



**Tribunal of Inquiry into complaints concerning some
Gardaí of the Donegal Division.**

Sole Member
The Honourable Mr. Justice Frederick Morris

THE MORRIS TRIBUNAL

OPENING STATEMENT OF COUNSEL

**“THE DETENTION” MODULE - TERMS OF
REFERENCE (b) and (f)**

The Tribunal has already delivered Reports in respect of Terms of Reference (a), (b), (d), (g), and (i). The Second Report of the Tribunal dealt with the progress, management and effectiveness of the Garda investigation into the death of the late Richard Barron and considered the management and performance of informants in the course of that investigation. As previously noted, the Tribunal deferred the hearing of evidence in respect of the detention of twelve persons who were arrested in the course of that investigation. Those hearings were delayed on the application of Mr. Frank McBrearty Junior on the basis that he was involved in High Court litigation and would find it difficult to give his attention to two sets of oral hearings which would have been personally burdensome and might adversely have affected his health. The Tribunal inconvenienced Mr. Frank McBrearty Junior and adjourned Detention Modules until March this year. In the meanwhile, the Tribunal proceeded with three Modules in respect of Terms of Reference (d), (g), and (i). In addition at the request of Mr. Mark McConnell, the Tribunal agreed to defer the hearings in respect of the sub-modules concerning the detention of Mrs. Roisin McConnell until July of this year and his own sub-module until to-day the 18th September, 2006. However, the evidence of Detective Sergeant John White could not be taken during the course of Mrs. Roisin's McConnell's detention sub-module in July because Detective Sergeant White's trial proceeded during the month of July and it became necessary to re-schedule the taking of his evidence until after his trial and accordingly, his attendance was deferred and the matter was adjourned until the Tribunal resumed its business to-day the 18th September, 2006.

Twelve persons were arrested in relation to the death of the late Mr. Barron in the course of the Garda investigation. Since March of 2006 the Tribunal has heard evidence in relation to the arrests and detentions of:

- (1) Katriona Brolly
- (2) Edel Quinn
- (3) Mark Quinn
- (4) Damien McDaid
- (5) Charlotte Peoples
- (6) Michael Peoples
- (7) Martin McCallion
- (8) Sean Crossan

and has heard much of the evidence in respect of:

- (9) Roisin McConnell

It is hoped, following the conclusion of the evidence in relation to the sub-module concerning Roisin McConnell's detention to proceed to hearings in respect of the arrests and detention of Mark McConnell, Frank McBrearty Junior and Frank McBrearty Senior. It will also encompass evidence in respect of Term of Reference (f) concerning the circumstances surrounding the arrest and detention of Frank McBrearty on the 4th of February, 1996 and his subsequent prosecution in the Circuit Criminal Court in respect of alleged assault on Edward Moss together with examination of the Garda investigation

of the case of Edward Moss. The detention of Mark McConnell on the 1st October, 1998 will also be examined. Opening statements have already been made in respect of the detentions of Roisin McConnell, Mark McConnell, Frank McBrearty Junior and Frank McBrearty Senior and the case of Edward Moss in which your Counsel attempted to set out the issues which appeared to present themselves in the papers then available to the Tribunal.

Further Opening Statements were then delivered in respect of the Detention Module on the 21st and 27th March, 2006 respectively. A further short Opening Statement was made before Mrs. Roisin McConnell gave her evidence to the Tribunal on the 3rd July, 2006. This statement together with the evidence given by Mrs. McConnell and other witnesses was received by the Tribunal in hearings which were held "otherwise than in public". This was necessitated in order to avoid any possible prejudice to the trial of Detective Garda John White which was heard in Letterkenny Circuit Court during the month of July. It should be noted that upon the conclusion of that trial in which Detective Sergeant was acquitted, an order was made by the Tribunal directing that the prior Transcripts of Mrs. McConnell sub-module be made available and they may now be found in the Tribunal's website:- www.morristribunal.ie. The Tribunal will now proceed with the concluding evidence in this sub-module in public.

The supplemental Opening Statements in large measure arose out of admissions made by Detective Garda John Dooley that he had, together with Detective Sergeant John White, engaged in misconduct during the course of their interviews with Mrs. McConnell. In her statements and in her evidence before this Tribunal Mrs. McConnell made very serious allegations against Detective Sergeant White and Detective Garda Dooley in respect of an interview which occurred late in her detention on the 4th December at some time between 19.25 and 20.10 hours approximately. She alleged, amongst other things, that Detective Sergeant White threw her off a chair and told her to stand up and flung the chair across the room. He pushed her up against the filing cabinet in the room. He touched her with his shoulder. He kept banging up against her but then told her to stop leaning up against the cabinet or to stop leaning against a wall. She complained that the interviewers were pushing her around the room. She said that Detective Sergeant White was enraged and describes that he was roaring and shouting that much that he was frothing at the mouth causing spittle to fly into her face.

She also alleged that she was shown photographs of the late Richard Barron's body and described these photographs in graphic detail. She alleged that the two Gardai were shoving photographs into her face. She complained that while Detective Sergeant White was pushing these photographs up against her face she kept closing her eyes. He called her Satan and the Devil and said that she would never see her late father in Heaven and that she would go to Hell for what she was doing. She alleged that Detective Garda John Dooley was smirking and at one stage turned around to Detective Sergeant White and told him to watch it, that there was somebody out in the hallway. She said he then quietened down for a minute

and listened to see if there was anybody in the hallway and then resumed the abuse.

Mrs. McConnell also complained that Detective Garda Dooley kept telling Detective Sergeant White to show her the photographs saying “let the murdering bitch look at them”. She said that Detective Sergeant White made allegations of infidelity against her husband in order to get her to turn against him. He verbally abused her and was physically vulgar towards her. She was constantly called a “murdering bitch” or “a lying murdering bitch”. She was made to bless herself and pray to her dead father. Detective Sergeant White allegedly then turned to her and asked her what her father had said to her and she replied that her father had told her that she was telling the truth. She alleged that this caused Detective Sergeant White to lose his temper again. All of the allegations made by Mrs. McConnell against Detective Sergeant White were initially denied by him in the course of the investigation into the death of the late Mr. Barron and in a further statement made to Chief Superintendent Carey on the 2nd June, 1998. These allegations were described by him as “amazing”. Detective Garda Dooley also made a statement on the 17th April, 1998 denying the allegations made by Mrs. McConnell by giving a contrary account of her arrest and detention.

On the 14th October, 2005 Detective Garda Dooley admitted many of the allegations levelled against him and Detective Sergeant White by Mrs. McConnell. As outlined previously, Detective Garda Dooley admitted in this statement that at Detective Sergeant White’s direction he went to the Incident Room and obtained an album of post mortem photographs of Richard Barron. He said that when he returned to the Interview Room he passed the album of photographs over to Detective Sergeant White. He also admitted that a number of matters were put to Roisin McConnell which were not recorded in the written Memo of interview. He said that Detective Sergeant White reminded Mrs. McConnell that the offence for which she was arrested carried a prison sentence of seven years on conviction and that her child would be put into care. He alleged that Detective Sergeant White put it to Mrs. McConnell that Frank McBrearty Junior had murdered Richard Barron and that her husband Mark McConnell had witnessed it and that she had told a number of lies in her interviews and that she should start to tell the truth.

