

TRIBUNAL OF INQUIRY
INTO

**COMPLAINTS CONCERNING SOME
GARDAI IN THE DONEGAL DIVISION**

**Appointed by Instrument made by the
Minister for Justice, Equality and Law Reform
on the 24th day of April, 2002 entitled
Tribunals of Inquiry (Evidence) Act, 1921
(Establishment of Tribunal), 2002**

**RULING IN RESPECT OF APPLICATION OF MR.
JOHN WHITE IN THE CALLING OF CERTAIN
WITNESSES IN RELATION TO THE ALLEGED
BUGGING OF GARDA STATIONS**

**Ruling of Mr. Justice Frederick Morris in respect of application of
Mr. John White in the calling of certain witnesses in relation to the
alleged bugging of Garda Stations**

On the 22nd day of May 2007, Mr. John White made an application to me, as Sole Chairman of the Tribunal, to call a number of witnesses whom he contended offered support to allegations that he had made that a Detective Sergeant Joseph Costello, attached to the Television and Technical Support Section based at the Technical Bureau at Garda Headquarters in Dublin (now the Telecommunications Section), attended at Letterkenny Garda Station between the 3rd and 7th of December 1996 for the purpose of placing listening devices in interview rooms and/or visiting rooms in order to record conversations between detainees and their solicitors and/or relatives, in the course of the Barron investigation. This allegation is the subject of the sub-module which is currently at hearing. The issue for the Tribunal is whether what is alleged took place in Letterkenny Garda Station in December 1996 in respect of those detained in the course of the Barron investigation. The issue is focused upon three incidents that occurred between the 2nd and 7th of December 1996 which can be summarised as follows:-

1. On the 2nd of December 1996 following the conclusion of an evening conference at Letterkenny Garda Station in respect of the arrests of suspects in the course of the Barron investigation, Garda Tina Fowley alleged that she was directed by Detective Superintendent Joseph Shelly and Inspector John McGinley to make ready a room known as the GRA (Garda Representative Association) room on the ground floor of the station for use as a visitors' room. She believed from her conversation with the two officers that the purpose of setting up this room was to enable a listening device to be placed in it in order to listen to or record conversations between visitors and detainees.
2. Detective Superintendent Shelly arranged on the 3rd of December 1996 for the attendance of Detective Sergeant Joseph Costello at Letterkenny Garda Station from the Technical Support Section at Garda Headquarters. The section provided technical assistance when requested for investigations around the country and it is said that Detective Sergeant Costello was primarily engaged in the taking of still photographs and video recording. Detective Sergeant Costello attended at Letterkenny Garda Station between the 3rd and 7th of December 1996. He was not given any directions to carry out any specific duties during that period, but evidence was given to the Tribunal to the effect that his attendance was required in case anything arose out of interviews conducted with detainees and/or in order to photograph or video record Mr. Frank McBrearty Senior upon his release should he attend at the home of a number of witnesses whom the Gardaí believed he was intimidating.
3. Mr. John White and then Garda John Dooley alleged that they met with Detective Sergeant Joseph Costello on the first floor corridor of Letterkenny Garda Station on the 4th of December 1996. They said that Sergeant White had a conversation with Detective Sergeant Costello in the course of which Sergeant White asked him "how the tapes were going". It was alleged that Detective Sergeant Costello replied that there had been trouble with the tapes early in the morning but that they were ok now. Mr. Dooley said that shortly after this conversation, he was told by Detective Sergeant White that the visitors' room had been "bugged" by Detective Sergeant Costello and that a visit then taking place between Mrs. Róisín McConnell (a detainee) and her mother, Mrs. Anna Quinn, was being "bugged".
4. Mr. White also alleged that, on the same day, but after his encounter with Detective Sergeant Costello, he went to the Detective Inspector's office at Letterkenny Garda Station and encountered Inspector John McGinley alone there. He alleged that Inspector McGinley was in possession of a twin-deck tape recorder which had been placed on a table. He further alleged that Inspector McGinley told him, when asked, that there was nothing of any interest on the tapes regarding Sergeant White's interview with Mrs. McConnell. He also said that the tape was played for him by Inspector McGinley for a few seconds and that he heard the voice of Mr. James Sweeney, a solicitor, who visited a number of prisoners that day in the station, on the tape.

