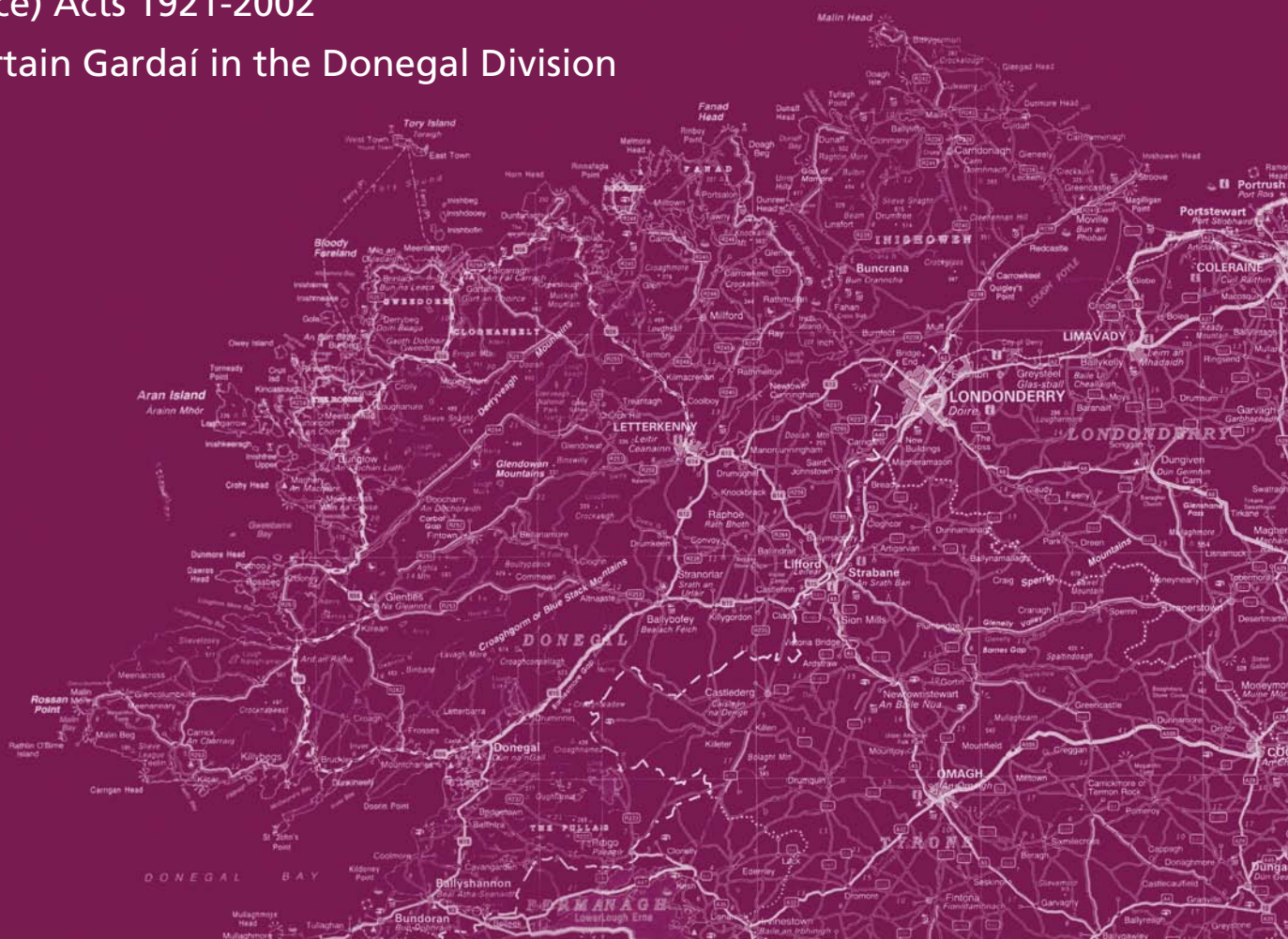




REPORT OF THE TRIBUNAL OF INQUIRY

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 3



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APPENDICES

Appendix A

Documents concerning the fourth interview of Róisín McConnell at Letterkenny Garda Station on the 4th of December 1996.

- A1. Typed memorandum of the interview of Róisín McConnell that appeared in the final report on the investigation into the death of Mr. Richard Barron submitted by Superintendent Kevin Lennon in March 1998 (statement 91E)
- A2. Handwritten notes of the interview of Róisín McConnell that were prepared by Garda Harkin in response to a request to submit his original notes to the incident room in late 1997/early 1998 (document 26E)
- A3. Statement of Garda Harkin incorporating the 'afternoon interview' of Róisín McConnell that appears on the final investigation file (statement 242).
- A4. Statement of Garda John Harkin incorporating the 'afternoon interview' of Róisín McConnell that was faxed to Manorcunningham Garda station on the 20th of February 1998, but that is missing from the working file of the investigation (statement 516).
- A5. Statement of Detective Inspector John McGinley incorporating the 'afternoon interview' of Róisín McConnell that appears on the working file (statement 529).
- A6. Handwritten notes that apparently record a portion of the afternoon interview of Róisín McConnell that were prepared by Detective Inspector John McGinley to provide an explanation for the previously identified discrepancies (Appendix 82, Carty Report)..

Appendix B

Documents concerning the arrest and detention of Frank McBrearty Junior on the 4th of December 1996.

- B1. A copy of the original handwritten confession said to have been made by Frank McBrearty Junior on the 4th December 1996 between 19.05 hours and 20.25 hours to Detective Sergeant John Melody and Detective Garda John Fitzpatrick.. . . .
- B2. A copy of the original handwritten statement said to have been made by Frank McBrearty Junior to Sergeant Eamon O'Grady and Sergeant Gerard McGrath between 20.30 hours and 21.16 hours on the 4th of December 1996.

- B3. A copy of the original custody record in respect of Frank McBrearty Junior dated the 4th of December 1996.
- B4. A copy of the original permission signed by Frank McBrearty Junior given to Detective Sergeant John Melody at 13.25 hours on the 4th of December 1996.

Appendix C

Correspondence between the Tribunal and Mr. Frank McBrearty Junior in respect of information sought by the Tribunal relating to Mr. Frank McBrearty Junior’s medical condition.

- C1. Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 13th of March 2006.
- C2. Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 7th of November 2006.
- C3. Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 14th of November 2006.
- C4. Letter from Mr. Frank McBrearty Junior to the Tribunal dated the 13th of November 2006.
- C5. Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 17th of November 2006.
- C6. Application of Mr. Frank McBrearty Junior to the Tribunal dated the 19th of November 2006.
- C7. Ruling in respect of application of Mr. Frank McBrearty Junior dated the 19th of November 2006 delivered on the 5th of December 2006.
- C8. Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 24th of November 2006.
- C9. Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 4th of January 2007.
- C10. Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 10th of January 2007.
- C11. Letter to Mr. David Walley, solicitor, enclosing correspondence sent to Mr. Frank McBrearty Junior by the Tribunal in respect of this matter.

Appendix D

Ruling in respect of Application of Mr. John White on the calling of certain witnesses in relation to the alleged Bugging of Garda Stations delivered on the 13th day of June 2007.

CHAPTER 11

THE ARREST AND DETENTION OF MARTIN MCCALLION

Background

11.01. In 1996, Martin McCallion was employed as a doorman at Frankie's nightclub in Raphoe. He had worked there for some two years and on Sunday night the 13th of October he commenced work at 22.10 hours. According to a statement made on the 22nd of October 1996 at Lifford Garda Station to Sergeant Joseph Hannigan, he remained on the main disco door until a bus arrived from Strabane carrying a number of patrons at approximately 23.30 hours. He then went into the disco hall at around 23.45 hours. In his statement he gave a detailed account of his movements during the course of the night and into the early hours of the morning. He also described the movements of Frank McBrearty Junior as he recalled them. He said that Frank McBrearty Junior was on the front door until 00.10 hours and then acted as a "floater" and went up to what they called the "crow's nest" which was on the first level of the disco and from which, apparently, one had a good view of the hall. He went on to describe his involvement in the expulsion of Paul 'Gazza' Gallagher, in which he was assisted by Frank McBrearty Junior, at approximately 00.30 hours to 00.45 hours on the 14th of October. He described how he and Mr. McBrearty Junior returned to the hall and separated after the expulsion of Mr. Gallagher. He then described another incident which occurred between 01.00 hours and 01.15 hours when another individual was ejected from the premises. Shortly after that a number of men from Strabane were also ejected. Though Mr. McCallion could not say if Frank McBrearty Junior was present on these two occasions he recalled that, "He is usually in the thick of it." He met Mr. McBrearty Junior between four to six times in the hall after this. He said:

I can't see it being possible that young Frank was missing that night. He is usually in and out and our paths would cross in the hall. I finished work that night at 4 o'clock after they were all out. I don't recall seeing Mark McConnell. Young Frank McBrearty left before me.¹⁶⁶⁷

11.02. In the course of the false statement made by Robert Noel McBride (previously discussed in the second report of the Tribunal), Mr. McBride described how he was in the vicinity of Frankie's nightclub at approximately 01.00 hours on the morning of the 14th of October 1996. He said:

As I walked up from D.J.'s and as I approached the entrance to Frankie's I

¹⁶⁶⁷ Tribunal Documents, pages 32-34 and see also pages 35-36.

saw one bouncer on the door. I would describe him as big and broad, skinhead type haircut, black in colour. I walked on up past this entrance. I noticed none of Frankie's staff in the car park ...

He went on to describe how just after 01.00 hours as he walked up the embankment to the top of the car park he saw Mark McConnell and Frank McBrearty Junior approaching him. He went back down through the car park past the entrance to Frankie's nightclub and stood outside D.J.'s café. He then said:

As soon as I got to D.J.'s I turned and faced Frankie's entrance. I saw Frank McBrearty Junior and Mark McConnell speak to the same bouncer I saw earlier on i.e., a fellow who is big and broad with skin head type haircut, black in colour. They spent about two minutes talking together, that is the three of them just outside Frankie's entrance on the tarmac. When they had finished young Frank McBrearty and Mark McConnell walked down to the Tudor Lounge entrance and the skin head bouncer went back into Frankie's. Frank McBrearty Junior knocked on the window on the disco entrance side of the Tudor Lounge entrance. After knocking three times the door opened and Frank McBrearty Junior and Mark McConnell went into the Tudor Lounge. I couldn't see who opened the door ...¹⁶⁶⁸

A conclusion was reached by investigating Gardaí that this description fitted Martin McCallion.

- 11.03. It is normal practice for an investigation team to cross-check on statements of this nature. However, no Garda returned to Mr. McCallion between the 22nd of October 1996 and the 8th of December 1996 in order to seek any clarification, explanation or expansion upon the statement that he had already made in the early stage of the investigation into the Late Mr. Barron's death. However, the description given by Mr. McBride in his statement of the 29th of November 1996, and the absence from Mr. McCallion's statement of the 22nd of October 1996 of any reference to meeting Mark McConnell and Frank McBrearty Junior as described by Mr. McBride, gave rise to suspicions that he was withholding information from the investigation team.

The Arrest of Martin McCallion

- 11.04. Detective Sergeant John O'Toole gave evidence to the Tribunal that he was directed to arrest Martin McCallion in relation to the death of the Late Mr. Barron on Friday the 6th of December 1996. Detective Sergeant O'Toole had been employed in the incident room as a uniformed Garda at the time and was aware

¹⁶⁶⁸ Statement of Robert Noel McBride made to Garda John O'Dowd, Sergeant Martin Moylan and Garda Philip Collins on the 29th of November 1996 – see report on the investigation into the death of Richard Barron and the extortion calls to Michael and Charlotte Peoples, paragraphs 5.102 to 5.103.

of information that had come in, discussions that had taken place and decisions that were made in relation to the investigation. He discussed with Sergeant Moylan the grounds which existed for the arrest of Mr. McCallion. He also re-read statements and any material that he thought was relevant to making the arrest in order to enable him to make up his own mind in relation to it.¹⁶⁶⁹ He said that the basis of the suspicion that he formed for the arrest was contained in the statement of Robert Noel McBride, in which he had described how the suspects Mark McConnell and Frank McBrearty Junior, had come down the car park at the rear of Frankie's nightclub and had gone to the side entrance to the nightclub, where they met with one of the doormen whom Mr. McBride described as already outlined. Detective Sergeant O'Toole said that on the basis of the description furnished in the statement he spoke with Sergeant Hannigan, Garda John O'Dowd and Garda Philip Collins about whether this was a description which fitted Martin McCallion. He was given to understand that the description fitted Mr. McCallion. Furthermore, he was aware that the statement furnished by Martin McCallion on the 23rd of October 1996 made no mention of any such encounter with Mark McConnell or Frank McBrearty Junior.¹⁶⁷⁰ On the basis that he accepted Robert Noel McBride's statement as true and had no reason to think otherwise, Detective Sergeant O'Toole said that he believed that Mr. McCallion had been withholding information in respect of this encounter with the two suspects. He felt that Mr. McCallion had seen them shortly after the death of the Late Mr. Barron.¹⁶⁷¹ In addition, he was given to understand by Sergeant Moylan that senior officers had directed this arrest and were happy that there was a legal basis upon which to effect an arrest of Martin McCallion under common law on reasonable suspicion of his being an accessory after the fact to the murder of the Late Mr. Barron.¹⁶⁷² Garda John O'Dowd denied that he told Detective Sergeant O'Toole that the description furnished by Mr. McBride fitted Martin McCallion, as he was on holidays from the 5th of December 1996 and could not have done so.¹⁶⁷³

- 11.05. Martin McCallion was arrested at 21.50 hours on the 8th of December 1996 by the then Garda John O'Toole at Townpark, Lifford. He lived in Strabane and was on his way to work as a doorman at Frankie's nightclub in Raphoe via the Lifford Bridge. He said:

I was crossing Lifford Bridge and just as I got to the bridge there was a checkpoint. A Guard, I knew him to see, he asked me for ID and I handed out my licence and he then looked over across the road, there was a group of Guards standing there and they had

¹⁶⁶⁹ Transcript, Day 316, Q.239-245.

¹⁶⁷⁰ Transcript, Day 316, Q.255-256.

¹⁶⁷¹ Transcript, Day 316, Q.266-267.

¹⁶⁷² Transcript, Day 316, Q.267-269.

¹⁶⁷³ Transcript, Day 316, Q.328-345.

*guns and he took it to identify it, he nodded over and said this is him here. I was asked to pull my car in to the left-hand side. They said it then, like you know, that they were arresting me ... they named a section, it was double Dutch. I says what, you know. I asked them could my car be left up to my mother-in-law's house. And they did and they proceeded ... took me down the road to Letterkenny.*¹⁶⁷⁴

- 11.06. Garda O'Toole arrested Martin McCallion in the company of Detective Garda Michael Carroll and Detective Garda Martin Anderson on reasonable suspicion of being an accessory after the fact to the murder of the Late Mr. Richard Barron. All three Gardaí denied that they were in possession of firearms as suggested by Mr. McCallion. Mr. McCallion requested that his car be driven to his mother-in-law's house nearby which was done, and he was conveyed to Letterkenny Garda Station without further incident. He makes no complaint regarding the behaviour of the three Gardaí in relation to the arrest or the journey to Letterkenny. For his part, Mr. McCallion thought that he was taken to Letterkenny in order to clarify some of the facts set out in his statement of October 1996 with reference to the expulsion of Paul Gallagher because he thought he might have given a mistaken account and nominated the wrong night for the event. He thought the Gardaí simply wanted a clearer picture of what happened. He said that it was not until the second interview conducted by the Gardaí in Letterkenny that the actual reason for his arrest was made known to him. It is an unusual feature of Mr. McCallion's arrest that he did not recognise that in fact he was being arrested on suspicion that he was guilty of an offence. He saw himself as a witness who was required by the Gardaí to assist them in their investigation. For that reason, he co-operated enthusiastically with them. It was only some time later that, to his surprise, he became aware of the fact that it was he who was suspected of having been involved in the crime which the Gardaí were investigating. For this reason, the Tribunal feels that it can rely with some confidence upon the evidence which was given by Mr. McCallion.

The Detention

- 11.07. Garda O'Toole and Detective Garda Carroll arrived at Letterkenny Garda Station at 22.10 hours on the evening of the 8th of December, following which Garda Martin McDonnell, the member in charge of the station, under the custody regulations authorised the detention of Mr. McCallion under section 4 of the Criminal Justice Act, 1984 on the application of Garda O'Toole. The grounds offered to and accepted by Garda McDonnell as the basis for authorising this detention are the same as those which grounded the arrest.¹⁶⁷⁵ Mr. McCallion

¹⁶⁷⁴ Transcript, Day 471, Q.51-81.

¹⁶⁷⁵ Transcript, Day 472, Q.38-42.

received a notice of his rights, which he acknowledged in the custody record, and at 22.25 hours and 23.50 hours his wife was telephoned at Strabane.¹⁶⁷⁶ Garda McDonnell remained as member in charge until 06.00 hours on the 9th of December 1996 when he was relieved by Garda Georgina Lohan, who remained as member in charge until Mr. McCallion's release at 09.45 hours on the morning of the 9th of December. Mr. McCallion made no complaints to either member in charge during the course of his detention concerning his treatment whilst in custody.¹⁶⁷⁷ Mr. McCallion stated that he was asked whether he wanted a solicitor but declined the offer because as far as he was concerned at that stage he had done nothing wrong and was prepared to answer any questions. He believed that they only wished to clear up a number of issues arising out of his statement. In evidence, he was happy enough to acknowledge that he was probably told the section of the Criminal Justice Act under which he was detained and given a reason for his detention, and to accept that the entries in the custody record were correct in that respect.¹⁶⁷⁸ **I am satisfied that both members in charge carried out their duties properly in respect of Martin McCallion.**

The Interviews

11.08. During the course of his detention Martin McCallion underwent six periods of interview by six Gardaí who interviewed him in teams of two. The Gardaí involved were Detective Garda Michael Carroll, Garda John O'Toole, Detective Garda Padraic Scanlon, Detective Garda Martin Anderson, Detective Garda Patrick Tague and Detective Garda Michael Jennings. A number of sets of notes were made available to the Tribunal in respect of each of these interviews. A synopsis of the main events and features of the detention are set out in tabular form:

Occurrence on the 8th of December:	Details of occurrence	Comment
21.50	Arrest of Martin McCallion at Townpark, Lifford.	
22.17	A notice of his rights was given to Martin McCallion and he was offered the opportunity to consult with a solicitor which he declined.	
22.17	Mr. McCallion requested that his wife be contacted.	
22.25	Mr. McCallion's wife was contacted at the number provided.	
22.30	Mr. McCallion was brought to the interview room by Garda O'Toole and Detective Garda Carroll to commence his first interview.	

¹⁶⁷⁶ Tribunal Documents, page 38.

¹⁶⁷⁷ Transcript, Day 472, pages 14-24 (Garda McDonnell) and pages 25-31 (Garda Lohan).

¹⁶⁷⁸ Transcript Day 471, Q.100-113.

23.30	Mr. McCallion was visited by Garda McDonnell and was "ok".	
23.45	Mr. McCallion was brought to the public office to make a telephone call to his wife.	
23.50	Mr. McCallion was returned to the interview room.	
23.55	Mr. McCallion was given the option to suspend his questioning until 8.00 a.m. on the 9th of December 1996 but he declined this option.	
Occurrence on the 9th of December:	Detail of Occurrence	Comment
00.45	Garda O'Toole and Detective Garda Carroll left the interview room, ending the first interview, and were replaced by Detective Garda Scanlon and Detective Garda Anderson, who commenced the second interview.	
01.15	Garda McDonnell visited Mr. McCallion in the interview room and found "everything in order".	
01.45	Mr. McCallion was again visited in the interview room.	
02.30	At the conclusion of the second interview Mr. McCallion was placed in a cell.	
03.00	Garda McDonnell visited Mr. McCallion in the cell. He was "ok".	
03.30	Mr. McCallion was brought from the cell to the interview room by Detective Gardaí Carroll and Tague to commence the third interview.	
03.45	Mr. McCallion was informed of the extension of his detention and the permission granted to photograph and fingerprint him by Garda McDonnell.	
04.14	Mr. McCallion was visited in the interview room "all ok".	
04.15	Mr. McCallion was visited in the interview room by Garda McDonnell and asked if he wanted refreshments.	
04.18	Mr. McCallion was given coffee and biscuits.	
05.30	Mr. McCallion requested more coffee, which was provided.	

05.50	Detective Gardaí Carroll and Tague concluded the third interview and left the interview room and were replaced by Detective Gardaí Scanlon and Anderson who commenced the fourth interview of Mr. McCallion.	
06.00	Mr. McCallion was visited in the interview room by Garda Georgina Lohan, the new member in charge, and was "ok".	
06.40	A further visit to Mr. McCallion in the interview room found him "ok".	
07.20	Detective Gardaí Scanlon and Anderson concluded the fourth interview and left the interview room and were replaced by Detective Gardaí Carroll and Tague who commenced the fifth interview.	
07.30	Detective Gardaí Carroll and Tague left the interview room and Mr. McCallion was placed in the cell.	
07.40	Detective Garda Carroll brought Mr. McCallion a cup of coffee.	
08.00	Detective Gardaí Carroll and Jennings brought Mr. McCallion from the cell to the interview room to commence his sixth interview.	
08.30	Mr. McCallion was offered breakfast but declined and requested coffee.	
08.40	Mr. McCallion received a cup of coffee.	
09.00	Mr. McCallion was visited by Garda Lohan and was "ok".	
09.45	Mr. McCallion was released from custody and signed an acknowledgement that he had no complaints to make.	

11.09. Detective Sergeant O'Toole in evidence said that he spoke to Detective Garda Carroll prior to commencing the first interview. Whilst there was no briefing session provided for them beforehand they read any relevant statements that had mentioned Mr. McCallion and his statement of the 23rd of October 1996. He said that they wished to interview him about the description already quoted contained in the false statement of Robert Noel McBride dated the 29th of November 1996, which stated that the two suspects identified by Mr. McBride had spoken with a doorman whom they believed to be Mr. McCallion. They also

wished to question Mr. McCallion as to why this encounter was not contained in his statement of the 23rd of October. In addition, they wished to question him about the behaviour of Mr. Frank McBrearty Senior towards his staff or witnesses who had been interviewed by An Garda Síochána. They were trying to gather intelligence about what Frank McBrearty Senior was saying to his staff. He said that they were also trying to uncover information concerning the movements of Frank McBrearty Junior that night. Primarily, they wished to question Mr. McCallion because they believed he was withholding information that, he thought, would be supportive of that outlined by Mr. McBride. They were also aware at that stage that Frank McBrearty Junior had made an alleged statement of admission of his involvement in the death of the Late Mr. Barron and they intended to use that information in the course of their interviews, though they did not produce the statement to him.¹⁶⁷⁹

The First Interview

- 11.10. The first interview was conducted by Garda John O’Toole and Detective Garda Michael Carroll between 22.30 hours and 00.45 hours. An extensive set of notes exists, signed by Martin McCallion and witnessed by Garda O’Toole and Detective Garda Carroll, that records the questions asked of Mr. McCallion during the course of this first interview. Martin McCallion informed the Tribunal that he was happy that this memorandum of interview was accurate and that he was treated fairly and properly by the two interviewing Gardaí.¹⁶⁸⁰
- 11.11. The notes reflect the topics which Garda O’Toole said were of interest to the interviewing Gardaí.¹⁶⁸¹ These included the movements of Mark McConnell and Frank McBrearty Junior and the expulsion of Paul Gallagher and a number of men from Strabane from the nightclub. Mr. McCallion informed the interviewers that he was “very pally” with Frank McBrearty Junior and that he could be hot-headed but would not start a fight. He said of him that “He doesn’t size up a situation he just goes into it feet first.” He said that he had never seen Frank McBrearty Junior carry a baton in the disco. He was asked whether he thought Frank McBrearty Junior was capable of hitting a man over the head with an implement. He said, “I know that he has a bad temper, I know that he would hit a man, I never seen him use an implement though”.
- 11.12. Mr. McCallion was also questioned about Frank McBrearty Senior. He said that Frank McBrearty Senior had asked him what he had told the Gardaí about Frank McBrearty Junior and to write down what he had told them. Frank McBrearty Senior was worried about his family getting a bad name and enquired of him what the Gardaí had said about Frank McBrearty Junior and about his business. He said that Frank McBrearty Senior also asked him to set out where everybody

¹⁶⁷⁹ Transcript, Day 471, Q.629-642.

¹⁶⁸⁰ Transcript, Day 471, Q.117-174.

¹⁶⁸¹ Tribunal Documents, pages 43-52.

was on the night of the 13th and 14th of October 1996 and to say where Frank McBrearty Junior was. He agreed that Frank McBrearty Senior was taking statements to indicate that Frank McBrearty Junior had nothing to do with the death of the Late Mr. Barron.

- 11.13. Martin McCallion also gave details to these interviewers about what he had been told by Frank McBrearty Junior of his detention at Letterkenny Garda Station on the 4th of December 1996. It emerged in this way. The interviewers said to Mr. McCallion that the deceased “was in a bad way”. Mr. McCallion replied:

I know I heard that the pictures were bad ... Young Frank said to me I saw him last night 8/12/96 and I said to him you are a bad colour. He said to me if you saw what I saw you would be a bad colour too. He said that he saw photographs and that they were horrific. He said f... you your statement is different to mine you said the wrong thing you must be thinking of a different night.¹⁶⁸²

This is the first recorded Garda information that Frank McBrearty Junior had a complaint or complaints to make about his treatment in Garda custody on the 4th of December 1996. Further detail of Frank McBrearty Junior’s complaints to Mr. McCallion are also contained in notes of the third and fifth interviews conducted with Mr. McCallion by Detective Gardaí Carroll and Tague in the following exchange:

- Q. When did you see Frank after he was in here?
- A. It was Saturday.
- Q. When did you see him on Saturday?
- A. He came out to the disco he only stopped for a short while.
- Q. Is that unusual?
- A. Yes.
- Q. Did he talk to you about what was said to him in here?
- A. He said that he got a hard time.
- Q. Was he pale looking?
- A. Yes he said that he was shown photos here and that they had a bad effect on him.
- Q. Did he say anything else about his time here?

¹⁶⁸² Tribunal Documents, page 51.

A. Yeah he said that he got slapped about the place. He only stayed five minutes at the disco which is very unusual and he left.¹⁶⁸³

- 11.14. Detective Sergeant O’Toole told the Tribunal that he was surprised when Mr. McCallion gave him this information. He did not believe it at the time. He assumed that the photographs referred to were post-mortem photographs that were available in the incident room. He said:

*We didn’t pursue it at the time. We were kind of taken aback about it, perhaps we should have enquired further into it but we didn’t at that time. We were coming to the end of our interview.*¹⁶⁸⁴

He was not made aware by Detective Gardaí Tague and Carroll that a further and more serious reference was made to this matter in the later interview.¹⁶⁸⁵ He made the assumption that since the allegation was in the memo of interview which was given into the incident room to be read and analysed by members of the investigation team, the matter would come up and, perhaps, somebody in authority would do something about it. He was never approached about it again by any other Garda or officer.¹⁶⁸⁶ The interview concluded at 00.45 hours.

The Second Interview

- 11.15. The second interview was conducted by Detective Garda Padraic Scanlon and Detective Garda Martin Anderson between 00.45 hours and 02.30 hours. According to Detective Gardaí Scanlon and Anderson, Detective Garda Scanlon took notes of this interview. Martin McCallion told the Tribunal that at first the tone of the questioning during the course of the second interview was different to that of the first. He said that at the beginning of the second interview the two Gardaí came in and started chatting. Martin McCallion said that he smirked at first, at which the Detective Garda asking the questions (on the Garda evidence Detective Garda Anderson) raised his voice and told him that the matter under investigation was not a laughing matter. Martin McCallion said that he was asked by this Garda whether he knew why he was in Letterkenny Station and Mr. McCallion replied that he did and that it was in order to clear up the dates which he had given in his statement in respect of the expulsion of Paul Gallagher from Frankie’s nightclub. He was then told by Detective Garda Anderson that he was in for “conspiracy for murder after the event”. Mr. McCallion replied that he was surprised by this and told Detective Garda Anderson that “you must be f... joking” at which the Detective Garda raised his voice again. When this happened Mr. McCallion said that he replied:

Listen, I am willing to co-operate anyway at, like you know, I have

¹⁶⁸³ Tribunal Documents, pages 72-73.

¹⁶⁸⁴ Transcript, Day 471, Q.666-676.

¹⁶⁸⁵ Transcript, Day 471, Q.680-685.

¹⁶⁸⁶ Transcript, Day 471, Q.686-692.

nothing to hide, any questions you ask me I'll answer them. But I tell you what, listen, if you give me a hard time I'll tell you what, this will be the longest twelve hours you ever sat here. That's the words I said.

He said that things then calmed down and Detective Garda Anderson offered him a cigarette, which he accepted, and the questioning began all over again and he answered their questions. The tone of the questioning changed to what he regarded as a more acceptable level.¹⁶⁸⁷

- 11.16. At this stage Martin McCallion said a book of photographs was placed down in front of him. He turned the pages as Detective Garda Anderson was talking and saw various photographs of the Late Richard Barron. He started to examine the booklet from front to back. He said:

The first photograph that I saw was Mr. Barron lying on, it looked like a table and it showed his face, blood and being bruised and a massive gash on his head. As I turned on, it showed me ... I seen a photograph of him with his two hands all bandaged, swollen, bruised. Then the next one then was the one where his head was ... his skin was peeled back from his head and it showed you the massive mark on his head ... on the forehead ... then I turned then and I seen the car. It was a Cavalier ... the colour was like a blue, like an aqua blue colour. She was damaged on the front, the front panel, headlight and bumper and the wing mirror was broken ... The front shot showed the damage to the bumper and the wing mirror and the side shot then showed you the damage ... no sorry, the wing mirror as well and part of the side panels.

Mr. McCallion said that the interviewer pointed at the photograph and asked him whether it bothered him. He replied that it did not:

He says you know it should, he says because you took ... you mightn't have done it, but you might as well have done it. You know I played a part in it and I should feel bad for looking at this photograph.

He said that when he turned to the photographs of the motor car he asked the Gardai what they were about. He said that the interviewer, who again appears to be Detective Garda Anderson, "pulled the photographs" and told him that they need not concern him. The book was then closed. Because the death of the Late Mr. Barron was supposed to be a hit-and-run at the beginning of the investigation, he thought that the photographs of the car were relevant to a hit-and-run.¹⁶⁸⁸

¹⁶⁸⁷ Transcript, Day 471, Q.175-202.

¹⁶⁸⁸ Transcript, Day 471, Q.203-260.

- 11.17. He said that the photographs which he saw were contained in an album and that each was contained in a separate plastic transparent photo sleeve.¹⁶⁸⁹ Martin McCallion told the Tribunal that he did not complain about the showing of these photographs to him to anybody. He said:

*I am still not complaining, I am not complaining I am just saying that I was shown the photographs, that's all I'm telling you, I was shown the photographs you know and they were of a graphic nature. It happened and I just thought it was standard procedure when you're being in and being interviewed you know for something, that that's part of the Garda's evidence that they can show it to you what had actually happened, like you know and try and come to a conclusion.*¹⁶⁹⁰

- 11.18. Mr. McCallion found it difficult to identify the man whom he said showed him the photographs. He had given a description of this man to the Tribunal investigators in the following way:

MF: Can you describe as best you can to us the man who showed you the photographs or was present there who produced the album to you? I take it there were two detectives there at the time?

MMcC: Yes there was, yes there was two detectives.

MF: Can you describe perhaps even one or other of them or both?

MMcC: Well the names I wouldn't be sure of because of, but the fellow to me was a man I'd say between 35 possibly 38 years of age, medium build, sort of long face with red cheekbones. Hair flicked to one side.

MF: What weight would you think?

MMcC: Weight I'd say approx. between 13½ to 14 stone.

It was put to Mr. McCallion in cross-examination that in fact Detective Garda Anderson was about 10½ to 11 stone and was somewhat slight of build for a policeman. Mr. McCallion had also told the Tribunal investigators that the man who showed him the photographs had not been involved in his arrest. Detective Garda Anderson had been involved in the arrest.¹⁶⁹¹ Mr. McCallion was asked, on that basis, whether he could possibly be wrong in his identification of Detective Garda Anderson and mistaken in identifying the second interview as being the occasion upon which he was shown the photographs. He said:

¹⁶⁸⁹ Transcript, Day 471, Q.261-275.

¹⁶⁹⁰ Transcript, Day 471, Q.457-459.

¹⁶⁹¹ Tribunal Documents, pages 97-100 and Transcript, Day 471, Q.560-580.

Right, he was part of the arrest team, so I was wrong giving a description. I'm not down here to discredit any member of the Garda Síochána. I'm down here to tell it the way it was. I'm not here to try and discredit any member of the Garda Síochána. I came down here to tell my side of the story, freely. I came down here without legal representation here today and I know there's other parties you know, wanting to get legal representation. So I'm saying I'm down here not to blacken anybody's name, I'm just telling it the way it happened and what I saw.

It was then suggested to him that because Detective Garda Anderson did not fit the description given by Mr. McCallion, and given the fact that he was on the arresting team, it was not Detective Garda Anderson who showed photographs to him. Mr. McCallion accepted that proposition.¹⁶⁹² Nevertheless, his evidence remained throughout his testimony that this incident had occurred in the second interview, by which he meant the interview between 00.45 hours and 02.30 hours.

- 11.19. Detective Garda Anderson and Detective Garda Scanlon both denied in evidence to the Tribunal that any photographs had been shown to Martin McCallion in the course of this interview at any stage. Detective Garda Anderson said that he met the previous interviewers, Detective Garda Carroll and Garda O'Toole, prior to interviewing Mr. McCallion. They told him that Mr. McCallion had not admitted to the encounter with Frank McBrearty Junior and Mark McConnell outside the nightclub. He said that he was not told anything about allegations made by Frank McBrearty Junior that he had been shown photographs. No photographs were shown and they were not part of any interviewing procedure that he was aware of or ever participated in. He said he would never show such photographs to anybody because it would be distressing. He said:

*I wouldn't do it with any person in an interview room. I wouldn't take in those photographs. Because it is distressing and anyway if people as a result ... may make admissions and they can be held inadmissible later on in the courts. I wouldn't do it. It ... would never come into my mind.*¹⁶⁹³

He had no recollection of any occasion upon which he had raised his voice to Mr. McCallion following which Mr. McCallion had told him or retorted that it would be a very long night if he continued in that vein. He said that Mr. McCallion was co-operative and answered the questions put to him. However, he still held the view that Mr. McCallion was holding back vital information in that he had seen the two men coming down the car park and he had let them into the Tudor

¹⁶⁹² Transcript, Day 471, Q.587-617.

¹⁶⁹³ Transcript, Day 472, Q.153-177.

lounge, because of the Robert Noel McBride statement which he believed at the time to be genuine. He thought that Mr. McCallion may have got the description of the photographs from some third party.¹⁶⁹⁴

- 11.20. Detective Sergeant Scanlon also denied that these photographs were shown to Mr. McCallion in the course of the interviews for which he was present. He thought that he had seen these photographs at some stage. However, he was not aware of the showing of any photographs to any detainees. He could not recall whether there was any discussion with his colleagues about this matter.¹⁶⁹⁵ Detective Sergeant Scanlon had a recollection that in the early part of the interview he and Mr. McCallion may not have got off on the right footing. He said there was no roaring or shouting or aggression on his part but:

*I don't know if it was something that he said that I ticked him off on or something that I said he didn't like, but there was a bit of firmness in the interview at the early stages. Now I don't remember what was said or what it was.*¹⁶⁹⁶

- 11.21. Detective Sergeant Scanlon admitted that he could have said that the matter they were dealing with was not a laughing matter. He also said that though he was the note-taker he would have asked questions during the course of the interview. He accepted that Mr. McCallion stood his ground in the face of questioning and that the initial exchange may have been provoked by a smirk on his part. He said that it was "a storm in a tea cup". The interview was quiet after the initial exchange.¹⁶⁹⁷ He accepted that he may have offered him a cigarette after the incident.¹⁶⁹⁸ He said no photographs were ever produced by him or in his presence to Mr. McCallion.¹⁶⁹⁹ Detective Sergeant Scanlon also drew attention to a statement made by Mr. McCallion to the Tribunal investigators, which contained the following exchange:

MF:	Did they give you any explanation as to why they were showing you these photographs?
MMcC:	This is what Frank McBrearty has done like you know and these photographs now he broke down and started crying like you know and put the photographs away and didn't want to see them and how come these photographs don't affect you and I said listen these photographs doesn't bother me I says I don't even know this man. I hadn't seen that man then and there's the first photographs I ever seen of that man. ¹⁷⁰⁰

¹⁶⁹⁴ Transcript, Day 472, Q.178-219.

¹⁶⁹⁵ Transcript, Day 472, Q.282-328.

¹⁶⁹⁶ Transcript, Day 472, Q.330-333.

¹⁶⁹⁷ Transcript, Day 472, Q.333.

¹⁶⁹⁸ Transcript, Day 472, Q.343.

¹⁶⁹⁹ Transcript, Day 472, Q.339-415.

¹⁷⁰⁰ Tribunal Documents, page 99.

Detective Sergeant Scanlon made the point that he knew nothing of photographs in relation to Frank McBrearty when interviewing Martin McCallion or of their production to Frank McBrearty Junior or his reaction to them or alleged reaction to them at that stage. Therefore, he could not have been involved in any such exchange with Mr. McCallion. It was not an exchange repeated by Mr. McCallion in evidence to the Tribunal.

11.22. Mr. McCallion originally gave a very detailed description of the photographs that he said he had seen to Tribunal investigators in an interview on the 12th of April 2006. Subsequent enquiries revealed that an album of photographs, containing a series of photographs as described in detail by Mr. McCallion, was prepared in 1996. Photographs taken by Garda Kevin O'Malley were processed at Garda headquarters and became exhibit number 140, reference number 2159/96 in the investigation. This album contained photographs of the post-mortem of the Late Mr. Barron, photographs of the car as described by Mr. McCallion (including the damage outlined by him to the investigators) and other photographs of the scene of the death.¹⁷⁰¹ The investigators returned to Mr. McCallion on the 2nd of May 2006 and produced to him the photograph album, reference number 2159/96, from which he identified two pictures of the car that he had described. Whilst a suggestion was made that Mr. McCallion must have been told about these photographs by some third party in order for him to be able to give such a clear, vivid and accurate description of them, no evidence of that kind was produced to the Tribunal.¹⁷⁰² **I am satisfied that Martin McCallion was able to give this description to the investigators because he had seen the photographs and I fully accept his evidence that he was shown these photographs in the course of his being interviewed by the Gardaí at Letterkenny Garda Station during the course of his detention.**

11.23. Martin McCallion resides in Strabane and co-operated very fully with the Tribunal's investigators prior to the Tribunal's hearings in respect of this sub-module. He also co-operated fully with the Tribunal in voluntarily attending as a witness before the Tribunal and submitting to its jurisdiction in circumstances where he could have stayed across the border in Strabane and simply ignored these proceedings. Whilst he maintained that these photographs were shown to him in the course of the second interview by Detective Garda Anderson in the presence of Detective Garda Scanlon, he could not and would not identify either of these Gardaí as the persons who showed him, or were present when he was shown, the photographs. He went so far as to accept that he was wrong in his description of Detective Garda Anderson as the person likely to have shown them to him. Consequently, it would be wrong of me to determine on the balance of

¹⁷⁰¹ Tribunal Documents, pages 94-97, and pages 103-105 (interview with Garda Kevin O'Malley, 3rd of May 2006) and see also Transcript, Day 472, pages 143-147; see also Chapter 4, paragraphs 4.90-4.108.

¹⁷⁰² Tribunal Documents, page 102.

probability that Detective Garda Anderson showed Mr. McCallion the photographs in the presence of Detective Garda Scanlon, notwithstanding the possibility that the photographs were indeed shown in the second interview. **The Tribunal can only go so far as to conclude that these photographs were shown to Mr. McCallion at some time during the course of his detention. Whichever Garda showed them to him and whichever colleague of that Garda was present at the time, have chosen not to make themselves known to the Tribunal even though Mr. McCallion does not seek to make a complaint about the matter but merely asserts it as an event that happened. The notes of this interview were not read over to Mr. McCallion at its conclusion. They were read over to him at the conclusion of the fourth interview, much later, at some time before 07.30 hours. This was not in accordance with good police practice and procedure. Rule 9 of the Judges' Rules contemplates the recording and reading over of notes of interview contemporaneously or within a short time of the interview.**¹⁷⁰³

The Third Interview

- 11.24. The third interview was conducted by Detective Garda Michael Carroll and Detective Garda Patrick Tague between 03.30 hours and 05.50 hours. Martin McCallion makes no complaint about this interview conducted by Detective Gardaí Carroll and Tague. He accepts that notes were taken by Detective Garda Carroll and that they constitute an accurate record of the interview. These notes were later read over to him between 07.20 and 07.30 hours when Detective Gardaí Carroll and Tague returned to the interview room for that purpose at the conclusion of the fourth interview. **It is the Tribunal's view that notes taken in the course of an interview should normally be read over at the conclusion of that interview; this was not done. In this case no conflict exists between the interviewee and the interviewers as to what was said during the course of the interview and the time between the conclusion of the interview. Nevertheless, the correct practice is to read over the notes at the conclusion of the interview.**¹⁷⁰⁴
- 11.25. It will be recalled that Detective Garda Carroll had also been present at the first interview with Garda John O'Toole. In the first interview, Martin McCallion told the interviewers of an encounter which he had with Frank McBrearty Junior in which Mr. McBrearty Junior told him that he had seen photographs that were horrific, apparently of the post-mortem of the Late Richard Barron. In this third interview Mr. McCallion repeated his account of that meeting with Frank McBrearty Junior but added that Frank McBrearty Junior had also alleged to him that "he got slapped about the place" whilst in detention on the 4th of

¹⁷⁰³ Rule 9 of the Judges' Rules; see also Regulation 12(11) of the Custody Regulations.

¹⁷⁰⁴ Tribunal Documents, pages 64 – 76.

December 1996. The relevant segment of the interview has already been quoted. This was the second occasion upon which Detective Garda Carroll heard this allegation and he was asked by Tribunal counsel for his reaction to it. He was aware that an alleged statement of confession had been made by Mr. McBrearty Junior but he had not seen it. His attitude was that he had recorded faithfully the account given to him by Mr. McCallion of the complaint made to Mr. McCallion by Frank McBrearty Junior. He submitted that note to the investigation team. He said that if Mr. McBrearty Junior wanted to make a complaint about getting slapped about the place he would have expected him to make the complaint officially rather than go to Mr. McCallion about it. He described his purpose in asking about his dealings with Mr. McBrearty Junior after the 4th of December 1996 as follows:

Well he had alluded to him being in a bad way in the previous interview and I was just trying to see how much of a bad way he was in, or what was the story with it. The reason I asked him did he see him was that I knew that there was a kind of a subsequent investigation, if you like, going on by Mr. McBrearty where he was making a point of seeing people who we had seen and asking them what they had said to us and it was in relation to that that I had asked him that. I know it went down a different road then after I'd asked him what kind of condition was he in when you did see him and was he pale looking. You know he had stated that he wasn't feeling well at one time when he was in Letterkenny Garda Station, that Mr. McBrearty had said that he wasn't well. I was just wondering what kind of condition he was in. I was more concerned about what he was asking him about and what Mr. McBrearty was saying was being said to him, trying to find out what angles they were trying to block off by carrying out their own investigation. I was trying to find out what story Mr. McBrearty was putting out there about himself being in the Station, was he saying that he had made a confession, was he saying that he hadn't made a confession.¹⁷⁰⁵

Detective Garda Carroll was not surprised by the reference to the photographs but he said:

I'd nothing to say to me that it was actually true, I'd nothing to say that it wasn't true, I wasn't aware at that time myself of the existence of such photographs.¹⁷⁰⁶

11.26. Detective Garda Tague gave evidence that he and his colleagues were interested

¹⁷⁰⁵ Transcript, Day 472, Q. 474-490.

¹⁷⁰⁶ Transcript, Day 472, Q.476.

in what Frank McBrearty Junior had said after he was released from custody:

*... to see if he had said anything about what happened. What he had said in custody or whatever, or what had he spoken to Marty McCallion about him being in custody. That was our interest in him. But we never said that to Martin McCallion.*¹⁷⁰⁷

Detective Garda Tague also said in evidence that he did not believe the reported allegations of Mr. McBrearty and put it down to some sort of a “bragging” or “bravado” account of what happened to him in detention. They did not give any significance to these answers. They did not think the replies merited any further attention other than that they be noted accurately in the notes that were made.¹⁷⁰⁸

- 11.27. **I am satisfied that Detective Garda Carroll made an accurate note of Mr. McCallion’s report to them of the allegations made by Frank McBrearty Junior concerning his detention.** There are two features of the reported complaints that are of interest. Firstly, the reported complaints were the first information received by any Garda of complaints made by Frank McBrearty Junior concerning his treatment in custody on the 4th of December 1996. Secondly, though neither interviewer had seen the alleged confession of the 4th of December 1996 made by Frank McBrearty Junior and both acknowledged that this was unusual, neither of them concluded that there was any link between the two matters. The account furnished by Mr. McCallion of his encounter with Mr. McBrearty Junior was included in the notes and furnished to the investigation team. The allegations were not brought to the attention of Superintendent Fitzgerald, who was available and, who indeed signed the extension order in respect of the detention of Martin McCallion at 03.40 hours on the morning of the 9th of December.¹⁷⁰⁹

The Fourth Interview

- 11.28. The fourth interview was conducted by Detective Garda Padraic Scanlon and Detective Garda Martin Anderson between 05.50 hours and 7.20 hours. Mr. McCallion makes no complaint about his treatment during the course of this interview and accepts that the notes furnished to the Tribunal represent accurately the questions and answers that passed between him and the interviewers.¹⁷¹⁰ In the course of this interview Mr. McCallion was asked how much he was paid by Mr. McBrearty Senior for his work as a doorman and about the movements of Seán Crossan on the night of the 14th of October 1996 within and outside Frankie’s nightclub. **The note that was read over at the conclusion of the fourth interview also contained the note recorded**

¹⁷⁰⁷ Transcript, Day 472, Q.595-600.

¹⁷⁰⁸ Transcript, Day 473, Q.1-32.

¹⁷⁰⁹ Tribunal Documents, page 39. Transcript, Day 473, Q.33-35.

¹⁷¹⁰ Tribunal Documents, page 63.

during the second interview. That portion of the note should have been read over to Mr. McCallion at the end of the second interview. This was contrary to what I regard as good practice. Each note of interview should have been read over to the detainee at the conclusion of each interview. Experienced detectives knew this but did not comply with it.

The Fifth Interview

11.29. Detective Garda Michael Carroll and Detective Garda Patrick Tague conducted the fifth interview between 07.20 hours and 07.30 hours. It appears that, during this brief period, notes of the third interview, conducted by the same officers, were read over to Mr. McCallion. **The comment at the conclusion of the last paragraph is equally applicable here.**

The Sixth Interview

11.30. Detective Garda Michael Carroll and Detective Garda Michael Jennings conducted the sixth and final interview of Martin McCallion between 08.00 hours and 09.45 hours. Mr. McCallion made a statement during this period of interview that runs to five and a half typed pages. The statement essentially repeats in narrative form the accounts which he had given of his movements and other events on the evening of the 13th/14th of October 1996 and his subsequent dealings with Frank McBrearty Senior.¹⁷¹¹

Release

11.31 The custody record also indicates that Martin McCallion was released from his detention at 09.45 hours on the morning of the 9th of December 1996, at which time he was recorded as having no complaints to make; he agrees that he signed this entry. Nevertheless, prior to his release, he said that he was asked about money he got from Mr. McBrearty Senior. He said that this was “more or less the end of the interview.” He said:

I think it was six ... Guards in the room, like you know, before I left, and there was one Guard in particular and he just says like, you know, how much did Frank McBrearty pay you, you know Judas sold our Lord for thirty pieces of silver and I said, it would take more than thirty pieces of silver to buy me. ... That happened more or less at the very end before I was being released. The actual time I couldn't give you. There was at least six Guards in at that stage ... I was put back in the cell and then I was brought from the cell then back in again. Just before I was being released. In the interview room. I was interviewed before I was released. I was brought from

¹⁷¹¹ Tribunal Documents, pages 77-82. Transcript, Day 471, pages 407-411 and Day 472, pages 136-140.

*the cell to the interview room, there was more Guards present before I was being released. I think it was more or less chatting like before I was being released.*¹⁷¹²

11.32. In a Statement of Claim delivered in the course of civil proceedings related to his alleged wrongful arrest and detention and dated the 6th of October 2003, it was claimed at paragraph 4, inter alia, that it was put to Mr. McCallion that he had been paid by Frank McBrearty Senior to tell lies about the death of Richard Barron.¹⁷¹³ Subsequently on the 20th of June 2006, Mr. McCallion told the Tribunal investigators that this had been put to him by Gardaí whilst he was in custody in Letterkenny but he again emphasised that in fact he had not been offered any money by Frank McBrearty Senior or anybody else.¹⁷¹⁴

11.33. In evidence to the Tribunal Mr. McCallion said that he could not honestly say that he had been questioned by any Garda about being paid by Frank McBrearty Senior to tell lies about the death of Richard Barron. He said:

*I honestly can't say, that was the direct question they asked me. I was asked about being paid and I was asked then about our Lord and the thirty pieces of silver.*¹⁷¹⁵

11.34. In his evidence Sergeant Carroll says that there was no reference in his presence to thirty pieces of silver or Judas Iscariot. He did not accept that there were more than two persons present in the interview room with Mr. McCallion at the end of his detention. He said that after the final interview Mr. McCallion was brought from the interview room to the day room prior to being released. He said:

*There may have been a number of Guards in the day room at any time but I don't even think that I went to the day room with him. I would have been anxious to get home at that stage.*¹⁷¹⁶

11.35. Detective Garda Jennings said that after the end of the final interview he went to look for the keys of a Garda car so that he could drive Mr. McCallion home. Mr. McCallion was taken to the day room prior to his release. He had no recollection of any mention of Judas Iscariot or thirty pieces of silver. Both interviewers maintain that they were not present, therefore, for the release of Mr. McCallion in the day room. This implies that, if the remarks were made, they were not made in the interview room as suggested by Mr. McCallion, but at the time of his release, and that the six Gardaí who were supposedly present at the time of the making of the remarks were present not in the interview room, but in the day room.

¹⁷¹² Transcript, Day 471, Q.363-429.

¹⁷¹³ Tribunal Documents, page 84.

¹⁷¹⁴ Tribunal Documents, page 106.

¹⁷¹⁵ Transcript, Day 471, Q.431.

¹⁷¹⁶ Transcript, Day 472, Q.526-532.

11.36. I am satisfied that some remarks of the type suggested by Mr. McCallion were made to him at the time of his release. Sergeant Carroll and Detective Garda Jennings distanced themselves from the making of these remarks by saying that they had nothing to do with him at the time of his release. The Tribunal is not satisfied to conclude that these two Gardai were present when these remarks were made. No other Garda accepts that he made the remarks or that he was present for the making of such remarks. However, I am satisfied that the remarks were made, though it is possible that Mr. McCallion is mistaken as to where they were made. The remarks should not have been made. The detention and interviewing of a suspect should be conducted within the disciplined legal and administrative framework provided. There is no place for insulting gratuitous remarks being made to a detainee within that framework.

Conclusions

11.37. The Tribunal has reached the following conclusions:

1. Martin McCallion was unlawfully arrested on the 8th day of December 1996 as an accessory after the fact to the murder of the Late Richard Barron. His arrest was based on the false statement of Robert Noel McBride, the contents of which were supplied by the Gardaí. No lawful arrest can occur when the agency effecting the arrest is responsible for manufacturing the evidence upon which the grounding suspicion was based. In this instance the arresting officer, Garda John O'Toole, was directed by Sergeant Martin Moylan on instructions from senior officers to carry out the arrest of Martin McCallion. In doing so he acted bona fide on the basis of the deceit orchestrated by his colleagues with Robert Noel McBride.
2. Martin McCallion makes no complaint as to how he was treated by any Garda during the course of his detention.
3. Whilst stressing that he had no complaint to make against any Garda, nevertheless Martin McCallion gave evidence about two incidents which are of concern to the Tribunal. Firstly, he said that he was shown photographs of the post-mortem of the late Richard Barron. Initially, he believed this could have occurred in the course of the second interview and implicated Detective Garda Anderson as the person who showed the photographs to him. The incident was denied by Detective Garda Anderson and Detective Garda Scanlon, who was also present for the second interview. Subsequently, in cross-

examination, Mr. McCallion conceded that he could not and would not identify Detective Garda Anderson as the person who had shown him the photographs. Nevertheless, he continued to maintain that it had occurred during the second interview. The Tribunal is satisfied that post-mortem photographs of the Late Richard Barron were shown to Martin McCallion during the course of his detention. It is not satisfied on the balance of probabilities that these photographs were shown to him by Detective Garda Anderson in the presence of Detective Garda Scanlon. While the Tribunal is impressed by the manner in which Mr. McCallion co-operated with the Tribunal and the fact that he has no complaints in relation to his arrest and detention, it is nevertheless unable to conclude that either Detective Garda Anderson or Detective Garda Scanlon behaved in any improper way during the course of their interviews with Mr. McCallion. In the result the Tribunal is of the view that Mr. McCallion was mistaken in originally attributing these acts to these members. It is satisfied that this was a bona fide mistake on his part. No circumstances existed relevant to the proper investigation of the death of the Late Mr. Barron which could justify the showing of these photographs of Mr. McCallion. The fact that nobody admits to the showing of the photographs suggests to the Tribunal that the Gardaí involved knew that there was no good reason to do so.

4. The Tribunal accepts the evidence of Martin McCallion that just before his release remarks were made to him by one of a group of Gardaí of an insulting nature which suggested that he had been bribed to tell untruths by Frank McBrearty Senior. When a person is detained in custody they may be interviewed within the legal and administrative framework provided by law. This incident suggests a lack of discipline and restraint on the part of the Gardaí present. The Tribunal is not satisfied on the balance of probabilities that Detective Gardaí Carroll and Jennings were present when these words were used. No Garda has admitted the making of these remarks or being present when they were made.
5. The Tribunal is satisfied that Martin McCallion's evidence was truthful, though there may have been some minor matters in respect of which he was genuinely mistaken

CHAPTER 12

THE ARREST AND DETENTION OF SEÁN CROSSAN

12.01. Seán Crossan was arrested on the 11th of December 1996. No other person was arrested on that day. Seán Crossan was not related to any of the persons who had been arrested earlier on the 4th, 5th and 8th of December 1996, nor was he connected to them by reason of marriage. Seán Crossan is an electrician who, for a number of years prior to his arrest, worked for Frank McBrearty Senior in his nightclub in Raphoe. He had been a friend of Mr. McBrearty for many years prior to his arrest and, it would seem, that friendship has continued. As Mr. Crossan stated: “at times we fell out, you know, but we got on well enough”.¹⁷¹⁷ In addition to electrical work, Mr. Crossan worked on the door of the nightclub, essentially from 22.00 hours to 02.00 hours on Fridays, Saturdays and Sundays.

Reason for Arrest

12.02. On the custody record maintained at Letterkenny Garda Station, the reason for the arrest of Seán Crossan is thus stated: “Common law for a felony. Suspicion of murder, accessory”.¹⁷¹⁸ More detail on this matter is required at this point.

12.03. As will be recalled, the entire premise for the arrest of those suspected of any kind of involvement, either as principals or as accessories after the fact, in the murder of the Late Richard Barron was that Mark McConnell and Frank McBrearty Junior had supposedly waited in Irish Row and there attacked their victim, returning cross country and through the car park of Frankie’s nightclub and ultimately entering that premises. The entirety of this theory was based upon a false statement procured from Robert Noel McBride. In the Tribunal’s second report it is commented that no arrest based on this statement could be valid as it was a creation of Garda misconduct: procuring someone to claim they were a witness in respect of a fact which they could not have witnessed as they were not even present at the location at the relevant time. It therefore follows that the arrest of Mr. Crossan was invalid. His arrest, however, was later than the others and, notwithstanding its invalidity, the premise behind it needs here to be explored.

The Statement and the Counterstatement

12.04. If the prosecution case was to be built on the premise that Robert Noel McBride had seen Mark McConnell and Frank McBrearty Junior coming down through the car park at a time which coincided with the Garda theory as to the commission of the supposed murder, any contradictory evidence would require investigation. On another view, any contradictory material to this theory was unwelcome.

¹⁷¹⁷ Transcript, Day 460, page 4.

¹⁷¹⁸ Tribunal Documents, page 61.

12.05. Seán Crossan was working through the night and early morning on which Mr. Barron met his death. His location, the ambient noise level and the distance from there to the place where Mr. Barron was killed rendered it highly improbable that he could have heard anything relevant. However, since he spent the relevant time, on the accounts of all of the relevant witness statements gathered by the Gardaí, out in the car park he was a prime witness as to whether Mark McConnell and Frank McBrearty Junior had passed through it at a time which suited the Garda theory. On the 18th of October 1996 a statement was taken at Raphoe Garda Station from Seán Crossan by Sergeant Joseph Hannigan, the relevant part of which reads:

I was on the pay box until about 12.30 a.m. on the 14th of October 1996. I remember Roberta Browne from the Terrace going in at around half twelve or so. Frank McBrearty Snr asked me to look after the car park at around 12.30 a.m. I normally do the pay box all night. When I went up to two wee girls in the car park then, one of them was sick. I was up about five minutes and went down to get the wee girl a tissue. I don't know who these girls are. When I went down Frank McBrearty Snr was at the Pay Box and he asked me to go down around the corner in case some boy he put out broke windows. I don't know who he put out. I didn't ask him but I went down the corner towards the Diamond. There was no-body at all about. I only went down as far as the bar door but I could see no-body as far as the Diamond. I didn't see any cars about. When I went back up I went to the front door of the disco. Frank Snr was standing at the Pay box and I asked him who he put out and he said Gallagher. I didn't know who Gallagher was. It was around twenty to one at that stage. I went up the car park again to the two wee girls. I was up there to a quarter to two. I kept going up and down the car park to them. I didn't see anyone else going into Frankies Night Club that night that I knew. No one came down through the grounds of the night club while I was there. They were all in cars. I can't add anything else to this statement.¹⁷¹⁹

At the time that this statement was made, only four days after the death of Mr. Barron on the 14th of October, suspicion in the town of Raphoe, and among the Gardaí, had not yet clearly focussed on those who were later arrested. However, over the course of the next four weeks, the Tribunal has concluded that it became apparent that Mark McConnell and Frank McBrearty Junior were suspected. The Tribunal does not know, and cannot therefore comment on, what inspired Seán Crossan to meet with Sergeant Joseph Hannigan at around 04.30 hours on the 17th of November 1996. Mr. Crossan's clear evidence is that in his first statement to Sergeant Hannigan he was confused and thinking about another matter that

¹⁷¹⁹ Tribunal Documents, pages 51-52.

was on his mind. On later reflection, it came to his mind that some other facts relevant to the night of Mr. Barron's death might be important to the Garda investigation. Mr. Crossan claims that in approaching the Gardaí with this information, he was not required to do so, or inspired to do so, by any of the McBrearty family.

- 12.06. On the 17th of November 1996 a note was made by Sergeant Joseph Hannigan of a conversation that he had with Mr. Crossan at the Diamond, Raphoe at 04.30 hours. This is how Sergeant Hannigan records the encounter:

Seán Crossan stated that having thought about it, that he now remembered that three fellows came down the car park of Frankies Night Club at 12.40 a.m. on the 14.10.96 stated that he couldn't describe them, that they were 19-20 years and well dressed. I asked him if they went into the disco and he said that he didn't know, that he was up the car park with two young girls, one who was getting sick. He didn't know who the girls were, thought that they might be from Lifford. Said that he noticed the three fellows going down the car park because he didn't notice a car coming up first. Stated that their clothes weren't dirty. Also stated that there was a couple sitting in a red car in the car park that night, possibly Ford Fiesta or a Peugeot. Sean Crossan stated that he didn't know them but that he thought that the girl was from Manorcunningham. He undertook to try to establish the identities of these people. He asked that I don't inform Frank McBrearty of our conversation and requested that I call to his home.¹⁷²⁰

In evidence Seán Crossan was vehement in his disagreement with Sergeant Hannigan as to his account of what had occurred. He said:

*I agree with none of it. I told him, I just told him what I wanted to add to that first statement. I want to see about the first statement: I have something else to add to it. That's the only words I says at half four in the morning ... [as to his claims that I said please don't inform Frank McBrearty about our conversation and to call to my home] nothing about it was said.*¹⁷²¹

Sergeant Hannigan denied that the first interview with Seán Crossan had been conducted in any way in a hasty manner.¹⁷²² The Tribunal accepts his evidence in that regard. Sergeant Hannigan also stood over his account of a conversation with Mr. Crossan in the early morning of the 17th of November 1996. The Tribunal considers that he has a better recollection of events.

¹⁷²⁰ Tribunal Documents, page 53.

¹⁷²¹ Transcript, Day 460, page 32.

¹⁷²² Transcript, Day 467, page 98-100.

- 12.07. As a result of the encounter Seán Crossan made a second formal statement to Sergeant Hannigan. The relevant part reads as follows:

I want to add that in addition to my earlier statement a few other things have come to mind having sat down and thought about it. On the 14th of October 1996 I remember going out to the car park at around 12.30 a.m. Frank McBrearty Snr sent me out to the car park. Sometime between 12.30 a.m. and 1 a.m. I went back into the hall. I cannot mind what for. I met Willie Logan in the hall. He was taking in empty bottles and glasses from the door. I went straight up through and out the back door. Willie Logan was with me. The back door was open because it was very warm that night and there was a bouncer standing beside it. I think it was Gerard Coyle. I stopped beside the girls on the wall. One of them was sick. One of them goes out with Rodney Roulston who works at the Tops. Willie Logan walked down the car park. I stopped with the girls and Willie went on. The girls were sitting on the wall that's on the road to the back exit. I left the girls and went down to the door and came back up after a few minutes. I walked straight back up to the girls. Three boys came down the car park. They came from the direction of the wall to the field. What caught my eye was the fact that no car had gone up the car park before these fellows came down. I didn't see anyone sitting in a car beforehand. That's what caught my eye more was that they came down the car park and no car went up first. They were chatting to each other on the way down, not laughing or joking. I never saw these three fellows before. They went down towards the dance hall. I don't know if they were in or not. I can't describe them individually. The three of them were 18 or 19 years of age and thin. I can't say what colour their hair was. They were dressed casually and had no coats on. They were clean. I lost sight of them. Their clothes didn't look to be dirty. After that I went to the front street again. I met Willie and Frank Snr at the door it was after one o'clock. Michelle Scott from Convoy told me and Frank and Willie that Richie Barron was killed in a hit and run. I was at the top of the car park and I told the girls about the hit and run. Damian McDaid's van was parked above the girls and I was speaking to Damian McDaid when he came in at around half twelve or twenty five to one ...¹⁷²³

Garda Reaction

- 12.08. Superintendent Joseph Shelly, in evidence to the Tribunal, described his reaction to the later statement of Seán Crossan as one of disbelief. He regarded the statement as being deficient in leaving out the description of the men, their ages, their manner of walking, how they appeared to behave and their clothing.¹⁷²⁴ This

¹⁷²³ Tribunal Documents, pages 54-55.

¹⁷²⁴ Transcript, Day 461, pages 57-69.

attitude was shared by other Gardaí. It is evidenced in the manner in which Sergeant White applied to Detective Superintendent Shelly for an extension order, which was granted, at 16.55 hours on the 11th of December 1997. Sergeant White's handwritten note read:

I had a conversation with D/Superintendent Shelly at Letterkenny Garda Station. I informed him that I had been involved in questioning Seán Crossan from 2.30 p.m. until 4.35 p.m. with D/Sgt. Michael Keane and that while Mr. Crossan was willing to discuss his employment by Mr. McBrearty at Frankie's Night Club Raphoe, he was not willing to answer any questions regarding the statement which he volunteered to Sgt Joseph Hannigan on the 18.11.96. In this statement he referred to three youths who were unknown to him walking from one direction of the scene of Richard Barron's death on the 14/10/96 at a critical time. Mr. Crossan refused to discuss this statement in any way or his reasons for making it and was most uncooperative. I informed D/Superintendent Shelly that I believed that the further detention of Mr. Seán Crossan was necessary for the proper investigation of the crime for which he had been arrested.¹⁷²⁵

Conclusion

12.09. The Tribunal concludes that the real reason for arresting Seán Crossan was that he had made a statement which directly contradicted the false statement of Robert Noel McBride. It was regarded among those leading the Garda investigation as an obstruction and a wilful lie. In the Tribunal's second report on the investigation into the death of Richard Barron and the extortion calls to Michael and Charlotte Peoples, the Tribunal concluded that it had good reason to find that there were indeed some men walking down the car park of Frankie's nightclub at the relevant time, though, in evidence, Mr. Crossan denied that the men named in that report were the men that he had seen.¹⁷²⁶ Even apart from the fact that Seán Crossan's arrest was predicated on the false and improperly obtained statement of Robert Noel McBride, it is difficult to see that an honest, though mistaken, statement could constitute the external act of a crime of being an accessory after the fact to murder. Such a proposition of law does not accord with any case noted in the leading textbooks.

Events Prior to Arrest

12.10. In evidence, Mr. Crossan claimed that the attitude of the Gardaí was hostile to his statement placing three men coming through the car park. On the weekend prior to his arrest he asserted that he had encountered Sergeant Joseph Hannigan, an

¹⁷²⁵ Tribunal Documents, page 234.

¹⁷²⁶ Second Tribunal Report, paragraphs 3.238 – 3.242.

unnamed Superintendent and Sergeant John White while he was working one afternoon in Frankie's nightclub. This is his account:

I met Sergeant Hannigan and some Superintendent, I don't know who, outside the nightclub ... and Hannigan told me that the statement I gave him was lies; that I had better come and see him before he comes looking for me ... I was standing outside McBrearty's dancehall ... it was during the day ... It was the day that they raided the nightclub. I was putting up Christmas lights ... and he came out of the pub, I can't mind now who the Super was. He introduced me to him. He says: "Them statements you gave me is all lies" ... The Superintendent was a thin, well dressed grey haired man ... sharp [faced]. He was thin with grey hair ... Sergeant Hannigan told me that if I didn't – that the statements I gave him was all lies and that if I didn't come looking for him, he would come looking for me. [The Superintendent] ... just stood there ... I says to the Sergeant: "I'm not lying". I says "That's the truth" ... Well I was worried because I didn't know what he meant, what the lies were ... he just came over and introduced me to the Superintendent and he says to me that them statements you gave me is all lies ... I went around the dancehall and Gardaí and Detectives were in the dancehall ... So I took Sergeant White up and showed him where the girls were sitting ... and where the car was and he told me that he would be coming looking for me before the weekend, going in seeing the statements ... He just said about your statements, he says: "If you don't change them, I will be coming looking for you before the weekend" ... I didn't feel too well because I didn't know what they were on about. I didn't know what they wanted me to change.¹⁷²⁷

- 12.11. Sergeant Joseph Hannigan recalled that on the 5th of December 1996 Mr. McBrearty's nightclub and bar premises had been searched. He did not agree with the account given by Mr. Crossan. Sergeant Hannigan stated:

I think the time he is referring to is the occasion that the premises of Mr. McBrearty was searched ... I certainly have a recollection of Mr. Crossan working on a ladder there. But I recall when the allegations were made in Donegal town that I certainly didn't put the proposition to him that if he didn't come to me that we would come to him. He said at the time that I introduced a Superintendent to him. My recollection is that there wasn't a Superintendent on the search. Inspector Jim Gallagher was on the

¹⁷²⁷ Transcript, Day 460, pages 48-54.

search. I certainly didn't introduce Inspector Gallagher or any officer to Mr. Crossan ... I would recall if I confronted him on the statement being false ... I don't believe I did because I would have recalled that and I would have taken a different approach ... I would have been sent ... I knew him for years when I was there and I don't believe that is the way I would have approached the matter. Had I been sent to do it, I certainly would have said you had better come to us before we come to you. It would have been a man I knew well, got on well with, it would have been much simpler if I called him and said listen, this isn't adding up. But I don't believe I had any role in that whatever.¹⁷²⁸

- 12.12. Mr. Crossan does not allege that Sergeant White was present for any conversation he had with Sergeant Hannigan. The evidence of Detective Sergeant White therefore falls to be considered separately. It could not be expected that Detective Sergeant White would have a clear recollection of these events because of the passage of time between when they occurred and when he gave evidence at the Tribunal. However, he was able to give the Tribunal a view as to what the nature of his interaction with Seán Crossan was on that day. He said:

There would have been twenty, maybe thirty, members on that search. But I don't remember speaking to Seán Crossan at all or anybody associated with the McBrearty family, other than members who are searching ... Well, first of all, I am uncertain about speaking to him about the girl that was getting sick ... I am uncertain about that, yes. It is something that I would do if I was walking around. I would take the initiative and talk to somebody you know ... But, on the other hand, I certainly wouldn't say to him: "Come in by the weekend and change your statements", because I would know that there was a plan to speak to this man at some stage ... and I wouldn't be interfering willy-nilly, as it were, with that plan or interfering because I wouldn't have full knowledge, or I wouldn't have as full a knowledge as other members on the investigation team as to the background, etc. The point I am trying to make is: I would not take the initiative and perhaps mess up an interview without being properly prepared, just for the sake of it.¹⁷²⁹

- 12.13. The Tribunal's view on this matter is that it is highly probable that this sort of comment, that he should come and speak to the Gardaí prior to the weekend with a more amenable statement, was made to him by somebody. The Tribunal

¹⁷²⁸ Transcript, Day 496, pages 96-113.

¹⁷²⁹ Transcript, Day 467, pages 144-145.

bases this conclusion on the fact that the second statement presented all sorts of problems to the investigation. The Tribunal has no doubt that the Gardaí thought that Seán Crossan had been put up to this by Frank McBrearty Senior and perhaps bribed. There was no evidence before the Tribunal to suggest that this was correct. The Tribunal cannot be satisfied that Sergeant White made this remark. It seems to the Tribunal that the point which he made may have validity. His argument was that he, as someone fresh to the investigation, would not come blustering in and issue semi-threats to a witness. Any rational person would wait until he got a feel for the investigation. Detective Sergeant White made the point that by doing this he could ruin the attitude of a satisfactory witness. In the result, the Tribunal is uncertain as to who may have made this remark.

The Arrest

- 12.14. Seán Crossan has not alleged in evidence before the Tribunal that the manner of his arrest was deliberately designed by the Gardaí so as to be especially humiliating or violent. His account was of an arrest which was carried out in a manner consistent with his dignity and in accordance with the duty which fell on the Gardaí to arrest him and bring him into custody for questioning. It would appear that Seán Crossan had planned to go to Frankie's nightclub in Raphoe during mid-morning. This was where he was arrested. His account of the arrest was as follows:

I was behind the car park in Frankie's nightclub and a patrol car pulled up and they told me they wanted to see me in the front of the dancehall. So I went down the side of the hall and Sergeant Scanlon and Sergeant Henry came out and arrested me and took me to Letterkenny Garda Station ... I wasn't arrested before so I didn't know what to expect ... On the arrest they weren't ... unkind, no. I wasn't [handcuffed]. [On the way to Letterkenny] there was conversation, but nothing of interest, you know ... I cannot mind now [the reason for the arrest]. He told me under some section ... I can't mind what section he told me.¹⁷³⁰

- 12.15. By 11.30 hours Seán Crossan had arrived in Letterkenny Garda Station. His details were taken by Garda Martin McDonnell. He was treated humanely, consistent with the duty of Garda McDonnell. The Tribunal is satisfied that he was informed that his solicitor could be contacted on his behalf and that a family member could be notified as to his arrest or that he could make a phone call to a family member. The standard notice of rights was read to Mr. Crossan and whereas the Tribunal may be uncertain as to how much of it he understood, or could take in, the Tribunal is satisfied that Garda McDonnell went about fulfilling his duty as best

¹⁷³⁰ Transcript, Day 460, pages 59-61.

he could in the circumstances. The Tribunal is satisfied that at 11.39 hours Garda McDonnell phoned V.P. McMullin & Son, Solicitors. The result of this was that at 12.00 hours James O'Donnell, a solicitor from that firm, came to the station and spoke privately to Mr. Crossan. Unfortunately Mr. O'Donnell has little recollection, possibly none, of meeting with Mr. Crossan on that day.¹⁷³¹ A note he made on the occasion, by way of a memo to the file dated the 11th of December 1996, states:

*Frank Junior phoned. He said the Special Branch were sitting outside waiting for Seán Crossan. He said they wanted Seán Crossan. Frank told me that the Gardaí had threatened Seán Crossan that unless he changed his statement by Friday they would get him.*¹⁷³²

The Account of the Solicitors

- 12.16. Mr. O'Donnell made a careful note of his meeting with Seán Crossan, which the Tribunal is satisfied lasted from 12.00 hours to 12.35 hours on the day of his arrest. This is Mr. O'Donnell's note as verified on the transcript:

Interview with Seán Crossan on the 11th December 1996 at Letterkenny Garda Station. I then spoke with Seán Crossan at approximately 12.05 p.m. Seán Crossan told me that he lives at 7, St. Eunan's Terrace, Raphoe and that his date of birth is 5/4/49. He said that he is on medication for back pain. He told me that his GP is Dr. Quinn, Raphoe. He told me that he had been told that he was being arrested under section 4 of some Act for murder of Richie Barron. He told me that he was working on the night of the death of Richie Barron on the pay box. He said that he was working there until 12.30 p.m. He told me that he had already made two statements to the Gardaí. He said that he made the first statement immediately after the death of Richie Barron. He said that the second statement was made on the week after the Prime Time television programme. He said that both statements were made voluntarily. The first statement was made in Raphoe Garda Station to Garda Hannigan, the second statement was made after he met Sergeant Hannigan on Friday evening at 3.30 a.m. after leaving work. He said there were a couple of things he remembered which he had not put in the first statement. Sergeant Hannigan phoned him on the Monday and asked him to come down to the barracks. The client told me that he went down to the barracks and made a second statement in which he remembered certain other matters

¹⁷³¹ Transcript, Day 468, page 72-85.

¹⁷³² Transcript, Day 468, page 74.

which he had not in his first statement. He said that in his second statement he stated that on the night of the death of Richie Barron he was on the pay box. He said that he was there until 12.30 and he said that thereafter he went into the car park to check to see if there was anybody about. He said he saw two girls getting sick there. He got them tissues. He said that he spent the rest of the night walking up and down looking after cars. He said in the second statement he told the guards that he saw three boys walking towards the centre of the car park. He told the Gardaí he did not recognise these three people, who they were. He also said that he saw a red Fiesta parked in the car park with a boy and girl sitting in it. He says he thinks three boys walked into the disco. He said that the reason he made the second statement was that he had forgot to mention about the two people sitting in the car park in the first statement. He told me that the Gardaí had been harassing him and asking him about his dole. He said that they had asked him about his family and the fact that he had six children. He said that [illegible]. After discussing this with my client I again spoke with the member in charge, Martin Leonard. I asked Martin Leonard could I speak with Detective Henry who had arrested the client. Martin Leonard told me he was not available at present. I asked when he would be available. Martin Leonard said that he did not know when he would be available, but said that he would get him to ring me at the office as soon as he came back. I then asked to speak to the Gardaí who were interviewing the client. Martin Leonard told me he did not know which Gardaí were interviewing the client. I said to him surely you must know who is interviewing the client. He said he thought it would be Detective Sergeant Henry. I said how could Detective Sergeant Henry be interviewing him if he isn't present. He said he would probably resume interviewing him when he came back. He said that in any case he would get Detective Sergeant Henry to phone me. I then asked to see the custody record. Garda Leonard told me I could not see the custody record at this stage. I left the station.¹⁷³³

It is a disputed point as to whether Mr. O'Donnell either came back or telephoned Mr. Crossan later in the evening. The custody record indicates that at 22.03 hours Mr. O'Donnell phoned.¹⁷³⁴ However, he had no recollection of the matter. Mr. Crossan's recollection is of seeing Mr. O'Donnell twice. In this, he is probably incorrect.

¹⁷³³ Transcript, Day 468, pages 87-91.

¹⁷³⁴ Tribunal Documents, page 63.

- 12.17. A note was taken by Mr. James Sweeney, solicitor, of a meeting which he had with Mr. Crossan on the day after his release from custody on the 12th of December 1996. Mr. Sweeney was then the solicitor to the McBrearty family and it seems likely that Mr. Crossan was steered in his direction by someone as a result of that connection. It is important to quote Mr. Sweeney's note in full. The document quoted is the typed version of Mr. Sweeney's attendance:

Seán Crossan called today in relation to the Richard Barron murder. He informed me that he was picked up at Frank McBrearty's premises in Raphoe at 11.00 a.m. on the 11th of December 1996 and taken to Letterkenny Garda Station. He was questioned by Garda Silvie Henry. He arrived at Letterkenny Station at 11.30 a.m. and he was informed that he was arrested under section 4 of the Criminal Justice Act, on suspicion of his involvement under the felony of murder after the fact. He was initially questioned by Sergeant Henry and another guard who shouted and roared at him. James O'Donnell had gone up and advised him of his rights in the Garda Station. He informed me that he initially made a statement four days after the death of Richard Barron, but was not given a copy of this statement. A month later he said that he made a second statement where he said that he saw three young boys coming out of the car park on the night of the murder. He stated, however, that neither of these boys were Frank McBrearty Junior or Mark McConnell. It transpires that under heavy interrogation from the Gardaí, Mr. Crossan was put under severe pressure to withdraw this statement and eventually did so. They said that if he did not withdraw, they would lift his car, take his children into care and confiscate his dole. He asked them if he withdrew the second statement would that be an end to it. And they said it would.

There were two teams of interrogating officers; one was with Silvie Henry and the other team was a Dublin guard and a Cork guard.

When Mr. Crossan withdrew his statement they put him into a cell. A short time afterwards they brought him out. They said that Mr. Crossan was in Mr. McBrearty's pay book. They continually put it to him that Mr. McBrearty paid him £500 to keep his mouth shut. He denied this at all times. They said that Frank McBrearty and Mark McConnell were murdering bastards. They questioned him about Frank McBrearty Senior having meetings with bouncers on the Sunday night after the murder. He confirmed this and said, however, that this had nothing to do with him. They put it to him that the second statement was only to cover up for Frank McBrearty Junior.

At one stage Seán's wife, Anne, came in and spoke to him for a while. She said to the Gardaí that he had nothing to eat all day. They said that was right. They gave him an Anadin as a painkiller. After dinner time, at approximately 2.00/3.00 p.m., the second group of interrogators came in, i.e. the Cork and Dublin guards. They called him a liar, scum, useless and good for nothing. They hit him and maintained that he was lying about his second statement. They hit him in the face and there are tear marks on his face to show this. They hit him in the mouth, stomach, his genitals and they spat on his face and into his mouth. I advised client to immediately take a photograph of the markings on his eye and to go to the doctor. I told him to inform the doctor of exactly what happened and that we may be requiring a statement or evidence from them at a later stage. Mr. Crossan went back to tell me how the matters proceeded. He said that at approximately 7.30 p.m. he withdrew his statement. However, he confirmed to me that the only reason he withdrew it was because of the continued pressure he was coming under and in fact he did see three young fellows walking through the car park. His second statement should not have been withdrawn.

Mr. Crossan was further questioned about an alleged £500 payment. However, he confirmed to me that he never received this. They maintained that he was covering up for someone and that someone got to him for the purposes of making a second statement.

They showed him photographs of the body of Richard Barron and shoved them into his face.

He allegedly made a second statement prior to leaving, acknowledging that he withdrew his second statement and saw Frank McBrearty talking to bouncers discussing the murder. They asked who he was afraid of and who he was lying for.

They then showed statements from other people where Seán was named. However, this had no effect in that he did not change his story.

Seán confirmed to me that he works on the pay box on the way into the Parting Glass in Raphoe. His present address is no. 7, St. Eunan's Terrace, Raphoe.¹⁷³⁵

- 12.18.** Mr. Sweeney had no specific recollection of seeing marks on Mr. Crossan's face. Mr. Crossan attended a medical doctor at the request of Mr. Sweeney. The Tribunal has seen a note from the doctor. However, the doctor is now deceased and the Tribunal could not come to any judgment based on this hearsay material.

¹⁷³⁵ Tribunal Documents, page 132.

Mr. Sweeney also provided handwritten notes.¹⁷³⁶ These conform with the typed version.

The Interrogation

12.19. The evidence received by the Tribunal indicates that the Garda Síochána custody record has accurately recorded the various transactions that concern Seán Crossan. The most important of these are therefore now set out in tabular form:

Occurrence on the 11th of December	Detail of Occurrence	Comment
11.10 hours	Arrest.	
11.30 hours	Checked in at the station.	
12.00 hours to 12.35 hours	Consultation with James O'Donnell.	
12.40 hours to 14.15 hours	Interview with Detective Sergeant Henry and Detective Garda Scanlon.	These notes run in with a later interview and are all at page 74 of the Tribunal materials.
14.15 hours to 14.30 hours	Meeting with Mrs. Crossan.	
14.30 hours to 16.35 hours	Interview with Sergeant White and Detective Sergeant Keane.	Interview notes at page 67 of the Tribunal materials.
16.55 hours	Extension order read out allowing for six more hours of detention.	
18.05 hours to 18.20 hours	Sergeant White alone with Mr. Crossan.	
18.20 hours to 19.35 hours	Detective Sergeant Keane joins Sergeant White.	Interview notes at page 72 of Tribunal materials.
19.55 hours to 22.30 hours	Interview with Detective Sergeant Henry and Detective Garda Scanlon.	These notes are apparently amalgamated with the notes from the earlier interview.
20.03 hours	James O'Donnell.	This is probably a telephone call consultation.

¹⁷³⁶ Transcript, Day 468, pages 49-62.

20.50 hours	Anadin requested by Mr. Crossan.	
21.10 hours	Two Anadin provided to Mr. Crossan.	
21.35 hours	An extra Anadin provided to Mr. Crossan.	
21.23 hours to 21.55 hours	Visit by Mrs. Crossan.	
22.35 hours to 23.05 hours	Interview with Sergeant White and Sergeant Martin Moylan.	These interview notes at page 83 of the Tribunal materials.
23.05 hours	Mr. Crossan is released.	He makes no complaints.

Summary of the Interviews

- 12.20.** The first interview with Seán Crossan was by Detective Sergeant Sylvester Henry and Detective Garda Padraic Scanlon from 12.40 hours to 14.15 hours. These interview notes are, on the account of these Gardaí, amalgamated with the second interview that they had with the arrestee from 19.55 hours to 22.30 hours.¹⁷³⁷ A point of controversy that arises in relation to this interview is that Mr. Crossan claims that the Gardaí took absolutely no notes during the interview. Any notes that were taken by these officers, he says, were taken later and during the second interview which they conducted with him from just before 20.00 hours. It is fair to record that such notes as the Gardaí have identified as being ascribed to this interview could be accommodated within two pages.
- 12.21.** In the first interview Detective Sergeant Henry and Detective Garda Scanlon asked Mr. Crossan how much he was getting for working for Frank McBrearty Senior. He wanted to know why he made the second statement and why he could not remember the details about the three men coming down through the car park when he made his first statement. They asked him whether the statements had been discussed with Frank McBrearty Senior. He said that Frank McBrearty Senior came to his house about ten minutes after Sergeant Hannigan had left after taking the second statement, and asked him what was in it. Gardaí claim that in answer to a question as to whether Mr. McBrearty Senior was waiting for the Gardaí to go and see what he had said in his second statement, because he had already told Mr. Crossan what to say, Mr. Crossan answered “he could have been”.¹⁷³⁸ The question from the Gardaí indicates that their view was that it was no coincidence that Frank McBrearty Senior called some ten minutes after Sergeant Hannigan had left Mr. Crossan after taking the second statement.
- 12.22.** The second interview with Seán Crossan was conducted by Detective Sergeant

¹⁷³⁷ Tribunal Documents, pages 74-82.

¹⁷³⁸ Tribunal Documents, page 76.

Michael Keane and Sergeant John White. This interview lasted from 14.30 hours to 16.35 hours. According to the Garda notes of this interview Mr. Crossan was asked about how long he had been working for Mr. McBrearty Senior and how much he was getting paid. The fact that he was also claiming social welfare was discussed in detail. An issue arose as to why the Department of Social Welfare had not been told about his extra income from working for Mr. McBrearty. It was indicated to Mr. Crossan that this was an offence.

12.23. The third interview took place from 18.05 hours to 19.35 hours. For the first fifteen minutes of this interview it seems that Sergeant White was alone with Seán Crossan. The detainee was asked about the night that Richard Barron died. It was pointed out to him that in his first statement to Sergeant Hannigan, dated the 18th of October 1996, he had stated that no one had come down through the grounds of the car park while he was there. This was contrasted with his second statement a month later in which he claimed that he “saw three fellows” walking down through the car park at 01.00 hours or shortly afterwards. When asked: “Is that true?” It is claimed that he said: “I am not happy now with that second statement ... I am not sure it was the night that Richie Barron was killed that the three fellows came down through the car park”.¹⁷³⁹ Asked why he had told this tale to Sergeant Hannigan on the 17th of November, it is claimed that Mr. Crossan said “I just don’t want to answer that” and “I don’t want to talk about that”.¹⁷⁴⁰ It is claimed that Mr. Crossan now wanted to indicate that when he saw the three fellows walking down the car park it was not the night that Richard Barron was killed: that he had made a mistake in making a second statement putting them there on that night. The effect of this admission by Mr. Crossan was to clear the way for the Garda theory supporting the proposition advanced by them, through the false statement of Robert Noel McBride, that Mr. McBrearty Junior and Mark McConnell had walked through the car park, supposedly after murdering Mr. Barron. The inconvenient statement of Mr. Crossan was now removed.

12.24. The fourth interview with Mr. Crossan took place with Detective Sergeant Henry and Detective Garda Scanlon between 19.55 hours and 22.30 hours. They claim to be able to pinpoint the question at which their second interview began in the interview notes amalgamating two interviews. Mr. Crossan is recorded as saying that he withdrew the second statement about the three anonymous men walking through the car park. It is claimed that he said “I got my nights mixed up”.¹⁷⁴¹ It is claimed that he was attributing this to his bad memory. References are made to meetings that he was supposedly having with Frank McBrearty Senior. The implication was that Mr. McBrearty Senior had invented this second statement to throw the Gardaí off the scent. Reference is made to an earlier remark attributed,

¹⁷³⁹ Tribunal Documents, page 71.

¹⁷⁴⁰ Tribunal Documents, page 72.

¹⁷⁴¹ Tribunal Documents, page 77.

perhaps falsely, to Mr. Crossan: “it’s a handling that went wrong”,¹⁷⁴² which Mr. Crossan claimed was merely a “figure of speech”.¹⁷⁴³ He was asked about the whereabouts of Frank McBrearty Junior and Mark McConnell. He said that he had not seen them in the car park that night. He agreed that before he had made the second statement to Sergeant Hannigan, he knew that Frank McBrearty Junior was, as the Gardaí put it, “the suspect”.¹⁷⁴⁴ He denied that he was out to create, as the question put it, “an alibi for Frank and hinder the Gardaí”.¹⁷⁴⁵

12.25. The fifth and last interview took place between 22.35 hours and 23.05 hours and was conducted by Sergeant John White and Sergeant Martin Moylan. Mr. Crossan was asked whether anyone had forced him to make a second statement and he said “no”.¹⁷⁴⁶ The Gardaí went back over the visit by Frank McBrearty Senior after the second statement was made to Sergeant Hannigan. However, Mr. Crossan indicated that Mr. McBrearty Senior usually called to his house around once a week. He said that he had told Frank McBrearty Senior about the statement that he had made to Sergeant Hannigan. He said that the statement had not been made on Mr. McBrearty Senior’s instructions. He claimed that he had seen three anonymous fellows coming down through the car park, but he said that when it happened was “the Friday before the murder”.¹⁷⁴⁷

12.26. The last item in the custody record reads as follows:

11/12/96: 11.05 p.m.: The prisoner was released from custody. He had no complaints. Signed: Seán Crossan.¹⁷⁴⁸

Detainee’s Account of the Interview

12.27. Mr. Crossan’s account of how he was treated by the interviewing Gardaí proved controversial. The main focus of this was as to how he had been treated by Sergeant White in the presence of Detective Sergeant Keane. In the aftermath of the arrest he claimed that he began to drink heavily. His marriage and family life suffered. He lost a great deal of weight. He claimed that what had happened to him in custody caused flashbacks. His attitude of respect towards An Garda Síochána changed into one of bitterness. He said that he held a grudge against no one and that prayer had been a constant support in his life. He praised his wife for helping him to sort out his problems. After a brief separation from her, caused, he claimed, by his treatment at the hands of the Gardaí, he returned to the family home where matters improved. He was grateful for the opportunity to speak at the Tribunal as to his experiences, and medical assistance was a continuing help.

¹⁷⁴² Mr. Crossan denies ever having said such a thing. Transcript, Day 460, page 85.

¹⁷⁴³ Tribunal Documents, page 79.

¹⁷⁴⁴ Tribunal Documents, page 81.

¹⁷⁴⁵ Tribunal Documents, page 82.

¹⁷⁴⁶ Tribunal Documents, page 83.

¹⁷⁴⁷ Tribunal Documents, page 85.

¹⁷⁴⁸ Tribunal Documents, page 64.

The Issues in Summary

- 12.28. The Tribunal would like to make it clear that any witness, whether Garda or civilian, can be firm in his or her recollection of a particular event, but nonetheless be completely mistaken. Sometimes, when a witness is recalling an event, he or she may be inaccurate in some detail of his or her description of that event or have a flawed recollection of when or where the event occurred. Judicial experience also indicates that it can be possible for a witness to be mistaken as to who was present at an event, or for elements of the event to be transposed. For example, if elements of the event, such as ill-treatment, are repeated, an earlier or later happening may be switched around. The natural tendency of the human mind for muddle makes it difficult to sort out the cunning liar from the witness who is doing his or her best to assist.
- 12.29. An instance of this occurs in Mr. Crossan's account of his interaction with his solicitor. It is certainly the case that Mr. James O'Donnell, solicitor, attended for about half an hour at the Garda station from midday. In evidence, Mr. Crossan claimed that there was a second visit. This, in the custody record, is put down as a telephone call.¹⁷⁴⁹ In evidence, Mr. Crossan swore that he never answered the phone to his solicitor, but that his solicitor had been there on the second occasion.¹⁷⁵⁰ This the Tribunal considers as an example of a mistake by Mr. Crossan. It does not undermine his credibility as it is an honest mistake. Mr. Crossan does not appear to have an animus against the Gardaí. In his evidence, for instance, he described the station orderly as being "very nice at that time" and the Gardaí who arrested him, and who otherwise processed him, apart from interviews, as treating him "grand".¹⁷⁵¹
- 12.30. Mr. Crossan claimed that his first interview with Detective Sergeant Henry and Detective Garda Scanlon was not noted by them: "There's nothing wrote down".¹⁷⁵² This is denied by the interviewing Gardaí. The focus of their questioning, according to Mr. Crossan, was to complain that he was a tool in the hands of Frank McBrearty Senior, who was paying him to give particular evidence that suited the cover up that the Gardaí alleged that he was about. In visiting Frank McBrearty Senior in hospital, they are supposed to have asserted that a Christian action was an attempt by him to get more money from the sick man.¹⁷⁵³ He claimed that the Gardaí wanted a statement that he had seen Mr. Frank McBrearty Junior and Mark McConnell coming down the car park covered in blood. He claimed that he was threatened with a charge of perjury and that a red book had been shown to him in that regard. Mr. Crossan indicated that the interviewing disintegrated into abuse. He was put under severe pressure by

¹⁷⁴⁹ Tribunal Documents, page 63.

¹⁷⁵⁰ Transcript, Day 460, page 63.

¹⁷⁵¹ Transcript, Day 460, page 66.

¹⁷⁵² Transcript, Day 460, page 69.

¹⁷⁵³ Transcript, Day 460, page 73.

Sergeant John White to withdraw his statement about the three unidentified men coming down the car park. That pressure focussed on threats to take away his children, verbal abuse, striking him in the eye, hurting his ear and punching him in the chest and genitals. It is claimed by Mr. Crossan that he was told he was a “menace to society”.¹⁷⁵⁴ The whole purpose of this was to ensure that his statement about the three unidentified men coming down through the car park was altered. He requested a doctor because, as he claimed, his “nerves were gone”.¹⁷⁵⁵ Some Anadin were provided. He claimed that when Detective Sergeant Henry and Detective Garda Scanlon came back to interview him at around 20.00 hours, Detective Sergeant Henry showed him post-mortem photographs. Mr. Crossan claimed that during his last interview with Sergeant John White and Sergeant Martin Moylan, nothing was written down.¹⁷⁵⁶ No specific abuse is alleged in relation to this interview. He claimed that when his wife visited him just before 22.00 hours she would have noticed how upset he was and that he had cuts, or abrasions, as they might properly be described, just below his eyebrow and on his ear.

- 12.31. The Tribunal now moves to deal in detail with the specific points in the account by Seán Crossan.

No Notes in First Interview

- 12.32. Mr. Crossan claims that during his first interview, which was with Detective Sergeant Henry and Detective Garda Scanlon, no notes were taken by either of these Gardaí. Some support for this fact might be gleaned from the absence of a specific note in relation to the first interview. As previously noted, pages 74 to 82 of the Book of Evidence in relation to Mr. Crossan’s detention are taken up with the set of notes that are signed by Seán Crossan and witnessed by Detective Sergeant J. S. Henry and Detective Garda P. Scanlon. The note is not dated as to when it commenced. According to the official record, this first interview should have commenced at 12.40 hours. That is not noted on the document. Instead, a time for the signature of the document is given as “10.27 p.m.”¹⁷⁵⁷ Both Detective Sergeant Henry and Detective Garda Scanlon have sworn that notes were taken during this interview.¹⁷⁵⁸ Detective Sergeant Henry, in particular, stated: “It has always been my policy to take interview notes of every interview that I am in”.¹⁷⁵⁹ The Tribunal sees that this interview lasted, removing possible sources of interruption, for in excess of an hour. In that context, the notes are extremely sparse. The Tribunal is of the view, however, that this first interview could have been in the nature of a more informal chat to attempt to get Mr.

¹⁷⁵⁴ Transcript, Day 460, page 97.

¹⁷⁵⁵ Transcript, Day 460, page 109.

¹⁷⁵⁶ Transcript, Day 460, page 121.

¹⁷⁵⁷ Tribunal Documents, page 82.

¹⁷⁵⁸ Transcript, Day 467, page 8, Transcript, Day 468, page 142.

¹⁷⁵⁹ Transcript, Day 467, page 8.

