



# 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 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)



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

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**Mr. Justice Frederick Morris**

25<sup>th</sup> April, 2006

**Re: Tribunal of Inquiry set up pursuant to the Tribunal of Inquiry (Evidence) Acts, 1921 - 2002 into certain Gardai in the Donegal Division.**

Dear Minister,

I enclose herewith my Report in respect of Term of Reference (i). This is in respect of:-

- (i) Inquiry into the circumstances surrounding the arrest and detention of seven persons at Burnfoot, Co. Donegal on the 23<sup>rd</sup> May, 1998 and the investigation relating thereto.

On the 1<sup>st</sup> March, 2006 the Tribunal wrote to Inspector Downey, the Garda Liaison Officer to the Tribunal, with a view to ascertaining whether it was reasonably possible or reasonably probable that criminal proceedings might be brought arising out of the circumstances which are the subject matter of this Module. On the 24<sup>th</sup> April, 2006, the Tribunal received an answer from Chief Superintendent Terry McGinn. I enclose a copy of this correspondence.

In relation to the three incidents identified in Chief Superintendent McGinn's reply, the following is my view which you may find of assistance:

1. The trial of D/Sergeant John White in respect of possession of a firearm at Burnfoot on the 21<sup>st</sup> May, 1998 has been the subject matter of a hearing at the Tribunal. My Report makes findings in relation to this incident. The hearing has been held in circumstances which prohibit publication of the evidence. My Report is being delivered to you in circumstances of complete confidentiality. It is my view that the publication of this Report would prejudice D/Sergeant White in his defence at his pending trial.
2. It is my view that nothing in the Report would prejudice those involved in the preservation of the scene at Gortahork. It is to be noted that the direction of the D.P.P. is issued and it is not intended to prosecute those involved.

3. My Report deals extensively with the circumstances surrounding the arrest and detention of the seven persons at Burnfoot on the 23<sup>rd</sup> May, 1998. It makes findings in relation to these arrests which, if published, would in my view prejudice the defence of those persons in relation to any prosecution which may be taken against them.

Yours faithfully,



---

Frederick Morris.  
Chairman of the Tribunal.

Michael McDowell, Esq., S.C.,  
Minister for Justice, Equality and Law Reform  
Dept. of Justice, Equality and Law Reform  
94, St. Stephen's Green,  
Dublin, 2.



# An Garda Síochána

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**PRIVATE & CONFIDENTIAL**

**MORRIS TRIBUNAL 24<sup>TH</sup> APRIL 2006**

**25 APR 2006**

**Mr Hugh Dockry,  
Solicitor to the Tribunal of Inquiry,  
Belfield Office Park,  
Beaver Row,  
Clonskeagh,  
Dublin 4.**

**Re: Tribunal of Inquiry into complaints concerning some Gardaí in Donegal.  
Burnfoot Module - Actual or Potential Criminal Proceedings.**

I refer to your correspondence dated the 17<sup>th</sup> January and 13<sup>th</sup> February 2006 in respect of the above caption.

The following matters pertaining to the relevant Module has been investigated, and the current position with each investigation is set out hereunder:

No.	Investigation	Current Position:
1.	Possession of Firearm at Burnfoot on 21 <sup>st</sup> May 1998 by D/Sergeant John White.	Criminal Trial Pending.
2.	Preservation of Scene at Gortahork, Ballybofey by Gardaí Vincent Burke and Michael O'Grady.	DPP Directions issued - No Prosecution.
3.	Circumstances surrounding the Arrest and Detention of 7 persons at Burnfoot, Co. Donegal on the 23 <sup>rd</sup> May 1998.	Investigation on going.

Should there be any developments in any of the above investigations, I will inform you without delay.

Is mise le meas,

  
**TERRY MCGINN**  
**CHIEF SUPERINTENDENT.**

*- Is é Mísean An Gharda Síochána*

An leibhéal insroichte is airead a bhaint amach maidir le Cosaint Phearsanta, Tiomantas don Phobal agus Stándáil Stáit

*Mission Statement*

To achieve the highest attainable level of Personal Protection, Community Commitment and State Security

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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**Sole Member**  
**The Honourable Mr. Justice Frederick Morris**

My Ref: MT/GDA/MCG010-01/HD/ES  
Your Ref:

If telephoning please ask for:-

Wednesday, 01 March 2006

**PRIVATE AND CONFIDENTIAL**  
**STRICTLY ADDRESSEE ONLY**

Inspector Declan P. Downey  
Liaison Officer  
Garda Liaison Office  
c/o Morris Tribunal  
Belfield Office Park  
Beaver Row  
Clonskeagh  
Dublin 4

**Re: Module: Term of Reference (i) - Inquiry into the circumstances surrounding the arrest and detention of seven persons at Burnfoot, Co. Donegal on 23rd May, 1998 and the investigation relating thereto.**

Dear Inspector Downey,

We refer to **paragraph (i)** of the **Tribunal's Terms of Reference** which reads as follows:

***"[That the Tribunal shall inquire urgently into] The circumstances surrounding the arrest and detention of seven persons at Burnfoot, County Donegal on 23rd May, 1998 and the investigation relating thereto".***

As you are aware, this Tribunal is governed by the **Tribunal of Inquiry (Evidence) Acts, 1921 – 2002**. **Section 3** of the **Tribunal of Inquiry (Evidence) Act, 2002** reads as follows:

***"(1) If, on receipt by the person to whom a tribunal is required, by the instrument by which it is appointed or any instrument amending it, to report of an interim or the final report of the tribunal, that person considers that the publication of the report might prejudice any criminal proceedings, that person may apply to the Court for directions regarding the publication of the report.***

Solicitor to the Tribunal: Hugh Dockry, B.A. Dip LS, AFL. Registrar to the Tribunal: Brendan O'Donnell

**(2) Before the Court determines an application under subsection (1), it shall direct that notice of it be given to—**

**(a) the Attorney General,**

**(b) the Director of Public Prosecutions, and**

**(c) a person who is a defendant in criminal proceedings relating to an act or omission that—**

**(i) is described or mentioned in the report concerned, or**

**(ii) is related to any matter into which the tribunal concerned inquired and which is so described or mentioned,**

**and the Court may receive submissions, and evidence tendered, by or on behalf of any such person.**

**(3) On an application under subsection (1) the Court may, if it considers that the publication of the report concerned might prejudice any criminal proceedings, direct that the report or a specified part of it be not published —**

**(a) for a specified period, or**

**(b) until the Court otherwise directs.**

**(4) An application under subsection (1) may be heard otherwise than in public if the Court considers that it is appropriate to do so.”**


In the event that the Tribunal is in a position to furnish a report to the Minister within the next couple of weeks, it is important that we should be informed as to the reasonable likelihood of criminal proceedings being brought concerning the subject matters of **paragraph (i)** as set out above. You are in a unique position, having attended most of the public sittings of the Tribunal and having acted in a most helpful way as Liaison Officer between An Garda Síochána and the Tribunal, to assist us in this regard. We would therefore ask you to make inquiries as to whether it is reasonably likely or reasonably probable that criminal proceedings might be brought at this juncture arising out of the circumstances that are the subject matter of this module.



Thank you for your ever helpful assistance and that of your Garda colleagues at the Garda Liaison Office.

We await hearing from you in due course.

Yours sincerely,

  
\_\_\_\_\_  
Hugh Dockry  
Solicitor to the Tribunal



**PARAGRAPH (i) of the  
TERMS of REFERENCE**

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

Paragraph (i) of the Terms of Reference requires the  
Tribunal to urgently enquire into and report on:

The circumstances surrounding the arrest and  
detention of seven persons at Burnfoot, County  
Donegal on the 23rd May 1998 and the  
investigation relating thereto.

## NOTE TO THE READER

The reader will please note the following:

1. Quotations from the transcript are designated by a bold indented italic.
2. Quotations from documents are boxed and grammatical errors have not been corrected.
3. Particularly important conclusions of the Tribunal are printed in a different colour.
4. Transcript quotes may have been slightly corrected as to punctuation.
5. In the Report, members of An Garda Síochána are referred to by the rank that they held when giving evidence where their testimony is quoted or referred to, and by the rank they held at the time of events referred to.



## CHAPTER 1 OVERVIEW AND INTRODUCTION

### Background

- 1.01. This is the fifth report of the Tribunal of Inquiry set up by Dáil and Seanad Éireann pursuant to the resolution of the 28th of May 2002. The first report of the Tribunal, concerning hoax explosives finds in Donegal in the years 1993 and 1994, was published in July of 2004. The second report of the Tribunal, dealing with the Garda investigation into the death of the Late Richard Barron in October 1996 and the subsequent extortion calls to Michael and Charlotte Peoples, was published in June of 2005. In its third report, the Tribunal set out the results of its inquiry into allegations made by Bernard Conlon that he had acted as an agent of An Garda Síochána in being found after hours on the premises of Mr. Frank McBrearty senior at Raphoe, County Donegal on the 31st of August 1997. Mr. Conlon further alleged that he had been put up to making a false statement and that he had been threatened on the 20th of July 1998 by Mark McConnell and Michael Peoples with a silver coloured bullet in an alleged attempt to prevent him from giving evidence at the licensing prosecution of Mr. McBrearty and others in respect of the earlier incident. The fourth report of the Tribunal dealt with the finding of a hoax explosive device on a telecommunications mast at Alt na gCappaill, Ardara, County Donegal in November of 1996, within the context of an investigation into arson which was then ongoing. This fifth report of the Tribunal concerns the alleged planting of a firearm in order to effect multiple arrests in May 1998.
- 1.02. The Tribunal commenced hearings in relation to paragraph (i) of its Terms of Reference, i.e. the 'Burnfoot' module, on Monday, the 28th of November 2005. As criminal proceedings that related to the subject matter of the module were in existence at that time, the Tribunal determined to conduct its hearings in private, as contemplated by section 2(a) of the Tribunals of Inquiry (Evidence) Act, 1921, as amended. The Tribunal heard evidence over a total of 39 days. Final written submissions were received between the 21st and the 23rd of March 2006.

### Purpose

- 1.03. The purpose of this section is to provide the reader with a road map through the report. Although this report is by no means as lengthy or as detailed as the first or second reports of the Tribunal, nonetheless a guideline as to the facts at issue and the circumstances giving rise to its inception is essential to a proper understanding of same.
- 1.04. It might be thought that the report which the Tribunal is now making to the

Minister for Justice, Equality and Law Reform are, in some way, an adjunct to its first and second reports. This report is of considerable importance in itself. It deals with allegations as to the planting of a firearm for illegal purposes of arrest and an alleged cover-up of frightening dimensions.

### **The Core Allegation**

- 1.05. This document reports on the allegation that members of the Detective Branch of An Garda Síochána deliberately planted a weapon at a campsite of the Irish Traveller Community on Friday, the 22nd of May 1998. This was done, it is alleged, with a view to ensuring that a search that was then planned, and in respect of which warrants were issued under section 29 of the Offences Against the State Act, 1939, for the following day, would be successful. In reality, the finding of such a weapon meant that an arrest under section 30 of the Offences Against the State Act, 1939 could be justified. If it be the case that members of An Garda Síochána were prepared to go to the length of securing a firearm recovered in the course of other operations, and planting it on innocent individuals so that they could be arrested and interrogated in respect of an unrelated matter, the implications are shocking.
- 1.06. In the aftermath of these events, one might suspect that had such an outrageous breach of the law occurred, never mind proper police procedures, the commission of same would have been left concealed. As the reader proceeds through this narrative he or she will realise that this is not what occurred. It took some years for anyone to come forward and to allege disgraceful Garda conduct to secure the arrest of seven innocent members of the Irish Traveller Community. When, however, the allegations were made, other members of An Garda Síochána, who are named in this report, and who had no actual knowledge or evidence as to the veracity or otherwise of the allegations, entered into a disgraceful conspiracy to pervert the course of justice by attempting to rubbish the allegations. This was done by sullyng the facts relevant to the original offence with incomprehensible nonsense designed to construct an unreal defence for a person, namely Detective Sergeant John White, then facing a criminal charge, and to lead the Garda authorities, the criminal courts, and this Tribunal astray.
- 1.07. This Tribunal has no intention of being misled into issuing any false report. Instead, it intends to report on the facts as it has found them to be after peeling away the layers of deception that have been falsely laid over an essentially simple, but repulsive, series of events.
- 1.08. The Tribunal was presented with a story, which was told by Detective Garda Kilcoyne, a member of the Detective Branch in Letterkenny, which if true meant

that Detective Sergeant John White, an able and energetic member of the Detective Branch, in order to ensure that some members of the Traveller Community were detained for a sufficient length of time to enable what he saw as a proper investigation to be carried out into the possible involvement of these people in a murder committed in Co. Mayo, deliberately planted a firearm in close proximity to their campsite so that it would be found during a search which was then planned by the Gardaí. This would enable the relevant provisions of the Offences Against the State Act to be invoked and would justify the detention of these persons over an extended period, during which a prolonged interrogation could be carried out. This would not be possible unless the provisions of the Offences Against the State Act applied to their arrest. Detective Garda Kilcoyne gave evidence of the manner in which he came under the influence of Detective Sergeant White and came to respect him and his ways of conducting Garda business and accordingly acquiesced in the planting of the firearm. With the passage of time, he says that he realised the injustice that had been visited on the members of the Traveller Community who had been arrested and this impacted upon his conscience. He accepted that he had a duty to reveal the truth and, as he claims, duly did so. For his part, Detective Sergeant John White denies all of Detective Garda Kilcoyne's allegations. He claims they were false. He goes further and claims that they are part of a conspiracy by the management of An Garda Síochána to bring him down and to discredit him. The Tribunal has called all of the relevant evidence as to this alleged conspiracy. Those allegedly conspiring include those who interrogated Detective Garda Kilcoyne. They are supposed, the conspiracy theory goes, to have inspired Detective Garda Kilcoyne to spontaneously admit a very serious criminal offence: namely, that he and Detective Sergeant White illegally planted a firearm to construct a false arrest. On the face of it, such a conspiracy is most unlikely. The Tribunal is satisfied that it never existed. The matters to be reported herein are ones of ordinary credibility.

### **Terms of Reference**

1.09. I now turn to Paragraph (i) of the Terms of Reference. That paragraph requires this Tribunal to urgently report on:

- |   |
|---|
| (i) the circumstances surrounding the arrest and detention of seven persons at Burnfoot, County Donegal on 23rd May, 1998 and the investigation relating thereto. |
|---|

In defining this paragraph of the Terms of Reference on the 15th of July, 2002 in accordance with the duty cast on the Chairman of a Tribunal by the Supreme Court as to this matter, I explained the following:



*The information available to the Tribunal indicates that at 08.00 a.m. on Saturday, 23rd May, 1998, a search of property, namely a Traveller's encampment, was carried out by members of An Garda Síochána on foot of search warrants. This search, or the searches, was or were carried out on the apparent basis that there were reasonable grounds for the Gardaí to believe that the persons occupying the relevant place were in possession of a firearm. The grounds for the belief were said to have been based on "confidential information". A firearm and ammunition were apparently found in a shed on the property searched. Seven persons were subsequently arrested and detained.*

*The Tribunal will, in the first instance, seek to establish the facts in this case and consider the accuracy of the matters set out above. The Tribunal will*

- (i) Enquire into and ascertain the facts in relation to the above matters;*
- (ii) Enquire into and establish the identities of those said to have been arrested and detained at Burnfoot on the 23rd of May, 1998;*
- (iii) Enquire into and establish the circumstances in which it was found appropriate or necessary to search the area of Burnfoot, Co. Donegal on or about the 23rd of May, 1998;*
- (iv) Enquire into and establish the grounds and/or material relied upon as the basis for an application made for the issuing of a search warrant or warrants for the purposes of searching an area of Burnfoot, Co. Donegal in or about May, 1998;*
- (v) Enquire into and establish whether the search and/or searches alleged to have occurred at Burnfoot, Co. Donegal in May, 1998 were related to some other investigation;*
- (vi) Enquire into and establish the extent to which the search and/or searches at Burnfoot, Co. Donegal were planned in advance;*
- (vii) Enquire as to whether any conference of members of An Garda Síochána was held prior to the said search or searches at Burnfoot, Co. Donegal;*

- (viii) *Enquire into whether it was determined that on a planned and pre-arranged basis members of An Garda Síochána should arrest and detain certain individuals with a view to having them questioned in relation to the finding of any material or any other matter and, if so, enquire into the circumstances in which and the reasons for which such a determination was made;*
- (ix) *Enquire as to whether there exist within the Garda Síochána any standards, practices or procedures applicable to the making of a determination in the course of an investigation to arrest and detain by pre-arrangement persons suspected in relation to a matter under investigation, whether in the course of a search or otherwise and, if so, whether there exist any or any adequate safeguards against any potential errors in the decision-making process or misuse of power whether accidental or deliberate;*
- (x) *Consider whether members of An Garda Síochána when making the arrests acted reasonably and in good faith;*
- (xi) *Enquire into whether particular persons became the focus of unfounded or unreasonable suspicion and, if so, how and why this occurred;*
- (xii) *Enquire whether in directing and/or making arrests members of An Garda Síochána proceeded with the arrests only when satisfied that in respect of each arrested person their suspicions were reasonable and/or that they exercised all appropriate care, caution and diligence in deciding to make an arrest with due regard to the presumption of innocence attaching to such persons and their right to fairness of procedures;*
- (xiii) *Enquire into all aspects of the arrests and detentions including the extensions of custody carried out in the course of the investigation;*
- (xiv) *Enquire into the information available and the circumstances which led to the search;*
- (xv) *Enquire into the circumstances in which the firearm allegedly came to be on the property;*

*(xvi) Enquire into the role of the members of An Garda Síochána who searched the property and their relationship (if any) to the firearms apparently found on the property;*

*(xvii) Enquire into the treatment of the persons arrested;*

*(xviii) Enquire into the connection (if any) between arrests relating to this Term of Reference and any other of the Terms of Reference;*

*(xix) Enquire into the handling of informants and the information received (if any) in relation to the events that are the subject matter of this Term of Reference and in that regard the procedure and approach set out at Paragraph (B)(3) of the Terms of Reference will be applied.*

### **Gardaí Involved**

- 1.10. In order to understand this aspect of the Tribunal's enquiries it is necessary to go back in time and to give some background information on the two persons who are likely to be the central witnesses concerned.
- 1.11. Detective Garda Thomas J. Kilcoyne joined An Garda Síochána in September 1983. After initial training he came to Donegal and was first stationed in Lifford, where he was engaged in ordinary policing work. In various statements made to the Carty investigating team, he seeks to indicate that the kind of police work he was engaged in initially was of a mundane variety. He portrays himself as a somewhat naive individual and claims to have had little investigative experience prior to his appointment as a detective in Letterkenny in April 1997. The Tribunal is not prepared to accept that Detective Garda Kilcoyne was without the practical experience and expertise that one would have expected him to have acquired during his service in An Garda Síochána.
- 1.12. Detective Sergeant John White comes from Bansha in Co. Tipperary. He joined An Garda Síochána in 1974 and was allocated to Ballybofey on completion of his training. He moved to Castlefin in 1978 and was then stationed in Graiguenamanagh, Co. Kilkenny, in 1979. In 1980 he was appointed to the Investigation Section of the Technical Bureau. In 1983 he served at the Central Detective Unit and with the Detective Unit in Kilmainham. In 1984 he was assigned as a Detective Garda in Blanchardstown where he served for ten years until he was transferred to Lifford in 1994. In 1995 he was promoted to the rank of sergeant and allocated to An Charraig. In January 1997, he was allocated to Raphoe and in August of that year he was allocated to detective duties in

Letterkenny. A conclusion might fairly be reached, from the relative profiles of these two individuals, that John White, in terms of his duties within An Garda Síochána, and in particular his experience of working within the city of Dublin, was by far the more experienced of these two officers.

- 1.13. When, in 1994, John White came from working in Blanchardstown to Lifford he first met Garda Thomas Kilcoyne. Detective Garda White had built a house in Ballybofey because, as he said, his wife was from that area. At that time, apparently, a matter unrelated to the work of the Tribunal was being investigated. This is an allegation of fraud against a man from Castlefin. In a statement made on the 13th of June, 2001 Detective Garda Thomas Kilcoyne indicated that the interaction on this matter between himself and Detective Garda White impressed him. He was told that Detective Garda White had been a member of the Murder Squad, prior to it being disbanded, and had worked with the former Chief Superintendent John Courtney. The witness statement of Detective Garda Kilcoyne reads in part:

I was totally inexperienced and John White taught me how to conduct an investigation. He told me how to dress, to wear shirt and tie and proper shoes ... He taught me how to take proper witness statements. He took all the statements. I learned from his thoroughness, his patience and his attention to detail.

- 1.14. In his evidence, Detective Garda Kilcoyne expanded on the concept that he looked up to, and expected to learn from, Detective Garda John White. As the Tribunal understands the evidence of Detective Sergeant White, and of Assistant Commissioner Dermot Jennings, despite the fact that John White had been transferred to Lifford from Blanchardstown in 1994, he retained certain duties in the Dublin area. These included handling a number of informants and reporting, in that regard, to superior officers. His profile, therefore, in County Donegal, even in the years 1994 to 1995, was higher than one might expect from his years of service. His apparent ability to take time off and to travel to Dublin for the purpose of reporting to superior officers burnished his reputation with a patina of high authority. It is as well, at this point, to quote Detective Garda Kilcoyne's testimony to the Tribunal:

*By coincidence, or as fate would have it, there was a building, or a project being developed across the road from the checkpoint [in Lifford where both he and Detective Garda White were then posted]. It was called the Castlefin Multi-Activity Centre, or words to that effect. On one particular day, Sergeant White stopped a chap at the checkpoint who was from Bord Fáilte, and they were*

*asking some questions about this activity centre, where it was [at in terms of development] etc., etc. They had supplied money and they felt they were being defrauded. Sergeant White thought it would be a good idea to investigate this, which was perfectly above board. And part of that investigation took us to Dublin ... The opportunities to be involved in investigations at that time in Lifford were very very small. There was a Detective Branch attached to Lifford. They would be dealing with anything that was to be dealt with. Sergeant White had contacts and the experience to be permitted to conduct an investigation of that nature. I think it was an £80,000 or £90,000 of a defrauding ... I'd have investigated very little else. So, the taking of statements ... and the whole idea of corroboration ... of witnesses and corroboration of statements that was – nobody else, I would have been senior on the unit with no experience outside of Lifford so there was nobody more senior to teach me. [Detective Sergeant White] ... has great stamina and mental ability of retention of facts ... and if you are standing beside someone who is that confident, it gives you confidence in yourself. I had never worked in plain clothes and I would have been used to wearing the uniform and the uniform gives you a certain confidence, but take away the uniform and you take away a little bit of the confidence. So working in plain clothes and carrying yourself as a Garda I think is something that's – it's an indefinable quality.<sup>1</sup>*

### **The Relationship Develops**

- 1.15. In his testimony, Detective Sergeant White never denied that he had taken Garda Thomas Kilcoyne under his wing. He accepted that he had attempted to introduce him to the best possible forms of conducting police investigations. The fact that Detective Garda White did this in 1994 and 1995 is a credit to him, and not the reverse. The Tribunal is, however, satisfied that the level of experience and education of Garda Kilcoyne in 1995 was such as laid the foundation for a relationship of deference towards John White into the future. Their trips to Dublin in pursuit of the fraud investigation were somewhat belittled by Detective Inspector Michael Keane in his testimony. Whether, however, legitimate and intelligent investigations bear fruit is partly a matter of chance and is partly the pursuit of developed police instincts.
- 1.16. The Tribunal is in no doubt that Detective Garda White and Garda Kilcoyne involved themselves in this fraud investigation legitimately and pursued it to

<sup>1</sup> Transcript, Day 388, pages 53-57.

Dublin on a few occasions in an attempt to further a genuine police inquiry. During the course of these events, the Tribunal is satisfied that Detective Garda White did his best to build up his own profile in the eyes of Garda Kilcoyne.

- 1.17. Everything which has been described to the Tribunal by Detective Garda Kilcoyne as occurring during these trips to Dublin would have had the effect of overawing him and placing him in a position where his initial view of Detective Garda White, as a person of authority, of influence and of experience, was magnified greatly. For instance, in the course of one of the trips to Dublin, Chief Superintendent John Courtney, then retired but formerly the head of the Murder Squad, was introduced to Garda Kilcoyne by Detective Garda White. The Tribunal is satisfied that this confirmed many of the inklings in Garda Kilcoyne's mind that the influence and contacts of Detective Garda White went far beyond that of any other Garda with whom he had previously interacted on a working basis.<sup>2</sup>

### **The 'Autopoint' Incident**

- 1.18. What follows is recounted in this report as an example of the way in which Detective Sergeant John White used Garda Kilcoyne for his own purposes. It serves as an example of the activities in which Detective Garda White was engaged which made a profound impression upon Garda Kilcoyne and caused him to respect and admire Detective Garda White. In mid December 1994, Garda Kilcoyne stayed in a well known bed and breakfast establishment in the vicinity of the eastern end of the Phoenix Park. He had brought various items of casual clothing with him in order to equip himself to work with Detective Garda White in detective work whilst in Dublin. This trip lasted perhaps three days. On the first day Garda Kilcoyne was supplied with some apparently sophisticated surveillance equipment by Detective Garda White. This consisted of a briefcase which contained a video camera, but without sound recording. The briefcase apparently video-recorded those at whom it was directed through an aperture, apparent only on close inspection, through which the lens could film.
- 1.19. Detective Garda Kilcoyne claims that, at the direction of Detective Garda White, he entered a fast food outlet with the briefcase, with a view to covertly filming an employee. It may be that the purpose of this filming was to further a private investigation into alleged insurance fraud. A view might be taken that the operation amounted to a very unusual tutorial in covert surveillance techniques. In any event, the operation appears to have been successful, and Detective Garda White dropped Garda Kilcoyne back to his accommodation for the evening.
- 1.20. In terms of anything that was planned by Detective Garda White, nothing further was supposed to occur on that evening. However, according to Detective

<sup>2</sup> Transcript, Day 388, pages 57-59.

Sergeant White's testimony, on Wednesday the 14th of December 1994 he received a mobile telephone call in the evening. This was from an informant requesting contact. He had information which suggested that a meeting was going to take place in a restaurant which, for these purposes, the Tribunal will refer to as the 'Autopoint'. The opportunity, therefore, arose to identify a number of individuals, and in particular a second person whom the informant had named. The Tribunal will deliberately leave the context of this matter vague for reasons relating to informer privilege. The issue was to attempt to resolve whether a number of people with criminal associations were meeting each other. Recording them together conversing in the restaurant would tend to provide intelligence to Garda Headquarters of ongoing interaction between these several individuals. Detective Garda White contacted Garda Thomas Kilcoyne and asked him to enter this place for the purpose of filming a number of individuals interacting with each other.

- 1.21. In his official report on the matter, Detective Garda White records that Garda Kilcoyne fulfilled this duty and observed the individuals in question, filming them for approximately forty-five minutes.<sup>3</sup> In his testimony, Detective Garda Kilcoyne did not dispute this narrative.
- 1.22. Unexpectedly, after having been left at the accommodation near the Phoenix Park, Garda Kilcoyne had received a telephone call from his colleague. This tasked him with the job that has been outlined. This was done in such garbled terms that Garda Kilcoyne did not know whether to expect Mr. Courtney or Detective Garda White. In the event, Detective Garda White turned up and was perturbed that Garda Kilcoyne had dressed down for the evening. In his testimony, Detective Garda Kilcoyne described being briefed by Detective Garda White to go into the food outlet and film the suspects. He was warned to be very careful and that if he was discovered using a camera, violence would be likely. This is how Detective Garda Kilcoyne described in his evidence how he fulfilled his task in the 'Autopoint':

*Sergeant White's informant had told him that this other criminal was very, very dangerous and that if I could use the camera to take a photograph of, i.e. film, these [number] people having their meeting or consultation ... When I went into the café there was only [number] people in the place. While there was only [number] people that were obviously men having a meeting, they were slightly to the left. There was somebody serving at the counter. I approached the counter first and I thought of putting the camera on the counter and doing a similar action to what I had done*

<sup>3</sup> Transcript, Day 392, pages 58-59.

*[earlier that day] in the chip shop but, I thought, it's too far away and it would look very blatant. So, I walked over to where these people were sitting and asked them to keep an eye on the briefcase and left it on the table beside them while I went to the toilet ... They looked at me strangely. There was another person then in the toilet who challenged me and asked me who I was: ... "Who the f... are you? What are you f...ing doing here?" He was a Dublin person. I told him I was my brother, Gerry ... that I was up for an interview for a job ... yeah ... I was going to be picked up by a fellow for a job, yeah, ... that I had been working – I told him the story about my brother, very briefly ... I had ordered food while I had been talking to the – I ordered food, then I went and I put down the briefcase and asked these chaps to watch the briefcase. Then I went to the toilet, collected my food, collected the briefcase and left ... John White had dropped me and I had ordered a taxi to take me back. I was to meet Sergeant White ... I had the impression I was followed in the taxi ... so I didn't go into the Garda Station, I went into the hotel beside the Garda Station, ... [I made my way into the Garda Station and met Sergeant White] ... I don't think we had any way of watching the tapes. You know the way, nowadays, you can look at a tape and see was there something on it, but I am not sure we had that capability on that device. But the following day we went to Headquarters and the Technical Support Section identified [a number of people] on the tape.<sup>4</sup>*

- 1.23. Whoever the people were on the tape, and the Tribunal has not sought to enquire into the matter, it would appear that filming these several persons together was of some use in intelligence terms. In consequence, Detective Garda White introduced Garda Kilcoyne to Chief Superintendent Kevin Carty, in the context of a visit to the Drugs Unit in Harcourt Square. In the result, Garda Kilcoyne felt immensely pleased with his efforts in carrying out a difficult task.

### **Credibility and the 'Autopoint' Tape**

- 1.24. In the course of cross-examining Detective Garda Kilcoyne, counsel on behalf of Detective Sergeant White put it to him that the tape of this event, which was played to the Tribunal, showed so many inaccuracies and hysterical exaggerations that all the testimony of Detective Garda Kilcoyne took on a taint of proven unreliability. The object in making the suggestion was to urge the Tribunal that it should not rely upon the evidence of Detective Garda Kilcoyne. It was suggested

<sup>4</sup> Transcript, Day 388, pages 64 –67.



that while it is correct that Detective Garda Kilcoyne did carry out a dangerous and valuable surveillance operation he is now misrepresenting to the Tribunal the part that he played and is exaggerating the importance of his work and the dangers involved in order to enhance his standing with the Tribunal. In particular, a number of specific points were made. Whereas Detective Garda Kilcoyne had claimed to have gone to the toilet and to have been confronted in there, the tape showed no evidence of that. Secondly, Detective Garda Kilcoyne claimed to have left the briefcase video recorder on a table in the vicinity of the men whom he was supposed to have filmed and asked them to look after it; whereas there is no evidence of this on the tape. Thirdly, no mention was made by Detective Garda Kilcoyne, in his report of these events, of being out in a corridor; whereas for a portion of some minutes during the video recording it is clear that he is outside the restaurant area and in the vicinity of a notice-board, the public toilets and what he claimed in testimony to have been a public telephone.

- 1.25. The Tribunal is aware of the fact that an honest witness will give a narrative in accordance with a foundation of fact that leaves an impression on the mind of the witness, but which may change with time. As is obvious from common experience, something which happened a matter of minutes ago will usually be recalled with considerably more accuracy than something which happened a matter of years ago. Counsel for Detective Sergeant White has argued that the frisson of danger which attended these events should have burned the circumstances as to the confrontation in the toilet, the speaking to the suspect men, the placing of the briefcase, and the other events, into the mind of Detective Garda Kilcoyne with accuracy. **The Tribunal does not accept that emotional upset, and in particular the presence of danger, or proceeding on an unusual or hazardous event, necessarily has the result of making a kind of computer image of these events in the mind of the person experiencing them.**
- 1.26. **The Tribunal's view of this matter is that the tape very substantially supports the narrative given by Detective Garda Kilcoyne in his testimony. It is true that no confrontation in the toilets is shown. This is the first place that Detective Garda Kilcoyne visits on entering the restaurant and, possibly, ordering some food. Since the tape is without any sound it is impossible to know whether a confrontation occurred in the toilet or not. It seems, however, that the time that Detective Garda Kilcoyne spent in the toilet would not have allowed for a lengthy confrontation but, then again, neither does his narrative argue for one. It is possible, however, that in the section of events which deals with Detective Garda Kilcoyne using the video recorder whilst in the corridor outside the toilet, he may**

have honestly mixed up what happened there with what happened in the toilet, which was contiguous to the public telephone situated in that corridor. During the course of his narrative to the Tribunal, while the tape was playing, Detective Garda Kilcoyne described a man coming from the toilet and looking at a notice-board in a suspicious way. It is possible that the confrontation as described by him took place there, and towards the end of his visit to the 'Autopoint'. Another alternative possibility relates to the time when the briefcase was sited pointing at the several individuals whom it was his purpose to film. For a period of a number of minutes, the briefcase was left there. It is possible that an associate of these men followed him to where he was going, which could have been the toilet, and there confronted him while the filming took place through the video recorder briefcase in his absence.

- 1.27. A complaint is also made of inaccuracy in Detective Garda Kilcoyne's statement: that the siting of the briefcase while it is pointing at these men clearly indicates that the briefcase was not left on a table, but was placed on the floor. This detail, in the view of the Tribunal, is essentially irrelevant. A mistake could easily be made about that kind of detail. As to there being no evidence that Detective Garda Kilcoyne asked these several men to mind the briefcase, the Tribunal regards this point as ignoring the fact that there was no sound recording capacity in the video recorder in the briefcase. It is entirely possible that he did ask some of the suspect men to look after the briefcase while he departed to the telephone or the toilet. Also, it is possible that he is making a mistake. The certain reality on the tape is that at a time when the video recorder briefcase was sited pointing at them, some of the men gave suspicious glances in its direction. This could be in the context of a request to mind it, or it could be in the context of the cunning suspicion that attends the criminal mind. The Tribunal is of the view that, substantially, and to an extent that is consistent with human experience, Detective Garda Kilcoyne gave an honest and reasonably accurate account of the events leading up to, and in, the 'Autopoint' that was consistent with the powers of human memory.
- 1.28. It is the opinion of the Tribunal that the description given by Detective Garda Kilcoyne may not be completely accurate in every respect. However, the overall picture presented by him to the Tribunal is a reasonable one and any inaccuracies in his account can be accounted for by the number of detailed circumstances in this event, the worry which he undoubtedly had during the carrying out of his duties and the passage of time. It is the

Tribunal's view that the tape which it was shown tends to demonstrate the overall capacity for credibility in Detective Garda Kilcoyne's evidence, rather than the contrary.

### **Later Events**

- 1.29. Following on the investigation of the Lifford fraud, Detective Garda White and Garda Kilcoyne parted company for a number of years. It was not until their joint service as members of the Detective Branch in Letterkenny from August of 1997 that they began to work together again. This working relationship was cemented by tasks which they pursued in the context of the Barron investigation. Reference should be made to the second Tribunal Report in that regard.

### **The FitzMaurice Murder**

- 1.30. The search of the Irish Traveller Community encampment which was scheduled to be carried out by members of An Garda Síochána on the 23rd of May 1998 was based upon the suspicion that these persons had been involved in the murder of Mr. Edward FitzMaurice. On the 6th of May 1998, late in the evening, the body of Edward FitzMaurice was found in an upstairs room of his house at Bellaghy, Charlestown, County Mayo. As the Tribunal understands it, from the testimony of Detective Superintendent John O'Mahony, the context of this suspicious death was to leave the Gardaí with very few clues as to the perpetrator, or perpetrators, of the crime that led to his death. His house was private and towards the outer fringes of Charlestown. Downstairs there was a shop from which he had conducted a business for most of his working life. He was a widower and, by this late stage in his life, his relatives were all living away from home. Thus, he was an example of the kind of isolated and elderly individual that, it is the Tribunal's unfortunate duty to record, have been the subject of a number of attacks by roving gangs over the course of the last thirty years. The murder scene appears to have yielded very little in terms of clues as to identity. If there were fingerprints, then the identification of a definite suspect may at some stage yield a match. The nature of the ongoing Garda investigation into Mr. FitzMaurice's death is not the Tribunal's business.
- 1.31. There were no signs of a break-in to the deceased's house. When Mr. FitzMaurice was found his hands and his feet were tied. The post mortem examination showed that the deceased had suffered bruising to his face and that his larynx had been fractured. This possibly indicates an attempt at either strangulation or at control through gripping him around the neck. His eventual death was due to hypothermia. This, of course, occurred due to the fact that he was tied up, disabled, and therefore unable to seek aid or food and water. The Tribunal found

the evidence of Detective Superintendent O'Mahony, a senior officer on the investigation team, to be helpful. It sees no reason to regard it as anything other than genuine. The following, taken from his testimony therefore, serves to advance this narrative:

*An investigation was commenced, with an incident room, firstly at Charlestown Garda Station and then, for logistical purposes, moved after two weeks to Swinford Garda Station. This was the District Headquarters. The investigation was run by the Chief Superintendent in Mayo, who was Chief Superintendent Carey at that time. And the District Officer in Swinford was Superintendent Oliver Hanley. After maybe two to three days into the investigation the assistance of the National Bureau of Criminal Investigation was sought. Accompanied by a number of other members of Sergeant and Garda level, I went to Swinford to assist in that investigation ... There were no eyewitnesses to the event. In fact, [the deceased] was last sighted on the Friday night, the 1st of May 1998 in his shop when two ladies came in and they bought some items of clothing. That was the last sighting of him. And he wasn't found again, or seen again, until his body was found on the 6th of May. So we had no sighting of Mr. FitzMaurice. Forensics also yielded very little in forensic examination ... Every avenue, I suppose, was open to us and we have to look at every avenue of inquiry. We looked at suspects from all over the country. A number of suspects were nominated either through information or through intelligence. We also looked at previous similar type crimes that were committed both in this jurisdiction, and indeed in Northern Ireland, and we looked at suspects in relation to those crimes ... From my own personal knowledge, I became aware, some time on the 19th of May, that information was coming from Ballybofey, and in particular from Detective Sergeant White in relation to the murder ... I became aware of that, I believe, that it was Chief Superintendent Carey who had been contacted in Castlebar or in his office in Castlebar or in Swinford. But he made us aware that there was information forthcoming ... On receipt of the fax [from Detective Sergeant White] of the 19th of May, the fax [nominating suspects for the crime] was given to a suspect team and it was entered in a book there and jobbed out and Detective Garda Kisane received the job ... In accordance with procedure, at that time [those nominated in the fax from Detective*

*Sergeant White] were actually the sixty-seventh group of suspects or possible suspects that had been nominated as of the 19th of May 1998 for this crime. When I talk about suspects, it would be in the loosest sense of the word. We had looked at people who had previously been convicted, or previously charged, with similar type crimes and they would have been listed as people that we wanted to look at as to their whereabouts on or about the time of the murder ... [By the time we get to the end of the investigation] there are over two hundred, as of today and it is still a live investigation, there are over two hundred [suspects].<sup>5</sup>*

- 1.32. In Chapter 3 of this report the Tribunal sets out in detail the circumstances whereby Detective Sergeant John White alleges he had a meeting first with Informant A and then with Informant B, both connected with the Irish Traveller Community, who he says gave him information which he says led him to genuinely suspect that a number of persons travelling with the Irish Traveller Community in County Donegal, then resident at Burnfoot, were involved in this murder. In Chapter 3, in more detail, it is set out that as a result of these contacts, Detective Sergeant White claimed that he genuinely believed that a sawn-off shotgun was in the possession of some of these Travellers for the purpose of protecting themselves against an anticipated attack by other members of the Irish Traveller Community. This was in the context of a feud over an appearance by some members of the community at a court case. Such is the background to the search which took place on the 23rd of May, 1998.

### **Further Events**

- 1.33. Since it is essential, for the purpose of making detailed findings of fact, to set out in a precise narrative the events which led to the search of the 23rd of May 1998 and the arrest of seven members of the Irish Traveller Community, that will be reserved for Chapter 3. A brief narrative, however, putting that chapter in context for the reader is appropriate here.
- 1.34. Detective Sergeant White claimed in evidence that when the FitzMaurice murder occurred it was something which impacted very little on his work as a detective. He would only have been slightly more interested in the event, which occurred in west Mayo, than would any ordinary member of the public in County Donegal. However, it was as a result of a trip to Dublin, which led to an encounter with his informant, whom the Tribunal will refer to as Mr. A, that he came to learn that there was a suspicion attaching to particular individuals who were members of the Irish Traveller Community and who, he was informed, had moved from Mayo, through Sligo and into County Donegal.

<sup>5</sup> Transcript, Day 402, pages 94-97.

- 1.35. In the weeks prior to the 23rd of May 1998 Detective Sergeant White and Detective Garda Kilcoyne had made some contact with a group of members of the Irish Traveller Community. They were then encamped at Barnesmore on a side road off the main road between Donegal town and Ballybofey. It is agreed by all parties that, on encountering them, false names were given by some members of the community. Detective Sergeant White became interested because a number of motor vehicle trailers belonging to him had earlier been stolen. He had decided to take up the challenge of pursuing that investigation. His enquiries took him to the encampment as a source of potential information as to the culprit involved in the crime which had been committed against him.
- 1.36. On the face of it, there was nothing suspicious about the Travellers whom Detective Garda Kilcoyne and Detective Sergeant White had met at Barnesmore. When, after this encounter, Detective Sergeant White travelled to Dublin and met with Informer A, he claims that he was told by Mr. A that some of the individuals whom he had met at Barnesmore had an involvement in the FitzMaurice murder and that another individual might have further information to offer. He then met, he claims, with an individual who the Tribunal will refer to as Mr. B. Mr. B apparently confirmed what Mr. A had already told Detective Sergeant White. In addition, he added the detail that this group of Travellers would have a firearm in their possession. A court case was apparently forthcoming and, so Sergeant White claims to have been informed, the willingness of one section of the Irish Traveller Community to give evidence in this court case against another group had led to violent resentment between them. According to the information which Detective Sergeant White ascribes to Mr. B, the gun was to be held in the context, not of the murder of Mr. FitzMaurice, but of self-defence against an anticipated attack.
- 1.37. By the time of these conversations, it is probable that the suspect group of Travellers had left the Barnesmore area and had moved on. Their location was confirmed a number of days later by the local Gardaí as being encamped at Burnfoot. According to Detective Sergeant White, his information was that they were imminently to travel to Derry city and so, if there was to be a search, it was necessary that this would be conducted expeditiously.

### **The Fax**

- 1.38. On the 18th of May 1998, Detective Sergeant White claims to have forwarded to Crime and Security, a section of Garda Headquarters, and in particular Chief Superintendent Dermot Jennings, a report which named four suspects as having a possible involvement in the Fitzmaurice murder. The text of this report is set out in Chapter 3. The next day, this document was faxed to the incident room in

relation to the FitzMaurice murder at Swinford Garda Station.<sup>6</sup> There, the Gardaí followed it up by attempting to do suspect profiles on those who were named. The four named persons were John Casey, Matthew Hand, Timothy Collins and David Power. Three of these were subsequently arrested on the 23rd of May, that is to say those named except for Matthew Hand. As will be set out in greater detail in Chapter 3, Detective Sergeant White claimed in testimony that he arranged a meeting with Detective Chief Superintendent Dermot Jennings to discuss the information which he had allegedly received from Mr. A and Mr. B. This, he claimed, generated an understandable enthusiasm on the part of Chief Superintendent Jennings. Detective Sergeant White claimed that together they telephoned Detective Inspector John O'Mahony at the incident room in Mayo. This was denied in evidence by Assistant Commissioner Jennings and Detective Superintendent O'Mahony.

- 1.39. The scene was therefore set for further investigations into certain members of the Irish Traveller Community and, in particular, a search of their encampment at Burnfoot and the potential arrest of some suspects.

### **Summary of the Core Issue**

- 1.40. It would appear that it was on the 21st of May 1998 that local Gardaí established, as a matter of probability, that the individuals with whom Detective Garda Kilcoyne and Detective Sergeant White had already spoken at Barnesmore had moved to Burnfoot in northeast Donegal. In fact, the location of the encampment was a literal stone's throw from Burnfoot Garda Station. The Tribunal emphasises that there was nothing at any stage of the Garda investigation into the FitzMaurice murder, apart from what Detective Sergeant White was saying, to suspect these members of the Irish Traveller Community of involvement in that crime. The Tribunal is satisfied that they had nothing to do with it. During the course of the hearings, as Chairman of the Tribunal, I asked Mr. Michael Coen, who appeared on behalf of the seven members of the Irish Traveller Community who were arrested, what the purpose of the community was in travelling to north Donegal. There was, he said, a purpose of general travelling but, in addition, it was true that there was some apprehension in relation to the potential for other feuding members of the community to follow them and for an ugly confrontation to break out. It was thus partly an apprehension of this happening, and to avoid it happening, that these members of the Irish Traveller Community sensibly moved away from the source of this aggravation. That helpful input by Mr. Coen into the Tribunal's work was further confirmed by evidence from members of the Gardaí who had taken part in the search that when the men folk had been kept in custody overnight as and from

<sup>6</sup> Tribunal Documents, page 987.

the 23rd of May 1998, the women members of the Traveller Community responsibly felt a lack of protection and threatened to move into the car park of Burnfoot Garda Station for their own safety. The situation was calmed by Detective Sergeant Leheny, who ensured that extra patrols of Gardaí over the course of that night would keep a sense of calm among the members.

- 1.41. While the officer in overall charge of the search of the Travellers' encampment at Burnfoot was Detective Inspector McGinley, the Tribunal is satisfied that the main initiative and momentum for the carrying out of the search came from Detective Sergeant John White. This is understandable in as much as he is a member of energy and drive. Above all, it was his own information that fuelled the initiative to carry out the search.
- 1.42. During the course of Friday the 22nd of May 1998, Detective Sergeant White made arrangements with a number of individuals to put together a substantial search party, of upwards of twenty members of An Garda Síochána, to search the Traveller encampment at Burnfoot early in the morning of the following day. He gave the impression to Detective Inspector John McGinley that he had already secured warrants for the purpose of a search. Whether he had or not, and the context surrounding the warrants, is dealt with in detail in Chapter 3. A number of other members of An Garda Síochána were contacted. Some of these were contacted in the afternoon or in the late evening. They were referred either in the course of their ordinary duties or, as to the majority of the detectives, on overtime, for the purpose of a search and, it was implied, a potential task lasting the rest of the day which might involve interviewing arrested suspects. As part of the investigation, Detective Sergeant White had alerted the incident room in Mayo, and the relevant members of the Detective Branch in Dublin, that it was necessary for them to travel for the purpose of interviewing suspects on the next day. Arrangements were put in place both for the search and for the interview teams to be present in County Donegal.

### **Allegation and Counter Allegation**

- 1.43. The Tribunal considers that it would be of assistance to the reader to summarise the evidence of Detective Sergeant White and Detective Garda Kilcoyne as to their actions on the 22nd of May 1998, that is to say the evening before the search. Detective Sergeant White says that he found that the battery of his mobile phone was low and, since he was expecting to receive important calls during the evening, he considered it necessary to return to his house in Ballybofey to put the phone on charge. He was accompanied on this trip by Detective Garda Kilcoyne. They had a meal together in the Navenny Grill in Ballybofey. They left this establishment at approximately 21.00 hours and drove back to Letterkenny



where they helped to make the final arrangements for the search that was due to take place at 08.00 hours the following morning. They then travelled out to Burnfoot to the Travellers' encampment. The reason for this journey, according to Detective Sergeant White, was to make sure that the Travellers had not moved on. He said that he satisfied himself that this was so and returned to Letterkenny and visited Superintendent Lennon at his home for the purpose of obtaining warrants to authorise the search.

- 1.44.** This evidence is in stark contrast with the evidence given by Detective Garda Kilcoyne. He says that after he and Sergeant White visited the Navenny Grill, they travelled back to Letterkenny to return the Garda car which they were driving and to collect Sergeant White's car. They then drove south, back to an area behind Ballybofey where Sergeant White kept a shed. He says that Sergeant White visited this shed, collected a sawn-off shotgun, carried out a test firing of this gun and then proceeded to Burnfoot with the gun, where he planted it close to the encampment. Detective Garda Kilcoyne says the purpose of doing so was to ensure that a firearm would be found during the search: this would justify an arrest under section 30 of the Offences Against the State Act.
- 1.45.** This was the first conflict which the Tribunal had to resolve. The following are the bare details. On the evening of the 22nd of May 1998 Detective Sergeant White and Detective Garda Kilcoyne had a meal at the Navenny Grill in Ballybofey. During the course of the meal Detective Sergeant White allegedly told Detective Garda Kilcoyne that it would be absolutely essential, if the operation were to be conducted successfully, that a gun should be found at the Traveller encampment. Detective Garda Kilcoyne says that, naturally, he was perturbed by the implication in this suggestion. His conscience was quieted somewhat by Detective Sergeant White allegedly telling him that he had been assured by Chief Superintendent Dermot Jennings that a gun would definitely be in place: what he was proposing was merely to copper-fasten a legitimate Garda operation. That, in any event, was how it was supposedly put. They then travelled to Letterkenny for the purpose of leaving back the official Garda car.
- 1.46.** It is a matter of record that both Detective Sergeant White and Detective Garda Kilcoyne made and received a number of phone calls on their mobile phones during this period. The record of phone calls, and the record of mast sites from which the billing records record the calling party as having bounced, will be given in detail in Chapter 3.
- 1.47.** From Letterkenny, Detectives White and Kilcoyne travelled south to Gortahork, a townland which is about five kilometres to the south of Ballybofey. Detective Sergeant White kept a large lock-up shed there. This was for the purpose of

keeping Jaguar cars, which was an interest of his. Detective Sergeant White, it is alleged by Garda Kilcoyne, went into the barn-like structure there and retrieved a dangerous-looking sawn-off double barrelled shotgun. He wedged it between a number of stones and discharged a shot. This may have been a blank shot or a shot where the pellets scattered into the sky. This will be dealt with in detail in Chapter 3. Detective Sergeant White and Detective Garda Kilcoyne then travelled with this weapon, it is claimed, placed in a bag with some old clothes that were supposed to look like clothes typically worn by members of the Irish Traveller Community, to the vicinity of Burnfoot Garda Station. Detective Garda White claims to have parked in the yard of the Garda Station in order to find out whether the Travellers were still in place and whether their vehicles, the numbers of which he had noted on their earlier encounter, had moved to that location. Detective Garda Kilcoyne claims that they parked across the road in a local community or co-operative centre car park. It is common case that both men went out to Burnfoot on that evening. Detective Sergeant White claims that they went to Burnfoot to do a reconnaissance. The pattern of mobile phone calls, bouncing off particular phone masts, shows the presence of one of the mobile phones in the area. These phone records were discovered in the context of the Tribunal's business and distributed to Detective Sergeant White.

- 1.48. According to Detective Garda Kilcoyne, both men chose not to drive past the Traveller encampment, which was perhaps a way of effecting their reconnaissance more discreetly. Instead, both men agree in evidence that they parked their car and then crept from the location where their car was kept up to the side of the extensive farm buildings that once belonged to the An Grianán estate. The Travellers were encamped just on the other side. There, it is alleged, Detective Garda Kilcoyne paused while Detective Sergeant White moved into the shadows and illegally deposited the gun.

### **The Warrants**

- 1.49. Detective Sergeant White claims that he then went, together with Detective Garda Kilcoyne, to the home of Superintendent Kevin Lennon for the purpose of obtaining warrants for the arrest of the Travellers whose caravans were on site. Superintendent Lennon was not the District Officer for that area. The circumstances of this are dealt with in Chapter 3. Detective Garda Kilcoyne does not believe he went to Superintendent Lennon's house with Detective Sergeant White on that evening. The issue for the Tribunal is how were the warrants obtained and when? It is common case, in any event, that the vast majority of the warrants, with the exception of the signature of Superintendent Lennon, were filled out by Detective Sergeant White.

## **The Arrests**

- 1.50. The next day at 07.00 hours a briefing took place at Burnfoot Garda Station. There were twenty members of An Garda Síochána present. The briefing was led by Detective Inspector McGinley, whose information was dependent on that of Detective Sergeant White. A briefing was also given by Detective Sergeant White. The search took place. No firearm was found in the vicinity of the caravans. After about an hour a firearm was discovered in the location where Detective Sergeant White had allegedly planted it. Seven members of the Irish Traveller Community were arrested. They were: Thomas Collins, Timothy Collins, David Power, Bernard Power, John McCann, Michael McCann and John Casey. They were, in effect, the men of the house of the seven caravans that were parked at that location. The arrests were effected under section 30 of the Offences Against the State Act, 1939. Any allegations of impropriety in these detentions emerged with great difficulty during the course of the Tribunal's hearings. A separate chapter is devoted to this issue.
- 1.51. In custody, all of the arrested men denied having any knowledge of the firearm. The photographs of the search, and indeed some of the photographs taken at a time after the discovery of the firearm, show an extremely good humoured group of members of the Gardaí and members of the Irish Traveller Community. From their demeanour, a reasonable person might think that they had nothing to fear in the context of the allegedly sinister discovery at their encampment. In interviews with members of An Garda Síochána, the members of the community blamed the Gardaí for planting the weapon at the campsite. These statements will be set out in detail in Chapter 5.

## CHAPTER 2

### HOW THE ALLEGATION WAS MADE

- 2.01. It is important to consider how Detective Garda Kilcoyne came to make an allegation against Detective Sergeant White to the effect that Detective Sergeant White had planted a firearm on the members of the Irish Traveller Community at Burnfoot. A statement including that allegation was made for the first time on the 13th of June 2001. Since the events with which we are concerned occurred in May of 1998, a full three years had elapsed before any official declaration that the search at Burnfoot and the arrest of the seven members of the Irish Traveller Community were tainted with most serious illegality.
- 2.02. In his evidence, Detective Sergeant White has alleged that Detective Garda Kilcoyne was telling a series of untruths when he claimed that Detective Sergeant White had planted this firearm. Various motivations were suggested as to why Detective Garda Kilcoyne should tell these lies about Detective Sergeant White. These will be dealt with in detail in Chapter 3. In this chapter, the Tribunal examines the genesis of the statement. The issue is whether this shocking allegation can be considered to have emerged out of a background which makes it inherently incredible. Were that to be the case, any further detailed analysis as to the truthfulness of Detective Garda Kilcoyne's allegations against Detective Sergeant White would have to be considered against that background of inherent improbability.

#### **The Transfer**

- 2.03. In the aftermath of the search of the 23rd of May 1998, Detective Sergeant White and Detective Garda Kilcoyne worked together on the same unit until a transfer moved Detective Garda Kilcoyne to another unit in August 1999. Detective Garda Kilcoyne was unhappy, he says, in the aftermath of these events, to work with Detective Sergeant White. No document from that time supports what he claims. It is a matter of record that he applied for a transfer. He did not tell his superiors anything as to the illegality he alleges as to the arrests at Burnfoot. He did not give his superiors any true reason as to why he was requesting a transfer. He simply made an excuse that he found it difficult to work with Detective Sergeant White: that Detective Sergeant White was not acting as a team player, and that he was falling out with other members of the Detective Branch because he was coming into their investigations without their permission.<sup>7</sup> In the event, there was no place on any other unit for Detective Garda Kilcoyne to be transferred to. He had to wait about a year. Detective Sergeant White, in his evidence, gave a number of examples of co-operation between himself and Detective Garda Kilcoyne during the course of the year after

<sup>7</sup> Transcript, Day 388, pages 40-41.

the search, which he claims indicates that they had a healthy working relationship unimpaired by any misgivings on the part of Detective Garda Kilcoyne. The Tribunal, however, places no great store by these instances. At most, they show nothing more than Detective Garda Kilcoyne keeping his head down in attempting to do his duty after the illegal events that he alleges he had been a part of.

- 2.04. Any reasonable person would regard it as extremely improbable that a person of conscience, as Detective Garda Kilcoyne claims to have been in his testimony, could have engaged in a scheme which resulted in the finding of a lethal weapon and the false arrest of seven people without experiencing serious compunctions. It would support the credibility of Detective Garda Kilcoyne should it be the case that his conscience manifested itself in some way during the three year period between the events at Burnfoot and the making of his detailed statement. The Tribunal, in this regard, does not consider that his transfer application, to work away from Detective Sergeant White, unequivocally supports the notion that he was troubled by the events of May 1998. There is nothing about the transfer application by Detective Garda Kilcoyne that would indicate that it was made with any reference that can now be documented to the Burnfoot issue. Within An Garda Síochána people transfer from one unit to another all the time. All of the evidence concerning Detective Sergeant White indicates that he was a forceful personality. After a period of time, a detective working with him might either thrive under his tutelage, or might feel that a change to working with somebody else was desirable. It is not a criticism of Detective Sergeant White to describe his work practices as dynamic. The mere fact, however, that Detective Garda Kilcoyne sought, and obtained, a transfer is explicable on several bases. It is probable that the work approaches of the two men were not entirely harmonious. The transfer cannot solely be interpreted as a reaction by Detective Garda Kilcoyne to the promptings of his conscience. Other events over the period from May 1998 to June 2001, when taken together, might, however, indicate a pattern which could be consistent with the credibility of the allegations which he made in evidence to the Tribunal.

### **Kilcoyne Starts to Seek Help**

- 2.05. During the course of his service in Letterkenny, one of the persons with whom Detective Garda Kilcoyne was most friendly was Detective Garda Joseph Foley. At the time of giving his evidence, Mr. Foley had retired from An Garda Síochána. He was, during the period of his service, a highly regarded member of An Garda Síochána and, it would seem, someone to whom Detective Garda Kilcoyne

legitimately looked up for advice and the benefit of his experience. In June of 1998, within weeks of the Burnfoot search and arrests, Detective Garda Kilcoyne and Detective Garda Foley met socially in a public house together with their wives. This is the first time that Detective Garda Kilcoyne gave any inkling of an illegitimate context to the Burnfoot events. In evidence, Mr. Foley described the incident in the following way:

*What happened really was [this]: my wife had met his wife in town on a Friday evening and she asked us to go for a drink with herself, Pauline Kilcoyne, and Tom Kilcoyne. She asked us to go for a drink with them that night. He did express a concern that night in relation to work and he didn't tell me what it was, nor did I ask. When he did express this concern, I said to him that we were out with our wives and did not wish to listen to any talk about what happens in the Garda Síochána or what does not happen in the Garda. It was left at that.<sup>8</sup>*

## **Rumours**

- 2.06. It is as well for the Tribunal to also record, based on the evidence that it has heard, in particular from Mr. James Leheny who was then a Detective Sergeant in Letterkenny, that rumours had begun to circulate among Gardaí that there was something wrong with the search at Burnfoot. The Tribunal accepts the evidence of Mr. Leheny. It notes that among Gardaí a reference to a search “being wrong” is a euphemistic way of indicating that what was found in the search had been planted there. The Tribunal also has regard to the evidence of a number of other members of An Garda Síochána. Some of them felt that it was possible that a rival member from the Irish Traveller Community had planted the firearm on those stationed at Burnfoot. Perhaps this was an attempt by them to wish away reality. Others took a more cynical view: that it was possible that someone from within An Garda Síochána had been involved in nefarious activity. These rumours seemed to have stayed at a static level after the Burnfoot arrests during the rest of 1998 and through 1999. There was nothing to fuel the rumours further. No one could take any action in relation to these rumours because, apart from the two individuals involved, namely Detective Garda Kilcoyne and Detective Sergeant White, no one could offer any evidence as to which theory regarding the search not “being right” was correct. It was neither likely that anyone would ask them nor that either would spontaneously confess.
- 2.07. Even had there been a firm suspicion that a member of An Garda Síochána had planted the weapon that was found at Burnfoot, Detective Sergeant White, as someone who took a leading role in the investigation, might be a person of

<sup>8</sup> Transcript, Day 396, pages 48-49.

whom questions could be asked. Detective Garda Kilcoyne was at a much greater remove from the investigation. It would seem reasonable for colleagues at the same level to defer making an enquiry of either of them until such time as the rumour had hardened through the revelation of some fact. Such colleagues should, in future, be required to report suspicions as to illegal Garda conduct to their District Officer. **Based on the testimony which the Tribunal has heard, it is of the view that these rumours had their foundation in the reaction of those arrested; in the unlikely positioning of the gun at a remove from the camp where it could not easily be accessed in the event of threats; and in the fact that it was put where it could easily have been discovered by children. The accessibility of the loaded gun to children could have caused a terrible accident. The gun was found hanging on a spike protruding from a detached steel door near the milking parlour. This was the area used by the Traveller Community as a dry latrine. It was inevitable, had it been there over a period of more than half a day, that children would have found it. With their natural curiosity, it could be predicted that they could have explored what was in the bag hanging from the leaning steel door.**

### **The McGlinchey Allegations**

- 2.08. The Tribunal refers the reader back to its first report on explosives finds in Donegal. In that report, the Tribunal records that it had the gravest difficulty in accepting, in its uncorroborated form, any evidence from the main witness to the planting of explosives finds in County Donegal during 1993 and 1994, namely Adrienne McGlinchey. Several additional allegations were made by her against decent and hardworking members of An Garda Síochána which turned out to have no foundation in fact. Indeed, very many of these were withdrawn by her in the course of her testimony at the Tribunal. **These allegations were investigated by the Carty team and, in the Tribunal's view, properly so. In August of 1999, Adrienne McGlinchey made an allegation that Detective Garda Joseph Foley had, with other members of An Garda Síochána, kidnapped her for the purpose of pressurising her to withdraw allegations as to the planting of explosives finds. This never happened.** She was then in the course of making lengthy statements to that effect to the Carty investigation team.
- 2.09. The allegations against Detective Garda Foley were extremely serious. Detective Garda Foley was extremely upset by them. In October of 1999 he was interviewed by the Carty investigation team. From his perspective, it seemed possible that even though he knew these allegations were not true, someone in

authority might mistakenly accept them. The situation was grave. At the least it was a suspicion hanging over his character and reputation for good conduct, and at worst it could result in a disciplinary or criminal charge. There was a mood about, among Gardaí in County Donegal, that the Carty investigation team might accept everything that Adrienne McGlinchey said as truth, without further investigation. **The Tribunal is happy to record that many of her allegations were taken as a foundation for investigation and that many of these were disproved, or rendered by further inquiry to be highly improbable, even before she withdrew many of them. Some of Adrienne McGlinchey's allegations the Tribunal ultimately accepted through an analysis of all of the evidence apart from her own.**

- 2.10. In his upset, Detective Garda Foley sought the advice of Detective Garda Kilcoyne. He invited Detective Garda Kilcoyne over to his house. This is how Detective Garda Foley described the events:

*I had been questioned for a lengthy period in Letterkenny Garda Station in relation to the alleged kidnapping of Adrienne McGlinchey ... when the period of questioning finished, Chief Superintendent Denis Fitzpatrick told me that John McGinley, Inspector, would meet me later on that night. He didn't keep that appointment and I waited for him in a pub in Letterkenny and I went there on the second occasion and met him at 10.00 that night. I came home after meeting Inspector McGinley and Tom Kilcoyne called to my house ... and he did mention a similar line that he had previously mentioned in the month of June 1998, and at that time I didn't even listen to him because – and he did not complete [what he had to say], he did not tell me what happened or what his concerns were. I was fairly upset at the time, after being accused of kidnapping somebody; a very serious crime ... I didn't listen to Tom Kilcoyne at that time. I had no intention of listening to him and he didn't tell me anything more, but he did express a concern that night, without a doubt ... Well, we downed a few bottles of beer, yes, and maybe some whiskey, yes.<sup>9</sup>*

### **Pauline Kilcoyne**

- 2.11. In or around January of the year 2000 further evidence emerged as to the troubled conscience of Detective Garda Kilcoyne. The Tribunal heard testimony from Pauline Kilcoyne, the wife of Detective Garda Kilcoyne. The Tribunal accepts her evidence as truthful. As can easily happen to somebody in the medical profession, Mrs. Kilcoyne, who is a nurse, was a witness in a medical malpractice

<sup>9</sup> Transcript, Day 396, pages 52-56.



suit, together with the family medical practitioners for whom she worked in a doctor's surgery. The Tribunal makes no comment as to the rights or wrongs of such a case. The modern legal practice is to sue everyone dealing with a patient, irrespective of identifiable fault, and to call almost every identifiable witness. I note that the case was settled in September 2000. Any professional person facing the prospect of being a witness, albeit not as one of several defendants, in a medical malpractice suit is likely to feel under considerable pressure. The time of maximum pressure, in terms perhaps of replying to particulars or preparing expert reports or witness statements for the trial, may come during the year immediately prior to the case being heard. On the evidence of Mrs. Kilcoyne, that was certainly the case here. In addition to that worry, she was pregnant. The Kilcoyne's third child was born in March 2000.

- 2.12. As Mrs. Kilcoyne described it, she was experiencing great upset and worry over the lawsuit. In her own words, she took it "out of all proportion".<sup>10</sup> She was losing sleep and finding herself upset. Naturally, this was of concern to her husband. He sought to calm and reassure her. It was in this context that a more explicit indication as to his troubled conscience emerged. This is how Mrs. Kilcoyne described the matter to the Tribunal:

*We were talking, as we do, we sit in the sitting room in front of the fire and chat and listen to music and, on this particular day, I was going on a lot about it [the medical malpractice case] and we had got letters and we had talked about that. And, basically he said "Pauline, I have something to tell you" and I said "What?" He said – he told me of an incident that a gun was planted in an [Irish Traveller Community] site and that John White put it there. I said "What's that got to do with you?" Then he said "I was with him, Pauline". I said "But John White put it there". He said "I was with him, I should have stopped him. I was with him". But he said, he reassured me, he said, "don't worry about it, John White will not come out with it". And he reassured me and he said "Don't worry about", you know ... that's what he said to me, you know, don't worry about it. He confided in me, so I think it was maybe to kind of say - well there's other things going on, Pauline, you know, and maybe to snap out of it, kind of what I was in ..."*<sup>11</sup>

### **The Rumours Grow**

- 2.13. [The Tribunal accepts the testimony that it has received which indicates that the rumour of illegitimacy concerning the Burnfoot search and arrest grew during the years 1999 and 2000.](#)<sup>12</sup> [In the natural course of events,](#)

<sup>10</sup> Transcript, Day 396, page 77.

<sup>11</sup> Transcript, Day 396, pages 78-79.

<sup>12</sup> Transcript, Day 396, page 50.

one might expect a rumour to fade over time: particularly where nothing further occurs to fuel any perceived legitimacy that might be behind the speculation on which such rumours are based. The Tribunal believes that the arrest on the 21st of March 2000 of Detective Sergeant John White over the Bernard Conlon silver bullet threat affair was one of the main items which ensured that rumours concerning Burnfoot stayed in currency and grew over this period of time.

- 2.14. Bernard Conlon had alleged two wrongs against Detective Sergeant White. Firstly, he claimed that Detective Sergeant White had befriended him and caused him to stay in the premises of Frankie's Nightclub in Raphoe well after closing time for the purpose of being found by members of An Garda Síochána and then brought to give evidence as to the availability of alcoholic beverage after hours on that premises. Secondly, he alleged that Detective Sergeant White was the author of an allegation that he had made to Sligo Gardaí, that on one evening in his house, Mark McConnell and Michael Peoples had called and threatened him with a silver coloured bullet with a view to warning him off from giving evidence for the prosecution about the after licensed hours drinking in Frankie's Nightclub. That threat also allegedly extended to Detective Sergeant White. In fact, no one was at the doorway at all. Mr. McConnell and Mr. Peoples were innocent. The reader is referred to the Tribunal's report on the Conlon/Silver Bullet affair for further information on this.

### **Detective Sergeant White Arrested**

- 2.15. On the 21st of March 2000, members of the Carty investigation team arrested Detective Sergeant White and questioned him concerning the Bernard Conlon/Silver Bullet allegations. His basic response was one of denial. Where a suspect is taken into custody for questioning it is provided by regulations that a 'custody record' be kept by the member in charge of the Station, in which is recorded the management of the detainee during the period of his detention. In this record, for instance, there is recorded the duration and number of times upon which the detainee was questioned, any complaint that he might have, and any visits that he received. This document is not used as a vehicle to record the detainee's statements nor is it the practice to use it for this purpose. A custody record was prepared. Unusually, Detective Sergeant White insisted on certain apparently unrelated observations being recorded in that custody record. Some of them have nothing to do with Mr. Conlon. In the course of the narrative recorded at his request in the custody record, Detective Sergeant White referred to a meeting which he had at the Hillgrove Hotel in Monaghan, in October of 1999, with Assistant Commissioner Carty. This meeting has already been dealt

with, in considerable detail, in the second report of the Tribunal in relation to the Garda investigation into the death of the Late Richard Barron. Assistant Commissioner Carty was called home from Sarajevo to give evidence. The Tribunal did not accept, and does not now accept, Detective Sergeant White's account of that meeting with Assistant Commissioner Carty. The Tribunal also rejected a far-fetched allegation that Assistant Commissioner Carty was plotting the creation of evidence. One of the allegations made in the custody record was that Assistant Commissioner Carty had brought up during the course of the conversation a number of incidents in the Donegal area in respect of which he suspected Detective Sergeant White. Assistant Commissioner Carty is supposed to have advised Detective Sergeant White that Chief Superintendent Denis Fitzpatrick and Detective Superintendent John McGinley had informed him that they strongly suspected Detective Sergeant White of being involved in four serious crimes. The Tribunal does not accept that this was discussed at the meeting in the Hillgrove Hotel. For the purposes of the record, and as a means of explaining how the rumours in relation to Burnfoot may have grown, it is as well to record what Detective Sergeant White said as to what the four serious crimes were supposed to have been:

This present allegation re: Mr. Conlon;

1. That I arranged to have a gun-man travel from Dublin and threaten a woman in Letterkenny with the aid of a hand-gun when he was masked;
2. That I planted explosives on a mast in west Donegal;
3. That I planted a gun near a travellers encampment in 1998.

I assured Commissioner Carty that I was not involved in any criminal activities in relation to the four accusations. In relation to number 4 I gave him the name of my two informants and I asked him to personally contact Deputy Commissioner Noel Conroy who was personally known to one of these informants and to get Deputy Commissioner Conroy to establish if I was telling the truth. Commissioner Carty assured me that he would do so. He said that he did not believe that I had anything to do with any of the crimes. I believe this arrest was made simply to discredit me in relation to any further court cases.<sup>13</sup>

- 2.16. **The Tribunal does not accept that Assistant Commissioner Carty raised these four alleged crimes with Detective Sergeant White. It is possible that, instead, Detective Sergeant White was intent on raising a bluff, when under arrest in relation to the Conlon affair, by referring to a**

<sup>13</sup> Tribunal Documents, pages 953-954.

multitude of matters which required investigation. The allegation of conspiracy by Assistant Commissioner Carty to do down Detective Sergeant White has been dealt with already by calling Assistant Commissioner Carty. In this module that allegation was further considered by calling everyone who had any official dealings with Detective Garda Kilcoyne over his central allegation of planting the gun. Not a shred of evidence emerged, expressly or by inference, that anyone conspired against Detective Sergeant White.

### **The Meeting**

- 2.17. In the aftermath of Detective Sergeant White's release from custody over the Conlon/Silver Bullet matter, he called out to see Detective Garda Kilcoyne. The fact of their meeting is not disputed. Detective Garda Kilcoyne's account of this matter was as follows:

*I don't believe I had any full conversation with him ever in connection with the planting of the gun. The next time it arose was he arrived out to my house shortly after his release, I'd say immediately after his release, or within days of his release, when he had been arrested in connection with Mr. Conlon ... and he asked me had anybody mentioned Burnfoot to me or asked me about Burnfoot ... I said they hadn't and I think that was the last conversation I ever had with Sergeant White as regards anything ... I didn't want to talk about Burnfoot, and I don't think he did either ... He may have telephoned me to tell me he was coming up and when he arrived he would normally have come in, but I met him at the door and sat into his car.<sup>14</sup>*

- 2.18. It is important to record this conversation because of an exchange which occurred between counsel for the Tribunal and Detective Garda Kilcoyne. It has been of considerable help to the Tribunal as to the credibility of Detective Garda Kilcoyne. Some of counsel's questions to Detective Garda Kilcoyne gave him an opportunity to lie, by embroidering the circumstances of this visit in a way that would show up Detective Sergeant White. As this extract indicates, he declined to do this:

*Q. There are two ways of looking at this thing. You do not seem to be saying that Sergeant White came and that you spoke to him and that he said the following: "do you remember the time when we planted the gun at Burnfoot?"*

*A. No.*

<sup>14</sup> Transcript, Day 389, pages 34-36.