Detective Garda Dooley said that he told Mrs. McConnell that her husband was unfaithful to her, with a named woman.

He also admitted in this statement that he suggested to her that she had been coached and tutored by Frank McBrearty Senior in relation to her story. He delivered all of this in a raised and aggressive voice in an attempt to put pressure on Mrs. McConnell. In this statement Detective Garda Dooley significantly denied that he or his colleague Detective Sergeant White had ever made any physical contact with Mrs. McConnell or interfered with her at any stage during the interview.

Detective Garda Dooley went on to admit that Mrs. McConnell had been called a “lying bitch” and ordered to put out a cigarette that she’d been

smoking. She had been ordered to stand up and told that she had been too well treated all day and that she had told several lies throughout the three interviews. He alleged that Detective Sergeant White got out of his seat, walked around the table and grabbed the chair on which Mrs. McConnell had been sitting. He threw it to the other side of the room away from Mrs. McConnell "in angry exasperation". Detective Sergeant White then got the album of photographs relating to the post mortem examination of the late Richard Barron and began to show them to Mrs. McConnell one by one. They were held "about a foot from her face". Detective Garda Dooley stood beside the light switch at the other side of the room switching it on and off. He denied that Mrs. McConnell was pushed into a cabinet by Detective Sergeant White or by him. He acknowledged that Mrs. McConnell looked shocked at the sight of the post mortem photographs which were graphic. Detective Garda Dooley alleged that Detective Sergeant White also told Mrs. McConnell that if she told the truth she would save herself seven years in prison. When she insisted that she had been telling the truth all day, Detective Sergeant White shouted at her that she was "a lying murdering bitch" or words to that effect. Detective Garda Dooley then alleged that Detective Sergeant White asked Roisin McConnell to pray to her late father for guidance and he in turn would pray to Richie Barron for the truth. After a period Detective Sergeant White asked her what her father had said to her and she replied that she had been telling the truth. Of course, none of this was recorded in the Memo of interview.

At the conclusion of that statement a number of points of difference, which were pointed out in the Opening Statement of the 21st March, existed between Detective Garda Dooley's description and the allegations made by Mrs. McConnell. Detective Garda Dooley "vehemently" denied that either he or Detective Sergeant White physically assaulted and/or pushed Mrs. McConnell around the room. He denied that Detective Sergeant White had ever raised his leg and broke wind or spat in Mrs. McConnell's face. He had not admitted that there had been any reference to Roisin McConnell as "Satan".

Following the making of this statement and in circumstances already outlined in the second supplemental Opening Statement in this sub-module on the 27th March, 2006, Detective Sergeant White furnished a statement to the Tribunal in which he admitted a number of the allegations made by Mrs. McConnell, in the circumstances outlined in the previous Opening Statement of the 27th March, 2006. Detective Sergeant White in a statement made on the 25th March, 2006, following a request by the Tribunal to reply to the statement made by Detective Garda Dooley on the 14th October, 2005, admitted to a number of the allegations made by Mrs. McConnell. He said that he broadly agreed with the statement made by Detective Garda Dooley and Mrs. McConnell. In respect of Mrs. McConnell he agreed that:

- (a) Photographs of the late Richard Barron were shown to her.
- (b) Allegations of infidelity by Mark McConnell were made to Mrs. McConnell.

- (c) It was suggested to her that Frank McBrearty was the main focus of the criminal investigation into the death of the late Mr. Barron.
- (d) A chair was roughly skidded across the interview room during an interview with Mrs. McConnell.
- (e) Intemperate and insulting language was used.
- (f) Lights were switched on and off in the course of an interview with Mrs. McConnell.
- (g) Reference was made to Mrs. McConnell's father's grave.
- (h) Mrs. McConnell was threatened that if convicted her children could be taken into care.
- (i) It was suggested to Mrs. McConnell that she was under the influence of Frank McBrearty Senior.
- (j) The questioning of Mrs. McConnell was intense and she was told to stop smoking.
- (k) Her chair was cast across the floor.
- (l) The interrogators voices were raised and abusive language was used.
- (m) Mrs. McConnell was told that if she told the truth she could save herself years in prison.

However, Detective Sergeant White denied (as did Detective Garda Dooley at that time) that he ever assaulted or laid hands on Mrs. McConnell. He said:

In particular I denied that I pushed, shouldered, unseated or had any physical contact with Roisin McConnell. I did not break wind in her face. I did not spit at her. I did not push photographs into her face. I did not call her Satan.

Subsequently on the 30th June, 2006, the Tribunal received two further short statements from Detective Garda John Dooley, days before Mrs. McConnell was due to give her evidence on the 3rd July, 2006 during the course of the non-public hearings. On that date the two short statements were read into the record and Detective Garda Dooley admitted that:

- (1) Roisin McConnell was shouldered whilst being interviewed by Detective Sergeant White and Detective Garda Dooley during the final interview with Mrs. McConnell. He said that:

It commenced after she was ordered to stand up and after her chair had been thrown across and before the post mortem photographs of the late Richard Barron were shown to her. At the time I was standing to the right of Roisin McConnell and Detective Sergeant White was standing to her left. Detective Sergeant White was the instigator of this incident. Without warning Detective Sergeant White shouldered Roisin McConnell into me and I

shouldered her back to him and this was repeated on three to four occasions.

- (2) Detective Garda Dooley admitted that Roisin McConnell was referred to as “Satan”

In relation to matters in general, Detective Garda Dooley also recalled an incident which he described as follows:

Detective Sergeant White and I left Letterkenny Garda Station on a meal break at approximately 5pm and returned at approximately 6pm or thereabouts via the back entrance to the Station. On opening the back door I heard loud angry shouts from several different male voices. This continued for what seemed like several minutes. The voices were angry and argumentative but I cannot recall any specific words or whether foul language was used. The shouting was coming up from upstairs where Frank McBrearty Junior and Mark McConnell were being interviewed. The noise created had ceased after some time and I cannot be certain about the length it continued.

Mrs. McConnell has now given her evidence to the Tribunal as has Detective Garda Dooley. The next step is for Detective Sergeant White to furnish his testimony in relation to the outstanding points of difference between himself and Mrs. McConnell. In respect of at least one of those points, the allegation that she was physically assaulted, Mrs. McConnell is now supported in her testimony by the testimony of Detective Garda Dooley. The incremental series of admissions by Detective Garda Dooley and Detective Sergeant White has led to the situation in which most of the allegations made by Mrs. McConnell are accepted by the two interviewers as true. Detective Sergeant White and his Counsel now have the opportunity to cross examine Detective Garda Dooley in relation to his further admissions concerning the alleged assault on Mrs. McConnell in the course of interviewing and any other matters which he wishes to engage with and of course to give evidence himself in relation to all of these matters.

