

## **ANONYMOUS ALLEGATIONS**

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We now turn to paragraph (h) of the Terms of Reference. This requires the Tribunal to urgently enquire into:

**Allegations contained in documents received by Deputy Jim Higgins on 25<sup>th</sup> June, 2000 and in information received by Deputy Brendan Howlin on 25<sup>th</sup> June, 2000 that two senior members of An Garda Síochána may have acted with impropriety.**

It is as well to point out at this juncture that Deputy Jim Higgins, T.D. received only one document relevant to paragraph (h) on the 25<sup>th</sup> of June, 2000. That document appears in three formats. Firstly, it appears in the format in which it was received by Deputy Higgins save that it was photocopied by him to remove the sender's identification on the fax. Secondly, the document was transcribed by Mr. Higgins' Secretary into a one page format. Thirdly, Mr. William George Flynn, Private Investigator, posted a handwritten note to Assistant Commissioner Fachtna Murphy on the 27<sup>th</sup> of October, 2000 with which he enclosed the same document but in a different format to the two already referred to. As we understand it, Deputy Brendan Howlin did not receive any document on the 25<sup>th</sup> of June, 2000 relevant to this matter but, instead, personally transcribed certain notes in the course of a conversation with a source known to him. The allegations contained in this transcribed note are similar to, but not identical with, the document received by Deputy Higgins.

Sir, in your explanation of the Terms of Reference, delivered on the 15<sup>th</sup> of July, 2002, you had this to say about paragraph (h):

**The information available to the Tribunal indicates that Deputy Jim Higgins (as he then was) and Deputy Brendan Howlin at or about the time indicated brought to the attention of the then Minister for Justice, Equality and Law Reform a fax, which had apparently been received by Deputy Higgins on the 25<sup>th</sup> June, 2000.**

**The main allegations relevant to this module are that:**

- (i) An investigation being carried out into conduct alleged against a member of An Garda Síochána was not being conducted in accordance with the Garda Commissioner's instructions due to the fact that the member under investigation had worked with two high ranking members of An Garda Síochána one of whom had charge of the investigation in respect of the alleged misconduct;**
- (ii) When working with these two high ranking members of An Garda Síochána he was alleged to have been given the job of producing evidence by unlawful means to prove a case beyond reasonable doubt whenever such evidence "had to be got";**

**(iii) In this regard a large number of convictions were achieved by planting evidence and it is alleged that both of the high ranking Gardaí were aware that the member under investigation was the source of trumped up evidence used in this manner;**

**(iv) The member under investigation gained from his actions of producing trumped up evidence which secured convictions in that he had paid to him extra expenses in the form of unworked overtime/travelling and subsistence allowances which continued up to 1998 and that he was given blanket permission to claim such expenses;**

**(v) The member under investigation was involved in planting stolen property on suspects and as a result had a huge amount of stolen property at his disposal which he had in the Donegal area and that this was known to members of An Garda Síochána at a number of levels;**

**(vi) The member under investigation was in regular contact with a high ranking Garda officer and had an eighteen page document concerning his and others activities while stationed in Dublin which document would enable him to escape the rigours of the law and was his way of frustrating the ongoing Garda investigation into his alleged misconduct.**

**The Tribunal proposes to:**

**(a) Enquire into this matter generally, and in so far as it is possible, ascertain the basic facts;**

**(b) Fully investigate each of the allegations contained in the document to ascertain whether there is any foundation for same;**

**(c) Consider the investigations carried out to date in relation to this matter and generally consider whether these allegations were scrutinised with the seriousness which they merit;**

**(d) Ascertain if there is any connection between this incident and any other incident referred to in the Terms of Reference;**

**(e) Attempt to ascertain if the author of the fax has any information which would justify the allegations contained therein; in that regard it would be necessary to ascertain the identity of this person and to seek his/her assistance for the work of the Tribunal;**

**(f) Attempt to ascertain whether the use of informants has anything to do with this matter and, if that is so, the same approach as set out in relation to Term of Reference B(3) will then apply;**

**(g) Attempt to ascertain the motive for sending this fax, if this is relevant.**

Sir, as you are aware, Assistant Commissioner Kevin Carty commenced an investigation on the 12<sup>th</sup> of February, 1999 as a special inquiry into matters arising from the Garda investigation of the death of the late Richard Barron on the 14<sup>th</sup> of October, 1996. The matter was precipitated by an apprehension that the telephone call to the home of Michael and Charlotte Peoples on the 9<sup>th</sup> of November, 1996 involved an extortion attempt and may have been perpetrated or assisted by a member of An Garda Síochána. Later, the Carty investigation was expanded to encompass allegations of fictitious finds of explosives in the Donegal area. As we have seen, when we dealt with paragraph (j) of the Terms of Reference, the McBrearty family expressed dissatisfaction with the manner in which the Garda Complaints Board had dealt with them. Apparently one of the reasons for the delay in finalising the statutory procedure pursuant to the Garda Complaints Act, 1986 was the existence of the enquiries being pursued by the Carty investigation team. If it could reasonably be apprehended that the Carty investigation team was itself handicapped through a conflict of interest between the personnel directing that investigation and the Gardaí being investigated in Donegal, a most serious situation would have developed. It would have meant that a major investigation was compromised. This would have called into question the ability of An Garda Síochána to investigate crime where the suspect was a member of the Force. Sir, we have already described the first and second Carty investigations. It is important to say at this juncture that you are in an especially good position to judge the effectiveness of that investigation both from the point of view of being the Chairman of this Tribunal and from the point of view of having possession of the entirety of these reports.

As we have said, anyone can make a malicious allegation against somebody else. This can be done anonymously or through attempting to hide behind a cloak of apparent privilege. Where a false allegation is made, it may simply amount to a mistake. Where a false allegation is made without checking the facts, negligence in this context can cause harm as readily as if a person had dealt carelessly with a piece of machinery, for example in a factory. Where an allegation is made maliciously it says much more about the person making the allegation than about the person against whom it is directed. Allegations are most dangerous when they are a concoction partially based upon actual facts because then they are more likely to be taken as having substance. The matters to which we must now refer consist of allegations against very senior members of An Garda Síochána: these may be the source of the often repeated cry that the corruption in the Donegal Garda Division, if there be such corruption, affects the entire Force all the way to the very top.

On the 29<sup>th</sup> of June, 2000 the Garda Commissioner directed Assistant Commissioner Fachtna Murphy to investigate this matter. He reported in December, 2001 and again on the 22<sup>nd</sup> of February, 2002. We have the benefit of the statements taken by his investigation team and of the documents gathered as being relevant to this Term of Reference. Our own investigators, appointed by you, Sir, with the approval of the Minister for Justice and the consent of the Minister for Finance, pursuant to Section 6 of the Tribunals of Inquiry (Evidence) (Amendment) Act, 2002 have also conducted enquiries. These are ongoing. Such enquiries are a prudent

course of action given that an investigation into an allegation that an existing investigation is corrupt cannot be taken at face value. In terms of a perusal of the documents, Sir, your own view can be formed as to the thoroughness of the investigations by Assistant Commissioner Murphy.