Crossan to trust the Gardaí and to begin talking about what it was felt by them that he knew. Such notes as were taken might have been very sparse, and therefore not noticed by Mr. Crossan. It is also correct to note that during the course of Mr. Crossan's evidence he candidly accepted, in relation to his interviews: "I might get some of them mixed up, I don't know which particular."¹⁷⁶⁰

- 12.33. A second issue which arises in relation to this first interview is as to whether it was put to Mr. Crossan that a sum of money was paid by Frank McBrearty Senior to induce him to give a false statement to the Gardaí, i.e. his second statement. This is denied by Detective Sergeant Henry and Sergeant Padraic Scanlon in evidence. Sergeant Scanlon stated:

*Well I never saw any of Mr. McBride's statements, but it was never – £500 or money as payment was never put across to Seán Crossan. If it was – it was in the arena or if we knew about it, it would have been an obvious thing and you would be putting it down pen to paper, did you receive money, you know, from Frank McBrearty Senior to make a second statement. It was an obvious road to go down, it would be a straightforward and natural course to take.*¹⁷⁶¹

- 12.34. The Tribunal has noted in its second report, on the Barron investigation and the extortion calls to Michael and Charlotte Peoples, that the supposed bribery of Robert Noel McBride by Frank McBrearty Senior was a major part of the statements that he made. The Tribunal regards it as likely that this area was also explored with Mr. Crossan. The Tribunal does not regard it as improper that this issue was raised or explored. Indeed it would have been a dereliction of duty given the nature of the information that was at the disposal of the interviewing Gardaí for them to fail to pursue this matter with someone who was a friend of Mr. Frank McBrearty Senior. In rejecting the evidence of Sergeant Scanlon and Detective Sergeant Henry the Tribunal regards it as possible that they are mistaken in their recollection. The account of the interview given by Mr. Crossan, focussing as it does on issues that are known to the Tribunal to be of importance to the Gardaí, and containing a detailed reference to Mr. Crossan's visit to Mr. Frank McBrearty Senior in hospital, strikes the Tribunal as being more likely to be correct. The Tribunal also regards it as likely that Mr. Crossan was questioned as to whether he had seen Mr. McConnell and Mr. McBrearty Junior coming down the car park supposedly covered in blood. With the introduction of the videoing and tape-recording of interviews a more detailed account of what occurs during interviews may now be obtained. Mr. Crossan also claimed that a red book was taken out by the interviewing Gardaí and that he was threatened with a charge of perjury. Detective Sergeant Henry states that the word 'perjury' was never

¹⁷⁶⁰ Transcript, Day 460, page 70.

¹⁷⁶¹ Transcript, Day 468, pages 141-142.

mentioned: “Not to my recollection. Most definitely not”.¹⁷⁶² Mr. Crossan claimed that his reluctance to deal with this issue caused the Gardaí to become frustrated and for loud voices to be used by them accompanied by “f-ing and blinding”.¹⁷⁶³ Mr. Crossan claimed that this distressed him. In answer, Detective Sergeant Henry stated:

*Mr Chairman, when I saw, or when I heard and read some of the things that was being said about myself and Garda Scanlon in relation to this particular witness, I was horrified. And I was angry myself when I heard them in Donegal town, because I felt that Mr. Crossan and myself got on extremely well and so did myself and his wife, Anne, when she came in to see him at 9 o'clock, or whatever time it was. As I said before, I had no reason to be angry with the man. I brought him in a cup of tea and a scone at a quarter past two and I did the same again at 8 o'clock or half past eight. Now, there was no reason for me to be nice with him on the one hand and angry with him on the other. It didn't happen ... he didn't get any bad language from me ... he didn't get it from Garda Scanlon either.*¹⁷⁶⁴

- 12.35. As to the threat of perjury, it is accepted by both Gardaí that in order to explain the reason for which Mr. Crossan was ostensibly arrested, that is to say his being an accessory after the fact to murder, a copy of the Garda Guide, or other law book, was produced to him in order to explain the nature of the offence.¹⁷⁶⁵ The Tribunal accepts this explanation. The Tribunal regards it as possible that by reason of matters to which the Tribunal must now turn, Mr. Crossan may well be mistaken in relation to his attribution of anger and foul language to Detective Sergeant Henry and Detective Garda Scanlon. The Tribunal accepts their account of the mood and tone of the interview.

Children, Dole and Assault

- 12.36. Seán Crossan gave a graphic account of his interview with Sergeant White and Detective Sergeant Keane. According to the custody record there were two interviews with these officers, which were noted there as occurring between 14.30 hours and 16.35 hours and then 18.05 hours and 19.35 hours. The official notes of the first interview recall that the conversation with the Gardaí centred on his dole and his working relationship with Frank McBrearty Senior. During the second interview, Mr. Crossan eventually denies that three unidentified men walked down through the car park on the night that the Late Richard Barron was killed, but claims that the event happened on another night.

¹⁷⁶² Transcript, Day 467, page 26.

¹⁷⁶³ Transcript, Day 460, page 76.

¹⁷⁶⁴ Transcript, Day 467, pages 26-27.

¹⁷⁶⁵ Transcript, Day 467, page 24.

- 12.37. The Tribunal regards it as entirely possible that Seán Crossan is mixing up the events of these two interviews. By reason of the trauma which he claims that he suffered it is conceivable that these interviews, the second and third of his detention, have become amalgamated, to some extent, in his mind. The following account by Seán Crossan, therefore, must be taken to refer to both interviews:

The second one, from Sergeant White ... He wanted me to sign the statements about the boys coming down the car park and all and he was very angry ... I was sitting on a three-wheeled chair, a chair with three wheels on it, he kept pushing me about the place ... it had three wheels and he kept pushing me about the place ... about 15 minutes or so ... Detective Keane ... I never met him before ... He was sitting lying back on the chair with the two feet up on the table ... He was asking questions about what happened years back and answering the questions himself and he started arguing with me then, arguing with me about them ... He asked me about one of the employees, one of the bouncers, Mickey McGahern, Frank McBrearty Senior was supposed to have lifted him one Saturday morning and taken him to see a Super in Letterkenny. He asked me why Frank McBrearty lifted him for. So I didn't know he lifted him. And I said to him, I said, I don't know, says I, I never heard tell of it. He says "you're a liar", he says. He says "I seen it. I seen him lifting him myself" ... It was getting a wee bit scary ... A bit of shouting ... Sergeant White [was] ... shouting abuse ... He told me I was a menace to society and to do something about it. Sorry, I might be getting the second interview and the third interview mixed up together ... He struck me in the eye. He cut my eye and he cut my ear. He hurt me in the chest and he hurt me in the privates ... And spit in my mouth ... He stuck his thumb into my eye like that and he twisted it, cut the hole, and he stuck his finger into my ear and twisted it and cut me and he spit into my mouth ... He spit. I was a menace to society and I should do something about it ... No, he meant it. He was that angry he had to leave the room ... [The other Garda] ... he just sat there. [He came back ... About five or ten minutes later] and I said to the other Garda, says I, Garda, says I, he'd no call to spit in my mouth ... I got up and cleaned it, just asked for a glass of water ... I got a tissue and a glass of water ... He said I was a menace to society: do something about it. If I didn't sign his statements that the wanes

would be lifted, the children, that he would get in contact with the probation officer the next morning ... He pushed me back and he pulled me forward ... On the chair ... Well, I slumped over in the chair and Sergeant Keane says, you're in the barracks here now, you sit, sit up straight, he says, you're in the barracks ... He kept lying back with the two feet on the bench ... [The pushing around on the wheelie chair] ... a couple of seconds just, he pushed me back and pushed me forward just, you know ... I asked for a doctor ... I asked four times, they told me when I got into the cell they'd get me a doctor when I came out again.¹⁷⁶⁶

- 12.38. In her evidence, Mrs. Anne Marie Crossan recalled her two visits to the Garda station, which happened, using round figures, at 14.00 hours and 22.00 hours. She recalls Detective Sergeant Henry being courteous to her and asking her about £500 that her husband might have received from Frank McBrearty Senior. Both of these visits are, as she herself says, “jumbled up” in her mind.¹⁷⁶⁷ This is her account of what her husband told her:

Well, he was being roared and shouted at, he told me. And on the first visit he told me, he says, Anne, when that big boy there – a man had passed – and he says, when that boy there comes in now, they say that's when I'm going to get it ... From what I have seen since, I recognise him to be Sergeant White. At the time I did not know Sergeant White ... I hadn't that long in with him on the first visit. [On the second visit] ... He was crying. He was very upset ... Well, on the second visit Seán was more than upset and he had said about a doctor again, he had asked for the doctor. And I noticed Seán was cut, so I did, at that time ... He was marked there ... Well, to me, it would be a cut ... There was no blood ... there was scratches in his ear there ... He had asked me – Sean doesn't usually smoke and Seán asked me, Anne, have you got cigarettes with you, and I gave Seán cigarettes ... because he – Seán was worried about me and the children at that stage, so he didn't want to be saying anything to me to upset anything further, what I gathered from him ... he kept everything very quiet from me and the children. But I knew myself that Seán was more than upset.¹⁷⁶⁸

Later on, when they got home, it emerged that Seán Crossan was alleging that Sergeant White had thumped him and spat into his mouth. She said that her family life “went haywire”.¹⁷⁶⁹

¹⁷⁶⁶ Transcript, Day 460, pages 93-98.

¹⁷⁶⁷ Transcript, Day 461, page 90.

¹⁷⁶⁸ Transcript, Day 461, pages 91-95.

¹⁷⁶⁹ Transcript, Day 461, page 99.

Garda Statements

- 12.39. Detective Sergeant Michael Keane made a statement at the time of the investigation which officially records his account of the interview. Of note in this account is his indication that Mr. Crossan refused to make any comment on why he had made two apparently inconsistent statements. This is how he deals with the second interview:

At 6.20 pm.on the 11th of December 1996 I entered the interview room at Letterkenny Garda Station where Sergeant White was with the prisoner Seán Crossan. I heard Sergeant White caution Mr. Crossan who said he understood. Sergeant White made a written record of this interview. At the finish of this interview Sergeant White read over the notes to Mr. Crossan and he signed them. Both Sergeant White and myself then witnessed his signature. This interview finished at 7.35 pm.¹⁷⁷⁰

- 12.40. Sergeant White's account, in part, reads as follows:

D/Sgt. Keane and myself then questioned him regarding the events of the night of the 13th of October, 1996 and the morning of 14th of October, 1996 and as to previous written statements he had made to The Gardaí. Sean Crossan answered our questions freely. I made written notes of the questions asked and the answers given. At the termination of this interview I read it over to Sean Crossan and I asked him if it was correct. He agreed that it was. I asked him if he wished to sign this memo of interview. He agreed that he did and he signed his name to it.¹⁷⁷¹

- 12.41. Statements were also made in answer to the Carty enquiries and as a result of Seán Crossan initiating High Court proceedings. Detective Inspector Keane, in a statement dated the 15th of February 2002, states the following:

I wish to state that at no time was Mr. Crossan assaulted or battered by me while in Garda custody. I did not see Detective Sergeant White stick his finger in Mr. Crossan's eye or cut Mr. Crossan above the eye. I did not see Detective Sergeant White stick his finger in Mr. Crossan's ear or injure the right side of Mr. Crossan's face. I did not see Detective Sergeant White spit into Mr. Crossan's mouth or punch him in the heart or genitalia. Mr. Crossan made no complaint to me in relation to the chair he was seated on. I did not see Detective Sergeant White push Mr. Crossan around the interview room. Mr. Crossan did not make any complaint to me in regard to his back or knee. Mr. Crossan made no request of me to be allowed to stand up. Mr. Crossan made no request to see a doctor. I did not verbally abuse or intimidate Mr. Crossan neither was I aware that Mr. Crossan was

¹⁷⁷⁰ Tribunal Documents, pages 22-23.

¹⁷⁷¹ Tribunal Documents, page 21.

on medication for his nerves. During my dealings with Mr. Crossan in Letterkenny Garda Station on the 11th of December 1996 he was treated with courtesy and respect by me and he made no complaint to me of ill treatment during his time in respect of his arrest or detention.¹⁷⁷²

The statement then ends by requesting the State to represent him in any court proceedings.

Evidence of Detective Inspector Michael Keane

12.42. In that foregoing context, the exchange that occurred between Tribunal counsel and Detective Inspector Michael Keane, when giving evidence, was surprising:

Q. *Then you weren't present when Sergeant White was in the interview room from 6.05 to 6.20, that's a 15 minute period. But you joined him then from 6.20 to 7.35?*

A. *That's correct, Chairman.*

Q. *It's probably the best thing to do is to get to the point Inspector and to ask you about various matters that are in contention between the parties. Let's go through it in terms of points, first of all. In terms of roaring and shouting what would you have to say about that in the interview?*

A. *Yeah, yeah, there was shouting.*

Q. *Yes. Can you help the Chairman on that as to when there was shouting and about what in particular?*

A. *Well if I could outline the initial interview which was the one at 2.30 in the afternoon or around that time.*

Q. *Indeed?*

A. *That commenced in the normal way, I think it was me that cautioned Mr. Crossan and that went on for some minutes, 10 or 15 minutes. Detective Sergeant White was asking the questions at that time more so than I was. Detective Sergeant White rose off the table, or rose off the chair, put his two hands on the table and leaned across to Mr. Crossan and said "look it Seán, it's time to tell us the truth". And he asked, we'll say, or*

¹⁷⁷² Tribunal Documents, page 239.

we'll say he put forward a barrage of questions that maybe lasted 20 seconds or 30 seconds. He was in a, how would I say it, a state of rage. There was spittle leaving his mouth. To me he was fired up in a way that I couldn't do it anyway.

Q. *Do you mean he was out of control?*

A. *Well, I wouldn't say out of control but sometimes, I have, unfortunately, I have the experience of it since in my own dealings with Detective Sergeant White.*

Q. *Yes?*

A. *Similar short spurts of rage.*

Q. *How close would the faces have been of the two men, the interrogator and the interviewed person?*

A. *Maybe two foot maybe ...*

Q. *Do you want to go on and give us any further description now in relation to that?*

A. *Well, it settled down to a normal, if I can call it normal, interview then. The same thing occurred again, almost identical thing occurred again when Detective Sergeant White and Mr. Crossan returned. I think it has been said today they went to the toilet, I know they went somewhere anyhow. Detective Sergeant White repeated the same process again and leaned across from Mr. Crossan with his finger and said to him "Look, Mr. Crossan, tell us what Frank McBrearty is paying you for".*

Q. *Well, you seem to be poking yourself in the chest; is that right?*

A. *Yeah encouraging him, maybe encourage is the wrong word, but encouraging him to tell the truth or to tell us – and basically I should have said earlier, Chairman, that my view of this interview was that Mr. Crossan made one statement and then made a second one sometime later which contradicted the first one somewhat and put three people coming down the car*

park of Mr. McBrearty's pub. My view is that was why and Detective Sergeant White's view I would imagine was the same thing, why did – or what possessed or what drove Mr. Crossan to come up with the second scenario?

Q. No, I can appreciate that and you have heard me asking people all during the course of the day about that theory. Basically, the alleged confession of Mr. McBrearty. The two statements from Robert Noel McBride and Gazza Gallagher to the effect they got £500 from Frank McBrearty. The first statement of Mr. Crossan leaving, if you like, the Garda theory in the clear and the second statement ruining it. You appreciate all of that was in the mix. I don't think you are contradicting that are you?

A. No.

Chairman: Can you go on with the narrative now. We got to the stage where the same thing was repeated a second time where I understand Sergeant White poked him with a finger; is that correct? Just a finger?

A. Oh just a finger.

Chairman: And he said words to the effect - is McBrearty paying you £500?

A. No I can't say it was £500. Questions to the effect, and I asked him this question myself as well: how much or what did Mr. McBrearty pay you or did he pay you for changing the statement?

Chairman: What happened next after that?

A. The interview room or the interview went back to what I would call a question and answer session after that. There was no further contact between Mr. Crossan and Detective Sergeant White.

Q. When you say spittle was leaving Sergeant White's mouth, the Chairman gave a description there in asking Mr. Crossan, you know the way sometimes you

can meet somebody in the street and they can be very voluble and there can be spray flying in all directions. Then, I suppose, you can deliberately spit in somebody's face. Could you help further on that?

A. *No, no, it wasn't a deliberate spit. Because I suffered the same – the same fate, I suppose, if you want to call it that, or the same treatment myself on a number of occasions from Detective Sergeant White.*

Q. *How would you describe it then as the recipient in terms of spittle contact?*

A. *He gets worked up. As simple as that. Now I suppose we're all different and that's his reaction to the time I arrested him or ...*

Q. *How much spray would go on to your face? Look it seems like a ludicrous question but I really have to ask it from the point of view of clarifying?*

A. *It's very difficult to say you know volume wise, but there would be little dots we'll say or specks emanating from his mouth.*

Q. *Would you be hit by many? Do you think Mr. Crossan was hit by much spittle that particular day, during these two outbursts, if you like? What is your own view on it?*

A. *No, I wouldn't think so. Like I was hit on two occasions and maybe a third occasion as well. But it wouldn't, you described it very well earlier on there when you said you would meet somebody on the street and they might be in a panic and they would have the same reaction.*

Q. *So there was basically a spray, you feel, going on to Mr. Crossan?*

A. *Yeah.*

Q. *As opposed to a deliberate globule of spit on somebody's face?*

A. *No you would see that now and again at football matches where somebody would throw spit on somebody else when they were passing or that.*

Q. *Yes?*

A. *That wasn't like that, no. I heard it described here where he was supposed to have landed it within his mouth. That would take some feat I would think.*

Q. *Do you feel if Mr. Crossan's mouth was open some specks might have well got into his tongue or mouth?*

A. *I wouldn't be able to say that happened or didn't happen. But there was specks of spittle flying anyway.*

Q. *You say there was an outburst of a series of questions lasting perhaps 30 seconds or so. Well 30 seconds is a short enough time but it can be a long time I suppose?*

A. *It's a long time when you're in the state that Detective Sergeant White was in, in my view.*

Q. *Would it be fair to say that Mr. Crossan gives the account of being called a liar and scum and a menace to society, can you help the Chairman in relation to any, whether any of those epithets were used?*

A. *In relation to being a liar if you, and I've done it myself several times, if you accuse someone of not telling you the truth I often wonder are you actually calling them a liar. But in an interview situation people are, or I do it myself several times, if I feel they're not telling me the truth what I will say is you're not telling me the truth what I will say is you're taking a hand with me now or you're telling me lies now.*

Q. *I'm talking about terms of abuse like scum and a menace to society?*

A. *No, no.*

Q. *Menace to society isn't so bad I suppose, I mean that could be a logical thing to say in the context of somebody who is blocking a legitimate murder*

- investigation. I'm not saying he was, but I'm saying that is the way it could come across?*
- A. *Them words, I've no recollection of them words being used.*
- Q. *Do you think it's possible that they were used? I mean, could you definitely rule it out?*
- A. *Well you see we're eight or nine years down the road at this stage. I honestly can't say.*
- Q. *In relation then to calm. I suppose we've all different ways of calming ourselves, Mr. Crossan describes Sergeant White as leaving the room, how long he left for is perhaps uncertain, it could be ten minutes, but for all I know it could be less?*
- A. *I've no recollection of him ever leaving the room except in the company of Mr. Crossan on one occasion.*
- Q. *Do you think it's possible he did leave the room and came back in?*
- A. *Oh no, no, no.*
- Q. *Would you say it's impossible?*
- A. *Yeah, it didn't happen because I would imagine if he left the room the member in charge would possibly, have possibly have seen him outside or put him in the custody record as leaving the room.*
- Q. *Sure, but I mean he's from here to at least out in the corridor in Letterkenny Garda Station and as the member in charge has said this wasn't a day when there were several prisoners and therefore he had his notebook out there and was? -*
- A. *That's correct.*
- Q. *- stationed, you know, in the corridor with a chair and that. I mean would it be likely that the member in charge would notice a man going outside the room for five minutes?*

- A. *Well, as I say, only if he was actually in the corridor himself.*
- Q. *Yes. Do you think it's possible he left the room?*
- A. *I don't think so, Chairman.*
- Q. *Was there any calming strategy engaged in by Detective Sergeant White? You know, have a glass of water or walk around the room or anything like that, can you recall any such thing?*
- A. *There were two periods of, how would I say it, tension, or when Detective Sergeant White to me got into a – what I now know as this rage or whatever word, maybe I'm not using the proper term for it.*
- Q. *If one just uses the word perhaps he got into a rage is perhaps a neutral way of describing it as opposed to ascribing fault, as such. You feel certainly that there was questions asked about being bribed by Mr. McBrearty and obviously £500 was in the Garda mind so you can't rule that out?*
- A. *No, I can't. £500 was being bandied about in many scenarios at that stage.*
- Q. *Were there questions asked about the following, or perhaps scenarios put about the following: the dole, the children, the car?*
- A. *Definitely the dole. I have no recollection of his children, of Mr. Crossan's children being mentioned at all. As a matter of fact I didn't even know at that time that Mr. Crossan had children or what children he had.¹⁷⁷³*

Detective Inspector Keane indicated that when this outburst happened on the second occasion he walked behind Mr. Crossan's chair and that his reason for doing this was to call a halt. He claimed there was no mention of a doctor at all by Mr. Crossan, or anyone else. He claimed that an issue did arise as to Mr. Crossan driving a Northern registered car, but could not say whether it was used as a lever. He ruled out any reference to Mr. Crossan's children or, more particularly, their being used as a lever. He said that "strong language" was used, though it was not abusive language.

¹⁷⁷³ Transcript, Day 469, pages 160-168.

- 12.43. When Tribunal counsel had finished, Mr. Whelan SC, acting on behalf of Detective Sergeant White, made the following intervention:

If I could just say in the meantime, I would prefer Mr. Fogarty to go before my cross-examination, but I should just say, Chairman, that this witness has come up with extraordinarily new allegations which were never put to us. We have no notice at all and this is allegations specifically against Sergeant White and I think it has taken us very short in doing this. We would like to know – Sergeant White would like the opportunity, obviously, to reply to these new allegations ... I'm not quite sure where the witness is coming from because he has statements made where none of this is said and suddenly out of the blue – now, we know there's no love lost between the two men but at the same time, he comes up with extraordinarily serious allegations against Sergeant White which, in a sense, could blacken his character further.¹⁷⁷⁴

Detective Sergeant White's Account

- 12.44. On the third and fourth day of the hearings into this matter Detective Sergeant White gave evidence for the first time. On the sixth day of the hearings, following the evidence of Detective Inspector Keane, he was recalled to deal with that evidence.
- 12.45. Detective Sergeant White could not remember whether derogatory references were made to Mr. Frank McBrearty Senior, in particular that he was called “a murdering bastard” or that an account was given of a supposed occurrence in Scotland. He said there was no roaring or shouting in either of the interviews. He conceded, however, that he and other Gardaí might press a point with an interviewee and that bad language might be used for emphasis. This he compared to counsel cross-examining a witness. This would not go beyond a raised voice and certainly would not amount to roaring into the face of an interviewee.¹⁷⁷⁵ He thought that Mr. Crossan was completely un-cooperative and reticent during at least the latter half of the first interview. Detective Sergeant White was asked whether an issue had arisen that Mr. Crossan's children should be taken from the family. He said:

No, that wouldn't arise and didn't arise because Mrs. Crossan has a large family who would support you, even help-wise, even helping with kids, that kind of thing, you know. That never entered my mind that his kids would be taken away, and it's totally wrong.¹⁷⁷⁶

¹⁷⁷⁴ Transcript, Day 469, page 176.

¹⁷⁷⁵ Transcript, Day 467, pages 161-163.

¹⁷⁷⁶ Transcript, Day 467, page 165.

12.46. Detective Sergeant White denied that he ever used the phrase “menace to society” in relation to Mr. Crossan. He said that, instead, if Mr. Crossan had been lying in relation to the three men coming down the car park, and covering up for Frank McBrearty Junior and Mark McConnell, he would be misleading a Garda investigation and Detective Sergeant White would have described that, in the course of the interview, as wrong. However, he conceded that he could have called Mr. Crossan “an f-ing liar”.¹⁷⁷⁷ The following exchange then occurred between counsel for the Tribunal and Detective Sergeant White:

Q. Well, is it possible that you simply lost your cool in the course of an interview? You had a very hard week the previous week, the interviews of the 4th of December, this is a week later, the 11th of December, and the appearance of obduracy and the inability, apparently, of Mr. Crossan to admit his wrong might have caused you to lose your temper? Is that possible?

A. It's not possible, Chairman, because there was nothing like the same high feeling on the 11th as there was on the 4th. The 4th, everything was going on, there was action everywhere. There was, like you say, a week in between. There were searches out in the open which is not stressful in any way. In fact, it's like relaxation to a certain degree. Other than frustration with Mr. Crossan, yes, but not to a degree that I would lose my temper and start beating him around the place.

Q. Yes, but the difference is, of course, that there is a confession statement. Now, you have said in previous modules that you didn't believe in that confession statement, that it was presented weirdly at the actual conference in the aftermath of its appearance?

A. I had concerns about it, Mr. Charleton ...

Q. All right, but even still ... no matter how you look at it there is a large brick wall standing between the road of the guilt of Mr. McBrearty, as the Gardaí believed it, and his conviction, which is Mr. Crossan's statement about the three men coming down the car park. Furthermore, that road has been paved by the allegedly voluntary statement of Mr. McBrearty in the previous week [supposedly confessing to

¹⁷⁷⁷ Transcript, Day 467, page 167.

the killing]: surely that would be a reason for you to get even more furious with his obduracy?

A. *I would question him about it, question him hard about it. I would be pressing on the questions. I would be trying to bring it home to him that he shouldn't be lying for Mr. McBrearty or for anybody else. I certainly wouldn't lose my temper, lose my head over it. I have done thousands of interviews, Mr. Charleton, at this stage, thousands, you know, with people who are really a lot harder than Mr. Crossan. I mean Mr. Crossan was polite at all times. He is not a man that would cause aggravation in an interview. He may have been reticent but he wasn't aggressive.¹⁷⁷⁸*

12.47. Detective Sergeant White had no recollection of a chair with wheels in the interview room. He denied pushing Mr. Crossan around on a chair. He implied that because he was interviewing Mr. Crossan with Detective Sergeant Michael Keane, a man whom he did not know well despite their being in the same class together in Templemore Garda College, it would be unlikely for him, or anyone, to engage in misbehaviour in the presence of a colleague that he did not know he could trust. Detective Sergeant White denied punching or hurting even inadvertently, Mr. Crossan in the genitals. He denied punching him in the chest or heart. He denied spitting in his mouth:

It would be a very dirty thing to do and it is not something I would do to a human being. Certainly if I had to do something, I would strike them before I would spit in their mouth.¹⁷⁷⁹

12.48. Detective Sergeant White denied leaving the room, either in a temper or at all. Regarding the period of 18.05 hours to 18.20 hours, when the custody record shows Sergeant White as being alone with Mr. Crossan, none of these things happened then, or at any time, according to Detective Sergeant White.¹⁷⁸⁰ If a doctor had been asked for, Detective Sergeant White testified that it was his golden rule to immediately call a doctor.¹⁷⁸¹ Detective Sergeant White described Mr. Crossan withdrawing his statement about the three men coming down through the car park on the night of the supposed murder, and ascribing it to a different night, as voluntary.¹⁷⁸² He was asked why Mr. Crossan should tell his solicitor about his series of complaints of Garda misconduct on the day after his release. Detective Sergeant White ascribed a particular motive to Mr. Crossan in the following terms:

¹⁷⁷⁸ Transcript, Day 467, pages 168-169.

¹⁷⁷⁹ Transcript, Day 467, page 171.

¹⁷⁸⁰ Transcript, Day 467, page 172.

¹⁷⁸¹ Transcript, Day 467, page 174.

¹⁷⁸² Transcript, Day 467, page 175.

*If you returned to Raphoe and spoke to certain people and said: I have let you down, or whatever, and I have told Gardaí the truth, or certain parts of the truth, as to what happened, I don't think you would be too well received ... I am talking about the heat of the moment at that time in Raphoe, and the view that the McBrearty family had maybe of the interviewers. There certainly was heat and tension.*¹⁷⁸³

12.49. Detective Sergeant White denied that there was any conversation in the course of the interview about Mr. Crossan being bribed by Frank McBrearty Senior, but accepted there might be a certain logic in terms of the Garda information at that time in pursuing such an issue. According to Detective Sergeant White, when Mr. Crossan ascribed to a different day the event of the three unidentified men walking down the car park, he accepted this explanation to a certain degree. He and his colleague, as Gardaí, however, still harboured suspicions that he had seen nobody at all that night, but was put up to making this statement by Mr. McBrearty Senior.¹⁷⁸⁴

12.50. When Detective Sergeant White returned to the witness box after the evidence of Detective Inspector Keane he had to comment on the new evidence that Detective Inspector Keane had given. Instead of agreeing with Mr. Crossan, Detective Inspector Keane had denied references to children being taken away or bribery by the McBrearty family, but had said that on two occasions there was an outburst, with spittle inadvertently flying, from Sergeant White whereby he was shouting into Mr. Crossan's face and had poked him in the chest. Detective Sergeant White, in evidence, replied to this as follows:

Chairman, it couldn't have happened during that period of time because Mr. Crossan was giving me the answers that I required in relation to social welfare. It would be pointless of me, in the middle of that, to stand up and abuse him because obviously he would stop; he would stop talking and it would get us nowhere. If this was alleged later in the day, that perhaps I swore at him or I used a loud voice to him, it would be difficult for me to disagree with it. I can't remember it. But not to lose my temper in the middle of the first interview and to be abusive to Mr. Crossan. I mean, that couldn't have happened and I am quite sure it didn't happen. I think, Chairman, if it did happen that Mr. Crossan would have said it to somebody, either to Mr. Flynn or during the evidence he gave here at the Tribunal. It is the most inappropriate time for anyone to give a hard time to a prisoner, if I can put it that

¹⁷⁸³ Transcript, Day 467, page 176.

¹⁷⁸⁴ Transcript, Day 467, page 184.

*way ... but I just can't leave the witness box without stating that I feel that Detective Inspector Keane was vindictive towards me in making this allegation and perhaps he did it to detract from questions that would be put to himself as to the fact that he was with me when this alleged assault in the evening, or in the afternoon, took place. And that perhaps he thought that this was what the Tribunal, or indeed Mr. Fogarty [counsel for Seán Crossan] would want to hear. But it didn't happen, Chairman ... I have made ... a long statement against Inspector Keane; wrongdoings that he has done to myself and to my family, to an Assistant Commissioner, and I have written to him requesting that he have no further interaction with me whatsoever. I have told liaison officers that I am not happy with him approaching me in public places for the purpose of handing me paperwork or whatever, and that I always insisted that some other member ... do so. Simply, I felt that he was hounding me ... May I say, Chairman, that from my position down there, his demeanour when he was making these allegations was that he couldn't wait to spit them out. He almost came forward in the witness box like that, trying to do so. I was totally ambushed by it. I have no idea why he didn't make a statement in advance. But, I mean, it's just down to bad blood: that's all I can say. I wish it would stop.*¹⁷⁸⁵

Photographs

12.51. Seán Crossan has also made a complaint that Detective Sergeant Henry showed him a set of post-mortem photographs of the Late Richard Barron. This, he claimed, caused him to experience reactive flashbacks and considerable upset.

Conclusions

12.52. In reaching its conclusions the Tribunal has had regard to a number of factors:

- (i) The evidence and demeanour of Seán Crossan and Anne Marie Crossan;
- (ii) The evidence and demeanour of Detective Sergeant Sylvester Henry and Sergeant Padraic Scanlon;
- (iii) The custody record and other documentation, including interview notes, generated as a result of the arrest of Mr. Crossan;
- (iv) The evidence of James O'Donnell, solicitor, as to his visit to Seán Crossan in the Garda Station on the day of his arrest.

¹⁷⁸⁵ Transcript, Day 470, page 114.

- (v) The most clear and helpful evidence and notes of James Sweeney, solicitor, as to what Seán Crossan told him by way of instructions on the day after his arrest.
- (vi) The demeanour of Detective Inspector Michael Keane and Detective Sergeant John White;
- (vii) The previous statements of Detective Sergeant John White and the statement of Detective Inspector Michael Keane, made for the purposes of the civil action and dated the 15th of February 2002.

In addition, the Tribunal has had regard to the entirety of the evidence and submissions. The Tribunal therefore reaches the following conclusions:

1. The Tribunal regards it as unlikely that Seán Crossan would spontaneously make up a set of utterly false allegations against the Gardaí by way of a complaint to his solicitor on the day following his release. There are circumstances, however, where apart from the possibility of mistake, it seems to the Tribunal that there is a degree of exaggeration in the evidence of Mr. Crossan. An instance of this is the allegation that Detective Sergeant White spat directly into his open mouth. This, the Tribunal feels, is an exaggeration of the lesser event that did happen of spittle flying naturally from Sergeant White's lips because he was in a state of fury. The Tribunal is not in a position to be satisfied that Detective Sergeant Henry, or any other Garda, showed Mr. Crossan post-mortem photographs.
2. The Tribunal is satisfied that Detective Sergeant Sylvester Henry and Detective Garda Padraic Scanlon did question Seán Crossan robustly. The Tribunal is satisfied that they made notes on both occasions, though not in an obvious way during the first period of interview. It is not acceptable that both interviews were amalgamated into one set of notes. In Chapter 8, which deals with the arrest and detention of Mark Quinn, I have already criticised Gardaí for deficiencies in note taking in the course of interviews. These Criticisms apply equally here. The Tribunal is satisfied that the questioning of Mr. Crossan extended to an accusation that he had been offered £500 by Mr. Frank McBrearty Senior. The Tribunal's view is that the interviewing Gardaí probably urged him to reconsider his second statement and to withdraw the assertion that he had seen three young unidentified men coming down the yard on the night of the supposed murder of the Late Mr. Richard Barron. The Tribunal cannot be satisfied that

these officers threatened to initiate a social welfare investigation for fraud. The Tribunal is not satisfied that either of these officers made a threat in relation to Mr. Crossan's children or his car.

3. The Tribunal has carefully considered the evidence of Seán Crossan, and re-read his evidence in full. It is, in general, honest evidence. The Tribunal regards the evidence of Sergeant Scanlon and Detective Sergeant Henry on this occasion as being honest evidence also. The Tribunal has had regard to the confused nature of the identification by Mr. Crossan of these two sergeants. This, in part, may be due to trauma which he later suffered in Garda custody, though, the Tribunal is satisfied, not at their hands. The Tribunal does not see anything wrong with these Gardaí questioning Mr. Crossan about the possibility that he was offered a bribe, nor could it be regarded as wrong that he should be urged to reconsider his second statement in the light of what certain Gardaí, including these, regarded as new developments.
4. The Tribunal has had regard to Detective Sergeant Henry's previous good character and to his previous evidence to the Tribunal that has been co-operative in nature. He is unlikely to have behaved in an inappropriate manner in his questioning of Mr. Crossan. The Tribunal is not satisfied that Mr. Crossan was accused of perjury by these officers. The Tribunal cannot make a recommendation that Gardaí should hold back from asking frank and forthright questions of a suspect. Nor is it wrong to point out the consequences of involvement in a crime, the consequences of a crime to a victim and his or her family, and the potential wrong done to society by failing to co-operate with the Gardaí. The Tribunal accepts the evidence of Detective Sergeant Henry that a book, probably the Garda Guide, was brought into the interview room for the purpose of explaining what an accessory after the fact to murder was. The Tribunal regards it as highly unlikely that it would be necessary for a Garda to bring down a book to show an interviewee what the penalty was in respect of a charge for which he was arrested. If a trick was being played on the prisoner, a Garda would be well able to invent a penalty without any authority. The definition of accessory might well, on the other hand, require the production of the written word.
5. The Tribunal notes that no allegation has been made against Sergeant Martin Moylan in respect of the interview that was

conducted by him and Sergeant White between 22.35 hours and 23.05 hours.

6. The Tribunal is absolutely satisfied that Sergeant White behaved improperly in his conduct towards Seán Crossan. The Tribunal has concluded that Sergeant White got into a state where he was beside himself as a result of what he perceived to be the obduracy of Seán Crossan. The Tribunal accepts that there was spit going into Seán Crossan's face, but it concludes that this was a product of Sergeant White's fury and was not a deliberate act on his part. The Tribunal concludes that Sergeant White was probably asked by Mr. Crossan for a doctor's assistance, but outside the context of an interview, perhaps on the way to or from a cell. The Tribunal is not satisfied that the provision of three Anadin was a sufficient response to his request.
7. The Tribunal is satisfied that Sergeant White's conduct went beyond that described in evidence by Detective Inspector Keane. The Tribunal is absolutely satisfied that Sergeant White did go into the possibility that Mr. Crossan would be reported to the Department of Social Welfare for fraud, working as he was for Mr. McBrearty Senior while drawing dole at the same time. The Tribunal concludes that Mr. Crossan was threatened by Sergeant White that his children would be taken away from him as a result of intervention through social workers and, on a much lesser level of seriousness, that his imported car would be seized. The Tribunal is satisfied that Sergeant White shouted at Seán Crossan in a fury. The Tribunal is satisfied that, in as much as it is confirmed by Detective Inspector Keane, Sergeant White prodded Seán Crossan in the chest with his finger. It would be wrong to describe such a prod as a blow to the chest, or more dramatically, to the heart. The Tribunal cannot conclude that any blow was delivered to Mr. Crossan's genitals as the Tribunal understands Mr. Crossan's evidence to be that he was sitting down at the time. With regard to the slight abrasions that might have been seen on his eye or ear, the Tribunal finds it difficult to be satisfied that Sergeant White would be sufficiently reckless as to leave a mark on a detainee. The Tribunal is satisfied that there was a chair in the room, as Seán Crossan says, with wheels on it and that he was subjected to being pushed around by Sergeant White for the purpose of intimidation. All of this behaviour was appalling.
8. The change of evidence by Detective Inspector Keane is noted. The

Tribunal does not accept his evidence as fully correct. That evidence has the ring of someone covering for himself in a context where he believes that Seán Crossan's evidence might be regarded as credible. Detective Inspector Keane has pitched a story to the level that he has because he has gauged that the true facts went beyond the point at which he should have intervened. Instead, he has portrayed himself as the one concerned with the prisoner's welfare by remaining on the alert in case Sergeant White should do anything really bad. Detective Inspector Keane's statement in reply to the civil action is false. In that statement he should have noted Sergeant White's conduct. Instead, he gives Sergeant White a totally clean bill of health. The Tribunal is satisfied that Detective Inspector Keane witnessed these abusive incidents and should have taken action.

CHAPTER 13

THE ARREST AND DETENTION OF DAMIEN MCDAID

Introduction

- 13.01. Damien McDaid lived with his wife and two children in Newtowncunningham, Co. Donegal at the time of his arrest on the 17th of December 1996. The village of Newtowncunningham is situated about 20 kilometers northeast of Raphoe. Mr. McDaid was 30 years of age at the time of Mr. Barron's death, and worked as a self-employed electrician in and around the north Donegal area. He employed a number of other persons, including his younger brother, Gavin McDaid, at that time. In broad terms, the reason why Damien McDaid was arrested was that he was seen leaving the car park at the back of Frankie's Nightclub in Raphoe at about 01.00 hours on the night that Mr. Richard Barron died, and it was suspected that he had some information in relation to what was at that time believed to have been the murder of Mr. Barron. This reason was believed to be sufficient to arrest him as an accessory after the fact to the murder of Mr. Barron.
- 13.02. Damien McDaid was detained at Letterkenny Garda Station from his arrest at 09.10 hours on the morning of the 17th December 1996 to his release at 21.02 hours that evening. During the course of his detention, Mr. McDaid claims that he was subjected to physical and verbal abuse at the hands of certain Gardaí. He also claims that as a result of his arrest, and the rumours that started to circulate about him in the wake thereof, his business started to fail. He also claims that these rumours contributed to the subsequent break-up of his marriage.

The Decision to Arrest

- 13.03. The Tribunal has already made findings in its second report that the various arrests with which the current module is concerned flowed from the fraudulently forced statement of Robert Noel McBride and were as a result unlawful. That false statement promoted the scenario that Mr. Barron had been murdered by Mr. McBrearty Junior and Mr. McConnell, who had then fled from the scene through waste ground that led to the car park behind Frankie's Night Club, before proceeding to gain access to the adjoining Tudor Lounge premises, supposedly with a view to cleaning up so that they could blend back into the crowd before anyone noticed that they were absent. As outlined in the Tribunal's second report, this scenario did not occur. Mr. McBride was not in Raphoe on the night in question and could therefore not have witnessed any individuals running through

the car park at a time proximate to the death of the Late Mr. Barron. It was also established in that report that neither Mr. McBrearty nor Mr. McConnell walked down through the car park at the relevant time, so nobody else could have seen them there either. In particular, in the context of Damien McDaid's detention, he could not have met or seen either of them there.

- 13.04. The arrest of Damien McDaid on the 17th of December 1996 occurred almost two weeks after the other arrests, including those of the primary suspects which occurred on the 4th of December and almost a week after the arrest of Seán Crossan, which occurred on the 11th of December 1996. The arrest of Seán Crossan impinged upon the arrest of Damien McDaid to the extent that Mr. Crossan indicated that he had seen and had an exchange with Mr. McDaid as the latter drove his van out of the car park at the side of Frankie's Nightclub at around 01.00 hours on the night of Mr. Barron's death.
- 13.05. Damien McDaid gave evidence at the Tribunal that he was not now in a position to give an account of his movements on the night of the 13th/14th of October 1996. He claimed at the Tribunal that he was intoxicated on the night in question and could not remember any details of the night. In the course of the Garda investigation and prior to the arrests of the chief suspects, Garda John Harkin and Detective Garda P.J. Keating interviewed Damien McDaid. This interview took place on the 8th of November 1996. The circumstances in which this interview occurred and the contents of the memorandum of interview thereof became a matter of controversy at the Tribunal. It is as well to set out the memorandum in its entirety:

My name is Damien McDaid and I am married to Geraldine. We have two children. I work as an electrical contractor and have carried out work for McBrearty's at the Parting Glass in Raphoe, installing a new lighting system. I would not know the deceased Richard Barron. I do remember Sunday night 13/10/1996. I was out on my own that night. I was in the Halfway House at Tooban Burnfoot, earlier that night. I left there at about 11.30 p.m. I had to do a run to Letterkenny. The place in Letterkenny I had to go to was a good distance away. After this I went to Raphoe. I was driving my van a navy blue Transit Van 94 DL 2592. I arrived in Raphoe at about 12.30 a.m. on 14/10/1996. I parked my van in the car park at the rear of Frankie's. I parked it up behind on the right hand side out of the way. I was on my own and I went straight into Frankie's Night Club. I recall seeing the big fellow that runs the place. He was inside the glass and taking the money. He took money from me. I also recall seeing the son. The young boy, the ignorant fellow. He was standing inside the door as I went in. I only stayed inside for half an

hour. There were people there from the wife's side and I did not want to stay there. I cannot name these people, as you have no business going to them. I left and went to get my van in the car park at 1 a.m. The only people I saw in the car park was one of the bouncers a baldy headed boy. He was along with a few women. There was one of them getting sick. When I left the car park and drove down there was a handling outside the main entrance and my way was blocked. There was two big fellows causing bother, they were IRA men. They were out for the weekend only. I saw the big fellow who owns the place and the son they were dealing with them. He did not want to let them in. I blew the horn on the van for them to get out of my way. I came on out and came straight home. I was home by 1.30 a.m. It was the following day before I heard that a man was knocked down.

Signed: Unwilling to make a statement
Will not sign anything

Witnessed: John Harkin Gda 23366H¹⁷⁸⁶

- 13.06. On the basis of this memorandum, it is difficult to see how any suspicion could arise in respect of Mr. McDaid's involvement in or knowledge of the circumstances surrounding the suspected murder of the Late Mr. Barron. It does refer to a sighting of Frank McBrearty Junior at the entrance door of the nightclub dealing with some unruly clientele, which is consistent with the account given by a number of other witnesses. In the context of the investigation as a whole, it might be thought that this statement was, on its face, an innocuous one.

The Memorandum

- 13.07. In evidence to the Tribunal, Damien McDaid denied having given the information on which the above memorandum was apparently based. He agreed that he met two Gardaí at some time subsequent to Mr. Barron's death and prior to his own arrest, but that, when questioned by them, he had informed them that he could not remember anything about the night in question owing to his state of intoxication at the time. Therefore, on Mr. McDaid's account, any memorandum of interview attributed to him that goes beyond this is a fabrication drawn from other sources, albeit not necessarily an inaccurate account of what actually happened. The interviewing Gardaí, Garda John Harkin and Detective Garda P.J. Keating, gave evidence that the memorandum is an accurate account of the information relayed to them by Mr. McDaid on the day in question. In particular, they point out that much of the detail of the memorandum would not have been readily available from independent sources.

¹⁷⁸⁶ Tribunal Documents, pages 34-35.

13.08. The following exchanges between counsel for the Tribunal and Mr. McDaid define his position in respect of the memorandum of interview taken on the 8th of November 1996:

Q. *Maybe you just don't remember talking to the guards about this, I don't know?*

A. *Oh I do, I didn't say nothing to them sure.*

Q. *Do you remember meeting them?*

A. *Oh I do surely, oh aye.*

Q. *Do you remember what you did say to them?*

A. *Aye.*

Q. *What did you tell them?*

A. *To f___ off, that's what I said, that's the very words I says.*

Q. *I see. So as far as you're concerned you didn't give them any information; is that right?*

A. *Yes, that's correct.*

Q. *Okay. Now, I suppose the importance of this, just to point it out to you, and the story that is told by the guards, is that when they spoke to you in the account that they say you gave, you didn't include seeing Mr. Frank McBrearty Junior and Mr. Mark McConnell coming down the car park. They thought you should have done that because they thought that's what happened. Do you understand me?*

A. *Yes, I understand.*

Q. *And then as a result of that, it would appear, they came to arrest you on 17th December of 1996?*

A. *Yeah.*

Q. *Because they felt your story -- that you had more to tell than what you had actually told them. That's*

their story. Do you understand me?

- A. *Yes. I'm behind you all the way.*
- Q. *Okay. So did anyone at all come to you, do you remember, and did you talk to any guard about what happened on 13th/14th October 1996, that you can remember? Did they talk to you about it at all, before your arrest?*
- A. *Oh aye. Aye, that Harkin boy was on at me, he asked me.*
- Q. *Yes?*
- A. *And I answered him what to do like, you know.*
- Q. *Yes, as you told us?*
- A. *Yes, that's what I said.*
- Q. *You didn't tell him anything more than that?*
- A. *Not at all, no.*
- Q. *Just to be fair to yourself now, is it that you don't remember or that you just didn't?*
- A. *I wasn't up there, that's what I thought, I wasn't in Raphoe, so that's all, how could I do anything else like?*
- Q. *Is it that you don't have a memory of it for some reason?*
- A. *Yeah, that's the reason. I was oiled up that night.*
- Q. *Chairman: Do you know where you got oiled up that night, where did you go?*
- A. *Ah God bless us, in the Halfway House.*
- Q. *Chairman: Where's that?*
- A. *It's way up my own side so it is, Burnfoot.*
- Q. *Chairman: Did you go to, is it Letterkenny you said in the statement? Did you have a job to do? Is it in Letterkenny he said?*

Q. Mr. McDermott: *Yes, sir.*

Q. Chairman: *Did you go to Letterkenny that night?*

A. *No.*

Q. Chairman: *It says in the statement that you did and I'm just wondering did you. You were just drinking away in the Halfway House?*

A. *Yeah.*

Q. Chairman: *Have you any memory of what happened after that?*

A. *I haven't a clue.*

Q. Chairman: *Were you alone or were you in company?*

A. *I was on my own, judge, Mr. Chairman.*

Q. Chairman: *You just remember drinking there in the pub; is that right?*

A. *Yes, that's all I can mind.*

Q. Chairman: *Okay.*

Q. Mr. McDermott: *Because funnily enough, Garda Harkin seems to have recorded that you were in the Halfway House in Burnfoot, and that seemed to be right?*

A. *Aye. Aye well, aye, that's right enough like.*

Q. *I suppose you'd be the only one that would know that?*

A. *Oh God no, Jesus Christ.*

Q. *You'd go out there I'm sure but that particular night ... (INTERJECTION)*

A. *I'm always in the Halfway House, I'm always f____ there, sorry. Everybody knows that that's where I drink, in the Halfway House. Everybody knows that.*

Q. *Well there it is. That's the note he has?*

A. *Yeah.*

- Q. *And you didn't say that to him?*
- A. *No, I wouldn't say IRA men, Jesus it'd be a wild job if I went home, I'd get a hole in my head so I would, I'd get shot for saying things like that.*
- Q. *That's the one thing. Can we just look at that for a moment. You might be worried about that?*
- A. *I'm terrified about that, no harm to you.*
- Q. *Could that be the reason that you're not agreeing ...*
- A. *Oh no, no, no.*
- Q. *... what you said to the guards?*
- A. *Not at all no. No.*
- Q. *Because other people said it as well?*
- A. *No.*
- Q. *You'd all be in the same boat and nothing has happened to anyone else?*
- A. *Aye.*
- Q. *Do you understand?*
- A. *Yes, I understand.*
- Q. *Other people have said this?*
- A. *No, I wouldn't. I wouldn't ever say something like that, that's absolutely -- that's asking to go to your grave.*
- Q. *Nowadays they mightn't be as worried about it as then?*
- A. *Aye, you might get away with that now.¹⁷⁸⁷*

13.09. The Tribunal regards the conflict which emerges from the account of the interview which Mr. McDaid has given and the evidence of Garda John Harkin and Detective Garda P.J. Keating as of significance because it is clear that no possibility for misunderstanding or mistake can arise here. The two Gardaí are clear that the contents of the interview which they had with Mr. McDaid is

¹⁷⁸⁷ Transcript, Day 451, pages 34-39.

recorded in the note of the interview whereas Mr. McDaid denies that he said any of the things recorded. The Tribunal considers that the determination of this issue is important in determining the truthfulness of the parties. Mr. McDaid denied that he told the Gardaí that he visited Raphoe on the night or morning of the 13th/14th of October 1996 and then denied to the Tribunal that he had any memory of being in Raphoe. The Tribunal has already heard evidence from other witnesses who personally witnessed Mr. McDaid drive his van from the car park at the rear of Frank McBrearty's nightclub, out through the gates, leading onto the main road and gave graphic descriptions of this event. Further, there is nothing in the memorandum of interview that is inconsistent with the account given by these witnesses of that night's events.¹⁷⁸⁸ The memorandum adds nothing to the pool of information which previously existed concerning the alleged murder and which, in fact, gave one of the chief suspects an alibi for a time very shortly after the death of the Late Mr. Barron. **The Tribunal accepts the evidence of those who saw Mr. McDaid that evening and this, coupled with the detail contained in the interview of the 8th of November 1996 satisfies the Tribunal that Mr. McDaid did furnish the Gardaí with the information contained in the interview and that in denying that he did so he was lying.**

13.10. A number of factors may explain Mr. McDaid's disavowal of the contents of this memorandum of interview. The first of these concerns Mr. McDaid's insistence that he would never have described certain individuals as 'IRA men'. Although no names were given in the memorandum, and many other witnesses in their statements identified the individuals who were fighting at the entrance to the nightclub as members of that particular terrorist organisation, Mr. McDaid was determined to distance himself from what might be regarded as a throwaway comment about 'IRA men', peripheral to the thrust of the interview. It may be that Mr. McDaid has a genuine fear of the consequences of being seen to have spoken to the Gardaí. Another factor that might explain Mr. McDaid's reluctance to sign the memorandum of interview relates to his poor literacy skills, which were apparent at the Tribunal hearings.

13.11. **The Tribunal is satisfied that the memorandum of interview attributed to Damien McDaid on the 8th of November 1996 accurately reflects what he told the two Gardaí who interviewed him on that day. The combination of Mr. McDaid's own poor literacy skills and what appeared to the Tribunal as an underlying distrust of the Gardaí on his part, is the most likely explanation for Mr. McDaid's refusal to sign the memorandum at the time. His stated fears in respect of the mention of 'IRA men' offer a possible explanation as to why he disavowed its contents at the Tribunal hearings.**

¹⁷⁸⁸ Transcript, Day 50, pages 58-60 (Evidence of Mr. Seán Crossan) and Transcript, Day 51, pages 110 to 113 (Evidence of Mr. Frank McBrearty Junior).

Nonetheless, his disavowel was untrue. Whatever the reasons for Mr. McDaid's refusal to sign the note of interview they did not relieve him of his obligation to tell the truth.

Decision to Arrest

- 13.12. Sergeant Martin Moylan, who was the arresting officer when Damien McDaid was arrested on the 17th of December 1996, gave the following evidence as to the deliberations that were conducted prior to that arrest:

My memory of the arrest of Damien McDaid is, it was at a conference a couple of days after 4th December and the decision to arrest Damien McDaid was made that day, along with other people in the car park, Seán Crossan and the doorman, McCallion ... That conference on the 5th or 6th, I think it was the 6th, there was a big conference, there was a lot of people at it. There were decisions made about detectives going back to their ordinary duties because it was coming up to Christmas, there was a fear of armed robberies and that ... Other detectives were told to finish out whatever they were at. Then these arrests were decided on and Sergeant Roache, I remember at that conference also, he wanted to go back to his traffic duties and he was sent back then and I was put in charge of the investigation ... Well the reason was the car park, you know, people in the car park, these people who were in the car park ... There was the doorman, Seán Crossan and Damien McDaid were in the car park that night and that they possibly could have seen the culprits coming down the car park ... I don't think when I was going out to arrest him that that was in my mind, about supporting the McBreartys. It was just that he was in the car park and he could have seen them coming down ... [The decision to arrest Mr. McDaid taken at the conference on the 5th or 6th December] I remember that ... John Fitzgerald, superintendent [made that decision]. I think I undertook to do the arrest that day, as far as I can remember ... I think that Frank McBrearty was in at the time and that a lot of detectives were tied up with his custody and I just couldn't get a group of detectives together and that was the first opportunity I got ... whatever date it was, twelve days later ... I've no recollection of a meeting to discuss the arrest of Damien McDaid because it had been decided a long time before that and it was a matter of going and operationally organising it.¹⁷⁸⁹

¹⁷⁸⁹ Transcript, Day 455, pages 3-16.

- 13.13. This version of events appears to indicate that the decision to arrest Damien McDaid was made in advance of the arrest of Seán Crossan. It might have been thought that the arrest of Seán Crossan had some impact on the decision to arrest Damien McDaid. There is, in effect, no real indication in the questioning of Mr. Crossan that the investigation team was closing in on a theory involving Mr. McDaid.
- 13.14. Hugh Smith, who was a detective sergeant at the time, attended at the arrest of Mr. McDaid and claims to have been somewhat surprised when he was informed of the grounds for arrest. He conducted a number of interviews with Mr. McDaid in custody on that date, and gave the following evidence in respect of his own reaction when he read the briefing file in respect of the arrest of Damien McDaid:

I remember when Marty [Moylean, Sergeant] was going through the different formalities, Marty had a sort of a briefing file and notes with him and I remember going through the notes because, as I said, I had very little prior knowledge as to the full extent of McDaid's supposed to be involvement in the whole Raphoe affair. I remember reading some documents that Marty had, what the title of the documents is I cannot be totally sure. I remember when I read them I was somewhat surprised that McDaid was arrested at all because, and I did say to Marty that we were on very slippery ground, because I felt myself, on the evidence of what I had read, unless somebody knew different, that it was a flimsy enough arrest, an excuse for an arrest ... Because at the end of the day ... it could have been John Harkin's note I read, and McDaid had explained, when approached by the Gardaí at the time, as far as I was concerned, what his actions were that night and that he had been up in the car park. He explained how he delayed in the van for a few minutes and went into McBreartys and how he went in and who he met at the door, had his pint and left for whatever reason, went back to the van and that was it. Basically he didn't see what other people were supposed to have seen ... I was somewhat surprised that a man would be arrested on that basis and I felt myself that if he was a witness of any description, and no matter how many ... he could be visited and re-visited to see was he missing anything or had he any better recollection or could he have seen X, Y and Z ... That was my gut feeling and it was also my gut feeling that when I finished the interview I wouldn't see the man again. I was somewhat surprised in the evening when I was asked to go back in for a second interview.¹⁷⁹⁰

¹⁷⁹⁰ Transcript, Day 462, pages 24-26.

- 13.15. It is clear, however, that the investigation team, in the context of a thorough and efficient investigation, should have made some arrangement to clarify the memorandum with Damien McDaid. The need for this course of action became imperative when the Gardaí considered arresting him as an accessory after the fact.

The Arrest

- 13.16. The arrest of Damien McDaid took place as he and his brother Gavin drove to work through Newtowncunningham just after 09.00 hours on the morning of the 17th of December 1996. The accounts of the arrest given by both Damien and Gavin McDaid differ quite markedly from those of the various officers who were present for the arrest that morning. It appears that the arrest was planned so as to intercept Mr. McDaid as he left for work in his van. It also appears to be accepted by all parties that at least two Garda cars were involved in stopping Mr. McDaid's van and that a standoff developed with Damien McDaid sitting inside his van with the doors locked while a number of Gardaí stood around the van encouraging him to step out, which he eventually did. Damien McDaid gave the following account of his arrest:

I got up in the morning to go to work and up the road for the van and the next thing I see a guard, you know, I looked in front of me, so I did, and looked in the back and nothing wrong, you know, was in behind me ... [A Garda car arrived and cut in front of me. And another Garda car] was in behind me ... And they all hopped out and I didn't know who it was, I didn't know what was going on. And they're hammering out of the van. I didn't know what the hell was going on. I didn't know what to do, get out of the van, I wouldn't get out, I didn't get out of the van because I didn't know what was ahead of me...I hadn't a clue who it was ... So they hammered on the window anyway, and I wouldn't get out and that's all about it, I wasn't getting out and they asked for this out the window, they wanted the insurance out the window and things like that...I wouldn't get out of the van. I wouldn't get out at all ... They weren't in uniform ... There could be eight of them I'd say ... [The car that stopped me] was a white one anyway, a white car so it was ... It was on the way up, aye, about a hundred yards off it, off the house ... They were hammering on and hammering on, so I had to hop out of the van then, I had to get out ... They were hammering the side of the van like animals on the front of the van, so I had to get out then ... I got out of the van ... Somebody had his hand on my shoulder and said whatever.

Whatever ... The way it worked out, I got out of the car and I said, I better go in and tell the wife and I went in to the wife and I answered to the wife what's going on. So I hopped in the car again and went up to the road, up to the boys then ... I haven't a clue [what was said to me by the guard who was arresting me] ... There was [no conversation on the way to the station] ... I wouldn't have a clue [who was in the car].¹⁷⁹¹

- 13.17. The Gardaí then brought Mr. McDaid briefly back to his home. Mrs. Geraldine McDaid gave the following account of her husband's arrest on that morning:

I was getting our wee girl ready for school, she was finished her breakfast, I was getting on the uniform when I heard cars coming into the street and ... I looked out the window and I seen Damien and these men were away with him, these guards were away with him ... I didn't know what was going on ... They didn't come in, some one of them stood at the door, the mobile door ... He was out there. Damien was out. Damien wasn't allowed back in the mobile ... I opened the window because I couldn't get at the door because the man was standing at the door and he says, they're lifting me. I says, what do you mean they're lifting you? He says, they're lifting me. I go, what do you mean they're lifting you? And he was away ... And I could just touch his hand at the window, Damien was away then.¹⁷⁹²

- 13.18. Gavin McDaid was seventeen years of age at the time of his brother's arrest on the 17th of December 1996. At the time he was serving an apprenticeship as an electrician with him. Gavin McDaid gave the following account of Damien McDaid's arrest:

That morning the same kind of routine, get up for work, he comes up, lifts me, and once I got in the van it's the first thing he said, he says there's somebody following me, you know. I found it strange. So I said something to him like he's paranoid or something like that. He says wait till you see this. So where my family home is it's the front row of cottages, now these cottages would go four or five deep, so you can go through the cottages and out on to a main road ... We went out through the cottages, out on to the main road and you heard before there Kiernans Centra, it's on the main Letterkenny to Derry road, it's just down the road from us a wee bit. You can cut across there in front of the school and back up the main street where he would have came up before ... And

¹⁷⁹¹ Transcript, Day 451, pages 39-44.

¹⁷⁹² Transcript, Day 451, pages

just as we came up the main street there was a local hall, you know a community hall, the Columban Hall it's called, and he turned back in there again. Just as he got turned in, and you know you can come in one end and out the other, it's not a very big car park, but it would be the size of this room and just with that then the guards seemed to be just be there, I couldn't understand it. It was so strange, you know, just to be blocked in all of a sudden. A lot of roaring and shouting, you know, boys coming up to the van, get out of the van, get out of the van...I would have thought there was three cars, two to three cars...There was one in front of us, I think there was one behind us and I'm not sure but I thought there was one further over a bit too. But as I say I wouldn't be exactly sure about that ... Everybody got out ... It was very kind of go, go, go, you know ... I would have thought there would have been either six or eight [guards], you know, six to eight people ... There was no Garda uniforms ... With that, straight over to the van and automatically we locked the doors. Because... Newtowncunningham where I live is a very, very quiet area, you know there's nothing. If we see a guard he was dressed as a guard, you know, a detective was something you seen on TV ... So there was a lot of roaring and shouting, get out of the van, get out of the van, we want you out of the van, open the doors now, open the doors now, steady, steady, steady, you know. And there was one particular fella, I don't know now if he's here today, but I asked him to put his ID to the window because I didn't know who he was ... but he put an ID to the window for me and showed me and I still didn't really believe him, that's being honest ... He showed me, but you know the way whenever you are scared you look at something but you can't really see it. You know what I mean ... they were shouting both, you know. As I say there was a lot of roaring and shouting going on. This isn't a place that sits on its own you know, there's ... it's on a main street, it's on our main street, do you know ... There was a lot, a lot of commotion made, you know. There was a lot of roaring and shouting ... [The cars were] unmarked ... No Garda sign ... [My brother said] "don't get out ... Don't get out of the van" ... Eventually there's nothing we could do but get out of the van. Nothing, you know. And once we got out of the van, once I got out of my side the fella that put the ID up to the window to me he kicked me, now I can swear on this Bible about that, he kicked me and he said the next time I tell you

*to open the door you open it you little bastard, that's guaranteed ... [I was kicked] in the ass, right in the ass ... It was a hard kick. It was a hard kick. He was angry because I didn't open the door and he kicked me for it ... I run around the side of the van as quick as I could ... From then on it was kind of ... I think they had a look in the van to see what was in it. I don't know if they put him in handcuffs at the time. But as I say, I said to you I would come back to you about the cars ... There was a patrol car that sat up on the footpath then and they put Damien into that and there was a guard, a uniform guard then with ... he was a right big fella and he moved me brother's van up onto the footpath and gave me the keys and I kept saying to them what are yous doing. I didn't know what was going on, you know, I hadn't a clue. Some of them said to the effect, again you have to curse, but he's a murdering bastard, you know ... So with that, once I got the keys in my hand I run straight up the street ... I don't even know if he locked the van, I think he just threw me the keys ... I think they put [my brother] in the back of the car or were in the process of it ... After I got the keys I run up, now it's a good maybe two or three hundred metres, I run, I never stopped up to my Ma's and I went in and I woke my Ma and Da in the bed and all I could say to them was Damien's been arrested for murder ...*¹⁷⁹³

- 13.19. Hugh Smith, who was a detective sergeant at the time of the arrest of Damien McDaid, gave the following account of his involvement that morning:

So the evening before, I'm not sure if it was Sergeant Moylan or some of the officers, came over and said that Damien McDaid was to be arrested the following morning and that Marty needed assistance. So I agreed to go with Marty and we took two other members of my unit, who was Detective Garda Keating and Sergeant Seán Herraghty, with us ... I'm not quite sure of why we took two [vehicles] but there was some suggestion at the time that Damien could be an awkward customer. I'm not sure how true it was but it was just as a precaution ... My recollection of the events surrounding the arrest are somewhat faded. As far as I was concerned it was a non-eventful morning, other than the fact that when we encountered Damien in the car park at the community centre in Newtowncunningham, he locked the door of the van ... I know it was described here during the week as a sort of a Starsky and Hutch style arrest, I've no recollection of that...As far as I

¹⁷⁹³ Transcript, Day 454, pages 87-94.

know, when we indicated to Damien McDaid that we wanted him to stop by a blip of the siren, he pulled into the car park at the community centre. Now, I don't recall any sort of a chase up and down the street, if there was a chase as described, I think I would remember that ... I was driving ... I can recall that Detective Garda Keating and Seán Herraghty were in the patrol car to the rear of the McDaid's van...And I would have been towards the front. Marty was the first man out of the vehicle. He was the arresting member, and he was in full uniform. Now when I say full uniform, he mightn't have been wearing his cap ... When I got out Damien McDaid was rolling up the window. I looked at Marty and I could see that the keys were still in the ignition and I was somewhat, I won't say annoyed, but I was surprised that Marty hadn't taken control of the situation because had I been the arresting member, the first thing I would have done was remove the keys and you had control of the situation. Marty did not do that ... Damien McDaid rolled up the window to a couple of inches from the top, because I remember we weren't able to fit in our hand to open the door. We knocked on the window and I know for a fact that I did go around the van and check the other doors, because I remember thinking at the time I'd look sweet standing at the side door if the back door, the side door or the passenger door was unlocked ... I've no vivid recollection of Damien's younger brother being there ... I was focussed on the driver, it was the driver we were interested in and if he was there I would have had no interest in the young fellow. Now I know there's a lot of chat about thumping on the van and banging and what not, I have no recollection of that. I know I did knock on the windows and maybe, it was a van, there might be a hollow sound, on the inside it might appear that there is lot of banging going on...We would have demanded or I would have demanded that Damien would have got out of the van. Now, while he didn't refuse, he didn't get out. Now, he commenced to use the phone in the van. It is my vivid recollection of him being on the phone ... Now, somebody said since that that the phone wasn't connected. Well if it wasn't connected, he's a very good actor because I got the distinct impression that he was chatting to somebody on the other end of the line and he said that the Gardaí are at the van trying to arrest him. I got the distinct impression that he was on the phone to his solicitor...He turned his shoulder slightly away from us ... But he had the phone up to his ear ...

distinctly remember going back to the patrol car, it was behind the van and either Detective Garda Keating or Herraghty said, what's the position now, and I says, he's locked the van and he's on the phone to his solicitor and I says, we'll wait and see. At that stage I had gone around and checked all the doors ... I've no recollection of any exchange with a passenger in the van and it wouldn't be unusual for me to produce my identification card if I wasn't in the company of a uniform member. But given the fact, as I have said already, that Marty was in full view, I couldn't see why I would be producing my identification card. I don't think there was any doubt, especially with Damien McDaid, that we were guards ... I remember saying to McDaid, you might as well get out because we have plenty of time and you're going to have to get out at some stage, why not now rather than later type of thing ... I cannot be sure if [Detective Gardaí Keating and Herraghty] got out of [their car] later on, but certainly while the stand off, for the few minutes while it was going on, I think they remained in the vehicle ... [After talking to them] I went back to the driver's door. And I do have a vivid recollection that when McDaid finished his conversation he opened the door and I was standing beside Marty when Damien McDaid got out of the van. Because at the end of the day, it was the driver we were interested in. I don't see why I would have been at the passenger side because if Gavin McDaid was there, as he states he was, I would have had absolutely no interest in the young fellow. I know there's a suggestion ... I haven't read Gavin's transcript, I wasn't here for his evidence, but that whoever was at passenger side when he emerged from the vehicle, gave him a kick up the backside and said, you'll open the door, you little so and so, the next time I ask you to ... I would hate to think that any member of the Garda Síochána would treat my son in that fashion. At the end of the day, if Gavin was there, he hadn't done anything wrong, I had no interest in him, and as to why to do that act, I don't think it's right ... I certainly wouldn't treat any other man's son in that fashion ... When [Damien McDaid] got out of the vehicle he was arrested formally. I know there was a discussion here about the van and I did ask about the van because I was going to take the van down home for him, or get some of the other members to do so ... He assured me it was okay where it was. And I do know that some member of the Garda Síochána present moved the van into the wall, because it was out in the middle of

the car park ... I'm not quite clear if [Detective Gardaí Keating and Herraghty] got out when McDaid got out because again, the situation is back in our hands and there would be no need for them to sit in the car at that stage. I've no recollection of them being out, but they may have got out. But I do know that we did move the van because it ... I won't say was causing an obstruction but it wasn't in a proper parking position. I was concerned that if we left the van where it was, that maybe on his return it could be broken into and his tools gone and I didn't want that. And I did volunteer that some of us would take the van back down home because it was only about 150 yards or 200 yards ... He said no, it was okay where it was ... But I do know it was moved.¹⁷⁹⁴

- 13.20. This account is largely in accordance with those of Sergeant Moylan, Seán Herraghty and P.J. Keating. Seán Herraghty, however, is much more emphatic about the fact that Gavin McDaid was not there that morning at all.¹⁷⁹⁵

Conclusion on the Arrest

- 13.21. The Tribunal accepts that the arrest was carried out by the four Gardaí identified by Hugh Smith, namely Sergeant Martin Moylan, Detective Sergeant Hugh Smith, Detective Garda P.J. Keating and Detective Garda Seán Herraghty. It accepts Gavin McDaid's impression that there were six or eight members involved as being an honest mistake on his part.
- 13.22. The Tribunal accepts Gavin McDaid's evidence as representing the most accurate account of what happened on the morning of his brother's arrest. It accepts that in making the arrest, one or more Garda cars followed Mr. McDaid's van through and around Newtowncunningham broadly as described by Gavin McDaid and accepts that as a consequence of the actions of the arresting party it was, for the McDaid brothers, dramatic. The use of the siren on the Garda car would not have arisen if the van had been flagged down, as it should have been, at a roadblock or checkpoint. Given that the arrest was to have been made as Mr. McDaid was leaving his residence to go to work there was no need for a car chase. This leads the Tribunal to the conclusion that the arresting party introduced unnecessary tension into the incident. This had the natural consequence of the two occupants of the van locking the doors against their perceived aggressors. The Tribunal is satisfied that an attempt was made by Mr. McDaid to use his mobile phone in the van before the doors were opened. This was regarded by the arresting party as an act of insolence when coupled with their refusal to open the van doors. The

¹⁷⁹⁴ Transcript, Day 462, pages 4-16.

¹⁷⁹⁵ Transcript, Day 458, page 71.

Tribunal is satisfied that the sides of the van were banged by the arresting party. This whole incident was allowed to get out of hand. The extraordinary sight of Garda cars chasing a van around a country town at 09.00 hours in order to effect an arrest on an electrician on his way to work can, in the Tribunal's view, be regarded as nothing but unacceptable. In particular, it accepts the fact that the manner in which the members stopped and surrounded the car led to a genuine uncertainty on the part of the brothers as to whether it was in fact a genuine police operation. This in turn led to a standoff, with both brothers sitting inside the locked van, and the members of the arrest party knocking on the van forcefully and ordering them to step out. The Tribunal accepts the evidence of the arresting Gardaí that Damien McDaid tried to make a phone call, and that this inflamed the situation further.

- 13.23. The Tribunal accepts the evidence of Gavin McDaid that he asked the Garda closest to his window to produce an I.D., a legitimate request in the circumstances, and that that Garda kicked Gavin McDaid when he eventually stepped out of the car. Gavin McDaid was unable to identify the Garda concerned. The Tribunal does not accept that at the time Gavin McDaid stepped out of the van Detective Gardaí Keating and Herraghty were still sitting in their parked car. The Tribunal is satisfied that Sergeant Moylan was not the member who kicked Gavin McDaid, but beyond that it cannot reach any definitive conclusion as to who did. The Tribunal accepts Gavin McDaid's evidence that at least one member of the arrest party called Damien McDaid a "murdering bastard" at that time, and that although this expression was used as a form of general abuse rather than as an indication of a belief on the part of the member concerned that Mr. McDaid had in fact murdered Mr. Barron, it indicates the atmosphere in which the arrest was carried out.

The Detention

- 13.24. The custody record in respect of the detention of Damien McDaid indicates that he was arrested at Main St., Newtowncunningham at 09.10 hours on the morning of the 17th of December 1996, arriving at the station in Letterkenny at 09.35 hours.¹⁷⁹⁶ The member in charge of the station that morning was Garda Declan Martyn. Garda Martyn was unaware that there was to be an arrest that morning, but a few minutes after he took up duty, Sergeant Moylan and Detective Sergeant Smith arrived in the station with Mr. McDaid. Sergeant Moylan briefed Garda Martyn about the reason for the arrest. He told him that Mr. McDaid had made a statement in which he admitted being in the car park behind Frankie's Nightclub in Raphoe on the night of Mr. Barron's death, but that

¹⁷⁹⁶ Tribunal Documents, page 36.

he denied having seen the alleged culprits there. Sergeant Moylan also told Garda Martyn that there had been a Garda meeting sometime previous to this at which the suggestion to arrest Mr. McDaid had been made and approved. Garda Martyn was led to believe that the matter had been fully thrashed out at that meeting with senior officers, and that the arrest of Mr. McDaid as a potential accessory after the fact to the murder of Mr. Barron was both genuine and legal.¹⁷⁹⁷ **The Tribunal accepts that, in the circumstances as presented to him, Garda Martyn could not reasonably have been expected to refuse to accept custody of Damien McDaid in Letterkenny Garda Station on that morning.**

13.25. The custody record taken on the day of Mr. McDaid’s arrest has been of assistance in identifying the times at which various undisputed occurrences took place. It has also been of assistance in ascertaining when various other contested events may have occurred. The following table details the most important events as set out in the custody record:

Occurrence on the 17th of December:	Detail of Occurrence	Comment
09.50 hours - 10.55 hours	Detainee interviewed by Detective Sergeant Hugh Smith and Sergeant Martin Moylan (Interview 1).	Notes of interview taken. Refused to sign. ¹⁷⁹⁸
10.15 hours	Garda Declan Martyn replaced by Garda Gerard Davenport as member in charge.	
10.55 hours - 13.10 hours	Detainee interviewed by Detective Garda P.J. Keating and Detective Garda Seán Herraghty. (Interview 2).	No interview notes available.
11.28 hours	Detainee served with breakfast.	
13.10 hours - 14.15 hours	Detainee in cell.	
13.22 hours	Detainee served with dinner.	
14.00 hours	Garda Gerard Davenport replaced by Garda Martin Finnan as member in charge.	
14.15 hours - 16.35 hours	Detainee interviewed by Detective Garda Martin Anderson and Detective Garda Michael Carroll (Interview 3).	Notes of interview taken. Refused to sign. ¹⁷⁹⁹
14.35 hours - 14.45 hours	Detainee receives a visit from his wife.	

¹⁷⁹⁷ Transcript, Day 455, pages 154-157.

¹⁷⁹⁸ Tribunal Documents, pages 53-54.

¹⁷⁹⁹ Tribunal Documents, pages 42-50.

14.55 hours	Superintendent John Fitzgerald authorises extension of detention period.	Authorisation available and timed appropriately. ¹⁸⁰⁰
16.35 hours - 18.15 hours	Detainee interviewed by Detective Garda P.J. Keating and Detective Garda Seán Herraghty. (Interview 4).	No interview notes available.
16.50 hours - 17.15 hours	Detainee visited by solicitors, Pat McMyler and Patricia Dorrian.	
18.15 hours - 18.50 hours	Detainee in cell.	
18.15 hours	Garda Martin Finnan replaced by Garda Debra Kyne as member in charge.	
18.20 hours	Detainee given meal in cell.	
18.50 hours - 20.00 hours	Detainee interviewed by Detective Garda Martin Anderson and Detective Garda Michael Carroll. (Interview 5).	Notes of interview taken. Refused to sign. ¹⁸⁰¹
19.00 hours	Garda Martin Finnan resumed duty as member in charge.	
19.30 hours	Superintendent John Fitzgerald gives authorisation to photograph and fingerprint detainee.	Authorisation available and timed appropriately. ¹⁸⁰²
20.00 hours - 20.40 hours	Detainee interviewed by Detective Sergeant Hugh Smith and Sergeant Martin Moylan (Interview 6).	Notes of interview taken. Refused to sign. ¹⁸⁰³
20.30 hours	Detainee photographed by Garda Kevin O'Malley.	
20.40 hours - 21.00 hours	Sergeant Brendan Roache interviews detainee (Interview 7).	No interview notes available.
21.02 hours	Detainee released. Property returned.	No complaints indicated by 'X' mark on custody record.

The Meal Allegation

13.26. The first substantial allegation of mistreatment made by Damien McDaid related to the early part of the day when his breakfast was brought to him. He alleges

¹⁸⁰⁰ Tribunal Documents, page 41

¹⁸⁰¹ Tribunal Documents, pages 51-52.

¹⁸⁰² Tribunal Documents, page 40.

¹⁸⁰³ Tribunal Documents, pages 55-56.

that one of the Gardaí who brought the food to him spat in it as he gave it to him. Mr. McDaid outlined this alleged incident in the following terms:

Yes, that's all that was there, just the one person was there ... He f___ spat in me breakfast, all I heard was (indicating)¹⁸⁰⁴ and that's that, he f___ spat in it, the b____, that's what he did ... That's the same man who hopped on my toes ... Yes, that's the same article [who pulled the gun], that's the s_____ that did it...He was [with another man during the interviewing when the breakfast was served] ... One just ... Yeah, he was him with him, yes ... I'm only after [describing him] ... the man wasn't well ... I couldn't be wrong, no. No, he was there and that's what he was at to me ... Aye, he was at ... aye, he was in at that time, so he was.¹⁸⁰⁵

13.27. The Garda who Damien McDaid referred to as the man who “wasn’t well” in this passage appears to have been Sergeant Martin Moylan. It was put to Damien McDaid that according to the custody record, Sergeant Moylan had left the interview room more than half an hour before he was served with his breakfast and would therefore not have been in a position to witness the alleged spitting incident. He remained steadfast in his assertion in this regard.

13.28. During the course of Tribunal hearings, it emerged that, Damien McDaid, was identifying the Garda whom he claimed was responsible for spitting in his meal as former Detective Garda Seán Herraghty. When the matter was put to Mr. Herraghty at the Tribunal, he stated the following:

All I can say is it didn't happen. I never spat at anybody or in their food in my life ... I don't recall him receiving his breakfast but we would have prisoners in practically on a, not maybe daily basis but every second day you would probably have occasion to take a statement or speak to someone. So basically it was a normal day's work. Someone arrived in with the breakfast and you sat down and let him have his breakfast.¹⁸⁰⁶

13.29. Mr. Pat McMyler, the solicitor who visited Damien McDaid in custody that afternoon, gave evidence that Mr. McDaid made no complaint to him about the alleged spitting incident.¹⁸⁰⁷ Mr. McMyler gave evidence of his consultation with Damien McDaid at 16.50 hours that afternoon in the following terms:

I remember going in to see Mr. McDaid ... the questioning was getting to him a little bit. He was finding it tiresome, he was finding it a little bit annoying. But indicated that he was well able

¹⁸⁰⁴ Indication of a deliberate as opposed to an accidental spit.

¹⁸⁰⁵ Transcript, Day 451, pages 72-75.

¹⁸⁰⁶ Transcript, Day 458, page 65.

¹⁸⁰⁷ Transcript, Day 452, page 37.

to handle it. He was quite upbeat about that, if that's a fair word to use, maybe a little bit macho, don't you worry, I can handle it, that type of stuff. The language might [not have] been from either of us just as polite as that, you know, but he wasn't a prisoner who felt that he wasn't going to be able to get through it ... there was nothing extraordinary about his account of what had happened to him. His main position was that he had nothing to worry about because he had done nothing wrong and this was about the other people ... His complaint was the usual ... questioning was ... the guards are trying to get me to say things that I didn't do. They're putting propositions to me that I have nothing to do with. They're, you know, saying I did things, that type of thing, which would be normal enough for a suspect or a person under arrest I should say ... He did express relief at us arriving, I have to say that. You know, he was happy to see us. But he didn't give any indication that ... you know, he was, thank God you're here, words to that effect, it wasn't thank God you're here, I'd be dead only from your here. He was happy to see us and glad of the break from the police or from the guards.¹⁸⁰⁸

- 13.30. The Tribunal does not accept that had the spitting incident occurred as alleged by Mr. McDaid he would have failed to mention it to Mr. McMyler at that time. The Tribunal also accepts that Sergeant Moylan did not conduct any interviews with Detective Garda Herraghty on the day in question, and that Mr. McDaid's evidence in this regard is incorrect. The Tribunal does not accept Damien McDaid's evidence that Detective Garda Herraghty spat into his breakfast when it was brought to him at 11.28 hours on the day in question. The Tribunal considers that for Mr. McDaid to have made this allegation was mischievous and dishonest.

The Stamping Allegation

- 13.31. Mr. McDaid made an allegation that during the course of his interviews that day, Detective Garda Seán Herraghty stamped on his feet. Once again it emerged during the hearings that this allegation was being made against Mr. Herraghty. Damien McDaid gave the following evidence in relation to this matter:

A ... big hefty man so he was ... his hair was away up here a bit on him. And he was an ignorant kind of boy ... I did [meet him earlier in the day], aye ... He was out and in a lot of times, so he was, all day you know ... This is the boy that hopped on my feet ... the boy that jumped on my feet ... Whenever the wife left or after that ...

¹⁸⁰⁸ Transcript, Day 452, pages 6-8.

Aye around that time after, aye ... it is [before the gun incident], aye ... He had interviewed me a lot of times ... He was not [a uniform man], no ... Oh God I wouldn't have clue now at this stage [what age he was]. There was another boy there [when he stamped on my feet] ... I think there was another boy there, the right-hand side ... I was sitting so I was ... I was off [the table] a bit ... I wouldn't be sure at this time [whether the other man was standing or sitting], I wouldn't be sure ... I wouldn't be sure [whether he was a big man or a small man]. I wouldn't be sure.¹⁸⁰⁹

- 13.32. Support for the contention that Damien McDaid had his feet jumped upon while in custody emerges from the evidence of Mrs. Geraldine McDaid who gave the following account of her husband's arrival home at the house that evening:

Damien walked in the door and he was carrying his boots in his hand and I says to him why are you carrying your boots in your hand, like, and he walked past me and went over to the sofa to sit down. I says to him again why are you carrying your boots in your hand and he says because his feet were sore, he used the effing word, his effing feet were sore like, you know. I go what do you mean your feet are sore? He says my effing feet are sore, they're tramped off me ... I don't know he just said his feet were sore, somebody was standing on his feet or something. I don't know, he just said his feet were sore ... He took off his socks ... They were a bit swollen looking, like his toes were reddish, swollen looking ... I think he wanted a bath ... Damien was nervous and you know he was scared, pale looking when he came home.¹⁸¹⁰

- 13.33. Once again, Damien McDaid identified former Detective Garda Seán Herraghty as the man who stamped on his toes. The physical description of Detective Garda Herraghty as a 'big hefty man' was difficult to reconcile with Mr. Herraghty when he gave evidence at the Tribunal. It is possible that the passage of time can have the effect of exaggerating an individual's physical characteristics in the mind's eye, so the Tribunal cannot dismiss Mr. McDaid's account on that ground only. But towards the end of the Tribunal hearings in this sub-module it emerged that Mr. McDaid was identifying Hugh Smith as the other Garda who allegedly witnessed this incident. In evidence to the Tribunal, Hugh Smith indicated that he was never at any stage in the interview room with Detective Garda Herraghty on that date.¹⁸¹¹ This assertion accords with the custody record. Mr. Herraghty, in his evidence to the Tribunal on this matter stated:

¹⁸⁰⁹ Transcript, Day 451, pages 59-61.

¹⁸¹⁰ Transcript, Day 451, pages 13-18.

¹⁸¹¹ Transcript, Day 464, page 4.

I don't recall him being in his stocking feet ... He said here that I jumped in the air and landed on his two feet ... Simultaneously. I think it's a bit ... first of all, me jumping in the air would be one problem and secondly, landing on his feet at the same time I think would be another problem. But that's what he has said so ... The time he alleged that I stood on his feet, I wasn't with the prisoner at that specific time, that's late on in the evening sometime after ... Sometime after eight o'clock I think or between eight and nine ... I say [the allegation is] completely untrue, sir. Completely untrue. I wasn't there. I wasn't in the room when he alleges this happened. I had no contact with the prisoner after 6.15. So how could I jump on his feet? Sergeant Roache, as far as I know, was present and as far as I know he was on his own during that interview ... None of [that] happened, sir, no. I wasn't in the room with him when Sergeant Roache was interviewing him ... He said that [it occurred some time after his wife left and some time before the gun incident] initially but I think he changed it then to when Sergeant Roache was present ... It didn't happen on either occasion ... He has made some of the most serious allegations you could possibly make against anyone while in custody against me. I can assure you I wasn't involved in any skullduggery while I was interviewing Mr. McDaid ... I would have ... I would have given him a fairly intense interviewing throughout the day. I was the person who was with him most. Myself and Garda Keating were with him more than any other one during the day. We would have given him fairly intense interviewing and he would have ... he would have a good picture of me in his head when he left ... Well, during the course of my career I would always have been a fairly intense interviewer ... But I can assure you I was never involved in any skullduggery ... Well a barrage of questioning throughout the day, putting them over and over and over again and making them answer the question. Look it, he would say, I have answered that before and you would say, right, well right, you will try and get around it in a different way ... I wouldn't get into a shouting match, it's a long enough day in an interview room without shouting throughout the day ... Well if I became frustrated with every prisoner that I had in custody that didn't answer questions that I put to them, I'd be frustrated all the time because I spent quite a bit of my career interviewing people.¹⁸¹²

¹⁸¹² Transcript, Day 458, pages 113-117.

- 13.34. The Tribunal accepts that Damien McDaid has not given a clear account of when various events occurred during the day or who was involved in those events. Though, initially, the Tribunal had some misgivings about the manner in which Mr. Herraghty gave evidence in respect of these issues which called for a direct response, his presentation in the witness box may well have been the result of the making of appalling allegations specifically against him with very little or no notice, ten years after the event. The Tribunal is satisfied, having regard to the evidence of Mrs. Geraldine McDaid, that something happened to Damien McDaid's feet in the station in Letterkenny on that day. However, I do not accept that Detective Garda Herraghty was responsible for this.

The Gun in the Mouth Allegation

- 13.35. The most serious allegation made by Damien McDaid involved a Garda telling him to kneel down on the floor and putting a gun in his mouth in the context of forcing him to sign a statement that he believed may have been designed to incriminate some other party in the alleged murder of Mr. Barron. It should be noted that this particular allegation first emerged when Mr. McDaid gave evidence to the Tribunal in Donegal town on the 3rd of July 2003.¹⁸¹³ At that time, the Tribunal was conducting hearings in respect of the Barron investigation itself. When he gave evidence at the sub-module in respect of his own detention, Damien McDaid gave the following evidence:

I was on my knees so I was, I was on my knees in there so I was at one time and the boy had to ... he had a handgun in my mouth so he did ... He had me on my knees and I put my head up and next thing I knew it was in my mouth, that side, stuck in there or something (indicating) ... It was in my mouth ... Well, he was going on and on that I was there that night and I seen what happened and I had the iron ... Richie Barron, I had the bar. Sure I says I had no iron bar. I says I'm innocent boys I wasn't even there. And he says you seen what happened. I said I seen nothing. He said you seen it. So he went on and on. He had stuff in his hand and he went over and he wrote away and wrote away and wrote away, aye that's what you sign there now and handed it over to me to write my name on it. I said you're off your head, I'm not going to sign nothing. God, you wouldn't do a thing like that, that man went up the road lying down for f___ ages. Jesus. You know, I wouldn't sign it...[He read it over to me] ... It's that long ago, it's that long ago. You know what I mean, whatever's on it, he had it out anyway...[It said] that I seen f___ Frank hitting yer man over

¹⁸¹³ Transcript, Day 51 (Barron investigation module), page 62.

the head with the iron, but sure I didn't see it at all so how could I write my name down on that, you know...I didn't see the writing on it, he had it in his own hands...And I seen this and I seen that. Sure I didn't know what was wrote on it, you know. I wasn't going to write my name down on it ... He went on and on for a while and he says but you will, and I says I won't f____ ... or I wouldn't do it just and that's that. And he said to me you will f____ sign it boy. So he went out of the room so he did...He came in the room and he said to me right on your knees, McDaid, or something like that. So I went on my knees, looked up, put my head up to see what he wanted and he just had it in my mouth right away, that's whenever I knew I was in bother then, I was in serious bother...I don't know what kind of gun it was. How would I know that ... The thing was in my mouth and I was f____ s____ myself, you know that kind of way ... A wooden handle, aye so it was. Aye, it was a wooden handle whenever I was looking up...He said, whenever I was on my knees, the gun was in my mouth, he said look you have to sign that there now, and I was on my knees like, he had the gun in this hand here (indicating right hand) and the thing the other side and I wasn't going to sign no paper...And had [the paper] out there into my face and I wouldn't sign it, I shook my head and I wouldn't do it ... I opened my eyes then and the whole thing was away, he was away, so he was...He was the only boy in [the room] with me...It would have been half eight or after, something like that...It was after [the visit from my wife and from my solicitor]...One guard, that's all was there ... A big f____ sorry, big hefty man so he was. Aye a hefty man, he was a hefty man like, his hair was away up here a bit on him. And he was an ignorant kind of boy ... I did [meet him earlier in the day] ... He was out and in a lot of times, so he was, all day ... This is the boy that hopped on my feet too, that's the boy that jumped on my feet ... Yes, the same man ... He had interviewed me a lot of times ... I haven't a clue how many times ... He was not [a uniform man], no ... I wouldn't have clue now at this stage [what age he was] ... I wouldn't have a clue.¹⁸¹⁴

- 13.36. Mr. Herraghty denied the allegation that he had produced a gun to force Damien McDaid to sign a statement implicating Frank McBrearty Junior in the following terms:

Completely untrue. I didn't carry a gun that day as far as I can recall. I wouldn't normally carry a gun while interviewing

¹⁸¹⁴ Transcript, Day 451, pages 53-61.

prisoners. It's standard procedure. You're told in training and you're told while you're undergoing firearms instructions that you're not to carry a firearm while interviewing prisoners ... That to me would be a very criminal act to perpetrate against anybody, that's something like you would hear coming out of west Belfast or something like that. You know, that doesn't happen in a civilised society anyway. There's no way I'd be involved in firearms ... misuse of a firearm at any stage in my career ... No. I never mentioned an iron bar. I never remember mentioning an iron bar to Mr. McDaid at any stage ... Well he stated first of all that I left the room, therefore obviously leaving him, he said I was on my own, that I left the room ... So I would have been leaving the prisoner on his own. If I went to get a firearm, it would mean first of all going and getting a key of a strong room, the key of my firearms locker, taking out that gun, walking the full length of the building and coming back again. So you're talking five minutes minimum out of that room and the prisoner on his own. So there's no way at any stage I'd leave a prisoner sitting while I go to get a ... you know, my recollection is that I never ... that I was with Garda Keating at all times during the interviews, I don't recall ever being with the prisoner that day on my own.¹⁸¹⁵

- 13.37. According to the custody record, Detective Garda Herraghty and Detective Garda P.J. Keating interviewed Damien McDaid twice on the day in question. The first interview commenced at 10.55 hours and ran until 13.10 hours, while the second interview ran from 16.35 hours to 18.15 hours, with a break from 16.50 hours to 17.15 hours for the visit of Mr. McDaid's solicitor. Unfortunately, not for the first time in relation to the detentions that form the subject matter of this sub-module, no notes of interview exist in relation to either of these periods of interview. Although, had it occurred, one would not expect there to be any indication of the production of a gun in the notes had they been taken and retained, one would have at least expected to get an indication of the particular lines of inquiry that the interviewing Gardaí were pursuing and the manner in which the detainee was co-operating or otherwise with those inquiries. Detective Garda Herraghty stated in evidence that:

As far as I was concerned there was no new evidence gained as a result of our interview with Mr. McDaid. So there wouldn't be any urgency attached to submitting them ...¹⁸¹⁶

- 13.38. **The Tribunal, in considering the gun allegation, heard testimony from**

¹⁸¹⁵ Transcript, Day 458, pages 66 and 111-118.

¹⁸¹⁶ Transcript, Day 458, page 101.

Gavin McDaid who said that Damien mentioned it to him on a number of occasions when he was drunk.¹⁸¹⁷ This cannot determine the issue: this evidence is essentially offered as self-corroboration and narrative on the part of Mr. McDaid and amounts to hearsay evidence emanating from Damien McDaid at a time when he was intoxicated. The Tribunal has considered the possibility that this incident, horrific and bizarre as it sounds, could possibly have occurred in the manner as outlined by Mr. McDaid. The Tribunal rejects the allegation and finds the account of the alleged incident as given by Mr. McDaid to be wholly unconvincing and improbable in the extreme. It bases this finding on the various inconsistencies in Mr. McDaid's evidence, the delay in making the complaint and his demeanour as a witness.

The Corridor Allegation

- 13.39. Sergeant Brendan Roache conducted the final interview with Mr. McDaid over a twenty-minute period. Mr. McDaid gave evidence that he had no complaints to make in respect of this interview, and that the member who interviewed him at that time was a "nice wee fellow...absolutely a hundred per cent".¹⁸¹⁸ The Tribunal surmises that in conducting this interview, Sergeant Roache was attempting to develop a positive rapport with Mr. McDaid with a view to opening up a channel of communication between him and the investigation team, in the event that Mr. McDaid subsequently obtained information that would be of assistance to the investigation.
- 13.40. Mr. McDaid gave evidence that, as he was being led from the room in which his final interview was conducted to the front desk of the station where the member in charge returned his property to him upon his release from custody, he received a shoulder from an officer who was standing in the corridor. Mr. McDaid first mentioned this alleged incident in his interview with the Tribunal investigators on the 24th of April 2006 in the following terms:

There was a wee man there he was only the size of a half guard. He hit me a dunt with his shoulder when I was in the hallway on the way out of the station...He was a wee short boy so he was you could just slap him away with your hand if you wanted to...I wouldn't be sure now [what age he was] ... He was in his 30s something around that I'd say...It was in the hallway so it was ... was going home just...Whoever was there was on. Whatever was in the interview ... Four or five [guards were] there...¹⁸¹⁹

- 13.41. In a further brief interview with the Tribunal investigators during the course of the

¹⁸¹⁷ Transcript, Day 454, pages 112-113.

¹⁸¹⁸ Transcript, Day 451, page 69.

¹⁸¹⁹ Tribunal Documents, pages 80-89.

Tribunal hearings,¹⁸²⁰ Damien McDaid indicated that the Garda to whom the above allegation related, and of whose name he was still unaware, was present to give evidence at the Tribunal. Damien McDaid gave the following account of this incident when he gave evidence to the Tribunal:

Whenever we were heading up the f____ wee hallway, like there's a wee hallway ... And the wee a____ he's up there, so he is, today. He's the boy who hit me, so he did... He hit me up the hall so he did ... I don't know his name ... he's there so he is. I can see him there (indicating) ... I don't know his name, how can I tell you who he is ... He's one, two, the third man over there ... On the right-hand side ... That's the man there getting up there now. That's better ... That's the man who gave me the push up the hallway so it is ... Anderson is it? ... That's the boy ... I'm only after saying, whenever ... he's the boy who hit me ... He hit me with his f____ ... he heaved me up the hall like that there so he did. He heaved me up the hall ... Aye, went up the hall and he was on this side here with the right hand and he hit me here so he did, he heaved me up the hall. That's what he did. He's only a wee man but that's what he did like, you know.¹⁸²¹

- 13.42. The manner in which Damien McDaid identified Detective Garda Anderson caused the Tribunal to have regard to the general rules of evidence in respect of identifications, particularly the cases of *The People (A.G.) v. Casey (No. 2)*¹⁸²² and *The People (DPP) v. Cooney*.¹⁸²³ The Tribunal believes that in weighing up the probative value of Damien McDaid's identification of Detective Garda Anderson, it must on the one hand consider the difficulty he may have had in establishing the name of the particular Garda against whom he wished to make the allegation, and whether he brought the particular Garda to the attention of the Tribunal investigators at the earliest opportunity available to him in the context of the Tribunal proceedings. On the other hand, the Tribunal, in reaching its conclusions on the matter, had to consider the possibility that Mr. McDaid made

¹⁸²⁰ Tribunal Documents, pages 99-102.

¹⁸²¹ Transcript, Day 452, pages 83-86.