5. All of these allegations are strongly denied by Mr. Shelly, Mr. McGinley, and Mr. Joseph Costello. The Tribunal has heard extensive evidence from those making the allegations and those alleged to have been involved in or to have knowledge of, the alleged "bugging" or taping. The Tribunal will make its findings in due course as to whether it is satisfied on the balance of probabilities whether the alleged conduct took place and it will hear further evidence in respect of these matters in June 2007.

It is important to note that in the course of the evidence heard by the Tribunal from Detective Sergeant Costello (now retired) and Superintendent Sharpe who had responsibility for the Television and Technical Support Section for many years, that the Garda Síochána in December 1996 had possession of devices and whatever technology might be required for the placing of listening devices in one or more rooms in Letterkenny Garda Station for the purpose of listening to or recording interviews between relations or solicitors visiting prisoners in the course of the Barron investigation, had they intended to do so. Of course, Mr. Costello denies that he did so. Superintendent Sharpe, for his part, denied that his section was engaged in such behaviour though he clearly acknowledged without hesitation that the technology was available to the members of his section.

In addition, Mr. Costello outlined to Tribunal investigators and in evidence to the Tribunal, one occasion upon which he, under the directions of senior officers, placed a listening device in a cell in Ballinasloe Garda Station in or about 1992, for the purpose of recording the conversation between two prisoners. The prisoners were suspected of involvement in the same serious crime. They were deliberately placed together in a cell in order to see whether, in the course of their conversation they would reveal anything of relevance to the Garda investigation that might assist the Gardaí in their inquiry and ascertain the level of involvement, if any, of either or both of them in the crime under investigation. One of the prisoners was subsequently prosecuted and the fact that his conversation was listened to and recorded was revealed to the defence. All relevant transcripts and materials were supplied by way of disclosure. The Tribunal investigators have examined the papers in respect of the matter and interviewed witnesses. The matter was revealed without prompting by Mr. Costello to the Tribunal investigators and verified by them by examining the relevant investigation file. Therefore, it is clear on Mr. Costello's own evidence and material supplied by An Garda Síochána that on this occasion his services were employed to place a listening device in a cell in a Garda Station for the purpose of listening to and recording a conversation, in that case between two prisoners.

All of this is by way of background to the present application by Mr. John White to the effect that the Tribunal should hear evidence from two retired members of An Garda Síochána from Cork who have a similar tale to tell concerning the placing and use of listening devices in order to listen to and record conversations of a prisoner with interviewing Gardaí and with a visitor at Mallow Garda Station in 1992. Clearly, this proposed evidence concerns an issue which is outside the scope of the Term of Reference of this Tribunal into which I am at present inquiring – Term of Reference (b). Nevertheless, Mr. White submits that it has become relevant to the issue of alleged bugging of Letterkenny station because it offers corroboration for the allegation that bugging occurred in Letterkenny Garda Station and was carried out by Detective Sergeant Costello as part of a longstanding practice in which he, Mr.

Costello, had been engaged for many years. Therefore, he submits that this evidence is relevant and is not remote from the issue which I have to determine. Mr. White claims that this evidence, if received by the Tribunal, will corroborate his allegation that Detective Sergeant Costello was employed regularly for the purpose of installing listening devices in interview rooms and/or visitor rooms in order to listen to and record conversations with prisoners at Garda stations around the country in the course of investigations into serious crime. He asserts that this evidence will support his proposition that Detective Sergeant Costello was present at Letterkenny Garda Station for the purpose of carrying out eavesdropping and the recording of conversations as already outlined. In addition, he claims that it would support his further proposition that the Garda Síochána had the technology with which to carry out such eavesdropping and recording, and that it was part of a wider practice within An Garda Síochána in the course of many investigations over the past twenty five years throughout the State. He further contends that this evidence would support his allegation that these things occurred with the knowledge of senior Garda management and would rebut the evidence of Detective Sergeant Costello, Mr. John McGinley and Mr. Joseph Shelly denying that Mr. Costello was brought to Letterkenny for the purpose of placing listening devices and recording conversations and that the two officers knew of and were full participants in it. He submits that allegations, that there was a failure on the part of senior Garda management to carry out a diligent and rigorous inquiry of the allegations made by the Cork Gardaí, were similar to the failure to carry out such an inquiry in respect of his allegations.