At the relevant time, James Higgins, T.D. was a member of Dail Eireann and opposition spokesman on Public Enterprise. He was previously well known as the opposition Spokesman on Justice. He therefore concerned himself with matters which this public inquiry is now pursuing. In his statement dated the 30<sup>th</sup> of June, 2000 he says:

**I had previously heard rumours in journalistic circles of a possible former police relationship between Assistant Commissioner Kevin Carty whom I know to be heading up the investigation in Co. Donegal and Detective Sergeant John White [whom] I know to be one of the subjects of the investigation. The rumours were to the effect that Assistant Commissioner Kevin Carty's investigation may be compromised as a result of this relationship.**

Between hearing those rumours and the period, it must be assumed, of many months prior to Sunday the 25<sup>th</sup> of June, 2000 we have only limited information as to what may have been occurring. This we shall refer to shortly. It may be that there was contact between the McBrearty family and Deputy Higgins. In his statement, Deputy Higgins goes on:

**On Sunday 25/06/2000 I received a telephone call to my phone at ... Ballyhaunis from an individual who told me that I would be receiving a fax message which had been drawn up by a former Garda and which contained very serious allegations, concerning the McBrearty investigation. My fax number is .... I have another phone in my house .... Both the person who phoned me and the retired former Garda are known to me but I am not at liberty to disclose their identity. Almost immediately around 6 p.m. ... the fax message arrived ... I [removed] the identifying fax number from it, in order to preserve the confidentiality of my source. Due to the content of the fax message I immediately decided to bring it to the attention of Mr. John O'Donoghue, T.D., Minister for Justice, Equality and Law Reform. On Monday morning ... I gave the fax message to my Secretary and asked her to transcribe same ... I phoned the Minister's office ... and made arrangements to meet him on Tuesday ... While I was waiting for the Minister to return my call I telephoned the Labour Deputy Leader, Brendan Howlin, who had also been raising the McBrearty investigation in Dail Eireann. He confirmed to me that he had also been given similar information on Sunday 25/06/2000. We discussed the possible implications of the information and I informed him that I had already sought to contact the Minister with a view to a meeting, Deputy Howlin asked to be included in the meeting. The Minister returned my call almost immediately and I made arrangements to meet him on Tuesday 27/06/2000. The meeting**

**took place in the Minister's Office ... at 3.20 p.m. and present were John O'Donoghue, T.D., Oonagh McPhillips, Private Secretary to the Minister, Brendan Howlin, T.D., and myself. I handed the Minister a copy of the transcribed document as prepared by my Secretary, Amanda Disking. I also gave a similar copy to Brendan Howlin, T.D. The Minister read the document in our presence and Brendan Howlin corroborated the contents of the document by reference to handwritten notes which he had made as a result of a phone call he had received from which I understand was a legal source ... in relation to the contents of the document I do not know the name of the Detective Inspector in the opening paragraph.**

Mr. Higgins was subsequently interviewed on a number of occasions but indicated that he felt unable to assist further in respect of the document. He said that his source was not willing to meet with the investigating Gardaí. Mr. Higgins said that he was a retired member of An Garda Síochána based in the Donegal Division. He said that he would again talk to his source and that he hoped that the source would agree to meet Assistant Commissioner Murphy or Detective Superintendent Brehony, who was working with him. The source has not come forward.

Mr. Brendan Howlin, T.D., was interviewed at his home by Assistant Commissioner Murphy and Detective Superintendent Brehony on the 1<sup>st</sup> July, 2000. He indicated that he had received a telephone call from a parliamentary colleague who supplied him, in turn, with a telephone number of a person who had been a source of information to him in relation to the McBrearty investigation and whom he said he trusted and was reliable. Mr. Howlin then telephoned this source, whom he told the investigators he knew, and was told the information that he noted. Mr. Howlin indicated that he could not identify his source because it would "seriously compromise the question of whistle blowing to public representatives". Later on the 4<sup>th</sup> July, 2000 Mr. Howlin met with the members of the Murphy investigation team. His informant was not willing that his name should be given to the Gardaí but said that this person had indicated to him that he was willing to give evidence "in court". On the 1<sup>st</sup> July, 2000 Mr. Howlin expressed concern that the Assistant Commissioner Murphy enquiries should not focus on the question of who the source was but, instead, investigate the allegations.

Subsequently, members of the Murphy investigation team again spoke to Mr. Howlin on the 4<sup>th</sup> July, 2000. He had contacted his informant who, he said, was unwilling to be identified to the Gardaí. Oonagh McPhillips, in her account of the meeting with the Minister, records that Mr. Howlin explained that the confidential memo. came from a Garda source which he trusted absolutely. She also records that Deputy Howlin had stated that his Garda source was willing to cooperate with the Garda inquiry, but not with the media. I am sure, Sir, that you would welcome such cooperation to this sworn public inquiry because, to date, it has not been forthcoming. The allegations contained in the document remain anonymous. The source of the information, if it could be classified as information, could not be discovered by

Assistant Commissioner Murphy's investigating team. It also seems appropriate to say, Sir, that even apart from the legal rule against self-corroboration, that the repetition of a rumour does not amount to the corroboration of a rumour. Corroboration occurs when some independent fact logically tends to prove a fact in issue. Nothing has been uncovered as a result of the investigations of this Tribunal, or on perusal of the documents and statements gathered by the Murphy investigation which provides any support for the allegations contained in the document, much less corroboration. Ms. McPhillips in her account of the meeting between Deputies Higgins and Howlin with the Minister also says as follows:

**Both Deputy Higgins and Deputy Howlin stated that they had received their information on Sunday 25<sup>th</sup> June, 2000. I did not take a note of what Deputy Howlin said, which he had recorded in the form of bullet points on a single page. I do not recall the detail but there was a general consensus at the meeting that in essence it was on similar lines to the information on the one paged document produced by Deputy Higgins at the meeting. Both Deputies acknowledged openly that neither of them had any proof of the allegations they outlined at the meeting but both stated that they had no reason to suspect any malicious motives on the part of their sources.**

We must now turn to what the document received by Mr. Higgins says and how this compares with the notes taken by Mr. Howlin. It seems reasonable to suppose, because of the similarity of the allegations, and their format, that there is only one source involved but that, Sir, is a matter for you. Mr. Howlin's notes begin:

**On Sunday evening, 25<sup>th</sup> June, 2000 I received a call from a colleague to phone a person who had in the past kept me informed about the situation in Donegal concerning the Gardaí and the McBrearty's. ... Evidence coming from Garda based in Donegal who has provided my informant with most reliable information in the past.**

This section does not require any comment. The document received by Mr. Higgins begins:

**Confidential ... confidential ... confidential**  
**Confidential information has come to hand from a serving Detective Inspector of An Garda Síochána attached to a station in the D.M.A. concerning the Garda investigation in the Donegal Division.**

It does not seem unreasonable to take the view that if this inquiry is going to be thorough it should attempt to ascertain the source of the information in order to learn from him or her at first hand either what material may be available to support the allegations; or with a view to establishing that the allegations are made without a basis of support in fact, for whatever reason.