Further Evidence from Detective Garda John Harkin

Another important development in this sub-module concerns the evidence of Detective Garda John Harkin, Mr. John McGinley, Garda Georgina Lohan and another Garda who had not featured at all to date in this sub-module, Sergeant Brian McEntee. Detective Garda John Harkin gave his evidence to the Tribunal concerning his involvement in the interviewing of Mrs. Connell on the 12th July, 2006 (Day 481). However, at the conclusion of his evidence, he

re-considered his position. The Tribunal was informed that Detective Garda Harkin was troubled that he had not told the full and true story of his involvement with Mrs. McConnell and that he wished to give a further account to the Tribunal. He was interviewed by the Tribunal's Investigators on the 17th and 21st July, 2006 arising out of which, you Sir, as Chairman, directed further inquiries which involved seeking further statements from amongst others Sergeant Brian McEntee and Mr. John McGinley. These inquiries were completed last Thursday the 14th September, 2006.

The Issue

Detective Garda Harkin primarily, wished to change the account which he had previously given in statements and in evidence to the Tribunal, concerning how the notes of the second interview which he had conducted with Mrs. McConnell had been compiled, and how those notes came to be changed by him at the instigation of the then Inspector John McGinley, directly and through the agency of Sergeant Brian McEntee, who was in 1996 a Detective Garda.

The note purporting to be a note of the second interview with Mrs. McConnell had, during the course of the Tribunal's inquiry into her detention, and on the materials available to the Tribunal, been a source of controversy. That controversy primarily arose from a statement or report furnished by Garda Tina Fowley to the Chief Superintendent in Letterkenny. In her report she gave an account of how she had been approached at the end of September, 1997 by Inspector John McGinley who sought the notes of interview pertaining to the detention of Roisin McConnell. This is what she described.

During September 1997 I was requested by Sergeant Martin Moylan to assist with Sergeant Brendan Roache to compile the custody files in respect of the detentions of all persons arrested, in connection with the murder of Richard Barron. Towards the end of September, 1997 the task was almost complete, but we were experiencing difficulty in finalising the detention file in respect of Roisin McConnell. There were matters requiring clarification, as there were two distinct sets of notes of one particular period of detention for that particular prisoner and a number of notes and statements not to file. At that time I became aware that Superintendent Lennon had just personally taken over, the conclusion of this investigation and the proper compilation of the files. Inspector McGinley came into the Traffic Sergeant's Office and saw the notes of interview pertaining to the detention of Roisin McConnell. I had received instructions that the original notes were not to be released, and I also had reservations in respect of this particular file, as such I did not then hand over the notes of interview to him. He left the office. I immediately contacted my supervisor on this matter, Sergeant Brendan Roache by phone at his home. He instructed me to get the original

documents out of the office and directly into the custody of Superintendent Kevin Lennon, and the District Officer then in charge of the investigation. I secured the office and made contact with Superintendent Lennon. He directed me to hand over all the files to Detective Sergeant John White. I met with Detective Sergeant White and handed over all documents pertaining to the custody file in my possession to him.

Garda Fowley elaborated on this in a statement on the 13th October, 1999 to Detective Sergeant George Kyne and Detective Inspector John O'Mahoney in which she said:

I experienced difficulty in finalising the file in respect of Roisin McConnell as a number of statements and notes had not been submitted. I stated in my report that there were two distinct sets of notes of one particular period of detention. By this I mean that there was an original set of notes and a typed copy of these notes. My recollection of this is that the typed copy did not reconcile with the original. Everything that was in the original note was not in the typed version.(Emphasis supplied) My recollection also is that it was notes that had been written by Garda John Harkin and that his writing was difficult to read and that the typist was not able to read them. On to-day's date I have identified a set of notes marked 26E which I believe from memory are the set of notes in question. At that time I was under strict instructions from Sergeant Brendan Roache not to release any original documentation. This is the reason when Superintendent McGinley asked me for these notes that I did not give them to him. To refer back to the discrepancy between the original and the typed copy of the notes, when I first discussed this I informed Sergeant Roach who told me to leave it to one side and we would deal with it later.

In an interview with Tribunal Investigators on the 26th June, 2003, Garda Fowley gave a more detailed account of this matter. She said:

During the course of building that custody file, I came across a discrepancy with notes of the interview of Roisin McConnell. There was a hand written set of notes of interview in John Harkin's writing. (Emphasis supplied)... He typed up his own notes of interview because the civilian typist who was typing them up at the time couldn't read his writing. Part of the approach in getting the custody file together was proof reading the hand written copies against the typed copies and when I proof read this set of notes against the typed copy I noticed discrepancies. The

discrepancies led up to the scenario put to Roisin McConnell at around 4.40 in the afternoon by Inspector McGinley. The scenario that was put to Roisin McConnell was remarkably similar to the gist of the statement of admission, (of Frank McBrearty Junior). It followed the same trends. I spoke to Sergeant Roache about this. He was supervising the compilation of the custody files and he said "leave it towards the end. Something could come in that will resolve it". It caused me bother because I couldn't understand how there was more in the typed version than in the hand written version and too much more to be in it for it to be a typing error, that it just wasn't a word, it was two questions and a half of another question was different so I left it aside and a new team was put in charge of the investigation.

Garda Fowley repeated her account of her discovery of the discrepancies in evidence to the Tribunal (Day 478 and 479). She said:

In relation to Garda Harkin's notes of interview he submitted them to the Incident Room when I was still there in December, 1996. The typist had great difficulty in reading his handwriting and she couldn't actually type what he had written so he was provided with the notes of interview to type them up himself and the typed version was submitted by him, having been typed by him. In proof reading Garda Harkin's notes of interview of an afternoon interview that involved Detective Inspector McGinley attending there was a typed set and there was a hand written set. When I proof read the typed set against the hand written set I found that there was more in the typed version than there was in the hand written version.

Garda Fowley stated in evidence that she commenced work on the file on the 13th September, 1997. She thought that she discovered the discrepancies on Monday the 22nd September, 1997. She believed the encounter with Inspector McGinley occurred on the 26th September, 1997 because this was the very last day that she worked upon the investigation files.

The Discrepancies

The Tribunal had been furnished with, what purported to be, the original handwritten notes of the second interview with Mrs. McConnell, and a typed version of those notes as submitted by Garda John Harkin to the Incident Room. When one compared the typed version with the manuscript of the interview, there appeared to be very little discrepancy between the two documents. Garda Fowley recalled that there were two additional questions in the typed script that she had read in September, 1997, which were not present in the original note and that these questions appeared in the typed script just before the putting of a scenario by Inspector McGinley to Mrs.

McConnell about how her husband, Mark McConnell, was believed to have been involved in the death of the late Richard Barron. She also believed that there were discrepancies in the wording of how that scenario was introduced to Mrs. McConnell, between the typed script and the manuscript.

Garda Fowley was asked to comment on the fact that the typed version of the note of the second interview available to the Tribunal was substantially the same as the manuscript of that interview. The discrepancies which she described did not appear from a reading of these documents. She said:

On the 26th September there was another version. Unless it's attached on the Lennon investigation file, I have not had sight of it in this documentation.....There certainly was (a different version of the typed notes of interview) It was a stand alone version, typed version exactly as that starts there except forthe discrepancy in relation to the questions....The notes of interview, the typed set that I had, had additional questions in them.

She said that she handed over the original handwritten notes taken by Garda Harkin and the typed version of those notes, which included the extra questions which weren't in the handwritten notes, to Detective Sergeant White on the evening of the 26th September, 1997.