Q. *That he said: "Has anybody mentioned anything about what we did there?"*

A. *No.*

Q. *"Concerning planting the gun and making sure these fellows were arrested", you're not saying that he said that?*

A. *I am not saying that. I am saying that he said "did anybody approach you or ask you about Burnfoot?"*

Q. *So this conversation with you on that day, if accepted by the Chairman, could be regarded as equivocal. In other words, it is not an incriminating admission by him: it is simply a mention of an incident which could be playing on his mind for any number of reasons apart from the planting of the gun?*

A. *Yes.*

Q. *Is that correct?*

A. *That's correct.*<sup>15</sup>

2.19. Detective Sergeant White's account in relation to his calling to Detective Garda Kilcoyne's house after his arrest in connection with the Conlon/Silver Bullet matter puts it on the basis that he called in response to an earlier visit by Detective Garda Kilcoyne. Counsel for Detective Sergeant White put to Detective Garda Kilcoyne that on Friday the 24th of March, three days after the arrest, Detective Garda Kilcoyne called over to the house of Detective Sergeant White. He was alleged to have gone with his children. The possibility of such a visit having occurred was not denied by Detective Garda Kilcoyne. However, he could not remember calling to Detective Sergeant White's house accompanied by his children. It was put to Detective Garda Kilcoyne that when he called, Detective Sergeant White was in a meeting with Chief Superintendent McGarty and Superintendent Gallagher and that Detective Garda Kilcoyne was stopped by Mrs. Rosaleen White from bursting in on the meeting and breaking it up. Mrs. Rosaleen White gave evidence to support this account by her husband.

2.20. *The Tribunal's view on this evidence is that again Detective Sergeant White is attempting to ascribe improper motives to Detective Garda Kilcoyne. In all probability the visit was an unremarkable one. Detective Garda Kilcoyne could not hope to achieve anything by bursting in on the meeting. If he were to do so, Superintendents McGarty and Gallagher*

<sup>15</sup> Transcript, Day 389, pages 35-36.

would have called for an explanation. If his purpose in the visit was one of causing a scene, he would not bring his children with him.

### **The June 2000 Statement**

- 2.21. Three months after Sergeant White's arrest in June 2000 for the Conlon/Silver Bullet affair, Detective Garda Kilcoyne was asked by the Carty team to make a statement concerning his involvement in the search of the 23rd of May 1998 at Burnfoot. This was a standard request made to a number of Gardaí. The statement which he made on that occasion deals explicitly with the search. It does not deal with the alleged planting of the gun the night before, or any of the events which led up to the search. In that statement, Detective Garda Kilcoyne describes being a member of the search team in respect of the operation that was carried out under the authority of section 29 of the Offences Against the State Act, 1939, under warrant. Part of the statement reads as follows:

The area being searched had a number of caravans and outhouses close by. The caravans and the vehicles on the site were searched. During the course of the search, I learned that a shotgun and shotgun cartridges had been discovered in a building adjacent to where the caravans were parked. At 10.07 a.m. on that morning Detective Sergeant Leheny of Buncrana Garda Station arrested Mr. Timothy Collins of Ballyderowen, Burnfoot, County Donegal under section 30 of the Offences Against the State Act, 1939 on suspicion that he had committed a scheduled offence under the Act, namely the unlawful possession of firearms. Timothy Collins was taken into custody at Letterkenny Garda Station.<sup>16</sup>

The rest of the document goes on to describe Detective Garda Kilcoyne's interactions with Mr. Collins as a prisoner in Garda custody.

- 2.22. One year later, in June 2001, the Carty investigation team were concerned with both the rumours as to the illegitimacy of the Burnfoot search and the surrounding circumstances that tended to raise suspicions as to the methodology employed by the Gardaí. They were making general enquiries as to what might have happened and as to who might have been involved.

### **Detective Garda Foley Approaches the Authorities**

- 2.23. The step which directly caused members of the Carty investigation team to approach Detective Garda Kilcoyne in June 2001 was an approach to them that month by Detective Garda Joseph Foley. The Tribunal accepts the following account, given in evidence by Mr. Foley:

*The rumours were becoming more obvious and more frequent and*

<sup>16</sup> Tribunal Documents, page 412.

*I did go to Detective Inspector Michael Keane, who was my superior at the time, and I told him that Tom Kilcoyne may have information in relation to the finding of a gun at Burnfoot. Because, at that stage, I had collated back what he said soon after the search and the second time he came to me in October 1999, the rumours were getting stronger. And I expressed my concerns to Detective Inspector Keane, yes ... certainly at the point it reached with me I felt there was an obligation on me to contact Detective Inspector Keane ... I just said to him, you know, I have known Tom Kilcoyne, I have worked with him and on the occasions he did speak to me he was upset and fairly downcast. And with the rumours going around I started to think, to collate, and I just said he may be of some help or he may know something about the firearm in Burnfoot ... It was purely – really a hunch more than anything else.<sup>17</sup>*

### **Detective Garda Kilcoyne Tells his Story**

- 2.24. On the 13th of June 2001, Inspector Michael Keane called Detective Garda Kilcoyne into his office. **The Tribunal is satisfied that his purpose in calling Detective Garda Kilcoyne in was no more than to discuss the rumours relating to the arrests at Burnfoot.** Later that evening, Detective Garda Kilcoyne made a cautioned statement to Chief Superintendent Walter I. Rice and Detective Superintendent Tadhg Foley , two senior members of the Carty investigation team, to the effect that he had accompanied Detective Sergeant John White to the encampment at Burnfoot on the evening of the 22nd of May 1998, and that Detective Sergeant White had then planted a firearm. This firearm was found during the course of the Garda search of the encampment on the following day and its discovery was used as a justification for the arrests of seven members of the Irish Traveller Community under section 30 of the Offences Against the State Act, 1939.
- 2.25. In essence, Detective Sergeant White has responded to the allegations that he planted a firearm on members of the Irish Traveller Community encamped in Burnfoot by saying that Detective Garda Kilcoyne was lying. Serious allegations were put to Detective Garda Kilcoyne by counsel for Detective Sergeant White: that the statement which he ultimately made about planting the firearm at Burnfoot was inspired by malice towards Detective Sergeant White or by a promise of advantage held out to him by members of the Carty team. It is therefore important to quote precisely what Detective Garda Kilcoyne said as to how he came to make that statement:

<sup>17</sup> Transcript, Day 396, pages 54-56.

*It was mid-afternoon and I got a phone call from ... Inspector Keane. Anyway, he was my immediate superior and he says "can you come in, the Chief wants to see you." I got the call on, I believe, my mobile phone and he didn't tell me what it was about or why he wanted to see me, but I was convinced it was about the Burnfoot module, or this planting of the gun ... I went in, I said "when does he want to see me?" He says, "immediately". So I went in, in whatever clothing I was wearing at the time. I went to [Inspector Keane's] office ... and he told me that Niall Coady, that's Sergeant Niall Coady, had been in with the Chief that morning and that he had information that I was talking in a pub and some informant had approached him with an overheard conversation that I had been involved in planting the gun with John White at Burnfoot ... It didn't make any sense to me at all that Niall Coady ... heard me doing this ... I said to him "is there statements, where is the allegation?" like, I was mad about it. I was mad at him for saying this, because I knew it wasn't true. It wasn't true. I hadn't talked to anybody in a pub for years about it. So he said, "if that's your attitude go over and talk to the Chief" ... So, I walked over to the Chief, down the corridor. He told me something about my family and about, I'm a bit vague on exactly what he said, but it was: do the right thing now by yourself, etc., etc., and you'll feel better for it, clear your conscience; words to that effect ... So I told him. I actually asked him first to make me a cup of coffee and I'll tell you a story. That's how I put it ... I told him what happened [in] not more than ten [minutes] ... he asked me then would I make a statement. There would be no caution this time. He asked me would I be prepared to make a statement and I said I would but not to anybody in this station, for whatever reason, maybe it was pigheadedness at Inspector Keane for the way, for the earlier conversation ... He asked when would I make the statement, would I make it this evening? I said I would ... and would I mind meeting Tadhg Foley, he's a Superintendent from Monaghan. And I says, "yes, I'd meet him." I asked – they wanted to come early, they wanted to come at 6.00 or 7.00 o'clock, I asked for them to come at 9.00 because I had the children in bed and my wife was going to a meeting for work. I wanted a bit of privacy to do it. As I said, they arrived at 9.00 o'clock. I left his office. I phoned Pauline and told her that I had told the truth about Burnfoot. I was a little bit dazed that I had actually spoken about it. Then they arrived.*



*We sat down at the kitchen table and Tadhg Foley began to speak and I told him, "Sir, I think you'd better caution me now". And I said "I know what I said to you, there's no point in me making a statement here unless it is cautioned." And immediately after the caution I signed my name.<sup>18</sup>*

- 2.26. The Tribunal notes the absence of any resort to legal advice by Detective Garda Kilcoyne. It notes that he did not seek Garda Representative Association help. It is influenced in assessing credibility by the foresightedness of his evidence. The account by Detective Garda Kilcoyne is supported by other testimony. Since allegations of lying have been made against Detective Garda Kilcoyne, it is as well now to quote the account of his encounter with Inspector Keane from that source. Detective Inspector Keane gave a similar version of these events to the Tribunal:

*As I said, in 2001, I think it was May 2001, I was approached and spoken to, in confidence, by Detective Garda Joseph Foley to say that he felt that Detective Garda Joseph Kilcoyne had some information in relation to the search in Burnfoot in May of 1998 ... Well, there were [rumours], Chairman. Chief Superintendent Rice had got knowledge of that rumour as well. I think it was from Sergeant Niall Coady ... Given that the Carty investigation was looking for statements off the members who were involved in the search at Burnfoot at the time, it probably gave rise to the suspicion going up somewhat ... Some weeks afterwards, I spoke to Chief Superintendent Rice in relation to that. On the 13th of June 2001 ... on that particular day I telephoned [Detective Garda Kilcoyne] at his home and I told him – he called into my office - and I told him that Chief Superintendent Rice wanted to see him in his office. I didn't press him on any issues. I left that to the Chief Superintendent [when the statement was made] ... I read that statement ... I felt very bad as a member of the Garda Síochána that such a thing should happen ... Detective Sergeant White seemed to be the man who was involved in that.<sup>19</sup>*

### **Alleged Conspiracy by Interviewers**

- 2.27. Detective Sergeant White has made serious allegations that a combination of Detective Inspector Keane, Detective Superintendent Tadhg Foley, Chief Superintendent Rice and others conspired to do him down. The alleged methodology was to inspire Detective Garda Kilcoyne to invent a false allegation about planting a firearm the night before the Burnfoot search. The likelihood of

<sup>18</sup> Transcript, Day 388, pages 47-51.

<sup>19</sup> Transcript, Day 398, pages 132 – 135.

such an allegation is analysed in Chapter 3. Here, it is sufficient to point out that the Tribunal considered this line of enquiry as a possible aid to assessing the credibility of Detective Sergeant White. It may seem inherently improbable that a serving member of An Garda Síochána should confess to having been involved in a criminal offence and a potential attempt to pervert the course of justice where he was not so involved, and name another party in this fiction for the purpose of destroying him. Nonetheless, that possibility must be considered by the Tribunal.

2.28. **The Tribunal is satisfied that there was no feeling or mood about in County Donegal, either inspired by the Carty investigation team or elsewhere, for people to fall on invented swords with the express purpose of dragging Detective Sergeant White down with them. In fact, Gardaí in Donegal were upset that such serious misconduct could be alleged against two of their members.** Indeed, a true flavour of the humour of despondency that members of An Garda Síochána could be involved in such nefarious activities as those described in this report came through from the testimony of a number of Garda witnesses. Detective Inspector Keane, in particular, was closely questioned by counsel for the Tribunal about his reaction to the revelation by Detective Garda Kilcoyne, and his involvement in facilitating the taking of the statement in which the allegations against both the maker and Detective Sergeant White emerged. The Tribunal accepts the veracity of the answers given by Detective Inspector Keane in the following passage:

Q. *Did you feel there was any mood about whereby if one wanted a fall guy, I use the colloquialism advisedly because I don't think there is any other word for it, in relation to the troubles of the Garda Síochána up in Donegal, that Detective Sergeant White was the man on whom events should fall be that right or wrong?*

A. *I am not so sure I am aware of what you want from me there. In relation to Burnfoot definitely.*

Q. *Definitely what?*

A. *Definitely Detective Sergeant White seemed to be the man who was involved in that.*

Q. *I am asking the question from a slightly different angle. It's this: Detective Sergeant White already had some trouble vis-à-vis the Bernard Conlon matter. You'll be aware of that; he was arrested in March, 2000?*

A. *That's correct Chairman.*

Q. *Now, these allegations here before the Tribunal have been that, in some way, these allegations were false; either as a result of the malicious and devious thinking of Mr. Conlon or that they were inspired in some way, or encouraged, by some kind of atmosphere that may have been about when Mr. Conlon was being interrogated. Do you understand? In other words, that it was appropriate to pick on Detective Sergeant White in relation to that matter?*

A. *Oh no, no, Chairman, no. That's not true.*

Q. *What I am asking you here is that, again, there is a problem vis-à-vis Burnfoot, and the question is: Is there an atmosphere among the Gardaí that, look, if anyone is going to be responsible for this then it is going to be Detective Sergeant White?*

A. *Oh not likely, Chairman.*

Q. *Not likely?*

A. *Not likely. Sorry maybe not likely is the wrong answer. That's not true.*

Q. *Well, you know, if a burglary is committed in a particular way that members of An Garda Síochána might think that it could be so and so who lives in such and such a place ... Was there any question that people automatically suspected Detective Sergeant White when anything happened in County Donegal?*

A. *No, Chairman, no. Everything has to be based on facts before you make your mind up in relation to any incident.*

Q. *Are you sure about that? Are you sure that this wasn't a case of ostracising him because of his work in Dublin?*

A. *Not likely. I shouldn't use the phrase not likely any more. That's not true. He was not ostracised by me or anybody under my command because he was working in Dublin or he was involved in Dublin.<sup>20</sup>*

### **Statement of the 19th of June 2001**

2.29. Since the next chapter is directly concerned with the credibility of the allegations made by Detective Garda Kilcoyne before the Tribunal, it is appropriate to record

<sup>20</sup> Transcript, Day 388, pages 135-137.

here precisely what he told Detective Superintendent Tadhg Foley and Chief Superintendent Nacey Rice at his home on the evening of the 13th of June, 2001. The exact text of his statement after caution of that date is therefore quoted:

I joined An Garda Síochána in September 1983. In February 1984 I was sent to Lifford, Co. Donegal when I was employed mainly on checkpoint duty. As far as I can recall John White came from Blanchardstown to Lifford in 1995. He told me he had been a serving member of the D.D.U. and had built a house in Ballybofey as his wife was from there. The only way he could get to Donegal was in uniform. He told me he had been a member of the Murder Squad prior to it being disbanded and had worked closely with John Courtney, ex. Chief Superintendent. He impressed me with the stories he told me about the investigations he had been involved in. At the time the first I.R.A. ceasefire had been in place and it was very quiet. I became involved with John White in the investigation of fraud by Danny Doherty, Castlefin. Part of the investigation took us to Dublin. I was totally inexperienced and John White taught me how to conduct an investigation. He told me how to dress, to wear shirt and tie and proper shoes. This was the first time I had worked in plain clothes and I did as I was told. He taught me how to take proper witness statements. He took all the statements. I learned from his thoroughness, his patience and his attention to detail. We worked 9 to 5 on that investigation while in Dublin. John White told me we would be meeting John Courtney, the ex. Chief Superintendent. He said that he used to help out John Courtney from time to time. John Courtney was doing work as an Insurance investigator. He was also writing a book about his exploits in the Murder Squad and it appeared to me that he knew everyone in the higher management of this job. As part of this Insurance thing, which seemed to be working in tandem with crime investigation, we received stolen property in or around North Fredrick Street. We were accompanied by a number of D/Gdai. from Blanchardstown. I think the property was in some way connected with John Courtney. That was my first evening in Dublin. We probably worked about 14 hours that day. The next day I was given a briefcase by John White. I knew the case contained a video camera as John White switched it on before I left. I was told to go to a Chip Shop and try and film you man behind the counter. As far as I can remember he was a foreign national. I am not sure what part of the city it was in as I don't know Dublin. I put the brief case up on the counter and pointed the camera at him. After I got served I left and handed the case back to John White. I knew the brief case belonged to John Courtney. I had been wearing a shirt and tie. Later

John White dropped me back to my B/B in the Phoenix Park. I was only there a short time and had just changed when John White phoned and told me to go to the top of the road where I would be picked up by John Courtney and he would give me the video camera in about 5 mins. And he would bring me somewhere. After 15 mins. John White himself arrived with the video camera. He gave out to me for being in casual clothes, that I would stand out like a sore thumb with a briefcase. He said we were going to the [redacted] which was a small filling station and diner [redacted]. We travelled cross country from Blanchardstown. He told me that a tout of his, [redacted] would be there. One or two nights before John White had driven to his house and went in leaving me outside. John White had briefed me that a meeting was to take place at [redacted]. The meeting had been arranged by [redacted]. I went into the café alone after White had dropped me off. He told me to get as close as I could as there was also a sound recorder in the case with the camera. I identified the three most likely people in the café. I put the case near them and told them to watch it for me. I went into the toilet and a fourth man followed me in and asked me who the f\_\_\_\_ was I. I gave my brother's name that was in England. I picked up the case and left. The next day the tape was developed [redacted]. John White was very excited about this. I then accompanied John White to D/Chief Supt. Carty's office who was in charge of drugs. He appeared pleased with the operation and knew John White. This whole experience in Dublin left me in awe of John White. I got a great buzz from it. John White had told me that he had done the Sgt.'s exam before coming to Lifford and he told me he was going to be promoted which he was later that year and transferred to Carrick, Co. Donegal. However, he spent most of his time in Glenties investigating crime. Throughout this time he told me he was constantly in contact with informants in the Real I.R.A. In February 1996 I was transferred to Letterkenny on uniform duties – the day the ceasefire broke, Canary Wharf bomb. From time to time I would have contact with John White, but not on a regular basis. He did appear to have intimate knowledge of operations against the Real I.R.A. I was always interested in subversives and in early 1997 I was appointed to Detective Branch. In Feb. 1997 John White came to Raphoe as Sgt. I/C. He had been looking for a transfer in as he was travelling from Ballybofey. In the middle of Sept. 1997 I, with three others, was assigned to the Richie Barron investigation. John White was the D/Sgt. We worked on that straight through and the file completed and submitted to the D.P.P. in February 1998. I remained on John White's unit, Unit 'D'. Sometime in late Spring of 1998 a number of trailers was

stolen from John White's property at Dreenan, Ballybofey. I accompanied Sgt. White in a number of enquiries, one of which took us to the Barnsmore Gap where a number of travellers had recently camped. We drove into the camp site and Sgt. White engaged in conversation with them. They had come from Dublin and they spoke about mutual acquaintances. We left after I had noted their vehicle registrations. Within the next day or two Sgt. White told me that some of these people had been identified as suspects for the Eddie FitzMaurice murder in Charlestown which had occurred approximately two weeks earlier. Sgt. White told me that some of those travellers had left the campsite prior to the FitzMaurice murder and had returned subsequently. He also told me that there was other information that these people had been involved. He told me that this information had been received from Dermot Jennings who I believed was high ranking officer in C.3. At this time White told me he had 3 mobile phones – official issue. He was constantly getting phone calls. They were throw away phones. He told me they were to protect someone on the inside of the Real I.R.A. I had no reason to disbelieve him. These travellers were alleged to be in possession of a sawn off shotgun. John White told me that the information came from Dublin that they had acquired this gun for their own protection, that they were to give evidence in a trial. The gun was supposed to be in or close to one of the caravans. The caravans moved and I was asked by John White to locate them. I found them at Burnfoot beside the Grianán Farm. John White was excited and told me that people from the Swinford investigation would be up and for me to keep an eye on them and gather intelligence on who was visiting them and record the number of the vehicles in the camp. On Friday 22nd May 1998 John White told me that the investigation team from Swinford would be up the next morning. The site was to be searched and a number of arrests to be made. I set about organising people for the search. There were approximately 5 caravans to be searched and at least 5 people to be arrested, maybe more. On Friday evening after all the arrangements had been made I was in Ballybofey with Sgt. White when he told me that he had a sawn-off shotgun that he was going to place at the caravan site in Burnfoot. He said to me Dermot Jennings says "there is a gun there" and he said to me it had to be found. He also said they need a Sec. 30 arrest. Firstly I was surprised that he had a sawn-off shotgun. From all I heard for that full week I was convinced that the information was correct, that these travellers were dangerous and did possess a sawn-off shotgun. I also presumed if the information was correct that the gun had to be close at hand because the information was that they had it for self defence and

from my g of the camp I knew they had dogs, children and it would be impossible to get anyone near the campsite undetected. So what Sgt. White was suggesting was in my mind unnecessary, not to mention illegal. I told him about the dogs and the kids but I felt it wasn't my place to tell him it was illegal. He was my Sgt. and more experienced than me. He told me it was in Gortacor where I knew he had a lock up store. I had been there before. He drove me there and I remained outside the store. He returned with a sawn off shotgun. The shotgun was the most frightening thing I saw in my life. I have been shown a sawn off shotgun by D/Supt. Foley and I recognise it by the two cocking hammers and no trigger guard and its poor condition. Sgt. White suggested we test it to see if it worked. He loaded it and attached a string to it about 7 or 8ft long and placed it between two stones or beside a stone and pulled the string. He discharged it into a clay bank at the back of the shed. It worked and was very loud. We travelled in his car out to Burnfoot. On the way at around 11.20pm he received a phone call when were at Burt on his mobile. He stopped the car and spoke for a while. After coming of the phone he immediately dialled another number and told the persons "that car is moving north tomorrow". I got out of the car and walked down the road where I used my mobile to call Falcarragh Garda Station. When he finished his phone call I got back in. He told me his first call was from his informant in the Real I.R.A. and that there was a team in place to intercept a stolen car the next day. We then drove on into Burnfoot. He parked the car up on a road beside the Garda Station out of sight of the main road. We then walked towards the Grianán Farm. He was carrying the gun in a black zipper brief case in his hand similar to one you carry files in. I was relieved when a car came up the road. I though Sgt. White would abort but he stepped into he shadows and the car went by. When we got to the edge of the farm buildings, approximately 150-200 yds. from the site I felt sick. I felt like a criminal. I felt everything in my head was telling me I shouldn't be here, to get out, but I felt it had gone too far and I had no control of events. The dogs started barking. I though he would abort, but he said keep your eyes open and he stepped into the shadows of the buildings. When he emerged I knew he had planted the gun. We made our way back to the car. He was happy with the operation and all I could hope for was that the real gun would be found and that there would be no need to find this one, the planted one. The next day the search moved went n. I accompanied the search team and the planted gun was found in the vicinity where I last saw Sgt. White with it. No other gun was found. Seven people were arrested under Sec. 30 O.A.S.A. as a result of that firearm been found. My

morale dilemma was that I was involved in planting the gun. I never had any worries that anyone would be charged with possession of it because it was impossible to prove possession of it, it being too far from the site. Later the same day the car was intercepted going across the border. Shortly after this I approached D/Sgt. Keane to get off the unit but this did not happen for 18 months until the first vacancy arose. I did not tell Sgt. White that I looked for a transfer as I was war of him. Since the event it has troubled me greatly. I did discuss it with my wife as it bothered my conscience. I described to her that b\_\_\_\_\_ White led me up the garden path. I wanted her to know first as it was my intention to tell the truth and I wanted her to know first. The many investigation ongoing in Donegal made it difficult for me to find someone I could confide in for the purpose of clearing my conscience. The opportunity presented itself for the first time to-day and I took it. I regretted deeply tht it happened and that I didn't report it. I'm glad I said all this tonight.<sup>21</sup>

### Issues Before the Tribunal

- 2.30. The Tribunal emphasises that this statement is not being accepted at face value. Where an allegation is made in it, basic fairness requires that it be proven. Chapter 3 is concerned with the crucial issue as to whether the central allegation in the above statement has been proven.
- 2.31. **The conclusion of the Tribunal is that the circumstances leading to the making of the statement of the 13th of June, 2001 by Detective Garda Thomas Kilcoyne are not inherently improbable. It remains the Tribunal's task to consider, through a detailed analysis of the evidence, whether any of the allegations made in that statement are correct.** In particular, the Tribunal in the next chapter will analyse whether Detective Sergeant White and Detective Garda Kilcoyne went to the lockup premises at Gortahork and retrieved the firearm and then tested it; whether they then went to the encampment of the Irish Traveller Community at Burnfoot; whether Detective Sergeant White planted the weapon; whether warrants were issued on the evening before the search or at an earlier or later stage and, finally, whether the allegations made by Detective Sergeant White as to the origin of the statement from Detective Garda Kilcoyne being rooted in bias against him and amounting to a conspiracy to do him down could possibly be correct. The next chapter deals with these matters in the necessary detail.

<sup>21</sup> Tribunal Documents, pages 414-420.





## CHAPTER 3

### THE SHOTGUN AND THE SEARCH

#### Introduction

- 3.01. This chapter considers the events leading up to the search of the Travellers' encampment at Burnfoot on the morning of the 23rd of May 1998. In this regard it is necessary to examine the information which Detective Sergeant White allegedly received in the weeks and days prior to the search.
- 3.02. This chapter sets out in detail the allegation made by Detective Garda Thomas Kilcoyne that a double barrelled sawn-off shotgun was planted beside the Travellers' encampment on the night of the 22nd of May 1998 by Detective Sergeant White and him. It will also give Detective Sergeant White's account of their activities on the same night.

#### The Issues

- 3.03. The reader will be struck by the fact that in a great many respects the accounts of that night given by Detective Garda Kilcoyne and Detective Sergeant White tally with each other. The two men are in agreement that they shared a meal together at the Navenny Grill, Ballybofey, from some time after 20.00 hours on the evening of the 22nd of May 1998, until a little after 21.00 hours. They agree that they then returned to Letterkenny. They are in agreement that they inspected the Travellers' encampment on foot later that same night.
- 3.04. However, their accounts diverge in a number of crucial respects. Detective Garda Kilcoyne maintained that at the Navenny Grill, Detective Sergeant White stated that they would have to plant a shotgun at the encampment later in the evening, so as to ensure arrests were made following the search that was due to take place the following morning. This is denied by Detective Sergeant White. Detective Garda Kilcoyne alleged that having gone to Letterkenny, they returned in Detective Sergeant White's car to a shed owned by Detective Sergeant White at Gortahork, where they retrieved and tested a double barrelled sawn-off shotgun. This is denied by Detective Sergeant White. He maintained that no such conversation ever occurred at the Navenny Grill, nor was there any trip to his shed at Gortahork.
- 3.05. Detective Garda Kilcoyne alleges that they then proceeded to Burnfoot, where Detective Sergeant White planted the shotgun in a disused building beside the caravans belonging to the members of the Irish Traveller Community. This is denied by Detective Sergeant White. He maintained that having returned from

the Navenny Grill to Letterkenny, they remained at the Garda Station, whence they proceeded to Burnfoot solely for the purposes of carrying out a reconnaissance of the encampment. He agreed that they proceeded on foot down a road known as the Slab Road, to the vicinity of the caravans and the disused buildings. Detective Sergeant White accepted that he entered one of the buildings for the purpose of getting closer to the vehicles parked beside the caravans, so as to get a better look at the registration numbers of those vehicles. He denied leaving any gun in the building.

- 3.06. Detective Sergeant White maintained that having carried out a perfectly legitimate reconnaissance of the area, they proceeded to the home of Superintendent Kevin Lennon, from whom they obtained a number of search warrants pursuant to section 29 of the Offences Against the State Act, 1939, as authority for the searches which were due to be carried out on the following morning. Detective Garda Kilcoyne stated that while he could not recall what they did after leaving Burnfoot, he was adamant that they did not go to the home of Superintendent Lennon. He stated that if he had gone there with Detective Sergeant White, he would certainly recall that event.

### **Detective Sergeant White's Case**

- 3.07. Detective Sergeant White maintained that in making these allegations in his statement of the 13th of June 2001, Detective Garda Kilcoyne had told a tissue of lies. He stated that Detective Garda Kilcoyne had given an account of the planting of a firearm at the encampment, which simply did not happen. Detective Sergeant White believes that this was part of a larger conspiracy to discredit him due to the alleged knowledge on his part of wrongdoing on the part of very senior officers within An Garda Síochána. His theory is that by procuring or enabling Detective Garda Kilcoyne to make this false allegation against him, the senior officers have set out to discredit Detective Sergeant White, so that when he would make known the wrongdoing allegedly perpetrated by them, nobody would believe him. He goes further and says that a high ranking informant of his was deliberately named by Detective Garda Kilcoyne in his statement. He maintained that this was done so that the informant would have to be taken out of the country for his own safety, thereby depriving Detective Sergeant White of a crucial witness, who, he alleges, would have corroborated his allegations of wrongdoing on the part of the very senior officers.
- 3.08. Thus, what might at first sight appear to be a relatively straightforward case of allegation and denial has been elevated by Detective Sergeant White into being part of a much wider conspiracy to destroy him, so as to silence him. This chapter will set out Detective Sergeant White's theory in some detail. Other aspects of this

conspiracy theory are considered at the end of Chapter 4 in the context of all of the evidence.

- 3.09. Finally, the chapter will give conclusions on the central issue as to whether Detective Sergeant White and Detective Garda Kilcoyne did in fact plant a firearm at the Travellers' encampment at Burnfoot on the night of the 22nd of May 1998.

### **Early May 1998**

- 3.10. On the 8th of May 1998, Sergeant Niall Coady saw two members of the Irish Traveller Community acting in what he thought was a suspicious manner near Donegal town. He stopped his vehicle and spoke to the two men. He had a look around. He found nothing suspicious and proceeded on his way. Some time later he mentioned this encounter to Detective Sergeant White. From the description of the two men provided by Sergeant Coady, Detective Sergeant White thought that he had encountered one of the men previously in Dublin.<sup>22</sup>
- 3.11. Coincidentally, at that time, there had been a spate of trailer thefts from the general Finnstown area in County Donegal. This was a significant crime spree, as there were about forty trailers taken in total and some of these were valued at approximately €1,500.00 each. Detective Sergeant White was also the victim of trailer theft at that time. Two trailers had been stolen on two separate occasions from outside his home. One was taken between the 6th and the 8th of May 1998. The other was taken on the night of the 10th of May 1998.<sup>23</sup> On the 11th of May 1998, Detective Sergeant White and Detective Garda Kilcoyne came across a number of members of the Irish Traveller Community encamped at Barnesmore Gap. Detective Sergeant White got out of the car and spoke to some of the Travellers. He stated in evidence that he thought that one of them might have given him a false name. He thought this because a child to whom he spoke said he was the son of the particular man, but gave a different name. However, Detective Sergeant White stated that he did not pay too much heed to the giving of a false name. He said that this was a fairly common occurrence from his experience in dealing with members of the Irish Traveller Community in Dublin. He stated that he was, however, struck by one aspect of their conversation. The Travellers to whom he spoke seemed to be well acquainted with certain well-known criminals who were also members of the Irish Traveller Community. He said that this struck him as being significant, as it showed that they were possibly involved in crime due to their acquaintance with the criminal element in their community.<sup>24</sup> However, he found nothing else suspicious during this encounter. While Detective Sergeant White had been speaking to the men, Detective Garda Kilcoyne had made a note of the registration numbers on the vehicles parked at the scene.

<sup>22</sup> Transcript, Day 400, pages 48-50.

<sup>23</sup> Transcript, Day 392, page 71.

<sup>24</sup> Transcript, Day 392, page 78.

### **Detective Sergeant White Receives Information**

- 3.12. Some days later Detective Sergeant White had occasion to travel to Dublin. This trip was in connection with an ongoing subversive operation of a sensitive and serious nature. He had been in Dublin earlier in that month on the same operation. He was back in Dublin from the 13th to the 15th of May 1998. During this time he had long periods of enforced idleness, while he waited for further contact from his informant. Coincidentally, at around this time some trailers were stolen from his property. He stated that it was during one of these slack periods that he decided to contact an old informant, who had knowledge of the Irish Traveller Community. He said that he did this from somewhat selfish motives, because he wanted to see whether the Travellers, whom he had encountered at Barnesmore Gap would be likely candidates for the theft of his trailers.
- 3.13. Detective Sergeant White stated that this informant, whom we shall refer to as Mr. A, knew the Travellers whom Detective Sergeant White had encountered in Barnesmore Gap. He informed Detective Sergeant White that they would not be involved in trailer theft. However, Mr. A apparently went on to inform him of some significant information in connection with the death of Mr. Edward FitzMaurice, which had occurred in County Mayo at some time between the 1st and the 6th of May 1998. This is Detective Sergeant White's account of receiving the information from Mr. A and subsequently from another informant, Mr. B, to whom he was introduced by Mr. A:

*Yes, Chairman, and I wish to deal with that now at the outset, if I may do so ... Chairman, I was in Dublin on 13th, 14th and 15th May 1998 on confidential enquiries. I don't know which day I spoke to my informant, but I presume it has to be 15th of May 1998. On that date I worked from 10.00 a.m. until 1.00 a.m., when I returned to Letterkenny, that would be arriving at Letterkenny at 1.00 a.m. and I believe that I met my informant that evening on his own, that's informant A, in McDonalds' car park. I described the exact location of the car park.*

*I have no doubt in my mind, Chairman, that I did meet him on that evening and that the events, as I have told you before, were – my reason for meeting him were my own trailers, a selfish reason to a degree, but I was not interfering with my work in any way as most of the time I was waiting for events to occur.*

*I first brought up the names of the Travellers in the Gap. Now, the only two names I had at that stage were Thomas Collins and a man who gave me his name as John Collins. I didn't know his true*

*identity at that stage although when the young child, the young kid, said to me that he was John Patrick Casey, Sir, and he said, that man is my father. So I assumed from that conversation with the youngster that his name was John Casey. I didn't pay any great heed to this.*

*John Casey had told me on that day on the 11th May, that the elderly man, well he wasn't elderly, but the older man there was in fact Tom Maughan, but he gave me his own name as Tom Collins to the best of my recollection. So the information I had in my mind was Tom Collins and John Casey. They were the names that I would have mentioned and I did mention to informant A.*

*The conversation that followed was short in that he told me that those men wouldn't be involved in stealing bogies, as he calls trailers. I then asked him – that was then put out of the way for the moment and I asked him if they knew of anybody else who would be receiving trailers in Dublin or any part of the country on a fairly large scale basis and he said he wouldn't, he had no idea about it.*

*Following that discussion I had no further suspicion of any kind against Mr. Tom Collins or Mr. John Casey as being involved in the theft of my trailers or any trailers in our area. And it was at that stage, and totally unsolicited, that informant A told me that these are hot people and that he knew from another man that they were involved in the death of the old man in Mayo. He didn't know the old man's name. From media reporting I was aware of the death in Mayo and of the identity of the man. I think everybody was at the time, it was very newsworthy.*

*Like I said before, I would take informant A's information at face value, always did, but this was a different situation in two ways. First of all, he himself didn't have the information only in a second-hand manner, as it were, from another man. Something he had been told, but that he believed. And the second reason was that he had never, that's informant A, had never given me information, as to matters outside of Dublin before. It was always in the Dublin area. While that was unusual in one context, it was easily explained by the fact that he got it from another man.*

*Now, I insisted on meeting the other man. At first he didn't want to do this because he said obviously the other man, who we will*

*call informant B, would know that he was touting to me and he didn't want that to happen. I told him I couldn't bring the matter any further until I met that man. I also asked him if he talked to somebody from Mayo. He dismissed it immediately out of hand, that he was talking to no other policeman. This informant A is a very stubborn man and he is very- he has a will of his own, and he is not the type of man you can coerce into doing anything for you, either he will give it voluntarily, or not give it to you. One of the two of them.*

*I told him that I would have to meet the second man, informant B. Before he told me his name, he wanted a guarantee that neither of their identities would ever become known and I said I'd agree to that on the understanding that neither of them had anything to do with the death of the old man in Mayo and that he was not telling me lies about it or in any way putting me wrong. He agreed straight away, but that wasn't the case, that they were not doing that and they had no part in it. But the killing of the old man was over the top and that's the only reason he was telling me.*

*So an arrangement was made whereby he would contact me with a meeting, now the meeting was scheduled to be in the same place, to the best of my recollection an exact day wasn't set for it. That is to the best of my recollection, because it would have been difficult to do so. I know at one stage somewhere in the statement I said it was the following evening, but I don't think that is the case. As events unfolded, there was a telephone call in the meantime and the information was developed a little bit further ...<sup>25</sup>*

## **The Report**

- 3.14. Detective Sergeant White stated that he returned to Donegal late at night on the 15th of May 1998. He was on rest days for the next two days. On the 18th of May 1998 he stated that he made various enquiries at Blanchardstown Garda Station and at the Social Welfare offices in relation to the Travellers. He also made enquiries with the RUC as to ownership of the vehicles which he had encountered previously at Barnesmore Gap. He learned during that day that the Travellers had left Barnesmore Gap. He did not know at that time where they had gone. On the 18th of May 1998 he also wrote a report which he alleged he sent to Detective Chief Superintendent Dermot Jennings in the Crime and Security Branch in Garda Headquarters; it should be noted that Assistant Commissioner Jennings denied that he received this report:

<sup>25</sup> Transcript, Day 395, pages 3-7.

Confidential

18.5.98

Code No.

D/Chief Supt. Jennings

Crime and Security Section

Garda H.Q.

Re: Suspicious Death of Edward FitzMaurice at Charlestown,  
Co. Mayo recently.

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On 18th May 1998, I received information from a Dublin based itinerant that the following travellers had been involved in the above mentioned crime:

1. John Casey, aged approximately 30 years, and originally from the Finglas area of Dublin. He is married to Mary Collins.
2. Mathew Hand, approximately 27 years. He is married to Maggie Power. He gave most of his life living at a campsite adjacent to Parslickstown Estate, Blanchardstown.
3. Timmy Collins, age unknown, is the son of Thomas Collins. Timmy Collins according to informant has served two prison terms in England for attacks on the elderly and is at present wanted by the police in Kent, England for a similar type attack. Apparently he left Kent a year and a half ago because he was wanted for this crime.
4. David Power is approximately 30 years of age and married to Mary Collins (daughter of Thomas Collins).

My informant who has been extremely useful in the past is [portion redacted] was told of the families' involvement in the incident two nights ago. My informant states that the four above mentioned are now staying offside either in a campsite in Derry or quite close to it. He states that they are in the company of Thomas Collins (father of Timmy). He states that they are in possession of a white transit van with a J reg. number.

On the evening 11th of May 1998, while accompanied by D/Garda Thomas Kilcoyne, and while making enquiries at different itinerant campsites in Donegal area in relation to a larceny near Ballybofey, I interviewed a small group of travellers, who were positioned in a lay-by approximately one mile south of Biddy's Pub, at Barnesmore Gap, Ballybofey.



I interviewed one traveller who gave me his name and address as John Collins, Cappagh Halting Site, Finglas. While dealing with another traveller approximately 10 minutes later I spoke to the aforementioned son, approximately 4 years of age, who stated that he was John Patrick Casey. Mr. Casey-Collins had obviously lied regarding his identity for whatever reason. I did not make an issue of it. He appeared nervous when I questioned him closely regarding the campsites he lived in. He is approximately 5 foot 8 inches in height, looks approximately mid-thirties, but may be younger. He has a gaunt face with dark hair. And I questioned him regarding who lived in the caravan beside the white van, he stated that it was Thomas Maughan. This was untrue as this was Mr. Thomas Collins.

We also interviewed another traveller who gave his name as Thomas Collins. He was approximately 45 years of age, well built with a big head with grey hair. He had a well tanned complexion. He was extremely confident and knew all of the travellers well who would be involved in serious crime in the Dublin area. Mr. Collins stated that they had spent a lot of time around Sligo in the past 6 months and had been in County Donegal for the past week and had spent their time sharpening lawnmowers, etc. When Mr. Thomas Collins was questioned as to the identity of the first man we spoke to, i.e. [John Collins – John Casey] he identified him as John Collins, which was untrue.

The following registration numbers were taken at this campsite:

1. C368 YTS which was a gold coloured Escort Estate.
2. CBZ 7093 unable to remember make. It may have been a cream coloured Sierra Sapphire as stated on attached printout.
3. J153 XKU which was a white coloured Ford Transit van.
4. C526 ULB which was a red Ford Fiesta.
5. TIJ 1487 which I believe was a blue pickup truck. It is according to RUC computer a blue Toyota Corina.

Enquiries with the proprietor of Bidy's Pub show that these travellers arrived at this lay-by on 30/4/1998 and left on Thursday evening 14/5/1998. Their present whereabouts are unknown except for the information from my informant which suggests that they are camped in the Derry area.

Please find attached printouts in respect of the first four vehicles and the photocopy of a photograph of Mathew Hand. It would appear that this is the Mathew Hand in question, but this is not certain.

I will be in a position to gain further information from my informant on 19th of May, 1998.

Forwarded for your information, please.

John White D/Sgt. 19787D<sup>26</sup>

- 3.15.** The Tribunal is anxious to point out at this stage that in setting out this narrative, it is necessary to give a detailed account of all of the information which Detective Sergeant White stated was given to him at the relevant time. However, the fact that the Tribunal has set out this information does not mean that any of that information was in fact correct. There is no finding made by the Tribunal that persons named in the report quoted above were in fact involved in the death of Mr. Edward FitzMaurice. There is nothing to suggest that they were.
- 3.16.** The report furnished to Detective Chief Superintendent Jennings did not give an accurate account of the state of knowledge on the part of Detective Sergeant White. It stated that Detective Sergeant White had received the information on the 18th of May 1998 and that his informant, Mr. A, had learned of the involvement of the Travellers in the FitzMaurice murder “two nights ago”, which would put that as having occurred on the 16th of May 1998. Neither of these assertions were correct.
- 3.17.** It was put to Detective Sergeant White in cross-examination by counsel on behalf of the Garda Commissioner that he had only changed his account of when he received the information and pushed the dates back to the 14th/15th of May 1998 when he realised from his A.85 form that he was not in Dublin on the 18th of May 1998, but was there on the 15th of May 1998. It was put to the witness that this implied that he may not have met Mr. A at all.<sup>27</sup>
- 3.18.** Detective Sergeant White emphatically denied that this was the case. He accepted that the report was not totally accurate. He stated that it was a confidential report and that the informant had indeed telephoned him at his home, or on his mobile phone, on the morning of the 18th of May 1998 to inform him that Mr. B was prepared to meet him on the following day in Dublin.<sup>28</sup> Detective Sergeant White was adamant that that call from Mr. A was his second contact with Mr. A and that was why he supposed that their previous meeting, which was in Dublin, must have been on the 13th, 14th or 15th of May 1998.

<sup>26</sup> Tribunal Documents, page 495.

<sup>27</sup> Transcript, Day 394, pages 127-131.

<sup>28</sup> Transcript, Day 394, pages 124-126.

- 3.19. On the evening of the 18th of May 1998, Detective Sergeant White received an amount of documentation from the RUC concerning ownership of the vehicles, which he had requested. He also received a photocopy of a photograph of one of the members of the Irish Traveller Community from Blanchardstown Garda Station.
- 3.20. At approximately 11.48 hours on the 19th of May 1998, Detective Sergeant White faxed copies of the documents which he had received on the previous evening, together with a copy of his report which he says that he sent to Detective Chief Superintendent Jennings, to the incident room at Swinford Garda Station, where the investigation team into the murder of Edward FitzMaurice was based. Included with the fax was a covering report addressed to Chief Superintendent Carey:

Chief Superintendent Carey

19.5.1998

It has been established that Sergeant Niall Coady, Donegal town stopped one of the cars mentioned in the attached report on some date last week. It was the cream Sierra CB2-7093. Details of occupants:

1. John Collins. D.O.B. 11.4.66, Cappagh Field, Finglas.
2. Timothy McDonagh. D.O.B. 13.2.73, Ladyswell, Blanchardstown.

Apparently Sergeant Coady's wife observed a small group of travellers between Newtowncunningham and Carrigans going towards Derry on the evening of 15.5.1998. This would tie in with the information from the owner of Biddy's Bar.

Sergeant Coady has details of the two above mentioned's tattoos.

I would be of the opinion that both men gave false second names and that John Collins is John Casey and that Timothy McDonagh is Timothy Collins. John Casey is violent and is known to Garda Paul Harrison, Blanchardstown Garda Station.

For your information please.

John White D/Sgt.

D/Gardaí Kilcoyne (mobile number given) and Joseph Foley Letterkenny Station will be in a position to make enquires this evening 19.5.98 re: their present whereabouts. Garda T.J. Nelby, Donegal town, is also making further enquiries.<sup>29</sup>

<sup>29</sup> Tribunal Documents, pages 994-995.

### **Alleged Contact with Detective Chief Superintendent Jennings**

- 3.21. A dispute has arisen between Detective Sergeant White and Assistant Commissioner Dermot Jennings. Detective Sergeant White stated that he told Detective Chief Superintendent Jennings of the information from Mr. A concerning the suspected involvement of the Travellers in the murder of Mr. FitzMaurice. He stated that he relayed this information to Detective Chief Superintendent Jennings in his office in Garda Headquarters in the course of their meetings during the ongoing subversive operation. He could not give a precise date for the meeting. However, he was very clear in his recollection that Detective Chief Superintendent Jennings phoned the incident room at Swinford Garda Station and put Detective Sergeant White on the telephone to Detective Inspector John O'Mahony, one of the officers in charge of that investigation.
- 3.22. In the course of cross-examination by counsel on behalf of the Garda Commissioner, it was put to Detective Sergeant White that Assistant Commissioner Jennings would deny that any such meeting took place. He would deny that he was told of any information by Detective Sergeant White concerning the Edward FitzMaurice murder, or the suspected involvement of the Travellers in that crime, or of any information coming from Mr. A in the matter. Detective Sergeant White was asked for his answer to that assertion. He gave the following reply:

*The answer is wrong, Chairman. I did discuss the matter with Dermot Jennings and he is sitting down there now and he knows about it. We discussed it in his office inside in Crime and Security in Garda Headquarters. I also told him that the informant A had forty-nine grenades and he told me that he had no interest in the grenades because he had already got one of his officers to pay out to another person in relation to grenades and he felt that my informant had some source within the Irish Army and that they would be stolen to order and that we weren't paying any more for them. A thousand pounds was requested for the grenades and he told me to tell them to go to hell. That's exactly what Dermot Jennings told me. Now, if he is going to come along – one second, Mr. Marrinan. If you, Dermot Jennings, are going to come along and say that I had no discussion with you, then you are a liar, Sir, and I can tell you that. Because I was there beside you, Mr. Jennings, talking to you about this and if you want to come in and commit perjury here, do so before God. That's a fact. But I had the information, I brought it to you, but like so many matters you chose to lie. But don't choose to lie about this occasion, that is a*

*fact. Or else do it on a lie-detector machine and I will take it here with you and you will see, Mr. Jennings, who is telling lies and who is telling the truth, and I put it to you before God and on oath that this is a fact. If what Mr. Marrinan says is true then you are telling lies. That is a fact. I told you about informant A. You know it very very well.<sup>30</sup>*

- 3.23. Assistant Commissioner Jennings gave a description of how he came to have dealings with Detective Sergeant White during 1998. In the course of that description, he praised the intelligence which Detective Sergeant White gathered in relation to subversive matters:

*Well he came to me in February and we had a discussion at my office. Exactly what I said to John White was, that if he had some information that he should maybe put it into a report form and send it to me. Which he did and I would have to say that some of the information which John White gave to me was absolutely excellent.*

*And that I would never forget that to the gentleman. In the fight against terrorism it's like a jigsaw, and those parts of the jigsaw to build a case are vital and at the time a new terrorist organisation was in its infancy and John White's information formed a part of that jigsaw which, coupled with a lot of other intelligence from other sources, both technical and manual, built and resulted in some very successful cases against this organisation. And I would never forget John White and the organisation would never forget the value of that intelligence.*

*And as I have said, I think I may have explained it yesterday, Chairman, John White came, handed me reports, dealt with in a very professional, very business-like fashion, left me the reports, there would be some telephone contact of course and the fact that he was so far away from his own base in Donegal when he came to me first and the first three reports actually were faxed to me from Donegal, from his own Chief Superintendent, I contacted his Chief Superintendent and said, look, there seems to be something here which is very relevant to other work that I was doing, and then by arrangement with the Chief Superintendent, he would come to Dublin when the need would arise, that it was possible that more information could become available, and it was easier for him to work in Dublin.<sup>31</sup>*

<sup>30</sup> Transcript, Day 394, pages 132-133.

<sup>31</sup> Transcript, Day 407, pages 4-6.

Detective Sergeant White was held in such high regard by Detective Chief Superintendent Jennings that, in June 1998, he selected Detective Sergeant White to be one of only four Garda participants on an advanced agent handling course held in England.

3.24. However, in relation to the issue of information concerning the death of Mr. Edward FitzMaurice, Assistant Commissioner Jennings denied that Detective Sergeant White had ever mentioned any information to him concerning any involvement on the part of the Travellers at Burnfoot in that crime. Nor had Detective Sergeant White ever informed him that those Travellers possessed a firearm. He said that had such information concerning the Edward FitzMaurice murder been made known to him, it would have been of considerable interest. He stated that he would have immediately directed one of his staff to send a report of the information to the investigation team at Swinford. He said that if Detective Sergeant White had told him of that information, he would also have suggested to Detective Sergeant White that he should call in to Swinford on his way back to Donegal to brief that investigation team personally on the information because, on its face, it was highly relevant information.

3.25. Assistant Commissioner Jennings stated that he had never received the report dated the 18th of May 1998 which Detective Sergeant White alleged that he had sent up to him at Garda Headquarters. Assistant Commissioner Jennings stated that he had never seen that report. Furthermore, he had checked the FitzMaurice file held at Crime and Security Branch at Garda Headquarters; there was no such report on the file:

*Mr. Chairman, the author, from what I have here in front of me, the author of this is Detective Sergeant White who had been dealing with me since February of that year. Now, he should know and it is up to him, being the author of the intelligence or information, whichever you wish to call it, he is the person who should have transmitted this to Headquarters and that is the normal procedure. But as an add-on he did actually send it to Mayo and I don't see anything wrong with that. Because if the information was transmitted to Crime and Security Branch in the normal fashion it would be turned around and sent back down to the relevant officer in charge of the investigation. That is the way the system works and Detective Sergeant John White is very familiar with that system. Then he should have sent the document to me. In fact, if he did send it to me I don't see why he didn't discuss it with me the following day when he was in Dublin.*

*Chairman, I have no reason to tell you anything only the truth here and that is the simple fact. As you are aware, I am also on oath and I am telling you I did not receive this document. It is not in Crime and Security, I have checked the file there. And I never discussed this piece of information with Detective Sergeant John White. I was dealing with one issue with him and I had no discussion with him on this. In fact – that's the bottom line, Chairman. That is the truth of the matter.<sup>32</sup>*

- 3.26. In relation to the assertion made by Detective Sergeant White that Detective Chief Superintendent Jennings had phoned Detective Inspector O'Mahony of the Swinford investigation team from his office and had then put Detective Sergeant White onto the telephone line to talk to Detective Inspector O'Mahony, Assistant Commissioner Jennings stated that that did not happen. He stated that he did not even know that Detective Inspector O'Mahony, who was part of the National Bureau of Criminal Investigation, had been sent down to assist in the investigation into the circumstances surrounding the death of Mr. FitzMaurice:

*Chairman, and I have given this I think yesterday in evidence, that is not true or you can call it what you like, it's a lie, whatever you want to call it, but that did not happen. Chairman, if the Detective Sergeant told me that some group of Travellers had a gun I would be delighted to hear that and I would be delighted to pass it on because that was the business that we were in. Like also the same with the document regarding the death of Mr. FitzMaurice, I would have been delighted to pass it on. But this just did not happen. I would further say that I have seen no report from John White to say that these Travellers had a gun. So there we are. That's the facts of the situation. I have no reason to tell anything else only the truth here, because if I got this information I would be delighted to get it, because that is the business that I was in charge of at the time ... Chairman, fine, he may have written it down and that is what he says and that's what you say to me, but I am telling you, Chairman, on oath, I have not discussed the contents of this document, nor did I get any information from John White about any Travellers having any firearm in their possession, whatsoever. It did not happen, Chairman, and that is the truth.<sup>33</sup>*

## **Hand Grenades**

- 3.27. In the course of his evidence, Detective Sergeant White had alleged that

<sup>32</sup> Transcript, Day 407, pages 31-32.

<sup>33</sup> Transcript, Day 407, pages 40-41.

Detective Chief Superintendent Jennings was well aware of his informant, Mr. A, as he had mentioned him to the Detective Chief Superintendent in connection with the alleged possession of forty-nine hand grenades. Assistant Commissioner Jennings denied ever receiving such information. He stated that if somebody had come into his office in 1998 and told him that some individual was in possession of forty-nine hand grenades, at a time when there was a new subversive organisation starting off within the State, he would have been most interested in that information. He stated that he would have investigated the matter fully. He stated that having heard this allegation given in evidence by Detective Sergeant White, he had carried out enquiries in Crime and Security Branch in December 2005. He stated that there was no reference anywhere in their files to forty-nine hand grenades having been missing or having come into the hands of any specific individual. He stated that this simply did not happen.

- 3.28. The issue as to what information was passed to Assistant Commissioner Jennings by Detective Sergeant White was bitterly contested between the parties. In fact, the intensity of this conflict far outweighs the importance of the issue save and insofar as it serves to assist in assessing the credibility of the witnesses. It would, of course, be of major importance were it to be a fact that it was evidence of a conspiracy against Detective Sergeant White. If such a conspiracy existed, then one could possibly interpret Assistant Commissioner Jennings' denial that Detective Sergeant White passed him the information as an effort to discredit Detective Sergeant White. However, the Tribunal is satisfied that no such conspiracy ever existed and accordingly this issue is of no more importance than a conflict of evidence between the two parties.

### **Analysis**

- 3.29. In the resolution of this conflict the Tribunal is satisfied that one could well understand Detective Chief Superintendent Jennings, as he then was, being heavily burdened with many responsibilities at the relevant time. One could understand his being unable to call to mind each and every conversation which he had with Detective Sergeant White and accordingly there would be room to allow for human error on his part. However, the Tribunal is of the opinion that it would be quite impossible for him to forget a conversation in which it was suggested to him that he could avail of an offer to purchase hand grenades then available through a subversive organisation. If such an offer was discussed, it would be quite impossible for him to forget this conversation, as it would be by no means an everyday event. Accordingly, this is not a conversation that could now escape Assistant Commissioner Jennings' mind.
- 3.30. The Tribunal considers it to be of fundamental importance that when Detective



Sergeant White was later speaking to Detective Garda Kilcoyne, comforting him with the suggestion that the information which was available to them, namely that the Travellers were in possession of a firearm, was “sound”, he attributed this information to Detective Chief Superintendent Jennings. In other words, he represented to Detective Garda Kilcoyne that it was Detective Chief Superintendent Jennings who provided him with the information and gave a completely different version of the disputed conversation.

- 3.31. The Tribunal is satisfied that where such a fundamental change occurs in the description of a disputed conversation, it must call into question Detective Sergeant White’s version. The Tribunal accepts as correct Assistant Commissioner Jennings’ description of the way in which he and Detective Sergeant White transacted their business. He described that reports furnished by Detective Sergeant White on occasions when he visited him in his office at Garda Headquarters, were furnished in writing. Notwithstanding a thorough search in the offices of Crime and Security Branch, no report relaying the alleged information from Detective Sergeant White’s two informants exists. The Tribunal accepts that Assistant Commissioner Jennings was unaware that Detective Inspector O’Mahony had been assigned to the FitzMaurice murder investigation in Swinford and accordingly it would not have been possible for him to telephone him, as suggested by Detective Sergeant White. Accordingly, in the resolution of this issue, the Tribunal accepts the evidence of Assistant Commissioner Jennings.

### **Contact with Mayo**

- 3.32. In the course of his evidence, Detective Superintendent John O’Mahony stated that the first he became aware of any information from Detective Sergeant White was on the morning of the 19th of May 1998, when the faxed documents already referred to were received at the incident room in Swinford. The investigation team immediately started to carry out enquiries relating to the suspects named in Detective Sergeant White’s report. He said that the next contact from Detective Sergeant White was by telephone either on Thursday, the 21st of May 1998, or early in the morning of Friday, the 22nd of May 1998. At this time, he became aware of further information; that the Travellers were suspected of having a firearm; that the whereabouts of the Travellers had been ascertained and that the Travellers were thought to be about to move into Northern Ireland.
- 3.33. Detective Superintendent O’Mahony stated that he had a number of contacts by telephone with Detective Sergeant White. He could not say from where Detective

Sergeant White had made any of those calls. He did not speak to Detective Chief Superintendent Jennings or to Detective Inspector John McGinley at any stage. He stated that he was made aware that Detective Sergeant White intended to carry out a search of the encampment at Burnfoot:

*The information, I had spoken to Detective Sergeant White in the interim and he assured me that his information was reliable. I was also aware, while I didn't know Detective Sergeant White personally, I was aware of his reputation at that time and I was aware that he had received quite excellent information in relation to various investigations that were in the past. Our enquiries then showed that some of the suspects were suspects for attacks on the elderly in the County Meath area. Another one of the suspects, he had previous convictions for firearms offences, he had also been found with nineteen shotgun cartridges in the search of a house. I think it was 1996. One of the suspects, an intelligence bulletin suggested that himself and his brothers were travelling around the country and that they were involved again in violent attacks on shops and private dwelling houses in the country. So, yes, they had the information looked – these people fitted the bill to be perfectly honest with you, yes ... [as to whether the Swinford team requested that arrests should be made] no. Following the initial fax, information that came, I had a number of contacts with Detective Sergeant White. I think the first contact would have been, I cannot say for definite, it was either late in the evening of the Thursday, which was the 21st, or early on the Friday, the 22nd. At that stage the original information and as far as we were concerned up until the 21st/the 22nd of May we weren't aware where these people were resident. It was only late on the 21st, early 22nd, that we became aware of the firearms situation and we also became aware of the fact that these people were, the information was that they were moving imminently into Derry which was outside of our jurisdiction. So naturally enough in the light of the information we had received and the enquiries we carried out, we were anxious to interview these people in some shape or form ... again I had discussed with Detective Sergeant White the information. I assumed from him or I was led to believe from him that he had the warrants to search and I was aware that if a firearm was found that there would be an arrest under section 30, yes.<sup>34</sup>*

<sup>34</sup> Transcript, Day 402, pages 98-100.

- 3.34. A point that is worthy of note, because it is of relevance in connection with the question of the issuing of search warrants, is that when Detective Inspector O'Mahony was speaking with Detective Sergeant White, prior to 15.30 hours on the 22nd of May 1998, he had the impression that Detective Sergeant White already had search warrants at that stage.<sup>35</sup>

### **Meeting Mr. B**

- 3.35. Detective Sergeant White stated that having received a telephone call from Mr. A on the morning of the 18th of May 1998, where he was informed that Mr. B was prepared to meet with him, he went to Dublin on the following day. While he couldn't be sure of the date of their meeting, he thought that he met Mr. B on the evening of the 19th of May 1998. He gave the following account of that meeting:

*No I think it would be after the 18th I had the second meeting. It was after the 18th. Sorry, it had to be after the 18th I had the second meeting with informant A and B because more information came to light. There was no mention at all of a shotgun during the first meeting with informant A on his own, or during a telephone call. It was during the second meeting when both informant A and informant B were present in the van that the gun was mentioned. At that meeting I arrived in the car park, they were all ready. I think they were all late coming to the meeting. I parked over on the left hand side in McDonald's car park and the pale blue van pulled in to almost the original position as the last day but maybe a few yards to the right. And I walked over and sat into the front seat of the van. Informant A was in the driver's seat and informant B was in the back in a kneeling down position or a hunking position, hunked, talking. His head would be just slightly to my right and my informant was in the driving seat and I taped this conversation at the time. With a recorder because I didn't know how co-operative informant B was going to be. Or whatever.*

*It wasn't really for proof that they told me anything. I often do this to help me with notes afterwards, making up notes in relation to things. I have taped my other informant in the subversive field on different occasions as well and it is of assistance rather than writing notes out in front of them. But I do believe that I wrote out those notes in the van which I tendered to the Tribunal in the yellow pages. They were contemporaneous, written at the time in the van and I think they had no problem with me taking notes, the*

<sup>35</sup> Transcript, Day 402, page 134.

*two men at the time. They were very co-operative and there was really no hesitancy at all on the part of informant B to tell me these things.*

*B told me that he had been in his caravan and that again his wife or mother, I didn't pay too much attention to her identity, was praying over candles and he asked her what's wrong and that she said that for certain, she named certain people, and that they had been involved in the killing of the old man in Mayo and she was praying for them and praying everything would be okay.*

*Without mentioning the people I had met, I can mention those names, John – I presume I can mention names of Travellers, I can because it's open. John Casey and Tom Collins and it was David Power and Matty Hand and Timmy Collins. I think they were the names that were given to me that day and I went through with him as much as I could the background of the people involved. I knew Matty Hand myself from previous experiences in Dublin and I wouldn't have known the rest of them, except Tom Collins, by name or reputation. But I tried to find out as much as I could in relation to their background and why they suspected them of this killing in Mayo. They really were going only on what happened in the caravan, but then they relayed to me the violent background and they did so with great gusto. There was no holding back or maybe or anything else, and they told me that Tim Collins was a violent man, that he had used, I think a hatchet, on a fellow called McDonagh who was originally from Dundalk. I think it was a James McDonagh, this happened over in England and he struck him with a hatchet.*

*And he had done a couple of garages in England with a shotgun and it's called hunking or bunking, a name, a term that I had never heard of before prior to that and that he was wanted by the police in Kent for one such robbery. At least they thought it was Kent because apparently they always lived over there when he was in England.*

*And in relation to Matty Hand he told me that he had been involved in some kind of a tie-up in Ashbourne, and that he had put a – I think it was Matty Hand now, it might be David Power in fairness, that he put a gun down a person's throat and threatened to cut their ears off and he was very vivid about this and that*

*Gardaí in Ashbourne didn't know about it. I later made enquiries with a couple of detectives in Ashbourne, I think one of them might have been Peter Smith, but they had no real job that would tie in exactly with that. But they had some crimes out there which he was going to look into, that type of thing. In relation to Matty Hand he was obviously very violent and always carried firearms and both of them were quite open about that. That Matty Hand was a dangerous man and that Johnny Casey was a dangerous man and they told me that Johnny Casey had shot a man in the leg out in Blanchardstown, Tom Lawrence. I asked them what proof they had, not even proof, but could they give me anything tangible that I could work on in relation to that. No it's just what they heard.*

*Oh yes. Informant B told me that if I was searching the caravan to be careful that the boys would have the gun with them. But they would only have it, he went on quickly to say, John, they are not going to use it on you or any of your men, that's not going to happen, he said. But they have it, he probably didn't say for defensive purposes, that's probably my own terminology in relation to it. They had it in case they would be attacked by the Quinn/McDonaghs because of a trial coming up. There was a couple of them. I don't know if they said women or not, a couple of them were to give evidence in a forthcoming trial of a, I think it was Tim Joyce, that was killed in Finglas and there was a murder trial looming some time in the months coming up. In fact, sorry, informant A had told me that first of all. They were up in Donegal keeping out of the way and that they had been usually all their life around Dublin and that it was very unusual that they would leave Dublin, but that they had been in Sligo and they had been in Mayo before that and he didn't know that they were in Barnesmore Gap until I told them this. That is the first meeting with informant A. But he certainly gave me the impression that they were keeping out of sight and keeping out of Dublin.<sup>36</sup>*

### **Mr. A and Mr. B**

- 3.36. Mr. A and Mr. B both gave evidence in private session before the Tribunal. For this reason it is not possible to refer in detail to the evidence given by them. The Tribunal can only give a very general outline of the tenor of their evidence. However, the Tribunal is entitled to refer to the memoranda of interviews

<sup>36</sup> Transcript, Day 392, pages 86-91.

between Mr. A and Mr. B and members of the Carty team, which documents were circulated in a redacted form in advance of the hearing.

- 3.37.** It is appropriate to begin by setting out briefly the versions which Mr. A and Mr. B put forward to the Carty investigation team. Mr. A was first spoken to on the 25th of July 2001 by Detective Sergeant Flannery and Detective Garda Flynn. Mr. A. told them that he knew of the Travellers who had been mentioned by Detective Sergeant White and he knew that they had possession of stolen property at their campsite. He said he was told this by his friend Mr. B. He said that within twenty minutes of receiving this information from Mr. B, he rang Detective Sergeant White in Donegal. He told Detective Sergeant White about Mr. Collins and Mr. Power being in Donegal and told him that they had a lot of “hot stuff”. He stated that Mr. B was with him when he made this telephone call from a telephone box in Coolock, Dublin. Mr. A said that he did not know anything about a firearm, but that Mr. B had told him to tell John White to be careful in case there was a gun. He said that he had no information in relation to the Edward FitzMaurice murder. He said that both he and Mr. B knew Detective Sergeant White from his days serving at Blanchardstown Garda Station.
- 3.38.** On the 5th of September 2001 Sergeant Flannery and Detective Garda Flynn again visited Mr. A. On that occasion he confirmed that it was Mr. B who had told him that the Travellers in Donegal had “the place robbed out of it”. He stated that he brought this information to Detective Sergeant White when he phoned him from the telephone box in Coolock. He again said that Mr. B told him to tell Sergeant White to be careful; that there may be a gun. He denied that he met Detective Sergeant White in any car park in Santry with this information. Mr. A said that if Detective Sergeant White was in trouble with the information, then it was he and Mr. B who were to blame. He said that Detective Sergeant White was only doing his job and that if the two detectives were to talk to Mr. B he would put them right. Having spoken to Mr. B, the two detectives returned to see Mr. A on the following day, the 6th of September 2001. It was put to him that Mr. B denied ever giving any such information to him, or ever meeting Detective Sergeant White. Mr. A was adamant that he had received the information from Mr. B and that he had relayed this on to Detective Sergeant White over the telephone. He agreed that he never met Detective Sergeant White in the company of Mr. B. He stated that he had met Detective Sergeant White in a car park in Santry, but this was about a month after the arrest of the Travellers in County Donegal. He stated that Mr. B was not with him on that occasion. He said that he would never bring anyone with him when he was meeting Detective Sergeant White.

- 3.39. Mr. A was again interviewed on the 13th of September 2001. On this occasion he stated that he had met Detective Sergeant White hundreds of times. He stated that if Mr. B was telling them anything different to what he had already recounted, Mr. B was not telling the truth. He again stated that he had got the information from Mr. B and that it was Mr. B who had told him about the gun when he was on the phone to Detective Sergeant White.
- 3.40. On the 25th of September 2001, Sergeant Flannery and Detective Garda Flynn had spoken to Mr. B. He confirmed that he knew Mr. A for thirty years. He stated that in the early summer of 1998, Mr. A had approached him and asked him where the Collinses and the Caseys were. He told them that they had gone travelling for the summer, but that he did not know where they had gone. He stated that about a week later, Mr. A called to his house and asked him to come with him as he wanted to meet John White. He stated that he knew of John White as a Garda who had been stationed in Blanchardstown and that he was a very good friend of Mr. A. He stated that he got into Mr. A's van and that they travelled to the car park of the McDonald's restaurant in Santry. He said that when Detective Sergeant White arrived, he only said "hello" to Detective Sergeant White, but said nothing more. He stated that Mr. A got out of the van and walked around the car park having a conversation with Detective Sergeant White. He denied that he gave any information to, or had any conversation with, Detective Sergeant White.
- 3.41. Mr. B went on to state that approximately ten days after the first meeting in the car park, Mr. A was again in his house and told him that he was meeting Detective Sergeant White and asked him if he wanted to go for a spin. Mr. B stated that he again accompanied Mr. A to the car park in Santry. He stated that Mr. A got out of the van and both men went for a walk in the car park. He stated that on this occasion he didn't talk at all to Detective Sergeant White. He stated that he had no information in relation to the old man who was killed and robbed in Charlestown. He stated that Mr. A and he never discussed anything about that crime. He denied that he was ever in a phone box with Mr. A when Mr. A rang Detective Sergeant White. In his evidence to the Tribunal, Mr. B stuck rigidly to the account which he had furnished to the Carty team.
- 3.42. Mr. A's evidence to the Tribunal departed considerably from what he had told the Carty team. His evidence was also in conflict with the evidence of Detective Sergeant White. Mr. A agreed with Mr. B that he had gone to the car park in his van to meet Detective Sergeant White. He said that Mr. B was with him on the first occasion. He stated that he got into Detective Sergeant White's car where they had a conversation about trailers which had been stolen from Detective

Sergeant White. He said that he was asked to keep an eye out for anyone trying to sell them in the Dublin area. He denied that there was any conversation about the murder of Mr. Edward FitzMaurice. He denied that he had ever given any information about crime, whether relayed from Mr. B or otherwise, concerning the possible involvement of the Travellers who had been at Barnesmore Gap.

- 3.43. Mr. A stated that he had a second meeting with Detective Sergeant White at the same car park some weeks later. He again arrived in his van. He couldn't be sure if Mr. B accompanied him on that occasion. He stated that he again got into Detective Sergeant White's car. He alleged that Detective Sergeant White told him that he had arrested a number of Travellers for involvement in the Edward FitzMaurice murder and asked him whether he knew anything about the Collinses and the Powers. He said that he knew Mr. Tom Collins, but that is all he could offer. He denied that he ever told Detective Sergeant White about any woman praying, or crying, about the death of Mr. FitzMaurice in Mayo. He denied that Mr. B ever told him anything about that crime.
- 3.44. It was put to Mr. A in cross-examination that Detective Sergeant White had taken notes in the van of an amount of information which he and Mr. B had allegedly furnished on that occasion. Mr. A denied that he or Mr. B gave that information to Detective Sergeant White. The original of these notes was furnished by Detective Sergeant White to the Tribunal. Mr. A denied that Detective Sergeant White sat into his van at any stage. Mr. A also denied that the memoranda made by the Carty team of their conversations with him were an accurate account of what he had said to them.
- 3.45. This whole controversy as to what information, if any, was given to Detective Sergeant White by Mr. A and/or Mr. B could have been resolved by a tape-recording of the discussions in the van. Detective Sergeant White stated in evidence that he had made such a covert recording. He said that while the sound quality was not that good on the tape, it was adequate to enable the listener to make out what was said by his informants on that occasion.
- 3.46. Detective Sergeant White no longer has the tape. He maintained that it was one of a number of items which were removed from his house during a search carried out by Gardaí on the 19th of June 2001. He stated that the tape was never returned to him. He stated that this was relevant to the general theory which he has put forward of a conspiracy to discredit him:

*Q. And are you implying that the Carty team had deliberately withheld that tape from you subsequent to the search?*

*A. I am or some member of the Team played the tape, saw the relevance, and decided he's not getting this, simple as that.*



Q. *I see. And why would they be motivated to take that action, if they did take it?*

A. *Because the Carty team wanted to do me down at that stage. They already have tried it with William Doherty. They had tried and charged me, but I wasn't charged at that stage with Bernard Conlon, and they wanted to ensure that I was not going to get out of the trap that they put me into, as simple as that. And that they were going to go by any means possible, illegal means possible to do so and they have done so and they have constantly and persistently done so and they have not investigated anything fairly and I can give details, Chairman, where they haven't investigated things.*

*They are good, experienced policemen and they could have if they wanted to, but they did not want to, they were malicious and they continue and remain to be malicious, and it is deeply hurtful to me and very saddening to me this is happening.<sup>37</sup>*

### **Analysis of This Conflict**

3.47. The Tribunal has been faced with conflicting accounts not only between the evidence of Mr. A, Mr. B and Detective Sergeant White, but also between what Mr. A said in evidence and what he was recorded as having told the Carty team. There is some measure of agreement between the evidence of Mr. A and Mr. B concerning the meetings. However, the Tribunal is satisfied that neither of these witnesses gave reliable evidence. The Tribunal is of the opinion that Mr. A lied in relation to the extent of his relationship with Detective Sergeant White. The notes taken at the time tend to support the inference that information was given by Mr. A and Mr B to Detective Sergeant White on that occasion. The Tribunal is satisfied that Detective Sergeant White did receive some information to the effect that the Travellers had been involved in the murder of Mr. FitzMaurice. The Tribunal is less certain as to the extent of the information received concerning possession by the Travellers of a firearm. However, given the unsatisfactory nature of the evidence given by Mr. A and Mr. B, the Tribunal concludes that it is possible that Detective Sergeant White did receive some information to the effect that the Travellers camped at Burnfoot may have had a firearm in their possession. It seems probable that they were said to have had it as a protection in case of a feud developing with the Quinn/McDonagh family.