¹⁸²² [1963] 1 I.R. 33. In that case, Kingsmill Moore J. stated (at pp. 39-40) that: 'We consider juries in cases where the correctness of an identification is challenged should be directed on the following lines, namely, that if their verdict as to the guilt of the prisoner is to depend wholly or substantially on the correctness of such identification, they should bear in mind that there have been a number of instances where responsible witnesses, whose honesty was not in question and whose opportunities for identification had been adequate, made positive identifications on a parade or otherwise, which identifications were subsequently proved to be erroneous; and accordingly that they should be specially cautious before accepting such evidence of identification as correct; but that if after careful examination of such evidence in the light of all the circumstances, and with due regard to all the other evidence in the case, they feel satisfied beyond reasonable doubt of the correctness of the identification they are at liberty to act upon it.'

¹⁸²³ [1997] 3 I.R. 205, in which the Supreme court held that the trial judge was entitled to take the view, in the 'unusual circumstances' of that particular case, that 'the admittedly prejudicial nature of a "dock identification" did not outweigh its probative value' (per Keane C. J. at p. 215).

an erroneous identification in circumstances in which he may have honestly been attempting to assist the Tribunal or the possibility that the identification was dishonest.

- 13.43. Detective Garda Martin Anderson interviewed Damien McDaid twice during the course of his detention: from 14.15 hours until 16.35 hours and from 18.50 hours to 20.00 hours. Both of these interviews in respect of which interview notes were available to the Tribunal were conducted in the company of Detective Garda Michael Carroll.¹⁸²⁴ Detective Garda Anderson gave evidence that Damien McDaid was very slow to open up to them during these interviews and had an air of defiance about him. He did however eventually open up enough to give the answers that appear in the interview notes. Although Detective Garda Anderson had not been present at the arrest himself, Detective Sergeant Smith had informed him of the standoff at the van. He also had some conversation with the other interview teams before commencing his own interviews with Damien McDaid. It was indicated to him that nothing had yet emerged from these earlier interviews.¹⁸²⁵ During the course of the first interview with Detective Garda Anderson and Detective Garda Carroll, Geraldine McDaid visited her husband. Detective Garda Anderson and Detective Garda Carroll left the interview room for the duration of that visit. At that time, Detective Garda Anderson contacted Sergeant Moylan with a view to approaching Superintendent Fitzgerald to request an extension to the detention of Damien McDaid. Detective Garda Anderson believed that Damien McDaid was withholding information about what he had seen in the car park. This line of questioning is reflected in the interview notes. Shortly after the conclusion of this first interview with Detective Garda Anderson and Detective Garda Carroll, Damien McDaid was visited by his solicitor, Mr. Pat McMyler. Neither Mrs. Geraldine McDaid nor Mr. McMyler recollect a complaint by Damien McDaid about Detective Garda Anderson in the course of their respective visits to him. In relation to the specific allegation made by Damien McDaid about the “shoulder” in the corridor as he left the station, Detective Garda Anderson gave the following evidence:

*When the interviews were over at 8 p.m. I went to the kitchen, I had a cup of tea and I left the station shortly after that. I was out of the station at about quarter past eight, I finished duty ... I went to the kitchen with my colleague, had a cup of tea, and I think he actually gave me a lift home ... Garda Carroll gave me a lift home ... That [incident in the corridor] never happened ... I wasn't there ... I'm a hundred per cent sure I wasn't in the station, I was at home.*¹⁸²⁶

¹⁸²⁴ Tribunal Documents, pages 42-52.

¹⁸²⁵ Transcript, Day 459, pages 10-17.

¹⁸²⁶ Transcript, Day 459, pages 28-30.

- 13.44. The Tribunal sought and obtained Detective Garda Anderson's Form A85 duty record for the day of Damien McDaid's arrest.¹⁸²⁷ Unusually, the record indicates that the 17th of December 1996 was a rest day for which Detective Garda Anderson submitted no claim for overtime. Detective Garda Anderson had no explanation for this.¹⁸²⁸ Detective Garda Carroll's record indicates that he was on duty from 09.30 hours to 21.30 hours on the date in question.¹⁸²⁹ This record would seem to indicate that he was still in the station when Damien McDaid was released at 21.02 hours. Sergeant Carroll gave the following evidence in relation to this matter:

Well that evening I was working with ... or all that day I was working with Detective Garda Anderson, we were called in that morning ... And we were asked during the course of the day to take part in interviews with Mr. McDaid, which we did do. On completion of the interviews, I remember Detective Garda Anderson asked me for a lift home and I said, well I don't have any car, and he said, well I have the keys of the car we had this morning still in my pocket here, and he threw me those keys as we left the Garda station and I drove him home and came back to the station. At that stage I would have submitted my notes to the interview ... into the incident room and I remember the day that I drove Damien McDaid home, I was in the Detective Branch office and I got a call to come down and Mr. McDaid was sitting in the foyer at front of the Garda station, outside the day room, with his boots on and I drove him home to Newtowncunningham on ... I am fairly sure that that was the occasion, Mr. Chairman. On the way to the house we had a conversation or I had a conversation with him in relation to ... I knew that he was an electrician, I was talking to him about his trade ... I don't know to this day where exactly Mr. McDaid's mobile home is in Newtowncunningham. But I know exactly where I left the man off. It was up in the Main Street in Newtowncunningham, a little bit above a place called Peter's bar and he said that he wanted to go for a pint before he went to the house ... I let him off at the side of the road and I turned the car and went back to Letterkenny and finished up duty on the night that I left him off. I am almost certain that that was the night, that I had been questioning him earlier that day ... I finished duty that night at 9.30 and that would leave me 15 minutes to drive him to Newtowncunningham and 15 minutes to come back and that would let me finish duty at 9.30 on that night. I know that that's

¹⁸²⁷ Tribunal Documents, page 146.

¹⁸²⁸ Transcript, Day 459, pages 28-29.

¹⁸²⁹ Tribunal Documents, page 147.

the time that I finished duty on that night and I do know for a fact that ... and can remember Detective Garda Anderson throwing me the keys of the car and I was surprised that he still had the keys of the car that we were using earlier in the morning in his pocket all day ... I can't recollect there being an alternative night. I know that I had other dealings at other times with Mr. McDaid, and I know that on one occasion that I was dealing with Mr. McDaid, where I had arrested him, that I didn't bring him home on that night. I know that he was brought home in a transit minibus that collected him at the Garda station on that particular night. I can't recall any other times that I would have been -- or any other time that I would have been called upon to leave the man home.¹⁸³⁰

13.45. Having received instructions from his client, counsel for Damien McDaid put forward the proposition that the Garda who dropped Mr. McDaid home on the night in question was in fact Detective Sergeant Sylvester Henry. Detective Sergeant Henry gave evidence that his Form A85¹⁸³¹ indicates that he was in Dublin at the Chief State Solicitor's office on the 17th of December. He believes that he may have stayed in Dublin overnight and returned to Donegal the following day, although he has no particular record or memory of same. In any event, Detective Sergeant Henry claims to have 'no recollection, absolutely none of taking Mr. McDaid home, good, bad or indifferent'.¹⁸³²

13.46. It may be that some incident occurred on the release of Mr. McDaid, but having regard to the fact that this allegation emerged ten years after the event and that Detective Garda Anderson was identified by Mr. McDaid as his assailant for the first time during the course of the giving of his evidence at the hearings before the Tribunal, I must approach his evidence on this matter with considerable caution. There is no evidence corroborative of this allegation against Detective Garda Anderson. In addition, I must bear in mind the dangers inherent in acting upon identification evidence, particularly when it is tantamount to what, in the criminal law, would be regarded as a 'dock identification' of the alleged culprit made suddenly and without notice to Detective Garda Anderson while Mr. McDaid was giving evidence. Once again, I must also have regard to the unsatisfactory demeanour of Mr. McDaid in the way he gave his evidence. I did not find his evidence credible on this matter and I am not satisfied on the balance of probabilities that he was assaulted by Detective Garda Anderson. I accept the evidence of Detective Garda Anderson and Sergeant Carroll on this issue.

¹⁸³⁰ Transcript, Day 463, pages 197-200.

¹⁸³¹ Tribunal Documents, page 156.

¹⁸³² Transcript, Day 464, page 12.

The Aftermath of the Arrest

13.49. The arrest of Damien McDaid on the 17th of December 1996 on the main street of his home village had a profound and lasting effect on both him and his family. This is a further example of the serious consequences that a negligently conducted investigation and improper use of police powers can have on the lives of ordinary citizens. Undoubtedly, Mr. McDaid had difficulties in his life before and after this incident and all of his misfortunes did not stem from this particular arrest, but it amounted to an injustice against him and his family and should and could have been avoided with the application of proper police procedures. His arrest had no foundation in fact or law.

Conclusions

13.51. The following are the Tribunal's conclusions on this matter:

1. The Tribunal is satisfied that the unsigned memorandum of interview made on the 8th of November 1996 accurately records what Mr. McDaid told Garda John Harkin and Detective Garda P.J. Keating. Mr. McDaid, in denying that he gave this information to the two Gardaí, was not telling the truth.
2. The decision to arrest Damien McDaid was made haphazardly by an investigation team that had completely lost its capacity to objectively analyse the information before it. It was grounded on an unsigned memorandum of interview of Mr. McDaid, combined with the fraudulently forced statement of Robert Noel McBride, which placed the comings and goings in the car park behind Frankie's nightclub at the centre of the investigation. Even those of the investigation team who were unaware of the fraudulent nature of that statement should have recognised that to arrest Damien McDaid without any attempt to provide him with the opportunity to affirm, deny or clarify the contents of his memorandum of interview was entirely inappropriate. The responsibility in this regard rests with the senior officers on the investigation team.
3. The Tribunal is satisfied that the general view of the investigation was that the evidence Mr. McDaid may have been withholding from them amounted only to a sighting in the car park of the two main suspects and contrary to what Mr. McDaid alleges, no attempt was made by Detective Garda Herraghty or any other Garda to procure from Mr. McDaid a false confession. This allegation is untrue.
4. The Tribunal is not satisfied that the interview notes that exist

constitute a complete record of what was said in the interviews. Of the seven interviews conducted throughout the course of the day there are no interview notes available in respect of three of them. The failure to keep and preserve notes of interview in the course of a murder inquiry by experienced investigators is a serious breach of the custody regulations and the Judges' Rules and this is a further example of persistent failure in the course of the investigation of the death of the Late Mr. Barron, to maintain proper notes. Criticisms already set out in this report apply equally in the case of Mr. McDaid. In addition the reader is referred to Chapter 17.

5. Damien McDaid made a number of very serious allegations against former Detective Garda Seán Herraghty. These included: spitting in his food, stamping on his feet and placing a gun in his mouth with a view to forcing him to sign a statement. The Tribunal is satisfied that the inconsistencies in Mr. McDaid's account of who was present in the interview room at the time make it impossible to conclude that the spitting incident occurred. The Tribunal does not accept Mr. McDaid's evidence on this matter and is satisfied that Detective Garda Herraghty did not spit on Mr. McDaid's food.
6. The Tribunal is not satisfied on the evidence that a gun was forced into Mr. McDaid's mouth by Detective Garda Herraghty.
7. The Tribunal is satisfied that something happened to Damien McDaid's feet while he was in custody and relies particularly on the evidence of Mrs. Geraldine McDaid in this regard. The Tribunal, having regard to the deficiencies in the account given of this incident by Mr. McDaid, does not attribute this action to Detective Garda Herraghty as it was linked so closely in his evidence to his other allegations against this Garda, which the Tribunal does not accept. Mrs. McDaid was in a position to give testimony to the injuries, which she saw to his feet on her husband's return to the family home.
8. The Tribunal is not satisfied that Damien McDaid was assaulted by Detective Garda Anderson when he was leaving the Garda Station following his release from custody. The Tribunal found Mr. McDaid's testimony on this matter to be unreliable and accepts the evidence of Detective Garda Anderson and Sergeant Carroll on the matter.

CHAPTER 14

THE ALLEGATION OF BUGGING

Introduction

- 14.01. This chapter concerns an allegation relevant to each of the detentions already considered over the period of the 4th to the 5th of December 1996. It was alleged that a Detective Sergeant Joseph Costello, who had special technical knowledge and experience, was brought to Letterkenny Garda Station from Dublin in order to enable the investigators to record interviews between the detainees and their solicitors or relations in the course of their detention. It was alleged that Detective Sergeant Costello placed listening devices in interview rooms and/or visiting rooms and that the confidential meetings of the detainees with their solicitors and relations were then recorded on tape. It was further alleged that this occurrence was not an isolated incident confined to this investigation but a more generalised practice within An Garda Síochána and one of “its best kept secrets”. This allegation is relevant to how the detainees, arrested in December 1996, were treated under Term of Reference (b).
- 14.02. What at first sight appeared to be a relatively straightforward issue, namely the truth or otherwise of this allegation, became increasingly involved. This was due in the main to attempts that Detective Sergeant White made to bring forward facts which he presented to the Tribunal as corroborative of his allegation. It became necessary for the Tribunal to enquire into those seemingly unrelated matters. As a consequence the reader of this chapter may find that he is presented with the formidable task of identifying the relevance of some of these events. For that reason, I consider that it is necessary to offer this overview of the chapter.
- 14.03. The allegation that the detainees’ conversations were bugged was first made public on Detective Sergeant White’s behalf by his solicitor, Mr. Paudge Dorrian, in an interview which he gave to Mr. Connie Duffy, a reporter with the Donegal Democrat. The contents of this interview were published by that paper on the 17th of May 2001. I am satisfied that the interview as published accurately reflects what Mr. Dorrian had told Mr. Duffy. When these allegations were made public directions were given by An Garda Síochána that the allegations should be investigated, and accordingly Chief Superintendent Rice arranged to interview Mr. Dorrian. In the course of this interview, Mr. Dorrian made a significant disclosure, namely that certain unnamed Gardaí were prepared to come forward and tell what they knew, not only about the bugging of the detainees in Letterkenny Garda Station but also about other Garda wrongdoing, provided that four conditions were agreed to. These conditions amounted to the granting of an

immunity from prosecution to the Gardaí who came forward. At that time Detective Sergeant John White had a number of issues outstanding and if these conditions were met then, in effect, he would enjoy an immunity from prosecution and disciplinary proceedings in respect of these issues. It is correct to say at this stage that Detective Sergeant John White later stood trial on some of these issues and was acquitted.

- 14.04. The chief superintendent reported the substance of his meeting with Mr. Dorrian and an assistant commissioner correctly responded to the offer by pointing out that the granting of an immunity from prosecution was not within the competence of An Garda Síochána, and that moreover, an immunity could never be considered without full knowledge of the offences in respect of which the immunity might be granted. When this was made known to Mr. Dorrian, contact with the chief superintendent was ended and no statement was made by Detective Sergeant White at that time.
- 14.05. **The significance of the offer made by Mr. Dorrian on Detective Sergeant White's behalf is, in my opinion, that it was an attempt by Detective Sergeant White to avoid the mounting problems with which he was faced at that time; and he was attempting to barter alleged information in exchange for such an immunity. I am of the opinion that there was no truth whatever in the allegation that Gardaí had bugged the interview rooms in Letterkenny Garda Station or taped conversations of the detainees.**
- 14.06. Subsequent events led to a further inquiry by the chief superintendent. Eventually, Detective Sergeant John White agreed to be questioned about his allegations in February 2002 and he made a statement. In that statement, he identified the fact that on the day upon which the detainees were detained in Letterkenny Garda Station on the 4th of December 1996, a Sergeant from the Television and Technical Support Section based in Garda Headquarters, Detective Sergeant Joseph Costello, who by reason of his expertise would have been capable of bugging an interview room, was present in the Garda station. In fact he was there to perform video photographic duties. Detective Sergeant White, however, represented him as being present to bug interview rooms. He told of a conversation that he had with Detective Sergeant Costello which was capable of the interpretation that he, Detective Sergeant Costello, had confirmed that he was engaged in bugging. **This led the Tribunal to enquire into that conversation and the reasons why Detective Sergeant Costello was in Letterkenny. It was established that he was there at Detective Superintendent Shelly's request on legitimate duties.**

- 14.07. **Detective Sergeant White also represented in this statement that he had seen Inspector John McGinley in the detective inspector's office listening to a tape of the voice of one of the detainee's solicitors, Mr. James Sweeney, later on the 4th of December 1996.** This allegation required the Tribunal to enquire into the times upon which detainees were visited by their solicitors and the opportunity which there would have been for bugging and taping to take place. In fact, Inspector McGinley, being newly appointed, had not taken up occupancy of the detective inspector's office in Letterkenny Garda Station at that time. This office had been used throughout the day as an interview room and at no time was there a realistic opportunity to listen to tapes in that room. To have done so at that stage would leave open the danger of being discovered by the next interview team when they came to the office. **I am satisfied that Detective Sergeant White's allegation is false.**
- 14.08. In support of his allegation Detective Sergeant White alleged that he had mentioned the bugging to two senior officers on occasions when he had met them. These officers were Assistant Commissioner Kevin Carty and Chief Superintendent Austin McNally. He said that he mentioned the matter to Assistant Commissioner Carty when he met him in the Hillgrove Hotel in Monaghan in October 1999 and to Chief Superintendent McNally when he met him in his office in Letterkenny Garda Station.
- 14.09. **The Tribunal established that it is true that Detective Sergeant White met Assistant Commissioner Carty on the day and at the place he claimed. However, that meeting was to discuss other Garda business unrelated to the possible bugging of detainees' conversations in Letterkenny Garda Station. This topic was never mentioned. Likewise, though he met Chief Superintendent McNally on a number of occasions, I am satisfied that the bugging of conversations was not the purpose of any of the meetings and was not discussed.**
- 14.10. **In making all of these allegations Detective Sergeant White is attempting to couple to an established fact a lie in order to lend authenticity to the lie.**
- 14.11. Detective Sergeant White was asked why he had his solicitor publish the allegation as he did. Detective Sergeant White gave a number of reasons for having done so, among them the desire to have the allegations properly investigated, revenge and a feeling of frustration; but the prime reason given was an elaborate falsehood. He said that shortly before the date of publication Detective Sergeant White had been interviewed by Detective Superintendent Brehony in connection with an anonymous allegation which had been published

concerning two senior officers of An Garda Síochána. Chief Superintendent Brehony was charged to find out what information Detective Sergeant White had in connection with these anonymous allegations. In particular, he was concerned to ascertain if Detective Sergeant White was aware of any wrongdoing on the part of either of these officers. In the course of interviewing Detective Sergeant White, Chief Superintendent Brehony advised him that if he knew of any wrongdoing on the part of these officers, he should make this known. Detective Sergeant White states that he used this invitation, limited though it was to wrongdoings on the part of these specific officers, as an excuse for his publishing the allegation of bugging even though, in Detective Sergeant White's version, the two officers played no part whatsoever in the bugging. The case was made that the publication of the allegations occurred because Detective Sergeant White lost confidence in Chief Superintendent Brehony's determination to investigate matters on which Detective Sergeant White had yet to report to him. No report of bugging was ever made to Chief Superintendent Brehony. There was absolutely no basis for believing that Chief Superintendent Brehony would act in any improper way. I am satisfied that the complexion now put upon these dealings with Chief Superintendent Brehony by Detective Sergeant White is totally contrived. Even if Detective Sergeant White was mistaken in thinking that he should expand his disclosure of wrongdoing beyond these two officers he could never, in any circumstances, have imagined that there was any good reason to publicise these alleged wrongdoings through the medium of a newspaper reporter for publication in a newspaper.

- 14.12. I have no doubt whatever that Detective Sergeant White has created a false scenario as a justification for his publishing these allegations of bugging in the way that he did, and the justification has no basis in reality.
- 14.13. Evidence was given to the Tribunal that was supportive of Detective Sergeant White by Garda Tina Fowley. She gave evidence that she was asked to help to furnish the visitors' room in Letterkenny Garda Station by providing armchairs from the female Gardaí's rest room. She said that when receiving these directions from the officers in Letterkenny Garda Station she heard the officers discussing the possibility of "gleaning" information from the visits. She said that she gave some help in the furnishing of the room as requested and assisted the station sergeant in this regard. He, however, has completely satisfied me from the production of his duty schedule and from his own evidence that he did not participate in the furnishing of the room, nor was he on duty on the night identified by Garda Fowley. Garda Fowley was interviewed by Inspector Sheridan in

connection with this incident. She made a curious allegation concerning this officer for which I can find no justification whatever. Garda Tina Fowley has given evidence to the Tribunal in several modules which the Tribunal has heard. She has been found for the most part to be a reliable witness. I do not find that her evidence on this occasion is mala fide but I am satisfied that for the reasons set out later on, it is unreliable. I am satisfied that none of the officers in question was engaged in any bugging exercise.

- 14.14. Detective Sergeant White has suggested that Detective Sergeant Costello's attendance in Donegal was improper and suggested that he would have no operational duty to perform in Letterkenny apart from a duty to bug the interview rooms. I am satisfied that this is not so. Detective Sergeant Costello's true expertise lies in his ability to mount CCTV cameras and similar equipment for recording the activities of suspects. This expertise was said by Detective Superintendent Shelly, the officer who requisitioned his attendance, to be of potential use as Mr. McBrearty Senior was believed to have intimidated witnesses and it was hoped that if he did so again there would be wider photographic evidence available to support the claim. The examination of this issue led to the discovery that the paperwork supporting the attendance of Detective Sergeant Costello in Letterkenny was faulty and unsatisfactory. This raised the possibility that his attendance was unauthorised and that his duties were irregular. I am satisfied that while the paperwork was not satisfactory the claim documents filed in relation to his attendance in Letterkenny station clearly demonstrate that no attempt was being made to hide his attendance. The unsatisfactory state of the paperwork can be accounted for by inefficiency.

- 14.15. The seriousness of the allegation may be understood by setting out the law applicable to visits to persons in custody in Garda stations. It is proposed, firstly, to outline the constitutional and legal framework within which such visits are regulated. The Tribunal will then examine the allegation made by Detective Sergeant White and the circumstances in which it came to be made. Following that, I will set out the evidence heard by the Tribunal over a number of weeks from the various parties concerning the visit of Detective Sergeant Joseph Costello to Letterkenny Garda Station and his presence there between the 3rd and the 7th of December 1996. The Tribunal was requested by Mr. John White to extend its inquiry beyond the allegation in Donegal to similar alleged events in Cork in 1992 and I declined to do so for the reasons set out in my Ruling of the 13th of June 2007, which is set out at Appendix D of this report. Consequently, this report is focused upon events that occurred in Letterkenny in December

1996, commencing with the direction to Detective Sergeant Joseph Costello to attend Letterkenny Garda Station at the request of Detective Superintendent Joseph Shelly on the 3rd of December 1996.

The Allegation of Bugging

- 14.16.** The source of this allegation is Detective Sergeant John White, who made a statement to then Chief Superintendent W.I. Rice on the 25th of February 2002, which is set out in full later in this chapter. In summary, Detective Sergeant White alleged that early on the 4th of December 1996 he met with Detective Sergeant Joseph Costello at Letterkenny Garda Station. He had known him for over twenty years. He said that he was, at the time, in the company of Detective Garda John Dooley and introduced the men to each other. He alleged that he then asked Detective Sergeant Costello “how the tapes were going”, and that Detective Sergeant Costello replied that they had trouble with them in the morning but that they were OK now. Detective Sergeant White said that he “interpreted” from this conversation with Detective Sergeant Costello and from his previous experience as a detective in other investigations over the years that conversations between “prisoners and other persons” were being recorded. Though he met with Detective Sergeant Costello “probably twice” on the 4th of December and again on the 5th of December 1996, he had no further conversation with him about “recording systems” or his duties at Letterkenny station.
- 14.17.** The second incident relevant to the allegation of bugging identified and described by Detective Sergeant White in this statement was alleged to have occurred later on the 4th of December 1996, after his encounter with Detective Sergeant Costello. He alleged that he called to the door of the detective inspector’s office in Letterkenny Garda Station and that the door, which was locked, was opened by Inspector John McGinley. In the room there was a tape recorder on a table and Detective Sergeant White alleged that he asked the Inspector if there was anything of interest on the tapes regarding his (Detective Sergeant White’s) interview with Mrs. Róisín McConnell. He was told that there was not. A short excerpt of the tape was allegedly played for him by Inspector McGinley, from which he was able to identify the voice of Mr. James Sweeney, Mrs. McConnell’s solicitor, and he alleged that both he and Inspector McGinley agreed that the quality of the tape was perfect. He further alleged that, before he left the office, he requested that Inspector McGinley contact him if anything of interest relevant to Mrs. McConnell came up.
- 14.18.** Detective Sergeant White’s statement was made some nine months after similar allegations of eavesdropping and the recording of interviews in Letterkenny Garda Station were first made public in an interview given by Mr. Paudge Dorrian,

Detective Sergeant White's solicitor, to Mr. Connie Duffy, a journalist with the Donegal Democrat, which was published on the 17th of May 2001. The details of the allegations made by Mr. Dorrian in that interview were broadly similar to those made by Detective Sergeant White, but it also contains significantly different and additional material to which I will later refer. It is important to understand how and why these allegations were made and how An Garda Síochána responded to them from May 2001 onwards. Mr. White contends that he is a bona fide 'whistleblower' in respect of these allegations of wrongdoing by other Gardaí. Those accused by him deny the allegations and contend that he has made up an elaborate story, that he is a mischief maker and that, in making up this story, he sought to distract from the serious allegations then emerging against him in the course of other Garda inquiries in respect of his wrongdoing in Donegal.

Visits to Prisoners in Custody

- 14.19. Before embarking on a review of the facts in the case, it is useful to set out the law applicable to visits by solicitors to their clients in custody in Garda stations and that applicable to visits by other persons to detainees. A person detained in a Garda station retains many of his legal and constitutional rights, including his right of reasonable access to his legal adviser. The importance of this right and its essential features were described by Finlay C.J., in the People (Director of Public Prosecutions) v Healy as follows:

The undoubted right of reasonable access to a solicitor enjoyed by a person who is in detention must be interpreted as being directed towards the vital function of ensuring that such person is aware of his rights and has the independent advice which would be appropriate in order to permit him to reach a truly free decision as to his attitude to interrogation or to the making of any statement, be it exculpatory or inculpatory. The availability of advice from a lawyer must, in my view, be seen as a contribution, at least, towards some measure of equality in the position of the detained person and his interrogators.

Viewed in that light, I am driven to the conclusion that such an important or fundamental standard of fairness in the administration of justice as the right of access to a lawyer must be deemed to be constitutional in its origin, and that to classify it as merely legal would be to undermine its importance and the completeness of the protection of it which the courts are obliged to give. ... A right of reasonable access to a solicitor in a detained person ... means in the event of the arrival of a solicitor at the Garda station in which a person is detained, an immediate right to that

person to be told of the arrival and, if he requests it, an immediate access. The only thing that could justify the postponement of informing the detained person of the arrival of the solicitor or of immediately complying with a request made by the detained person when so informed, for access to him, would be reasons which objectively viewed from the point of view of the interest or welfare of the detained person, would be viewed by the court as being valid.¹⁸³³

The conditions under which a solicitor should be afforded access to his client were laid down in the State T.S. (Harrington) v Garvey, in which Finlay P. ruled that:

Where a detained person is entitled to access to his legal adviser, this must be achieved in privacy and out of the hearing of any member of the Garda Síochána.¹⁸³⁴

- 14.20. The custody regulations provide for the protection of the constitutional right of access to a solicitor in that regulation 11(1) states that:

An arrested person shall have reasonable access to a solicitor of his choice and be able to communicate with him privately.

Regulation 11(3) provides that:

A consultation with a solicitor may take place in the sight but out of hearing of a member.

Unlike visits from friends or relatives of a prisoner, a solicitor's visit is completely private and must take place out of the hearing of a Garda.

- 14.21. Visits by relatives and friends of a prisoner are also regulated by the custody regulations. Regulation 11(4) provides that:

An arrested person may receive a visit from a relative, friend or other person with an interest in his welfare provided that he so wishes and the member in charge is satisfied that the visit can be adequately supervised and that it will not hinder or delay the investigation of crime.

Regulation 11(6) provides that:

Before an arrested person has a supervised visit or communicates with the person other than his solicitor, he shall be informed that anything he says during the visit or in the communication may be given in evidence.

I am satisfied that the spirit and intention of this regulation is that a visit from a relative or friend may be supervised physically by a Garda who will remain

¹⁸³³ [1990] I.L.R.M. 313; [1990] 2 I.R.73.

¹⁸³⁴ Unreported High Court 14th of December 1976.

sufficiently proximate to the visitor and the prisoner to enable their conversation to be overheard and the prisoner will be cautioned that anything he says during the course of the visit may be given in evidence. The Regulation does not contemplate eavesdropping by means of a listening device on a conversation between a prisoner and his visitor and/or the taping of that conversation. I do not accept the submission made to me on behalf of Garda Tina Fowley that because technical eavesdropping and the recording of such interviews is not prohibited by the regulations, such behaviour is therefore lawful and acceptable. These regulations set out how visits to a prisoner by a friend or relation are to be regulated, supervised and restricted. That is the regulation with which An Garda Síochána are obliged to comply. They cannot, unilaterally, operate outside the regulations governing such visits on the basis that they choose or wish to deal with the prisoner in a different way to that regulated by law. There may be one exception to this, upon which the Commissioner of An Garda Síochána made submissions, to which I will revert shortly. In this instance, I accept that the regulations attempt to set down in an “accessible and precise” way the circumstances in which, and the conditions under which, the Gardaí are empowered to intercept private communications between family members and friends, when the person is detained in custody. It is part and parcel of how a person may be detained “in accordance with law” under the Constitution. It can also be regarded as compliant with the State’s obligations under Articles 6 and 8 of the European Convention of Human Rights in respect of the protection of a person’s private life and correspondence.¹⁸³⁵

14.22. A more wide ranging outline of the policy of the Garda Commissioner in relation to eavesdropping on or tape recording conversations of prisoners with their relations and/or legal advisers was outlined orally to the Tribunal by counsel on behalf of the Garda Commissioner. The policy is as follows:

1. A prisoner has the right to consult with his solicitor within sight but not in the hearing of a Garda when detained in a Garda station;
2. A visit to a prisoner detained in a Garda station by a relation or friend may be permitted, restricted, supervised and witnessed by a Garda in accordance with the custody regulations;
3. No eavesdropping upon or tape recording of any visits made to a prisoner detained in a Garda station is to be conducted or permitted by any Garda save “in extraordinary excusing circumstances”. This appears to extend to visits by a solicitor, a contention concerning which I have serious reservations.¹⁸³⁶

¹⁸³⁵ *Malone v United Kingdom* [1985] 7 E.H.R.R. 14.

¹⁸³⁶ Transcript, Day 596, pages 166-169.

14.23. The third element of the Garda Commissioner's position on this matter is, I take it, derived under case law concerning the obtaining of evidence by means of a deliberate and conscious violation of the accused's constitutional rights. Unless such violation occurred by reason of "extraordinary excusing circumstances", the evidence obtained as a result thereof would be the subject of an absolute exclusionary rule in the course of a criminal trial. The examples given of "extraordinary excusing circumstances" in the case law are that such violation may be necessary if there is a life at risk or if there is an imminent danger that evidence would otherwise be destroyed.¹⁸³⁷ In the facts outlined in this case there are no "extraordinary excusing circumstances" that might justify eavesdropping or recording of conversations between visitors and their relations or friends. I am not aware of any case in this jurisdiction in which it was sought to justify eavesdropping by means of a listening device or the tape recording of a solicitor's visit to his client in a Garda station. That is not to say that a case might not arise in the future where such covert surveillance might be contemplated by An Garda Síochána in what one could only imagine to be "extraordinary excusing circumstances". The European Court of Human Rights in considering this matter indicated that where covert surveillance might intrude upon legal professional privilege regard must be had to the great importance of protecting "a lawyer's work under instructions from a party to proceedings". In *Kopp v Switzerland* the European Court of Human Rights expressed some astonishment that Swiss domestic law allowed an administrative authority to engage in such intrusive surveillance "in the sensitive area of the confidential relations between a lawyer and his clients" without supervision by an independent judge.¹⁸³⁸ **Any watering down of a prisoner's right of access to his lawyer following his arrest and detention must be avoided if serious damage to the fairness and integrity of the criminal justice system is to be avoided. It is recognised as a fundamental right under the Constitution, and its essence and substance must be preserved and defended at all levels within the criminal justice system.**

14.24. **It should be noted that the Law Reform Commission made valuable and extensive recommendations in 1998 in respect of audio and audiovisual surveillance to be carried out by An Garda Síochána that have not been acted upon, and which are very relevant to the particular issue raised in this module, and the more general issue of covert surveillance and the powers available to An Garda Síochána. Its recommendations should be urgently reviewed and implemented.**¹⁸³⁹

¹⁸³⁷ *People (Attorney General) v O'Brien* [1965] I.R.142; *People (DPP) v Doyle* [1977] I.R.336; *People (DPP) v Walsh* [1980] I.R.294; *People (DPP) v Healy* [1990] 2I.R. 73 and *People (DPP) v Kenny* [1990] 2I.R.110.

¹⁸³⁸ *Kopp v Switzerland* [1999] 27 E.H.R.R. 91 - see also *Kennedy v Ireland* [1987] I.R.587.

¹⁸³⁹ The Law Reform Commission Report on Privacy – Surveillance and the Interception of Communications (June 1998) (LRC 57/1998). See also *Human Rights and Criminal Justice* (Emmerson and Ashworth) (2001) Chapter 7.

- 14.25. The Tribunal has been told that the Garda policy outlined by counsel for the Commissioner in the course of its hearings is not the subject of any Garda circular, nor is the Tribunal aware of any document that sets out this policy clearly. It is not the subject of widespread dissemination to Gardai of all ranks, or the Garda Representative Association, or the Association of Garda Sergeants and Inspectors. This is not the way in which such an important policy issue should be treated within An Garda Síochána. It falls far short of setting out fully in an “accessible and precise” way to the public and serving Gardai the circumstances in which eavesdropping or tape recording may be carried out in the course of visits or otherwise. This matter should be addressed as a matter of urgency by the Department of Justice in consultation with the Garda Commissioner, and the relevant statutory regulatory provisions should be introduced to deal with the matter.
- 14.26. The allegation made that listening devices were placed in interview or visitor rooms at Letterkenny Garda Station during the course of the detentions in the Barron investigation for the purpose of eavesdropping on conversations between prisoners and their relations and prisoners and their solicitors is very serious: if true, it would be tantamount to a shocking violation of a prisoner’s right to reasonable access to his solicitor and the specific terms, spirit and intention of the custody regulations.¹⁸⁴⁰ Nobody has put forward what might be regarded as “extraordinary excusing circumstances” to justify any of the alleged course of action in respect of any of the detainees. It is in that context that the Tribunal extended its inquiry to encompass this allegation, as it directly impinged upon the treatment of the detainees whilst they were in custody. It differs somewhat from the allegations made by the detainees themselves in that these allegations emanate from and are supported by the Gardai are made against other members of the force.

How the Allegation Emerged

- 14.27. Detective Sergeant White said that he first raised the issue of the bugging at Letterkenny Garda Station with Chief Superintendent Austin McNally on two separate occasions and with Assistant Commissioner Kevin Carty on another occasion. He said that these meetings preceded the publication of the article, containing the interview with Mr. Dorrian, in the Donegal Democrat on the 17th of May 2001. Undoubtedly, the core allegation made in respect of the alleged bugging of Letterkenny Garda Station is ultimately contained in the statement of Detective Sergeant White made in February 2002. It will be seen that Detective Sergeant White attempted to support that core allegation by pointing to what he maintains are consistent efforts by him to expose this story to senior officers in

¹⁸⁴⁰ Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 (S.I. No. 119 of 1987) Regulation 11.

An Garda Síochána and via the media. Notwithstanding the rule against hearsay evidence that prohibits reliance upon prior consistent statements made by witnesses because they offend against the rule against narrative and self-corroboration, nevertheless it is important to examine the course of events as outlined by Detective Sergeant White in order to ascertain whether firstly, they were true, and secondly, he sought to make the revelations contended for. **As will become clear, I am satisfied that the course of events outlined by Mr. White is untrue and that, far from showing consistency, insofar as he outlined allegations of bugging prior to his statement of February 2002 through his solicitor in the article of the 17th of May, 2001, this account contains details which are inconsistent with his later statements.** The following is an account of events from 1999 until the 25th of February 2002.

Meetings between Chief Superintendent McNally and Detective Sergeant White

- 14.28. In Detective Sergeant White's statement of the 25th of February 2002, he gave an account of his dealings with Chief Superintendent Austin McNally, who had been appointed in 1999 to carry out inquiries on behalf of the Carty team. He said:

Shortly after the commencement of the investigation being carried out by Assistant Commissioner Kevin Carty, Chief Superintendent Austin McNally entered my office at Letterkenny Garda Station. I knew this officer very well from duties I had carried out in Dublin between 1995 and 1999. He remained in my office for an hour and half approximately. He requested a full run down from me in relation to both investigations into the death of Richard Barron. I discussed the recording of prisoners by D/Sgt. Joe Costello on the 4th Dec 96 with Chief McNally and I asked him if he was going to carry out an investigation into that as part of his general investigation. He stated that the recording of prisoners in Garda Stations was one of the best kept secrets within the Gardaí and that he was not going to go into it. ... I had a further meeting with C/Supt. McNally I think it was on the 7th Mar '99,¹⁸⁴¹ this meeting was at his request. Initially at Sligo Garda Station in his office and later on at a Public House in Sligo town. During our conversation I again brought up the matter of the recordings in Letterkenny Garda Station and I asked him was it going to be investigated, among other things. He said, it was not, they were not going to go into that aspect of it. We were alone in this Public House at the time but just before I left another member joined Chief McNally whom I believe was Sgt. Kevin English, we were introduced by Chief McNally. I left a minute or so after Kevin English came in as I was going to Dublin.¹⁸⁴²

¹⁸⁴¹ This date is acknowledged by Mr. White to be incorrect, but Chief Superintendent McNally accepts that there were two meetings.

¹⁸⁴² Tribunal Documents – Alleged Bugging, pages 71-72.

- 14.29. In his evidence to the Tribunal, Mr. White elaborated upon what he maintained he told Chief Superintendent McNally at their first meeting. He said:

When Chief McNally walked into my office I knew him well, I was on first name terms with him when we were alone, I knew him well he just asked me for a run down on what had happened over the initial [Barron] investigation and then the Lennon investigation. ... I presume I did start at the beginning. But before we went much further, the Frank McBrearty statement came up. I'm not sure had we got to it in our investigation or what or maybe the fact he was a suspect, pretty quickly it came to the surface, it was mentioned. He asked me a direct question on that, that is what he said to me, intently he said, what is the story with the statement, you know. That's when I told him that the statement cannot be preserved, I told him no matter how you try ... I probably said how we tried to cover it or anything else, that it will not be covered no matter what. ... There's too many things wrong with it. At this stage obviously our investigation was over, I don't think the DPP's directions were back yet, I don't think that was the case. What he said to me was, he put his two hands up and said ... don't tell me that. As if he didn't want to hear that coming out of my mouth. I said look Austin, I'm only telling you the truth. I have no time for McBrearty Jnr., I probably said worse than that about McBrearty Jnr., I didn't like him at the time, most certainly. But I said this is just ... there is no covering it.

We discussed that and he didn't want to hear about it, he didn't discuss with me how he would cover it but I told him as quickly as I could the points that were wrong with it, you know. I told him that I am a long time in the job and that it was a stupid thing to do. He veered off from that, he didn't want to talk about that anymore, he didn't want that much detail about it, that's the way I felt. That seemed to me, open the tide, as it were. I said look, it didn't end there, I went on about the bugging, if I went on immediately about the bugging. I told him about the thing on September 20th, or that is the date in Milford '97, in September '97 in Milford, I had a grievance about that. I told him about that, and John McGinley and whoever else was there at the time, Sergeant Moylan. And the visit to Mrs. Roper in Killygordon, I wasn't happy about that because I felt a proper statement wasn't taken off her. I told him I would come back to Joe Shelly and Joe Shelly not being

happy with me about that. ... I hope I wasn't whinging to him, but what I was doing was telling him how I saw it from my point of view and then I asked him about ... I told him about the bugging of the station, I said is that wrongdoing? I was more or less asking him, look, you tell me is it wrong to do it or not, and if you are down investigating it, are you going to investigate that. He said that's the best kept secret, I think he said in detective units rather than the Garda Síochána. It's the best kept secret within the detectives, maybe in the Gardaí, and he stopped it there. He didn't want to go into that any more. ... Starting off in that conversation I had no intention of telling Austin McNally about the bugging, it wasn't one of the first matters I mentioned to him. What happened was the discussion about the statement. That's when ... that's the starting point of all this. As it went on, he didn't ask me to keep going or keep telling him the things. I told him the rest of the things that I felt he should know about.¹⁸⁴³

- 14.30. Mr. White also said in evidence that as a result of telling Chief Superintendent McNally about these matters a "divide" came between them. He said:

I think it was Mr. McNally's attitude towards me then in relation to the statement, he wasn't pursuing the line of a senior officer who would be interested in righting this wrong. His idea was that these boys from Dublin would have to be protected. And here was I, one of the sound men from Dublin, if you like, originally, saying that the statement was wrong and was concocted clearly and there's no mistake about it. So I felt a divide coming between Austin McNally and myself at that stage. I felt if he was a senior officer, he was entitled to know the rest of it.¹⁸⁴⁴

Mr. White was asked why he raised the issue of the alleged bugging with Chief Superintendent McNally since he maintained that it was commonplace within An Garda Síochána and was not a matter which caused him any worry at a time when he was telling the Chief Superintendent about matters which were worrying him, such as problems with the statement of Frank McBrearty Junior. Mr. White said that he just wanted to see the Chief Superintendent's reaction to the bugging. He assumed that Chief Superintendent McNally would not investigate it and "maybe I was taunting him to a certain degree in relation to it."¹⁸⁴⁵

- 14.31. In a statement made in response to the allegations contained in Detective

¹⁸⁴³ Transcript, Day 604, pages 168-173.

¹⁸⁴⁴ Transcript, Day 604, Q.695.

¹⁸⁴⁵ Transcript, Day 604, pages 175-176.

Sergeant White's statement on the 25th of February 2002, Chief Superintendent McNally said the following:

I can categorically state that the matter referred to by Sergeant White was never the subject of any discussions between us. I did not have any meeting with Sergeant White on the 7th of March 1999. However, I did have a meeting with Sergeant White in Sligo in November 1999 as I was aware that Sergeant White was friendly with Garda John O'Dowd and Garda Pádraig Mulligan and that he could have information in relation to their movements on the night of Richard Barron's death. Prior to this meeting members of the investigation team had received information that Gardaí Dowd [sic] and Mulligan were in a pub in Lifford earlier on the morning that Richard Barron died. During the afternoon on the date of this meeting I had rang Sergeant White to arrange a meeting in Letterkenny but he told me that he was travelling to Dublin that evening and that it would suit him to meet me in Sligo. The only subject discussed at this meeting was the issue regarding his colleagues Gardaí Dowd [sic] and Mulligan.¹⁸⁴⁶

- 14.32. In evidence to the Tribunal, Chief Superintendent McNally said that he could recall two meetings with Detective Sergeant White. The first he thought was around April or May of 1999, which he described as follows:

I have some vague recollection of being in his office, his office was just directly across the corridor from our offices. But what I would have been meeting him in relation to at that time, at that point in our investigation would have been in relation to John O'Dowd and the extortion phone calls ... that he made to Michael Peoples. The phone call made from John O'Dowd's house. ... I asked him because we knew he was friendly with John O'Dowd and to try and get John O'Dowd to elaborate. He wasn't co-operating with us in relation to the fact that a phone call had been made from his house. That was in May, I would say. In fact, I think from glancing at his [Detective Sergeant White's] diary, I think there was an entry even somewhere there in May where I had met him re John O'Dowd, it says met Chief McNally re John O'Dowd.¹⁸⁴⁷

Chief Superintendent McNally said that Detective Sergeant White agreed to speak to John O'Dowd and he understood that he did so.¹⁸⁴⁸

- 14.33. Chief Superintendent McNally stated that the next meeting that he had with

¹⁸⁴⁶ Tribunal Documents – Alleged Bugging, page 241. 'Garda Dowd' is a reference to Garda John O'Dowd.

¹⁸⁴⁷ Transcript, Day 601, pages 7-9.

¹⁸⁴⁸ Transcript, Day 601, pages 9-10.

Detective Sergeant White was on the 24th of November 1999. This was in relation to inquiries being carried out by the Carty team in relation to the whereabouts of Garda John O'Dowd and Garda Pádraig Mulligan on the evening of the 13th and into the morning of the 14th of October 1996, the night of the death of the Late Richard Barron. He considered that Gardaí O'Dowd and Mulligan had not given any adequate explanation of their movements on that night. On the 23rd of November 1999, Chief Superintendent McNally had lunch with Assistant Commissioner Carty and a number of other officers in the Carty investigation. It was discussed at this lunch that Gardaí O'Dowd and Mulligan had been approached by members of the Carty team about their movements at crucial times on the particular night but were not saying anything about it. Following the lunch Chief Superintendent McNally said that he telephoned Detective Sergeant White and asked to meet him in Donegal. Detective Sergeant White told him that he was going to Dublin that evening and that he would meet him in Sligo at approximately 20.00 or 20.30 hours. He left his apartment to meet Detective Sergeant White in a local hotel and was later joined by Sergeant English when the meeting was over. He said that the meeting was entirely about the movements of Gardaí Mulligan and O'Dowd. Detective Sergeant White was able to tell him that the two Gardaí had been in a pub and he told Detective Sergeant White that it was very important that the two Gardaí tell the Carty investigators about that. Detective Sergeant White was fairly confident that the two Gardaí would make statements but some days later he telephoned Chief Superintendent McNally to inform him that Mr. Dorrian, solicitor, had advised them not to make statements.¹⁸⁴⁹ This sorry episode has already been chronicled in the second report of the Tribunal.¹⁸⁵⁰

- 14.34. In evidence, Chief Superintendent McNally denied that the issue of recordings or bugging in Letterkenny Garda Station had ever been raised with him in the following way:

*That is totally and utterly untrue. Totally and utterly untrue. He never mentioned anything about recordings in Letterkenny Garda Station. The subject that was discussed that night was in relation to John O'Dowd and Pádraig Mulligan and their movements on the night that Richie Barron was killed.*¹⁸⁵¹

In relation to the allegation that Chief Superintendent McNally had suggested that the bugging of visits to prisoners in custody was one of the best kept secrets within An Garda Síochána he said:

¹⁸⁴⁹ Transcript, Day 601, pages 11-12.

¹⁸⁵⁰ 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 3, paragraphs 3.61 to 3.74 and paragraphs 3.163 to 3.180.

¹⁸⁵¹ Transcript, Day 601, pages 13-14.

*That is total rubbish. John White uses colourful language to make it sound true in relation to various conversations he has with people. I have said this in my evidence before, he uses the occasion of a quite legitimate meeting or encounter to put his own spin on things. I never made that statement ...*¹⁸⁵²

He also observed that entries made by Detective Sergeant White in his diary in relation to contact with Chief Superintendent McNally in respect of his request to approach John O'Dowd did not include any reference to the other matters that Detective Sergeant White alleged were discussed in relation to the statement of Frank McBrearty Junior or the recording of interviews.¹⁸⁵³

- 14.35. I am satisfied that Detective Sergeant White did not raise the issue of the alleged bugging of Letterkenny Garda Station at these two meetings. I accept Chief Superintendent McNally's evidence and that the meetings concerned the topics described by him in evidence. I am satisfied that Detective Sergeant White later used the occurrence of these meetings to construct a clever, but false backdrop which would be used to give a sensational aura to the story that he chose later to reveal to the media through his solicitor.

Meeting between Assistant Commissioner Carty and Detective Sergeant White

- 14.36. In the course of his statement of the 25th of February 2002, Detective Sergeant White stated that he met Assistant Commissioner Kevin Carty at the Hillgrove Hotel in Monaghan in October of 1999 and raised the issue of the tape recording of visits to prisoners at Letterkenny Garda Station in December 1996. He said:

I also brought this matter up with Kevin Carty at a recent meeting at the Hillgrove Hotel in Monaghan town on the 6th or 7th of Oct '99. Assistant Commissioner Carty advised me to leave this matter out of it. ... the meeting with A/C Carty was also with just him alone, he had insisted that I travel from Donegal to the Hillgrove Hotel in Monaghan on my own.¹⁸⁵⁴

- 14.37. Assistant Commissioner Carty accepts that this meeting took place on the 7th of October 1999 at the Hillgrove Hotel in Monaghan. He disagreed with what Detective Sergeant White alleged took place at that meeting. He said:

This is something that I gave evidence before this Tribunal some number of years ago at this stage. He said he brought it to my notice at a meeting in the Hillgrove Hotel in Monaghan in I think October of '99 and I rejected what Mr. White said at that stage as

¹⁸⁵² Transcript, Day 601, page 14.

¹⁸⁵³ Transcript, Day 601, pages 47-50.

¹⁸⁵⁴ Tribunal Documents – Alleged Bugging, page 72.

being untrue. I still reject it. I probably would point to the fact [that] when he was subsequently arrested in 2000 Mr. White, on the 21st of March I believe, he made a quite detailed submission which was recorded in the custody record in relation to the meeting in Monaghan [in] which he itemised several items which he claimed that he brought to my attention, all of which I deny as well as being untrue. I think it is quite interesting and relevant to note that he made no reference to alleged bugging in his submissions as put to the custody record and [that] tells me very strongly that whatever views he developed later on was an afterthought in relation to 2001 when these allegations were put by Mr. Dorrian into the media. But I think that if Mr. White was genuine in what he was actually saying were truthful and that he did actually mention these things to me during the meeting in Monaghan then I think he would definitely have introduced it in his submissions into the custody record in March of 2000. Six months after. Seeing that he put all the other allegations in. I don't understand that and I would say it's relevant.¹⁸⁵⁵

- 14.38. Assistant Commissioner Carty's account of the meeting at the Hillgrove Hotel is set out in his statement of the 15th of April 2002, which he made in response to Detective Sergeant White's statement of the 25th of February 2002. He said:

In October 1999 I met Sergeant White by appointment in the Hillgrove Hotel in Monaghan. Sergeant White selected the site for the meeting as he did not want to be seen talking to me in Donegal. The purpose of the meeting was to try and elicit from Sergeant White a true account of the movements of Gardaí Mulligan and O'Dowd in Raphoe on the night Richard Barron was killed. I knew that both members were friendly with Sergeant White and were likely to have confided in him in light of the ongoing investigation. He told me that Garda Mulligan and Garda Dowd [sic] were drinking in a pub that night, Garda Dowd [sic] telephoned him at his home on the morning after the death of Richard Barron seeking his advice. Garda Dowd [sic] would not discuss the matter on the telephone but insisted on driving to Sgt. White's house. Shortly afterwards Gardaí Mulligan and Dowd [sic] arrived at his house. Sgt. White told me that both members told him they were drinking in Lifford that night and they were concerned about what they should do. Garda Mulligan had the principal concern because he was detailed for duty in Raphoe at the time he was in the pub. Sgt. White told me that he told both members to tell the truth about their movements on the night. Sgt. White understood they were

¹⁸⁵⁵ Transcript, Day 606, pages 112-113.

going to do that before they left his house. Sgt. White told me that Gardaí Mulligan and Dowd [sic] went to Mr. Dorrian, solicitor on the following day and he advised them not to tell the truth. Sgt. White handed me an audio tape which he claimed he recorded secretly while speaking to Willie Doherty and Pat Doherty. I subsequently handed this tape into the incident room where it was transcribed and proved to be of no evidential value in our investigation. The meeting in Monaghan was the only time I met Sergeant White in the course of the Donegal investigation, in the course of that meeting Sergeant White did not mention anything about the recording of interviews at Letterkenny Garda Station between suspects and their solicitors or any other persons. The only recording that was mentioned was Sergeant White's statement that he himself secretly recorded William Doherty.¹⁸⁵⁶

Assistant Commissioner Carty denied under cross-examination that he had committed perjury in his previous evidence to the Tribunal or that this statement was a concoction.

- 14.39.** Mr. White contends that the real subject matter of the meeting was described by him when he was arrested on the 21st of March 2000. It was set out at his request in the custody record. In the custody record it is recited that Detective Sergeant White complained that his arrest was illegal and unlawful and was as a result of his meeting with Assistant Commissioner Carty, in which he brought to his attention his contention that the statement taken from Frank McBrearty Junior on the 4th of December 1996 was a false statement and that the arrest of Michael Peoples on the 6th of May 1999 was an unlawful arrest. It is also noted that he alleged that he brought it to Assistant Commissioner Carty's attention that he had a number of reasons for believing that a Garda notebook found at William Doherty's house at Doorable, Manorcunningham on the 20th of September 1997 was planted by the Gardaí in order to discredit Superintendent Lennon and Garda John O'Dowd. He said that he handed Assistant Commissioner Carty a micro cassette containing a taped conversation between William Doherty, Detective Garda Kilcoyne and himself on the 5th of December 1997 relevant to this notebook. He then alleged that Assistant Commissioner Carty informed him that Chief Superintendent Fitzpatrick and Detective Superintendent John McGinley had told the Assistant Commissioner that they strongly suspected that Detective Sergeant White had been involved in four serious crimes, namely the allegation regarding Mr. Bernard Conlon, that he arranged to have a gunman travel from Dublin and threaten a woman in Letterkenny with the aid of a handgun while masked, that he placed explosives on a mast in West Donegal, and that he planted a gun near a Travellers'

¹⁸⁵⁶ Tribunal Documents – Alleged Bugging, pages 239-240.

encampment in 1998. The note then records that Detective Sergeant White stated that he assured Assistant Commissioner Carty that he was not involved in any criminal activities relating to the four accusations. He said that he had given the names of two informants and got them personally to consult with Deputy Commissioner Noel Conroy, who was personally known to one of the informants, and that the Assistant Commissioner ought to get the Deputy Commissioner to establish if he was telling the truth. He said that the Assistant Commissioner assured him that he would do so. He said that the Assistant Commissioner stated that he did not believe that Detective Sergeant White had anything to do with any of the crimes. It was also recorded that Detective Sergeant White stated that he believed that his arrest was simply to discredit him in relation to any future court cases.¹⁸⁵⁷ These matters have already been the subject of inquiry by the Tribunal. To them, one must add the allegation contained in the statement of the 25th of February 2002 to the effect that he alleges that he told Assistant Commissioner Carty of the recording of interviews of visitors at Letterkenny Garda Station. However, it is clear that this matter was not referred to when he outlined his grievances in respect of his meeting with Assistant Commissioner Carty following his arrest, notwithstanding the extensive detail that he insisted be recorded by the member in charge.

14.40. **As with the account given by Detective Sergeant White of his meetings with Chief Superintendent McNally, I am satisfied that his account of the meeting with Assistant Commissioner Carty is false. It was not included as an element of the story that he had inserted in the custody record of the 21st of March 2000. The motivation for drawing Assistant Commissioner Carty into the story in this way may be seen clearly from the section of the article of the 17th of May 2001 in which there is the suggestion that this allegation potentially flaws any report by Assistant Commissioner Carty's team. I accept the evidence of Assistant Commissioner Carty on this matter.**

14.41. It would appear that Detective Sergeant White gave instructions to his solicitor, Mr. Pudge Dorrian, about these matters because aspects of them are referred to in the article of the 17th of May 2001 and in subsequent meetings that took place between Chief Superintendent W.I. Rice and Mr. Dorrian following the publication of this article. It is to the publication of that article that I now turn.

Article of the 17th of May 2001

14.42. The interview that Mr. Pudge Dorrian, Detective Sergeant White's solicitor, gave to Mr. Connie Duffy, journalist with the Donegal Democrat newspaper, which was published in that newspaper on the 17th of May 2001, reads as follows:

¹⁸⁵⁷ Tribunal Documents – Silver Bullet Module, pages 588-590.

Solicitor accuses Gardaí of illegal secret recordings

A leading Donegal solicitor has claimed that Gardaí in Letterkenny, Milford and Manorhamilton, have been using secret recording equipment illegally to help gather evidence in major criminal investigations.

Paudge Dorrian claimed that in one case conversation between lawyers and witnesses were illegally recorded by Garda personnel in Letterkenny Garda station during the Richie Barron murder investigation. He said senior Gardaí were aware of the practice, which he understood was widespread.

Mr. Dorrian said that at least three members of the Gardaí were prepared to give evidence to back up the allegation. "I am satisfied the source of my information is absolutely correct and can be verified" he said.

Mr. Dorrian has now called on the Minister for Justice and the Director of Public Prosecutions to investigate the matter. He said it must be dealt with before any decisions are made on the Carty report on police corruption in Donegal.

Speaking yesterday (Wednesday), Mr. Dorrian revealed that he had been informed by members of An Garda Síochána that on 4th or 5th of December, 1996, a senior member of the special Garda Technical Support Section attended Letterkenny Garda Station and installed sophisticated recording equipment in one of the interview rooms. He added the result of this was that all witnesses that had been interviewed in relation to the investigation into the Richie Barron murder were taped as were their solicitors or barristers. "I haven't got the details of the number of taping incidents that occurred but I know that the first taping was of Mr. James Sweeney, solicitor of McMullin & Co., and his interview with his client. There were difficulties with the taping that morning but that was subsequently rectified. "Subsequently when members of An Garda Síochána attached to Donegal brought it to the notice of different investigating officers they were told to keep quiet because it was done in the interests of obtaining evidence in relation to the Barron murder. Whilst they acknowledged it was illegal, they said that sometimes they had to cross the line to obtain evidence".

Mr. Dorrian added he was informed by his sources that at least one superintendent was seen and heard listening to some of the tapes. It was brought to the notice of other senior members but his informant was told to "keep quiet" because it would "do damage to the force". He said he understood similar recording equipment had been installed in Milford and

Manorhamilton Garda stations. “I was further informed that this practice has been going on by the investigation teams in major criminal investigations for over twelve years all over the country. I have been informed that the equipment installed at Letterkenny cost in the region of £30,000.

Mr. Dorrian said he wanted to know when senior officers were informed of this illegality, what steps they took to reveal it and was it still continuing.

Constitutional Rights

“I also want to know if the Carty team, when they were told about it, investigated it and reported it to the DPP as it would seriously flaw the Carty report going to the DPP. I want to know if the tapes are still available and why the constitutional rights of persons giving evidence, particularly the members of the legal profession, were treated in such an illegal manner. I am also informed and believe that when different Gardaí were being interviewed in Letterkenny, their conversations were also taped.”

The Bunrana based solicitor said this matter had to be immediately addressed by the Minister for Justice before the DPP made any decision on the Carty report.

Mr. Dorrian said he received confirmation of the claims on Tuesday of this week and at least three members of the Gardaí were prepared to give evidence in relation to it. “As well as asking the Minister for Justice to get involved, I will be calling on the Donegal Solicitors Association and the Incorporated Law Society to intervene once I have further and better details to give. I am satisfied the source of my information is absolutely correct and can be verified. It can also be verified by the fact that people from the Technical Support Service were in Donegal and their payment records and overtime allowances can be checked.” He added he did not think recording was common practice in all cases but was fairly confident it was happening in all murder and rape cases for the past twelve years all over the country. “One of the Chief Superintendents ... involved has been quoted as saying “it’s the best kept secret in the force – keep it quiet, otherwise you will throw the system into disarray”.¹⁸⁵⁸

- 14.43. This article and the purported facts cited by Mr. Dorrian are all, of course, based on hearsay and do not constitute first hand evidence of the alleged eavesdropping and tape recording. That evidence is limited to the matters later raised in Detective Sergeant White’s statement of the 25th of February 2002. The article, however, provides an important basis against which the later details provided by Detective Sergeant White can be tested for consistency.

¹⁸⁵⁸ Tribunal Documents – Alleged Bugging of Interview Rooms, page 270.

Evidence of Mr. Connie Duffy

14.44. Mr. Connie Duffy, the journalist to whom Mr. Dorrian gave the interview upon which the article was based, as part of his duties regularly covered court proceedings in Donegal in 1996. While he accepted that he had no actual recollection of the circumstances in which he came to conduct an interview with Mr. Dorrian in Gallagher’s Hotel in 2001, nevertheless, he was satisfied that he had recorded the interview in a careful manner. He said the fact that the story had never been challenged by anybody as to its correctness or otherwise confirmed his view that the matters reported in the article accurately reflected what he was told by Mr. Dorrian. He did not have the notes of the interview as the standard practice was to retain such notes for six months only. He never followed up the story or carried out any investigation into the allegations made by Mr. Dorrian to him before publication. He said that Mr. Dorrian was a reputable solicitor and that he was telling him something which he (Mr. Dorrian) believed to be true. He was happy to accept that from someone of Mr. Dorrian’s standing. Before publication it was the practice within the Donegal Democrat for the editor to question a journalist about his source and to satisfy himself that the source was accurate and that it was alright to publish the article. He would have informed his editor that Mr. Dorrian was the source. No Garda was contacted about this story, nor was Mr. James Sweeney, the solicitor who was referred to in the article. He understood that Mr. Dorrian approached him with this story because he was concerned that the practice existed and was anxious that this should be made public.

14.45. Mr. Duffy was clear in his evidence to the Tribunal that he reported what Mr. Dorrian told him “meticulously and professionally”. He was satisfied that anything that appeared in the article attributed as a quotation from Mr. Dorrian was a verbatim quotation. He was also satisfied that any details appearing in his report were carefully reported by him. Mr. Dorrian had never made any complaint that anything contained in this article was in any way inaccurately reported.¹⁸⁵⁹ The Tribunal accepts that Mr. Duffy’s reportage of the interview with Mr. Dorrian was an accurate representation of what Mr. Dorrian told him.

Differences between the allegations made to Mr. Duffy and those made by Detective Sergeant White

14.46. Mr. Dorrian in his evidence, and Mr. White in cross-examination of Mr. Duffy, attempted to suggest that Mr. Duffy may have misinterpreted some of what Mr. Dorrian told him about these allegations. It is relevant now to consider the differences between the allegations made by Mr. Dorrian to Mr. Duffy on the instructions of Detective Sergeant White, and those ultimately made by Detective Sergeant White. In particular:

¹⁸⁵⁹ Transcript, Day 615, pages 121-160.

- (1) The article stated that Mr. Dorrian claimed that Gardaí in “Letterkenny, Milford and Manorhamilton” had been using secret recording equipment to illegally gather evidence. Mr. Dorrian in evidence told the Tribunal that Detective Sergeant White never told him that, and that his suspicions about Milford and Manorhamilton were about two different matters. Concerns about what happened in Milford related to alleged changing of notes in the course of an interview. His concerns about Manorhamilton were that a lady had been arrested and detained and taken to Manorhamilton Garda Station rather than to Donegal after her arrest, but this did not relate to the allegations of bugging made by Detective Sergeant White.¹⁸⁶⁰ Mr. White told the Tribunal that these matters never formed part of his instruction to Mr. Dorrian.
- (2) Mr. Duffy also reported that Mr. Dorrian had alleged that three Gardaí were prepared to give evidence to back up the allegations of bugging. The Tribunal was told by Mr. Dorrian and Mr. White that Detective Sergeant White was the only Garda who was the source of this information and prepared to give evidence to back it up. Mr. Dorrian disputed the suggestion that he had mentioned three members who were willing to come forward to give evidence. It was suggested to Mr. Duffy by Mr. White in cross-examination that he may have mixed up matters and that Mr. Dorrian’s reference to three Gardaí may have been a reference to three persons having knowledge of the allegations, that is, Detective Sergeant White, and the two senior officers to whom he had allegedly reported them.
- (3) Mr. Dorrian told Mr. Duffy that sophisticated recording equipment had been placed in one of the interview rooms at Letterkenny Garda Station. In evidence to the Tribunal, Mr. White ultimately surmised that no more than three rooms were being bugged in his view. He had not confined his allegation to one room. Indeed, the issue of rooms is not addressed in his statement of the 25th of February 2002 at all.
- (4) Mr. Dorrian told Mr. Duffy that the equipment installed in Letterkenny cost in the region of £30,000. In evidence, Mr. Dorrian said that Detective Sergeant White had told him this. However, he added that he may have been referring not to the actual equipment put in for recording purposes but to a machine that could tape or trace telephone calls. He said that he connected that machinery with the recordings that took place on the 4th or 5th of December 1996.¹⁸⁶¹ Mr. White, in evidence, said that he was told that it cost £30,000 to purchase equipment “to clone mobile

¹⁸⁶⁰ Transcript, Day 602, pages 149-150.

¹⁸⁶¹ Transcript, Day 602, pages 151-152

telephone calls, digital mobile telephones” by somebody in Dublin Castle the previous year.¹⁸⁶²

- (5) Mr. Dorrian is quoted as saying that when members (plural) of An Garda Síochána attached to Donegal brought the bugging to the notice of different investigating officers they were told to keep quiet about it because it was in the interests of obtaining evidence in relation to the Barron murder. On Mr. Dorrian’s and Mr. White’s account, in evidence, the only person who brought this matter to the attention of senior officers was Detective Sergeant White. There is nothing in his subsequent statement of the 25th of February 2002 or in his evidence to suggest that Detective Sergeant White was told by either Chief Superintendent McNally or Assistant Commissioner Carty specifically that what was done was in the interests of obtaining evidence in relation to the Barron murder.

- 14.47. Mr. Duffy denied that his report was in any way inaccurate. He said that anything included in the report was an accurate representation of what he had been told by Mr. Dorrian.¹⁸⁶³ It is clear that the differences in the article by Mr. Duffy that I have just highlighted, give rise to serious conflict between the story told to Mr. Duffy by Mr. Dorrian on behalf of Detective Sergeant White, and the story ultimately told by Mr. White. **The issues which were raised by Mr. Dorrian in his interview with Mr. Duffy were extremely serious. I accept Mr. Duffy’s article as a true representation of what was said to him by Mr. Dorrian. It is a serious and significant matter if the account given by Mr. Dorrian to Mr. Duffy is at variance with the instructions of his client. Of course, one is entitled to presume that what was said by Mr. Dorrian, an experienced solicitor, represented what he was then being told by his client. That would suggest that the story has changed significantly over time and that it is untrue.**

Evidence of Paudge Dorrian

- 14.48. Mr. Paudge Dorrian gave evidence to the Tribunal as to how he came to give the interview to Mr. Duffy. He said that on the 10th of January 2001 he and Detective Sergeant White met with a Detective Superintendent Brehony and Sergeant Eugene Corcoran at a hotel in Letterkenny. Detective Superintendent Brehony was conducting an inquiry in relation to the “Anonymous Allegations” made to Deputies Jim Higgins and Brendan Howlin on the 25th of June 2000 in the course of which serious allegations were made against Detective Sergeant White and Assistant Commissioners Hickey and Carty. In the course of this meeting Mr. Dorrian and Detective Sergeant White were, he said, informed by Detective

¹⁸⁶² Transcript, Day 605, pages 64-65.

¹⁸⁶³ Transcript, Day 615, pages 127-128 and pages 149-153.

Superintendent Brehony that they each had an obligation to bring any allegations of wrongdoing within An Garda Síochána to the attention of the Garda authorities and that they should each make a comprehensive statement covering any such allegations. Mr. Dorrian indicated that he would take time to consider this matter. Advice of senior counsel was obtained and Detective Sergeant White agreed to compile a statement covering all allegations that he had to make about wrongdoing in An Garda Síochána. Mr. Dorrian said that Detective Sergeant White prepared the first twenty or so pages of this statement. This, he said, contained allegations that interview rooms and visitor rooms at Letterkenny Garda Station had been “bugged” in the course of the detentions of the various suspects in the Barron investigation. Mr. Dorrian said that Detective Sergeant White furnished the initial draft to Mr. Dorrian, who shortly thereafter returned it to him. It was the first time that these allegations had been committed to writing to Mr. Dorrian’s knowledge, but the matter had been referred to by Detective Sergeant White in consultation with two senior counsel on two separate occasions prior to the interview. Unfortunately, the text of the first twenty-page draft is no longer available as Mr. White contends that this was seized from his home on the 19th of June 2001 in the course of a search by members of the Carty team investigating the finding of the gun at Burnfoot and never returned to him; an allegation denied by those who conducted the search.¹⁸⁶⁴

- 14.49. Mr. Dorrian gave a summary in his evidence of what he had read in the draft report as follows:

*John White informed me that during a meeting in Letterkenny Garda station that he had met a Garda from Dublin and that he was down for the purpose of carrying out bugging operations in Letterkenny. That he had mentioned to him in the corridor something to the effect that this morning’s recording wasn’t good, there was something wrong with the tape but that they had that rectified. Sergeant White had then indicated that after that he went to some office in Letterkenny Garda barracks and that Superintendent McGinley was listening to a tape, he recognised James Sweeney’s accent on it. And that he also heard a female voice and he was of the impression that that was Róisín McConnell. And that that was during an interview between Jim Sweeney and a female witness that he assumed or he came to the conclusion was Róisín McConnell.*¹⁸⁶⁵

Mr. Dorrian said that he was not told the contents of the conversation overheard on the tape between Mrs. McConnell and Mr. Sweeney by Detective Sergeant

¹⁸⁶⁴ See Fifth Tribunal Report, paras. 3.229 – 3.233 and 4.77.

¹⁸⁶⁵ Transcript, Day 602, Q.623.

White.¹⁸⁶⁶ Mr. Dorrian confirmed to the Tribunal that he had no other independent evidence in relation to the allegation of bugging at the Garda station at Letterkenny in December 1996.¹⁸⁶⁷ Mr. White's contention is that he only ever heard one voice – that of Mr. Sweeney on the tape.

Evidence of Chief Superintendent Pat Brehony

- 14.50. The then Detective Superintendent Pat Brehony and his colleague Sergeant E. Corcoran conducted two interviews with Detective Sergeant John White in the presence of his solicitor, Mr. Dorrian, on the 16th of November 2000 and on the 10th of January 2001. These interviews were conducted in the course of inquiries which Detective Superintendent Brehony was directed to carry out in respect of allegations contained in the facsimile sent to Mr. Jim Higgins, T.D. and made by telephone to Mr. Brendan Howlin, T.D. on the 25th of June 2000 concerning serious alleged criminal wrongdoing by Assistant Commissioner Kevin Carty, Assistant Commissioner Tony Hickey and Detective Sergeant John White. These allegations will be fully addressed in the Tribunal's report on "Anonymous Allegations" (Term of Reference (h)).
- 14.51. In the course of the meeting of the 16th of November 2000 Detective Superintendent Brehony produced and read from the facsimile document sent to Deputy Higgins. He went through a number of allegations which were set out in numbered paragraphs on the facsimile and in respect of which Detective Sergeant White made comments which were recorded in the course of the interview. The notes of this meeting deal exclusively with the allegations made against the two Assistant Commissioners and Detective Sergeant White. Towards the end of the notes Detective Sergeant White states that, "as far as Kevin Carty is concerned and in relation to this document I was never involved in criminal activity and the allegations about him in the document are not true."
- 14.52. A further note was made upon the conclusion of that meeting of "off the record" comments made by Mr. Dorrian and Detective Sergeant White in the presence of the two Gardaí. Mr. Dorrian expressed concern about the activities of Assistant Commissioner Carty in relation to the Omagh bombings and another case. The following was then recorded:

J.W. stated that outside of the document emanating from Jim Higgins, that A/C Carty was involved in matters which were of grave concern to him.

P.B. Both were asked was it of a criminal nature and they replied yes.

They were not prepared to discuss these matters with us but stated they

¹⁸⁶⁶ Transcript, Day 602, pages 128-130.

¹⁸⁶⁷ Transcript, Day 602, Q.635-642.

were definitely going to bring them to the attention of appropriate authorities at a later stage.¹⁸⁶⁸

- 14.53. The notes of the 16th of November 2000 were read over to Detective Sergeant White by Sergeant Corcoran at a further meeting on the 10th of January 2001 and only one minor amendment was requested.¹⁸⁶⁹ In the course of this second meeting attended by the same persons the following exchange is recorded:

P.B. At the end of the meeting on the 16/11/00 you said there were matters of great concern to you about A.C. Carty.

E.C. What are those matters.

J.W. At the moment on legal advice I will not elaborate on that. I am awaiting the advice of Senior Counsel on that.

P.D. We are not withholding information. We are deciding how we will disclose it, either publicly to the Nation or to the Commissioner.

P.B. You will appreciate that we cannot investigate any criminal matter in a vacuum and you will appreciate that John as a member of the Garda Síochána and Mr. Dorrian as an Officer of the Court will appreciate that and we expect that you will make whatever material you have available.

E.C. What are your intentions regarding the information you say you have.

P.D. Our intentions are to protect the State and the structure of the State and we'll be making certain suggestions as to how to do that. We cannot elaborate on John White's concerns about Kevin Carty until after a meeting we are having next Monday.¹⁸⁷⁰

The interview continued in respect of other matters and towards its conclusion the following exchange occurred:

P.B. I want to reiterate that the matters you have mentioned without elaboration, that you should make your knowledge known.

P.D. I will speak directly to the Commissioner on these matters and he can decide whether to go to the minister or not.

P.B. When do you think you will be in a position to do this.

P.D. Next week after I speak to Counsel. After that I will be guided by the Commissioner in deference to John With [sic]. We're not looking for anything I want to make that clear.¹⁸⁷¹

¹⁸⁶⁸ Tribunal Documents – Anonymous Allegations, pages 299-303.

¹⁸⁶⁹ Tribunal Documents – Anonymous Allegations, page 304.

¹⁸⁷⁰ Tribunal Documents – Anonymous Allegations, pages 307-308.

¹⁸⁷¹ Tribunal Documents – Anonymous Allegations, page 309.

The meeting then concluded and Mr. Dorrian and Detective Sergeant White were asked to remain while the notes were read over. Mr. Dorrian replied that he was satisfied that the notes were correct and the Gardaí were requested to supply a typed copy of the notes of both meetings.

- 14.54.** In evidence to the Tribunal Chief Superintendent Brehony said that these meetings were focused entirely, as far as he was concerned, on allegations of criminal misconduct made against the three named individuals. Detective Sergeant White was questioned during the course of the meetings about his alleged involvement in criminal wrongdoing with Assistant Commissioner Carty and Assistant Commissioner Hickey. He denied that there was any such wrongdoing. However, he went on, as is clear from the notes taken in the course of the meetings, to allege that Assistant Commissioner Carty was involved in unspecified criminal wrongdoing but was unwilling to elaborate on this on the 16th of November 2000. When he was asked about these allegations concerning Assistant Commissioner Carty on the 10th of January 2001, Detective Sergeant White and his solicitor maintained that they were awaiting the advice of senior counsel before deciding how to disclose the information. It was in that context that Chief Superintendent Brehony said that he expected both men to make available whatever material they had to him and his colleague. He said that it was clear from Mr. Dorrian's response to the effect that "we cannot elaborate on John White's concerns about Kevin Carty until after a meeting we are having next Monday", that he too was focused on allegations against Assistant Commissioner Carty. Chief Superintendent Brehony, in evidence, denied that he was issuing an invitation to Detective Sergeant White to give information about any wrongdoing that he was aware of within An Garda Síochána in the course of these meetings. In addition, he told the Tribunal that there was no mention of any alleged unauthorised bugging or recording during these meetings.¹⁸⁷²
- 14.55.** Mr. Dorrian and Mr. White both maintained in evidence that it was because of the fact that Chief Superintendent Brehony informed them on the 10th of January 2001 that they had an obligation to inform him of any wrongdoing of which they were aware and that he should write out a statement concerning any matters of wrongdoing within An Garda Síochána, that Detective Sergeant White started to draft a lengthy statement that commenced with a description of the alleged bugging of interviews at Letterkenny Garda Station on the 4th and 5th of December 1996.¹⁸⁷³
- 14.56.** The Tribunal notes that on the 10th of January 2001 Mr. Dorrian told Detective Superintendent Brehony that "we're not looking for anything, I want to make that clear". As will be seen this changed completely when Mr. Dorrian met Chief

¹⁸⁷² Transcript, Day 615, pages 161-191.

¹⁸⁷³ Transcript, Day 602, Q.584-603.

Superintendent W.I. Rice in respect of the allegations made in the article of the 17th of May 2001, on the 30th of May 2001. He then refused to disclose the source of the bugging allegations unless four preconditions were met.

- 14.57. Mr. Dorrian also said in evidence that Detective Sergeant White gave him quite clear indications that eavesdropping upon prisoners and their visitors and the taping of interviews with solicitors was rampant wherever Detective Sergeant White had served in the past and that the necessary machinery had been provided in all the stations in which he had served. In discussing the matter with Detective Sergeant White, he expressed the fear to Mr. Dorrian that the matter would never be investigated and would be simply denied by the Garda authorities. Detective Sergeant White based this on the meetings which he had with Chief Superintendent Austin McNally and Assistant Commissioner Kevin Carty, who, he alleged, had given him to understand in clear terms that this matter would never be investigated and that it was one of the most closely guarded secrets within An Garda Síochána.¹⁸⁷⁴ Mr. Dorrian, for his part, was very concerned that the legal professional privilege that attaches to interviews between solicitors and their clients whilst in custody had been fundamentally breached in Mr. Sweeney's consultation with Mrs. McConnell and anybody else who had been listened to and recorded by the Gardaí.¹⁸⁷⁵ Mr. Dorrian, therefore, decided to publicise these allegations for two reasons. Firstly, the client had no confidence that they would be properly investigated by An Garda Síochána and gave him authority to publicise them. Secondly, Mr. Dorrian said that it was a matter of public importance that the constitutional right of reasonable access to a solicitor had been seriously compromised in the manner described to him by Detective Sergeant White and he hoped that, if the matter were made public, it would give rise to an investigation on the part of the Minister for Justice, Equality and Law Reform or the Commissioner of An Garda Síochána.

Evidence of Mr. John White

- 14.58. In evidence Mr. White said that in the period from mid-April to early May 2001 he was physically unwell and had attended his psychiatrist. He felt very frustrated, annoyed and hurt about the way he had been treated by senior Garda officers. He was also under enormous pressure in dealing with correspondence from Garda authorities and the various inquiries then underway. He said that he had discussed with Mr. Dorrian the making of a statement for Detective Superintendent Brehony following the meeting of the 10th of January 2001. When it was partially completed he gave it to Mr. Dorrian to read and to give to senior counsel for his consideration and advice. He had been advised by Mr. Dorrian to put everything into this statement because there would be no point in

¹⁸⁷⁴ Transcript, Day 602, pages 145-147.

¹⁸⁷⁵ Transcript, Day 602, pages 163-164.

coming back with a second statement in relation to matters. He said that he found the composition of the statement very difficult. This partially completed statement contained the full details of his allegations concerning the bugging. This statement was returned to him by Mr. Dorrian with the request that he complete a full statement regarding all other matters and re-submit it to him. In the meantime, Mr. Dorrian went to Mr. Duffy with the allegations that were published in the article of the 17th of May 2001.¹⁸⁷⁶ Mr. White also asserted in evidence that he chose to reveal the bugging allegations as a direct response to what he regarded as Detective Superintendent Brehony's open invitation to make a statement in respect of any allegation of wrongdoing within An Garda Síochána of which he knew.¹⁸⁷⁷

14.59. Mr. White said that he was fully aware of Mr. Dorrian's concerns about the implication of his allegations for the practice of criminal law in breaching the rights of prisoners to consult privately with their solicitors. Mr. Dorrian, he said, suggested that the revelation of these allegations through the media might yield sufficient pressure that would result in an appropriate inquiry into the allegations. Detective Sergeant White was happy that this should be done. However, he said that he was not aware when it would be done and was surprised that it was done so quickly. He maintained that by reason of other pressures he had little regard to the content of the article when it was published and did not have any forewarning of its publication or its exact contents. This is of importance because of the very significant differences between the allegations contained in the article and the allegations put before the Tribunal by Mr. White. **I am not satisfied that Mr. White can divorce himself from the explicit allegations made by his solicitor to Mr. Duffy. If Mr. Dorrian had been given full details of the bugging allegations in the partial statement, he had full instructions in relation to the matter and I would expect that whatever he was told by Detective Sergeant White would be accurately conveyed to Mr. Duffy. As already noted, I am satisfied that Mr. Duffy accurately reported what he was told.**

14.60. It is not clear to the Tribunal why these events triggered the publication of these allegations in the press in May 2001. Up to that point, notwithstanding the alleged discouragement received by Detective Sergeant White from Chief Superintendent McNally and Assistant Commissioner Carty to the effect that these allegations would not be investigated and that they were a well kept secret within An Garda Síochána, Detective Sergeant White had accepted what he regarded as the invitation of Detective Superintendent Brehony to put together a comprehensive statement in respect of all of his allegations of wrongdoing within An Garda Síochána. That document was apparently still in preparation in May

¹⁸⁷⁶ Transcript, Day 604, pages 201-204.

¹⁸⁷⁷ Transcript, Day 604, Q.807.

2001 and Mr. Dorrian could offer no explanation as to why the preparation of that statement was abruptly abandoned by Detective Sergeant White at that stage and the matter was made public. However, it is suggested that senior counsel advised some three weeks before the publication that that was the route to take.

14.61. However, Mr. White contends that his disillusionment with the senior officers of An Garda Síochána and his belief that they would not carry out any meaningful investigation into the allegations of bugging was based on the fact that when he sought to compile his comprehensive statement concerning wrongdoing within An Garda Síochána, he requested a number of important documents relevant to allegations he wished to make in that statement against senior Garda officers. He sought these documents from Detective Superintendent Brehony in order to complete his statement and he felt that Detective Superintendent Brehony did not co-operate with him and furnish the documents required. Consequently, he maintained that the only way to ensure that this matter would be subjected to investigation was by going public about it.¹⁸⁷⁸ It is clear that the documents requested existed and were ultimately produced to the Tribunal after considerable delay; however, they had nothing to do with the “bugging” issue. They did, however, have relevance to a matter under investigation in respect of the “anonymous allegations” module – Term of Reference (h) - concerning another allegation made by Detective Sergeant White against Assistant Commissioner Carty. **The non-production of these documents was not the fault of Detective Superintendent Brehony, who, I am satisfied, took every reasonable step to procure them. The matter may well have caused Mr. White to lose confidence in the objectivity of the inquiry into the allegations (if they were true) that he wished to make against Assistant Commissioner Carty to Detective Superintendent Brehony but I do not accept that it had any bearing on the pursuit by Detective Sergeant White of the bugging allegations.**

14.62. It should be noted that prior to his meetings with Chief Superintendent McNally and Assistant Commissioner Carty, Detective Sergeant White had no difficulties about the bugging that he alleges was carried on at Letterkenny Garda Station. It was not behaviour that he believed was wrong. It was a good police tactic as far as he was concerned. This was a view that, he said, was fully accepted by Chief Superintendent McNally and Assistant Commissioner Carty and many other Gardaí with whom he had worked. One explanation for the timing of the revelation offered by Mr. White was that he made it out of frustration and resentment at what he perceived to be the focus of the Carty inquiry upon his behaviour, rather than other wrongdoing that might more properly be the subject

¹⁸⁷⁸ Transcript, Day 604, pages 199-207.

of criticism such as the alleged bugging.¹⁸⁷⁹ He said that he felt that the Carty team were being selective in the matters that they chose to investigate and that other wrongdoing such as the alleged bugging was not going to be investigated because it did not suit the interests of the senior management.¹⁸⁸⁰ He accepted in evidence that he did not believe it to be morally wrong to eavesdrop or record these conversations. Mr. White said that it was his resentment at what he perceived to be the hypocrisy of the Carty team's focus upon some wrongdoing and its reluctance to pursue other wrongdoing that provoked him into pursuing his allegations publicly. A second explanation offered by Mr. White was that he resented what he believed to have been selective leaks to the press allegedly made by senior Garda management against him in relation to ongoing inquiries by the Carty team.¹⁸⁸¹

14.63. Clearly, Mr. White could not contend that these allegations were revealed in the interests of justice for the detainees. Sergeant White's behaviour towards Róisín McConnell and Katrina Brolly, as documented in earlier chapters of this report, and his complete denial of wrongdoing in that regard until it was exposed by retired Garda John Dooley, undermines the proposition that this revelation was made in the interests of truth or justice. Nevertheless, it is Mr. Dorrian's and Mr. White's evidence that the interview given to Mr. Duffy was a genuine attempt to publicise various wrongdoings by the Gardai in December 1996 in the hope of evoking an official inquiry into the matter. I, therefore, conclude that this publicity conducted on behalf of Detective Sergeant White was for a self-serving purpose. On his own testimony, it was a retaliatory act. It was also an attempt to distance himself from the central issues that he was being asked to explain at the time, such as his alleged involvement with Bernard Conlon. It is clear that Mr. Dorrian sought an official inquiry into this aspect of the detentions only, and not into broader issues, such as the allegations of wrongdoing against Sergeant White made by Róisín McConnell and Katrina Brolly, as chronicled elsewhere in this report. It is also apparent that, at this time, Detective Sergeant White was also stonewalling the legitimate inquiries being made into his alleged dealings with Bernard Conlon, as set out in the Tribunal's third report.

14.64. As a result of the publication of the aforementioned article concerning the alleged bugging of solicitor-client consultations, the then Deputy Commissioner of An Garda Síochána appointed the then Chief Superintendent W.I. Rice to carry out an inquiry into the allegations contained in it. However, this investigation did not immediately result in

¹⁸⁷⁹ Transcript, Day 602, pages 210-212.

¹⁸⁸⁰ Transcript, Day 602, pages 212-214.

¹⁸⁸¹ Transcript, Day 605, pages 49-56.

the making of a statement by Detective Sergeant White. Rather than assist the investigation and make a statement at that time, I am satisfied that Detective Sergeant White adopted tactics during the course of 2001 calculated to frustrate this inquiry: this was done in circumstances in which the allegations had been loudly trumpeted on behalf of Detective Sergeant White in the media. The investigators had to wait a further nine months before a statement was made by Detective Sergeant White. This is what happened.

The Initial Inquiry of Chief Superintendent Rice

14.65. Following the publication of the article by Mr. Duffy in the Donegal Democrat, Assistant Commissioner Kevin Carty sent a copy of the article to Deputy Commissioner Noel Conroy on the 18th of May 2001.¹⁸⁸² Deputy Commissioner Conroy directed Assistant Commissioner Carty to investigate the matter: he requested that Chief Superintendent W.I. Rice make contact with Mr. Paudge Dorrian, solicitor, because he had made the allegations upon which the article was based, with a view to obtaining whatever evidence existed to support the allegations.¹⁸⁸³ Two other articles were also referred to Chief Superintendent Rice which contained substantially the same material as that contained in Mr. Duffy's article.¹⁸⁸⁴ The journalists who wrote these articles were not interviewed by Chief Superintendent Rice, and the Tribunal is satisfied from its own inquiries that no further evidence would have been obtained by him if they had been interviewed at the time. It was clear from the outset that the only person who could provide Chief Superintendent Rice with a firsthand account of events that might support these allegations was Detective Sergeant White.

14.66. In accordance with the request made by the Deputy Commissioner, Chief Superintendent Rice, following a number of phone calls, agreed to meet Mr. Dorrian at a hotel on the 30th of May 2001. Assistant Commissioner Rice told the Tribunal in evidence that he was told by Mr. Dorrian at that meeting that he represented a number of Gardaí (plural) and that before any information would be forthcoming in relation to the article, four conditions would have to be met by the Commissioner or other appropriate authority for the safeguarding of these Gardaí. Assistant Commissioner Rice was given an outline of various aspects of the bugging allegations and took notes of the conversation as follows:

Wednesday 30/5/01 – Mount Errigal Hotel 16.50. Mr. Dorrian

1. People who come forward their promotional prospects will not be jeopardised.

¹⁸⁸² Tribunal Documents – Alleged Bugging, page 527.

¹⁸⁸³ Tribunal Documents – Alleged Bugging, page 526.

¹⁸⁸⁴ Tribunal Documents – Alleged Bugging, pages 529-533 – two articles that appeared in Ireland on Sunday; by no means as exclusive as was claimed.

2. Will not be subject to disciplinary action as a result.
3. Won't be discriminated against.
4. That any aspects of Official Secret Act will not be invoked against them.

Equipment put in 4 or 5 December 1996.

A/C Carty) Not sure exactly when they were told but were C/Supt.
McNally) made aware by Garda Officer

Jim Sweeney Solicitor – who was interviewing a female witness in relation to Raphoe (McConnell).

Installed by technical support section the name of person installing was Costello.

McGinley was monitoring the tapes. McNally said it is the best kept secret.

Every person who was in after that was recorded.

My information was that Milford and Manorhamilton were also used and there was recording equipment used there also.

Interviewing between Gardaí and witnesses were also taped.

I myself was told during a murder investigation in Manorhamilton – not confined to Donegal it's a problem countrywide – there could be – there could be implications. Only senior interrogators were aware and possibly the Sergeant collating the enquiries.

Junior Officers were not aware and I cannot suggest that the ordinary Gardaí in Letterkenny knew anything about it.

There was complaint by Costello to John McGinley that the equipment was not working properly, that he couldn't hear the conversations properly.

It then transpired that the next recording was o.k.

All this happened 4 or 5 December 1996. The reason they thought[t] there was a fault was that Jim Sweeney told his client to whisper as he was not satisfied with the security of the room.

If the four conditions are not given I will go public on the matter.

Certain Gardaí are concerned that they were taped.¹⁸⁸⁵

¹⁸⁸⁵ Tribunal Documents – Alleged Bugging, pages 75-77.

14.67. As appears from the above notes Mr. Dorrian laid down four preconditions that had to be complied with before the Gardaí whom he represented would come forward, namely that:

1. The promotional prospects of those Gardaí who came forward would not thereby be jeopardised;
2. These Gardaí would not be subject to any disciplinary action as a result of coming forward;
3. These Gardaí would not be discriminated against in the force in the future and;
4. No action under the Official Secrets Act, 1963 would be taken against these Gardaí (by which the Tribunal understands that they would be given immunity from any prosecution that might flow from their revelations).

Assistant Commissioner Rice also said in evidence that he did not respond to the preconditions set by Mr. Dorrian but simply noted them. At the conclusion of the conversation the Assistant Commissioner said that on the way out the door Mr. Dorrian said:

*That he had a number of people, a number of Gardaí, a number of people on a solicitor/client relationship and that if these conditions were met that they would come forward or could come forward.*¹⁸⁸⁶

The meeting concluded amicably. **What is clear from the subsequent Garda correspondence and the evidence is that the setting of these four preconditions occurred at a time when Chief Superintendent Rice had not advanced his inquiries by interviewing the person who was the source of the allegations, namely Detective Sergeant John White. He had not been told the identity of the Gardaí making the allegations. He had been denied the important facility of interviewing the main witness. However, what is equally clear is that Chief Superintendent Rice drew the four preconditions to the attention of his superiors in an interim report, which he furnished to Deputy Commissioner Conroy on the 5th of June 2001.**

14.68. In evidence, Mr. Dorrian said that the four conditions in the note were set by him as the basis upon which Detective Sergeant White would give his co-operation to Chief Superintendent Rice and furnish such evidence as was in his possession concerning the alleged bugging. He felt that Chief Superintendent Rice was well aware of the identity of John White as his source since he had informed him about the meetings which had taken place with Chief Superintendent McNally

¹⁸⁸⁶ Transcript, Day 613, pages 1-10 and Q.115-116.

and Assistant Commissioner Carty: though on the other hand, he maintained that he did not correct an error made by Chief Superintendent Rice in noting the name “John” McGinley when the name John was mentioned by Mr. Dorrian in the course of their conversation. Mr. Dorrian had let slip the name “John” but did not wish to reveal that it was John White and so did not correct Chief Superintendent Rice’s insertion of John McGinley in his note. It somewhat contradicts his assertion that Chief Superintendent Rice must have known that they were discussing Detective Sergeant John White.

- 14.69. A number of other matters may be noted about this meeting. Mr. Dorrian told Chief Superintendent Rice that Detective Sergeant White told him that he recognised one of the voices on the tape as that of a female whom he named to Chief Superintendent Rice as Róisín McConnell. As already noted, this was confirmed in evidence to the Tribunal by Mr. Dorrian.¹⁸⁸⁷ Further, Mr. Dorrian told Chief Superintendent Rice that his information was that witnesses had also been taped. Mr. White’s allegations before the Tribunal were confined to visits to prisoners. However, it may be that Mr. Dorrian used the words witnesses and prisoners interchangeably. Further, the note records that Mr. Dorrian told Chief Superintendent Rice that he had been told about taping during a murder investigation in Manorhamilton. However, in evidence Mr. Dorrian thought that the note must be confused because he was never involved in a murder investigation at Manorhamilton. Indeed, Mr. Dorrian said that the reference by Mr. Duffy in his article to taping in Milford and Manorhamilton was also incorrect as his concerns in relation to occurrences at those stations were in respect of different matters. It is curious that both Mr. Duffy and Chief Superintendent Rice are said to be confused or incorrect in this regard.

Interview with Mr. James Sweeney

- 14.70. Following his meeting with Mr. Dorrian, Chief Superintendent Rice contacted Mr. James Sweeney, solicitor, who had consulted with Mrs. Róisín McConnell on the 4th of December 1996, in relation to the allegation that his interview with his client had been taped. On the 1st of June 2001 Mr. Sweeney informed Chief Superintendent Rice that in December 1996 he did not suspect that this conversation had been taped but would have been suspicious about Gardaí listening at the door or window of the interview room. He went on to state, however, that:

At this stage I believed without any proof that my conversation with Róisín McConnell and/or Frank McBrearty Junior were taped.¹⁸⁸⁸

¹⁸⁸⁷ Transcript, Day 602, page 177.

¹⁸⁸⁸ Tribunal Documents – Alleged Bugging, page 78.

He also outlined an incident which later aroused his suspicion that the interview had been taped in the following way:

... On arrival to the station I entered the interview room in which Róisín McConnell, Sgt. White and another Garda were present. The two Gardai had been interviewing Róisín McConnell for some time, my recollection is that that they had summarised the interview by reading through their notes. They told me not to take any notes that they would give me a copy of their notes. Having read the notes they left the room for an unusually long period of time. I think about 20 minutes for the purpose of photocopying these notes. During that time I advised my client. When they returned they said they were not now willing to give me the notes. This was said by Sergeant White.¹⁸⁸⁹

This matter is more particularly discussed in Chapter 3 of this Report in respect of the arrest and detention of Róisín McConnell. Assistant Commissioner Rice said that though he did not record it in the note of his conversation with Mr. Sweeney, Mr. Sweeney told him that he did not wish to make a statement and that he was not “on any crusade and had not been consulted about the newspaper article by Paudge Dorrian”. He included this in his report of the 5th of June 2001.