The Murphy investigation team took a similar view. Your investigators, Sir, also believe it is essential to interview this person to attempt to find out what he or she knows. Because of the dramatic statement, that what is contained in the document comes from a serving Detective Inspector attached to a station in Dublin, statements were taken from all 30 members of An Garda Síochána holding the rank of Detective Inspector who were either located in Dublin at the material time or were attached to stations or specialist units located in Dublin. Every one of these examined the fax document and all of them indicated that they had no knowledge or evidence of any wrongdoing on the part of members of An Garda Síochána who were named in the document. Every one of them also indicated that they had not been in contact with any public representative with regard to any of those matters. At the meeting with the Minister Deputy Howlin described his source, according to Oonagh McPhillips, as “a legal non-Garda source”. Deputy Howlin expressed absolute trust in this source. It would be difficult to see how a legal person could have first-hand knowledge of internal Garda matters. Deputy Higgins, in his statement, described the source as a “retired former Garda”. Forty-six retired members of An Garda Síochána in the Donegal Division were interviewed by the Murphy investigation team. These included persons who, at the material time, were attached to Districts in respect of which questions came to be asked over the handling of the Barron case. All of these, with the exception of one, either made statements or allowed themselves to be interviewed. That person was eventually interviewed on the 15<sup>th</sup> of January, 2002. All of them denied authorship of the document or having any part in its composition, or of ever having seen it before. The first paragraph of the document received by Mr. Higgins reads:

**1. There appears to be a problem concerning the ongoing investigation into the conduct of one Detective Sergeant White which would give the impression that the matter is not being dealt with in accordance with the Commissioner’s instructions to the investigating officer, Kevin Carty. If this is the case, it is very worrying, to say the least.**

As has already been said, Sir, you will be in a position to ascertain the fairness of the investigations undertaken by Assistant Commissioner Carty and his team. At this time, we cannot point to anything to indicate a failure to follow appropriate lines of enquiry, any lack of thoroughness or any absence of determination to follow through the investigation of an issue to its logical conclusion. This point is not explicitly made in the notes taken down by Mr. Howlin but it is implicit in the text. The only parallel in the notes of Mr. Howlin reads:

**Informant’s real concern however is that the Carty investigation is compromised.**

The second paragraph of the document received by Mr. Higgins reads:

**2. The reason for this is that Detective Sergeant White worked with both Mr. Carty and Assistant Commissioner Tony Hickey**

during his service in Dublin and whenever evidence had to be got to prove a case beyond doubt, Sergeant White was the man who was given the job of producing the said evidence by unlawful means.

Three sections of the notes made by Mr. Howlin read as follows:

**[A] critical issue is that Sergeant White is in a position to blackmail two Assistant Commissioners - Assistant Commissioner Kevin Carty and Assistant Commissioner Tony Hickey ... every case Sergeant White was involved in needs rechecking ... explained that case "with Ballymun connection" would cause difficulty for Kevin Carty - White, he suggested did "dirty work" for him.**

According to these allegations the opportunity for corruption, and the situation whereby the possibility for compromising of both Assistant Commissioners Carty and Hickey arose was due to common service in Dublin. The allegation goes further than that and alleges a close working relationship. The statements available indicate no evidence for this. Assistant Commissioner Tony Hickey had, at the relevant time, responsibility for the eastern region and was based in Mullingar. He is now attached to the Dublin Metropolitan Region. When interviewed by Assistant Commissioner Murphy and Detective Superintendent Brehony he said:

**In October, 1980 I was assigned to the investigation section of Garda Headquarters as a Detective Sergeant. There was a staff of about 40 personnel there at the time, one of which was Detective Garda John White. The section was divided into units. Detective Garda White was never attached to my unit. The only time I worked with Detective Garda White was for a day in either August or September, 1982 when we traced the owner of a suspicious car. This duty resulted from an enquiry in the McArthur case. We located the owner of the car and ruled him out of this enquiry. Detective Garda John White was transferred with a number of others from the Investigation Section to the Dublin Metropolitan Area in April, 1993. After 1983 I served in the following areas as an Inspector in Operations at Garda Headquarters, as a Detective Inspector in the Drug and Serious Crime Squad, as a Superintendent with responsibility for drug law enforcement at Garda Headquarters, as Chief Superintendent at Castlebar and Crime Branch, Garda Headquarters, as a Detective Chief Superintendent in charge of the Central Detective Unit and as Assistant Commissioner at Sligo and Mullingar. On this date I had been shown a document JH2 by Assistant Commissioner Fachtna Murphy. ... In paragraph 2 it is alleged that Detective Sergeant White worked with me during his service in Dublin and whenever evidence had to be got to prove a case beyond doubt, Sergeant White was the man who was given the job (by me) of producing the said evidence by unlawful means. I wish to**



**categorically state that I never worked with John White during his time in Dublin. I was never involved with him in an inquiry, investigation or prosecution and I never requested or directed Detective Garda John White (now Detective Sergeant) to produce evidence by unlawful means for the purpose of proving any case beyond doubt.**

John White, we feel we should remind you, Sir, joined An Garda Síochána in 1974 and served with the Investigation Section of the Technical Bureau from 1980-1983. Then he served with the Central Detective Unit and the Detective Unit at Kilmainham. In 1984 he was transferred to the Blanchardstown Detective Unit where he served until July, 1994 when he transferred to Lifford as a Detective Garda. Assistant Commissioner Carty made a statement on the 3<sup>rd</sup> of May, 2001 in relation to this matter. He says:

**Between 1980 and 1986 I was attached to the Investigation Section of the Garda Technical Bureau. I held the rank of Detective Sergeant at that time. The section was split into 4 units each working under 4 Detective Inspectors. I was attached to the unit under Detective Inspector F.O.C. Browne who is now retired. John White who was a Detective Garda at the time was attached to a different unit. I am not sure what Detective Inspector he worked under. Assistant Commissioner Hickey was also attached to the Investigation Section as a Detective Sergeant. I am not sure what Detective Inspector he worked under but it was not my unit. Over the period I worked in the Investigation Section between 1980 and 1986 I cannot remember any occasion when I had any contact with John White. I never socialised with him and I cannot recall having any type of conversation with him. I definitely was never on the same investigation as John White over that period. I was never involved in giving evidence in court in any case that John White had any connection with. I never ever had any reason to even discuss any investigation with John White. We were never friends and shared no common interests.**

What is said in the foregoing statement deals with the allegations in the first two numbered paragraphs of the document. The next two paragraphs contain no additional information but could be regarded as a rhetorical reiteration of what is there already. The document sent to Mr. Higgins states:

**3. A large number of convictions were achieved “by planting” evidence and both Carty and Hickey were aware that White was the source of the “tramped op” evidence. Payback was extra expenses for White in the form of unworked overtime/travelling and subsistence allowances and this misappropriation of Department of Justice funds continued up to 1998 as White was given blanket permission to claim the aforementioned expenses.**

**4. There is now a fear among members of the investigation team that if White is fully investigated he will use his knowledge of**

**those matters as his defence and in doing so a number of persons convicted which involved lengthy prison sentences will prove to have been unsafe and the consequences for those involved and indeed the entire force would be unthinkable.**

The notes taken by Mr. Howlin read:

**He informed me that serious information had been brought to his attention regarding Detective Sergeant White. He suggested that criminals were used by Sergeant White to give perjured evidence against Mr. McBrearty. He suggested that he (White) planted evidence on a McBrearty associate. He suggested that Sergeant White planted stolen property on youth in Lifford (an action that was common for him) ... - White's expenses make interesting reading – also allowed to have access to stash of stolen property – to plant on people. ... Informant's real concern however is that the Carty investigation is compromised ... He (Donegal-based Garda) was approached by senior Detective from Dublin who told him that Sergeant White "was being looked after".**

We should not lose sight of the fact that if these personnel did not work together the opportunity for this behaviour did not arise. What I have read from Assistant Commissioner Carty has already dealt with these allegations. Assistant Commissioner Hickey says the following:

**In paragraph 3 it is alleged that a large number of convictions were achieved by "planting" evidence and that I was aware that White was the source of the "tramped (sic) up evidence". Furthermore it is alleged that pay-back "was extra expenses for White in the form of unworked overtime/travelling and subsistence allowances and that this misappropriation of Department of Justice funds continued up to 1998 as White was given blanket permission to claim these aforementioned expenses". Even though I have already outlined that I have never worked with or had any dealings with John White during his service in Dublin I want to reiterate that I have absolutely no knowledge of nor was I involved in the obtaining of convictions by the planting of evidence. I did not, nor would I under any circumstances sanction unauthorised expenses for John White or any other member. Furthermore I did not provide any blanket permission for Detective Sergeant John White to claim such expenses. ... It goes without saying that I never discussed with him ... either the planting of evidence, the securing of convictions by unlawful means or the payment of unauthorised expenses.**

On the 16<sup>th</sup> of November, 2000 and the 10<sup>th</sup> of January, 2001 Detective Sergeant John White was interviewed by Detective Superintendent Brehony and Sergeant Eugene Corcoran in the presence of his solicitor, Mr. Dorrian. The relevant document was produced to him. What he has to say about it is of relevance to you. We now quote from the notes of those discussions,

drawing together the relevant pieces from each. On whether he and Assistant Commissioners Hickey or Carty were ever involved in any common investigations, thereby giving the opportunity for planting evidence or otherwise perverting the course of justice, he said:

**I cannot remember working with Hickey or Carty on any case but I may have. My D/Inspector was Pat Culhane. I worked mostly in Munster and Dublin when I was in the murder squad. It is possible that I may have worked with Hickey, who was a D/Sergeant. I am reasonably certain that I didn't work with either of them while I was in Blanchardstown. I never planted evidence. I never obtained or handled stolen property illegally and I never gave false evidence. I never asked anybody else to give false evidence. Neither Carty or Hickey were involved in cases I was involved in. I believe that the document given to the Minister by Jim Higgins is a malicious document submitted by members of the Donegal Division attached to the Carty team, for the purpose of discrediting me and destroying my character. ... I was never in court or gave evidence in relation to any matter in which Carty or Hickey were investigating. Between early 1995 or late 1994 and January or February, 1998 I worked for Kevin Carty as an agent handler, an untrained agent handler. I am now trained. At that stage I was requested by a Detective Superintendent to stop giving him information as the information wasn't relevant to his line of work. I never planted evidence in my life. I had little to do with the handling of evidence because of the nature of the work. Around late 1994 or early 1995 I recall recovering a firearm in Dublin, close to Clonsilla. Detective Inspector Derek Byrne was investigating this.**

On the issue of expenses Detective Sergeant White had this to say:

**I'd like it brought to your attention that I did not claim £3,000 approximately in overtime. I also did not claim over £2,500 expenses for my move from Lifford to Carrick. The suggestion that I claimed unworked overtime and expenses is ridiculous. I had permission to leave the Donegal Division at any time from Chief Superintendent D. Fitzpatrick [paragraph 4 is] total rubbish.**

Available documentation in support of claims made by Detective Sergeant White between 1994 and 1999 was gathered together by the investigation team under Assistant Commissioner Murphy. We have obtained and examined these. All of the Gardaí who acted as district officers or acting district officers, and who were therefore in a position to certify claims for overtime and travelling expenses were also interviewed. These were: Chief Superintendent Denis Fitzpatrick; Superintendent James Gallagher; Superintendent Kevin Lennon; Superintendent John Manley; Superintendent Frank Fitzpatrick; Superintendent Denis Cullinane (retired); Inspector Eugene McGovern; and Inspector Vincent O'Brien. Any document can mix fact and fiction. It appears to be the case that Detective Sergeant White was

required to engage in duties which involved him travelling and incurring overtime expenses. One of the people for whom he performed duty was Detective Chief Superintendent Dermot Jennings. He was at the time responsible for security and intelligence. This involves him meeting with various members of An Garda Síochána. In his statement dated the 4<sup>th</sup> of January, 2001 he has this to say:

**In 1998 I dealt with Detective Sergeant John White on a security and intelligence matter. My dealings with him continued over a number of months and were carried out with the knowledge of Chief Superintendent Denis Fitzpatrick, the member's Divisional Officer. Those matters were of a highly confidential nature. In order for Detective Sergeant White to effectively carry out these duties, he was required to use his own motor vehicle, and often had to work continuously long hours, even when he was on rest days. By agreement with Chief Superintendent Fitzpatrick I certified a record of hours worked by Detective Sergeant White. On this date I was shown correspondence concerning certification of duties for Detective Sergeant White addressed to Superintendent, Letterkenny and dated 27/3/98, 30/4/98 and 9/6/98 with supportive claim forms. I confirm that I certified this duty and satisfied myself of its correctness beforehand. On this date a form A85 in respect of claims submitted by D/Sergeant White for roster ending 22/2/98 and roster ending 22/3/98. I identify my signature in the relevant column where I certified the claim. On form A85 I certified it for the following dates – 24/2/98, 25/2/98 and 26/2/98 and also on 19/3/98, 20/3/98 and 21/3/98. On form A85 I certified it for the following dates – 17/2/98, 18/2/98, 19/2/98, 20/2/98 and 21/2/98.**

Detective Sergeant White also did some work between 1994 and 1996 for Assistant Commissioner Carty. This is what the latter has to say:

**On the 1<sup>st</sup> September, 1994 I was appointed as Detective Chief Superintendent-in-Charge of the Central Detective Unit at Harcourt Square, Dublin. At that time the Central Detective Unit encompassed the Crime Investigation Unit, Fraud, Stolen Cars, Domestic Violence and Drugs. There was a continuous interaction between the unit and the district detective units in Dublin city. John White was attached to Blanchardstown as a Detective Garda for a period after the break-up of the Technical Bureau Investigation Section in 1986. I assume that while he was attached to Blanchardstown he would have had contact with the Central Detective Unit. In any case shortly after my appointment to the Central Detective Unit I was contacted by John White. At this time the member was a uniformed Sergeant attached to the Donegal Division. He gave me to understand that he was operating an informant in North Dublin who was in a position to supply information on the movement of drugs and car thefts in Dublin city. He then began to supply information from the**

informant to my unit. Sergeant White would have visited my office at Harcourt Square on a number of occasions between December, 1994 and September, 1995. In September, 1995 I was appointed as Detective Chief Superintendent-in-Charge of the Garda National Drug Unit. Sergeant White continued to supply information from the same informant to the National Drug Unit. This continued until early 1996. The information supplied by Sergeant White over that period i.e. late 1994 to 1996 never resulted in a seizure of drugs of any description, or the arrest and charging of any persons with criminal offences. I had some reservations about the motivation of the informant and I dispensed with his services to the National Drug Unit in the early months of 1996. I informed Sergeant White of my decision and he accepted the situation. Over the period that Sergeant White was working the informant he would have travelled to Dublin and other locations in the country on a number of occasions to meet the informant or to develop the information. I was satisfied that Sergeant White was making a very genuine effort to provide good information and solve crime. He had a confidence in the informant that I did not share. Over the period that Sergeant White was working the informant and providing intelligence to the Central Detective Unit and the National Drug Unit I signed certifications that Sergeant White had attended at the offices in Harcourt Square on specific dates and was involved on confidential duties between specified times. This was normal procedure and I was satisfied that what I signed was correct and that the dates and times were accurate. I had been shown a typed list of times and dates that bears my signature by Assistant Commissioner Murphy, I recognise this as the certificate of times and dates of attendance for Sergeant White to which I already referred.

We have now quoted in full the notes taken by Deputy Howlin. The reference to stolen property is replicated in the document received by Deputy Higgins. Paragraphs 5 and 6 read:

Another matter which White was involved in was the planting of stolen property on suspects and as a result of this he had a huge amount of stolen property at his disposal. This property was not officially documented in official property books and this malpractice enabled him to have a huge amount of stolen property at his disposal. When he moved to the Donegal Division he moved a large amount of said stolen property with him and this was known by the authorities and indeed was a "running joke" among ordinary Gardaí. Taking all this reliable information into account it is felt that this investigation will be unsuccessful in establishing the true facts of the illegal activities of Detective Sergeant White and the only other alternative is a full and open public inquiry.

In essence, cutting away the rhetoric, the allegation against Detective Sergeant White is the possession of, and planting on suspects, of stolen property.

Prior to his transfer to Lifford, Co. Donegal, Detective Sergeant White, as we will recall, was stationed in Blanchardstown for the ten year period from the 31<sup>st</sup> of January, 1984 to the 21<sup>st</sup> of July, 1994. All of the available records relating to the recording of property coming into the possession of the Gardaí at Blanchardstown were recovered and examined by the Assistant Commissioner Murphy investigating team. They have also been examined by our investigators. All property which relates to Sergeant White was found, on examination, to be properly accounted for. There were a few discrepancies in respect of missing stolen property where the property book indicated the recovery of items but with no proper record of it having been restored to its owner, or otherwise disposed of in accordance with Garda Regulations on the handling of property. Oddly enough, all of this property could be regarded as having some connection with house renovation. This is a hobby not unfamiliar to members of An Garda Síochána. There were six items: a blue toolbox with assorted tools; a brown canvass bag containing tools; items of assorted tools; a spirit level; a steel metric ruler; and a yellow oilskin jacket. The amount of property involved is very small and there is no indication that any of it has any connection whatever with Detective Sergeant White. Detective Superintendent Brehony and Sergeant Corcoran met Detective Sergeant White in the company of his solicitor, Mr. Dorrian, in Letterkenny on the 10<sup>th</sup> of January, 2001 and brought with them the Blanchardstown property book. The relevant entries, to which I have referred, were gone through with him. He said that he dealt with such a large amount of property that he couldn't remember any individual amounts, such as the tools referred to. He referred to other Gardaí who may have dealt with the cases and attempted to identify the handwriting on the entries. He indicated he had no memory of any of these things. He indicated some entries which were in his handwriting. It would have to be expected that as a Detective Garda attached to Blanchardstown that he, in common with all the other Detective Gardaí, would make entries from time to time in the property book. Assistant Commissioner Carty indicated that he never had any dealings in relation to property with Sergeant White. The reference in Mr. Howlin's notes to a case with a "Ballymun connection" was disposed of by Assistant Commissioner Carty as follows:

**I can say I was never involved in any investigation with Sergeant White that had a "Ballymun connection". When I say investigation I include any matters connected with investigations such as the gathering of intelligence, prosecution in court or the giving of evidence.**

The final, unnumbered, paragraph of the document sent to Deputy Higgins reads as follows:

**It is known that White is in regular contact with Assistant Commissioner Hickey and has an eighteen page document**

**concerning his and other's activities whilst he was stationed in Dublin and this document, it appears, is his passport to escaping the rigours of the law and his way of frustrating the ongoing investigation.**

There are three matters there. On the 16<sup>th</sup> of November, 2000 Detective Sergeant White, in the presence of his solicitor, told Detective Superintendent Brehony and Sergeant Corcoran that over the past six years he had met Tony Hickey twice. He said that he had never worked for him and could not remember any telephone call from him in that time. He said that he certainly did not phone him. Assistant Commissioner Hickey in his statement makes the following comment on the final paragraph:

**I am not and never was in regular contact with Detective Sergeant White. In the Investigation Section between 1980 and 1983 our contact was minimal. Since then I have never telephoned Detective Sergeant White, he has never telephoned me. My only recollection of meeting with Detective Sergeant John White is while on official duty at Letterkenny Garda Station some time in the first half of 1997 when he was in the company of other members. Since 1983 I feel I did meet Detective Sergeant White on a few occasions informally (as I would similarly have met many other members) at some social occasions and once perhaps at a funeral. ... I have no knowledge of the existence or otherwise of any eighteen page document concerning Detective Sergeant White's activities or the activities of any other member while Detective Sergeant White was stationed in Dublin.**

Detective Sergeant White also said that from time to time he received messages, by way of a prank, from Detective Sergeant Pat Walsh in Dublin, which messages were to the effect that he should ring "Assistant Commissioner Hickey" and giving a mobile phone number. The mobile phone number was of his friend in Dublin and he always returned the phone call to him. Detective Sergeant Pat Walsh made a statement on the 10<sup>th</sup> of July, 2001 in which he said:

**I know Detective Sergeant John White since 1980 as he was attached to the Investigation Section, Garda Headquarters for a short period of time while I was there. He then went on transfer to Blanchardstown Garda Station. While in the Investigation Section he never actually worked on any investigation with me. I am aware that he went on transfer to the Donegal Division. During his time in Donegal he travelled to Dublin on duty and I would have met him on occasions. I would also have spoken to him by phone on and off. On occasions when I phoned Letterkenny Garda Station wishing to speak to Detective Sergeant White I left a message for him if he was not at the station. The nature of the message would be to phone Assistant Commissioner Tony Hickey, or Chief Superintendent Brian Garvey, Commissioner's Office. I always left my own mobile phone number so Detective**

**Sergeant White would know it was me who called. He always returned my calls ...**

As to the reference to the "eighteen page document" it is maybe a funny coincidence that on the 24<sup>th</sup> of March, 2000, prior to being arrested, Detective Sergeant John White made a sixteen page statement to Superintendent James Gallagher. At the moment, we cannot refer to any other information concerning any other document.