<sup>37</sup> Transcript, Day 392, pages 94-95.

## **Preparations for the Search**

- 3.48. Detective Sergeant White maintained that upon receipt of the information from Mr. B, he asked Detective Garda Thomas Kilcoyne to make enquiries in Donegal to ascertain the whereabouts of the Travellers. He knew that they had left Barnesmore Gap on the 16th of May 1998, but did not know where they had gone. Detective Garda Kilcoyne accepts that he did receive this instruction from Detective Sergeant White. He made enquiries and located the Travellers in an encampment at the side of a road known locally as Slab Road, in Burnfoot. They had placed their caravans beside some disused sheds and a disused milking parlour, which formed part of An Grianán farm. Detective Sergeant White returned to Donegal on the evening of the 21st of May 1998. Later that evening he was told of the location of the Travellers' encampment by Detective Garda Thomas Kilcoyne.
- 3.49. On the morning of the 22nd of May 1998, Detective Sergeant White spoke to Detective Inspector John McGinley about the information which he had concerning the Travellers. He told the Tribunal that it was decided that a search would take place as soon as possible. The curious feature was that nobody in particular seems to have taken responsibility for actually making the decision that a search was to be carried out. Superintendent Long, in whose District the encampment was located, had not been informed of any proposal to hold a search. Neither had Superintendent Kevin Lennon, who was Superintendent in Letterkenny District. Detective Sergeant White denied that it was he who had authorised the search. Mr. John McGinley, who was then the Detective Inspector, stated that he had two conversations with Detective Sergeant White on the 22nd of May 1998. In the first conversation, he was informed by Detective Sergeant White that he had information that the Travellers camped at Burnfoot had a firearm. In the second conversation, which occurred about an hour and a half later, Detective Sergeant White informed him that he had obtained search warrants to carry out a search of the encampment on the following morning. Thus, it appears to the Tribunal that the operation was Detective Sergeant White's idea. It was mentioned by him to Detective Inspector McGinley, who accepted that once warrants had been issued by the Superintendent, he had no function in making any further enquiries in relation to the search.
- 3.50. During that day, preparations were put in place by Detective Inspector McGinley and his assistant Garda Brian McEntee; and further assistance was provided by Detective Garda Thomas Kilcoyne. There was considerable work to be done because the search was going to be quite a large-scale operation, involving about twenty-five Gardaí, male and female, from at least three districts in the Donegal Division. Arrangements also had to be put in place to deal with the interviewing

of any persons who might be arrested as a result of the search. In addition, there was contact between Detective Sergeant White and Detective Inspector O'Mahony in Swinford with a view to their involvement in the interviewing of suspects in relation to the FitzMaurice investigation.

- 3.51. Detective Superintendent O'Mahony told the Tribunal that by 15.30 hours on Friday, the 22nd of May 1998, he was aware from his conversations throughout the day with Detective Sergeant White that the search operation was in place for the following morning. He stated that he had the impression from Detective Sergeant White that search warrants had already been obtained. Detective Inspector O'Mahony was due to travel to Dublin that afternoon. It was agreed that he, along with three colleagues from the National Bureau of Criminal Investigation, would travel up from Dublin on the following morning. They were to be joined by four members of the Swinford investigation team, who would travel up from Mayo.

### **The Navenny Grill Conversation**

- 3.52. It is at this point that a very sharp divergence emerges between the evidence of Detective Garda Thomas Kilcoyne and Detective Sergeant White. They agree that they went to the Navenny Grill in Ballybofey for a simple meal at some time after 20.00 hours on the 22nd of May 1998. Detective Sergeant White stated that they had gone out to Ballybofey for the purpose of recharging Detective Sergeant White's mobile telephone battery at his house. He stated that it was necessary to do this because he was expecting further important communications from his subversive informant later in the night. Detective Garda Kilcoyne could not recall why they had gone out to Ballybofey for a meal that evening. What transpired during the meal at that restaurant is hotly contested between the two men. Detective Garda Kilcoyne gave the following account of what was said by Detective Sergeant White during the meal:

*We were eating and Detective Sergeant White was going through the information that he had gleaned that these people were involved in the death of Mr. FitzMaurice, that we had all our teams in place. I don't know how many teams there were and the people that were going to come up, that were on their way up from Swinford, were going to come up the following day and that this firearm would have to be found, like it's all going to be for nothing if this firearm is not found ... Because there would have been no section 30 arrests without a firearm ... And the reason for the section 30 arrest was that there was a longer period of detention, a longer period to interrogate them to interview them*

*as to their movements ... He said that the information is one hundred per cent, it's Dermot Jennings. And then he says that he had a firearm, I can't remember the exact words, but he had a gun, a sawn-off shotgun, and that we should place it close to the caravans just in case there was no gun found ... I didn't know why or what to say to him. Because I believed that there was a firearm there. That the information was firm ... you have to support somebody else's information basically. The reaction was how was I going to talk him out of this. In my mind because there was no need to get a firearm. There was also the shock that he actually had a firearm at all. And a sawn-off shotgun. I can't remember what words I used to him. But what I do remember was that he was emphatic in saying, look it, there's a firearm there, Dermot Jennings says this is one hundred per cent, don't worry about it, this thing will only be there to one side if we don't find the original, or the one that Dermot Jennings says is there.<sup>38</sup>*

- 3.53. In the course of cross-examination by counsel for Detective Sergeant White, he was asked to repeat what he alleged Detective Sergeant White had said at the restaurant:

*That we are – the exact words escape me again. It is a fact that he introduced this subject to me and I will try my best to say how he said it. Okay, I was sitting across the table from him. He said to me the search teams are ready to go. Whether he said we had the warrants or not, I'm not sure. The search teams are ready to go, there are people coming from all over. Dermot Jennings said these guys have got a gun, they are in possession of a gun for their own safety as we have discussed earlier, it is close at hand to the caravan, or if it is not in the caravan, it's close at hand. They are in possession of a gun for their own safety. That this information came from Dermot Jennings. There are twenty-five of us, I am still trying to give the best description I can of this actual event.*

*If twenty-five or thirty was to arrive up, people coming from Swinford and Ballinasloe, and everything else, or wherever they are coming from, Swinford or Buncrana, and there is no gun found, we will all have to go away and the investigation in the FitzMaurice murder will be blown because we have declared or shown our hands. There will have to be an outcome, there will have to be arrests. So just in case Dermot Jennings' information is not correct, and this is not what he said, I am giving you a flavour*

<sup>38</sup> Transcript, Day 388, pages 99-101.

*of what I understood him to be saying. If we find ourselves in a position that the gun is gone or for whatever reason we don't find Mr. Jennings' gun, we will expose our hands, we won't be able to make a section 30 arrest, these people will know that we are on to them for the FitzMaurice thing, or for something sinister and I have got a gun and we should, or I should or we should travel to – or we should bring the gun as a backup. Now, sir, that is not exact words, that is my best effort at trying to get across to you, sir, what I am trying to say about what happened that evening in the Navenny Grill and how I found myself in the position that I did find myself in.<sup>39</sup>*

- 3.54. Detective Garda Kilcoyne admitted that his response to this suggestion from Detective Sergeant White was weak-willed. He did not say to Detective Sergeant White that it was a wrong thing to do; he merely said that it would not be possible to get too close to the encampment due to the presence of dogs and children who would raise the alarm:

*That it was unnecessary if Dermot Jennings' information is correct, that there was no need. But basically my argument or what I had said in response is that there are a lot of caravans there, they have children and they have dogs and it would be very very difficult to get close enough to the caravan to have any success in getting the gun close without being detected. But this is, what I said earlier, the counter-argument was put to what I was saying. Without a gun being discovered there would be no section 30 arrests.<sup>40</sup>*

- 3.55. When asked as to why he had not said to Detective Sergeant White that the plan was wrong or illegal, Detective Garda Kilcoyne candidly admitted that he had not done so because he had been morally weak:

*Because the weight of his argument and the belief that this gun would not be discovered was something that – I was weak, I should have said it. But I didn't say it. I didn't say it because – I didn't say it ... I was trying to say – I was trying to come up with something that would explain why I didn't say it for you, Sir ... and the best explanation I can come up with is that I was weak and negligent in my duty.<sup>41</sup>*

- 3.56. In his examination in chief, and in his prior interviews with the Tribunal investigators, Detective Garda Kilcoyne maintained that having telephoned his wife to inform her that he would be late home that night, he proceeded with

<sup>39</sup> Transcript, Day 389, pages 155-157.

<sup>40</sup> Transcript, Day 389, page 157.

<sup>41</sup> Transcript, Day 389, page 159.

Detective Sergeant White directly from the restaurant to a shed owned by Detective Sergeant White at Gortahork. When it was pointed out to him that Detective Sergeant White had made a telephone call to Detective Chief Superintendent Jennings on his mobile telephone at 21.25 hours, which had been routed through the mast at Mongorry Hill, which is north of Ballybofey, miles away from Gortahork, Detective Garda Kilcoyne changed his evidence. He stated that having thought about the matter overnight, he realised that there was a conflict between his account to the effect that they had left the restaurant and directly proceeded in a southward direction towards Gotahork, a townland close to Ballybofey, and the cell site analysis which showed that the telephone call had been made by Detective Sergeant White at 21.25 hours and routed through a mast which was north of Ballybofey. He stated that having thought about it overnight, he realised that they had been using the Garda unmarked patrol car when they arrived at the Navenny Grill in Ballybofey. He had a clear recollection of being in Sergeant White's car when they went to the shed at Gortahork. On this account, he was of the view that they did indeed return to Letterkenny Garda Station after the meal for the purpose of changing vehicles.<sup>42</sup>

- 3.57. Detective Garda Kilcoyne was cross-examined extensively by counsel for Detective Sergeant White on his change of evidence. It was put to him that this was merely an example of how he would change his story when confronted by a piece of concrete evidence, in the form of the telephone records, which showed that his original account could not be true. Detective Garda Kilcoyne denied that he had changed his version on that account. He stated that when counsel for the Tribunal had pointed out about the telephone call from the Mongorry mast at 21.25 hours, he had given the matter considerable thought; while he had no specific memory of what had happened after they left the restaurant and before they arrived at Gortahork, he did have a recollection that they had been in the unmarked patrol car at the restaurant, but that they had definitely been in Detective Sergeant White's car at Gortahork. On this basis, he concluded that they must have changed cars in the interim. He said that he had a vague recollection of returning to Letterkenny Garda Station to leave back the patrol car and proceed in Detective Sergeant White's car.<sup>43</sup>

### **Detective Sergeant White's Account**

- 3.58. Detective Sergeant White has stated that no such conversation took place between them at the Navenny Grill, as described by Detective Garda Thomas Kilcoyne. He said that while they may have discussed the search operation which was planned for the following day, there was absolutely no question of planting any firearm at the encampment.

<sup>42</sup> Transcript, Day 389, page 12.

<sup>43</sup> Transcript, Day 390, pages 5-10.

- 3.59. Detective Sergeant White stated that they left the restaurant at circa 21.10 hours and that having retrieved the re-charged battery from his home, they then proceeded back to Letterkenny Garda Station. This would explain the call made at 21.25 hours using the Mongorry mobile phone mast. Detective Sergeant White stated that when they arrived at Letterkenny Garda Station, they remained there doing paperwork until it was dark enough to go on a reconnaissance mission to the encampment. He stated that at all times that night they had used the unmarked Garda patrol car. They never used his private vehicle.
- 3.60. Detective Sergeant White also emphatically denied that he had ever intimated to Detective Garda Thomas Kilcoyne that any of his information had come from Detective Chief Superintendent Jennings. In this regard, Detective Garda Kilcoyne had said that in the days leading up to their conversation at the Navenny Grill, he had been aware of two strands of information coming in from Detective Sergeant White. The first strand was to the effect that the members of the Irish Traveller Community camped at Burnfoot had some involvement in the murder of Edward FitzMaurice. This information, he understood, came directly to Detective Sergeant White from one of his informants in Dublin. The second strand of information was to the effect that the Travellers were in possession of a firearm for their own protection from attack by other Travellers with whom they were in dispute concerning evidence to be given at a forthcoming criminal trial. Detective Garda Kilcoyne maintained that it was represented to him by Detective Sergeant White that this information had come from Detective Chief Superintendent Jennings and was very reliable information. Detective Sergeant White accepted that he had the two pieces of information, but said that it all came from his own informants, Mr. A and Mr. B. He said that none of it came from Detective Chief Superintendent Jennings, nor did he ever intimate that to Detective Garda Kilcoyne. Detective Sergeant White went further and alleged that this allegation, which was given in evidence and also appears in the original statement of Detective Garda Kilcoyne made on the 13th of June 2001, was in fact a subtle plant by the Carty team to set up a conflict between Detective Sergeant White and Detective Garda Kilcoyne and Assistant Commissioner Jennings with a view to further discrediting him. He explained his theory in this regard as follows:

*Q. So if you didn't say that to him, why would he put that into a statement? What's the purpose of adding it in?*

*A. I don't know if the purpose was to try and establish that, let me think a moment now, it's difficult to put that scenario forward. That I was – that I was making him so sure that there was a firearm there. But I mean it doesn't make an*

*awful lot of sense now, I'm trying to work it out in my own mind, but it doesn't make an awful lot of sense. It had been the case, yes, I would have told Tom Kilcoyne if the Detective Chief Superintendent Jennings had given me the information, certainly I would have told him, but if anyone knew how we work, it just simply wouldn't work that way. There's probably an amount of malice involved in it too by Detective Garda Kilcoyne saying that, because he knows it isn't the truth.*

Q. *It doesn't seem to add a great deal, I mean you have a certainty on your own evidence that there was a shotgun there or a firearm there?*

A. *Yes.*

Q. *The only point of difference is you say you had the certainty from talking to A and B rather than talking to Detective Chief Superintendent Jennings and that therefore you didn't tell Garda Kilcoyne that you had this certain belief from talking to Superintendent Jennings?*

A. *Yes, I am a bit lost now, Mr. Barr. Sorry about that again. I am trying to follow exactly what you are saying. I think that the reason was that when he said this that I said it and then Detective Chief Superintendent Jennings was quite obviously going to say I didn't ever give that information to John White.*

Q. *Yes?*

A. *That that would cause a problem for me.*

Q. *Yes?*

A. *In a conflict between Detective Chief Superintendent Jennings and myself. That conflict would be caused, Chairman, and it would be a source of maybe discrediting me in that regard.*

Q. *So it was a subtle planted lie to enable Chief Superintendent Jennings to be brought into the picture to deny that he had ever said such a thing to you?*

A. *Yes, I believe that to be the case.<sup>44</sup>*

<sup>44</sup> Transcript, Day 392, pages 140-141.



### **Decisions on the Navenny Conversation**

- 3.61. The Tribunal accepts the account given by Detective Garda Kilcoyne of the conversations he had with Detective Sergeant White in the days leading up to the search at Burnfoot. The Tribunal accepts his account of the conversation at the Navenny Grill on the night of the 22nd of May 1998. In particular, the Tribunal is satisfied that Detective Sergeant White did convey to Detective Garda Kilcoyne that the information concerning the possession of a firearm by the Travellers came from Detective Chief Superintendent Jennings. This was not in fact the case. One can only speculate as to why Detective Sergeant White told this lie to Detective Garda Kilcoyne. Perhaps it was a desire on his part to invest such information as he had in relation to the firearm with added significance or authority in the eyes of his colleague; or perhaps it was merely an act of bravado on his part. Whatever the reason, the Tribunal is satisfied that Detective Sergeant White did indicate to Detective Garda Kilcoyne that this information came from Detective Chief Superintendent Jennings.
- 3.62. While this aspect may appear to be a somewhat trivial dispute between Detective Garda Kilcoyne and Detective Sergeant White, it is in fact significant, because it constitutes an allegation by Detective Sergeant White that Detective Garda Kilcoyne was put up to putting this specific lie into his statement by some party, presumably the Carty team, so as to establish a conflict between the three named persons. Its inclusion in his statement of the 13th of June 2001 would imply that Detective Garda Kilcoyne was acting at the behest of third parties in making what Detective Sergeant White alleges was a totally false statement, rather than on his own initiative. **The Tribunal is satisfied that this was not a lie told by Detective Garda Kilcoyne. Accordingly, it could not be a “subtle planted lie” as alleged by Detective Sergeant White.** This allegation by Detective Sergeant White will be seen to be significant when one comes to consider the wider theory advanced by Detective Sergeant White later in this chapter.

### **The Shed at Gortahork Near Ballybofey**

- 3.63. Detective Garda Kilcoyne gave the following account of what allegedly happened after Detective Sergeant White and he had changed vehicles at Letterkenny:

*We drove and the shed is approximately one hundred and fifty yards from the road, we drove in the entrance, I believe I opened the gate and we passed at the shed, at the side of the shed, in front of the shed by the large door. And Sergeant White went into the shed and my memory of it actually is that he was driving his own car and my first memory is of him coming out of the shed holding this shotgun.*

*It was a small, short sawn-off shotgun with the stock sawn off and the barrel sawn off. I would describe it as being very frightening from the point of view of the lack of safety. There was no trigger guard on it. There was one single trigger.*

*Now, I had stepped out at this time. Well, I came to him as much as he had come to me. He was holding the gun and he asked or suggested or said that we should test fire it to see does it work.<sup>45</sup>*

- 3.64. Detective Garda Kilcoyne went on in his evidence to state that Detective Sergeant White attached a piece of string to the trigger area of the gun. He placed the gun on the ground, between some stones. He then pulled the string so as to discharge the gun towards a bank. However, under cross-examination he admitted that he had no actual recollection of Detective Sergeant White attaching the string to the gun. He indicated that the stones were reasonably large: about the height of a small plastic bottle of drinking water and the same in diameter. This would be circa eight inches in height. Detective Garda Kilcoyne stated that he stood some distance away. He stated that he was not able to see the gun itself while it was being fired. It was largely obscured by the stones which had been placed on either side of it.
- 3.65. Detective Garda Kilcoyne stated that he did not see any recoil from the weapon when it was fired. He said there was a big bang and a large puff of smoke. He did not see any flash, but it was not that dark at the time that he alleges that the test firing was done. He stated that he did not see Detective Sergeant White load the gun. Detective Sergeant White was not wearing gloves during this operation. He stated that the testing of the gun took about fifteen minutes. He maintained that Detective Sergeant White was very pleased that the gun had been discharged successfully.
- 3.66. Detective Garda Kilcoyne stated that Detective Sergeant White then returned to the shed, placed the gun into a bag and placed some clothes in the bag, saying that the clothes would look like pieces of clothing worn by members of the Irish Traveller Community. In fact, when the gun was found the following morning it was in a blue cloth bag with an old soiled shirt and a child's woollen jumper, which was purple in colour with a pattern on it.
- 3.67. Detective Garda Thomas Kilcoyne did not see any cartridges being placed into the bag. He says that Detective Sergeant White put the bag on the back seat of his car. They then proceeded to Burnfoot. During this journey, Detective Sergeant White received an important telephone call and made two calls to Detective Chief Superintendent Jennings. The timing of the calls is not in dispute, but Detective Sergeant White maintains that the calls were made by him when they were

<sup>45</sup> Transcript, Day 388, page 106-107.

driving from Burnfoot, not while they were on their way to the encampment. From the point of view of a coherent narrative it is perhaps easier to give Detective Garda Kilcoyne's account first followed by Detective Sergeant White's version. The telephone calls will be looked at in detail under a separate heading.

- 3.68. The encampment of the Travellers located at a crossroads with a smaller road bisecting the larger road. The larger road went from the Buncrana direction towards Derry city. It was bisected by a smaller road, known as the Slab Road. On the left side of the larger road, the Slab Road ran along the side of the Garda Station at Burnfoot. On the opposite side of that small road, directly opposite the Garda Station itself, was a disused factory building, which is now a community centre. It had a sizeable car park in front of the building. On the other side of the main road, the Slab Road was rural in nature. The only buildings were the large disused cattle sheds and milking parlour which had formed part of An Grianán farm. They were on the left hand side of the Slab Road as one travelled down that road away from Burnfoot Garda Station. The farm buildings were visible from the Garda Station, as it was only approximately two hundred and fifty metres away.

### **The Alleged Planting**

- 3.69. Detective Garda Kilcoyne gave the following account of what happened when he and Detective Sergeant White arrived at Burnfoot that night:

*At the side of – there's a road up the side of Burnfoot Station, we drove up, we turned right off the main Buncrana Road and up that little side road and we parked at, I think it was a disused factory, it's approximately two hundred yards off the road on the left hand side and there's a wing on that building which we could see from where we parked. It's an L-shaped building, the base of the L facing the road, so we went to that wing. We got out of the car and I walked in front. We walked fairly briskly towards An Grianán farm. It was a fairly darkish night, but it was warm, it wasn't raining or anything ...*

*Oh not more than three or four minutes ... As we approached the farms or the buildings, disused buildings, there was a car approached us from the Slab side, drove towards us, and I remember I was slightly exposed because there was a wall, a stone wall, I had no place to step in, so I turned back up a little bit up the road to a gap or a route, I stood beside Sergeant White while the car passed. This is the memory I described earlier of looking back*

*at Sergeant White holding this bag. We stood there for a second to let the vehicle pass, indeed it might have been two, but it was definitely one.*

*We had been on the off-side of the road, we crossed the road, we had been on the right hand side approaching the farm. Sergeant White led from there. He crossed the road into the vicinity of this area where we have the sheds. He told me to watch from the corner, keep an eye open, something of that nature. He had the bag and he looked into the shadows. It had been dark and at night and I hadn't gone back there again until I saw the photographs in 2001. I realise that he had stepped in under this large steel door that was covering a vacancy in the wall, or a gap in the wall, he emerged a few minutes later and he didn't have the bag which contained the gun.<sup>46</sup>*

3.70. Detective Garda Kilcoyne stated that their original intention had been to get somewhat closer to the caravans. However, due to the barking of a dog, they could not proceed any further than the side of the milking parlour, which building was adjacent to where the caravans were parked. It was at this time that he alleged that Detective Sergeant White entered the milking parlour for the purpose of leaving the bag containing the gun there. Detective Garda Kilcoyne stated that he could recall that Detective Sergeant White was happy, or “buzzed up” as he put it, that they had successfully planted the firearm at the encampment. However, he had no memory of what happened after that. He did not recall any conversation in the car, nor whether he had driven home from Letterkenny in his own car, or had been dropped home by Detective Sergeant White. He assumed that he must have been at home, or on his way home by 00.37 hours because the telephone records showed that he made a call on his mobile phone to Letterkenny Garda Station. This call was routed through the Mongorry mast, which serves his home area. He was of the opinion that that call was probably to ask the Communications Centre at Letterkenny Garda Station to give him a wake-up call the following morning.

3.71. It will be seen that this lack of memory of events after the alleged planting of the firearm at Burnfoot gives rise to problems in relation to the issuing of search warrants by Superintendent Kevin Lennon. This aspect will be examined later in this chapter.

### **Detective Sergeant White's Version**

3.72. As already stated, Detective Sergeant White maintained that after the meal in the Navenny Grill and the collection of the re-charged mobile phone, he and

<sup>46</sup> Transcript, Day 388, pages 122-124.

Detective Garda Kilcoyne returned to Letterkenny Garda Station. There they did paperwork until it was dark enough to proceed out to do a reconnaissance of the encampment. He stated that they left at approximately 22.30 hours and drove directly to Burnfoot.

- 3.73. Detective Sergeant White was adamant that they never went to his shed at Gortahork that evening; nor did they obtain any gun from his shed; nor did they test fire any gun. He maintained that the account furnished by Detective Garda Kilcoyne in this regard was simply a tissue of lies.
- 3.74. Detective Sergeant White stated that the purpose of the reconnaissance was, firstly, to establish that the Travellers had not moved on from the encampment at Burnfoot and, secondly, to establish if possible the number of caravans and the registration numbers of the cars and other vehicles there, to ensure that they would name the right people in the search warrants.
- 3.75. Detective Sergeant White accepted that for two men dressed in plain clothes to walk down the Slab Road towards the encampment at a time that was relatively early, being before pub closing time, was a calculated risk.<sup>47</sup> He accepted that if they had been seen, the entire search operation would probably have been blown, as the Travellers would have sensed that a search was imminent and would probably have moved the firearm far away from their camp. He did not think that a simple drive-by inspection would have sufficed:

*It wouldn't, Chairman, really. I intended to get a much better look than you would with a drive-by as such. It is very difficult to actually discern seven vehicles driving past there at 25/30 miles per hour, it is difficult to do it. I suppose I am curious by nature and I want to get more information if I could because I wanted to have the names right on the warrants as much as possible and that's been my procedure over the years, to do all the possible background work that I am capable of doing, because it was a big enough operation from Donegal standards and it was big because of the amount of men that were going out.<sup>48</sup>*

- 3.76. Detective Sergeant White stated that he did not ask the local Gardaí at Burnfoot, whose station was within sight of the encampment, to count the caravans because it was his method of operating to always check out his information for himself.<sup>49</sup> The Tribunal does not accept this explanation of his actions. There was no valid reason why Detective Sergeant White could not have requested one of the station party at Burnfoot to carry out the necessary reconnaissance of the Travellers' encampment if that was what he really wanted. One of those Gardaí

<sup>47</sup> Transcript, Day 392, page 164.

<sup>48</sup> Transcript, Day 392, page 164.

<sup>49</sup> Transcript, Day 392, pages 154-155.

could have passed by the campsite without attracting any undue attention from the Travellers. Sergeant Leheny and Garda Galligan had visited the campsite some days previously. They could easily have done so again in order to acquire the desired information. It would be conduct amounting to recklessness for two Gardaí to walk down the Slab Road at that time of night simply to do a reconnaissance of the campsite. By so doing, they would have risked blowing the whole search operation if they had been seen by any of the persons living at the campsite. The Tribunal regards it as implausible that Detective Sergeant White went to the campsite that night for the purpose only of carrying out a reconnaissance thereof.

- 3.77. Detective Sergeant White stated that they parked the unmarked Garda patrol car in the car park of Burnfoot Garda Station. He stated that they crossed the main road and proceeded on foot down the Slab Road. He described the reconnaissance as follows:

*We walked down the road like this [indicating]. I'd say from there, possibly about ten or fifteen feet from the wall, we'll say, out to about there, to look at them. That's when the dog or dogs began barking.*

*At that stage I felt it prudent to pull back straight away over to the corner, but they were yapping away and there was no chance to move closer. If we had moved around the corner, we would be too close to the caravans and attracted attention, I felt. So I went in through that doorway there and I walked in through a room maybe fifteen foot long, but then I came to an area inside where you couldn't possibly go any further. There was a drop down and a lot of machinery around it and at night time you couldn't possibly negotiate your way through it.*

*And anyway, I would be caught inside in the building if anybody came out. But before I went there, I mean I didn't know the layout of this place at all, at all, I thought it would be possible to get into these buildings and get a closer look at the caravans.*

*But when I got there it wasn't possible. That's as close as I got. Probably ten or fifteen feet past that corner at that angle.<sup>50</sup>*

- 3.78. Due to the unsafe condition of the interior of the milking parlour, Detective Sergeant White was not able to get any closer to the caravans by going through the interior of the building. Due to the barking of the dogs, he had not been able to make any further progress by the exterior route. So, as events transpired, he

<sup>50</sup> Transcript, Day 392, pages 166-167.

had not been able to get close enough to ascertain the registration numbers of any of the vehicles.

- 3.79. Detective Sergeant White stated that they returned to their vehicle and proceeded towards Letterkenny. He stated that they did not go into Burnfoot Garda Station to ask the Gardaí on duty to keep an eye on the Travellers' encampment, or even just to say "hello" to the Gardaí working that evening. If their car had in fact been parked in the Garda Station car park and if they had been engaged on a legitimate reconnaissance operation, the Tribunal finds it simply incredible that they would not have gone into the station even for a moment just to check that everything was in place for the search on the following morning, or indeed to ascertain the registration numbers of the vehicles owned by the Travellers.

### **Emergence of the Reconnaissance Story**

- 3.80. It is relevant to note that while Detective Garda Kilcoyne's statement was made on the 13th of June 2001 and put to Detective Sergeant White during his detention between the 19th and the 21st of June 2001, it was not until May of 2003, almost two years later, that Detective Sergeant White made his statement to the effect that he had been out to Burnfoot that evening with Detective Garda Kilcoyne, but that it had been for an entirely legitimate operational reason: that of carrying out the reconnaissance of the encampment.
- 3.81. In the course of cross-examination by counsel on behalf of the Garda Commissioner, it was put to Detective Sergeant White that the emergence of this account in 2003 was not entirely coincidental. It was put to him that in fact it was a calculated statement designed to take account of the fact that cell site identification of the mobile telephone records for that night would show that Detective Sergeant White made two calls at 23.15 hours and 23.23 hours, both of which were routed through the Newtowncunningham base station, which served the Burtchappel and Burnfoot areas of North Donegal. Thus, the records put Sergeant White in the Burnfoot area between 23.15 and 23.30 hours. Detective Sergeant White denied that his late admission to this being an entirely legitimate reconnaissance operation, in 2003, was designed to cater for these facts, which emerged from an analysis of the telephone records. He stated that he had commenced giving a detailed statement to Sergeant Treanor and Detective Garda Malony while he was in custody on this matter in June 2001. He stated that he would have mentioned the reconnaissance operation, except for the fact that the officers allegedly promised to continue taking the statement after a break, but never returned and he had not reached that part of the narrative at the time that the taking of the statement had been broken off:

Q. *The first time you mentioned this recce was in 2003: isn't that right?*

A. *Yes.*

Q. *And that was after you had discovered the cell identification records were available to show that phone calls were received by you out in Burt?*

A. *Yes, but, Mr. Marrinan, but, I would have given my full story and my full account of things if I had been allowed by Sergeant Treanor and Detective Garda Malony, but I was not allowed because on this occasion, Chairman, on previous occasions I had refused to make a statement, but on this occasion I was doing it in great chronological order, putting in great detail, and this is not what the Carty team wanted. They didn't want a detailed statement from me outlining everything I did in case it upset the apple cart too much for them and they would have to carry out a detailed investigation and drop the whole thing. That's why they cut me off at half past ten on the night of 20th June. I would not be due for release until a quarter to three the following day, because I had been given six and a half hours in the hospital, which time doesn't count at all, at all. I think it's a quarter to three, from memory, I would be due for release the following day. There would be no problem in keeping up the forty-eight hours to the end, taking a full detailed statement as I was making and then bring it in maybe before the court in Letterkenny.*

*Either way I was kept in the station overnight. So it didn't matter to my freedom or anything else. It would have been simpler to keep going with the statement and to get it. And any detective, when a man is willing to make a statement to you in a very serious matter and he has started this after caution and he is giving great detail, it's a Godsend, you keep writing it down and you get every single thing possible off that man before he leaves the Garda Station and then it makes your job easier afterwards. And it wasn't done, Chairman, because the Gardaí did not want the story. I don't mean the story as a false story. They did not want my account of things.<sup>51</sup>*

<sup>51</sup> Transcript, Day 394, pages 103-104.



- 3.82. Curiously, on the two occasions which were next in time to the reconnaissance operation, being an alleged visit to Superintendent Lennon’s house later that evening and at the pre-search briefing at Burnfoot Garda Station on the following morning, there is dispute as to whether the reconnaissance was mentioned at all. It is Detective Sergeant White’s case that after the reconnaissance operation, he and Detective Garda Kilcoyne went to the home of Superintendent Lennon to get search warrants issued. Detective Sergeant White says that while he has no specific recollection of mentioning to Superintendent Lennon that they had just come from a reconnaissance operation, he more than likely did so. Superintendent Lennon denies that he was told that the two men had just come from such an operation. Detective Sergeant White accepts that he did not mention the reconnaissance at the briefing in Burnfoot Garda Station on the morning of the 23rd of May 1998. Thereafter, there was no mention of the reconnaissance operation at all until he made his statement in May 2003 in the context of a civil action being brought against him and the State by one of the Travellers. **The Tribunal is satisfied that had Detective Sergeant White a genuine story to tell about being on a reconnaissance operation that night he would have made it known far earlier. The fact that it was deliberately held back for such a long period satisfies the Tribunal that there is no truth in it whatsoever.**

### **The Search Warrants**

- 3.83. The next significant event that night was the alleged visit to Superintendent Kevin Lennon’s home at approximately 23.40 hours by Detective Sergeant White and Detective Garda Kilcoyne for the purpose of obtaining search warrants pursuant to section 29 of the Offences Against the State Act, 1939 as amended. There is a fundamental dispute here between Detective Garda Kilcoyne on the one hand and Detective Sergeant White and Superintendent Lennon on the other. Detective Garda Kilcoyne maintained that while he had no recollection of what they did when they left Burnfoot, he was adamant that he did not go with Detective Sergeant White to Superintendent Lennon’s house that night to get any search warrants.<sup>52</sup>
- 3.84. Detective Garda Kilcoyne did, however, have a recollection of being in Superintendent Lennon’s house on two occasions in 1998. On one of these visits he was in the company of Detective Sergeant White, when they briefed Superintendent Lennon about the search warrants. He thought that this might have been during the late hours of the 21st of May 1998, or in the early hours of the 22nd of May 1998. He was adamant that he was not in Superintendent Lennon’s house on the night/morning of Friday/Saturday, the 22nd/23rd of May 1998.<sup>53</sup>

<sup>52</sup> Transcript, Day 388, pages 132-138; Transcript, Day 389, pages 12-15.

<sup>53</sup> Transcript, Day 289, page 15.

- 3.85. Superintendent Lennon maintained that the account given by Detective Garda Kilcoyne could not possibly have been accurate as regards time, due to the fact that he was in Dublin overnight on the 21st of May 1998 for the purpose of attending a consultation with barristers representing the State in actions brought by members of the McBrearty family against the State. This consultation was held at the Law Library on the morning of the 22nd of May 1998. Superintendent Lennon stated that, according to his diary, that consultation lasted from 10.00 hours to 13.00 hours, following which he attended to some business in Dublin. He said that he most likely had dinner with his brother in Mullingar on the way back to Donegal, arriving back home late in the evening of the 22nd of May 1998.
- 3.86. The accounts given by Superintendent Lennon and Detective Sergeant White of what occurred at Superintendent Lennon's house that evening are largely identical save that, as already noted, Superintendent Lennon maintained that he was not told of any reconnaissance operation by Detective Sergeant White when he arrived at the house at approximately 23.40 hours that evening. Superintendent Lennon gave the following account of what transpired at his home:

*Well I do recall very well Sergeant White and Garda Kilcoyne called to my home and told me that he was looking for section 29 warrants. He outlined to me that those Travellers were parked in a lay-by at Burnfoot, that they had been involved in the death of the Late Edward FitzMaurice down in Mayo. He said that he had information from a very good source to this effect. He said that they had a fireman's axe in one of the caravans and I said, stop, I am not issuing a warrant for a fireman's axe. He said that's not all, the axe.*

*So he went on to say that he had met this informant A, that he had told him this information, that those people had been involved in a Travellers' dispute in Dublin and they had moved off site to cool the issue down and that they had the firearm in their possession as a defensive firearm only and he went on to say that it couldn't be used against anybody only in the case of them being attacked. It wouldn't be in a caravan, but it would be somewhere adjacent to it and I went on to question him about the knowledge of this informant, how he would know those things and he explained to me that he was a good informant in the past, he had given good information in the past, he had given information about firearms and that I wanted to know, why, how would he know about*

*informants in – or Travellers in Donegal, having a firearm and he said that there was another man who he named, he named the two men.*

*That he had met informant A first and then he had met informant A and B and that informant B had a close liaison with these people and knew they had a firearm. I was questioning him deeply on it and he said to me, he got a bit annoyed with me, and he said do you not believe me and I said it's not about that, I have to issue warrants. He said to me well ring up Commissioner Conroy, he had dealings with informant A and he will verify him as a good informer. He said do you want to know the names of these people and I said yes and he gave me the names of those people and I recall the names of those people and I have the names in my mind.*

*He told me that he had been on to the incident room in Mayo and that they were travelling up the next morning, leaving Mayo at 5.00 a.m. and these warrants were needed urgently. Then he showed me two reports that he had written off, which we saw in the documentation and I can identify them. He had the warrants prepared and he had all the details in the warrants and I signed the warrants as a result of having made up my own mind and evaluating the information and taking into account the information of the informant. I duly signed the warrants. I took no further part in the operation.<sup>54</sup>*

- 3.87. While Superintendent Lennon was clear in his evidence as to when the search warrants had been issued by him, he was considerably less clear in his interviews and statements to the Carty team. He was first approached on the matter by Sergeant Gabriel Bell on the 19th of May 2000. In his memo of that conversation, Sergeant Bell noted that Superintendent Lennon had stated that Detective Sergeant White had come to his house the night before the search and informed him of the information from Mr. A and Mr. B to the effect that the Travellers camped at Burnfoot had an axe and a firearm.<sup>55</sup>
- 3.88. On the 6th of June 2000 Superintendent Lennon made a statement about the issuing of the search warrants. He stated that Detective Sergeant White had called to his house on the morning of the 22nd of May 1998. He gave an account of the information outlined to him by Detective Sergeant White and stated that he issued four separate search warrants to Sergeants Burke, Smith, White and Leheny.<sup>56</sup> On the 26th of February 2003 Superintendent Lennon was questioned about the search warrants by Sergeant Treanor and Detective Inspector

<sup>54</sup> Transcript, Day 397, pages 17-19.

<sup>55</sup> Tribunal Documents, page 405.

<sup>56</sup> Tribunal Documents, page 406.

O'Loughlin. He stated that he had been briefed by Sergeant White in the presence of Detective Garda Kilcoyne in his house at the hour of 23.40 hours on the 22nd of May 1998. However, in the next sentence he stated that he had dated the warrants after midnight on the 21st of May 1998.<sup>57</sup>

- 3.89.** On the 19th of August 2003, Superintendent Lennon made another statement dealing with the search warrants issue. In that account, he stated that he had issued the search warrants when Detective Sergeant White and Detective Garda Kilcoyne called to his house on the evening of the 22nd of May 1998 at about 23.30 – 23.40 hours.<sup>58</sup>
- 3.90.** In evidence Superintendent Lennon could only offer, as an explanation for the discrepancies as to when the search warrants were issued, that he had made a mistake when making his first statement and also when giving the interview to Sergeant Treanor and Detective Inspector O'Loughlin.
- 3.91.** Detective Sergeant White's account was largely the same. In many respects he had a very specific recall of the encounter, or so he claims. He was able to recall where each of the men were sitting. He even recalled that they had to move the couch a little further away from the fire, as it had become uncomfortably hot. He accepted that he did not tell Superintendent Lennon that he had a covert tape of his meeting with Mr. A and Mr. B in the van.
- 3.92.** Detective Sergeant White maintained that the search warrants<sup>59</sup> were partially made out by him prior to going up to Superintendent Lennon's house. It appears that these search warrants were made out in a somewhat curious fashion. The body of the warrant which designated the person whose lands or dwelling was to be searched, together with the location of the property, and the identity of the sergeant to whom the warrant was to issue was filled out beforehand by Detective Sergeant White. It is in his handwriting. Furthermore, at the top of the warrant it provides a space where the name of the superintendent who is actually issuing the warrant is inserted. This was also filled in by Detective Sergeant White in the name of Superintendent Lennon. However, at the time that Detective Sergeant White says that he set off to do the reconnaissance operation, he did not know whether or not Superintendent Lennon would in fact issue the warrants, as he had not made any contact with Superintendent Lennon prior to arriving at his house at 23.40 hours, after having completed the reconnaissance operation.
- 3.93.** There are also anomalies in relation to the bottom section of the warrants, which provides a place for the signature of the person issuing the warrant and a space for the designation of his rank, together with a place to write in the date on

<sup>57</sup> Tribunal Documents, page 943.

<sup>58</sup> Tribunal Documents, page 944.

<sup>59</sup> Tribunal Documents, pages 597, 598, 1027-1031.

which the warrant has issued and the place at which it was issued. Each of the warrants appears to have been signed by Superintendent Kevin Lennon. However, it would appear that in many of the warrants the other information such as his rank, the date and the place where the warrant was issued was in fact written in by Detective Sergeant White. Curiously, on one of the warrants the portion where the rank is to be designated is left blank, as is the date on which the warrant issued. In another warrant there is a mistake in relation to the date in that it is said to have been issued on the 22nd of May 1999, thereby giving the wrong year. In some of the warrants it would appear that the place where the warrant was issued, being Letterkenny, has been written in by different persons. The handwriting certainly appears to differ between the various warrants.

3.94. Another curious feature of the search warrants is that of the seven search warrants issued, four were issued to Detective Sergeant White and one each to Sergeants Smith, Leheny and Burke. When asked by Mr. Barr SC why four such warrants had been made out to Detective Sergeant White and only one to each of the other three sergeants, Superintendent Lennon stated that that was just the way the body of the search warrants had been made out by Detective Sergeant White:

*Q. Why did you elect to issue multiple warrants only to one Sergeant?*

*A. That's the names that were on them.*

*Q. No, no, the question I am asking you is: you issued one warrant to Detective Sergeant Leheny?*

*A. Yes.*

*Q. One to Detective Sergeant Hugh Smith?*

*A. Yes.*

*Q. And one to Detective Sergeant Burke?*

*A. Yes.*

*Q. And four to Detective Sergeant White. Why was that?*

*A. Because that is the way he had them made out. There were no other sergeants available obviously.*

*Q. Why not issue, say, two warrants to three of the sergeants and one then to the fourth sergeant and that would make seven?*

A. *That's the way they were made out and that's the operation that was taking place and I just signed them up.*

Q. *Was there any reason why four warrants would be issued to Detective Sergeant White?*

A. *I have no reason but he made them out in his own name.*

Q. *Would it suggest that they could have been made out later and issued to him later on, because that couldn't be done to the other sergeants because they would have said, I had only one warrant on the morning?*

A. *No, no, that's a bad thought, Mr. Barr, because that did not happen.*

Q. *Is it a bad thought?*

A. *It sure is a bad thought and it never happened.*

Q. *Is it coincidental then at page 1030, at the bottom, that the portions that are missing, that haven't been filled in at the bottom, appear in a warrant issued to Detective Sergeant John White?*

A. *Well ...*

Q. *Is that purely coincidental?*

A. *That is coincidental and those warrants were not made out other than on the night of the 22nd of May 1998. Because I challenged Sergeant White about this afterwards, did he hoodwink me into this or mislead me into this and he assured me that he didn't.<sup>60</sup>*

3.95. Superintendent Lennon's evidence as to the anomalies in the completion of the bottom portion of the search warrants was unconvincing. The Tribunal rejects his explanation as to why certain portions at the foot of the warrants were filled in by him on some of the warrants and by Detective Sergeant White on others. He had no satisfactory explanation for the missing portion from the warrant. He has proven himself before the Tribunal as a man who is diligent and adept at paperwork. The warrants were allegedly completed in a relaxed informal atmosphere in the living room in his home. The Tribunal does not accept that he filled out all these warrants at the same time, but did so in somewhat of a 'hit and miss' fashion. In the circumstances, the Tribunal is not prepared to accept any

<sup>60</sup> Transcript, Day 397, pages 45-46.

of the evidence given by Superintendent Lennon in relation to the issuing of the search warrants.

- 3.96. Detective Inspector John McGinley had had two conversations with Detective Sergeant White on the afternoon of the 22nd of May 1998. He stated that Detective Sergeant White first approached him at about 15.30 hours to inform him that he had information that a group of Travellers, who were camped at Burnfoot, were feuding with another group of Travellers from Dublin; and that as a result they had moved to Donegal and had a firearm in their possession for their own protection. Detective Sergeant White also told him that he was liaising with the Swinford investigation team, as he also had information that they were involved in the robbery of Mr. FitzMaurice.
- 3.97. Mr. McGinley stated in evidence to the Tribunal that about an hour and a half later Detective Sergeant White returned to him and stated that his information was that the Travellers were going to move into Northern Ireland. Detective Sergeant White told him that he had obtained search warrants to carry out a search on the following morning. He also stated that due to time constraints, the members of the Swinford investigation team would not be able to participate in the search. Mr. McGinley stated that Detective Sergeant White did not produce the search warrants to him, but that he had a file with him at the time of their second conversation. Mr. McGinley stated that Detective Sergeant White had told him in their second conversation that there were four caravans in Burnfoot and that he had four search warrants from Superintendent Lennon. Detective Sergeant White was looking for assistance in organising the search parties for the following morning. As a result of the conversation, Detective Inspector McGinley arranged for his clerk to assemble a search party for the following day. He also telephoned Superintendent Tom Long, who was the Superintendent in Buncrana, which district included the Burnfoot area. Superintendent Long had no knowledge of the search, but said that he would make men available for the operation.<sup>61</sup>
- 3.98. It will be recalled that Detective Inspector John O'Mahony had spoken to Detective Sergeant White at approximately 15.30 hours on the 22nd of May 1998. He stated that he got the impression from Detective Sergeant White that he already had search warrants at that stage.

### **Conclusion on the Warrant Issue**

- 3.99. [Having regard to the conflict of evidence between Detective Sergeant White and Superintendent Lennon on the one hand and Detective Garda Kilcoyne on the other, the Tribunal is satisfied that in view of the events](#)

<sup>61</sup> Transcript, Day 407, pages 64-71.

that had occurred earlier in the night, had Detective Garda Kilcoyne gone to Superintendent Lennon's home later that night, he would certainly have recalled that event. This fact, taken together with the inconsistencies in Superintendent Lennon's subsequent statements and memoranda of interview; the unconvincing explanations as to why certain portions of the bottom part of the search warrants were written by Detective Sergeant White and some written by Superintendent Lennon; the absence of any credible explanation for the missing portion at the bottom of one of the search warrants; and the failure to satisfactorily explain to the Tribunal why it was necessary to issue four search warrants to Detective Sergeant White and only one to each of the other three sergeants, if all of the search warrants were issued simultaneously, leads the Tribunal to find that the search warrants were not issued in the manner described in evidence by Detective Sergeant White and Superintendent Lennon. When exactly the search warrants were signed by Superintendent Lennon, the Tribunal cannot say. The lies that have been told by Detective Sergeant White and Superintendent Lennon on this aspect have rendered it impossible for the Tribunal to establish exactly when they were issued.

- 3.100. Having regard to the anomalies in the content of the search warrants, the Tribunal is of the opinion that it is probable that some of the search warrants were issued first. Probably, one was issued to each of the four named sergeants, with the remainder, which were all allocated to Detective Sergeant White, coming into existence at a subsequent time. It is possible that Detective Sergeant White may have had access to search warrants signed in blank by Superintendent Lennon for use as and when required, or alternatively, that these three search warrants came into existence subsequent to the search. However, in the absence of evidence as to how exactly the search warrants came into being, the Tribunal cannot find as a fact that either of these possibilities occurred. The Tribunal can only make a finding that the search warrants in question were not issued in the manner described by Superintendent Lennon and Detective Sergeant John White.

### **The Telephone Records**

- 3.101. When there is a dispute as to where people were at specific times, telephone records and cell site analysis can be very useful. Evidence was given to the Tribunal by Mr. James Faughnan of eircom plc as to how this works. In simple terms, when a call is made from a mobile telephone, the call will usually be picked up by the nearest mast. From there, it will be routed through to the recipient's phone. There is a record kept of the place from where the call was



made, the number to which the call was made and the duration of the call. There is no record of where a mobile phone receives a call; a land line call is received at the place where it is rented. This information is kept primarily for billing purposes, so that if a customer queries his or her bill, he or she can be given an exact breakdown from where the call was made on his or her mobile telephone, to what number the call was made and how long it lasted. Thus, the records can establish the general location, usually within about a ten kilometre radius, of the caller at the time of the specific call. This is important in the context of the disputed evidence in this case.

- 3.102.** The first relevant call was the one made by Detective Sergeant White at 21.25 hours to Detective Chief Superintendent Jennings. We have already seen how Detective Garda Kilcoyne changed his testimony to account for the fact that this call was routed through the Mongorry mast, which would tend to suggest that Sergeant White was north of Ballybofey at the time of that call, rather than south of the town in Gortahork as originally alleged by Detective Garda Kilcoyne.
- 3.103.** The next relevant call is a call received by Detective Garda Kilcoyne at 22.18 hours. This was from a civilian, who was a windsurfing friend of his. That call was routed through the Bendash mast near Letterkenny. This establishes where Garda Kilcoyne's friend was at the time he made the call. It does not establish the location of Detective Garda Kilcoyne at the time he received the call.
- 3.104.** The next set of calls come in a group. At 23.12 hours, Detective Sergeant White received a call from his informant on subversive matters. This call lasted for two minutes and twenty-two seconds: thereby terminating at 23.15.14 hours. Almost immediately, at 23.15.39 hours, Detective Sergeant White made a call on his mobile phone to Detective Chief Superintendent Jennings. This call lasted for four minutes and twenty seconds: thereby terminating at 23.19.59 hours. This was routed through the Newtowncunningham base station, which at that time serviced the Burt and Burnfoot areas. Some few minutes later, Detective Sergeant White made another call to Detective Chief Superintendent Jennings, commencing at 23.23.23 hours and lasting for seven minutes and twenty seconds: thereby terminating at 23.30.43 hours. This call was also routed through the Newtowncunningham base station.
- 3.105.** The next relevant call was an outgoing call made from a landline at Falcarragh Garda Station to the mobile phone of Detective Garda Thomas Kilcoyne. It was made at 23.29.02 hours for a little over one minute. It appears that the purpose of this call was to inform him that Garda Alison Teape would be available to go on the search on the following morning.

- 3.106. At 00.37 hours on the 23rd of May 1998, Detective Garda Kilcoyne rang Letterkenny Garda Station for two minutes and fifteen seconds. It was routed through the Mongorry mast. This would indicate that Detective Garda Kilcoyne was either on his way home, or at home, when he made that call. He stated in evidence that the purpose of the call was to arrange a wake-up call for the following morning.
- 3.107. At 01.08 hours on the 23rd of May 1998, Detective Sergeant White received a call from his subversive informant, which lasted for thirty seconds. At 01.09.05 hours on the 23rd of May 1998, Detective Sergeant White rang Detective Chief Superintendent Jennings. This call was routed through the Stranorlar mast, which serviced the area where Sergeant White's house was situated. This would indicate that Sergeant White was either on his way home, or at home, at the time of this call.

### **The Issues as to the Phone Calls**

- 3.108. The most relevant calls were the three calls between 23.12 hours and 23.30 hours. There is no dispute that these calls were received and made by Detective Sergeant White. The only real dispute is as to whether these calls occurred on the way to, or from, Burnfoot. According to Detective Garda Kilcoyne, the first call was received by Detective Sergeant White while they were in the Burt area on the way to the location. He stated that at this time Detective Sergeant White pulled in to the side of the road. Detective Garda Kilcoyne stated that after a little time he got out of the car, as he realised that the calls were of a sensitive nature. He stated that Detective Sergeant White told him that the telephone calls were about the movement of a suspect vehicle.
- 3.109. In his statement made on the 13th of June 2001, Detective Garda Kilcoyne stated that after Detective Sergeant White received the first call, he immediately dialled another number and told that person "that car is moving north tomorrow".<sup>62</sup> Detective Sergeant White maintained that that portion of Detective Garda Kilcoyne's statement was a lie because he (Detective Sergeant White) did not know about the car moving north until later at 01.08 hours on the 23rd of May 1998 and that that was why he telephoned Detective Chief Superintendent Jennings immediately at 01.09 hours:

*There is one very important point and I must point out here, Chairman, that Detective Garda Kilcoyne, although I know we didn't cross-examine him on this thing, I actually forgot about it, but he says in his statement that I said, that car is going north tomorrow. He has that in inverted commas in the thing. I didn't say that and I couldn't have said it. Because at that stage, I didn't*

<sup>62</sup> Tribunal Documents, page 419.

*know, first of all, that there was a car stolen, there wasn't a car stolen at that stage and I didn't know its destination the following day. That is very important because on 2/4/98, the destination was [redacted]. We didn't know, I didn't know at that stage where the car would be going ... no, absolutely not. And it wasn't until 1.08 in the morning when my informant telephoned me, confirmation that a car had been stolen and I telephoned Detective Chief Superintendent Jennings at 1.09. And it wasn't until that point that I knew that a car would be taken for certainty that night. That comment was put in there, gratuitously more or less, to give corroboration to this whole story that he is telling. He wasn't in my company at all at 1.09, when I telephoned Detective Chief Superintendent Jennings. [It was put into the statement] to show that he was so close to me that he was listening to my conversation with Detective Chief Superintendent Jennings in relation to [redacted] ... I let him sit in the car and listen to part of the conversation about a current subversive operation it's part of [redacted] ... he said that he heard me saying to my superior that that car is going north in the morning. And he didn't hear that, it didn't take place and it is an intentional lie.<sup>63</sup>*

- 3.110. Detective Sergeant White challenges the accuracy of Detective Garda Kilcoyne's evidence in relation to this phone call with Detective Chief Superintendent Jennings and alleges that this part of Detective Garda Kilcoyne's statement is "an intentional lie". He does so, presumably, to challenge the accuracy of the remainder of his statement.

### **Conclusion on the Mobile Calls**

- 3.111. The Tribunal has analysed all of the evidence on this matter, including that given in secret session. The Tribunal has no doubt that Detective Garda Kilcoyne did hear Detective Sergeant White say on the telephone "that car is moving north tomorrow", or words to that effect. Detective Sergeant White agrees that this remark was made, but says that it wasn't made until 01.09 hours on the 23rd of May 1998. It is impossible to envisage any circumstances in which Detective Garda Kilcoyne could have known that the remark was made unless he overheard Detective Sergeant White make it. Accordingly, the Tribunal concludes that Detective Garda Kilcoyne must have been in Detective Sergeant White's company at the relevant time. Furthermore, the Tribunal does not accept that it would have been necessary for Detective Sergeant White to have been aware

<sup>63</sup> Transcript, Day 392, pages 172-175.

that the car in question had in fact been stolen, before he became aware of the purpose for which the car was being stolen. The Tribunal rejects Detective Sergeant White's submission that this part of Detective Garda Kilcoyne's statement is an "intentional lie". The mobile telephone records are consistent with the evidence of Detective Garda Kilcoyne.

### The Bag and the Clothes

- 3.112. In his statement made on the 13th of June 2001, Detective Garda Kilcoyne gave a significant mis-description of the bag in which the gun had allegedly been carried by Detective Sergeant White on the night of the 22nd of May 1998. In that statement he described the bag as follows:

He was carrying the gun in a black zipper briefcase in his hand, similar to the one you carry files in.<sup>64</sup>

- 3.113. The bag which was found at the Travellers' encampment on the 23rd of May 1998 is missing. It was not available to the Tribunal. However, the Tribunal did have the benefit of a large number of photographs which had been taken on the day of the search. These photographs showed clearly the locus of the find, the bag, the clothing, the cartridges and the gun. The bag appears to be a blue corduroy cloth bag, with handles, and edged in red trim. It appears to have a white interior lining. Whether the lining is made of plastic or cloth is difficult to tell. It has a zip down one side of the bag. There could be a zip on the other side, but it is not possible to be definite about that from looking at the photographs. If it were the case that there was a zip on both sides, it would mean that the bag could be opened out flat, like a baby's changing bag. There does not appear to be any means of securing the top of the bag closed.
- 3.114. In the course of cross-examination of Detective Garda Kilcoyne by counsel on behalf of Detective Sergeant White, it was put to him in strong terms that there was a significant discrepancy between the bag he had described in his statement and the bag which was actually found and which had been captured in the photographs. Detective Garda Kilcoyne explained that while making his statement, he had been asked by the Gardai how had the gun been carried on the way down Slab Road. He had a memory of turning around when he saw the lights of an oncoming car and seeing Detective Sergeant White carrying the bag in his arm close to his chest:

*Yes, Sir. When I was making the statement on the – the one that described the black, zipper briefcase, one of the two men, probably Detective Foley, Detective Superintendent Foley, asked me who was carrying the gun in the sequence of events, or how*

<sup>64</sup> Tribunal Documents, page 419.

*was the gun being carried. And this is another one of these ways that my brain remembers this particular incident. It's a picture I have in my head, Sir. The question was asked, the picture was we were walking towards the Grianán and he asked the question, who was carrying the gun or how was he carrying the gun, I am not sure which. And I had the mental picture of turning around and seeing Sergeant White carrying the packet across his chest, not – the question I was asked, was he physically carrying the gun in his hand, there, open, or under his arm or in his pocket or under his coat and it wasn't that, that picture that came to me was he wasn't carrying the gun like that. He was carrying the gun in a container and the picture was, it was a black container across his chest, up to his chest. And the occurrence of me turning to make that visual, or to record that visual picture in my brain, was the approaching car, Sir. This is how I developed this black briefcase, black, square object across his chest ... that was the black object across his chest, Sir, of that nature is what I believed it to be, or I recorded it or imagined as it happens, but he was carrying a container with some sort of package across his chest like that and it was dark or black in colour and perhaps it was unfortunate that I used the words, very unfortunate for me that I used black, zipper briefcase as a description. But it was as much in the size and the bulkiness of the bag as anything else that I was describing. The word zipper is misleading.<sup>65</sup>*

- 3.115. Detective Sergeant White stated that he was well known for carrying documents to court in a leather documents bag. He said that many such bags had been given out by the Garda Credit Union prior to 1998. He alleged that this description was put into Detective Garda Kilcoyne's statement so as to support the lie by referring to a container of a type which Detective Sergeant White habitually carried. He stated that it was only after the photographs came to light that Detective Garda Kilcoyne had to change his story in an attempt to explain his mis-description of the bag in which the gun had been found.
- 3.116. Another anomaly is that while Detective Garda Kilcoyne gave fairly detailed evidence about the placing of the clothing in the bag and the remarks allegedly made by Detective Sergeant White while so doing, none of this was mentioned in Detective Garda Kilcoyne's original admission statement of June 2001. It was only after having been shown the photographs that Detective Garda Kilcoyne made a further statement on the 20th of September 2001:

<sup>65</sup> Transcript, Day 390, pages 44-46.

Further to my statement of the 13th June, 2001, I wish to add that on today, 20th September I have been shown an album of photographs and having seen photographs 7 to 10 I now remember that this was the bag that John White put the gun into, together with some clothing at Gortahork, Killygordan, before going to Burnfoot. I can remember John White making a comment “that it would look better to have dirty clothes or to have them look like tinkers or knackers clothes to hide it”.<sup>66</sup>

3.117. It was put to Detective Garda Kilcoyne that he changed his story when he realised that his original one couldn’t stand up in the face of the photographs:

*Q. Now, I put it to you that when you saw the photographs on the 20th of September, you got a right hand because you realised your story wasn’t going to hold up and you had to change it, that’s really what happened?*

*A. When I saw the photographs on that date, when I first saw the photographs, it all came back to me. The first thing that came back to me was the incident in the shed, as I previously described but, yes, I have to say that the sequence of events and I don’t deny that I changed the entire story about the black briefcase, the zipper briefcase. But the photographs enabled my memory to connect the bag back to the shed and to connect the bag to the gun ... I will say that when I was making this statement of the 13th June, the initial statement, the first statement, I hadn’t thought about the incident in great detail. I had thought about the consequences for myself, I was thinking about the consequences for myself and not so much the detail of the bags. The criminal act I was admitting being involved in and for myself I was admitting my own culpability and my own cautioned statement. I tried to put as much detail as I possibly could into it, Sir.<sup>67</sup>*

### **Conclusion on the Bag Issue**

3.118. **The Tribunal is satisfied that the mis-description of the bag by Detective Garda Kilcoyne in his statement of the 14th of June 2001 was an error of recollection on his part.** He was trying to recall an item which was but a small part of an incident which had occurred over three years previously. When photographs came to hand, it was responsible of the Carty team to return to Detective Garda Kilcoyne to point out to him the anomalies which had arisen. In so doing, the Carty team were merely following up on his initial statement as

<sup>66</sup> Tribunal Documents, page 421.

<sup>67</sup> Transcript, Day 390, pages 46-47.

normal police practice required. Honest people regularly make errors in recollection. **The Tribunal is satisfied that the mis-description was an error of recollection on the part of Detective Garda Kilcoyne and was not indicative of any fabrication of a story on his part.**

- 3.119. One might usefully note, at this juncture, that if Detective Garda Kilcoyne had been working in league with the Carty team, or other third parties, in an attempt to frame Detective Sergeant White, it could be assumed that they would have done their homework properly and ensured not only that his description of the bag would match the bag shown in the photographs, but also that he would have mentioned the clothing and what Detective Sergeant White said about the clothing in his original account.

### **The Briefing and the Search**

- 3.120. It is common case that a briefing of the search parties was held in Burnfoot Garda Station at approximately 07.00 hours on the 23rd of May 1998. This was first addressed by Detective Inspector McGinley. The main briefing was given by Detective Sergeant White. It is accepted that he informed the sergeants who were heading each of the search parties that the members of the Irish Traveller Community camped at Burnfoot were suspected of involvement in the murder of Mr. Edward FitzMaurice in Mayo and that they were involved in a feud with other Travellers from Dublin: as a consequence whereof they were thought likely to have a firearm in close proximity to their caravans for self-protection in the event of an attack by the Dublin Travellers. Detective Sergeant White told the Gardaí to be vigilant if the Travellers started talking to each other in Cant, their own dialect. He said that they might be communicating with each other in relation to the firearm. When each of the sergeants had received their instructions, they briefed their own search party on the caravans that they were detailed to search.
- 3.121. When the Gardaí arrived at the scene at approximately 07.30 hours the members of the Irish Traveller Community camped there were asleep in their caravans. The caravans were searched first with negative results, save for the discovery of an axe in one of the caravans, described as a fireman's axe, by Detective Garda Kilcoyne. In his evidence, Detective Garda Kilcoyne stated that there had never been any mention of an axe by Detective Sergeant White or anyone else prior to the search. He said that he only brought it to the attention of his sergeant on the search due to the fact that some months earlier, in January 1998, there had been a robbery at Drumkeen Post Office, where an axe had been used. He thought that the axe could have been connected to that crime. Detective Sergeant Henry was in charge of that investigation. He was not part of the search party. Following forensic examination, the involvement of this axe in the robbery of Drumkeen Post Office was ruled out.

- 3.122. Detective Sergeant White stated that Mr. A had mentioned the axe to him at the second meeting in the van, when he was alleged to have said that he saw reference to a robbery in Donegal on the Crimeline television programme where an axe was used, and that the Travellers in Burnfoot had a hatchet as well:

*The axe was mentioned, Chairman, on the second day with informant A and B and in fact it was informant A first said it in the van that day. He said and, I won't mention the name, haven't they a hatchet as well, didn't we see it on T.V. and he says John they could be involved in robbing that place down in Donegal and I asked him what he meant by that and he said he saw it on television on whatever, Crimeline version was at the time, crime programme or the Garda programme about crime, and that he had seen that, and that he had seen, it must be a rubber handled axe, but he told me they had a rubber handled axe. I said, have you any way in the world, are you suggesting more or less they could be involved in the robbery as well? He said no, no, we're not. Then he asked informant B about the axe and he said yeah, they have the axe, Johnny Casey has that axe. But that's as far as they put it. There was no question of them being involved in the robbery other than there was a similar type –weapon is the wrong word to use for it, it wasn't really a weapon as such, there wasn't violence attached to it, a similar implement to what informant A and B had seen on the television, certainly informant A.<sup>68</sup>*

- 3.123. Detective Sergeant White said that he mentioned the axe to Superintendent Lennon when applying for the search warrants. He claimed that he mentioned it to Detective Garda Kilcoyne on several occasions prior to the search. He said that he did not recall whether he mentioned it at the briefing, as it was not foremost in his thoughts at the time; but he thought that he probably did mention it. Some of the persons at the briefing had a recollection of Detective Sergeant White referring to an axe. In their statements to the Carty team, neither Mr. A nor Mr. B mentioned the axe. Superintendent Lennon stated that there was definite mention of an axe prior to the search. On the 19th of May 2000 he told the Carty team that on the night prior to the search, Detective Sergeant White had come to his house and told him that there was a fireman's axe and a firearm hidden at the encampment. He repeated this in a statement made on the 19th of August 2003.<sup>69</sup>

- 3.124. In his evidence, Superintendent Lennon was adamant that Detective Sergeant White had mentioned the axe when looking for the search warrants; to which he allegedly replied that he could not give a warrant under section 29 of the

<sup>68</sup> Transcript, Day 392, pages 101-102.

<sup>69</sup> Tribunal Documents, pages 405 and 944.



Offences Against the State Act for an axe; and that Detective Sergeant White had then gone on to give the details about the firearm being at the encampment.<sup>70</sup>

- 3.125. Detective Sergeant White was asked whether a person would be wrong if they were to suggest that he had used the actual finding of the axe as a means of validating his account of receiving information from Mr. A and Mr. B, by mentioning in his statement that he had in fact received information prior to the search to the effect that there was an axe to be found at the Travellers' encampment; he denied that that was what he had done. He went further and stated that none of the Gardaí who had made statements about the search mentioned the finding of the axe. He maintained that this had been done deliberately. He stated that they had airbrushed out any mention of the axe and that this was done at the behest of the Carty team to further the case against him. He stated that at least five or six detectives must have known of the finding of the axe, but that they did not refer to this in their statements concerning the search. When it was put to him that this would involve a number of Gardaí from the Donegal Division being in conspiracy with the Carty team, he said that that was possible and that their motive for so doing was because they were jealous of the successes he had had in other criminal investigations.<sup>71</sup>

### **Conclusion as to the Axe**

- 3.126. On day 423, Detective Sergeant Thomas Burke, who was a member from the Donegal Division, gave evidence that he had been at the briefing on the morning of the 23rd of May 1998. He had a clear recollection of the axe being mentioned in connection with a post office robbery which had occurred at Drumkeen, County Donegal, some time previously.<sup>72</sup> While it is true to say that of the statements taken by the Carty team from members in the Donegal Division who mention the briefing, there was no mention of an axe in any of those statements, the Tribunal does not accept that this was done deliberately in an effort to discredit Detective Sergeant White; nor does the Tribunal accept that this was done by the members concerned out of malice towards this officer due to his successes on various criminal investigations within the Donegal Division. **The Tribunal is satisfied that there was no concerted effort by the Carty team, or anyone connected with them, to airbrush any mention of the axe out of the accounts of the briefing given by Detective Sergeant White on the morning of the 23rd of May 1998.**

### **The Finding of the Gun**

- 3.127. A contemporaneous entry in the notebook of Sergeant John O'Keeffe records that the bag containing the gun was found at 09.10 hours by Sergeant Niall

<sup>70</sup> Transcript, Day 397, pages 17; 66-67.

<sup>71</sup> Transcript, Day 393, pages 64-69.

<sup>72</sup> Transcript, Day 423, page 117.

Coady. Sergeant Coady stated that having taken part in the searches in the caravans, he was asked by Detective Sergeant White to help extend the search outwards from the caravans to the adjoining buildings and open grounds. Having gone into the sheds briefly, where other Gardaí were conducting a search, he commenced a search of the external perimeter of the buildings. When he had searched around almost the entire perimeter, he came to a large steel door similar to a heavy garage door, leaning at an angle against the wall of the milking parlour. It covered an opening to that building. On looking behind the door he saw the bag hanging from a hook, or some projection. The hook was about two and a half feet from the ground and the bag was almost touching the ground surface. Sergeant Coady stated that he had to squat down on his hunkers to see the bag. He removed it from the hook and upon opening the bag, saw a sawn-off shotgun inside. He placed it on the ground and alerted others on the search party that he had made a find. He stated that at the time that he made the find, he could hear voices coming from the inside of the building. One of the voices was that of Detective Sergeant White. He did not know to whom Detective Sergeant White was speaking, nor did he know whether the voice came from the inside of the milking parlour or the inside of the sheds.<sup>73</sup>

- 3.128. Some short time later Detective Sergeant Hugh Smith, a qualified scenes of crime examiner, arrived at the area where the gun was found. He broke the gun open in order to render it safe. Upon examination, he found a discharged cartridge in the left barrel and a live cartridge in the right barrel. When the gun had been made safe, photographs were taken of the various items. On the day that Detective Sergeant White was arrested, Detective Sergeant Smith was asked for a statement. In it, he said:

I can recall breaking open the firearm which was a sawn-off, side by side, double barrelled shotgun. The gun was in very poor condition, but appeared to have been recently oiled and the trigger guard and one of the triggers were missing. The gun was loaded with two cartridges of which one had been fired – the one in the left barrel. I removed both cartridges from the chambers and saw that there was one green cartridge that had been in the left barrel and had been fired. While the one in the right barrel was red in colour, had not been fired and was intact. Having removed both cartridges I looked into both barrels and it was obvious that while there was fouling of both barrels, the left barrel was the cleaner of the two. It was my opinion, at the time of my cursory inspection of the firearm that a shot had been discharged from the left barrel at some point prior to it being found. The right barrel had obstruction in it, which would have been dislodged had a shot been discharged from it. There were also a number of live cartridges, a mixture of red and green in the bag with the gun.<sup>74</sup>

<sup>73</sup> Transcript, Day 400, page 60.

<sup>74</sup> Tribunal Documents, pages 131-132.

- 3.129. In his evidence, Detective Sergeant Smith stated that having proved the firearm, he looked down the barrels. The right barrel was partially blocked. It had dirt and cobwebs in it. This indicated to Sergeant Smith that it hadn't been discharged for some considerable period. The left barrel was clear except for a sooty residue. This indicated to him that the gun had been discharged through the left barrel. He could not say if that discharge had been in the recent past, or some considerable time before the gun was found by Sergeant Coady. He stated that if the interior of the barrel was not cleaned after use, the residue would be visible for many months, or maybe a year, after the gun had been discharged. Detective Sergeant Smith stated that he had not carried out a formal examination of the gun, but had merely observed its general condition once he had made it safe. He had been asked to make his statement three years after the search, at the time of the arrest of Detective Sergeant White in June 2001. He is, however, a trained observer of a most conscientious kind.
- 3.130. A dispute has arisen between Detective Sergeant White and Sergeant Christopher Galligan as to the exact whereabouts and movements of Detective Sergeant White at the time of the find and immediately after the find had been announced. Detective Sergeant White stated that he had been in the sheds, which were to the rear of the milking parlour, when he heard that something had been found. He went to the nearest opening, which was a doorway leading from the shed to the ground immediately adjacent to where the gun was found. He saw Sergeant Coady pointing to the bag which he had placed on the ground beside the steel door. He said that there was a steel gate with bars on it, similar to one which would lead into a field, leaning across the doorway to the shed. He climbed over that to get to the site of the find.<sup>75</sup>
- 3.131. Sergeant Christopher Galligan gave a different account of Detective Sergeant White's movements. He stated that at the time the find was made by Sergeant Coady, he and Sergeant White were walking through the interior of the milking parlour building, going towards the same steel door. Thus on his account, Sergeant Coady approached the steel door from the exterior, while Sergeant White and he approached the same general area from the interior of the building. When Sergeant Coady stated that he had found something, Sergeant Galligan stated that Detective Sergeant White shouted "find", then turned and retraced his steps back through the milking parlour, going in the direction whence they had entered the building. According to Sergeant Galligan, Sergeant White went around the exterior of the milking parlour to the find site.<sup>76</sup>
- 3.132. Mr. John McGinley described how, when he was approaching an opening just to the left of where Sergeant Coady had found the gun, he met Detective Sergeant

<sup>75</sup> Transcript, Day 393, pages 28-30.

<sup>76</sup> Transcript, Day 399, pages 61-64.