Report by Detective Garda John Dooley

14.71. Chief Superintendent Rice also received a report in the course of his inquiry at that time by Detective Garda John Dooley to the Superintendent at Glenties dated the 21st of May 2001. This report referred to a meeting between Detective Sergeant John White and Detective Garda Dooley on the 9th of May 2001. It will be recalled that Detective Garda Dooley and Detective Sergeant White were at that time in complete denial of the allegations made by Mrs. Róisín McConnell and Mrs. Katrina Brolly in respect of their ill-treatment at their hands at Letterkenny Garda Station on the 4th of December 1996. Nevertheless, for some reason Detective Sergeant White at that time went out of his way to approach Detective Garda Dooley. This is what Detective Garda Dooley said in his report:

On the evening of 9th of May 2001, Sergeant John White contacted my home by telephone in my absence. He left a message for me to the effect that he was in a local café with his family and requested that I contact him there. When I returned home I got the message and on my way to the local shop I met Sergeant White who was just leaving Glenties. He had his mother and children with him. He stopped his car, got out and stood on the footpath with me and after exchanging pleasantries he made the following comments: Quote “I am going to make a twenty-five page

¹⁸⁸⁹ Tribunal Documents – Alleged Bugging, pages 78-79.

statement shortly and I am going to include the bugging that went on in Letterkenny Station the day we were interviewing Róisín – remember I introduced you to Joe Costello”. I informed D/Sgt White that I was in a hurry as I had chores to attend to. This meeting lasted less than two minutes. I can remember being introduced by Sgt White to a man by the name of Joe Costello who was said to be a brother of Sgt John Costello who was Sergeant i/c., Letterkenny at that time ... I also conducted interviews with him in Letterkenny Garda Station on 4th of December 1996 when a number of persons were arrested in connection with the murder of Richard Barron. Sergeant White and I interviewed both Róisín McConnell and Catriona Brolly at Letterkenny Garda Station. When D/Sgt White worked with me in Glenties during 1996 he was a regular visitor to my home and since that he has visited me and made contact by telephone occasionally. I would like to point that I did not encourage any of this contact in recent years.¹⁸⁹⁰

Chief Superintendent Rice did not interview Detective Garda Dooley at that time in respect of this curious report. It should be noted that the report comes some four days after the article published in the Donegal Democrat. The visit to Detective Garda Dooley came seven days before that article appeared. Mr. White suggests that the failure to interview Mr. Dooley was because the senior Gardaí did not wish to have the bugging properly investigated and exposed.

- 14.72. Detective Garda Dooley’s statement added to the story in that he indicated that he had been approached by Detective Sergeant White and informed that he was going to tell the truth about the bugging at Letterkenny Garda Station on the 4th of December 1996 and sought Detective Garda Dooley’s support by asking him to recall how Detective Sergeant White had introduced Detective Garda Dooley to Detective Sergeant Joseph Costello at Letterkenny Garda Station. This introduction was confirmed by Detective Garda Dooley in the statement, but he did not go on to substantiate, at that time, the allegation later made by Detective Sergeant White that tapes had been referred to in the course of that meeting. However, it will be seen that he did accept that there was such a reference in a statement made on the 14th of October 2005. The report of the 21st of May 2001 is the first recorded account of the encounter between Detective Sergeant Costello, Detective Sergeant White and Detective Garda Dooley at Letterkenny Garda Station on the 4th of December 1996. **It is an important report when viewed in the light of the description of events offered through Mr. Dorrian and it clearly drew Detective Sergeant White into the story by name. Nevertheless, it was not at that time pursued by Chief Superintendent Rice. I consider that the suggested criticism of Assistant**

¹⁸⁹⁰ Tribunal Documents – Alleged Bugging, page 436.

Commissioner Rice is unwarranted and something of a distraction from the real problem facing his inquiry at that time, namely the refusal of Detective Sergeant White to come forward and make a statement.

- 14.73. It is difficult to know what Detective Garda Dooley was to make of the approach by Detective Sergeant White, because his fellow wrongdoer in respect of the interrogations was informing him that he was about to make a selective allegation of wrongdoing against other Gardaí which he was inviting Detective Garda Dooley to substantiate. A further observation can be made that Detective Garda Dooley in his report, while clearly implying that he did not seek contact with Detective Sergeant White, nevertheless did not deny knowledge of any suggested bugging at Letterkenny Station and has always accepted that he met with Detective Sergeant Joseph Costello on the 4th of December 1996, and much later accepted that there was a reference to tapes at that meeting. His report was included in the report of Chief Superintendent Rice made to Deputy Commissioner Conroy on the 5th of June 2001.

Chief Superintendent Rice's Report

- 14.74. The report sent by Chief Superintendent Rice to Deputy Commissioner Conroy dated the 5th of June 2001 contained an outline of the investigations which he carried out and included an account of his meetings with Mr. Paudge Dorrian and Mr. James Sweeney and the report of Detective Garda Dooley. Assistant Commissioner Rice said that, at the time, he did not regard his report as a final report. It was for the purpose of providing information to the Deputy Commissioner who would, having assessed the substance of this report, direct or take such further steps as he thought appropriate. He made no recommendations in the report. He told the Tribunal that he could not take the allegations further unless he could obtain a statement from the person having firsthand knowledge of the facts underlying the allegations, namely, as it turned out, Detective Sergeant White. He was most reluctant to put allegations from an anonymous source to senior officers of An Garda Síochána, namely Assistant Commissioner Carty, Chief Superintendent McNally and others, including Detective Sergeant Joseph Costello, without first having a statement from the witness who was the source of the allegations. Assistant Commissioner Rice rejected the suggestion that his reluctance to challenge the officers and Detective Sergeant Joseph Costello and put these allegations to them was based on a reluctance to investigate the allegations properly because the senior management or officers of An Garda Síochána did not wish to have this type of wrongdoing exposed.
- 14.75. The report was initially transmitted to Assistant Commissioner Carty who

transmitted it to Deputy Commissioner Conroy under cover of a letter of the 7th of June 2001. Assistant Commissioner Carty's view of the matter is clearly expressed in that letter:

Mr. Dorrian is now alleging that I was personally made aware of the alleged installation of recording equipment in Letterkenny. This allegation is totally and utterly false. It is part of a concerted campaign to undermine and discredit my investigations in the Donegal Division. Because of Mr. Dorrian's allegation my position in the matter is compromised and I am unable to investigate or advise further. Forwarded for your further direction.¹⁸⁹¹

- 14.76. On the 11th of June 2001, Deputy Commissioner Conroy wrote to Assistant Commissioner Fachtna Murphy concerning the four preconditions set out by Mr. Dorrian. He sought the advice of Assistant Commissioner Murphy as to how these matters might be approached so that the inquiries conducted by Chief Superintendent Rice might be continued. In particular, he sought the guidance of Assistant Commissioner Murphy in relation to the three issues of promotion, application of the Garda disciplinary regulations and the issue of discrimination against Gardaí coming forward with these allegations. In relation to the fourth condition concerning the Official Secrets Act, the Deputy Commissioner noted:

This will be a matter for the law officers, which can be addressed when we establish the nature of the offences alleged and if immunity from prosecution should be sought for any individual.¹⁸⁹²

- 14.77. Assistant Commissioner Murphy responded on the 22nd of June 2001 in the following way:

I will deal with each issue separately. Before doing so I would make the general observation that the Commissioner of An Garda Síochána is being asked here to provide a blanket undertaking on matters relating to promotion, discipline and discrimination in circumstances where neither the identity of the members has been disclosed and no information has been furnished in advance relating to their alleged activity or to the matters at issue. Notwithstanding it is imperative that all acts of wrongdoing should be examined and investigated, every opportunity within the criminal code and Garda Regulations should be afforded to our members who may be in a position to assist.

1. Promotion in An Garda Síochána is governed by An Garda Síochána Regulations in Chapter 11, Garda Síochána Guide. The regulations stipulate the requirements and criteria for promotion.

¹⁸⁹¹ Tribunal Documents – Alleged Bugging, page 494.

¹⁸⁹² Tribunal Documents – Alleged Bugging, page 492.

2. The Garda disciplinary regulations govern all matters relating to the discipline of An Garda Síochána. All members of An Garda Síochána are subject to the regulations. In the absence of specific information it is not appropriate that any undertaking in relation to discipline be given to Mr. Dorrian at this stage.
3. Chapter 6 Garda Síochána Code sets out the policy in An Garda Síochána on matters relating to discrimination. The underlying tenet of the Commissioner's policy is that discrimination is not condoned in An Garda Síochána. It seems to me that any member coming forward with information on any matter can be provided with an assurance that notwithstanding any other action that might be necessary, he or she will not be discriminated against by Garda management. Consequently I see no reason why Mr. Dorrian cannot be provided with such an assurance.¹⁸⁹³

- 14.78. On receipt of this letter Deputy Commissioner Conroy wrote to Chief Superintendent Rice on the 26th of June 2001 enclosing the advice from Assistant Commissioner Murphy. In that letter Deputy Commissioner Conroy stated:

I refer to your report of the 5th ... and forward for your information the attached report from Mr. Murphy. It is most important that we establish the truth or otherwise of the allegations being made by Mr. Dorrian, Solicitor. Concerning the four conditions posed by Mr. Dorrian, in the absence of any specific information regarding the evidence that he alleges can be provided by unnamed members of An Garda Síochána, or knowledge of the level of involvement the members themselves had in any alleged wrongdoing, it is not possible to provide the assurances sought at this time. Each of the matters raised is covered by Garda regulations and/or legislative provisions, as outlined by Assistant Commissioner, 'B' Branch (Assistant Commissioner Murphy).

The conditions posed can only be considered fully by the organisation and the Director of Public Prosecutions following revelation of the detailed information/evidence allegedly in the possession of members. Report any further developments to this office.¹⁸⁹⁴

- 14.79. On receipt of this letter, Chief Superintendent Rice arranged a further meeting with Mr. Dorrian at a hotel on the 17th of July 2001. This turned out to be a very short meeting. Chief Superintendent Rice described it in a letter to Deputy Commissioner Conroy of the 18th of July 2001:

¹⁸⁹³ Tribunal Documents – Alleged Bugging, pages 501-502.

¹⁸⁹⁴ Tribunal Documents – Alleged Bugging, page 500

At 16.25 on the 17th July 2001 I met Mr. Dorrian and I informed him that the conditions posed by him on the 30th of May 2001 could only be considered fully by the Garda organisation and the Director of Public Prosecutions following revelation of detailed informative evidence allegedly in the possession of his client. Mr. Dorrian stated 'OK I am going to go public on this. Let them try prosecuting me under the Official Secrets Act, I have sought advice from Senior Counsel.'¹⁸⁹⁵

- 14.80. Chief Superintendent Rice told the Tribunal that at that stage, having regard to his knowledge of the matters in Donegal, he suspected that Detective Sergeant White was one of the Gardai to whom Mr. Dorrian had made reference in his previous meeting. This suspicion can only have been confirmed by the report from Detective Garda Dooley. Though the Deputy Commissioner had indicated in his letter that it was important to establish the truth of the allegations, Chief Superintendent Rice still did not view that as a brief to go to the various people mentioned in the earlier interview with Mr. Dorrian or Detective Garda Dooley and enquire of them what they knew about the matter. He explained his position in this way:

My view was that taking from what the Deputy Commissioner had said to me, that essentially I needed Mr. Dorrian to cooperate and I needed those people to come forward, so I would have the basis for an investigation, that I would have prima facie statement of evidence on which to found an investigation. And I didn't have that. And that's where the matter lay until the following January when another person, Mr. Flynn, came into the scenario, into the equation ... If I went to somebody on the basis of not having any formal statement or any formal basis, I mean the first thing they would ask you, what is the basis of what you are asking me about ... I needed something to ground the investigation. I needed a formal complaint, a statement of somebody who had evidence or information that I would say was prima facie, you know, in terms of the grounding of the investigation ... It was my belief then and it is my belief now that I needed some formal basis on which to kick off an investigation. I had no basis to kick off the investigation, and I believe then and I believe now that I needed that.¹⁸⁹⁶

It has been submitted that Assistant Commissioner Rice should on the basis of the Dooley report have interviewed Mr. Dooley and Detective Sergeant White in order to further his inquiry and that he was in some way remiss in not doing so. There is, however, an air of unreality about

¹⁸⁹⁵ Tribunal Documents – Alleged Bugging, page 512.

¹⁸⁹⁶ Transcript, Day 613, pages 35-50.

this criticism when it was abundantly clear that Assistant Commissioner Rice was getting absolutely no co-operation from Detective Sergeant White or Mr. Dorrian.

- 14.81. The Tribunal is satisfied that Assistant Commissioner Rice made every reasonable effort to advance the allegations of bugging at Letterkenny Garda Station in December 1996 by trying to gain access to the one person who could help with his inquiry, namely Detective Sergeant John White. He was thwarted in his efforts to do this by the preconditions set by Detective Sergeant White's solicitor, Mr. Dorrian. In setting these preconditions, Mr. Dorrian must have been fully aware that as presented, these conditions could not be met. A blanket immunity from prosecution is never given by the Director of Public Prosecutions and, more especially, in the absence of comprehensive statements made by those seeking such immunity and the opportunity to carry out a full investigation of the allegations in respect of which the immunity is sought. Similarly, the Garda Commissioner could not give a blanket assurance that disciplinary proceedings would not be invoked against Gardaí, the scale of whose breaches of discipline he was completely unaware.
- 14.82. There was, at the time, no formal procedure in existence, protective of any potential 'whistleblower' within An Garda Síochána, in respect of any wrongdoing that might be exposed by another Garda. This has since been the subject of reform. Clearly, however, An Garda Síochána has a proven record of pursuing those members who have committed crime in the past. In this instance, I am not satisfied that Detective Sergeant White was genuinely concerned about his possible position as a 'whistleblower'. As already noted his motivation in coming forward was self-serving and retaliatory, borne out of frustration and resentment that he was the subject of inquiry in respect of other matters. Indeed, had the blanket immunity sought by Mr. Dorrian been granted he would have been relieved of the burden of all of these inquiries, which would have been, in the light of events which followed, the findings of this Tribunal, and the admissions later made by Detective Sergeant White in respect of his wrongdoing towards Mrs. McConnell and Mrs. Brolly, entirely wrong.
- 14.83. The Tribunal is satisfied that the setting of preconditions was calculated to and did thwart the investigation of Chief Superintendent Rice and rendered it impossible for him to bring it to a satisfactory conclusion at that time. Having called for an inquiry into these alleged buggings through the article of the 17th of May 2001 Mr. Dorrian and Detective Sergeant White then undermined that very inquiry by failing to co-

operate with it. By the 17th of July 2001 it had been made very clear to Chief Superintendent Rice that the Gardaí whom Mr. Dorrian said he represented would not be co-operating with him in any inquiry. The Tribunal is satisfied that responsibility for the stalling of the inquiry at that stage lies squarely with Detective Sergeant White and Mr. Dorrian.

Detective Sergeant White and Mr. William Flynn

14.84. There the matter rested until the 20th of December 2001 when Mr. William Flynn was visited by Detective Sergeant White and was informed in the course of a meeting that extended from 19.00 hours to 03.00 hours or 05.00 hours the following morning, and covered a wide ranging number of issues, that the interviews between those detained at Letterkenny Garda Station in December 1996 and their relations and legal advisers had been listened to and taped. Following this meeting, on the 3rd of January 2002 Mr. William Flynn wrote to Mr. Shane Murphy, SC who had been appointed by the Minister for Justice, Equality and Law Reform to carry out an independent review of various matters that had occurred in Donegal. The relevant extract from the letter of the 3rd of January 2002 is as follows:

3rd January 2001¹⁸⁹⁷

Re: Donegal Garda in Corruption Case

Dear Mr. Murphy,

I am writing in reference to our telephone discussion of 31st December last concerning certain information related to me by a member of An Garda Síochána concerning your investigation into the Donegal Garda corruption case.

Before I provide further details I will seek written assurances from the Minister for Justice that they will not be passed on to a third party.

The Garda I spoke to said he was present at Letterkenny Garda station on December 4th 1996 when Frank McBrearty Junior and Mark McConnell and a number of others were interviewed by Gardaí in connection with the death of Richard Barron.

He was also present at other Garda stations concerning the McBrearty case, in particular a meeting at Milford Garda station on 20th of September 1997. On this occasion he was present at a meeting where Inspector John McGinley and Detective Sergeant Sylvester Henry allegedly recommended that all original Garda statements associated with the Richard Barron investigation be destroyed.

¹⁸⁹⁷ It is apparent from the evidence that this letter was erroneously dated 2001 as opposed to 2002 which is when it was in fact sent.

I have approximately 250 memos of relevant issues concerning the Richard Barron investigation containing allegations by this Garda who informs me he was present at all relevant times. He says he was given control of the investigation on 8th August 1997.

Among the allegations made by this Garda source is that Garda Joe Costello, of the Garda Technical Unit, bugged the interview rooms where those detained on December 4th 1996, spoke in confidence with their solicitors and that he witnessed Inspector John McGinley playing over the tapes of interviews between Mrs. Katrina Brolly and Mrs. Róisín McConnell with their solicitor, James Sweeney of VP McMullin & Co. ...

Yours faithfully,

William G. Flynn¹⁸⁹⁸

This letter concluded by stating that it was one of the issues that warranted investigation by Mr. Murphy. It is interesting to note that the four preconditions were not thought relevant by Detective Sergeant White when the allegation of bugging was later passed to Mr. William Flynn, a private investigator and civilian. They were not invoked by Detective Sergeant White after the Flynn letter was acted upon by Deputy Commissioner Conroy which resulted in the second phase of Chief Superintendent Rice's inquiry into the matter.

- 14.85. Mr. William Flynn attended the Tribunal as a witness at the request of the Garda Commissioner's legal team with a view to his furnishing evidence into certain alleged differences between his letter to Mr. Shane Murphy, SC, the contents of which was allegedly written on the basis of a conversation which he had with Detective Sergeant White in December 2001, and the later statement made by Detective Sergeant White outlining the nature and extent of his allegation of bugging in February 2002. However, Mr. Flynn left the Tribunal before he had completed his evidence and before he submitted to full cross-examination by other parties, including Detective Sergeant White and those represented by counsel for the Garda Commissioner. At the time I indicated that in relation to the issue of the alleged bugging of Garda stations, I did not intend to rely upon Mr. Flynn's evidence in making any determination as to the facts. His evidence contains so many inconsistencies and was so unsatisfactory in relation to matters canvassed with him at the Tribunal that it would be unsafe to rely upon it, and consequently I disregard such evidence as he gave to the Tribunal on this issue.¹⁸⁹⁹

John White's Allegation

- 14.86. In the course of Assistant Commissioner Rice's renewed investigation, Detective

¹⁸⁹⁸ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 268-269: reference to other complaints have not been included in this extract.

¹⁸⁹⁹ William Flynn's evidence in this matter is set out at Transcript, Day 616, pages 59-109.

Sergeant White granted him an interview in respect of this matter on the 25th of February 2002 and made the following statement:

I am making this statement on the agreement that it solely deals with the events of the 4th and 5th December 1996 at Letterkenny Garda Station. On the 2nd of Dec. '96 I travelled to Letterkenny Garda Station at the request of D/Supt. Joseph Shelly for the purpose of assisting with the interview of prisoners who were scheduled for arrest on the 4th Dec. 96. At some stage early in the day of the 4th Dec. 96 I met D/Sgt. Joe Costello of the Technical Support section of the Garda Technical Bureau, Garda Headquarters, Dublin at Letterkenny Garda Station. I have known D/Sgt. Costello for over twenty years. We had a general discussion and I introduced him to D/Gda John Dooley of Glenties Garda Station, who was with me at the time. I asked D/Sgt. Costello how the tapes were going and he replied we had trouble with them early in the morning but they are o.k. now. We had a general conversation about life in general outside the job. It may have been a couple of years before that, since I had spoken to Joe Costello and that would have been in the Technical Support Unit in Dublin. I was aware from talking to Joe Costello that conversations between prisoners and other persons were being recorded. I didn't know who or where. I interpreted this from my conversation which I have already mentioned with Joe Costello and from my experiences over the years as a member of the Investigation Section at Garda headquarters and as member of other Detective Units in Dublin, mainly at Blanchardstown Garda Station. I met Joe Costello probably twice on that date, the 4th Dec. 96 and the 5th Dec. 96, we had a general conversation and we did not discuss any recording systems or his duties in Letterkenny Garda Station at that time. I did not meet Joe Costello again until Feb. 97 when I met him at T.S.S. in Dublin. This meeting was not connected with Letterkenny on the 4th and 5th Dec. 96. Later on the 4th Dec. 96 after my discussion with Joe Costello, I called to the door of the D/Inspectors Office in Letterkenny Garda Station, I put my hand on the door handle but it was locked. I heard voices within the room. The door was then opened by D/Inspector John McGinley, who is now a Detective Superintendent. I entered the office alone, John McGinley locked the door after I had entered. He had a long black coloured twin-deck tape recorder on his table. I asked him if there was anything of interest on the tapes regarding my interview with Róisín McConnell and he said, there was not. I asked him what the quality was like and he pressed a button on the tape recorder and I heard a voice, who I recognised as Mr. James Sweeney Solicitor, speaking. D/Inspr. McGinley

turned off the machine and we both agreed that the quality of the recording was perfect. I did not hear anyone else speaking on the machine. Before I left the D/Inspectors office I asked him to contact me if anything of interest relative to Róisín McConnell came up. I did not hear or see any tape recorders after this. ...¹⁹⁰⁰

- 14.87.** The two encounters described by Mr. White, one with Detective Sergeant Joseph Costello and the other with Inspector John McGinley, are the central elements of the story which he told concerning the bugging. The other element of his story places this event in a more general context. He alleges that in his experience as a detective in An Garda Síochána the tape recording of confidential meetings between prisoners and their lawyers and/or other visitors was a normal feature of the investigation of serious crime conducted by the sections to which he was attached in the course of his career. Mr. White alleges that Detective Sergeant Costello and his colleagues in the Technical Support Section of An Garda Síochána at Garda Headquarters were responsible for these tape recordings. He also alleges that his encounter with Detective Sergeant Costello and Inspector McGinley in Letterkenny on the 4th of December 1996 is a single specific example of this more general allegation of which he has firsthand knowledge. He pointed to these incidents in support of his specific allegations. He also alleges that when he complained of this tape recording to Chief Superintendent McNally and Assistant Commissioner Carty they declined to investigate the issues as it would expose the widespread practice as described by Mr. White.
- 14.88.** In this regard Mr. White sought to rely upon proposed evidence from former Gardaí in Cork in relation to what were alleged to be similar incidents in Cork in the 1990's, on the basis that this would demonstrate to the Tribunal that An Garda Síochána had carried out such eavesdropping and tape-recording in the past. These events were in themselves matters of controversy. They had nothing to do with the issues which I had to resolve in Donegal and did not involve the same personnel. For the reasons set out in my ruling on the matter, as set out in Appendix D to this report, I declined to receive this evidence. In any event, other evidence established that on one previous occasion Detective Sergeant Costello had been retained to eavesdrop and covertly record a conversation between two prisoners in a Garda Station in Ballinasloe on the direction of his superiors in 1993. It was therefore established to my satisfaction that the Television and Technical Support Unit under Detective Sergeant Costello had the experience, ability and equipment to do so again, if so directed or inclined.
- 14.89.** It was of far more importance to concentrate upon and examine the evidence in support of Mr. White's allegation concerning the incidents of the 4th of

¹⁹⁰⁰ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 69-71 (Statement made to Detective Garda Michael O'Driscoll, Inspector J. Sheridan and Detective Garda G. Murray by Detective Sergeant White on 25th February 2002 at Cashel Co. Tipperary).

December 1996, as outlined by him in his statement of the 25th of February 2002.

The Meeting with Detective Sergeant Joseph Costello

14.90. The first important element of Detective Sergeant White's account of these events is the meeting between himself, Detective Sergeant Costello and Detective Garda Dooley at Letterkenny Garda Station on the 4th of December 1996 and the conversation which allegedly took place on that occasion. Detective Sergeant White alleged that he introduced Detective Garda Dooley to Detective Sergeant Joseph Costello and asked him how the tapes were going and was told by Detective Sergeant Costello that they had trouble with them early in the morning, but they were now okay. This conversation is linked to a further conversation which Detective Garda Dooley states took place a short time later in the kitchen of Letterkenny Garda Station between Sergeant White and Detective Garda Dooley, in the course of which Detective Garda Dooley was informed by Sergeant White that the visitors' room at Letterkenny Garda Station had been bugged and that Mrs. Róisín McConnell and her mother, Mrs. Anna Quinn, were at the time in the visitors' room. Questions to be addressed in examining these events are how and why Detective Sergeant Joseph Costello came to be posted to Letterkenny Garda Station in December 1996; whether he met with Sergeant White and Garda Dooley on that date; what conversation, if any, was had between them concerning "tapes"; and what conversation, if any, took place between Sergeant White and Detective Garda Dooley later on that day in respect of the "bugging" of visitors' rooms at Letterkenny Garda Station.

Detective Sergeant Joseph Costello

14.91. Detective Sergeant Joseph Costello was in 1996 attached to the Television and Technical Support Section based at Garda Headquarters in Dublin. He described his duties as assisting Garda investigations nationwide by supplying and maintaining video and still photography, night vision equipment and lecturing to training courses within An Garda Síochána. He said the unit in which he was involved assisted in the installation and monitoring of CCTV for pop concerts and international matches of all codes and other large public events. In 1981 he was attached temporarily to the technical support section. The technical support section was apparently part of the Technical Bureau at Garda Headquarters and assumed a separate designation in or about 1980. This section was transferred to the telecommunications section of An Garda Síochána in or about 1987 or 1988. Detective Garda Costello was made permanent in the section in 1985 and promoted to the rank of Sergeant in 1990. The section consisted of one sergeant and three Gardaí.¹⁹⁰¹ It is unquestionably the case, and is accepted by him, that

¹⁹⁰¹ Tribunal Documents – Alleged Bugging of Interview Rooms, page 361 and pages 364-367.

Detective Sergeant Costello travelled to Letterkenny Garda Station to assist in the investigation into the death of the Late Richard Barron on the 3rd of December 1996 at the request of Detective Superintendent Shelly. He remained there until the 7th of December 1996.

The Posting to Letterkenny

14.92. The Tribunal sought to understand how and why Detective Sergeant Costello was requested to assist the investigation into the death of the Late Richard Barron. On the 1st of March 2002 Detective Sergeant Costello made a statement in which he acknowledged that he was contacted on the 3rd of December 1996 by Detective Superintendent Joseph Shelly, Letterkenny, who informed him that he intended to make arrests the following day in relation to the investigation into the death of the Late Richard Barron. He said that Detective Superintendent Shelly told him that he might need some form of technical assistance “in the event of any disclosures from subsequent interviews”, but that the matter was not discussed any further on the phone. He travelled to Donegal and arrived later on the evening of the 3rd of December, in sufficient time to attend the end of a conference in respect of the arrests. He said that he spoke to Detective Superintendent Shelly and other members of the detective branch after the conference, but got no specific instructions or requests from anyone at the time. He was told that a number of people were to be arrested the following day and that he was to be available in Letterkenny Station, if required. He then stated that he was not requested to perform any duty at Letterkenny Station on the 4th of December and remained on “standby duty” until the 7th of December 1996. He said that the only equipment that he brought with him was a “video camera and night vision which was kept in a room on the first floor at the back of Letterkenny Garda Station”. He had no recollection of speaking to Inspector McGinley at Letterkenny Garda Station.¹⁹⁰²

14.93. In an interview with the Tribunal investigators on the 21st of June 2006 Mr. Costello described how he came to travel to Letterkenny Garda Station on the 3rd of December in more detail. He repeated that he had been requested to do so by Detective Superintendent Shelly who informed him that it was intended to arrest a number of prisoners in respect of the Barron investigation the following day and that:

The assistance he would require would be of a technical nature in the sense that there was a lot of things happening around Raphoe he said, he said there was intimidation and he was hoping that as a result of all the interviews being carried out that perhaps something might come out that might lead to the installation to some type of video equipment in the area

¹⁹⁰² Tribunal Documents – Alleged Bugging of Interview Rooms, pages 237-238.

of Raphoe. In other words, to carry out some surveillance in that area, so I told him that I couldn't give him an answer in other words that he would have to talk to Inspector Sharpe who was acting as Superintendent in charge of the telecommunications section and that I could do nothing 'till he gave the authorisation. So he rang me back in the afternoon and he told me that had been o.k.d or words to that effect and. 'twould be get there as soon as I could as there was a conference there that night and that was the end of the conversation I had with Superintendent Shelly.¹⁹⁰³

Detective Superintendent Shelly requested that one man be sent by way of assistance and because of his own family connections in Donegal he volunteered to take the duty himself. His brother Sergeant John Costello of Letterkenny Garda Station resided in Ballybofey at the time with his wife and family. He elected to go himself in order to include this family visit as it was coming up to Christmas. He had done so on previous occasions when assignments were required to be completed in Donegal.¹⁹⁰⁴

14.94. Mr. Costello also said the following in the course of the interview with the Tribunal investigators:

JC: My understanding was that I would be installing a video camera in some place or some premises for the use of taking photographs of some persons or video of some persons that would mean using the camera myself or installing a miniature video camera which I had with me and recording that onto a time lapse recorder.

MF: What equipment did you bring with you when you travelled from Dublin to Letterkenny?

JC: I brought video equipment. I'd have brought an ordinary standard video recorder. I'd have brought a still camera with a few various lenses. I'd have brought night vision binoculars. I'd have brought a time lapse recorder that would be it. If there is one thing I want to explain maybe in a sense when you are going out and asked to do surveillance you don't know what you're going into, or what you're going to see there or what's going to happen you have to go and survey the place if possible at all yourself. You could bring a wagon load of equipment with you and you mightn't have the right equipment at all. You have to see the place if possible if you thought about installing video cameras.¹⁹⁰⁵

14.95. In evidence to the Tribunal Detective Sergeant Costello (now retired) told how he came to be posted to Donegal on the 3rd of December 1996. He said:

¹⁹⁰³ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 368-369.

¹⁹⁰⁴ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 369 and 376.

¹⁹⁰⁵ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 372-373.

I remember sometime in the morning of the 3rd of December 1996 I received a phone call from Superintendent Joe Shelly in Letterkenny Garda Station. I knew Superintendent Shelly over the years and I had worked with him and we had a brief conversation about things past and he told me about the death of Mr. Richie Barron and that he was involved in the investigation of that and that he was taking in a number of people the following day, that would be the 4th December. Now he might have mentioned names of people he was arresting but at that time they wouldn't have meant anything to me ... So after a brief conversation he informed me that he had a problem with one of the persons that was going to be arrested in the sense that he was suspected of intimidating and interfering with the witnesses and that he had been following witnesses around and that he had been going to particular houses where members of the investigation section had carried out enquiries, and he was wondering if we could carry out some type of a surveillance in the sense of a technical surveillance in the event of further information coming to light from any interviews that was being conducted with prisoners on the 4th. ... At that stage I told him that we could possibly supply that equipment or somebody could go there and maybe help with the investigation of that aspect. But I told him that he would have to ring my inspector, who at that time was Inspector Shape who would be acting superintendent to authorise my permission to go. That was basically the end of the conversation. I put him through to Inspector Sharpe or transferred the call to Inspector Sharpe's phone and that was the end of that conversation at that stage. ... In the afternoon that day Superintendent Shelly rang me back and told me that that had been okayed. He didn't say by [whom] he said that had been okayed. He said there is a conference tonight, he said I'll see you up there.¹⁹⁰⁶

14.96. He was asked to explain what he thought he would be doing in Donegal. He said:

Well what I understood from talking to Superintendent Shelly, that they had a suspect who was intimidating witnesses or interfering with witnesses. I think he mentioned even Gardaí as well, and that he had been following them around from place to place. What I understood from Superintendent Shelly is, if we could provide some technical surveillance for the purpose of gathering further evidence or further information. But to do this they were arresting

¹⁹⁰⁶ Transcript Day, 597, pages 38-39.

the suspect for this intimidation and that when he would be in custody, that anything ... further information that they had in relation to the other prisoners that were being taken into the station on the 4th, that that and this further information would be put to the suspect for the intimidation which I now understand was Mr. McBrearty Senior. I assume that it was alleged. ... When he was released, depending on what further information they had in their possession, that I'd be asked at some stage to set up video cameras or some type of a video system or that I would use the surveillance van in some way to carry out surveillance on the particular premises or house, or that I would install a video camera in some house or some premises for the purpose of taking video or taking photographs. That was my understanding.¹⁹⁰⁷

Detective Superintendent Joseph Shelly

14.97. Detective Superintendent Joseph Shelly said in an undated statement that:

It was also agreed by management in charge of the investigation that the services of the Garda Technical Support and Television Section at Garda Headquarters should be requisitioned as the services of this section might be of assistance to the investigation. I made contact with Detective Sergeant J. Costello who was the member in charge of this unit and he agreed to travel to Donegal to assist in the investigation if required. As far as I can recall I spoke to Detective Sergeant Costello on the 3rd of December 1996, the day before the arrest of the suspects was due to be made. The type of assistance that might be required that I had in my mind would be technical covert surveillance of suspects which might come to light arising out of the interviews. I am aware that Detective Sergeant Costello attended at least part of a conference which was held at Letterkenny Garda Station on the evening of the 3rd of December 1996. I spoke with Detective Sergeant Costello after this conference and we discussed him being available over the coming days to carry out any duties of a covert nature that might be required resulting from the interviews of the prisoners.¹⁹⁰⁸

14.98. Superintendent Shelly was also interviewed by Chief Superintendent Brian Garvie (RCMP) about the role that Sergeant Costello was to play in the investigation. The following exchange occurred:

B.G. What role was he to play in the investigation?

J.S. We felt that, depending on how the interviews developed and what

¹⁹⁰⁷ Transcript, Day 597, pages 44-45.

¹⁹⁰⁸ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 198-199.

information was gleaned from the interviews, that Sergeant Costello might have been in a position to provide technical surveillance for us, if that was required. As matters turned out, it wasn't required.

B.G. What kind of technical surveillance would he provide?

J.S. Well we knew that he was in a position to, photographing, videoing, that sort of surveillance, if that was necessary.

B.G. Did you have a surveillance team available to follow any of the individuals?

J.S. Well we would have depended on Sergeant Costello to do that for us but we didn't have a surveillance team as such but if there was technical surveillance required, Sergeant Costello would have been in a position to help us there.

B.G. Where would you put him to do this?

J.S. Depending on what information came from the interviews. As it turned out it wasn't necessary but I suppose, we were thinking in terms of Raphoe and the village of Raphoe in particular, if new names came or whatever came to light. That didn't transcribe.

B.G. But what would he do? What would he video? What did you want out of it?

J.S. We would I suppose, subsequent on the release of certain individuals, if it transpired that new names came into the arena or whatever, that we would be in a position, that he would be in a position to take a photograph or whatever of those individuals but, as I said, it didn't happen anyway so we didn't use it.¹⁹⁰⁹

- 14.99.** It is not clear to me from the above extracts what use Detective Superintendent Shelly intended to make of technical assistance that might be forthcoming from the Television and Technical Support Section. A somewhat more cogent outline of what assistance might be afforded by the section was given in evidence by Mr. Shelly. He outlined in evidence how he had become involved in the investigation of alleged intimidation by Mr. Frank McBrearty Senior and in that context had attended at his premises on the 19th/20th of November 1996. This meeting had been tape-recorded by Inspector John McGinley. From his testimony it appears that it was intended to procure this assistance in order to obtain video or photographic images of any further intimidation or visits to witnesses that might occur following the release of Frank McBrearty Senior, whom it was intended to arrest on the 4th of December 1996. He said that he had explained his thinking

¹⁹⁰⁹ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 218-219.

on the matter to Superintendent John Fitzgerald who had no difficulty with it. He informed him to proceed to arrange it. He said:

I felt that resulting from whatever may come of the interviews obviously all of this information was going to be put to him [of alleged intimidation], that he then would be aware of the identity of the complainants and there might be simply a reaction to it and it was my view that if we got help from the Technical Support Section that we might be able to firm up on what was actually happening. What I had in mind there was that a member of the Technical Support Section would travel down and depending on developments that might arise that we might be able to get some video or photographic, still photographs, of these alleged visits to houses and whatever, intimidating people. That basically was what was in my mind. I ran that by Superintendent Fitzgerald, Chairman, and he had no difficulty with it. He told me to proceed to look after it and I did that as I said in my statements, Chairman, I rang the section.¹⁹¹⁰

14.100. He also told Inspector John McGinley what he had in mind. Inspector McGinley thought at the time that he would not get any help from Dublin in respect of carrying out such surveillance. Mr. John Fitzgerald in his evidence denied any knowledge of this operation until he saw Detective Sergeant Joseph Costello at a conference on the night of the 3rd of December 1996.¹⁹¹¹ Mr. Shelly said that he would not have made such an arrangement without consulting Superintendent Fitzgerald.¹⁹¹²

14.101. Detective Superintendent Shelly spoke with Detective Sergeant Costello on the telephone twice on the 3rd of December 1996 and again later that evening after the conference at Letterkenny Garda Station. He informed him that the arrests would take place the following morning and that he should be available to carry out a particular technical surveillance if required. He told him:

That if Frank McBrearty [Senior] when he left custody, that if he approached any of these people who had already made complaints or any other people that might be out there, that we would be in a position to take a photograph of him approaching individuals or their houses. Basically that was it, Chairman. He understood that he was happy with that ... I knew that [he would use] either still photograph or the video camera ... we didn't go into any great details or plans or that because we were waiting to see what development would happen. He was aware of that from

¹⁹¹⁰ Transcript, Day 603, pages 107-108.

¹⁹¹¹ Transcript, Day 596, pages 5-6.

¹⁹¹² Transcript, Day 603, pages 108-114.

*my telephone conversation with him anyway and he was happy with everything that I told him. He already had the benefit of sitting in on part of the conference as well so he would have heard what was happening there.*¹⁹¹³

- 14.102. By this stage of the investigation into intimidation five civilian witnesses had made statements upon which, it was said, the arrest of Mr. McBrearty Senior was based. Obviously there was a limited number of addresses at which those witnesses resided and at which they might be visited by Mr. McBrearty Senior or others on his behalf following his release. However, Detective Sergeant Costello was never informed of these persons' identities or their addresses so that he could view the locations at which he might have to take photographs in advance. He was not provided with the intimidation file by way of a briefing as that was not considered to be necessary.¹⁹¹⁴
- 14.103. It was suggested to Mr. Shelly in cross-examination that his account of how he proposed to use the services available to him from Detective Sergeant Joseph Costello was highly implausible. Mr. Shelly said that it was intended that Detective Sergeant Costello would use his own equipment and Garda surveillance van and the assistance of a local Garda to follow Mr. McBrearty Senior to Raphoe following his release from custody. He supposed that the local Garda would have driven the van. Mobile surveillance of Mr. McBrearty Senior would then take place and photographs or video recording could be taken of any approach made by Mr. McBrearty Senior to any of the complainants whose names he would now know, following his release. It was suggested to Mr. Shelly that, if this were so, he would have taken steps to ensure that Detective Sergeant Costello was given a profile of Frank McBrearty Senior and a copy of the intimidation investigation file, that Detective Superintendent Shelly would have ensured that proper communications were set up between Detective Sergeant Costello, Letterkenny Garda Station and himself during the course of the operation, either by radio or by mobile phone, and that he would have nominated a local Garda to guide Detective Sergeant Costello in the area and provide him with local knowledge. It was also suggested to Mr. Shelly that there was a very high risk that Mr. Frank McBrearty Senior would immediately recognise the driver of the surveillance van, if he were a local Garda, and if it were parked near or outside his home, following his release.
- 14.104. In addition, it was pointed out that Detective Sergeant Costello had given evidence that he was engaged for the purpose of static surveillance and not mobile surveillance, that is surveillance to be carried out at the houses of potential witnesses whom, it was thought, might be approached by Frank

¹⁹¹³ Transcript, Day 603, pages 138-141.

¹⁹¹⁴ Transcript, Day 603, pages 140-145.

McBrearty Senior. This would have required some element of forward planning by Detective Sergeant Costello, if only to ascertain the layout of the respective premises and their immediate surroundings and assess how best to carry out such mobile surveillance, or if it were feasible at all. The taking of such photographs or the making of a video recording could also have been carried out by local Gardaí without any expertise, as they had in other cases in the Donegal area in the past. In addition, it was suggested to Mr. Shelly that one might expect the Gardaí who were interviewing Frank McBrearty Senior to have been informed of the intended surveillance following his release and that the persons whom it was suspected might be approached by Mr. Frank McBrearty Senior following his release might be warned that this might happen, in the interests of their own personal security and well-being. It was then suggested to Mr. Shelly that Detective Sergeant Costello was brought to Letterkenny for the purpose of the covert recording of visits and that the plan as outlined by Mr. Shelly to the Tribunal and in early interviews and statements was an invention designed to cover up the true purpose of Detective Sergeant Costello's attendance. This Mr. Shelly denied.¹⁹¹⁵

Superintendent John Fitzgerald

14.105. In a statement made on the 12th of March 2002 Superintendent John Fitzgerald acknowledged that:

The services of a member from the Television and Technical Support was also anticipated. Detective Superintendent Shelly then attached to Donegal division sought these services. On the 3rd of December 1996 final preparations were made concerning the arrests to be made on the 4th of December 1996 and all to be involved were fully briefed ... I recall seeing Detective Sergeant Costello at Letterkenny Garda Station and as far as I recall it was at the conference room. I acknowledged his presence but do not recall having a conversation with him. There would be a number of reasons for his presence, one being that he would be fully briefed on the up to date situation in the investigation. As it turned out his services were not required.¹⁹¹⁶

Superintendent Fitzgerald was also interviewed by the Tribunal investigators and said that he was aware that Detective Superintendent Shelly had contacted technical services. He said that the purpose of having Detective Sergeant Costello present at Letterkenny was for "technical surveillance". He was asked to explain the kind of technical surveillance for which Sergeant Costello was required and replied:

¹⁹¹⁵ Transcript, Day 603, pages 204-225.

¹⁹¹⁶ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 189-190.

Let's say for instance that first of all, Detective Superintendent Shelly was looking after the intimidation end. We'll give you an example of the intimidation end of matters. ... We'll say that a camera needed to be set up in Raphoe. I would have no objection to that if that were the case and he called, you asked me for example, that could be an example. Also, as a result of what might come out of the interviews, the use for technical surveillance may be of use and so for that reason I have no problem with that.¹⁹¹⁷

- 14.106.** In evidence Mr. Fitzgerald told the Tribunal that he was not a party to any decision to seek the help of the Television and Technical Support Section on the 2nd or 3rd of December 1996 and that the first time he became aware of it was at the conference on the evening of the 3rd of December. He said that he had delegated the investigation of the alleged intimidation of witnesses by Frank McBrearty Senior to Detective Superintendent Shelly. At this conference Detective Superintendent Shelly told him when Detective Sergeant Joseph Costello entered the conference room that he had sought his attendance. Mr. Fitzgerald said that he did not assign any task to Detective Sergeant Costello at the conference. He expected Detective Superintendent Shelly to brief Detective Sergeant Costello and give him any direction that he thought appropriate to his investigation. He was satisfied that Detective Sergeant Costello was present only in respect of the intimidation issue, because he believed that it would have been discussed with him beforehand had Detective Sergeant Costello's assistance been sought for some other reason connected to the wider Barron investigation: though he acknowledged that he could not divide the two investigations completely. He denied any knowledge of any covert eavesdropping on visits to prisoners at Letterkenny Station. He disagreed with Mr. Shelly's recollection that Superintendent Fitzgerald had been a party to the decision to obtain Detective Sergeant Costello's services.¹⁹¹⁸

Inspector John McGinley

- 14.107.** The then Detective Superintendent John McGinley was also asked why he thought Detective Sergeant Costello was in Letterkenny. He said:

Superintendent Shelly sought assistance from that section on the basis, as I understood it, that we had planned to make all these arrests. We had also planned to arrest Frank McBrearty, Snr. for the intimidation and intimidation was widespread, as we discussed yesterday. It was felt that, following on from these arrests where people would be questioned, the facts put to them and individuals mentioned that, after that process, that people who were being questioned would be aware of who these people

¹⁹¹⁷ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 196-197.

¹⁹¹⁸ Transcript, Day 596, pages 3-70.

were in Raphoe and that this activity was liable to continue and Sergeant Joe Costello was in a position, if that had arisen. It didn't arise because, first of all, Frank McBrearty, Snr. wasn't there on the day and Joe Costello would have been in a position to go out. He wasn't known. He would have been able to travel around Raphoe and record ... he wasn't known he would have been able to do videos of any such activity.¹⁹¹⁹

- 14.108. In evidence to the Tribunal Mr. McGinley said that the decision to seek technical assistance from Dublin was made on the morning of the 3rd of December 1996 when it was also decided that Mr. Frank McBrearty Senior would be arrested in respect of the alleged intimidation of witnesses. He said:

It was during the discussion on that that Superintendent Shelly suggested, given that we had visited him [Mr. Frank McBrearty Senior] on the 20th [of November] and he had denied it ... when he was interviewed and the facts were put to him that he would be likely subsequently to go to these people and maybe have a confrontation with them, and that it would be useful to have somebody there to cover that. There was no big discussion on it, Superintendent Shelly said that he would look into it. And that was all there was to it at the time.¹⁹²⁰

- 14.109. Mr. McGinley denied having any conversation with Garda Fowley about the setting up of a visitors' room or procurement of technical assistance in order to eavesdrop on conversations as she alleged. He expanded on this theme later in his evidence:

We had been out there [to Mr. Frank McBrearty Senior] in relation to the intimidation aspect that went on all along on the 20th of November [1996]. And in fact on that date I had recorded a conversation with him. ... Essentially we went out to ask him to desist from these activities that were ongoing. I suppose had he put his hands up and said that he would or he acknowledged that he was doing it, maybe that would have been the end of it. But he didn't do that and he disputed the thing. One of the things that arose during that was he wanted to know who we were talking about and what houses he was at. ... In it he would have declined or refused to accept that he was doing those things. When it came to arrest him then, when he was to be arrested on the 4th of December in conjunction with all the others, it was felt that by putting the case to him that he would be aware of all these people who had made complaints against him and that subsequent to his

¹⁹¹⁹ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 227-228.

¹⁹²⁰ Transcript, Day 599, Q.673-675.

*release he was likely to go back and berate them or challenge them or whatever. It was on that basis that the understanding was that we would have some system there that might be able to deal with it.*¹⁹²¹

- 14.110. As readers will recall from the reading of Chapter 10 of the report, a number of witnesses had made statements to the Garda Síochána on the basis of which Inspector McGinley and Detective Superintendent Shelly had visited Mr. McBrearty Senior on the 20th of November 1996. This visit, they contend, was an effort to dissuade Mr. McBrearty Senior from approaching witnesses who had been interviewed in relation to the Barron investigation by An Garda Síochána, and it was the Garda view that Mr. McBrearty Senior was intimidating the witnesses. This was denied by Mr. McBrearty Senior. Inspector McGinley made a tape recording of the conversation with Mr. Frank McBrearty Senior, the transcript of which clearly indicates that the two officers were trying to obtain from Mr. Frank McBrearty Senior an undertaking that he would not approach witnesses in the future or, as they saw it, seek to interfere in the Garda investigation into the death of the Late Mr. Barron. Clearly Mr. McBrearty Senior did not accept that he was engaged in any such activity and would not give the undertaking sought. In this context, Mr. McGinley explained to the Tribunal that the task which it was intended to assign to Detective Sergeant Costello following the arrest of Mr. Frank McBrearty Senior:

Was to deal with the aftermath of Frank McBrearty's questioning and Frank McBrearty wasn't questioned. First of all he wasn't got on the 4th, he wasn't there. The plan was, as I understand the plan, that ... Frank McBrearty would be arrested on the morning of the 4th, he would be questioned. He'd either be released that night or the following day because it was a Section 30 arrest. ... It's unlikely that there were would have been an extension and depending on what came out of the interviews with him, then, that Sergeant Costello would be able to monitor his actions and activities subsequent. But a lot of things happened in the meantime. First of all he wasn't there [on the 4th of December] so it didn't arise. Then when he was arrested the following day, he was only in a short time when he went to the hospital and he didn't get out of the hospital for a week. Consequently, no matter how many plans you had in place, you couldn't do anything about it. ... Superintendent Shelly was of the view that when he was arrested and questioned about it, that he would be armed with this information, he would know who these people were and he would know what was being

¹⁹²¹ Transcript, Day 599, Q.705-719.

*said about him in relation to the intimidation, and given his character and so on we felt that there was a good chance that he would go back out and deal with it.*¹⁹²²

- 14.111. As already noted, the submission is made that the reasons given for the attendance of Detective Sergeant Joseph Costello at Letterkenny Garda Station by Detective Sergeant Costello, and more particularly Mr. Shelly and Mr. McGinley, are untrue and that his purpose in attending was to carry out eavesdropping on visits between civilians and solicitors and the detainees. It is submitted that the plan outlined by Mr. Shelly, in particular, for the carrying out of mobile surveillance on Mr. Frank McBrearty Senior by Detective Sergeant Costello, following his release from custody, was made up after the event in order to explain Detective Sergeant Costello's presence at Letterkenny. It was pointed out that this differs from the evidence of Mr. Costello to the effect that he was not to carry out mobile surveillance, but static surveillance. Mr. Costello contends that he only ever carried out static surveillance. As already outlined, the plan elaborated upon by Mr. Shelly at the Tribunal suffered from a number of inadequacies. The Tribunal notes that the plan seems to have become much more concrete than is evident from the statements given by Superintendent Shelly, Detective Superintendent McGinley and Mr. Costello to Assistant Commissioner Rice's investigation team in 2002. This is clearly a matter of some concern. *However, having considered all of the evidence in this matter, I have come to the conclusion that Detective Superintendent Shelly had no clear view as to what use he would make of Detective Sergeant Costello when he attended at Letterkenny Garda Station. The criticisms made of the plan as presented to the Tribunal by Mr. Shelly, Mr. McGinley and Mr. Costello are to an extent valid. Nevertheless, I do not accept that there is anything sinister about the fact that Detective Sergeant Costello was not given specific directions by Detective Superintendent Shelly or any other officer as to what he was to do. It was simply a case that Detective Superintendent Shelly did not think through what he wished to achieve in obtaining Detective Sergeant Costello's services. There was a vagueness and a disorganisation about his thinking in relation to this matter, and indeed that of other officers, that is not unsurprising to me having regard to the manner in which the Barron investigation was conducted.*
- 14.112. *I have considered the differences between the account which was given by Mr. Costello to the Tribunal investigators in relation to the knowledge that he had of the work that he was expected to do in Donegal and the evidence that he gave to the Tribunal in relation to the same matter. The account that he gave to the investigators centres very much on work*

¹⁹²² Transcript, Day 599, Q.720-726.

which might arise as a result of interviews of “a number of prisoners”. Nevertheless, there is a saving feature in that he clearly made reference to the fact that “there was intimidation”. The only relevance of this reference can be to some general briefing that he got concerning the alleged intimidation by Frank McBrearty Senior. He said that his role was “installing a video camera” and would also involve using a camera himself. He brought video equipment with him to Donegal. I do not accept that there is a significant point to be made about the fact that Detective Sergeant Costello was never given a clear indication about what exactly his work was. I am not prepared to hold that because Detective Superintendent Shelly was haphazard, both in his own mind and in the instructions that he gave to Detective Sergeant Costello, I should draw a sinister conclusion. The looseness of the plan reflected the lack of focus and wooliness of thinking of the planners.

Sergeant Martin Moylan

14.113. Sergeant Martin Moylan, in a statement made on the 14th of February 2002, said that he had no knowledge of the taping of alleged conversations in interview rooms at Letterkenny and had no recollection of seeing Detective Sergeant Costello in Letterkenny Station on the 4th of December 1996.¹⁹²³ However, in an interview with the Tribunal investigator on the 14th of May 2003 he recalled seeing Detective Sergeant Joseph Costello around Letterkenny Garda Station during the days of the detentions. When asked the purpose of Detective Sergeant Costello’s attendance he said initially that he did not know and then said:

From what I can gather it was in connection with some other IRA activity. That was my impression at the time. There was other IRA activity going on at the time. ... When I was there he never got any tasks out of the office in connection with the arrests or with anything like that.¹⁹²⁴

Sergeant Moylan had a leading role in the incident room and could be expected to understand what technical assistance was available to the investigators during the course of the detentions. He said that there was no discussion in the conference on the 3rd of December 1996 or in the briefings with respect to any duties that Detective Sergeant Costello would perform. He said that to his knowledge none of the interview rooms were “wired”. **I am satisfied that Sergeant Moylan’s speculation as to the reason why Detective Sergeant Costello attended at Letterkenny Garda Station is wrong and I would have expected that a sergeant who had a leading role in the incident room on the Barron investigation would have had a better understanding of**

¹⁹²³ Tribunal Documents – Alleged Bugging of Interview Rooms, page 140.

¹⁹²⁴ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 156-157.

Detective Sergeant Costello's presence at Letterkenny Garda Station. I did not find his testimony to be of any assistance.

Procedure Followed

14.114. All of the foregoing accounts indicate that Detective Sergeant Costello's presence in Letterkenny Station was secured through a conversation between Detective Superintendent Shelly and Detective Sergeant Costello on the 3rd of December 1996. Mr. Costello elaborated on this in an interview with Tribunal investigators. He described how, save in emergency situations, when time was of the essence, a formal procedure existed which had to be strictly complied with to procure assistance from his unit. A written application would have to be submitted to the superintendent in charge of the telecommunications section seeking such assistance. If the superintendent decided to grant the application, that decision was transmitted to his unit and he would act upon it. In this regard, Mr. Costello relied upon paragraph 44.4 of the Garda Síochána code (1995). This provision stipulated that before the services of his section could be procured an application would have to be made through the superintendent in charge of administration at the Technical Bureau. In respect of that provision he said:

That was strictly complied with, nothing would be done in relation to provision of equipment or any service without the authorisation of our own Superintendent attached to the technical bureau and subsequently attached to the telecommunications section and that request would have to be submitted to that Superintendent from the Superintendent of the person seeking the assistance. It was always made in writing or by fax.¹⁹²⁵

In cases of emergency, when there was no time to send in a written application, an application could be made by telephone to the superintendent at the bureau.¹⁹²⁶

14.115. In evidence, Mr. Costello elaborated upon the manner in which the services of the technical services unit were procured. An application was made in writing by a local superintendent to the superintendent in charge of the telecommunications section seeking assistance. That written application set out broadly the nature of the assistance sought. The operational reason for which assistance was sought was not important. On occasion, this reason was withheld or unavailable for reasons of security or confidentiality in respect of an ongoing investigation. If time did not permit the making of a formal written application by post, Mr. Costello confirmed that an application might be made by telephone. This less formal application would be followed later by a written form of application in order to complete the paperwork required by the section.¹⁹²⁷ If

¹⁹²⁵ Tribunal Documents – Alleged Bugging of Interview Rooms, page 368.

¹⁹²⁶ Tribunal Documents – Alleged Bugging of Interview Rooms, page 368.

¹⁹²⁷ Transcript, Day 597, Q.101.

upon receipt of the application the superintendent in charge of the telecommunications section thought it was appropriate that the assistance of the Television and Technical Support Unit should be given, a direction would be given to the section to provide the assistance. Detective Sergeant Costello, or another officer in his position, would then direct a member or members of his staff to provide the assistance sought, whether by providing equipment or otherwise, as directed by the superintendent.¹⁹²⁸ For that purpose, the personnel in his section would liaise with a member of the local investigation team from which the application for assistance emanated. This contact was necessary for the practical purpose of ascertaining exactly what assistance could be rendered to the local investigation team. It had the further useful consequence that the personnel in the Television and Technical Support Unit would have a clearer understanding of how they could assist and the nature of the equipment they needed to bring with them in order to render effective assistance to their colleagues.¹⁹²⁹

- 14.116. Mr. Costello gave evidence to the Tribunal that if an application was made informally by telephone, in all such cases a written document verifying the application should have been sent to the superintendent in charge of the telecommunications section from the requesting superintendent as soon as possible. In all cases he expected that a file would be created in respect of each application. That file, together with the direction was sent to his section. When the assistance had been rendered he would then write a report which would be added to that file indicating the nature of the assistance provided and return the file to his superintendent.¹⁹³⁰
- 14.117. As already noted, Mr. Costello told the Tribunal investigators that he spoke to Detective Superintendent Shelly twice on the 3rd of December. In the first phone call he referred him to Inspector Sharpe, who was acting as a superintendent in charge of the telecommunications section, on the basis that Detective Sergeant Costello could not give assistance until he was given the authorisation. In the second phone call in the afternoon Detective Superintendent Shelly informed Detective Sergeant Costello that the request had been sanctioned.¹⁹³¹ In respect of Detective Sergeant Costello's duties for the 3rd to the 7th of December 1996 no file exists. Mr. Costello said that he was very surprised that it did not exist and also said that it would be "very very unusual" for a file not to exist in respect of any such request.¹⁹³²

Inspector James Sharpe

- 14.118. In 1996 the then Inspector James Sharpe was attached to the

¹⁹²⁸ Transcript, Day 597, Q.102-112.

¹⁹²⁹ Transcript, Day 597, Q.112-125.

¹⁹³⁰ Transcript, Day 597, Q.125-150.

¹⁹³¹ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 368-369.

¹⁹³² Transcript, Day 597, Q.156-162.

telecommunications section at Garda Headquarters in Dublin. Part of his function was to provide the necessary communication facilities, including CCTV, to assist in the policing of high risk VIP visits and major sporting and musical events. A facility was also provided for the copying of relevant CCTV tapes, mostly for defence solicitors, and the provision of technical assistance to provide equipment and playback of CCTV tapes in court. At that time, Detective Sergeant Joseph Costello and three detective Gardaí formed the Television and Technical Support Unit within the telecommunications section. Their duties included the matters already mentioned and they were occasionally tasked with the installation of CCTV to assist in the investigation of crime. On the 3rd of December 1996 Inspector Sharpe was on official duty in Birmingham, having left Garda headquarters at 05.30 hours and returned at 22.00 hours on the same day. He had no recollection of any application for technical assistance from Donegal on that date or indeed for the latter quarter of 1996 because there was no written record of any such application. He said:

I have checked my desk diary for the latter quarter of 1996 without finding any request for technical assistance from Donegal during that period. I keep a record of all files passing through my office by holding top page only of each file. I have also checked these but found no file relating to request for assistance. The copies of full files in Administration Section have been searched without finding any request for technical assistance in Donegal.

On checking our records of claims for travelling and subsistence a copy of a claim was on record whereby Sergeant J. Costello claimed four nights overnight subsistence and the period of absence was stated as 5 p.m. on Tuesday 3/12/96 to 5 p.m. on Saturday 7/12/96. The duty was stated to be assistance to investigation into murder at Dunloe, Co. Donegal. The location where duty was performed was stated to be Letterkenny, Co. Donegal. The record of duty form A.85 also recorded duty at Letterkenny from 3/12/96 to 7/12/96.¹⁹³³

- 14.119.** Superintendent Sharpe was interviewed by Tribunal investigators on the 6th of July 2006. It is clear from that interview that in his absence from the unit, Superintendent Sharpe expected that contact would have been made directly with a senior officer, probably a superintendent, by Detective Superintendent Shelly, seeking authorisation for assistance. He thought it likely that if such an application were made to a senior officer for assistance in respect of a murder investigation, it would be granted. He would also have expected a senior officer to have enquired as to the reason for which such assistance was sought so that

¹⁹³³ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 232-233.

the unit would have some detail at least as to what equipment was required in order to be of use on arrival in Donegal. In addition, he expected that paperwork would have been completed and faxed through to the section either immediately or very shortly afterwards. He had no evidence to suggest that either of these events occurred. The only records that existed were in relation to the allowances claimed by Detective Sergeant Costello in respect of the matter and Detective Sergeant Costello's form A.85, which indicated the duties which he carried out for the period.¹⁹³⁴ The records clearly demonstrate, of course, that his trip to Donegal was to that extent documented and verifiable.

- 14.120. Curiously, Detective Sergeant Costello's allowance claim A.85 for the 3rd to the 7th of December 1996 indicates that he was on "confidential" duties in Letterkenny though his form for travelling and subsistence allowances, A.13, indicates that he was giving "assistance investigation into murder at Dunglow, Co. Donegal".¹⁹³⁵ These claims were properly approved by Inspector Sharpe.
- 14.121. Superintendent Sharpe confirmed in evidence to the Tribunal that the procedure to be followed in 1996 in order to obtain the services of the Technical Support Unit was as already outlined in the evidence of Mr. Costello. **I am satisfied that the expected and normal procedure was for Detective Superintendent Shelly or Superintendent Fitzgerald to submit an application in writing to the appropriate superintendent. This did not happen.**
- 14.122. In any event, if a shortcut had been taken because of pressure of time, Superintendent Sharpe expected that the paperwork would in the normal course of events have been completed and forwarded from Donegal shortly afterwards. This did not happen. If Detective Superintendent Shelly contacted the superintendent in charge of the section, it was to be expected that the superintendent would have enquired of Detective Superintendent Shelly what assistance he required. He could then decide what was necessary and, if granting the application, brief Detective Sergeant Costello on his decision and what was required. The file would, in the normal course, have been generated in respect of this request and action taken upon it. No such file exists in respect of this application. Superintendent Sharpe said that this file should contain all of the relevant paperwork including a copy of the application and a brief report by Detective Sergeant Costello as to what he actually did in compliance with the direction to assist. Superintendent Sharpe said that he would also expect that following the granting of an application to the local superintendent, the superintendent in charge in the section would have conveyed that decision to Detective Sergeant Costello with an outline of what was required. This would have enabled Detective Sergeant Costello to decide what equipment and

¹⁹³⁴ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 401-412.

¹⁹³⁵ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 309-310.

personnel were necessary in order to render effective assistance. If there were any queries in relation to the matter the Garda assigned to the duty would then normally contact a local colleague, in this instance in Donegal, involved in whatever matter was under investigation and obtain further details from him/her as to what was required. In addition, Superintendent Sharpe, then an inspector in charge of the section, expected that he would have been informed of the decision to render assistance upon his return from Birmingham, where he was on the 3rd of December 1996.¹⁹³⁶

- 14.123. It was Superintendent Sharpe's personal practice to photocopy the top sheet of every file prepared in respect of any grant of assistance. He retained all of these top sheets under lock and key in his own office. When he examined all of the top sheets that he had retained, he discovered that he was not in possession of a top sheet appropriate to a file in respect of a request made from Donegal on the 4th of December 1996 or in respect of any assistance furnished in the last quarter of 1996 to Donegal. As already noted, Superintendent Sharpe was able to retrieve copy forms A.85 and A.13 in respect of the duty and expenses and allowances claimed by Detective Sergeant Costello in respect of his duty in Donegal.
- 14.124. The fact that there is no file in respect of the assistance rendered between the 3rd and the 7th of December 1996 by Detective Sergeant Costello and that there is no copy of the top sheet of such a file in Superintendent Sharpe's private papers is open to a number of inferences. It might be suggested that for some reason the relevant documents had been removed from the place in which they had been stored because they may have contained some reference to the bugging of prisoners at Letterkenny Garda Station. Alternatively, it may be because no file was ever created in respect of the work carried out by Detective Sergeant Costello in Donegal. I am satisfied that no such file was created and consequently the top page of any such file could not have been photocopied and placed in Superintendent Sharpe's personal papers. It is clear that the normal procedure was not followed in relation to this application for assistance. I am satisfied that the absence of paperwork and the haphazard way in which Detective Sergeant Costello was summoned to Letterkenny does not give rise to any sinister implication in this instance. It is one of a number of instances of the failure on the part of the Donegal investigation team to comply with procedure in the course of the Barron investigation.
- 14.125. In cross-examination Superintendent Sharpe accepted that the Television and Telecommunication Section had the technical capacity in 1996 to carry out eavesdropping and covert tape-recording of visits as allegedly occurred at

¹⁹³⁶ Transcript, Day 605, pages 131-147.

Letterkenny Garda Station in December. He rejected the suggestion that there was eavesdropping and covert recording conducted which was documented at his section. He could not recall a single case in which Detective Sergeant Joseph Costello had carried out mobile surveillance as opposed to static surveillance using cameras or video equipment.¹⁹³⁷ Superintendent Sharpe could offer no evidence to suggest that there was any incidence of a file created in respect of work undertaken by Detective Sergeant Costello that has subsequently gone missing.¹⁹³⁸

Bugging at Ballinasloe

14.126. In this regard Mr. Costello also gave evidence that the unit had the capacity to carry out eavesdropping and covert recording of conversations in Garda stations and in that regard he informed the Tribunal that on an occasion in the early 1990's he had been directed by his Superintendent to contact a Superintendent Burke of Ballinasloe in respect of such an operation. He said:

[Superintendent Burke] told me that he had two people who would be in his station the following day. One was appearing in the local court on remand, a person who had been charged with murder and I don't know who the second person was. He asked me would it be possible to record any conversation between those two particular individuals. I had permission from my own superintendent to go to Ballinasloe, I think it was Superintendent Nolan, it was at the time, told me to go and see could I do anything for this man and help him. I went to Ballinasloe and I met some members down there, including the Superintendent. And I was asked could I put some kind of device into a cell that would record conversation and I went down to the cell and I looked and I found a bit of difficulty. But eventually there was an air vent from the outside into the cell. So I told him the only thing I could do would be to put a microphone into the cell, into this vent and wire it to a tape-recorder which would be located some place upstairs in a different room and that would be it ... so the following day, I installed this and I was told sometime later that there were two prisoners in the cell and I wanted their conversation recorded, and I recorded that conversation in the presence of the Superintendent and two other members. That was it ... At a later stage I got a request from an Inspector Hargadon at the time who was in charge of the investigation that they required five copies of the tape. So I provided five copies of the tape, but I provided them on

¹⁹³⁷ Transcript, Day 605, pages 161-200.

¹⁹³⁸ Transcript, Day 606, pages 71-80.

*standard cassette and I supplied them to the superintendent in Ballinasloe. That was my involvement that I can recall [back in 1993].*¹⁹³⁹

- 14.127. This matter was examined by the Tribunal investigators who conducted an interview with Superintendent Hargadon, who was the inspector referred to by Mr. Costello. He explained that the Garda Síochána had placed a prisoner who had been arrested on suspicion of committing an offence in the same cell as a prisoner who had confessed to the offence and was detained at the same Garda station pending his appearance on remand before the District Court. The purpose was to enable An Garda Síochána to listen to any conversation they might have and to resolve an issue which had arisen in the course of the criminal investigation. Superintendent Hargadon said:

During the course of the investigation we were aware that these two, this particular suspect who was now under arrest was the last person that the suspect had been with, that was the information we had from him and from the accused, but we weren't sure as a result of [forensic tests] ... if we were getting the full truth and we believe that if this conversation, if it was recorded unknown to them, that they might make certain admissions or they might divulge something which would resolve the issue ... on the evening before the arrest [of the suspect] and on the morning of it I met with Sergeant Costello and outlined to him what we wanted done and from what I can recall ... there was a device, a listening device, or a tape-recorder put in the cell and hard wired back up to the incident room which was at the very very top of the station and the conversation was recorded by way of a tape-recorder ... We subsequently received the tape and it was transcribed by the clerical assistant who was typing for us at the time ... It was [of benefit to us] and we were quite satisfied at the time that the suspect whom we had arrested had no involvement with [the accused] on the occasion [of the commission of the offence].¹⁹⁴⁰

- 14.128. This action was taken on legal advice and with the full knowledge of the State Solicitor; and also in reliance upon a number of English legal precedents.¹⁹⁴¹ The event was fully documented and disclosed to the accused's defence team at his trial.
- 14.129. **Consequently, I am satisfied for the purposes of this enquiry that Detective Sergeant Costello had the experience, equipment and opportunity to carry out covert eavesdropping and recording had he so wished. However, I am satisfied that he did not do so on this occasion.**

¹⁹³⁹ Transcript, Day 597, pages 110-112.

¹⁹⁴⁰ Tribunal Documents, Alleged Bugging, pages 386-393.

¹⁹⁴¹ R –v- Maqsud [1966] 1 Q.B. 688.

Detective Superintendent Shelley's Contact with Dublin

- 14.130. For his part, Mr. Shelly told the Tribunal, in relation to the application, that on the 3rd of December 1996 he telephoned the Telecommunications Section of An Garda Síochána at Garda Headquarters and was put through to Detective Sergeant Costello. He explained the position as already outlined in this chapter. He said that Detective Sergeant Costello told him that he could help him, but that Detective Superintendent Shelly would need to get clearance for him to travel to Donegal. Mr. Shelly said that he told Detective Sergeant Costello that he would take care of that.¹⁹⁴²
- 14.131. Mr. Shelly explained to the Tribunal that he contacted somebody in charge of the section and informed them that he had been speaking to Detective Sergeant Costello and why he wanted his assistance in Donegal. This person told him that there was no problem and Detective Superintendent Shelly then phoned Detective Sergeant Costello again and told him that the assistance had been authorised. Detective Sergeant Costello said that he would come up himself and would see them later that night in Letterkenny. Mr. Shelly said that it was Detective Sergeant Costello's decision to come to Letterkenny. Detective Superintendent Shelly was aware that his brother, Sergeant John Costello, whom he had known for very many years, worked in Letterkenny, but said that there was no question that he was seeking to convenience a visit to Donegal by Detective Sergeant Costello. He confirmed that he did not sign any formal application and he was surprised that there was no documentation in respect of the application for assistance. He thought that Garda Tina Fowley processed the application in the light of notes of a meeting with her which he had received in documentation from the Tribunal.¹⁹⁴³
- 14.132. I am satisfied that Detective Sergeant Costello was contacted personally by telephone by Detective Superintendent Shelly on the 3rd of December 1996 and requested to come to Donegal. Detective Superintendent Shelly was referred to a superintendent and, having obtained authorisation, reverted to Detective Sergeant Costello. The then Inspector Sharpe was away in Birmingham all of that day and I would have expected the senior officer contacted by Detective Superintendent Shelly to have contacted Detective Sergeant Costello and informed him that this application had been verbally authorised by him. I would also have expected some information to have been left for Inspector Sharpe on his return informing him that his sergeant had been authorised to go to Donegal for a number of days, if only for administrative purposes. This did not happen. I am also told that the section was extremely busy at the time as it had onerous duties to perform in the light of a European Presidency meeting that was

¹⁹⁴² Transcript, Day 603, pages 117-118.

¹⁹⁴³ Transcript, Day 603, pages 118-120.

about to take place in Dublin later in December. It was clearly outside normal procedures for Detective Sergeant Costello to deal directly with Detective Superintendent Shelly in respect of the request for assistance, having regard to the clearly established procedures within his section. However, if Detective Sergeant Costello was habitually engaged in bugging visits, it seems unlikely that on this single occasion a file would not be created. In any event the visit was documented in his submitted claim forms. In addition, the single occasion upon which he said he carried out covert taping in Ballinasloe was fully documented. I am satisfied that the relative informality of the arrangement may have resulted partly from an enthusiasm on the part of Detective Sergeant Costello to take up this assignment in Donegal in the pre-Christmas period to avail of the opportunity to visit with his brother and family. This may also explain, to some degree, a somewhat lax and informal assessment by the section of Detective Superintendent Shelly's plan in relation to the use that he would make of Detective Sergeant Costello. I am not satisfied that any attempt was made at any level to hide Detective Sergeant Costello's visit to Letterkenny, his presence there or any paperwork related to it. The dominating features of this episode were the failure of Detective Superintendent Shelly to adhere to normal procedures and his conduct of business in his usual robust way.

Garda Tina Fowley

- 14.133. The allegation of eavesdropping on visits between prisoners and their relations during the course of their detention was to some extent supported by the various accounts given by Garda Tina Fowley in the form of statements and an interview with Tribunal investigators, and later in her evidence to the Tribunal. She described a meeting that took place between herself, Detective Superintendent Shelly and Inspector McGinley on the evening of the 2nd of December 1996 in which the two officers spoke about setting up a visitors' room and "getting technical support down to set it up" in order to see what could be "gleaned" from the visit. In her view, the only way that that could be accomplished was by having the room "wired". The room chosen for this purpose, she said, was the GRA room, an office on the ground floor of Letterkenny Garda Station that was used infrequently. This is how her account unfolded.
- 14.134. On the 7th of March 2002 Garda Tina Fowley made a statement in respect of this matter and said:

I am to state that I was aware that the assistance of the Technical Support Unit, Garda Headquarters, Dublin was sought by those leading the
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investigation. At that time I understood the purpose was to install a listening device on conversations between the prisoners and any visitors they may have had. A dedicated room was set up for the purpose of prisoner visits. This room is located on the ground floor of Letterkenny Garda station. It is sited to the right hand side as one enters the main corridor from the public office. It is a first room on the right hand side. This room was referred to as the “visiting room”. I did not attend this room on the 4th of December 1996. Sergeant Joe Costello, Technical Support Section, was present in Letterkenny Garda Station on the 4th of December 1996, he is a brother of the then sergeant in charge of Letterkenny Garda station, Sergeant John Costello 15607H, now retired. I did not know Sergeant Joe Costello prior to meeting him on the 4th of December 1996. I did not see any tapes, equipment and did not listen to any recordings.¹⁹⁴⁴

- 14.135.** In a memo of interview which is unsigned by Garda Fowley but signed by Inspector J. Sheridan on the 28th of March 2002, the following is noted:

Major pre-arrest conference. Plans for visiting room in place. Requisition had been made for Technical support (official typed request) had gone from District Officer as opposed to District Office, via Divisional Office.

Couple of days in advance of 2/12/96 I rang Dominic Hutchins in Technical support to see if he was coming down, and he told me that he wouldn't that the skipper was coming down because of his family connection.

Some days prior to 2/12/96 I was present in the Incident Room when Superintendent John Fitzgerald, D/Superintendent Joe Shelly and Inspector John McGinley discussed obtaining the services of Technical Support the purpose being to “glean” information relating to the investigation from visitors to the prisoners.

The room which was used as the visiting room is now the Fines on the Spot Office. ... Never heard the use of listening device discussed again.¹⁹⁴⁵

It is also recorded that Garda Fowley could not say at whose instigation the services of the Technical Support¹⁹⁴⁶ unit were obtained. She added that she did not report this matter to the Garda authorities prior to the 18th of February 2002 but had said it to her solicitor Mr. Damien Tansey in early 2000 “as part of a verbal report”.¹⁹⁴⁷

- 14.136.** It should be noted that this memo of interview on the 28th of March 2002 was taken at Garda Fowley's home when Inspector Sheridan visited Garda Fowley in

¹⁹⁴⁴ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 81-82.

¹⁹⁴⁵ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 83-85.

¹⁹⁴⁶ I take this reference to be to the unit to which Detective Sergeant Costello was attached.

¹⁹⁴⁷ Tribunal Documents – Alleged Bugging of Interview Rooms, page 85.

order to collect the statement of the 7th of March 2002 already quoted. Garda Fowley took serious issue with the accuracy of this note in the course of her evidence. She complained that it was not read over to her and that she was not asked whether it was correct by Inspector Sheridan at the time he made it. However, she also said that she was allowed to take a photocopy of the note on the 28th of March 2002, which she retained in her possession. She said that insofar as the note suggests that a requisition had been made for technical support in the form of an official typed request from the district officer, it was incorrect. She never told Inspector Sheridan that a typed requisition had been sent or that she had in any way been involved in or had knowledge of a typed requisition being sent in relation to the attendance of personnel from the Television and Technical Support Unit. She was simply explaining to Inspector Sheridan the procedure that would normally apply. She told him that, in the normal way, an application would have to be made for assistance from the district officer in Letterkenny to the chief superintendent, but that applications to the telecommunications section would not normally be routed through the divisional office. Normally if other types of application were made to Garda headquarters they were routed through the chief superintendent and the divisional office. She also said that the note was in error in nominating Superintendent Fitzgerald as a party to the conversation on the night of the 2nd of December 1996, as she had not said that Superintendent Fitzgerald was present. Garda Fowley also said that the note was in error in suggesting that she telephoned Detective Garda Dominick Hutchin a couple of days in advance of the 2nd of December 1996 to see if he was coming down. That date should be the 4th of December 1996.¹⁹⁴⁸

Evidence of Superintendent Sheridan

14.137. Superintendent Jim Sheridan in evidence said that on the 28th of March 2002 he called to Garda Fowley's house in order to collect a statement which she had agreed to make concerning the allegation of bugging made by Detective Sergeant White. A statement was prepared following advice from her solicitor dated the 7th of March 2002. He was then an inspector and attended with Detective Garda Murray. On receipt of the statement, which was typed, Detective Garda Murray read it over to Garda Fowley who agreed that it was correct and signed it. Prior to that Garda Fowley had amended the statement on her computer by adding the addendum that the statement had been read over to her and that she agreed it was correct. Superintendent Sheridan said that he then asked Garda Fowley if he could ask her a number of questions about the statement and make notes of the exchange. Garda Fowley agreed, provided that she was furnished with a copy of the notes. He said that his notes were made as

¹⁹⁴⁸ Transcript, Day 596, Q.318-400.

an *aide memoire* in order to clarify a number of matters that were contained in her statement. He acknowledged that it was not a verbatim record of what was said by Garda Fowley.

- 14.138. The first issue between Garda Fowley and Superintendent Sheridan concerns her contention that she never told the then Inspector Sheridan that a typed requisition had been sent in respect of the application for technical support and that she had typed it. She contended that she was simply explaining to Inspector Sheridan the procedure that would normally apply. Superintendent Sheridan, for his part, interpreted Garda Fowley's description of the making of the request for assistance, as set out in her statement of the 7th of March 2002, as a clear statement that a formal typed request had been submitted to the Telecommunications Section in order to procure Detective Sergeant Costello's attendance. He quoted the following excerpt from the statement:

I am to state that I was aware that the assistance of the Technical Support Unit, Garda Headquarters, Dublin, was sought by those leading the investigation.

Superintendent Sheridan believed that Garda Fowley was aware prior to their attendance at her home on the 28th of March that a document seeking assistance was not available to the investigators. It was in that context that he asked her further questions in relation to the matter. He said:

... The statement she had made was short really on facts. One as to who was there when all these things were discussed or whatever, and so it was necessary, I felt, to delve a bit into that to establish what actually happened. She then ... in relation to the request of the requisition, she certainly, when I was talking to her was ... had ... although she couldn't be certain of it, in fairness to her, she may well have typed it. Subsequently of course that became relevant because Detective Superintendent Shelly indicated that he rang Joe Costello, but she was herself at that time ... and indeed she thought she may even have it on her computer, but she couldn't retrieve it and I do recall asking her if she did happen to retrieve it, to get me a copy of it because we didn't have any written request or any evidence of written request ... I think she was aware even prior to us going there that ... this document wasn't available ... She wasn't sure, but she was certainly I think under the impression that a request may have been made in writing for it. But it subsequently became apparent that this was not the case ... She was still ... I would say, under the impression that she may

*have typed it, but she couldn't find it, but she wasn't ... in fairness to her, certain that she had typed it, she couldn't say for definite that she had. But she certainly was under the impression and she gave me the impression that it had been a typed copy.*¹⁹⁴⁹

- 14.139. Superintendent Sheridan said that he was under the impression from her that an official typed request had been sent, but that she simply was not sure whether she had typed it or not. That is why he made the note:

Requisition had been made for technical support (official typed request) had gone from district officer as opposed to District Office, via Divisional Office.

- 14.140. Further, Garda Fowley contended that Inspector Sheridan indicated that he was not interested in hearing from her about a tape-recording covertly made by Inspector John McGinley on the 20th of November 1996, when he and Detective Superintendent Shelly visited Frank McBrearty Senior on that date. Garda Fowley alleged that Superintendent Sheridan asked her if she had ever heard Inspector McGinley's voice on tape and that she then proceeded to tell him about a tape that she transcribed on the 20th of November 1996. She said:

*The meeting came to a question where Inspector Sheridan asked me if I had ever heard Inspector McGinley's voice on the tape and I said that I had and I was referring to the tape that was made in Mr. McBrearty's premises in November 1996 and I stated to Inspector Sheridan that I had a copy of that tape and I outlined the circumstances in which I was aware that the tape came to be made. None of that discussion was recorded in this memorandum. I got the feeling from him he didn't want to know and in the matter things came to an abrupt kind of end. I asked him for a copy of the memo of interview and he said he would forward a copy onto me. I hadn't felt comfortable with the way the interview had terminated, so I suppose I was a bit brave in insisting on getting a copy because I had photocopying availability or services available at the house and I said there is no need for you to post it back to me or whatever, I can take a copy here now and walked out to under the stairs and took a copy.*¹⁹⁵⁰

She said that when she tried to tell him about this tape she noticed Inspector Sheridan's "pen going down" and this brought the discussion to a "rather blunt end".¹⁹⁵¹

- 14.141. Subsequent to the 28th of March 2002, Garda Fowley restated this complaint

¹⁹⁴⁹ Transcript, Day 614, pages 14-18.

¹⁹⁵⁰ Transcript, Day 596, page 115.

¹⁹⁵¹ Transcript, Day 596, page 97.

when she made a statement to Superintendent Coburn on the 15th of January 2003.¹⁹⁵² Superintendent Sheridan denied that he ever asked Garda Fowley whether she had heard Inspector McGinley's voice on a tape. He said that this had no relevance to his investigation as there was no allegation that John McGinley's voice was on any tape made, only that Inspector McGinley was said by Detective Sergeant White to have been listening to a tape. Garda Fowley, for her part, said in her statement of the 7th of March 2002 that she had not seen any tapes or equipment, and did not listen to any recordings. Consequently, he said, the question never arose.¹⁹⁵³ Superintendent Sheridan also said that he was not aware of the incident of the 20th of November 1996 until the statement made in January 2003 to Superintendent Coburn was brought to his attention. He said he was still unaware of what the tape was about. He contended that if Garda Fowley had an issue to take up with him about the contents of the note or if she wished to make a complaint that he had refused to note her comments about Inspector McGinley, she could have taken a copy of the memorandum that was in her possession to her solicitor and/or made further contact with him, but she did not do so.¹⁹⁵⁴ For her part, Garda Fowley contended that the memo was never read back to her and she was not asked if it was correct. Superintendent Sheridan indicated that from time to time during the course of the making of his memorandum he sought confirmation of various details and indeed read the entire memorandum to her at its conclusion.

14.142. A further disagreement between Garda Fowley and Superintendent Sheridan relates to the inclusion in the note of Superintendent Fitzgerald as a person who was present at a conversation that took place, according to Garda Fowley, between her, Detective Superintendent Shelly and Inspector McGinley on the 2nd of December 1996. This was the occasion when she contends that she was directed to prepare a room which, she inferred, would be employed for the purposes of eavesdropping on conversations between visitors and prisoners. Superintendent Sheridan contends that he included Superintendent Fitzgerald's name because it was given to him when he sought clarification from Garda Fowley as to who was present at that meeting. Garda Fowley contends that his note is in error and that she informed him that Superintendent Fitzgerald was simply at a meeting that preceded the encounter, but not for the conversation at the end of the meeting.

14.143. **I am satisfied that Superintendent Sheridan's account of his dealings with Garda Tina Fowley is truthful. I accept that he conscientiously noted her comments; that he read over his notes to her; that she was given a copy of them and that at no stage did she resile from them, nor did she ever**

¹⁹⁵² Tribunal Documents – Alleged Bugging , pages 437-443.

¹⁹⁵³ Transcript, Day 615, pages 40-45.

¹⁹⁵⁴ Transcript, Day 615, pages 39-40 and see Transcript Day, 514, pages 22-30.

communicate with him later, either personally or through her solicitor, to object to anything in the notes or excluded from them. I do not accept that Superintendent Sheridan indicated at any stage that he was unwilling to receive information from her concerning wrongdoing by putting down his pen and declining to enquire further into what she was saying. I accept his evidence that he never asked Garda Fowley whether she had heard John McGinley's voice on tape. The question simply did not arise having regard to the course of the investigation that he was following and the statement that she had made to the effect that she had not heard any tape or seen any equipment in Letterkenny Garda Station in December 1996. I do not accept that there was any element of confusion about her nomination of Superintendent John Fitzgerald as one of the officers present during the conversation of the 2nd of December 1996. I consider the presentation of these events to be somewhat contrived and a confabulation. Superintendent Sheridan and his colleague were asked to carry out a simple task which I believe they did conscientiously and honestly. I reject any suggestion that Superintendent Sheridan acted in any improper way.

The Preparation of a Room

- 14.144. It is clear from the evidence that the room which Garda Fowley said was designated as the visitors' room for the purposes of monitoring visits between prisoners and their relatives was the room assigned within the station for use by the Garda Representative Association. However, the evidence clearly indicates that that room was never used for visits between prisoners and their relatives. The only room, other than an interview room, used as a visiting room was on the first floor: this was a room normally designated as a rest room for female Gardaí. This emerged from the evidence of Mr. John Dooley and his statement of October 2005 and also from the evidence of Mrs. Róisín McConnell, Mrs. Anna Quinn and Sergeant Georgina Lohan, in which they describe this visit. It was the sole visit of a relative to a prisoner that occurred in that room that day.¹⁹⁵⁵
- 14.145. Garda Fowley was also interviewed by the Tribunal investigators about this matter on the 26th of June 2003. She was asked whether there was any discussion at the pre-arrest conference on the 3rd of December 1996 about what she was asked to do. The following exchange occurred between Garda Fowley and Tribunal Investigator, Chief Superintendent Brian Garvie (RCMP):

B.G And if they did in fact obtain that support, what was your belief that that individual would do?

¹⁹⁵⁵ See Chapter 3 of this report.

- T.F. He would bug the room, the downstairs room.
- B.G. So you would intercept the conversations by means of a listening device?
- T.F. A listening device.
- B.G. Were any of those terms used in a discussion that you overheard or were privy to between whoever had that discussion?
- T.F. I knew about it. It was frank matter. I had no qualms about it personally because these conversations weren't in any way privileged. It was visitors only. There was no indication or intent that I was aware of, that this room could be used for a solicitor's consultation. The room was set up after conference. I can remember them looking for an armchair and there's a banner ... a slang term for a female Guard, and there's a banner's rest room with armchairs in it and they wanted to take the armchairs from that to set up this visitors room. From my recollection of things, that room's referred to in custody records as the visiting room.
- B.G. Who participated in that conversation that you overheard?
- T.F. D/Superintendent Shelly was present and Inspector McGinley. I was there myself. I was part of it. There would have been other people in the room but not just privy to the conversation
- B.G. Now when you were privy and part of that discussion with McGinley and Shelly, was the term "bugging"/"listening device", utilised in the conversation or was it an inference that you drew from the discussion?
- T.F. From the discussion I knew what they were talking about, that they were talking about setting up the room and getting technical support down to set it up.
- B.G. Was the word "bugging" actually used?
- T.F. I can't say.
- B.G. Was there any doubt in your mind what they were discussing?
- T.F. No.
- B.G. Or what the intent was?
- T.F. The intent was to see what could be gleaned and that word was specifically used for prisoners' visits with family.

B.G. And the only way that that could be accomplished, in your view, was to have the room wired?

T.F. Yes.¹⁹⁵⁶

- 14.146. In evidence to the Tribunal Garda Fowley outlined what happened on the 2nd of December 1996 at the conclusion of a conference held prior to the various arrests between 20.30 hours and 22.45 hours. This was the first major conference held in respect of these arrests. She said that there was no mention of seeking the assistance of the Television and Technical Support Unit during the course of that meeting. At the conclusion of the conference, Garda Fowley said the following happened:

After the conference I remained in the conference room, Detective Superintendent Shelly and Inspector McGinley were standing in a group together in the conference room. Inspector McGinley beckoned to me and I joined in the conversation with him. They were discussing the setting up of a room that could be used as a visiting room for the purpose of monitoring ... sorry, monitoring now would be my word. For the purpose of allowing the visitors to come into the station to see the prisoners and in an effort to see what could be gleaned from their conversation during the visits. The room that was being proposed was the GRA office which is an office sited on the ground floor of the Garda station as one goes in the double doors from the day room it's to the right hand side and it's the office on the right hand side of the corridor. It's an office that was used on a very infrequent basis. The GRA would have their meeting in it maybe once a month. It later was reassigned as the Fines on the Spot office. ... I had been told that technical support ... during the conversation with Detective Superintendent Shelly and McGinley that the Technical Support Section were to come down and the term "gleaned" was used by Inspector McGinley in relation to what could be picked up from what transpired during the visits. ... Nobody ever said it was a secret. It was a very frank matter. ... It hadn't been mentioned at conference so in that respect it had been kept quiet, but there was no element of secrecy or not discussing it in the conversation that I had with Inspector McGinley and D/Superintendent Shelly. It seemed to be just another matter that had to be seen to, would I go down and see to the room. ... The gleaning word was used in connection with a visit of say a mother's or a prisoner's mother or sister or brother coming in to the station. ... So when I was

¹⁹⁵⁶ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 97-98.

*heading down the corridor I knew that I was going to see about setting up the room for visitors ... or for the prisoner's mother, brother or sister to come in and have a chat with the prisoner while in custody and technical support were going to be I suppose monitoring is the word I would put on it before the visit.*¹⁹⁵⁷

- 14.147. Garda Fowley deduced from the import of what was said by Detective Superintendent Shelly and Inspector McGinley that the gleaning of information from persons visiting the prisoner in this visitors' room would be facilitated by the use of personnel from the technical support section. She said she did this "through putting two and two together and getting four" – technical support was coming and a special room was to be set aside for prisoner visits for the purpose of gleaning what was said in the course of these visits.¹⁹⁵⁸
- 14.148. Garda Fowley then described to the Tribunal how she went to the GRA room and was met at the door of the room by Sergeant John Costello (a brother of Detective Sergeant Joseph Costello). There they discussed the logistics of obtaining furniture from the female members' room in the Garda station. She said that Sergeant Costello asked her if he could take the armchairs from the female members' room. She suggested that he should perhaps take the coffee table as well to make the room more relaxed and comfortable for the visitors coming in. She told Sergeant Costello that she was heading home and that if he wanted to get the armchairs he should do so now because normally the female members' room would be locked and each female Garda had a key to it. Sergeant John Costello then told her to go on and head home and not to worry about the matter as he would obtain armchairs from the snooker room. This was the last involvement she had with the preparation of the room. She said nothing to Sergeant Costello about the use to which the room was going to be put other than for the purpose of visits. In particular, she did not discuss with him that it would be used for the purpose of monitoring or eavesdropping on the visits.¹⁹⁵⁹
- 14.149. Garda Fowley acknowledged that the question of placing a listening device in or bugging the visitors' room was never specifically discussed or mentioned by Detective Superintendent Shelly or Inspector McGinley but she said, "I would have felt that I knew what they were talking about".¹⁹⁶⁰
- 14.150. Garda Fowley said that the next step she took in relation to this matter was on the morning of Tuesday, the 3rd of December 1996, when she telephoned Detective Garda Dominick Hutchin who was attached to the Television and Technical Support Unit, with whom she had had prior dealings. She thought he might be coming down to carry out the work and she offered him

¹⁹⁵⁷ Transcript, Day 596, pages 70-77.

¹⁹⁵⁸ Transcript, Day 596, pages 76-77.

¹⁹⁵⁹ Transcript, Day 596, pages 77-78.

¹⁹⁶⁰ Transcript, Day 596, page 79.

accommodation in Letterkenny for the duration of his stay. She said that he said he would not be coming and that “the skipper had connections in Letterkenny and Donegal and that he was doing that job”.¹⁹⁶¹

14.151. As already noted Superintendent Fitzgerald is referred to in Inspector Sheridan’s note of the 28th of March 2002 as one of the three officers present for the conversation with Garda Fowley on the 2nd of December 1996 in which she was directed to prepare the Garda Representative Association’s room at Letterkenny Garda Station for the purpose of visits to prisoners. Mr. Fitzgerald denied that he was a party to any such conversation and that was accepted by Garda Fowley in her evidence and through her counsel during the cross-examination of Mr. Fitzgerald.¹⁹⁶² It was explained to the Tribunal that Superintendent Fitzgerald was never nominated to Inspector Sheridan by Garda Fowley as a participant in the conversation and, in a further statement dated the 4th of May 2007, it was suggested that Inspector Sheridan’s note was in error in this regard.¹⁹⁶³ It was suggested that Garda Fowley’s dissatisfaction with Inspector Sheridan’s note in this regard had been expressed in her statement to Superintendent Coburn of the 15th of January 2003. This is true in respect of the absence from that note of the reference to the taping of a conversation on the 20th of November 1996 between Detective Superintendent Shelly, Inspector McGinley and Frank McBrearty Senior, as already discussed. However, there is no reference in the statement made to Superintendent Coburn to any other features of the note with which Garda Fowley now takes issue. It was very late in the day that Garda Fowley sought to correct the clear implication of the note, namely that Superintendent Fitzgerald was present at that meeting.

14.152. For their part, Mr. Shelly and Mr. McGinley both denied the conversation as described by Garda Fowley on the 2nd of December 1996. Mr. Shelly was extensively cross-examined on the issue and said that he was not present for and had no conversation at all with Garda Fowley about the setting up of a visitors’ room for the purpose of gleaning information from conversations between prisoners and relations visiting them.¹⁹⁶⁴ Mr. McGinley said in evidence:

I didn’t have that conversation with Garda Fowley. Insofar as that night is concerned ... the request wasn’t made I think until the 3rd by Superintendent Shelly, and then there would be two conditions probably attaching to that in my experience. I know when Superintendent Shelly sought both assistance from the NBCI and technical aids, I personally thought it was a waste of time at the time because in my experience any time we sought them, we

¹⁹⁶¹ Transcript, Day 596, Q.264.

¹⁹⁶² Transcript, Day 596, pages 14-16, and pages 36-42 (Evidence of Mr. Fitzgerald): Transcript, Day 596, pages 110-111 and pages 163-167 (Evidence of Garda Tina Fowley).

¹⁹⁶³ Tribunal Documents – Alleged Bugging, page 444.

¹⁹⁶⁴ Transcript Day 604, pages 3-75 and pages 86-91.

*didn't get them. Conditional before we would make any arrangements to fix up a room he would have to have confirmation that they were coming. And there was no question of that, of Sergeant Costello coming down at that time ... it didn't arise on that night. And to be going fixing up a room for something that wasn't in the offing on the 2nd is what I can't figure out ...*¹⁹⁶⁵

- 14.153. A number of aspects of Garda Fowley's account are worthy of note. Firstly, Sergeant John Costello denies that he had a conversation with Garda Fowley on the night of the 2nd of December 1996 concerning the furnishing of the visitors' room. Indeed, his A85 form, which purports to show the duty period for which a Garda was employed, suggests that he was not even on duty that evening.¹⁹⁶⁶ Secondly, Mr. Joseph Costello and Mr. Shelly both agreed that the first contact that was made with Detective Sergeant Costello by Detective Superintendent Shelly requesting his assistance in Donegal occurred late in the morning of the 3rd of December 1996: his attendance in Donegal was directed by Detective Superintendent Shelly in the course of the afternoon. Consequently, it would be difficult for Detective Garda Hutchin to be aware that a decision had been made to furnish this assistance to Donegal on the morning of the 3rd of December 1996. Unfortunately, Detective Garda Dominick Hutchin had, for a considerable period in advance of the Tribunal's hearings in this matter, been rendered incompetent as a witness for medical reasons: consequently, I do not draw any inference from any evidence concerning Detective Garda Hutchin. Thirdly, the GRA room nominated by Garda Fowley as the visitors' room which she was directed to prepare was not utilised for that purpose according to the evidence available to the Tribunal. In addition, Mr. Shelly and Mr. McGinley both denied that they had any encounter with Garda Fowley of the type described by her on the evening of the 2nd of December 1996, or on any other occasion.

Sergeant John Costello

- 14.154. Sergeant John Costello (now retired) the brother of Detective Sergeant Joseph Costello, was on the 4th of December 1996 the sergeant in charge at Letterkenny Garda Station. He was not directly concerned in the investigation of the death of the Late Mr. Barron. In a statement made on the 18th of February 2002 he said:

I was at no stage asked to provide a room for visitors to visit the prisoners or for solicitors to visit the prisoners. I am a brother of retired D/Sergeant Joe Costello of the Garda Technical Support Unit and I recall seeing Joe in Letterkenny Garda Station on 4/12/96. I asked Joe what he was doing in

¹⁹⁶⁵ Transcript, Day 599, pages 130-142. See also pages 170-208.

¹⁹⁶⁶ Tribunal Documents – Alleged Bugging of Interview Rooms, page 482.