Further, it was alleged by Mr. White that at separate meetings with Assistant Commissioner Carty and Chief Superintendent Austin McNally he raised with them the fact that the alleged bugging had taken place at Letterkenny Garda Station in December 1996 and was informed that the matter would not be investigated by the Carty investigation. In particular, he alleged that Chief Superintendent McNally's comment to him to the effect that the bugging of Garda stations was one of the best kept secrets in An Garda Síochána encapsulated the attitude of senior officers in An Garda Síochána to what he alleged to be this widespread practice. Assistant Commissioner Carty and Chief Superintendent McNally deny Mr. White's version of these meetings. Mr. White contends that the evidence of the witnesses whom he seeks to call from Cork supports or tends to support the existence of the widespread practice of bugging in Garda stations throughout the country. It is in that context, he alleges, that Chief Superintendent McNally's remark and the reluctance of the Carty team to investigate the bugging allegation can be reasonably understood. In that sense the proposed evidence is an attempt to rebut the evidence of the two officers in respect of their meetings with Mr. White. In my view, this would be to allow evidence to be introduced on a collateral issue, namely the bugging of a Garda station in Cork, in order to undermine the credibility of two senior officers in relation to meetings which were held a number of years after the events in December 1996. The Cork evidence, in this context, constitutes evidence in rebuttal on a matter which is collateral to the main issue under inquiry: it is not a matter which the cross examining party (in this case Mr. White) should be allowed to introduce in evidence in chief because of its lack of connection with the central issue under inquiry, namely the bugging of Letterkenny Garda Station in December 1996. It goes only to the issue of credibility. Consequently, answers given under cross examination by the various witnesses to questions concerning either the Cork issue or the widespread allegations of bugging throughout the country must be treated as final. (See Attorney

General v Hitchcock [1847] 1 Exch. 91 at page 105 and *R v Burke* [1858] 8 Cox C.C.44). However, the matter does not rest there because there are further issues to be considered.

The evidence that Mr. White seeks to adduce can be summarised in the following way. Two retired Gardaí from the Cork area have made statements to the Tribunal. They have also been interviewed by Tribunal investigators in the course of the private preparatory stages of the Tribunal's work. In summary, they make the following allegations:

1. Mr. JMG, a former Garda, was involved in a murder inquiry in 1992 and alleged that he was informed by a Superintendent A (now deceased) that in the course of that investigation a listening device "was attached to the home of a lady, (Mrs. Y) in order to intercept telephone conversations that might be made" to her home. The main suspect for the murder (Mr. X) resided in this house separately to her. He alleged that he was told that the device was placed in a fridge, a cooker or a television. Mr. X was the father of the young lady, the alleged murder victim was her husband (Mr. Y). Mr. JMG alleged that he was told by the superintendent that at least two phone calls were intercepted and that useful information was obtained from them.
2. In August 1992, Mr. X was arrested and taken to Mallow Garda Station. Mr. JMG alleged that before Mr. X's arrival at the station he had been told casually, by Superintendent A, that a listening device had been placed in an interview room at Mallow Garda Station. He also alleged that he, together with Superintendent A and another senior officer B, listened to a sound test being conducted following the installation of the listening device in the interviewing room. He said he listened to this test in a red van at the back of Mallow Garda Station. He could not see who was carrying out the test and he did not recognise the voices that he heard in the course of the test.
3. Mr. JMG also alleged that during the course of Mr. X's detention at Mallow Garda Station he went in the company of Superintendent A and Senior Officer B to the red van at the rear of Mallow Garda Station. There was another Garda in the van whom he described and who was in possession of a tape recorder. He heard the voices of two named interviewing Gardaí and the voice of a person whom he believed to be Mr. X.
4. Mr. JMG also alleged that on the night of this arrest he met with the young lady whose house had been bugged, Mrs. Y, the daughter of Mr. X, at Mallow Garda Station before she visited Mr. X in the station. He was in the company of TC. He then went to the red van and listened to part of the conversation that took place between the young lady Mrs. Y and her father Mr. X, in the presence of TC and ML, both Gardaí.
5. Mr. JMG said that he made a complaint to Superintendent D at Mallow Garda Station in 2001 about this and that the matter was then investigated by Superintendent H. Mr. JMcG complained to the Garda Commissioner