White inside the doorway. Detective Sergeant White informed him that Sergeant Coady had found the gun and that he (Detective Sergeant White) had been approaching the same area and that if he had been a little bit sooner arriving, he would have found the gun himself. Mr. McGinley looked out the open doorway and saw the bag and gun on the ground beside the steel shutter. At this time, Detective Sergeant White was standing beside him at the opening, which was blocked by a five bar gate. Mr. McGinley had the impression that Detective Sergeant White had already seen where Sergeant Coady had found the gun and had come back down the large shed to inform him of the find; he then returned with him to the opening from where they looked at the find. His recollection was that they both went back out in the direction from which Sergeant White had originally come.<sup>77</sup>

3.133. Thus, there would appear to be three different accounts. Detective Sergeant White stated that he got over the gate which had been covering the doorway to the left of the steel shutter. Sergeant Galligan stated that he and Detective Sergeant White retraced their steps through the milking parlour and that from there Detective Sergeant White went around to the site of the find. In cross-examination by counsel for Detective Sergeant White, it was put to Mr. McGinley that having looked at the find from within the doorway, they went back out the same direction whence they had come through the door at the top of the sheds. This would appear to be different to Sergeant White's own account.

3.134. **The Tribunal does not find it necessary to resolve this divergence in the accounts of the witnesses. The uncontested fact is that the gun was found by Sergeant Coady. If one were to accept Sergeant Galligan's evidence, one could possibly draw the inference that Sergeant White was moving towards the area because he knew where the bag was all along and he intended to effect the discovery of it, in the event that it was missed by the others on the search party. The Tribunal is not so certain as to be prepared to make that finding.**

### **After the Gun was Found**

3.135. As a result of the discovery of the firearm, seven adult male members of the Irish Traveller Community who resided in the encampment were arrested. They were taken to Letterkenny, Burnfoot and Buncrana Garda Stations, where they were interviewed by detectives from the Donegal Division and also by detectives from the Swinford investigation team. Members of that team had arranged to travel from Dublin and Mayo for the purpose of questioning the arrested persons. Detective Inspector O'Mahony stated in evidence that while en route to Donegal he received a telephone call at approximately 10.00 hours informing him that

<sup>77</sup> Transcript, Day 408, pages 48-52.

arrests had been made. His team arrived in Letterkenny at approximately 12.00 hours, where they were briefed on the circumstances surrounding the finding of the firearm. They then commenced interviewing the prisoners. Insofar as issues have arisen in connection with the treatment of the prisoners during their time in custody, those are dealt with in Chapter 5 of this report.

- 3.136.** When the gun had been found it, along with the cartridges, was placed in evidence bags and put into the boot of a Garda patrol car. Later that day, the gun and the cartridges were conveyed to Garda Headquarters in Dublin for forensic analysis. The appropriate C.56 form was completed. This form sets out an inventory of what was handed over by the Donegal Gardaí to the Technical Bureau in Garda Headquarters. That form shows that the following items were recorded as having been accepted into the Technical Bureau: one double barrelled shotgun, serial not known; nine cartridges (four hawks best green, five eley maximum); one maximum four 3.1 mm cartridge found in the right chamber of JF1; one spent cartridge (casing hawk best).<sup>78</sup>
- 3.137.** The gun was subjected to fingerprint analysis by Detective Sergeant Oliver Cloonan. No fingerprints belonging to any of the arrested persons were found on the firearm. The gun was then furnished to Detective Garda Pat Whelan of the Ballistics Section for examination. In summary, he was able to do a test firing of the gun. This established that it was possible to discharge a cartridge from the left barrel, but not from the right barrel.<sup>79</sup> It will be necessary to return to this testing of the gun later: this is due to a dispute as to what Detective Garda Whelan meant by saying that in his opinion there was “no evidence of recent discharge” from the firearm when he examined it in May 1998. It is also necessary to look at a subsequent test carried out by Detective Garda Whelan in 2001, when he was asked to attempt to fire the gun by pulling a piece of string in the manner described by Detective Garda Kilcoyne in his statement of the 13th of June 2001. This will be examined in detail in a later section of this report.
- 3.138.** Thus, as matters stood in May 1998, the forensic tests established that the gun could be fired, but did not establish that it had been handled by any of the arrested persons. Those persons strongly denied any knowledge of the gun during their interviews with the Gardaí. No incriminating statements were made by any of them while in custody. As far as the Swinford Investigation Team was concerned, while they could not at that time definitely rule out these persons from their enquiries into the death of Mr. FitzMaurice, their belief was that the persons had probably not been involved in that crime. The men were released from custody without charge.

<sup>78</sup> Tribunal Documents, page 1056.

<sup>79</sup> Transcript, Day 396, pages 126-134.

- 3.139. It is worth noting that in the course of his evidence Detective Superintendent John O'Mahony stated that when he was leaving Donegal on the night of the 24th of May 1998, he did not think that the seven arrested persons had any involvement in the death of Mr. Edward FitzMaurice. He stated that he was still of this belief when he gave evidence before the Tribunal on the 6th of March 2006.<sup>80</sup>

### **No File**

- 3.140. Somewhat curiously, no file was ever made on the finding of the shotgun at the encampment on the 23rd of May 1998. Sergeant Coady stated that nobody asked him for a statement in respect of his finding of the firearm and the ammunition. He found this puzzling. He recalled raising the question of a statement once with Detective Sergeant White, but he could not recall what answer Detective Sergeant White gave. In any event, he did not make any statement on the matter until approached some years later by the Carty team.
- 3.141. When asked about the absence of a file, Detective Sergeant White stated that as there was no evidence linking any specific arrested person to possession of the firearm, it was not going to be possible to mount a successful prosecution against any of them. In these circumstances, he stated that it would have been a waste of valuable Garda time and energy to obtain statements from each of the Gardaí on the search party and from each of the Gardaí who conducted interviews with the suspects, and obtain forensic reports, only to incorporate those into a file which was effectively going nowhere. He stated that it was not until some considerable period later that he was asked whether there was going to be any prosecution. This question was raised in the context of a request which had been made by Messrs. Quinn, Dillon and Company, Solicitors, who were acting in an action brought on behalf of one of the arrested persons. This person was taking a civil action against the State. The solicitor had requested a copy of his client's interview notes. Detective Sergeant White stated that he sought the interview notes from the investigation team in Mayo. He said that there was considerable delay in sending the relevant notes to him. On the 5th of April 1999 Detective Sergeant White wrote to his superintendent in Letterkenny in the following terms:

<sup>80</sup> Transcript, Day 426, page 207.

Superintendent,

Letterkenny

Re: Thomas Collins and Timothy Collins – Detained at Letterkenny Garda Station from 23.5.1998 until 25.5.1998 – section 30 O.A.S.A. 1939.  
Investigating Officer – D/Sergeant John White

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There will not be any file prepared for the D.P.P. in relation to this matter as there is not any evidence available linking any of the arrested persons with the firearm.

Please find attached copies of all statements – memos made by Thomas and Timothy Collins and photocopies of the relevant custody records.

Any inconvenience caused by the delay in the submission of this report is regretted and is due to the fact that the original statements and memos are with the staff of the incident room at Charlestown, County Mayo and I had to requisition copies of same.

Forwarded for your information, Please.

Signed:

John White D/Sgt. 19787D<sup>81</sup>

- 3.142. In essence, the investigation went nowhere once the arrested persons were released from custody. It is, however, unacceptable that no file was prepared. A sawn-off shotgun had been found in the vicinity of the Travellers' encampment. A large number of people had been arrested under section 30 of the Offences Against the State Act, as amended. Forensic tests had been carried out on the firearm. Though it may not have been possible to bring a prosecution against any of the arrested persons in the particular circumstances of the case, this did not excuse the fact that a file should have been prepared and submitted to either Superintendent Long, in whose district the gun had been found, or to Superintendent Lennon, who had issued the relevant search warrants. The Tribunal is satisfied that had this been a legitimate operation, a file would have been prepared, even if the recommendation thereon would have been that no prosecution could be brought. The fact that no such file was ever produced leads the Tribunal to conclude that the finding of the firearm was in fact a charade designed to ensure that the Travellers were taken into custody where they would be amenable to questioning in

<sup>81</sup> Tribunal Documents, page 619.

relation to the murder of Mr. Edward FitzMaurice. The responsibility for preparing a file rested with Detective Sergeant White. He was the person designated as the member in charge of the investigation on the C.56 form.

### The Locus of the Find

- 3.143. The place where the bag containing the gun was found was some considerable distance from the caravans occupied by the members of the Irish Traveller Community. The information which Detective Sergeant White allegedly had was to the effect that they were likely to have a firearm close at hand for self-protection in case of an attack by the Dublin Travellers. In the course of cross-examination, it was put to Detective Sergeant White that the locus of the find was somewhat curious, in that it was far away from the caravans and therefore not of much use in the event of an attack by other persons. It was further suggested that this was an odd place for Travellers to place a gun and live ammunition, particularly given the unsafe condition of the gun, as it would pose a significant risk to young children playing around the campsite.
- 3.144. In response to these matters, Detective Sergeant White propounded a theory that the bag containing the gun had been moved during the course of the search by a Traveller child or children, who had been directed to do so by one of the adult Travellers:

*When the search started at the caravans, I think that the most common way is getting the kids to move something out of the way quickly, as quickly as possible, because kids are unobtrusive and you are not going to be putting your hand on a child moving away from a caravan or whatever, you're focussing on the front door, the back door, etc. I would think it was moved at some stage during the search. If it was in the caravan area, obviously before going into the caravans and if not if it had been hidden in a different part of the building, but closer to the caravans at some stage during the search. I cannot say when. But I cannot understand how it wasn't seen. Certainly if I walked to the corner of that building I would see it behind the door. By any human being walking, you would scan it and you would see a blue bag sitting on the grass and the grass wouldn't be high and it would be in total contrast in colour and shape to the normal layout of the buildings and the rest of the wall, the door, that type of thing.<sup>82</sup>*

- 3.145. Detective Sergeant White accepted that he had never mentioned this possibility at the pre-search briefing, nor did he mention it at the time that the gun was

<sup>82</sup> Transcript, Day 393, pages 32-33.



found by Sergeant Coady. He stated that he told his solicitor of his theory at some stage. He also thought that he had probably told Garda Pádraig Mulligan about the theory and he thought that he may have mentioned it to Garda Martin Leonard. He had not mentioned the theory at the time of his arrest in June 2001. In January 2002, he made a statement to Detective Inspector Thomas O’Loughlin and Superintendent Denis O’Brien in relation to what he had been told about Gardaí Moran and McConigley allegedly searching the same area and finding nothing, literally minutes before Sergeant Coady found the bag. He did not mention his theory that the bag had been moved in the course of the search by child Travellers, at that time.

- 3.146. On the 29th of May 2003 Detective Sergeant White made a detailed statement at the request of Detective Sergeant Patrick Hennigan. This was for the purpose of defending a civil action which had been brought by one of the arrested Travellers against both the State and Detective Sergeant White. Detective Sergeant White wanted the Attorney General to represent him in that action. He did not mention this theory in the course of that fourteen page statement. When asked why he did not mention it at the time, he replied:

*Well I intended to keep my defence, Chairman, as with other matters, I intended to keep it for my defence.<sup>83</sup>*

- 3.147. The Tribunal does not accept that a decision to keep matters concealed for the purpose of some defence that Detective Sergeant White would mount at a later time was a valid reason for not coming forward with such an important theory as to how the bag came to be at the locus where it was actually found. Indeed, he accepted in cross-examination that the first time this theory was made known to the Tribunal was in the course of his evidence.<sup>84</sup> The Tribunal is satisfied that this theory was given in evidence as a means of reconciling the impractical nature of the locus where the gun was found with its intended purpose. Detective Sergeant White came up with the theory because he had to explain why the Travellers would have placed the gun in such an unsuitable place, if it was needed by them in case of attack from other Travellers, but also taking account of the fact that it was a loaded firearm and was in a very unsafe condition, thereby posing serious risk to children at the campsite. The theory is not correct. The Tribunal is satisfied that it was in an effort to get over these difficulties that Detective Sergeant White came up with this theory.

### **The Missing Exhibits**

- 3.148. A disturbing feature of this module is the disappearance of important exhibits.

<sup>83</sup> Transcript, Day 395, page 61.

<sup>84</sup> Transcript, Day 395, page 55.

The firearm was discovered at Burnfoot at 09.10 hours. It was made safe, photographed and shown to a number of the Travellers at the campsite. Thereafter, nobody has taken specific responsibility for it. This is shocking. It had been properly accounted for from approximately 18.00 hours onwards. At that time the gun and cartridges had been placed into an exhibits bag by Detective Garda Joseph Foley. He had also completed the requisite C56 form. He gave the exhibit bag and form to Detective Garda Michael Jennings who transferred them to the Technical Bureau at Garda Headquarters. However, nobody has been able to inform the Tribunal as to who took charge of the firearm and other exhibits between the time it was found at Burnfoot and the time that it was packaged by Detective Garda Foley. A number of witnesses gave evidence as to having seen the gun in an open evidence bag in Letterkenny Station during the day. It appears that the gun was effectively knocking around the station for the remainder of the morning and the afternoon, without anybody in particular taking charge of it. This gave ample opportunity for anyone to clean the left barrel of the firearm if they so wished. The firearm was subjected to fingerprint and ballistic examination at the Garda Technical Bureau. A chain of possession in respect of the firearm has been maintained from then and it was available for examination by the Tribunal.

- 3.149.** The eleven cartridges delivered to the Technical Bureau with the gun have been mislaid there. The C.56 form records that the gun and the cartridges were received at the Technical Bureau. Detective Garda Pat Whelan of the Ballistics Section accepted that it would be normal for him to be given any ammunition found with a firearm. He carried out an examination of the gun in May 1998. However, he had no recollection of receiving any cartridges. It was his invariable practice to record all items received by him in a record book kept in the Ballistics Section for that purpose. There was no record of the cartridges in that book. On this basis, he stated that the probability was that he never received the cartridges. Where they went after they were received at the Technical Bureau is not known. This is astounding.
- 3.150.** Nobody has been able to satisfactorily account to the Tribunal as to what became of the bag and the two items of clothing found with the gun. It seems that they were brought back to Letterkenny Garda Station. Mr. Tom Collins alleged in evidence that, upon his arrival in Letterkenny Garda Station, the gun was shown to him in a room by Detective Sergeant White and another unnamed Garda. He stated that the gun was wrapped in a child's woollen jumper at that time. When this allegation was made by Mr. Collins, Detective Sergeant White located a handwritten set of interview notes made by Detective Garda Michael O'Grady which indicated that at 19.30 hours on the 24th of May 1998, while he and Detective Sergeant Smith were interviewing Mr. Collins, Detective Garda

Herraghty entered the interview room and produced to Mr. Collins the bag in which the gun had been found, together with a woollen jumper and a shirt in which the gun had been wrapped within the bag. Mr. Collins is noted as having said that the jumper was very much like a Traveller's jumper but that he had never seen it before.<sup>85</sup>

- 3.151. The significance of these notes is two-fold. They were introduced by Detective Sergeant White to counter the allegation made by Mr. Collins that he had been shown a jumper earlier in his period of detention. If he had been shown the jumper on the previous day by Detective Sergeant White, it was argued that he would have made some comment to that effect, rather than a denial that he had ever seen the garment before that time. The Tribunal accepts that this could be a reasonable point. If Mr. Collins had been shown the gun and the clothes by Detective Sergeant White on the previous day, he would have said so.
- 3.152. The second matter of significance lay in the fact that Detective Sergeant White had complained that a large number of notes of interview with the Travellers had gone missing. He alleged that their disappearance was intended to prejudice his opportunity to get a fair trial on charges of possession of a firearm for an unlawful purpose at Burnfoot on the night of the 22nd of May 1998. When it was put to Detective Sergeant White that it was particularly fortuitous that he could find the Collins interview set of notes at precisely the moment when they were needed to contradict a specific allegation, he stated that he had a large volume of documentation in his car. He did not realise that he had these notes until he made a search for them in the light of the allegation made by Mr. Collins. The Tribunal notes that these notes appeared at a time when they were of particular benefit to Detective Sergeant White.
- 3.153. What became of the bag and the clothing after the 24th of May 1998 has never been satisfactorily explained. Nobody has been able to inform the Tribunal what became of them.
- 3.154. In the course of cross-examination of Detective Superintendent John O'Mahony on behalf of Detective Sergeant White, it was put to him that thirty-nine original notes of interviews of the Travellers who had been detained following the search operation had been retained by members of the Swinford investigation team and had gone missing. It was alleged that this was thirty-nine out of a total of sixty original notes of interview. It was put to Detective Superintendent O'Mahony that this was an extraordinary amount of documents to go missing. Chief Superintendent O'Mahony accepted that he was aware that a number of original notes of interviews, which have been retained by members of the Swinford investigation team, were now missing. He could not say how they went missing;

<sup>85</sup> Tribunal Documents, page 1629.

nor could he give an explanation as to how this had happened. He stated that, from memory, he did not think that there was anything recorded in those notes which would have been relevant to Detective Sergeant White's defence on criminal charges arising out of the alleged possession of the gun for an unlawful purpose.<sup>86</sup> It is impossible to imagine how members of the camp at Burnfoot could have said anything to establish a defence for Detective Sergeant White.

3.155. Sergeant Fergus Treanor was one of the members of the National Bureau of Criminal Investigation, and also part of the Swinford investigation team. He had travelled to Letterkenny on the 23rd of May 1998 to conduct interviews. He interviewed Thomas Collins and Bernard Power. He stated that his original notes of interview were brought back to Swinford. There were five sets of interview notes. He stated that he learned in May 2000 that three sets of his notes had gone missing. He could not account for that. He could not say whether the figures put forward by counsel for Detective Sergeant White in cross-examination, as to the total number of statements that had gone missing, were accurate.<sup>87</sup>

3.156. **It is highly unsatisfactory that original exhibits should be mislaid in the Technical Bureau of Garda Headquarters; that material exhibits found with the firearm were not sent to Garda Headquarters for forensic analysis and thereafter should simply disappear; and that a significant number of memoranda of interview should become mislaid. No explanation has been forthcoming for these occurrences. In the absence of any evidence that they were deliberately done away with, the Tribunal cannot make a finding that any person was responsible in a deliberate and culpable way for their disappearance. However, the fact that these material exhibits did go missing, particularly the bag and the clothing, causes the Tribunal to have considerable unease in relation to Garda procedures.**

### **The A.85 Forms**

3.157. An A.85 form is a record of the hours of duty, both normal hours and overtime, worked by a Garda during a given period. In respect of the night of the 22nd of May 1998, Detective Garda Kilcoyne recorded himself as having done a normal tour of duty from 06.00 hours to 14.00 hours. He claimed for overtime duty from 19.00 hours to 22.00 hours. According to Detective Garda Kilcoyne, he deliberately did not claim for the time that he spent going to Gortahork for the purpose of retrieving and testing the gun and then planting it at the encampment at Burnfoot.

3.158. It was put to Detective Sergeant White that if Detective Garda Kilcoyne had

<sup>86</sup> Transcript, Day 402, pages 120-132.

<sup>87</sup> Transcript, Day 411, pages 9-11.

merely been engaged on a perfectly legitimate reconnaissance operation, followed by a visit to Superintendent Lennon's home for the purpose of obtaining search warrants, terminating sometime after midnight, there was no rational reason why he would not have claimed for working these hours. Detective Sergeant White maintained that because Detective Garda Kilcoyne had made a claim for the time between 19.00 hours and 22.00 hours, when all he had done was accompany Detective Sergeant White for the purpose of recharging the telephone battery and having a meal in the Navenny Grill, which he maintained was not entirely justified, it was for that reason that Detective Garda Kilcoyne had not claimed for the hours worked after 22.00 hours. He said that within the Gardaí there was an understanding that in making a claim for overtime, one would not "tear the arse out of the claim". He said that that was the simple explanation as to why Detective Garda Kilcoyne had not claimed for the hours worked after 22.00 hours on the 22nd of May 1998.<sup>88</sup> The Tribunal considers this unlikely, to put it mildly.

- 3.159. On his A.85 form, Detective Sergeant White had claimed for working up to 01.30 hours on "confidential duties". He stated that that was accurate, as he would have spent some time making up notes following his call from his informant at 01.08 hours and his call to Detective Chief Superintendent Jennings at 01.09 hours. He was asked why he had not made any entry on the form to indicate that he had done a reconnaissance or sought the search warrants during the relevant period. He said that that omission was due to the fact that one only puts in a brief description of the main duty performed during the relevant hours.
- 3.160. When it was pointed out that for other days in the same period, he had put in multiple entries, such as "file LK and enquiries Raphoe" and "LK and travel Dublin", he said that it was simply a question of the space available on the form and the fact that confidential duties would override anything else. Furthermore, there was the fact that overtime would be paid by the authorities without question in relation to confidential duties.<sup>89</sup>

### **Arson Attack on Detective Sergeant White's Car**

- 3.161. Detective Garda Kilcoyne alleged that the bag containing the gun, the clothes and the cartridges had been placed on the back seat of Detective Sergeant White's car when they travelled from Gortahork to Burnfoot. In the course of his evidence, Detective Sergeant White alleged that he would not have done that, as the bag could have been forensically tested for fibres coming from the back seat of his vehicle. This was not possible for two reasons. Firstly, by June 2001 the bag which had contained the gun had gone missing. While the date of its disappearance is not known, it would appear to have been mislaid prior to 2001,

<sup>88</sup> Transcript, Day 392, pages 185-188.

<sup>89</sup> Transcript, Day 392, pages 188-190.

because it was not available to be shown to Detective Garda Kilcoyne in June of that year. Even if the bag had been available at that time, forensic comparison between the fibres on the bag and the rear seat of Detective Sergeant White's car would not have been possible due to the fact that on the 19th of October 1998, shortly after 06.00 hours, a person or persons unknown allegedly entered Detective Sergeant White's property and there set fire to his car, causing severe damage to the interior of the vehicle. There was no evidence before the Tribunal as to who may have been responsible for this fire. There was no evidence that the fire was deliberately caused by Detective Sergeant White. The Tribunal merely notes that the forensic comparison which Detective Sergeant White alleged could have been done was not capable of being carried out due to two intervening events: the setting fire to the vehicle and the loss of the bag.

### **Aftermath of the Arrests**

- 3.162. After the release from custody of the seven Travellers in May 1998, the whole affair seemed to die away somewhat, but not completely. The Tribunal has heard evidence from Sergeant Leheny and Sergeant Galligan that even quite early on, the station party in Burnfoot had doubts that the Travellers owned the gun which had been found at their encampment. The Travellers themselves had vehemently denied that they owned the firearm. It appears that rumours began to circulate, which were to the effect that the gun had been planted. By whom this was supposed to have been done was not clear.
- 3.163. Retired Garda John Clancy stated in evidence that in view of the vehemence of the denials by the arrested Travellers, he went out to Burnfoot to inspect the locus of the find. On seeing this he harboured serious doubts that the Travellers had left the gun at that location. He recounted how later in the evening he told Detective Inspector O'Mahony of his suspicion that the gun had been planted:

A. *...I was outside the station, I don't smoke, I don't know what I was doing outside the station, I was standing out probably just getting a breath of fresh air and I was on my own and John O'Mahony came over to me and he said to me, John, he said, you're a long time around these people he said, what do you think of them?*

*I was surprised, I suppose to be asked for my view, but I thought about it and I said, John, to tell you the truth, I think it's a plant. He didn't answer me. He walked away from me. And I said – before that I said to him, what I am going to say to you, I didn't like saying it, I was really shocked I*

*suppose that I had come to that conclusion, but I said to him, I'll never say this to another person again and I won't repeat it, but I felt I owed it to him to make my views known when he asked me. At least he was one of the few people who ever asked me for my views on a major investigation, so when I was asked them, I gave them as truthfully as I could.*

Q. *Why was it that you had to say to him, or felt you would say to him, look, I won't say this again, but this is my view, was that because of the nature of the planting?*

A. *When I realised that what I was saying was a very, very serious matter. You know, that if a firearm was planted on innocent people it was a serious matter and ...*

Q. *So do I understand you to mean by what you said to the Detective Inspector, you were alleging it was planted by the Gardaí?*

A. *I suppose, I have been thinking about that, I suppose I would have to say yes. Being honest, yeah.*

Q. *Can you tell the Chairman why it was you thought the gun might have been planted there by the Gardaí rather than perhaps other Travellers with whom some of these members may have been feuding with back in Dublin?*

A. *I really don't know why. I suppose they thought that it would be another group that would do it, it just didn't enter my mind the way the searches were conducted and the whole nature of the information. The fact you know that they were being nominated for the murder of Eddie FitzMaurice and in my opinion being very, very unlikely suspects for this murder because of the fact that they knew nothing about the area.*

*My own opinion about the Eddie FitzMaurice murder from the earlier stages was that there was some local involvement in it, because there had been a series of tie-ups in that area in the previous years and they hadn't been successfully detected. Nobody had been apprehended for it. My opinion from the early stages was this was just another tie-up that went badly wrong. So overall the idea that number one, that*

*these people from Dublin would come down and kill Eddie FitzMaurice in Mayo and not have the local knowledge of either the area or the victim. So I didn't think it was either likely, I didn't think they were likely suspects for either the crime and then the whole way the gun was found, led me to believe, led me to the conclusion that I came to. It gave me no pleasure now, I have to say that it wasn't an easy thing to say and I never did repeat it to anybody.*

**Q.** *Why did you not repeat it to anybody after that?*

**A.** *Because nobody ever asked me and I felt that I had made my views known and I didn't get a yea or a nay, only just a walk away. I didn't want to impose my view on anybody again that was likely to be able to do anything about it.<sup>90</sup>*

**3.164.** Detective Superintendent O'Mahony stated that he had no recollection of any such conversation with Garda Clancy. He did not deny that the remark could have been made by Garda Clancy. However, he was adamant that whatever Garda Clancy may have said, he did not understand him to be implying that he believed that the gun had been planted at the encampment by a Garda. He stated that if that had been made clear to him, he would have sought further details from Garda Clancy and he would have looked into the matter thoroughly.

**3.165.** There was also a rumour that the area had been searched by some Gardaí on the previous evening, when nothing had been found. The Tribunal is satisfied that this rumour was a misrepresentation of what had actually taken place. It appears that in the days before the search, Sergeant Leheny and Garda Galligan had visited the encampment and spoken to the Travellers. This was just a routine visit to acquaint themselves with the identity of the new arrivals in the locality. In the course of that visit, the two Gardaí took a cursory look around the encampment. They found nothing suspicious. However, it was not by any means a detailed search. It was just part of routine diligent police work.

### **The Rumours**

**3.166.** The Tribunal is satisfied that in the months and years after the search, this prior visit to the encampment became the subject of conversation among some Gardaí in the area. Over time and repetition it is likely that it grew into the second limb of the rumour: that the area had been searched with negative results on the night prior to the search on the 23rd of May 1998. This is discussed more fully in Chapter 4.

<sup>90</sup> Transcript, Day 423, pages 26-29.



### **The Arrest of Detective Sergeant White**

- 3.167. On the 13th of June 2001, Detective Garda Kilcoyne made his statement to Chief Superintendent Rice and Detective Superintendent Foley. The lead up to the making of that statement has been looked at in detail in Chapter 2 of this report. On the 19th of June 2001, Detective Sergeant White's house and his shed at Gortahork were searched. Detective Sergeant White was arrested at his home and brought to Letterkenny Garda Station on suspicion of having committed a scheduled offence, being possession of a firearm for an unlawful purpose at Burnfoot on the 22nd of May 1998.
- 3.168. On that same day Detective Garda Kilcoyne travelled with Superintendent Hugh Coll to the shed at Gortahork. There he pointed out the area of the bank into which he alleged that the test shot had been fired on the night of the 22nd of May 1998. Over the ensuing three days, a thorough search was carried out of the shed and the bank. No pellets were found in the bank. Nothing of evidential value was found in the shed.

### **Alleged Interference with the Scene**

- 3.169. A question has arisen as to whether the search area at Gortahork was left unprotected during the course of the search and, if so, whether this was done from some sinister motive, possibly with a view to persons unknown planting pellets into the bank so that the search would in fact yield positive results. Detective Garda Noel Jones gave evidence to the Tribunal to the effect that he, along with Gardaí Heraghty and Breslin, was detailed by Superintendent Hugh Coll to carry out a thorough search of the shed at Gortahork. This necessitated cutting the original padlocks. They were also detailed to dig out the part of the bank into which the original test shot had allegedly been fired. The purpose of this was to look for pellets and wadding which would have been discharged from the alleged test firing of the gun. He stated that they dug out an area of the bank during the first day. That evening the search site was preserved by Gardaí O'Grady and Burke. The digging of the bank resumed on the following day. At the end of that day, Gardaí O'Grady and Burke again returned to preserve the area overnight. Garda Noel Jones stated that he left the search area that evening with a view to resuming the search on the following morning. The bags of earth which had been removed from the bank, along with tools used for digging, were left at the site in the care of the two Gardaí.
- 3.170. Mrs. Rosaleen White stated in evidence that on the evening of the 20th of June 2001 she had travelled to Gortahork to visit her mother, who lived close to the shed. She said that on her way to the house, she met Gardaí O'Grady and Burke driving away from the area in separate cars. She saw that the gates on the path

leading to the sheds had been left open. Upon closer inspection she discovered that the shed itself, the bags of earth and the tools had simply been abandoned, without being secured in any way. She stated that when Detective Garda O’Grady saw her travelling to the shed he returned to the shed and when she asked him why the area had been left unsecured, he replied that he had been going to a local hardware merchant for the purpose of purchasing locks to secure the premises.

- 3.171. Detective Sergeant White went on to allege that some time later he had two conversations with Detective Garda O’Grady. In the first of these Detective Sergeant White alleged that Detective Garda O’Grady had called out to his house one day on other business. During the course of the conversation his wife brought up the subject of what had happened at the shed in Gortahork on the night of the 20th of June 2001. Detective Sergeant White said that he gently rebuked his wife for bringing up the matter because he was the subject of a criminal charge arising out of that incident. However, he said that Detective Garda O’Grady told them to sit down, that he wanted to tell them the truth. This is Sergeant White’s account of what he alleges Detective Garda O’Grady said to him on that occasion:

*He said sit down, John, I’ll tell you the truth. He then went on to tell me that he was told to leave the scene that night. No, I said to him do you realise what you are saying, Michael, or Mick, do you realise what you are saying, that if someone told you to leave the scene is a very serious situation. He said I do realise. Then at that stage I don’t know did Rosaleen ask him the name, or me, I think I asked him – I think she asked him, sorry, and he said I’ll tell a judge. If it comes to it I’ll tell a judge. I’m not going to tell you now. I couldn’t go any further with it, I felt I had transgressed a bit into the criminal case with the witness, maybe it wasn’t fair, it wasn’t right. So shortly after that he left ... I think he was told to leave the scene until he was told to come back. As it turned out, I think it was about an hour. That’s just information in my mind since. I’m not sure he said leave for an hour exactly, but to leave until he was told to come back ... and that specifically he was to bring Garda Vincent Burke with him away from the scene.<sup>91</sup>*

- 3.172. Detective Sergeant White stated that in February 2005, he called to Detective Garda O’Grady’s house to inform him that he intended to make a statement concerning their earlier conversation. He stated that Detective Garda O’Grady said words to the effect that he knew it would come to this. He did not appear

<sup>91</sup> Transcript, Day 393, pages 96-97.

to mind that Detective Sergeant White was going to make a statement about their earlier conversation.<sup>92</sup>

- 3.173. Detective Sergeant White maintained that the two Gardaí had been directed to leave the search site for the purpose of enabling pellets to be planted into the bank so that they would be found subsequently by the search team:

*But I think that they decided that they would go through with this farce of checking the ditch possibly in the small chance that he may be telling the truth and it was part of an investigation, an investigative process. But when it wasn't working they then instructed the two men minding the scene to go away and the two of us are men of the world, Mr. Marrinan, and we know that there can be only one reason for that to happen and that is to plant material and if my wife, Rosaleen, hadn't went up there there would be a little bag sitting there now, a plastic bag, with twelve pellets found in Sergeant White's clay bank, Chairman, and it would look very bad for me. And there is no other reason in the world of any kind for leaving a scene unattended.<sup>93</sup>*

- 3.174. It was put to Detective Sergeant White in cross-examination that if the Carty team, or anyone else, wished to plant pellets in the bank, it would have been much easier simply for them to plant the pellets into the bags of earth taken from the bank, when the bags were brought back to Letterkenny Garda Station. Detective Sergeant White disagreed with this assertion. He stated that, firstly, the pellets shot out of a gun would be disfigured and, secondly, he maintained that by firing the pellets into the bank during the night, they would then be able to get an honest and credible statement from the members who carried out the search on the following day, to the effect that they did in fact discover pellets in the bank.

- 3.175. Detective Gardaí Michael O'Grady and Vincent Burke gave an identical account of the sequence of events on the night of the 20th of June 2001. At approximately 20.30 hours, Detective Garda O'Grady received a call on his mobile telephone from Detective Inspector Michael Keane. He enquired of Detective Garda O'Grady as to whether the search party had completed their search for the day. When Garda O'Grady said that they had, Detective Inspector Keane told him that the search was over and that they could stand down from their duty of preserving the area. He instructed Detective Garda O'Grady to ensure that the shed was secured. Detective Garda O'Grady relayed the news to Garda Burke, who started to load the Garda digging equipment into the patrol car. Detective Garda O'Grady stated that he telephoned Ballybofey Garda Station to ask them

<sup>92</sup> Transcript, Day 396, page 98.

<sup>93</sup> Transcript, Day 394, page 97.

to ascertain if Mrs. Rosaleen White had a duplicate set of locks for the shed. He recalled that some short time later he received a call back from Ballybofey Garda Station to the effect that either the Whites did not have a duplicate set of locks, or that they were not at home that evening. Either way he was aware that no locks were available.

- 3.176. Having loaded the equipment into the cars, Detective Garda O’Grady left in the patrol car and Garda Burke left in his private car. Some distance down the road they met Mrs. Rosaleen White. Detective Garda O’Grady turned his car and followed her back to the shed. Garda Burke proceeded to Ballybofey Garda Station. At the shed Detective Garda O’Grady had a brief conversation with Mrs. White. He explained that the search had terminated and that he was going to go and get locks for the shed. He informed Mrs. White that he would leave in the keys for the new locks when he had obtained same. He and Mrs. White then left the area.
- 3.177. Detective Garda O’Grady drove to Ballybofey Garda Station, where the Garda digging equipment was locked into the store room. He and Garda Burke then went to the home of a local shop owner to obtain new locks. Unfortunately the shop owner was not at home. The two Gardaí then proceeded to the home of a local builder, who provided the necessary locks. They then proceeded back to Gortahork to affix the locks to the shed door. On the way back, Detective Garda O’Grady received a second call from Detective Inspector Keane, who instructed that preservation of the search site was to be reinstated. The two Gardaí proceeded to the search area and preserved it for the remainder of the night. The search area had been unprotected from approximately 21.00 hours until 21.45 hours.
- 3.178. Detective Garda O’Grady telephoned Ballybofey Garda Station to ask them to inform Mrs. White that preservation of the search area had been reinstated and that on that account he would not be dropping the keys in to her as earlier promised. He recalled that some time later in the night, he received word that that message had been delivered to Mrs. White.

### **The Search Warrants**

- 3.179. The reason for the reinstatement of the preservation of the search area arose out of a number of conversations between Detective Superintendent Tadhg Foley, Superintendent Hugh Coll and Detective Inspector Keane on the evening of the 20th of June 2001. It appears that Detective Inspector Keane informed Detective Superintendent Foley that the search had been called off. He, in turn, mentioned this over dinner to Superintendent Coll, who had just returned from a meeting

with the Director of Public Prosecutions in Dublin. On learning of this, Superintendent Coll enquired whether the bags of earth which had been taken from the bank at Gortahork had been brought to Letterkenny Garda Station. On learning that they had not, he directed that the search should continue, so that the bags could be brought to Letterkenny Garda Station for detailed examination. It was for this reason that Detective Inspector Keane made the second call to Detective Garda O'Grady instructing him to reinstate preservation of the search area. Due to the fact that there had been a break in the continuation of the search, it was thought necessary to have a further search warrant issued by Detective Superintendent Foley in respect of the lands owned by Detective Sergeant White at Gortahork.

- 3.180.** In August 2001 both Detective Garda O'Grady and Garda Burke made statements regarding their preservation of the search area on the night of the 20th of June 2001. Both statements are in almost identical form and both contain the following assertion:

At 6.00 p.m. on Wednesday, 20th June I resumed protection duty at the said shed and site at Gortahork, Killygordan relieving D/Gardaí Jones and Herraghty. I certify that during my period of duty no unauthorised persons entered the scene or interfered with the protected area. I was relieved at 8.00 a.m. on Thursday 21st June 2001 by D. Gardaí Jones and Herraghty.<sup>94</sup>

- 3.181.** Garda Burke made his statement on the 2nd of August 2001. He explained the inaccuracy in his statement on the grounds that he had been lazy in the way that he had made out his statement. He stated that he had used a well known formula of words to cover the relevant periods during which he had preserved the area. As nothing of evidential value had been found in the course of the search, he did not consider his statement of great significance. Detective Garda O'Grady made his statement on the 23rd of August 2001. He stated that as he had done the same periods of preservation duty as Garda Burke, he merely copied his statement verbatim.
- 3.182.** These matters rested until a visit to Detective Sergeant White's house by Detective Garda O'Grady in December 2001. He had gone out there, he said in evidence, on totally unrelated business. When that business had been completed, he recalled that Mrs. White brought up the subject of their encounter on the road and at the shed on the night of the 20th of June 2001. Detective Garda O'Grady agreed that he had indeed met her that evening. There was a dispute in their evidence as to where exactly on the road they had met, but that is not material. Detective Garda O'Grady accepted that he was asked by Detective Sergeant White and Mrs. White as to who had instructed him to leave the search area that

<sup>94</sup> Tribunal Documents, pages 152 and 231.

night. He had refused to give that information because he did not feel that Detective Sergeant White was entitled to know it, or if he was, he felt that he should get it from higher authorities. He denied that he ever used words to the effect that he would tell a judge this information, if it came to a court case.

3.183. After that discussion, Detective Garda O’Grady realised that his statement about preserving the search area was not accurate. He discussed this issue with his colleague Garda Burke. Garda Burke said that he enquired from Detective Inspector Keane as to whether anything of evidential value had been found as a result of the search. On learning that the search had been negative, Garda Burke and Detective Garda O’Grady decided that their statements were not going to be of any significance whatsoever in any criminal proceedings involving Detective Sergeant White; accordingly they decided to do nothing about their previous statements. Their statements of August 2001 remained as the ‘official’ version of events.

3.184. In February 2005, Detective Garda O’Grady received a visit from Detective Sergeant White. Again he was quizzed as to who had directed him to leave the search area. For a second time, he refused to divulge this information. He denied that he ever indicated to Detective Sergeant White that the first instruction received by him on the night of the 20th of June 2001 was to the effect that he should leave the search area and take Garda Burke with him and remain away from the area until directed to return. He also denied that he ever said to Detective Sergeant White that the only reason that he could have been told to vacate the search area was to enable material to be planted there.

### **Analysis of the Gortahork Search Issue**

3.185. Having heard evidence from the relevant officers, the members of the search party, the two Gardaí concerned in preserving the search area, and from Detective Sergeant White and Mrs. White, the Tribunal is satisfied that the account of the events of that night as given by Detective Garda O’Grady and Garda Burke was both accurate and honest. Their account does not in fact differ in any material respect from the account given by Mrs. White. The Tribunal accepts that the search was called off by Detective Inspector Keane and then reinstated by him on the direction of Superintendent Coll for the purpose of having the bags retrieved and brought to Letterkenny Garda Station for detailed examination. The Tribunal is satisfied that there was nothing sinister in the vacating of the search area by Detective Garda O’Grady and Garda Burke on that evening.

3.186. The Tribunal accepts as truthful the explanations given by Detective Garda O’Grady and Garda Burke as to the reasons why their original statements

in August 2001 were inaccurate. One would be living in a totally unreal world to think that people will not on occasion be careless in the drafting of statements that they feel are of no significance in the context of criminal proceedings. Accordingly the Tribunal accepts that the original version of their statements was due to carelessness; it was not part of any deliberate conspiracy to cover up the fact that the search area had been left unprotected for a period on the night of the 20th of June 2001. The fact that a second search warrant had been issued to cover the Gortahork shed was a clear indication that there had been a break in the search, thereby necessitating the second search warrant. This was not something which the Garda authorities were deliberately trying to cover up.

- 3.187. The Tribunal is, however, concerned by the fact that having learned in December 2001 of the error regarding their earlier statements, neither Detective Garda O’Grady nor Garda Burke took any steps to rectify the matter by submitting an additional statement. They had a duty to correct the matter once it was brought to their attention. While it may not have appeared of any significance to them, it was something of which Detective Sergeant White, as an accused person, was entitled to be told. He was entitled to receive these statements by way of disclosure in the course of his criminal proceedings. The Tribunal accepts that the motivation of Detective Garda O’Grady and Garda Burke in not submitting corrective statements was merely a desire on their part not to stir up trouble for themselves and merely to leave well alone in view of the fact that they considered their statements not to be significant.
- 3.188. The fact that no corrective statements were forthcoming after the meeting in December 2001, coupled with Detective Garda O’Grady’s refusal to disclose to Detective Sergeant White who had directed him to leave the area, may have led Detective Sergeant White to form the belief that the Garda authorities were going to hold the line that the area had never been left unattended that night. From this, he may have inferred that the only reason for adopting such a line was to cover up the fact that the men had been removed from the area for a sinister purpose. While the Tribunal can appreciate how Detective Sergeant White came to hold that belief, the Tribunal is satisfied that such belief was unfounded. The Tribunal is satisfied that there was nothing sinister in the events leading to the abandonment of the search area for approximately 45 minutes on the night of the 20th of June 2001.

### **Testing the Gun**

- 3.189. On the 19th of June 2001, Detective Garda Pat Whelan of the ballistics section

in the Technical Bureau at Garda Headquarters was asked by Detective Sergeant Treanor and Detective Garda Caplice to do a test to see whether the gun found at Burnfoot could be fired by means of pulling an eight foot length of string attached to the trigger area. Detective Garda Whelan stated that he was not shown Detective Garda Kilcoyne's statement, but was merely requested to fix the gun in the clamp, attach a length of string and see if it could be made to discharge.

- 3.190. He described how he placed the gun in a clamp; tied the end of the string around the pistol grip and trigger area of the gun; pulled sharply on the string a number of times and managed to discharge the firearm.<sup>95</sup> In his undated statement, made after the test had been carried out, he stated that he had attached the length of twine to the broken trigger and then cocked the weapon. He stated that by pulling the twine he discharged the left barrel of the shotgun.<sup>96</sup>
- 3.191. In his evidence, he stated that he did not attach the string to the trigger as such, as there was too little of the trigger left, but that he attached the string around the pistol grip portion of the gun including the trigger area. He stated that by pulling sharply on the string a number of times, it was possible to discharge the left barrel. The Tribunal had doubts about this version of events, given the condition of the gun when produced before it. This was done in controlled circumstances in Garda Headquarters.
- 3.192. On the 14th of December 2005, at the request of the Tribunal, a further test on the gun was carried out. Detective Garda Whelan was asked to demonstrate the test which he had performed on the 19th of June 2001. In attendance at that demonstration were the Tribunal Chairman, the Tribunal legal team and its investigators and the legal team representing the Garda Commissioner, together with Detective Sergeant White and his legal team. At the request of the Tribunal, the test was also witnessed by Mr. Philip Boyce, firearms and toolmarks examiner with Forensic Alliance, an independent forensic laboratory based in Leeds, England. He was an expert who had formerly worked for the Royal Ulster Constabulary G.C.
- 3.193. For the purpose of the demonstration, Detective Garda Whelan placed a blank cartridge into the shotgun, placed the gun into a clamp and attached a cord around the pistol grip portion of the gun. On the first sharp pull of the cord, the gun discharged.

### **Evidence of Detective Garda Pat Whelan**

- 3.194. In the course of his evidence, Detective Garda Whelan was cross-examined extensively on the comment in his first undated statement, that "an examination

<sup>95</sup> Transcript, Day 396, page 132.

<sup>96</sup> Tribunal Documents, pages 394-5.



of the interior of both barrels revealed no evidence of recent discharge”.<sup>97</sup>

- 3.195.** It can be readily appreciated that in the context where Detective Garda Kilcoyne alleged that the gun had been test fired late in the evening of the 22nd of May 1998, this was a very significant opinion from the ballistics expert. It was put to him that a reasonable person reading that portion of his statement would draw the conclusion that it was his expert opinion that the gun had not been discharged in the hours and days prior to his examination of it on the 23rd or the 24th of May 1998. He disagreed with that interpretation of what he had said in his statement. He stated that all he was saying was that on a visual examination of the barrels there was no physical evidence of recent discharge having taken place. In other words, that there was no soot or residue visible within the barrels, which would indicate that a discharge of the firearm had taken place. He went on to state that even where a gun had been discharged there would not always be any residue, or fouling of the barrels. This would depend on the type of cartridge used and whether it had been altered in any way.
- 3.196.** Detective Garda Whelan stated that modern type cartridges, with plastic rather than fibre wadding, tended to clean out the barrel as they travelled along it. Also, the modern type powder was described as being “smokeless” as opposed to the older type of cartridge. Thus, he said that the opinion he was giving was not an exact science. However, he stated that this gun had been proved for the old black powder cartridges, not the modern ones.<sup>98</sup>
- 3.197.** Furthermore, he claimed that if the cartridge had been altered by removal of the shot and the wadding and the powder, leaving only the detonator, that would result in no fouling of the barrel upon discharge. He stated that even if the powder was left in the cartridge, as long as it was modern type powder, there would not be any fouling.<sup>99</sup> He stated that if one desired to do so, it was very easy to open a cartridge and remove the shot, wadding and powder.
- 3.198.** Detective Garda Whelan stated that in this case he had never had the opportunity to examine the actual cartridges because he did not receive them. The cartridges shown in the photographs were Hawks Best cartridges, no. 4. He could not say whether the green cartridge which had been found in the left barrel had been altered by having the top cut open and having the shot and wadding removed. He said that he would have to have the opportunity to physically examine the cartridge in order to give a reliable opinion on that aspect.<sup>100</sup>
- 3.199.** Detective Garda Whelan explained that at the time of his first examination of the gun in May 1998, he did not see any soot or residue in the barrel, nor was there any smell from the barrel.<sup>101</sup>

<sup>97</sup> Tribunal Documents, page 392.

<sup>98</sup> Transcript, Day 396, pages 140-141.

<sup>99</sup> Transcript, Day 396, page 139.

<sup>100</sup> Transcript, Day 396, page 143.

<sup>101</sup> Transcript, Day 396, page 180.

- 3.200. Detective Garda Whelan was asked for his opinion on a number of matters relevant to the test firing of the gun as described by Detective Garda Kilcoyne. He stated that the gun would have needed to have been fixed well in position, otherwise it would move when the string was pulled. This would have occurred at the intended moment of discharge and as such would be very dangerous. He stated that if stones were used for the purpose of fixing the gun, they would have to be reasonably heavy or large. The absence of any stone or impediment behind the gun would have consequences for the movement of the gun and the direction of the shot on discharge. If a stone was not placed on top of the weapon, there was a risk that the gun could tilt upwards or even worse, flip backwards, thereby causing the shot to go into the air, or backwards towards any persons standing behind the weapon.
- 3.201. In relation to the reported absence of any recoil of the weapon on discharge, Detective Garda Whelan stated that if there was no powder charge in the cartridge, there would not be a recoil. Accordingly, the absence of any recoil in the account given by Detective Garda Kilcoyne would suggest that there was no powder charge present. In other words, a blank cartridge had been used in the test. The reported absence of a flash was less conclusive, because much would depend on the location, time of day and lighting conditions. However, one would not get a flash while firing a blank cartridge.<sup>102</sup>
- 3.202. In terms of transporting the gun in a bag placed in the back of a car, Detective Garda Whelan gave the opinion that as long as the hammers on the gun were not pulled back, there was no danger of the gun discharging. The hammers would have to be pulled back for this to happen. No amount of jiggling of the weapon would set it off, unless the hammers had been cocked.<sup>103</sup> Conversely, once the hammers were pulled back, due to the poor condition of this gun, any jiggling of the weapon could set it off.

### **Alleged Pressure on the Expert**

- 3.203. Detective Garda Whelan was asked by members of the Carty team about his comments in his first statement concerning no evidence of recent discharge. He made a further statement some time after the 19th of June 2001 in which he stated, in relation to the term in my original statement 'both barrels revealed no evidence of recent discharge', this is based on visual examination".<sup>104</sup> He denied that he had been put under any pressure to change his original statement. He said that he was only asked could the gun have been discharged prior to his first examination. He did not regard this as any form of pressure to alter his original opinion. He stated that all he was doing was explaining how he came to give that opinion in his first report and what he meant by it. He stated that if anyone had

<sup>102</sup> Transcript, Day 396, page 184.

<sup>103</sup> Transcript, Day 396, page 144.

<sup>104</sup> Tribunal Documents, page 394.

brought any improper pressure to bear on him, he would immediately have reported it to his Detective Inspector. He would also have dealt harshly with any person who tried to put such pressure on him.

- 3.204. Detective Garda Whelan stated that in relation to the test which he did in June 2001, he had been asked to do that test with a live round of ammunition. He refused to do so on health and safety grounds; the gun was too unstable. He brought this to the attention of his superior Detective Inspector Hancock. The Detective Inspector fully supported his stance in the matter.
- 3.205. A controversy had arisen in February 2005 when Detective Sergeant White alleged that he had had a conversation with Detective Garda Sheerin where the latter said that Detective Garda Whelan had told him that he had been put under pressure to say that the gun had been recently fired prior to his examination of May of 1998. When asked to comment on this, Detective Garda Sheerin made a statement in the following terms:

A few years ago, I was in the company of a group of Gardaí at the Garda Headquarters. In general conversation D/Garda P.C. Whelan spoke about one of his cases, I understood from what he said that he had been asked to include in his statement that the gun, which he had examined, had been recently fired. This was a very brief reference and I cannot recall any further discussion on it.<sup>105</sup>

- 3.206. In his evidence, Detective Garda Sheerin stated that in actual fact the conversation had been a one to one casual conversation between him and Detective Garda Whelan. It could have taken place in the corridor, or in Detective Garda Whelan's office. He accepted that Detective Garda Whelan may have only said to him that two Gardaí were concerned that he should do the test with a live round of ammunition, rather than as he wished with a blank cartridge. It was put to Detective Garda Sheerin that there was a big difference between effectively being put under pressure to change his opinion, to write an opinion to order as it were, and being put under pressure to do a test with live ammunition:

*Q. Can I suggest this to you, Detective Garda Sheerin, there is a big difference between on the one hand somebody saying look there's a health and safety issue in relation to this gun and firing it at all because it could blow up and alternatively I have been asked to write an opinion to order?*

*A. There is, yes.*

*Q. It's very hard to mistake the one for the other?*

<sup>105</sup> Tribunal Documents, page 595-11.

A. *It is, yes.*

Q. *A reasonable person might think that it's therefore if your recollection of events is correct, that it's very likely that Detective Garda Whelan had reported to you that he was being put under pressure vis-à-vis writing an opinion to order?*

A. *That he had reported to me.*

Q. *Yes, that he was being put under pressure to write an opinion to order?*

A. *No, I don't think he was actually, I couldn't say that for definite, I think that it was that he had a concern about it and I don't think it was a pressure that he was to write an opinion to order. I think that it was, there was an issue there in relation to the firing of the gun and I think that he may have concerns about both test firing it and that.<sup>106</sup>*

3.207. Detective Garda Whelan stated that he might have discussed with Detective Garda Sheerin the requirement by the Carty team that he should do the test with live ammunition, but he couldn't actually recall any such conversation. He did not accept that he had ever said that he had been put under pressure to change his statement or opinion, as alleged by Detective Garda Sheerin in his statement. Detective Garda Whelan explained that it was not uncommon for members of the Gardaí who were investigating a particular case to return to him to ask him to explain portions of his opinion after he had examined a particular firearm or other item. In doing this, the Gardaí were merely seeking clarification from him on points that they did not fully understand in his statement.

3.208. The Tribunal also heard evidence from Sergeant Fergus Treanor. He stated that on the 18th of June 2001 he and Detective Garda Caplice were sent up to the ballistics section of the Technical Bureau at Garda Headquarters, to request that a test firing of the gun, in the manner described by Detective Garda Kilcoyne, be carried out. On that occasion Detective Garda Pat Whelan was not prepared to carry out such a test with live ammunition, due to a fear on his part that due to the condition of the firearm it would be dangerous to do so. Sergeant Treanor and Detective Garda Richard Caplice returned to Donegal. However, they were instructed that it was essential to ascertain if the gun could be fired in the manner described by Detective Garda Kilcoyne. Accordingly, they returned to Dublin on the following day and requested Garda Whelan to do the test with a blank cartridge. This he was prepared to do. Sergeant Treanor stated that it was

<sup>106</sup> Transcript, Day 397, pages 145-146.

necessary to investigate Detective Garda Kilcoyne's statement and, in particular, to see if the gun could be discharged in the manner described. It was for this reason that the test firing was done in a controlled way. Sergeant Treanor denied that he interfered with Detective Garda Whelan as regards the method adopted to carry out the test. He also denied that he had asked Detective Garda Whelan to change the content of any of his statements in relation to his examination of the firearm.<sup>107</sup>

- 3.209. **Having considered the evidence of Sergeant Treanor, Detective Garda Sheerin and Detective Garda Whelan, the Tribunal is satisfied that no pressure was brought to bear on Detective Garda Whelan to change any opinion. The Tribunal notes that he did not ever change the opinion as stated in his first undated statement following his examination of the firearm in May 1998.**

### **Expert Evidence of Philip Boyce**

- 3.210. Mr. Philip Boyce is a ballistics expert. He holds a Bachelor of Science degree in chemistry and a Master of Science degree in forensic science. He has been a forensic scientist since 1984. He spent eighteen years in the Forensic Science Laboratory of Northern Ireland, before coming to his present position as head of the Firearms Facility in an independent forensic laboratory run by a company called Forensic Alliance in Leeds, England.
- 3.211. At the request of the Tribunal, Mr. Boyce examined the shotgun which had been recovered at Burnfoot on the 23rd of May 1998. He described it as a sawn-off twelve gauge shotgun in very poor condition. Due to its condition it would represent a considerable danger to anyone using the weapon to discharge live ammunition. He stated that there was a significant risk of the gun discharging back into a person's face, if they tried to discharge it using live ammunition. He stated that the gun was very old. From the proof marks on the gun, he estimated that it had been manufactured at some time prior to 1904.
- 3.212. Mr. Boyce stated that it would be apparent to anyone familiar with firearms that it was unsafe to discharge live ammunition from the firearm. He stated that it would be very easy to simply remove the shot and the powder from the cartridge. Physically one would cut off the top of the cartridge, pour the shot out, put one's finger inside the cartridge to pull out the wad and then pour the propellant out.<sup>108</sup> This would leave only the primer at the base of the cartridge.
- 3.213. As to whether it would be obvious that a cartridge had been modified, he stated that this would depend on the type of cartridge used. If the top of the cartridge had been simply cut off, that would be obvious, but if the actual seal at the top

<sup>107</sup> Transcript, Day 411, pages 12-14.

<sup>108</sup> Transcript, Day 413, page 58.

of the crimp had been broken and then the crimp actually opened, that would not be obvious. One would not be able to say whether the cartridge had been modified or not prior to discharge. One would have to rely on microscopic examination of the cartridge to show signs of scrapings with a penknife, or other such cutting implement.

3.214. Mr. Boyce stated that if the cartridge had been modified, so that only the primer was left in, one would still get a loud bang on discharge of the firearm. If the wadding and the gun powder were left in, one would get a louder bang. If one left the gun powder in the cartridge, one would get a soot deposit in the barrel. He stated that even when only the primer was left in the cartridge, one would still get a very fine residue left on the inside of the barrel.<sup>109</sup>

3.215. With an unaltered older type of cartridge, the barrel would be quite blackened because the older cartridges actually use black powder as a propellant. Mr. Boyce stated that the length of the barrel does not have any effect on whether or not a residue is left in the barrel. The residue is left along the length of the barrel from the chamber to the end of the muzzle.

3.216. Mr. Boyce stated that when a cartridge has been modified so as to render it a blank cartridge, it will not give any appreciable kick or recoil about on discharge. If the gun were placed between stones and fired with a live cartridge, Mr. Boyce was of the opinion that in these circumstances he would expect considerable movement from the gun, perhaps up to three or four feet from where the gun was sitting. It would also jump on discharge. The gun would not stay level. The direction of discharge of the pellets in such circumstances would be quite unpredictable.<sup>110</sup>

3.217. In relation to the term “recent discharge”, Mr. Boyce indicated that that was almost a term of art in his profession:

*Q. I want to ask you about a term which might be a term of art in terms of forensic people who deal with firearms: is ‘recent discharge’ a term of art in your skill, profession?*

*A. It is, whenever we say ‘recent discharge’ if we have looked at a weapon we say that the weapon has been fired and not cleaned. But a weapon can have been fired months before, left as it was and whenever we look at it, it still looks as if it is recently discharged.<sup>111</sup>*

3.218. The only way that one can tell if a gun has been discharged in the immediate past prior to inspection is by the distinct smell which is left when a gun has been

<sup>109</sup> Transcript, Day 413, page 61.

<sup>110</sup> Transcript, Day 413, page 63.

<sup>111</sup> Transcript, Day 413, page 65.

discharged. Mr. Boyce stated that this can last for a couple of days. Usually it is not possible to say when exactly a gun has been discharged: one can only say that the gun has been discharged and not cleaned. Mr. Boyce stated that it is very simple to clean the barrel of a gun. It can be done by using a shotgun cleaning rod, or by simply pulling something such as a rag through the barrel. It would only take a matter of, at most, minutes. It does not require any special tool: if one has a rag and some means of pushing it through the barrel, that will suffice.<sup>112</sup>

**3.219.** Mr. Boyce was asked about the apparent divergence of evidence between Detective Sergeant Hugh Smith and Detective Garda Pat Whelan. The Sergeant had said that on a superficial examination of the firearm at the scene, he formed the view that it had been discharged, due to the presence of soot residue in the left barrel. Whereas, on his examination some two days later, Detective Garda Whelan stated that due to the absence of any sign of residue, there was no evidence of recent discharge from the left barrel. Mr. Boyce stated that in these circumstances, the residue would have had to have been removed by using a rag or other cleaning method in the period between the time of the first finding of the firearm and the time of the examination by Detective Garda Whelan in Garda Headquarters. He stated that due to its being a sawn-off shotgun, one could clean it quite quickly by using a pull through, or a shotgun cleaning rod, or a piece of stick with a rag on it. Mr. Boyce ruled out the possibility that the effect of carrying out fingerprint examination of the firearm prior to its being examined by the ballistics expert would have any impact on the amount of residue left on the interior of the barrel. He was of the opinion that the only possibility was that there had to have been some cleaning in the interim, if there had been residue present on first examination of the firearm, but not at the time of the second examination.

**3.220.** Mr. Boyce had seen photographs taken of the shotgun and cartridges at the time that they were found at Burnfoot on the 23rd of May 1998. The cartridges shown in the photographs were of the modern type. He stated that it was clear from these photographs that the crimp at the top of the cartridge found in the left barrel had been opened. However, in the absence of physically examining the actual cartridge, he was not able to say whether the opening of the crimp had occurred due to the discharge of a live cartridge, or due to some modifying of the cartridge prior to its discharge. He stated that from his examination of the firearm, it appeared that the right barrel had not been discharged in a considerable number of years. He formed this opinion due to the amount of rust and deterioration present on the inside of the right barrel.

**3.221.** In cross-examination on behalf of Detective Sergeant White, Mr. Boyce was asked whether it would have been possible for his client, who was five feet, eleven

<sup>112</sup> Transcript, Day 413, page 83.

inches tall, to be able to engage the trigger mechanism on the firearm by tying a string around the pistol grip area of the gun and pulling it from a distance of circa eight feet; Mr. Boyce stated that it would have been very possible for Detective Sergeant White to engage the trigger portion in the method described. However, it would have been very dangerous to have done so with a live cartridge due to the unpredictable direction of discharge of the shot from the weapon.<sup>113</sup> Mr. Boyce was of the opinion that the fact that the firer may have been standing, while the weapon itself was resting on the ground, would have aided discharge by causing an upward pressure to be put on the butt portion of the trigger. By tying the string around the gun, one was applying upward pressure to the trigger, which in turn would cause the gun to discharge. It was put to Mr. Boyce that it would have taken some time to tie the string around the body of the gun, including the trigger portion; he did not agree. He stated that this could have been done relatively quickly: within one or two minutes.

### **Conclusion on the Firearm Discharge Issue**

3.222. The Tribunal accepts the evidence of Detective Sergeant Hugh Smith that when he examined the firearm, he saw evidence that it had been discharged due to the presence of soot and residue in the left barrel. It also accepts the evidence of Detective Garda Pat Whelan that when he examined the gun one or two days later, due to the absence of any sign of residue, there was no evidence that the left barrel had recently been discharged. It is clear, in these circumstances, that in the intervening time, the left barrel of the firearm had been cleaned. The fact that the right barrel was allowed to remain partly blocked by a residue of dirt would appear to indicate that whoever cleaned the left barrel did so with a view to removing evidence of the fact that the gun had been fired. The Tribunal has considered the possibility that this was done with a view to challenging any evidence of the gun having been fired outside Detective Sergeant White's shed at Gortahork if such evidence should ever be given. It is unable to make any such definite finding, but is satisfied that the apparent conflict between Detective Garda Kilcoyne's statement that the gun was fired and the finding of Detective Garda Whelan that it showed no evidence of recent discharge can be reconciled by virtue of the fact that the gun was cleaned prior to the time that Detective Garda Whelan saw it.

### **Detective Sergeant White's Theory**

3.223. It has been Detective Sergeant White's case all along that Detective Garda Kilcoyne has told nothing but lies about the retrieving of a gun at Gortahork and

<sup>113</sup> Transcript, Day 413, pages 77-78.



the planting of same by Detective Sergeant White at the encampment at Burnfoot on the night of the 22nd of May 1998. Detective Sergeant White has said that that simply did not happen.

3.224. When asked why a detective Garda, who had taken part in a perfectly legitimate Garda reconnaissance operation, would put his whole career in jeopardy by making a false statement implicating both Detective Sergeant White and himself in the commission of a serious criminal offence, Detective Sergeant White put forward a number of arguments. He maintained that Detective Garda Kilcoyne was anxious to distance himself from Detective Sergeant White, due to the fact that Detective Sergeant White was somewhat unpopular with colleagues in the Donegal Division because he was allowed to investigate crime in a number of districts, and in so doing, had occasion to 'step on the toes' of other members of the Detective Branch working there. He also maintained that Detective Garda Kilcoyne craved the acceptance and friendship of the other detectives in Letterkenny. Detective Sergeant White maintained that these detectives had a grave dislike of him. He further alleged that Detective Garda Kilcoyne was prepared to make these false statements because he wanted enhancement in the eyes of the Garda authorities. He stated that it was his belief that Detective Garda Kilcoyne would be promoted and his career would flourish once the whole Burnfoot saga had blown over.<sup>114</sup>

3.225. In his cross-examination of Detective Garda Kilcoyne, counsel for Detective Sergeant White put the following scenario to him:

*Q. Now I put it to you finally that this whole story of the planting of the gun is a complete fabrication and that it grew out of rumours as you have said yourself which were running rife already in 1998 that some Guard or some person had planted a gun. I put it to you that John White was the easy target, particularly once he had been arrested for the Bernard Conlon affair. Do you agree with that? That John White was the easy target to pin this on?*

*A. No.*

*Q. And I put it to you that you went along with the story which was promoted by your superiors who are prepared to offer you immunity so as to make a breakthrough in their investigations?*

*A. So ...*

<sup>114</sup> Transcript, Day 394, page 82.

Q. *You were manipulated and used and you did it knowingly, that's what I put to you. You disagree?*

A. *I disagree entirely, Sir.*

Q. *Did it ever occur to you that the gun which was found was in fact the genuine gun?*

A. *No, Sir.*<sup>115</sup>

### **The Conspiracy Theory Develops**

3.226. Detective Sergeant White developed this theory considerably in the course of his evidence. In essence, Detective Sergeant White alleged that because he was going to make allegations of serious wrongdoing against senior members of An Garda Síochána, they used Detective Garda Kilcoyne to make a false statement about Burnfoot, so as to totally discredit Detective Sergeant White before he would make the allegations against them. Furthermore, by getting Detective Garda Kilcoyne to name Detective Sergeant White's subversive informant in the course of his statement they were thereby creating a situation where the informant would have to be taken into an informant protection programme, thereby making him unavailable to Detective Sergeant White to corroborate his allegations of wrongdoing. This theory first saw the light of day in his statement of May 2003:

It is my strong and unshakable belief that my informant's identity was disclosed in this statement for the purpose of forcing him [portion redacted]. I believe that this action was taken in order to prevent my informant from ever being given the opportunity of giving evidence against two members of An Garda Síochána who now hold the rank of Assistant Commissioner.<sup>116</sup>

3.227. In his evidence, Detective Sergeant White expanded on his apparent beliefs as to the background to the making of these allegedly false allegations as follows:

*I just need to give you a bit of background as to why I believe this happened and why I believe that it was necessary to target me further after the Bernard Conlon affair and why it was necessary to put me totally out of commission and I am very clear on this. I will give you those reasons now very clearly.*

*On 30th November 2000, along with my solicitor, Mr. Dorrian, I met Detective Superintendent Patrick Breheny and Inspector Eugene Corcoran. I think it was in the Holiday Inn or in the Mount Errigal,*

<sup>115</sup> Transcript, Day 391, page 92.

<sup>116</sup> Tribunal Documents, page 613.

*the Mount Errigal Hotel perhaps in Letterkenny. That was in relation to the anonymous allegations module, that part of – you know what I am talking about?*

*And I was asked during that if I knew of any wrongdoing by Assistant Commissioner Hickey and I said, absolutely not, never did in any way. I was asked the same question about Assistant Commissioner Carty and I said that there was no wrongdoing I knew of in relation to the specific allegations that were being made in the fax, but there were other matters of wrongdoing I knew by A/C Carty. And I knew by doing this that I was putting myself into a kettle of boiling water, but I felt very strongly about the point.*

*He asked me to elaborate and I think I said I would in a statement later on. He asked me were the allegations of a criminal nature and I said they were. There were notes taken at that meeting. I cannot give you the exact words now, but they are close enough to it.*

*We had a further meeting, the four of us, on 10th January 2001, yes 2001, and again I was asked if I was willing to make this statement now and I told Detective Superintendent Breheny, the statement in relation to A/C Carty and another statement in relation to knowledge the Gardaí had of Omagh before it happened, on the Thursday before it happened. It was actually my solicitor who just brought this into the conversation first of all. I said I would make statements about both.<sup>117</sup>*

- 3.228. At that point, counsel for the Garda Commissioner asked that the Tribunal should go into private session if Detective Sergeant White was likely to give evidence which could affect national security. With the agreement of all parties, evidence was heard from Detective Sergeant White in private session. Due to the terms of the Protocol covering the hearings in private session, it is not possible to set out in a report the matters discussed in these hearings. Suffice it to say that Detective Sergeant White gave an account of operational decisions taken by senior Gardaí, which he alleged showed wrongdoing on their part.
- 3.229. Detective Sergeant White also maintained that the Garda authorities wished to silence him due to views that he held on the so-called ‘confession’ to the murder of Richard Barron allegedly signed by Frank McBrearty junior on the 4th of December 1996. Detective Sergeant White alleged that he had made known to

<sup>117</sup> Transcript, Day 393, page 111-113.

his superiors that he thought that there was something “not right” about that statement. Detective Sergeant White also alleged that the Garda authorities wished to silence him due to allegations which he was going to make public concerning the covert recording of discussions between persons detained in Garda stations and their legal advisers, which he alleged was a widespread practice in Garda stations throughout the country and, in particular, had taken place during the detention in Letterkenny Garda Station in December 1996 of persons in connection with the death of Mr. Richard Barron.

- 3.230.** Detective Sergeant White alleged that, for all these reasons, the Garda authorities and in particular Assistant Commissioner Carty and Assistant Commissioner Jennings had engaged in an elaborate conspiracy whereby Detective Garda Kilcoyne was prevailed upon to make a false statement implicating him and Detective Sergeant White in criminal wrongdoing. He alleged that this plan was carried out by those who dealt with Detective Garda Kilcoyne, being Chief Superintendent Rice, Detective Superintendent Tadhg Foley and Superintendent Hugh Coll. He also alleged that in furtherance of the conspiracy somebody had deliberately removed items which had been seized during the search of his house, in particular the recording of his meeting with Mr. A and Mr. B. He also alleged that Sergeant Treanor and Detective Garda Malony had deliberately refused to continue to take a detailed statement from him when he was in custody in June 2001, because the Garda authorities did not want the full truth to come out.
- 3.231.** Detective Sergeant White further alleged that during the search of his lands at Gortahork in June 2001 the Gardaí preserving the search site had been deliberately removed from the area, so as to allow for the planting of pellets into the bank, so as to enable the material evidence to conform to the content of Detective Garda Kilcoyne’s statement. He alleged that this did not come about due to the arrival of Mrs. White on the scene that evening.
- 3.232.** Detective Sergeant White also alleged that the true purpose of the search of his home on the 19th of June 2001 was not to look for any material which could possibly connect him to the planting of a firearm at Burnfoot on the 22nd of May 1998, but rather to remove as much documentation and computer material as possible so as to find out exactly what he knew about the allegations of wrongdoing which he was about to make against senior Gardaí. He said it was for this reason that a vast quantity of documentation and other material was removed from his house.
- 3.233.** The Tribunal heard evidence from those persons who are alleged to have been responsible for carrying this conspiracy into effect. The conclusions of the Tribunal on this aspect are set out below. Peppered through the evidence of Detective

Sergeant White, and in his written submissions, various alleged pointers to this conspiracy against him are highlighted. These have also been set out in Chapter 4 in concise form and the conclusions of the Tribunal are given there in respect of each such point.

## Conclusions

- 3.234. Having carefully considered all of the evidence, both documentary and oral evidence from witnesses, and having considered the theory put forward by Detective Sergeant White as to why people would be motivated to tell lies about him, the Tribunal has come to the following conclusions.

### The Pre-Search Information

1. The Tribunal is satisfied that Detective Sergeant White did have some contact with informants Mr. A and Mr. B in the days and weeks leading up to the search in Burnfoot on the 23rd of May 1998. What exact information Mr. A or Mr. B might have given to Detective Sergeant White is difficult to say. However, given the content of the report sent by Detective Sergeant White to Swinford on the 19th of May 1998; his enquiries at Blanchardstown Garda Station and with the RUC; and the evidence of Detective Garda Kilcoyne about the strands of information coming in at that time, the Tribunal is satisfied that Detective Sergeant White did receive some information to the effect that the Travellers, whom he had met in Barnesmore Gap on the 11th of May 1998, could have had some involvement in the death of Mr. Edward FitzMaurice. The Tribunal reiterates again that the fact that the Tribunal has found that such information was given to Detective Sergeant White does not amount to any finding, or implication, that the particular members of the Irish Traveller Community concerned were in fact involved in the death of Mr. FitzMaurice. They were not.
2. Having regard to the fact that there was no mention of any firearm in the report dated the 18th of May 1998, together with the evidence of Detective Garda Kilcoyne and Mr. John McGinley that on the 22nd of May 1998, Detective Sergeant White mentioned the probability of the Travellers having a firearm, the Tribunal is prepared to find that some information did come in to Detective Sergeant White between those dates to the effect that the Travellers could be in possession of a firearm.
3. For the reasons set out earlier in this chapter, the Tribunal is satisfied that Detective Sergeant White did not impart the information which he had received from informants A and B to Detective Chief Superintendent Jennings; nor did he send up the report dated the 18th of May 1998 on

the same topic, as alleged by him in evidence. The Tribunal accepts the evidence of Assistant Commissioner Jennings that he was not aware of this information, nor did he receive the relevant report.