Finally, the document sent to Deputy Higgins alleges that the Carty investigation would be frustrated. As regards Detective Sergeant White one result of the Carty investigation was the bringing of prosecutions against him. This was following the submission of an enormous covering report, 10 volumes of statements and 25 volumes of appendices. When asked about this Assistant Commissioner Carty made the following comment:

**Since the commencement of my investigation in Donegal I have endeavoured at all times to investigate or cause to be investigated all allegations in a fair and open manner. All persons under investigation, Gardaí and members of the public were treated in the same manner and all legal powers were exhausted in an effort to discover the truth. The investigation disclosed that various parties involved pursued, and are continuing to pursue certain agendas. I have been criticised publicly and in the media by different parties or persons acting on their behalf at different times. I have absolutely no doubt that the allegations disclosed by Deputy Higgins and Deputy Howlin are made with malicious intent with the sole purpose of assassinating my character and good name. I find it most distasteful that elected public representatives have taken it upon themselves to destroy my reputation in a cowardly manner by hiding behind whatever legal privilege is afforded to them by their position in public life. I am quite prepared to stand in any forum with Mr. Higgins and Mr. Howlin and answer whatever allegations they wish to make as long as I am provided with the basic constitutional right of defending myself. At the moment my character and good name has been destroyed and I have not been allowed any opportunity to defend myself. I believe this is an orchestrated effort to destroy my good name. I say this because I know of at least two journalists with national newspapers who have been provided with copies of the same allegations as those produced by Deputy Higgins. I am also aware that other parties with an interest in the Donegal investigation have also been made aware of the allegations. I would ask that the current investigation examine this matter and ascertain by whom and for what reason was the national media and others were provided with the slanderous information. I am not aware of any reason why "a serving Detective Inspector in the D.M.A." should make such allegations about me. I request that the current investigation make whatever enquiries are necessary to identify this individual if he or she**



**does exist. In conclusion I repeat that I totally reject all of the allegations disclosed by Mr. Higgins as false and malicious and made with the sole reason of destroying my character and reputation. The allegations are now public knowledge. They are well known in Garda circles and in the media. This is a source of extreme worry and stress for me and my family.**

As against this reaction, there is nothing to suggest that persons involved in political life, or those working for them, might have anything to do with passing on the document, or information, to which we have referred, to the media. As Deputy Howlin said, and we feel we should remind you of it at this juncture, Sir, an important function of public representatives is to draw to the attention of the relevant authorities matters which other people might feel unable to complain of, for fear of being victimised, or other good reason. Finally, it would appear that the furnishing of the relevant document, be it worthwhile or worthless, we cannot say, gave very strong impetus to the setting up of this Tribunal.

On the 2<sup>nd</sup> of November, 2000 Assistant Commissioner Fachtna Murphy received a handwritten note from William George Flynn, Legal and Financial Investigator. This note simply read: "Dear Fachtna, Please contact me re. enclosure. Best regards, Billy." With this note, was a version of the document received by Deputy Higgins. The heading "Confidential ... confidential ... confidential" was missing from the top, and instead it was headed: "For the information of Mr. Jim Higgins, T.D.". The word "End" does not appear at the end of the document. The typeset, layout, and spacing between sentences differed substantially. This possibly can be accounted for on the basis that the document had been put through a scanner or was sent by e-mail from a computer using one word processing package to another using a different system. Another difference is that whereas the original document sent to Deputy Higgins refers to "tramped up" evidence, in the document sent by Mr. Flynn it says "trumped up evidence". This phrase appears in inverted commas in the document sent to Mr. Higgins.

Detective Superintendent Brehony and Sergeant Corcoran interviewed Mr. Flynn on the 7<sup>th</sup> of November, 2000 at his home. Some of that conversation concerned the conviction of Mr. Flynn in the District Court in Donegal on the 7<sup>th</sup> of July, 1998 on a charge of making an abusive telephone call to Mrs. Rosaleen White, the wife of Detective Sergeant John White. Mr. Flynn, they record, indicated that his motivation in making contact with Assistant Commissioner Murphy was in an effort to enlist the help of senior management in An Garda Síochána in having that conviction lifted. At that meeting, he handed over a letter dated the 11<sup>th</sup> of October, 2000 to Mr. Brendan Howlin, T.D., which he said he had sent, but which he alleged that Mr. Howlin had not responded to. Mr. Flynn stated his belief that the author of the document was a retired Garda who had come to his house with Mr. Frank McBrearty, Snr. Mr. Flynn also indicated that he personally had no evidence or first hand knowledge of the allegations made in the document. Mr. Flynn was then interviewed on two further occasions, on the 14<sup>th</sup> of May, 2001 and on the 7<sup>th</sup> of June, 2001. The fax document received by

Mr. Higgins, and the document as retyped by his secretary, were produced to him together with the document which he furnished to Assistant Commissioner Murphy by post.

In the course of the later interview of the 7<sup>th</sup> of June, 2001 Mr. Flynn dictated a memorandum to his daughter Jacqueline, who typed it. This memorandum outlined Mr. Flynn's account of what transpired at the alleged meeting in his house on 7<sup>th</sup> March, 2000, at which the retired member of the Gardaí allegedly made allegations against Det./Sgt. White, Assistant Commissioner Hickey and Assistant Commissioner Carty. A copy of that memorandum was handed over to interviewing Gardaí at the conclusion of the meeting. On the 14<sup>th</sup> of September, 2000 members of the Assistant Commissioner Murphy investigating team had called to the home of Mr. P.J. Togher, a retired Garda who had served in Donegal. He referred to the statement which he had made on the 5<sup>th</sup> of July, 2000 to Superintendent Jim Gallagher and said that this was his last and final statement. He indicated that his wife was a nurse and was trying to sleep and that because of this, and family business, he did not wish to meet with the interviewing Gardaí, as indeed was his right. The letter of the 5<sup>th</sup> of July, 2000 indicated Mr. Togher's concern that on the 4<sup>th</sup> of July, 2000 two members of the internal investigation team had called to his dwelling without making an appointment beforehand first. He claimed that this was the third such unannounced visit to his place of residence. In the letter of the 5<sup>th</sup> of July, 2000, he says:

**I would like to put on record for the final time, that I have absolutely nothing to offer any member's of this or any other investigation team. I served 30 years and 30 days in An Garda Síochána retiring on the 31<sup>st</sup> of October, 1998 and during those years I carried out my duties without fear, favour, malice or ill-will. I have never had any arguments with anyone of officer rank, differences of opinion maybe, properly talked through and concluded without malice. I have served under many persons of officer rank, including the present Chief Superintendent Denis Fitzpatrick, Superintendent Kevin Lennon and your good self and I wish to say that I have never had any reason to have other than the highest regard for theirs or any other officer's integrity whilst I served under them.**

The letter goes on to indicate that on only one occasion while serving as a member of An Garda Síochána did he ever encounter an explosive device being worked on. He also says that: "As regards to any documentation of any description which refers to or bears semblance to this or any other investigation, I have no knowledge of, none whatsoever". He then writes of his high opinion of Mr. McBrearty, Snr. and of a request in August of 1998 from Mr. McBrearty's solicitor to Mr. Togher to furnish a statement outlining his dealings with Mr. McBrearty during the past 20 years. This statement was furnished, Mr. Togher says, as a character reference in relation to summary proceedings against Mr. McBrearty in the District Court. He then complains about what he took to be observation of him by Gardaí on the 14<sup>th</sup> of May, 2000. He says:

**I am now involved in the running of an family business, I have no intention of speaking to anybody concerning any investigation within or without the Garda Síochána, I have nothing whatsoever to offer and I now request that members of any outside investigation team are put on notice that (i) I do not wish to speak to them and (ii) I do not wish them calling to or annoying my family or myself in the future. If I can be of any assistance to your Divisional/District Force on matters non-relative to internal investigations, please do not hesitate to call upon me.**

It is now necessary to return to the memorandum prepared by Mr. Flynn in the presence of members of the investigation team on the 7<sup>th</sup> of June, 2001. The memorandum claims that Mark McConnell, Frank McBrearty, Jnr., Frank McBrearty, Snr., and Mr. Togher, misspelt as “Tougher” in the original memorandum, met with Mr. Flynn at his house on returning from what he claims that they claimed was a meeting in Leinster House with Deputy Jim Higgins. Mr. Flynn claims in the memorandum to have a vivid recollection of what was discussed. And it is better to quote the relevant sections of the document rather than attempt a paraphrase:

**The meeting lasted about three hours during which time a number of matters were discussed. I can remember vividly the following been discussed.**

- (a) That Detective Sergeant John White planted evidence and framed people, the latter was alleged by Mr. Tougher who went on to discuss John White’s expenses and went into some detail in connection with same, i.e. he was alleging that Detective Sergeant John White literally got away with murder within the Garda Force in relation to expenses, because his connections with Assistant Commissioner Tony Hickey and Assistant Commissioner Kevin Carty ....**
- (b) Mr. Tougher alleged that Sergeant White stayed at Tony Hickey’s house in Maynooth when Sergeant White was investigating me, up to that time I never knew or still do not know whether Tony Hickey lives in Maynooth ...**
- (c) The discussion moved on to a garage or warehouse that Sergeant White owned near the boarder which Mr. Tougher alleged contained stolen goods ... Mr. Tougher then alleged that a number of garda from Ballybofey had made representations to Chief Superintendent Denis Fitzpatrick that they did not wish to work along with Mr. White because he framed people.**

Mr. Flynn then claims that an allegation was also made by Mr. Togher against another senior officer. This allegation, however, has not found its way into the communications to Deputy Higgins or to Deputy Howlin. The memorandum then goes on:

- (d) **A general discussion took place re. Ban Garda Fowley. Mr. Tougher alleged that she was very badly treated and that her husband's phone had been interfered with and that her husband would be taking legal action against Fitzpatrick. He mentioned victimization of Ms. Fowley.**

I stop there to mention that Garda Martina Fowley was not married and therefore did not have a husband, with or without a phone, at the relevant time. The document continues:

- (e) **Mr. Tougher reverted back to the relationship of Sergeant White and senior members of the Garda Force in particular Tony Hickey and because of same, that he was able to fraudulently obtain astronomical expenses. I should mention that in the months proceeding this attendance and indeed within weeks of Mr. Carty's appointment, Mr. McBrearty had contacted me and alleged that he was informed by Garda sources that Sergeant White had something on Assistant Commissioner Carty which would prevent Assistant Commissioner Carty from carrying out his duties. Further references and repeated references were made to Sergeant White was used to plant evidence and fit people up with the knowledge of Kevin Carty and Tony Hickey ...**

**Mr. Tougher and I discussed Sergeant White and Mr. Tougher alleged that the Gardaí could be facing a disaster situation, there was another word used which suggested or implied that individuals who were framed by White would be queuing up to have their convictions set aside and that it would cost the state millions. Mr. Tougher informed me that my phones were most likely taped and would not give me his phone number or address or to contact him in any way ...**

On Sunday the 2<sup>nd</sup> of July, 2000 an article was published in the Sunday Business Post under the headline "Opposition T.D.s meet Minister over Garda corruption claim". This was written by Mr. Frank Connolly. He was interviewed by members of the investigating team on the 7<sup>th</sup> of July, 2000. He said that he became aware on the 30<sup>th</sup> of June, 2000 of the information being provided to the Minister for Justice regarding allegations made by a Garda in Co. Donegal. He said that he subsequently obtained a copy of a typed document comprising one and a half pages which indeed is the length of the original fax sent to Mr. Higgins. Mr. Connolly did not disclose his source but he said that the article was written by him based on the document. He would not supply a copy of the document to the investigating officers due to a commitment to his source. On the 9<sup>th</sup> of July, 2000 and the 30<sup>th</sup> of July, 2000 three articles appeared in the Sunday Times newspaper written by Mr. John Mooney. These referred to similar allegations. Mr. Mooney was interviewed on the 8<sup>th</sup> of August, 2000 and again refused to disclose his source.

Mr. Mooney was interviewed on a number of other occasions. He explained to the Gardaí that by reason of his commitment to his profession, as exemplified in his membership of the National Union of Journalists, that he was precluded from ever revealing a confidential source. Further articles, apparently written by him, were put to him. These included a number of articles which appeared to concern this matter. He accepted his authorship. He claimed to have seen the fax document sent to Mr. Higgins prior to his receiving it. The Gardaí had not shown to him any of the copies which they had of this fax. Nonetheless, he was able to give a description of it. At his meeting with the Gardaí on the 28<sup>th</sup> of May, 2002 he alleged that the document was a forgery and further claimed that it was generated in order to collapse, as he put it, the corruption investigation of Assistant Commissioner Carty and to ensure that he would not be replaced by Assistant Commissioner Hickey if the document had its desired effect. On the 17<sup>th</sup> of July, 2002 Mr. Mooney was met in formal circumstances, in the sense that his solicitor was present, by members of Assistant Commissioner Murphy's investigation team. He indicated that he had been shown the fax document from his confidential source and made a comment about the use to which it might be put in civil proceedings. Mr. Mooney stated that he began to have doubts about the authenticity of the document when he checked what was in it with his other confidential sources.