The Discrepancies noted by Garda Fowley

Garda Fowley particularized the discrepancies which she had noted in September, 1997 by reference to a note, said by Detective Inspector McGinley to have been by him, during the course of the second interview. She identified the missing questions as follows:

D/I: *What sort of woman are you? Are you a good woman?*

A: *There are worse than me.*

D/I: *Are you a religious woman?*

A: *Shrugged her shoulders and laughs*

(Tribunal documents pages 438 and 440)

Garda Fowley confirmed these questions did not appear in the hand written note of the interview by Garda Harkin but it was in the typed version of that note which she said was now missing and which she last saw when she handed the document to Detective Sergeant White.

The Tribunal also had available to it a note purportedly made by Inspector John McGinley of what he said he had noted during this interview. Garda Fowley pointed to the McGinley note and the introductory sentence to the scenario put by Inspector McGinley to Mrs. McConnell setting out the Garda belief as to how Mark McConnell had been involved in the death of the late Mr. Barron, in particular the sentence;

I would say you're a good person and I'm going to tell you what happened and you tell me if I'm telling you a lie.

She said that this did not appear in the manuscript note of Detective Garda Harkin.

I'm going to put this scenario to you and you tell me if I am telling you a lie. (Tribunal documents Roisin McConnell, page 424)

However, she said that the typed version which she saw contained the version set out in Mr. McGinley's note. She reasoned that the extra material in the typed note had to have been generated from some other source as it clearly was not contained in what was presented to her as the original hand written note of Detective Garda Harkin.

A Second Discrepancy

Garda John Harkin made a statement dated the 3rd September, 1997 which was available to the Tribunal in typed form which gives rise to a further discrepancy between the typed statement and what is also presented as the manuscript of the note of the second interview. In Detective Garda Harkin's statement he includes the following questions immediately after the scenario put to Mrs. McConnell in respect of the alleged involvement of Mark McConnell in the death of the late Richard Barron:

Q. ***Now tell me did I tell you a lie?***

A. ***Yes, it's all lies.***

A. ***Because I know it's a lie.***

Q. ***What do you mean you know it's a lie?***

A. ***Because I know he wouldn't have it in him.***

Q. ***What does that mean?***

A. ***No answer.***

Q. ***What do you mean he wouldn't have it in him?***

A. ***He could not do that?.***

A. ***Murder a man like that***

The answers:

Because I know he wouldn't have it in him.

Q. ***What does that mean?***

A. ***No answer***

Q. ***What do you mean he wouldn't have it in him?***

from the excerpt were not recorded in the supposed original note of the second interview by Detective Garda Harkin. Garda Fowley did not recall that discrepancy. (Transcript Day 479).

In her evidence Garda Fowley said that she did not know what happened to the typed version of the notes of Detective Garda Harkin that she held in her hand on the 26th September, "with the additional questions and the change in the questions". (Transcript Day 479).

Garda Fowley also told the Tribunal that she informed Sergeant Kyne and Detective Inspector O'Mahoney, of the Carty Team, in October, 1999 about the discrepancies in the notes which she had found. She told them that in September, 1997, she had declined to hand over the notes of interview to Inspector McGinley in order to preserve them because she felt if he got them they were going to disappear. She said that they produced to her two documents purporting to be the manuscript of the note of the second interview and the typed version of that note made by Detective Garda Harkin and she told them that the typed version was not the version which she had seen.

The significance of the Discrepancies

Garda Fowley could not understand why anyone would seek to suppress the two questions which preceded the putting of the scenario by Inspector McGinley during the course of the interview – in relation to whether Mrs. McConnell was a good woman or a religious woman. However, she thought that the change in the first sentence of the scenario put to Mrs. McConnell concerning the alleged involvement of her husband in the death of the late Mr. Barron was significant. She drew a comparison between that first sentence which reads:

I would say you are a good person and I am going to tell you what happened that night and you tell me if I am telling you a lie

and which she maintained had been altered, and the first sentence of the alleged statement of admission of Frank McBrearty Junior on the 4th December, 1996 which reads:

Listen I'll tell you what happened on the 14.10.96.

When invited to speculate as to the purpose of the changes made in the notes, she thought it was "to tone it down".

Garda Fowley's version of events was challenged at the Tribunal and was disputed in very large measure by Detective Garda Harkin and Mr. John McGinley in evidence. This has now substantially changed. It is now accepted by Detective Garda Harkin and Mr. John McGinley and in a further statement submitted by Sergeant Brian McEntee that the original notes of the second interview, as submitted by Detective Garda Harkin, were changed and supplanted by a second set. This had the effect placing within the investigation an altered statement of Detective Garda Harkin and an altered note of the second interview in typed form. It involved submitting a forged original note of interview. As will be seen, the changes are those pointed to by Garda Fowley. However, differences exist between Garda Fowley and Detective Garda Harkin as to the nature of the documents which he originally submitted and which would have been available for inspection by her in September of 1997. The core allegation made by Garda Fowley that discrepancies existed and that a document disappeared from the system turns out to be true, if these new statements are accepted as true by the Tribunal.

It is now proposed to examine the original positions of Detective Garda Harkin and Mr. McGinley in relation to these events and the statement of Sergeant Brian McEntee in order to provide some understanding as to how their positions have changed and how it was that the original notes of the second interview came to be interfered with at the instigation of Mr. McGinley, by Detective Garda Harkin and how Sergeant McEntee came to be involved in these events. If the statements received from Detective Garda Harkin, Mr. McGinley and Sergeant McEntee are correct, it may mean that the three entered into an agreement to alter the original notes of interview by supplanting them with amended notes and destroying the original versions and removing or attempting to remove documents which had already been furnished to the investigation team on the investigation file. From the statements furnished, it was done in an extraordinary fashion and with clear intent, if somewhat unclear purpose. The idea that experienced and senior Gardai could behave in such a manner, and cavalierly alter documents to suit themselves, is completely unacceptable and shocking. It shatters the basis on which trust is placed in members of An Garda Síochána by their colleagues in the investigation of crime, by the Director of Public Prosecutions and ultimately by the Judiciary. The question arises as to how much faith one can have in any number of notes of interview taken in the course of this investigation if a Senior Officer and two experienced Gardai who were all aware of the rules and their importance in respect of the taking of statements

and notes of interview, not only flouted them but made up a note to suit themselves. The Tribunal still seeks an explanation as to why this happened. It may be for the sinister reason suspected by Garda Fowley. It may be for the reason tendered by Inspector McGinley that he was embarrassed by the asking of the two questions about religion and whether Mrs. McConnell was a good person. It may have been an effort to distance Inspector McGinley from allegations made by Mrs. McConnell that improper questions referable to religion and her dead father were asked of her when she was interviewed. Wherever the truth lies, it casts a dark shadow over the manner in which records were kept for Mrs. McConnell's detention and perhaps the nature of the compliance of members of An Garda Siochana with their obligations in respect of her detention and the detention of others.