4. The Tribunal is satisfied that Detective Sergeant White did indicate to Detective Garda Kilcoyne that the information which he had concerning the alleged possession of a firearm by the Travellers at Burnfoot had come from Detective Chief Superintendent Jennings. Whether he did this as a means of giving added weight to the information, or merely as an act of bravado, the Tribunal cannot say.

#### The Core Allegations

5. Having observed both Detective Garda Kilcoyne and Detective Sergeant White give evidence over a considerable number of days and having analysed their respective accounts, the Tribunal is satisfied that Detective Garda Kilcoyne is both accurate and honest in the account that he has given of the events of the night of the 22nd of May 1998.
6. Detective Garda Kilcoyne struck the Tribunal as a most unusual witness. He gave honest testimony. He did not try to minimise his role in the affair. He did not try to excuse his participation in the commission of a serious criminal offence. The Tribunal was struck by his candour when, on one occasion, counsel for the Tribunal opened what might be regarded as a moral escape route for him, by suggesting that he might have been carried along by Detective Sergeant White and acted in the agony of the moment so to speak, Detective Garda Kilcoyne said simply that was not the case; he had participated fully in the escapade from the moment it was raised in the Navenny Grill, through to its conclusion. Later, when he was asked in cross-examination why his only response to Detective Sergeant White's idea of planting a shotgun at the encampment was to the effect that the plan would be difficult to execute due to the presence of children and dogs at the encampment, he candidly admitted that he had not tried to stop Detective Sergeant White because he had been weak and negligent in his duty. He was the first Garda witness to make such an admission before the Tribunal.
7. The Tribunal is satisfied that, having put a large search operation in place, which involved many personnel from the Donegal Division, together with men from the Mayo Division and the NBCI, Detective Sergeant White was determined to ensure that arrests under section 30 of the Offences Against the State Act, 1939 would be effected. With this in mind, he conceived the idea of planting the shotgun at the encampment. The

Tribunal accepts Detective Garda Kilcoyne's account of the conversation between them at the Navenny Grill on the night of the 22nd of May 1998.

8. The Tribunal accepts the account given by Detective Garda Kilcoyne of the trip back to Letterkenny Garda Station for the purpose of changing cars. The telephone records and cell site analysis for that evening are consistent with this account. The Tribunal also notes that Detective Garda Kilcoyne did not claim for the operation undertaken by him after 22.00 hours that night. Had he in fact been engaged on a legitimate reconnaissance of the encampment, the Tribunal is satisfied that he would have claimed for those hours. The Tribunal does not accept the explanation proposed by Detective Sergeant White for the absence of a claim by Detective Garda Kilcoyne in this regard. Nor does it accept that on his A.85 form he did not mention the reconnaissance operation, but merely mentioned the "confidential duties" due to lack of space in the appropriate box, or because of a practice that one only records a single type of duty for the relevant period. The difference between the two men was that while Detective Garda Kilcoyne was not prepared to claim for the time spent planting a firearm, Detective Sergeant White was prepared to do so.
9. The Tribunal is satisfied that Detective Garda Kilcoyne's account of the retrieval and testing of the firearm at Gortahork is accurate. According to Mr. Boyce, the independent expert retained by the Tribunal, this gun was an antique, having been manufactured prior to 1904. In these circumstances, as the gun was supposed to have been at the encampment for self protection purposes, it was essential that it should at least be capable of being fired. Hence the necessity for a test firing of the gun.
10. The account of the test shot into the bank as given by Detective Garda Kilcoyne is credible. The absence of pellets from the bank is explicable by virtue of the fact that Detective Sergeant White may have fired a blank cartridge for this test shot. He would have been reckless to fire a cartridge in the normal way from this gun. A live cartridge can be altered to become a blank by simply opening the front of the cartridge and removing the shot. This operation can be performed in a matter of moments and may well have been done by Detective Sergeant White before the test shot. Alternatively, if live ammunition was used, which is improbable due to the unsafe nature of the firearm, then since a sawn-off shotgun has a wide scatter, the shot would disperse over a wide area. It is also probable that due to the absence of any retaining stone on top of the gun, it would tilt upwards on the moment of discharge, thereby causing the pellets to miss the bank completely.

11. The Tribunal is of the view that a blank cartridge was probably used due to the evidence of Detective Garda Kilcoyne that no stone or material was placed on top of the gun while doing the test. In such circumstances Detective Sergeant White would have known that it was very dangerous to fire a live cartridge from the gun, due to the risk of the gun rotating backwards and discharging into one of the spectators.
12. The Tribunal is of the view that it was safe for the occupants of the car to travel with the gun on the back seat. I accept the evidence of Detective Garda Whelan that as long as the hammers on the gun were not cocked, no amount of jiggling would cause the weapon to discharge.
13. Analysis of the telephone records establishes that Detective Sergeant White was in the Burt/Burnfoot area between 23.12 hours and 23.30 hours. The Tribunal is satisfied that it was this fact that prompted the emergence of the reconnaissance story as first put forward by Detective Sergeant White in his statement of May 2003.
14. The Tribunal does not accept that Detective Sergeant White was at the encampment for the purpose of doing a reconnaissance that night. The Tribunal is satisfied that his primary purpose in going there was to plant the shotgun. If Sergeant White's sole purpose in being there had been the carrying out of a legitimate Garda operation, he would have mentioned it at the briefing on the following morning, or during his arrest in June 2001, and would have called on the members of Burnfoot Garda Station that night, having done his reconnaissance.
15. The locus of the find was adjacent to the building where Detective Garda Kilcoyne said he had seen Detective Sergeant White entering with the bag and later emerging without it. The Tribunal is satisfied that the choice of location was due to the fact that Detective Sergeant White could not get closer to the encampment by the exterior route due to the barking of dogs; nor could he do so from the interior of the building due to the unsafe condition of the said interior. It was for this reason that the bag was left in the position where it was later found by Sergeant Coady.
16. The Tribunal is satisfied that when Detective Sergeant White was confronted by the fact that this was an unlikely place where Travellers might leave a gun for their use in case of attack, he came up with the theory that the bag was probably moved by one of the Travellers' children during the course of the search itself. This theory only emerged in his evidence to the Tribunal. He never mentioned it at the time of the search,



or subsequently, even when he had to make a statement about the Moran and McConigley issue, which was the obvious time to expound such a theory. The Tribunal is satisfied that this was merely a theory proffered by Detective Sergeant White when confronted by the implausibility of the Travellers leaving the gun in the location where it was found.

17. The Tribunal is satisfied that on the night of the 22nd of May 1998, Detective Sergeant White planted a very old double barrelled sawn-off shotgun, together with clothes and cartridges, at the Travellers' encampment at Burnfoot. This was done so as to secure the arrest of the seven adult Travellers, so as to enable the questioning of them by the team investigating the Edward FitzMaurice murder. In the planting of that gun Detective Sergeant White was aided by Detective Garda Kilcoyne, who acted as lookout at the critical time. Detective Sergeant White was the instigator and dominant personality in this plan. There is no evidence, nor any allegation, that any member of the team investigating the death of Mr. FitzMaurice had any knowledge that a shotgun had been planted at the encampment. The Tribunal is satisfied that in undertaking this operation, Detective Sergeant White was acting on his own initiative, albeit with the assistance of Detective Garda Kilcoyne. There was no involvement on the part of the Swinford investigation team in this unlawful exercise.

#### Conclusions on Ancillary Matters

18. In relation to the search warrants, the Tribunal does not accept the evidence of Superintendent Lennon and Detective Sergeant White that the search warrants were issued in the manner described by them in their evidence. The reasons for this finding are set out in detail earlier in this chapter. The Tribunal does not know when exactly the warrants were issued by Superintendent Lennon. It is probable that some of the warrants were issued first, being the four warrants issued to each of the named sergeants. The three remaining warrants, which were all issued to Detective Sergeant White, came into existence at some different time. Whether Detective Sergeant White merely had blank warrants, or whether he obtained these subsequent to the search from Superintendent Kevin Lennon, the Tribunal cannot say. As in other modules, the Tribunal has considerable disquiet about the issue of search warrants under section 29 of the Offences Against the State Act, 1939 as amended.
19. The Tribunal has considerable unease about the missing exhibits and materials, in particular the missing bag and clothing. However, the Tribunal is unable to make a finding that their disappearance was caused

deliberately by any specific person. There is no evidence that such disappearances are part of a plot against Detective Sergeant White.

20. For the reasons already set out in this chapter, the Tribunal is satisfied that the temporary abandonment of the search area which occurred on the night of the 20th of June 2001 was not done for any sinister purpose. The Tribunal is satisfied that the search had initially been totally called off by Detective Inspector Keane and that this order was subsequently countermanded by Superintendent Coll, who directed that it would be necessary to retrieve the bags of earth and bring them to Letterkenny Garda Station for more detailed examination. It was for this reason that the preservation of the search area was reinstated by Detective Inspector Keane. The Tribunal rejects the version by Detective Sergeant White that the abandonment of the search area was for some sinister purpose, such as to enable members of the Carty team, or those acting with them, to plant pellets in the bank. There is no evidence to support this theory; in the circumstances the Tribunal expressly rejects it.
21. The Tribunal accepts the evidence of Detective Garda Pat Whelan that his initial opinion was merely that, on visual examination of the barrels of the shotgun, there was no physical evidence in the form of soot, or burnt powder, to suggest recent discharge of the firearm. The Tribunal accepts that this does not amount to an expert opinion that the gun was not actually discharged prior to the examination. The fact that Detective Sergeant Smith saw residue in the left barrel when he looked at the gun at the time when it was first found and the fact that there was an absence of residue in that barrel when the gun was examined by Detective Garda Whelan in the days following the initial find, can be explained by the fact that somebody must have cleaned the gun between these two inspections. This was enabled because nobody satisfactorily accounted for preservation of the firearm from the time when it was first found by Sergeant Niall Coady and the time that it was packaged by Detective Garda Joseph Foley at approximately 18.00 hours on the 23rd of May 1998. In the interim period there was evidence that the gun was being handed around Letterkenny Garda Station in an evidence bag. There was ample opportunity for someone to clean the left barrel quickly if they so wished.
22. The Tribunal accepts the evidence of Detective Garda Whelan that no pressure was put on him to change any opinion given by him in any of his statements.

23. Having heard the evidence of Assistant Commissioner Rice, Assistant Commissioner Jennings, Mr. Tadhg Foley and Superintendent Hugh Coll, the Tribunal is satisfied that there is no evidence of any conspiracy between these men and any other persons to get Detective Garda Kilcoyne to make a false statement in June 2001 so as to discredit Detective Sergeant White. The Tribunal is satisfied that this allegation made by Detective Sergeant White, has no basis in truth or in fact. It is a fiction put forward by Detective Sergeant White in an attempt to deny the allegations made by Detective Garda Kilcoyne and at the same time explain why he would make such allegations involving, as they do, an admission of guilt by Detective Garda Kilcoyne. The Tribunal is satisfied that Detective Sergeant White was effectively forced into the position of making the case that there was a sinister conspiracy against him due to the fact that he had no other way of explaining why Detective Garda Kilcoyne would tell lies about a perfectly legitimate police operation and, in the process, implicate both himself and Detective Sergeant White in a criminal act. The Tribunal is satisfied that there is no reality to the conspiracy theory as put forward by Detective Sergeant White.
24. The Tribunal is satisfied that no one, neither the Carty team nor anyone else, put Detective Garda Kilcoyne up to making any false statement. If they had done so, they would have ensured that his description of the bag would have been accurate and that his initial description of the clothes and the cartridges would have been as accurate as his description of the gun. Furthermore, they would have ensured either that there were pellets found in the bank at Gortahork, or that Detective Garda Kilcoyne would have given a clear account of the pellets being removed from the cartridge prior to the test firing. That these anomalies exist in his statement is indicative to the Tribunal that Detective Garda Kilcoyne was doing his best to recollect what had happened over three years previously. He was not reciting any script prepared by the Carty team.
25. The Tribunal is, however, concerned by the naming in Detective Garda Kilcoyne's statement of a man, whom he alleges was Detective Sergeant White's informant on subversive matters. This person is named three times in the statement. That statement was made in a relaxed atmosphere in the kitchen of Detective Garda Kilcoyne's house to two senior ranking Gardaí of vast experience. There is evidence that the content of the statement was also discussed with Superintendent Hugh Coll and Assistant Commissioner Kevin Carty. The Tribunal cannot understand how sensitive information found its way into the public domain by being included in

Detective Garda Kilcoyne's statement in the book of evidence prepared for Detective Sergeant White's trial. Checks should be thoroughly made on books of evidence and disclosure in criminal cases to ensure that no reference to an informant is included. It should be recognised that, as a matter of reality, such documents enter the public domain.

26. The Tribunal rejects the allegation made by Detective Sergeant White that his informant was deliberately named in that statement and then released into the public domain, so as to render it necessary to take the informant into a protection programme, thereby rendering him unavailable to give supporting evidence on behalf of Detective Sergeant White in respect of any allegations which he might make against senior ranking Gardaí. Having heard evidence from Assistant Commissioner Rice, Mr. Tadhg Foley and Detective Garda Kilcoyne, the Tribunal is entirely satisfied that they did not conspire together to name the informant in the statement.
27. The later preparation of the book of evidence was an administrative matter from which the name of the informant should have been excluded. This was overlooked. In future steps should be put in place to ensure that sensitive material shall be physically redacted by the Gardaí prior to furnishing material in the book of evidence to the Chief Prosecution Solicitor.
28. There is no rational reason why a person who had an unblemished record would come along three years after an event and tell a large amount of lies about a perfectly lawful operation and in the process implicate his sergeant and himself in the commission of a serious criminal offence that did not in fact happen. The only rational explanation for these events, and the finding which the Tribunal makes, is that Detective Garda Kilcoyne has told the truth.



## CHAPTER 4

### THE "GRASS WAS LONG" STORY

4.01. This chapter is concerned with whether attempts were made by serving members of An Garda Síochána to ensure that the truth about the planting of the firearm at Burnfoot was hidden by deceit and distorted by lies. For ease of reference, the Tribunal also gathers together into this chapter its conclusions on the allegation by Detective Sergeant White that he is the victim of a conspiracy.

#### **Overview**

4.02. Since the purpose of the alleged conspiracy with which this chapter is concerned was to sow lies and confusion, the resulting factual matrix is in danger of becoming impossibly confused. It is essential therefore to provide a handy guide to the reader as to the main events and characters before proceeding to analyse the testimony given to the Tribunal and to make findings of fact. A lie is an attempt to conceal or distort the truth. The fact that a lie was told about the truth is, in itself, a fact that must be recorded.

#### **Main Parties**

4.03. Sergeant John Conaty joined An Garda Síochána in July of 1972. He was promoted to the rank of sergeant in 1982 and transferred to Carrigans Garda Station, where he has served ever since.<sup>118</sup> Garda Eamon McConigley joined An Garda Síochána in June 1980 and, having served in Counties Sligo and Cavan, was transferred to Carrigans Garda Station in January of 1983, where he has remained. Garda Anthony Moran came to Carrigans Garda Station on the 11th of February 1983 and has served there ever since. As might be expected in a small station like Carrigans, Sergeant Conaty worked in close association with Gardaí McConigley and Moran over the period of these several years. Both Gardaí McConigley and Moran have excellent service records. They have not been the subject of any discipline charges. In contrast, Sergeant Conaty testified to having been the subject of over thirty individual disciplinary investigations and charges.

4.04. This is utterly shocking. It does not speak highly of the discipline process within An Garda Síochána that, as of the dates which are germane to this Tribunal's enquiries, Sergeant Conaty continued to serve as a sergeant. In its first report, the Tribunal recommended that the discipline regulations be streamlined and reformed to accord with the experience of other jurisdictions. The astonishing helter-skelter of allegation, complaint, response and long drawn out procedures that tarnished Sergeant Conaty's career are an indictment of the entire process. The Tribunal can make no comment in relation to criminal proceedings that have been tried before a court of competent jurisdiction. It suffices to record that one

<sup>118</sup> For an account of his career see Transcript, Day 401, page 188 on.

of the most serious allegations that Sergeant Conaty faced involved a serious criminal offence. He has been tried for this offence and acquitted.

### **The Burnfoot Search – Involvement of the Parties**

- 4.05. It is important at this point to set out the involvement of the relevant parties in the search at Burnfoot. As has been recorded elsewhere in this report, a briefing was held at Burnfoot Garda Station on the morning of the 23rd of May 1998, at which Inspector John McGinley presided, and at which Detective Sergeant White outlined the information he had allegedly received in relation to the subsequent detainees’ alleged involvement in the FitzMaurice murder. The Garda members were told that there was also information to the effect that a firearm was present at the encampment. About twenty members of An Garda Síochána attended this briefing. Inspector McGinley’s leadership was nominal. He knew nothing of the nasty plans that had been hatched behind his back. The members were divided into search teams, with each team assigned to search a particular caravan. The Tribunal heard evidence that upon the completion of the initial searches of the caravans, in the course of which no firearm was discovered, the search was widened to encompass the farm buildings to the rear and adjacent to where the caravans were aligned. It was in the course of this wider search that Sergeant Niall Coady found a double barrelled sawn-off shotgun.
- 4.06. Garda Eamon McConigley and Garda Anthony Moran were both involved in the search operation at Burnfoot. They had been contacted on the previous day and asked to assist. It is important to note in the context of the multitude of claims and denials in respect of conversations that may or may not have taken place, that form the subject matter of this chapter, that Sergeant Conaty, Garda Leonard and Garda Mulligan were not involved in the search at Burnfoot. The Tribunal heard evidence that Garda McConigley was assigned to a search team that included Sergeant Niall Coady and Garda Noreen Grehan. The Tribunal also heard evidence that Garda Moran was assigned to a team led by Sergeant Hugh Smith and which also included Detective Garda Alphie McHale and Detective Garda P.J. Keating. It was unusual that Garda McConigley and Garda Moran should have been in separate search parties. They were close personal friends, serving together in the same Garda station. Normally they would have been together in the same search party. Therefore, if someone were disposed to create a false story in relation to the finding of the firearm in Burnfoot, the author of the false story would have felt that he could safely assume that these two members would be together in the same party. In fact, they were not.
- 4.07. Garda McConigley claimed that at no time during the search operation did he conduct any searches with Garda Moran. Garda McConigley stated that:

*When we went down to the Traveller's encampment, my duty was with Sergeant Niall Coady and Garda Noreen Grehan. When we arrived there, Sergeant Coady informed us that we were to search [the caravan owned by Bernard Power and his family]. My duty was that he was going to go in there, he was going to perform the search; I was to make sure and look after the main member of the caravan that he wouldn't move any stuff from an area of unsearched to an area that was searched...It was a very thorough search...and at all times I was watching the male member of the caravan...Naturally, as a Garda you are naturally suspicious of everything that is happening around you and you're always looking for little things and there was nothing out of the ordinary took my attention that day anyway...It would be normal practice that, you know, if we came from the same station that you wouldn't be split up [onto separate search teams], but this time [Garda Moran and I] were given two different groups and it wasn't anything, you know, extraordinary...I never searched any area in that encampment with Garda Tony Moran at any time...I was never in Tony Moran's presence anywhere in that encampment before the gun was found...After the gun was found when we were all ready to pack up and go, I would have been with Garda Tony Moran, yes...After the caravan was searched, I don't remember getting any briefing from Sergeant Coady about what to do...Sergeant Coady I think went and did his own thing and I went and did mine...There's one thing I am a hundred per cent sure of, I did not leave the front area of those caravans. Now what I was doing was only jogged maybe about three, about a month or three months maybe before I came here or before I met my senior counsel. That I went on my own initiative and there was an open bodied truck there and in that body of that truck there was an awful lot of slash hooks, there might have been small hatchets as well, but there was an awful lot of slash hooks, which I was surprised at. I went and brought it to the attention of Superintendent McGinley, and he told me to stay at that truck and to keep an eye on the male people of the encampment just to find out where they were going to and coming from. That's what I did...I was not in the sheds and I was not near the area where the gun was found. I am a hundred per cent sure of that.<sup>119</sup>*

- 4.08. Garda Moran gave an account of his involvement in the search operation in the following terms.

<sup>119</sup> Transcript, Day 400, pages 118-124.



*I don't remember too much about the briefing. There was over twenty of us there. I was out in the hallway, and all I can remember is that Detective Sergeant Hugh Smith and Detective Garda P.J. Keating were in my group and I knew that Detective Sergeant Smith would brief me when we arrived at the camp...I thought there was a fourth member on the search party, Chairman, but it definitely wasn't Garda McConigley, because when I arrived at the caravan [owned by David Power and his family], Detective Sergeant Hugh Smith went into the caravan and I was outside, immediately outside the door and there was a bucket of urine fired at me...Sergeant Smith stayed in the caravan...I was at the door of the caravan and searched part of the caravan, I was assisting...[The search lasted] for at least a half hour.<sup>120</sup>*

- 4.09. Garda Moran went on to describe how he proceeded to search the general area in front of and to the right of the large shed complex that was behind the encampment. He claims to have searched the entrance to the sheds, but not to have searched in the sheds themselves. The evidence of other members of the search team who remember observing Garda Moran searching in this area supports this account. While there is some divergence of opinion as to whether he in fact entered the sheds at this point, it is not an issue on which anything turns, as the area in question is a considerable distance from where the gun was subsequently found. Detective Garda P.J. Keating gave evidence that upon entering the sheds in the course of the search, he looked behind him and saw both Gardaí Moran and McConigley searching in the shed area. On cross-examination by counsel for Garda McConigley, he admitted that he could be mistaken about this, and that he was less sure about Garda McConigley than Garda Moran.<sup>121</sup> The Tribunal believes that Detective Garda Keating may have made an honest mistake in his recollection of events.
- 4.10. Garda Moran claimed in evidence that while he was in the vicinity of the sheds on the right hand side, i.e. the opposite end of the encampment to where the gun was in fact found, word filtered through about the discovery, and he proceeded back to the roadway. A number of photographs were taken at the search in Burnfoot. They seem to indicate that the search was conducted in a non-hostile atmosphere. The pick-up truck referred to by Garda McConigley in his account of the search is visible in two of the photographs.<sup>122</sup>
- 4.11. Sergeant Niall Coady gave evidence that after searching the caravan of Bernard Power and his family with Garda McConigley and Garda Grehen, he was called over by Detective Sergeant White, who asked him to assist in the wider search on

<sup>120</sup> Transcript, Day 402, pages 136-139.

<sup>121</sup> Transcript, Day 392, page 44.

<sup>122</sup> Tribunal Documents, page 907.

the stated basis that he, Sergeant Coady, was “always lucky”.<sup>123</sup> Although Sergeant Coady agrees that Detective Sergeant White did not then direct him towards the area where the gun was found, in the light of my other findings in relation to the planting of the gun, this comment by Detective Sergeant White is at the very least highly suspicious. Sergeant John O’Keeffe gave evidence that he had searched inside the sheds and milking parlour on the outer perimeter of which the gun was eventually located. He was walking down the roadway when Detective Sergeant White approached him and directed him to conduct further searches in the area in front of which the gun was eventually found.<sup>124</sup> By this stage, Sergeant Coady had proceeded around the entire perimeter of the shed buildings and found the gun in a bag hanging from a hook inside a detached metal door that was leaning against the milking parlour wall. Sergeant Christopher Galligan gave evidence to the effect that Detective Sergeant White had met him shortly before Sergeant Coady discovered the firearm, and suggested that he should follow him on a search through the milking parlour. He claims that both he and Detective Sergeant White were approaching the leaning door of the milking parlour when they observed Sergeant Coady kneeling down and finding the bag with the gun in it.<sup>125</sup>

- 4.12. [The Tribunal accepts the testimony of Sergeant Coady, Sergeant O’Keeffe and Sergeant Galligan in relation to their dealings with Detective Sergeant White during the course of the search. In the context of my earlier finding in respect of the planting of the gun, it is apparent that Detective Sergeant White was attempting to engineer a situation whereby another member of the search party would discover the gun, so that if an issue ever arose in the future whereby the legitimacy of the find was called into question, somebody other than him would be primarily in the firing line. This is, in fact, exactly what happened. Finally, in relation to the search, Detective Garda Kilcoyne gave evidence that he searched a caravan at the far end of the encampment from which the gun was found. He expected that a genuine find of a firearm would be made, based on the information previously given to him by Detective Sergeant White. As the searches progressed, he became more and more uneasy. Not surprisingly, he did not proceed to search the area where he had seen Detective Sergeant White plant the gun on the previous evening.](#)<sup>126</sup> The Tribunal accepts this evidence.

### **Events Move On**

- 4.13. On the 19th of June 2001 Detective Sergeant John White was arrested in respect of the planting of the firearm at Burnfoot and was charged on the next day. On

<sup>123</sup> Transcript, Day 400, pages 54-55.

<sup>124</sup> Transcript, Day 399, pages 147-148.

<sup>125</sup> Transcript, Day 399, pages 54-63.

<sup>126</sup> Transcript, Day 389, pages 27-33.

the day following, the 21st of June 2001, Sergeant John Conaty was arrested for a serious criminal offence in a Garda station and was questioned in Garda custody.

- 4.14. Garda Pádraig Mulligan will be familiar to the readers of the second Tribunal report, which is concerned with the death of the Late Richard Barron and the Garda investigation in relation thereto. Briefly, Garda Mulligan was the Garda on duty on the night on which the Late Richard Barron was the victim of a road traffic incident. He was not available for duty when an emergency call came through. Instead, he was elsewhere, accompanied, apparently on the basis of friendship, by Garda John O’Dowd. Both were drinking in a public house for some time prior to the death of Mr. Barron. As the Tribunal recorded in its second report, serious questions still remain as to where they were and what they were doing prior to coming to the scene where Mr. Barron died. They arrived well after the removal of Mr. Barron’s body by ambulance. Garda Mulligan was suspended from duty during the relevant events that are recorded in this report: from 2001 on. He was later dismissed from An Garda Síochána.
- 4.15. Garda Martin Leonard will also be familiar to readers of the reports of this Tribunal, most especially in relation to the first Tribunal report, which concerned explosives finds in County Donegal during the years 1993 and 1994. He was supposedly involved in the recovery of one explosives find, but in a way which showed an astonishing approach to his duties which was not consistent with any good practice within An Garda Síochána. In the second report of the Tribunal, concerning the Garda investigation into the death of the Late Richard Barron, Garda Martin Leonard was the custody officer during the detention of Robert Noel McBride on the 29th of November 1996. In a statement which he made while in Garda custody, Mr. McBride gave a completely fictional account of where he had been in Raphoe on the night Mr. Barron was killed. That account was ascribed to him. He was not in Raphoe that night. The Tribunal has previously recorded that Garda Leonard did not fulfil the duty that is the fundamental purpose of the member in charge of a Garda station during the detention of a prisoner in Garda custody. For the precise comments of the Tribunal in relation to Gardaí Mulligan and Leonard, the reader is referred to the first and second reports of this Tribunal.

### **Credibility**

- 4.16. **The Tribunal would like to make it clear that the credibility of witnesses is an extremely important facet of fact-finding for any judicial body. As Chairman for this Tribunal, however, and as a former serving judge, experience has taught me that a witness who has lied in respect of one**

particular matter, may tell the truth in relation to another. It seemed fair to me, therefore, while approaching the evidence of Garda Leonard and Garda Mulligan with a certain wariness, to assume that they could, and would, tell the truth in relation to the matters that are outlined in this chapter.

### **Chronology**

- 4.17. The Tribunal now proposes to set out briefly the chronology of dates involved in matters related to this alleged conspiracy. These events occurred during the years 2001, 2002 and 2003.
- 4.18. On the 13th of June 2001 Detective Garda Kilcoyne made a statement to Chief Superintendent Nacie Rice and Detective Superintendent Tadhg Foley indicating that he had accompanied Detective Sergeant John White when he had planted the firearm at Burnfoot on the 22nd of May 1998. On the 19th of June, Detective Sergeant White was arrested in respect of the Burnfoot matter. He was charged as a consequence with a firearms offence on the 20th of June.
- 4.19. On the 21st of June, Sergeant John Conaty was arrested in respect of a serious criminal offence. One week later Garda Mulligan alleges that he called to Detective Sergeant White's house. During the course of an allegedly friendly conversation, Sergeant White denied to Garda Mulligan that he had planted a gun at Burnfoot.<sup>127</sup> Garda McConigley and Garda Moran called to the Conaty house on a number of occasions. These visits were made, it would appear, out of a concern for Sergeant Conaty's predicament: that is to say the possibility of his being charged with a serious criminal offence. It is alleged by Sergeant John Conaty and Mrs. Carmel Conaty that during the course of a conversation on one such visit, Gardaí McConigley and Moran told the Conatys that they had searched the area where the gun was subsequently found and that no gun was present at that time. Sergeant Conaty claims that he advised them to keep quiet about the whole incident.<sup>128</sup> Gardaí McConigley and Moran deny that any such conversation took place.
- 4.20. Some weeks later, during September 2001, Sergeant Conaty and Garda Mulligan were playing golf. Their evidence is that their conversation turned to the fact that Sergeant White had been arrested for the offence of planting a gun in the encampment. They discussed the fact that the charge was based on an allegation made by Detective Garda Thomas Kilcoyne. The allegation was that he and Detective Sergeant White had placed the gun the night before the search. The Tribunal was told by Sergeant Conaty that it was only then that the significance of the conversation which he had had with Garda McConigley and Garda Moran

<sup>127</sup> Transcript, Day 404, pages 18-23.

<sup>128</sup> Transcript, Day 401, page 205.

struck him and he realised that if, in fact, they had searched the area where the gun was found shortly beforehand and it was not there, then the allegation that it had been planted there the night before could not be correct. He then recounted to Garda Mulligan the conversation which he had had with Garda McConigley and Garda Moran and arrangements were then allegedly made for Garda Mulligan to relay this information to Detective Sergeant White. A day or two later, Garda Mulligan allegedly called to Detective Sergeant White's house in order to inform him of this. Detective Sergeant White was supposed to have been delighted and to have indicated that he was going to telephone Sergeant Conaty.

4.21. On the 3rd of October 2001 Garda Martin Leonard was in the Orchard Bar in Letterkenny. He was aware of the rumour that Gardaí McConigley and Moran had searched the area where the gun was found shortly beforehand and saw nothing. He told the Tribunal that when Garda McConigley and Garda Moran came into the licensed premises, he enquired from Garda McConigley if this was true. He said that Garda McConigley confirmed that it was true and that he, Garda Leonard, urged him to make a statement about this. He said that Garda McConigley indicated that he did not intend to do so on the grounds that he had only a short time to serve in the Gardaí before retirement and was not prepared to make trouble for himself. The following morning, Garda Leonard met Detective Sergeant White at the Quiet Moment Café in Letterkenny and took the opportunity to tell him of the Orchard Bar encounter with Garda McConigley. Surprisingly, because he was allegedly already aware of this fact, having been told of it by Garda Mulligan, Garda Leonard said that Detective Sergeant White was delighted to have heard this news. Garda Leonard said that he regarded the news as extremely important, so much so that after he had met Garda McConigley in the Orchard Bar, he went home and discussed the matter fully with his wife. She gave evidence, as we shall see, to the Tribunal.

4.22. Garda Pádraig Mulligan told the Tribunal of events that supposedly occurred on the 15th of October 2001. He said that on that date, he called to Sergeant Conaty's house to meet Sergeant Conaty. He said that normally Sergeant Conaty would have been there and his wife away at work but, on this occasion, Mrs. Conaty was in the house and Sergeant Conaty was not in. He didn't know Mrs. Conaty but nevertheless was invited in to have tea and, since he was anxious to make contact with Garda McConigley, he asked Mrs. Conaty if she had seen him lately. He said that Mrs. Conaty volunteered to telephone Carrigans Garda Station, where Garda McConigley was serving, and, as a result of the call, he and Garda Moran arrived down to Sergeant Conaty's house where Garda Mulligan asked them about the Burnfoot search. He told the Tribunal that a conversation occurred which was similar to that which Sergeant and Mrs. Conaty had had with

these two members. Garda McConigley and Garda Moran agreed that they did call to Sergeant Conaty's house, but deny that a conversation of the type described by Garda Mulligan took place.

- 4.23. On the 13th of November 2001, Garda Leonard made a statement about his alleged encounter with Garda McConigley in the Orchard Bar. In this statement he described in broad terms what had occurred; but he neither named Garda McConigley as the person to whom he spoke, nor did he name the location or the persons in whose company he was. That day he called Garda Moran into the Traffic Office and showed him the statement that he had made regarding the alleged meeting in the Orchard Bar with Garda McConigley. Garda Moran was reluctant to read the statement in full because he realised that it referred to either his friend, Garda McConigley, or to himself. On the following day, Garda Leonard made a statement giving further details about his alleged meeting with Garda McConigley in the Orchard Bar on the 3rd of October. In it, he claimed for the first time that he was in the company of certain other officers of the Garda Representative Association, with whom he had had a formal meeting earlier that evening. In this statement, Garda Leonard claimed that after speaking to Garda McConigley, he asked Garda Michael O'Boyce to specifically note that he had spoken to Garda McConigley and that he had informed Garda O'Boyce of the contents of the conversation with Garda McConigley. Garda Larry Walsh, Garda Michael Moreton and Garda Michael O'Boyce, the members of the Garda Representative Association who were in the Orchard Bar with Garda Leonard on the evening of the 3rd of October, subsequently made statements in relation to the matter that flatly contradicted Garda Leonard's version of events.
- 4.24. It was probably some days after this that a man called Tommy Harkin, who happened to know Sergeant Conaty and Garda Eamon McConigley through sport, innocently passed on a message from Sergeant Conaty to Garda McConigley that he had been covertly taped in Sergeant Conaty's house during the earliest encounter concerned with this matter. This message was passed on to oblige Sergeant Conaty. This was done innocently and without Mr. Harkin in any way realising the complex Byzantine web into which he was momentarily drawn. On the 5th of December Garda Martin Leonard was brought back to Letterkenny Garda Station and confronted by his superior officers with an issue as to whether he was making an untrue statement concerning Garda McConigley.
- 4.25. On the 17th of January 2002, Garda Pádraig Mulligan made a statement as to his alleged involvement in this matter. On the 18th of January, Sergeant John Conaty made a statement concerning his alleged conversation with Gardaí

McConigley and Moran at his home some time around the autumn of 2001. During the course of this statement he did not mention the detail that his wife had supposedly been present. On the 26th of January, Garda McConigley and Moran made statements fully addressing the allegations made by Sergeant Conaty, Garda Leonard and Garda Mulligan against them. They denied the truth of these statements.

### **The Conaty Encounter**

4.26. The first issue which the Tribunal has to resolve concerns the alleged conversation, shortly after the arrest of Sergeant John Conaty for a serious criminal offence, which took place in his house. It is accepted by all parties that Gardaí McConigley and Moran were relatively frequent visitors to the home of Sergeant John and Mrs. Carmel Conaty. The Tribunal notes that in his first official account of this matter, dated the 18th of January 2002, Sergeant John Conaty did not put his wife as a witness to any discussion or conversation that allegedly occurred at that time. The Tribunal, however, was mindful of the fact that Sergeant Conaty might, facing as he was a serious criminal offence charge, have been anxious to keep his spouse free of yet further trouble. In consequence, it approached the testimony of Mrs. Conaty in relation to the alleged conversation about the Burnfoot search on that basis.<sup>129</sup> Mrs. Conaty's account of this matter was as follows:

*I was there on a night that [Gardaí McConigley and Moran] called up, on an evening that they called up. No one comes to our front door, they all go to the back door ... They came in ... and I told them to have a seat. Jackie came in. He was in another room. And I put the kettle on: pure habit. Asked if they would have a cup of tea, Eamon said he would. Tony was taking water and I made tea for Jack and myself as well. I don't know how the conversation came round, I was making the tea, and we were talking to Jackie about – when I started to listen, it was about the searches that had gone on at an itinerant camp at a previous time. They went on to say that they were there and that they had done the search and that there was quite a good search party down at the place, which was in another area. It wasn't the Carrigans area. And that they had been searching and they had to search the area where the gun had been found and they said that they searched that area and then a while later someone had found a gun. They said that Niall had found a gun, Niall Coady, Sergeant Niall Coady and they said they had searched that area and they were sure that there was no*

<sup>129</sup> Mrs. Conaty had first made a statement on this matter on the 11th of January 2003.

*gun there. I thought to myself, you know, if a gun's not there, then it's there, how did it get there? I thought, well it wasn't any – I wouldn't have presumed that it wouldn't be anything to do with any of them, from what I knew of them. Jackie said “You know boys, there's nothing I can do about this. What are you coming with this for now it's, you know, serious?” They were finished the tea at that stage, and I was clearing the cups and I said “there's a fire on in the living room, why don't you just go in and sit in the living room?” So they headed into the living room. I finished just washing the dishes at the sink. It was just mugs. I followed them into the sitting room to see if everybody was alright. Jackie and Eamon were having a drink. Tony wasn't. He was driving anyway and I didn't have one. And at that stage the conversation had changed. They were talking about sport and that then. That's basically it.<sup>130</sup>*

The account of Sergeant Conaty was very similar.<sup>131</sup> The response by Garda McConigley to this allegation can be recorded in a brief form:

*I just want to make a point. [Sergeant John Conaty] alleges that some time around the arrest of Sergeant White we would have been in – we could have been in his house – but I am saying we never had a discussion about Burnfoot with Sergeant Conaty at any time.<sup>132</sup>*

4.27. Garda Moran's response to the allegation was as follows:

*I never said a word about the search in Burnfoot at any time to any of the Conatys. From the date, the 21st of June 2000, Mr. Chairman, to the 15th of October 2001, Garda policies, bar what Sergeant Conaty was involved in, were never discussed at any time in his house and they never would be discussed in the presence of his wife, even if he wasn't suspended ... He had enough of pressure, it was a major case he was involved in. It was a very serious charge that was against him and that was serious enough. He had enough to handle. We wouldn't go up there to discuss a search in Burnfoot between 2000 and 2001 and we had no reason to talk about it during that period.<sup>133</sup>*

The inherent likelihood, or unlikelihood, of this conversation having taken place can be judged against a number of background factors.

<sup>130</sup> Transcript, Day 401, pages 149-151.

<sup>131</sup> Transcript, Day 401, pages 159-205.

<sup>132</sup> Transcript, Day 401, page 28.

<sup>133</sup> Transcript, Day 402, pages 148-149.



## Analysis

- 4.28. Firstly, it seems improbable, though it is not decisive one way or the other, that Gardaí McConigley and Moran would involve Mrs. Conaty in a discussion as to a completely unrelated aspect of Garda business. Secondly, and more importantly, the reaction of Sergeant Conaty to this revelation, if it happened, must be judged according to what he might be expected to do. Instead of contacting the Carty investigation team, or any other official source, he continued about his life as if nothing had happened. Someone with whom he was at least acquainted was facing a serious criminal charge that could readily be expected to result in a jail sentence. A defence to that criminal charge had just been revealed to him. In fact, the whole basis on which the prosecution was being brought had been undermined: the gun could not have been planted on the night before the search at Burnfoot if it was not in the location where Sergeant White had allegedly put it minutes before it was discovered. This clearly raised the implication that other members of An Garda Síochána, possibly Garda McConigley or Garda Moran, or possibly some member of the Irish Traveller Community, put the gun in that location after the initial search there had proved negative. At least a reasonable doubt, and probably much more, had been raised in relation to the prosecution case against Detective Sergeant White. Instead of raising this defence with official sources, Sergeant Conaty’s testimony to the Tribunal was that he gave certain advice to Garda McConigley and Moran. This was his advice: “I told them to keep quiet ... keep quiet about the whole incident”.<sup>134</sup>
- 4.29. Another possibility which emerges is that Gardaí McConigley and Moran had a black sense of humour and started this story by way of making a light-hearted joke.
- 4.30. None of the parties who are allegedly witnesses to these events makes the allegation that this revelation was made in anything other than serious tones. Having examined the demeanour of Garda McConigley and Moran the Tribunal regards this possibility as inherently unlikely.

## Conclusion on the Conaty Issue

- 4.31. **The Tribunal regards Sergeant Conaty’s testimony as beyond credibility. According to the testimony of Mr. Pádraig Mulligan, a few days later he called to Detective Sergeant White’s house and told him what Sergeant Conaty had allegedly revealed to him. Detective Sergeant White is supposed to have been delighted and indicated that he was going to ring Sergeant Conaty.<sup>135</sup> Again, the Tribunal must point to the response of all three parties. Garda Mulligan was fully aware of the charge against Detective Sergeant White: within a week of him having been arrested and**

<sup>134</sup> Transcript, Day 401, page 204.

<sup>135</sup> Transcript, Day 404, pages 27-30.

charged with the Burnfoot matter he had called to his house and discussed it. Garda Mulligan made no attempt to make a statement to his authorities as to what he had learned from Sergeant Conaty. When Detective Sergeant White learned about the matter, there was nothing from what Garda Mulligan had told him, as to what had been said to Sergeant Conaty, which would indicate that Gardaí McConigley and Moran were attempting to hide what they knew. What stands out here is a determination of Sergeant Conaty, Detective Sergeant White and Garda Mulligan not to involve the official authorities. Their silence is inexplicable in the light of the destruction of the criminal case being made against Detective Sergeant White. The Tribunal is satisfied that at no time did Gardaí McConigley or Moran make any comments or remarks that could have been interpreted as meaning that they had searched the area together shortly before the gun was found and had seen nothing. The evidence that attributed these remarks to them is untrue. It cannot be correct that they searched the area together. For them to have done so, they would have had to have been in the same search party. They were not. Normally they would have been as they came from the same station and were close friends and were work partners but on this search, they were allocated to separate search parties. They performed different duties. Garda McConigley was delegated to perform the duty of searching one of the Travellers’ caravans and having done so, he was directed to guard a small truck parked in the area in which there was a quantity of hedge cutting equipment. This equipment had the potential for use as weapons. Garda McConigley remained by the truck performing this duty and can be seen there in photographs taken on the day. Garda Moran, on the other hand, was on search duty. They were not together. The established facts do not make it possible for the story attributed to them to be true. It is however a story, the author of which might expect to have been true, since he or she would have expected that the two Officers would perform their duties together. The Tribunal does not accept the account of Sergeant Conaty. I regret that his wife has also been dragged into this matter. Her evidence is rejected.

### **The Orchard Bar Meeting**

- 4.32. On the 3rd of October 2002 a regional Garda Representative Association meeting took place in Letterkenny Garda Station. In attendance were Garda Martin Leonard, Garda Michael O’Boyce, Garda Michael Moreton and Garda Lawrence Walsh. According to those present, it would not have been normal for the members of the regional committee to have gone for alcoholic refreshments after

the meeting. On this occasion, however, one of their number was coming to the end of his term of office and this, therefore, was to be his last duty on the committee. It was therefore decided to visit the Orchard Bar for what was termed “a quiet pint”.

- 4.33. It just so happened that, in going off duty, Garda Eamon McConigley met Garda Séamus Patton, who was similarly finishing work, and accepted his suggestion to go to the Orchard Bar for alcoholic drink. When they went in they saw Garda Nigel Keown sitting on his own and decided to join him. Garda McConigley’s account of what occurred is as follows:

*We walked up to where Nigel Keown was at the bar and we joined him there for a drink. As you come in the door on the left hand side, there would have been four members of the Garda Representative Association, from which I presumed they were having a meeting there. We walked on past them, and we walked over to where Nigel Keown was. I didn’t have any contact with anybody other than Nigel Keown, Seamus Patton and myself in that bar ... I never spoke to any of the Garda Representative Association members at any time. Garda Michael O’Boyce – sorry, Chairman, if I can just explain, when I went across to the other end of the bar, the opposite end to where these people were standing, there would be a door which leads out to the toilets. Now, Garda O’Boyce went out to the toilet at some stage and came in. He acknowledged the fact that we were there, but we didn’t speak. In other words, a kind of a nod or a hello, or whatever. That would have been the only time that I would have spoken to anybody in the lounge that night ... I wish to categorically state here today that I never spoke to Garda Martin Leonard in the Orchard Bar on that night.<sup>136</sup>*

- 4.34. The assertion that Garda McConigley never spoke to Garda Martin Leonard that night has also been made in evidence by Nigel Keown and Garda Séamus Patton.<sup>137</sup> While it is correct to suggest that two of the group were prepared to, or were in the act of, leaving, those who would have the best view as to whether any conversation occurred, were the three members of the Garda Representative Association who accompanied Garda Leonard. They were directly in his company in a public house that was not, on that night, especially crowded. Garda O’Boyce was closely questioned by counsel for the Tribunal as to the case being made by Garda Martin Leonard that not only had a conversation occurred between him and Garda McConigley, but that he had asked Garda O’Boyce to specifically note

<sup>136</sup> Transcript, Day 401, pages 10-21.

<sup>137</sup> Transcript, Day 403, pages 122-133 (Garda Séamus Patton); Transcript Day 403, pages 134-137 (Garda Nigel Keown).

that the conversation had occurred, and had further informed Garda O’Boyce of its contents. In itself, this was a strange request because Garda O’Boyce had left Garda Leonard to go to the toilet and the request was not to note that a conversation had taken place but to note that he, Garda Leonard, had requested Garda O’Boyce to note that he had told him that the conversation had taken place. A relevant portion of the transcript reads:

Q. *[Garda O’Boyce] when you saw Garda Séamus Patton and Garda Eamon McConigley, were they in fact anywhere near your other three comrades [from the GRA] at the bar?*

A. *No ... the bar at the Orchard is not – as a public bar is not a terribly big room. I would say that the bar counter would be maybe six feet long. So, we were standing at the end of the bar near the front door and Garda McConigley and Patton were at the other end of the bar and there is another section that heads out towards the door to the toilets, so I would say they were about seven feet away from where we were, six or seven.*

Q. *So you went over and you joined your three comrades?*

A. *Yes.*

Q. *Garda Larry Walsh, Garda Michael Moreton and Martin Leonard?*

A. *That’s right.*

Q. *Did Garda Leonard turn to you and say: “I have just had the following conversation with Garda McConigley, that he was on the search; that he searched the area three minutes beforehand, or not three minutes beforehand; there was no gun to be found; and that ... he and another member went around to the side of a caravan and had laughed at the idea of the gun being found? ‘Would you make a statement?’ ‘No. I have only a couple of years to go on the job and I will keep my head down’? And then going to the corner of the pub, turning back, and saying ‘the grass may have been long’ and laughed”?*

A. *No.*

Q. *Was there even any mention by Garda Leonard that a*

*conversation had occurred with Garda McConigley?*

A. No.<sup>138</sup>

- 4.35. There was no particular reason for Garda Michael Moreton or Garda Lawrence Walsh to have noticed any conversation. However, had a lengthy conversation of the kind alleged by Garda Leonard occurred, it seems highly probable that it would have come to their attention. They had no recollection of any such encounter taking place.<sup>139</sup>

### **Self-Corroboratorion**

- 4.36. In ordinary court proceedings, the rule against self-corroboration applies. This rule is no more than an extension of the usual rule that evidence to be corroborated must be supported from a source outside that in respect of which the law requires corroboration. If you want corroboration of the evidence of an accomplice, the corroboration must be from some evidence independent of his testimony. The fact that a person says that he did something on a particular day is not corroborated by the fact that, on any number of occasions prior to giving testimony, he asserted to a number of different individuals that he had in fact done that thing. An exception to that rule can arise. Where an allegation is made against a witness that he has recently fabricated a story, then witnesses may be called to show that prior to giving testimony he had given a similar account of the events in question to them.
- 4.37. Although the Tribunal is not bound by the rules of evidence, it has tried to abide by the sense inherent in the formulation of those rules in both receiving and analysing evidence. Since Garda Martin Leonard wished to offer in support of his account as to what had happened in the Orchard Bar, the testimony of his wife Majella Leonard, the Tribunal therefore received it. This is what Mrs. Leonard had to say:

*Martin went off to a GRA meeting and I went to bed by 12.00 o'clock. I was reading a book when he came in about half past 12 and he had a sense of excitement in his voice and he said "I have something to tell you, I have something to tell you". Which wouldn't be unusual in our house. I would get up and come down and have a cup of tea. We did, we sat at each side of the fire and we were sitting chatting. He told me what had happened that night in the Orchard Inn ... Well, he said he was in the Orchard Inn. They would normally have a drink [of alcohol] after the GRA meeting. And McConigley had come into the Orchard Inn with another few people and he mentioned about – he said to Eamon,*

<sup>138</sup> Transcript, Day 403, pages 184-187.

<sup>139</sup> Garda Walsh's evidence can be found at Transcript, Day 403, pages 139-167. Garda Moreton's evidence is at Transcript, Day 403, pages 168-177.

*“tell us about the search”. And Eamon said that they had searched the area three minutes before that and there was nothing there. They were told later then that something had been found, just a very short period after that. They went around the back of the caravan and they laughed at this idea, that they had searched previously and that there was nothing there ... Well, he said to Eamon, he said, would you make a statement about that and Eamon said – he kind of turned around and laughed and he said “I have only a short period of time to go and I am keeping my head down” and that he wasn’t getting involved ... I believe Michael O’Boyce had been at the toilet and on the way back he was drinking with Martin on the evening and Martin said to Garda O’Boyce to take a note, “I’ve just been speaking to McConigley”. And nothing else, just to take a note that I had been talking to Garda McConigley. He turned around and he said “don’t be fighting John White’s battles” ... Well, I mean, it was only a very short brief encounter. As I said, they had literally just said this in the space of three minutes. It wasn’t a full-length conversation. He was passing and Martin happened to mention about the search ... well, the fact that these rumours were circulating and they were widely spread and a lot of people knew about these rumours and Martin being the Guard that Martin is. I have been married for twenty-four and a half years, and I can honestly stand here and say the Garda Síochána comes first and I and the family are second. And I don’t mean that in a bad way, but Martin’s uniform is more important to him than anything else. He stands for the uniform.”<sup>140</sup>*

- 4.38. The Tribunal has carefully considered the demeanour of Mrs. Leonard. She gave her evidence as if she was remembering lines that she had learned. Her evidence is not to be judged alone, but in the context of the inherent likelihood, or unlikelihood, of the entire series of stories being told as to this episode by her husband, Garda Martin Leonard, by Sergeant Jack Conaty and by Garda Pádraig Mulligan. Having heard her evidence, therefore, the Tribunal thought it best to judge her veracity in the context of the entirety of the evidence given in relation to this, the ‘long grass’ story. In particular, it was necessary for the Tribunal to focus on her evidence and to decide what weight had to be given to it, if any, in the context of the weight that might be given to the testimony of her husband, Garda Martin Leonard.

<sup>140</sup> Transcript, Day 401, pages 129-132.

### **The Quiet Moment Café**

- 4.39. After his alleged encounter with Garda McConigley in the Orchard Bar in Letterkenny, and on the same morning as he allegedly told his wife about that encounter, Garda Martin Leonard met with Detective Sergeant White in the Quiet Moment Café in Letterkenny. He allegedly told him about the Orchard Bar encounter. Again, the Tribunal notes there was no attempt by Garda Leonard, a prominent member of the Garda Representative Association and someone in respect of whom it is alleged that Garda duties were of considerable importance, to go to the authorities or to officially investigate this matter. Nor, in fact, did he make a statement until the 13th of November, six weeks after this alleged encounter. Garda Leonard’s eventual and tardy response was, in fact, to make a statement about the alleged conversation with Garda McConigley in the Orchard Bar and to call Garda Moran into the Traffic Office to show it to him. The precise details of this are not of importance. What is of importance is that the statement<sup>141</sup> does not mention that the encounter took place in the Orchard Bar, or who was with him. It is so devoid of detail that the event mentioned could have happened anywhere in the company of anyone. This was a fact of considerable significance, and something that could hardly have escaped a member of An Garda Síochána of Garda Leonard’s experience. The encounter between the two men was for Garda Leonard, in effect, to taunt Garda Moran that he would not be happy as to what he was saying in the statement about Garda McConigley. **The Tribunal accepts Garda Moran’s evidence that he barely read the statement. On mentioning it later to Garda McConigley, his response to the allegation made against him was to say “pass no heed of that idiot”.**<sup>142</sup>
- 4.40. Detective Garda John White was now aware that he had a likely defence to his criminal charge. The question is: was that defence manufactured dishonestly?

### **Chasing the Rumour**

- 4.41. In his testimony to the Tribunal, Garda Martin Leonard claimed that it was after the arrest of Detective Sergeant John White in respect of the charge of planting the firearm at the Travellers’ encampment at Burnfoot, that he decided to become involved. At that stage, from a Garda point of view, the crime had been solved. It had been investigated; the culprit had been found; he had been charged before a court; and he was now awaiting trial. At no stage was Garda Leonard involved in the investigation into the Burnfoot affair. No senior officer had assigned him to that task and, indeed, his speciality was in relation to traffic matters. It is hard, therefore, to fathom how he could suddenly take it upon himself to be inspired to pursue an alleged crime that had happened three years

<sup>141</sup> Tribunal Documents, page 441.

<sup>142</sup> Transcript, Day 403, page 23.

previously. Garda Leonard, in his testimony to the Tribunal, explained it as a compulsion which came to him as a result of wearing a Garda uniform. His explanation was that once there was a crime there to be investigated he had, in effect, as much right as any policeman to go and investigate it. The Tribunal is not convinced by this reason. The Tribunal comments that it must have been next to impossible to handle Garda Leonard as an operative in any structured organisation, much less within An Garda Síochána.

- 4.42. Garda Leonard’s reasoning in relation to his behaviour on this matter is as follows. He knew in the year 2000 that there were rumours about that there was something wrong with the search in Burnfoot. To him, that meant that it may be that the firearm that was found at Burnfoot had been planted. However, in July 2000, when he first became cognisant of these rumours, he decided not to investigate the find. His reason for not investigating it was that there was nobody charged in relation to it. This stands the usual form of Garda reasoning upside down. However, when someone, mainly Detective Sergeant White, was charged in June 2001, he was then inspired to investigate the crime. The following exchange occurred between Mr. Marrinan, counsel for the Garda Commissioner, and Garda Leonard on this issue:

Q. *[In] June of 2001, were there rumours circulating ... in relation to the search at Burnfoot?*

A. *There were rumours in 2000 ... Yeah.*

Q. *The nature of these rumours was that there was something wrong with the search?*

A. *Yes, that’s right.*

Q. *And reading between the lines, it means effectively that there may have been a possibility that the firearm had been planted?*

A. *That’s right.*

Q. *Yes. So as early as 2000 you heard that a firearm may have been planted?*

A. *Yes.*

Q. *Did you set off to investigate that?*

A. *No.*



Q. *On a solo run?*

A. *No.*

Q. *Why not?*

A. *... Lots of Guards were talking about that rumour.*

Q. *Why didn't you set off to investigate it on a solo run?*

A. *Why would I?*

Q. *Well for the same reason that you set off in June [2001]?*

A. *There was a man arrested for this. There was a man arrested and charged actually.*

Q. *Well, that's the whole point?*

A. *In June [2001].*

Q. *The crime had effectively been solved when you decided to investigate it. But when you heard the rumours, and there was something to investigate, you didn't. And I want to know why you didn't investigate it?*

A. *There was no reason for me to investigate it in July 2000 as there was no man arrested.*

Q. *This was a very serious rumour?*

A. *But sure lots of Guards knew that, including the management.*

Q. *According to yourself, you're somebody apparently who would charge off on a white horse immediately if one heard such a rumour of something as serious as that?*

A. *Ah no, Mr. Marrinan, I wouldn't charge off on a white horse immediately. This is a serious matter here, a man being charged.*

Q. *You did absolutely nothing when you heard these rumours ... in 2000 you did nothing?*

A. *No.*

Q. *When you heard these rumours?*

A. *Except to mention it to [Sergeant] Coady at the checkpoint; and that was only to annoy him, maybe.*

Q. *Yes, so therefore you used it as some sort of weapon in relation to some joke that you were making?*

A. *Yes, yes, yes.*<sup>143</sup>

### **The Funeral Encounter**

4.43. In a later account of this episode, Garda Leonard claimed that it was not the charging of Sergeant White in June 2001 that inspired him to begin investigating a crime about which he had no knowledge, and to which he was not assigned, but rather an encounter with Detective Sergeant White himself. Both Garda Leonard and Detective Sergeant White have claimed that they were not friendly with each other. I do not accept that. Whatever might have been the case back in the year 2001, they have certainly become close since that time. Shortly after hearing that Detective Sergeant White had been charged, Garda Martin Leonard attended the funeral of his colleague’s Late mother-in-law. Although, ostensibly, I am supposed to believe they were not friendly, and although he did not know either Detective Sergeant White’s wife or her mother, he nonetheless attended the funeral as a mark of respect. He claimed that he attended the funeral for the purpose of offering his support and comfort to Detective Sergeant White and his wife at the time of their loss.

4.44. However, according to Detective Garda Leonard, an extraordinary scenario then developed whereby, after the obsequies, he took Detective Sergeant White aside outside the church and questioned him closely as to why he had been charged with planting the gun at the Travellers’ encampment in Burnfoot in 1998, and whether he had any defence to the charge. This is how Garda Leonard put it in evidence:

*I put that scenario to Sergeant White at the funeral. I said “if you have anything to do with the planting of that gun at Burnfoot, you should be in jail” and he should have been; if he had anything to do with the planting of the firearm at Burnfoot. Then, his denial was so vehement, he led me to believe that he did not plant the gun at Burnfoot.*<sup>144</sup>

4.45. It is a matter of some puzzlement to the Tribunal as to how Garda Leonard could attend the funeral and then tell one of the bereaved that they ought to be in jail. The matter was pursued in cross-examination by Mr. Marrinan SC in the following way:

<sup>143</sup> Transcript, Day 406, pages 31-33.

<sup>144</sup> Transcript, Day 406, pages 54-55.

- Q. *It seems quite extraordinary, if it is true, Garda Leonard, that you would attend a funeral in order to be of support, and give support, to Sergeant John White ... at a time of bereavement ... and then you would have a confrontation with him where you would say that “if it’s true you ought to be in prison”?*
- A. *Yeah, but we are cops. We are cops.*
- Q. *I’ve no idea what that is supposed to mean?*
- A. *This is utmost in our minds. This is an extraordinary set of events.*
- Q. *I thought you had gone there because his mother-in-law had died and you wanted to be of assistance to him at a time when somebody is feeling low?*
- A. *Yeah, to offer our deepest condolences.*
- Q. *Where does the business “we’re cops”, whatever that is supposed to mean, come from?*
- A. *We do say things to each other that maybe the civilian population wouldn’t say to each other.*
- Q. *Like “you should be in jail”?*
- A. *If a cop was involved in such an act, there’s no doubt he should [be in jail].*
- Q. *Did you feel – why did you feel it necessary to tell him [that he should be in jail] at that particular moment in time?*
- A. *I know.*
- Q. *All right, well anyway, he denied it?*
- A. *Yes.*
- Q. *Right, that’s fine. But why do you then go off in search of – what were you searching for because, I don’t understand, the rumour is now dead. What are you searching for?*
- A. *Well his denial was so, as I said, intense, he convinced me that he didn’t plant the gun, let’s say ... I’m not the sort to, say, take your word at face value and I just made enquiries about the rumours of the gun.*

*Q. The rumours were dead?*

*A. Yeah, well John White ... said he didn't plant the gun and went on to explain that it was extraordinary and this was a statement made up by Kilcoyne, because the Carty team were out to destroy John White ... so rather than take that at face value I just sourced the rumour and it took me to Burnfoot.<sup>145</sup>*

### **Garda Leonard and Garda Marley**

4.46. Garda Leonard told the Tribunal that in mid-August 2001 he went to Burnfoot Garda Station in order to see what he could discover at the source of, what he put to be the origin of, the rumour. What the nature of the rumour was at this stage, is more than unclear. Beating that in obscurity, is any credible reason why Garda Leonard should go to Burnfoot and what he might have imagined he could discover there. The rumours took him to Burnfoot Garda Station. He claimed that he was “ninety per cent certain” that he encountered a Garda serving there, namely Garda Séamus Marley, who, according to Garda Leonard, instead of dousing whatever faint flame of rumour might have existed in Garda Leonard’s mind at this point, threw petrol on it. Mr. Marrinan SC asked Garda Leonard why he went to Burnfoot. The following exchange occurred:

*A. Yeah, look it, why did I go to Burnfoot? That's the question.*

*Q. That's the question I'm asking you, and you still haven't answered it?*

*A. Because there were still ...*

*Q. You haven't come close to answering it?*

*A. There were still suspicions or something about the gun.*

*Q. What do you mean suspicions, and something about the gun, because you realise, Garda Leonard, you're changing your evidence now in relation to this matter. You were accused yesterday in relation to this matter and I think the Chairman was concerned to clarify the position as to when the rumour changed and the point in time when this rumour changed is, according to yourself, when you had a conversation with Garda Séamus Marley in mid-August, when he introduced, for the first time, Garda Eamon McConigley and Garda Eamon Moran as apparently laughing about the finding of a firearm?*

<sup>145</sup> Transcript, Day 406, pages 56-58.

- A. Yes.
- Q. *And up until then you were saying that you were investigating the previous rumour?*
- A. Yes.
- Q. *Now we have established the previous rumour was dead in June [2001]?*
- A. *Mm-hmm.*
- Q. *And I am wondering: what is it that has you out in Burnfoot, if you were there at all?*
- A. *Yeah.*
- Q. *In mid-August [2001], talking to Garda Séamus Marley who, you say, is apparently going to deny this conversation ever took place?*
- A. *Well I'm not surprised at that.*
- Q. *Are you?*
- A. *I don't know. You introduced his name.*
- Q. *And now you are telling us you discussed the matter with him and he actually denies that he ever had that conversation with you?*
- A. *Yes. This was in 2003.*
- Q. *And yesterday your clear indication was that you thought it was him, but it may have been somebody else?*
- A. *Yes, that's right.*
- Q. *Now you've just changed that in your last statement by saying – well wouldn't you deny it if it was you?*
- A. *Deny it.*
- Q. Yes.
- A. *Yeah. In view of the whole circumstances of what has transpired, the whole circumstances.*
- Q. *It seems quite extraordinary, Garda Leonard, the way you are able just simply to throw out accusations against people?*

- A. *I’m not throwing out accusations against people.*
- Q. *The clear implication there is that you were implying that Garda Marley is denying [this conversation] because he doesn’t want to get involved in this and, in fact, it was he who had the conversation with you?*
- A. *But sure most of the Guards in Donegal don’t want to get involved in this. That’s the problem. Anyway, listen, you are asking me why I was going out to Burnfoot ... after John White’s total denial that he had anything to do with the planting of this firearm, I went to Burnfoot. That’s all ...*
- Q. *So, anyway, I still don’t understand why that brings you to Burnfoot?*
- A. *As I said, the set up was wrong. There was something wrong and smelly about this investigation. I went to Burnfoot, I was stationed there years ago, the rumours emanated in Burnfoot. That’s why I went to Burnfoot.*
- Q. *And?*
- A. *And asked the Gardaí, and I was ninety-five per cent certain it was Garda Marley and it was on an afternoon, it was out in the recreation room. I says – “Who is the source, what are the rumours, who is the source of these rumours, what are the rumours?” And the rumours were that McConigley was laughing at the idea of a gun being found.*
- Q. *So you asked “What are the rumours”?*
- A. *Yeah.*
- Q. *When you knew the rumours?*
- A. *Well who was spreading the rumours.*
- Q. *No, you asked what are the rumours?*
- A. *Yeah.*
- Q. *Even though you knew what the rumour was?*
- A. *Yeah.*
- Q. *And then you introduced, for the first time, an entirely new rumour?*

A. *That McConigley was laughing. Yes ...*

Q. *Is that your account?*

A. *Yes, that's my account and I left it at that because that was the name of the man spreading the rumour.*

Q. *So the next minute, you go off looking for McConigley.*

A. *That's right ... not in any great urgency.<sup>146</sup>*

4.47. Garda Leonard sought to support this scarcely credible account of events by referring to the fact that he had asked his sergeant at the time, Sergeant Brendan Roche, to assign him away from traffic duties for a few days so that he might go and track down Garda Eamon McConigley resulting from his alleged conversation with Garda Séamus Marley.

4.48. Sergeant Roche told the Tribunal that he recalled that one evening before Garda Leonard went on a particular period of sick leave he came to him and asked to be put down “for the border or words to that effect” because he wanted “to call out and see the fellows in Carrigans”. **Sergeant Roche denied, and the Tribunal accepts his evidence, that this request was put in the context of the necessity to follow up the alleged statement of Garda Séamus Marley that at the time of the finding of the firearm at Burnfoot in 1998 Garda McConigley had been seen laughing.** Garda Leonard explicitly alleged to the Tribunal that he had intimated to Sergeant Roche that he wanted to go to Carrigan's Garda Station to see Garda Eamon McConigley because it was rumoured that he had been laughing at the time of the finding of the firearm in Burnfoot in 1998. This is a lie.

4.49. The Tribunal has carefully considered the evidence of Sergeant Roche. According to him, there was nothing unusual about a member of An Garda Síochána asking to be allocated to border duty in order to call on a particular Garda station close to the border, as Carrigans is, for the purpose of meeting a fellow Garda, for the purpose of serving a summons or for the purpose of making an enquiry in relation to their assigned duty which, in Garda Leonard's case, would have concerned traffic matters. If this request had been made in the context of a necessity to follow up what was then an active and controversial investigation which had resulted in the arrest and charging of a Garda Detective Sergeant in County Donegal, Sergeant Roche would have remembered it. **The Tribunal is convinced that Garda Leonard did not tell Sergeant Roche in the summer or autumn of 2001, or at any time, that he was asking to be assigned to border duties near Carrigans Garda Station because he wanted to meet**

<sup>146</sup> Transcript, Day 406, pages 62-66.

Garda Eamon McConigley to ask him about a rumour that he had been laughing when the gun at Burnfoot was discovered. Sergeant Roche remembered the manner in which, prior to being called to the Tribunal to give evidence, Garda Leonard had asked him about this. It was in the following terms:

*Garda Leonard did say one thing else to me after he came in. When I said yes, I confirm that you looked for a border patrol to go to Carrigans, he said “That’s good”, or words to that effect. That will show I was looking for McConigley.<sup>147</sup>*

- 4.50. Garda Séamus Marley denies that he ever introduced to Garda Leonard, or to anyone else, any rumour about Garda Eamon McConigley or Garda Tony Moran laughing at the time of the discovery of the firearm in Burnfoot in 1998. The Tribunal accepts his evidence that the first he heard of any such suggestion concerning Gardaí McConigley and Moran was when he read through the opening statement of counsel when it was posted on the Internet in November 2002. This was how he described the approach which he had from Garda Leonard in August 2003:

*He had called to my house earlier, and this was, I can’t recall the exact time and date, it was maybe a few months before that. And he said to me “I will be needing you for the Tribunal and you will give evidence. “I was absolutely shocked because I didn’t know what he was on about at this stage. I had absolutely no knowledge of what he was talking about. At that stage, he never would have brought Eamon McConigley or Garda Tony Moran’s name into it. I said I knew nothing about anything and he left it at that. Then he came to me at Burnfoot. It was a Sunday evening, and he introduced the conversation again and I told him I knew absolutely nothing about any rumours about anything and I put it to him, I said you could be mistaking me for someone else. He was quite confused himself as to whom he was talking to at this stage. Then he introduced the name of, it could have been Garda Peter McDermott. I also put it to him that time, and on both occasions, he said to me that this is very important and I didn’t deny it was important and I asked him well, if you had been talking to me or somebody else would you not have noted the time and date as to who you were talking to and kept a note of that as it was very important. And he said, no I didn’t. It was left at that ... The only thing that was introduced at any stage was that there was a rumour going around Burnfoot and everyone was talking about it and, to my knowledge, everyone was not talking about it ... The*

<sup>147</sup> Transcript, Day 413, page 18.



*nature of the rumour was that there was something suspicious about this gun which was found at that particular time ... he never [mentioned Garda McConigley and Garda Moran laughing]. My only knowledge of Garda McConigley and Garda Moran laughing was in the initial transcript from the Morris Tribunal that came out on the Internet which was in the public domain at that stage. I would have read through certain transcripts of it; and that would be my knowledge of that.<sup>148</sup>*

### **Garda Gillespie is Called On**

- 4.51. One of the Gardaí with whom Garda Leonard worked in the Traffic Corps in Letterkenny was Garda John Gillespie. The Tribunal has heard his evidence. It is obvious that he, Sergeant Roche and Garda Marley all fit within the category of decent hard-working Gardaí who are a credit to their country and whose evidence the Tribunal has no hesitation in accepting. He is the third member of An Garda Síochána to whom Garda Leonard attributes conversations that they do not accept. This is in addition to Garda McConigley.
- 4.52. On the 14th of November 2001, Garda Martin Leonard appeared in the Traffic Office in Letterkenny carrying a statement of that date, to which the Tribunal has already referred. Garda Tony Moran was there. The brief conversation between these two men has already been touched on. Garda Martin Leonard, however, when he called on Garda Gillespie prior to him giving evidence to the Tribunal, wanted to suggest to Garda John Gillespie, who was present in the office on that occasion, that the conversation was somewhat more elaborate than has been introduced in evidence. In this suggestion, similar to the suggestions made to Sergeant Roche and Garda Marley, Garda Leonard was blocked off. Mr. Gillespie gave the following evidence to the Tribunal:

*After I retired ... Garda Leonard came to my house and he asked me some time afterwards, did I recall the conversation in the station. And I told him I did. He says to me “Can you repeat it because I am not going to mention any names to you?” Then I told him again what had happened, about the gun and the craic about the gun and being there one time and not being there five minutes later. I mentioned Garda McConigley then. I couldn’t remember the representative body man, which he reminded me was Boyce. He said, that’s okay, that’s okay. He then left. Some time later I called to his house ... I think he might have been sick and I called to his house to see how he was. Because I called to him, now and again, every six maybe seven months, and to other members.*

<sup>148</sup> Transcript, Day 413, pages 90-92.

*So we were talking and he said to me “Did you hear I was arrested?” ... I said I did. I asked him “What for?” He says “For making a false allegation in connection with the craic with the gun, the gun found at Burnfoot”. Then I asked him was that the statement that he read out to me? He said it was. I said to him “Sure, I heard you read that out to me. Did you tell them that?” Then he said to me “Will you make a statement about that?” Then I said I would. Then that was that ... [about eight weeks ago Garda Leonard called to my house] ... he told me that we would have to go to the Tribunal in relation to this matter, myself and Sergeant Roche. And we probably, I don’t know if we chatted about this, again I’m not sure. I said “That’s alright, that’s okay”. So that was all, that’s the end. We probably, maybe, mentioned what happened again ... [On Sunday, the 5th of February 2006] he called to my house at twenty five to four and he told me he had questions for me. He said different things. We talked about the Tribunal, and he talked about – he said that if he got a statement from Sergeant Roche now that he would be okay ... and he did mention that, he was only joking, if he could get Garda Foley into this, that was only a joke, probably, joking ... I must say he is always making jokes. He is a happy man. I don’t want to fall out with him. We get on well together like ... I told Garda Leonard that I thought we shouldn’t be discussing this and he told me that we can because I was his witness and he can discuss anything with me ... Then I asked him would Garda Moran be in court and he said I think he would. Then he went into details then about the Tribunal. Then I said, I told him that I wouldn’t be much good to him anyway because the only thing I heard was when Garda Moran came to the door, what he said was, “Come on, come on – you said come in and he said maybe I’d better not, that you might be writing about me there”. Then [Garda Leonard] said to me “Sure what about the conversation we had in the corridor, sure you were there?” I told him that I wasn’t there at all. I heard no conversation and this was all new stuff to me, which it was to me. I never heard nothing about this before. I told him that and he seemed to change his attitude and he told me “What do you think I took you up to the Tribunal for?”<sup>149</sup>*

- 4.53. Mr. Gillespie told the Tribunal that Garda Leonard then left on bad terms. Further, he never had any recollection of a conversation between Garda Leonard and

<sup>149</sup> Transcript, Day 412, pages 10-12.

Garda Moran in the corridor. [The Tribunal accepts Garda Gillespie’s evidence unreservedly.](#)

### **Corroboration and Garda Leonard**

4.54. The Tribunal has gone into detail on this matter because of a necessity to attempt to vindicate the position of Garda Leonard, if such vindication is possible. As soon as Garda Leonard mentioned during the course of the Tribunal hearings that corroboration was available in relation to his account of the conversation at the Orchard Bar, the Tribunal pursued it. It was Tribunal counsel who called Sergeant Roche, Mr. Gillespie and Garda Marley with a view to seeing whether they could provide any support for the idea that Garda Leonard was actively and honestly pursuing an investigation in respect of Garda McConigley during the summer and autumn of 2001. There is no support for that proposition.