Sir, these reports as to what other unidentified people have said do not get us any further. They merely add yet another layer of suspicion to those which might already be felt on an objective reading of the fax document. It is also right that we point out at this juncture that numerous efforts were made by the Gardaí to meet with and discuss the matter of the fax with the McBrearty family. These were unsuccessful. On the 12<sup>th</sup> of February, 2002 Assistant Commissioner Murphy wrote to the solicitor then acting for the McBrearty family. The response to a request for assistance on this issue was a personal letter from Mr. McBrearty, Snr. In part this reads:

**I now wish to put the Commissioner of An Garda Síochána and his subordinates on notice from this date, 28<sup>th</sup> February, 2002 that I or my family, friends or employees, Mr. Murphy, that are (a) Witnesses (b) Plaintiffs or (c) any other person being called to give evidence in our forthcoming cases are not to be approached again on matters appertaining to the "McBrearty Affair". My co-operation with the Garda Síochána has dramatically changed from the announcement of a Tribunal of Enquiry on the 12<sup>th</sup> February, 2002. Any divergence from these instructions will be prevented, by the seeking of court injunctions, by consultation with my legal team, in order to ensure the protection of these witnesses.**

Assistant Commissioner Murphy wrote seeking clarification of this matter from Mr. McBrearty's then solicitors who ultimately replied on the 8<sup>th</sup> May, 2002 that they no longer acted for Mr. McBrearty "or for the retired Garda who is assisting him". Later communications to Mr. McBrearty's new solicitors were rebuffed in similar tone.

It was of course important that Mr. Togher should have the opportunity to answer what is alleged in the memorandum dictated by Mr. Flynn. On the 15<sup>th</sup> of January, 2002 the investigating officers met with Mr. Togher at his home. He was advised of the nature of the enquiries and copies of the document were produced to him. This is a quote from the investigating officers report:

**He stated that his last statement to Superintendent Jim Gallagher was made in July, 2000 ... and that he had nothing further to offer. He also stated that he had good regard for Sergeant White, never had any difficulty with him and never made any complaint to any person about John White. He did confirm that a meeting took place at the home of William Flynn attended by himself together with Frank McBrearty, Snr., Frank McBrearty, Jnr., Mark McConnell and a niece of Mr. McBrearty, Snr. He said the meeting took place while on a return trip from Dublin to Donegal after a meeting with ... [solicitor and counsel]. He further stated that he had no knowledge of the contents of the facsimile documents produced and that he had never seen them before. He suggested that the documents looked like something which came from Mr. William Flynn himself. He confirmed that while he knew Jim Higgins, T.D., he denied that he was the source of the information or the sender of the questioned facsimile message to Mr. Higgins, T.D. Similarly he stated that he had not contacted Mr. Brendan Howlin, T.D. on the matter. He declined to make a further statement.**

There was also further contact with Mr. William Flynn who claimed, in a telephone conversation on the 15<sup>th</sup> February, 2002 that he had written to the Attorney General. He claimed to have advised the Attorney General of what he alleged to have been the involvement of Mr. Togher in what he called the events surrounding the facsimile document passed to the Minister. He undertook to forward a copy of that letter to Assistant Commissioner Murphy. I would have to say, Sir, that such a document was received within the last few days. He also indicated a reluctance to speak further to the Gardaí by saying that he had no intention of making any statement and that he did not wish to have any further contact, as he put it, with any member of An Garda Síochána.

We must mention, in passing, that Assistant Commissioner Murphy's investigation team also spoke to a solicitor in Donegal who stated his belief as to who the source of the document in question was. That solicitor was challenged by the serving Garda officer in question and he denied that he had ever made such a comment. We do not suggest to you, Sir, that you should pursue this matter. Instead, having outlined the material that may be the focus of your enquiries, it may be helpful to refer to a number of matters:

1. The formulation of the document sent to Deputy Higgins sets out to make a show of its own importance. It refers to "confidential

information”; it claims that this has come from “a serving Detective Inspector of An Garda Síochána attached to a station in the D.M.A.”; it refers to “a fear among members of the investigation team”; it says of itself that it is presenting “reliable information”; and it makes an apparently public spirited call for “a full and open public inquiry”. Similarly, the information noted by Mr. Howlin refers to the fact that “serious information “had been brought to “the attention of the source”; it makes an allegation of “blackmail”; it refers to “dirty work”; and it claims that the informant has a “real concern”. The amount of information contained in the document is, however, at a minimal level.

2. In making an application on behalf of Mr. Howlin, Mr. Richard Humphries, Barrister said:

**Finally, I would say insofar as you have dealt with paragraph (h) and you say you will enquire into it generally to see was there a basis to it, so I suppose insofar as there was the potential for an inquiry into the basis for it, there is a potential for comment on the appropriateness of passing on the information, so to that extent there is potential for prejudice in relation to Deputy Howlin.**

Mr. Niall Mooney, B.L., in making an application for representation on behalf of Mr. Jim Higgins said:

**I would piggyback along the back of the comments of my friend, Mr. Humphries but I would also say to you that at the time that Mr. Higgins became involved in this matter, he was at the time a public representative and he was at the time spokesman for Justice, Equality and Law Reform for this particular Party and he did get involved in this matter in that context. I would say that any finding that you, Mr. Chairman, may make in respect of paragraph (h) of your Terms of Reference could seriously affect Mr. Higgins in his good name and reputation, as it were, after the publication of the report.**

3. You have indicated, Sir, that you intend to enquire into paragraph (h). The result of that is that there will be a full public inquiry in relation to matters which, as regards the police force of any country, could not be more serious. What evidence is there in support of those allegations? If there is none, were they made maliciously?
4. A question may arise as to whether a privilege attaches to communications making allegations on matters of public interest to public representatives. If such a privilege exists, and that is a matter which may need to be argued out before you, Sir, it can only enure to the benefit of the public representative and not to any other person used as a conduit for the allegations. I remind you, Sir, that Oonagh McPhillips, Private Secretary to the Minister for Justice, noted Deputy Higgins as stating that “his Garda source was willing to

cooperate with a Garda inquiry, but not with the media". Notwithstanding this, it would appear that the document has been circulated to the media. For all we know, Sir, the source may be in a position to supply better information than the broad brushstrokes painted in the allegations which he or she has made. The cooperation of this person would therefore be welcome. As you have indicated that there must be an inquiry into the matter, Sir, we feel obliged to call forward all relevant evidence for your assistance. Since the source claims to have the best knowledge of these allegations we will use every endeavour legally available to us to also call the source.

Sir, this constitutes our preliminary opening statement to the Tribunal.