The Initial Response of Detective Garda Harkin and Mr. John McGinley

A typed statement exists dated the 3rd September, 1997, in which Garda John Harkin gave an account of his interviews with Mrs. McConnell, including the interview between 16.40 hours and 18.15 hours. This account has already been referred to and has already been discussed in the context of the two major discrepancies as set out above. In a statement made by Garda Harkin to Chief Superintendent John Carey and Superintendent Pat Forde in the course of the Garda Complaints Board Inquiry on the 31st March, 1998, Garda Harkin gave a very general account of this interview, he noted that:

Detective Inspector McGinley came into the Interview Room and he asked her some questions. He was not abusive to her. He asked her questions about her movements on the night and the movements of her husband Mark. He did not abuse her in any way. This interview lasted for over an hour.

Garda Harkin was shown a Memo of Interview which had been made by Detective Inspector John McGinley during the course of his interview with Roisin McConnell at 16.45 hours on the 4th December, 1996, on the 23rd June, 2000. He said:

I can't recall seeing this document before.

A further statement made between the 15th and 18th April, 2000 at Letterkenny Garda Station, replicates the statement which he had made on the 13th September, 1997 in respect of the second interview. In this statement it is reiterated that the notes of the interview were read over to Mrs. McConnell by Garda Harkin as correct and she was asked to confirm that they were correct, which he said, she did. On the 25th May, 2000 he was presented with the manuscript notes of the second interview. He identified them as the notes which he had taken during the second interview. He said:

I supplied a statement of evidence to the Incident Room at Letterkenny shortly after the 4th December, 1996. I left them

into the Incident Room and I cannot remember who I handed them to. My attention has been drawn to a number of questions which appear in my typed version of my original statement wherein I include the original notes taken by me with Roisin McConnell on the 4th December, 1996 and which are exhibit 26E. It has been pointed out to me by Detective Sergeant Kyne that three lines appear in the typed version of this statement which relate to this interview and do not appear in the original note of interview which I recorded. I cannot recall at this stage why these lines are included. It has been three and a half years since this interview and due to the passage of time I have no recollection of why or how these lines appear in the typed version of this statement. My original note is the record which I would rely on as an accurate account of the interview.

This statement was made in the course of the Carty Inquiry and appears to relate to the second discrepancy which appeared in the notes of interview, which has already been discussed. As will appear from what follows Garda Harkin had a very clear recollection of why this discrepancy existed, which he did not, of course, reveal to Detective Sergeant Kyne. He had forged the manuscript note which had been shown to him, (Exhibit 26E). He would later say that the omission of the three lines was an error in transcription from the typed document during the course of the creation of this new forged manuscript.

Garda Harkin's evidence

In evidence to the Tribunal Detective Garda Harkin said that he had no recollection of Detective Inspector McGinley taking notes. He said he was the note taker during the course of the interview and he confirmed that at the end of the interview he came out of the interview satisfied:

that there was one set of notes in hand written form

which he confirmed as the original of the notes which he took at that time (Day 480, Questions 512 – 515). This was untrue. He said that he retained the interview notes until he submitted his statement but he did not hand in his manuscript notes on the 4th December, 1996.

Garda Harkin then told the Tribunal that the first controversy arose concerning these notes in February of 1998 when he was contacted by Superintendent Lennon:

The problem was that they (the manuscript notes 26E) did not accord with my typed statement.

He then said:

They might well have supplied separate typed copies of the manuscript notes of interview together with his statement.

However, the typed copy produced to him at the Tribunal was not a copy which he typed, the type face different from that of his word processor.

He specifically denied in evidence that he ever produced a note of the interview that contained questions posed to Mrs. Mc Connell as to whether she was a good person or a religious person. He denied being involved in removing a typed version of notes or of replacing them with any other notes. He denied that anybody had communicated with him with a view to changing or removing any questions in his notes. He said:

The manuscript (26E) was the only note that he had.

The substance and thrust of this evidence was, in the light of Garda Harkin's subsequent revelations, untrue.

On the second day of his testimony a new fact emerged. Garda Harkin told the Tribunal that he searched his files and came across a typed copy of the notes of the second interview. He said that he had typed up his statement and incorporated the hand written notes into it. He then printed off that statement and edited the text in the following way. He printed off the questions and answers appropriate to each interview. He produced this document to the Tribunal which incorporated questions asked by Inspector McGinley of Mrs. McConnell during the second interview as to whether she was good and as to whether she was a religious woman. Of course, these were missing from the original hand written note. He presumed that he had access to a note made by Inspector McGinley at the time that he typed up his statement and produced this typed note of the second interview. However, in Inspector McGinley's note (Tribunal documents Roisin McConnell, page 440) the lead into the scenario put by Inspector McGinley to Mrs. McConnel was, as already noted:

I would say you're a good woman and I'm going to tell you what happened that night and you tell me if I'm telling you a lie.

Whereas Garda Harkin, notwithstanding the availability of Inspector McGinley's note to him, inserted into the typed script:

I am going to put this scenario to you and you tell me if I am telling you a lie.

In his evidence Garda Harkin could not tell the Tribunal why he had changed elements of Inspector McGinley's note when typing up his statement nor could he tell the Tribunal why he had typed up a note which was not the note that had been read over to her and was not the original note. He conceded that it

should not have been changed at all. He said nobody had asked him to change it. In the light of Garda Harkin's latest admissions this is also untrue.

Garda Harkin was also asked if he could explain why the typed version of his statement of the 3rd September, 1997, already referred to, did not include two questions posed to Mrs. McConnell as to whether she was a good or a religious woman. He could not explain this. However, as he later revealed the questions did not appear in the statement because they had been deliberately omitted by him at the instigation of Inspector McGinley.

He then told the Tribunal that this typed document, which he had produced, had been submitted by him to the investigation team in the Barron inquiry. He could not explain how that typed version of the note and indeed the typed version of his statement which contained the additional questions were not available to the Tribunal, in the Lennon Report materials or the Carty Team materials. In effect if it had been submitted and it was clearly not available, somebody had removed it – a proposition which if accepted by the Tribunal tended to support elements of Garda Fowley's story. When asked whether there had been any inappropriate treatment of these notes on his part, Garda Harkin replied:

No other than I didn't correctly maybe type them or whatever or proof read. And obviously including the additional questions of Inspector McGinley..... that could be.....would be inappropriate.

He also said that he had never made out a statement in hand written form. It had been produced on his word processor and had only ever been submitted in typed form. Following his evidence the Tribunal was left with an increasingly confused story about the notes of the second interview – a matter that should have been crystal clear if Garda Harkin and Inspector McGinley had dealt with the note properly.

Garda Harkin's new account

Garda Harkin, having reflected on the evidence which he gave to the Tribunal and that of other witnesses, had known that he had not told the truth to the Tribunal and wished to change the account which he had heretofore given in evidence. He met with Tribunal Investigators and was interviewed on the 17th and 22nd July, 2006. He told the Investigators that he was unhappy that he had not told the truth to the Tribunal. He said:

I felt and knew that I had been obstructive and evasive.