Letterkenny and he said he was down with some equipment for Supt. Joe Shelly. I did not ask Joe what the equipment was or I did not see what equipment he had with him. Joe was most of the time in my office on 4/12/96 and 5/12/96. I am not aware of any listening devices or bugging devices having been placed in any interview room in Letterkenny Garda Station or any other room in the station.¹⁹⁶⁷

- 14.155. In evidence Mr. John Costello told the Tribunal that on the 2nd of December his tour of duty was as follows:

I finished at 6 o'clock. I would say Garda Fowley is mistaken, that it wasn't me she met. She may have met some other sergeant, it could be the duty sergeant that would be on duty from 10.00 a.m. to 6.00 p.m., that's a possibility, I can't answer that. All I can tell you is that I wasn't there. There are several reasons I would say that. I live eighteen miles away from the station, so when I finish work at 6 o'clock, I go directly home. And there are certain things in relation to the room. First of all, to the GRA office, where the Divisional GRA Committee would hold their meetings. That room, to my recollection, was normally locked. Well it would be an inappropriate room for me to go into without the presence of a member of the GRA. Because we'd have different issues from time to time. They would have the files in there, maybe not locked away. So I can't see myself entering that room without the presence of a GRA member, to be quite honest with you ... I did not have access. I had no key to that office. To my recollection the only members who would have a key to that office would be members of the GRA executive and possibly the superintendent, he would have a pass key ... I would say the second point is one in relation to the armchairs. I can't honestly see myself taking in armchairs for a visitors' room. There were quite comfortable chairs available throughout the station, with padded seats and padded backs ... I don't think I would have got armchairs or mentioned armchairs. The third point is that it is alleged that I mentioned the armchairs in the female rest room. I had absolutely no knowledge of what furnishings were in the female rest room. In my ten years that station was open that I was there, I think I stood once in that room. So I would have no knowledge of what furnishings were in it.¹⁹⁶⁸

- 14.156. I am satisfied that Garda Tina Fowley's evidence in relation to this

¹⁹⁶⁷ Tribunal Documents – Alleged Bugging of Interview Rooms – pages 187-188.

¹⁹⁶⁸ Transcript, Day 603, pages 1-12 and pages 33-71.

conversation is unreliable. I accept Mr. John Costello's evidence that he was not present in Letterkenny Garda Station on the 2nd of December 1996 at the time when Garda Fowley said that she met him and had a conversation with him about preparing the Garda Representative Association room. I do not accept Garda Fowley's account of her later meeting concerning this matter and her attempts to explain away elements of the memorandum made by Inspector Sheridan which she now finds it inconvenient to maintain. On this occasion I am satisfied to accept the evidence of Mr. McGinley and Mr. Shelly that there was no conversation from which Garda Fowley would have "gleaned" that covert recordings of visits to prisoners by relatives would be undertaken in the GRA room which she was then asked to prepare. Consequently, I cannot treat the story told by her as corroborative of the allegations of bugging made by Detective Sergeant White.

Sergeant White's Meeting with Detective Sergeant Costello

- 14.157. As already set out, Mr. White said that early in the day on the 4th of December 1996 he met Sergeant Costello at Letterkenny Garda station and introduced him to Detective Garda John Dooley with whom he was conducting interviews that day with Mrs. Róisín McConnell. He said that he asked Detective Sergeant Costello how the tapes were going and that the Detective Sergeant replied with words to the effect that "we had trouble with them early in the morning but they are OK now."
- 14.158. In evidence to the Tribunal Mr. White said that he first saw Detective Sergeant Costello at Letterkenny Garda Station on the 4th of December 1996 when he came through swing doors at the end of the Detective Unit corridor and he was walking along with Detective Garda Dooley on his right hand side. Though he thought this had occurred earlier on in the day and said as much in his statement, he could not say why he had fixed the incident as occurring earlier on in the day. He described the meeting in the following way:

The very first part I remember is walking along the corridor outside the Detective Branch office, going towards the front of the station. I have no idea where we were before that. I was walking with John Dooley. And about twenty feet in front of me or thirty feet I saw Joe Costello coming towards me. He was on the same side of the corridor as I was. I was happy to see him because I hadn't met him in, maybe I don't know, two or three or four years before that. And we always got on well. He is a quiet spoken man, a very nice man, always was. I got on well with him. I can't remember, I don't think

we shook hands, but if we had, I would have said "hello Joe, how are you doing, how's it going?" Then I remembered that John Dooley was beside me ... well he reciprocated the 'hello' part and 'how are you doing', that type of thing. I can't remember the words. Both of us were happy to see one another. Then I remember John Dooley beside me and I introduced John Dooley to him. I told him I thought that John was a sound man, I worked with John for maybe a year, a year and a half, before that. And I probably told him that John Dooley is a good worker, simple as that. That type of thing. But it wasn't just a 'detective I met that day' type of thing, that we were close, and I asked him, I said "how are the tapes going?" Without any hesitation or any question as to why or whether he should talk in front of John Dooley or not, he just said they were going bad in the morning, but that they are okay now. Whether they are the exact words or not I cannot be exactly sure. I think they were. And that was ... he said that in a reassuring voice to me, as such. I am not sure if John Dooley and Joe Costello shook hands or not, I don't think they did. But he acknowledged John Dooley and spoke to him for a second or two and then John Dooley just left ... I have no memory of discussing the tapes further with him, although I feel that we should have said something further in relation to it ... it was on the first floor of Letterkenny Station, facing towards the roadway. We were walking towards the road ... The Detective Inspector's office would be behind us on the right ... the Detective Sergeant's door would have been just slightly behind us to the right or abreast or it, probably a little behind us and the door to the store room ... is on the left.¹⁹⁶⁹

- 14.159. Mr. Dooley said that this incident occurred much later in the day at about 18.00 hours or 18.30 hours. He gave evidence that Sergeant White shortly afterwards, in the canteen of the Garda station, made reference to the fact that a visit then taking place between Mrs. Róisín McConnell and her mother, Mrs. Anna Quinn, was being "bugged". Mr. White had no memory of this. Mr. White had no specific memory as to what he did next. However, he said:

I do know that it was in my mind that I shouldn't have told John Dooley, I shouldn't have said it in front of John Dooley about the tapes, but then I remember the kitchen, him asking me or maybe telling me that the place was bugged and he was amazed in one way and another. I suppose he was happy to be in the loop.¹⁹⁷⁰

¹⁹⁶⁹ Transcript, Day 604, pages 123-125.

¹⁹⁷⁰ Transcript, Day 604, page 128.

He fully recalled being in Detective Garda Dooley's company in the kitchen later on, but could not recollect any specific discussion concerning the visit of Mrs. Quinn to Mrs. McConnell and the fact that it was being bugged or taped.

- 14.160. Mr. White's contention was that the practice of covert eavesdropping as a tactic in relation to visits to prisoners was something known only to a few people. In that context he was asked why he raised the issue of tapes in the presence of Detective Garda John Dooley and Detective Sergeant Costello. He said:

It was a spur of the moment thing to do. It really was. I shouldn't have asked him the question in John Dooley's presence ... As soon as I did it I knew that I shouldn't be saying it. But I trusted John Dooley that he wouldn't talk about it to other people, I had been working with him for maybe a year and a half at the time ... I felt I was in the company of two men I trusted and I did trust both men equally I would say. I felt it wouldn't go any further because I knew that John Dooley was tight about things, he wouldn't be out talking to civilians or to other uniformed Gardaí about it ... but if I had three or four seconds to think about it, I probably wouldn't have said it in his company.¹⁹⁷¹

He added that one of the main reasons for raising the issue in his presence was to impress Detective Garda Dooley with knowledge of this matter.¹⁹⁷² Mr. White did not see any tape-recording taking place. He does not know where within the station the equipment was located or the room in which the taping was done. He did not see any listening device.

Detective Sergeant Joseph Costello

- 14.161. Detective Sergeant Costello (now retired) denied any such meeting. In his statement of the 1st of March 2002 he said:

I know John White since 1980 when he was attached to the Garda Technical Bureau. I recall meeting him in the car park of Mcllhenney's in Ballybofey one day during the period 3rd to 7th of Dec. '96. He was alone when I met him and we had a general conversation, about work and day to day matters. I did not meet or speak to him in Letterkenny Garda Station on the 4th Dec. '96. I had no contact with any of the persons who were arrested and detained in relation to the death of Richard Barron, at Letterkenny Garda Station on the 4th Dec. '96. I was not in any interview room in Letterkenny Garda Station while I was on duty there. I did not place any listening device in any interview room or any other room in Letterkenny Garda Station while I was on duty there.¹⁹⁷³

¹⁹⁷¹ Transcript, Day 605, pages 84-85.

¹⁹⁷² Transcript, Day 605, page 85.

¹⁹⁷³ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 237-238.

In an interview with the Tribunal investigators on the 21st of June 2006 Mr. Costello denied having listening devices or placing listening devices in Letterkenny Garda Station.

14.162. Mr. Costello described in evidence what he did on the 4th of December 1996. He said that he went to Letterkenny Garda Station at 08.00 hours and called to the incident room. He enquired as to the whereabouts of Detective Superintendent Shelly and was informed that he was gone to a meeting and would be away for a period of time. He remained around the incident room. Sometime later he went to see his brother whom he knew would be commencing work at approximately 09.00 to 10.00 hours. He went to the office of the sergeant in charge on the ground floor of the building and spoke to his brother for a period of time. He then went to Ballybofey for a period. He said that he probably returned to the incident room when he returned from Ballybofey and then returned to his brother's office and thereafter remained "around the place" but did not carry out any duties.¹⁹⁷⁴ He said that, in the absence of Detective Superintendent Shelly, he did not seek directions from any other officer, because it was the policy of his section that when requested to do something they dealt only with one man. If that person was not available at the time, the policy of the section and his policy was to wait until he had an opportunity to speak to him. If Detective Superintendent Shelly had delegated this duty to somebody else he would have spoken to that person. In any event, he was not approached by any officer, nor was he directed by Detective Superintendent Shelly to take direction from any other person. He presumed this had slipped Detective Superintendent Shelly's mind. He said that he was present at the Garda station at 18.00 hours but did not attend any conference at that time. However, he did attend a conference later on in the evening at which the statement of admission of Frank McBrearty Junior was read out.¹⁹⁷⁵

14.163. Mr. Costello acknowledged in his evidence that he may have seen Sergeant John White at Letterkenny Garda Station in the course of the 4th of December 1996. However, he had no recollection of being introduced to Detective Garda John Dooley by Sergeant White. He denied that he ever had a conversation with Sergeant White concerning the recording of prisoners either in Letterkenny Garda Station or anywhere else. He also said that on the 4th of December, he met casually with Sergeant White over the lunch period, perhaps some time between midday and 01.00 hours, at McElhinney's car park in Ballybofey. He said:

I know that it was daylight. I mean it was wintertime and it was during the day, I know it was. And I parked the van in McElhinney's car park. Now Mr. Chairman, I don't know what I was doing over

¹⁹⁷⁴ Transcript, Day 597, pages 59-61.

¹⁹⁷⁵ Transcript, Day 597, pages 61-66.

*there. It quite possibly was something personal or private thing I was doing for myself. I don't know, I can't recall. When I got out of the van I was approached by Sergeant White and I was surprised to see him there in the car park. We had a general conversation, when I say general conversation we probably talked about people that we knew, we both knew. In the job, Sergeant White's conversation was generally about the job. And I do recall that I asked him was he was not involved in the interrogations or the interviews. That I was surprised and he said that he was, words to that effect, that he was. He went away about his business and I went off about my business. ... It possibly was in the midday, when I say midday, lunchtime. It possibly would have been lunchtime.*¹⁹⁷⁶

- 14.164. It is appropriate to make a number of observations about this evidence. Firstly, in his statement of the 1st of March 2002, Mr. Costello was very uncertain about the day upon which he met with Sergeant White in Ballybofey. In that statement he thought that the meeting occurred "one day during the period 3rd to 7th of December, 1996". In his evidence he placed the meeting firmly on the 4th of December 1996 at or about lunchtime. In addition, he added the detail that they had a conversation as to whether Sergeant White was involved in the interrogations at Letterkenny Garda Station. It is difficult to understand how Mr. Costello moved from his uncertain recollection of March 2002 to the certitude with which he told the Tribunal that the meeting had occurred in McElhinney's on the 4th of December 1996 and involved the mention of Sergeant White's involvement in the interrogations. Secondly, some of Sergeant White's movements are referred to in the custody record of Róisín McConnell and in other evidence. He and Detective Garda Dooley concluded an interview with Mrs. Róisín McConnell at 11.55 hours. Detective Garda Dooley, in his evidence in respect of the detention of Róisín McConnell, stated that he then went to the incident room with Sergeant White where he first saw post mortem photographs of the Late Richard Barron which were subsequently utilised in the interviews of Mrs. McConnell and Mrs. Katrina Brolly. He said that he and Sergeant White then went for a meal, outside the station, before returning to the station at approximately 13.40 hours.¹⁹⁷⁷ Mr. John Fitzgerald gave evidence to the Tribunal that he extended the detention of Mrs. Róisín McConnell at 14.10 hours on the afternoon of the 4th of December following a consultation with Garda Martin Leonard at 13.50 hours and Sergeant White at 13.45 hours approximately. These facts suggest that Mr. Costello is entirely mistaken about the timing of his meeting with Sergeant White in Ballybofey, if it occurred. Mr. White denied that he ever met Mr. Costello in McElhinney's car park in Ballybofey at any stage. He

¹⁹⁷⁶ Transcript, Day 597, pages 78-79.

¹⁹⁷⁷ Transcript, Day 496, pages 18-20

said in evidence that he went to lunch in Letterkenny with Detective Garda Dooley at approximately 13.00 hours and did not travel to Ballybofey as alleged.¹⁹⁷⁸ It should be noted that the evidence of Detective Garda Dooley in relation to these matters was given during the course of the Róisín McConnell sub-module, well in advance of the evidence given by Mr. Costello in which he said, for the first time, that the date of this meeting was the 4th of December 1996 and consequently, this evidence could not have been anticipated by Detective Garda Dooley. The Tribunal is not satisfied that the meeting described by Mr. Costello in McElhinney's car park in Ballybofey at lunchtime on the 4th of December 1996 took place on that date. If such a meeting took place it is more likely to have occurred on some other date.

Detective Garda John Dooley

- 14.165.** Detective Garda John Dooley was working with Sergeant John White during the course of the 4th of December 1996 and together with him interviewed Róisín McConnell during her detention and later in the evening interviewed Mrs. Katrina Brolly with him. Detective Garda Dooley made a series of admissions in a statement on the 14th of October 2005 concerning the ill treatment of Róisín McConnell and Katrina Brolly carried out by him and Sergeant White. As will be seen he also gave information in that statement which tended to support Detective Sergeant White's allegation that a visit or visits had been tape recorded by the Gardaí.
- 14.166.** The first reference by Detective Garda Dooley to this issue came in a report, which he made to the superintendent at Glenties, Co. Donegal on the 21st of May 2001 in respect of a meeting that he had with then Detective Sergeant John White on the 9th of May 2001. In that short report, Detective Garda John Dooley reported that Detective Sergeant White contacted his home by telephone on the 9th of May 2001 and left a message for Detective Garda Dooley to the effect that Detective Sergeant White was in a local café with his family and requested that he contact him there. He indicated in his report that the following happened:

When I returned home I got the message and on my way to the local shop I met Sergeant White who was just leaving Glenties. He had his mother and children with him. He stopped his car, got out and stood on the footpath with me and after exchanging pleasantries he made the following comments: Quote "I am going to make a twenty-five page statement shortly and I am going to include the bugging that went on in Letterkenny Station the day we were interviewing Róisín – remember I introduced you to Joe Costello". I informed D/Sgt White that I was in a hurry as I had chores to attend to. This meeting lasted less than two

¹⁹⁷⁸ Transcript, Day 604, pages 163-165; and Day 605, pages 39-43.

minutes. I can remember being introduced by Sgt White to a man by the name of Joe Costello who was said to be a brother of Sgt John Costello who was Sergeant i/c., Letterkenny at the time.

In the course of the report Detective Garda Dooley allegedly said that he did not encourage this contact with Detective Sergeant White.¹⁹⁷⁹

- 14.167. Detective Garda Dooley's next reference to the matter is contained in a statement made on the 13th of February 2002 in which he said that he was not aware of any listening devices placed in the interview room in which he questioned Róisín McConnell on the 4th of December 1996. He said:

I recall that Róisín McConnell had a consultation with her Solicitor in the interview room that day, the 4th Dec '96, it was early in the day around 11 am. I was not aware of that consultation being recorded. I did not hear and I am not aware of any tape recordings of conversations between Róisín McConnell and her Solicitor, or Katrina Brolly and her Solicitor, being played over by D/Inspr. John McGinley, in Letterkenny Garda Station on the 4th of Dec '96 or any other day. I can recall meeting D/Sgt. Joe Costello of the Garda Technical Support Unit, Garda Headquarters, Dublin in Letterkenny Garda Station on the 4th of Dec '96. I was introduced to him by Sgt. John White, he was introduced to me as Joe Costello a brother of Sgt. John Costello, the then Sergeant In Charge of Letterkenny Garda Station. I was not aware of D/Sgt. Joe Costello's duties in Letterkenny on that day, the 4th Dec '96.¹⁹⁸⁰

- 14.168. In a statement made by Detective Garda Dooley on the 14th of October 2005 in which he made a large number of admissions in respect of the ill-treatment of Róisín McConnell and Katrina Brolly, he also said, in relation to this incident, that some time in the early evening he was introduced to Detective Sergeant Joseph Costello by Sergeant White on their return from a meal break. Sergeant White and Detective Garda Dooley had been interviewing Róisín McConnell up to 16.20 hours, following which they went to the incident room where the memo of interview was handed in. He said that they remained in the incident room for some time and discussed the progress of the investigation. He stated:

Sergeant White and I then went on a meal break and left the building. Following our return to Letterkenny Garda Station, while walking along a corridor we met a man who was dressed in civilian attire. Sergeant White shook hands with him and introduced him to me as D/Sergeant Joe Costello from Garda Headquarters. Sergeant White informed me that he was a brother of Sergeant John Costello who was then the Sergeant in

¹⁹⁷⁹ Tribunal Documents – Alleged Bugging of Interview Rooms, page 436.

¹⁹⁸⁰ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 177-178.

charge of Letterkenny Station. I knew Sergeant John Costello. I remarked that there was a striking resemblance between the two brothers. Sergeant White and D/Sergeant Costello had great welcome for each other. Sergeant White discreetly asked D/Sergeant how were the tapes going and D/Sergeant Costello replied that they were talking very low. I did not know what Sergeant White and D/Sergeant Costello were talking about. This was the first I had heard anybody mention tapes. I was very confused. As I did not know D/Sergeant Costello I walked away and indicated that I was going to the kitchen in Letterkenny Garda Station where I was joined a short time later by Sergeant White. Sergeant White informed me that the visitor's room in Letterkenny Garda Station had been bugged by D/Sergeant Costello and that Róisín McConnell's mother, Mrs. Anna Quinn, was visiting her there at that time. I was shocked to hear that the visitors' room was bugged. I was not made aware of the nature of the device used or how it was put in place. I did not see the tapes being made, the device used, the tape recordings nor was I invited to listen to the recordings made. I cannot remember the exact time of meeting D/Sergeant Costello but I am of the belief that it was around 18.30pm as Sergeant White and I had spent time in the incident room following our meeting with D/Sergeant Costello prior to our final interview with Róisín McConnell which commenced at 19.25pm. The reason for visiting the incident room was to establish any progress had been made by the previous interview team.¹⁹⁸¹

It is noteworthy that Detective Garda Dooley's account, though quite detailed, puts the encounter at a point much later in the day than Detective Sergeant White.

14.169. In evidence Mr. Dooley gave the following account of the meeting:

Chairman, it was after we came back from our tea and I was walking down the corridor with Sergeant White. I am not sure, we may have been going to the incident room at the time ... and this man approached from the opposite direction and John White shook hands with him and he introduced me to him as Sergeant Joe Costello, a brother of Sergeant John Costello, who was the Sergeant in charge of Letterkenny at the time. I noted to myself there is a striking resemblance between the two brothers. They had a big welcome for each other, Sergeant White and himself, they obviously knew each other. Sergeant White said to Joe Costello "how are the tapes going?" and he says "they're talking very low" and I felt they may have wanted to have a private

¹⁹⁸¹ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 327-328.

conversation and I said to John White, I says "I'll go to the kitchen, you'll get me there". Now I can't put a time on this Chairman, an exact time, but I know the 6.00 o'clock news was on. And after some minutes Sergeant White came to the kitchen and I just said to him "what was all that about?" and he says that Róisín McConnell had a visit from her mother, that was on the first floor, that's where the visit was, or where the room was, and that the room was bugged, but there was difficulties because they were speaking very low. We went from there then to the incident room to check on progress and we came back and commenced our final interview with Róisín McConnell ... I am one hundred per cent sure about this. I mean, I never saw Sergeant Costello before or since until I saw him outside here this morning, I recognised him instantly.¹⁹⁸²

- 14.170. In a statement made by Garda Joan Gallagher in respect of Garda Dooley's statement of admission in respect of wrongdoing to Mrs. McConnell and Mrs. Brolly, she said:

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 Detective Sergeant Costello and did not hear what they had discussed.¹⁹⁸³

- 14.171. For his part, Mr. White felt that the encounter between the three men took place much earlier in the day than 18.00 hours. Also, he did not recall informing Detective Garda Dooley that Mrs. McConnell and her mother were being taped.¹⁹⁸⁴ Mr. Dooley also accepted that he may have been told by Sergeant White not to mention anything of this matter to anybody else.¹⁹⁸⁵ It should also be noted that Mrs. McConnell was in fact visited by Mrs. Anna Quinn between 18.16 hours and 18.45 hours and that the visit was supervised by Garda Georgina Lohan, who, under the ordinary custody regulations would have been entitled to remain and take a note of anything that was said between the two. Detective Garda Dooley went into the kitchen where he was later joined by Sergeant White. He said that following this conversation about the taping of this visit they then went to the incident room where they prepared themselves for the next interview with Mrs. Róisín McConnell, which commenced at 19.35 hours.

¹⁹⁸² Transcript, Day 595, pages 14-17; and Day 476, pages 66-67.

¹⁹⁸³ Tribunal Documents – Alleged Bugging of Interview Rooms, page 342 (Statement received by the Tribunal 23rd March 2006).

¹⁹⁸⁴ Transcript, Day 595, pages 39-41.

¹⁹⁸⁵ Transcript, Day 595, page 24.

- 14.172. I am satisfied that Sergeant White met Detective Sergeant Joe Costello at approximately 18.00 hours on the 4th of December 1996 in the presence of Detective Garda Dooley. I am further satisfied that a comment was made by Sergeant White to Detective Sergeant Costello such as “how are the tapes going?” I accept the evidence of Mr. White and Mr. Dooley that he replied to the effect that there had been difficulty in the morning, but that it was alright now. I am not satisfied, as a matter of probability, that the reference to “tapes” meant that Detective Sergeant Costello had been tape-recording conversations of suspects with visitors, either solicitors or relatives. It may be that the comment had its origin in the fact that Detective Sergeant Costello was engaged in video-recording as part of his normal duties from time to time. Nonetheless, I am satisfied on the evidence of Mr. White and Mr. Dooley that such a conversation occurred.
- 14.173. In this regard I am satisfied to accept the evidence of Mr. White that he did not meet with Detective Sergeant Costello in McElhinney’s car park in Ballybofey at lunchtime on the 4th of December, 1996. I accept the evidence of Mr. White and Mr. Dooley that, at that time, they were together. They had concluded their morning business at Letterkenny Garda Station and then went to a downtown café in Letterkenny where they remained until they returned to the Garda Station later in the afternoon at approximately 13.40 hours when Superintendent Fitzgerald consulted with Sergeant White in relation to the extension of the detention of Róisín McConnell. Mr. Costello’s account of this meeting went from a high degree of uncertainty as to when it occurred to one of certainty. Initially he said that he may have met Sergeant White between the 3rd and the 7th of December 1996 in Ballybofey, whereas in evidence he specifically said it was lunchtime on the 4th of December 1996. I do not accept his evidence in this regard.
- 14.174. While I am satisfied that Sergeant White told Detective Garda Dooley that the purpose for which Detective Sergeant Costello attended at Letterkenny was to eavesdrop on visits to prisoners and to record them, I am not satisfied that this in fact happened. I am satisfied that it was said by Sergeant White with a view to impressing Detective Garda Dooley, conveying to him that he had insider knowledge of secret taping that he shared with Detective Sergeant Costello and which he was now willing to share with Detective Garda Dooley. Mr. White, in evidence accepted that part of the reason that he engaged in further conversation about the matter in the kitchen at Letterkenny Garda Station with Detective Garda Dooley was to impress him.

- 14.175. The further allegation made by Detective Sergeant White was that he went to the Detective Inspector's office on the first floor of Letterkenny Garda Station and that when admitted to it by Inspector John McGinley he saw a tape-recorder. According to Detective Sergeant White, Inspector McGinley then played a five to seven second portion of tape for him containing the voice of Mr. James Sweeney, solicitor. This evidence, if accepted, would be unequivocal evidence of eavesdropping upon a solicitor attending upon one of the detainees on the 4th of December 1996. It is to that central allegation that I now turn.

Encounter with Inspector John McGinley

- 14.176. Detective Sergeant White described a meeting with Inspector John McGinley, said to have occurred later on the 4th of December 1996, after his meeting with Detective Sergeant Costello. He alleges that he called to the Detective Inspector's room at Letterkenny Garda Station and met Inspector McGinley. The door was unlocked by the Inspector and he entered the room. There was a tape recorder on the table and he asked Inspector McGinley whether there was anything of relevance on the tape regarding his interview with Mrs. Róisín McConnell, to which Inspector McGinley replied that there was not. This is how he described the encounter:

Later on the 4th Dec 96 after my discussion with Joe Costello, I called to the door of the D/Inspectors office in Letterkenny Garda Station, I put my hand on the door handle, but it was locked. I heard voices within the room. The door was then opened by D/Inspector John McGinley, who is now a Detective Superintendent. I entered the office alone, John McGinley locked the door after I had entered. He had a long black coloured twin-deck tape recorder on his table. I asked him if there was anything of interest on the tapes regarding my interview with Róisín McConnell and he said, there was not. I asked him what the quality was like and he pressed a button on the tape recorder and I heard a voice, who I recognised as Mr. James Sweeney Solicitor, speaking. D/Inspr. McGinley turned off the machine and we both agreed that the quality of the recording was perfect. I did not hear anyone else speaking on the machine. Before I left the D/Inspectors office I asked him to contact me if anything of interest relative to Róisín McConnell came up. I did not hear or see any tape recorders after this. ... How I know that the voice on the tape recording I heard with John McGinley at Letterkenny Garda Station was on the 4th Dec 96 was that of James Sweeney Solr., is that I had early spoken to Mr. Sweeney in Letterkenny Garda Station that day, while he was present when I was interviewing Róisín McConnell for about twenty minutes. From the time

that D/Supt. John McGinley pressed the button on the tape recorder until he turned it off, five to seven seconds had elapsed. I do not remember the words spoken by Mr. Sweeney, they were of no interest to me. This tape was played solely to show me the quality of the tape.¹⁹⁸⁶

14.177. Mr. White in evidence to the Tribunal said:

And later on in the day I was upstairs and I knocked ... I think it's on the D.I.'s door, the Detective Inspector's door at the time that I knocked on. At the time I had very little knowledge, of Letterkenny Station, but I was looking for John McGinley and it was in relation to something else, I can't remember, maybe Joe Shelly wasn't there at the time, and I wanted to talk to him about, I suppose, what was going on, how the interviews were going, that type of thing and get a general ... have a general chat with John McGinley. I knew him reasonably well at this stage. I knocked on the door. He said "hang on". He opened the door and he had his left arm more or less up against the door and then he says "come in". So I came in. And I asked him ... the machine was on the table quite obviously. It was quite obvious John McGinley trusted me. Simple as that, you know. But I think anybody would have because they would know I was a long time in plain clothes. Maybe if John Dooley came in he wouldn't have opened the door. Simple as that. The table was directly in front of us, parallel to the door, and there was a black, what I would call a twin deck machine. I asked him where the tapes were going, there was no big question of 'what are you talking about?' or anything else, you know. He says "there's nothing coming out of it". I asked him how was the quality, because I talked to Joe Costello about the quality earlier on, and he said the quality was good. He pressed the button on the machine for four or five seconds and I heard Mr. Sweeney's voice on it. I heard no other voice. And the quality was excellent. As far as I am concerned it was excellent.¹⁹⁸⁷

14.178. Later in the course of this sub-module Mr. White had an opportunity to give a more detailed account:

I am walking to the door and I am walking in the direction of the back of the station and I put my hand in the door and I hear noises inside and inside somebody's having a meeting there or whatever. So I go to walk away, but immediately as I do the door opens ... or the door is unlocked. I hear the door being unlocked and the door

¹⁹⁸⁶ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 70-74.

¹⁹⁸⁷ Transcript, Day 565, pages 91-92.

is opened immediately. John McGinley is standing there with his left hand on the door and he says to me "o' it's you", or "hello" or something like that, you know. He stepped back to let me in. A small bit. The door wasn't open the full way. I walked in. He locked the door after me. I saw the machine on the table, the black twin deck machine on the table and I knew then without saying a word to John McGinley more than likely what he was doing, because locking the door after me seemed to be a most unusual type of thing to happen anyway in a detective office. And the fact that I heard someone talking, there was nobody else in the room when I walked in. So it had to be coming from a recorder or a radio and I didn't think it was a radio. And I just said hello to him then, we exchanged, I suppose, pleasantries or whatever. It wouldn't be the same pleasantries now that I had with Joe Costello by any means. It was "hello John, how are you doing", that type of thing. And I asked him was he listening to the tapes and he immediately said he was. I made that assumption from what I just told you. And I was certain anyway myself and I asked him is there anything coming out of it in relation to Róisín McConnell that could help me, he said there wasn't. That was, I suppose, disappointing to a certain degree, you know. I think I asked him was there anything else ... I certainly would have asked him was there anything else coming from any other tape or any other prisoner that would give us hope and no, there wasn't and then my only ... I suppose the only thing I could ask after that was, my curiosity was, "what was the sound like?" and that's when he pressed the button, I asked him what the sound was like, he pressed the button. And I said five years ago, I said five to seven seconds, that's about right. It had what I would describe as a droning voice of Mr. Sweeney. I knew his voice from that morning because I spoke quite a lot to him that morning and that was it, just turned off. I didn't hear any other voice, either male or female, or anything else ... All that was on it was Mr. Sweeney's voice, you know. In the station that day you have to assume he is talking to a client when he is recorded, but certainly no other voice. It was stopped in mid-sentence when the button went off, I am certain about that.¹⁹⁸⁸

- 14.179. Mr. White could offer no reason as to why he went to the Detective Inspector's room that day. He suspected, in retrospect, that he was looking for Detective Superintendent Shelly to find out how things were going and obtain an update from his "boss" to ascertain from him whether there was anything on the tape:

¹⁹⁸⁸ Transcript, Day 604, pages 140-142.

he knew that Detective Superintendent Shelly would tell him if there were. He presumed that he looked for Detective Superintendent Shelly in his own office, in the conference room, the kitchen, and the Detective Branch office and assumed that not having found him he went to the Detective Inspector's office.¹⁹⁸⁹ This, of course, differs somewhat from his evidence as quoted above.¹⁹⁹⁰

- 14.180. Mr. White also accepted that he never enquired specifically of Inspector McGinley about Mr. Sweeney's interview with Mrs. McConnell, but asked only in specific terms about whether anything had emerged from tapes in relation to Mrs. McConnell and about the quality of the sound on the tape.¹⁹⁹¹ He agreed that what Inspector McGinley was coincidentally listening to was "most definitely" in relation to Mrs. McConnell. He assumed that it was her interview with Mr. Sweeney, although he did not hear Mrs. McConnell's voice.¹⁹⁹² He said:

*I asked was there anything coming out of the tapes in relation to Róisín McConnell and he said "no there wasn't" and I said "let me know if there is" and he said he would. Now, he went over and he opened the door, he unlocked the door and I left.*¹⁹⁹³

- 14.181. He did not believe that he returned to Detective Garda Dooley following this encounter with Inspector McGinley or that he informed him of what he had been told. He felt that he had told Detective Garda Dooley enough at that stage. He confirmed that it was after the discussion with Detective Garda Dooley in the kitchen that he had the encounter with Inspector McGinley.¹⁹⁹⁴ He could not say where he went after the encounter with Inspector McGinley other than that he came out of the Detective Inspector's room and turned right.¹⁹⁹⁵

- 14.182. Detective Superintendent McGinley's response to this allegation is contained in a statement made on the 13th of March 2002 in which he denied the occurrence of this incident. He stated that:

These allegations refer to the recording of conversations between Róisín McConnell, Katriona Brolly and their solicitor on [the 4th of December 1996]. He also alleges that I had possession of a transcript of such a recording and that I played it for him in the office of the D/Inspector, Letterkenny on the 4/12/96. These allegations are completely false. No such recording of conversations between prisoners and their solicitors or any other persons were made at Letterkenny Garda Station on the 4/12/96 or any other time. I never had possession of any such transcripts as alleged. Sergeant White alleges that this took place in the office of D/Inspector,

¹⁹⁸⁹ Transcript, Day 604, pages 142-143.

¹⁹⁹⁰ See paragraph 14.177 above.

¹⁹⁹¹ Transcript, Day 604, pages 146-148.

¹⁹⁹² Transcript, Day 604, pages 148-149.

¹⁹⁹³ Transcript, Day 604, page 151.

¹⁹⁹⁴ Transcript, Day 604, pages 150-153.

¹⁹⁹⁵ Transcript, Day 604, pages 160-162.

Letterkenny Garda Station on the 4/12/96. I wish to point out that at this time I was a Uniform Inspector at Letterkenny Garda Station and my office was on a different corridor in the station. There was no D/Inspector attached to Letterkenny Garda Station at this time and this office was unoccupied. However, the D/Inspector's office was taken into use as an interview room on the 4/12/96 due to the number of prisoners in custody and the requirement for additional interview rooms. As far as I can recall Mark McConnell was interviewed in this office for the duration of his period of detention which was between 8.22 am and 8.20 pm on 4/12/96. It would therefore have been impossible for me to have had any such meeting with Sgt. White as alleged. I was appointed as D/Inspector at Letterkenny Garda Station on the 27th January 1997, certain renovations were carried out to this office and I only took up occupancy at this office sometime towards the end of February 1997. I know these allegations are completely false and vexatious and I know of no reason why D/Sgt. White is now making them.¹⁹⁹⁶

In an interview with the Tribunal investigator Chief Superintendent Garvie (RCMP) on the 2nd of September 2003 Detective Superintendent McGinley was again asked about these allegations. He said:

It's completely untrue and false and vindictive. I mean there was no solicitor. I'm 30 years in the Guards. I've never heard, seen or have been a party to any solicitor anywhere ever having his conversation taped. It didn't happen in Letterkenny that day. It didn't happen any other day and it never happened and it's completely wrong to suggest that.¹⁹⁹⁷

- 14.183.** In evidence to the Tribunal Mr. McGinley described the allegation made by Detective Sergeant White as ridiculous. He said that the alleged encounter "just didn't happen".¹⁹⁹⁸ He said that on the 4th of December 1996 he was a uniformed inspector, though acting in plain clothes. He did not take up his formal role as Detective Inspector until the 27th of January 1997. The Detective Inspector's office referred to by Detective Sergeant White was not used by him in December 1996 and was unavailable to him when he was formally appointed as a detective inspector. Its former occupant at that time continued to store his uniforms, correspondence and personal effects in the detective inspector's office. In the weeks following Detective Inspector McGinley's formal appointment to that rank it was renovated and redecorated. He did not occupy that office until some time in late February 1997. It was his belief that Detective Sergeant White, in making these false allegations, had forgotten that Mr. McGinley was not a

¹⁹⁹⁶ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 224-225 (made to Inspector James Sheridan).

¹⁹⁹⁷ Tribunal Documents – Alleged Bugging of Interview Rooms, page 228.

¹⁹⁹⁸ Transcript, Day 599, pages 155-156.

Detective Inspector on the 4th of December 1996 and did not occupy the detective inspector's office at that time. He was still formally a uniformed inspector operating from a uniformed inspector's office. Mr. McGinley also made the point in evidence that when making his statement in 2002, Detective Sergeant White forgot that the Detective Inspector's room was used throughout the day as an interview room with Mark McConnell. He also said:

It seems to me this is, this and Mr. Dorrian and the Democrat, it's Sergeant White conducting this. Making these disclosures through the media and political circles and otherwise. Despite the fact that five years before he was given control of the investigation in August 1997. He worked with Superintendent Lennon until it was finished. He never raised any of these issues. He never made any reference to them in the file and here five years later all these issues come up when he is under pressure himself for other matters. So to go back to the question you asked me in relation to the interview on that day. When Sergeant White made these allegations five years ago, he forgot that on the 4th of December I wasn't in the Detective Inspector's office. He forgot it was being used as an interview room and how I couldn't possibly have been in there. If I did for instance want to do as he is suggesting I would have been doing it in my own office where I would have had privacy and so on. You couldn't do it in a room that was designated as an interview room.¹⁹⁹⁹

- 14.184. Mr. White advances the case that Mr. McGinley's credibility has been undermined on previous occasions in relation to other matters and that he adopts a simple approach of denial of wrongdoing when confronted. In particular, Mr. McGinley has been criticised for not telling the truth in relation to evidence that he has given in other chapters of this report. Regrettably, that comment could be made of Mr. White in respect of other matters. **I do not propose to determine the matter on that basis. Nevertheless, there are a number of features of Mr. White's account of this event that I find difficult to accept. I do not accept that if Sergeant White specifically went looking for Detective Superintendent Shelly, as the person who might be able to tell him what had emerged from the tapes or was reviewing the tapes, he accidentally came across Inspector McGinley in the Detective Inspector's room carrying out that very function. I do not accept that if he had found Inspector McGinley carrying out that function he would not have made specific enquiries of him as to what was on the tapes concerning Mrs. Róisín McConnell and the visits that she had with her solicitor and mother. I am**

¹⁹⁹⁹ Transcript, Day 599, pages 160-165.

satisfied that she gave a great deal of detail to her solicitor in consultation, and an interrogator would have been interested in what was discussed, how the questioning was affecting her and whatever else had come out of the consultation. I note that Mr. White in his evidence said that he only heard Mr. Sweeney's voice on the short excerpt of tape that was played to him: however, Mr. Dorrian in his evidence said that Mr. White told him that he heard both voices on the tape: that is Mrs. McConnell and Mr. Sweeney. In addition, I am satisfied that in locating the Detective Inspector's office as the place where he found Inspector McGinley in his statement of 2002, Detective Sergeant White was making the error suggested by Mr. McGinley, and that he had forgotten that Mr. McGinley had not been appointed to the rank of Detective Inspector until January of the following year. I am also satisfied that Inspector McGinley had not taken up occupation of that room and was operating as a uniformed inspector from a different office at that time. In rejecting the evidence of Mr. White in this regard I am also taking into account all of the evidence which I have already chronicled in this chapter, together with the chronology of events in the course of the 4th of December, 1996, which in my view so severely limits the opportunity for the encounter described as to make it highly improbable. It is to that chronology of events that I now turn.

Mr. Sweeney's Attendance with Mrs. Róisín McConnell

14.185. Mr. James Sweeney, solicitor, visited Mrs. Róisín McConnell in the course of her detention at Letterkenny Garda Station on the 4th of December 1996 as already set out in chapter 3 of this report. This was the only visit by Mr. Sweeney to Mrs. McConnell during her detention. Mr. Sweeney told the Tribunal that his consultation with Mrs. McConnell commenced at 10.55 hours in the interview room. During the course of this consultation Sergeant White and Detective Garda Dooley, the interviewers, left the interview room. The custody record also reflects this. During this period Mr. Sweeney advised Mrs. McConnell generally as to her rights. Mr. Sweeney then went outside to speak to Sergeant White and Detective Garda Dooley at 11.10 hours and requested that he be allowed to remain for the completion of their period of interview. Sergeant White permitted this because he was nearing the end of the interview. Mr. Sweeney said that he also asked for a copy of the memorandum of interview. The interview resumed at 11.20 hours and was completed at 11.35 hours. At this stage the two interviewers left the interview room and Mr. Sweeney was left alone with Mrs. McConnell. Mr. Sweeney said that he understood that the interviewers left in order to obtain a copy of the memorandum of interview for him. The interviewers returned after a

short interval to the interview room (recorded at 11.50 hours) and informed Mr. Sweeney that they could not provide him with a copy of the notes of interview. They remained for a short further period and then left (recorded at 11.55 hours). Mr. Sweeney left the interview room at 11.56 hours.²⁰⁰⁰ It would appear that it is to this interview that Detective Sergeant White may be referring in his statement of the 25th of February 2002, in which he alleged that Inspector McGinley played a short segment of tape to him containing the voice of Mr. James Sweeney,²⁰⁰¹ although Mr. White said that this was not necessarily so.

- 14.186.** The two Gardaí and Mr. Sweeney are agreed that there was only one consultation between Mr. Sweeney and Mrs. McConnell. Their first interview with her commenced at 08.51 hours and concluded at 11.55 hours. It is not suggested that any encounter took place between Sergeant White, Detective Garda Dooley and Inspector McGinley before 11.55 hours. Mr. White told the Tribunal that he presumed that the consultation between Mrs. McConnell and her solicitor would be recorded.²⁰⁰² He accepted that he did not conduct himself at that time on the basis that the consultation was being taped. He took no steps after the consultation at 11.55 hours to discover what, if anything, had been recorded of this interview between Mrs. McConnell and her solicitor.²⁰⁰³ He explained in evidence that it was up to those listening to and recording consultations to inform an interviewer if anything of any value had been recorded. He said that it would have been inappropriate for him to approach any of his colleagues engaged in this activity and that they would not have appreciated such an approach. The system operated on the basis that if anything was heard of interest to an interviewer it would be conveyed to him. However, as already seen, this did not prevent him from later looking for Detective Superintendent Shelly whom he believed would have known what was on the tapes in the station, which led him, he alleged to the office of the Detective Inspector as already described.

Opportunity to Meet in the Detective Inspector's Office

- 14.187.** Mr. White also accepted in evidence that upon the conclusion of this interview at 11.55 hours, he went with Detective Garda Dooley to the incident room where he handed in the originals of the notes of interview. These notes were then photocopied. He said that he also carried out enquiries by telephone with an individual mentioned by Mrs. McConnell in the course of the interview and that this took at least twenty minutes. He said that he believed that neither he, nor Detective Garda Dooley left the incident room much before 13.00 hours.
Though, understandably, unable to give the exact time at which they left the station to go to lunch downtown, Mr. Dooley and Mr. White agreed

²⁰⁰⁰ Transcript, Day 475, pages 110-161 (Evidence of James Sweeney) and Tribunal Documents – Róisín McConnell, page 381.

²⁰⁰¹ Tribunal Documents – Alleged Bugging of Interview Rooms, pages 73-74.

²⁰⁰² Transcript, Day 604, page 102.

²⁰⁰³ Transcript, Day 604, Q. 108-110.

that they left the station for approximately an hour for lunch and upon the evidence given by them I am satisfied that this occurred sometime between 12.30 and 13.40 hours. As already noted, Sergeant White and Detective Garda Dooley returned to the Garda Station in time for Sergeant White to consult with Superintendent Fitzgerald about the granting of an extension of Mrs. McConnell's detention at approximately 13.40 hours. It is clear that the opportunity to meet Detective Sergeant Costello when in the company of Detective Garda Dooley had not arisen before lunchtime. Even if it had, the opportunity for an encounter between Sergeant White and Inspector John McGinley thereafter was limited in the early afternoon to a period after 13.45 hours and before Sergeant White and Detective Garda Dooley recommenced their interview with Mrs. McConnell at 14.25 hours. The opportunity for such a meeting in the Detective Inspector's office was further limited by the fact that Mark McConnell was being interviewed throughout the day in that office from 09.20 hours with various breaks until 20.20 hours. One such break occurred at lunchtime between 13.18 hours and 14.05 hours, during which Mr. McConnell was held in a cell. Therefore the opportunity for an encounter between Sergeant White and Inspector McGinley in the Detective Inspector's room was limited to a short period between 13.45 hours to 13.50 hours and 14.05 hours approximately. On the evidence, I am satisfied that it did not occur during this period. Indeed, Mr. White agreed in evidence with Detective Garda Dooley that his meeting with Detective Sergeant Costello was more likely to have occurred later on in the course of the day at 18.00 hours approximately.²⁰⁰⁴

- 14.188. Mr. White also agreed in evidence that there was no possibility for an encounter with Inspector McGinley during the course of the afternoon because of the respective duties being performed by Sergeant White and Inspector McGinley and the continuing interviewing of Mark McConnell in the Detective Inspector's office. During the afternoon, Sergeant White and Detective Garda Dooley interviewed Mrs. McConnell from 14.25 hours until 16.20 hours. Inspector McGinley interviewed Mr. McConnell from 14.45 hours to 15.55 hours. Later Inspector McGinley interviewed Mrs. McConnell between 16.45 hours and 18.00 hours. Inspector McGinley was free from 15.55 hours to 16.45 hours and Sergeant White was free from 16.20 hours. So there was a theoretical possibility for them to meet, but not in the Detective Inspector's office, because that was continuously occupied by Mark McConnell and other Gardaí who were interviewing him between 15.56 hours and 18.00 hours.²⁰⁰⁵ The remaining window of opportunity for an encounter between Inspector

²⁰⁰⁴ Transcript, Day 604, pages 136-138.

²⁰⁰⁵ Tribunal Documents, The Arrest and Detention of Mark McConnell, pages 314-315.

McGinley and Sergeant White in the Detective Inspector's office occurred after 18.00 hours.

- 14.189. Inspector McGinley left the interview with Mrs. Róisín McConnell at 18.00 hours, leaving her behind in the company of Detective Garda Harkin. Her interview continued until 18.16 hours when she was visited by her mother Mrs. Anna Quinn in the room reserved for female Gardaí on the first floor of Letterkenny Garda Station. I am satisfied on the evidence in respect of the arrests and detentions of Mr. Mark McConnell, Mrs. Róisín McConnell and Mr. Frank McBrearty Junior that Inspector McGinley went to the incident room after leaving the interview with Mrs. McConnell and was present in the Garda station when Mrs. Quinn first arrived and was brought to see her daughter at 18.16 hours. Mark McConnell was taken from the Detective Inspector's room at 18.00 hours to a cell where he remained until 19.05 hours. He then returned to where he remained in the interview room until his release at 20.20 hours. Therefore the only opportunity for an encounter between Sergeant White and Inspector McGinley in that office occurred between 18.00 hours and 19.05 hours. That period is further limited in light of the fact that I am satisfied that Inspector McGinley was otherwise engaged up to 18.16 hours. There remained, however, a window of opportunity for such an encounter of approximately fifty minutes. This was further reduced when we consider the account of Mr. Dooley concerning the timing of his encounter with Detective Sergeant Costello.
- 14.190. In that regard, as I have already outlined, I am satisfied that the meeting between Sergeant White and Detective Garda Dooley and Detective Sergeant Costello took place at some time between 18.00 hours and 18.30 hours, and perhaps a little after, as described by Detective Garda Dooley. I am also satisfied that Detective Garda Dooley, having left Detective Sergeant Costello and Sergeant White went to the kitchen where he was later joined by Sergeant White who made a reference to Mrs. Anna Quinn's attendance at the station to visit Mrs. McConnell and informed Detective Garda Dooley that this visit was being recorded. Mr. Dooley described in evidence how he and Sergeant White then went from the Kitchen to the incident room to check on progress and then returned and commenced their final interview with Mrs. McConnell at 19.35 hours.²⁰⁰⁶ For his part, Mr. McGinley told the Tribunal that he left the Garda station some time after the conclusion of the interview with Róisín McConnell for a meal break and to bring his son to swimming. Mr. McGinley gave this explanation for his absence from the station originally in an entirely different context to the one now under discussion and before it had become clear that the

²⁰⁰⁶ Transcript, Day 595, pages 19-21.

window of opportunity for an encounter as described by Sergeant White had been narrowed down to this short period. **I am satisfied on the evidence that Mr. McGinley was not present at Letterkenny Garda Station between 18.18 hours and 19.05 hours and that the encounter described by Mr. White is unlikely to have taken place at that time.**²⁰⁰⁷

Visits to Prisoners

14.191. It should be noted that only six of those arrested on the 4th of December 1996 were detained at Letterkenny Garda Station. Those arrested earlier in the day were Mrs. Róisín McConnell, Mr. Mark McConnell, Mrs. Charlotte Peoples and Mr. Frank McBrearty Junior. Two other persons arrested during the course of the day, Mr. Mark Quinn and Mrs. Katrina Brolly, were also detained at Letterkenny Garda Station. The Tribunal has already set out in detail in previous chapters the relevant facts concerning their detentions. Apart from the allegations made by the detainees concerning their custody, it was also necessary to examine the visits that each of them received from solicitors and relatives during the course of their detention, in an effort to identify the occasions upon which the tape recording of such visits might have taken place. It was important to understand the extent to which persons were allowed to visit alone and out of the hearing of the Gardaí and whether the visitors and the detainees were left with an impression that they could speak freely and not be overheard by a Garda. An important feature of the bugging allegation made by Detective Sergeant White was that effective eavesdropping could be facilitated by the Gardaí upon two prisoners or a visitor and a prisoner if they were ‘boxed’ together so that they might exchange unguarded comments which could then be picked up on a microphone and overheard by the Gardaí.²⁰⁰⁸ In this context it is clear that while detained at Letterkenny at the same time, no effort was made to “box” Mr. Mark McConnell and Mrs. Róisín McConnell or Mr. Mark McConnell and Mr. Frank McBrearty Junior or any of the other detainees together in a room in the course of their respective detentions. In addition, each detainee had different experiences in terms of professional visits and visits from relatives.

Mrs. Róisín McConnell

14.192. **It has already been outlined that Mrs. Anna Quinn visited her daughter Mrs. Róisín McConnell between 18.16 and 18.45 on the 4th of December 1996.** Her first visit took place under the supervision of Garda Georgina Lohan.²⁰⁰⁹ It did not take place in the Garda Representative Association room on the ground floor, but in the room designated for use by female Gardaí on the first floor. The only other visit received by Mrs. McConnell in the course of the day was from her

²⁰⁰⁷ See Chapters 3, 4 and 7.

²⁰⁰⁸ Transcript, Day 605, pages 23-27.

²⁰⁰⁹ See Chapter 3. Also Tribunal Documents Arrest and Detention of Róisín McConnell, page 382, also Transcript, Day 475, pages 89-93.

solicitor as already described. She was kept apart from her husband during the course of the day and was denied the facility of contacting her family immediately following her arrest by Sergeant White. The visit by Mrs. Quinn to Mrs. McConnell appears to be the only visit received by any of the detainees that was conducted in this visitors' room. Detective Garda Dooley in his statement on the 14th of October 2005 said that he was informed by Sergeant White that the visitors' room in Letterkenny Garda Station had been bugged by Detective Sergeant Costello and that Mrs. McConnell's mother, Mrs. Anna Quinn, was visiting her there at that time which was sometime around 18.30 hours. **In all the circumstances I am satisfied that this visit was not covertly taped.**

Mark McConnell

14.193. Mr. Mark McConnell was interviewed in the detective inspector's office on the first floor of Letterkenny Garda Station throughout the course of the day. Mr. James O'Donnell, his solicitor, had a consultation with his client between 10.30 hours and 11.10 hours and I am satisfied that this consultation took place in the interview room. Mr. McConnell had no further consultations with his solicitor in the Garda station and did not receive any visits from any of his relations during the course of the day. It will be recalled that Detective Sergeant White alleged that he met with Inspector John McGinley in the detective inspector's office, on which there was a table upon which he saw a tape recorder. He said that a five to seven second portion of the tape was played to him in which he recognised James Sweeney's voice. **If he heard Mr. Sweeney's voice it was not taped during the course of any visit to Mr. Mark McConnell.**

14.194. In addition, it should also be recalled that Inspector McGinley refused a further visit by Mr. James O'Donnell to his client at 15.20 hours on the 4th of December 1996, on the basis that the solicitor had already been afforded reasonable access to his client.²⁰¹⁰ This was a clear opportunity, if one was sought, to eavesdrop and tape record the solicitor's visit. It appears to me to be unlikely that Inspector McGinley would have foregone such an opportunity had he been engaged in this alleged bugging. Mr. McConnell was not brought to see any other prisoner in the course of his detention.

Charlotte Peoples

14.195. Mrs. Charlotte Peoples was interviewed during the course of her detention in one of the designated interview rooms on the ground floor of Letterkenny Garda Station. She did not have a consultation with her solicitor during the course of the day. However, she was visited by her mother Mrs. Catherine "Dolly" Eaton between 15.15 hours and 15.35 hours and I am satisfied that this visit took place

²⁰¹⁰ Tribunal Documents, Alleged Bugging, pages 271-278.

in the interview room on the ground floor adjacent to the interview room in which Mrs. Róisín McConnell was being interviewed.²⁰¹¹ In this instance, it is clear that Mrs. Eaton was not brought to a specially designated visitors' room, which one might have expected had it been specially prepared to eavesdrop on her conversation with her daughter. The Tribunal has already found that the member in charge failed to ask Mrs. Peoples if she wished to see Mr. Kieran Dillon, solicitor, who had made telephone enquiries asking whether she wanted to see him. She was not specifically asked whether she wished to see Mr. Dillon and earlier refusals to seek a solicitor were relied upon by the member in charge instead. The Tribunal has already accepted the member in charge's evidence that these omissions were not due to any calculated or devious motive on his part. This is a further indication that there was no strenuous effort made to ensure that Mr. Dillon could attend with his client so that such a consultation might then be listened to covertly.

Frank McBrearty Junior

14.196. Mr. Frank McBrearty Junior was interviewed on the first floor in Room No. 225, which is at the back of the station. Mr. James Sweeney, solicitor, visited Mr. McBrearty Junior in the interview room between 10.20 and 10.51 hours. He received no further visits from his solicitor during the course of his detention and received no other visits.²⁰¹² He was not brought to see any other prisoner in the course of his detention. Mr. Sweeney took extensive instructions from Mr. McBrearty Junior at the time. There is nothing to indicate that this conversation was covertly taped.

Mark Quinn

14.197. Mr. Mark Quinn was arrested later in the afternoon of the 4th of December 1996 and was interviewed in the traffic sergeant's office on the first floor of Letterkenny Garda Station. He did not receive a consultation from any solicitor during the period of his detention but he was visited by his wife, Mrs. Donna Quinn, in the interview room between 23.40 and 00.08 hours.²⁰¹³ It would appear that this visit was interrupted at 23.58 hours when the member in charge, who had brought Mrs. Quinn to the room, returned to inform Mr. Quinn about his right to have questioning suspended. In this instance Mrs. Quinn appears to have been left alone in the room with her husband for a period.²⁰¹⁴

²⁰¹¹ Transcript, Day 457, pages 4-11 (Evidence of Garda Kyne); Transcript, Day 464, pages 17-20 (Evidence of Detective Sergeant Henry); Transcript, Day 456, pages 20-23 (Evidence of Mrs. Dolly Eaton); Transcript, Day 456, pages 129-131 (Evidence of Mrs. Charlotte Peoples).

²⁰¹² Transcript, Day 507, pages 59-61 (Evidence of Mr. James Sweeney) and Tribunal Documents – Arrest & Detention – Frank McBrearty Junior, pages 444-447.

²⁰¹³ Tribunal Documents – Alleged Bugging, pages 284-289.

²⁰¹⁴ Transcript, Day 445, pages 78-79.

Katrina Brolly

- 14.198. Mrs. Katrina Brolly was arrested and detained later on the evening of the 4th of December 1996. She was questioned in an interview room on the ground floor opposite the sergeant's office in Letterkenny Station. She was visited by Mr. James O'Donnell, solicitor, between 21.35 hours and 22.10 hours. This visit was recorded as having taken place in the interview room.²⁰¹⁵ Mrs. Brolly did not receive any visits from her relations though her husband, Mr. Eunan Brolly, was refused a visit in the course of her detention. This would have been a further opportunity to eavesdrop on a private conversation between a husband and wife had the Gardaí been so minded, but it was not availed of.
- 14.199. There is only one instance of a civilian visitor being directed towards a 'visitors room' namely the visit of Mrs. Anna Quinn to her daughter, Mrs. Róisín McConnell. Other civilian visitors were brought to the interview rooms. Inspector McGinley refused to allow Mr. Mark McConnell's solicitor, Mr. James O'Donnell, to consult with him at 15.20 hours. If he knew that the room was "wired" for sound, he was foregoing the opportunity to eavesdrop on a further consultation between a solicitor and client in refusing the visit. The same can be said in relation to the refusal to Mr. Eunan Brolly of a visit with his wife, Mrs Katrina Brolly. Also, one might have expected the Gardaí to facilitate and encourage a visit between Mr. Kieran Dillon, solicitor, and Mrs. Charlotte Peoples. **This evidence in respect of the visits actually received by the detainees, the location of these visits, and the fact that prisoners were not brought together and left alone for periods indicates to me that that there was no plan whereby visitors and detainees would be brought together in a designated room or rooms for the purpose of covertly monitoring or recording their conversations. If that was the plan, it was very poorly organised and executed.**

Conclusions

- 14.200. The following are the conclusions that I have reached in respect of this sub-module:
1. **On the 3rd of December 1996 Detective Sergeant Joseph Costello of the Television and Technical Support Unit at Garda Headquarters was requested to come to Letterkenny Garda Station to assist in the investigation of the death of the Late Richard Barron. He was requested to do so by Detective Superintendent Shelly and arrived at Letterkenny Station on the evening of the 3rd of December 1996. He attended a conference then being conducted at the station. It was a pre-arrest conference held in relation to the anticipated arrests the**

²⁰¹⁵ Tribunal Documents – Arrest & Detention of Katrina Brolly, pages 190-194: see also Chapter 9 – and Transcript, Day 429, pages 57-59.

following morning of a number of suspects who were to be taken to Letterkenny and Lifford Garda Stations following their arrests. It was alleged that Detective Sergeant Costello was summoned to Letterkenny Garda Station in order to provide technical assistance to the investigation by eavesdropping upon and recording the conversations of solicitors and relatives who might visit the various detainees in the course of the day at Letterkenny Garda Station. The evidence given by Mr. Joseph Shelly, Mr. Costello and Mr. John McGinley satisfied me that there was considerable vagueness about the intended use to which Detective Sergeant Costello's technical abilities were to be put during the course of these detentions. I am satisfied that his role at the time was not clearly thought out by Detective Superintendent Shelly and was not clarified to Detective Sergeant Costello during the course of his attendance at Letterkenny Station. Indeed, he remained on duty in Letterkenny Station until the 7th of December 1996 without direction. His role was explained to me in different ways. It was said that he was to be available at the station in case anything developed from any of the interviews to be conducted with the detainees. It was also suggested that he might be used to carry out surveillance on witnesses whom, it was suspected, had been intimidated by Frank McBrearty Senior and on whom Mr. McBrearty Senior might call following his release from custody. This was thought to be a reasonable possibility because in the course of being interviewed about this alleged intimidation, the Gardaí believed that Mr. McBrearty Senior would become aware of the names of those who had made allegations against him and might approach them afterwards. It was unclear to me whether this proposed surveillance was to be static or mobile. For his part, Detective Sergeant Costello did not engage in mobile covert surveillance. It was submitted to me that the reasons offered for Detective Sergeant Costello's attendance were inconsistent, vague and implausible. However, the Tribunal has on too many occasions in the course of its enquiry into the death of the Late Richard Barron been confronted by various inadequacies and lack of thought in decisions made in the course of that investigation. I am satisfied that, though there was a vagueness and inadequacy in the thinking underlying Detective Sergeant Costello's presence at Letterkenny Garda Station, this was not because of any sinister plan on the part of Detective Superintendent Shelly and Inspector McGinley to employ him for the purposes alleged. It was a further example of the ill-

disciplined and haphazard nature of that investigation.

2. Normally an application for assistance to the Television and Technical Support Unit would be made in writing to the Superintendent or acting Superintendent in charge of the section. In this instance Detective Superintendent Shelly telephoned Detective Sergeant Costello directly. The then responsible officer, Inspector Sharpe, was out of the country on the day on which contact was made. Mr. Shelly gave evidence that having telephoned Detective Sergeant Costello, he then got authorisation from another superintendent in the section before telephoning Detective Sergeant Costello again, and confirming to him that his presence at Letterkenny Station had been authorised. If no written application had been made for some reason, such as pressure of time, and an application was made by telephone, it was expected that the applicant, in this instance Detective Superintendent Shelly, would, in the immediate period thereafter, ensure that a written application was forwarded to the section. The written application was the basis upon which a file would then be created within the section. This file would ultimately record all work carried out in respect of the request and contain a report by the Garda who carried out the work requested. No such written application was submitted in this case, and I am satisfied that no file was created. Though the absence of a file is unusual, I am not satisfied that it necessarily implies a sinister purpose for Detective Sergeant Costello's trip to Donegal. Apart from the formal procedural lapses to which the Barron investigation was prone, the evidence also indicates that at the time a Sergeant John Costello, a brother of Detective Sergeant Joseph Costello, was stationed as the member in charge at Letterkenny Garda Station. The assignment, once it was offered, was happily accepted by Detective Sergeant Joseph Costello as it also facilitated a pre-Christmas visit to his brother and his brother's family in Donegal. The possibility exists that the informal application of Detective Superintendent Shelly was not subjected to the usual strict tests adhered to by the Television and Technical Support Section. The informality of the process extended to how Detective Sergeant Costello was informed of his posting, not by his own superior, but by Detective Superintendent Shelly. He readily accepted direction from the Detective Superintendent and, having regard to the rank of the officer concerned, did not seek to question it. If he had any inclination to question the Detective Superintendent's direction, this was

probably lessened by the prospect of fitting in a family visit prior to Christmas. I am satisfied that Detective Sergeant Joseph Costello for his part attended at Letterkenny Garda Station for bona fide reasons at the request of Detective Superintendent Shelly and would have carried out any assignment given to him whilst in the station relevant to his expertise. I am satisfied that Detective Superintendent Shelly did not intend that Detective Sergeant Costello's duties at Letterkenny Garda Station would extend to eavesdropping upon and tape-recording the conversations of solicitors and relatives with various detainees, and that on this occasion Detective Sergeant Costello did not engage in such activities. I am satisfied that this allegation is false.

3. Detective Sergeant White said that he met early in the day with Detective Sergeant Costello in the company of Detective Garda John Dooley. He said that he introduced Detective Garda Dooley to Detective Sergeant Costello and asked Detective Sergeant Costello "how the tapes were going?" to which Detective Sergeant Costello replied that they had trouble with them early in the morning, but they were okay now. He said that he was aware from talking to Detective Sergeant Costello that conversations between prisoners and other persons were being recorded, but that he did not know who or where. He said that he had inferred this from various conversations with Detective Sergeant Costello and from his own experience over the years as a detective. Detective Garda John Dooley agreed that such a meeting had taken place, but said that it had taken place at 18.00 hours to 18.30 hours approximately on the evening of the 4th of December 1996. From this conversation Mr. White asked the Tribunal to infer that Detective Sergeant Costello was present at Letterkenny Garda Station for the purpose of eavesdropping upon and tape-recording conversations between solicitors and relatives and the detainees. Mr. Dooley added to the story by outlining how shortly after this encounter he was joined in the kitchen of Letterkenny Garda Station by Detective Sergeant White, who informed him that the visitors' room in Letterkenny Garda Station had been bugged by Detective Sergeant Costello and that Róisín McConnell's mother, Mrs. Anna Quinn, was visiting her there at that time. For his part Mr. Costello denied that any such meeting took place and said that the only meeting he had on the 4th of December 1996 with Sergeant White was in the car park of McElhinney's store in Ballybofey. For the

reasons already set out I am satisfied that if such a meeting took place in Ballybofey, it did not take place on the 4th of December 1996. I am satisfied that the encounter described by Mr. White and Mr. Dooley with Detective Sergeant Costello took place as described by them. I am also satisfied that during the course of this encounter Detective Garda Dooley left the company of Sergeant White and Detective Sergeant Costello and went to the kitchen where, shortly afterwards, he was joined by Sergeant White who, when asked what that was all about, replied that Mrs. McConnell had a visit from her mother on the first floor where the room was bugged, but that there were difficulties because they were speaking very low. Mr. White had no recollection of this part of the conversation. I am satisfied that the first conversation probably related to Detective Sergeant Costello's duties of video-taping and did not amount to much more than a normal encounter between the two men. I am satisfied that whatever was said later about taping the visit between Mrs. Róisín McConnell and Mrs. Anna Quinn, such taping did not take place. I am satisfied that this conversation was something of a bravura performance on the part of Sergeant White calculated to impress his colleague and to demonstrate to him that Sergeant White had a great knowledge of and insight into the workings of the unit to which Detective Sergeant Costello was attached and that he had an advantage of insider knowledge and experience over him. I am not satisfied to conclude on the basis of this encounter that on this occasion Detective Sergeant Costello was eavesdropping and tape recording the visits as alleged.

4. I am satisfied that the allegation made by Detective Sergeant White that he entered the Detective Inspector's room where he encountered Inspector John McGinley with a long black coloured twin deck tape-recorder on the table is false for the reasons already set out. The Detective Inspector's room was only available for such an encounter for a short period during the day because it was used throughout the day as the interview room for Mark McConnell. Mr. Dooley said that the conversation with Detective Sergeant Costello took place between 18.00 hours and 18.30 hours approximately, or perhaps a little afterwards. Mr. McConnell was placed in a cell between 18.00 hours and 19.05 hours. Mr. Dooley said that following the conversation with Sergeant White he went with him to the incident room and from there to the next interview with Róisín McConnell at 19.35 hours. This does not allow for an interval during that period in

which he could have encountered Inspector McGinley in the Detective Inspector's Office before 19.05 hours. In addition, I am satisfied that Inspector McGinley had left the station at approximately 18.16 hours for a meal break and returned after attending to a family matter.

5. In the course of the 4th of December 1996, Mr. James Sweeney, solicitor, visited two prisoners only. They were Mr. Frank McBrearty Junior, between 10.30 hours and 11.10 hours, and Mrs. Róisín McConnell between 10.55 hours and 11.55 hours with various interruptions. Mr. Sweeney was present with the Gardaí in the course of the latter interview for a period of fifteen minutes from 11.10 hours to 11.35 hours. Mr. Sweeney made extensive notes of his consultations. Obviously a great deal was discussed between Mr. Sweeney and his clients. It would be surprising if the interviewers of both prisoners were not informed or did not seek to find out about what the solicitor had discussed with his clients, having regard to the fact that these consultations were allegedly taped. The same applies to the consultations held by Mr. James O'Donnell, solicitor, with other prisoners. Even if no admission was made, valuable information implicating or even exonerating any of the suspects may have been overheard, and the demeanour and state of mind of the prisoners exhibited during the course of these meetings would have been of great interest to the interviewers. There is no evidence that this information was sought by, or given to, the interviewers. I am satisfied that this is because no taping took place.
6. In addition, Mr. Mark McConnell was refused a visit from his solicitor in the course of the afternoon by Inspector John McGinley, who was alleged to have been involved in the recording of these meetings. Mr. Eunan Brolly, Mrs. Katrina Brolly's husband, was refused a visit with his wife when he attended the station on the evening of the 4th of December. Other visits were supervised in the normal way. The Gardaí did not take any steps to ensure that strict privacy would be afforded to persons visiting the prisoners. The prisoners were not brought into each other's company and left alone so that they could have a private conversation in the course of which they might make some admission or yield some information that could then be recorded. No room was designated specifically as a visitors' room. Indeed, no allegation is made that any information whatsoever was obtained in the course of the alleged process. I am satisfied that all these matters suggest that no tape-recording occurred.

7. Garda Tina Fowley made an allegation that following a conference on the 2nd of December 1996, Inspector John McGinley beckoned to her to join him in the company of Detective Superintendent Shelly. She alleged that the two officers were then discussing the setting up of a room to be used as a visiting room for the purpose of allowing visitors to come to the station to see the prisoners and in an effort to see what could be “gleaned” from their conversation during the visits. She said that the room designated for these visits was the Garda Representative Association room on the ground floor of Letterkenny Garda Station. During this conversation, she alleged that Detective Superintendent Shelly and Inspector McGinley spoke of the fact that the Technical Support Section were to come down to glean what was being said between the visitors and the prisoners in the course of the detentions. She was requested to make ready the room for this purpose. She deduced from what was said by the two officers that a listening device would be placed in the room for this purpose. She then alleged that she sought the assistance of Sergeant John Costello, the brother of Detective Sergeant Joseph Costello, in setting up this room. I am satisfied that Garda Fowley’s evidence in relation to this conversation is unreliable and I accept Sergeant John Costello’s evidence that he was not present in Letterkenny Garda Station on the 2nd of December 1996 at the conclusion of the conference held that evening. I am also satisfied that there was no conversation between Garda Fowley, Detective Superintendent Shelly and Inspector McGinley from which it could have been inferred that information was to be gleaned from conversations held between visitors and prisoners. Consequently, I do not treat her story as corroborative of the allegations of bugging made by Detective Sergeant White. The Tribunal is satisfied that Garda Fowley’s presentation of these events and other meetings with Gardaí investigating the allegation of bugging is somewhat contrived and constitutes a form of confabulation on her part.
8. The Tribunal has already set out how these allegations came to public notice in the form of the article in the Donegal Democrat on the 17th of May 2001. A number of the details in the account set out in that interview by Mr. Dorrian, Detective Sergeant White’s solicitor, and the account given by Detective Sergeant White himself were significantly different. Mr. Dorrian said that Detective Sergeant White told him that he heard the voice of Mrs. McConnell and Mr. Sweeney on the

tape, whereas Detective Sergeant White said that he only ever heard the voice of Mr. James Sweeney on the tape. Mr. Dorrian referred to three Gardaí who could support the allegation: there was only Detective Sergeant White. Apart from these significant differences and a number of others, I am satisfied that the timing of the publication of these allegations was a response by Detective Sergeant White to the allegations then being investigated by the Carty team against him. He, himself, accepts that the making of the allegation was a retaliatory gesture against enquiries that were focussed upon him in respect of other matters. He acknowledged that he had no difficulty with the taping of prisoner's visits and I can therefore discount any suggestion that this revelation had anything to do with the interests of justice or prisoners' rights. I consider the complicated explanation given by Mr. White for the making of these allegations to be unconvincing.

9. I do not accept that, at a meeting with Detective Superintendent Brehony, Detective Sergeant White had been told to make a statement concerning any wrongdoing of which he was aware and that in obedience to that he prepared a statement that included an account of the alleged bugging. Detective Superintendent Brehony was at that time investigating allegations against Assistant Commissioner Carty, Assistant Commissioner Hickey and Detective Sergeant White arising out of anonymous allegations made to Mr. Jim Higgins, T.D., and Mr. Brendan Howlin, T.D. and was requesting assistance in that regard. His request related exclusively to that matter, which was the matter under discussion between them. It had no relevance to anything connected with bugging or anything other than the topic then under discussion. Mr. White went on to state that it was a lack of confidence in Detective Superintendent Brehony caused by his failure to obtain certain documents which existed within Garda files unrelated to the issue of bugging, that led him to abandon the making of a statement to Detective Superintendent Brehony and to his going public in relation to this whole matter. I find this explanation completely unconvincing. I believe that the publication of this allegation through his solicitor in the newspapers was a diversionary tactic carried out in the hope of drawing off criticism or enquiries which were then mounting against him. A subsequent lack of co-operation with Assistant Commissioner Rice's enquiry into the matter by the setting of impossible conditions by Mr.

Dorrian in order to secure Detective Sergeant White's co-operation in the matter further supports the proposition that this story was without substance. Further, it is difficult to understand why, if Detective Sergeant White wished to be a bona fide whistle-blower in relation to allegations of bugging, he chose on this occasion only to make the allegation in respect of detentions at Letterkenny Garda Station in the course of which the alleged taping of interviews did not result in the conviction of any person or yield any significant evidence as opposed to any other occasion on which such an outcome had been achieved.

10. In respect of the allegation that Detective Sergeant White had two meetings with Chief Superintendent Austin McNally at which he told him about the alleged bugging of prisoners at Letterkenny Garda Station and that he was told not to reveal it because it was one of the best kept secrets within An Garda Síochána, I do not accept that the conversations as outlined by Mr. White took place and I accept the evidence of Chief Superintendent McNally in that regard.
11. In respect of the allegation that Detective Sergeant White had a meeting in October 1999 with Assistant Commissioner Kevin Carty at which he outlined concerns about alleged bugging at Letterkenny Garda Station in December 1996, I reject the evidence of Mr. White in this regard and I fully accept the evidence of Assistant Commissioner Carty. I am satisfied that the false accounts given by Detective Sergeant White in respect of both of these senior officers were made in order to give substance to the false allegation made by him that bugging had taken place at Letterkenny Garda Station on the 4th of December 1996.
12. The Tribunal has made a number of recommendations in relation to electronic overt and covert eavesdropping and surveillance which are set out in Chapter 16.

CHAPTER 15

APPROACHES TO POLICE INTERROGATIONS

- 15.01. The purpose of the investigation of crime should be the pursuit of truth. The Tribunal over the last five years has enquired into the investigation of the death of the Late Richard Barron and has discovered that it was conducted in a most negligent manner. False evidence was manipulated by members of An Garda Síochána in an effort to implicate suspects whom the Gardaí believed were responsible for the Late Richard Barron's death. Proper methods of investigation were not employed. Statements were not properly taken from witnesses. Rumour as to who might be responsible for the Late Mr. Barron's death was taken to be true from the moment of its reception by An Garda Síochána. The officers in the investigation became driven by their own conviction that Mr. Frank McBrearty Junior and Mr. Mark McConnell were guilty of the killing of the Late Richard Barron. This phenomenon is not unique to the Barron investigation. It has been experienced by other police forces in other jurisdictions and in its most extreme form has come to be known as 'tunnel vision'. The stage was set by the investigators themselves for the ensuing calamity. Lies and negligence led to the arrest of innocent people and the disruption of their lives, at a terrible human and social cost for some of them.
- 15.02. The most obvious forensic manifestation of this disaster was the procurement from Mr. Frank McBrearty Junior of a false confession, which coincided to a large extent with the incorrect theory upon which the investigation had proceeded. The statement itself was the product of a complete and systematic failure of policing at a number of levels, from the most senior officers leading the inquiry, to those conducting the interviews of certain witnesses and suspects, and a failure to analyse statements and evidence obtained.
- 15.03. In this jurisdiction, unfortunately, this has not been a unique occurrence. The Tribunal is now aware of the case of the Late Dean Lyons, in which a false confession was also obtained by members of An Garda Síochána in the course of a murder investigation. Thus, in two very serious recent inquiries, two detainees have yielded false confessions in respect of crimes of which they were innocent.
- 15.04. It is clear that every step must be taken to ensure that false confessions are not procured from suspects and that whatever training, procedures and interviewing techniques that are necessary to minimise the risk of this occurrence in the future should be examined and adopted. Unless this matter is addressed as energetically and effectively as possible, there is a real risk that future investigations will produce further false confessions from innocent people with disastrous consequences for them, for policing, and for public confidence in An Garda

Síochána. In both of these instances, the cases did not go to trial and convictions were not obtained on the basis of false confessions. Nevertheless, there is a real risk that unless proper steps are taken miscarriages of justice may occur in the future, as they have in the past in other jurisdictions. The available literature indicates that this can all too easily happen and miscarriages of justice have provided much of the research material in this area.

15.05. The making of false confessions has been the subject of a growing body of research. Police forces and authorities in other jurisdictions have been rocked by high profile cases in which false confessions were relied upon to obtain wrongful convictions. There is now a body of case law on the topic. Many of these miscarriages of justice were only put right when they were referred back to superior appellate courts on the basis of additional evidence. This evidence was often based on psychological tests of the accused which demonstrated the unreliability of the confession and focussed on the psychological vulnerability of the person who made it. In some cases, this expert evidence was accompanied by further evidence as to the primary facts in the case or of a forensic nature that compelled the authorities to review the case. Many of these convictions occurred up to fifteen to twenty years before they were re-opened and the persons wrongfully convicted had served lengthy prison sentences. Historically, the research and level of understanding of the issues relating to false confessions were not, perhaps, well or at all understood by those involved at that time in the criminal justice system. Policemen and psychologists alike acknowledge that the police, criminal law practitioners, and the judiciary, in the wake of some notorious cases, became more educated over time about the dangers of false confessions and how they may arise. This increased awareness contributed to the enactment in this jurisdiction of section 2 of the Criminal Procedure Act, 1993, which facilitated for the first time the review of a criminal conviction, even if there had been an unsuccessful appeal, if a new or newly discovered fact demonstrates to the Court of Criminal Appeal that there has been a miscarriage of justice.

15.06. This chapter concerns the evidence presented to the Tribunal from a number of experts concerning the interrogation of persons arrested on suspicion of having committed criminal offences. The Tribunal heard expert evidence from six witnesses as to how this issue may best be approached. The Tribunal's purpose was to examine best interviewing practice in other police forces and to offer, if it could, positive recommendations in this area. Hopefully, this may assist in lessening the chances of obtaining false confessions in the future and improving standards of interviewing. Professor Gisli Gudjonsson is a Professor of Forensic Psychology at the Institute of Psychiatry, Kings College, London and head of the Forensic Psychology Services at Maudsley Hospital, London. He is a fellow of the

British Psychological Society and is the author of numerous books and articles on the psychology of interrogations, confessions and testimony. He has engaged in extensive research over many years on the nature of, and reasons for, the making of false confessions. He has published extensively on the subject in learned journals and addressed many conferences. He has been engaged as an expert by prosecuting authorities and on behalf of defendants and appellants in criminal cases in order to assist in determining the reason why certain confessions were made. He is the author of *The Psychology of Interrogations and Confessions – a Handbook*²⁰¹⁶ and has also given evidence in courts and to official inquiries in the United Kingdom and elsewhere on the topic. The Tribunal was grateful for his assistance and the evidence that he gave by way of presentation to the Tribunal followed by questioning by counsel.²⁰¹⁷ Inspector Donald John Adam of the Royal Canadian Mounted Police, a policeman of great experience, has given considerable thought to investigative interviewing and he gave the Tribunal the benefit of the experience which Canada had in reforming its interrogation practice. Inspector Adam was engaged in supervising interrogation in serious cases and in assisting the Royal Canadian Mounted Police in the development of a comprehensive programme that married the best elements of independent investigative procedures with fair-minded interviewing techniques.

15.07. The Tribunal also heard evidence from Detective Chief Inspector Gary Shaw of the Northumbrian Constabulary. He is also a police officer of great experience. He has been involved in developing interrogation programmes throughout the United Kingdom and has advised on the implementation of best practices in a number of jurisdictions, including Northern Ireland. He has lectured on the subject extensively and is the author of a number of papers on the subject and a joint author of *Investigative Interviewing Explained*.²⁰¹⁸

15.08. The Tribunal also received evidence from Ms. Mary Schollum, who researched interviewing procedures and advised the New Zealand Police Service in respect of these matters, having consulted widely with other police services, including the Police Service of Northern Ireland. The Tribunal also received evidence from Chief Superintendent John O'Mahony and Chief Superintendent Kevin Ludlow of An Garda Síochána in respect of this issue. Their evidence enabled the Tribunal to assess the extent to which An Garda Síochána is addressing the issue in comparison with police forces in other jurisdictions.

Tunnel Vision or The Assumption of Guilt

15.09. The second report of the Tribunal should be read in full by anyone who wishes to understand how an assumption of guilt can fuel a drive to suspect certain individuals while ignoring evidence that has the potential to exonerate them. This

²⁰¹⁶ John Wiley & Sons Limited, 2003.

²⁰¹⁷ Transcript, Day 442.

²⁰¹⁸ The New Police Bookshop, 1999.

phenomenon has also been experienced in other jurisdictions and has been the subject of inquiries such as this.²⁰¹⁹ While different cultural systems can yield different approaches to problems, the evidence presented to the Tribunal indicates that a propensity to rush to an assumption of guilt, on the basis of tenuous evidence interpreted against the suspect, may be due to the frailties of human personality or nature as much as, or perhaps, more than, the desire to frame or persecute. It may be done from the best of motives from the perpetrator's point of view – a form of 'noble cause corruption' fuelled by a genuine belief that the suspect is guilty but that the evidence is unavailable. It should be guarded against. In this regard, from his experience in Canada, Inspector Adam told me that as an investigator, at some stage, one has to pick a theory as to how a crime was committed and be willing to move ahead on that theory. The difficulty arises when an investigator becomes so married to a theory that they stop looking at other potential theories and develop tunnel vision. When that happens the investigator is in error and seeks to make every other fact fit into the theory. In British Columbia, Inspector Adam headed a unit which is used in the investigation of serious crime and the interviewing of suspects for such crime. He noted that what he and his unit were able to bring to an investigation was an independence of approach. It involved the creation of a new role of major case manager, a senior officer with sufficient experience who, together with some other experienced officers, could be seconded to a local investigation to offer objective assistance. This was a unit which could step back from the investigation then in progress and assess its course. Hopefully, through the application of good communication and simple logic, tunnel vision could be avoided. A simple example was given that if upon reading a statement, whether by a witness or an accused person, a number of other people also witnessed an event, the logical course would be to look for the statements of the other witnesses. If these witnesses had not been interviewed, then logically a difficulty existed. Professionally, nobody should have a difficulty with following such simple logic but in cases of tunnel vision such action might not be taken, because to do so might give rise to conflicting evidence in relation to the theory upon which the investigators were operating.²⁰²⁰ The Tribunal has already identified similar deficiencies in the Barron investigation in its second report.

- 15.10.** Detective Chief Inspector Gary Shaw also spoke of his awareness of this problem from his work in the United Kingdom. He noted that investigators always bring their personal experience to the investigation of crime. That can often affect decision making in the course of the investigation in a positive way. However, if care is not taken, he warned, personal bias can affect decision making.

²⁰¹⁹ Inquiry regarding Thomas Sophonow (a miscarriage of justice case in Manitoba, Canada) and Commission on proceedings involving Guy Paul Morin (relating to a miscarriage of justice in Ontario, Canada).

²⁰²⁰ Transcript, Day 485, pages 12-13.

Verification of fact may be distorted into the verification of a point of view. He highlighted the importance of doing a proper assessment of what evidence exists and how other factors such as personal bias may have an effect on an investigator's decision making. It is essential to be truly open minded in trying to search for the truth.²⁰²¹

- 15.11. It is easy to see how the dangers of a fixed perspective or tunnel vision can be extended into the arrest and interviewing of suspects. It is obvious that the more independent and professional the preliminary work carried out in the course of the investigation prior to the arrest, the less likely the risk of obtaining a false confession. However, even if this preliminary work has been done to the highest standards, that does not necessarily mean that the person arrested is the true culprit in respect of the crime under investigation. When a person is interviewed whilst in detention it is important that the interviewers continue to exercise an open mind in relation to his involvement in the crime rather than merely pay lip-service to that concept. The Tribunal is not satisfied that in the training given to An Garda Síochána adequate warning is given to trainee Gardaí about the dangers of fixed perspective or tunnel vision in the course of the investigation of crime. The link has been so clearly demonstrated between tunnel vision and the obtaining of false confessions that it is essential that the training of Gardaí and the assessment of their work should concentrate on principles and practices that avoid such a focus.

United States

- 15.12. The approach to interviewing adopted in the United States for many years has been informed by works by Inbau, Reid, Buckley and Jayne. This technique of interviewing involves a breaking down of denials and resistance and increasing a suspect's desire to confess. It operates on the premise that the person under interrogation has a guilty story to tell. Tactics are employed that are calculated to minimise the moral implications of the alleged crime and/or give the suspect the opportunity of accepting self justifying or face saving excuses for its commission in order to entice them to confess. It may be suggested that the suspect had a non-criminal intention when committing an act, whether by implying that the act was accidental or inadvertent, and that the suspect may not suffer negative consequences or very serious negative consequences.²⁰²² These tactics are all directed towards obtaining an admission. Professor Gudjonsson contends that this kind of approach seriously distorts a suspect's perceptions of the negative consequences of their self-incriminating admissions. He believes that it is potentially very dangerous and on occasion may result in a false confession.²⁰²³ In the case of Frank McBrearty Junior, as can be seen in Chapter 7, there were

²⁰²¹ Transcript, Day 523, pages 29-30.

²⁰²² Inbau, Reid, Buckley & Jayne, *Criminal Interrogation and Confessions* (2001) page 286.

²⁰²³ *The Psychology of Interrogations and Confessions – A Handbook*, pages 16-17 and pages 231-233.

elements of this tactic applied at the conclusion of the interview in which he said he would consider making a statement and prior to the interview in which he was said to have made a statement of admission.

15.13. The theme of any interview or interrogation conducted in respect of a detained suspect under the American approach is one of confronting the suspect with assertions of the suspect's guilt and broadly speaking the determination not to accept or give credence to denials put forward by the suspect. Though there is extensive training of Garda personnel and officers in the United States, the Tribunal has been informed that this is not the approach adopted by An Garda Síochána.

15.14. Chief Superintendent John O'Mahony of An Garda Síochána informed me that:

*During the period of detention the process of suspect interviewing takes place with the aim of establishing the truth in terms of the suspect's involvement or not, knowledge of or otherwise complicity in a criminal act. The suspect is questioned in terms of what is relevant to the crime under investigation. Any fact which assists in establishing the truth unless specifically excluded by some rule or principle of law is relevant.*²⁰²⁴

Chief Superintendent O'Mahony said that there was now an acute awareness in relation to the issue of false confessions within senior management in particular. He said:

*Certainly I think it's important that it starts with senior management and ... where the attitude may have prevailed in the past where we looked at getting an admission [this] has now changed into seeking out the truth and making sure that we have the truth and corroborating that, ensuring that there is no tunnel vision is very much inculcated into our training programmes at senior management level.*²⁰²⁵

15.15. It became clear from the evidence of the chief superintendent and his colleague Chief Superintendent Kevin Ludlow that they are very well experienced and aware of various models concerning investigative and interviewing techniques adopted in Ireland and abroad. Insofar as Chief Superintendent O'Mahony expressed any reservations about the application of any particular technique, he was concerned to emphasise the continuing need for investigators in any police force to be in a position to challenge detained suspects in respect of crimes which they are suspected of having committed. He noted that some of the models presented to the Tribunal did not allow for a strong challenge to suspects. He

²⁰²⁴ Transcript, Day 614, page 18.

²⁰²⁵ Transcript, Day 614, pages 42-43.

thought that there may be little or no pressure put upon a suspect when he is detained by reason of the restrictive nature of some of these models, which may well result in the interviewers not obtaining the truth in the course of the interview. This would not protect the interests of the public or the victims of crime²⁰²⁶

- 15.16. In this context, it is well to take stock of the protection that already exists in relation to ensuring that investigative interviews are conducted fairly, in accordance with law, and that whatever admission is obtained as a result of the interview process can be viewed as freely and voluntarily made and reliable.
- 15.17. The legal parameters within which An Garda Síochána must operate have already been set out in Chapter 1 of this report. In addition, in the recent past both in response to recommendations of this Tribunal and ongoing internal review, the Garda Commissioner has instituted reforms of the manner in which major investigations are conducted. A preview of some of these reforms was offered by Chief Superintendent O'Mahony in his evidence to the Tribunal. They included the appointment of a detective inspector to each division to be responsible for the investigation of more serious crime in the division. There has also been substantial progress in the provision of facilities for the videotaping of interviews in designated Garda stations throughout the country, to which arrested persons are brought in the course of investigations. Consideration has also been given to the installation of CCTV cameras in the corridors and other areas of Garda stations so that movements of prisoners within the station and access to them by members of An Garda Síochána can be monitored and recorded. This is standard in many other public buildings throughout the country. There does not appear to be any practical reason why it should not apply in Garda stations throughout the country in areas to which the public have access and areas through which prisoners move when brought to a cell or a visiting or interview room. There are significant protections in the custody regulations in respect of those who are intellectually or physically disabled, or who suffer from physical or mental illness or intoxication, whether from drugs or alcohol. The proper application of the law and police investigative procedures up to the point of arrest are all acknowledged by the experts called before the Tribunal as essential to the conduct of an interview in a professional and effective manner. They ensure that progress is made in the investigation towards ascertaining the truth of what happened and whether or not the suspect was involved in the commission of the crimes.
- 15.18. It is interesting to note that all of the experts agree that the introduction of the videotaping or tape recording of interviews (in the United Kingdom) has reduced considerably the number of allegations of oppressive or untoward behaviour by

²⁰²⁶ Transcript, Day 614, pages 29-30.

interviewers in the course of detention. However, studies have also found that notwithstanding the protections afforded to a detainee by law and the benchmark of professionalism set by best practice within any police force, including An Garda Síochána, best practice may not be followed. The law may not always be applied appropriately to the detainee, and/or the detainee whether by reason of psychological vulnerability, dysfunctional personality, the manner in which he is interviewed, or a combination of any of these, may yield a confession that is false. Once that truth is realised and accepted by any police force, it must take steps to minimise the chances of the making of a false confession insofar as that is reasonably possible. The danger, as expressed by Chief Superintendent O'Mahony, is that in doing so the effectiveness of interviewing as an investigative tool may be undermined, if the capacity of An Garda Síochána to engage meaningfully with a suspect is denied, by instituting what might be regarded as an unworkable or unrealistic methodology of interview.²⁰²⁷ This point is further discussed later in this chapter.

The Problem of False Confession

15.19. It used to be a commonly held belief that no person would confess to a crime they had not committed and, more especially, to a serious crime such as murder. History and decided cases clearly demonstrate that this is simply not the case. As already noted, there have been cases in which those accused of crime have confessed and been prosecuted and convicted, but were ultimately released on appeal because the confessions were false. These cases provided considerable material for researchers such as Professor Gudjonsson to explore with a view to understanding why these false confessions were made. Some of these cases are well known: the cases of Stefan Kiszko, the Guildford Four, the Birmingham Six, Judith Ward, and Engin Raghıp (the Tottenham Three). In addition, in this jurisdiction, the report of the Commission of Investigation into the Dean Lyons case determined that the Late Mr. Lyons falsely confessed to murders that he did not commit. In his case the conclusion was reached that the explanation for his false confession was "his attention seeking and that in his confused state he may have actually come to believe that he had an involvement in the crime". It was also accepted that his status as a drug abuser was highly relevant to his confused and erratic mental process.²⁰²⁸ Also, of course, there is the false confession of Frank McBrearty Junior.

²⁰²⁷ Transcript, Day 614, Q.29-31.

²⁰²⁸ The Report of the Commission of Investigation (Dean Lyons case) set up pursuant to the Commission of Investigation Act, 2004 – Sole Member George Birmingham, SC. See also the description of the confession said to have been made in *The People v Lynch* [1982] I.R.64 at pages 79-81 – a case in which the confession of the accused in which he admitted to a murder was found to be factually at odds with independently verifiable accounts of his movements and those of the deceased, which substantially undermined the reliability of the confession in a case in which the Supreme Court allowed his appeal against conviction; see further Report of the Tribunal of Inquiry into "The Kerry Babies case" Pl.3514, in which it was determined that a number of persons had signed confessions to involvement in the death of a baby which were not true (Chapter 37 pages 154-158) (1985).

Types of False Confession

15.20. Professor Gudjonsson's description of the various categories of false confessions as described in published materials are broadly as follows:

- (a) Voluntary false confession
- (b) Coerced compliant false confession
- (c) Coerced internalised false confession

Voluntary False Confession

15.21. A "voluntary false confession" may have a number of manifestations:

1. A morbid desire for notoriety can give rise to one or more people coming forward to confess to high profile crimes of which they are totally innocent.
2. A necessity to expiate guilt about some previous imagined or real transgressions can result in a person seeking to attract punishment for crimes of which the person is in fact innocent.
3. An inability or breakdown in the ability to distinguish fact from fiction, which can be associated with major psychiatric illness such as schizophrenia.
4. A desire on behalf of some person to protect a friend or relation who may be guilty of the crime under investigation can also lead them to confess falsely.²⁰²⁹

Coerced Compliant False Confession

15.22. What is described as a "coerced compliant false confession" is one which results from pressure that may be applied in the course of police interview or from the experience of being in custody. In this instance, the interviewee gives in to the demands and pressures of the interviewers for some tangible immediate gain such as release, or bringing an interview to a conclusion. The interviewee is concentrating on escaping the immediate stress of the conditions in which he finds himself and may pay little regard to the serious long term consequences of confessing to a crime. The conduct of the interviewer and the personality and vulnerabilities of the interviewee are of great importance when trying to understand the dynamics of how such false confessions come to be made.

Coerced Internalised False Confession

15.23. A "coerced internalised false confession" is said to occur when a suspect comes

²⁰²⁹ "Disputed Confessions and the Criminal Justice System" – Gudjonsson & MacKeith, Institute of Psychiatry London, Maudsley Discussion Paper No. 2, page 12.

to believe, if only temporarily, that he has committed the crime of which he has been accused. This can happen even though he could have no actual memory of committing the crime because he did not commit it. A person may suffer from a “memory distrust syndrome” in that he may distrust his own memory and rely on external sources of information instead.

Such a vulnerable person may readily develop self doubt and uncertainty especially if confronted by the interviewer with disturbing suggestions such as the claim that there is incontrovertible evidence against them that they have committed the crime. In this type of false confession it is the quality of the susceptibility to suggestion which appears to be the most important psychological vulnerability.²⁰³⁰

- 15.24. There are a number of features of an interviewee’s personality that are relevant to the making of false confessions. The person may have a susceptibility to give in to leading questions or a tendency to alter his answers when put under pressure by an interviewer. A person may be more vulnerable than others to being misled by subtle questioning or by pressure. Further, a person may not have a great ability to cope when confronted with uncertainties or expectations in the course of an interview. A person may be significantly compliant and have a tendency or eagerness to please others and avoid conflict and confrontation with others, especially those in authority. These factors may exist independently or co-exist with other vulnerabilities or disabilities such as intellectual impairment or disability or handicap, mental illness or drug addiction. Youth or lack of education may also play their part.
- 15.25. It is clear that in the case of “voluntary false confessions” the false confessions are not the fault of the police. However, the “coerced compliant false confession” is more likely to be the result of heavy handed interrogation in which people break down, make a confession and sign it.²⁰³¹
- 15.26. In order to minimise the possibility of false confession there has to be an acknowledgement that even the best system needs constant review. Organisations, understandably, do not tend to review or change systems that appear to be working. It is therefore important to acknowledge that faults can apparently tick along within a system over years, causing low level problems, and that it is only when these problems result in a major difficulty that the necessity for review and change is acknowledged. That time has undoubtedly come in Ireland. As has been seen, it is a disaster for society if the police do not tackle the task of preventing and detecting crime with energy, efficiency and objectivity. The situation constitutes a vast waste of resources and is a harbinger for anarchy

²⁰³⁰ “Disputed Confessions and the Criminal Justice System” – Gudjonsson & MacKeith, Institute of Psychiatry London, Maudsley Discussion Paper No. 2, pages 12-13.