4.55. [In fact, an opposite picture emerges whereby Garda Leonard seemed to be happy to lead his colleagues on in conversations that mildly suggested to them that they might have evidence of a particular kind that they ought to offer the Tribunal. They refused his suggestions. The Tribunal commends both their honesty and the integrity with which they approached the Tribunal.](#)

4.56. When Garda Marley had concluded giving his evidence, Garda Leonard queried why the witness had been called at all. This was, to put it mildly, a curious intervention as he had been called in aid of the story being told by Garda Leonard. The following exchange then occurred between Tribunal counsel, the Tribunal and Garda Leonard:

*Mr. Charleton: This witness, sir, was called, in effect, at the behest of Garda Leonard because he had introduced him, as indeed he had introduced the previous witness, Sergeant Roche, into the equation. Now, both of them have denied the effect of the conversation that had been alleged by Garda Leonard in his cross-examination by Mr. Marrinan. Am I now to call Garda Peter McDermott? Because clearly as the allegation is so serious it would be wrong of your legal team, sir, not to follow up and call any witness that could be helpful to a person against whom a serious allegation is made. That was the reason for calling Garda Marley, and obviously we are grateful to him for being here, but it wasn't on a wild goose chase by any means. Maybe Garda Leonard could tell me whether he wants Garda Peter McDermott now called as well.*

*Garda Leonard: I don't want – I didn't expect to see Garda Marley here and I don't want Garda McDermott called here. The point I was making to the Tribunal was simple: that I actually went out to Burnfoot and asked the question in relation to the conversation I had with John White. I think that has been established Mr. Chairman, that I actually did.*

*Chairman: Who did you actually speak to?*

*Garda Leonard: I am sure it was Garda Marley, but I cannot remember.*

*Chairman: We now know it wasn't.*

*Garda Leonard: Yes.*

*Chairman: Who did you speak to?*

*Garda Leonard: I thought it was Garda Marley, and it wasn't Garda Marley, but it was a Guard in Burnfoot and it was a senior member of the Gardaí in Burnfoot. The point is you either believe I did or that I didn't. That is the point and I cannot put it any further, Chairman.*

*Chairman: You don't want Garda McDermott: is that right?*

*Garda Leonard: Unless you want him, Chairman. I don't want him because he's – I don't know who the Guard was.*

*Chairman: Thank you very much.<sup>150</sup>*

### **Credulity and Garda Leonard**

4.57. Even if it was taken as a fact that one can stretch human credulity to the point to where one might believe that Garda Martin Leonard went in the summer and autumn of 2001 on a personal investigation of the Burnfoot search, another aspect of the conduct of Garda Leonard puts the story which he has told the Tribunal beyond any rational person believing him. If it were the case, and the Tribunal does not accept this, that on visiting Burnfoot some time in August of 2001 he met with Garda Marley, or some other Garda, who told him about Garda McConigley laughing at the time the gun was found at the Travellers' encampment at Burnfoot in 1998, the next obvious and logical line of enquiry was to talk to Garda McConigley. [The Tribunal does not accept that Garda Leonard went to Sergeant Brendan Roche and asked that he be assigned to a border duty at Carrigans for the purpose of searching out Garda McConigley.](#)

<sup>150</sup> Transcript, Day 413, pages 98-100.

- 4.58. This is the reality. Every member of An Garda Síochána has a dwelling. At the time, Garda McConigley’s family home was within a stone’s throw of Letterkenny Garda Station. For some months, he was living temporarily elsewhere. Nonetheless, he was surely contactable through that address. A person’s home is the usual place to look for him. There was no attempt made by Garda Leonard to call on his home. **The Tribunal does not accept the excuses for not calling at his home.** Carrigans Garda Station has a telephone. Garda Leonard never telephoned it. Garda McConigley had friends who could easily have told Garda Leonard, had he bothered to enquire, where he was. Garda McConigley had a mobile phone which was listed with the communications section of the Divisional Headquarters in Letterkenny. No enquiry was made by Garda Leonard in that respect. Instead, he sought to be put on duty for the purpose of calling personally on Garda McConigley while he might have been on duty, at the same time as him, in Carrigans Garda Station. There is no evidence that he ever called at Carrigans Garda Station looking for Garda McConigley. Indeed, Garda Leonard never even made that case. This is hardly surprising as the Tribunal received evidence that Garda McConigley in Carrigans, and Garda Leonard in Letterkenny, worked on shifts based on a twenty-four hour system, which meant that their working hours were, at the relevant times, never overlapping. Thus, Garda Leonard could not have called to Carrigans Garda Station during the course of his duties at a time when Garda McConigley was working because he was not on duty when Garda Leonard was on duty.
- 4.59. Curiously, the first time that Sergeant Roche heard of this account was from Garda Leonard himself in 2003, two years after he was supposed to have been told about it in the context of a request for a re-assignment of Garda Leonard to duties on the border. This was put in such a way that Garda Leonard was asking Sergeant Roche did he not remember the conversation that they had had two years ago and then explicitly spelling it out to him. **The Tribunal is deeply suspicious of this process. My suspicion is deepened when I consider the manner of Garda Leonard’s approach to other witnesses, namely the manner of his approach to Garda Séamus Marley and to Mr. John Gillispie.**
- 4.60. **The Tribunal has no desire to stretch credulity beyond breaking point. The Tribunal is convinced that Garda Leonard has engaged in an elaborate conspiracy to invent against Garda McConigley a supposed conversation with Garda Eamon McConigley in the Orchard Bar on the 3rd of October 2001. He did this with a view to dishonestly assisting Detective Sergeant White to create a false answer to the criminal charge which he was facing. The Tribunal does not accept the evidence of Mrs. Majella Leonard. It rejects all of the evidence of Garda Martin Leonard as lies. The Tribunal**

notes the astonishing insubordination and deceit of Garda Leonard. He has featured in evidence in the most discreditable ways. As member in charge during the Barron investigation, he did nothing to ensure that the rights of Mr. Robert Noel McBride were upheld when he made a completely false statement. In this case, just before Detective Garda Kilcoyne was due to give evidence, he applied to the District Court to have him arrested. This was an exercise in attempted intimidation. He was in no way assigned to dealing with this case. He has constantly sought to cast aspersions, on the basis of allegations that, even were there evidence to support them, are collateral issues, against Detective Garda Kilcoyne. As a Garda, he has refused to wear his uniform before the Tribunal. At the same time he has wearily harped on about his pride in the uniform he refused to wear. His insubordination is amazing. That he can get away with such conduct, and he certainly did so for several years, is a dreadful indictment of Garda discipline.

#### **Garda Mulligan at Conaty’s**

4.61. A number of days following the alleged Orchard Bar encounter, Garda Martin Leonard met with Garda Pádraig Mulligan. He alleged that he recounted to him what had allegedly occurred in the Orchard Bar between himself and Garda Eamon McConigley. The claim in relation to this by Garda Mulligan, is that he was under the impression that Garda McConigley was not going to deny the story that would exonerate Sergeant White on the charge of planting the firearm at Burnfoot and that it was going to be repeated to the authorities.<sup>151</sup> Nonetheless, he claimed that he was interested in meeting with Garda McConigley.<sup>152</sup> The Tribunal notes that Garda McConigley’s address in Letterkenny was in the vicinity of the Garda station. Even accounting for the fact that there may have been a temporary difficulty at the time in calling to his home, he was a longstanding member of the Garda Station in Carrigans for the previous eighteen years. His shifts were either well known, or could easily have been ascertained from his acting sergeant. His telephone number, including his mobile telephone number, could have been readily obtained from the communications section of Letterkenny Garda Station. What happened next is therefore difficult to understand within that context. This is how Garda Mulligan put his account of events:

*On the 15th of October, I went down to visit Jack in his house, Jack Conaty. Any time I called before, Sergeant Conaty was always at home and his wife was at work. I wouldn’t have to ring. He was there. She was working Monday to Friday. On that morning I went*

<sup>151</sup> Transcript, Day 404, pages 50-59.

<sup>152</sup> Transcript, Day 404, page 62.

*down to visit him and I called to the house and he wasn't there. Which was unusual. And his wife was there, Mrs. Carmel Conaty. I went to the back door and she came to the door and I says "Is Jack here?". She says "No he's away this morning." I knew by the woman that she was upset. She was shaken. I said to her "My name is Pádraig Mulligan, I'm a friend of Jack's. I just called down to see him". At that stage she said to me she thought it was maybe some of the Carty team coming back to him. There had been people down prior to that, some days prior to that. I says "No, I'm only down to visit Jack". And she says "Come in and have a cup of tea". I went in and had a cup of tea and I said to Mrs. Conaty, during our conversation I said "Do you ever see Eamon McConigley around?". Mrs. Conaty said to me, "I think he's working this morning, will I ring the station?" And I says "No, don't bother, I'll get him again". She said "There's no problem I'll ring the station". I said "That's okay". So she rang the station. I think before that I was chatting to, I had rung Sergeant Conaty's mobile just to tell him I'd called down prior to her ringing the station. And a few minutes later Garda McConigley arrived up with Garda Moran and came into the house. And we were chatting about general things and I said to the two lads then, I said "What's this problem with Burnfoot, you were on that search". Then between the two of them they outlined the conversation as follows: that they had searched the area where the gun was found a short time before Sergeant Coady found it and they had gone around the corner when they heard the shout that the gun was found. And I said to them, I says "That's very important information". And I asked them did they ever make statements about it and they said they did. I never thought there would be any open conflict about it. I thought it was open; an open discussion. There would be no denying it after."<sup>153</sup>*

Mrs. Conaty, in her evidence, simply confirmed that Garda McConigley had come to the house and had spoken to Garda Mulligan in her kitchen.<sup>154</sup> The circumstances of the encounter, however, led the Tribunal to conclude that she and Garda Mulligan had deliberately arranged a pretext to cause Garda McConigley to come to the house. He had unexpectedly arrived in the company of Garda Moran.

- 4.62. In contrast to the foregoing account, Garda McConigley defended himself in these terms:

<sup>153</sup> Transcript, Day 404, pages 66-67.

<sup>154</sup> Transcript, Day 401, pages 155-160.

*I went to Sergeant Conaty's house at the request of his wife Carmel on the 15th of October [2001] ... I went to the house that morning accompanied by Garda Tony Moran ... Mrs. Conaty said she was going on down to the room and she wanted to see me about ... I would go and she left us there in the presence of Garda Mulligan. Now, Garda Mulligan was either off sick or he was suspended at the time and we were discussing, you know, how he was getting on and what was happening to him. The next thing, out of the blue, he says to us: "Was it only the two of you on that search in Burnfoot?" At which Garda Moran replied "No, there was at least twenty-four, twenty-five men on that Burnfoot search that morning". Then we continued on to have a discussion about something else. I proceeded down to the room to Mrs. Conaty. She asked me why her phone calls were not being returned from Letterkenny and who would have been up around her house on the Friday evening. So I explained to her that I felt her husband was going to be arrested and charged with a serious criminal offence, which he was later acquitted of, may I add, at the time. I do feel, at the time, I gave her the best advice I thought to give her which was that I thought Sergeant Conaty should concede to the arrest and go down to Carndonagh District Court, because there is a very quiet area down there, it's way up in Inishowen and he could get in and out without anybody knowing him and there would be nothing more about it ... now, as it transpired, I was doing a checkpoint the next morning in Lifford Bridge, along with Garda Tony Moran and Mrs. Conaty rang me and she was in a serious state and she told me could I call up to the house to her. I arrived at the house and she says to me that she was after getting a call from Carndonagh District Court and all the media were there ... all the cameras, the whole lot were waiting at Carndonagh, which was highly strange. But I do believe and it's the sorriest bit of advice I ever gave anyone, because I do believe that both Sergeant Conaty and his wife think I informed the media; which I didn't ... The only thing that Garda Mulligan said on the day was "were the two of you on that search alone"? I didn't answer it, Garda Moran answered it and he said there was at least twenty-five people on that search ... That was the total extent of the conversation in relation to Burnfoot ... The only comment I want to make about it is that when we arrived up at the house there, we thought it was out of context that Garda Mulligan should be*



*there: but at the time we didn't think anything about it. Absolutely nothing. We knew Garda Mulligan. I knew him. He was a friend of mine. What I have said was the total conversation with Garda Mulligan at that house.*<sup>155</sup>

4.63. The Tribunal wishes to comment, as an aside, that, whereas it is understandable for Garda McConigley to believe that Mrs. Conaty may have suspected him in relation to the appearance of the media at the charging of her husband in Carndonagh District Court, any evidence which she gave to the Tribunal was out of loyalty to her husband and not out of a sense of bitterness towards Garda McConigley or Garda Moran.

4.64. The account of Garda McConigley was supported by that of Garda Moran:

*I went, accompanied by Garda McConigley, to Sergeant Conaty's house and it was as a result of a phone call received by Sergeant Gaynor and the phone was passed to Garda McConigley and we went up and I took it that we were going up to see Sergeant Conaty and Mrs. Conaty, who Garda McConigley was dealing with during that period. He was negotiating between the two sides, mediating between the two sides ... I took it we were going to see Sergeant Conaty and Mrs. Conaty. When we arrived up [Garda] Pádraig Mulligan was in the house on the 15th of October 2001 ... When I went in there ... we were quietly surprised Pádraig Mulligan was there, because in any of my visits up there I never saw him there before. Mrs. Conaty said "I'll leave you to it". She said "I want to see you, Eamon, before you go", and she left the kitchen. We spoke with Pádraig about general things. He says "My service has stopped now" and I remember that was one of the lines. Out of the blue he says "Was it only the two of you on that search in Burnfoot?" and I answered fairly sharpish, I says "What are you on about? There was at least twenty men there". That was the only question referring to Burnfoot that was mentioned. It was him continued on after that, that's all. We left him space. I remember because that question was so outright. I'll remember it to my dying day, that question. "Was it only the two of you on that search in Burnfoot?". I am still amazed with the question ... We were talking about his service, we were talking about general things and there was no mention of the search in Burnfoot, absolutely not ... I can remember the question so clearly now, that question, that there was actually silence for maybe three or four*

<sup>155</sup> Transcript, Day 401, pages 29-36.

*seconds after the question and my answer was, I said “What are you on about, there was at least twenty of us on that search”. That’s as far as it went ... He never said another word about the search.*<sup>156</sup>

- 4.65. No statement was made in relation to this matter by Garda Pádraig Mulligan until the 17th of January 2002. In the meantime, on the 16th of October 2001, Sergeant John Conaty had been charged with a serious criminal offence; Garda Martin Leonard had confronted Garda Moran with a statement that he had made about Garda McConigley; Gardaí Moran and McConigley and Sergeant Niall Coady had made statements about the search; and on the 29th of November, Gardaí Leonard, O’Boyce, Walsh, Keown, Patton and Moreton had made statements about the alleged encounter with Garda McConigley at the Orchard Bar. **The Tribunal accepts that in all respects Gardaí McConigley and Moran have told the Tribunal the truth.**

### **An Innocent Emissary**

- 4.66. What appears to have been some days after the meeting between Gardaí Mulligan, McConigley and Moran in the Conaty house, one of the strangest events in this entire farrago occurred. It is accepted by Sergeant John Conaty that he asked a friend in sport, Mr. Tommy Harkin, to give a message to Garda Eamon McConigley. It so happened that Garda McConigley managed the football team, Fanad Gaels, for whom Mr. Harkin was the physiotherapist. This message was to the effect that Sergeant Conaty had taped his conversation with Garda McConigley and Garda Moran when they had called to the house and allegedly mentioned the search at Burnfoot, and the absence of a gun. **Sergeant Conaty accepts that he had never taped this alleged conversation. In the message through Mr. Harkin, he does not mention that his wife would also appear as a speaker on this audio tape. This accords with the absence of his wife from this alleged conversation in the statement which he made to the Carty investigation team on the 18th of January 2002. He says that his motivation for getting Mr. Harkin to innocently deliver this sinister message to Garda McConigley was to use a lie in an attempt to force him to tell the truth.**<sup>157</sup>

### **Another Alleged Conspiracy**

- 4.67. During the course of the hearings, Detective Garda John White has alleged that he is the victim of a conspiracy. This matter has already been extensively discussed in Chapter 3. However, this chapter deals with it in order to summarise the points that he has made in evidence, and in his written submissions, to supposedly

<sup>156</sup> Transcript, Day 402, pages 151-154.

<sup>157</sup> Transcript, Day 401, pages 208-209. The account of Garda McConigley on this matter is at Transcript, Day 401, pages 42-44.

prove the existence of such a conspiracy, and to show in short form why the Tribunal has concluded that there is not now, and never was, any conspiracy against him. The points urged in evidence, and in the written submissions, by Detective Sergeant White are thus set out herein and the Tribunal’s conclusions on the material which he has urged support the existence of such a conspiracy are now set out.

4.68. Detective Sergeant White has submitted that it supports his allegation of a conspiracy against him that Detective Garda Kilcoyne has been granted immunity from prosecution. He argues that such immunity, of itself, indicates that he is a puppet of “the authorities” and that he will sing any song that they ask him to sing, no matter that such evidence would also implicate himself in the commission of a most serious firearms offence. In the view of the Tribunal, it does not indicate this at all. In fact, Detective Garda Kilcoyne did not even know, the Tribunal is satisfied, that he had an immunity until the Tribunal started. The Director of Public Prosecutions granted the immunity. There has never been any suggestion that the Director was a party to any conspiracy. As to whether immunity was or was not properly issued in this case, it is perfectly obvious that immunity would be essential if there were to be any hope of Detective Garda Kilcoyne giving evidence. However, he never held out for immunity. The documentation from the Gardaí seeking the immunity from the Director is both logical and proper. **The Tribunal is reluctant to pronounce on the issue of whether such immunity was or was not correctly granted. This is a matter for the Director of Public Prosecutions. The issue before the Tribunal is as to whether the immunity shows such impropriety as to be evidence of a conspiracy. The granting of the immunity was proper and has greatly assisted the work of the Tribunal.**

4.69. Detective Sergeant White has submitted that it supports his allegation of a conspiracy against him that Detective Garda Kilcoyne is still serving as a Garda. In my view, **this does not prove anything. Garda Kilcoyne has told the truth as to serious wrongdoing. This takes considerable strength of character. If he had been dismissed, that would have been a legitimate executive decision, but not one which would encourage, as the Tribunal has urged repeatedly, Gardaí to come forward and tell the truth. Perhaps some people might say that steps should have been taken to remove him. That would be a legitimate point of argument. It does not prove a conspiracy to take a contrary view. The Tribunal has asked itself how could it be suggested that leaving him exactly as he was without, for instance, promotion, could be interpreted as a reward for telling this story? The Tribunal is of the view that the decision to retain a truthful person who spontaneously admits his own wrong is not evidence of a conspiracy.**

- 4.70. Detective Sergeant White has submitted that it supports his allegation of a conspiracy against him that Assistant Commissioner Carty was the person in charge of the investigation into his wrongdoing. This, he has argued, of itself demonstrates that there is a conspiracy. In fact, while one might possibly argue, though the Tribunal does not so find, that a more independent officer might have been a better choice, **the mere fact alone that he was the officer in charge does not establish anything. In reality, as the commanding officer for the region he was required to take charge of this matter. His investigation began in early 1999 into a different matter entirely. As events unfolded, this matter also required investigation at a much later date. He used good and independently-minded Gardaí to conduct that enquiry. They did not influence the evidence that has been given by Detective Garda Kilcoyne.**
- 4.71. Detective Sergeant White has submitted that it supports his allegation of a conspiracy against him that no shot pellets were found in the bank where the gun was discharged prior to it being planted on the alleged suspects. This, he argues, proves that Detective Garda Kilcoyne’s story of test firing the gun is false. If this is false, he argues, then all of the evidence of planting the gun becomes a proven fantasy. **The Tribunal does not agree. A sawn off shotgun has a wide scatter of shot. It was not properly anchored prior to being discharged while insecurely wedged with stones and set off by the pull of a string. The shot could have gone anywhere, if there was any shot in the cartridge. It might have been loaded with a blank cartridge. This matter has been analysed in Chapter 3. It does not prove anything. The fact that members of the Gardaí carried out the search, in the view of the Tribunal, shows that a sincere and genuine effort was made to verify or disprove Detective Garda Kilcoyne’s story.**
- 4.72. Detective Sergeant White has submitted that it supports his allegation of a conspiracy against him that Detective Garda Whelan, on examining the gun in the Ballistics section of Garda Headquarters, found no evidence that the gun had recently been fired. This, it is claimed, shows that Detective Garda Kilcoyne is telling lies when he says that the gun was fired by his colleague at Gortahork prior to being planted. **In fact, the evidence is clear that when seen by Detective Sergeant Smith immediately after it was recovered at the Traveller encampment, the relevant barrel was soot contaminated, as if a shot had been discharged. Later, at Garda Headquarters, that barrel appeared to be clean. This point is dealt with in detail in Chapter 3. The Tribunal’s view of the evidence is that this shows that the barrel was cleaned in the intervening two days. The opportunity for this arose because there was no clear chain of evidence kept in relation to the gun**

from the moment that it was found at 09.10 hours to the time it was packaged by Detective Garda Joseph Foley at around 18.00. In the intervening time, the Tribunal is satisfied that the gun was shown to Mr. Thomas Collins by Detective Garda John White at Letterkenny Garda Station later that morning. There has also been evidence that the gun was being handed around the station in an evidence bag during that time. Various officers handled it but no one has taken responsibility for the gun during this period. There was ample opportunity to upset the condition of the gun. The Tribunal notes that the cobwebs in the right barrel were not removed. Only the left was cleaned. This shows deliberation.

- 4.73. Detective Sergeant White has submitted that it supports his allegation of a conspiracy against him that efforts were supposedly made to get Detective Garda Whelan to change his account of his findings in respect of the gun and that this shows that there was a conspiracy ongoing. **In fact, I am completely satisfied, on the evidence, that no effort was made to get Detective Garda Whelan to change his findings on examination of the weapon. The Tribunal considers that it was merely a recounting and recounting again of events which created a confused impression of what in fact had occurred.** More detail on this matter is to be found in Chapter 3.
- 4.74. Detective Sergeant White has submitted that it supports his allegation of a conspiracy against him that Assistant Commissioner Jennings has denied in his evidence to the Tribunal that he ever told him of the information he got from Mr. A and Mr. B. As, it is argued, Assistant Commissioner Jennings has demonstrably lied about this, it shows that he is trying to set up Detective Sergeant White. **This is far-fetched. Even if it were true that information were casually mentioned to a senior officer in the course of a discussion on other matters, the fact that he does not recall it would not prove a lie. This matter is fully analysed in Chapter 3. There, after a careful consideration of the relevant facts, I hold that Detective Sergeant White never told Assistant Commissioner Jennings about this information.**
- 4.75. Detective Sergeant White has submitted that it supports his allegation of a conspiracy against him that many of the exhibits are missing in relation to his criminal trial. This, he says, shows that he cannot get a trial in accordance with law because senior officers do not want him to be fairly tried. **I reject this. A fair trial is a matter for the courts of Ireland. I have yet to be convinced that the non-existence of some of the exhibits makes the smallest difference to his trial. It has never been established to me that the fact that interview notes with the arrested Travellers are missing makes any difference to the**

core issue as to whether Detective Sergeant White planted the gun on them. How could it since they could hardly know about something that he did in secret? Other items are missing. The absence of the cartridges only means that they cannot be fingerprinted for Detective Sergeant White’s fingerprints. The absence of the bag in which the gun was when it was planted, coupled with the later fire in Detective Sergeant White’s car, by whatever means that that occurred, has the neutral result that fibre samples cannot be tested. Further detail on this matter is contained in Chapter 3.

- 4.76. Detective Sergeant White has submitted that it supports his allegation of a conspiracy against him that instead of continually preserving the scene at Gortahork, where the gun was sourced by him so as to be planted, certain Gardaí left the search scene so that, he claims, shot pellets could be planted in the bank by other and unspecified Garda members. **The Tribunal has analysed this fully in Chapter 3. In my view, this argument is nonsense. Evil-minded Gardaí, if they existed on this investigation, which they did not, could easily have planted the samples when they got back to the Garda station, if that is what they wanted.**
- 4.77. Detective Sergeant White has submitted that it supports his allegation of a conspiracy against him that his computer, together with papers unconnected with the shotgun, were removed from his house and possibly never returned. An argument might be made as to improper conduct on the basis of this argument. That does not, even if it succeeded on the facts and on the law, support a conspiracy theory. At best, an argument might be made that the searchers had decided that they were going to “turn over” Detective Sergeant White’s house and make sure that he was not up to any other irregular or unlawful actions. **The Tribunal notes that in December 2002, a search of Superintendent Lennon’s locker at Letterkenny Garda Station uncovered notes that helped to prove his involvement in the false planting of explosives. There are circumstances where paper can be relevant to a firearms or an explosives search.**
- 4.78. Detective Sergeant White has submitted that it supports his allegation of a conspiracy against him that the investigations into the allegation made by Detective Garda Kilcoyne were improperly carried out so as to avoid proving his innocence. **I think that no matter how thorough an investigation was carried out, you would always find Detective Sergeant White saying that they could have done better. The Tribunal does not find shortcomings in this investigation that are indicative of existence of a conspiracy.**

## Conclusions

1. On the 22nd of May 1998 Detective Sergeant John White, accompanied by Detective Garda Thomas Kilcoyne, deliberately planted a gun at an encampment of the Irish Traveller Community at Burnfoot. As the Tribunal has already found, the express purpose of Detective Sergeant White in engaging in this shocking conduct was to make it more likely that an arrest under section 30 of the Offences Against the State Act, 1939 could, and would, be used against those peacefully camped there. The gun was innocently retrieved by Sergeant Niall Coady. He had no part in this.
2. It is probable, following on the arrest of seven members of the Irish Traveller Community on the 23rd of May 1998, that rumours began to circulate among the Gardaí in County Donegal that there was, to use their own words, “something not right about the search”. This was a coded way of saying that some members of the Gardaí suspected that the gun at the Travellers’ encampment might have been planted by another rival group or even by a Garda. This suspicion was based on an inference drawn from the unlikely position of the gun where children could have accessed it, the vehement denial of those arrested that they had anything to do with the gun and the general reaction of genuine surprise of those in the encampment when the gun was ‘discovered’.
3. On the 21st of March 2000, Detective Sergeant White was arrested by members of the Carty investigation team who, at that stage, were looking at an allegation made by Bernard Conlon that Detective Sergeant John White had inspired him to make a false allegation against Mark McConnell and Michael Peoples that they had called to his home and threatened him with a silver bullet in order to menace him away from appearing as a witness in an apparently straightforward licensing prosecution being brought against the owner and certain staff members at Frankie’s Nightclub in Raphoe, County Donegal. On the occasion of that arrest, Detective Sergeant White insisted on a comment being recorded in the custody record to the effect that he was in some way suspected of the Burnfoot gun planting matter and declaring his innocence. This action by Detective Sergeant White may have had the effect of fuelling speculation and rumour concerning the Burnfoot ‘firearm’ find.
4. On the 13th of June 2001, Detective Garda Thomas Kilcoyne gave a truthful and accurate account of the manner in which Detective Sergeant John White, in his presence, had planted the firearm at the Burnfoot Traveller encampment on the 22nd of May 1988. This led to further

rumour and speculation among other members of the Gardaí. On the 19th of June 2001 Detective Sergeant John White was arrested for an offence connected with the planting of that gun on the Burnfoot Travellers.

5. As a matter of fact, Garda Eamon McConigley and Garda Tony Moran had taken part in the search of the Travellers’ encampment at Burnfoot on the 22nd of May 1998. They were two members out of a party of some two dozen or more Gardaí. Their role in the operation was entirely mundane. They were never near the location where Sergeant Niall Coady discovered the firearm in good faith and they had no inkling that there was anything wrong with the search. It is possible that they engaged in some light-hearted banter with members of the Irish Traveller Community during the course of this search. They did not search the area where the gun was found either immediately before it was found or at any time before it was found. They did not go behind a caravan and laugh at the notion of the gun being found there. They did not plant the gun there. They did not consider the notion of a gun being found at the Burnfoot Traveller encampment either funny or in any way an appropriate subject for joking and nor did they either say, or think, that the reason that the gun was not found was because “the grass was long”. In all respects, both in terms of their conduct as Gardaí and in their evidence to the Tribunal, Garda Eamon McConigley and Garda Tony Moran testified with absolute truthfulness and behaved with complete rectitude.
6. At some stage after the 21st of June 2001, when Detective Sergeant White was then charged with this matter, Garda Martin Leonard, Sergeant Jack Conaty and Garda Pádraig Mulligan met together and decided to form a conspiracy to corruptly invent a story that could be regarded as providing a defence for Detective Sergeant John White. At the core of this conspiracy was their plan to invent an allegation against two completely innocent and unconnected members of An Garda Síochána, namely Garda Eamon McConigley and Garda Tony Moran, which implicated them, and thus tended to acquit Detective Sergeant White, in planting the gun at the Traveller encampment in Burnfoot. Sergeant Jack Conaty, Garda Pádraig Mulligan and Garda Martin Leonard then set about inventing evidence in accordance with a script agreed between the three of them. This was to the effect that Gardaí McConigley and Moran, within minutes before the gun was found at Burnfoot, had searched that area and that there was nothing there; when the gun was found by Sergeant Coady they found the notion that it had suddenly appeared so ridiculous that they burst out laughing. Since none of this had happened as a matter of



fact, and since there were no witnesses who could possibly prove that Gardaí McConigley and Moran had done anything which fitted in with the plan of the conspiracy, Sergeant Conaty, Garda Leonard and Garda Mulligan set about fitting up Gardaí McConigley and Moran with that story.

7. The only way that Gardaí Leonard, Sergeant Conaty and Garda Mulligan could create the illusion that Gardaí McConigley and Moran had searched the area where the gun was found at Burnfoot, minutes before its discovery by Sergeant Coady, was to frame them with what was, in effect, a false confession. Acting on the basis of a rehearsed script, this is exactly what they attempted to do.
8. Sergeant Jack Conaty has invented a story that abused the friendship offered to him by Gardaí McConigley and Moran whilst he was on suspension, and passing his days at his home, in respect of unrelated Garda discipline matters. Sergeant Jack Conaty and his wife have both claimed in evidence that at some time, probably in August 2001, when Gardaí McConigley and Moran came and visited him and his wife to enquire after his welfare, they had told the Conatys that they had searched the area of the Traveller encampment at Burnfoot where the planted gun was subsequently found and that no gun was present at that time. No such conversation ever took place. Sergeant Jack Conaty deliberately lied to the Tribunal in furtherance of the conspiracy between himself, Garda Leonard and Pádraig Mulligan by claiming that such a conversation had taken place. Carmel Conaty, his wife, gave evidence to the Tribunal purporting to back up Sergeant Jack Conaty’s story. The Tribunal rejects her evidence.
9. On the 3rd of October 2001 Garda Martin Leonard was in the Orchard Bar in Letterkenny late at night. There, he claims to have encountered Eamon McConigley and to have had a conversation with him, the text of which confirmed the earlier conversation with the Conatys. This conversation never took place. Garda Martin Leonard lied to the Tribunal in pursuance of the conspiracy entered into between himself, Sergeant Jack Conaty and Pádraig Mulligan. In fact, Garda Eamon McConigley did no more than at most glance at, or possibly greet, Garda Martin Leonard on this evening. They had no conversation at all. Mrs. Majella Leonard has given evidence that late on the night of the 3rd of October or in the early hours of the 4th of October 2001, she was roused from her bed and brought down to the sitting room where, around the fire and over a cup of tea, Garda

Martin Leonard truthfully relayed to her what had occurred earlier on in the Orchard Bar in Letterkenny. The Tribunal rejects Mrs. Leonard’s evidence entirely.

10. On the 15th of October 2001, Garda Pádraig Mulligan called to the home of Sergeant Jack Conaty in pursuance of the conspiracy between himself, Garda Martin Leonard and Sergeant Jack Conaty. Using a ruse, Mrs. Carmel Conaty was caused to make a telephone call to Carrigans Garda Station, which had the result of calling over Garda Eamon McConigley to her home. Unexpectedly, Garda Moran came with him. Gardaí McConigley and Moran had expected to meet with Mrs. Conaty and anticipated offering her some reassurance as to the welfare of her husband, who was then facing serious criminal charges; these charges are unrelated to anything that the Tribunal has had to consider. Instead, in the absence of Mrs. Conaty, they were confronted by Garda Mulligan who turned the conversation to the search at Burnfoot. Garda Mulligan, in pursuance of the conspiracy to pervert the course of justice engaged in between himself, Garda Leonard and Sergeant Conaty, alleged that Gardaí McConigley and Moran had repeated the account of the search at Burnfoot already told to Sergeant and Mrs. Conaty and to Garda Leonard. This did not happen. Garda Mulligan made a half-hearted attempt to open a conversation in relation to Burnfoot by asking Gardaí McConigley and Moran were they “the only two members on the search at Burnfoot”. This ridiculous question was met with a sharp reply that at least twenty or twenty-five Gardaí had taken part in that search.
11. An inference might be made by the Tribunal that the conspiracy to pervert the course of justice entered into by Garda Martin Leonard, by Garda Pádraig Mulligan and by Sergeant Jack Conaty was not only for the benefit of Detective Sergeant White, but that he was part of the conspiracy. There was no evidence to suggest that Detective Sergeant John White inspired this conspiracy. He claims not to have been on good terms with Sergeant Conaty. As a matter of fact, Detective Sergeant John White had planted the firearm on the Irish Traveller Community encamped at Burnfoot. Consequentially, he was happy to receive the benefit of the fraudulent creation of a reasonable doubt in respect of the criminal charge he was facing arising out of Burnfoot.
12. The Tribunal has scoured the evidence in an attempt to discover what motivation Sergeant Conaty, Garda Mulligan and Garda Leonard may have had for their energetic pursuit of this criminal conspiracy on behalf

of Detective Sergeant John White. The Tribunal is of the view that one of the primary motivations in their conduct was to help Detective Sergeant White escape the criminal charge which he was facing in Letterkenny Circuit Criminal Court and which arose out of his planting the firearm at Burnfoot. Garda Martin Leonard regarded his function as a Garda Representative Association official as being that of mischief maker. Sergeant Jack Conaty was himself facing a charge of a serious criminal offence in a Garda station and was suspended from duty at the time of these offences. Garda Pádraig Mulligan was facing serious questions, which he refused to answer, as to his conduct while on duty on the night on which the Late Richard Barron met his death on the 14th of October, 1996. All three men were determined to create as much mischief as possible for the Garda authorities. Instead of serving the force and the people of Ireland, they were determined to make trouble at every hand's turn and to create as much black mischief through lies as would defeat any legitimate enquiry for truth or any attempt to bring order to the chaotic discipline situation which prevailed among certain sections of An Garda Síochána in the Donegal Division.

13. There was no conspiracy to falsely convict Detective Sergeant White on this matter.

## CHAPTER 5 THE DETENTIONS

### Introduction

- 5.01. The search and the discovery of a firearm at Burnfoot on the 23rd of May 1998 led to the arrest of seven members of the Irish Traveller Community. They were the most senior male occupants of the seven caravans that were encamped beside the An Grianán farm buildings situated at Ballyderowen, close to the village of Burnfoot. Upon arrest, four of the seven arrestees were taken to Letterkenny Garda Station, where they were detained until the following night. The other three arrestees were taken to Burnfoot Garda Station. One of the arrestees, Michael McCann, was transferred that first evening to Buncrana Garda station. Mr. McCann and the two detainees who remained in Burnfoot Garda Station were also released late the following evening.
- 5.02. In its inquiry into the circumstances surrounding the arrest and detention of the seven men arrested at Burnfoot, the Tribunal has heard evidence as to the relationship between the seven arrestees and the circumstances that brought them to Burnfoot at the time. A central element of the information, according to Detective Sergeant White, that led to the search of the encampment was the suggestion that the individuals encamped at Burnfoot had left Dublin owing to a fear of intimidation in respect of a forthcoming criminal trial and that they had a firearm. The Tribunal has heard evidence that two of the female members of the Irish Traveller Community who were staying at Burnfoot were potential witnesses at the then impending trial of David ‘Minor Charge’ McDonagh. Mr. McDonagh was subsequently convicted of the murder of Mr. Timmy Joyce, who was a brother of one of the women at the encampment in Burnfoot. The Tribunal has considered whether the primary reason for the members of the Irish Traveller Community being in Burnfoot was a fear of intimidation. Such a proposition might in turn lend credence to the belief that a weapon, and in particular a firearm, would be kept close at hand as a means of defence. This scenario was weighed against the proposition that the impulse that brought the group to Burnfoot was their nomadic culture. The criminal record of the arrestees was also taken into account in assessing whether they were likely to be in possession of a firearm. The nature of the firearm itself, and whether it was likely that such a firearm would be deposited with ammunition in a place where children may have found it without much difficulty was also considered in this regard.
- 5.03. The Tribunal heard evidence of the treatment of the seven persons in custody. Each of the arrestees, to a greater or lesser extent, made allegations of mistreatment in custody that went beyond what could be regarded as

appropriate or legitimate interrogative procedure. It should be noted that some of these allegations were rather vague and unspecific, and were not directed towards any named Garda. The Tribunal accepts the fact that the arrestees would have had no particular reason to know the names of the Gardaí interviewing them. The passage of time would also be a factor in explaining the lack of specific detail in relation to the allegations. Upon reviewing the custody records and memoranda of interview taken at the time, and having heard the testimony of the various arrestees, it was possible to identify a number of individual Gardaí who the Tribunal felt might be in a position to give relevant evidence in respect of the allegations made. The Tribunal wrote to these members of An Garda Síochána, some of whom are now retired, and invited them to make detailed statements in the light of the evidence that was given by the arrestees at the Tribunal. These members were then called to give evidence. This afforded the Tribunal the opportunity to determine whether there was any substance to the allegations of mistreatment in custody.

### **The Irish Traveller Community at Burnfoot**

- 5.04. The most senior member of the Irish Traveller Community in Burnfoot was Mr. Thomas Collins, whose nickname is 'Hairy Tom'. At the time of the arrests in May 1998, Mr. Collins was 51 years of age. He was living with his wife Kathleen, nee Joyce, a sister of Mr. Timmy Joyce, who had been murdered the previous year. Mr. Thomas Collins was arrested and taken to Letterkenny Garda Station subsequent to the search at Burnfoot.
- 5.05. Two of the children of Thomas and Kathleen Collins were staying in Burnfoot at the time. Timothy Collins, aged 30 then, his wife Marie, nee McDonagh, and their children had their own caravan on the site. A daughter of Thomas and Kathleen Collins, Mary, was married to David Power, then aged 33. A brother of David Power, Bernard, who was then aged 30, and his wife, Pauline, nee McDonagh, were living in a caravan at Burnfoot with their three children at the time of the search. Pauline Power was one of the two women in Burnfoot who were scheduled at the time to be witnesses at the trial of David 'Minor Charge' McDonagh for the murder of Timmy Joyce. She was also heavily pregnant at the time of the arrests and had her baby at a camp just outside Ballybofey a couple of weeks later.
- 5.06. John and Michael McCann, then aged respectively 26 and 25, were two brothers who were also arrested at Burnfoot. They were nephews of David and Bernard Power and grandsons of Thomas Collins' first cousin; but the more immediate connection with the rest of the group was that John McCann's wife, Bernadette, nee McDonagh, is a sister of Bernard Power's wife, Pauline.

- 5.07. The seventh man arrested at Burnfoot was John Casey, then aged 32, known as 'Johnny Boy'. His wife, Mary Collins, is a first cousin of John and Michael McCann, but Mr. Casey's closest relationship with the rest of the group appears to have been his friendship with Bernard Power, with whom he had worked clearing rubbish for a number of years. Mary Collins was the second woman in Burnfoot who was due to give evidence at the trial of David 'Minor Charge' McDonagh.
- 5.08. Thomas Collins, Timothy Collins, David Power and John Casey were arrested and brought to Letterkenny Garda Station. Bernard Power, John McCann and Michael McCann were arrested and brought to Burnfoot Garda Station. Michael McCann was later transferred to Buncrana Garda Station.

### **The Road to Burnfoot**

- 5.09. Before considering the motivation of the group in travelling to Burnfoot, it is as well to set out a brief summary of their journey there. Although all of the seven men arrested in Burnfoot have spent significant parts of their lives living in different parts of the country and in England, it would appear that Blanchardstown was the base from which they all went travelling in early 1998. The first families to leave Dublin and travel to Sligo were those of Thomas and Timothy Collins, probably towards the end of January. David Power and his family joined them in Sligo in March. Apart from travelling, all three men worked part-time in the tree-topping/hedge-clipping business. David Power gave evidence that both he and Thomas Collins, his father-in-law, had been to the same area the previous year and had been successful in finding work.<sup>158</sup> In connection with this work they had shears, forks, shovels, chain saws, trimmers and slash hooks. The three families stayed at a convenient place alongside an old mental hospital just outside Sligo town.
- 5.10. While living in Sligo, Mrs. Kathleen Collins arranged for a number of the children to be confirmed by a bishop there at the end of April 1998. One of the children who was confirmed was Cilla Power, a daughter of David and Mary Power and granddaughter of Thomas and Kathleen Collins. Another child who was confirmed at the time was Stephen Power, the son of Bernard and Pauline. To attend the confirmation, the families of Bernard Power, John Casey, John McCann and Michael McCann went to Sligo towards the end of April. Bishop C. Jones, Bishop of Elphin, conducted the confirmation ceremony in St. Joseph's church, Sligo on the 28th of April 1998.<sup>159</sup> A less happy occurrence in Sligo was the arrest and subsequent conviction of Timothy Collins, David Power and another man, who was staying with them at the time, for stealing scrap from the disused mental home.

<sup>158</sup> Transcript, Day 416, pages 112-113.

<sup>159</sup> See interview of Mr. Thomas Collins by Mr. Alan Loomes at Tribunal Documents, page 690.

- 5.11. Within a couple of days of the confirmation, the seven caravans moved north to the beautiful Barnesmore Gap in Donegal, about seventy kilometres northeast of Sligo. The families set up camp on a slip-road, slightly beyond the Gap close to Biddy's Pub. Although none of the members of the Irish Traveller Community were in a position to say exactly when they arrived at this location, Mr. Thomas Collins was in a position to remember decorating a May bush there on the 1st of May. That date is important to the community. He gave the following evidence:

*[I]n years gone by, no matter where we'd go we make a May bush, we used to call them May bush, get auld egg shells and some bits of flowers and we put them on every May you know. We'd always think back where we were. Then on that particular day I remember cutting a little fir bush at the back of the caravan, that's how I remember where I was. I definitely know the 1st May we were on Barnesmore Gap ... You could see Biddy's Pub down from us, Mr. Chairman, you could see Biddy's Pub down from us, yeah ... It was an old cut away [road], Mr. Chairman, right at the back...It's a Travellers' tradition, years ago every Traveller -- you'd be asked where were you last May Day, you know, when you'd meet. I could say, I was in Tullamore or we were down in Donegal or we were in Roscommon. You always knew where you were or the camp that you were in...You'd be making these things, Mr. Chairman ... it was right at the back of the caravan, I had auld tools in the van, I was cutting the bushes and I just got up, me and the wife, we'd a bit of an auld fire at the back of the caravan and I just started cutting bushes to let us know where we were that May Day ... I shaped the bush, yeah ... We used to put egg shells onto the tree. I don't think that morning we had any egg shells to tell you the truth.<sup>160</sup>*

- 5.12. The significance of this evidence is that Mr. Edward FitzMaurice died at some time between the 1st and the 6th of May 1998. Although the encampment of the seven caravans at Barnesmore Gap on the 1st of May, and for a period of about a fortnight thereafter, is not of itself definitive in relation to the murder of Mr. FitzMaurice, over one hundred kilometres away on the Mayo border, the Tribunal is satisfied that these Travellers are entirely innocent of this crime. In fact, they were obviously shocked by it.
- 5.13. The encounter at Barnesmore Gap between the members of the Irish Traveller Community, Detective Sergeant John White and Detective Garda Thomas Kilcoyne has been set out elsewhere in this report. Not long after this encounter,

<sup>160</sup> Transcript, Day 415, pages 54-56.

the group moved again in a north easterly direction towards Bridge End, a distance of some sixty kilometres. It is interesting to note, in the context of the information allegedly received by Detective Sergeant White to the effect that the families were on the point of moving into Northern Ireland to put themselves beyond the reach of the law in this country, that the quickest route to Bridge End from the Barnesmore Gap is through Strabane.<sup>161</sup>

- 5.14. The members of the Irish Traveller Community, having left the area of the Barnesmore Gap, camped next beside an old hotel in Bridge End that had recently burnt down. This sojourn appears to have been relatively brief. Thomas Collins indicated that the owner of the premises objected when the families began to salvage certain materials, such as supplies of shampoo, from the charred remains of the building.<sup>162</sup> The families then moved to the site at Burnfoot, which was only a couple of kilometres away. It should be noted that this move brought them further away from the Irish border.

### **The Burnfoot Encampment**

- 5.15. The encampment at Ballyderowen, Burnfoot was located a distance of a couple of hundred metres from the village. It was at the side of the village closest to Burnfoot Garda Station. The caravans were parked in a grassy area, just off what is described as the “Slab” road. Behind, and to the Burnfoot village side of the caravans, were derelict farm buildings associated with the Grianán an Aileach estate. These buildings consisted of a large slatted shed that would have housed hundreds of bovine animals when fully operational. This building was approximately one hundred and fifty metres long and sixty metres wide, and was set about forty metres back from the road. Adjoining this building, and between it and the road, was a disused milking parlour. An aerial view of the site, with the road at the base, would show the buildings forming a ‘T’ shape, with the milking parlour as the trunk and the slatted sheds as the crossbeam. The encampment was located under the right wing of the ‘T’, while the gun was found close to the junction of the buildings on the left hand side.
- 5.16. The site at Burnfoot was sufficiently large to enable the members of the Irish Traveller Community to park their caravans and vehicles in from the side of the road. They had sufficient space to move around comfortably and they utilised the old milking parlour as a toilet area. Their presence, however, caused a certain amount of tension with some of the local people. In the words of Thomas Collins during the course of an interview while in custody:

<sup>161</sup> A search on the Automobile Association website ([www.theaa.ie](http://www.theaa.ie)) indicates that while the route via the Dry Arch roundabout outside Letterkenny is shorter in terms of distance, the route through Lifford, Strabane and Derry takes less time owing to the better roads.

<sup>162</sup> Tribunal Documents, page 691.



*That place around there – those empty sheds at the factory/buildings – there are ones going in there shagging all the time – they didn't want us there – that's why they were always blowing the horn, all hours of the night, waking up kids.<sup>163</sup>*

- 5.17. In any event, the milking parlour was commandeered to provide improvised latrine facilities for the members of the Irish Traveller Community, and this facility lay on the direct route between where the caravans were parked and where the gun was eventually found.

### **The Motivation for Going to Burnfoot**

- 5.18. The information allegedly received by Detective Sergeant White was to the effect that the reason why the group travelled to the northwest of the country was a fear of intimidation in the lead up to the trial of David 'Minor Charge' McDonagh. It was in this context that they were supposed to have a shotgun for defensive purposes. As the senior member of the Irish Traveller Community amongst the group, it might be thought that Thomas Collins played a central role in setting the agenda for the trip. Thomas Collins gave the following evidence in respect of his attitude to trouble:

*Me, if there's trouble, I'd go a million miles to try and stop it, Mr. Chairman... Well if an argument broke out between the travelling people -- you see I am mixed up in both the Quinns and the Joyces. My sister -- and brother-in-laws on both sides, in each, so who can they turn to, they turn to me and try to do something, Mr. Chairman, to try to sort it out. Because I'm neither here nor there, you know, I'm just in the middle...Well you get a few from each side and you bring them in and meet in a pub and have a chat about it and say, enough is enough and that's as far as it goes. And shake hands at that, Mr. Chairman. That'd be the end of it...Sometimes it would be too difficult, Mr. Chairman, more times it wouldn't be, you know what I mean...There's no problem with me with the travelling people in Dublin. When I left Dublin [in January 1998] it was only me and my son Timmy, Mr. Chairman, left. It was two months later when these other crowd followed us down...There was two witnesses, Mr. Chairman, one of them was my niece and the other was a McDonagh, they were supposed to be two witnesses for Minor Charge McDonagh. Yes, I would try to get them out of the way. There's no saying I wouldn't. But they did follow me down. There was no trouble going on...Well when we went down to Sligo, me and the wife, Mr. Chairman, there was*

<sup>163</sup> Tribunal Documents, page 1293. Detective Sergeant John McCormack and Detective Garda Michael Keaveney conducted this interview on the 23rd of May 1998.

*Holy Communion or Confirmation, I'm not rightly sure, in the chapel beside us. The wife went down, and she does this for children, she put Johnny boy Casey's young lads down and I think it was one of Pauline's that she gave to the priest, but they were in Dublin at the time, so they came down for that.*<sup>164</sup>

- 5.19. The Tribunal accepts Thomas Collins' point that the staggered departure from Dublin is inconsistent with the existence of a coherent plan to flee the city, and that the Confirmation in Sligo was the core event that brought the group together for their subsequent travels. It also accepts his evidence that getting the potential witnesses "out of the way" or away from Dublin played some part in considerations. This was consistent with his role as a peacemaker, rather than an indication that they had armed themselves with a firearm in anticipation of an ambush.
- 5.20. The Tribunal also heard the evidence of John McCann in relation to his family's motivation for moving to Sligo, and, from there, continuing on with the rest of the group to Donegal. In relation to the question as to whether a fear of intimidation in respect of the forthcoming trial was a factor in the decision to travel, he stated:

*If [the two women] were going to be witnesses, it was all the same what part of Ireland we were going to be in. If you mean were we in danger or anything like that, it wasn't that we were in danger, it's just that we didn't want any confrontations with the people...It was to avoid confrontation, not that we were scared, we were afraid of them or they were afraid of us, it's just that if we were to bump into each other, there probably would have been something. But there wouldn't have been. There was nothing. We bumped into each other on numerous occasions in the shopping centre in Blanchardstown and there was never any arguments or anything like that ... They would never have come to where we lived or we would never have gone to where they lived. So a confrontation would have been in a shopping centre or a public place. So, we never have any weapons or carry any weapons in a public place ... The law was looking after it, the law was dealing with the case...the law had the man charged, the man eventually got life in prison. So I mean we were leaving it up to the law...We were told by -- my wife and the other two witnesses was told that the man was going to get life in prison. So that satisfied a lot of us ... Especially the nieces of the deceased ... We weren't afraid at all*

<sup>164</sup> Transcript, Day 415, pages 68-71.

*because the amount of men that they had would be about the same amount of men as we had and the way we settle a lot of our scores is fist fights ... Man to man and it's all like that ... But it didn't even come to that ... So when it didn't even come to a fist fight, it wasn't going to come to an all out war I mean between two families ... I'm not saying we left to avoid confrontation ... I'm just saying we left.*

John McCann then went on to allude to another factor in their decision to travel to the west of Ireland at that time. He stated:

*We left because my wife is from England...Bernard Power was leaving with his wife Pauline; that's my wife's sister. My wife wanted to be with her sister. She was only newly back, like she wasn't that used to Ireland and she wanted to be with her sister and especially her sister's kids...We didn't want any confrontations but we weren't worried about any confrontation because, as I said, we had confrontations and there was nothing ever said or done, there was no arguments, like, but still we just tried to avoid them if we could.<sup>165</sup>*

### **Conclusion on the Travelling Issue**

- 5.21. The Tribunal accepts the evidence of John McCann in this regard. It is entirely understandable that a desire to avoid confrontation coexisted with a general desire to travel around the Irish countryside in the company of one's family. The Tribunal accepts the point that if tensions had not escalated to the point where fist fights occurred, it was most improbable that the group would have apprehended more violent outbreaks of hostility prompting recourse to a firearm for defensive purposes.

### **Criminal Records of the Men Arrested at Burnfoot**

- 5.22. The Tribunal considered the possibility that, independent of a general plan to retain a firearm on the site at Burnfoot, one or more of the members of the Irish Traveller Community may have brought a gun along, unbeknownst to the rest of the group. In fact, it is apparent from the line of questioning adopted in the course of the various detentions, that this possibility entered the equation at an early stage in the minds of the interviewing members.
- 5.23. All of the men arrested have convictions for motor offences, generally in connection with a lack of insurance. Thomas Collins has a conviction for assault

<sup>165</sup> Transcript, Day 416, pages 37-42.

in England dating back thirty years, but has no convictions in respect of firearms offences. In evidence to the Tribunal, he expressed his abhorrence of firearms and his views on the danger of keeping firearms in the vicinity of children.<sup>166</sup> **Mr. Collins is a decent man who has taken on the task of peace-making in his community.** Timothy Collins has a number of convictions in relation to drugs offences in the United Kingdom and a conviction for stealing scrap metal in Sligo, as earlier outlined. He also admitted that in his younger days he had robbed a number of old people in England by barging in through the door when they answered it. He described this particular criminal activity as “humping”.<sup>167</sup> Although this scenario might give rise to the suggestion that he was a likely suspect in respect of the death of Mr. FitzMaurice, which apparently occurred through the exercise of lethal force and restraint during the course of a robbery, there is no evidence to suggest that the robberies committed by Timothy Collins involved the use of violence against the person being robbed. It must also be remembered that not alone did the murder of Mr. FitzMaurice involve robbery with violence, but it also involved a decision on the part of the perpetrators not to make an anonymous phone call that might have saved his life. **The Tribunal is satisfied, from his demeanour at the Tribunal, that Timothy Collins is not the sort of man who one could reasonably suspect of having committed such a heinous crime.** Returning to the issue as to whether Timothy Collins was likely to have had a shotgun in Burnfoot, it should be noted that he has no convictions in respect of firearms offences, and **the Tribunal is satisfied that he is most unlikely to have travelled with a gun in the manner suggested.**

- 5.24. John McCann, Michael McCann and Bernard Power do not have any convictions beyond motoring offences. John Casey has two convictions for assaulting Gardaí, and admits to having been brought in for questioning a number of times in connection with various robberies.<sup>168</sup> The Tribunal also received a report concerning the arrest of Mr. Casey when a number of cartridges were found in his caravan on the 26th of October 2000. However, it would appear that no charges were brought in respect of this matter as “it was established that he had moved into this caravan the previous day and that it lay idle for two weeks, with open access to anybody.”<sup>169</sup> David Power was convicted of assault in the context of a fight with another group of Travellers. It would appear that his weapon of choice was a chain, while his opponent wielded a billhook.<sup>170</sup> Mr. Power also has a conviction for possession of a firearm, in the aftermath of an occasion on which he appears to have drunk too much. The circumstances of this brush with the law were described by him as follows:

<sup>166</sup> Transcript, Day 415, pages 79-83.

<sup>167</sup> Transcript, Day 416, pages 22-23.

<sup>168</sup> Tribunal Documents, pages 783-785.

<sup>169</sup> See report of Garda Gerard Brennan at Tribunal Documents, pages 1607-1608.

<sup>170</sup> Transcript, Day 416, pages 109-110.

*I was sitting at home one evening, I was drinking most of the day, when this memorial cross belonging to Matthew Hand, you have heard his name three or four times in this thing, was put at our campsite gate. There was a bit of commotion outside when I came out from where I was drinking with a couple of lads. Some of them told me that the memorial cross was took from where it was, the name was dug out of it and it was thrown at our campsite gate for us to see. The person who done this was supposed to be the person who shot Matthew Hand at the time. We found out where he was staying, at some settled house person, a settled lad that was living in Corduff. I was upset, very upset and I was drunk and I jumped into the car, me own car, to go down and confront him about this. As I was driving two lads jumped in with me. I didn't know what they had with them, they just jumped in with me. On the way down, when we got there, there was a police car outside the settled man's house. Why he was there, I don't know, I have no reason. I done a U-turn to come away and the guards followed me. On the way back I crashed me car. I was too drunk to run or do anything else, but I was took away, arrested and took away. The two other lads was gone, they got off. The next morning, I was took back to the police station, put into a cell. The next morning they told me that they found a gun in the front seat of my car. I didn't know the gun was there in the front seat of my car. The guard, he wasn't a guard, he was a detective who interviewed me could tell me, he says, we know who owns that gun Davey because this person, the person I didn't tell about, was willing to give that gun to this detective for a car that was took off him previous. I told him, I'll take responsibility of this gun, says I, I'm not going to tell about the other lad, I knew his name but I'm not going to tell about the other lad. I take full responsibility for this gun. I gave him the statement that I owned the gun, that I got a lend of it, I owned it and I took responsibility for this firearm...I found out afterwards that it was a rifle...It came before the courts...I pleaded guilty to the charge [and received a three year suspended sentence].<sup>171</sup>*

- 5.25. This incident occurred over a year after the arrests in Burnfoot. Although the Tribunal does not feel itself in a position to assess whether the misfortunate series of events that, on his own evidence, led to Mr. Power's arrest and conviction are entirely accurate, [the Tribunal believes that this particular conviction in](#)

<sup>171</sup> Transcript, Day 416, pages 110-112.

isolation, and taking all of the other circumstances into account, is insufficient to establish a propensity on the part of Mr. Power to handle firearms, such as would indicate that he brought the firearm to Burnfoot.

- 5.26. The aforementioned incident took place in the aftermath of the second of two major Garda operations to recover firearms and other weapons from the Cruiserath halting site in Mulhuddart, Co. Dublin in May and June 1999. Detective Garda Martin Flood, who has been based in Blanchardstown Garda Station for the past twenty years, gave evidence in relation to these Garda raids, which were given the operational codenames Greenfield 1 and Greenfield 2. In the course of these raids, a number of firearms were recovered. Detective Garda Flood gave evidence that Thomas Collins, Bernard Power, John Casey, and David Power were living at the site at that time.<sup>172</sup> However, according to Detective Garda Flood, there were over thirty caravans on the site at the time, and three of the four firearms were recovered from a concealed location some distance from any of the caravans that were owned by the men arrested at Burnfoot. Detective Garda Flood stated:

*It is a fairly large encampment. It's basically divided in two. You have two entrances from different roads into it and it's fairly well scattered through kind of ... each area would be kind of divided by a large mound of clay which would have, I suppose, grass growing on it ... There could have been in excess of 30 caravans ... there was a good few families and extended families in that. I suppose you could have 40 to 50, maybe more than that with children involved as well...During the course of the search there was a couple of ... a number of guns found on site ... At the very top of the site, Chairman, there is an area which is a disused area, it's unoccupied, three of the guns were got in that in the trenches and they were concealed in sewage pipes, wrapped and pushed into sewage pipes and then buried in the sewage pipes. Then closer to the site itself there was a gun found in a disused caravan ... I seen [the guns] later on that morning ... I wouldn't be able to say on the year of manufacture but they were in good condition, they seemed to be oiled and the necessary wrappings around them to keep them from rusting ... They would be fairly modern guns. I'd say in the last 20 years possibly the year of manufacture or maybe even younger than that ... There was no arrests made, no ... [There was then a follow up search, a little under a month later] ... Basically again the information was that the members of the Travelling Community in that area had rearmed and a second*

<sup>172</sup> Transcript, Day 415, page 7.

*search was organised ... The area was searched again. During the course of that search a single barrelled shotgun was recovered...It was not in great condition at the time. It seemed to have been open to the elements. It hadn't been wrapped...It was got on the high bank that divides the two sites ... I think there was another few items but nothing of any major consequence ... [Some petrol bombs] were found concealed, again behind a bank, and some pickaxe handles and other such items ... Long sticks and I think there might have been a pitchfork, I'm not too sure ... No ammunition was located in that search.*<sup>173</sup>

- 5.27. There was no forensic evidence linking the men arrested at Burnfoot to any of these firearms. **The Tribunal is satisfied, having closely studied the demeanour of the members of the Irish Traveller Community when questioned on this point, that these discoveries were unrelated to them.** The Tribunal also notes that locations where the firearms were recovered would not have been readily accessible to children. The manner in which the three firearms were concealed in the sewage pipe indicates that they were placed there by a person or persons used to handling firearms. The Tribunal is satisfied that the men arrested in Burnfoot do not fall into this category.

### **The Gun Itself**

- 5.28. The Tribunal has considered a number of further factors that militate against the premise that the gun at Burnfoot had been brought and stored there by one or more of the arrestees. Firstly, the gun was found in a location that would have made it difficult to access in the event of a sudden attack owing to its distance from the caravans. According to Detective Garda Kilcoyne, Detective Sergeant White assured him that his information was to the effect that a gun would be found beside one of the caravans. Indeed, this is where the search initially focussed.
- 5.29. Another aspect of the gun's location that casts doubt on the premise that it had been deposited there by a member of the encampment lies in the fact that it was located in a place that was proximate to where the members of the Irish Traveller Community were going to the toilet. As there were a number of children at the campsite, the question has to arise as to whether such a lethal weapon would be left in such a place. The Tribunal notes that when the gun was found, it was loaded and pointing upward. Although the cartridge in the left barrel was in fact a used cartridge, there were also a number of other apparently live cartridges in the bag. **The Tribunal does not accept that such a firearm would be left in such a location where children were likely to find it.**

<sup>173</sup> Transcript, Day 415, pages 6-10.

- 5.30. The Tribunal has also heard evidence as to the type and condition of the gun recovered. This has been described in detail earlier in the report. The question arises as to whether the members of the Irish Traveller Community were likely to have in their possession such an old gun, in such a dangerous condition. **The Tribunal believes that the dangerous condition of the gun made it too hazardous for any rational person to think of firing a live round out of it, and therefore highly unlikely to be employed as a means of protection.**

### **The Arrests**

- 5.31. The search of the encampment at Burnfoot commenced at about 08.00 hours on the morning of the 23rd of May 1998. As described earlier in this report, the search party was divided into a series of search teams, and each search team was allocated a particular caravan to search. The members of the Irish Travelling Community were still in bed when the search parties arrived at their caravans, as many of them had been up drinking until the early hours of the morning. In the words of Thomas Collins:

*In that place we were celebrating nearly every night going on, with drink ... You wouldn't go to bed until maybe two or three o'clock in the morning ... Not myself. But the other young lads, there could be some might sleep on all day.<sup>174</sup>*

- 5.32. It would appear that the searches of the caravans were conducted in a thorough, but professional manner. It is natural that such an operation, whereby strangers search through a person's private possessions, would cause anybody an amount of upset, but the members of the Irish Traveller Community acknowledged at the Tribunal that, as regards the search itself, the Gardaí were merely doing their job. The photographs of the search<sup>175</sup> bear testimony to the fact that it was conducted in a generally benign and relaxed atmosphere. It would appear that as the search widened, many of the members of the Irish Traveller Community gathered at Thomas Collins' caravan, where Mrs. Kathleen Collins made tea. It was at this point that a humorous exchange took place, when Thomas Collins asked the younger men what they had got up to in the town the previous night. He apparently suggested, in Cant, that "you sooblicks are going to be innicked", i.e. that the younger men were going to be arrested, and that he would be left behind to mind the women and children. Ironically enough, it was he himself who, on the evidence of all the other arrestees, was first arrested and taken away.
- 5.33. John McCann gave evidence that his primary concern when the search party woke him up was to ensure that some cannabis resin that he and his wife had in their caravan would not be discovered. With this in mind, when the search party

<sup>174</sup> Transcript, Day 415, page 88.

<sup>175</sup> Tribunal Documents, pages 906-916.



momentarily withdrew to allow them to get dressed, he told his wife, in Cant, to “innick the maille”, i.e. to hide the cannabis.<sup>176</sup> When his wife assured him that she had safely removed the hash, he felt much more relaxed. It would appear that his wife was less than impressed with the manner in which their caravan was being searched. He claims that she asked to see the warrant, but that none was produced to them. Given the less than straightforward manner in which the warrants were obtained, as outlined in Chapter 3 of this report, the fact that John McCann was not one of the men mentioned in Detective Sergeant White’s report of the 18th of May, and the fact that the warrant in respect of John McCann that appears in the Tribunal papers<sup>177</sup> is made out to Detective Sergeant White himself, **the Tribunal accepts the evidence of Mr. McCann that the search warrant was not produced to him or to Mrs McCann at the time of the search of their caravan. This is disturbing.**

- 5.34. Subsequent to the finding of the firearm on the day of the search, it would appear that the firearm was photographed and placed in an evidence bag, which was in turn carried and placed in the boot of a Garda car. **Although a number of members of An Garda Síochána with training as scenes of crime officers were present on the search, it is unclear to the Tribunal who, if anybody, was designated as the scenes of crime officer on that particular morning.** Sergeant Niall Coady found the gun. Detective Sergeant Hugh Smith examined the gun at the scene. Detective Garda Joseph Foley filled out the Form C.56, which detailed the gun’s transfer to Garda Headquarters for fingerprints and ballistic examination, while Detective Garda Michael Jennings was assigned to bring the gun to Garda Headquarters at about 18.00 hours on the 23rd of May, i.e. about eight hours after it was found. **Although the Tribunal is satisfied that these members carried out their duties conscientiously, the lack of clarity as to who was responsible for ensuring that the chain of evidence was not broken means that the gun’s whereabouts from the time it left the encampment to when it was recovered from the Detective Branch office by Detective Garda Jennings to bring it to Dublin are uncertain. Any subsequent testing of the gun was thereby compromised.** This has been dealt with in detail in Chapter 3.
- 5.35. One final issue relative to the search itself was the showing of the gun to the men who were subsequently arrested. The gun had been placed in the boot of a Garda car, and a number of the arrestees gave evidence of being paraded down to see it there. One of the arrestees who claims not to have seen the gun in the boot of the car was Thomas Collins.<sup>178</sup> On his own account, and on the account of the other members of the Irish Traveller Community, he was the first man arrested that morning, and was placed in the back of a police car and driven

<sup>176</sup> Transcript, Day 416, page 57.

<sup>177</sup> Tribunal Documents, page 1028.

<sup>178</sup> Transcript, Day 415, pages 95-96.

away in advance of the other persons who were subsequently arrested. The arresting officer in respect of Thomas Collins was Detective Sergeant John White. He also has no recollection of bringing Thomas Collins down to see the gun in the boot of the car at the encampment, nor of who travelled in the police car with him and Thomas Collins to Letterkenny Garda Station. This lapse of memory is rather unfortunate in the light of Thomas Collins' claim that the gun was shown to him by Detective Sergeant White subsequent to his arrival at Letterkenny Garda Station.

### **General Observations on the Detentions**

- 5.36. Before proceeding to the issue of what occurred during the course of the various detentions, the Tribunal feels compelled to make some preliminary observations. Each of the arrestees made allegations of mistreatment during the course of his detention. Such alleged mistreatment ranged from verbal abuse, to intimidation, to physical assault. The allegations were by no means directed at all of the interviewing members. Indeed, during the course of the hearings, it was indicated a number of times to the Tribunal by an arrestee, through his legal representatives, that he had no allegation of mistreatment to make against a particular Garda who had been called to give evidence in relation to his detention. The Tribunal regarded the allegations that did remain, however, as being very serious and worthy of closer enquiry.
- 5.37. In preparation for the portion of the module dealing with the arrest and detention of the various persons arrested at Burnfoot, the Tribunal invited each of the arrestees to submit a statement outlining the specific allegations he wished to make in relation to his detention. The Tribunal received memoranda of interview prepared by the arrestees' legal representatives. The Tribunal then requested its investigators to interview each of the arrestees with a view to clarifying a number of relevant issues. The Tribunal received the full co-operation of the arrestees in this regard. However, this process was only partially successful in identifying the members of An Garda Síochána against whom allegations of mistreatment were being made. The Tribunal then called the various arrestees to give evidence. A number of further Garda witnesses were either identified as having allegedly mistreated the arrestees, or were eliminated from enquiries as a result of this. Each of the arrestees indicated that he was not in a position to name names, but various descriptions were advanced in respect of alleged abusers. In an attempt to fully vindicate the rights of all parties, the Tribunal called all of the interviewing guards, not already eliminated, against whom an allegation may have been made. As earlier indicated, this afforded the arrestees the opportunity to eliminate further persons from any allegation of wrongdoing.

It also facilitated the identification of various individuals against whom the arrestee wished to direct his allegation.

- 5.38. In assessing the various allegations of mistreatment in Garda custody, the Tribunal paid particular attention to the gestation of each such complaint. Quite apart from the procedure that led to the identification and linking of various members of An Garda Síochána to a particular complaint, as outlined above, the Tribunal focussed on the nature of the complaint, its mutation where such was found to exist, and all other external factors that may have contributed to discrepancies between the time when the complaint was first made and its final manifestation at the Tribunal.
- 5.39. On the evidence before the Tribunal, only one of the arrestees, namely Timothy Collins, made an allegation of mistreatment at the time of the detentions themselves. Mr. Collins made the complaint to his solicitor, Kieran Dillon, and it was duly noted in the custody record.<sup>179</sup> The nature of this complaint is dealt with in greater detail later in this chapter. All of the other arrestees, with the exception of David Power, availed of his right to consult a solicitor during the course of his detention. As each of the arrestees, in consultation with his legal representatives, waived his right to legal privilege in relation to these consultations, the Tribunal had the benefit of the evidence of the various solicitors who were consulted by the arrestees at the time of the detentions. No other formal complaints were made at that time. The Tribunal has, however, considered the evidence of the various arrestees to the effect that their primary concern at the time of the arrests was securing their own release, and that making a complaint of mistreatment would have been perceived by them not to be likely to advance this cause. The fact that a series of complaints were not made at the time of the arrests does not, in the view of the Tribunal, completely rule out the possibility that the arrestees were subject to abuse at that time. The Tribunal also considers the fact that the members of the Irish Traveller Community remained at the encampment in Burnfoot for a further week after the release of the seven men from custody is more indicative of a clear conscience with regard to the crimes for which they were arrested than a lack of distress as to what may or may not have happened to them in custody.
- 5.40. The next development in relation to complaints of mistreatment in Garda custody occurred in the aftermath of Detective Garda Kilcoyne's statement of the 13th of June 2001 and the subsequent arrest and charging of Detective Sergeant John White the following week. Detective Sergeant Fergus Treanor, who was a member of the Carty investigation team at the time gave the following evidence:

*I was involved in the investigation in Donegal between '99 and 2002. Whenever John White was charged with the crime of*

<sup>179</sup> Tribunal Documents, page 1258.

*possession of the firearm, I was doing the -- making out the tasks that were needed from the statement of Tom Kilcoyne. Whenever the issue came up about dealing with members of the Travelling Community, I spoke to Detective Superintendent Foley and Detective Inspector Coll and indicated that I knew these people and had dealt with them when they were here and I specifically looked for those jobs, that I would go and visit them and inform them of what had happened and the fact that a member of the guards had been charged with the possession of the firearm for which they had been arrested...I travelled to Blanchardstown and I spoke with local Gardaí there. There had been a few incidents up at the site prior to that and they were indicating that I shouldn't travel on my own. As far as I was concerned I was quite happy to go up and deal with them, and I knew that, in particular, Thomas Collins would know me. I went up to the site and spoke with him and indicated to him what had happened: that John White had been charged with the possession of a firearm. To say he was surprised was obviously, I mean he just couldn't believe it. That a guard was arriving to his door to tell him, listen, another guard has been charged with the possession of this firearm. I told him that he should get some advice, legal advice, but that I required every member that had been arrested -- every member of the Travelling Community to make a statement, a witness statement, as to what had happened and their arrest in Burnfoot. I waited on-site until a solicitor arrived. Thomas Collins rang a solicitor. He arrived sometime around 2 p.m. on that day that I travelled there... I know that I did speak to him for about half an hour on the day. I can say to you that I spoke to him about what was needed, about what had happened, and the fact that John White was charged and that I needed a statement off them but I felt that they needed some legal advice before I took that statement. I can't recall his name, but I provided my phone number. I know that he was advised that there was statements available to him if he needed them and that kind of thing. I just don't recall his name...I came back after about a week and started the process of taking the statements, it took a couple of days and indeed I had to travel to England to meet Timmy Collins.<sup>180</sup>*

<sup>180</sup> Transcript, Day 421, page 42-44.