He then set out what he said was the true account of the compilation of the notes of interview with Mrs. McConnell and his statement concerning her arrest and detention which was furnished to the Barron Investigation Team. He said that on the 21st August, 1997 he had received an "urgent reminder" to submit his statement regarding the arrest and detention of Roisin McConnell to the Incident Room. He then prepared his statement in

Newtowncunningham Garda Station on his personal word processor and saved it to a floppy disk. There was no hand written manuscript of this statement. He typed his own statement regarding Mrs. McConnell's arrest and detention. In his typed statement he included all of his dealings with Roisin McConnell including the arrest and the notes of interview and detention. He identified to the Investigators what he said was a true copy of this original statement which had been sent by facsimile to him in Newtowncunningham on the 17th February, 1998.

In respect of the first interview of Mrs. McConnell, Garda Harkin said that he submitted the original notes of this interview in manuscript form to the Incident Room on the 4th December, 1996. He said that he retained the original manuscript notes of the second interview in his own possession.

Following the receipt of the message from the Incident Room that his statement was urgently required, he prepared a typed statement on his word processor dated the 3rd September, 1997. This statement incorporated the contents of the hand written notes from both interviews. He said that he then edited down from this typed statement two sets of interview notes which left him with three typed documents.

- (1) The typed statement incorporating the text of the hand written notes.
- (2) A separate typed copy of the notes of the first interview.
- (3) A separate typed copy of the notes of the second interview.

He said that he placed the three typed documents in an envelope and submitted them to the Incident Room at Letterkenny less than a week after typing the statement. He retained the original set of notes of the second interview in his own possession. He said that some weeks after the submission of his statement, on a date which he believes was in October, 1997, he had a conversation with Inspector John McGinley which was "quite casual". He said:

He (Inspector McGinley) was aware that I had submitted my statement and Memos and he says "somebody said we were a bit hard on her in that interview" and I was genuinely surprised by the remark and taken aback by the remark..... He had never at any stage between the 4th December, 1996 and this time, he had never approached me, contacted me or had any dealing with me in relation to this at any stage. I felt maybe it was, I was unfair in what I had done and ought to have given him an opportunity to view the note to see if he was in agreement or not before I submitted my statement. So for that reason it must be I said "well I still have the original note of that interview" and he says leave it with me, he says, I'll take a look at it and see. It was just in that format, as casual as that, he didn't take me aside or say

come in here or anything, there was nothing cloak and dagger about it to my mind at that time. That was my only contact with him....

(Tribunal documents Roisin McConnell, page 712)

Garda Harkin then described how he was contacted by Detective Garda Brian McEntee (now Sergeant McEntee) at Newtowncunningham Garda Station some days or weeks later. He said:

It was at night time possibly around midnight or that but it was the contact made by Detective Garda Brian McEntee, now Sergeant Brian McEntee, was the person well known to me and at that time he was known as the Border Clerk or the D/Superintendent's Clerk and I was a bit surprised at that because I had no dealings with Brian McEntee at all in relation to Roisin McConnell nor anything to do with this and he wasn't present the day that I had the discussion with Inspector John McGinley but anyway it was made known to me that he was ringing in relation to this matter and as I said I was a little surprised that anybody else should be contacting me because it was in effect widening the circle at that stage and I said to him, I said obviously he got around to the fact that he had the proposed changes of what was unsatisfactory to Inspector McGinley or not accepted by him and I said is this substantial or is there much to this or something to that effect. He said no, no it's pretty minor, or very small or something to that effect. So then it was a telephone conversation, I presume he was ringing from Letterkenny. I was certainly on the phone in Newtowncunningham Garda Station and I retrieved my file and he spoke to me and he obviously had the file in front of him and he outlined what was regarded maybe as offensive and this included two questions and answers and the introductory line to an allegation or scenario that was put to Roisin McConnell and that was the total of the material that was in question and that was all that I was requested, and that's all I took it that was being requested to amend. I was concerned because I knew I had submitted my typed statement, my original statement and notes corresponding to that and I said this to him and I told him exactly what had been sent in and he said "that's my job" to retrieve that, "that's my job".

(Tribunal documents Roisin McConnell, pages 712 – 713)

He then said that the word "retrieve" might not have been used but it was clearly understood by him that that was what Detective Garda McEntee was to do. He confirmed that the two questions concerned were those in relation to what sort of a person Mrs. McConnell was and to religion. Garda Harkin thought that maybe the questions could be considered offensive and inappropriate but he did not consider them so. He said:

I had no great difficulties with the questions or recording them anyway. But I thought maybe I was being unfair to Inspector McGinley or maybe that the questions hadn't been asked in that format. He felt that they weren't, it wasn't like an accurate representation of what was said and in any event I felt that the answers given by Roisin McConnell were of little significance in relation to the matter at hand and I justified in my own mind that there was no great issue or any difficulty with not including those statements in an amended draft and I did that.

He did not think Detective Garda McEntee named Inspector McGinley in the course of their conversation or said that he was acting on his behalf but they were under no illusions that they were discussing Inspector McGinley and his participation in the interviewing of Mrs. McConnell.

As a result of the contact with Detective Garda McEntee, Garda Harkin returned to his word processor and opened up the file on the disk. He amended the typed text in both the statement and the corresponding interview by deleting the relevant material, i.e. he deleted the two questions and answers and amended the introduction to the allegation or accusation by Inspector McGinley to Mrs. McConnell concerning the involvement of her husband in the death of the late Mr. Barron. He then printed off the amended documents, placed them in a sealed envelope and addressed it to Detective Garda McEntee. He delivered the envelope by hand to Letterkenny Garda Station and left them for his attention but did not hand them directly to him. He thought this occurred sometime around late October, 1997. He believed that if he had not met Inspector McGinley casually and if he had not indicated to him that he still had the originals of the notes of the second interview that nothing further would ever have happened. He felt that Inspector McGinley was concerned that if there were High Court proceedings, the questions concerning religious matters or matters of that nature could be deemed to be offensive. He did not seek any explanation from Inspector McGinley for the changes. There was no further contact from Inspector McGinley.

Garda Harkin also stated that having submitted the amended documents to Detective Garda McEntee, he then destroyed the original Memo of interview for the second interview which he had with Roisin McConnell by shredding it. He then rewrote the Memo of interview which he intended to be in accordance with the amended draft interview. In doing so he omitted two questions subsequent to the scenario put to Roisin McConnell by Inspector McGinley which were described earlier in this Opening as "a second discrepancy". In effect he mistakenly omitted the following:

because I know he wouldn't have it in him.

Q. *What does that mean?*

A. *No answer*

Q ***What do you mean he wouldn't have it in him?***

from the new forged note of the second interview. He said that this was unintentional on his part:

He had no wish or reason to delete these lines. He was then requested to submit the original note to the Incident Room and so he submitted the forged copy of the interview note with the amendments made to it. By reason of the error made in transcription in respect of the above quoted lines, it, ironically, did not now coincide with the typed version of the interview contained in his statement or the typed note of interview given to Detective Garda McEntee.

From this it now appears that what was believed to have been the original note of the second interview 26E is in fact forged document. The original note of interview has been destroyed. The statement of the 3rd September, 1997 which was available in the materials is not the original typed statement submitted by Garda Harkin. The original typed statement disappeared from the investigation file and is not to be found. The original typed note of the second interview submitted by Garda Harkin is also unavailable and not to be found in the investigation papers.