²⁰³¹ Transcript, Day 442, pages 52-53 (Evidence of Professor Gudjonsson); see also page 65.

when, as must happen eventually, people become tired of inefficiencies and injustices in the system and are tempted to take the law into their own hands. This was reflected in the various assaults perpetrated upon Mark McConnell by members of the Barron family in the years following the death of the Late Mr. Barron. A smug belief that any system, whether of policing or of criminal justice, has all the answers and can match the very best of international police standards, man for man, as it were, means that mistakes will neither be detected nor corrected. Infirmities in the system will continue until a major dam burst of disasters causes the system to collapse. Elsewhere in these reports, I have commented on the nature of Donegal as not being isolated from the mainstream of policing in this country. These reports have uncovered a major scandal. It provides an opportunity to take serious stock. The Tribunal acknowledges and has been informed of how An Garda Síochána has responded to these challenges. This is very positive but the implementation of changes must be kept under continuing review so as not to lose focus and impetus. Professor Gudjonsson and Detective Chief Inspector Shaw both pointed to the major scandals created by the various cases in the United Kingdom as providing the impetus for change in that jurisdiction. Unfortunately where there is no scandal, there is not much public pressure for change and therefore not much review or change takes place. Both men acknowledge that there is no perfect system but that certain precautions can be taken in order to reduce the chances of wrongful convictions and miscarriages of justice based upon false confessions.²⁰³² The danger lies in inertia. When the full glare of scandal has passed, it may be regarded as once-off, atypical, not likely to recur and therefore not really requiring the attention that reports such as this suggest it deserves. The slow evolution of legal reform on this issue in this jurisdiction, as discussed later in this chapter, provides a clear example of just how lacking in response the authorities can be.

The Extent of the Problem

- 15.27. It can be difficult to establish with any certainty the frequency with which false confessions have been made in the past. There is little reliable empirical data in this jurisdiction that authentically defines the extent of the problem of false confession. In the United Kingdom it has been noted in studies that at magistrate court level untrue pleas of guilty are often entered in respect of minor offences. For example, where the evidence before the court was to consist of that of a policeman and that of the accused in respect of a public order matter, the accused was frequently advised that it was likely that the magistrate would accept the evidence of the policeman over that of the accused. Sometimes, therefore, when a plea of guilty was advised in respect of such a matter it was entered. As already noted, there have been a number of notorious cases relating to false confessions in these islands.

²⁰³² Transcript, Day 442, page 65 (Professor Gudjonsson) and Transcript, Day 523, page 8 (Detective Chief Inspector Shaw).

Research

- 15.28. Many of these notorious cases have been extensively chronicled in Professor Gudjonsson's book, *The Psychology of Interrogations and Confessions – A Handbook* and in his evidence to this Tribunal. The Tribunal is also aware of these cases from the law reports. The research conducted by Professor Gudjonsson as set out in his book, his evidence and other publications has been hugely instructive in expounding the background against which false confessions may be obtained. This chapter sets out to a limited extent the nature of the research and case studies undertaken by Professor Gudjonsson, some of which were presented by him in evidence to the Tribunal. I fully appreciate that this is a mere sample of the extensive literature that is available to those interested in this area, but this research is invaluable to those trying to understand the nature and extent of the problem faced.
- 15.29. Professor Gudjonsson gave a useful summary of the available evidence in relation to twenty-eight cases in twenty-two of which he was commissioned as an expert. The convictions in these cases were overturned. In eighteen of these cases, psychological vulnerability was the main reason for the reversal of the verdicts of the lower courts. Police impropriety was relied upon in ten of the cases. A number of vulnerabilities in those who had falsely confessed were identified. Some of them had a low I.Q.; some displayed compliant and suggestible personality traits; others had a personality disorder; one suffered clinical depression. Others showed no personality disorders. Quite ordinary individuals, it was found, given certain circumstances, had also confessed falsely.²⁰³³
- 15.30. A Norwegian case was presented to the Tribunal by Professor Gudjonsson as an example of an investigative and interviewing error on the part of the police and also of how the psychological characteristics of an individual can have an influence in obtaining a false confession. This was the case of a young man who was of above average intellectual ability, had a good memory and learning capacity, was not particularly suggestible or compliant, was in a general sense able to stand up for himself and was not in any sense mentally ill. He was suspected of the rape and murder of a young girl. Initially he was interviewed as a witness, but police officers became convinced of his guilt, and focussed all of their efforts upon proving his involvement in the murder. He was arrested and remanded in custody for a period of four weeks, during which time he was isolated from all social contact and allowed to speak only with his advocate and the psychiatric nurse. He was repeatedly challenged and undermined in relation to his own recollection and an alibi which he put forward. He was given an exaggerated account of the strength of the evidence against him. He was asked by interviewing policemen to make up a hypothetical account of the crime and

²⁰³³ Transcript Day, 442, pages 68-78.

how it might have been committed, but in the third person and in the format of a film script. Eventually he made an admission which he later retracted. At his trial he denied any involvement in the murder and his alibi was confirmed by his parents. However, he was convicted of murder and rape and sentenced to fourteen years imprisonment. On appeal DNA evidence was offered to indicate that a hair found in the victim's clenched fist did not match that of the victim or the accused. His appeal against conviction was allowed. Professor Gudjonsson's conclusion was that this was a false confession of the coerced internalised kind.²⁰³⁴ It is cases of this type that may assist, to some extent, in our overall understanding of the dynamics of false confessions such as those made by Dean Lyons and Frank McBrearty Junior.

- 15.31. In an earlier work *The Psychology of False Confessions: Research and Theoretical Issues*²⁰³⁵, Professor Gudjonsson reviewed a number of studies and books concerning research on wrongful convictions and false confessions that had occurred in the United Kingdom and the United States dating back to the 1930s. The themes encountered in these studies were the same as those which run through the more notorious recent cases of false confessions already referred to. Further, Professor Gudjonsson carried out extensive research in the United Kingdom and Iceland which gave rise to some useful empirical data on the prevalence of false confessions.
- 15.32. In the United States following the introduction of DNA testing a large number of persons who had been convicted of serious criminal offences which attracted sentences, including the death penalty, were exonerated. When these cases were examined in various States it was discovered that false confessions also featured in 20% or more of the cases.²⁰³⁶
- 15.33. An extensive study was carried out in Iceland. 80% of students between the ages of fifteen and twenty four were interviewed: a total of 10,515 students. Questionnaires concerning issues such as mental health, police interviews and false confessions were completed by the participants. They were asked whether they had ever been interviewed at a police station, whether they had ever confessed to anything to the police, and, if they had, whether the confession was truthful or not, or whether they had made a false denial of an accusation. Some 25% of the youths interviewed indicated that they had been interviewed by the police. 18.5% of those interviewed had been interrogated at a police station:

²⁰³⁴ See - *The Psychology of Interrogations and Confessions – A Handbook*, Chapter 23, pages 590-614, which contains a much more extensive account of this case. Notwithstanding the verdict of not guilty delivered by a jury in the case (in the appeal process), the three judges involved in the case made an award of £10,000 because they considered on the balance of probability that the accused had murdered his cousin based on his confession to the police. Further evidence in favour of the young man ultimately emerged and the Attorney General in Norway ordered an investigation into this new forensic evidence. A new murder inquiry was commenced.

²⁰³⁵ Wiley 1992.

²⁰³⁶ *Investigative Interviewing – Rights Research and Regulation* (Willan Publishing 2006), Chapter 8 – “Towards Greater Professionalism – Minimising Miscarriages of Justice”, pages 147-165.

almost one-fifth. 53% asserted that they had confessed truthfully to the police. 7% said that they had falsely confessed.

- 15.34. In a similar Danish study a false confession rate of 7% was also claimed by those interviewed. In that study 49% of those interviewed by the police claimed to be innocent, while 51% accepted that they were not. Professor Gudjonsson accepted the limitations of this kind of study, such as the fact that the interviewees might have lied in claiming to be innocent when they were not or by alleging that they had falsely confessed when they did not. Nevertheless, he offered the studies as some support for the proposition that a significant number of false confessions are made to policemen in formal interviews.²⁰³⁷
- 15.35. Later in his evidence, Professor Gudjonsson spoke about his experience as a policeman in Iceland.²⁰³⁸ He had elicited a false confession without impropriety. As an investigator, he had available to him a witness account that said that a particular man had stolen a purse from a woman, and he had no reason to doubt it. When he presented that witness testimony to that individual, who had a history of alcoholism, the suspect said that he must have done it, though he could not remember doing it. He signed a statement to that effect. Subsequently, it turned out that the confession was untrue.
- 15.36. Many false confessions are ones where a doubt can be raised as to the nature of the falsehood perpetrated. Again, the watchword here must be the application of the truth to particular situations. The criminal justice system is carefully graded so that it is proper to suspect someone, to engage in investigation on that behalf, to move on to reasonably suspect someone and to engage in the invasive procedure of lawful search and arrest in consequence, and ultimately to prove guilt to the standard of removing all reasonable doubt as to the potential for innocence. The presumption of innocence is then finally displaced. There can be circumstances where a confession has been ruled inadmissible where those reviewing the papers might reasonably say that the suspicion to some degree remains against the person charged. The legal system correctly disposes of such issues by acknowledging the restoration of the presumption of innocence and the principles of *autre fois acquit* determine the issue of the presentation of that suspicion in a criminal court definitively. The most obvious instances that prove the existence of false confessions are those where, like in the Norwegian case, the young man who confessed did not match the DNA sample on the hair roots found clenched in the hand of the murder victim. Similarly, in Iceland Professor Gudjonsson, as a police officer, became convinced that a false confession had been made because the complainant indicated that she was never a victim, but

²⁰³⁷ Transcript, Day 442, pages 50-52. He said that the base rates of asserted innocence and guilt were of some importance because if they reflected the truth, the police were interrogating a lot of people who were genuinely innocent. From this, one might deduce that there was a real risk of obtaining a false confession having regard to the base rate of those asserting innocence.

²⁰³⁸ Transcript, Day 442, page 143.

that she had in fact found her purse. In answer to counsel for the Association of Garda Sergeants and Inspectors, Professor Gudjonsson acknowledged that there are significant numbers of people who confess to crimes that they have not committed, and for all sorts of reasons.²⁰³⁹

- 15.37. A great deal of the post conviction research concerns the investigation of miscarriages of justice. The challenge for An Garda Síochána arises before that stage is reached in the course of an investigation. There are two elements that need particular consideration in trying to minimise the possibility of an interviewee making a false confession. The first concerns the method used in interviewing people and the second, related to the first, lies in trying to assess whether the interviewee may be a person who is subject to certain psychological vulnerabilities with which great care should be taken and which render him or her more susceptible to manipulation or suggestion.

The Extent to which the Problem can be Addressed

- 15.38. The first type of false confession identified in the research, “voluntary false confession”, emanates from the maker of the confession. It is not something that the police can reasonably anticipate or prevent. Thus if a person seeking notoriety goes to a police station and volunteers a confession, the most that can be expected from the police is that they readily identify the confession as false in the light of their knowledge of the case to date. The second type of false confession, the “coerced compliant false confession”, typically results from the coerced pressures of the interrogation process. In this instance, the suspect has not confessed voluntarily but gives in to demands and pressures of the interrogators, usually for some immediate or tangible gain. This usually involves misbehaviour on behalf of the interviewers or investigators to whom the confession was made. I have already outlined the extensive legal tests applicable to the admissibility in evidence of such confessions in Chapter 1 of this report, which together with the developments in the video recording of interviews in Garda stations should considerably reduce the opportunity for such misbehaviour. Obviously, if such misbehaviour is video-recorded it will be readily seen. The installation of CCTV cameras in corridors leading to and from cells and interview rooms and in reception areas of Garda stations would also assist in this regard.²⁰⁴⁰

- 15.39. In this context, an interviewee may exhibit traits of mental illness or intellectual disability which should trigger the protective provisions of the custody regulations concerning the attendance of a doctor or a friend or relative who might assist them. In addition, experienced interviewers should, in fairness, be very careful in interviewing such a person having regard to their vulnerability. Again any abuse of this kind of situation or exploitation of vulnerability should now be audible and

²⁰³⁹ Transcript, Day 442, page 145.

²⁰⁴⁰ See Garda Síochána Complaints Board Annual Reports 1997, 1998, 1999 and 2000.

visible from a video recording of the interview. That is not always the case. That being so, there may be occasions upon which the police are not to blame for the making of a false confession which occurs by reason of the vulnerabilities described, but which were not apparent at the time of the interview. In addition, as already noted, persons who are otherwise healthy in mind and body have also falsely confessed.

- 15.40. In addition, there is the “coerced internalised false confession”, where persons come to believe during police interviewing that they have committed a crime of which they are accused even though they have no actual memory of having committed it. This can result from a situation in which a suspect distrusts his own memory but begins to rely on external sources of information, such as the interviewer. The suspect may suffer from amnesia or alcohol induced memory problems. On the other hand, a suspect who did not commit a crime may have no clear memory of not having done so. This second type of memory distrust syndrome may result in a false confession because of subtle manipulation by the interrogator as a result of which the interviewee gradually begins to distrust his own recollections and beliefs such that he is imbued with self doubt and confusion to the extent that it causes him to change his perception of reality and confess. Thus while technical advances have allowed independent third parties such as the judiciary to have a clear view of what actually happens in the interview room, it has been acknowledged in the United Kingdom, Canada and elsewhere that in the context of these other problems, approaches can be adopted in the course of interviews which lessen the chances of obtaining a false confession and maximise the opportunity to obtain the truth.

Developments in Interviewing Techniques and Procedures

- 15.41. For the most part, developments in other jurisdictions as to how interviews should be conducted and the introduction of interview training programmes have been the result of the notorious miscarriages of justice already referred to, many of which have concerned false confessions. Such changes have also been facilitated by a change in emphasis in the course of criminal investigations from a narrow focus in obtaining admissions from suspects, to increased emphasis on what might be regarded as other independent evidence. This has been greatly assisted by developments in forensic science and technology.

The Way Forward

- 15.42. Two good structured models for progress were presented to the Tribunal by Detective Chief Inspector Shaw of the Northumbria Police and Inspector Donald J. Adam of the Royal Canadian Mounted Police. I now intend to make extensive reference to these in the light of the knowledge that Professor Gudjonsson has

broadly agreed with the principles that they have outlined, in terms of eliminating false confessions, in his evidence.

United Kingdom

- 15.43. One of the most highly regarded methods of interviewing suspects is that developed in the United Kingdom since the mid 1980s. As a result of a research study conducted as part of the Royal Commission on Criminal Procedure (1981), which found that a considerable number of persuasive and manipulative tactics were used by interviewers to obtain confessions, the Police and Criminal Evidence Act, 1984 (PACE) was enacted. The act provided for the detention and questioning of suspects in custody. It provided for the provision of legal advice and the tape recording of interviews. The tape recording of interviews allowed police officers and other experts to examine accurate records of police interviews. As a result a number of studies identified problems with the method of interviewing then practiced. Police officers were found to have an accusatory mindset when interviewing and to be using coercive techniques that were more consistent with the American interview system. Some interviewers were said to appear incompetent, nervous and ill at ease, and lacked confidence in dealing with the interviewee. Suspects were given little opportunity to speak and when they did so, interviewing officers constantly interrupted them. The interviewing style was said to be aggressive and harrying. Unfair inducements were offered. There was found to be an over-reliance on confession evidence under the new legislation, which meant that witnesses and victims were frequently not interviewed thoroughly and were unable to provide all the information they were capable of giving as evidence. Interviewing officers appeared to view their role as one of persuading suspects to confess rather than engaging in a process of inquiry which was to search for the truth.²⁰⁴¹
- 15.44. A committee on investigative interviewing consisting of police officers, lawyers and psychologists produced seven “principles for investigative interviewing”, which were circulated by the Home Office in Home Office Circular 22/1992. This encouraged policemen to see their role as searching for truth in the course of interviewing suspects. These principles emphasised the role of investigative interviewing as one of obtaining accurate and reliable information from suspects, witnesses or victims, in order to discover the truth about the matter under investigation, interviewing a suspect with an open mind and testing such information that has been obtained against what is already known or can reasonably be established. Interviewers were enjoined to act fairly; they were not bound to accept the first answer and to engage in persistent questioning was not deemed to be unfair merely because it was persistent. It was acknowledged that

²⁰⁴¹ *Investigative Interviewing – Rights, research, regulation Willan Publishing (2006)*, see Chapter 8, “Towards greater professionalism – minimising miscarriages of justice” (Williamson) and Chapter 9: “Will it all end in tiers? Police interviews with suspects in Britain” (Griffiths and Milne) pages 147-189.

even though a right not to say anything could be exercised by a suspect, this did not prevent the police from putting questions to the suspect. It was acknowledged fully that policemen were free to ask questions in order to establish the truth and were not constrained by the rules applicable to lawyers in court. It was emphasised that vulnerable persons, whether victims, witnesses or suspects, had to be treated with particular consideration.²⁰⁴²

15.45. In addition to these studies there were the cases of the Guildford Four and the Birmingham Six in the late 1980s and the early 1990s, in the course of which ten persons were released from custody, and confessions central to their convictions were shown to be unreliable, and in some cases fabricated, or otherwise discredited. The Home Office Circular 22/1992 developed out of the growing public concern and increasing lack of confidence in police methodology caused by such cases. In the case of Heron, in which the interviews with a suspect were taped, unlike the previous cases in which they were not, tactics such as overstating evidence and emphasising the benefits of admitting an offence were identified as contributing most to the unreliability of a confession. Manipulative tactics such as these, based on the interviewing officer's commitment to what he regarded as the truth that Heron was guilty of the offence, produced a confession so unreliable that it had to be excluded at the trial.²⁰⁴³

15.46. The obtaining of false confessions from persons who might be regarded as vulnerable led to an extension of the nature of the expert evidence deemed to be admissible in relation to the making of statements in criminal trials in the United Kingdom. Under section 76(2)(b) of the Police and Criminal Evidence Act, 1984 it was provided that a court shall not allow a confession to be given in evidence against an accused person unless it is proved beyond reasonable doubt that the confession was not obtained *inter alia* "in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof". English case law provides that the circumstances to be considered by a trial judge when hearing submissions under this section include the mental condition of the defendant, which should be based on medical evidence rather than the trial judge's own assessment of the defendant in interview. Previous authorities restricted the admissibility of such evidence to cases in which the I.Q. of the accused was below 68. Later case law altered the position and the I.Q. factor was not used to dictate the admissibility of this evidence. For the expert evidence as to some abnormality in the accused to be admissible it is not now necessary or sufficient that the abnormality should fit into some recognised category. What is necessary is that the disorder must be of a type which might render a confession or evidence unreliable and it must represent a significant deviation from the

²⁰⁴² *Investigative Interviewing – Rights, research, regulation* pages 153-154 and page 169.

²⁰⁴³ *Investigative Interviewing – Rights research, regulation* pages 169-170 and pages 320-321.

norm. In addition, there has to be a history pre-dating the confession or evidence being impugned which is not based solely on the history given by the accused and which points to or explains the abnormalities.²⁰⁴⁴

15.47. It is clear from the custody regulations in this jurisdiction that issues relevant to the disciplines of psychology and psychiatry are on occasion relevant to the state of mind of a person who is interviewed, in that special care must be taken of persons suffering mental disability, intellectual impairment or mental illness. The fairness of the interview, in logic, must also be judged by reference to psychological and psychiatric issues if they arise on the basis of expert evidence. This of course should be decided on a case by case basis. The taking of such evidence in relation to the issue of the admissibility of a statement of admission is distinguishable from the taking of the evidence of a psychiatrist as to whether, for example, the offence of provocation should, as a matter of fact, be available to an accused in a murder trial. Such evidence is not admissible in respect of the ultimate issue of the *mens rea* of the accused, as is clear from the People (DPP) v Kehoe.²⁰⁴⁵ However, the Tribunal is aware of cases in which such evidence has been received in the course of the determination of the admissibility of statements in this jurisdiction, and fairness of procedures requires that this should continue to be the case.

15.48. The next development was the creation of what is regarded as a successful investigative interviewing training programme under the mnemonic PEACE, which describes what are regarded as the appropriate stages in an interview:

Planning and preparation

Engage and explain

Account and clarification

Closure

Evaluate evidence obtained through questioning

15.49. This national training programme in the United Kingdom has now become a mandatory part of the curriculum for the training of police officers throughout the United Kingdom. PEACE is said to work in the following way:

Planning and Preparation:

The interviewing officer is required to prepare his interview taking into account the points required to establish the offence under investigation and that may give rise to a defence to that offence and to define the subject areas to be covered in the course of the interview. Other practical steps should also be planned such as planning and preparing for an appropriate number of staff to be available,

²⁰⁴⁴ R v Silcott and Others The Times, December 9th 1991 (CA), R v Ward 96 Cr. App. R.1 (CA), and R v O'Brien and Others [2000] Crim. L.R. 676(CA).

²⁰⁴⁵ [1992] I.L.R.M. 481.

preparing the interview room, ensuring that equipment is available and in working order, and arranging for the attendance of other professionals, if necessary.

Engage and Explain:

This refers to the early stage of an interview in which the interviewer ought to ensure that the legal requirements such as the explanation of the detainee's legal rights are covered and outlining the process of interview that is about to take place to the detainee.

Account and Clarification:

The interviewer attempts to obtain an account from the detainee of the incident under investigation. This should include an initial account followed by in-depth probing of aspects of that account together with matters identified by the interviewer in his own preparation as relevant. Should the account obtained yield discrepancies with other evidence this leads to a 'challenge' or 'clarification' phase, during which aspects of that evidence are put to the suspect.

Professor Gudjonsson describes the methodology which he has taught to interviewees as follows:

Officers are taught two methods of eliciting an account from the interviewee. These are referred to as "cognitive interview" and "conversation management", respectively. The former is based on the work of Fisher and Geiselman (1992) and can be used with cooperative suspects as well as with witnesses. In contrast, "conversation management", which is based on the work of Eric Shepherd (see Mortimer and Shepherd, 1999), is recommended when the degree of cooperation from the suspect is insufficient for the "cognitive interview" techniques to work satisfactorily.²⁰⁴⁶

Closure:

Deals with the closing of an interview. Any legal requirements which are necessary to be concluded at this stage should be dealt with. It should be explained to the detainee what may happen after the conclusion of the interview. The interviewee is provided with a summary of the main points of interview and given the opportunity to comment or add anything.

Evaluation:

After the interview information obtained in the course of the interview should be assessed, as should the interviewer's own performance within the interview. This is with a view to the future development of the case and of the interviewer's skills.

²⁰⁴⁶ *The Psychology of Interrogations and Confessions – A Handbook*, pages 53-55.

- 15.50. A very extensive training programme was commenced in the police forces of England and Wales with a view to ensuring that every police officer from the rank of inspector down was trained in the skills identified within this programme. In this way, it was hoped to ensure that more effective interviewing of suspects was carried out at all levels in the investigation of crime. Professor Gudjonsson concluded that as a result the manipulative tactics previously adopted in the course of interviews prior to the introduction of the Police and Criminal Evidence Act, 1984 and the accompanying Codes of Practice were remarkably reduced. The persuasive interrogation style of the past had been replaced by questioning which was less manipulative in nature and was not dependent on misleading suspects. However, it took a great deal of effort over time to secure its full implementation. In 2001 a study of the long term effectiveness of the PEACE model raised doubts about the effectiveness of the national training of police officers and the improvement hoped for in respect of their interview skills. The initial impetus for change and improvements was blunted over time. Many of those who were trained failed to put the training into practice and planning and basic communication skills remained relatively poor.²⁰⁴⁷ As will be seen a review of these developments led to a further development of the PEACE model.

Evidence of Detective Chief Inspector Gary Shaw

- 15.51. Detective Chief Inspector Shaw was a senior officer with Northumbria police in England. He was a national interview co-ordinator. In a practical way, as an investigator he was involved in high profile, sometimes complex investigations of serious criminal offences. In his work he advised other investigators on interview processes and strategy, pre-interview disclosure strategy, which occurs (in the United Kingdom) because of the involvement or presence of a solicitor in interviews, and other practical matters relating to the preparations for interviews. He often monitored the progress of interviews that in some cases extended over two or three days, in order to ensure that correct procedures were followed and that appropriate support was offered to the interviewing team. After the interviewing of a suspect he was also involved in the evaluation of the interviews and sat down with the interviewers and senior investigators in the case to examine what exactly had been achieved and whether or not, at the more general level, anything could be learnt by the interviewers that could inform them as to how to improve their performance as interviewers in the future.
- 15.52. Since about 1994 he has been involved in developing a national interview strategy initially in England and Wales, and subsequently in Scotland and the North of Ireland. This strategy was an attempt to provide a co-ordinated approach to interviews throughout the various police forces by providing support,

²⁰⁴⁷ Clarke and Milne (2001) The national evaluation of the PEACE Investigative Interviewing Course. Police Research Award Scheme. Report No. PRAS/149 Institute of Criminal Justice Studies, University of Portsmouth.

advice, guidance, training and review to interviewers on a structured basis throughout the country. In this regard, he explained in evidence his growing involvement in the development of the training processes and structures already described in relation to PEACE.²⁰⁴⁸

- 15.53. Up to 1997 no national standardised training was offered to trainee police officers throughout the United Kingdom. In that year for the first time a structured approach to interviewing and training was introduced to the national police training centres. Because there was no overall national strategy or support for the introduction of PEACE, Detective Chief Inspector Shaw believed that up to five or six years were lost in the effective and full implementation of the model throughout the forty-three police services to which it was to apply. In 2002 a national training curriculum and occupational standards were adopted in order to support the implementation of the PEACE model of interviewing. Detective Chief Inspector Shaw became national interview co-ordinator in 2003 in order to implement a national infrastructure to provide this support. When the model was initially rolled out training was focussed on the trainee policeman. It was not focussed on the supervisors. It was realised that the training was ineffective because the supervisors under whom the trainees operated were not trained in the system. The conclusion was reached that the supervisors must first be trained. If the strategy of the model was not understood by the senior investigators and supervisors of those who had been trained in the model, it would not be valued within the force and skills would not be deployed as effectively as they ought to be. Those trained in the model became somewhat disillusioned and discouraged from implementing it. It was, therefore, essential to ensure that older and senior police officers, management and supervisors were trained in and accepted fully the spirit and essence of the PEACE model of interviewing, if it was to be effective.
- 15.54. The effectiveness of police training in respect of the PEACE model was reviewed by a National Investigative Interview Strategic Steering Group in association with the Association of Chief Police Officers. Following widespread consultation, the initial model was developed into a five-tiered model in which the varying needs of different police services and levels of police investigation were accommodated. It was recognised that the rather limited training provided in the original model was inadequate to the needs of the investigation of serious crime. It was useful and necessary that police officers be trained to interview both witnesses and suspects and understood the theory and practice to be applied, for example, through role play interviews between students. It was recognised that for the investigation of more serious crime more training was required.

²⁰⁴⁸ Transcript, Day 523, pages 3-125.

- 15.55. Detective Chief Inspector Shaw explained the five tiered system this way. The first, second and third tiers were viewed as “practitioner” tiers and the fourth and fifth were regarded as “management” tiers. He regarded three things as essential for the implementation of the model at all levels, namely training, workplace assessment and policy development.
- 15.56. When policemen want to become involved in work which entails interviewing, a more complex role, further training is available. Those who receive this training are expected to be able to deal with burglaries, serious assaults and crimes of that kind. The training is not simply the interviewing of suspects, but is also geared towards dealing with witnesses. Experience in England and Wales indicates that a five-tiered system works well. Constables who have basic training are at the first level. Those who are at levels two and three are regarded as specialist interviewers. A three week suspect interview course is currently being developed as part of the national curriculum for police training. In addition to training in interview techniques concerning suspects, those officers who wish to take this course need to learn about interviewing witnesses with particular disabilities related to learning, mental health, youth and other challenges. An officer who is in tier two is already in a detective-type environment where his or her skills are expected to be at a specialist level. The aim, according to Detective Chief Inspector Shaw, is to make available to the organisation the number of specialists that are required to deal with the issues. Those trained to tier three should be able to handle interviews in the most serious and complex of crimes, such as murder. Those who are at level four are tasked with the management development of interviews. This is the person who assesses interviewing and who is able to give feedback, evaluate interviews and support and mentor those who are working at the first three levels. This person would be regarded as an interview advisor. Detective Chief Inspector Shaw is, himself, at tier five.
- 15.57. The training afforded to policemen who are probationary policemen in England occurs this way. Upon joining the police force a two week period of initial training is given, one week of which is devoted to the interviewing of witnesses and the other to the interviewing of suspects. This training occurs at the training schools within the various police colleges. The trainees are then supported in the workplace by tutor constables who assess the quality of their interviewing against the national standards. After a year’s service the young constable is brought back for further in-house training. The objective is to ensure that when the constable is appointed following his two year period of training he will have a basic level of interviewing skill around the PEACE model. Every constable is trained to tier one level, which they must complete in order to complete their training.

- 15.58. Further training is required if a policeman is to go from tier one to tier two or three. The second tier of investigators consists of uniformed and detective policemen engaged in the investigation of offences ranging from minor to perhaps more complex but low level serious type offences, for example, typical burglaries or serious assaults. A further two week period of training is provided for these policemen, which again allows for one week in respect of suspects and one week in respect of witnesses. At level two the interviewer receives training in the interviewing of witnesses and suspects and may specialise in interviewing various types of witness such as children, or persons with mental illness, or other mental or intellectual disabilities. The type of offences to which those trained at tier three are assigned are some of the more serious offences of murder, manslaughter, rape, firearms offences – the more serious kind of criminality.²⁰⁴⁹ Though it is necessary to have a body of specialist interviewers at tier three, the numbers required are not as great, for example, as tier two. In reaching tier three interviewers may be trained in more specialist areas. The PEACE model applies both to witnesses and suspects so that an interviewer may be found to have better competence interviewing children or victims or persons with learning disabilities, or indeed quite hostile adults. For that level three week periods of intensive training are given in respect of those whom it is intended will interview suspects. More extensive training may be necessary in relation to interviewing certain types of witnesses.
- 15.59. Detective Chief Inspector Shaw emphasised the necessity for continuous professional development and the need for interviewers to be assessed in the workplace. This is addressed by tier four of the model. It is necessary to ensure that once the skills have been passed on to the trainee they are implemented, and to that end there should be robust supervision covering feedback, evaluation, support and mentoring. Of course, those who are involved in these assessments should be trained and competent in the level of interviewing over which they are given supervision. It is essential that these supervisors be trained at the initial stages of setting up the model. It should be noted that tier four involves the management and the development of investigative interviews: the aim is to provide tutor constables, supervisors and managers with the skills necessary to develop probationers, uniform investigators and detectives, and to maintain effective capability in respect of investigative interviewing through robust supervision of the interview process.
- 15.60. The final tier – tier five is in respect of specialist interview management, whereby the aim is to ensure that those operating at that level have an interview expert status and the ability to act as a consultant in all areas of interviewing. Where officers of this competence are embedded in the police forces of England, Wales

²⁰⁴⁹ Transcript, Day 523, pages 96-98.

and Scotland, they operate at a high specialist level, and are available to assist in the implementation of new legislation and to offer continuing advice in relation to training and the maintenance of standards. The role of an interview advisor in this context is to provide assistance to senior investigating officers in major crime and other investigating officers in complex volume or serious crime in relation to the interviewing of victims, witnesses or suspects and to assure the quality of interviews conducted in his or her force. Interview advisors themselves need to be managed and supported with regular monitoring in order to ensure their competence is maintained. It is thought appropriate that those giving the training or exercising the role of interview advisors should also be given the opportunity to continue practicing their skills in an operational environment from time to time.

15.61. Overall, there is also in place a National Interview Strategic Steering Group (NISSG) under the auspices of the National Centre for Police Excellence, chaired by a very senior police officer and containing representatives of the police, academics, representatives of the Home Office, her Majesty's Inspectorate of Constabulary, and the Crown Prosecution Service. There is direct communication between the Centre for Police Excellence and regional co-ordinators of this policy, with whom Detective Chief Inspector Shaw meets regularly to discuss any issues concerning the implementation or improvement of the model. He has formal meetings with regional co-ordinators four times a year together with regular less formal contact and they in turn have meetings within their own police forces which enable them to explain any policy documents or developments to their staff.²⁰⁵⁰ It should be noted that the tiered system referred to, which now involves these essential elements of supervision and training, has been implemented in the North of Ireland. Detective Chief Inspector Shaw was involved in this process and it was also the subject of some study by Ms. Mary Schollum on behalf of the New Zealand police service.

15.62. Detective Chief Inspector Shaw offered me positive evidence of the manner in which effective interviewing techniques can be implemented within a structured framework. He told me in evidence how in England and Wales the introduction of the recording of interviews meant that the noting of interviews, apart from notes for the benefit of the memory of interviewing officers, has all but disappeared. The number of challenges to the admissibility of statements based on allegations of oppressive conduct by the police have also all but disappeared from the system. The scrutiny of the interview process is now based very much on how the interviewee was dealt with while under interrogation: the process of interview. He said that the last case in England and Wales where a confession was ruled inadmissible by reason of oppression was in 1993.²⁰⁵¹ The Tribunal is

²⁰⁵⁰ Transcript, Day 523, pages 24-28.

²⁰⁵¹ Transcript, Day 523, page 17.

satisfied that the PEACE model, described by Detective Chief Inspector Shaw, is well thought through and very useful in terms of minimising the element of prejudice in an investigation and making sure that interviews proceed according to a defined model. The advantage of this is that it requires people to check themselves against a system that works well. The availability of mentoring from experienced officers brings benefits, many of which have also been experienced in Canada.

Canada

- 15.63. Evidence in respect of the Canadian experience of investigative interviewing was provided by Inspector Don Adam of the Royal Canadian Mounted Police. Mr. Cummins, (Assistant Commissioner, RCMP, retired), a Tribunal investigator, was also of invaluable assistance in procuring extremely useful reports by various tribunals in Canada and from various statutory bodies which were of assistance to the Tribunal in its work.
- 15.64. The two major innovations in British Columbia were the creation of an original interview team and the introduction of a person trained to be a major case manager. Inspector Adam told me that the lessons which have been learnt in his jurisdiction came about as a result of a scandal. The Bernardo case became notorious in Canada. As I was told, it was a case of rape and murder which resulted in an inquiry into the police. It was learnt that in a lot of major cases in Canada nobody knew who was in charge, or the person who was put in charge purported to exercise a leadership role because he happened to be the favourite of the Chief of Police or for other reasons unrelated to competence or experience.²⁰⁵² In consequence there was an initiative which aimed to ensure that the instances of cases being poorly handled were minimised. Now, if there is a major case it is best practice that an officer trained as a major case manager is placed in charge. In addition, there is a standards review committee under which senior officers actually engage with the major case manager and review with him the state of the investigation, what enquiries have been conducted and where these enquiries are leading. Senior officers can then review the performance of the major case manager and warn him or her about potential pitfalls, give them the benefit of their experience in criminal investigations and lead them away from tunnel vision.
- 15.65. To a large extent, the evidence given by Inspector Adam contained a description of the various problems encountered in investigative interviewing in Canada, which mirrored problems experienced in the United Kingdom and Ireland. Solutions introduced in British Columbia, of which he had experience, were directed towards introducing similar efficiencies to those that were thought

²⁰⁵² Transcript, Day 485, page 13.

necessary in the United Kingdom. He acknowledged that a significant change was brought about by technology. Videotaping of interviews resulted in better behaviour or less frequent false allegations of improper behaviour by or against the police. He also acknowledged that the introduction of videotaping exposed the inadequacies and ineffectiveness of the techniques of interviewing then employed by the police. As in the United Kingdom, for the first time, the interviews conducted could be subjected to analysis and review by senior investigators, at which point it became clear that the techniques were somewhat poor and in need of improvement.²⁰⁵³ In addition, facilities were provided in some police stations which enabled the investigators to monitor how an interview was going. On occasion an interviewer could be replaced if he was not making progress and if it were thought that an interviewer with different skills would make progress with the detainee.²⁰⁵⁴ This involved the provision of appropriately fitted out custody suites.

15.66. Inspector Adam described to the Tribunal how during the 1980s due to a number of judicial decisions and rules and regulations concerning the interviewing of suspects, a mentality grew amongst policemen that they were not permitted to interview in any very effective way. It was recognised that the skills of interviewers needed to be improved and interviews made more effective. An interview programme involving a two week national course was instituted in the late 1980s and delivered to investigators involved in the investigation of serious crime. A further problem was then recognised in that the lower echelons of the police service were not afforded this training. However, Inspector Adam said that over the last three or four years an attempt has been made to remedy this by introducing a mandatory course for lower ranking officers of one week's duration for those having two to five years service, the subject matter of which was effective interviewing.²⁰⁵⁵ The course is provided by the Pacific Regional Training Academy. This course concentrates particularly on aspects of 'tunnel vision', the danger of wrongful conviction as a result, and the relevant law applicable to interviewing. This course also contains strong ethical direction to ensure compliance with the law and the decent treatment of those interviewed.

15.67. Inspector Adam's description of what the tutors try to impart during these courses coincides in large measure with E of the PEACE model, i.e. engage and explain. He said that it is very important that an interviewer does not make presumptions or have a fixed view of the interviewee in terms of their involvement in the commission of an offence or their character by virtue, for example, of their appearance. It should be made clear to the interviewee why he/she is being interviewed. People should, as far as possible, be put at ease. They

²⁰⁵³ Transcript, Day 485, pages 3-115.

²⁰⁵⁴ Transcript, Day 485, pages 21-23.

²⁰⁵⁵ Transcript, Day 485, pages 28-30.

should be given to understand that they will be treated decently. An attempt should be made to build a rapport with them.

15.68. It was, he said, also important that the interviewer obtain as much information as possible about the matter at hand. He explained how his force had moved from the question and answer approach to what he termed “a pure version”, in which the interviewer sets very wide parameters and tries to get a person to tell in their own words his/her account of a series of events. While there is some concentration on behavioural analysis, there is also an emphasis on the dangers that can be involved in drawing too many conclusions from a person’s demeanour in the course of the interview.

15.69. In the evidence and amongst the materials presented to the Tribunal on this topic, there has been some reference to whether it is possible to detect deception on the part of interviewees. Detective Chief Inspector Shaw and Inspector Adam expressed similar views as to the unreliability and danger of interviewers believing that they are experts at detecting a liar by behavioural observation. For example, nervousness detected in a detainee may be referable to guilt or it may be referable to the fact that he is in custody for the first time. Inspector Adam described how trainees in British Columbia were trained as to the nature of the questions to be asked during the course of an interview. They are told the object is to get an account of a day’s events from a suspect rather than go immediately into a question and answer session. They are told how to re-ask questions and be comfortable with silence and other different methods of drawing a person into speaking. They are taught techniques on how to assess verbal language insofar as it is possible to become aware of certain forms of deceptive behaviour, but always with the caveat that these are not necessarily definitive. The techniques applied involve behavioural observation. This may involve the setting of a question whereby a particular response might be acceptable, in terms of it not being troubling, if the person is innocent; or which might involve a shutting down of the topic as an indication that the interviewee has difficulty talking about it. That may or may not be an indication of guilt. A response is often judged on the basis of normative behaviour: how people respond to matters in the ordinary way or alternatively, in a way that a topic or issue puts them under pressure. It is not the function of this Tribunal to set out in detail the nature and implications of the studies carried out in this area or how they might be applied by An Garda Síochána. Chief Superintendent Ludlow has already indicated that account has been taken of these developments in trying to formulate the new training programme and has referred to studies carried out elsewhere in this regard.²⁰⁵⁶ It is sufficient to observe that this is yet another area that needs to be considered in the training of interviewers and is accepted as such in the United Kingdom and Canada.

²⁰⁵⁶ Transcript, Day 614, pages 89-100.

- 15.70. Inspector Adam told me that if there are difficulties in relation to the account given by the interviewee, in that it differs from information or evidence gathered by the investigators, the interview proceeds to a form of questioning or interrogation which seeks to test the story told and to seek explanations in relation to these difficulties, if they are available. This appeared to be somewhat similar to the A – account element of the PEACE model.
- 15.71. The elements of behavioural analysis outlined by Inspector Adam in respect of this phase are included as part of the courses taught concerning behavioural responses and techniques of statement analysis. Though these may provide pointers to the interviewer as to the veracity of the interviewee, they are regarded as falling far short of providing a definitive test of truthfulness.²⁰⁵⁷ Inspector Adam believes that the techniques applied by those who have attended these courses have produced an increase in crime resolution. Police officers became competent in conducting interviews and, because the techniques proved to be successful in the resolution of crime, they came to be accepted amongst all ranks. All the experts accept that the detection of deceit on the part of an interviewee by the interviewer is very difficult and over reliance by an interviewer on his sense that lies are being told can lead to error.
- 15.72. In British Columbia there were approximately 5,000 RCMP officers. Approximately 700 had attended twenty-four courses offered in relation to these interviewing techniques in the previous year. This indicated a very high level of continuing participation in this training. The introduction of effective interviewing training and standards required very strong leadership at the top, the effect of which, Inspector Adam said, was to inspire lower ranking officers in the following way:

*We have in interview a fanatic following of high end investigators who are looked up to and we have a winning culture about that I suppose, we've been lucky enough to develop that.*²⁰⁵⁸

He said that the trainers told their young people that they could elect to be mediocre policemen their entire lives if they wished but if they actually wanted to be somebody who had the satisfaction of solving crime and moving forward this was the path to take and that they should fight for high standards, even if they have to fight with their NCO's in order to achieve their implementation. It was emphasised, as it was in the United Kingdom, that strong leadership in this area was essential to the introduction and maintenance of high standards of interviewing.²⁰⁵⁹ However, it was also acknowledged that training and assessment was extremely expensive, to the extent that they had not yet reached the stage

²⁰⁵⁷ Transcript, Day 485, Q.32-41.

²⁰⁵⁸ Transcript, Day 485, page 44.

²⁰⁵⁹ Transcript, Day 485, page 43

where they were in a position to carry out extensive assessments on the standard of interviews across the board.²⁰⁶⁰

15.73. Inspector Adam also told the Tribunal about efforts made in British Columbia to provide assistance in the investigative interviewing required in more serious cases. The measures taken by the RCMP in this regard attempted to address the same problems that police in the United Kingdom tried to address under tiers four and five of the PEACE model. In or about 1999 a full-time interview assistance team was created in British Columbia. Inspector Adam, who had a particular expertise as “a polygraph examiner” and in the investigation of major crime, was involved in the creation of this unit and was, at the time he gave evidence, in charge of the interview team. The development of this investigation team arose out of the realisation within British Columbia that there were a limited number of people within any given major crime unit with the expertise necessary to carry out effective interrogations or interviews in serious criminal cases. These interviewers would necessarily have worked in the investigation but they tended to work very long hours and were completely consumed by it. At the culmination of the investigation an arrest might be made and the interviewers would then be expected immediately to interrogate the suspect(s) identified as the culprit(s). Such a close involvement in the investigation, it was realised, could give rise to bias on the part of the interviewers towards the interviewee(s) or contribute towards complete fatigue on the part of the interviewer when called upon to carry out that very important function. A decision was made to devise a system whereby the best interviewers available to the RCMP within British Columbia could be used in investigations of serious crime. This, it was hoped, would enable a more objective assessment of the evidence to take place: strategy and direction in terms of the interviews to be discussed: and the sharing of experience with interviewers of equal or greater skill than oneself.

15.74. As already noted, another feature of the new system introduced in British Columbia was the creation of a case manager, a capacity in which Inspector Adam also acted in the course of his duties. These managers are ratified or accredited as major case managers. They are brought in to large federal investigations, and joint investigations with local police forces. A major case manager has the experience to run a difficult case properly and to bring perhaps a fresh view or the more objective view of an experienced officer who has not been directly involved in the investigation to date. Sometimes he is brought into the case when progress has been slow in order to engender perhaps a fresh approach. There is also a standards review committee in British Columbia, under which a case manager's performance in respect of a particular investigation can be reviewed, and if it has stalled or has not made the progress expected, he/she

²⁰⁶⁰ Transcript, Day 485, page 46.

can be advised as to how difficulties might be overcome. A major case manager can be assigned by the RCMP to review any particular case under investigation.²⁰⁶¹

- 15.75. In British Columbia a provincial major crime unit can, at the will of the local commander, insert itself into any investigation. These investigators are not regarded as interfering busy-bodies, coming in to take credit in respect of a case that the local police could easily solve, rather the atmosphere in Canada has changed so much that this highly resourced unit is sought out by local police branches for its investigative thinking.
- 15.76. The advantage of a study of the Canadian system is that much thought has been put into the preparation of effective training. The system clearly has many advantages and, it seems to the Tribunal, it would repay further study to see how well elements of excellence from this system could be incorporated into training and practice in Ireland.

New Zealand

- 15.77. The Tribunal has also been assisted by the New Zealand police. In 2005 the New Zealand police commissioned a review into the then current policies and practices surrounding investigative interviewing in New Zealand, and appointed Ms. Mary Schollum to carry out this review. She embarked on a study which included a core reference group of four experienced police officers from New Zealand, discussion with various stakeholder groups and a comprehensive survey of best practice in the area as outlined in the international literature. An integrated series of studies comprising of a national survey, relevant statistics, an assessment of a selection of video taped interviews of suspects and witnesses and other matters were carried out by Ms. Schollum, the core reference group and two clinical psychologists. In addition, surveys and interviews were carried out with other interested groups such as police prosecutors, crown solicitors, district court judges, and other frontline supervisors and police investigators. The Commissioner of the New Zealand police authorised Ms. Schollum to furnish details of her research to the Tribunal and to give evidence before it, which she did by live video link and which was of great assistance to the Tribunal. Ms. Schollum informed me of her view that the PEACE model brought together all the elements considered crucial to producing effective interviewing. It embodied a knowledge of the psychology of interviewing, a thorough grounding in a wide range of practical techniques to draw on in interviews as appropriate, the opportunity for substantial practice in a learning environment and supervision and feedback on real life interviews. She acknowledged the importance of establishing a robust training structure that should be delivered to all police staff whose roles involved conducting or supervising investigating interviews. She

²⁰⁶¹ Transcript, Day 485, pages 11-15.

envisaged a training structure for New Zealand similar to that implemented in the United Kingdom, with the exception that it would consist of four interviewer levels rather than five. She envisaged a system of training and accreditation in respect of interviewers at these various levels. In this respect, New Zealand is a country of comparable size to Ireland with a common law tradition. There is a population of 4.4 million people approximately and the police force has a staff of 10,000, 66% of whom are sworn police officers – approximately 6,500 police officers.

- 15.78. In evidence she outlined the circumstances in which her review of investigative interviewing took place. She said that since the advent of audiovisual recording of interviews most police jurisdictions, including New Zealand, came to realise that the skill level was not as high as it was believed to be. Police officers joining the New Zealand police from the United Kingdom who had been exposed to the PEACE model were somewhat surprised at the low standard of interviewing in New Zealand and were of the opinion that the model had a lot to offer in terms of improving best practice. As in other jurisdictions, New Zealand experienced a number of controversial cases in which police inadequacies or misconduct in the course of interviewing became of great public concern. The New Zealand police service carried out approximately 300,000 interviews a year with suspects, taking up approximately a fifth of officers' time. This was a core activity, but one which was accompanied by very limited guidance for the police. Very limited training was provided. Assessment was limited. Only probationary constables had a formal workplace programme, of which only a small element concerned interviewing. The training of detectives involved a small amount of workplace assessment. There was very little available to investigators apart from this elemental training. There was also very limited supervision. Supervisors had no additional training in interviewing apart from what they had received as recruits. Interviewing of suspects and of witnesses was found to be quite poor. Ms. Schollum favoured the training of rank and file officers rather than simply an elite body of investigators that would be brought in where a serious crime was suspected. She believed that this was appropriate because the police carried out over two million interviews a year and each interviewer should understand the psychology that underpins an interview, together with the law and the ethics applicable. Specialist interviewers were important, as was the concept of a group of interview advisors. These would be called on in the most complex and serious cases. They would not necessarily conduct the interviews themselves but would be present to offer assistance in relation to training and strategy and the assessment and monitoring of interviews. She said:

I totally support having some specialist, but I think every police officer does need to have the structures around them to know how

to interview witnesses and victims and suspects in a highly competent and professional manner. That, I think, can only be achieved through dedicated training and having that practice in a learning environment. Having ongoing monitoring and feedback from supervisors and formal assessment to make sure that their skills are of the required level and that in fact skills are being maintained. ... It would be totally impractical for New Zealand to have a smallish body of elite interviewers who would have to travel large distances to reach out of the way locations. I think there is a core activity for police at the moment ... it uses up about a fifth of officers' time. It's a day to day core activity for them and they need to do it well.²⁰⁶²

She added that those who show a particular aptitude should be targeted for fast track training in the early years into advanced interview training and ultimately targeted for specialist training. This should be accompanied by an accreditation process.

- 15.79. In this context, Ms. Schollum recommended four interviewers' levels. Level one was regarded as the foundation level for investigative interviewing for recruits who, on achieving the desired basic standard, would be accredited as a level one interviewer. This involved ten days training. Level two was an advancement on this foundation level and would be a requirement for all experienced officers of three years' standing, all supervisors and all aspiring criminal investigation branch officers. This would encompass another five days, training within police districts supported by workplace assessment to ensure the desired standards were met. Level three was for advanced or specialist interviewers such as child abuse, evidential interviewers, or adult sexual assault interviewers. This would be taught through specialist courses at the Royal New Zealand Police College or other dedicated training facilities. Level four was to be established for a small number of investigative interviewing advisors. This would be district staff who would advance the cause of investigative interviewing and use their expertise to assist serious criminal investigations with advice on interviewing. They would also assist with district training and workplace assessments. It was anticipated that levels three and four would be regularly assessed. A significant allocation of resources would be required for the training and supervision necessary to implement the programme. It was envisaged that this would have a significant cost. Of particular significance was the knowledge that training alone was not the answer. In the light of the experience in the United Kingdom it was clear that it was vital that an accreditation process be introduced together with ongoing evaluation as described by Detective Chief Inspector Shaw.²⁰⁶³

²⁰⁶² Transcript, Day 545, pages 45-46.

²⁰⁶³ Transcript, Day 545, pages 1-85.

Ireland

15.80. The issues concerning the treatment of persons in custody have been the subject of a number of reports in this jurisdiction. The controversies precipitating these reports usually centred on allegations made by detainees that they had been mistreated whilst in custody. Developments relevant to this matter are set out in some detail in order to afford an understanding of the present position and how it arose. As is clear from what follows matters have moved on considerably since 1996, but much remains to be done.

The Ó Briain Report

15.81. On the 6th of October 1977, the Ó Briain committee was established by the government:

To recommend with all convenient speed whether, and if so, what additional safeguards are necessary or desirable for the protection against ill-treatment of persons in Garda custody, having regard to allegations made in relation to persons held in such custody pursuant to Section 30 of the Offences Against the State Act, 1939, or Section 2 of the Emergency Powers Act, 1976, and for the protection of members of the Garda Síochána against unjustified allegations of such ill-treatment ...

At the time, the committee noted that all persons in custody were entitled pursuant to Garda regulations to the right to have a solicitor and a member of his family or a friend informed that he had been taken into custody, to receive a visit from and consult privately with a solicitor, to receive a visit from a member of his family or a friend provided this was not considered prejudicial to the interests of justice and was supervised by a Garda, and the right to be informed that he is entitled to communicate with his family, friend, legal or medical advisor or to send for a bails man. The committee noted a number of phenomena with which the Tribunal is very familiar. It understood that there was general complaint to the effect that the Gardaí had a tendency not to co-operate wholeheartedly when a complaint was made against them, due to an understandable reluctance to becoming involved as a witness against a colleague:

The “wall of silence” which meets the investigating officers may well make any proper inquiry abortive. There may also arise the added difficulty of cases where the identity of the officer against whom it is sought to make a complaint is unknown, and unascertainable by the complaining member of the public. If the public has any ground to suspect that there is a “cover up”, it is inevitable that a loss of public confidence in the force will ensue.²⁰⁶⁴

²⁰⁶⁴ Report of the Committee to Recommend Certain Safeguards for Persons in Custody and for Members of An Garda Síochána, page 13, paragraph 37.

It also noted that the preponderance of criminal offences “upwards of 80%” were solved by confessions which were the end product of questioning sessions.

- 15.82. The committee made a number of recommendations, the first of which was that the then practice of taking people whom it was desired to question to a Garda station “to help the police with their enquiries” should be discontinued. A number of other recommendations suggested the appointment of a “Custodial Guardian”, whose duty would be to ensure that a person was treated humanely and in strict accordance with Garda regulations whilst he was in custody. This guardian would be responsible for the wellbeing of the person in custody and the safeguarding of his rights and for ensuring that his reasonable requests were met. In the event of any member of the force, whether senior in rank or not, attempting to treat the person inhumanely or contrary to Garda regulations the custodial guardian, it was recommended, should forthwith intervene to prevent such abuse. It should be reported immediately to his immediate superior. For those detained for lengthier periods under the Offences Against the State Act or the Emergency Powers Act, the custodial guardian, it was recommended, should be a member of the force of rank not below that of inspector to be assigned by a chief superintendent of the division in which the person was detained. Other recommendations for the keeping of a station logbook to record the history of each detainee, and for the manner of taking of statements, were made. It was also suggested that an independent complaints tribunal should be set up and that when an accused person appeared on a charge in the District Court the prosecution should be required to say whether any statement or confession made by the accused would be relied upon. It also recommended that the District Judge, if he ascertained that a statement or confession was to be relied upon, should then enquire of the accused whether or not the confession or statement was freely made. If the accused said it was not freely made he should be permitted but not compelled to elaborate in relation to any alleged ill-treatment. It also made recommendations for the increase of forensic facilities for the Garda Síochána, which were deemed to be seriously inadequate and compared unfavourably with those available to police forces elsewhere. The training of Garda recruits and in-service training of Gardaí, laying stress on the proper treatment of persons in custody having regard to their legal rights as laid down in the United Nations Declaration on Human Rights and other international agreements and conventions, was also recommended. Feasibility studies were recommended as to whether videotaping or tape recording of interviews could take place.
- 15.83. In an addendum to the report Mr Justice Ó Briain suggested that the law should be amended to provide for a period of detention during which the Gardaí would

have the right to hold persons “reasonably suspected of having committed a crime” for the purpose of questioning them in relation to the crime. He recommended that six hours be adopted as the norm in all cases with certain powers for a District Judge to extend the normal period for a strictly limited time. He also envisaged that the Offences Against the State Act, 1939 and the Emergency Powers Act, 1976 would be replaced by this provision.

- 15.84. Mr. Justice Ó Briain also considered whether the absolute right to remain silent should continue in all cases. He considered that the rule should be modified and that a suspect should be required to answer certain questions and that a failure or a refusal to do so might be made the subject of comment by the judge at the trial and/or by the prosecution with the leave of the trial judge. He thought that the jury should be told to draw such inference they thought proper from a refusal to answer all or any such questions. He said:

Such questions might relate to identity and address, marital status, explanation of stains on clothing, property (including money) found upon the suspect, an account of his dealings with a vehicle believed by the Gardaí to have been used in a crime, his movements for a specified period of time before and after the crime, and some other kindred questions to be set out in a statute and strictly limited. Outside of such matters the suspected person would retain his right of silence, as at present, quite unimpaired.²⁰⁶⁵

- 15.85. Years later some of these issues were addressed in the Criminal Justice Act, 1984. Under section 4 of that act the power to detain persons arrested in respect of offences that could attract a sentence of up to five years imprisonment, limited to six hours, was introduced. This power could be extended for a further six hours on the direction of an officer not below the rank of superintendent. This differed somewhat from the recommendation of Mr. Justice Ó Briain insofar as the extension did not require a judicial authority and it was to coexist with the powers to detain under section 30 of the Offences Against the State Act, 1939. Consequently, as seen in Chapter 1, regulations in relation to the treatment of persons in custody, which largely reflected the recommendations set out in the main body of the Ó Briain report, were introduced. In addition, under Sections 18 and 19 of the Criminal Justice Act, 1984 it was provided that adverse inferences could be drawn from the failure or refusal of an accused person to account for objects or marks or his presence at a particular place in the course of a criminal trial. The Act did not come into force until 1987 with the making of the custody regulations and the bringing into force also of the Garda Síochána (Complaints) Act, 1986.

²⁰⁶⁵ Report of the Committee to recommend Certain Safeguards for Persons in Custody and for Members of An Garda Síochána (Pr1.7158 pages 21-23).

- 15.86. Also in line with the recommendations of the Ó Briain report, section 27 of the Criminal Justice Act, 1984 provided for the electronic recording of questioning. In fact the electronic recording of questioning was not then introduced and it was ten years before the introduction of the Criminal Justice Act, 1984 (Electronic Recording of Interviews) Regulations, 1997.²⁰⁶⁶

The Martin Report

- 15.87. In this regard, the Minister for Justice and Communications appointed a “committee to inquire into certain aspects of criminal procedure” under the Chairmanship of His Honour Judge Frank Martin in 1989. This committee was formed in the wake of the cases of the Maguire Family, the Guildford Four and the Birmingham Six. The committee was asked to examine whether there was a need for a procedure whereby those who had suffered a miscarriage of justice could have recourse to a further appeal or some other procedure whereby the conviction which was the product of a miscarriage of justice could be recognised as such and set aside. In addition, it was asked to examine whether additional safeguards were needed to ensure that admissions were properly obtained and recorded given that uncorroborated inculpatory admissions made by an accused to An Garda Síochána could be sufficient evidence to ground a conviction.²⁰⁶⁷ The committee recommended that the questioning of suspects be recorded audiovisually. It was anticipated that there would be some delay in the implementation of the proposal, having regard to the logistical planning, training and material support necessary for such a project if it were to be implemented throughout the State. A pilot scheme was advised in the first instance. In addition, it was recommended that a comprehensive set of rules be drawn up concerning procedures to be followed during the course of such interviewing and in relation to the preservation of the tapes once made.²⁰⁶⁸ The committee also recommended that the views of the judiciary should be obtained as to whether, in appropriate cases, a warning should be given to juries as to the caution that should be exercised when convicting a person on a verdict which depends wholly or substantially on the accused’s inculpatory admission.²⁰⁶⁹
- 15.88. Following this report a number of statutory provisions were enacted. Firstly, section 2 of the Criminal Procedure Act, 1993 introduced a scheme whereby miscarriages of justice could be addressed by way of further application in the Court of Criminal Appeal in cases where there is said to be a new or newly discovered fact. Secondly, section 10 of the Criminal Procedure Act, 1993 provided that a trial judge should advise a jury to have due regard to the absence of corroboration in cases in which there is evidence of a confession. Thirdly, in

²⁰⁶⁶ S.I. No. 74/1997.

²⁰⁶⁷ Report of Committee to inquire into certain aspects of criminal procedure (March 1990) ISBN 0-7076-0100-2.

²⁰⁶⁸ Report of Committee to inquire into certain aspects of criminal procedure, pages 33-38.

²⁰⁶⁹ Report of Committee to inquire into certain aspects of criminal procedure, page 39.

1997 the Criminal Justice Act, 1984 (Electronic Recording of Interviews) Regulations 1997 were introduced.

- 15.89.** The Tribunal has from time to time had occasion to criticise the failure of reform within An Garda Síochána. However, as appears from this lengthy and protracted history concerning these issues over a twenty-year period between 1977 and 1997, the Oireachtas and the Department of Justice, Equality and Law Reform were very slow to respond to extremely important issues. When one considers that the electronic recording of interviews was given a statutory basis in 1984 and that it was not acted upon until 1997, and then seven years after a report recommending that this action be taken, it is impossible not to conclude that the administrative and political reticence in dealing with these important issues contributed largely to the continuing environment in which interviews took place. The Garda Síochána can only act with the facilities and within the legislation and procedures that are provided to them by the Oireachtas and the Minister for the time being responsible for the Department of Justice, Equality and Law Reform. These authorities, together with the Commissioner of An Garda Síochána, bear responsibility for reform and changing the operational culture within which An Garda Síochána operates. Had recording facilities been available in 1996 in Letterkenny Garda Station this Tribunal would have been saved months of evidence and those who participated in wrongdoing might have been discouraged from their improper behaviour. Those who exaggerated or made false allegations against members of An Garda Síochána might also have been discouraged from so doing. Of course, this applies in a more general sense to all similar cases that occurred during that protracted period.
- 15.90.** Having said all that, the scope for wrongdoing has been hugely reduced by the availability throughout the State of the electronic recording of interviews at Garda stations to which detainees are brought under section 4 of the Criminal Justice Act, 1984 or section 30 of the Offences Against the State Act, 1939. The implementation of this nationwide system has taken place over a number of years since the introduction of the regulations and has been overseen by the Steering Committee on Audio and Audio/Video Recording of Garda questioning of detained persons which was established in 1993. Under the chairmanship of Mr. Justice Esmond Smyth it was directed to make recommendations to the Minister for Justice, Equality and Law Reform on all aspects of instituting electronic recording of detained persons in Garda custody. Its first report led to the introduction of a pilot audiovisual scheme operated in selected stations between 1994 and 1999. In its second report made to the Minister in 1999 the committee recommended that a nationwide scheme of audio/video recording should proceed. The government accepted the Steering Committee's

recommendations and authorised a nationwide scheme in July 1999. The third report of the Steering Committee delivered in September 2004 chronicled the nationwide implementation of the audiovisual recording of interviews in detention.

- 15.91. It was never envisaged that all Garda stations would have facilities for the electronic recording of interviews, indeed not all Garda stations were appropriate for the detention and interviewing of suspects in any event. Consequently, the aim of the scheme was to ensure that within each division there were a sufficient number of Garda stations to ensure that all interviews as specified in the regulations were recorded.²⁰⁷⁰ The advances made in this area have now been considered by the Court of Criminal Appeal in *The People (DPP) v Connolly*²⁰⁷¹ and in *The People (DPP) v Murphy*²⁰⁷² in which the Court of Criminal Appeal more recently observed that:

Going forward ... there should be a marked reluctance to excuse failures to comply with the requirements of the Criminal Justice Act, 1984 (Electronic Recording of Interviews) Regulations 1997, other than those circumstances specified in the regulations themselves. We feel, therefore, that in respect of station interviews from this point onwards, the court should only exercise its discretion under S.27(4) for very good reason.²⁰⁷³

Section 27(4) of the Criminal Justice Act, 1984 provides that any failure to comply with the provision of the electronic recording regulations should not by itself render inadmissible in evidence anything said during questioning, without prejudice to the power of the court to exclude evidence at its discretion.

- 15.92. The Steering Committee also recognised that the training of over 8,000 Gardaí was necessary in order to ensure that the regulations could be implemented. This training consisted of a two day course in relation to the operation of the video system supplied and some training in relation to the interviewing of suspects. This included, for the first time, a guide to interviewing and awareness of interviewing suspects with potential psychological problems. The PEACE model was part of this training course and was recommended as a good model for training by the committee as it gave guidance on the structure and best practice in interviewing. A cornerstone of the training in Ireland, as in the United Kingdom, was said to be a practical approach involving case studies and the use of installed equipment. The trainers themselves received a one week training course to enable them to deliver the required course to the trainees. It was also noted that all members appointed to a Detective/Crime Investigation Unit underwent a five week training

²⁰⁷⁰ The Third Interim Report of the Steering Committee on Audio and Audio/Video recording of Garda questioning of detained persons – September 2004.

²⁰⁷¹ [2003] 21.R.1 which referred to the desirability of the use of audiovisual recordings for the interviews of suspects in Garda stations.

²⁰⁷² [2005] 41.R.504.

²⁰⁷³ *Ibid* page 517; see also *The People (DPP) –v- Diver* [2005] 3 I.R. 270.

course. During this programme various aspects of interviewing and the conduct of interviewing and the taking of statements is addressed. In addition, subsequent to the completion of this nationwide training course the training of all probationer Gardaí in the audio/video recording of suspects' interviews was incorporated into the student/probationer training programme provided at Templemore Training College. Though there was no legal obligation under statute to tape or video record interviews the committee considered that because the scheme was now in operation on a nationwide basis:

It should obviate any suggestion that it is necessary to bring a detainee to a station other than those which have been fitted out with the necessary facilities for audio/video interviews. Therefore the Garda Síochána must make every effort to ensure that all interviews are recorded on audio/video and that all available options are explored before any of the exceptions, as provided for in the regulations, are invoked.²⁰⁷⁴

15.93. The Tribunal is satisfied, having regard to the statutory regulation of the electronic recording of interviews, the enormous investment in resources made by the State in training An Garda Síochána and supplying the equipment necessary throughout the country to ensure its implementation, the extensive time afforded to An Garda Síochána to adapt to the new regime, and the enormous importance of the availability of accurate recordings of interviews in the administration of justice, that the admissibility in evidence of unrecorded admissions made by persons in custody should not be tolerated. There should be a marked reluctance on the part of the courts, who ultimately provide a benchmark for best practice in An Garda Síochána, to accept anything less than the full implementation of these regulations "absent extraordinary circumstances"²⁰⁷⁵ clearly established in evidence by An Garda Síochána.

15.94. By reason of these important changes, An Garda Síochána has been placed in the position in which any independent viewer of the video tapes of an interview will have a very clear record of what happened and how an interviewee came to make an admission. In addition, An Garda Síochána have a very effective tool by which they can review the performance of their interviewers and learn from any mistakes that are evident from any particular interview. This can be beneficial for the Gardaí involved and for An Garda Síochána in general if the mistakes and deficiencies observed are found to be widespread but capable of remedy by improving the general approach to interviewing. It has already been noted that widespread shortcomings were found to exist in the United Kingdom, Canada and New Zealand when tapes and video tapes were reviewed. A considerable

²⁰⁷⁴ The Steering Committee on Audio and Audio/Video recording of Garda questioning of detained persons Third Report – September 2004 paragraph 4.3.

²⁰⁷⁵ People (DPP) v Connolly [2003] I.R.1 at p.18 for Hardiman J.; see also Chapter 1.

number of interviews with suspects and with witnesses were examined by this Tribunal in the course of its work and similar deficiencies were clearly demonstrated in that documentation and in the evidence heard by the Tribunal in a number of its modules.

Evidence of Chief Superintendent Kevin Ludlow

- 15.95. Chief Superintendent Kevin Ludlow was in charge of the Garda College at Templemore for a period of approximately six years from 1999 to 2005. It was a period during which formal training in the area of interviewing techniques first took place at the college. He also has considerable operational experience over thirty-four years of service and since in or about 2004 has been the divisional officer for the Cork City division. In evidence to the Tribunal he outlined how the need for training in the area of interview techniques was identified and introduced to An Garda Síochána at the same time as the introduction of the electronic recording of interviews. The two issues were integrated following the introduction of the pilot programme as a result of the Steering Committee's recommendations already referred to. When a national scheme of electronic recording of interviews was recommended by the committee, it was decided that a training and development programme would be introduced, not only around the technicalities of operating the equipment properly, but also with a view to introducing a more formal and directed approach to interviewing. At that time An Garda Síochána did not have a policy which drove training in this area. In developing a training programme international best practice was reviewed and the Gardaí assessed what was available in adjoining jurisdictions. A two day training programme was ultimately developed and provided to some 8,945 Gardaí. It commenced in March 2001 and concluded in July 2002. The PEACE model, with some adaptations, was used as a framework for the programme. The programme concentrated on the regulations for the audiovisual recording of interviews, the use of the audiovisual equipment, relevant case law, a guide to interviewing and awareness of interviewing suspects with potential psychological problems, together with guidance on best practice through the medium of a number of case studies.
- 15.96. Detective Chief Inspector Shaw indicated in his evidence that a two day course covering all of these matters was entirely insufficient for the purpose of training police officers in respect of the PEACE model. This was acknowledged by Chief Superintendent Ludlow in that he accepted that though a two day programme might have been sufficient to deliver on the technical aspects of the equipment and also to raise some awareness about issues like psychological vulnerabilities, it would not have provided enough time to go into these issues in great detail.

Whilst the course touched on some of the issues raised, in particular concerning coerced compliant confessions, the time available meant that this was quite a superficial treatment of the issue. However, it indicated to participants that there was theory and research concerning this particular issue in existence.

- 15.97. An outline was furnished to the Tribunal of the training provided to student/probationer Gardaí since February 2003. In the initial phase one of training, which is a period of twenty weeks duration conducted at the Garda Síochána college, a student Garda is provided with four hours theoretical tuition on the detention of persons in Garda stations and Garda practices and procedures in that respect. This course extends to issues concerning the human rights standards applicable, the custody regulations and the Criminal Justice Act, 1984. There is no practical instruction on interviewing techniques provided at this stage of the training and development programme.
- 15.98. Phase two of training is “an observational and experiential learning programme”. Students are assigned an experienced tutor and to a designated training station but they are not members of An Garda Síochána as yet. They are required to achieve “learning outcomes” in a number of areas, including the management of prisoners. The students document these “learning outcomes and experiences and reflect on them” in what is known as their “experiential learning diaries” which are subject to assessment and inspection by training staff and local managers and supervisors. Access to live interviews is permitted and required so that the student Garda experiences at first hand the interviewing of witnesses or suspects unless there is an objection by the suspect.
- 15.99. In phase three of the training programme conducted back at the Garda college over a twelve week period, students receive an introduction to interviewing including the analysis of victim statements and how to properly interview witnesses, and the analysis of suspect statements. They receive theoretically based lectures on interview skills, including the legal requirements of the audio visual regulations and best practice in interviewing skills including issues around false confessions and oppressive questioning. Following this phase, the student Garda moves to the probationer stage for a period of two years. The Probationer Garda is assigned to a Garda station, which is a designated training station where module two of the “phase three programme” is conducted. This is of four weeks’ duration and is conducted at the station. Each probationer is required to achieve four days of classroom activity during this period. The course covers the provisions of the Criminal Justice Act, 1984, discussion on the recording of interviews, advice and guidance on the practical implementation of the custody regulations, and instruction on the PEACE model. A lecture is delivered by a local

interviewer, selected on the basis of his expertise and ability in the area of interviewing. They prepare for practical interviewing exercises, which are conducted with them during the four day period. They practice procedures necessary to comply with the regulations concerning the electronic recording of interviews and the operation of the equipment. They then have practical interviews involving role play exercises and receive feedback including discussion on their performance during that particular period.²⁰⁷⁶

15.100. Chief Superintendent Ludlow also described the detective training programme, which devotes two days to the issue of investigative interviewing. Over these two days the cognitive interviewing of detainees, the interviewing of suspects with psychological vulnerabilities, and investigative interviewing techniques are discussed. Issues surrounding the audiovisual recording of interviews and statement analysis are explored. In recent times the detection of deception has become part and parcel of that particular programme. Following the training period the development of competence in interviewing is carried out through “experiential learning”, which takes the format of coaching and mentoring in the operational field by experienced people. The Gardaí are accompanied when conducting interviews and are seconded to detective units where they will receive experience and have the opportunity to practice and develop their skills. He noted that there was no formal structured feedback on the performance of Gardaí carrying out interviews. There is feedback in terms of the scrutiny of investigation files. There are discussions with inexperienced Gardaí in relation to their investigation files and any issues arising out of interviews that they have conducted either with witnesses or suspects. Issues that management feel are required to be brought to their notice to help their development are pointed out to them in order to improve their performance. This is regarded as part of daily and normal supervisory management. At district officer level frequent conferences are held and the competence and capability of Gardaí and their approaches in particular cases may be discussed as part of the normal supervisory management of daily activities.²⁰⁷⁷

15.101. In addition, Chief Superintendent O’Mahony and Chief Superintendent Ludlow informed the Tribunal that there were a number of working groups within An Garda Síochána reviewing the overall structure of how best to conduct serious criminal investigations. Chief Superintendent O’Mahony referred to four such groups and an additional fifth group which was concerned with creating policy in relation to the interviewing of witnesses and suspects which, it is hoped, will influence the training of Gardaí at various levels. It was hoped to have a preliminary report submitted to the Commissioner of An Garda Síochána on this matter by September 2007. The group was chaired by Chief Superintendent

²⁰⁷⁶ Transcript, Day 614, pages 73-85.

²⁰⁷⁷ Transcript, Day 614, pages 83-88.

Ludlow and composed entirely of Gardaí drawn from all ranks that had experience and/or attended conferences concerning the issue or had had some training with the Police Service of Northern Ireland in respect of the interviewing of witnesses or suspects.

15.102. At the time of writing the Tribunal is aware that the working party chaired by Chief Superintendent Ludlow has made an interim report to the Commissioner in respect of these matters. He expected to furnish his final report to the Commissioner before the end of January 2008. The Tribunal has not been furnished with either report.

15.103. Chief Superintendent Ludlow pointed out that the working group of which he had been appointed Chairman:

Has been tasked with developing a draft manual for guidance for the interviewing of witnesses and suspects taking into account international best practice and the constitutional and legal requirements of this jurisdiction. The work of that group is currently ongoing and it's true to say that our focus is to produce a policy and a manual of guidance that will withstand judicial and academic scrutiny and also have the trust and confidence of the public and community at large.²⁰⁷⁸

It is not the function of this Tribunal to recommend what should be included in such a manual or to set out in detail the questions that may or may not be asked in the course of any particular interview. It is clear to the Tribunal from the evidence of Chief Superintendents O'Mahony and Ludlow that An Garda Síochána has already adopted the ethos and the important key elements of the PEACE model in some aspects of its training (subject to some reservations which will be addressed later in this chapter). These are very positive developments. As will be seen the Tribunal recommends full implementation of the PEACE model by An Garda Síochána subject to any necessary adaptations which will make it more effective. However, at present An Garda Síochána needs to clarify its policy in this area and complete the full implementation of the model in respect of best interview training, general training, supervision and workplace evaluation.

15.104. In this regard, the Tribunal has been informed that An Garda Síochána is also co-operating with the expert group sitting in respect of the Dean Lyons Report and concerned with the very issues touched upon in this chapter. It has not yet reported. The Tribunal has also considered the very

²⁰⁷⁸ Transcript, Day 614, pages 99-100.

helpful reports of the Steering Committee on Audio and Audio/Video Recording of Garda questioning of detained persons concerning the implementation of electronic recording throughout the State. In this context, I have reviewed what I consider to be the more important recommendations and developments in this area over the last thirty years. I have set out the extensive case law and statutory provisions applicable to the detention and interviewing of persons in custody in Chapter 1 of this report. All of these events and matters indicate to me that the time has come for all of the relevant authorities in this jurisdiction to come together and formulate a clear policy to be applied by members of An Garda Síochána in the interviewing of persons in custody. The Department of Justice, Equality and Law Reform has a clear role to play in the examination of best interviewing techniques and the provision of the appropriate legislative support and structural and material resources for An Garda Síochána to implement them. In this context, it is appropriate that lessons be learnt from the United Kingdom and, in particular, the value attached in that jurisdiction to the involvement of all relevant interested parties in the formulation of the national strategy for the implementation of the PEACE model. This includes the training necessary for its implementation, and the introduction of a steering group to oversee its continuing effective implementation and development. As a matter of urgency the disparate groups now considering aspects of interviewing suspects and/or witnesses should be brought together in one group, perhaps under the chairmanship of a judge to consider all aspects of the interviewing of suspects with a view to the full and practical implementation of the PEACE model as soon as possible. This group should formulate, implement and oversee policy in this area. Membership of the group should include all ranks of An Garda Síochána with experience in this area, a representative of the Director of Public Prosecutions, the Office of the Attorney General, the Department of Justice, Equality and Law Reform, the Bar Council and/or The Incorporated Law Society of Ireland, civil liberties groups, the Human Rights Commission, and a psychiatrist and/or psychologist with insight into the areas of false confessions and/or other vulnerabilities that may be exhibited by detainees. It is important that lawyers be appointed to this committee who have extensive criminal law experience, having appeared for the defence and the prosecution, and having first hand experience of the difficulties presented. This group should be mandated to produce results within a short time. This should include the production of a handbook, the proper training, supervision and assessment of

interviewers in the field at all levels, and the provision of appropriate custody suites, and other practical facilities thought to be necessary. Provision for further refresher courses should also be available. The oversight element requires the appointment of a national co-ordinator in respect of the strategy to be implemented so that some person is given full responsibility and authority to ensure that proper training is carried out, and to ensure that implementation of the strategy is fully accepted and executed by Gardaí at all ranks.

- 15.105. It is clear to the Tribunal that the training of interviewers is particularly important in the context of the implementation of the PEACE model. Whatever variation of this model is ultimately adopted by An Garda Síochána, more intensive training will have to be given to Gardaí involved in what are regarded as the second level of interviews concerning crimes such as burglaries and/or serious assaults. Further training must also be given to those involved in the more specialist areas concerning the investigation of more serious crimes such as murder and rape. The Tribunal so recommends. In that regard, the evidence of Detective Chief Inspector Shaw to the effect that three things were essential for the implementation of the model at all levels, namely training, workplace assessment and policy development, should be the abiding guide for An Garda Síochána in the future. It is clear that this will require substantial investment of time, money and Garda resources. It is the responsibility of the Department of Justice, Equality and Law Reform to ensure that these resources are provided.

The Caution

- 15.106. Another area in which action is required relates to the nature of the caution to be administered to persons in detention, having regard to the provisions of the Criminal Justice Act 2007, which allow for the drawing of adverse inferences from a person's silence and for failure to mention particular facts as set out in the statute in the course of a trial. In addition, section 57 (1) of the Criminal Justice Act, 2007 provides for the admission in evidence of an electronically recorded statement, notwithstanding that it was not written down at the time of its making. Every attempt should be made to provide guidance to An Garda Síochána as to the appropriate caution to be administered in relation to these statutory provisions and the extent of the information, if any, that should be given to a solicitor advising a detainee in order to enable him to give meaningful advice. Otherwise, the inadequacy of the caution given may give rise to unfairness and/or criticism if the matter comes before the criminal

courts.²⁰⁷⁹ The ramifications of judgements of the European Court of Human Rights in this regard have also to be considered. The Garda Síochána should be afforded some meaningful guidance as to the implications of these decisions.²⁰⁸⁰ It cannot be emphasised too strongly that these matters are of the utmost importance, having regard to the central role that admissions or confessions often take in the prosecution of criminal offences and in the day-to-day investigation of crime.

An Garda Síochána and the PEACE Model

15.107. Clearly An Garda Síochána favour the application of the PEACE model in relation to investigative interviewing. They have implemented it to a significant but limited extent in the course of the training regime introduced in respect of the electronic recording of interviews and in their probationary and detective training programmes since in or about 2003. They have not, however, acted on the lessons learnt following the initial implementation of the model in the United Kingdom and the studies carried out thereafter. They have not developed the five tiered structure applicable in the United Kingdom or created the intensive training system in relation to the taking of statements envisaged by tier two and, more particularly, of the specialist level, tier three. However, Chief Superintendent O'Mahony indicated that when the policy review of the working party in which he was serving was completed, he envisaged that the model would not be substantially different from the PEACE model applicable in the United Kingdom. Be that as it may, there is an urgent need to improve the training and approach of interviewers involved in the investigation of serious crime.

15.108. At present there is no management tier within An Garda Síochána trained to carry out any real or ongoing assessment of the interviewing techniques or standards applied by those engaged in the interviewing of suspects. The Tribunal has been told that it may come following the review of policy. The training afforded to detectives still seems to be based on 'on the job training' by experienced detective interviewers. This probably has some practical advantages. However, the lessons learnt in the United Kingdom and Canada are that newly sworn police officers do not often have the opportunity to implement or utilise interviewing skills with suspects in the years immediately following their appointment. Their skills may fall into disuse. If, then, they become detectives, in this jurisdiction they get the limited training already described. There is no evidence, however, that in this jurisdiction detectives following their

²⁰⁷⁹ The People (DPP) v Bowes [2004] 4I.R.223.

²⁰⁸⁰ See Archbold (2002) paragraphs 15-316 to 15-347.

initial training are tutored on the job by those familiar with implementing the PEACE model. Indeed, there is little training of specialist interviewers in the model and it would appear that whatever practices existed hitherto in relation to interviewing have not been the subject of any major policy change or the implementation of any new regime at the more experienced or management levels within the force. This would require some form of policy initiative which has not yet been decided upon, let alone implemented.

- 15.109. The Gardaí have had access to video tapes of interviews carried out by their members over the last number of years. There is no evidence of any continuous critical assessment of these video tapes, whereby the performance of interviewers is assessed by properly trained supervisors with a view to enhancing the performance of interviewers in the future. As noted, when tape recordings and video recordings of interviews were introduced in the United Kingdom, Canada and New Zealand it was found that the standard of interviewing was quite low. This was part of the reason for the re-assessment of the system and the introduction of the five tiers whereby management and supervision of interviewers became much more important. There is no reason to believe that the same is not the case in this country. However, valuable time has been lost without a structured review of these interviews in order to ascertain the extent to which standards of interviewing may need improvement. In this regard, I note the evidence of Chief Superintendent O'Mahony that the proposed introduction of a detective inspector in each division who will be responsible for the investigation of serious crime and for the co-ordination of interviewers in the course of such investigations may provide some measure of supervision and assessment in that regard. That will depend on the extent of the assessment. Proper assessment, I have been told, requires trained manpower and the commitment of resources.
- 15.110. The Tribunal was also informed by Chief Superintendent O'Mahony that there is no system in place within An Garda Síochána whereby following the revelation or realisation that a false confession has been made or that a statement has been treated as inadmissible by a Court in the course of trial, the Gardaí immediately investigate from their perspective the reasons why such an event has occurred. It would seem to be an important part of work assessment that An Garda Síochána would have a system in place whereby such an event could be immediately reviewed and an understanding sought as to why or how it had come to pass. This must change. The force must be in a position and be willing to examine its

actions and learn from such events as part of an ongoing capacity for review and reform. This should be linked to the ongoing supervision and assessment of interviews. The results of such a review could be conveyed to the committee already mentioned, which might take account of them in formulating policy or any suggestions for improvement in procedures or practices applicable.

- 15.111. The Tribunal is concerned that there may be a reluctance to implement the PEACE model fully. If An Garda Síochána have reservations about the model, they should be fully explored, debated and resolved. If there are not, confused signals are being sent to the Gardaí operating as interviewers in the investigation of crime as to what the policy to be implemented is. In addition, if an admission or confession is challenged at a trial and the facts surrounding the taking of that admission or confession are explored, it will be necessary for the interviewers to stand over what they have done and how they have conducted an interview but, as matters presently stand, they will be doing so in a vacuum of policy. Policy, necessarily dictates what the interviewers regard as fair procedure. It may be that the vacuum remains but the judiciary would be obliged to dictate the policy to An Garda Síochána by developing case law arising out of such events. This is a most unsatisfactory state of affairs and should not be allowed to continue. The present situation is that PEACE is part of the student Garda training programme and the detective training programme. At present there is no meaningful work assessment to ensure its implementation: though I am told that it is hoped to institute one as part of a training structure. The Tribunal has been told that some supervision may take place by virtue of the appointment of a detective inspector to each division to take charge of the investigation of serious crime. The reality is that the policy development of An Garda Síochána in this area is still under review: though hopefully not stalled. It would appear that Chief Superintendent O'Mahony envisages that following the conclusion of the policy review it is likely that the model to be adopted by An Garda Síochána will substantially reflect the PEACE model.
- 15.112. An Garda Síochána has expressed a reservation about a central element of the PEACE model as to how an interview is to be approached. The main problem as explained to me by Chief Superintendent O'Mahony was that it did not accommodate a sufficiently strong "challenge" to the interviewee in the course of interview. The Tribunal sought to understand what was meant by this. Chief Superintendent O'Mahony explained that a tendency had been noted and indeed accepted by Detective Chief Inspector Shaw in the United Kingdom, that a

formulaic approach tended to be adopted by interviewers applying the PEACE model to the extent that interviewers tended to “tick the boxes” when appropriate questions were posed during the course of the interview. Having done so, there was no follow-up or challenge to the interviewee. He explained it in the following way:

From my experience and from speaking to practising police officers in the United Kingdom and in Northern Ireland, it is very much the question is asked and the answer is accepted and the boxes ticked in a lot of the cases. I believe that we have a duty of care to the victims, to the public, to ensure that every avenue is explored in relation to finding the truth. Obviously any challenge that is made would be within the legal parameters and would have to be accepted by the courts. ... If somebody says no I wasn't there or whatever and if you have evidence in relation to the fact or you suspect that he was there, that there may be nothing wrong with a persistent amount of questions in relation to that, and putting facts to this person. I suppose the PEACE system and the attitude adopted in the United Kingdom is that unless there is very specific evidence there, that they won't make the challenge. Whereas I would see here in relation to it that you may very well have intelligence but that you are not able to put that intelligence for some reason or another to the person, that we should be able to make that challenge.²⁰⁸¹

- 15.113. In addition, practical problems have been encountered by An Garda Síochána over the years in dealing with subversives and persons involved in organised crime for the most part. Detainees who have been arrested on suspicion of committing offences have been described to me as “picking a spot on the wall” or engaging in other diversionary or frustrating tactics calculated to ensure that the interviewer is not afforded the facility of putting the questions which it is his duty to put in the proper investigation of the offence. At the moment, legislation provides for the drawing of adverse inferences in respect of a failure to account for various matters, but otherwise a person is entitled not to incriminate themselves and indeed to remain silent in the face of questioning. The Tribunal does not see any reason why an investigator should not repeat questions to the detainee in those circumstances; and indeed it may be his duty to do so. The scenario presented by Chief Superintendent O’Mahony, in which the Gardaí only have evidence from a confidential source as the basis upon which to pose the questions may well render any interview very short. However, the idea that the interviewers might adopt a somewhat lethargic “tick the box” attitude towards

²⁰⁸¹ Transcript, Day 614, pages 57-59.

the interview and complete the interview when “standard” questions have been asked and answered, or ignored, is contrary to the spirit and intention of the PEACE model and seems to reflect more on the interviewers rather than on the model itself. In all of these matters common sense has to prevail. A certain discretion must always exist on the interviewer’s part to carry out his interview in the way that he sees most calculated to assist in establishing the truth within the parameters of the law referred to in Chapter 1. The Tribunal does not see anything in the PEACE model that should be allowed to inhibit sensible and fair interviewing. In addition, there will be circumstances in which An Garda Síochána have confidential information in their possession which leads them to the reasonable suspicion that a person is guilty of an offence, and they may wish to put some propositions to that person arising out of the information. One would hope at this stage having regard to the new informant procedures which, the Tribunal has been told, have been implemented at Garda headquarters and throughout the country, that such information would have been assessed and deemed to be reliable, before it is used to arrest a person and then to interview him. In any event, it seems that such an interview would not be very protracted as the Gardaí would be anxious to preserve the identity of the source and if there is no further evidence would likely not be in a position to conduct a very fruitful interview.

- 15.114. The phenomenon of a non co-operative detainee who refuses to allow himself to be interviewed or adopts frustrating tactics in the course of the interview is difficult to deal with under any scheme of interviewing. A suspect in those circumstances has a right not to incriminate himself and to remain silent subject to the statutory provisions already referred to. It is difficult to see how the PEACE model makes the position of An Garda Síochána any better or worse in the face of such circumstances. The question may arise as to whether the person behaving in that fashion may be thought of as hindering the police in the execution of their duty. However, penalising such behaviour by way of criminal sanction or otherwise would probably undermine the protections available to them under the Constitution and the European Convention on Human Rights and Fundamental Freedoms, insofar as it would impinge upon the exercise of the person’s right not to incriminate themselves. It is virtually impossible to legislate for obnoxious behaviour in such circumstances, which can manifest itself in varying levels of bad manners: it would be unfair to take the further step and ascribe guilt to such a person on that basis: though the Tribunal was asked to consider some provision of that nature by Chief Superintendent O’Mahony. The Tribunal can only sympathise with the Gardaí in the face of some of the more extreme behaviour that they have to cope with in those circumstances.

- 15.115. Detective Chief Inspector Gary Shaw of the Northumbria Police, Inspector Donald J. Adam of the Royal Canadian Mounted Police and Professor Gisli Gudjonsson of London University all agreed that challenge is a necessary part of interviewing. This is not necessarily oppression and the courts have to understand that. It is not necessarily wrong to challenge someone by claiming that they are lying and nor is it necessarily wrong to repeat points against the suspect in a challenging way.
- 15.116. Notwithstanding the legal changes introduced in the United Kingdom and the introduction of the PEACE model the confession rate has been fairly stable at 55% to 60% in England and Wales. In that jurisdiction the detainee has the right to have a lawyer present in the course of police interviewing. Sometimes lawyers can intervene and be proactive and claim that oppressive and unfair questioning is taking place. Even with, as it were, an advocate within the setting of an interrogation, the confession rate has remained stable. Anxieties had been expressed by the police about tape recording confessions and new procedures in that it was claimed that the police would not be able to put people under the same pressure and that this would affect the rate of confession. The research suggests that this is not so.²⁰⁸²
- 15.117. The reality is that in very many cases people confess voluntarily in the course of properly conducted interviews. A very high proportion of criminal cases result in pleas of guilty. Professor Gudjonsson has studied why people confess. His view is that there are three basic reasons. First there is the perception of proof. This, he describes as the most significant overall reason why people confess to things that they have done. If a suspect perceives that the police have got evidence against them, when they are caught for instance at a crime scene with the murder weapon in their hand, it is very difficult to escape an admission of guilt. Similarly, DNA evidence linking people to a crime constitutes a strong proof which is an inducement, in itself, to admission. Even with such proofs, people deny their guilt.²⁰⁸³
- 15.118. Secondly, Professor Gudjonsson has researched the phenomenon of internal pressure. Some people who have done something bad often have the need to talk about it. They may not be able to live with the guilt of what they have done. This does not on occasion prevent such persons from retracting the initial admission when confronted later in interview about the crime. Nevertheless, there is a large extent to which guilty persons by reason of shame or guilt feel the necessity to confess to wrongdoing.²⁰⁸⁴ Thirdly, external pressures from others or other events can lead to confessions, as previously discussed. These confessions can either be false or true. If an interview is conducted on the basis of an approach based on truth, with an open mind, professionally and with humanity,

²⁰⁸² Transcript, Day 485, page 81.

²⁰⁸³ Transcript, Day 442, pages 26-27.

²⁰⁸⁴ Transcript, Day 442, page 28.

many of the potential pitfalls in terms of situations that lead to false confessions can be removed. Within the legal framework available in this jurisdiction and within the PEACE model as described by Detective Chief Inspector Shaw, and indeed within the similar models described by Inspector Adam, truthful confessions can be accommodated, as can a reasonable challenge to the person under interview. The extent of the reservation expressed to me by the two chief superintendents concerning the “challenge” which they wish to be able to mount in the course of interviews, given that such a challenge would be made within the law and within the ethos of the PEACE model as accepted by An Garda Síochána, does not seem an insurmountable obstacle to the full implementation of the PEACE model. This concern is easily overstated and should not become an obstacle to further progress.

- 15.119. The concerns expressed about the adequacy of the “challenge” and the fear that policemen express that they may be restricted in the placing of pressure upon suspects in custody to assist in obtaining the truth is indicative of important contradictions in the principles at play in this area. An Garda Síochána are vested with powers to arrest and detain suspects for the proper investigation of an offence. Deprivation of liberty in accordance with law is permitted under the Constitution: but that in itself has a pressurising effect on an ordinary person. It removes him from his normal environment and permits him to be subjected to continuous interviewing and held in a Garda station and/or lodged in a cell over a lengthy period. On occasion the Garda in interview seeks to confront the suspect within the law as described in Chapter 1, with propositions and evidence indicating that he is guilty, and to seek a response. The detainee has a right not to incriminate himself: this however, is further restricted by the permissible pressure that if certain explanations are not forthcoming, adverse inferences may in certain defined circumstances be drawn against the detainee at any future trial. The State has provided a framework within which this pressure may be applied legitimately. Limits are set by law on the extent to which this pressure may be applied. The predicament of the detainee is to an extent relieved by these limits and the positive rights vested in the prisoner by virtue of the custody regulations and all of the rights discussed in Chapter 1. The pressure is calculated to obtain a response from the individual. The Garda concern about restrictions on “challenge” is in law misconceived, as the whole tenor of the legitimate tools and powers now vested in An Garda Síochána is calculated to provide time and opportunity for this “challenge”. The PEACE model is simply a vehicle by which this “challenge” may be fairly mounted.

- 15.120. Chief Superintendent O'Mahony and Chief Superintendent Ludlow pointed to studies carried out in other jurisdictions, which provided variations on the methodology advocated in the PEACE model. In particular, they mentioned with some approval the "Kreativ" methodology, which was described to me as involving:

The strategic use of potential evidence in suspect interviews ... [and] interviewing programme [that] provides police officers with a strategy that eliminates conceivable manoeuvres for a guilty suspect by sustaining evidence in the early stages of the interview ...

That approach also advocates open mindedness on the part of the interviewers.²⁰⁸⁵ In this regard, the Tribunal is satisfied that the PEACE model represents established best practice for the interviewing of witnesses and suspects. However, it does not specifically recommend that the PEACE model be adopted in full to the exclusion of some reasonable adaptations thought to be necessary by An Garda Síochána. This is perhaps best studied in more detail by the committee suggested by the Tribunal. However, whatever about the finer detail, the essence of the PEACE model must be implemented as fully as possible soon: a strategy must be developed and implemented in the interests of certainty in the investigation of crime in fairness to Garda interviewers and to interviewees. An Garda Síochána is well capable of instituting a fair system of interviewing with such reasonable adaptation as is appropriate to their circumstances within the parameters of the law as set out in Chapter 1. It has already commenced the implementation of the PEACE model in a limited way. At the moment, its implementation is far from complete though the Tribunal has been told that the ethos behind the model has been adopted by An Garda Síochána. Nevertheless, this is not reflected in management or supervisory structures that would ensure that this ethos is applied in a uniform, consistent and effective manner in the investigation of crime. The Tribunal is satisfied that the more extensive implementation of the model or its close equivalent is necessary to raise the efficiency and professionalism of Garda interviewing of witnesses and of suspects and that this, in consequence, will further lessen the chances of obtaining a false confession and enhance the investigation of crime and the chances of obtaining the truth.

Resistance

- 15.121. According to Detective Chief Inspector Shaw, changes have been effected in the

²⁰⁸⁵ Transcript, Day 614, pages 98-99.

United Kingdom on two different levels. Firstly, leadership has been available from the top and through the development of a national curriculum, in order to ensure that the necessity for change is taken seriously. Secondly, by introducing change and professionalism as a necessary component of the training of police officers, change has naturally been effected by the ordinary turnover in new recruits. It would seem that in every country in which change is effected there is resistance. A consistent impetus for change in the varying jurisdictions as noted by Professor Gudjonsson, Detective Chief Inspector Shaw, Inspector Adam and Ms. Schollum, and to an extent in this jurisdiction, has been the occurrence of a scandal in order to get government institutions to listen to the necessity to review and change procedures.²⁰⁸⁶

- 15.122. In Canada, change has taken time, but the results have been good. Inspector Adam told the Tribunal:

*There was an old guard of which I would have been part prior to getting the training ... that really didn't want to change, but in our jurisdiction there were enough people that were swayed ... and the success simply fed on itself and those sort of dinosaurs, they got moved off to the side.*²⁰⁸⁷

- 15.123. An Garda Síochána has demonstrated a capacity to develop and enhance its practice and procedure in this area. The developments since 1977 have been slow. The introduction of audiovisual recording required a great deal of work and resources. The effective training of Gardaí in modern interviewing techniques has received a positive if limited start. The ethos and main elements of the PEACE model have been introduced to our system. With decisive and clear leadership, determination and the provision of the resources required, the very best international practice can be adopted fully. That requires full implementation of the PEACE model with any adaptation thought necessary to enhance it for the requirements of An Garda Síochána. That is what the Tribunal recommends. It is an opportunity that should be enthusiastically availed of. It will lead to better policing and investigations and help to lessen the possibility of obtaining false confessions in the future. It will enhance the capacity of An Garda Síochána to pursue and obtain the truth.

Summary of Conclusions and Recommendations

- 15.124. The Tribunal recommends that the PEACE model of interviewing witnesses and suspects, or its close equivalent, be fully implemented by An Garda Síochána subject to any adaptation thought to be necessary to improve its

²⁰⁸⁶ Transcript, Day 442, page 75.