- 5.41. Detective Sergeant Treanor interviewed and, in most cases, took statements from Thomas Collins,<sup>181</sup> John McCann,<sup>182</sup> John Casey,<sup>183</sup> Bernard Power<sup>184</sup> and David Power<sup>185</sup> at the Ladyswell Halting Site in Mulhuddart on the 27th of June 2001, and took a statement from Timothy Collins<sup>186</sup> in England on the 5th of July of that year. These statements dealt with the circumstances of the arrests and the questions that were put to the men when they were arrested. The Tribunal admires the professionalism of Sergeant Treanor's work and the energetic way he goes about his work.
- 5.42. On the 21st of May 2002 the seven men arrested at Burnfoot instituted civil proceedings against the State. In addition to a claim for unlawful arrest, each of the statements of claim alleged assault and battery while in custody. The various statements of claim are very general and unspecific in detail.<sup>187</sup> Each of the arresting officers were joined to the action, but no other members of An Garda Síochána are either identified or described, and the nature of any alleged assault or battery is not detailed. An application for legal representation at the Tribunal, on behalf of the seven persons arrested at Burnfoot, was made on the 15th of July 2002. No mention was made in the application of any allegations of mistreatment in Garda custody.<sup>188</sup> The application focussed instead on the lawfulness of the search and subsequent arrest and detention of the seven persons, and the impact that any findings of the Tribunal might have on the good name of the Travellers. This application was granted the following week.<sup>189</sup> Between that time and the production of the memoranda of interview by the legal representatives of the arrestees in November 2005, the Tribunal received no information from any of the arrestees elaborating upon the various statements of claim.
- 5.43. There appears to be no compelling reason why the detailed allegations of mistreatment in custody that eventually emerged at the Tribunal could not have been provided at a much earlier date. The Tribunal took into account the difficulty such a delay may have created for those answering the allegations. However, the Tribunal was generally mindful of the candid and spontaneous manner in which some of the arrestees gave their evidence. Certain embellishments that could have been made were resisted, and there was a general acknowledgement on

<sup>181</sup> Tribunal Documents, pages 313-314.

<sup>182</sup> Tribunal Documents, pages 295-296

<sup>183</sup> Tribunal Documents, pages 328-329.

<sup>184</sup> Tribunal Documents, pages 277-278.

<sup>185</sup> Tribunal Documents, pages 280-281.

<sup>186</sup> Tribunal Documents, pages 316-317.

<sup>187</sup> Tribunal Documents, pages 637-639 (Timothy Collins); Tribunal Documents, pages 677-680 (Thomas Collins); Tribunal Documents, pages 701-703 (John McCann); Tribunal Documents, pages 735-737 (Michael McCann); Tribunal Documents, pages 768-770 (John Casey); Tribunal Documents, pages 823-826 (Bernard Power); Tribunal Documents, pages 848-850 (David Power).

<sup>188</sup> Transcript, Applications for Representation, 15 July 2002, pages 47-49.

<sup>189</sup> See paragraph 1 of 'Judgement for Representation 22nd July 2002' at 'Download Area' of the Tribunal's website: [www.morristribunal.ie](http://www.morristribunal.ie).

the part of the arrestees that many members of An Garda Síochána with whom they interacted during their time in custody had acted in a courteous and professional manner.

- 5.44. While the Tribunal has undoubtedly been hampered in its quest for the truth by the failure of the seven arrestees to outline their specific allegations of mistreatment in a timely manner, it is also the case that the failure of the vast majority of Garda witnesses to retain notes of his/her duties on the 23rd/24th of May 1998 has also been most unhelpful. The Tribunal notes that a number of memoranda of interview have also gone missing without trace. As the investigating officer, a responsibility in this regard rested with Detective Sergeant White, who should have ensured that such memoranda were gathered together and retained. However, the primary responsibility for the loss of the interview notes thereafter must rest with the personnel responsible for the interview room set up to investigate the murder of Mr. FitzMaurice. The Tribunal also notes that amongst the memoranda of interview that are available, many of them are brief relative to the relevant period of questioning as adduced from the custody record. Presuming that long periods of silence were not a dominant feature of these interviews, the Tribunal can only conclude that certain exchanges occurred that were not recorded in the memoranda. Whereas there may in fact be nothing sinister about these omissions, the very fact that they occurred undermines the transparency of the entire process, leaving the door open to allegations of abuse, be they justified or unwarranted.
- 5.45. The Tribunal has also been hampered in its quest for the truth by a reluctance on the part of many members of An Garda Síochána to deviate from the party line, even when this line is irrational. An example of this occurred in relation to the hypothetical question as to what the back-up plan was if a firearm had not been found during the search of the encampment in Burnfoot, particularly as four members of the FitzMaurice investigation team were en route from Mayo and five members of the National Bureau of Criminal Investigation en route from Dublin. The answer provided by member after member was that there would then have been no arrests, and that the investigating members would have either interviewed the members of the Irish Traveller Community at the campsite, or invited them down to the local station to make voluntary statements. The logic behind bringing nine experienced detectives, who were then engaged in the early stages of a murder investigation, halfway across the country with a view to conducting a fireside chat with a group of people whose homes one has just turned over in the course of a fruitless

search was not adequately explained to the Tribunal. The Tribunal is satisfied that the real back-up plan in the event that no firearm was found was to arrest the members of the Irish Traveller Community for murder based on the information provided by Detective Sergeant White. If the information was *bona fide*, and the Tribunal has no reason to believe that the other investigating members believed it to be otherwise, this was the most logical step to take. However, the proclivity to tow the party line, even on a relatively non-contentious point like this, has the effect of not only muddying the waters, but also devaluing the member's testimony in relation to more contentious issues.

- 5.46. A general allegation that was made by all of the arrestees related to derogatory remarks allegedly passed by certain interviewing members concerning the travelling culture. The Tribunal is satisfied that such verbal insults did unfortunately occur during the detentions at issue. Although the Tribunal believes that such utterances were more reflective of societal prejudice than specific police interviewing techniques at the time, they are nonetheless entirely unacceptable, and can only serve to foster the sort of climate in which physical abuse can take place. The Tribunal is satisfied on the evidence of a number of experienced detectives who commented on the matter, that establishing a relationship of trust with an interviewee is a crucial prerequisite to obtaining relevant and useful information. Whereas there may be an Irish cultural disposition to trade insults in general discourse without either party taking offence, perceiving the exchange to be mere banter, the specific circumstance of interviewee and arrestee, in terms of exercise of executive power on the one hand and curtailment of the right to personal liberty on the other, precludes any such approach in that context. The arrestees were unable to identify any particular Garda in relation to the verbal abuse. The Tribunal is satisfied that both the passage of time and the fact that such abuse was by no means a unique occurrence explain this deficiency of detail.

### **The Detention of Thomas Collins**

- 5.47. Thomas Collins was arrested by Detective Sergeant John White on the morning of the 23rd of May 1998. The time of his arrest has been the subject of some controversy. His custody record indicates a time of arrest of 10.35 hours,<sup>190</sup> with a time of arrival at the station of 10.50 hours. However, on his own evidence and on that of many of the other persons arrested on that morning,<sup>191</sup> he was in fact the first person arrested at the scene, and was driven away immediately upon his arrest. Of the other three men arrested and brought to Letterkenny Garda

<sup>190</sup> Tribunal Documents, page 1283.

<sup>191</sup> See testimony of John McCann at Transcript, Day 416, pages 58-62 and testimony of David Power at Transcript, Day 416, pages 117-121.

Station, Timothy Collins is recorded as having been arrested at 10.07 hours,<sup>192</sup> David Power is recorded as having been arrested at 10.15 hours,<sup>193</sup> and John Casey is recorded as having been arrested at 10.15 hours.<sup>194</sup> The Tribunal is therefore satisfied that Thomas Collins was in fact arrested shortly after 10.00 hours on the morning in question. Thomas Collins is recorded as having arrived at Letterkenny Garda Station at 10.50 hours. The Tribunal is satisfied that he actually arrived at the station about twenty minutes to half an hour earlier. The significance of this missing time is elaborated upon further in the next paragraph. Thomas Collins was released from custody on the 24th of May 1998 at 23.50 hours. He was interviewed during this period by a number of Gardaí. The sequence of interviews during his period of detention is set out in the following table:

Date	Time	Interviewers	Reference
23/5/1998	14.15-17.05	D/Sgt. John McCormack/ D/Gda. Michael Keaveney	Tribunal Documents, 1291-1293
	18.55-20.40	Sgt. Padraic Scanlon/ D/Gda. Frank Feely	Tribunal Documents, 1294-1297
	21.10-22.30	Scanlon/Feely	Tribunal Documents, 1297-1300
	22.30-23.58	McCormack/Keaveney	Tribunal Documents, 1301-1303
24/5/1998	8.25-10.15	D/Sgt. Hugh Smith/ D/Gda. Michael O'Grady	
	10.15-11.55	McCormack/Keaveney	Tribunal Documents, 1304-1305
	13.05-15.00	Smith/O'Grady	
	15.00-15.40	McCormack/Keaveney	Tribunal Documents, 1306-1307
	17.13-20.00	Smith/O'Grady	Tribunal Documents, 1628-1629

<sup>192</sup> Tribunal Documents, page 1256.

<sup>193</sup> Tribunal Documents, page 1371 and page 1332 respectively.

<sup>194</sup> The detention tables are colour coded as follows: interviewers in red are from the Mayo Division; black, from the Donegal Division; and blue, from the National Bureau of Criminal Investigation (NBCI) in Dublin.



## Thomas Collins and the Gun

- 5.48. Shortly after his arrival at Letterkenny Garda Station, Thomas Collins alleges that he was put in a room and shown the sawn-off shotgun by Detective Sergeant White. Another detective was present whom he could not describe. Thomas Collins described this incident as follows:

*The first thing that happened I was brang into a room and was sitting down and Mr. White and another guard walked in with a bag and they showed me this gun wrapped up in an old cardigan and he turned around and said to me did you ever see this cardigan before. I said no I did not. He said did it look like something that Travellers would wear. I said yes it would because it was all colours, Mr. Chairman ... As far as I know that's all he asked me. I don't think I seen John White any more after that, that was the end of it...It's so long ago I don't know what bag. I can remember a plastic bag. I'm not sure what was in the plastic bag, I couldn't see what was in the plastic bag. I think it was a blue bag. But I'm not rightly sure...It was a zipper bag...Well on the first beginning, on the campsite the morning that raid came up I -- I remember seeing the bag, now when I come to think back at it. At that time I didn't pass much heed of it, Mr. Chairman. But when I was getting took away down ... John White was coming away from the caravans, I seen one of the guards with that bag in his hand on the road but I didn't know what was in that bag, Mr. Chairman, I did not...The bag I saw was kind of a carrying bag, I think it had two handles...I said before I'm not very good at this. It could be plastic, I haven't got a clue, Mr. Chairman, what it was...It wasn't very much of a conversation. It was just, more or less, he turned around and says this gun was got in your caravan, Mr. Collins. I said if it was, if this gun was got in my caravan you put it [there] ... I can remember back what John White said to me this day, this gun was got in your caravan, I said if it did, sir, you planted it.<sup>195</sup>*

- 5.49. Detective Sergeant White denied that any such incident occurred. He admitted that his recollection of the morning in question was very hazy. He pointed to the uncertainty in Thomas Collins' account of the bag from which the gun was produced, and the fact that the cardigan that was found with the gun was produced to Mr. Collins during the course of a later interview, at which time he made no comment to the effect that he had seen it before.<sup>196</sup> However, there is

<sup>195</sup> Transcript, Day 415, pages 97-100.

<sup>196</sup> See notes from interview with Detective Sergeant Hugh Smith and Detective Garda Michael O'Grady at Tribunal Documents, pages 1628-1629.

also a reference to Mr. Collins having seen the gun at the campsite in a statement taken by Detective Sergeant Fergus Treanor in July 2001.<sup>197</sup> A close examination of the later interviews of Mr. Collins is inconclusive in determining whether references to him having seen the gun earlier refer to seeing the gun at the campsite or in the interview room with Detective Sergeant White. This is also true of an attendance taken by the solicitor who visited him in custody, Kieran Dillon, who made the following note at the time:

I asked Mr. Collins did they show him the gun. Mr. Collins said they did not bring it out and all that was seen was a wooden handle in a bag, a brown paper bag.<sup>198</sup>

- 5.50. **The Tribunal is satisfied, however, that a period of twenty minutes to half an hour is unaccounted for from the time when Thomas Collins arrived at Letterkenny Garda Station to when he was checked in by the member in charge.** The arresting officer, Detective Sergeant White, provided no explanation for this lapse of time. Although enquiries to determine in what vehicle the gun was brought to the station on that morning have proved inconclusive, it is apparent that the chain of evidence in respect of the gun was not maintained: the opportunity existed for Detective Sergeant White to commandeer the gun for a period of time. The Tribunal heard evidence that Superintendent Lennon was seen carrying the gun around the station in a brown evidence bag around midday.<sup>199</sup> The Tribunal accepts that Mr. Collins is now unsure about the type of bag from which the gun was produced to him, but that Mr. Dillon's note provides a reliable contemporaneous record indicating that it was produced to him from a brown evidence bag. **On the balance of the evidence and, in particular, in the absence of any explanation for the lapse of time between Thomas Collins' actual and recorded arrival at the station, the Tribunal accepts Mr. Collins' evidence that Detective Sergeant White produced the gun to him when he first arrived at the station that day. The Tribunal considers that it is of significance that it was possible for Detective Sergeant White to have possession of the firearm and have been free to bring it to Mr. Collins and show it to him during this time. It indicates that an opportunity existed for the cleaning of the left barrel of the firearm at or around this time when clearly the chain in the preservation and custody of the firearm was broken.**

### **The Showing of Photographs**

- 5.51. Thomas Collins gave evidence that during the course of his detention, he was shown a number of post mortem photographs of Mr. FitzMaurice. The Tribunal

<sup>197</sup> Tribunal Documents, pages 313-314.

<sup>198</sup> Tribunal Documents, page 1658.

<sup>199</sup> Transcript, Day 423, pages 8-10. (Evidence of Detective Garda John Clancy.)

is satisfied that, if such a display occurred, it amounted to an unacceptable deviation from appropriate interview techniques, irrespective of what might be regarded as the detainee's capacity to deal with the situation. Thomas Collins described the production of the photographs as follows:

*In the interview, Mr. Chairman, when I got to the police station, not the first one, I think it was the second one, they started showing me photographs of an old man and saying we murdered him ...They started blaming us for murdering the old man, they started showing me photographs of him. They say, you murdering this, you murdering that, you were going around the country killing people...I was pushed about a bit and dragged and a bit shoved and they tried to say that I murdered this old man... I was shown an old man lying on the side of a settee, Mr. Chairman, with an auld nighty on him...A pyjamas, yeah, and it was dragged down by the side of his hip and there was all blood on the side of his hip and around his hip...His hands were tied behind his back...To me he looked about 60, 60 years of age...[His hair] was grey...he wasn't naked from the hips down, it was pulled down on the hip, you know what I mean, it was still on him...Just his hip [was shown] and there was blood on him...There was [blood on the hip]...I don't think [there was blood on the face]...They told me who he was...<sup>200</sup>*

- 5.52. The Tribunal heard evidence from Joseph McCartney, who was an official Garda photographer at the time of Mr. FitzMaurice's death. Mr. McCartney gave evidence of travelling to the scene where Mr. FitzMaurice's body was found and of taking photographs and a video of the scene. He then travelled to Castlebar hospital to photograph Mr. FitzMaurice's post mortem. He developed the photographs in the following days, probably on the 12th of May 1998, sending one copy of the post mortem photographs to Dr. Marie Cassidy, the State Pathologist, and a copy of both the crime scene and post mortem photographs to the investigation team, then based in Charlestown. He says that he made no additional copies of these photographs.<sup>201</sup> Detective Garda Eddie Naughton gave evidence that he was assigned to assist in setting up the incident room at the commencement of the FitzMaurice investigation. He took custody of the albums of photographs that were developed by Mr. McCartney and kept them in a filing cabinet that he said he locked at night in Charlestown Garda Station. While they were produced from time to time during investigation conferences, he did not recall them ever leaving the incident room.<sup>202</sup> He admitted, however, that the

<sup>200</sup> Transcript, Day 415, pages 108-113.

<sup>201</sup> Transcript, Day 426, pages 176-179.

<sup>202</sup> Transcript, Day 426, pages 160-175.

filing cabinet was left open during the day, and that it would have been possible for somebody to remove the photographs without his knowledge. They were not signed out or in like exhibits. They were not exhibits and not treated with the care required for original evidence. He never saw any loose photographs around the incident room. Detective Superintendent John O'Mahony gave evidence that any documentation that was brought to Donegal from the FitzMaurice investigation would have been brought by him. He believes that this would have consisted of a preliminary report outlining when the body of Mr. FitzMaurice was found, the nature of the finding on post mortem examination, the preliminary enquiries that had been carried out, and the report sent to the incident room by Detective Sergeant White. Specifically, he recounts that there were no photographs to his knowledge in Donegal at any time during the FitzMaurice investigation.<sup>203</sup> He did not rule out, however, that they could have been brought without his knowledge.

- 5.53. In light of the above evidence, the Tribunal is satisfied that there was no authorised plan to produce the photographs to the detainees in Donegal during their interviews in detention. It cannot, however, rule out the possibility that copies of some of the photographs were made, transferred to Donegal and displayed by one of the interviewing teams without the knowledge of the senior management, or indeed of the other interviewing teams. It is worth noting, at this point, that of the four persons detained in Letterkenny Garda Station who complained of having the photographs shown to him at some time during his detention, none can identify the member who allegedly showed them to him. The testimony received by the Tribunal from the detainees rings true in some instances. The Tribunal is satisfied that photographs of the deceased were shown to Thomas Collins and to Timothy Collins and possibly to two other detainees as well. This was done to frighten the detainees with a view to getting them to make an admission. This is deplorable. There is nothing wrong in the Gardaí using maps, photographs and sketches of a crime scene in order to seek clarification of a statement or, possibly, to seek to put appropriate questions to a suspect in particular circumstances. Using such material for horror purposes is not right. On the state of the evidence, the allegations as to who may have been responsible for this is so unclear as to make it impossible for the Tribunal to ascribe responsibility to any named Gardaí. To do so would be unfair. The Tribunal is also satisfied that there is no evidence that this state of affairs was authorised by management.
- 5.54. The Tribunal is satisfied that the description given by Thomas Collins closely corresponds to one of the post mortem photographs that appears in the book of

<sup>203</sup> Transcript, Day 426, pages 187-188.

photographs that were produced to the Tribunal by the FitzMaurice investigation team. Whereas some of the details might have been accurately guessed at, others, such as the account of bruising on the hip area, would not have been at all predictable. The Tribunal received a number of newspaper cuttings in relation to the death of Mr. FitzMaurice, and viewed an RTÉ Crimeline programme that was produced shortly after Mr. FitzMaurice's death, and an RTÉ Crime Call programme that was produced in May 2005, featuring a reconstruction of the murder. This latter programme showed an actor dressed in pyjamas, lying with his hands and feet bound, in a position similar to that that appears in the photographs. The bruising on the hip is not, however, visible. The deceased was left, as shown in the photographs, almost naked whereas in the broadcast he is well clothed in pyjamas. **Mr Collins' description, tallying as it does with the photographs from the scene that would otherwise have been unknown to him, strongly supports the truthfulness of this particular allegation.**

- 5.55. There is no record of photographs having been shown to Mr. Collins in the notes of attendance taken by Kieran Dillon when he visited Mr. Collins during his time in custody. In his Statement of Claim,<sup>204</sup> Thomas Collins also makes no mention of having been shown photographs. The first mention of photographs in the context of Thomas Collins' detention appears in an interview with his own solicitors dated the 20th of September 2005. It is interesting to note that Mr. Collins linked the production of the photographs with the production of the gun that has been outlined earlier. He stated:

Out of the blue when they were showing me the gun the other Guard pulled out a bundle of photos and pushed one of them in my face and said, "this was the man you murdered. If you made a phone call he would still be alive". They showed me more photographs. It was terrible to see the old man dead. After they said I murdered the man in Mayo – me and my son – the gun was never mentioned anymore and it was all about murder and Post Office robberies...Up to this day I am disgusted that I ever saw the photos of the old man dead. He was on the floor beside the settee with his hands tied behind his back and his legs tied and I think there was something wrapped around his face. I didn't want to look at them. I was forced to. I should never have been shown them and I was shocked that I was and I am still am today because I can still remember it. White and the other Guard didn't stay for long. Nearly all the time it was four Gardaí.<sup>205</sup>

- 5.56. The differing accounts of when the photographs were allegedly produced to Thomas Collins, combined with his inability to identify the members in question created additional difficulties for the Tribunal in determining the veracity of the

<sup>204</sup> Tribunal Documents, pages 677-680.

<sup>205</sup> Tribunal Documents, pages 692-693.

allegation. It is clear from his evidence to the Tribunal that Thomas Collins is not now alleging that Detective Sergeant White, or the unidentified member who accompanied Detective Sergeant White into the unrecorded interview when the gun was produced to Mr. Collins, also produced the photographs. According to his custody record, three separate interview teams interrogated Thomas Collins over the course of his detention. One of these teams consisted of Detective Sergeant John McCormack and Detective Garda Michael Keaveney, who were members of the FitzMaurice investigation team from the Mayo Division. When Detective Garda Keaveney came to give evidence,<sup>206</sup> counsel for Thomas Collins made no allegations of any description against him. Somewhat surprisingly, while cross-examining Detective Sergeant McCormack,<sup>207</sup> counsel for Thomas Collins made an oblique reference to the possibility that Detective Sergeant McCormack might have shown photographs to Thomas Collins without in any way indicating that Thomas Collins had either identified Detective Sergeant McCormack or wished to put the allegation to him directly. The Tribunal is satisfied on the evidence before it that neither officer produced the post mortem photographs in the manner outlined by Thomas Collins. A second team of interviewers who interviewed Thomas Collins consisted of Detective Sergeant Hugh Smith and Detective Garda Michael O'Grady. Both members had previously given evidence in relation to this module, and counsel for Thomas Collins made no application to have them recalled so that the allegation in relation to the production of photographs could be put to them. The Tribunal is satisfied from its previous dealings with Detective Sergeant Smith and Detective Garda O'Grady that neither of them would have produced post mortem photographs to Thomas Collins in the manner outlined.

- 5.57. The third team that conducted interviews with Thomas Collins consisted of Sergeant Padraic Scanlon and Detective Garda Frank Feely. Detective Sergeant Scanlon indicated that his questioning of Thomas Collins related solely to the issue of the firearm that was found at the encampment. They did not question him about the robbery and assault of Mr. FitzMaurice.<sup>208</sup> Detective Sergeant Scanlan claimed that after coming on duty at 18.00 hours on the Saturday evening, he received no briefing in relation to the death of Mr. FitzMaurice and did not show any photographs of Mr. FitzMaurice to the detainee. He recalled Thomas Collins asking for a solicitor at the commencement of their second interview with him at 21.11 hours that evening, but recalled it as being a run of the mill request with no particular precipitating factor. Counsel for Thomas Collins put no specific allegation of wrongdoing to Detective Sergeant Scanlon.<sup>209</sup>

<sup>206</sup> Transcript, Day 425, pages 41-58.

<sup>207</sup> Transcript, Day 426, pages 144-156.

<sup>208</sup> Transcript, Day 426, page 29.

<sup>209</sup> Transcript, Day 426, pages 28-59.

Detective Garda Feely also denied showing any photographs to Thomas Collins.<sup>210</sup> On the evidence before it, the Tribunal is satisfied that neither Sergeant Padraic Scanlon nor Detective Garda Frank Feely showed photographs of Mr. FitzMaurice to Thomas Collins during his detention.

- 5.58. **On the balance of the evidence, the Tribunal is satisfied that Thomas Collins was shown the post mortem photographs of Mr. FitzMaurice while in custody in Letterkenny Garda Station but by whom the Tribunal cannot state.**

### **Meal Intimidation**

- 5.59. Thomas Collins gave evidence that during the course of one particular meal during his detention, he was subjected to constant questioning about Mr. FitzMaurice. Although he is unsure about the day on which this occurred, he remembers it as having been around midday, so he is most likely to be referring to the meal served to him at 14.05 hours on the Sunday afternoon. He recounted:

*I was sitting down and I was getting asked questions, I haven't a clue what they were but the dinner came in and it was left on top of the table. It was getting dragged from one to the other, dragged there, pushed there and dragged there. How long this went on for, Mr. Chairman, I haven't got a clue but I just got fed up and I just left it there...Well anyone can see I've no teeth, put it that way, and I had no teeth that time. I was trying to take my time with this dinner, they were asking me questions while I was eating it, I was trying to eat it, they were dragging it away from me...They were asking me questions about the old man in Mayo...The whole point, they were blaming me for murdering him as far as I know...I told them I never killed anybody in my life or never would.<sup>211</sup>*

- 5.60. The custody record indicates that this meal was delivered while Detective Sergeant Smith and Detective Garda O'Grady were interviewing Thomas Collins. Detective Garda O'Grady left the interview room for fifteen minutes just after the meal had been served to Mr. Collins. As previously noted, counsel for Mr. Collins made no application to have either witness recalled so that this matter could be put to them. The Tribunal is satisfied that neither officer would nefariously deprive a detainee of his lawful entitlement to unmolested nourishment, but that at a certain point any interviewer's patience might wear thin when confronted with an unduly languorous display of victual consumption. The Tribunal has also

<sup>210</sup> Transcript, Day 426, pages 75-78.

<sup>211</sup> Transcript, Day 415, pages 110-111.

considered the attendance taken by Kieran Dillon, solicitor, when he visited Thomas Collins at 15.45 hours on the Sunday afternoon. According to the note, Thomas Collins told Mr. Dillon that he got no breakfast, but that “he got a dinner about half an hour ago”.<sup>212</sup> There is no mention of any problem with the meal. **The Tribunal is satisfied on the evidence before it that Thomas Collins has greatly exaggerated any incident that might have occurred with his meal for dramatic effect.**

### **Miscellaneous Difficulties**

- 5.61. Thomas Collins also gave evidence that during the course of his detention he was “pushed about a bit and dragged and a bit shoved”<sup>213</sup> and that on another occasion he was “punched...in the chest by...one of the tallest men of them that was there”.<sup>214</sup> He claimed that he told his solicitor about this, and asked him to make a complaint.<sup>215</sup> Although Mr. Kieran Dillon, solicitor, produced a comprehensive note of both attendances he had with Thomas Collins while the latter was in custody, there is no mention of this complaint, or of the dragging and pulling in either.<sup>216</sup> The Tribunal is satisfied that these details have also been added for dramatic effect.
- 5.62. One final matter in relation to the detention of Thomas Collins concerns an admission by Detective Sergeant John McCormack that certain questions posed by him and Detective Garda Michael Keaveney, in their final interview on the Saturday evening, were not recorded in the interview notes. These questions concerned the death of Mr. FitzMaurice. He admitted that these questions were introduced at that time to allow Thomas Collins to reflect on the matter overnight. He had no answer as to why same did not appear in the custody notes.<sup>217</sup> The Tribunal is satisfied that while the omission of these questions was a clear breach of the Judges’ Rules, in giving an inaccurate record of what was asked at the interview, there was nothing improper about the questions concerned that would render their omission unduly sinister. The Tribunal has already noted that many of the interview notes were sparse and, in that context, the admission by Detective Sergeant McCormack is not apt for particular censure. It is rather a further indicator that the accuracy of interview notes will always be the subject of some controversy until accurate recording methods are implemented.

<sup>212</sup> Tribunal Documents, page 1663.

<sup>213</sup> Transcript, Day 415, page 109.

<sup>214</sup> Transcript, Day 415, page 117.

<sup>215</sup> Transcript, Day 415, page 118.

<sup>216</sup> Tribunal Documents, pages 1658-1659, 1663.

<sup>217</sup> Transcript, Day 426, page 121.



## The Detention of Timothy Collins

5.63. Timothy Collins was arrested on the 23rd of May 1998 by Detective Sergeant James Leheny at 10.07 hours and taken to Letterkenny Garda Station where he was detained until his release at 23.45 hours on the 24th of May 1998. The following is a chart based on the custody record<sup>218</sup> outlining the members of an Garda Síochána who interviewed Timothy Collins during his detention:

Date	Time	Interviewers	Reference
23/5/1998	13.10-14.16	D/Gda. Michael Jennings/ D/Gda. P.J. Keating	Tribunal Documents, 965-969
	14.16-16.25	D/Sgt. Fergus Treanor/ D/Gda. Patrick Flood	
	17.56-20.11	D/Gda. Joseph Foley/ D/Gda. Thomas Kilcoyne	Tribunal Documents, 1264-1267
	20.11-20.55	Treanor/Flood	
	22.00-23.35	Treanor/Flood	
24/5/1998	8.08-9.40	Foley/Kilcoyne	Tribunal Documents, 1268-1271
	10.20-11.52	Treanor/Flood	Tribunal Documents, 1276-1279 <sup>219</sup>
	13.10-15.00	Foley/Kilcoyne	Tribunal Documents, 1272-1275
	15.00-16.55	Treanor/Flood	
	18.00-19.50	Treanor/Flood	
	21.30-22.45	D/Sgt. John McCormack/ D/Gda. Michael Keaveney	Tribunal Documents, 1280-1281

## The ‘Thump in the Chest’ Allegation

5.64. In his evidence to the Tribunal, Timothy Collins gave an account of his arrest and being brought to Letterkenny Garda Station. He identified Detective Sergeant Fergus Treanor as one of the Gardaí who conducted the first interview with him during his period of detention. This is at variance with the custody record,<sup>220</sup> and the Tribunal feels that his recollection, given the passage of time, might

<sup>218</sup> Tribunal Documents, pages 1256-1263.

<sup>219</sup> It is not clear which of the three interviews conducted by D/Sgt. Treanor and D/Gda. Flood on that day this memorandum of interview relates to.

<sup>220</sup> The custody record indicates that Detective Garda Michael Jennings and Detective Garda P.J. Keating conducted the first interview. However, no allegation of any form of abuse was put to Detective Garda Jennings by counsel for the members of the Irish Traveller Community when he gave evidence. When Counsel to the Tribunal put the various allegations of abuse made by Mr. Collins to him, Detective Garda Jennings indicated that no abuse of Mr. Timothy Collins took place while he was present. Transcript, Day 421, page 21.

understandably be inaccurate in this regard. Of more significance is the detail in his account of what transpired during the course of his initial interview with Detective Sergeant Treanor and Detective Garda Patrick Flood, which the custody record indicates occurred between 14.16 hours and 16.25 hours on the afternoon of the 23rd of May. In evidence to the Tribunal, Mr. Timothy Collins said:

*Yeah, I was thumped. I was thumped...He was aggressive, he was aggressive talking to me, Mr. Chairman, and he told me to stand up and he asked me, Mr. Chairman, was I on medication. I told him no and then he got me a thump into the chest ... It was in the interview room...It was a thump, Mr. Chairman, his fist closed ... One fist ... One [thump] ... put me flying back down again ... I don't know his name ... He was a big, stocky fella, that's as far as I can recall and remember, Mr. Chairman, a big, stocky fella...If I can recall he had greyish, blackish hair, Mr. Chairman. Too far back to remember exactly ... He was a tall man ... He was middling, Mr. Chairman. Stocky, stocky ... My recall is he had a Dublin accent ... About 38 [years of age]...The guard sitting over here [was in the room] ... Sergeant Treanor, I can't think of his name, sorry ... [Sergeant Treanor] was sitting down most of the time, listening and looking all the time ... It's too far back to remember, I don't know if [the other Garda] was sitting down, Mr. Chairman, he could be standing, he could be, I don't know.<sup>221</sup>*

- 5.65. The first indication the Tribunal received that Timothy Collins' assault allegation was directed at Detective Garda Patrick Flood emerged when Timothy Collins gave evidence at the Tribunal. As can be seen from the passage of his evidence that has already been quoted, he did not specifically name Detective Garda Flood, but indicated that it was the Garda who interviewed him with Detective Sergeant Treanor who administered the thump in the chest. Detective Garda Flood was subsequently cross-examined by counsel for Timothy Collins on the basis that he was the Garda at the centre of this allegation.
- 5.66. The Tribunal heard the evidence of Detective Garda Patrick Flood and Detective Sergeant Fergus Treanor, who both denied either administering or witnessing an assault on Timothy Collins. Detective Garda Flood gave evidence that:

*The first interview was a very relaxed interview, Judge. We had to try and build-up Mr. Collins' trust and in any interview or any set of interviews that you are going to conduct, the first interview is the most crucial one because it's that interview that the suspect*

<sup>221</sup> Transcript, Day 426, pages 11-13.

*decides whether he can trust you or not. We believed that Mr. Collins would have information in his head and we needed to get that information from him. In order to do that we needed to build up trust. One of the things that we were conscious of, and I am not suggesting and I am not taking Mr. Collins' character away, but one of the things we were aware of, Judge, going into the interview was that Mr. Collins by way of alibi may have had to...nominate himself for a smaller crime...If Mr. Collins had committed a crime or was involved in a small crime anywhere else, any kind of petty crime, that may have been his way of giving his alibi. For that reason we had to instill trust in him and make sure he knew that he could pass on that information without fear, that it wouldn't be pursued by us, that we would go into him -- and if it was the case that he had been up in Derry and got into an altercation in Derry and had been stopped and gave a wrong name or been involved in something petty, that he could trust us to tell us that by a way of putting himself away from the FitzMaurice murder...Irrespective of the consequences that may follow, so we would have told him we wouldn't pursue this. The interview was carried on with that in mind. It was very relaxed. It was very much a case of we were there to help him...he could impart the information he required to impart to us and we would take it from him, his whereabouts on the 1st May...It was uneventful as far as I was concerned. It was a normal interview...At the end of the evening, the day progressed, we were -- certainly it was a very amicable first interview. The second interview was...a briefer interview and we brought Mr. Collins Senior to Timothy Collins and they had that meeting. Then the third interview changed a slight bit in that we put, we pressed on Mr. Collins more that he could have been involved in the murder of Edward FitzMaurice. We took it on a small bit. We put it to him that he had been involved. We put it to him, we pressed him a bit harder. He had been very easy going up to that, and this interview was a bit more robust in so much as we pressed harder in the third interview, the final interview...in relation to the complaint itself, judge, I never assaulted at any stage during the 23rd or 24th May 1998, Timothy Collins or anybody else, never abused them or never ill treated them in any way.<sup>222</sup>*

- 5.67. Detective Sergeant Fergus Treanor denied, in addition, having witnessed an assault on Timothy Collins. He pointed out that it was he who had visited

<sup>222</sup> Transcript, Day 421, pages 96-103.

Timothy Collins in London in 2001 to inform him of the developments with regard to the alleged planting of the firearm. He had travelled across with Detective Garda Richard Caplice, who was not involved in the arrests in 1998. Detective Sergeant Treanor indicated that had Timothy Collins made any complaints of assaults at that time, he would have taken them, or he would have withdrawn had any complaints been directed at him personally. In the event, Timothy Collins was happy to deal with him and made no complaints.<sup>223</sup> In relation to his interviews with Timothy Collins on the 23rd and 24th of May 1998 in Letterkenny Garda Station, Detective Sergeant Treanor gave the following evidence:

*I was present with Detective Garda Flood throughout that interview. The interview was being conducted and I was the person in charge of what was going on in that interview room. Detective Garda Flood had not been involved in the investigation in Charlestown, so I was aware of the information that we needed to put to the prisoner and Detective Garda Flood played, very much, a secondary role...I certainly say that the assault did not happen...Certainly I don't recall that any question [as to whether he was on medication being] asked of him.<sup>224</sup>*

- 5.68. In his statement of claim, delivered on the 5th of July, 2002, Timothy Collins alleged that he was “punched, shoved about and pushed”.<sup>225</sup> In a reply to a Notice Requesting Further and Better Particulars dated the 2nd of October 2003, Timothy Collins’ solicitors indicated to the solicitors representing Detective Sergeant Leheny, the arresting officer, that Timothy Collins was “not in a position to say who assaulted [him]”.<sup>226</sup> In an interview with his own solicitor dated the 16th of September 2005, Timothy Collins described the person who gave him “a thump in the chest” as “a Dublin fella”.<sup>227</sup> He went on to indicate that “the other Donegal fella he was just sitting down over there. He was only listening, There wasn’t a word out of him”.<sup>228</sup> This description was reiterated in Timothy Collins’ interview with the Tribunal investigators. He described the person who administered the punch as being a “big stout fellow” about 42 years of age with greyish hair and a Dublin accent. He described the person with him as being “stocky” with a “Donegal accent, north accent”.<sup>229</sup>

<sup>223</sup> Transcript, Day 421, pages 86-87.

<sup>224</sup> Transcript, Day 421, page 29.

<sup>225</sup> Tribunal Documents, page 638.

<sup>226</sup> Tribunal Documents, page 640.

<sup>227</sup> Tribunal Documents, page 665.

<sup>228</sup> Tribunal Documents, page 665. Note that the original transcription of this passage read, “the other *bald* fella he was just sitting down over there, etc.”. This was corrected in a letter to the Tribunal dated the 19th of January 2006: Tribunal documents, 1254.

<sup>229</sup> Tribunal Documents, pages 1530-1531.

- 5.69. It is not clear to the Tribunal why Timothy Collins failed to avail of the many opportunities afforded to him over the years to give the type of detail and make the identification of the alleged aggressor that he eventually did at the Tribunal. In determining whether the alleged assault in fact took place in the manner outlined, the Tribunal has also considered the fact that when Mr. Kieran Dillon, solicitor, visited Timothy Collins on the first night of his detention, Timothy Collins made an allegation, recorded by Mr. Dillon, that might in some way be seen to support his allegation.
- 5.70. Mr. Kieran Dillon, solicitor, visited Timothy Collins twice during the course of his detention. Of particular significance in the context of the allegation levelled at Detective Garda Flood is a visit that occurred at 23.48 hours on the 23rd of May 1998 and continued until 00.15 hours on the following morning. It is interesting to note that Thomas Collins had been brought to meet his son that evening at 20.40 hours by Detective Sergeant Treanor. This meeting lasted for about ten minutes. Shortly thereafter, at 21.11 hours, Thomas Collins asked for a solicitor. When Mr. Dillon first arrived at the station, he had a consultation with Thomas Collins between 23.15 hours and 23.45 hours.<sup>230</sup> Thomas Collins then asked Mr. Dillon to visit his son.
- 5.71. Timothy Collins waived his legal privilege in relation to his consultation with Mr. Dillon so that the Tribunal could receive Mr. Dillon's notes of attendance in respect of this matter. Mr. Dillon also gave evidence of his consultation with Timothy Collins to the following effect:

*I introduced myself to him and explained who I was etc.. He was distressed. My recollection is that he was upset and nervous and he wanted to talk to me about what was happening and obviously tried to get information about his entitlements etc. He appeared to be very distressed. I tried to ask him questions to find out the history of what had occurred and any information he could tell me about why he was being questioned. We went through that process. I have referenced that in the notes...Well my recollection was we discussed what had been going on in the interviews up to that, and because he was nervous and appeared to me to be distressed, he informed me about what had happened. That he had been -- my recollection was, slapped, that's my main recollection, he may have been pushed and I basically tried to find out what happened to him and who was responsible. Unfortunately he couldn't assist me with that because he didn't know the names of the Gardaí involved.<sup>231</sup>*

<sup>230</sup> Tribunal documents, pages 1284-1286. (Custody record of Thomas Collins.)

<sup>231</sup> Transcript, Day 420, pages 90-92.

- 5.72. Mr. Dillon approached the member in charge after his consultation with Timothy Collins and asked that a note be made in the custody record of a complaint of assault on behalf of his client. The Tribunal notes that an unscrupulous detainee who wishes to deflect attention away from an interrogation that is not going well for him could simply make a complaint in order to create some space. On the other hand, a simple noting of a complaint seems an inadequate response. Perhaps the best way forward would be to require the member in charge to note any complaint in detail on a sheet attached to the custody record. This can then be checked against future allegations. Three entries in relation to the complaint lodged by Mr. Dillon were made in the custody record by the member in charge as follows:

24/5 12.15 am – Solicitor Kieran Dillon terminates consultation with prisoner. Solicitor requests that an entry be made in the custody record to the effect that his client, Timothy Collins, has alleged that he has been assaulted i.e. slapped and that he has been put under duress.

24/5 12.20 am – Solicitor leaves station.

24/5 12.22 am – In the presence of D/Sgt. Henry I spoke to the prisoner and asked if he wanted to see a doctor and if he did that there was one in the Garda Station at that time. The prisoner didn't want to see a doctor. There was no visible signs of injury on the prisoner at that time.<sup>232</sup>

- 5.73. Garda Martin Conroy, who has since been promoted to the rank of sergeant, was the member in charge of Letterkenny Garda station who noted the complaint made by Mr. Dillon on behalf of his client, Timothy Collins, in the custody record. Garda Conroy had taken up duty as member in charge of the station at 20.00 hours on the night of the 23rd of May 1998. In evidence to the Tribunal, he outlined his involvement in this matter as follows:

*I took Mr. Kieran Dillon to see Timothy Collins. At 12.05 a.m. I gave him a glass of water and at 12.15 a.m. Mr. Dillon called to me in the public office and stated that he wished that an entry be recorded in the custody record to the effect that Timothy Collins has alleged that he had been slapped and that he had been put under duress. I immediately recorded that in the custody record, Chairman, and I brought it to the attention of Detective Sergeant Sylvie Henry...I went to the cell where Timothy Collins was at that stage with Detective Sergeant Henry and I asked if he was okay and if he wanted a doctor. Mr. Collins declined. He said he didn't want a doctor. At that stage, Chairman, there was a doctor in the*

<sup>232</sup> Tribunal Documents, page 1258.

*station. It's entered in the custody record but I don't recall what reason the doctor was there at this stage but there was a doctor in the station. Mr. Collins had no visible signs of injury or didn't appear to be in distress.*<sup>233</sup>

In response to a query as to whether the custody record reflected a verbatim account of what was said to him by Mr. Dillon, Sergeant Conroy stated:

*I would say [the entry in the custody record was] a short note but I would have used some of his words. Like for instance, as far as I can recall, Chairman, he did use the word 'duress' and he did use the word 'slapped'. Perhaps he would have said more but I can't recall at this stage. That's all that was in the custody record.*<sup>234</sup>

Sergeant Conroy went on to describe how he dealt with the complaint received. He stated:

*Well your main concern as Member in Charge would be for the welfare of Timothy Collins at that stage and you would ensure immediately that he had access to medical attention. For that reason I went to the cell with Detective Sergeant Henry. I reported the matter to Detective Sergeant Henry. I was aware at the time he was in the station at the time. I am not sure -- I didn't know at that time that he was involved in the investigation or the interviewing of the persons in custody but...I asked him to go to the cell with me because Detective Sergeant Henry is an experienced member and he's well respected, Chairman. I asked him to accompany me to the cell because I would value his opinion as well on Mr. Collins' condition and that's why I brought him...I'm not sure was he in the room when Mr. Dillon was making the complaint on behalf of his client or not. But the first person that I saw in authority was Detective Sergeant Henry at the time and I brought it to his attention...In hindsight, Chairman, I shouldn't have left it up to the solicitor alone to take the complaint. I should have enquired of Mr. Collins the details...The normal procedure, Chairman, in relation to it is, if there's a person in custody who makes a complaint, at that time, well even now, if a person is in custody and he makes a complaint to a solicitor, the solicitor follows it up. But, in hindsight, and it would have assisted the Tribunal now I know if I had asked for details of Mr. Collins...At the time I wasn't clear, I wasn't aware of what the complaint -- was the complaint in relation to the previous interview or when it was. I didn't ask,*

<sup>233</sup> Transcript, Day 423, pages 157-158.

<sup>234</sup> Transcript, Day 423, page 158.

*Chairman. In hindsight I should have asked. In normal circumstances, if the complaint is made to a solicitor, then the solicitor follows it up when the person is released from custody...I should have asked Mr. Collins if he wanted to make a complaint...In hindsight I should have done it to him, asked him as well because there wasn't enough detail there.*<sup>235</sup>

- 5.74. Sergeant Conroy agreed with the Tribunal that he should have spoken to Timothy Collins with a view to identifying which particular interviewer he wished to complain about. On balance, the Tribunal accepts that Sergeant Conroy acted in a bona fide manner on the night in question. In summoning Detective Sergeant Henry, whom the Tribunal has found to be a most professional member of An Garda Síochána in relation to a number of other matters on which it has previously reported, Garda Conroy reported the matter to a superior officer. In offering the services of a doctor to Timothy Collins, he also took appropriate steps to fulfil his mandate as member in charge. However, the fact that an otherwise diligent member in charge such as Garda Conroy and an experienced investigator such as Detective Sergeant Henry stopped short of enquiring further into the details of the complaint is indicative of the parameters within which members in charge appear to operate.
- 5.75. The Tribunal accepts that persons in custody often make frivolous complaints. It cannot always be the case that a complaint to the member in charge has the automatic effect of either halting an interview or of causing a particular interviewer to be withdrawn. In relation to the investigation of serious crime where the detention period is limited, such an outcome would be of enormous benefit to the experienced and cunning criminal. However, it cannot be the case that the summoning of a solicitor as legal adviser is seen to in any way diminish or subsume the role of the member in charge as 'friend' or 'guardian' of the detainee while he/she is in custody. If/when a complaint is made by a person in custody, the member in charge must be empowered to not alone notify a superior officer who is not directly involved in the investigation him/herself, but to make appropriate enquiries into the nature of the complaint and to take appropriate remedial/preventive steps where he/she feels that there is some validity to the complaint.
- 5.76. In relation to whether Timothy Collins was in fact punched in the chest, thereby precipitating his complaint to Mr. Dillon, the Tribunal has closely observed the demeanour of the various witnesses who gave evidence in relation to the matter. The Tribunal is satisfied that Mr. Dillon acted as any

<sup>235</sup> Transcript, Day 423, pages 159-162.



good solicitor would have acted in the circumstances in having his client's complaint noted in the custody record. This put the onus on the member in charge and the supervising officers to ensure that the matter would be properly investigated; that Mr. Collins' well-being would be assessed and that the ongoing interviews would be more closely monitored. Mr. Dillon was, however, only in a position to relay to the Tribunal what his client had told him. Although distinguishing between a 'thump' and a 'slap' might in some cases be merely a matter of semantics, the Tribunal is of the view that what Timothy Collins in fact complained of to Mr. Dillon that night was not the alleged 'thump' from Detective Garda Flood, but an entirely different type of battery, one that he did not recount at the Tribunal. The Tribunal notes from the custody record that Sergeant Fergus Treanor and Detective Garda Flood interviewed Timothy Collins that evening between 22.00 hours and 23.35 hours. Considering the fact that his consultation with Kieran Dillon commenced thirteen minutes after this interview terminated, it seems to be quite incredible that Timothy Collins would not have made some attempt to either describe the person who had committed the alleged assault or that he would not have simply indicated to Mr. Dillon that it was the last interview team who were responsible. After all, the person allegedly responsible had just left the room. Sergeant Fergus Treanor was indignant on this point in his evidence; and the Tribunal thinks rightly so. The Tribunal cannot be satisfied that this complaint is sustained.

### **The 'Slap in the Face' Allegation**

5.77. Timothy Collins made a further allegation that on his second day in custody, a Garda, who had not interviewed him on the first day of his detention, slapped him in the face. He gave the following account to the Tribunal:

*It was about the gun and then it was about the old man, back to the gun to the old man...And I got slapped across the face...I didn't know what was happening...It was a different interview...It was by different Guards to my -- that I can recall, remember back, Mr. Chairman, it was different Guards...Open hand. It came out of the blue, Mr. Chairman, I wasn't expecting it, it came out of nowhere...I was sitting down...There was one or two sitting down, Mr. Chairman, and there was one or two standing up...[There were] about four of them...If I can remember, I mightn't be correct, but I think there was about three or four...Three or four, too far to remember back...[The man who slapped me] I can recall he was standing...[I was slapped] just once...If I can recall he had*

*Brylcream on his hair, he'd a white shirt, a blue tie, Mr. Chairman, a stocky fella...He was about five, five seven, Mr. Chairman.*<sup>236</sup>

- 5.78. Once again, there appears to be some background on this allegation in a note of attendance taken by Mr. Kieran Dillon when he visited Timothy Collins for the second time in custody on the Sunday afternoon between 15.15 hours and 15.40 hours. In the note of this attendance, Mr. Dillon recorded that:

Mr. Timothy Collins says after 8 a.m., he was slapped again this morning. It hasn't happened since...Mr. Timothy Collins said "the Gardaí is slapping me on my body"...At 12.25 a.m. on 24th May, 1998 Garda Conroy was informed that Timothy Collins made a complaint about being slapped while being interviewed in custody. Mr. Collins alleged that he was slapped on the face while being questioned and he wants this noted in the custody record. Garda Conroy says he did not make any request for a doctor. I said that I would review it tomorrow but we wanted it logged in the custody record.<sup>237</sup>

- 5.79. In respect of this note, Mr. Dillon stated in evidence to the Tribunal that he was following up on what Timothy Collins told him on the previous day, and that the note reflected what Timothy Collins told him. Again, Timothy Collins did not identify any particular Garda by either description or period when the interview was conducted to Mr. Dillon. Mr. Dillon attempted to find out what had happened to him and who was responsible, but Timothy Collins was not able to assist him because he didn't know the names of the Gardaí involved.<sup>238</sup>

- 5.80. [In the light of Timothy Collins' evidence that some member other than Detective Garda Flood or Detective Sergeant Treanor had administered the slap on the face, the Tribunal called the other individuals who had interviewed him at the relevant time. When Detective Garda Joseph Foley was recalled to give evidence in this matter, counsel for Timothy Collins put no allegation to him.<sup>239</sup> Detective Garda Thomas Kilcoyne was also offered as a witness, but it was indicated to the Tribunal that no allegation was being made against him either. As these were the only Gardaí who interviewed Timothy Collins over the period relevant to his 'slap in the face' allegation, the matter effectively ran into the sand. It would be a breach of due process to make a decision against any Garda against the manner in which this hearing was run.](#)

### **Other Miscellaneous Complaints**

- 5.81. Timothy Collins complained that photographs of Mr. FitzMaurice were produced to him while he was in custody. His recollection of these photographs was that:

<sup>236</sup> Transcript, Day 416, pages 15-17.

<sup>237</sup> Tribunal Documents, pages 1660-1661.

<sup>238</sup> Transcript, Day 420, pages 91-92.

<sup>239</sup> Transcript, Day 421, pages 146-168.

*As far as I can remember, it's a good while ago, his legs was tied, his arms was tied behind his back and his mouth was gagged as well, Mr. Chairman. And he was all black and blue everywhere...[He was] indoors...I can remember he was on a sofa, a sofa...Well if I can remember he was on the sofa, I don't know exactly if he was but I think he was on a sofa. He could be on the floor too, it's too far back to remember...I think he just had pyjamas on him...All I can remember from seeing the photograph, Mr. Chairman, he just had the legging bottoms on him at the time...If I can remember, I can't remember, I think his chest was bare...There was a number of photographs there, Mr. Chairman, but I think this is the one getting shown to me a few times.<sup>240</sup>*

- 5.82. Once again, some support is available to Timothy Collins' account of the photographs in the attendance taken by Mr. Kieran Dillon, solicitor, at the time of his visit to Mr. Collins in custody on the first day of his detention. An extract from Mr. Dillon's attendance reads as follows:

The Gardai showed my client a photograph of a man they said that Mr. Timothy Collins knew. Mr. Timothy Collins said that it was some man tied up in Charlestown.<sup>241</sup>

- 5.83. Mr. Dillon's recollection is that he recalls Timothy Collins describing a "distressing photograph".<sup>242</sup> However, whether the photograph was distressing because of its contents, or because of the implication behind it is not clear. All of the Gardai who interviewed Timothy Collins denied showing photographs of Mr. FitzMaurice to him. However, Detective Sergeant Treanor gave evidence that he recalled a loose photograph of Mr. FitzMaurice, taken of him while alive, sitting in a bar, that the investigation team had received from the deceased man's family. While he had no recollection of this photograph being available in Donegal at the time of these detentions, he did not rule out the possibility that such a photograph may have been produced to the detainees at the time. It would appear that this particular photograph appeared on television and in the newspapers at the time, so that may be argued as an explanation for Timothy Collins having seen a photograph that upset him more for the implication underlying its production to him than for its actual visual effect. **The Tribunal is of the view that Timothy Collins' recollection of the post mortem photograph as given in evidence at the Tribunal is convincing. However, in the absence of any indication as to what Garda allegedly produced the photograph to him, while it is likely that his account is correct, the Tribunal cannot ascribe responsibility to any named Garda, or to a plan by Garda management in this regard.**

<sup>240</sup> Transcript, Day 416, pages 14-15.

<sup>241</sup> Tribunal Documents, page 1660.

<sup>242</sup> Transcript, Day 420, page 92.

- 5.84. Mr. Collins also complained about being verbally abused whilst in custody. He recounted the following:

*[They] just told me that when you go to prison you know what happens to you in prison. I said I don't know what happens to you in prison. He said you can get injections, you can get AIDS in there, things like that...I can't remember who said that, Mr. Chairman.<sup>243</sup>*

The Tribunal finds itself unable to assess whether comments such as this were made to Timothy Collins while he was in custody in Letterkenny.

### The Detention of John Casey

- 5.85. John Casey was arrested by Detective Sergeant Thomas Burke at 10.15 hours on the 23rd of May 1998 at Ballyderowen, Burnfoot. He was taken to Letterkenny Garda Station where he was detained at 10.50 hours and released at 23.55 hours on the 24th of May 1998. During the course of this detention he was interviewed by teams of Gardaí, the detail of which is set out in the following table:

Date	Time	Interviewers	Reference
23/5/1998	12.24-14.26	D/Sgt. Thomas Burke/ D/Gda. Alphie McHale	Tribunal Documents, 975-976
	15.01-16.20	D/Sgt. Martin Byrne D/Gda. John Clancy	Tribunal Documents, 1339-1341
	17.55-19.30	Byrne/Clancy	Tribunal Documents, 1342-1344
	19.30-21.50	D/Gda. P.J. Keating/ D/Gda. Alphie McHale	
	22.35-23.55	Byrne/Clancy	Tribunal Documents, 1345-1346
24/5/1998	8.15-10.10	McHale/D/Gda. Seán Herraghty	
	10.30-11.59	Byrne/Clancy	Tribunal Documents, 1347
	13.10-15.00	McHale/Herraghty	
	15.00-16.03	Byrne/Clancy	Tribunal Documents, 1348-1349
	17.30-19.30 <sup>244</sup>	D/Sgt. John White/ D/Sgt. Sylvie Henry	Tribunal Documents, 322-327  Tribunal Documents, 1350-1355
	21.00-22.45	D/Gda. John Kissane/ D/Gda. Seán O'Brien	

<sup>243</sup> Transcript, Day 416, page 19.

<sup>244</sup> An unusual feature of this interview is that there are two sets of interview notes.

## Photographs and Poking in the Eyes

- 5.86. John Casey made an allegation that during the course of one of his interviews, he was poked in the eyes and forced to look at the post mortem photographs of Mr. FitzMaurice. He described the incident as follows:

*I can't recall what day it was now, Chairman...I was getting interviewed and they had photographs there of an old man and then they changed over to the shotgun, then they changed over to the post office. They were charging me...they were asking questions about two, about three different things, they'd go from the old man to the post office, from the post office to the...gun...They thrun the [photographs] in on top of me, in on top of the table and told me to look at them photographs. They had the old man's hands behind his back and his legs tied and he was thrun on his side on the floor and he was all black and blue and blood, you know...I never forgot it now, to tell you the truth...Ah it was very upsetting, very upsetting...They had a few photographs...I looked at about three of them...they had no book. They just had them open in their hands...They put them out on the table, they thrun them on the table. Look at them, he says, you dirty knacker, look at what you done to the old man. I said I did nothing to the old man, I was never in Charlestown in my life...When I wouldn't look at the photographs they started putting their fingers in me eyes, poking like that into my eyes and standing up, told me stand up against a wall and stand on my toes...They'd stick their fingers into my eyes to open them back up...To open them up to look at the photographs...And keep my eyes open, then they put me up against a wall and then they stood on my toes...There were two men...I can describe one man...He was like a body builder, real short tight haircut, kind of blondish colour...Kind of blondish, fairish colour hair. He was...doing all the questions and things...He was wearing a red T-shirt, a short sleeved T-shirt and I think he had blue slacks on him...It could have went on for about 25 minutes, 20 minutes...It happened at one interview...[The interviewer with the red T-shirt] was there the once...I'm sure, yeah...I feel certain of that, yeah...[The other detective in that interview] I hadn't ever seen him before, no. He was just an ordinary black haired guy...He was just reading out what I was supposed to do and what I didn't do...That's the full extent now [of any complaints I would like to make].<sup>245</sup>*

<sup>245</sup> Transcript, Day 416, pages 154-163.

5.87. In a summary of John Casey's allegations submitted by his legal representatives shortly before he gave evidence,<sup>246</sup> it was suggested that the interview in which all of the aforementioned abuse occurred was in the afternoon or evening of the first day of his detention. From the custody record, it is clear that the only two Gardaí who interviewed Mr. Casey on one occasion on that day were Detective Sergeant Thomas Burke and Detective Garda P.J. Keating, and they did not take part in the same interview. The Tribunal is also satisfied that neither member, both of whom gave evidence at the Tribunal, conform with the physical description given by John Casey. Even if he is incorrect about the day on which this alleged abuse occurred, the only two one-time interview teams on the Sunday can also be excluded. One of these teams included Detective Sergeant John White, who Mr. Casey admitted he recognised from their previous encounter in the Barnesmore Gap,<sup>247</sup> and the other team, who conducted the final interview on the Sunday evening, included Detective Garda Seán O'Brien and Detective Garda John Kissane: against whom counsel for Mr. Casey indicated that his client wished to make no complaints.<sup>248</sup> **The Tribunal cannot be satisfied on the evidence before it that John Casey's account of his alleged abuse in custody is correct. While he may have been shown a post mortem photograph, the Tribunal cannot ascribe responsibility in that regard.**

### **The Detention of John McCann**

5.88. John McCann was arrested at 10.20 hours on the 23rd of May 1998 by Garda Michael Farren under Section 30 of the Offences against the State Act. He was taken to Burnfoot Garda Station and was detained there until his release at 00.10 hours on the morning of the 25th of May. During the course of his detention, he was interviewed by a number of members of An Garda Síochána. A schedule of these interviews is set out in the following table:

<sup>246</sup> Tribunal Documents, pages 1330-1331.

<sup>247</sup> Transcript, Day 416, page 166.

<sup>248</sup> Transcript, Day 422, page 99.

Date	Time	Interviewers	Reference
23/5/1998	12.25-13.45	Sgt. Philip Gillespie/ Gda. Christy Galligan	
	16.00-18.00	D/Sgt. Jim Leheny/ D/Gda. John O’Keeffe	Tribunal Documents, 284-286
	20.02-22.45	Leheny/O’Keeffe	Tribunal Documents, 286-288
24/5/1998	12.20-14.15	O’Keeffe	Tribunal Documents, 288-291
	14.15-15.30	Leheny	
	16.30-18.00	O’Keeffe	Tribunal Documents, 291-293
	19.30-21.30	Leheny/O’Keeffe	Tribunal Documents, 293-294
	22.30-23.50	D/Gda. Brendan Regan/ D/Gda. John O’Keeffe	

- 5.89. John McCann indicated that he was called such things as ‘knacker’ and ‘murdering bastard’ on a number of occasions in the earlier part of his detention. He was unable to identify any particular Garda as being responsible for this. The Tribunal has already commented on this aspect of the detentions earlier in this chapter. However, it can make no specific finding of such abusive language in relation to this particular detention. John McCann’s most significant complaint concerns the final interview prior to his release. He outlined this complaint as follows:

*What happened in the last interview, they brought in this big black haired man with black hair, kind of greasy, like Brylcreem or something, he was taller than me, he was a lot bigger than me, he was like a rugby player. I think, by this time, they knew that my nerves were gone up the wall. I think they tried to bring in this fella to intimidate me into making a confession...he was a plain clothes...I had the rosary beads around my neck, it was only a plastic one my grandmother gave me. This big man came in and the detective who was questioning me, he left the room. And there was another detective sitting in front of me. So the detectives were questioning me, he walked out of the room, about five minutes later this big man came in, this big guard. He named his name. I'm not sure what name he gave. He walked over to me*

*and he grabbed me by the rosary beads. He said, what are they. Obviously everyone knows what rosary beads are. I told him, I says, they're rosary beads. He started pulling at them. He said, where did you get them? I said, my grandmother gave them to me. My hair was longer at that time. He was jerking me off the chair. Holding my rosary beads at the one time and jerking me, lifting my hair from the back of my head, he was standing right at the side of me and he was kind of moving me off the chair, like, with tugs to my hair. At that then he stood rightly directly behind me, still holding the rosary beads, had them up against my throat...I was terrified at this time. He'd hold his hand maybe three inches from my head and hit me in the back of the head and my head would go further. I was looking at the guard in front of me for him to try and do something: please help me, Mr. Chairman, and he just -- he wasn't doing nothing anyway. So then they did that about three to four times. Then he asked me me height, I told him I was five foot eleven. He said, you're taller than that. He said stand up against the wall. So I stood up against the wall and he told me to take off my shoes and he told me to breathe in while I was against the wall he told me to get a magazine and put it directly on top of my head. As I was standing against the wall holding in me breath and with the magazine on my head and one hand by my side...he kept -- it as if he was going to hit me a punch in the stomach. So I would cower then and he would yell at me, get up you knacker, get up you effing knacker, get up. He said something like, now you know what it's like, now you know what it's like. So I'd stand up again, and he said, I told you to put the magazine on your head and stand up and breathe in. So I would do it again. But I was like dodgy, I was wary, I was very frightened. So he would go to hit me a punch in the stomach again. He did that four times. Like I mean, I didn't know the second time, the third time, I don't know when, each time he did that I cowered, I cowered down. The other guard wasn't helping me. He wasn't saying anything. As I was getting off the chair I was kicked in the backside and he hit the back of my legs. This is before I had to put the magazine on my head. When I was getting off the chair I got a kick in the backside, one knee went forward and I nearly stumbled. He told me to stand up against the wall and, as I told you, put the magazine on my head and every time I'd do that, about four times, Mr. Chairman, he went to hit me, he'd pretend -- well I didn't know if he was*



*pretending, I didn't know when I was going to get the punch. He did it once, he did it the second time, maybe the third time I was going to get a punch, you know what I mean. My nerves were shattered at that time...No, he didn't land a punch on me...He was a big man and he would put his hand back like that and I would cower down...That happened about four times, Mr. Chairman. Then he looked at the other guard and the two of them just gave eyes to one another; I could see them giving eyes to one another. Then I was told to sit back down. He left. The other guard, the other uniformed guard, the plain clothes guard came back in, the one who had already left before this big man walked in. He walked back in, they put me back in the cell, told me I was going to be let out in about half an hour. They also told me while I was there I was going to go for about 12 months on remand. I heard since that you can't go for 12 month on remand, Chairman, but at that time I had never been in trouble before. There was a gun planted on us, we were getting accused for killing an old man, I didn't have a clue, I was terrified that I was going to see my wife - well I had no kids at the time, but I wasn't going to see my wife for a long time and all this, all this was getting thrown at me and being called a knacker, a smelly knacker and you murdering bastards...My nerves were gone at the time...There was nothing to confess to. If I had known who did it, I would have tell them at the time and even now if I know who did it, I would tell...I'm sure that was the last interview I had...I'm sure. I cannot be a hundred per cent sure now but I'm 70% sure.<sup>249</sup>*

- 5.90. This account is fairly consistent with the account given by John McCann in a memorandum of interview submitted by his legal representatives dated the 4th of November 2005.<sup>250</sup> In terms of putting the member in charge on notice of his alleged difficulties, the following passage appears to be relevant.

So every time I would go to stand like that he would make as if he was going to hit me a punch...And he screamed "Get fuckin up. You dirty smelly knacker yea. Stand up. I told you to stand up"...And the other guard who was with me all the time, he just kept looking. The desk sergeant was good – was all right. But this was the last interview so I was letting a few screams go.<sup>251</sup>

- 5.91. When he came to give evidence at the Tribunal, it was put to Detective Garda Brendan Regan by counsel for John McCann that he was the black haired

<sup>249</sup> Transcript, Day 416, pages 74-79.

<sup>250</sup> Tribunal Documents, pages 704-734.

<sup>251</sup> Tribunal Documents, page 725.

member who abused Mr. McCann in the manner as outlined above.<sup>252</sup> This approach would tend to confirm that Mr. McCann’s allegations related to the interview conducted by Detective Garda Regan and Detective Garda John O’Keeffe between 22.30 and 23.50 on the Sunday evening. The custody record of John McCann for this period<sup>253</sup> contains the following entries:

24/05/98	9.30 p.m.	Interview terminated and prisoner returned into cell. all in order from D/Gda. O’Keeffe.	P. McD.
24/05/98	10.00 p.m.	Took up duty as S.O. & Member in Charge relieving Gda. McDermott. Visited prisoner in presence of Gda. McDermott o.k. Shaun Tully Gda. Peter McDermott Gda.	
24/05/98	10.30 p.m.	D/Gdai O’Keeffe & Regan to interview room with John McCann	S.T.
24/05/98	11 p.m.	Visited prisoner in interview room with D/Gdai Regan & O’Keeffe. I asked him if he wanted a meal. He said no.	S.T.
24/05/98	11.50 p.m.	Interview terminated, prisoner returned to cell.	S.T.
25/05/98	12.10 a.m.	Prisoner released. No complaints. J McCann	

**5.92.** Garda Shaun Tully was the member in charge for the duration of the interview in relation to which John McCann made his most serious allegations. He gave evidence that during this interview he spent his time in the day room, which was adjacent to the interview room. He could therefore observe anybody entering or leaving the interview room, and would have noted any such comings and goings in the custody record. He stated that Detective Gardaí Regan and O’Keeffe brought John McCann into the interview room at 22.30 hours so that there could be no question of Detective Garda Regan entering the interview room after another Garda had just left. In terms of the allegations of abuse made by John McCann, he gave evidence that as the station was generally very quiet at that time of night, he would certainly have heard any shouting or noises coming from the interview room. Garda Tully claims that he heard no shouting of any description. He also indicated that he offered John McCann a meal at 23.00 hours because he noted that he had not eaten since 15.30 hours that afternoon. John McCann refused this offer. At the end of the interview, Garda Tully returned him to the cell. Upon his release, John McCann indicated to Garda Tully that he had no complaints in respect of his detention and signed the custody record.<sup>254</sup>

**5.93.** Detective Garda Brendan Regan gave evidence that before entering the interview room with John McCann, he spoke with Detective Garda O’Keeffe, who had been interviewing Mr. McCann for much of the previous two days. Detective

<sup>252</sup> Transcript, Day 422, page 31.

<sup>253</sup> Tribunal Documents, page 1316.

<sup>254</sup> Transcript, Day 422, pages 167-182.

Garda O’Keeffe indicated to him that Mr. McCann seemed to be telling the truth about his non-involvement in the crimes for which he was arrested. Although he had no evidence himself either way, he entered the interview room bearing this in mind.<sup>255</sup> He indicated that there was no animosity present in the interview at all. There was no “name-calling, roaring or shouting”.<sup>256</sup> He claims that the interview concerned Mr. McCann’s background, relations, friends and associates.<sup>257</sup> Unfortunately, this is one of the interviews in respect of which the interview notes now appear to be missing.

- 5.94. Sergeant John O’Keeffe gave evidence in relation to his various interviews with John McCann in the following terms:

*Myself and Detective Sergeant Leheny...commenced the first interview at four o'clock on the 23rd with Mr. John McCann. John was obviously a bit nervous and a bit anxious, he had been arrested but as the interviews continued he became less and less nervous. He was very open, very co-operative. He was amenable. He was quite easy to interview. He wasn't nervous as the day went on. Basically towards the -- at the very last interview, when Detective Sergeant Regan arrived, at that stage, having interviewed him five times, I was of the opinion that he knew very little, if anything at all, about the gun that was found there. That he knew very little, if anything at all, in relation to the murder of Mr. FitzMaurice. I felt that he had co-operated well with me and Detective Sergeant Leheny. At the final interview, I remember that the interview was even more relaxed and Detective Garda Regan is the type of a jovial person if you know him, there was a type of jovial aspect to that final interview. There was absolutely -- in relation to the previous interviews, at no stage did I ever insult Mr. McCann, did I ever call him names. At no stage during the final interview was Mr. McCann assaulted, abused in any way. I don't even recall if he had rosary beads on him at the time. As I say, I got on well with Mr. McCann. In the statement in which I replied to the writ, I also at that time made it clear that Mr. McCann was easy to deal with as a prisoner. My technique in dealing with prisoners always has been one where I've tried to build a rapport with the prisoner and I also tried to find something in common with him in relation to -- and build up a mutual respect, if possible and I had no problem with Mr. McCann in that regard. Mr. McCann was quite intelligent and a pleasant prisoner to deal with. I find it absurd*

<sup>255</sup> Transcript, Day 422, pages 30-31.

<sup>256</sup> Transcript, Day 422, page 27.

<sup>257</sup> Transcript, Day 422, page 23.

*that these allegations were made because they simply did not happen, Chairman.*<sup>258</sup>

- 5.95. During the course of evidence at the Tribunal, the issue as to whether John McCann could have been wearing rosary beads at the time he was allegedly assaulted was addressed by a number of parties. The sequence in which evidence on this matter was given is significant. John McCann gave the evidence as outlined above before any issue as to the presence of the rosary beads on his person on the night in question was raised. He also gave evidence that during the course of a visit from his cousin, Mary Collins, at 20.00 hours on the Sunday evening, he received cigarettes and a copy of the 'News of the World'. In his own words: "That was it".<sup>259</sup> A number of days after Mr. McCann gave this evidence at the Tribunal, Detective Garda Brendan Regan gave evidence, and it was indicated to him for the first time in the course of cross-examination by counsel for Mr. McCann that he was the Garda who Mr. McCann believed had abused him in the manner described. John McCann was recalled to give evidence to facilitate his cross-examination. Mr. Tom Murphy, acting on behalf of Detective Garda Regan put it to John McCann that he could not have been wearing a rosary beads at the time of the alleged abuse; as such an item would have been confiscated by the member in charge upon his arrival in the Garda station. Mr. McCann then indicated that he had in fact received the rosary beads from Mary Collins when she called to visit him.<sup>260</sup> This contradicted his previous evidence in which he indicated that the only items given to him by Mary Collins were cigarettes and a newspaper. The Tribunal is satisfied that Mr. McCann would not have inadvertently failed to mention the rosary beads in this context considering they played such a central role in the alleged abuse later that evening.
- 5.96. Garda Gerard Vaughan was the member in charge when John McCann was first arrested. He gave evidence that it was standard procedure upon arrival at a police station for the purposes of detention that, after the detainee had been given notice of his/her rights, he/she would have had his/her property confiscated and placed in a sealed envelope. The detainee is also subject to a search. A 'tap search' would have included the neck area. Such a search is carried out to ensure that a detainee has no concealed weapons or anything that might allow him/her to inflict harm on him-/herself. Garda Vaughan noted the items confiscated from John McCann. In fact, he had no property on him on the day in question. In Garda Vaughan's experience, visits from family members are monitored to the extent that where a family member wished to give something to a detainee, it would be given to the member in charge who would pass it on where appropriate. A detainee would not be permitted to bring any item with which he/she might do him-/herself harm back to the cell. Garda Vaughan gave

<sup>258</sup> Transcript, Day 420, pages 7-8.

<sup>259</sup> Transcript, Day 416, page 91.