Following the receipt of the additional statements from Garda Harkin, Sir, you directed that letters be written to a number of named parties including Sergeant Brian McEntee and Mr. John McGinley asking in a general way whether they had any further information to offer in relation to the interview of Mrs. McConnell.

Statement of Sergeant Brian McEntee

In a statement dated the 2nd August, 2006 Sergeant Brian McEntee from Sligo Garda Station stated that he accepted full responsibility for contacting John Harkin and requesting him to change the notes of interview taken by him during the course of the interview with Mrs. McConnell at which Inspector McGinley was present. He confirmed that this had been done following a request from Detective Inspector John McGinley. The statement was made in the knowledge that Garda Harkin had informed the Tribunal of these events. He gives the following account of what happened:

Between 1995 and 2000 I was a Detective Garda attached to the Border Superintendent's Office at Letterkenny Garda Station. Approximately a year or so after the arrest of Roisin McConnell on the 4th December, 1996, D/Inspector John McGinley entered my office in Letterkenny Garda Station. D/Inspector McGinley told me that he was unhappy, uncomfortable and embarrassed by two questions that had been put by him to Roisin McConnell during the course of her interview, which had been recorded by Garda John Harkin in his notes. D/Inspector

McGinley told me that these two questions and answers were

“Are you a good woman?” and the other was “are you a religious woman?”

At this point I cannot recall whether or not he had the notes of interview with him. I believe that he did. D/Inspector McGinley requested me to approach Garda John Harkin and to find out if he would remove these two questions and answers. At this point I am unsure as to why he wanted these particular questions and answers removed. I believe that this request was made as a result of the impending Civil action of Roisin McConnell.

I had some years prior to this worked with Garda John Harkin in Burnfoot Garda Station and would have known him quite well. I believe it was for this reason that D/Inspector McGinley requested me to approach Garda Harkin. I had a clear memory of what D/Inspector McGinley asked me to do. The reason for this is because I considered the questions to be inoffensive and innocuous and I expressed this to John McGinley at the time. I also recall telling D/Inspector McGinley that I considered his request to be completely ridiculous and stupid. However, D/Inspector McGinley was unhappy and uncomfortable with these two questions and answers. Despite my reservations I agreed to approach Garda John Harkin in relation to removing these two questions and answers. At this stage I cannot be certain when my meeting with D/Inspector McGinley took place and it is quite possible that it took place anything up to a year after Roisin McConnell’s arrest.

Sometime later I spoke to Garda John Harkin. I cannot be certain whether I spoke to Garda John Harkin on the telephone or met him in Letterkenny Garda Station. At that time Garda Harkin was attached to Newtowncunningham Garda Station which is in the Letterkenny Garda District. Garda Harkin would be a regular caller to Letterkenny Garda Station. I told him that D/Inspector John McGinley was unhappy with two questions put by him to Roisin McConnell at interview and felt that they should be removed.

A meeting later took place between myself, Garda John Harkin and D/Inspector McGinley. This meeting took place in a car. I cannot recall where. I cannot recall the exact detail of what was discussed. However, I believe that it was either in relation to whether the changes had been made to the notes of interview or whether it was in relation to securing Garda Harkin’s agreement to make these changes to the notes of interview.

I have no recollection of any further meeting that took place in relation to this matter.

Between 1995 and 2000 as outlined above, I was attached to the Border Superintendent's Office at Letterkenny Garda Station. I had no involvement in the Barron investigation.

I am completely ashamed about what I have done. I am particularly upset at involving myself in changing original notes of interview at somebody else's request. What I did was wrong and I have regretted it ever since. I have never brought this to the attention of my own authorities and for that I am sorry. In early 2003 I received correspondence from the Morris Tribunal in connection with their inquiries and was requested to provide them with any information which would assist them in their inquiries. I did not provide this information and for that I would like to take the opportunity to apologise to the Chairman. I would also like to unreservedly apologise to Roisin McConnell.

I have attempted to set out as clearly as possible my recollection of events. If there is any aspect of this statement which requires clarification, I will provide an additional statement to the Tribunal or attend for interview with the Tribunal Investigators.

Sergeant McEntee was interviewed by Tribunal Investigators on the 10th August, 2006. He said that having been requested by Mr. McGinley to contact Garda Harkin because he knew him, he spoke to him and told him that John McGinley was not happy with the two questions. He said:

I told him the questions in relation to "are you a religious woman?" and "are you a good woman?" the questions and answers and told John that John McGinley wasn't happy with them and asked him to remove them.

He said that he did not ask Garda Harkin to remove anything else or amend any other sentence in the notes. For his part Garda Harkin asked him why Mr. McGinley wished to have these questions removed and he told him that it was because "John McGinley wasn't happy with them, he felt embarrassed by them". He did not recall anything else being discussed. Following this contact with Garda Harkin he spoke briefly to Mr. McGinley about the matter and informed him that he had made the request to Garda Harkin. "There was no agreements or anything". He then told the Investigators about the meeting which had taken place between Garda Harkin and Inspector McGinley and himself in a car. He confirmed that this meeting had to do with the notes but he could not recall in detail what was discussed but it was in relation to the questions in the notes. He did not know why the meeting was called.

In large measure the admissions by Sergeant McEntee correspond with the story told by Garda Harkin in relation to his acting as an intermediary. Missing from the story is any account of receiving any documents from Garda Harkin or whether he retrieved the originals from the system and had them replaced, or how he dealt with documents received from Garda Harkin, if indeed he received them. These matters and others will require further exploration.

Statement of John McGinley

On the 28th August, 2006, John McGinley (retired D/Superintendent) made a statement in relation to this matter. He said:

I understand from the correspondence that Garda Harkin has made a new statement covering these matters and that this new statement may impact on the evidence which I have given. I have given a great deal of consideration to this since I gave my evidence and I wish to respond to this to the best of my recollection and belief.

I wish also to point out that I have had very little contact with members of Donegal Division since moving on transfer to Galway in August 2000 and as far as I am aware I have had no contact with Garda Harkin in that time.

On the 4th Decemeber, 1996, I took part in an interview with Roisin McConnell at Letterkenny Garda Station from 4.45pm until 6pm. Gardai Harkin and Lohan were present during the course of the interview, which I have covered in my previous statements.

I later made out my statement of evidence. I obtained a copy of statement made by Garda Harkin so as to include details of the interview as recorded by him. As far as I recall I got this copy from the working files in the Incident Room. This was a typed copy of Garda Harkin's statement.

At this time I felt annoyed and embarrassed by two questions which I had put to Roisin McConnell during the interview. These questions were:-

“What sort of a woman are you? Are you a good woman and are you a religious woman?”

I felt that these questions were inappropriate and were asked as part of general conversation. I was embarrassed when I saw them in the records of the interview.

Sometime after this, I met Garda Harkin and as far as I recall it was in Letterkenny Garda Station. I told him that I was embarrassed at seeing these two questions recorded and I asked him to leave them out of his statement of evidence and the record of interview. I cannot recall if D/Garda McEntee was present at this time but I did discuss the matter with him at some time.