²⁰⁸⁷ Transcript, Day 485, pages 42-43.

efficacy and fairness. The Tribunal is satisfied that An Garda Síochána has substantially accepted the ethos of the PEACE model and is entirely satisfied that its full implementation would lessen the possibility of obtaining a false confession. An Garda Síochána has already implemented the model to a limited extent as described in this chapter. It must now proceed to implement the very important specialist training of interviewers, supervisors and managers outlined in the model and provide for continuous assessment of the performance of interviewers with a view to maintaining and enhancing standards. Leadership of a high quality must be provided by senior officers in An Garda Síochána so as to ensure that the model is implemented and accepted at all levels in the force. Refresher courses should also be periodically provided for interviewers. The Department of Justice, Equality and Law Reform should make available the necessary additional resources to ensure the proper implementation and maintenance of the model and provide such further legislation as may be necessary in this regard.

- 15.125. A number of disparate groups have been involved in considering various aspects of the issues surrounding the interviewing of witnesses and suspects. The Tribunal was impressed by the work in the United Kingdom of a national committee convened for the purpose of developing, implementing and reviewing strategies to be applied to interviewing. A national co-ordinator for the implementation of the policy developed by the committee exists. The Tribunal recommends that a similar structure be implemented in this jurisdiction. The Tribunal has been impressed by the work of a number of bodies and persons in this area in this jurisdiction, including Chief Superintendent Ludlow and the committee that he chairs and the Steering Committee on Audio and Audiovisual Recording of Interviews under the chairmanship of Mr. Justice Edmond Smyth. The Minister for Justice, Equality and Law Reform also appointed a committee to consider issues such as those raised in this chapter following the publication of the Dean Lyons Report. The Tribunal recommends that a national committee be formed consisting of members of An Garda Síochána from all ranks involved in investigative interviewing, a representative from the Office of the Attorney General, the Director of Public Prosecutions, the Human Rights Commission, civil liberties groups, and consisting also of a member or members of the legal profession engaged in the practice of criminal law for the defence and the prosecution. It should also include and have access to expert advice from a psychologist and a psychiatrist who may be able to assist in the formulation of policy towards those subject to various relevant

vulnerabilities or disabilities discussed in this chapter. The committee should formulate and recommend the policy to be implemented in respect of investigative interviewing by the Commissioner of An Garda Síochána on an ongoing basis in all its respects and make such recommendations from time to time in relation to any legal changes or changes in practice which it deems to be appropriate in this area. In consultation with the Garda Commissioner a national co-ordinator responsible for the implementation of this policy at all levels should be appointed. This should be a senior Garda officer with expertise in the area. This proposal should not delay, but facilitate the full implementation of the PEACE model and its future development.

- 15.126. A review of best international practice indicates to the Tribunal that the potential for a good interview with a suspect is directly related to the level of professionalism demonstrated in the investigation carried out. A number of matters are important.
- 15.127. The maintenance at all times of an open mind towards the alleged suspect and the avoidance of ‘tunnel vision’ is of paramount importance.
- 15.128. To this end, the skilful interviewing of witnesses and the taking of witness statements must be maintained to a very high standard. The Tribunal was not impressed at the standard of witness statements taken from a large number of the witnesses interviewed in the course of the Barron investigation. Proper investigative methods must be applied in the cross checking of statements and in the examination and assessment of statements so that the best possible objective evidence or overview of the case is available to the investigators.
- 15.129. A professional level of planning and preparation will undoubtedly provide a proper foundation and facilitate a more useful and effective interview with a suspect. Studies have shown that more people confess truthfully when presented with the evidence that is the product of a professional investigation.
- 15.130. The interviewers must be well trained in the interviewing of witnesses and suspects. Different levels of experience and training will be required depending on the nature of the crime under investigation. Appropriate training in interviewing techniques will assist in obtaining a more useful outcome. These techniques have been described in the various text books, journals and articles submitted to the Tribunal and in the course of the testimony given by the various experts from Ireland and abroad.

- 15.131. An admission or confession once obtained should be subject to rigorous analysis and measured against the other evidence obtained during the course of the investigation. It should be cross checked with other statements and evidence with a view to ascertaining whether there is anything of significance that can corroborate the contents of the admission or statement in the legal sense or whether any other fact discovered in the course of the investigation undermines its truthfulness or accuracy to any important extent.
- 15.132. The Tribunal has been impressed with the evidence given by senior officers of An Garda Síochána which indicates that the deficiencies in the taking of the witness statements and the cross checking of statements in the course of the Barron investigation did not comply with best Garda practice. It is important that the standard in the taking of witness statements is kept under continuing oversight by An Garda Síochána. In this regard, a major new initiative has been taken by An Garda Síochána in respect of the training of specialist interviewers of children and those with intellectual disability who have been the victim of, or witnessed sexual offences, or offences involving violence. A very extensive programme is now being implemented in this regard.²⁰⁸⁸ The scheme is based on the PEACE model as it applies to witness interviews. This type of training should be extended in order to raise the professional standard in the taking of witness statements generally.
- 15.133. There have been a number of developments that now enable those outside the interview room to assess and judge how a confession came to be made. Until 2000 there was usually no independent eye witness available to confirm whether any allegation made by a detainee against a Garda was true or not. This has now changed fundamentally with the introduction nationally of the audiovisual recording of interviews. The recording of these interviews is now the subject of extensive regulation and the video tapes of the interviews are appropriately preserved. In the United Kingdom the introduction of the taping and audiovisual recording of interviews led to a marked falloff in challenges to confession statements by accused persons in the course of criminal trials. Whether this is due to improved behaviour on the part of interviewers, or a discouragement in the making of false accusations by interviewees, because the interviews were recorded, is difficult to determine. However, it seems likely that similar consequences will follow in this jurisdiction from the use of audiovisual equipment. In any event, if there is misbehaviour it should be caught on camera and tape. Thus, if there are

²⁰⁸⁸ Transcript, Day 614, pages 100-106.

allegations that a statement or admission is a coerced compliant confession, a judge will be substantially assisted in determining the issue by playing the videotape. The Tribunal recommends that the best and most secure technology be used and that this matter be kept under constant review.

- 15.134. The Tribunal was informed that in a number of Garda stations throughout the country the CCTV monitoring of public reception areas, or corridors, or rooms in which prisoners are processed or to which they are brought from time to time in the course of their detention, has been introduced with a view to providing further recording of any activity occurring in respect of the detainee outside of the interview room. This was a proposal put forward by the Garda Complaints Board in a number of its reports in the 1990s and the Tribunal is of the view that it should be extended to every Garda station in which prisoners are detained.
- 15.135. Detainees may, under recent legislation, be detained for much longer periods than were previously allowed – in some cases persons may be detained for up to a week in a Garda station. The detention of prisoners in a Garda station for up to a week requires much higher standards of hygiene, sanitation, accommodation and the provision of exercise facilities than were hitherto required for periods of much shorter detention.
- 15.136. Facilities exist in other jurisdictions for the audiovisual monitoring of interviews as they take place by police officers positioned outside the interview room. The Tribunal has been told that such monitoring can be beneficial and that an interviewer who is not making progress with an interviewee can be replaced, or if an interviewer engages in inappropriate questioning, this can be observed immediately and dealt with. The Tribunal recommends that consideration be given to the external audio visual monitoring of interviews as they progress, in particular in respect of interviews concerning more serious crime, and that this monitoring be conducted by a senior officer, preferably an interview specialist in a position to offer appropriate advice.
- 15.137. The Tribunal is also mindful of the suggestion that approaches can be made to interviewees by interviewers outside the confines of the interview room and off camera to induce them or persuade them in inappropriate ways to make a statement of admission. Or, it may be that admissions are made unexpectedly to interviewers outside the interview room but are not recorded. In the latter case, the Tribunal recommends

that if an admission of any kind is made by an accused person outside an interview room and is not recorded, at the very least the present Judges' Rules should apply to the making and recording of such a statement or admission and the accused should be invited to repeat it on tape as soon as possible after its making. In respect of the former situation, the possibility of recording encounters outside the interview room between interviewers and suspects should be explored given the ready availability of hand held recorders and indeed video-cameras on mobile phones. This, of course, would have to be regulated.

15.138. A recording by electronic means and/or transcripts of such a recording of the questioning of a person by a member of An Garda Síochána at a Garda station or elsewhere in connection with the investigation of an offence may be admitted in evidence at the trial of that person in respect of an offence under section 57(1) of the Criminal Justice Act, 2007. Under section 57(2) of the Act any statement made by a person that is recorded may be admitted in evidence notwithstanding the fact that it was not taken down in writing at the time it was made and/or signed by the person who made it. The Tribunal considers that it is now appropriate to consider a change in the requirement on Gardaí to take notes during the course of an interview which is being recorded. The Judges' Rules and Regulation 12 (11) of the 1987 Custody Regulations provide for the taking of notes by interviewing Gardaí. This obligation is referred to and continued under Regulation 6(2)(a) of the Criminal Justice Act, 1984 (Electronic Recording of Interviews) Regulations, 1997 which requires that a caution be given to the interviewee that he is not obliged to say anything unless he wishes to do so but that whatever he says will be taken down in writing and may be given in evidence. It requires that he be informed that the interview is being taped and that the tapes may be used in evidence. In the light of recent statutory changes it is imperative that a change in the nature of the caution be considered for a number of reasons:

- (i) The video recording of evidence has to a large extent rendered note taking redundant: the best evidence of what the interviewee said is on the tape;
- (ii) Note taking interrupts the flow of the interview and renders it less effective as it is constantly stalled and interrupted in order to maintain the note.

15.139. In addition, several instances in which it is now provided by statute that

adverse inferences may be drawn from a failure to disclose certain facts when interviewed in the course of a criminal investigation necessitate a very clear and detailed caution if such a failure is to be relied upon in evidence at a later trial. The Court of Criminal Appeal has already criticised the inadequacy of a caution in respect of this matter in the Bowes case. This matter has also been considered by the European Court of Human Rights.

15.140. The Tribunal therefore recommends that the caution to be administered to interviewees should be reviewed as a matter of urgency and amended to take account of the likely reliance on the tape recording as original evidence of any admission or confession made and/or the circumstances in which an accused is alleged to have failed to disclose certain facts when interviewed.

15.141. This is not without difficulty. One can envisage circumstances in which the entire tape of an interview should be shown to the jury in order to convey an understanding as to how an admission came to be made. One can also envisage how showing material extraneous to the confession may be grossly prejudicial to an accused person. In such a case, an excerpt from the tape or a transcript of the tape may be the more appropriate form in which to present the evidence to the trier of fact. In other circumstances, it might be more appropriate to have an agreed note of what was said made available to the jury. These are matters which perhaps will differ from case to case. It may require the issuing of a practice direction and/or regulation by statutory instrument or statute, but the issues should be addressed as a matter of urgency.

Epilogue

15.142. This report had just been completed when on the 13th of March 2008 a copy of a proposed "Manual of Guidance for Investigative Interviewing in An Garda Síochána" recommended by the working group chaired by Chief Superintendent Ludlow was furnished to the Tribunal by the Garda Commissioner. This working group, referred to in the body of this chapter was established in May 2007 some short time before Chief Superintendent Ludlow gave evidence in June 2007. Included in this manual is a very short "Framework for Development". It is proposed that this manual, once finalised, will be distributed throughout An Garda Síochána. The Tribunal is happy to see the production of such a manual. The aspirations contained in the draft manual may form a useful point of departure for the extensive body of work necessary to achieve the application of best

international standards in the conduct of interviews and interrogations. It is abundantly clear to the Tribunal from international experience that a manual will not of itself be adequate as an engine for such far reaching changes. The reforms contemplated require a real change in investigative and management mindsets and practice in respect of the conduct of interviews and interrogations and commitment to this at all levels in the force. It is clear from the draft manual and the evidence heard by the Tribunal that a lot more work needs to be done. Its implementation would require the commitment of considerable resources and determined leadership. The Tribunal repeats that all of its recommendations should be implemented and incorporated into training, workplace assessment and policy development of police interrogations in the future.

CHAPTER 16

RECOMMENDATIONS

16.01. The Tribunal has already set out in detail its conclusions as to what happened to the twelve persons whose detentions have been extensively examined. Once again, the Tribunal was faced with Gardaí who were determined to hide the truth of what happened. They made statements to their superiors which were in many instances minimalist in their detail and failed to give a fully truthful account; in a number of instances the statements were a complete fabrication. It was disturbing to find a deep seated reluctance to concede that a colleague had acted incorrectly or wrongfully or that the complaints made by the detainees were true – the wall of silence was maintained. Unfortunately, this approach extended to and was encouraged by senior officers in this investigation and in the overall approach adopted by An Garda Síochána to external complaints. The Tribunal, however, was able to break through the wall of silence on occasion, sometimes with the assistance of Gardaí who eventually admitted wrongdoing, and on other occasions by persistent hammering on the wall. The Tribunal was also faced with a great deal of posturing, exaggeration and falsehood on the part of some of the detainees; others gave dignified and honest testimony. This has all been chronicled in the report. The deficiencies observed by the Tribunal in the manner in which An Garda Síochána acted in these matters, by their nature, are not peculiar to Donegal. Issues of accountability, tunnel vision, the proper investigation of offences, the treatment of persons in custody, and responsible leadership of criminal investigations, are all issues related to general policing. The deficiencies in these areas must be addressed throughout the force and at all levels within An Garda Síochána. With that in mind, the Tribunal makes the following further recommendations.

Interviewing of Witnesses and Suspects

- 16.02. The Tribunal has examined international best policing practice in respect of the interviewing of witnesses and suspects, and false confessions. In particular it has, like other police services, been greatly impressed by the PEACE model of interviewing. This model was developed in the United Kingdom and has been adopted in a number of jurisdictions with considerable success. It has already found some acceptance within An Garda Síochána. All of this is set out in Chapter 15 of the report.
- 16.03. The Tribunal recommends that the PEACE model of interviewing witnesses and suspects, or its close equivalent, be fully implemented by An Garda

Síochána subject to any adaptation thought to be necessary to improve its efficacy and fairness. The Tribunal is satisfied that An Garda Síochána has substantially accepted the ethos of the PEACE model and is entirely satisfied that its full implementation would lessen the possibility of obtaining a false confession. An Garda Síochána has already implemented the model to a limited extent as described in Chapter 15. It must now proceed to implement the very important specialist training of interviewers, supervisors and managers outlined in the model and provide for continuous assessment of the performance of interviewers with a view to maintaining and enhancing standards. Leadership of a high quality must be provided by senior officers in An Garda Síochána so as to ensure that the model is implemented and accepted at all levels in the force. Refresher courses should also be periodically provided for interviewers. The Department of Justice, Equality and Law Reform should make available the necessary additional resources to ensure the proper implementation and maintenance of the model and provide such further legislation as may be necessary in this regard.

- 16.04. A number of disparate groups have been involved in considering various aspects of the issues surrounding the interviewing of witnesses and suspects. The Tribunal was impressed by the work in the United Kingdom of a national committee convened for the purpose of developing, implementing and reviewing strategies to be applied to interviewing. A national co-ordinator for the implementation of the policy developed by the committee exists. The Tribunal recommends a similar structure in this jurisdiction. The Tribunal has been impressed by the work of a number of bodies and persons in this area in this jurisdiction, including Chief Superintendent Ludlow and the committee that he chairs, and the Steering Committee on Audio and Audiovisual Recording of Interviews under the chairmanship of Mr. Justice Esmond Smyth. The Minister for Justice, Equality and Law Reform also appointed a committee to consider issues such as those raised in Chapter 15 following the publication of the Dean Lyons Report. The Tribunal recommends that a national committee be formed consisting of Gardaí from all ranks involved in investigative interviewing, a representative from the Office of the Attorney General, the Director of Public Prosecutions, the Human Rights Commission,²⁰⁸⁹ civil liberties groups, and consisting also of a member or members of the legal profession engaged in the practice of criminal law for the defence and the prosecution. It should also include and have access to expert advice from a psychologist and a psychiatrist who may be able to assist in the

²⁰⁸⁹ This may depend on how the Commission interprets its role under its statutory mandate.

formulation of policy towards those subject to various relevant vulnerabilities or disabilities discussed in Chapter 15. The committee should formulate and recommend the policy to be implemented in respect of investigative interviewing by the Commissioner of An Garda Síochána on an ongoing basis in all its respects, and make such recommendations from time to time in relation to any legal changes or changes in practice that it deems to be appropriate in this area. In consultation with the Garda Commissioner a national co-ordinator responsible for the implementation of this policy at all levels should be appointed. This should be a senior Garda officer with expertise in the area.

- 16.05. A review of best international practice indicates to the Tribunal that the potential for a good interview with a suspect is directly related to the level of professionalism demonstrated in the investigation carried out. A number of matters are important.
- 16.06. The maintenance at all times of an open mind towards the alleged suspect and the avoidance of ‘tunnel vision’ is of paramount importance.
- 16.07. To this end, the skilful interviewing of witnesses and the taking of witness statements must be maintained to a very high standard. The Tribunal was not impressed at the standard of witness statements taken from a large number of the witnesses interviewed in the course of the Barron investigation. Proper investigative methods must be applied in the cross checking of statements and in the examination and assessment of statements so that the best possible objective evidence or overview of the case is available to the investigators.
- 16.08. A professional level of planning and preparation will undoubtedly provide a proper foundation and facilitate a more useful and effective interview with a suspect. Studies have shown that more people confess truthfully when presented with evidence that is the product of a professional investigation.
- 16.09. The interviewers must be well trained in the interviewing of witnesses and suspects. Different levels of experience and training will be required depending on the nature of the crime under investigation. Appropriate training in interviewing techniques will assist in obtaining a more useful outcome. These techniques have been described in the various textbooks, journals and articles submitted to the Tribunal and in the course of the testimony given by the various experts from Ireland and abroad.
- 16.10. An admission or confession once obtained should be subjected to rigorous

analysis and measured against the other evidence obtained during the course of the investigation. It should be cross checked with other statements and evidence with a view to ascertaining whether there is anything of significance that can corroborate the contents of the admission or statement in the legal sense, or whether any other fact discovered in the course of the investigation undermines its truthfulness or accuracy to any important extent.

16.11. The Tribunal has been impressed with the evidence given by senior officers of An Garda Síochána which indicates that the deficiencies in the taking of the witness statements and the cross checking of statements in the course of the Barron investigation did not comply with best Garda practice. It is important that the standard of the taking of witness statements is kept under continuing supervision by An Garda Síochána. In this regard, a major new initiative has been taken by An Garda Síochána in respect of the training of specialist interviewers of children and those with intellectual disability who have been the victims of, or witnessed sexual offences or offences involving violence. A very extensive programme is now being implemented in this regard.²⁰⁹⁰ The scheme is based on the PEACE model as it applies to witness interviews. This type of training should be extended in order to raise the professional standard in the taking of witness statements generally.

16.12. There have been a number of developments that now enable those outside the interview room to assess and judge how a confession came to be made. Until 2000 there was usually no independent eye witness available to confirm whether any allegation made by a detainee against a Garda was true or not. This has now changed fundamentally with the introduction nationally of the audiovisual recording of interviews. The recording of these interviews is now the subject of extensive regulation and the video recordings of the interviews are appropriately preserved. In the United Kingdom the introduction of the taping and audiovisual recording of interviews led to a marked falloff in challenges to confession statements by accused persons in the course of criminal trials. Whether this is due to improved behaviour on the part of interviewers, or a discouragement in the making of false accusations by interviewees because the interviews were recorded, is difficult to determine. However, it seems likely that similar consequences will follow in this jurisdiction from the use of audiovisual equipment. In any event, if there is misbehaviour it should be caught on camera and tape. Thus, if there are allegations that a statement or admission is a coerced compliant

²⁰⁹⁰ Transcript, Day 614, pages 100-106.

confession, a judge will be substantially assisted in determining the issue by playing the videotape. The Tribunal recommends that the best and most secure technology be used and that this matter be kept under constant review. Failure to ensure that interviews are recorded should normally result in the exclusion of any alleged confession from the evidence in any criminal trial.

- 16.13. The Tribunal was informed that in a number of Garda stations throughout the country the CCTV monitoring of public reception areas or corridors, or rooms in which prisoners are processed or to which they are brought from time to time in the course of their detention, has been introduced with a view to providing further recording of any activity occurring in respect of the detainee outside the interview room. This was a proposal put forward by the Garda Complaints Board in a number of its reports in the 1990s. The Tribunal recommends that it should be extended to every Garda station in which prisoners are detained.
- 16.14. Detainees may, under recent legislation, be detained for much longer periods than were previously allowed – in some cases persons may be detained for up to a week in a Garda station. The detention of prisoners in a Garda station for up to a week requires much higher standards of hygiene, sanitation, accommodation and the provision of exercise facilities than hitherto required for periods of much shorter detention. The Tribunal recommends that proper infrastructure and accommodation should be made available for such an extended detention within Garda stations to which such detainees are brought.
- 16.15. Facilities exist in other jurisdictions for the audiovisual monitoring of interviews as they take place by police officers positioned outside the interview room. The Tribunal has been told that such monitoring can be beneficial and that an interviewer who is not making progress with an interviewee can be replaced; or if an interviewer engages in inappropriate questioning, this can be observed immediately and dealt with. The Tribunal recommends that consideration be given to the external audiovisual monitoring of interviews as they progress, in particular in respect of interviews concerning more serious crime. This monitoring should be conducted by a senior officer, preferably an interview specialist, in a position to offer appropriate advice.
- 16.16. The Tribunal is also mindful of the suggestion that approaches can be made to interviewees by interviewers outside the confines of the interview room and off camera to induce them or persuade them in

various ways to make a statement of admission. Or, it may be that admissions are made spontaneously to interviewers outside the interview room but are not recorded. In the latter case, the Tribunal recommends that, if an admission of any kind is made by an accused person outside an interview room and is not recorded, at the very least, the present Judges' Rules should apply to the making and recording of such a statement or admission and the accused should be invited to repeat it on tape as soon as possible after its making. In respect of the former situation, the recording of encounters outside the interview room between interviewers and suspects should be considered given the availability of hand held recorders. Indeed, some mobile phones have a facility for audiovisual recording which is very simple to operate. This of course, would have to be regulated.

Notes of Interview and the Caution

16.17. A recording by electronic means and/or transcripts of such a recording of the questioning of a person by a Garda at a Garda station or elsewhere in connection with the investigation of an offence may be admitted in evidence at the trial of that person in respect of an offence under section 57(1) of the Criminal Justice Act, 2007. Under section 57(2) of the Act any statement made by a person that is recorded may be admitted in evidence notwithstanding the fact that it was not taken down in writing at the time it was made and/or signed by the person who made it. The Tribunal considers that it is now appropriate to consider a change in the requirement on Gardaí to take notes during the course of an interview which is being recorded. The Judges' Rules and Regulation 12(11) of the 1987 Custody Regulations provide for the taking of notes by interviewing Gardaí. This obligation is referred to and continued under Regulation 6(2)(a) of the Criminal Justice Act, 1984 (Electronic Recording of Interviews) Regulations, 1997 which requires that a caution be given to the interviewee that he is not obliged to say anything unless he wishes to do so but that whatever he says will be taken down in writing and may be given in evidence. It requires that he be informed that the interview is being taped and that the tapes may be used in evidence. In the light of recent statutory changes it is imperative that a change in the nature of the caution be considered for a number of reasons:

- (i) The video recording of evidence has to a large extent rendered note taking redundant: the best evidence of what the interviewee said is on the tape;

(ii) Note taking interrupts the flow of the interview and renders it less effective as it is constantly stalled and interrupted in order to maintain the note.

- 16.18. In addition, several instances in which it is now provided by statute that adverse inferences may be drawn from a failure to disclose certain facts when interviewed in the course of a criminal investigation necessitate a very clear and detailed caution if such a failure is to be relied upon in evidence at a later trial. The Court of Criminal Appeal has already criticised the inadequacy of a caution in respect of this matter in the *Bowes* case.²⁰⁹¹ This matter has also been considered by the European Court of Human Rights.
- 16.19. The Tribunal therefore recommends that the obligation to take notes and the caution to be administered to interviewees should be reviewed as a matter of urgency and amended to take account of the likely reliance on the tape recording as original evidence of any admission or confession made and/or the circumstances in which an accused is alleged to have failed to disclose certain facts when interviewed.
- 16.20. This is not without difficulty. One can envisage circumstances in which the entire tape of an interview should be shown to the jury in order to convey an understanding of how an admission came to be made. One can also envisage how showing material extraneous to the confession may be grossly prejudicial to an accused person. In such a case, an excerpt from the tape or a transcript of the tape may be the more appropriate form in which to present the evidence to the trier of fact. In other circumstances, it might be more appropriate to have an agreed note of what was said made available to the jury. These are matters which perhaps will differ from case to case. It may require the issuing of a practice direction and/or regulation by statutory instrument or statute, but the issues should be addressed as a matter of urgency.
- 16.21. In 1996, the obligation was to take and preserve notes and remains so today. The Tribunal has found a persistent failure by interviewing Gardaí to make and maintain any or any proper notes of interview in the course of many of the detentions investigated in the course of its work. On occasion, notes were said to have been lost. On other occasions the Tribunal has found that notes were never made, or that once made they were changed, or that the formalities of the Judges' Rules were not observed, or that there were deliberate omissions from notes that were calculated to conceal wrongdoing by interviewing Gardaí. When notes

²⁰⁹¹ See also *The People (DPP) -v- Binéad* [2007] 1 I.R. 374 and par. 15.106 ante.

were not received by the incident room or were otherwise not available for inclusion in the report on the investigation into the death of the Late Richard Barron that was ultimately forwarded by Superintendent Lennon to the Director of Public Prosecutions, nothing happened. An inquiry was on one occasion made of Garda John Harkin about discrepancies in the notes of interview in respect of Róisín McConnell. Otherwise, the absence of notes went without explanation or any accountability. The absence of notes of interview in this murder inquiry went largely unremarked upon by incident room staff and, more importantly, senior officers leading the inquiry. This is shocking and completely unacceptable in respect of matters of huge importance subject to well known and comprehensive legal regulations. It was not, unfortunately, a situation peculiar to the Donegal division, as can be seen in *The People (DPP) –v- Diver*,²⁰⁹² a case in which serial breaches of the custody regulations and failures to maintain proper notes of interview contributed to the quashing of the applicant’s conviction for murder by the Supreme Court. The Diver interviews took place when the accused was detained in Lucan Garda Station, County Dublin on the 8th of December 1996. It is essential that the custody regulations and the law applicable to note-taking be strictly observed by the Garda Síochána at all levels. These notes are essential tools in the investigation of crime and must be free of any taint of omission, manipulation, invention, forgery, loss or other legal impropriety if the integrity of the criminal trial is to be maintained.

Covert Surveillance and Taping

- 16.22. It is not surprising that any competent police force will consider covert surveillance by employing police officers or modern technology consisting of audio and audio/visual surveillance and recording. In the course of the evidence heard by the Tribunal in respect of the various arrests and detentions in respect of allegations that certain visits to prisoners were “bugged” and from other evidence heard by the Tribunal, it emerged that Gardaí from time to time contemplated or engaged in covert listening and/or recording of individuals, both civilians and Gardaí. Some of this covert listening and recording occurred spontaneously: on other occasions it was planned. On the 20th of November 1996 Detective Superintendent Shelly and Inspector John McGinley attended at Mr. Frank McBrearty Senior’s licensed premises and Inspector McGinley covertly recorded the conversation. This tape was then passed on to Garda Tina Fowley who typed up the transcript of the tape at the direction of Inspector McGinley. Mr. Shelly said he was not aware of, and did not authorise, the taping of

²⁰⁹² [2005] I.R. 270.

this conversation. Mr. Frank McBrearty Senior, of course, was totally unaware that this conversation was taped.

- 16.23. Garda John O’Dowd taped his conversation with Chief Superintendent Denis Fitzpatrick on the 29th of June 1997. From the papers available to the Tribunal it is clear that Garda Tina Fowley taped a number of conversations which she had with Chief Superintendent Fitzpatrick. Sergeant John White quite openly used a video recorder to record the arrest of Frank McBrearty Junior on the 4th of February 1997 and covertly and overtly recorded other events during the course of Mr. McBrearty Junior’s detention on that date. Sergeant White also covertly recorded events of the 9th of February 1997 at Raphoe Garda Station during the course of a drugs search carried out on Mr. Paul Quinn. The Tribunal also became aware during the course of the alleged bugging sub-module that on at least one occasion the Gardaí in Ballinasloe, in circumstances described in Chapter 14, covertly recorded a conversation between two prisoners in a cell at that station.
- 16.24. It became obvious during the course of the Tribunal’s hearings that there is little or no, legal or ethical, guidance given to An Garda Síochána by statute or statutory instrument, or in the Garda Síochána Code, concerning covert surveillance whether by Gardaí in person or by means of audio or audio/visual electronic devices or recorders.
- 16.25. In the case of *Kane v The Governor of Mountjoy Prison*²⁰⁹³ the Supreme Court considered overt police surveillance of a person in respect of whom the Gardaí anticipated that they would have to execute an extradition warrant. The court deemed this surveillance to be justified. The circumstances of the Kane case were highly unusual. The applicant had been detained for forty-eight hours under section 30 of the Offences Against the State Act, 1939. Immediately prior to his release An Garda Síochána were informed that an application for his extradition would be made, though there was evidence that a prior decision had been made to place him under surveillance. He was thereafter placed under intense surveillance for some seven hours, and was followed wherever he went by Gardaí in cars or on foot. Following a car chase and a confrontation with the Gardaí he was ultimately arrested on various charges and, having been brought before the court and released on bail, he was promptly re-arrested on the basis of an extradition warrant. The Supreme Court was prepared to assume for the purposes of the case that a right of privacy may exist in an individual even when they are travelling on the public

²⁰⁹³ [1988] I.R.757.

roads. The court determined that overt surveillance of this type would be unlawful and objectionable unless it could be justified. Chief Justice Finlay said:

Such surveillance is capable of gravely affecting the peace of mind and public reputation of any individual and the courts could not, in my view, accept any general application of such a procedure by the police, but should require where it is put into operation and challenged a specific adequate justification for it.²⁰⁹⁴

- 16.26. It is clear from the judgments of the court that it was accepted that the Gardaí could lawfully ‘stake out’ premises which they believed would be burgled and that they could also lawfully “overtly or otherwise” follow a suspect with a view to investigating or detecting crime. The lawfulness of the surveillance will depend on whether its form is proportionate to the lawful end sought to be attained. Apart from this unusual case An Garda Síochána have been left without statutory guidance and the citizen without adequate understanding of the extent to which overt or covert surveillance may be carried out on an individual. In the case of Frank McBrearty Senior it will be recalled that Detective Superintendent Shelly gave as his reason for obtaining the services of Detective Sergeant Joseph Costello, his intention to have Mr. McBrearty Senior followed following his release from section 30 custody to see if he made any attempt to visit any of the witnesses who had made statements against him suggesting that they had been intimidated by him. The deficiencies of the decision making involved in these events and the absence of documentary evidence that would afford understanding of how and why they occurred, indicates to the Tribunal the need for appropriate direction in this area. General guidelines should be formulated by the Garda Commissioner covering best ethical practice in the carrying out of surveillance by Gardaí, in actually following or watching people. The reason for any decision to carry out surveillance should be clear and the level of intrusion upon the privacy of the subject of the surveillance should be proportionate to the legitimate object that is desired to be achieved.
- 16.27. Similar issues arise in relation to the covert audio and/or audiovisual surveillance and/or recordings. The Tribunal was disturbed and dismayed at the extent to which covert taping was conducted by the Gardaí, not alone of conversations with civilians, but of conversations between Gardaí supposedly working together. This issue also involves the right to privacy as guaranteed under Article 40.3 of the Constitution. In the course of the

²⁰⁹⁴ [1988] I.R. at 769.

examination of the allegations of bugging of interview rooms in Letterkenny Garda Station made against other Gardaí by Detective Sergeant White, the Tribunal heard evidence of a documented case of covert eavesdropping and audio recording of a conversation between two prisoners in a cell at Ballinasloe Garda Station some years previously.

16.28. It is clear from Chapter 14 that the Tribunal is not satisfied that the alleged bugging took place at Letterkenny Garda Station. However, it also became clear during the hearing of the sub-module that there was no clear Garda directive in place in respect of covert eavesdropping in Garda stations and that the Gardaí were relying on common law precedents in respect of the eavesdropping that took place in Ballinasloe Garda Station. As a matter of law, the custody regulations permit Gardaí to supervise a visit by a friend or relation to a detainee provided it will not hinder or delay the investigation of crime. Regulation 11(6) also provides that before such a supervised visit takes place the prisoner shall be informed that anything he says during the visit may be given in evidence. Similarly, an arrested person may make a telephone call to another provided that this will not hinder or delay the investigation of crime and Regulation 11(5) provides that a Garda may listen to any such telephone call and terminate it. Regulation 11(6) provides that a prisoner shall be informed that anything he says during this communication may be given in evidence. There is no actual provision for the tape recording of such visits or telephone calls. Counsel for the Garda Commissioner informed the Tribunal that it was the Commissioner's view that such covert eavesdropping or recording should not take place save in extraordinary excusing circumstances, but as already noted, this is not part of the Garda code or any direction that has been issued by the Commissioner to Gardaí. It was not contemplated by the custody regulations.

16.29. Having regard to the surveillance contemplated against Frank McBrearty Senior, repeated tape recording of conversations by the Gardaí, and the other evidence described in Chapter 14, the Tribunal is concerned that this area remains unregulated by statute or statutory instrument. In this regard, the Tribunal recommends that the Law Reform Commission Report on *Privacy: Surveillance and the interception of Communications (June 1998)* be reviewed with a view to implementing the extensive recommendations in that report concerning regulatory provisions in respect of certain forms of surveillance by An Garda Síochána and others. It is entirely wrong that the Gardaí should be recording persons, including their colleagues and senior officers, at will and/or contemplating or

carrying out covert surveillance using electronic devices without any statutory guidance or regulation and without any internal Garda guidelines.

- 16.30. As already seen, case law provides some guidance in respect of the parameters of acceptable behaviour in this area. The Law Reform Commission has noted the unsatisfactory nature of relying upon case law which may be rooted in unusual circumstances in providing a benchmark for acceptable behaviour. In addition, the development of the law is largely dependent on individuals taking and funding cases in which they believe their rights to have been breached. Further, if surveillance is covert, a party is unlikely to discover such a breach. Article 8 of the European Convention of Human Rights provides as follows:

1. Everyone has the right to respect for his private and family life, his home and correspondence.
2. There should be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society and the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The Law Reform Commission was of the view that covert police surveillance (using audio and video devices) would probably amount to an interference in the exercise of Article 8 rights. In commenting on whether such activities should be provided for by positive law it said:

This reflects the underlying requirements of the rule of law which animates the entire Convention. The basic value at stake is the insistence that all limits imposed by States on rights must not rest merely on a substantive justification but must also be based on law. Any limit to a right that is not so based – even one that is substantively justified in the abstract – is likely to prove a threat to a right because of the discretion afforded to the authorities. This insistence that limits be channelled through law is not just procedural but takes in substantive considerations also. Broken into its component parts this demands the prior existence of law (common law can count as law) and that the law possess certain qualitative attributes such as “accessibility” and “foreseeability”. In the established case law of the court (of human rights), “accessibility” refers to the degree to which the law can be comprehended (via legal advice if necessary) and

“foreseeability” refers to the precision with which it is cast. A high degree of precision enables individuals to plan their actions rationally so as to avoid entanglement with the law. Foreseeability is therefore at a premium where fundamental rights are at stake. Conferring discretion on officials is not, as such, inherently violative of Article 8. What matters is how adequately that discretion is bound by law and the adequacies of the remedies available in the event of its misuse.²⁰⁹⁵

- 16.31. In this context, there is a complete absence of regulation in respect of covert surveillance including audio and audiovisual surveillance. This should not be allowed to continue. It is not necessary to repeat in their entirety the various recommendations of the Law Reform Commission in this regard. The recommendations are detailed and provide a very important and useful template by which the right to privacy in this regard may be vindicated and protected in a practicable manner. Draft headings of a bill as set out in the Law Reform Commission Report provide draft provisions for the regulation of covert and overt surveillance. It sets out a procedure whereby such surveillance might be authorised initially by a chief superintendent and subsequently by a Judge of the District Court. Further provisions might be required in relation to the circumstances described in relation to the Ballinasloe case; and appropriate provision would also have to be made for the circumstances contemplated by the Commissioner of covert eavesdropping in a Garda station on a visit between a prisoner and a relative or friend in “extraordinary excusing circumstances”. The latter could be done by an amendment to the custody regulations, whereby a person making a phone call or receiving a visit might be informed that the visit will be monitored electronically and may be recorded, or that a telephone call may be monitored and electronically recorded. The Tribunal does not make any such recommendation in respect of the electronic monitoring of visits by solicitors to their clients which should not take place, and which under the Constitution must take place in private.
- 16.32. On a more general level, consideration should be given to ensuring that where authorisation is required, for covert or overt surveillance by electronic means, it should be sought from a judge rather than from a chief superintendent (as suggested by the Law Reform Commission). In practical terms, as with the obtaining of warrants, there should be no difficulty in seeking an authorisation for covert eavesdropping from a judge under any proposed legislation. This has the advantage of providing a degree of independence in respect of the decision which the Tribunal,

²⁰⁹⁵ The Law Reform Commission Report on Privacy pages 199-200.

regrettably, has found to be lacking in respect of the issue of section 29 warrants in the course of its inquiries when issued by a superintendent of An Garda Síochána. The Tribunal recommends the urgent implementation of the recommendations of the Law Reform Commission Report of 1998 relevant to the specific areas referred to in the preceding paragraphs.

Garda Statements

- 16.33. A number of Gardaí did not make full and truthful statements in relation to their involvement in the interviewing of suspects when first given the opportunity to do so in the course of civil proceedings instituted by the various detainees. For example, in the case of Charlotte Peoples, Sergeant Carroll and Detective Garda Jennings focussed on the narrow allegations made in the civil proceedings and denied their occurrence. Subsequently, when faced with the admissions made by Detective Garda Dooley and Detective Sergeant White in relation to the ill-treatment of Mrs. Róisín McConnell, they were obliged to acknowledge the truthfulness of much of what Mrs. Peoples had alleged as to what she had overheard in the course of the interview with Mrs. McConnell while she was being interviewed in the room next door. An explanation was offered that when making statements in the course of civil actions, Gardaí were expected to address each allegation narrowly and to refute it and to this end reliance was placed on Regulation 6.37(4) of the Garda code which states that in relation to defending a civil action:

Each of the allegations should be addressed and refuted where possible.

To say the least, this provision is most unbalanced. It is the duty of a Garda in making a statement, or of an officer in preparing a file in respect of a civil action, to obtain and state the truth as to what happened in respect of the events, the subject matter of the proceedings. The Tribunal has already referred to the “wall of silence” that has been experienced in dealing with policemen at home and abroad when they are faced with allegations of misconduct. This may be viewed with the other phenomenon of ‘Garda speak’ which the Tribunal has encountered over the last number of years, and an understanding by Gardaí that they are expected only to give the minimum amount of detail in respect of any controversy in which the Gardaí are involved. This provision of the Garda code requires immediate amendment. All that should be required from a Garda is that he give a full and detailed account of the event at issue. If that account contains a truthful admission or truthful refutation of an allegation, so be it. In its present form, the provision has rightly or

wrongly been interpreted as offering an encouragement and support to Gardaí who understand that they are expected to focus very narrowly on any allegation made and to refute it. If Gardaí do not tell the truth in such statements the lawyers representing the State in civil litigation cannot advise their clients as to the most prudent course of action to be taken at any given stage. Disingenuous statements from Gardaí only cloud the issues, leading to considerable difficulties. The true story may never emerge, or if it does, it is only at a much later stage, to the acute embarrassment of the State. The State must act honourably and honestly in its dealings with plaintiffs in these circumstances. It cannot do so if it is told lies and half truths by the Gardaí. This must stop. Senior officers in An Garda Síochána must show leadership in this regard. These difficulties are also linked to difficulties faced by ‘whistle blowers’ who wish to tell the truth but fear the consequences from their colleagues or for their careers. This provision should be amended and replaced with a positive provision enjoining the investigating officer and any Gardaí making statements to address each allegation in a full and frank statement addressing any issues which are relevant in the broadest sense. The Tribunal recommends that the amendment should discourage the giving of a simple flat denial of allegations as a response when, as in most cases, there is a complete history to be told. Of course, Gardaí should give a full and truthful account in every statement which they make in all cases whether civil or criminal. It is regrettable that such a basic proposition in relation to telling the truth should have to be spelt out in this way.

Power of a Superintendent to Issue a Search Warrant

- 16.34. The arrest of Mr. Frank McBrearty Senior on the 5th of December 1996 was preceded by the issuing of a search warrant by Detective Superintendent Joseph Shelly on the 3rd of December 1996 under section 29 of the Offences Against the State Act, 1939. Detective Superintendent Shelly was to the forefront of the investigation into the death of the Late Mr. Barron and in the investigation of the allegations of intimidation made against Mr. Frank McBrearty Senior which led to his arrest. The issuing of this warrant occurred in the context of all of the criticisms that have been made of the leadership of this investigation and the way in which it was conducted, as set out in the second report of the Tribunal and as further documented in this report. The issuing of search warrants by superintendents under section 29 of the Act was considered a detail in the “Report on the Arrest and Detention of Seven Persons at Burnfoot, County Donegal on the 23rd of May 1998 and the Investigation relating

to same” – Term of Reference (i). In that report, the Tribunal expressed unease at the manner in which section 29 warrants had been dealt with in relation to the Burnfoot matter. It also expressed concern at the manner in which the section 29 warrant procedure was used in its “Report on the Garda Investigation of an Arson Attack on property situation on the Site of the Telecommunications Mast at Ardara, County Donegal in October and November of 1996” – Term of Reference (g). The Tribunal acknowledges once again that the use of search warrants is an important facility available to An Garda Síochána in the investigation of crime. It repeats that it is important that adequate and effective safeguards against possible abuse of the power granted under section 29, either by the superintendent exercising the power, or by those seeking to exercise it, exist. In this instance, Detective Superintendent Shelly suggested to the sergeant who applied for the warrant that he should apply for it. The circumstances surrounding the issuing of the warrant are set out in Chapter 10 of the report. The Tribunal remains of the view that a danger exists that a warrant can be issued automatically and without proper investigation of the matter by the superintendent to whom the application is made if he or she is heading the investigation. There is a danger that the power to issue a section 29 warrant becomes a mere formality in which the investigating sergeant might as well be empowered to issue a search warrant to himself. It must be remembered that the warrant to search empowers the Garda Síochána to forcibly enter a dwelling house which is otherwise “inviolable” under Article 40.5 of the Constitution. The Tribunal is aware that An Garda Síochána have sought to improve their approach to the issuing and execution of warrants by introducing “Operational Briefing Orders” in respect of searches. In addition, An Garda Síochána has engaged with such bodies as the Irish Council for Civil Liberties with a view to enhancing the extent to which the rights of citizens are taken into account by the making of such operational decisions. The Tribunal is also aware that the issuing of a warrant has been regarded under previous court decisions as an executive act rather than a judicial one. Having considered all these matters and the conclusions already stated in previous reports of the Tribunal that section 29 warrants are not only open to abuse but have been abused in the past, the Tribunal reiterates its recommendation as follows:

6.23. The Tribunal is satisfied that it is preferable that the power to issue a warrant should be vested in a judge. With modern technology and rapid communications, there is no reason why a judge cannot be

easily contacted by telephone, facsimile or e-mail, or personally, for the purpose of making an application to him/her for a search warrant. A record can thereby be created, whether by tape or by the recording of the message received by facsimile or e-mail, or indeed by the prompt furnishing of a grounding information to the judge within a limited period after the application of, say, 24 hours, verifying the basis upon which the application was made, which record can then be filed for future reference. The judge can then make an independent decision. Such a decision as to whether to grant the warrant would involve a balancing of the interests of An Garda Síochána and the investigation of the criminal offence and the constitutional or legal rights of the person whose premises is to be the subject of the warrant. There are very limited occasions upon which time would be so pressing as to make it impossible to follow such a procedure. In any event, a residual power for such eventuality could, perhaps, still be vested in a senior officer of the Garda Síochána to be used in exceptional circumstances.

6.24. The Tribunal, therefore, recommends that urgent consideration be given to vesting the power to issue warrants under Section 29 in judges of the District or Circuit court. This, the Tribunal believes to be in keeping with best modern practice in this regard as exemplified in judgements of the European Court of Human Rights and judicial trends in Canada and New Zealand.²⁰⁹⁶

6.25. In addition, provision should be made whereby the issuing authority should be formally notified of the execution of a search warrant within the time limits. If it is not so executed the issuing authority should be notified of this fact and furnished with detailed reasons for its non-execution.²⁰⁹⁷

Extension of Detention

16.35. Under section 4 sub-section (3) of the Criminal Justice Act, 1984, a person detained under section 4(2) of the Act for a period of six hours can be further detained on the direction of an officer of An Garda Síochána not below the rank of superintendent for a period not exceeding six hours if the superintendent “has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence”. This direction may be given orally or in writing, and if given

²⁰⁹⁶ See *McLeod v United Kingdom* [1999] 27 E.H.R.R. 493; *Funke v France* [1993] 16 E.H.R.R. 297; *Niemietz v Germany* [1993] 16 E.H.R.R. 97; *Camezind v Switzerland* [1999] 28 E.H.R.R. 458 and see also Emmerson & Ashworth “Human Rights and Criminal Justice” pages 199 to 204.

²⁰⁹⁷ Report on the Arrest and Detention of Seven Persons at Burnfoot, County Donegal on the 23rd of May 1998 and the Investigation relating to same – Term of Reference (i), pages 266-270.

orally, it must be recorded in writing as soon as practicable.²⁰⁹⁸ In the case of eleven of the detainees who were detained under section 4 of this Act extensions were sought and granted by Superintendent John Fitzgerald on the application of various Gardaí. The Tribunal is not satisfied that sufficient inquiry was made by Superintendent Fitzgerald of the various Gardaí who approached him seeking a direction to further detain detainees. In addition, the member in charge was involved in this process by the superintendent and has given evidence that on at least one occasion he made application for the extension of detention. The spirit and intention of the legislature in vesting this power in a senior officer is to ensure that a proper and authoritative objective assessment can be made as to whether it is appropriate in all the circumstances to continue this deprivation of personal liberty. This is not a rubber stamp exercise. It requires a careful consideration of the information to be placed before a superintendent and the balancing of that information against the detainee's right to personal liberty. In this regard, it is important that a superintendent to whom an application is made for an extension of detention be alert to the possibility that such further detention may not be factually justified. This important power has been vested in a non-judicial figure. Senior officers must be instructed that the decision is not simply pro forma. It must be carefully made and a careful balance struck between the interests of the Gardaí and the public in the investigation of crime, and the accused's entitlement to the presumption of innocence and his right to personal liberty. It is also important that the superintendent making this decision acquaint himself with whatever is known about the detainee, including the reasons why his continued detention is sought, his background and circumstances, his physical and mental condition, any complaints which he has made or which have been made on his behalf, and any visits which he has received whether from relatives, friends or a solicitor. In short, the superintendent should acquaint himself with all facts necessary to enable him to make a decision of substance and not of mere form. This decision should then be recorded in the superintendent's journal. The record should set out the identity of the person who made the application for the extension to the superintendent, the time and date of the application, the reasons for the application, the nature and extent of the inquiries made by the superintendent on foot of this application, the results of such inquiries, the decision about the extension, and the reasons for that decision. If the superintendent makes the decision to extend the detention, the record should not simply recite that the reason

²⁰⁹⁸ There have been a number of amendments to section 4, most notably in section 9 of the Criminal Justice Act, 2006, and section 50 of the Criminal Justice Act, 1999. This recommendation is intended to apply to these amendments and to similar powers under section 2 of the Criminal Justice (Drug Trafficking Act), 1996 and section 30 of the Offences Against the State Act, 1939.

was for the proper investigation of the offence, but should also recite why that determination was made and all the relevant circumstances. The determination of whether the further detention “is necessary for the proper investigation of the offence” should include consideration of all the matters to which I have referred and any other matters thought to be relevant to that issue. The Tribunal recommends that a similar approach be adopted by any senior officer in whom a power is vested to extend the detention of a prisoner under this or any other statute.

Member in Charge

- 16.36. Under the provision of the Criminal Justice Act, 1984 a number of powers and duties are vested in a Garda referred to as a ‘member in charge’. Initially, a person who is taken to a Garda station may be detained for an initial six hours:

If the member of the Garda station in charge of the station to which he is taken on arrest has at the time of that person’s arrival at the station reasonable grounds for believing that his detention is necessary for the proper investigation of the offence.

Many of the powers vested in the member in charge have already been chronicled in Chapter 1 of this report. His role is defined in the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Stations) Regulations, 1987 as “the member who is in charge of a station at a time when ... required to do anything or cause anything to be done pursuant to these regulations”. The superintendent in charge of a district is obliged to issue instructions in writing from time to time, either generally or by reference to particular Gardaí of particular ranks, or to particular circumstances, as to who is to be the member in charge of each station in the district. Regulation 4(3) states:

As far as practicable, the member in charge shall not be a member who was involved in the arrest of a person for the offence in respect of which he is in custody in the station or in the investigation of that offence.

A written record is to be kept in each station in the district containing the name and rank of the member in charge at any given time. Regulation 5 provides that the member in charge:

shall be responsible for overseeing the application of these regulations in relation to persons in custody in the station and for that purpose shall visit them from time to time and to make any necessary inquiries.

This is without prejudice to the responsibilities and duties of any other Garda in relation to persons in custody.

- 16.37. The Tribunal is satisfied that the custody regulations envisage a member in charge who is, insofar as is practicable, independent of the Garda investigation in respect of which a person has been detained and who has a duty to ensure that the constitutional and other legal rights of the detainee are afforded to him and observed. Regulation 5(3) provides:

Where it appears to the member in charge that a direction given or action taken by a member of higher rank is inconsistent with the proper application of these regulations, he shall inform that member accordingly and, unless the matter is resolved, report it without delay to another member of or above the rank of superintendent.

In addition, the member in charge has the duty to ensure that the custody record is maintained and that certain information is relayed without delay to the detainee in respect of his rights. The Tribunal recommends that in all cases a member in charge should be a Garda of considerable experience of sergeant rank at least. The Tribunal is not satisfied, on the evidence that it has heard, that the role of a member in charge pursuant to the regulations is treated with sufficient importance, or that the member in charge is vested with sufficient authority to ensure compliance with the regulations. Thus the appointment of a junior Garda as a member in charge in a station to which a suspect, arrested in respect of a serious crime, is brought, may result in a failure on the member in charge's part to act effectively in the implementation of the regulations. This may be by reason of inexperience, an apprehension on his part that representations made in order to ensure compliance with the regulations might not be viewed favourably or treated seriously by Gardaí of more senior rank, or by a failure to understand the independence of his role under the Act. The role and status of the member in charge is established by statute and regulation: whether that role and status is given practical effect depends on the respect and authority given to that role in practice by other Gardaí and especially those in leadership roles. It is important that the member in charge understands that he is expected to act in a proactive manner in the execution of his duties and that he is encouraged to do so by the officers of An Garda Síochána. Otherwise, the effectiveness of the role of the member in charge can be blunted in practice. The role of the member in charge, carrying out his duties under the custody regulations and the Criminal Justice Act, should be one of considerable

independence from the Gardaí carrying out the investigation and this may, if necessary, bring him into conflict with his colleagues and on occasion with officers of An Garda Síochána. This is a very difficult role. If it is to be carried out effectively and even-handedly the member in charge must have the support of the officers of An Garda Síochána and the encouragement to execute his duty fearlessly when required. The Tribunal is not satisfied that the role of the member in charge is in practice afforded the respect and authority contemplated by the legislation. The Tribunal recommends that senior officers in An Garda Síochána reinvigorate the role of the member in charge in the light of these observations. The Tribunal recommends that training or refresher courses for members in charge and senior officers should be introduced with a view to ensuring that the independence, power and authority of the member in charge is recognised and re-established. This is essential to the proper implementation of the legislation.

- 16.38. In order to ensure that this situation is reached, the member in charge must be given all necessary information in respect of the welfare of the detainee. For example, he must be kept fully informed in relation to the medical condition of the detainee or any directions given by a doctor as to how the detainee should be treated. Manifestly, this did not happen in the case of Mr. Frank McBrearty Senior. This was in direct contravention of Regulation 21(3) of the custody regulations which states:

The removal of a person in custody to a hospital or other suitable place and the time of removal should be recorded. Any instructions given by a doctor regarding the medical care of a person in custody and the steps taken to comply with them shall also be recorded.

The Tribunal has already chronicled the fact that the member in charge, to his own frustration, was not informed of the medical directions issued in respect of Mr. Frank McBrearty Senior when he returned to his Garda station following a transfer to hospital. This is a measure of the extent to which, in the Tribunal's view, the role of the member in charge was not treated with sufficient respect by members of the investigation team, including the senior officers. The senior officers, on learning of a medical report, did not take it upon themselves to ensure that the member in charge was informed about it. It will come as little surprise therefore, if others do not supply important information or if others regard the role of the member in charge as of very limited importance.

- 16.39. The member in charge must be regarded, by virtue of his appointment,

and the statutory and regulatory duties imposed upon him, as having an important, independent and active role in overseeing the treatment of prisoners in custody and urgent steps must be taken to ensure that this is done.

Questioning After Midnight

- 16.40. Section 4 sub-section (6) of the Criminal Justice Act, 1984 provides that if a person is being detained under the Criminal Justice Act in a Garda station:

between midnight and 8 am and the member in charge of the station is of opinion that any questioning of that person for the purpose of the investigation should be suspended in order to afford him reasonable time to rest, and that person consents in writing to such suspension, the member may give him a notice in writing ... that the investigation (insofar as it involves questioning of him) is suspended until such time as is specified in the notice and shall ask him to sign the notice as an acknowledgement that he has received it.

This sub-section also includes other provisions requiring that this notice be recorded and that various other procedures be followed in relation to it. Clearly, section 4(6)(a) contemplates that the questioning of a person in a Garda station may continue between the hours of midnight and 08.00 hours. That questioning can be stopped by the intervention of the member in charge who forms the requisite opinion that the questioning should be suspended in order to afford the detainee reasonable time to rest. However, the person must consent in writing to the suspension because the suspension of questioning stops the time running in respect of the duration of the detention permitted by the section.

- 16.41. Regulation 12(7)(a) provides as follows:

Except with the authority of the member in charge, an arrested person shall not be questioned between midnight and 8 am in relation to an offence, which authority shall not be given unless –

- (i) he has been taken to the station during that period,
- (ii) in the case of a person detained under Section 4 of the Act, he has not consented in writing to the suspension of questioning in accordance with sub-section (6) of that section, or
- (iii) the member in charge has reasonable grounds for believing that to

delay questioning of the person will involve a risk of injury to persons, serious loss of or damage to property, destruction of or interference with evidence or escape of accomplices.

This regulation clearly provides that a person detained under section 4 of the Act shall not be questioned between midnight and 08.00 hours. The exception arises where the authority of the member in charge is given for his questioning during that time. However, that authority cannot be given under the regulation unless the person has been taken to the station between midnight and 08.00 hours. Even if taken to the station during that period, the regulation provides that the authority to question him during that period shall not be given unless the detainee has not consented in writing to the suspension of questioning in accordance with sub-section (6) of section 4.

- 16.42. It is clear that section 4(6)(a) proceeds on the premise that it is permissible to question a person between midnight and 08.00 hours unless the member in charge is of the opinion that it should be suspended in order to afford him reasonable time to rest and a consent is forthcoming. The sub-section applies to any person detained in a Garda station between those hours under section 4. Regulation 12(7)(a) proceeds on a different basis, that it is impermissible to question an arrested person between midnight and 08.00 hours unless the authority of the member in charge is given. This authority cannot be given unless the prisoner has been taken to the station during the period midnight to 08.00 hours. This appears to imply that no person detained in a Garda station can be questioned under the regulations at all between midnight and 08.00 hours, which is contrary to the premise of section 4(6)(a). A further condition under Regulation 12(7)(a)(ii) that such consent shall not be given unless the detainee “has not consented in writing to the suspension of questioning in accordance with sub-section (6) of that section” seems otiose in that Regulation 12(7)(a) proceeds on the basis that one could never have questioning during that period and consequently the provisions of section 4(6) could never come into operation because a person could never be questioned between midnight and 08.00 hours without the authority described under Regulation 12(7)(a). The Tribunal is satisfied that these provisions need to be reviewed and clarified. If it is intended that the norm should be that no questioning of a suspect detained under section 4 should take place between midnight and 08.00 hours (which seems reasonable), save in circumstances where the accused is brought to a Garda station during that period, or where it is imperative that he be questioned because to delay

questioning would involve a risk of injury to persons or loss of life or damage to property or the destruction of or interference with evidence or the escape of accomplices, then this should be clearly provided by statute. An Garda Síochána are entitled to clear statutory direction in relation to these matters. The Tribunal recommends that these provisions be amended to the effect that persons should not be questioned between midnight and 08.00 hours unless there are exceptional reasons such as that to delay questioning would involve a risk of injury or loss of life, the destruction of property or evidence, interference with evidence or the escape of accomplices.

CHAPTER 17

COSTS

- 17.01.** The Tribunal has considered whether it can at this stage make an Order for Costs pursuant to section 6 (as amended) of the Tribunals of Inquiry (Evidence) Acts 1921 to 2004 in favour of any of the parties who are legally represented before the Tribunal. The Tribunal heard each of the arrests and detentions as a separate sub-module and also heard evidence in respect of the alleged bugging of interview or visitors' rooms as a further sub-module. Many of those who were called as witnesses before the Tribunal were also granted legal representation in relation to the issues that arose in the course of the sub-module in which they appeared as witnesses. The Tribunal has determined that a number of these witnesses are entitled to the full costs of their legal representation before the Tribunal. I will deal with each of these matters later in this Ruling.
- 17.02.** On the publication of various reports of this Tribunal in the past I have set out the legal basis governing the exercise of my discretion as to the awarding of costs pursuant to section 6 (as amended). The following are the legal principles upon which the Tribunal makes an award of costs.
- 17.03.** Section 6(1) of the 1979 Act (as amended by the 1997 and the 2004 Acts) provides as follows:

Where a Tribunal or, if the Tribunal consists of more than one member, the Chairperson of the Tribunal, is of opinion that, having regard to the findings of the Tribunal and all other relevant matters (including the terms of the resolution passed by each House of the Oireachtas relating to the establishment of the Tribunal, or failing to cooperate with or provide assistance to, or knowingly giving false or misleading information to, the Tribunal) there are sufficient reasons rendering it equitable to do so, the Tribunal or the Chairperson, as the case may be, may either on the Tribunal's or the Chairperson's own motion, as the case may be, or on application by any person appearing before the Tribunal, order that the whole or part of the costs –

- (a) of any person appearing before the Tribunal by counsel or solicitor, as taxed by a Taxing Master of the High Court, shall be paid to the person by any other person named in the order.
- (b) incurred by the Tribunal, as taxed as aforesaid, shall be paid to the Minister for Finance by any other person named in the order ...

Section 6 of the Act also provides that:

- (2) any sum payable pursuant to an Order under this section shall be recoverable as a simple contract debt in any court of competent jurisdiction.
- (3) any sum payable by the Minister for Finance pursuant to an order under this section shall be paid out of monies provided by the Oireachtas.

17.04. Section 6 (as amended) gives the Tribunal a wide discretion in respect of the Orders which it can make as to costs. In exercising this discretion, the Tribunal can have regard to a number of matters. The first matter specified by this section is “the findings of the Tribunal”. The interpretation of this portion of the section has given rise to some difficulty. In the 1979 Act, section 6 only provided that the Tribunal could have regard to “the findings of the Tribunal and all other relevant matters”. That section was considered by the Supreme Court in *Goodman International v The Honourable Mr. Justice Liam Hamilton, Ireland and the Attorney General* [1992] 2 IR 542. In analysing section 6, McCarthy J., stated at 605 of the report:

The liability to pay costs cannot depend upon the findings of the Tribunal as to the subject matter of the inquiry. When the inquiry is in respect of a single disaster, then, ordinarily, any party permitted to be represented at the inquiry should have their costs paid out of public funds. The whole or part of those costs may be disallowed by the Tribunal because of the conduct of or on behalf of that party at, during or in connection with the inquiry. The expression “the findings of the Tribunal” should be read as the findings as to the conduct of the parties at the Tribunal. In all other cases the allowance of costs at public expense lies within the discretion of the Tribunal, or, where appropriate, its Chairman.

17.05. In his judgment Finlay C.J., expressly agreed with the construction placed on section 6 of the 1979 Act by McCarthy, J. O’Flaherty and Egan J.J., also agreed in general terms with the judgment of McCarthy J.

17.06. In the 1997 Act, the Oireachtas inserted into section 6 after the words “and all other relevant matters”, the words “(including the terms of the resolution passed by each House of the Oireachtas relating to the establishment of the Tribunal or failing to cooperate with or provide assistance to, or knowingly give false or misleading information to, the Tribunal)”. The amended section 6 has not as yet been the subject of judicial interpretation.

17.07. The Law Reform Commission published a consultation paper on Public Inquiries, including Tribunals of Inquiry, in 2003. In that paper it argued that given the

additions made to section 6 in the 1997 Act, the major change thereby effected was to enable the Tribunal when exercising its discretion under section 6 to have regard to its findings on the substantive issues. The Law Reform Commission stated at page 286 of the consultation paper:

The major change is directed at the main point under consideration here, namely whether in deciding whether to award costs, a Tribunal may take into account its findings on the substantive issue or whether it is confined to the parties' behaviour before the Tribunal. The following points are relevant. First, the fact that the Tribunal is enjoined to pay regard to the fact that a person has "failed to cooperate with ... or knowingly given false ... information to the Tribunal" is now (in contrast to the original 1979 Act wording) stated explicitly. It is critical that there can, therefore, be no room for the suggestion that the phrase "the findings of the Tribunal" should be taken to mean a finding as to whether a person has failed to cooperate with the Tribunal. Instead this key phrase must bear its natural meaning, that is, the findings of the Tribunal as to the substantive issue. The second point tending in the same direction concerns the phrase "including the terms of the resolution ... relating to the establishment of the Tribunal". These words, too, make it clear that in awarding costs, the Tribunal must take into account the facts found in relation to the subject matter which it was mandated, by its Terms of Reference to explore. In short, mention of the "Terms of Reference" points the Tribunal in the direction of its findings on the substantive issue, as a relevant factor to be taken into account in deciding on costs. This confirms the first point.

- 17.08.** This interpretation of section 6 was accepted by His Honour Judge Alan P. Mahon, S.C., Chairman of the Tribunal of Inquiry into Certain Planning Matters and Payments in a Ruling issued by him entitled, 'Ruling on the Principles to be Applied in Respect of Certain Applications for Costs', delivered on the 30th of June 2004.
- 17.09.** Having regard to the Ruling of the Supreme Court in this matter I find myself unable to accept, without qualification, the interpretation suggested by the Law Reform Commission with which his Honour Judge Mahon was in agreement. This interpretation suggests that, without disturbing the phrase, "the findings of the Tribunal", the legislature enacted a reforming provision which bore a meaning which was exactly the opposite to that reached by the Supreme Court concerning that phrase: in effect reversing the Supreme Court Ruling. The Law Reform Commission's view was that the original section required the Tribunal to have regard to (a) the findings of the Tribunal and (b) to all other relevant matters and

that the section as amended does no more than identify some of the other relevant matters. It does not purport in any way to alter or amend the phrase “the findings of the Tribunal”, which was the subject of the Supreme Court’s judgment in the Goodman case.

17.10. However, it can also be contended that the analysis of the Law Reform Commission concerning the significance of the insertion of “terms of the resolution” into the amended version of section 6, ignored the fact that the “terms of the resolution” are but one of the other “relevant matters” identified in the amendment and are clearly not an aspect of the amendment intended to have an impact upon the expression “the findings of the Tribunal”. The argument runs that it is much more likely that the Oireachtas had in mind that element of the “terms of the resolution” (Term of Reference) which commands a Tribunal to complete its business in as economical a manner as possible and directs that all costs incurred by reason of the failure of individuals to co-operate fully and expeditiously with the Tribunal, insofar as is consistent with the interests of justice, be borne by such an individual. It would have been remarkably easy for the draughtsmen of the legislation to have amended the phrase, “the findings of the Tribunal” to provide that it should be read as including the substantive findings of the Tribunal in relation to the matters into which it is inquiring, if that was what was required. This was exactly what the Supreme Court held the phrase did not mean, and accordingly, it is argued that had the Oireachtas intended to effect an overturning of that decision, it would have been easy to insert the necessary words to make this absolutely clear. This, it is contended, the 1997 Act did not do: the phrase was left undisturbed.

17.11. The Law Reform Commission considered how this issue was addressed by the Mahon Tribunal and this Tribunal in Chapter 7 of its report on Tribunals of Inquiry. The Tribunal notes that in this report the Law Reform Commission concluded that the phrase “the findings of the Tribunal” as currently drafted may be “misinterpreted” to mean that the Tribunal in resolving the issue of costs could not or should not have regard to the findings which it has made on the substantive or primary issues which arose out of its deliberations. It therefore recommended an amendment to the relevant part of section 6(1) of the Act for the purpose of clarification. It said:

7.19. The Commission recommends that the first part of Section 6(1) of the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979 which deals with the awarding of costs be redrafted as follows: “Where a Tribunal ... is of the opinion that having regard to:

(i) the findings of the Tribunal in relation to its subject matter as

indicated in the terms of the resolution passed by each House of the Oireachtas relating to the establishment of the Tribunal;

- (ii) and all other relevant matters (including failing to cooperate with or provide assistance to, or knowingly giving false or misleading information to the Tribunal and the means of a party), there are sufficient reasons ...

rendering it equitable to do so, the Tribunal may make an order in respect of costs.

17.12. The Tribunal is satisfied that the phrase “the findings of the Tribunal” in section 6 as amended by the 1997 Act does not mean that the substantive findings of the Tribunal may never be taken into account by a Tribunal in determining an application for costs. For example, if a person were to make an entirely false and unfounded allegation which he knew was false and which by reason of that person’s insistence led to the establishment of a Tribunal of Inquiry and that person was subsequently exposed as untruthful or acknowledged the falsehood of his allegations before the Tribunal, such a person could make an application to the Tribunal for costs. However, if the Tribunal made a finding of fact that the allegations were false and were falsely made which constituted a substantial finding in respect of its Terms of Reference it would be entitled to take that finding of fact into account in determining and refusing such an application. The Tribunal accepts that the Ruling as to costs does not depend exclusively on the substantive finding of the Tribunal in respect of its Terms of Reference but simply acknowledges that in certain cases its findings may properly be regarded as important to such a Ruling.²⁰⁹⁹

17.13. It must also be understood that under section 6 of the Act as amended a substantive finding of wrongdoing does not necessarily operate so as to deprive an applicant of the opportunity to have an award of costs made in their favour. In that regard, it is important to consider the extent to which an applicant has co-operated with the Tribunal by furnishing it with relevant documents within his/her knowledge, power or procurement in an understandable and accessible format by way of discovery or disclosure; by furnishing it with all information in his/her knowledge, power or procurement, and by telling the whole truth to the Tribunal’s investigators and as a witness. When an applicant has fully co-operated in this sense with the Tribunal I am entitled to consider the making of a full order

²⁰⁹⁹ It should be noted that under section 36(4) of the Tribunals of Inquiry Bill 2005 it is proposed that the Chairperson of a Tribunal shall have reference to “the findings of the Tribunal” when deciding whether it is equitable to make an order for costs under the section. This clarifies the suggested ambiguity noted by the Law Reform Commission and clearly implies that the decision of the Supreme Court in *Goodman International v The Honourable Mr. Justice Liam Hamilton and others*, already referred to, had to be addressed by way of statutory amendment to enable a Chairperson of a Tribunal to expressly rely upon “the findings of the Tribunal” as a discreet ground on which to grant or refuse an order for costs. (This Bill was at its second stage before Dáil Éireann at time of writing).

for costs in his/her favour. In such circumstances, an applicant may be granted costs even though he/she has been found to have been involved in wrongdoing in respect of the substantive issues reported upon by the Tribunal. In addition, a party may have partially co-operated or assisted in respect of some particular issue or issues, but not others. I am satisfied that I am entitled in such circumstances to make an order for costs which takes account of the degree of such non-co-operation or co-operation in the sense indicated, by making a limited or partial order for costs in favour of such an individual. Under the provisions of section 6 where a person has wholly failed to co-operate with the Tribunal or provide it with assistance, or gave it false or misleading information, or lied, I am also entitled to consider the making of an order for costs against such a person, particularly where this caused further work for the Tribunal and prolonged or complicated its investigations or hearings.

- 17.14. It was previously urged upon the Tribunal that costs should be awarded on a solicitor and client basis, rather than as party and party costs. I note that differing approaches have been taken by previous Tribunals in this regard. The Tribunal of Inquiry into the Whiddy Island disaster, the Tribunal of Inquiry into the Beef Processing Industry and the Tribunal of Inquiry into the Blood Transfusion Service Board, awarded costs on a party and party basis. The Tribunal of Inquiry into the Infection with HIV and Hepatitis C of persons with haemophilia and related matters and the Tribunal of Inquiry (Dunnes payments) awarded costs on a solicitor and client basis.
- 17.15. In my opinion, an award of costs on a solicitor and client basis is appropriate where the costs have been incurred between the solicitor and his or her own client. In such circumstances, the client has knowledge of the amount of work being undertaken by the solicitor on his/her behalf. The client can control the level of service provided by his/her legal advisors. Where an Order for Costs is made by this Tribunal, such Order will be directed to the Minister for Finance who will discharge the ultimate bill from monies made available by the Oireachtas. The Minister for Finance has no control whatsoever over the amount of legal services provided to a party by that party's legal team during the course of the Tribunal. In such circumstances, it seems to me that it is only equitable that costs should be awarded on a party and party basis. This will enable a party in whose favour an Order is made to obtain costs in respect of legal work reasonably undertaken by their legal advisors and at a reasonable rate. Accordingly, the Orders which will issue from the Tribunal will be on a party and party basis. This accords with the previous Rulings of this Tribunal.
- 17.16. I now set out the Tribunal's Ruling in respect of a number of the individuals who were legally represented before the Tribunal, having regard to the findings of fact

which I have made. In this regard it should be noted that Mrs. Katrina Brolly has already been awarded full costs of her legal representation before the Tribunal. This order was made shortly after the conclusion of the hearing of the sub-module concerning her arrest and detention. Mrs. Brolly was the first detainee to attend at the Tribunal and to tell her story. She did so in the anticipation that she would be cross-examined as being untruthful by those who wronged her. She gave her evidence honestly and with quiet dignity and courage. She co-operated fully with the Tribunal. In making this order, the Tribunal was complying with its undertaking that it would make orders for costs in respect of each of the sub-modules as soon as possible. Mr. John Dooley was also awarded costs in respect of the same sub-module because of his co-operation and honesty.²¹⁰⁰ The Tribunal is now in a position to make orders for costs in respect of three of the other detainees who were legally represented, namely Ms. Edel Quinn, Mr. Mark Quinn and Mr. Seán Crossan.

Ms. Edel Quinn

17.17. Ms. Edel Quinn gave evidence to the Tribunal and was represented in the course of this sub-module by solicitor and junior and senior counsel. I am satisfied, having regard to Ms. Quinn's co-operation with and attendance as a witness at the Tribunal and the truthful evidence which she furnished, that Ms. Quinn is entitled to an order granting her full costs of her legal representation before the Tribunal.

Mr. Mark Quinn

17.18. Mr. Mark Quinn was unlawfully arrested and detained. The Tribunal is satisfied that Mr. 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 in a limited number of matters the Tribunal regards his account of events as exaggerated or untrue. These are chronicled in the report. Nonetheless, a number of the important allegations which he made, and which were consistently denied over the years by members of An Garda Síochána, were found to have occurred. In those circumstances, the Tribunal is satisfied that it is equitable to make a full order for costs in respect of his legal representation at the Tribunal. The Tribunal was greatly assisted by the legal representatives of Mr. Quinn in the presentation of his case and the clarification of various issues.

Mr. Seán Crossan

17.19. Mr. Seán Crossan was also unlawfully arrested and detained. Though the Tribunal has determined that he was mistaken and has in a number of instances made exaggerated claims in relation to how he was treated, nevertheless the Tribunal

²¹⁰⁰ Transcript, Day 438, pages 156-157.

is satisfied that his core story was truthful to the best of his ability and that he co-operated in a meaningful way with the Tribunal. The Tribunal is satisfied that it is equitable in all the circumstances to make a full order for costs in favour of Mr. Crossan in respect of his legal representation before the Tribunal.

17.20. In accordance with the provisions of Section 6 of the Act, these costs will be payable to the parties by the Minister for Finance.

17.21. Following the publication of the Tribunal's report, the Tribunal will receive applications from any other interested parties who may wish to make an application for an award for costs. Such applications should be in writing and made to the Registrar of the Tribunal at:

The Morris Tribunal,
Block 5,
Belfield Office Park,
Beaver Row,
Clonskeagh,
Dublin 4.

Applications for costs should be made within three weeks of the publication of this report. The Tribunal reserves the making of any further order until it has received and considered such further applications as may be made. The applications in writing should be in the form of a written submission as to why the applicant considers an order for costs should be made in his or her favour.

APPENDICES

Appendix A

Documents concerning the fourth interview of Róisín McConnell at Letterkenny Garda Station on the 4th of December 1996.

- A1. Typed memorandum of the interview of Róisín McConnell that appeared in the final report on the investigation into the death of Mr. Richard Barron submitted by Superintendent Kevin Lennon in March 1998 (statement 91E) . . . 1275
- A2. Handwritten notes of the interview of Róisín McConnell that were prepared by Garda Harkin in response to a request to submit his original notes to the incident room in late 1997/early 1998 (document 26E) 1285
- A3. Statement of Garda Harkin incorporating the 'afternoon interview' of Róisín McConnell that appears on the final investigation file (statement 242). 1293
- A4. Statement of Garda John Harkin incorporating the 'afternoon interview' of Róisín McConnell that was faxed to Manorcunningham Garda station on the 20th of February 1998, but that is missing from the working file of the investigation (statement 516). 1303
- A5. Statement of Detective Inspector John McGinley incorporating the 'afternoon interview' of Róisín McConnell that appears on the working file (statement 529). 1313
- A6. Handwritten notes that apparently record a portion of the afternoon interview of Róisín McConnell that were prepared by Detective Inspector John McGinley to provide an explanation for the previously identified discrepancies (Appendix 82, Carty Report).. 1321

Appendix B

Documents concerning the arrest and detention of Frank McBrearty Junior on the 4th of December 1996.

- B1. A copy of the original handwritten confession said to have been made by Frank McBrearty Junior on the 4th December 1996 between 19.05 hours and 20.25 hours to Detective Sergeant John Melody and Detective Garda John Fitzpatrick. 1325
- B2. A copy of the original handwritten statement said to have been made by Frank McBrearty Junior to Sergeant Eamon O'Grady and Sergeant Gerard McGrath between 20.30 hours and 21.16 hours on the 4th of December 1996. 1329

B3.	A copy of the original custody record in respect of Frank McBrearty Junior dated the 4th of December 1996.	1331
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Appendix C

Correspondence between the Tribunal and Mr. Frank McBrearty Junior in respect of information sought by the Tribunal relating to Mr. Frank McBrearty Junior’s medical condition.

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C5.	Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 17th of November 2006.	1351
C6.	Application of Mr. Frank McBrearty Junior to the Tribunal dated the 19th of November 2006.	1355
C7.	Ruling in respect of application of Mr. Frank McBrearty Junior dated the 19th of November 2006 delivered on the 5th of December 2006.	1357
C8.	Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 24th of November 2006.	1363
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C10.	Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 10th of January 2007.	1371
C11.	Letter to Mr. David Walley, solicitor, enclosing correspondence sent to Mr. Frank McBrearty Junior by the Tribunal in respect of this matter.	1373

Appendix D

	Ruling in respect of Application of Mr. John White on the calling of certain witnesses in relation to the alleged Bugging of Garda Stations delivered on the 13th day of June 2007.	1375
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APPENDIX A

A1

Typed memorandum of the interview of Róisín McConnell that appeared in the final report on the investigation into the death of Mr. Richard Barron submitted by Superintendent Kevin Lennon in March 1998 (statement 91E).

**NOTES OF INTERVIEW WITH ROISIN McCONNELL AT LETTERKENNY
GARDA STATION ON 04/12/1996. GARDA HARKIN ENTERED THE
INTERVIEW ROOM AT 4.40P.M. GARDA LOHAN PRESENT AND ROISIN
McCONNELL WAS TEARFUL.**

(Q) Are you okay?

(A) Yes.

(Q) Do you realise that 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?

(A) Yes.

(Q) Are you saying that Mark and yourself did not leave Quinn's pub until 1.15a.m.?

(A) Yes.

(Q) Why are other people saying that this is not true?

(A) There are bad people in Raphoe.

(Q) Why would Mark Quinn not recall seeing you in his pub until that time?

(A) Because he is afraid. He does not want to tell the Guards that he was serving drink until that time.

(Q) This is a murder enquiry, not an enquiry into after hours drinking in Raphoe?

(A) Well, there can be no other reason.

(Q) What time did you speak to Stephen McCullough outside his pub?

(A) It was 1.25a.m.

(Q) Why would he put this time much earlier than that?

(A) For the same reason, he was finishing up and does not want to tell the truth.

(Q) Are you suggesting that all these people are telling lies about the time they saw you?

(A) I don't care if there are one hundred people who say they saw me over there earlier. If they saw me, they saw me in Quinns.

At 4.45p.m. Inspector John McGinley entered the interview, introduced to prisoner.

(Q) Roisin what is the position here?

(A) They are saying that I left Quinn's pub earlier than I did.

(Q) What time are you saying you left the pub at?

(A) Not earlier than 1.15a.m.

(Q) What about these people who saw you and your husband long before this?

(A) They are mistaken, if they saw me they saw me in Quinns.

(Q) I am going to put this scenario to you and you tell me if I am telling you a lie? 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 the man would die. They left him and went back down, walked down in fact and went into the Parting Glass. Now, tell me, did I tell you a lie?

(A) Yes, it's all lies.

(Q) Why?

(A) Because I know its a lie.

(Q) What do you mean you know its a lie?

(A) He would not do that.

(Q) He would not do what?

(A) Murder a man like that.

(Q) Was he murdered?

(A) You tell me, I was told this morning I was arrested for murder, was it murder.

(Q) Maybe it was an assault that ended with his death?

(A) What do you men, I was told he was murdered.

(Q) What is murder?

(A) What do you mean what is murder.

(Q) What is an assault?

(A) An assault is where you hit someone and he lives.

(Q) Could somebody be assaulted and die as a result of the assault?

(A) No.

(Q) Could Mark have hit him in the pub if you had not stepped in to break them up?

(A) He could have.

(Q) Could Richie Barron have fallen and cracked his skull on the bar or a table and died?

(A) I suppose he could.

(Q) Would that have been murder?

(A) I don't know.

(Q) Mark was not with you when you went into the night club?

(A) He was right behind me, he was along with me.

(Q) Why did you have to go and get yourself a drink when you went in?

(A) I just did, that's all.

(Q) Do you expect us to believe that the two of you went in there together and remained together and et did not even your first drink together?

(A) No reply.

(Q) You had no part in this row, why are you not telling the truth about your movements on that night?

(A) I am telling the truth to the best of my knowledge.

(Q) Going back to where Richie Barron died, the story was that he had been hit with a car?

(A) Yes.

(Q) You were aware of this?

(A) Yes.

(Q) When did you become aware that there was suspicion that this was not the way he died?

(A) There were rumours going around that he had been killed.

(Q) You were aware of these rumours?

(A) Yes.

(Q) You were also aware that your husband was being blamed for his death?

(A) Yes.

(Q) Can you explain why it is that when you were visited by Gardai and given an opportunity to account for your husband's and you movements that night, you left out some of your movements?

(A) We had been out and just returned home when the Guards arrived, our child was there making noise.

(Q) A man was dead, there were rumours going around about your husband. There were several Gardai in Raphoe talking to anyone who had seen Richard Barron that night. Here were the Gardai calling to your door within days of this event^t and giving you an opportunity to put the record straight and you got it wrong and say you did not insist on having your statement read over to you to make sure it was correct, who is going to believe that?

(A) No reply.

Inspector McGinley left the interview room.

(Q) What time did you leave Quinn's Pub that night?

(A) Between a quarter past and twenty past twelve -prisoner shakes her head -
between a quarter past and twenty past one.

(Q) What did you talk to Stephen McCullough about?

(A) Can't remember.

(Q) How long were you talking with him?

(A) About a minute or less.

(Q) Who else was there?

(A) His wife.

(Q) What did you do then?

(A) We went over to Sarah's cafe.

(Q) What did you order in Sarahs?

(A) We ordered chicken curry, rice and chips.

(Q) Who did you see there?

(A) Wilma Barnett was there.

(Q) Who was serving?

(A) What do you call her - Laird.

(Q) Where is she from?

(A) Originally, I don't know but she is married to a fellow from the Terrace.

(Q) Who was outside?

(A) Daniel Lynch.

(Q) Who was on the door as you went in?

(A) Big Frank and Willie Logan, Frank, he said go ahead. I met Michael Peoples down the hall but I went on.

(Q) What did you do then?

(A) Went to the bar and got a drink, went and joined my sister and her friends and had a dance for five minutes.

(Q) What time did you go in at?

(A) 1.30a.m. for twenty minutes. We came out at ten minutes to two.

(Q) You were out before that?

(A) No.

(Q) Why did you get a drink for yourself only?

(A) I just got a drink for myself.

(Q) Your husband was not there?

(A) He was there.

(Q) You are not telling the truth?

(A) You can sit there until the morning and I will stay say he was in the Parting Glass.

(Q) Is it not true that you can not drink or dance with someone who is not there?

(A) He was there.

Prisoner informed that her mother was here to visit her. Prisoner appears emotional at this news and is tearful. Notes of interview were read over to the prisoner by Garda Harkin.

(Q) Are these notes correct?

(A) No reply. Prisoner nods her head in agreement.

(Q) Do you wish to sign the notes?

(A) Prisoner shakes her head and says no.

Signed: John Harkin, Garda 23366H

A2

Handwritten notes of the interview of Róisín McConnell that were prepared by Garda Harkin in response to a request to submit his original notes to the incident room in late 1997/early 1998 (document 26E).

Notes of interview with Rossin Mc Cormell at Letterkenny
Guard Station on 4/12/1996. Garda Deakin entered the
interview room at 4.30 p.m. Garda Johnson was present
and Rossin Mc Cormell was fearful.

Q. Are you okay?

A. Yes.

Q. You realize that you are not obliged to say
anything unless you wish to, do so but whatever
you say will be taken down in writing and may
be given in evidence?

A. Yes.

Q. Are you still saying that Mark and yourself
did not leave Quinn's pub until 1.15 a.m.?

A. Yes.

Q. Why are other people saying that this is not true?

A. There are bad people in Ryehill.

Q. Why would Mark Quinn not recall seeing you
in his pub until that time?

A. Because he is stupid. He does not want to tell
the guards that he was serving drink until that
time.

Q. This is a murder enquiry, not an enquiry into
after hours drinking in Ryehill?

A. Well, there can be any other reason.

Q. What time did you speak to Seán Mc Callough
outside his pub?

A. It was 1.25 a.m.

Q. Why would he put this time much earlier than that?

A. For the same reason, he was finishing up and
does not want to tell the truth.

Q. Are you suggesting that all these people are letting
lies about the time they saw you?

(2)

A. I don't care if there are one hundred people who say they saw me over there earlier. If they saw me, they saw me in Quinn's.

At 4:45 p.m. Supt. John McQuibby entered the interview room and introduced to the witness.

Q. Again, what is the position here?

A. They are saying that I left Quinn's pub earlier than I did.

Q. What time did you say you left the pub at?

A. Not earlier than 1:15 a.m.

Q. What about those people who saw you and your husband very late this.

A. They are mistaken, if they saw me they saw me in Quinn's.

Q. I am asking you but this appears to you and you tell me if I am telling you a lie. Your husband Mark Mc Connell had a row with Richie Brennan in the pub. They were no longer drunk but he grabbed the Mc Connells and he insulted your husband. He did not like it. He left the pub with you and you ordered your taxi, after making every effort to meet the Mc Connells. You went into Frankie's on your way. Mick met Frankie Mc Bratley and told him what happened. They decided to go and see Richie Brennan a legend. They walked up and through the carpark and met Richie Brennan standing there as he always did. He got one wallop and that was it. As for us they were concerned Richie was drunk. He got one wallop per he often did before. It was no big deal. They are not to

(3)

know, the man would die. They left him and went back down, walked down in fact, and went into the Penton Club? Now, tell me, did you tell you a lie?

A. Yes, it's all lies.

Q. Why?

A. Because I know it's a lie.

Q. What do you mean, you know it's a lie?

A. He could not do that.

Q. He could not do what?

A. Murder a man like that.

Q. Was he murdered?

A. You tell me, I was told this morning I was arrested for murder, you say murder.

Q. Maybe it was an assault that ended with his death?

A. What do you mean, I was told he was murdered.

Q. What is murder?

A. What do you mean, what is murder.

Q. What is an assault?

A. An assault is, where you hit someone, and he dies.

Q. Could somebody be assaulted and die as a result of that assault?

A. No.

Q. Could Mark have hit him in the head if you had not stepped in to break them up?

A. He could have.

Q. Could Rufus Brown have fallen and cracked his skull on the bar or a table and as a result die?

A. I suppose he could.

Q. Would that have been murder?

A. I don't know.

(4)

Q. Maybe wasn't pretty you when you went into the night club, is it?

A. He was right behind me, he was along with

Q. Why did you have to go and get yourself a drink when you went in?

A. I just did, that's all.

Q. Do you expect us to believe that the two of you went in there together and remained together and yet did not even get your feet drunk together?

A. No Reply

Q. You had no part in this, you, why are you not telling the truth about your movements on that night?

A. I am telling the truth to the best of my knowledge

Q. Coming back to when Ricky Brown died, the story was that he had been hit with a car

A. Yes

Q. You were aware of this?

A. Yes.

Q. What did you become aware that there was suspicion, that this was not the way he died?

A. There were rumors going around that he had been killed

Q. You were aware of those rumors?

A. Yes.

Q. You were aware that your husband was being taken for a death?

A. Yes.

Q. Can you explain why it is that when

(5)

you were visited by Curtis and given an opportunity to account for your husband and your movements that night, you left out some of your movements.

A. We had been out and just returned home when the Guards arrived, an individual was there and making noise.

Q. A man was dead, there were rumors going around about your husband. There were several articles in the paper talking to anyone who had seen Richard Egan that night. There were the Guards calling to your door within days of this event and giving you an opportunity to put the record straight and you got it wrong and say that you did not bring on having your statement read over to you to make sure it was correct, who is going to believe that?

A. My Reply.

Q. Inspector Mc Carthy left interview room. What time did you leave Quinn pub that night?

A. Between a quarter past eight and twenty past eight - giving her head - between a quarter past eight and twenty past eight.

Q. What did you talk to Stella Mc Carthy about?

A. Can't remember.

Q. How long were you talking with him?

A. About a minute or less.

Q. Who else was there?

A. His wife.

Q. What did you do then?

A. We went over to Sarah's cafe.

(6)

- Q. What did you order in Sarah's?
A. They ordered chicken curry and rice and chips.
- Q. Why did you see they?
A. Wilma Bennett was there.
- Q. Who was serving?
A. What do you call her - Lurd.
- Q. Where is she from?
A. Originally I don't know, but she is married to a fellow from the Terrace.
- Q. Who was outside?
A. Daniel Lerner.
- Q. Who was on the door as you went in?
A. Big Frank and Willie Lerner, Frank, he said go ahead, but I met Michael Lerner when the bell but I went on.
- Q. What did you do then?
A. Went to the bar and got a drink, went and joined my sister and her friends and had a dance for five minutes.
- Q. What time did you go in at?
A. 1:30 a.m. for twenty minutes. We came out at ten minutes to two.
- Q. You were out before that?
A. No.
- Q. Why did you get a drink for yourself only?
A. I just got a drink for myself.
- Q. You hadn't even met there?
A. He was there.
- Q. You are not telling the truth?
A. You can't see until the morning and I will say he was on the partying door.

(7)

Q. Is it not true that you can not drink of
or dance with someone who is not there.

A. The man that
Prison informed that her mother was here
to visit her. Prisoner appears emotional
at this news and is weeping. Peter of
Mogana read to the prison by Gada
Kambin.

Q. Are these notes correct.

A. Yes Reply, Prisoner nod her head in agreement

Q. Do you wish to sign these notes.

A. Prisoner shake her head and says No.

John Harkin Code 23366 H
(J. HARRIM).

Dated 16/3/88 in presence of D/Sgt. Kyrle.
John Harkin Code 23366 H
(JOHN HARRIM).

A3

Statement of Garda Harkin incorporating the 'afternoon interview' of Róisín McConnell that appears on the final investigation file (statement 242)

Statement of John Harkin Garda 23366H, Newtowncunningham Garda Station, made on 3/9/1997.

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.

I am a member of an Garda Siochana stationed at Newtowncunningham. On Tuesday 4th December 1996 I was on duty at William Street Raphoe. I was with Sergeant John White and Detective Gardai John Dooley and Pauric Scanlon. Garda John o'Dowd from Raphoe was operating a checkpoint on the road. At 8:17 a.m. motorcar 88 DL 4204 a white Peugeot 309 was stopped at the checkpoint. Sergeant White approached the rear passenger side door of the car. The door was opened and he spoke to the woman sitting inside. He showed her his identity card. She stepped out of the car. She identified herself as Roisin McConnell from Tullyvinney, Raphoe, County Donegal. At 8:18 a.m. Sergeant White placed his hand on her arm and arrested the woman. She was informed that she was arrested on suspicion of being an accessory after the fact in the murder of Richard Barron at Townparks, Raphoe, County Donegal on 14/10/1996. She was cautioned 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. As she was led across the road to the patrolcar, she turned her head and called to the the occupants to "Lorna, go and get Mark". She was placed in the rear seat of the patrolcar along with Sergeant White and Detective Garda Dooley. Detective Garda Scanlon drove the car. I sat in the front passenger seat. Sergeant White informed Roisin McConnell of our identity. Sergeant White spoke with the prisoner. I noted comments made by the prisoner on the journey to Letterkenny Garda Station. She asked "Do I have to answer any questions". She spoke about the Barron family saying "It's wild for his family and it's going to be wild for my

family". She spoke about evidence saying "You have a lot of evidence" . . . "What evidence do you have on him, if you have evidence on him why are you not lifting him". She talked about the row in the pub saying "You have one argument with a man and your blamed for murdering him". She asked "How many people did murder him". The prisoner talked about her new home saing it was finished the previous April. On the subject of Richard Barron she said "I just knew him to see". As we neared Letterkenny she asked "Can I make a phonecall to Catriona or home to get a childminder ?" She was told that she could. She then said "I can have a solicitor as well". She was told she could. She said ""I will not get any this time of the morning" and after a short pausesaid "I don't need a solicitor, I done nothing wrong". The prisoner was taken to Letterkenny Garda Station. We arrived at Letterkenny Garda Station at 8:40 a.m. . Garda Martin Leonard was the member in charge. At 12:05 a.m. Detective Garda Scanlon and myself entered the interview room. I informed the prisoner of our identity and cautioned her 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. I made notes of the interview. She was asked the following questuions. Q. You have made verbal statements. Is there a reason for not making a signed statement ? A. I have already made a signed statement. How many signed statements should I have to make. Q. When you made your statement, you did not say about having to go home to collect the stuff for the baby ? A. I am answering no more questions, my child has got nothing to do with this here. Q. What time do you say it was when you got to Quinns and were you on your own when you got there? A. Youse are going to muddle No, I am not saying anything. Q. What do you mean, "we are going to muddle" ? A. Youse are going to muddle up what I have said. Q. Did you go to the pub with Mark ? A. No, I did not. If he says that he is a liar. Q. When you made your statement, who did you make it to ? A. O' Malley. Q. What happened when it was taken, was it read over to you ? A.

Bits of it was, there was parts of it left out. Q. Was it a serious row between Mark and Richie Barron ? A. No it was not. Q. What time did you leave the pub ? A. I left at 1:20 along with Mark. My brother Gerard, Irene and Frankie Dolan were still there when we left. Q. What were you wearing ? A. I was wearing a black velvet top and blue jeans faded. Q. What did Mark wear ? A. He was wearing an Addidas top and track bottoms grey. Q. Was Mark annoyed about the row ? He was annoyed at the time. He wasn't sober. He had about five pints. He is not a drinking man. We do not go out very often, maybe once every three weeks. Q. Why did you allow yourself to sign a statement about your movements without insisting that it was read over to you, given that your husband had a row with him ? A. It was not a serious row. Today is the first day I have heard that he was murdered. Q. Why would rumours regarding your husband and Frank McBrearty be going around ? A. Live in Raphoe for a while and you will know all about it ? Q. Do you not like Raphoe ? A. Not after this I don't. I left Quinn's pub at 1:20 a.m. and went to Sarah's, ordered a chicken curry and fried rice and chips and then went to Frankies, in the front door, went to pay. Big Frank told me to go ahead. Frank junior must have been in the hall. Who is minding my child now ? I was dancing. Mark was not along with me dancing. I was dancing with a sister of mine, Edel, Joan Colhoun and Paula Ayton. Edel told me. I was shocked. He was hit by a car. Mark was in the poolroom in Quinn's pub and I was in the bar. Q. Could a space of fifteen minutes have passed during which you did not see him. A. It could have. I doubt it. We were not stuck to one another all night. Mark was with me in the bar after Richie Barron left the pub. He would need to be psychic. Q. Why ? A. To know that Richie Barron was going up that road at that time. Q. So, Mark could have been out of your sight for fifteen minutes ? A. No. You said he could have been. Q. Who left the disco with you ? Mark, Ebby and Edel. Q. What was Mark like. A. Upset. He had just heard that the man he was in a row with was dead, wouldn't

you be upset. We did not go in until 1:30 a.m. . Q. What if I said you were seen coming out at 1:30 a.m. . A. As I said to you, come and live in Raphoe. Q. This is a very reliable person, is he telling lies ? A. Well is it a man then so ? - you said he is a reliable witness, it must be a man. The prisoner was asked who took the baby down to Brolly's house. She replied that Catrionas son and daughter who took the child down to Brolly's before 9 o'clock and that a child is supposed to be out the pub before 9 o'clock. At this time Garda Canning entered the interview room with a cup of tea and some toast for the prisoner. Following this the prisoner was questioned again about the time she left Quinn's pub. A. It was 1:15. I looked at the clock in the bar. I was refused a drink. Mark Quinn refused me. The clock is over the bar above the toilet doors. She was questioned about the row between her husband and Richie Barron. Q. If they had not been separated, it would have come to blows ? . A. Well maybe it would have been better. Richie Barron would maybe be alive today because someone would have taken him home. I know he did not do it. He has not got it in him. (She was asked if her husband had attended the wake or funeral of Richie Barron. A. If he had gone to the wake, he would not be sitting here now, if he had been a hypocrite. Q. Did Mark leave the pub that night ? A. I can not be one hundred per cent sure. If he left Quinn's pub. He could not have been gone for more than five minutes. He did not leave. Q. Can you be sure that he did not leave. A. I don't know. She was asked again about the row in the pub. A. If Mark had wanted to hit Richie Barron, he could have thrown me out of the way. Q. Did you ever see Mark lose his temper ? A. I don't know. This question was repeated a few times with the same answer each time. Q. Did you ever see him in a fight ? A. No. She then said. A. I can never remember Mark losing his temper. At this time I read over the notes of the interview to Roisin McConnell. I asked her if the notes were correct. She replied, A. Thats what you have down. I asked her if she wished to sign the notes. She replied, A. No. I signed the notes.