<sup>260</sup> Transcript, Day 424, pages 195-196.

evidence that while it would be permissible to hand over rosary beads, these would be retained in the property locker until the prisoner was released.<sup>261</sup>

- 5.97. The Tribunal finds it impossible to be satisfied that the abuse as outlined by John McCann occurred. The Tribunal does not believe that there was any reason for tensions to have escalated within the interview room during the course of the final interview. All of the Gardaí who interviewed John McCann were locally based. The fact that none of the four outside interview teams interviewed John McCann over the course of his two days in custody is an indication that he was a relatively peripheral figure amongst those arrested. The Tribunal accepts Sergeant O’Keeffe’s evidence that John McCann was a helpful and co-operative witness, who over the course of the two days had convinced him that he knew nothing about either the shotgun or the FitzMaurice murder. This description fits with what the Tribunal observed to be the gentlemanly character of Mr. McCann. The Tribunal is satisfied that Detective Garda O’Keeffe, whom it finds to be a most diligent and conscientious officer, would not have sat idly by if another member of An Garda Síochána started to abuse a detainee in the manner outlined by John McCann. The Tribunal is satisfied that John McCann suffered not only the indignity of being falsely arrested in respect of a matter that had absolutely nothing to do with him, but that he also suffered further opprobrium from those who believed that there was no smoke without fire. However, the Tribunal is satisfied that he was not the victim of serious physical abuse within the context of the detention itself.

### **The Detention of Michael McCann**

- 5.98. Michael McCann was arrested by Garda Christopher Galligan at 10.20 hours on the 23rd of May 1998 at Ballyderowen, Burnfoot under Section 30 of the Offences against the State Act, 1939 and was conveyed initially to Burnfoot Garda Station and then to Buncrana Station. He was detained at Burnfoot from 10.20 hours to 20.00 hours on the 23rd of May 1998 and then was further detained at Buncrana Station until his release at 23.55 hours on the 24th of May 1998. The interviews that were conducted with Michael McCann are set out in the following table:

<sup>261</sup> Transcript, Day 426, pages 4-12.

Date	Time	Interviewers	Reference
23/5/1998	11.50-13.20	Gda. Tony Moran/ Gda. Eamon McConigley	
	15.55-17.40	D/Sgt. Thomas Burke	Tribunal Documents, 298-300
	20.25-23.30	D/Gda. James Breslin/ Gda. Brendan Regan	Tribunal Documents, 311-312
24/5/1998	12.45-15.29	D/Sgt. Burke/ Sgt. Philip Gillespie	Tribunal Documents, 301-305
	17.05-19.05	Burke/Gillespie	Tribunal Documents, 306-307
	20.34-23.50	Burke/Gillespie/Breslin <sup>262</sup>	Tribunal Documents, 308-310

5.99. Michael McCann indicated that he had no complaint to make against any of the three Gardaí who interviewed him in Burnfoot Garda Station on Saturday the 23rd of May 1998.<sup>263</sup> He also had no complaints to make about his first interview in Buncrana Garda Station that evening. Michael McCann gave evidence that in one of the later interviews on the Sunday evening “things really started to get hectic”.<sup>264</sup> He stated:

*It must be the last one because that's when there was three detectives in with me...I remember there was one sitting in the middle and he was asking me the questions. He reminded me of Marty Whelan, the game show host, he looked like him...In the dress sense and sort of appearance as well...I couldn't really say one hundred per cent but I think he did have a moustache...There was two other fellas sitting on each side, these were kind of quiet now, there wasn't a budge out of them...So, Marty, as I was saying, was asking me questions. Slowly, but surely, the other two lads pulled around to the side of me. So they were sitting right close to me, here and here...Yeah, they were at the two corners say...And they pulled right around...We sat there for a while without saying anything. One would start whispering this side and the other fella started whispering this side. So I was kind of looking at them half edgy and trying to answer Marty's question at the one time. Then I get a flick here, just a flick. But you know it was nerve wracking because I had to keep an eye on everybody because I was in the middle of these three and you know then I'd get a flick here at this side. So I says to Marty, I says Marty what's the story here with*

<sup>262</sup> Enters interview room at 21.01, replacing Sgt. Gillespie.

<sup>263</sup> Transcript, Day 416, page 191.

<sup>264</sup> Transcript, Day 416, page 193.

*these two here. He says, look don't mind them just answer me the questions. So I was trying to answer the questions but I didn't even know what he was saying now...because I was more heed of these two at the side of me because they were too close for comfort. I could feel their breath either side of my neck. All of a sudden they just bombard [me] with talk about what was going to happen to me and who was going to get us and all this kind of stuff. And you could tell they were, they knew what they were doing because there was just no stopping it...[I was flicked] maybe four or five times each while they were coming out with this chat, it would have gone on for longer...other for I think it was the desk sergeant came to the door...They told me for a start of how many IRA men was listed in Buncrana, they told me how many UDA men was listed in Buncrana, they told me how many UVF men was listed in Buncrana. They told me all these paramilitaries, if you want to call them that, about us being arrested would be leaked to them and we would be blamed for the murder even if we didn't get charged for it and these people would come and shoot us for it, it was as simple as that, you knacks. They were calling me knacks, it must have been short for knacker, but that's what they were calling, knacks...I kind of nicknamed the [two other guards] Bodie and Doyle, because one was tall, a big strapping man...They were similar to [the T.V. characters], and plus one of them had a scruffy brown leather jacket which one of The Professionals [from the TV series] used to wear as well...One of them was tall, I'd say he was over six foot, maybe 6'2" or something like that. Short black hair. Strong built, but kind of scruffy looking in appearance. The other fella was shorter again, his hair either was raked back or there was a curl in it. Brownish hair again and if I am not mistaken he was wearing the brown leather jacket...[The tall Garda] was well built. He was kind of, you know, strong bones...I'd say he was in his mid-30s at the time...If I am not mistaken they had northern accents ...[The other man] was smaller, a little bit more stouter...I'd say he was in around the one age. Mid-30s...I was [frightened], I was bricking it to be straight, I was kind of cornered, you know. I definitely thought this was going to go even further and further.<sup>265</sup>*

- 5.100. During the course of the interview, Michael McCann gave evidence of a visit from the member in charge in the following terms:

<sup>265</sup> Transcript, Day 416, pages 194-2000.

*When he knocked on the door, I don't know if he came in or before he actually came in, but them two kind of went straight back to where they started off, back up again beside Marty...I kind of pushed the chair back and stood up in front of the sergeant, and the sergeant kind of said who he was and this that and the other...With that I kind of says to him well look before we, before you leave or anything like that, so I took off me shirt and then I took off me T-shirt and then I undone me trousers and pulled them down to my ankles, I was wearing shorts, and I showed the sergeant, I kind of put my arms at length and stuff like that, I told the desk sergeant or whoever it was, did he see any bruises on me, so he says no. So then I kind of did a bit of a twirl to see there was there any bruises on my back and he says no. I says I have to do this now because the way things are going in here I am going to have bruises by the time this interview is over with. Then he says to me don't worry about that, he says nobody will put any bruises on you while I'm here. He says if it does get a little bit hectic to them, that sort of words, he said bang on the floor, he says, because I'm directly underneath you...[He left then]...I was standing like a lost soul with my trousers down around my ankles, it's a little bit funny now but it wasn't then. I couldn't really look eye to eye with Bodie and Doyle and Marty because I just couldn't. You know what I mean. I was blushing, I could feel my face blushing. But I looked at them then and I told them, I said something in around the words of well, look, lads I had to do something you know like, no offence and all that. So then I pulled up my trousers put back on my T-shirt, pulled back over my chair, sat down. There wasn't a budge out of them. They were staring at me. So then the taller fella of the two, he says you didn't pull down your shorts did you. I said no I didn't really think I had to. Well he said you should have because by the end of this interview I'm going to shove your balls -- excuse my language...He said I'm going to shove your balls up through your body and he says it's nothing that that fucking eejit is going to do about it either. He says in the line of banging of your feet on the floor he said I'll beat your head off the floor and he says he won't come up around here. He said you'll admit to murdering the old man before this interview is over...The power left my body. I didn't think I was getting out of this police station the way I came in...The interview went on for another while but it calmed down then and two, Bodie and Doyle stayed where they were...I think it might have gone on for another half an hour or so or something*



*like that...I think it was the last interview. I think so, because I am kind of sure it was because after that then without going ahead of myself too much I got the lift.<sup>266</sup>*

- 5.101. Michael McCann gave an account of his journey home after his release from custody. This journey apparently exacerbated rather than appeased his feelings of unease. He stated:

*I was waiting for a lift. I had no way in. I had no money. I didn't know anything about taxi routes or anything like that. It was very late and very dark. I was told I was getting a lift. So I was kind of hoping it'd be one of the uniform guards...But then one of the detectives came down that went through the interviews with me...Yeah, he was the smaller fella that was sitting this side to me...And he said he was giving me a lift home...I told him that I didn't want a lift home with him. I told him that we shared enough time together, you know. I didn't really want a lift home with this man after everything, the interviews and the last interview especially...Well he more or less told me that, you know, to get in the car and I was -- I must have been in some state now to think back a bit, that I did. Because now I'd just walk home. But he told me to get in the car, that if I wanted a lift home that he was giving me a lift home and that was it...I wasn't at all comfortable with it, it was very late and very dark and it was a good five or six mile of a walk from Buncrana to where I was staying in Burnfoot...When he took to drive out of Buncrana he drove a different direction. I only knew one way into Buncrana from Burnfoot and that was the main road out from the Burnfoot police station, say, it was a straight road. But he drove up hills, you know Buncrana was downhill. If I am not mistaken he passed out a caravan site that was there. A mobile home holiday place...So from that moment onwards I did feel a little bit edgy, but then I felt edgy getting into the car in the first place. We were going these back roads anyway and it came over the radio that there's a buggy in the middle of the road can you go and move it out of the way. Now there wasn't a budge between me and him so I could hear more or less what he heard. So at first he says can you not get somebody else to do it, in around them words. But it was put back over the radio again no can you do it or something like that. It wasn't on our way because he had to do a couple of lefts and a couple of rights. I kind of got freaked out by this now because I was wondering why a detective, a big time detective, a murder detective or a shotgun detective or*

<sup>266</sup> Transcript, Day 416, pages 200-202.

*whoever he was, was asked to do such a simple job when I had already seen a handful of uniform guards in the police station. I had already seen one on the road, at least one on the road, and now this man was turning out of his way and going to me more into the wilderness to move this buggy. So I was going from bad to worse anyway, there's no point saying any different. But when he did eventually come up this narrow road there was the buggy and to me it was like something like out of the Hammer House of Horrors, because I just couldn't understand what was going on here, you know. I know it could have been simple enough that he was just asked to do this but it just seemed a little bit too far fetched for me. So he stopped the car about 20 yards away from the buggy and he put on his headlights and then when he got out of the car then the lights, the light inside the car came on. So I was kind of blinded by everything. I remember the sweat pumping out through me, I am a little bit nervous now as it is. I thought something was going to happen. I definitely thought that this was some sort of set up. I don't mean to be incriminating anybody, I'm just saying the way it was to me at that time. Because he got out of the car and he stood at the door and he looked at the buggy, he didn't just get out and get it and throw it away. He looked at the buggy from a distance. I kept staring at him then because I don't know I kind of wanted to see him for some reason or another...So then he took to walk towards the buggy and as his face went into a shadow cause of the light inside the car and the headlights outside the car, I thought something was going to happen to me. I definitely thought something was going to happen. Because I was already with this man and another fella and Marty for three hours and in probably the worst spot I was ever in in my life and then for this spot to be in here now. To be honest with you, I just put my head down between my legs, I was afraid to look out through the window. I could only see my reflection anyway but I was afraid to look that way, it was like there was a ghost there or something like that. I just kind of put my head down like that and I just said a little prayer, I said I hope I see my family again, just let me see my family again, just let me see my children again. It really was that bad for me at that time. Maybe I'm a little bit childish, I don't know...I didn't see him move the buggy but obviously he did. He got back into the car, went to the top of the road, did a left and a right and he was right outside the camp.<sup>267</sup>*

<sup>267</sup> Transcript, Day 416, pages 206-211.

5.102. When they came to give evidence at the Tribunal, it was put to Detective Sergeant Thomas Burke that he was the ‘Marty Whelan’ character in the contentious interview, and that Detective Garda James Breslin was either Bodie or Doyle. This confirmed that Michael McCann’s complaint arose out of the final interview on the Sunday evening between 20.34 hours and 23.50 hours, as this was the only interview at which both members were present. The custody record in relation to this interview<sup>268</sup> contained the following entries:

24-5-98	8.18 p.m.	Prisoner placed in cell by Gda. Burke	L.C.
24-5-98	8.34 p.m.	Prisoner taken from cell to interview room by D/Sgt. Burke and Sgt. Gillespie	L.C.
24-5-98	9 p.m.	Sgt. Gillespie left interview room	L.C.
24-5-98	9.01 p.m.	D/Gda. Breslin entered interview room with D/Sgt. Burke and prisoner already there	L.C.
24-5-98	9.04 p.m.	Checked prisoner in interview room, he is alright	L.C.
24-5-98	9.34 p.m.	Checked prisoner in interview room, he is alright	L.C.
24-5-98	10 p.m.	At 10 p.m. I took up S.O. duty & member i/c, for the purpose of the Criminal Justice Act, 1984, relieving Gda. Casey. Gda. Casey informed me of the circumstances surrounding the prisoners arrest & detention & after having a conversation with Gda. Casey, I was satisfied that the further detention was necessary for the proper investigation of the offence for which he was arrested. Signed Brendan Joyce, Gda. C/s Louise Casey Gda.	
24/5/98	10.10 p.m.	Visited the prisoner in the interview room with Gda. Casey. All in order. Also present were D/Sgt. Burke & D/Gda. Breslin.	B.J.
24/5/98	10.40 p.m.	Visited prisoner in interview room, all in order. Present D/Sgt. Burke and D/Gda. Breslin.	B.J.
24/5/98	11.10 p.m.	Visited prisoner in interview room, all o.k. Present D/Sgt. Burke and D/Gda. Breslin.	B.J.
24/5/98	11.40 p.m.	Visited prisoner in interview room, all o.k. Present D/Sgt. Burke and D/Gda. Breslin.	B.J.
24/5/98	11.50 p.m.	Prisoner returned to the dayroom by D/Sgt. Burke	B.J.
24/5/98	11.55 p.m.	Prisoner released from custody – No complaints. his property returned to him. Signed B. Joyce Gda. c/s : X M. McCann	B.J.

<sup>268</sup> Tribunal Documents, pages 1328-1329.

- 5.103. In the course of cross-examination by counsel for Michael McCann, it was put to Detective Sergeant Thomas Burke quite forcefully that what appears in a custody record as opposed to what really happens during a detention are two quite separate things.<sup>269</sup> The Tribunal accepts that were a station party to conspire to abuse a prisoner by sending an inappropriately large group of officers into the interview room to intimidate him or her, it is unlikely that this would appear in the custody record. Custody records are only as accurate as the person making the entries wants them to be. On the other hand, the Tribunal was left in the situation that no clear indication was given to it as to which particular aspects of the custody record concerning his detention that Michael McCann disputed. When Sergeant Philip Gillespie gave evidence, for example, no challenge was made to his evidence that during the period in which he was in the interview room there were only two interviewers present, that he had left the interview room when Detective Garda Breslin arrived to replace him at 21.00 hours on the night in question, or that he had neither witnessed nor partaken in any of the activities alleged by Michael McCann.<sup>270</sup> Counsel for Michael McCann accepted that no allegation was being made against a uniformed Garda in relation to the interview in question.<sup>271</sup>
- 5.104. Detective Sergeant Thomas Burke gave evidence that he had conducted a number of interviews with Michael McCann over the course of both days on which he was detained in Buncrana. He even conducted one of the interviews on his own as there was nobody else available to assist him. He found Michael McCann to be pleasant and articulate. During the course of the contentious interview, he remembered Sergeant Gillespie leaving and Detective Garda Breslin replacing him. He was sitting on the opposite side of the table to Michael McCann, and both Sergeant Gillespie, before he left, and Detective Garda Breslin, when he replaced Sergeant Gillespie, sat on a chair to the left of Detective Sergeant Burke, also on the opposite side of the table to Michael McCann. He recalled that all of the interviews were relaxed, and that nothing out of the ordinary happened in any of them. He recalled Michael McCann smoking ten or twelve cigarettes that he gave to him over the course of the final interview. He denied the allegation that Michael McCann pulled down his trousers and complained of abuse, either past or imminent, when the member in charge entered the interview room. Detective Sergeant Burke gave evidence that when Michael McCann was released from custody, he offered him a lift home, which Michael McCann freely accepted. He claimed that the only concern that Michael McCann seemed to have on the journey home was a desire not to be seen getting out of the police car by other members of the Irish Traveller Community. Detective Sergeant Burke dropped him out of sight of the encampment at the top

<sup>269</sup> Transcript, Day 423, pages 141-150.

<sup>270</sup> Transcript, Day 423, pages 93-115.

<sup>271</sup> Transcript, Day 423, page 107.

of the road. He did not recollect stopping to remove a buggy, but accepted that it may have happened. In any event, he drove directly along the main Buncrana to Burnfoot road without taking a detour.<sup>272</sup>

- 5.105. Detective Garda James Breslin gave evidence that he interviewed Michael McCann on two occasions: once on the Saturday evening, and then during the final interview on the Sunday. Detective Garda Breslin described this interview as a “normal enough type interview” in which Michael McCann answered all questions willingly.<sup>273</sup> He denied that he or any other person in his presence moved around to sit beside Michael McCann and either whispered into or flicked him on the ear. He also denied that there was any conversation with Michael McCann in relation to subversives or any threats of retribution. He also denied that there was any comment to the effect that he would be beaten up in the interview room and that it would be futile to call the member in charge.<sup>274</sup>
- 5.106. Garda Louise Casey, who was member in charge for the earlier part of the final interview, gave evidence that as far as she was aware, there were never any more than two interviewers in the interview room with Michael McCann during her period as member in charge. She admitted that she would be relying on somebody to inform as to the time when a person entered or left the interview room. She did not recall Michael McCann making any complaints to her or leaving down his trousers on any occasion that she called in to check on him, and would have recorded such a complaint in the custody record if it had occurred.<sup>275</sup>
- 5.107. Garda Brendan Joyce gave evidence that he took over as member in charge at 22.00 hours on the Sunday evening, and that he accompanied Garda Louise Casey, who he was replacing, to the interview room at that time. This is significant, as Michael McCann frames his complaint to the member in charge as having occurred at the time of the changeover of shift. Garda Joyce denied that Michael McCann ever dropped his trousers or made a complaint about the manner in which he was being interviewed in his presence, either at the time of the changeover of shift or at any time thereafter. He also denied that Michael McCann complained to him about the manner in which the interviews were being conducted.<sup>276</sup>
- 5.108. **On the balance of the evidence before it, the Tribunal is satisfied that the experience of being detained for two days, and the attendant fear in relation to the consequences were he to be convicted of the matters in respect of which he was arrested, had a very traumatic effect on Michael McCann, a man who had never been in any serious trouble before. The**

<sup>272</sup> Transcript, Day 423, pages 115-155.

<sup>273</sup> Transcript, Day 422, page 115.

<sup>274</sup> Transcript, Day 422, pages 114-123.

<sup>275</sup> Transcript, Day 426, pages 13-27.

<sup>276</sup> Transcript, Day 422, pages 148-166.

Tribunal sympathises with Michael McCann in this regard, and feels that a decision to release him could have been made at a much earlier stage. In respect of the contentious final interview, however, the Tribunal finds it impossible to accept his evidence that he was abused in the manner as outlined. In particular, the Tribunal does not accept his account of being threatened with retribution from subversive groups or of the futility of calling the member in charge. The Tribunal accepts the evidence of the members in charge to the effect that he did not drop his trousers or make a complaint about the manner of his questioning in their presence. In respect of the journey home, the Tribunal notes that it was Detective Sergeant Burke who dropped him home, as opposed to Detective Garda Breslin, as might be inferred from his own account of this journey. The Tribunal is satisfied that nothing untoward happened on the journey, and that Michael McCann's subjective torment in the course of this journey was unrelated to anything that had happened to him, as opposed to the fact of being in custody. The Tribunal recognises that there will be a difference of emphasis placed on the events which occurred during interviews by, on the one hand, the detainee and, on the other hand, the Gardaí conducting the interview. However, in the case of Mr. McCann, the Tribunal regrettably feels that he has gone further. Here the Tribunal considers that exaggeration and difference of emphasis has spilled over into the manufacturing of an account. This conduct is improper. He attempted to mislead the Tribunal and this reflects no credit on him.

- 5.109. The Tribunal has heard evidence from the member in charge. He denied ever seeing Michael McCann stripped down as he has described. He said that no plea was made to him by the prisoner as to what would happen. **The Tribunal, against the background of the manner in which these complaints have been made, does not regard them as probable.**

### **The Arrest and Detention of Bernard Power**

- 5.110. Bernard Power was arrested by Sergeant Philip Gillespie at 10.20 hours on the 23rd of May 1998 at Ballyderowen, Burnfoot and conveyed to Burnfoot Garda Station. He gave the name Timothy McDonagh when he was first arrested. He was released from custody at 00.10 hours on the 25th of May 1998. The arrest was under Section 30 of the Offences against the State Act for an offence under the Firearms Act. During the course of his detention he was interviewed by a number of Gardaí, as set out in the following table:

Date	Time	Interviewers	Reference
23/5/1998	14.00-14.40	Sgt. Philip Gillespie/ Gda. Michael Farren/ Gda. Christy Galligan	Tribunal Documents, 265-267
	17.40-19.10	Gillespie/Farren	
	20.02-20.55	Gillespie/D/S Sgt. Thomas Burke	Tribunal Documents, 268-269
	21.40-22.35	Gillespie/Burke	Tribunal Documents, 269
24/5/1998	12.40-13.00	D/Sgt. Jim Leheny	
	13.00-15.05 <sup>277</sup>	D/Sgt. John White/ D/Sgt. Sylvie Henry	Tribunal Documents, 272-276
			Tribunal Documents, 1365-1367
	16.02-18.05	D/Gda. Brendan Regan/ Gda. Thomas Rattigan	Tribunal Documents, 270-271
	18.07-19.09	Sgt. Martin Byrne/ D/Gda. John Clancy	Tribunal Documents, 1368-1369
	20.35-21.45	Regan/Rattigan/ Gda. Michael Burke	
	21.45-23.15	D/Sgt. Fergus Treanor/ D/Gda. Patrick Flood	

5.111. In his evidence to the Tribunal, Bernard Power agreed that nothing untoward happened to him for the duration of his first day in custody.<sup>278</sup> He did, however, outline an incident which he believes occurred in either the penultimate or the final interview before his release on the Sunday evening/Monday morning:

*I was getting interviewed, I think it was about the same thing, the murder of the old man, I'm not sure but one of the guards -- I was one side of the table, the other guard was the other side of the table. Whatever he was saying to me, he pointed, he pointed with his hand. It made me nervous, I pointed back. As soon as I pointed back he drew out with the back of his hand and gave me two slaps into the mouth. Just as he did, the other tall guy gave me two, not very hard pucks into the ribs. I suppose I was panicking and then he said relax, relax, we're doing the interview, relax, relax. So I relaxed and we went back into the interview...[The guard who slapped me was] I'd say about five eight, maybe five nine, five*

<sup>277</sup> There are two sets of interview notes in respect of this interview.

<sup>278</sup> Transcript, Day 417, page 11.

*eight, my height, maybe a bit smaller. Between, could be 50, 55 in my vision. Kind of a sandy or grey hair, greyish, curlyish hair, small, thinnish build...Maybe a Donegal accent, I'm not sure...[The Garda who punched me in the ribs] was standing...just a bit behind me...About two [punches]...into the back of the ribs...He was a tall, a tallish guard about, he could be six foot. Slimmish. I'm sure he had black or dark brown hair...He could have been 45 [years old]...[They were both in] plain clothes.<sup>279</sup>*

5.112. Bernard Power indicated to the Tribunal that Detective Sergeant Fergus Treanor, whom he had seen sitting in the Tribunal chamber before he gave evidence, was not one of the Gardaí who took part in this contentious interview.<sup>280</sup> This ruled out the final interview, conducted by Detective Sergeant Treanor and Detective Garda Patrick Flood, which was conducted between 21.45 hours and 23.15 hours on the evening of the 24th of May, 1998. The Tribunal's attention then focussed on the penultimate interview, which was conducted between 20.35 hours and 21.45 hours on the evening in question. It is as well to quote the various entries in the custody record for that period.<sup>281</sup>

24/5/98	8.17 p.m.	Prisoner brought to T.V. Room to visit with his wife Pauline and also with his aunt Mary Collins
24/5/98	8.35 p.m.	Visit completed at T.V. Room and prisoner to interview room. D/Gda. Regan – Rattigan.
24/5/98	8.45 p.m.	Gda. Rattigan leaves interview room and Gda. M. Burke to interview.
24/5/98	9.00 p.m.	Gda. Burke leaves the interview room and D/Gda. Regan remains.
24/5/98	9.45 p.m.	D/Gda. Brendan Regan leaves the interview room and is replaced. D/Gda. Flood and D Sgt. Treanor. All in order.

5.113. It will be noted from the above record that there were only two brief periods during the course of this interview when two interviewers were present in the room: the ten minute period at the beginning of the interview when Garda Rattigan was in the company of Detective Garda Regan and the fifteen minute period directly after that when Garda Michael Burke was present, having replaced Garda Rattigan.

5.114. When he came to give evidence at the Tribunal, it was put to Detective Garda Regan by counsel for Bernard Power, that his client was "75% sure" that it was he who had administered the punches to the ribs.<sup>282</sup> It was also put to Detective

<sup>279</sup> Transcript, Day 417, pages 14-20.

<sup>280</sup> Transcript, Day 417, page 17.

<sup>281</sup> Tribunal Documents, pages 1363-1364.

<sup>282</sup> Transcript, Day 422, page 54.



Garda Regan by counsel for Bernard Power, that the assault occurred during the ten minute period when Garda Thomas Rattigan was present in the interview room.<sup>283</sup> Detective Garda Regan denied having assaulted Bernard Power in the following terms:

*It was after a visit. We brought him over to the interview room and we began interviewing him again...Garda Rattigan was there for a short period of time, I think it was about ten minutes....He was replaced then by Garda Burke...Garda Burke was in the interview room for approximately 15 minutes. Garda Burke knew him from before...Garda Burke was stationed in Dublin and he came across Mr. Power in Dublin...I had been in with [Bernard Power] before with Garda Rattigan and I had already taken a statement off him and I got to know Mr. Power, it just was a casual interview. That's the way it was...There was no purpose [to the interview]. Like I mean, in the previous interview he told me he knew nothing about the gun and I was believing him, I was inclined to believe him, yes...I treated him with courtesy and respect at all times that I was in the interview with him, Mr. Chairman. I think Mr. Power has stated that there was two detectives interviewing him when this alleged ill treatment occurred...Well Garda Burke was in uniform...for that 15 minutes before I was in on my own...Garda Rattigan was only in with me for ten minutes, so that was a short interview. The following interview after that, Garda Burke was in with me and that was for 15 minutes, which was a short interview, and he was in uniform. Then I was on my own for...45 minutes, but I was on my own for that period. I am sure Mr. Power would have recalled those instances...His descriptions, I think they're 45 and 55 years of age. Well I was only 35 back then, Mr. Chairman...I wasn't 45 or 55. Garda Rattigan would have been the same age and I think Garda Burke would have been a bit older than that, but he was in uniform so it couldn't have been either he was referring to. But nothing untoward happened him whatsoever in that interview, nothing.<sup>284</sup>*

- 5.115. Garda Thomas Rattigan gave evidence that both he and Detective Garda Regan had interviewed Bernard Power earlier that afternoon and had taken a statement<sup>285</sup> from him, which he was happy to sign. It is interesting to note that in the course of this statement, Bernard Power makes the comment that, "That gun that was got on the site yesterday was planted on us, that's my belief".<sup>286</sup>

<sup>283</sup> Transcript, Day 22, page 61.

<sup>284</sup> Transcript, Day 422, pages 8-19.

<sup>285</sup> Tribunal Documents, pages 270-271.

<sup>286</sup> Tribunal Documents, page 271.

Garda Rattigan went on to deny that any verbal or physical abuse of the prisoner had taken place at any time when he was present, and that he did not conform to the physical description of the man who was alleged to have either punched or slapped Bernard Power. He indicated that he was due to go off duty at 22.00 hours that night, but was relieved of his interviewing duties early by Garda Michael Burke, who indicated that he knew Bernard Power from Dublin.<sup>287</sup>

5.116. Garda Michael Burke gave evidence that on the day in question he took up duty in Buncrana Garda Station where Michael McCann was at that time detained. When he saw Michael McCann's Dublin address on the custody record, he recognised it from his own time working in Dublin. He decided to enquire as to the well-being of Bernard Power, whom he had dealt with during his time in Dublin, and whom he knew to have resided at the address in question. Michael McCann informed him that Bernard Power had been travelling with him, had also been arrested the previous morning and was detained at that time in Burnfoot Garda Station. Garda Burke made it his business to pay a visit to Burnfoot Garda Station later that evening with a view to meeting Bernard Power, whom he hoped would welcome seeing a familiar face. It was in this context that he entered the interview room in Burnfoot Garda Station at 20.45 hours. Garda Rattigan left the interview room immediately upon his arrival. Counsel for Bernard Power indicated to the Tribunal that his client had no allegation to make against Garda Burke.<sup>288</sup>

5.117. The Tribunal notes that when Garda Rattigan was cross-examined by counsel for Bernard Power, no direct allegation was made to him that he was in fact the Garda who had slapped Bernard Power.<sup>289</sup> This proposition appeared to be at the core of Bernard Power's allegation. **The Tribunal notes that Garda Rattigan, when he appeared to give evidence, did not fit the description of the Garda alleged to have slapped Bernard Power as given by him in his evidence to the Tribunal. The Tribunal believes that this divergence, given the natural process of aging, would have been even starker almost eight years ago, when the incident allegedly occurred. The Tribunal is not satisfied that the incident as outlined by Bernard Power took place.**

### **The Arrest and Detention of David Power**

5.118. David Power was arrested on the 23rd of May 1998 at 10.15 hours at Ballyderowen, Burnfoot under Section 30 of the Offences against the State Act, 1939 in respect of a firearms offence. The arresting officer was Detective Sergeant Hugh Smith and he was detained until the 24th of May 1998 at 23.52 hours. He was interviewed by a number of Gardaí during his detention in

<sup>287</sup> Transcript, Day 424, pages 72-85.

<sup>288</sup> Transcript, Day 424, pages 86-94.

<sup>289</sup> Transcript, page 424, pages 82-85.

Letterkenny Garda Station. The following table outlines the interviews conducted during the course of David Power's detention:

Date	Time	Interviewers	Reference
23/5/1998	12.20-14.20	D/Sgt. Hugh Smith/ D/Gda. Michael O'Grady	
	14.20-16.17	D/Gda. Seán O'Brien/ D/Gda. John Kissane	Tribunal Documents, 1377-1378 <sup>290</sup>
	17.55-20.10	Smith/O'Grady	
	20.10-21.10	O'Brien/Kissane	Tribunal Documents, 1379-1380 <sup>291</sup>
	22.10-23.40	O'Brien/Kissane	
24/5/1998	8.21-10.15	D/Gda. P.J. Keating/ D/Gda. Brian McEntee	Tribunal Documents, 1381-1383
	10.25-11.55	O'Brien/Kissane	Tribunal Documents, 1384-138.
	13.06-15.00	Keating/McEntee	Tribunal Documents, 970-974
	15.00-16.00	O'Brien/Kissane	
	17.00-19.10	Keating/McEntee	Tribunal Documents, 1388-1391
	19.30-20.00	O'Brien/Kissane	
	21.00-23.52	Sgt. Martin Byrne/ D/Gda. John Clancy	Tribunal Documents, 1392-1393

### Post Mortem Photographs

5.119. David Power gave evidence that during the course of an interview on probably his first day of detention, post mortem photographs of Mr. FitzMaurice were produced to him and he was forced to look at them. He gave the following evidence:

*On the first day, I'm not really sure but 90% sure, on the first day I was getting questioned about this old man, Mr. Chairman. One of the guards was asking me questions, he was up and about, he was walking about. There was another ...detective, he was sitting down not saying much. But the one standing up, he was mostly asking me questions and he would walk to a window and look out through it, looking through a bag that he had or a case or*

<sup>290</sup> It is not clear whether this memo is attributable to this interview as no time is given on the face thereof.

<sup>291</sup> It is not clear whether this memo is attributable to this interview as no time is given on the face thereof.

*something. At one stage, I can't remember the questions he was asking me but at one stage he said to me, do you want to see the photograph, he says, of this old man. I told him, I don't want to see the photograph of the old man. He walked over to me sitting at the table and threw the photograph on the table and he grabbed me from behind like this, Chairman. (Indicating) He didn't push my head straight up, he just kind of pushed it towards the -- to make me look at the photograph. I pulled my head back. He only did it on the one occasion. He wanted me to see the photograph really, expecting me to say something that I couldn't say anything about, but I think that's what he was trying to do...I thought [he] was about 30 to 35, that kind of range. I would give him about six foot, with dark hair. But that is the only things I can remember of him, I can't remember anything else, Mr. Chairman...we'd say well built. I wouldn't say heavy or I wouldn't say slim. I'd say in between, well built...Dark hair, dark brown, black hair...The other detective was sitting down there. I wouldn't know any of their names anyway, Mr. Chairman. The other detective was sitting there. He was just -- he never said nothing, just mostly taking notes I think and that was really it...he was a bit older and greyer, that's all I can remember...I can't remember what interview did that really happen in, was it the first -- I know it was one of the murdering questions, when I was getting questioned about the old man, Mr. Chairman, but really I couldn't tell you what interview it was...it happened on the first day...[In the photograph] I saw an old man with his hands and feet tied, Mr. Chairman. Well bruised and cut. His pyjama bottoms were kind of pulled down a bit. I'd say he was about 70 years of age, Mr. Chairman, in a very bad state, very bad state...He was lying on the floor, he was slumped on the floor...I can't remember a settee, Mr. Chairman, I won't tell a lie.<sup>292</sup>*

- 5.120. In his Statement of Claim in civil proceedings arising out of this matter, dated the 5th of July 2002 the following extract in relation to production of photographs appears:

The Plaintiff, was grabbed by the back of his neck by a member of an Garda Síochána and forced to look down at the photograph of a dead man on the table. In addition he was struck with the photograph of the old man in his face. The Plaintiff had offered no provocation or justification for the actions of the said persons. The Plaintiff reserves the right to furnish further particulars if the need arises.<sup>293</sup>

<sup>292</sup> Transcript, Day 416, pages 126-133.

<sup>293</sup> Tribunal Documents, page 849.

The Tribunal notes that the allegation that David Power was struck in the face with the photograph was not followed through with in his evidence to the Tribunal.

- 5.121. Only two sets of Gardaí interviewed David Power on his first day in custody. He gave evidence that the first interview, which was conducted by Detective Sergeant Hugh Smith and Detective Garda Michael O’Grady, focussed on the finding of the gun, whereas the interview in which he was allegedly shown the photographs concerned the murder of Mr. FitzMaurice. Considering the fact that Detective Sergeant Smith was the officer who in fact arrested David Power, and that the descriptions given do not match him or Detective Garda O’Grady, the Tribunal’s focus turned to the other two officers who interviewed David Power on the first day: Detective Garda Seán O’Brien and Detective Garda John Kissane. Both men were members of the National Bureau of Criminal Investigation and had been specifically directed to go to Donegal on that day to interview the suspects.
- 5.122. Detective Garda Seán O’Brien vehemently denied showing post mortem photographs of Mr. FitzMaurice to David Power. He denied having ever seen such photographs at any time himself, and claimed not to have heard anything about post mortem photographs during his time in Letterkenny Garda Station over that two-day period. He claimed that to produce such photographs during an interview of a suspect would render any future statement inadmissible.<sup>294</sup> Of itself, that proposition is not legally correct. When cross-examined by counsel for David Power, it was put to Detective Garda O’Brien that, “Mr. Power is not saying that you were the Garda who did this, in fact he’s unable to identify any particular Garda as being responsible for this”.<sup>295</sup> Detective Garda John Kissane had a greater involvement in the overall FitzMaurice investigation than Detective Garda O’Brien. He had in fact drawn up some preliminary profiles of the persons mentioned in Detective Sergeant White’s report of the 18th of May 1998, before travelling to Donegal on the morning of the 23rd of May 1998. As David Power was one of the persons mentioned in that report, it seems reasonable to presume that he was assigned to interview David Power in part on that basis. Detective Garda Kissane denied that he saw any post mortem photographs during his time in Letterkenny Garda Station on that weekend, nor did he hear anything about such photographs being available in the station.<sup>296</sup> Counsel for David Power declined to make any direct allegation against Detective Garda Kissane in respect of the alleged showing of the photographs.<sup>297</sup>
- 5.123. **In light of the above evidence and the observations in relation to the post**

<sup>294</sup> Transcript, Day 422, pages 78-80.

<sup>295</sup> Transcript, Day 422, page 97.

<sup>296</sup> Transcript, Day 422, page 123.

<sup>297</sup> Transcript, Day 422, pages 103-108.

mortem photographs that are set out earlier in this report, the Tribunal cannot be satisfied that David Power was not shown the post mortem photographs of Mr. FitzMaurice as alleged. While, in the light of the Tribunal's other findings, it is possible that he was, the Tribunal could not ascribe any finding of responsibility in that regard.

### **Rapid Hand Movements**

- 5.124. David Power gave evidence that during the course of his detention he was subjected to intimidation in the form of rapid hand movements in the vicinity of his face. He described these alleged incidents in the following terms:

*On the second day another -- when I was getting questioned by other detectives about the old man's murder again, two detectives, Mr. Chairman, one each side of me, came in so close that one would ask me a question and the other would raise his hand so fast to himself, to his own height, that I was thinking that I was going to get a slap. I kind of jerked back in my chair. This was going on between the two of them for about ten or twelve times, Mr. Chairman. Every time one would be asking me questions, the other fella would raise his hand. I was trying to watch the two of them at the same time. I think it was to threaten me that I was going to get a slap, but none of the two of them ever got me. It was just mentally to make me, they were trying to get me to talk about something, Mr. Chairman, I don't know...He would go so fast from where his hand would be to his own hair. It was so close to me...but he was doing it so fast. Then he put his fingers through his hair...It was to his own face, yes, but it was so fast of a movement that I thought that I'm going to get a slap, Mr. Chairman, do you know what I mean....But nothing ever happened to me...[It happened] about twelve times...Between the two of them, I would say about twelve times, ten to twelve times...[I] cannot [describe the two detectives]...They were different detectives [to the previous day]...Yes, it was none of the men on the first day. Two detectives.<sup>298</sup>*

- 5.125. Once again, in respect of these alleged incidents, Mr. Power was unable to identify those responsible. Although his Statement of Claim indicated that "he was subjected to assault and battery",<sup>299</sup> there are no details. Of the four men who interviewed David Power on the Sunday, who hadn't already interviewed him on the Saturday, counsel for Mr. Power indicated that he was making no allegation against either Detective Garda John Clancy or Sergeant Martin

<sup>298</sup> Transcript, Day 416, pages 129-130.

<sup>299</sup> Tribunal Documents, page 848.

Byrne.<sup>300</sup> No application was made to have Detective Garda P.J. Keating recalled or Detective Garda Brian McEntee called to give evidence on this matter. **On the evidence before it, the Tribunal cannot be satisfied as to this incident.**

### **Denial of Access to a Solicitor**

5.126. One final matter that arose in the course of David Power's evidence was his claim that he was denied access to a solicitor. He claimed:

*When I was questioned at one stage about the old man and when I found out what I was getting charged with, I'm not really sure which interview it was I did ask for a solicitor. I was getting agitated because there was so many questions, Mr. Chairman, getting thrown at me about this old man so I did ask for a solicitor. As I jumped up off the chair I was so agitated, they told me to relax, relax, relax, sit down and relax. With that I did sit down and relax. They softened up a bit. I never asked for a solicitor after that and it never came up. They never asked no more either did I want a solicitor. But he never came to see me from the first asking.<sup>301</sup>*

5.127. There is no mention of this alleged breach of Mr. Power's rights in his Statement of Claim.<sup>302</sup> It is difficult to understand why David Power would be denied access to a solicitor while each of the other six persons arrested at Burnfoot had at least one visit from a solicitor during his detention. **The Tribunal is satisfied that no such denial of access to a solicitor occurred.**

### **Conclusions**

1. **The Tribunal proposes to now summarise its findings in relation to the detention of seven members of the Irish Traveller Community following on their arrest at Burnfoot on the 23rd of May 1998.**
2. **All of those arrested at Burnfoot were unlawfully deprived of their liberty. The arrests took place directly as a result of a member of An Garda Síochána, namely Detective Garda John White, deliberately planting a dangerous firearm at the encampment on the previous day so that it would be found in a subsequent search, thus justifying the arrest of the heads of household there.**
3. **The Tribunal fully accepts the evidence of the members of the Irish Traveller Community that gave evidence before it that the dominant reason why they journeyed to the north of Donegal was because of their nomadic culture. In addition, subsidiary reasons related to the determination of the leader of their group, Mr. Thomas Collins, to keep**

<sup>300</sup> Transcript, Day 423, page 87.

<sup>301</sup> Transcript, Day 416, page 131.

<sup>302</sup> Tribunal Documents, pages 848-850.

the peace within the wider Irish Traveller Community by bringing some relatives of his away from Dublin so that they might not get into any trouble before giving evidence in a murder trial that was then imminent.

4. While on their travels, the community members engaged in lawful activities that involved hard gardening work under the leadership of Mr. Thomas Collins.
5. The minor conviction of one of the members of the group of Travellers does not detract from the Tribunal's essential finding that this was a peaceful and well ordered group of people.
6. The Tribunal has formed an favourable impression as to the character of the members of the Irish Traveller Community that have given evidence before it. It does not accept that they armed themselves with lethal weapons for the purpose of faction fighting.
7. On the evidence before it, the Tribunal is satisfied that no member of the Irish Traveller Community brought any firearm into their camp at Burnfoot, or took any firearm on their travels to the northwest of Ireland.
8. There is no evidence before the Tribunal that the journey of the men arrested at Burnfoot encompassed a trip to Charlestown in county Mayo where the Late Mr. Edward FitzMaurice was murdered between the 1st and the 6th of May 1998.
9. There is no evidence before the Tribunal that any of those arrested had any part in the murder of Mr. FitzMaurice, or in the planning of same.
10. The Tribunal is satisfied that this group of citizens heard about that murder in the ordinary way, through the radio and newspapers, and that they took an attitude of appropriate moral indignation to the ghastly attack that had been perpetrated on the deceased.
11. During their time in custody, those arrested did all in their power to aid the Gardaí with their enquiries. They told the truth as to their movements and their activities during their journey.
12. Those men were referred to casually by derogatory names while they were in Garda custody. The Tribunal, however, cannot ascribe responsibility for this deplorable situation to any named Gardaí, as this is impossible on the state of the evidence.
13. The Tribunal had the gravest difficulty prior to its hearings in finding out what other allegations of mal-treatment the arrested persons wished to



give evidence of. There was little detail in the civil proceeding documents that the Tribunal had sight of. A request for further particulars from the Tribunal to the legal representatives of the arrested men yielded little extra detail. Extensive interviews by the Tribunal's statutory investigators added some extra particulars. In the end, the Tribunal decided to call the arrested persons and to hear their evidence on oath. This then necessitated an adjournment so that the transcripts of hearings might supply the necessary detail to those Gardaí who were being accused of abuse and assault. One unfortunate result of these defective complaints was that it became impossible to certainly identify the Gardaí against whom allegations of abuse and assault were made.

14. In the result, the Tribunal cannot conclude that any member of the Gardaí assaulted or abused any person in custody beyond the general finding already made that the Irish Traveller Community were the subject of racist abuse by certain isolated Gardaí that the Tribunal cannot identify by name or rank.
15. As to the allegation that post mortem photographs of the Late Mr. FitzMaurice were shown to four men of the seven arrested at Burnfoot, the Tribunal considers that it is probable that this happened to two of the men and that it is possible that it happened to the other two men who complained of this procedure. On the unsatisfactory state of the evidence before the Tribunal it is not possible to ascribe responsibility for this to any individual Gardaí or to say that they were there identified there as interviewing Gardaí. On the evidence, this practice was not authorised and occurred on the initiative of individual members. It is not proven to this Tribunal to have occurred as a result of a policy decision.

## CHAPTER 6

### CONCLUSIONS AND RECOMMENDATIONS

- 6.01. At this stage in the deliberations of the Tribunal, I feel that in addition to the specific recommendation that follows in this chapter, some more general comments are called for.

#### **The Work of the Tribunal**

- 6.02. The first week of June 2002 was the first complete week of work for me as Chairman of the Tribunal together with my legal team. Since that time, the Tribunal has gathered thousands of documents and distributed those that are relevant. It has sat, so far, for close on 450 hearing days. It has completed seven out of the ten modules of work mapped out by counsel for oral hearings. Another module is now at hearing and two other modules have been prepared and simply await hearing time. Whereas the title of the Tribunal focussed its work on “certain Gardaí in the Donegal Division”, the reality is that evidence has been heard from members of An Garda Síochána on a much more widespread basis. The Tribunal has examined senior officers from Garda Headquarters, from almost all of the specialist technical sections, from Crime and Security Branch, from the specialist detective units in Dublin and from many Gardaí serving in Donegal and elsewhere in other divisions. Of the Gardaí serving in Donegal, it cannot be said that they are unrepresentative or an aberration from the generality. All of them were trained as Gardaí and served under a uniform structure of administration and discipline that is standardised throughout the country.

#### **The Terms of Reference**

- 6.03. The Tribunal’s Terms of Reference have in no way restricted the Tribunal as to where it should look or whom it should seek to examine. Every possible enquiry has been made before the five reports on the seven modules, inclusive of this one, that have been already finalised were completed. The Tribunal’s investigations included enquiries from a number of persons who have held the post of Minister for Justice, enquires into documents at that government department and enquiries from other branches of the government. That does not mean that the Tribunal, having exhaustively investigated matters, is not entitled to stop and regard an enquiry as complete. It can and it has. Further, it is not the job of a Tribunal to establish criminal liability by apparently convicting people of criminal wrongs. It does not have the power to do more than

give its opinion and to decide on costs on the basis of awarding the expense of legal representation to those who have co-operated with it and told it the truth. This process of awarding costs to represented parties is only possible when the Tribunal has made findings of fact.

### **An Garda Síochána**

- 6.04. An Garda Síochána is probably the largest organisation in the state where all of its members pursue the same work. It is certainly the largest organisation where all the members are vested with the same legal powers. It is our national police force. It is authorised by law to effect arrests, to invade homes and business premises in order to search, to seize property suspected to be connected to the commission of criminal offences, to carry and use weapons up to and including lethal firearms, to possess drugs and other contraband for the purposes of legal control, to hold prisoners for questioning for periods of some days and to regulate traffic through the making of lawful requirements of drivers and vehicle owners. These are but examples of the powers of the Gardaí. All of these powers are subject to legal regulation. However, the only legal scrutiny over the exercise of such powers is through the courts. In order for the courts to exercise their powers, which are generally to award damages or declare a breach of the law, a case must be taken. That does not always happen when Gardaí are guilty of serious wrongdoing.
- 6.05. It is obvious that for the security of the State and for the security of its citizens, there must be an effective police force. In the Tribunal's opinion, what has been lost sight of is that police work requires the safeguard of strict internal discipline. An Garda Síochána cannot be compared in industrial relations terms, or in terms of its internal accounting, to a business. It is not a commercial enterprise. In the Tribunal's opinion, proper discipline has been lost from the Garda Síochána. Without a management structure being restored to the Gardaí that is based on strict compliance with orders, and immediate accountability, the danger is extreme that what the Tribunal has reported on in Donegal will be repeated; and that such conduct will multiply if allowed to go unchecked.

### **The Proud Record of the Gardaí**

- 6.06. The Tribunal is convinced that there is a substantial core of Gardaí who view police work as a vocation and who act within the law and for the good of the people of Ireland. Numerous examples have surfaced in this module of those admirable people. Garda O'Boyce, for instance, as a

Garda Representative Association official refused to lie for his conspiring colleagues. The Tribunal has heard evidence from numerous Gardaí of all ranks who were clearly committed and energetic police officers. At Garda rank examples include Garda Gillespie and Garda Marley. These officers are an example to the Garda force. They were drawn into temptation without asking for it and they refused to have truck with deceit. Many other examples can be drawn from the modules the Tribunal has heard. The imaginative drive of Deputy Commissioner Peter Fitzgerald, the keen intelligence of Chief Superintendent Thomas Monaghan, and the application to duty of Chief Superintendent William Keane are but some examples of many. The extraordinary work that such officers can do when applied to tasks as seemingly impossible as the once startling homicide rate in Limerick, aspects of the drug problem in Dublin and the search for proper standards and methods of policing is a source of pride to An Garda Síochána and to the country. The same comment applies to those hundreds of men and women who do routine tasks of policing fairly and with a sense of commitment to their community on a daily basis. They are the officers upon whose professionalism the future of the force can, and should, be built.

- 6.07. Then there are Gardaí who need direction and discipline. Even were discipline and proper direction to be effective, the Tribunal would remark that there are those who would never be suitable for any policing task. Examples are mentioned in this report. The fact that they are empowered as policemen by virtue of their membership of An Garda Síochána acts as a timely warning that structures of strict and absolute accounting for duty is essential for the future control of the force. This is a serious business. It is not a matter into which industrial relations chaos can be brought without potentially affecting the lives of everyone in Ireland.

### **Discipline**

- 6.08. There has to be discipline in the Gardaí. It is not a playground for the mischievous. There must be strict accounting and control as to police work. In any organisation, as well as the two extremes of the committed and the mischief-makers, there are those who can be led astray. This is not surprising as those who can be led constitute perhaps the majority of humankind; though one would hope that the number of those who can be led into wrongdoing is less within the Garda force. No one reading this report, or considering any action based on it, should lose sight of the fact that the conspiracy uncovered by this Tribunal involved a sergeant and

two Garda members, and that two otherwise decent women were dragged into lying on its behalf. Detective Garda Kilcoyne stands as a good example of an officer who, had he not come under the bad influence of Detective Sergeant White, might well have served within An Garda Síochána without serious blemish. A senior and much respected officer tempted him and he succumbed. The fact that he told the truth, very much against his best interests, shows that decency is, and always was, the foundation of his character. It is shocking that a man like that can be inveigled into a criminal conspiracy. There were others to whom tentative offers to join the later conspiracy of cover-up were made but who were able to say no, perhaps more easily because they were not in awe of those who would suck them into a morass of corruption. Look at the results of this: two exemplary Gardaí, Garda McConigley and Garda Moran, were left tarnished by an attempt to fit them up with criminal conduct just so that a more favoured colleague could be pulled out of his difficulty: his difficulty being a criminal trial. The Tribunal has been able to restore their reputation. The Tribunal remains stunned, however, by the findings of fact that it has had to make.

### **The Danger of Indiscipline**

- 6.09. The Tribunal has been staggered by the amount of indiscipline and insubordination it has found in the Garda force. There is a small, but disproportionately influential, core of mischief-making members who will not obey orders, who will not follow procedures, who will not tell the truth and who have no respect for their officers. An Garda Síochána is an organisation necessarily vested with wide-ranging powers that impose on the constitutional rights of the citizens of Ireland. It must have, as in a military organisation, accountability and unwavering discipline. Garda Martin Leonard, for example, was able to act almost at will: applying to arrest a colleague in an investigation in which he was not involved, not wearing his uniform, lying at will, and continually testing the waters as to the vulnerability of his colleagues. The behaviour of Sergeant Conaty, Garda Mulligan and Detective Sergeant White in all of this beggars belief; and yet it happened. In the course of a Tribunal hearing that was much extended by their dissimulation, the Tribunal was used as a sounding board for deceit in the hope that it too could be inveigled into believing lies.
- 6.10. Where was the code of Garda discipline in all of this? When this matter was unfolding, Sergeant Conaty had faced, on his own evidence, thirty or

more discipline enquiries and charges and was awaiting trial for a most serious criminal offence. Garda Mulligan was suspended and facing a discipline enquiry that took years more to unravel. Detective Sergeant White still has not had his discipline charges concluded: and that over a period of several years. Because of the overlay of legal formalism on this process, procedures can be used to delay and frustrate simple and straightforward investigations. Members of the Gardaí against whom any wrong is alleged have the dubious, and often exploited, benefit of procedures that compare with those in a murder trial. Garda discipline should be about accounting for how one has served the people of Ireland and about the truth. The criminal trial model is not the only model available for the disposal of employment matters. In ordinary employment, the criminal trial model is almost never available. Instead, people are given the right to be notified of allegations and the right to respond to them before a decision is made. Then that decision is made subject to a statutory remedy as to whether a reasonable employer would have opted for dismissal in such circumstances. This all has the advantage of being swift and fair. If it were adopted within the Gardaí, matters should improve. There would be no right to claim damages for unfair dismissal as Garda service is outside the statutory framework. A simple appeal process from a decision to dismiss could replace the absence of a statutory remedy for unfair dismissal. The Tribunal has already made recommendations in that regard and will not repeat them.

### **Management**

- 6.11. Management has to be based on trust. It also has to be based on checking and the reasonable possibility that managers will be strictly called to account. Trust and leadership are qualities that ensure the proper direction of any organisation. It is imperative to select those who can display these qualities with energy for the Garda force to move forward. The Tribunal reiterates that many officers meet those criteria. Any careful reader of the prior reports of this Tribunal can note the damage that can be done by infirm leadership. The Tribunal has already made recommendations in that regard and will not repeat them.

### **The Future of the Gardaí**

- 6.12. Young and interested people, who have ambition to do well, and to do good by contributing to our society, are joining An Garda Síochána every year. In part, at least, they are drawn to serve by its proud record. They are the hope of the future. It is a disservice to them, and to Ireland, that they

can be asked to serve under and with some of the kind of members that have populated the pages of this report. They can be led astray. The young are, of their nature, vulnerable. They will be left undisciplined and demoralised if pride in the force is not restored through respect for both senior officers and for the kind of committed Gardaí who are also exemplified in this report. The Garda force needs new kinds of members, from religious and national minorities. The Tribunal has already made recommendations in that regard and will not repeat them.

- 6.13. It would be futile, and a shame, for recruits to discover themselves in an industrial relations morass. Those who are charged with upholding the good order of society are not to be dragged into looking at their vocation as a just another way of making money or, worse, of lazing about and making mischief. It is wrong to suggest that the people of Ireland are getting value from every Garda employed by them. This report, together with the other four reports of this Tribunal, is a sure testament to that. Discipline is necessary to bring out the kind of energy and optimism to make a real difference: that shone out in the evidence of Sergeant Fergus Treanor and Deputy Commissioner Peter Fitzgerald. That kind of talent and energy is there within the Garda force. Without structures of strict accounting, and without a swift method of disposing of those who are causing real problems through indiscipline and not working, and of correcting those who can be corrected, a terrible and costly waste of talent will occur. It goes without saying that organised insubordination on a mass scale would be a disaster.

#### **Previous Recommendations**

- 6.14. The Tribunal has now made specific recommendations in five reports. It has reiterated over these last paragraphs its optimism for the restoration of morale within the Gardaí through fair but stern measures of discipline.
- 6.15. There is one further aspect of Garda procedures that needs to be drawn to the attention of the Minister, and through him, to the Oireachtas. It concerns the disquiet of the Tribunal over these several modules with the use of section 29 of the Offences Against the State Act, 1939 as amended.

#### **Power of a Superintendent to Issue a Search Warrant**

- 6.16. Section 29 of the Offences Against the State Act, 1939 as amended allows a Garda superintendent to issue a warrant to search any vehicle or premises, where he is satisfied that “evidence of or relating to the commission of intended commission of an offence” scheduled under the

Act “is to be found”. This is a serious power. It is an exception from the generality of the law that a Garda officer and not a judge should be able to issue a warrant to search a citizen’s home. It is an exception allowed by our constitution, but not by other constitutional frameworks, most notably that of the United States of America. The existence of such an exception should be justified. If it is, the regard for scrupulous attention to detail and to truth that a judge would require must, as a minimum standard, be translated into how a Garda applies for such a warrant and how the superintendent deals with such an application.

- 6.17. The Tribunal has been disturbed by the manner in which section 29 warrants have been dealt with over a number of modules. In the Ardara module, a search warrant was issued that resulted in a number of unlawful arrests. It was based entirely on the application of Detective Sergeant White to Superintendent Dennis Cullinane. The professional regard in which Superintendent Cullinane held Detective Sergeant White, and the manipulation by Detective Sergeant White of this personal advantage over his colleagues, played a significant function in the deception of the superintendent by Detective Sergeant White. It enabled him to procure the issuing of the warrants under Section 29 of the Offences Against the State Act, 1939 for the searches subsequently carried out. In this module, the irregularities associated with the issuing of the several warrants to search seven caravans were staggering. The details of this are in Chapter 3. In the result, seven families were disrupted and seven men were arrested.
- 6.18. Undoubtedly, the use of such Section 29 warrants is an important facility available to An Garda Síochána in the investigation of crime. The vesting of this power to issue a warrant in a senior Garda officer, a superintendent, under the Act enables a prompt step to be taken which may be of vital importance if evidence in relation to the commission of an offence is to be preserved or discovered.
- 6.19. The vesting, under the Act, of this power to issue a warrant in a senior Garda officer enables a prompt step to be taken which may be of vital importance if evidence in relation to the commission of an offence is to be preserved or discovered. In this regard, it was stated in the “Report of the Committee to review the Offences against the State Acts, 1939-1998 and related matters” made to the Government under the chairmanship of the Honourable Mr. Justice Anthony J. Hederman that



There is no doubt but that the power to issue a warrant under Section 29 is a vital weapon in the armoury of the Gardaí in their fight against the activities of illegal organisations. Thus, for example, many of the finds of illegal arms and explosives have resulted from the search of private lands authorised by means of a warrant issued under Section 29. Given the utility and importance of this power, the Committee does not wish to make any recommendation that would undermine its effectiveness.

The Tribunal wholeheartedly agrees with this statement.

- 6.20. The Tribunal also considers that the vesting by the Oireachtas of this power under Section 29 in a senior officer of An Garda Síochána was calculated to ensure that there is a measure of objectivity maintained in the decision as to whether a search warrant will be issued. Unfortunately, in the experience of the Tribunal and from the evidence available over a number of modules, the level of objectivity and independence of mind required for the exercise of this power upon the application of a sergeant of An Garda Síochána is demonstrably eroded if the superintendent concerned in the investigation of the offence is also the authority to whom application is made for the warrant. It seems inevitable that in certain Garda investigations, such as in a small district like Ardara, the superintendent becomes involved in the investigation. In these circumstances, it seems likely that greater weight will be afforded by him as to the needs of the Garda operation or investigation, and somewhat lesser consideration to the rights of the citizen under Article 46.5 of the Constitution and Article 8 of the European Convention of Human Rights concerning the protection of their residence. This was the case in both the instance of the searches at Ardara and, to a much worse extent, at Burnfoot.
- 6.21. It is important that adequate and effective safeguards against possible abuse of a power granted under Section 29 either by the superintendent exercising the power, or those seeking its exercise, exist. An important protection to ensure the fair exercise of this power is that it should be exercised by a person capable of acting in a judicial and independent way. The Garda Síochána's interest in the proper investigation of crime should be balanced with the protection of the individual's constitutional and legal rights to his/her property and privacy in their dwelling. This issue concerned the Committee who reviewed the Offences Against the State Acts, 1939-1998. They addressed the issue in the following way:

The Committee considers that it would be desirable for the legislature to introduce a maximum period within which a warrant should be executed or would otherwise lapse. The Committee has concluded and so recommends, that this period of time should be 24 hours. The Committee addressed the question whether it would be desirable to require that a warrant be issued only by a court in cases where the search of a private dwelling is envisioned. Whilst some members of the Committee would favour this limitation in view of Article 46.5 of the Constitution and Article 8 of the European Convention of Human Rights, the Committee, on balance, does not consider that this additional limitation should form part of its recommendations on this section. Some members of the Committee consider that search warrants issued under this section should remain valid for seven days.<sup>303</sup>

- 6.22. No reasons for this view were articulated in the report. The Tribunal is satisfied that in many cases the person who issued the warrant was the person who was involved in the investigation of this offence. This cannot instil any confidence in the independence of the decision made to issue the warrant. In the Ardara case, the superintendent who was close to the investigation in Ardara was manipulated by Detective Sergeant White. The shocking circumstances as to the issue of the warrants for Burnfoot are detailed in Chapter 3 of this report. The danger exists that a warrant would 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 thereby becomes a mere formality in which the investigating sergeant might as well be empowered to issue a search warrant to himself.
- 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

<sup>303</sup> Paragraph 6.142 of the Report.

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.<sup>304</sup>
- 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.

### **Delay in the Courts**

- 6.26. Detective Sergeant White was charged in respect of the Burnfoot firearm planting on the 19th of June 2001. The report of this Tribunal in respect of this matter is being delivered to the Minister for Justice, Equality and Law Reform on the 10th of May 2006. The Tribunal regrets to report that the criminal trial of Detective Sergeant White has not yet taken place. In consequence, subject to the High Court, there may be much of this report that cannot be published. The Tribunal notes that part of the delay in the disposal of this trial was occasioned by a judicial review application to the High Court. While judgment has been given by the High Court dismissing the application, the possibility of an appeal to the Supreme Court remains to further delay matters.
- 6.27. Judicial review applications are now commonplace as a means of challenging forthcoming criminal trials. An order granting leave to seek judicial review is easily obtained. The consequence of launching judicial review proceedings is serious delay. Many cases are taken for motives that genuinely seek to test the law as it impacts on an accused. The court of trial could dispose of many such applications, however. It would be loosing sight of reality not to recognise that a large proportion of judicial

<sup>304</sup> 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.

review cases are motivated solely by a desire to obstruct the due administration of criminal justice. One of the most serious obstacles to the administration of justice is delay. It has to be recognised that the purpose of judicial review is, in many cases, to cause that delay so that it might work to the benefit of the accused through the death of witnesses, through possible challenges to their recollection based on the elapse of time or through frustration. The legal system should recognise in a practical way that the victim of crime has a right of access to the courts, once a charge is decided on by the Director of Public Prosecutions. Serious delay defeats the rights of victims and of the community. Judicial review is a process of deciding legal issues in a summary way on affidavit. Case management structures should be efficiently brought to bear on the administration of all judicial review lists so as to bring the disposal of these cases back within reasonable times for decision. A strong argument can also be made that the original test for the obtaining of a certiorari or mandamus order, that of convincing the court to issue a conditional order, was a better test than the very slight burden now born under order 84 of the Rules of the Superior Courts of merely obtaining leave to commence an application.

- 6.28. One other matter occurs to the Tribunal on the subject of this kind of unfortunate delay. There are some cases that require to be swiftly disposed of by the courts because they are of the highest importance. It could be the case that other cases depend on them, or that by reason of such a case having been brought that a major public project or enquiry is held up. Where, for instance, a murder case cannot take place because a witness has been charged with some offence, the courts should give a designation of A1 priority to that charge and to all judicial review applications that arise from it. Similarly, if a serious criminal charge is to be delayed because the trial of an accomplice, or other trial, has to be disposed of first, the courts should give A1 priority to bringing all aspects of such a preliminary case to a close. Retrials can be examples of this as well. Despite real efforts by the courts, huge delays are occasioned in cases. The courts should make provision, in a special way, to avoid the multiplication of delay that is occasioned when litigation becomes dependent on the prior disposal of other cases. One aspect of this unfortunate state of affairs is the manner in which tribunals have been, and are being, held up because a ruling is first sought from them and then that ruling is made the subject of a judicial review application in the High Court and in the Supreme Court. This can result in a body that is tasked

with the daunting work of reporting urgently on a matter of high public importance being stopped for months or even for years in its work. Just how unsatisfactory and costly this is requires to be recognised. Finally, the Tribunal considers that there must come a point where delay in any case has become such that by reason of that fact alone the courts should give it A1 priority. The criminal charge against Detective Sergeant White is an example of this, though the Tribunal expressly does not find that he was in any way abusing the system by bringing his judicial review applications.

- 6.29. The Tribunal therefore recommends that serious consideration should be given to the effectiveness of case management structures in judicial review cases and to the appropriateness of the very low threshold that now applies in commencing such cases. The Tribunal further recommends that all courts should recognise that there are cases that should be designated and given A1 priority for their disposal. As to whether any case is to be afforded such priority should be decided the President of each division of the courts on application to him by simple letter followed by a short public hearing of the parties to decide that matter. Once a lower court grants such priority, it should continue on appeal. Where A1 priority is given to a case, time limits as designated by the Rules of the Superior Courts may be shortened and other directions given for swift disposal. The Rules of the Superior Courts already allow for this. The Tribunal also recommends that a High Court judge should be designated term by term to the disposal of A1 priority cases and that such judge be given sufficient time and resources for the production of urgent judgments. It is a matter for the Supreme Court to then dispose of such cases by having the potential for appropriate space in their listings.

## **PROGRESS OF THE MORRIS TRIBUNAL:**

**STATEMENT OF MAY 10TH, 2006**

As of today, reports on the Burnfoot gun-planting and arrest module; the Bernard Conlon as a Garda agent and 'silver bullet threat' module; and the Ardara bomb discovery and arrest module have been delivered to Mr Michael MacDowell S.C., T.D., Minister for Justice, Equality and Law Reform. The Tribunal has now sat for 450 days of hearings.

The Tribunal began work under the Chairman and sole member of the Tribunal Mr Justice Frederick Morris, in early June 2002. The task set by the Oireachtas was to urgently enquire into and report on issues as to unethical and criminal Garda. Counsel, on a preliminary basis, read an opening statement in November 2002 over 8 days.

The hearings began in March 2003. First dealt with was the issue as to the concealment of explosive substances for the purpose of fraudulent finds by some Gardaí. The medical evidence as to how the Late Richard Barron had died was interposed. That issue was part of the investigation into the Garda handling of what was assumed to be his homicide, an entirely separate matter from the explosives issue.

The Barron investigation module was heard next, including issues as to Garda informers and extortion calls. It was concluded in April 2005. After that, the Tribunal heard the module that concerned two matters: that a witness, Mr Bernard Conlon, had been planted in a licensed premises for the purpose of using him in a licensing prosecution; and that two innocent men had been arrested on the word of that same individual who had claimed falsely, allegedly at the behest of a Detective Sergeant, that they had threatened to shoot him and the Detective Sergeant with a silver bullet.

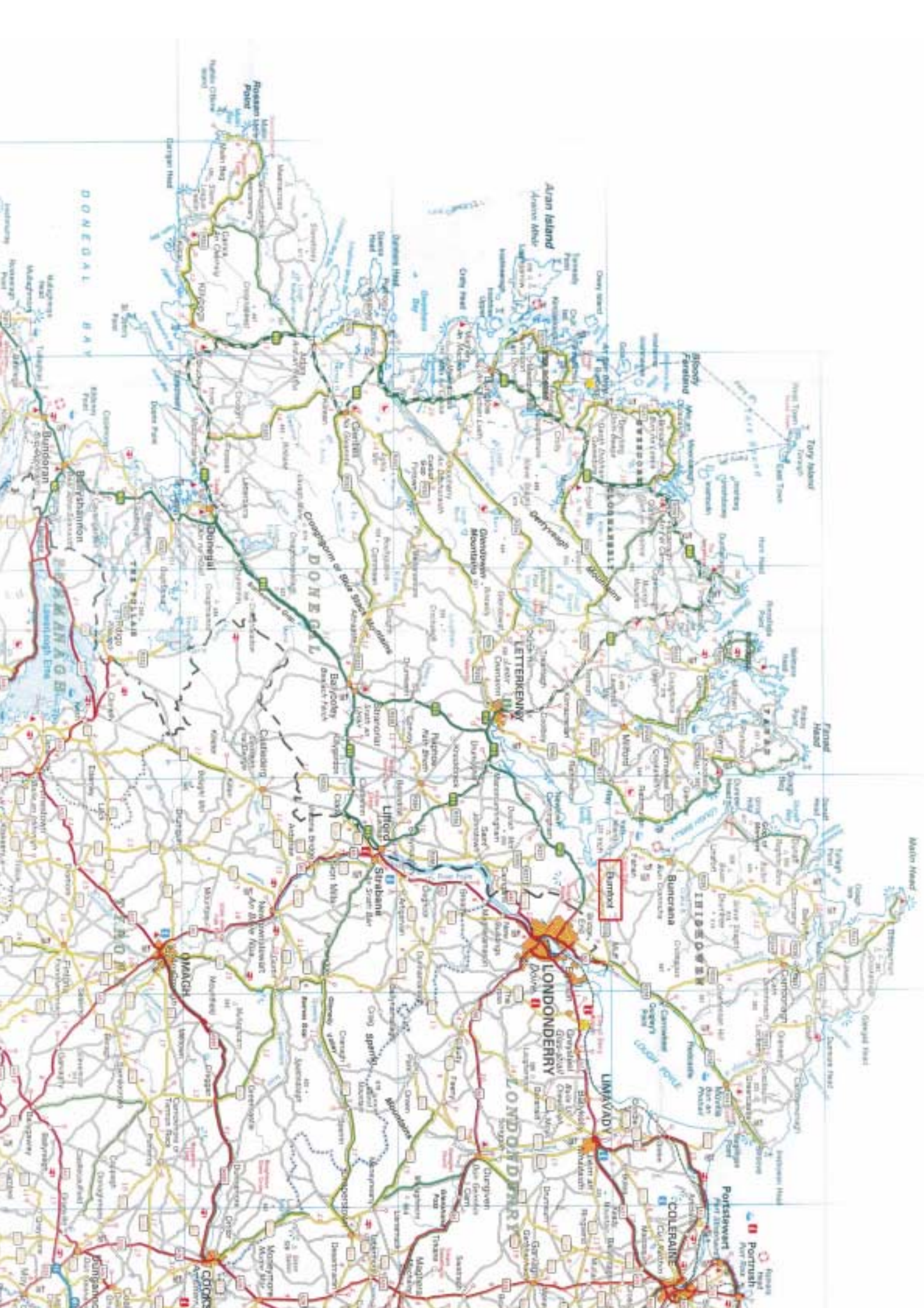
On completion, that module was followed by the hearing concerned with an issue that an explosive device had been planted on a television transmission mast in Donegal for the purpose of arresting three citizens.

On the conclusion of that module, the Tribunal heard the evidence as to the arrest of seven members of the Irish Traveller Community at Burnfoot as an apparent result of the discovery of a sawn-off double-barrelled shotgun there: one that certain Gardaí were themselves alleged to have planted for this purpose.

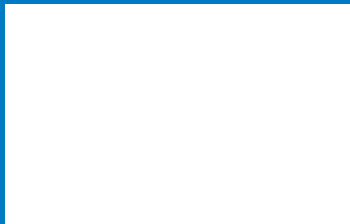
The Morris Tribunal has now issued five substantive reports. The Tribunal is now well into the hearing the module about all of the detentions in relation to certain investigations by the Gardaí in Donegal. A table showing progress, as set against the task set to the Tribunal, now follows:

### Morris Tribunal Progress Table, May 10th, 2006

Module	Term of Reference	Report Issued	Status of Enquiry
1) Planting of explosives for the purpose of fraudulently finding same.	E	Report I, issued in June 2004.	<i>Completed</i>
2) The Garda investigation into the death of the Late Richard Barron.	B1	Report II, issued in June 2005.	<i>Completed</i>
3) The use of informants in a Garda investigation.	B2	Report II, issued in June 2005.	<i>Completed</i>
4) The interrogation of suspects in Garda custody.	B3 and F		At hearing, with three sub-modules completed.
5) Extortion phone calls to the Peoples family.	A	Report II, issued in June 2005.	<i>Completed</i>
6) The alleged planting of an agent in a licensed premises and false allegation of a 'silver bullet' threat against him and a Garda sergeant.	D	Report III delivered to the Minister for Justice in May 2006.	<i>Completed</i>
7) The alleged planting of a bomb on a transmission mast and the consequent arrest of three people.	G	Report IV delivered to the Minister for Justice in May 2006.	<i>Completed</i>
8) The alleged planting of a gun and the consequent arrest of seven people.	I	Report V delivered to the Minister for Justice in May 2006.	<i>Completed</i>
9) Anonymous allegations of Garda corruption at the highest level.	H		Under investigation. Papers delivered. Ready for hearing, subject only to time.
10) Effectiveness of the Garda Complaints Board and the serious harassment of citizens.	C and J		Papers prepared. Advice on Proofs prepared.







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