I do not recall any further contact with Garda Harkin until February or March 1998 when I met him accompanied by D/Garda Brian McEntee. Garda Harkin told me that he had submitted a statement of evidence and notes of interview which left out the two questions as requested by me. He stated that he had been called into Letterkenny Station by Supt. Lennon and asked about these discrepancies by Supt. Lennon. He stated that he offered no explanation for them. I do not recall if Garda Harkin made contact with me, or, if D/Garda McEntee contacted me on his behalf.

I was not asked to account for the discrepancies between us or made aware that there was any issue at this particular interview and afterwards I completely forgot about the matter. I felt that these questions had no bearing or relevance on the investigation and should not have been asked. I felt they were inappropriate. I regret that I did not bring this matter to the notice of my authorities or the Morris Tribunal before now and I apologise for any inconvenience caused as a result. Indeed my remarks to Garda Harkin were casual as I remember them and I would not have made an issue of the two questions had he decided not to remove them from his statement and notes. Indeed I did not change my own notes or statement to correspond with Garda Harkins and I realise now that I was both casual and careless in this regard. It was an observation I made to Garda Harkin at the time that the two questions I posed to Mrs. McConnell were inappropriate and unfair and I was feeling ashamed of that. I want to apologise sincerely to Mrs. McConnell for putting these questions to her in the way that I did, as they were not relevant to the investigation and should not have been asked. Otherwise I feel my interview with her went well and I believe we both got on well.

I want to emphasise again that nothing turned on these two questions and it was never my intention to mislead the Tribunal or cause inconvenience to anyone. Garda Harkin is an honourable member and I should not have placed him in this position. I want to apologise to him for the difficulty I created for him. With the passage of time my recollection of these events may be faulty. However, I am prepared to

accept Garda Harkin's version of these events and to admit that I did ask him to leave details of the two questions out. I was wrong to do this with a subordinate and I am sorry for it. However, I did not do it for an illegal reason or to subvert the course of justice (as nothing turned on the questions or indeed the interview overall) but to save my own face.

In his initial statement which is undated, Detective Inspector McGinley gave an account of the second interview which includes the two questions as to whether Mrs. McConnell was a good woman or a religious woman and the introductory sentence to the scenario put to her concerning her husband. (Tribunal documents Roisin McConnell, pages 192 – 194) This account is repeated in a further lengthy statement which is also undated (Tribunal documents Roisin McConnell, pages 208 – 213). In a further undated statement he described his dealings with Mrs. McConnell in the following way:

I informed Roisin McConnell that the Gardai were endeavouring to establish the truth and the facts surrounding the death of Richie Barron at Raphoe on the night of 12th/13th October, 1996. I explained to her that there were discrepancies in her versions of events and that known to the Gardai. I also pointed out to her what the Gardai believed had occurred on the night and that the Gardai believed she was assisting in covering up for her husband, Mark, on the night. I asked certain questions and made a note of them and the response given. Having asked a few questions, I noticed that Garda Harkin was also keeping notes and I then stopped and I did not keep any further record. I had asked six (6) questions at this time. When I made out my statement of evidence covering the matter I included the record of interview as recorded by me up to the time I stopped taking the notes. I then had the notes of interview recorded by Garda Harkin in his statement added. It was at this time that it was noticed that there was a slight discrepancy in my statement and that of Garda Harkin. This was due to the fact that I had recorded two questions which were not recorded by Garda Harkin. Having made my statement, I arranged for a copy of it to be forwarded to Garda Harkin for his information.

In the course of the statement made for the Complaints Board arising out of Mrs. McConnell's allegations concerning her treatment in the course of that interview, he said:

On entering the interview room I was introduced by Garda Harkin who informed me that the prisoner had been cautioned. I asked her certain questions. Garda John Harkin took notes of the interview.....

There is no other reference to the notes in that statement. In a statement which was apparently prepared for Civil proceedings arising out of Mrs. McConnell's detention, which is again undated, Detective Inspector McGinley gave an account of this interview which includes the questions and the introductory sentence already referred to. In that statement he acknowledged that he asked Mrs. McConnell certain questions and that:

Garda Harkin and I took notes of the interview.

In yet a further statement dated the 7th April, 2001 in response to Civil proceedings brought by Ms. Fowley he set out his role in respect of the interviewing of Mrs. McConnell and he said:

I asked a number of questions and kept a record of the interview at the start....I saw that Garda Harkin was also recording the interview and I then made no further notes. Garda Harkin later forwarded a copy of his statement to me. I prepared my own statement of evidence from my notes and record of interview recorded by Garda Harkin in his statement of evidence. I had recorded two questions at the beginning of the interview which were not recorded by Garda Harkin. These questions were of a general nature and nothing of substance was involved. I did not ask Garda Fowley for any notes or statement. These were kept on file and were available to me at all times.

(Tribunal documents, pages 649 – 651)

Mr. McGinley gave evidence to the Tribunal in relation to these matters on the 12th and 13th July, 2006 (Days 481 – 482). Garda Fowley's belief that there was an earlier set of interview notes by Garda Harkin from which material was removed, perhaps at the behest of Mr. McGinley, was denied in evidence. He denied that he went to seek notes from Garda Fowley in order to ensure that originals could be destroyed, altered to a definitive version, or to replace them with an altered set of notes. Differences in the documents were explained on the basis that they could have been due to a typist error in pasting parts of notes or documents from one document to another when the statements were being put together. It was suggested that Garda Fowley was in some way paranoid in respect of Inspector McGinley. This was the reason she had made allegations implicating him in respect of the Harkin notes. It would appear that Mr. McGinley still denies the suggestions that he approached Garda Fowley in order to retrieve these notes in or about the 26th September, 1997. It may be contended in the course of the evidence to be heard by the Tribunal that Garda Fowley is wrong in relation to the narrative which she gave the Tribunal concerning the dates at which certain material came to her attention, nevertheless, it is clear that the core of the story which she has furnished to the Tribunal is to-day supported by those whom she suspected of being engaged in improper behaviour vis a vis the taking and preservation of the notes of the second interview.

It is important to the Tribunal's work that Gardai or former Gardai of whatever rank come forward to tell the truth in relation to matters under inquiry – even when that involves consequences for them because they have told untruths or not co-operated with the Tribunal until now. Coming forward requires a degree of moral strength and the courage to face family, colleagues, the Tribunal and the public and to submit to searching questions and perhaps strong criticism. It must be acknowledged that such openness is essential to establishing the truth – but the story must be complete if the truth is to emerge. This is true as much for the witnesses concerned with this issue as for any other witnesses who are called before the Tribunal. The Tribunal is entitled to their attendance, their truthful testimony and full co-operation.

In this respect questions still remain to be answered.

1. Why did Mr. McGinley seek changes to Garda Harkin's notes of interview?
2. How and when were these changes made?
3. How when and by whom were original documents removed from the investigation file?
4. Who knew about this and for how long?
5. How were discrepancies in the notes of the second interview made known to Superintendent Lennon? When?, by whom?, and with what consequence?
6. Were these actions linked to the other interviews of Roisin McConnell? Was there an effort to distance Inspector McGinley and Garda Harkin from allegations made by Mrs. McConnell against Detective Sergeant White and Detective Garda Dooley?
7. Were these events in any way linked to any possible involvement or knowledge on the part of Mr. McGinley in the false confession of Frank McBrearty Junior?

These are some of the questions that it is hoped now to address.