Detective Garda Scanlon signed the notes. The interview was finished. We left the interview room at 12:45 p.m. . At 4:40 p.m. I entered the interview room where Roisin McConnell was seated. Garda Lohan was present. Roisin McConnell was tearful. I asked her was she okay. She replied that she was. She replied that she was. I cautioned her and made notes of the interview. She was asked the following questions. Q. Are you still saying that Mark and yourself did not leave Quinn's pub until 1:15 a.m. ? A. Yes. Q. Why are other people saying this is not true ? A. There are bad people in Raphoe. Q. Why would Mark Quinn not recall seeing you in his pub until that time ? A. Because he is afraid. He does not want to tell the Guards that he was serving drink until that time. Q. This is a murder enquiry, not an enquiry into after hours drinking in Raphoe ? A. Well, there can be no other reason. Q. What time did you speak to Stephen Mc Cullough outside his pub ? A. It was 1:25 a.m. . Why would he put this time much earlier than that ? A. For the same reason, he was finishing up and does not want to tell the truth. Q. Are you suggesting that all these people are telling lies about the time they saw you. Q. I don't care if there are one hundred people who say they saw me over there earlier. If they saw me, they saw me in Quinn's. At 4:45 p.m. Inspector John McGinley entered the interview room. He was introduced to the prisoner and asked the prisoner some questions. Q. Roisin, what is the position here. A. They are saying that I left Quinn's pub with Mark earlier than I did. Q. What time are you saying you left the pub at ? A. Not earlier than 1:15 a.m. . Q. What about these people who saw you and your husband long before this ? A. They are mistaken, if they saw me they saw me in Quinn's . Q. I am going to put this scenario to you and you tell me if I am telling you a lie. 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 and through the carpark and met Richië 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 the man would die. They left him and went back down, walked down in fact and went into the Parting Glass. Now, tell me, did I tell you a lie ? A. Yes, it's all lies. Q. Why ? A. Because I know it's a lie. Q. What do you mean you know its a lie ? A. Because I know he wouldn't have it in him. What does that mean ? A. No answer. Q. What do you mean, he wouldn't have it in him ? A. He could not do that ? A. Murder a man like that. Q. Was he murdered ? A. You tell me, I was told this morning I was arrested for murder, was it murder. Q. Maybe it was an assault that ended with his death ? A. What do you mean, I was told he was murdered. Q. What is murder ? A. What do you mean what is murder. Q. What is an assault ? A. An assault is where you hit someone and he lives. Q. Could somebody be assaulted and die as a result of the assault ? A. No. Q. Could Mark have hit him in the pub if you had not stepped in to break them up ? A. He could have. Q. Could Richie Barron have fallen and cracked his skull on the bar or a table and died. A. I suppose he could. Q. Would that have been murder. A. I don't know. Q. Mark was not with you when you went into the nightclub ? A. He was right behind me, he was along with me. Q. Why did you have to go and get yourself a drink when you went in. A. I just did, that's all. Q. Do you expect us to believe that the two of you went in there together and remained together and yet did not even get your first drink together ? No answer. Q. You had no part in this row, why are you not telling the truth about your movements on that night. A. I am telling the truth, to the best of my knowledge. Q. Going back to when Richie Barron died, the story was that he had been hit with a car ? A. Yes. Q. You were aware of this ? A. Yes. Q. When did you become aware that there was suspicion that this was not

the way he died ? A. There were rumours going around that he had been killed. Q. You were aware of these rumours ? A. Yes. Q. You were also aware that your husband was being blamed for his death. A. Yes. Q. Can you explain why it is that when you were visited by Gardai and given an opportunity to account for your husband's and your movements that night, you left out some of your movements ? A. We had been out and just returned home when the Guards arrived, our child was there and making noise. Q. A man was dead, there were rumours going around about your husband. There were several Gardai in Raphoe talking to anyone who had seen Richard Barron that night. Here were the Gardai calling to your door within days of this event and giving you an opportunity to put the record straight and you got it wrong and say you did not insist on having your statement read over to you to make sure it was correct, who is going to believe that ? A. No reply. Inspector McGinley left the interview room. Q. What time did you leave Quinn's pub that night ? A. Between a quarter past and twenty past twelve - prisoner shakes her head - between a quarter past and twenty past one. Q. What did you talk to Stephen McCullough about ? A. Can't remember. Q. How long were you talking with him ? A. About a minute or less. Q. Who else was there ? A. His wife. Q. What did you do then ? A. We went over to Sarah's cafe. Q. What did you order in Sarah's ? A. We ordered chicken curry and rice and chips. Q. Who did you see there. A. Wilma Barnett was there. Q. Who was serving. A. What do you call her - Laird. Q. Where is she from ? A. Originally, I don't know but she is married to a fellow from the Terrace. Q. Who was outside ? A. Daniel Lynch. Q. Who was on the door as you went in ? A. Big Frank and Willie Logan, Frank, he said go ahead. I met Michael People's down the hall but I went on. Q. What did you do then ? A. Went to the bar and got a drink, went and joined my sister and her friends and had a dance for five minutes. Q. What time did you go in at ? A. 1:30 a.m. for twenty minutes. We came out at ten minutes to two. Q. You were out before that ? A. Why did you get a

drink for yourself only ? A. I just got a drink for myself. Q. Your husband was not there ? A. He was there. Q. You are not telling the truth. A. You can sit there until the morning and I will still say he was in the Parting Glass. Q. Is it not true that you can not drink or dance with someone who is not there. A. He was there. The interview was terminated. The prisoner was informed that her mother was here to visit her. She appeared tearful and emotional at this news. I read over the notes of the interview to Roisin McConnell. I asked her were they correct. She nodded her head. I asked her if she wished to sign the notes and she shook her head and said "No". I signed the notes.

Copy. _____ Garda 23366H
(JOHN HARKIN)

A4

Statement of Garda John Harkin incorporating the 'afternoon interview' of Róisín McConnell that was faxed to Manorcunningham Garda station on the 20th of February 1998, but that is missing from the working file of the investigation (statement 516).

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Statement of John Harkin Garda 23366H, Newtowncunningham Garda Station, made on 3/9/1997.

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.

I am a member of an Garda Siochana stationed at Newtowncunningham. On Tuesday 4th December 1996 I was on duty at William Street Raphoe. I was with Sergeant John White and Detective Garda John Dooley and Pauric Scanlon. Garda John o'Dowd from Raphoe was operating a checkpoint on the road. At 8:17 a.m. motorcar 88 DL 4204 a white Peugeot 309 was stopped at the checkpoint. Sergeant White approached the rear passenger side door of the car. The door was opened and he spoke to the woman sitting inside. He showed her his identity card. She stepped out of the car. She identified herself as Roisin McConnell from Tullyvinney, Raphoe, County Donegal. At 8:18 a.m. Sergeant White placed his hand on her arm and arrested the woman. She was informed that she was arrested on suspicion of being an accessory after the fact in the murder of Richard Barron at Townparks, Raphoe, County Donegal on 14/10/1996. She was cautioned 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. As she was led across the road to the patrolcar, she turned her head and called to the the occupants to "Lorna, go and get Mark". She was placed in the rear seat of the patrolcar along with Sergeant White and Detective Garda Dooley. Detective Garda Scanlon drove the car. I sat in the front passenger seat. Sergeant White informed Roisin McConnell of our identity. Sergeant White spoke with the prisoner. I noted comments made by the prisoner on the journey to Letterkenny Garda Station. She asked "Do I have to answer any questions". She spoke about the Barron family saying "It's wild for his family and it's going to be wild for my

family". She spoke about evidence saying "You have a lot of evidence" . . . "What evidence do you have on him, if you have evidence on him why are you not lifting him". She talked about the row in the pub saying "You have one argument with a man and your blamed for murdering him". She asked "How many people did murder him". The prisoner talked about her new home saying it was finished the previous April. On the subject of Richard Barron she said "I just knew him to see". As we neared Letterkenny she asked "Can I make a phonecall to Catriona or home to get a childminder?" She was told that she could. She then said "I can have a solicitor as well". She was told she could. She said ""I will not get any this time of the morning" and after a short pause said "I don't need a solicitor, I done nothing wrong". The prisoner was taken to Letterkenny Garda Station. We arrived at Letterkenny Garda Station at 8:40 a.m. . Garda Martin Leonard was the member in charge. At 12:05 a.m. Detective Garda Scanlon and myself entered the interview room. I informed the prisoner of our identity and cautioned her 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. I made notes of the interview. She was asked the following questions. Q. You have made verbal statements. Is there a reason for not making a signed statement? A. I have already made a signed statement. How many signed statements should I have to make. Q. When you made your statement, you did not say about having to go home to collect the stuff for the baby? A. I am answering no more questions, my child has got nothing to do with this here. Q. What time do you say it was when you got to Quinns and were you on your own when you got there? A. Youse are going to muddle No, I am not saying anything. Q. What do you mean, "we are going to muddle"? A. Youse are going to muddle up what I have said. Q. Did you go to the pub with Mark? A. No, I did not. If he says that he is a liar. Q. When you made your statement, who did you make it to? A. O' Malley. Q. What happened when it was taken, was it read over to you? A.

Bits of it was, there was parts of it left out. Q. Was it a serious row between Mark and Richie Barron? A. No it was not. Q. What time did you leave the pub? A. I left at 1:20 along with Mark. My brother Gerard, Irene and Frankie Dolan were still there when we left. Q. What were you wearing? A. I was wearing a black velvet top and blue jeans faded. Q. What did Mark wear? A. He was wearing an Addidas top and track bottoms grey. Q. Was Mark annoyed about the row? He was annoyed at the time. He wasn't sober. He had about five pints. He is not a drinking man. We do not go out very often, maybe once every three weeks. Q. Why did you allow yourself to sign a statement about your movements without insisting that it was read over to you, given that your husband had a row with him? A. It was not a serious row. Today is the first day I have heard that he was murdered. Q. Why would rumours regarding your husband and Frank McBrearty be going around? A. Live in Raphoe for a while and you will know all about it? Q. Do you not like Raphoe? A. Not after this I don't. I left Quinn's pub at 1:20 a.m. and went to Sarah's, ordered a chicken curry and fried rice and chips and then went to Frankies, in the front door, went to pay. Big Frank told me to go ahead. Frank junior must have been in the hall. Who is minding my child now? I was dancing. Mark was not along with me dancing. I was dancing with a sister of mine, Edel, Joan Colhoun and Paula Ayton. Edel told me. I was shocked. He was hit by a car. Mark was in the poolroom in Quinn's pub and I was in the bar. Q. Could a space of fifteen minutes have passed during which you did not see him. A. It could have. I doubt it. We were not stuck to one another all night. Mark was with me in the bar after Richie Barron left the pub. He would need to be psychic. Q. Why? A. To know that Richie Barron was going up that road at that time. Q. So, Mark could have been out of your sight for fifteen minutes? A. No. You said he could have been. Q. Who left the disco with you? Mark, Ebby and Edel. Q. What was Mark like. A. Upset. He had just heard that the man he was in a row with was dead, wouldn't

you be upset. We did not go in until 1:30 a.m. . Q. What if I said you were seen coming out at 1:30 a.m. . A. As I said to you, come and live in Raphoc. Q. This is a very reliable person; is he telling lies ? A. Well is it a man then so ? - you said he is a reliable witness. it must be a man. The prisoner was asked who took the baby down to Brolly's house. She replied that Catrionas son and daughter who took the child down to Brolly's before 9 o'clock and that a child is supposed to be out the pub before 9 o'clock. At this time Garda Canning entered the interview room with a cup of tea and some toast for the prisoner. Following this the prisoner was questioned again about the time she left Quinn's pub. A. It was 1:15. I looked at the clock in the bar. I was refused a drink. Mark Quinn refused me. The clock is over the bar above the toilet doors. She was questioned about the row between her husband and Richie Barron. Q. If they had not been separated, it would have come to blows ? . A. Well maybe it would have been better. Richie Barron would maybe be alive today because someone would have taken him home. I know he did not do it. He has not got it in him. She was asked if her husband had attended the wake or funeral of Richie Barron. A. If he had gone to the wake, he would not be sitting here now, if he had been a hypocrite. Q. Did Mark leave the pub that night ? A. I can not be one hundred per cent sure. If he left Quinn's pub. He could not have been gone for more than five minutes. He did not leave. Q. Can you be sure that he did not leave. A. I don't know. She was asked again about the row in the pub. A. If Mark had wanted to hit Richie Barron, he could have thrown me out of the way. Q. Did you ever see Mark lose his temper ? A. I don't know. This question was repeated a few times with the same answer each time. Q. Did you ever see him in a fight ? A. No. She then said. A. I can never remember Mark losing his temper. At this time I read over the notes of the interview to Roisin McConnell. I asked her if the notes were correct. She replied, A. Thats what you have down. I asked her if she wished to sign the notes. She replied, A. No. I signed the notes.

Detective Garda Scanlon signed the notes. The interview was finished. We left the interview room at 12:45 p.m. . At 4:40 p.m. I entered the interview room where Roisin McConnell was seated. Garda Lohan was present. Roisin McConnell was tearful. I asked her was she okay. She replied that she was. She replied that she was. I cautioned her and made notes of the interview. She was asked the following questions. Q. Are you still saying that Mark and yourself did not leave Quinn's pub until 1:15 a.m. ? A. Yes. Q. Why are other people saying this is not true ? A. There are bad people in Raphoe. Q. Why would Mark Quinn not recall seeing you in his pub until that time ? A. Because he is afraid. He does not want to tell the Guards that he was serving drink until that time. Q. This is a murder enquiry, not an enquiry into after hours drinking in Raphoe ? A. Well, there can be no other reason. Q. What time did you speak to Stephen Mc Cullough outside his pub ? A. It was 1:25 a.m. . Why would he put this time much earlier than that ? A. For the same reason, he was finishing up and does not want to tell the truth. Q. Are you suggesting that all these people are telling lies about the time they saw you. Q. I don't care if there are one hundred people who say they saw me over there earlier. If they saw me, they saw me in Quinn's. At 4:45 p.m. Inspector John McGinley entered the interview room. He was introduced to the prisoner and asked the prisoner some questions. Q. Roisin, what is the position here. A. They are saying that I left Quinn's pub with Mark earlier than I did. Q. What time are you saying you left the pub at ? A. Not earlier than 1:15 a.m. . Q. What about these people who saw you and your husband long before this ? A. They are mistaken, if they saw me they saw me in Quinn's. Q. What sort of a woman are you. are you a good woman ? A. There are worse than me. Q. Are you a religious woman ? The prisoner shrugged her shoulders and laughed. Q. I would say you are a good person and I am going to tell you what happened that night and you tell me if I am telling you a lie. Your husband Mark McConnell had a row with Richie Barron in the pub. There were no blows struck,

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Statement

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 and through the carpark 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 the man would die. They left him and went back down, walked down in fact and went into the Parting Glass. Now, tell me, did I tell you a lie? A. Yes, it's all lies. Q. Why? A. Because I know it's a lie. Q. What do you mean you know its a lie? A. Because I know he wouldn't have it in him. What does that mean? A. No answer. Q. What do you mean, he wouldn't have it in him? A. He could not do that? A. Murder a man like that. Q. Was he murdered? A. You tell me, I was told this morning I was arrested for murder, was it murder. Q. Maybe it was an assault that ended with his death? A. What do you mean, I was told he was murdered. Q. What is murder? A. What do you mean what is murder. Q. What is an assault? A. An assault is where you hit someone and he lives. Q. Could somebody be assaulted and die as a result of the assault? A. No. Q. Could Mark have hit him in the pub if you had not stepped in to break them up? A. He could have. Q. Could Richie Barron have fallen and cracked his skull on the bar or a table and died. A. I suppose he could. Q. Would that have been murder. A. I don't know. Q. Mark was not with you when you went into the nightclub? A. He was right behind me, he was along with me. Q. Why did you have to go and get yourself a drink when you went in. A. I just did, that's all. Q. Do you expect us to believe that the two of you went in there together and remained together and yet did not even get your first drink together? No answer. Q. You had no part in this now, why are you not telling the truth about your movements on that night. A. I am telling

the truth, to the best of my knowledge. Q. Going back to when Richie Barron died, the story was that he had been hit with a car? A. Yes. Q. You were aware of this? A. Yes. Q. When did you become aware that there was suspicion that this was not the way he died? A. There were rumours going around that he had been killed. Q. You were aware of these rumours? A. Yes. Q. You were also aware that your husband was being blamed for his death. A. Yes. Q. Can you explain why it is that when you were visited by Gardai and given an opportunity to account for your husband's and your movements that night, you left out some of your movements? A. We had been out and just returned home when the Guards arrived, our child was there and making noise. Q. A man was dead, there were rumours going around about your husband. There were several Gardai in Raphoe talking to anyone who had seen Richard Barron that night. Here were the Gardai calling to your door within days of this event and giving you an opportunity to put the record straight and you got it wrong and say you did not insist on having your statement read over to you to make sure it was correct, who is going to believe that? A. No reply. Inspector McGinley left the interview room. Q. What time did you leave Quinn's pub that night? A. Between a quarter past and twenty past twelve - prisoner shakes her head - between a quarter past and twenty past one. Q. What did you talk to Stephen McCullough about? A. Can't remember. Q. How long were you talking with him? A. About a minute or less. Q. Who else was there? A. His wife. Q. What did you do then? A. We went over to Sarah's cafe. Q. What did you order in Sarah's? A. We ordered chicken curry and rice and chips. Q. Who did you see there. A. Wilma Barnett was there. Q. Who was serving. A. What do you call her - Laird. Q. Where is she from? A. Originally, I don't know but she is married to a fellow from the Terrace. Q. Who was outside? A. Daniel Lynch. Q. Who was on the door as you went in? A. Big Frank and Willie Logan. Frank, he said go ahead. I met Michael People's down the hall but I went on. Q. What did you do then? A. Went to the bar

and got a drink, went and joined my sister and her friends and had a dance for five minutes. Q. What time did you go in at? A. 1:30 a.m. for twenty minutes. We came out at ten minutes to two. Q. You were out before that? A. Why did you get a drink for yourself only? A. I just got a drink for myself. Q. Your husband was not there? A. He was there. Q. You are not telling the truth. A. You can sit there until the morning and I will still say he was in the Parting Glass. Q. Is it not true that you can not drink or dance with someone who is not there. A. He was there. The interview was terminated. The prisoner was informed that her mother was here to visit her. She appeared tearful and emotional at this news. I read over the notes of the interview to Roisin McConnell. I asked her were they correct. She nodded her head. I asked her if she wished to sign the notes and she shook her head and said "No". I signed the notes.


(JOHN HARKIN)

Garda 23366H

A5

Statement of Detective Inspector John McGinley incorporating the 'afternoon interview' of Róisín McConnell that appears on the working file (statement 529).

STATEMENT OF EVIDENCE OF DETECTIVE INSPECTOR JOHN
MCGINLEY 18700C, AN GARDA SIOCHANA, LETTERKENNY, CO.
DONEGAL.

I am a member of An Garda Siochana and attached to Detective Branch at Letterkenny, Co. Donegal. On Tuesday 4th December 1996, I was on duty at Letterkenny Garda Station. I was aware that a number of persons had been arrested on that date connection with the who were suspected of involvement in the suspicious death of Richard Barron on 14th October 1996. I had been involved in the investigation into the murder of Richard Barron and was aware of the progress of the investigation and the various matters relating to it. At 2.45pm on that date, 14th Oct. 1996 I entered an interview room at Letterkenny Garda Station where D/Sergeant J. Leheny and D/Garda M. O'Malley were questioning a prisoner whom I knew to be Mark McConnell, Tullyvinney, Raphoe, Co. Donegal. I was made aware by the D/Sergeant Leheny that the prisoner had been cautioned. D/Sergeant Leheny informed me that Mark McConnell was not responding to questioning and that he would not answer questions put to him. I told the prisoner that it would appear he was telling lies and covering up. He stated that he was not, that he did not leave the pub until 1.30am.

I told him that it was clear from our investigation that this was not so, that several witnesses had seen him on the Main Street at 12.25am and he said that they were lying. It was pointed out to him that there were two witnesses in the Chip Shop while he entered with his wife Roisin who both stated that he came into the Chip Shop at 1.30am and who made statement to that effect. He said to put the statements there - pointing to the table. I read from these statements and showed them to him. He again stated that he would say that they were lying. At 3.20pm Garda Cannon informed me that James O'Donnell, Solicitor was in the Garda Station and wished to see his client Mark McConnell. I discussed this with Garda Cannon and advised him that as Mr. O'Donnell had a consultation with his client from 10.30am to 11.10am and spoke to him on the phone at 2.55pm that he had been given reasonable access and to decline further access at this time. During the interview, the prisoner was asked if he could be mistaken in his times as Summer time had concluded the previous week. Mr. McConnell stated that he was not mistaken and that it was ordinary time. Mark McConnell insisted during the course of the interview that he was in Quinn's Bar until 1.30am and that the people who say he was not were lying and that no matter what these people say he was saying that he was there until 1.30am. At 3.55am D/Garda Jennings entered the interview room with Dr. Colgan. D/Sergeant Leheny, D/Garda O'Malley and I then left.

At 4.45pm on that date, 14 October 1997, I entered an interview room at Letterkenny Garda Station where Roisin McConnell, Tullyvinney, Raphoe was being questioned by Gardai John Harkin and Georgina Lohan. I was aware that she was in custody having been arrested at Common Law for the murder of Richard Barron on 14th October 1997 at Raphoe. I had been involved in the investigation of this matter and I was in possession of the progress and position with the investigation. I was aware that Roisin McConnell was in possession of information and other facts in relation to the matter under investigation in the matter. On entering the interview room I was introduced by Garda Harkin who informed me that the prisoner had been cautioned. I asked her certain questions. Garda John Harkin took notes of the interview. The questions asked and the response given is as follows:

Q. Roisin, what is the position here?

A. They are saying that I left Quinn's Pub with Mark earlier than I did.

Q. What time are you saying you left the Pub at?

A. Not earlier than 1.15am.

Q. What about these people who saw you and your husband long before this?

A. They are mistaken, if they saw me they saw me in Quinn's.

Q. What sort of woman are you, are you a good woman?

A. There are worse than me.

Q. Are you a religious woman?

A. The prisoner shrugged her shoulders and laughed.

Q. I would say you are a good person and I am going to tell you what happened that night and you tell me if I am telling a lie. You husband Mark McConnell had a row with Richie Barron in the Pub. There were no blows struck, but he insulted the McBrearty's 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 and through the carpark 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 the man would die. They left him and went back down, walked down in fact and went into the Parting Glass. Now, tell me, did I tell you a lie?

A. Yes, it's all lies.

Q. Why?

A. Because I know it's a lie.

Q. What do you mean you know it's a lie?

A. Because I know he wouldn't have it in him.

Q. What does that mean?

A. No answer.

Q. What do you mean, he wouldn't have it in him?

A. He could not do that. Murder a man like that.

- Q. Was he murdered?
- A. You tell me, I was told this morning I was arrested for murder, was it murder.
- Q. Maybe it was an assault that ended with his death?
- A. What do you mean, I was told he was murdered.
- Q. What is murder?
- A. What do you mean what is murder.
- Q. What is an assault?
- A. An assault is where you hit someone and he lives.
- Q. Could somebody be assaulted and die as a result of the assault?
- A. No.
- Q. Could Mark have hit him in the pub if you had not stepped in to break them up?
- A. He could have.
- Q. Could Richie Barron have fallen and cracked his skull on the bar or a table and died.
- A. I suppose he could.
- Q. Would that have been murder?
- A. I don't know.
- Q. Mark was not with you when you went into the night club?
- A. He was right behind me, he was along with me.
- Q. Why did you have to go and get yourself a drink when you went in?
- A. I just did, that's all.

- Q. Do you expect us to believe that the two of you went in there together and remained together and yet did not even get your first drink together?
- A. No. answer.
- Q. You had no part in this row, why are you not telling the truth about your movements on that night.
- A. I am telling the truth, to the best of my knowledge.
- Q. Going back to when Richie Barron dies, the story was that he had been hit with a car?
- A. Yes.
- Q. You were aware of this?
- A. Yes.
- Q. When did you become aware that there were suspicion that this was not the way he died?
- A. There were rumours going around that he had been killed.
- Q. You were aware of these rumours?
- A. Yes.
- Q. You were also aware that your husband was being blamed for his death?
- A. Yes.
- Q. Can you explain why it is that when you were visited by Gardai and given an opportunity to account for your husband's and your movements that night, you left out some of your movement?
- A. We had been out and just returned home when the Guards arrived, our child was there and making noise.

Q. A man was dead, there were rumours going around about your husband. There were several Gardai in Raphoe talking to anyone who had seen Richard Barron that night. Here were the Gardai calling to your door within days of this event and giving you an opportunity to put the record straight and you got it wrong and say you did not insist on having your statement read over to you to make sure it was correct, who is going to believe that?

A. No reply.

At 6pm I terminated my interview and I left the interview room.

I hereby declare that this statement is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence 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.


John McGinley/D/Inspector.

A6

Handwritten notes that apparently record a portion of the afternoon interview of Róisín McConnell that were prepared by Detective Inspector John McGinley to provide an explanation for the previously identified discrepancies (Appendix 82, Carty Report).

Rosie McConnell

4.4.50 4/12/50 - Mr. John McConnell -

custody records in

Garda Charlie & Shen - Myra of interview & asked Jim Franks. Introduced by John Harkin.

Q Rosie what is the position here

A Myra saying that I left Denny's pub with what earlier than I did.

Q What time are you saying you left the pub at.

A Not earlier than 1.15 am.

Q What about these people who saw and you were long before this

A They are mistaken if they saw me in Denny's

Q What sort of woman are you a good woman

A I am worse than me

Q Are you an religious woman.

A - straight straight & simple

Q I would say you are a good person and I am going to tell you what happened and you tell me if I am telling you a lie. Your husband about Mr McConnell has a bad man Richie Barron in the pub. There were three men there but he insulted the Mr Barron's 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 Mr Barron's. He went into Franks on your own. Next met Frankie the Barty and told him what happened. They decided to beat Richie Barron a lesson. They walk up through the Chapel and met Richie Barron stepping home as he always did. He got one whallop and that was it. As far as they were concerned, Richie was down - he got a whallop he later did before - it was on his head then.

were not to know the man would die. The left
his and went back down. Wabbed down. in fact
and went into the seating place. Now tell me, a
I told you a lie

A yes its all his

Q why

A because I know its a lie. what
of what do you mean you know its a lie

A because he wouldn't have it in his.
what does this mean.

what do you mean for wouldn't have it in his.

A he could not do that - murder a man like that
87 another murderer —

Left testimony down again. Notes not
read over to justice.
John McGinley of [unclear]

APPENDIX B

B1

A copy of the original handwritten confession said to have been made by Frank McBrearty Junior on the 4th December 1996 between 19.05 hours and 20.25 hours to Detective Sergeant John Melody and Detective Garda John Fitzpatrick.

That agent of Frank McCrearty, born 22/5/19
27 Elmwood Drive, Letterkenny, Co. Donegal
made to Detective Sergeant John Maloney after
been contacted as follows "You are not
obliged to say anything unless you wish to
do so but anything you do say will be
down in writing and may be given in evidence
Lester will tell you what happened on 14/1/96
I heard that Kildie Banner was up to his
eyes again regarding about the McCrearty's.
Mark McConell, he's my first cousin, told me
he had a row with him in Quinn's Pub that
evening. His wife Rose was also there. Mark
was very annoyed over the row and what
Kildie Banner said to him. When he came
to the pub that is Mark McConell, he told
me that he had seen Kildie Banner heading
towards home and that he was drunk. We
decided that we would head his off at the
top of the road. We went in the back way
across the car park and got into the main
Ile waited for Kildie Banner there. We didn't
have a word with him. We saw Kildie coming
he was on his own. I picked up a bit of
timber when we stopped he lashed at
at us but he missed. I hit him a slab.
He braced and he fell back. We then ran.
I had the timber I had in the way.
We got into the pub and it was at night. I
had heard that Kildie had been knocked
down by a hit and run. Michael Deight told
my father 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 by anyone to refuse evidence against me. His statement has been read over to me and it is correct.

John Melody, Det. in Charge
John Fitzpatrick of Florida
4/12/1996

B2

A copy of the original handwritten statement said to have been made by Frank McBrearty Junior to Detective Sergeant Eamon O'Grady and Sergeant Gerard McGrath between 20.30 hours and 21.16 hours on the 4th of December 1996.

Statement from Frank Lee Proctor
DOB: 22/5/69 67 Glenwood Drive
Letterman Co, Queens, made
at Kameka Gordon Station on
the 4/12/96 made to Sergeant
Lemon & Grady and I who
was mentioned as follows:
You are not obliged to
say anything unless you
wish to do so. What you
do say will be taken
down in writing and may
be given in evidence. ^{FM-B}

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

Signed: Frank M. Proctor
Witness: Gerald M. Grant
Witness: [Signature]

B3

A copy of the original custody record in respect of Frank McBrearty Junior dated the 4th of December 1996.

Garda Sochána Custody Record

Garda Station St. John's

District St. John's No

A. Details Concerning Person in Custody

1. Name FRANK MC BREATHY, JR.
 2. Address 67 ELMWOOD DOWNS BERTHOBY
 3. Alias
 4. Date of Birth DD. S. 69 5. Sex DR. M
 6. Marital Status Married 7. Nationality DR. M
 8. Height 5' 9. Hair Colour Black 10. Eye Colour Blue
 11. Complexion fair Facial Hair nil
 13. Eye type

14. Any Distinguishing Marks/Deformities/Amputations/Scars/Facial Oddities/Alerts (Personality and Possible Tendencies).
 Signature of Member M. Leonard

B. Details of Arrest

15. Arrest - Time 9:30am Date 4.12.96.
 16. Name of arresting member Sgt J. HANSEN
 17. Place of arrest Home No. 67 Elmwood
 18. Arrival at Station - Time 9:30am Date 4.12.96
 19. Offence(s) or other matter in respect of which arrest was made
Common Law Felony 4.10.96 in KATRO
 20. Any relevant particulars relating to physical or mental condition
 Signature of Member M. Leonard

21. ATTENTION
 to be completed in respect of a person detained under section 4 of the Criminal Justice Act 1984:
 "I have reasonable grounds for believing that the detention of Frank Mc Breathy is necessary for the proper investigation of the offence(s) in respect of which the said person has been arrested".
M. Leonard 9:35am 4/12/96
 Signature of Member-in-Charge Time & Date

C. Initial Action Taken

22. Information given to arrested person in accordance with Regulation 8(1).
9:36am Sig. of Member M. Leonard
 23. Not of rights
See 5 Sig. of Member M. Leonard
to be read & explained

24. I acknowledge receipt of notice of rights
 Signature of person in custody Frank Mc Breathy Jr

Remarks:
VERY ABUSIVE. Violent

Persons under 17 or mentally handicapped persons

25. Parent, guardian or spouse (as case may be) informed of arrest
 Time Signature of Member
 26. Where not possible to contact a parent, etc., information given to arrested person in accordance with Regulation 9(1)(b).
 Time Signature of Member
 27. To be completed where notification of solicitor or other person requested by person in custody or, where arrested person under 17 or mentally handicapped, on person's behalf:

Time request made	Name & Status of person to be notified	Time request complied with	Initials
9:36am	ADA. V. P. Mc Mullin	9:45am	MJL

Remarks:

28. District Headquarters notified (Reg. 10(2))
 Home District Headquarters notified (Reg. 10(3))

D. Details of Any Action or Occurrence Involving the Person in Custody

- Instructions:
 1. All other matters required by the Regulations on the treatment of persons in custody should be recorded in this section.
 2. Entries need not be restricted to one line.
 3. All entries should be signed or initialled and timed by the member making them.
 4. Where the authority of a member of a specified rank is required for any action the name and rank of the member giving the authority is to be recorded.
 5. Where the consent of the person in custody is required for any action, that consent should be acknowledged in writing by the person on this record or a separate document, as the case may be.

Date	Time of action/ occurrence	Details of action / occurrence	Member's signature/ initials
4/12/96	9:30am	Gdt Sgtt Hansen received with Prisoner	
		Arrested at Common Law	
		Discussed fully circumstances of arrest and reasons for Detention.	MJL
	9:35am	Detained Sec 4	MJL
	9:38am	Given Drink of Water	MJL
	9:40am	Taken to Interview Room	
		by Sgtt O Brady, M. J. G. M. J.	MJL
	10:15am	Sole Prisoner and O. Board	
		arrived at 8th	MJL
	10:30am	Prisoner taken to Room for consultation with	
		Mr. O'Leary, Prisoner	MJL
		was OK.	
	10:50am	Prisoner terminated consultation	
	10:50am	Prisoner taken to Interview Room.	
		by Sgtt O Brady, M. J. G. M. J.	MJL
	10:51am	Prisoner brought to by other person	
		& Complaint made by Prisoner	
		that he was being pushed about in case on way in.	
		Mt Sgtt Hansen	MJL
	11:10am	Prisoner provided tea	
		& toast	
	12:04pm	Prisoner taken to Court	
		by Sgtt O Brady, M. J. G. M. J.	MJL

(If necessary additional pages may be attached)

FRANK Mc BRENNAN

Date	Time of action/occurrence	Details of action/occurrence	Member's signature/initials
4/12/76	9.04pm	D/Sgt Melody & Fitzpatrick to Interview Room	MFL
4/12/76	12.35pm	I went to Interview Room & checked Prisoner & was OK	MFL
4/12/76	1.35pm	I asked that Interview terminate and Prisoner was taken to cell after going to toilet He was OK	MFL
4/12/76	1.45pm	Dinner provided to Prisoner in cell by Ma Cannon, supervised	MFL
4/12/76	1.50pm	Permission to leave unit & photographs of Prisoner created by Sgt Fitzpatrick taken from cell and I notified Prisoner of Supt's Authority to fingerprint He understood taken to	MFL
2.30pm		Interview room by Sgt O'Shea & Sgt	
2.35pm		Fingerprinted & photographed by Sgt Condy & photographed by Sgt Murphy	MFL
2.43pm		Sgt Condy & Murphy left the room & D/Sgt O'Shea & Sgt entered the room	MFL
2.45pm		Prisoner Picked James Sweeney & supervised by Sgt Cannon after speaking to Sgt Proctor & denied to provide blood sample provided it was split	MFL

NAME Mr. Bready

Date	Time of action/occurrence	Details of action/occurrence	Member's signature initials
4/12/96	2:45pm	Prisoner returned to Interview Room after phone call to Sgt by Cdc Cannon	ll
	2:50pm	Extension Period of six hours granted by Sgt F. J. Field	ll
	3:14pm	I went to Interview room and notified Prisoner of Art's direction Prisoner was OK.	ll
	3:25pm	DR Mr Logan and	
	4:05pm	D/Sgt Jones, Lodge, Nuff went to Room	
	5pm	D/Sgt O'Grady, McGreth left the Room	
	5:07pm	D/Sgt Melody, Fitzpatrick to Interview Room	
	5:40pm	I visited Prisoner & checked him: wanted Paracetamol for Back Pain Had no complaints	
	6:10pm	Interview terminated Returned to cell, after going to toilet	
	6:15pm	Gave 2 Redox tablets to Prisoner & water	
	6:25pm	Meal provided	
	6:50pm	I received phone call from Rossland Mr Bready's mother Re-assured her of son's condition, he would be released in 2 hours	

FRANK W. HACKETT

Date	Time of action/occurrence	Details of action/occurrence	Member's signature/initials
4/24/86	7:05pm	D/Sgt Melody & Sgt Filsotruk took Prisoner to Interview Room	
	8pm	I checked Prisoner & he was OK.	Mjg
	8:30pm	D/Sgt Melody, D/Sgt Filsotruk left interview Room & D/Sgt McGrath and D/Gandy entered the room.	Mjg
	8:58pm	Checked Prisoner & he was OK with no complaints	Mjg
	9:16pm	Prisoner Released from provisions of Sec 46 Criminal Justice Act 84 Property Returned to Mr McBreath had no complaints	Mjg
	9:45pm	Prisoner Left in Bus	Mjg

B4

A copy of the original permission signed by Frank McBrearty Junior given to Detective Sergeant John Melody at 13.25 hours on the 4th of December 1996

I live at 67 Elmwood Downs Letter Kings
 Co. Doregal. I know why I am arrested
 I hereby give permission to the Gaidai
 to carry out a search of my house
 and to seize what ever property they
 consider necessary for the investigation
 of the murder of Kilia Barron

John W. Burt
 John Melody, Detective Sergeant 4/12/96 1.25

APPENDIX C

C1

Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 13th of March 2006.

Tribunal of Inquiry into complaints concerning some Gardaí of the Donegal Division

Established by the Minister
for Justice Equality and Law Reform
by the Tribunals of Inquiry
(Evidence) Act 1921
(Establishment of Tribunal)
Instrument 2002



Belfield Office Park
Beaver Row,
Clonskeagh,
Dublin 4,
Ireland.
Tel: 01 - 260 1111
Fax: 01 - 260 1122
DX Number: 208

Sole Member
The Honourable Mr. Justice Frederick Morris

My Ref: **MOS/MCB006-06/HD/PMCD/ES**
DETFJ/MCB006-12

Your Ref:

If telephoning please ask for:-

PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE

Monday, 13 March 2006

PRIVATE AND CONFIDENTIAL
STRICTLY ADDRESSEE ONLY

Mr. Frank McBrearty (Jnr.)
Tullyvinney
Raphoe
Co. Donegal

Re: Module: Edward Moss - Term of Reference (f) Inquiry into the circumstances surrounding the Arrest and Detention of Mr Frank McBrearty Jnr on 4th February 1997 in relation to an alleged assault on Mr Edward Moss
Module: Barron investigation - Term of Reference (b) 3 - Investigation into the death of Mr. Richard Barron - The detention of Mr. Frank McBrearty Jnr.

Dear Mr. McBrearty,

As you are aware the Tribunal is now commencing hearings in relation to the detention of twelve persons who were arrested and detained in December 1996 and on other dates in the course of the investigation carried out by An Garda Síochána into the death of the late Mr. Richard Barron. In this regard it is hoped to receive your evidence concerning your detention of the 4th December 1996 and the 4th February 1997 on the 10th July 2006. The Tribunal believes that it is important, prior to your attending as a witness, in respect of the detention module that you be afforded an opportunity to offer such further information, comments or statements as you may consider relevant to the alleged statement of admission dated 4th December 1996 and your detention in Garda custody on the 4th December 1996 and the 4th February 1997. There are three matters with which you may be able to assist the Tribunal.

Firstly, the Tribunal notes that you have through your solicitor, by letter dated 3rd February, 2005 indicated that you are not happy with elements of the memorandum of interview taken by the Tribunal's investigator, Mr. Patrick Cummins on the 12th August, 2004. It was said that you had not sufficient opportunity to consider the memorandum due to personal

Solicitor to the Tribunal: Hugh Dockry, B.A. Dip LS, AFL. Registrar to the Tribunal: Brendan O'Donnell

reasons. The Tribunal notes that no further amendments to this memorandum have been submitted by or on your behalf since that time. It is important that any amendments or further comments or information be submitted as soon as possible and the Tribunal invites you to do so, if you wish.

Secondly, the Tribunal is in receipt of a number of reports concerning the alleged handwriting and the signature of Frank McBrearty Jnr. on the second page of the alleged statement of admission made on the 4th December, 1996. Two of these reports from Detective Sergeant Lynch and Mr. Kim Harry Hughes have already been distributed. There are two further reports, one from Mr. James Nash and the other from Dr. Robert W. Radley which we now enclose for your consideration. The Tribunal wishes to afford you an opportunity of submitting any further original samples of your handwriting for expert analysis for comparison with the signature on the document of the 4th December, 1996, should you wish to do so. We understand that there may be signatures made by you around the time of these events in 1996 in the course of business or otherwise which may be useful to this analysis. The Tribunal would be happy to receive these original samples from you of your handwriting duly authenticated, and, if required, will provide any assistance it can to you in procuring same, for example, if the documents upon which such signatures are affixed are held by some official agencies.

Thirdly, the Tribunal is aware that an important element of your case concerns the traumatic effect which these events have had on you and your family. The Tribunal understands that you have required medical and psychiatric care as a result of this. In that regard the Tribunal wishes to afford you the opportunity to provide medical evidence to the Tribunal concerning the medical consequences for you of these traumatic events. If you wish to follow that course the Tribunal would be obliged to receive copies of any medical reports upon which you wish to rely.

The Tribunal Counsel will make a further opening statement in respect of the Detention Module at 10.30 am next Tuesday 21st March, 2006.

We thank you for your attention and look forward to hearing from you in due course.

Yours faithfully,

PP 
Hugh Dockry
Solicitor to the Tribunal

Encs.

- Extra to Volume 2, documents 51 to 53 together with amended word index

C2

Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 7th of November 2006.

C3

Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 14th of November 2006.

C4

Letter from Mr. Frank McBrearty Junior to the Tribunal dated the
13th of November 2006

Frank McBrearty Jnr
Tullyvinney
Raphoe
Co Donegal

Monday 13th November 2006

Morris Tribunal,
Belfield Office Park,
Clonskeagh,
Dublin 4,
Ireland.

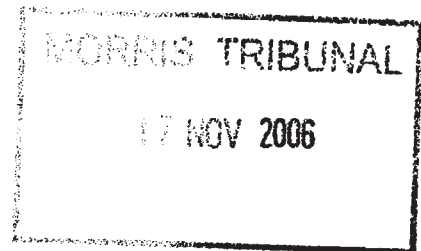
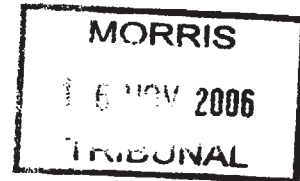
Re: Arrest and Detention Module

Dear Mr Morris

Having considered a number of issues concerning my evidence to the above module of the Tribunal and notwithstanding the fact of the breaches of my Constitutional and Civil Rights and the fact that the Government, the Minister for Justice and the Chairman of this Tribunal has continuously denied me and my family legal aid for our legal representatives, whom we have worked with for the last ten years and trust without question, and also the fact that the legal teams for the Minister, the Garda Commissioner and the 101 Gardai, many of whom have lied, obstructed and frustrated your Tribunal for four years and have been paid to the tune of €7.3 million to date, I have decided, under protest, to complete my evidence to the satisfaction of the terms of reference of the Tribunal.

I will be available to complete my evidence subsequent to me returning from a business trip to the United States on the 5th of December 2006. I am leaving on the 22nd November 2006.

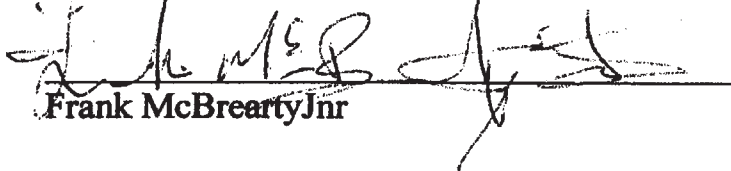
I wish to request that you consider taking and completing my evidence at Donegal Courthouse, County Donegal due to exceptional family circumstances.



I wish to be notified as early as possible by the Tribunal as to when my concluding evidence will be taken.

With reference to your letter of the 7th inst, I request you to clarify what medical records past and present you require and for what reason you require same? Can you also clarify the reasons that the Tribunal are requesting for me to be psychiatrically and psychologically assessed by medical practitioners nominated by the Tribunal? In addition to my statement of claim and other legal documents which have been furnished to the Tribunal by the State, I would be obliged if you would confirm that the State has provided the Tribunal with all medical records and reports.

Yours Faithfully,



Frank McBreartyJnr

c.c. Hugh Dockry, Solicitor for the Tribunal.

C5

Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 17th of November 2006.

Tribunal of Inquiry into complaints concerning some Gardaí of the Donegal Division

Established by The Minister
for Justice Equality and Law Reform
by the Tribunals of Inquiry
(Evidence) Act 1921
(Establishment of Tribunal)
Instrument 2002



Belfield Office Park,
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Tel: 01 - 260 1111
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DX Number: 208

Sole Member
The Honourable Mr. Justice Frederick Morris

My Ref: **DETFJ/MCB006-12/HD/ES**

Your Ref:

If telephoning please ask for:-

PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE

**WE ARE TRANSMITTING 3 PAGE(S) INCLUDING THIS PAGE.
IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE DUBLIN 2601111 OR
FAX DUBLIN 2601122.**

**PLEASE NOTE THAT THE INFORMATION CONTAINED IN THIS FAX IS STRICTLY CONFIDENTIAL
AND FOR THE USE OF THE ADDRESSEE ONLY AND UNAUTHORISED USE IS STRICTLY
PROHIBITED.**

FROM: Hugh Dockry.

Friday, 17 November 2006

**PRIVATE AND CONFIDENTIAL
STRICTLY ADDRESSEE ONLY**

Mr. Frank McBrearty (Jnr.)
Tullyvinney
Raphoe
Co. Donegal
Post & Fax: 074-9145904

**RE: Module: Barron investigation - Term of Reference (b) 3 - Investigation into the
death of Mr. Richard Barron - The detention of Mr. Frank McBrearty Jnr.**

**Module: Edward Moss - Term of Reference (f) Inquiry into the circumstances
surrounding the Arrest and Detention of Mr Frank McBrearty Jnr on 4th
February 1997 in relation to an alleged assault on Mr Edward Moss**

Dear Mr. McBrearty,

Thank you for your letter of the 13th inst., which I have drawn to the attention of the
Chairman of the Tribunal.

It is understood that business matters will detain you as you have indicated. The Tribunal
will therefore sit in Dublin from the 6th of December, commencing at 10.30 hours, to hear
the completion of your evidence on the issues concerning your arrests and detentions.
This will involve answering all questions put to you in cross-examination and re-
examination. Mr. Barnes, at (01) 2601111 and mobile 086-8164656, will be available to

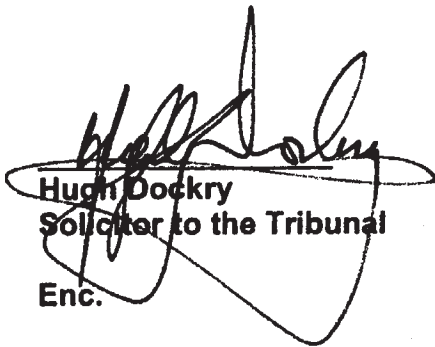
Solicitor to the Tribunal: Hugh Dockry, B.A. Dip LS, AFL Registrar to the Tribunal: Brendan O'Donnell

you by telephone during business hours to facilitate all matters relating to accommodation and you might like to ring him in that regard.

During your evidence you made several references to your psychiatric condition at various times, in relation to when you were detained and later when you were reporting to various parties what you had experienced in that regard. The availability of medical records in relation to that might assist the Tribunal in considering your evidence. The Tribunal is not party to civil litigation and has received no reports that might have been of assistance in assessing damages. A full psychiatric and psychological examination can be arranged by the Tribunal, should you consent to it. It would assist as a first step that such medical and psychological/psychiatric reports as you have should be furnished to the Tribunal and we would ask you to forward same to us. Alternatively, the Tribunal will write to your advisors and a form of consent is enclosed that you might return in a signed form to the Tribunal.

Lastly, for the purposes of clarification, no email was received by the Tribunal from you pertaining to this matter. Should you wish to email me my address is HughDockry@morristribunal.ie.

Yours sincerely,



Hugh Dockry
Solicitor to the Tribunal
Enc.

Tribunal of Inquiry into complaints concerning some Gardaí of the Donegal Division

Established by The Minister
for Justice Equality and Law Reform
by the Tribunals of Inquiry
(Evidence) Act 1921
(Establishment of Tribunal)
Instrument 2002



Belfield Office Park,
Beaver Row,
Clonskeagh,
Dublin 4,
Ireland.
Tel: 01 - 260 1111
Fax: 01 - 260 1122
DX Number: 208

Sole Member
The Honourable Mr. Justice Frederick Morris

My Ref:

Your Ref:

If telephoning please ask for:-

DETFJ/MCB006-12/HD/ES

I, Frank McBrearty Junior, hereby consent to my medical consultant/psychiatrist/psychologist furnishing whatever medical reports are retained on my behalf to the Tribunal of Inquiry into complaints concerning some Gardaí of the Donegal Division.

Signed: _____

Dated: _____

Created on 17/11/2006 13:02

Solicitor to the Tribunal: Hugh Dockry, B.A. Dip.LS, AFI Registrar to the Tribunal: Brendan O'Donnell

C6

Application of Mr. Frank McBrearty Junior to the Tribunal dated the 19th of November 2006.

APPLICATION OF MR. FRANK McBREARTY JUNIOR

**The following application was made by Mr. Frank McBrearty Junior
to the Chairman of the Tribunal
by letter dated the 19th of November 2006.**

- “1. I require legal aid for my family and I. We also require that the Barron Module be reopened in order that the full truth and facts come out.
2. I require all interview notes taken by D/Inspt Eammon O'Grady, D/Sgt Gerard McGrath, Retired D/Sgt John Melody and D/Garda John Fitzpatrick over their entire careers.
3. I require all statements taken by D/Inspt Eammon O'Grady, D/Sgt Gerard McGrath, Retired D/Sgt John Melody and D/Garda John Fitzpatrick over their entire careers.
4. I require to cross examine the following Gardaí, D/Inspt Eammon O'Grady, D/Sgt Gerard McGrath, D/Sgt John Melody, John Fitzgerald, Denis Fitzpatrick, Joe Shelly, John McGinley, Tina Fowley, Sgt O'Toole, D/Garda Michael O'Malley, D/Garda McEntee, Garda Harkin, D/Sgt Brennan, D/Garda Anderson, D/Garda Keating, Supt McGovern, Supt Gallagher, Mr Durak SC for Garda Commissioner, all the handwriting experts, and the witnesses listed in Frank McBrearty Snr and Frank McBrearty Jnr arrest and detention module, and finally the Minister Michael McDowell.
5. I require all transcripts on CD and hard copy of all the people at the Tribunal who have made allegations against my family and I.
6. I require that D/Inspt Eammon O'Grady, D/Sgt Gerard McGrath, D/Sgt John Melody and D/Garda John Fitzpatrick submit themselves to cross examination by Frank McBrearty Jnr before their legal teams cross examine Frank McBrearty Jnr and that Frank McBrearty Jnr does not be cross examined until they submit to this request.
7. I require a proper explanation as why the Tribunal need my medical records and why the Tribunal wants me to be medically examined.”

C7

Ruling in respect of application of Mr. Frank McBrearty Junior dated the 19th of November 2006 delivered on the 5th of December 2006.

TRIBUNAL OF INQUIRY

INTO

COMPLAINTS CONCERNING SOME GARDAI IN THE DONEGAL DIVISION

**Appointed by Instrument made by the
Minister for Justice, Equality and Law Reform
on the 24th day of April, 2002 entitled
Tribunals of Inquiry (Evidence) Act, 1921
(Establishment of Tribunal), 2002**

RULING IN RESPECT OF APPLICATION OF MR. FRANK McBREARTY JUNIOR DATED THE 19TH OF NOVEMBER 2006

Ruling of Mr. Justice Frederick Morris in respect of application of Mr. Frank McBrearty Junior dated the 19th of November 2006

By letter dated the 19th of November 2006, Mr. Frank McBrearty Junior made an application to the Tribunal. It was made in the following context. Mr. Frank McBrearty Junior on the 25th of October 2006 at Donegal Town courthouse declined to answer any questions put to him in cross-examination in the course of his evidence to the Tribunal and staged a walkout. Since that date he has requested that the Tribunal allow him the opportunity to submit to cross-examination on any date following the 6th of December 2006 following his return from a business trip to the United States. The Tribunal has decided to allow him to return to the Tribunal to give his evidence under cross-examination and to remedy his refusal to do so on the 25th of October 2006. The Tribunal has directed that he give his evidence on the 12th of December 2006 at 10.30 a.m. In the meantime, Mr. McBrearty Junior has submitted this application to the Tribunal.

The application concerns a number of issues:

1. Mr. McBrearty Junior states that he requires Legal Aid for his family and himself and "that the Barron module be re-opened in order that the full truth and facts

come out". The Tribunal has in a number of rulings made clear the position in relation to Legal Aid. The Legal Aid Scheme in its civil or criminal form does not apply to the workings of this Tribunal. At the conclusion of each module or sub-module an application for costs may be made on behalf of any party who is legally represented at the Tribunal. That Order will be made by me in the exercise of my discretion as provided pursuant to the provisions of Section 6 of the Tribunals of Inquiry (Evidence) Act 1921 to 2002. The basis upon which that discretion will be exercised is fully set out in the Rulings of the Tribunal as to costs made in respect of various applicants following the publication of the first five reports of the Tribunal. These Rulings are available at the Tribunal's website at www.morristribunal.ie. A number of parties who are represented by solicitors and counsel and who were obliged to maintain representation at the Tribunal over very lengthy periods, have benefited from the making of such orders for costs. In the present sub-module concerning Mr. McBrearty Junior's arrest and detention it was envisaged that the hearings would be of three to four weeks duration. If Mr. McBrearty Junior chose to be legally represented during this period the Tribunal envisages that an application for costs could be ruled upon shortly after the issuing of a report in respect of his detention.

The second element of this paragraph of the application relates to Mr. McBrearty Junior's request that the "Barron Module" be re-opened. The Tribunal has concluded its inquiry into the investigation into the death of the Late Mr. Richard Barron and the progress, management and effectiveness of that Garda investigation thereof with particular reference to the management of informants. Its conclusions are set out in the second report of the Tribunal. Following the publication of that report, orders for costs in favour of various parties, including Mr. McBrearty Junior and his family, were made by the Tribunal in respect of such legal representation as they maintained at the Tribunal when it held its hearings in Donegal Town. I also observed in that ruling that had Mr. McBrearty, Junior and his family been legally represented for the entire period of that module it is most likely that a full order for costs would have been made covering such representation. It is not intended to re-open this module.

2. Detective Inspector Eamon O'Grady, Detective Sergeant Gerard McGrath, Retired Detective Sergeant John Melody and Retired Garda John Fitzpatrick all interviewed Mr. McBrearty Junior whilst he was detained at Letterkenny Garda Station on the 4th of December 1996. In the course of that detention, Gardaí maintained that Mr. McBrearty Junior made an alleged confession to the involvement in the death of the Late Mr. Barron to Detective Sergeant Melody and Detective Garda Fitzpatrick. The Tribunal has determined that that statement is false. Its present inquiry is focused on how that statement came to be made. In paragraphs 2 and 3 of his present application, Mr. McBrearty Junior requires that all statements and interview notes taken by the four named Gardaí "over their entire careers" be furnished to him. The Tribunal does not have these documents in its possession. I do not consider this application to be of any assistance to me in my present work. Presumably, what is contemplated is that I should base my conclusions as to how the present statement came into existence by reference to some other events and that I should conduct a trawl through the careers of each of these Gardaí with a view to ascertaining if there

are any cases of allegations similar to those made against these Gardaí by Mr. McBrearty Junior and, that I should conclude, if such cases exist, that they acted wrongfully on the occasion of the detention of Mr. McBrearty Junior on the 4th of December 1996. I do not consider that such a trawl is relevant or of assistance to the issue which I have to decide in relation to this detention. The primary facts that I have to address arise from the evidence which Mr. McBrearty Junior and the four Gardaí can give to me on their sworn testimony, properly tested under cross-examination and focused upon the real issues concerning this statement. If I thought that other sufficiently cogent, reliable and relevant evidence that would assist me in this aspect of the inquiry lay elsewhere, I would obtain it. The trawl suggested by Mr. McBrearty Junior would be an unwieldy and unreasonable undertaking having regard to the discreet issue with which I am concerned. It would unreasonably extend the work of the Tribunal to areas which are not the subject of the Terms of Reference in respect of issues which are undefined, open ended and without a clear focus. Under its Terms of Reference the Tribunal is directed to complete the inquiry "in as economical a manner as possible and at the earliest possible date consistent with a fair examination of the matters referred to it." As matters stand, I am having considerable difficulty in getting the full story from Mr. McBrearty Junior who is the complainant in respect of his two detentions. The Tribunal has recently exercised considerable time, resources and patience in trying to procure from him his full evidence in relation to what he says happened to him in the course of his detentions. So far, he has not provided the full cooperation which the Tribunal needs in order to investigate his complaints. It is unrealistic to make application to the Tribunal to extend its investigation to other areas when he has failed to complete his evidence in relation to the very issues which are the subject of the Terms of Reference. I will continue to seek the relevant evidence from all parties directly involved in the detentions of Mr. McBrearty Junior in order to ascertain the truth of what happened. The best evidence in that regard is the evidence of Mr. McBrearty Junior and that of the four named Gardaí. In addition, I hope to have the assistance of a number of expert witnesses on document analysis and handwriting. Mr. McBrearty Junior can assist me in that endeavour by submitting to cross-examination as now agreed by him on the 12th December 2006. This part of the application is refused.

3. In the fourth paragraph of his application Mr. McBrearty Junior states that he requires to cross-examine seventeen named Gardaí, together with counsel for An Garda Síochána and the Tánaiste and Minister for Justice, Equality and Law Reform, Mr. Michael McDowell, TD. In addition, he seeks the right to cross-examine all handwriting experts and all witnesses who testify in the sub-module relating to Mr. Frank McBrearty Senior. Mr. McBrearty Junior has a right to cross-examine all witnesses called in respect of the sub-module dealing with his arrest and detention. That has never been an issue. He is entitled to exercise that right himself or through solicitor and counsel. If he wishes to call any witnesses who are not on the list of witnesses to be called by the Tribunal, he may make application to the Tribunal in that regard and furnish a list of the names of those witnesses together with a reason as to why each witness should be called and is relevant to the evidence in his sub-module. I will decide as to whether it is appropriate to allow that witness to be called. This is in accordance

with the established practice of the Tribunal. At the moment it is not intended by the Tribunal to call counsel for the Garda Commissioner, or the Tánaiste and Minister for Justice, Equality and Law Reform as witnesses in respect of this sub-module and I would require a further application from Mr. McBrearty Junior setting out particular reasons as to why this position should change before I would permit any change in that regard.

Mr. Frank McBrearty Senior has repeatedly stated in evidence that he would not be cross-examining any witness on his own sub-module. I do not see how Mr. McBrearty Junior has any standing to cross-examine on behalf of his father. Mr. McBrearty Senior has not made any application to me that his son be permitted to cross-examine on his behalf. If he does, I will consider it in the ordinary way.

4. The fifth paragraph of Mr. McBrearty Junior's application requires that all transcripts on CD and hardcopy of all the people at the Tribunal who have made allegations against his family and Mr. McBrearty Junior be furnished to him. The transcripts of all the Tribunal's modules with the exception of the Explosives, Ardara and Burnfoot modules, and the detention modules concerning other persons and which did not concern Mr. McBrearty Junior, have been furnished to him. Mr. McBrearty Junior has been furnished with all relevant transcripts. Insofar as a CD ROM or floppy disc version of transcripts already supplied in hardcopy has not been furnished, this will now be done by the Tribunal's administrative staff by arrangement with the stenographers. It should also be noted that in more recent months the daily transcripts of the Tribunal have been available at the Tribunal's website.
5. The sixth paragraph of Mr. McBrearty Junior's application "require(s)" that Detective Inspector Eamon O'Grady and Detective Sergeant Gerard McGrath, Retired Detective Sergeant John Melody and Retired Detective Garda Fitzpatrick submit themselves to cross-examination by Frank McBrearty Junior before their legal teams can examine him and requires that "Frank McBrearty Junior is not to be cross-examined until they submit to this request". The Tribunal has already heard the evidence-in-chief of Mr. Frank McBrearty Junior. It wished to proceed immediately to his cross-examination in Donegal Town. Mr. McBrearty Junior refused to be cross-examined by those against whom he has made very serious allegations of assault, verbal abuse, forgery and the fabrication of a false confession against him and/or obtaining a false confession by means of a trick. It is clear that each of these Gardaí either by themselves or through their counsel are entitled to cross-examine Frank McBrearty Junior in relation to these allegations in vindication of their constitutional rights to fairness of procedures as set out in numerous judgements of the Supreme Court. This procedure also accords with the orderly, and efficient running of the business of this, or any other Tribunal, or court. I see no reason to depart from it. Allegations have been made. Those accused are entitled in their defence to challenge the man who made them. Mr. McBrearty Junior has the duty to submit himself to cross-examination. Others in Mr. McBrearty Junior's extended family, including the ladies of the extended Quinn family, (some of them unrepresented) have done so with dignity and courage. The Gardaí in turn will then be examined and cross-examined by counsel to the Tribunal and Mr. McBrearty Junior if he so wishes. This application is refused.

6. In the seventh paragraph of Mr. McBrearty Junior's application he seeks an explanation as to why the Tribunal needs his medical records and has requested him to submit himself to medical examination. That matter will be dealt with in private correspondence with him.

Signed:

Frederick R Morris
Mr. Justice Frederick R Morris
Sole Member of the Tribunal

Date:

5th December 2006

C8

Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 24th of November 2006.

Tribunal of Inquiry into complaints concerning some Gardai of the Donegal Division

Established by The Minister
for Justice Equality and Law Reform
by the Tribunals of Inquiry
(Evidence) Act 1921
(Establishment of Tribunal)
Instrument 2002



Belfield Office Park,
Beaver Row,
Clonskeagh,
Dublin 4,
Ireland.

Tel: 01 - 260 1111
Fax: 01 - 260 1122
DX Number: 208

Sole Member
The Honourable Mr. Justice Frederick Morris

My Ref:

Your Ref:

If telephoning please ask for:-

DETFJ/MCB006-12/HD/NT

PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE

Friday, 24th November 2006

PRIVATE AND CONFIDENTIAL
STRICTLY ADDRESSEE ONLY

Mr. Frank McBrearty Junior
Tullyvinney
Raphoe
Co. Donegal

RE: Medical Reports

Dear Mr. McBrearty,

I refer to your letter of the 19th of November 2006 and in particular paragraph seven thereof in which you "require a proper explanation as why the Tribunal need my medical records and why the Tribunal wants me to be medically examined". The Chairman has requested that I write to you privately in relation to this matter as it concerns your medical treatment.

The Tribunal has previously written to you by letter dated the 13th of March 2006, the 23rd of March 2006, the 7th of November 2006, the 14th of November 2006 and the 17th of November 2006 requesting that you submit any medical reports which you wish to rely upon in the course of your sub-module, to include medical reports in respect of your mental health relevant to the detentions of the 4th December 1996 and the 4th of February 1997 and the consequences for you of the treatment which you allege you suffered during the course of these detentions. You did not respond to these letters but raised the matter with me, and counsel to the Tribunal, at meetings in Donegal Town in the recent past. In case there is any misunderstanding about what the Tribunal have in respect of your medical condition you should note that the only reports in the possession of the Tribunal relate to your previous application for an adjournment of your sub-module in February 2005 when your solicitors, David Walley and Company, submitted two reports in respect of your then condition. The Tribunal is not privy to and does not have and never had any reports concerning your mental condition or treatment by any psychiatrist prepared in furtherance of your High Court case or otherwise.

The Tribunal repeats its request that if you wish to rely upon any medical evidence relevant to your detention on the 4th of December 1996, the 4th of February 1997 and/or psychiatric illness, mental trauma, emotional distress caused to you in the course of or following such detention or relevant to any other alleged misbehaviour on the part of An Garda Síochána, you should submit same to the Tribunal in the immediate future. The Tribunal will then take steps to procure the attendance of any medical expert whom you wish to have called on your behalf in respect of any condition from which you may have suffered. It is a matter for you whether you wish to fully inform

Solicitor to the Tribunal: Hugh Dockry, B.A. Dip LS, AFL. Registrar to the Tribunal: Brendan O'Donnell

the Tribunal in relation to any such condition or treatment or have it considered by the Tribunal in the course of its deliberations.

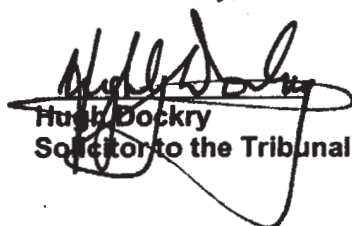
The relevance of such evidence may be as follows:-

1. It is important for the Tribunal to be aware of and receive any expert medical evidence which may be available, which proves or tends to prove that as a result of your mistreatment by members of An Garda Síochána whilst detained on the 4th of December 1996 and the 4th of February 1997 or any further encounters or harassment which you allege against any members of An Garda Síochána, you suffered mental illness, emotional trauma or any other condition which can be clinically ascribed to such mistreatment.
2. It is important that the Tribunal receive any medical evidence about your behaviour and your reaction following your arrest and detention on the 4th of February 1997 in order to assist it in determining whether, as you alleged in your evidence, the distress which you exhibited on that occasion was largely a product of trauma caused to you during the course of your first arrest.
3. You maintained in the course of your evidence that when interviewed by Mr. William Flynn and by two senior officers in respect of an inquiry by the Garda Complaints Board, that you were suffering emotional or psychiatric trauma or illness which might have rendered your accounts to these persons incomplete, unsatisfactory, or jumbled in some way. The Tribunal may be assisted by the evidence of your doctors in understanding the extent, if any, to which any subsequent accounts given by you to others of what you suffered may have been influenced by your mental condition at the time of giving those accounts.
4. It may also be of use and relevance to the Tribunal's work to have a profile of your mental health and personality made available from your medical advisers concerning the contention made by members of An Garda Síochána that you made an admission to them in the course of your detention on the 4th of December 1996. This you vehemently deny. This profile may provide evidence that you have a personality or psychological profile which might be expected to resist pressure brought to bear upon you to confess or, that you do not. In this way medical evidence from your doctors may assist the Tribunal in determining the allegation made by members of An Garda Síochána against you that you made such a confession. It may support the Garda allegation or it may provide evidence tending to support your denial of it; or, it may be neutral on the subject.

The Tribunal has on a number of occasions requested that parties who have given evidence to the Tribunal submit themselves to psychiatric examination by a suitably qualified expert appointed by the Tribunal. It has made this request on two occasions in the past to two important witnesses at the Tribunal who agreed to be so examined, and reports in respect of whom have been received by the Tribunal. It would be of assistance if you would agree to submit to examination by a suitably qualified expert(s). The procedure followed in those circumstances is that you would make yourself available for perhaps one to two days for such examinations, which have in the past extended to psychiatric and psychological testing. The report furnished by the expert(s) will be furnished to you or your legal advisors. It would be distributed following the redaction of any personal or sensitive material in consultation with you prior to its distribution to the relevant parties in your sub-module. This is the practice that has been followed in the past. It is entirely a matter for you whether you wish to consent to such examination or not.

I look forward to hearing from you.

Yours sincerely,


Hugh Dockry
Solicitor to the Tribunal

C9

Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 4th of January 2007.

Tribunal of Inquiry into complaints concerning some Gardaí of the Donegal Division

Established by The Minister
for Justice Equality and Law Reform
by the Tribunals of Inquiry
(Evidence) Act 1921
(Establishment of Tribunal)
Instrument 2002



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DX Number: 208

Sole Member
The Honourable Mr. Justice Frederick Morris

DETFJ/MCB006-12/HD/ES

My Ref:

Your Ref:

If telephoning please ask for:-

PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE

Thursday, 04 January 2007

PRIVATE AND CONFIDENTIAL
STRICTLY ADDRESSEE ONLY

Mr. Frank McBrearty (Jnr.)
Tullyvinney
Raphoe
Co. Donegal

RE: Module: Barron Investigation - Term of Reference (b) 3 - Investigation into the death of Mr. Richard Barron - The detention of Mr. Frank McBrearty Jnr.

Module: Edward Moss - Term of Reference (f) Inquiry into the circumstances surrounding the Arrest and Detention of Mr Frank McBrearty Jnr on 4th February 1997 in relation to an alleged assault on Mr Edward Moss

Dear Mr. McBrearty (Jnr.),

I refer to the above matter and in particular my correspondence of the 17th and 24th November last.

I would be obliged to receive a response to the correspondence pertaining to your medical reports by return. The Tribunal will need to be informed immediately as to whether you wish to furnish any new medical evidence to the Tribunal that may be relevant to any aspect of your arrest and detentions.

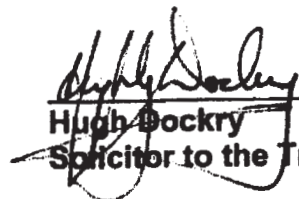
Your cross examination will proceed as scheduled at 12 noon on the 15th January next and no further applications for adjournments will be considered.

In an effort to facilitate you the Tribunal proposes to commence the work for the purposes of your cross examination on the 15th January next at noon rather than at 10.30 am to give you the opportunity to travel to the Tribunal on that date, if you so wish. In any case if you wish to travel to Dublin the evening before, Mr. Philip Barnes, Office Manager, can be contacted at his telephone number 086-8164656 to ensure suitable arrangements are in place for you that night and, as usual, any other nights during the course of your stay.

Solicitor to the Tribunal: Hugh Dockry, B.A. Dip.L.S., AFL. Registrar to the Tribunal: Brendan O'Donnell

I look forward to hearing from you.

Yours faithfully,


Hugh Dockry
Solicitor to the Tribunal

C10

Letter from the Tribunal to Mr. Frank McBrearty Junior dated the 10th of January 2007.

Tribunal of Inquiry into complaints concerning some Gardaí of the Donegal Division

Established by The Minister
for Justice Equality and Law Reform
by the Tribunals of Inquiry
(Evidence) Act 1921
(Establishment of Tribunal
Instrument 2002



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Tel: 01 - 260 1111
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DX Number: 208

Sole Member
The Honourable Mr. Justice Frederick Morris

DETFJ/MCB006-12/HD/JH

My Ref:

Your Ref:

If telephoning please ask for:-

PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE

Wednesday, 10 January 2007

PRIVATE AND CONFIDENTIAL
STRICTLY ADDRESSEE ONLY

Mr. Frank McBrearty (Jnr.)
Tullyvinney
Raphoe
Co. Donegal

RE: Module: Barron investigation - Term of Reference (b) 3 - Investigation into the death of Mr. Richard Barron - The detention of Mr. Frank McBrearty Jnr.

Module: Edward Moss - Term of Reference (f) Inquiry into the circumstances surrounding the Arrest and Detention of Mr Frank McBrearty Jnr on 4th February 1997 in relation to an alleged assault on Mr Edward Moss

Dear Mr. McBrearty (Jnr.),

Further to your telephone conversation of today's date with Mr. Barnes, Office Manager, I would remind you that if you wish to rely on any medical reports in your possession you should, in the normal way, submit them to the Tribunal and indicate by return any medical witnesses whom you wish to have called in respect of the module.

Lastly, I enclose copy statement of evidence of John Melody as requested.

Yours faithfully,


Hugh Dockry
Solicitor to the Tribunal

Enc.
c.c. Walley & Co.

C11

Letter to Mr. David Walley, solicitor, enclosing correspondence sent to Mr. Frank McBrearty Junior by the Tribunal in respect of this matter.

Tribunal of Inquiry into complaints concerning some Gardaí of the Donegal Division

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by the Tribunals of Inquiry
(Evidence) Act 1921
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Sole Member
The Honourable Mr. Justice Frederick Morris

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DETFJ/MCB006-12/HD/JH2

PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE

Thursday, 04 January 2007

PRIVATE AND CONFIDENTIAL
STRICTLY ADDRESSEE ONLY

David Walley & Co.
Solicitors
54 Amiens Street
Dublin 1
DX 262 Dublin

RE: Module: Barron investigation - Term of Reference (b) 3 - Investigation into the death of Mr. Richard Barron - The detention of Mr. Frank McBrearty Jnr.

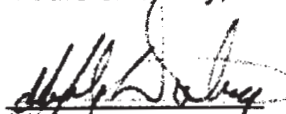
Module: Edward Moss - Term of Reference (f) Inquiry into the circumstances surrounding the Arrest and Detention of Mr Frank McBrearty Jnr on 4th February 1997 in relation to an alleged assault on Mr Edward Moss

Dear Mr. Walley,

I refer to the above matter and enclose herewith for your information the following copy correspondence from the Tribunal to your client, Mr. Frank McBrearty Junior relating to medical reports:

1. Letter from the Tribunal to your client dated 4th January 2007:
2. Letter from the Tribunal to your client dated 24th November 2006:
3. Letter from the Tribunal to your client dated 17th November 2006:
4. Letter from the Tribunal to your client dated 7th November 2006: and
5. Letter from the Tribunal to your client dated 13th March 2006.

Yours sincerely,


Hugh Dockry,
Solicitor to the Tribunal

Solicitor to the Tribunal: Hugh Dockry B.A. Dip.LS. AFL. Registrar to the Tribunal: Brendan O'Donnell

APPENDIX D

D

Ruling in respect of Application of Mr. John White on the calling of certain witnesses in relation to the alleged Bugging of Garda Stations delivered on the 13th day of June 2007.

TRIBUNAL OF INQUIRY

INTO

COMPLAINTS CONCERNING SOME GARDAI IN THE DONEGAL DIVISION

**Appointed by Instrument made by the
Minister for Justice, Equality and Law Reform
on the 24th day of April, 2002 entitled
Tribunals of Inquiry (Evidence) Act, 1921
(Establishment of Tribunal), 2002**

RULING IN RESPECT OF APPLICATION OF MR. JOHN WHITE ON THE CALLING OF CERTAIN WITNESSES IN RELATION TO THE ALLEGED BUGGING OF GARDA STATIONS

Ruling of Mr. Justice Frederick Morris in respect of application of Mr. John White in the calling of certain witnesses in relation to the alleged bugging of Garda Stations

On the 22nd day of May 2007, Mr. John White made an application to me, as Sole Chairman of the Tribunal, to call a number of witnesses whom he contended offered support to allegations that he had made that a Detective Sergeant Joseph Costello, attached to the Television and Technical Support Section based at the Technical Bureau at Garda Headquarters in Dublin (now the Telecommunications Section), attended at Letterkenny Garda Station between the 3rd and 7th of December 1996 for the purpose of placing listening devices in interview rooms and/or visiting rooms in order to record conversations between detainees and their solicitors and/or relatives, in the course of the Barron investigation. This allegation is the subject of the sub-module which is currently at hearing. The issue for the Tribunal is whether what is alleged took place in Letterkenny Garda Station in December 1996 in respect of those detained in the course of the Barron investigation. The issue is focused upon three incidents that occurred between the 2nd and 7th of December 1996 which can be summarised as follows:-

1. On the 2nd of December 1996 following the conclusion of an evening conference at Letterkenny Garda Station in respect of the arrests of suspects in the course of the Barron investigation, Garda Tina Fowley alleged that she was directed by Detective Superintendent Joseph Shelly and Inspector John McGinley to make ready a room known as the GRA (Garda Representative Association) room on the ground floor of the station for use as a visitors' room. She believed from her conversation with the two officers that the purpose of setting up this room was to enable a listening device to be placed in it in order to listen to or record conversations between visitors and detainees.
2. Detective Superintendent Shelly arranged on the 3rd of December 1996 for the attendance of Detective Sergeant Joseph Costello at Letterkenny Garda Station from the Technical Support Section at Garda Headquarters. The section provided technical assistance when requested for investigations around the country and it is said that Detective Sergeant Costello was primarily engaged in the taking of still photographs and video recording. Detective Sergeant Costello attended at Letterkenny Garda Station between the 3rd and 7th of December 1996. He was not given any directions to carry out any specific duties during that period, but evidence was given to the Tribunal to the effect that his attendance was required in case anything arose out of interviews conducted with detainees and/or in order to photograph or video record Mr. Frank McBrearty Senior upon his release should he attend at the home of a number of witnesses whom the Gardaí believed he was intimidating.
3. Mr. John White and then Garda John Dooley alleged that they met with Detective Sergeant Joseph Costello on the first floor corridor of Letterkenny Garda Station on the 4th of December 1996. They said that Sergeant White had a conversation with Detective Sergeant Costello in the course of which Sergeant White asked him "how the tapes were going". It was alleged that Detective Sergeant Costello replied that there had been trouble with the tapes early in the morning but that they were ok now. Mr. Dooley said that shortly after this conversation, he was told by Detective Sergeant White that the visitors' room had been "bugged" by Detective Sergeant Costello and that a visit then taking place between Mrs. Róisín McConnell (a detainee) and her mother, Mrs. Anna Quinn, was being "bugged".
4. Mr. White also alleged that, on the same day, but after his encounter with Detective Sergeant Costello, he went to the Detective Inspector's office at Letterkenny Garda Station and encountered Inspector John McGinley alone there. He alleged that Inspector McGinley was in possession of a twin-deck tape recorder which had been placed on a table. He further alleged that Inspector McGinley told him, when asked, that there was nothing of any interest on the tapes regarding Sergeant White's interview with Mrs. McConnell. He also said that the tape was played for him by Inspector McGinley for a few seconds and that he heard the voice of Mr. James Sweeney, a solicitor, who visited a number of prisoners that day in the station, on the tape.

5. All of these allegations are strongly denied by Mr. Shelly, Mr. McGinley, and Mr. Joseph Costello. The Tribunal has heard extensive evidence from those making the allegations and those alleged to have been involved in or to have knowledge of, the alleged "bugging" or taping. The Tribunal will make its findings in due course as to whether it is satisfied on the balance of probabilities whether the alleged conduct took place and it will hear further evidence in respect of these matters in June 2007.

It is important to note that in the course of the evidence heard by the Tribunal from Detective Sergeant Costello (now retired) and Superintendent Sharpe who had responsibility for the Television and Technical Support Section for many years, that the Garda Síochána in December 1996 had possession of devices and whatever technology might be required for the placing of listening devices in one or more rooms in Letterkenny Garda Station for the purpose of listening to or recording interviews between relations or solicitors visiting prisoners in the course of the Barron investigation, had they intended to do so. Of course, Mr. Costello denies that he did so. Superintendent Sharpe, for his part, denied that his section was engaged in such behaviour though he clearly acknowledged without hesitation that the technology was available to the members of his section.

In addition, Mr. Costello outlined to Tribunal investigators and in evidence to the Tribunal, one occasion upon which he, under the directions of senior officers, placed a listening device in a cell in Ballinasloe Garda Station in or about 1992, for the purpose of recording the conversation between two prisoners. The prisoners were suspected of involvement in the same serious crime. They were deliberately placed together in a cell in order to see whether, in the course of their conversation they would reveal anything of relevance to the Garda investigation that might assist the Gardaí in their inquiry and ascertain the level of involvement, if any, of either or both of them in the crime under investigation. One of the prisoners was subsequently prosecuted and the fact that his conversation was listened to and recorded was revealed to the defence. All relevant transcripts and materials were supplied by way of disclosure. The Tribunal investigators have examined the papers in respect of the matter and interviewed witnesses. The matter was revealed without prompting by Mr. Costello to the Tribunal investigators and verified by them by examining the relevant investigation file. Therefore, it is clear on Mr. Costello's own evidence and material supplied by An Garda Síochána that on this occasion his services were employed to place a listening device in a cell in a Garda Station for the purpose of listening to and recording a conversation, in that case between two prisoners.

All of this is by way of background to the present application by Mr. John White to the effect that the Tribunal should hear evidence from two retired members of An Garda Síochána from Cork who have a similar tale to tell concerning the placing and use of listening devices in order to listen to and record conversations of a prisoner with interviewing Gardaí and with a visitor at Mallow Garda Station in 1992. Clearly, this proposed evidence concerns an issue which is outside the scope of the Term of Reference of this Tribunal into which I am at present inquiring – Term of Reference (b). Nevertheless, Mr. White submits that it has become relevant to the issue of alleged bugging of Letterkenny station because it offers corroboration for the allegation that bugging occurred in Letterkenny Garda Station and was carried out by Detective Sergeant Costello as part of a longstanding practice in which he, Mr.

Costello, had been engaged for many years. Therefore, he submits that this evidence is relevant and is not remote from the issue which I have to determine. Mr. White claims that this evidence, if received by the Tribunal, will corroborate his allegation that Detective Sergeant Costello was employed regularly for the purpose of installing listening devices in interview rooms and/or visitor rooms in order to listen to and record conversations with prisoners at Garda stations around the country in the course of investigations into serious crime. He asserts that this evidence will support his proposition that Detective Sergeant Costello was present at Letterkenny Garda Station for the purpose of carrying out eavesdropping and the recording of conversations as already outlined. In addition, he claims that it would support his further proposition that the Garda Síochána had the technology with which to carry out such eavesdropping and recording, and that it was part of a wider practice within An Garda Síochána in the course of many investigations over the past twenty five years throughout the State. He further contends that this evidence would support his allegation that these things occurred with the knowledge of senior Garda management and would rebut the evidence of Detective Sergeant Costello, Mr. John McGinley and Mr. Joseph Shelly denying that Mr. Costello was brought to Letterkenny for the purpose of placing listening devices and recording conversations and that the two officers knew of and were full participants in it. He submits that allegations, that there was a failure on the part of senior Garda management to carry out a diligent and rigorous inquiry of the allegations made by the Cork Gardaí, were similar to the failure to carry out such an inquiry in respect of his allegations.

Further, it was alleged by Mr. White that at separate meetings with Assistant Commissioner Carty and Chief Superintendent Austin McNally he raised with them the fact that the alleged bugging had taken place at Letterkenny Garda Station in December 1996 and was informed that the matter would not be investigated by the Carty investigation. In particular, he alleged that Chief Superintendent McNally's comment to him to the effect that the bugging of Garda stations was one of the best kept secrets in An Garda Síochána encapsulated the attitude of senior officers in An Garda Síochána to what he alleged to be this widespread practice. Assistant Commissioner Carty and Chief Superintendent McNally deny Mr. White's version of these meetings. Mr. White contends that the evidence of the witnesses whom he seeks to call from Cork supports or tends to support the existence of the widespread practice of bugging in Garda stations throughout the country. It is in that context, he alleges, that Chief Superintendent McNally's remark and the reluctance of the Carty team to investigate the bugging allegation can be reasonably understood. In that sense the proposed evidence is an attempt to rebut the evidence of the two officers in respect of their meetings with Mr. White. In my view, this would be to allow evidence to be introduced on a collateral issue, namely the bugging of a Garda station in Cork, in order to undermine the credibility of two senior officers in relation to meetings which were held a number of years after the events in December 1996. The Cork evidence, in this context, constitutes evidence in rebuttal on a matter which is collateral to the main issue under inquiry: it is not a matter which the cross examining party (in this case Mr. White) should be allowed to introduce in evidence in chief because of its lack of connection with the central issue under inquiry, namely the bugging of Letterkenny Garda Station in December 1996. It goes only to the issue of credibility. Consequently, answers given under cross examination by the various witnesses to questions concerning either the Cork issue or the widespread allegations of bugging throughout the country must be treated as final. (See Attorney

General v Hitchcock [1847] 1 Exch. 91 at page 105 and R v Burke [1858] 8 Cox C.C.44). However, the matter does not rest there because there are further issues to be considered.

The evidence that Mr. White seeks to adduce can be summarised in the following way. Two retired Gardaí from the Cork area have made statements to the Tribunal. They have also been interviewed by Tribunal investigators in the course of the private preparatory stages of the Tribunal's work. In summary, they make the following allegations:

1. Mr. JMG, a former Garda, was involved in a murder inquiry in 1992 and alleged that he was informed by a Superintendent A (now deceased) that in the course of that investigation a listening device "was attached to the home of a lady, (Mrs. Y) in order to intercept telephone conversations that might be made" to her home. The main suspect for the murder (Mr. X) resided in this house separately to her. He alleged that he was told that the device was placed in a fridge, a cooker or a television. Mr. X was the father of the young lady, the alleged murder victim was her husband (Mr. Y). Mr. JMG alleged that he was told by the superintendent that at least two phone calls were intercepted and that useful information was obtained from them.
2. In August 1992, Mr. X was arrested and taken to Mallow Garda Station. Mr. JMG alleged that before Mr. X's arrival at the station he had been told casually, by Superintendent A, that a listening device had been placed in an interview room at Mallow Garda Station. He also alleged that he, together with Superintendent A and another senior officer B, listened to a sound test being conducted following the installation of the listening device in the interviewing room. He said he listened to this test in a red van at the back of Mallow Garda Station. He could not see who was carrying out the test and he did not recognise the voices that he heard in the course of the test.
3. Mr. JMG also alleged that during the course of Mr. X's detention at Mallow Garda Station he went in the company of Superintendent A and Senior Officer B to the red van at the rear of Mallow Garda Station. There was another Garda in the van whom he described and who was in possession of a tape recorder. He heard the voices of two named interviewing Gardaí and the voice of a person whom he believed to be Mr. X.
4. Mr. JMG also alleged that on the night of this arrest he met with the young lady whose house had been bugged, Mrs. Y, the daughter of Mr. X, at Mallow Garda Station before she visited Mr. X in the station. He was in the company of TC. He then went to the red van and listened to part of the conversation that took place between the young lady Mrs. Y and her father Mr. X, in the presence of TC and ML, both Gardaí.
5. Mr. JMG said that he made a complaint to Superintendent D at Mallow Garda Station in 2001 about this and that the matter was then investigated by Superintendent H. Mr. JMcG complained to the Garda Commissioner

about the manner in which this investigation was carried out on the 8th of February 2003. He said that he was not aware of any other incidents of "bugging" conducted by An Garda Síochána. He also said that he first became aware that this "bugging" was unauthorised when informed of that fact by Superintendent A in 1998 or 1999.

Mr. TM, a retired sergeant of An Garda Síochána states that he was the Garda who arrested Mr. X in the course of the investigation into the alleged murder of Mr. Y in August 1992. He alleges the following:

1. He became aware that a Garda C who had been placed on duty outside the home of Mr. X and Mrs. Y following the death of Mr. Y, saw a man climbing what appeared to be a telephone pole near the house: he presumed that this was part of a surveillance of the house by some technical means.
2. Mr. TM states that he and a Detective Garda FOD were informed of the presence of a Garda in a red van that had been parked in an area of forestry near the home of Mr. X and Mrs. Y. He went to the van and met with Garda DM who had in his possession a tape recorder in the front of the van. He said that he visited the van on two or three occasions and was told that conversations between Mrs. Y and whomsoever made contact with her at her home, were being intercepted. Apparently, the reason for this interception was that the Gardaí suspected that Mr. X and Mrs. Y, the occupants of separate parts of the house, had in some way colluded in the death of the Late Mr. Y. Mr. TM was not sure whether the phone was tapped or whether the listening device had been placed in the house but was satisfied that some sort of audio surveillance was taking place.
3. Mr. TM also alleged that Superintendent A told him that the same equipment that was used to intercept communications to or within the home of Mr. X and Mrs. Y was also used to listen to interviews carried out between members of An Garda Síochána and Mr. X at Mallow Garda Station. He alleged that, the Late Superintendent A, and Detective Garda FOD went to a red van parked at Mallow Garda Station and listened to conversations that were then taking place between Garda interviewers and Mr. X, who was then detained in custody. It was manned by Garda DM. Garda DM also played the tapes and operated the machine in the van. He could not recall the identity of the interviewing Gardaí whose names he heard, nor could he recall what was said. It was a normal question and answer session. He was informed by Superintendent A that all was "above board".
4. Mr. TM was asked what advantage he thought there was in eavesdropping on an interview between Gardaí and a prisoner. He replied that it would be advantageous to a Garda in the event of any allegation made at a later date that the session had been recorded. He also suggested that eavesdropping on an interview would enable subsequent Garda interviewers to have prior knowledge as to the progress made by the preceding interviewers.

5. Mr. TM said that he first became aware that this eavesdropping was unauthorised following the collapse of a trial against Mr. X in Dublin when Senior Officer B passed a comment to the effect that if the defence had come up with evidence in relation to the "bugging" that the Government could fall.

Following the making of allegations by these two Gardaí the Commissioner of An Garda Síochána appointed senior officers to carry out an internal inquiry into the matter. Those against whom allegations were made were interviewed and denied the allegations. No adverse finding was made against them. Criticisms were made in the subsequent reports of the two Gardaí concerned with particular reference to grievances which they had against officers in An Garda Síochána. The two Cork based Gardaí were highly critical of the investigations carried out by these senior officers and considered them totally inadequate.

Subsequently, Mr. JMG and Mr. TM submitted statements to the Tribunal in respect of these matters and they and others were interviewed by Tribunal investigators in the course of the private preparatory work of the Tribunal. It is against this background that Mr. White invites me to call Mr. JMG and Mr. TM as witnesses before the Tribunal and to inquire into the truthfulness of their allegations in respect of the alleged eavesdropping at Mallow Garda Station in 1992. The determination of the truthfulness or otherwise of their allegations would involve the Tribunal in further extensive inquiries, interviews and prolonged hearings in order to attempt to ascertain the truth concerning this matter. However, that in itself would not deter me from pursuing these further inquiries and convening further hearings in respect of this issue, if I thought that it was necessary in the interests of justice and in fairness to Mr. White that it should be done, in order to enable him to present his case to the Tribunal in respect of the alleged bugging of interview rooms at Letterkenny Garda Station by Mr. Joseph Costello between the 3rd and 7th of December 1996.

Mr. White submits that the two Cork Gardaí should be called as witnesses in support of his contention that Mr. Joseph Costello attended at Letterkenny Garda Station on the 3rd of December 1996 and placed listening devices in a number of interview rooms and/or visiting rooms at the station to facilitate the recording of conversations between solicitors and prisoners and/or visitors and prisoners. He states that their evidence, if believed, would enable the Tribunal to infer that Mr. Costello carried out this covert audio recording as part of his normal work which was commonplace within An Garda Síochána as evidenced by the events in Cork. In addition, he submits that his wider proposition that the covert listening was carried out nationwide and regularly by Mr. Costello is corroborated by the evidence available from the Cork witnesses. Even if I accept, as I do for the purposes of this Ruling, that all they say is true, this would not in my view entitle me to infer as a matter of probability that what Mr. White says, occurred in Letterkenny. However, it would be evidence, if accepted, that the Garda Síochána had the capacity to place listening devices in a Garda station and listen to and record conversations in an interview room between interviewing Gardaí and a prisoner, and between Mrs. Y and a prisoner, and did so on this occasion in Cork in 1992. However, from the materials available to me, this incident did not involve Detective Sergeant Costello or the Television and Technical Support Unit from Garda Headquarters. It would be wrong of me to infer from such

evidence that because some other Gardaí in Cork carried out a broadly similar eavesdropping operation to that alleged against Detective Sergeant Costello, that Detective Sergeant Costello did so in Donegal in 1996, and that further, he was employed regularly in carrying out similar duties throughout the country. The account of the Cork Gardaí is not sufficiently cogent as to provide a nexus between the events recounted by them and the events in Donegal. Clearly, it would not be logical or fair to infer that because a bugging operation occurred in Cork in 1992, that a similar bugging operation was carried out in Letterkenny Station in December 1996 or that it was carried out by Mr. Costello in circumstances where it is not even contended that Mr. Costello participated in any way in the events in Cork.

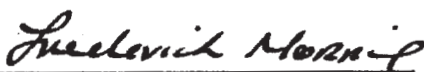
As already noted, if the account of events in Cork in 1992 is accepted, a conclusion could be reached that the Gardaí had the technology available to them to carry out covert recording of interviews in interview rooms in a Garda station and did so in Cork in 1992. In my view, much stronger evidence has already been adduced before the Tribunal in the course of this sub-module to this effect from Mr. Joseph Costello and Superintendent Sharpe, who have given evidence to the effect that this technology was available, if the Gardaí were minded to use it, in 1996. In addition, Mr. Costello volunteered to Tribunal investigators that he was involved in 1992 in the placing of a listening device in a cell at Ballinasloe Garda Station. On that occasion, two prisoners were placed together in a cell and their conversation was recorded by Detective Sergeant Costello in accordance with directions given to him by a senior officer. In subsequent criminal proceedings taken against one of the prisoners, the transcript of this recording together with other relevant materials, were disclosed to the defence lawyers in the case. This occurrence is documented and has been recounted in evidence to the Tribunal by Detective Sergeant Costello. Mr. White has also given evidence that prisoners were from time to time "boxed" together in this manner for the purposes of eliciting any valuable information that might arise from conversations between two prisoners. It is clear, therefore, that the evidence presented to the Tribunal by Mr. Costello and Mr. Sharpe indicates that Gardaí had the capacity to do what Mr. White alleges Mr. Costello did. This constitutes significant evidence in support of Mr. White's contention that the Gardaí and, in particular, Mr. Costello, had the capacity and experience to carry out such an operation at Letterkenny Garda Station in 1996. In addition, the acceptance by Mr. Costello that he carried out what might be regarded as a broadly similar operation in Ballinasloe in 1992, under the direction of his superiors, might also be regarded as supporting Mr. White's proposition that Mr. Costello was regularly engaged in this type of activity, in a manner which the evidence proposed to be tendered by the two retired Gardaí from Cork does not.

Consequently, it is not intended by me to call the evidence of the two retired Gardaí from Cork in relation to the events of 1992. It has already been established to my satisfaction that the Garda Síochána had the necessary technology available to it if it was desired to place listening devices in interview rooms or visitors' rooms at Letterkenny Garda Station in 1996. In addition, it has been established that on at least one occasion in 1992 Mr. Costello carried out a broadly similar operation in Ballinasloe Garda Station as directed by his superiors. It is not suggested that Mr. Costello is in any way implicated as a participant in the alleged events in Cork in 1992. Mr. White will not be in any way prejudiced in my not calling this evidence and I do not accept that it will in any way assist me in determining the issue as to whether

the alleged bugging was carried out by Mr. Costello in Letterkenny Garda Station in December 1996. Even if the evidence of the retired Cork Gardaí were accepted in full, the Tribunal could not draw any adverse inference from it against Mr. Costello or in support of Mr. White's case in respect of what happened in Letterkenny Station in December 1996.

This Tribunal of Inquiry is mandated to inquire into its Terms of Reference and to complete its inquiry in "as economical a manner as possible and at the earliest possible date consistent with a fair examination of the matters referred to it". The relevant case law indicates that Tribunals of Inquiries, such as this one, have "a significant measure of discretion as to the manner in which they carry out the important task which has been entrusted to them by the Oireachtas": see Keane CJ in *Flood v Lawlor*, Supreme Court unreported 24th November 2000 and *O'Brien v Moriarty* [2006] 2 I.R.221. The interpretation of the Terms of Reference of the Tribunal is a function for me as Sole Chairman. It is for the Tribunal to decide when and whether to conduct private investigations or to proceed to public hearings. The present sub-module is concerned with alleged bugging of interview and visitors' rooms at Letterkenny Garda Station during the course of the detention of twelve persons in December 1996 in the course of the Barron investigation - Term of Reference (b). It is a matter for the Tribunal as to what evidence it deems relevant to the inquiry and what evidence should be adduced at public hearings. It is for the Tribunal, to exercise its own judgement on the application of the parties before it as to the necessity to call any witness or any evidence concerning any issue raised. However, in making that determination, I must have regard to fairness of procedures for all parties, including Mr. White, and ensure that he is not unfairly prejudiced in any decision that I make, in limiting the evidence to be heard in public session. Having regard to the scope of this inquiry, the nature of the evidence to be adduced, the evidence already heard by the Tribunal, the specific events under inquiry in this sub-module and my obligation to focus upon the real issues to be determined in respect of those matters, I do not intend to call the proposed Cork witnesses or to inquire further into that matter by way of public hearings. I do not accept that hearing this testimony will assist me further in resolving the issues to be determined in this sub-module, nor do I accept that Mr. White's case or his position will be prejudiced by my declining to hear this evidence.

Signed:


Mr. Justice Frederick R Morris
Sole Member of the Tribunal

Date:

13th June 2007