about the manner in which this investigation was carried out on the 8th of February 2003. He said that he was not aware of any other incidents of "bugging" conducted by An Garda Síochána. He also said that he first became aware that this "bugging" was unauthorised when informed of that fact by Superintendent A in 1998 or 1999.

Mr. TM, a retired sergeant of An Garda Síochána states that he was the Garda who arrested Mr. X in the course of the investigation into the alleged murder of Mr. Y in August 1992. He alleges the following:

1. He became aware that a Garda C who had been placed on duty outside the home of Mr. X and Mrs. Y following the death of Mr. Y, saw a man climbing what appeared to be a telephone pole near the house: he presumed that this was part of a surveillance of the house by some technical means.
2. Mr. TM states that he and a Detective Garda FOD were informed of the presence of a Garda in a red van that had been parked in an area of forestry near the home of Mr. X and Mrs. Y. He went to the van and met with Garda DM who had in his possession a tape recorder in the front of the van. He said that he visited the van on two or three occasions and was told that conversations between Mrs. Y and whomsoever made contact with her at her home, were being intercepted. Apparently, the reason for this interception was that the Gardaí suspected that Mr. X and Mrs. Y, the occupants of separate parts of the house, had in some way colluded in the death of the Late Mr. Y. Mr. TM was not sure whether the phone was tapped or whether the listening device had been placed in the house but was satisfied that some sort of audio surveillance was taking place.
3. Mr. TM also alleged that Superintendent A told him that the same equipment that was used to intercept communications to or within the home of Mr. X and Mrs. Y was also used to listen to interviews carried out between members of An Garda Síochána and Mr. X at Mallow Garda Station. He alleged that, the Late Superintendent A, and Detective Garda FOD went to a red van parked at Mallow Garda Station and listened to conversations that were then taking place between Garda interviewers and Mr. X, who was then detained in custody. It was manned by Garda DM. Garda DM also played the tapes and operated the machine in the van. He could not recall the identity of the interviewing Gardaí whose names he heard, nor could he recall what was said. It was a normal question and answer session. He was informed by Superintendent A that all was "above board".
4. Mr. TM was asked what advantage he thought there was in eavesdropping on an interview between Gardaí and a prisoner. He replied that it would be advantageous to a Garda in the event of any allegation made at a later date that the session had been recorded. He also suggested that eavesdropping on an interview would enable subsequent Garda interviewers to have prior knowledge as to the progress made by the preceding interviewers.

5. Mr. TM said that he first became aware that this eavesdropping was unauthorised following the collapse of a trial against Mr. X in Dublin when Senior Officer B passed a comment to the effect that if the defence had come up with evidence in relation to the "bugging" that the Government could fall.

Following the making of allegations by these two Gardaí the Commissioner of An Garda Síochána appointed senior officers to carry out an internal inquiry into the matter. Those against whom allegations were made were interviewed and denied the allegations. No adverse finding was made against them. Criticisms were made in the subsequent reports of the two Gardaí concerned with particular reference to grievances which they had against officers in An Garda Síochána. The two Cork based Gardaí were highly critical of the investigations carried out by these senior officers and considered them totally inadequate.

Subsequently, Mr. JMG and Mr. TM submitted statements to the Tribunal in respect of these matters and they and others were interviewed by Tribunal investigators in the course of the private preparatory work of the Tribunal. It is against this background that Mr. White invites me to call Mr. JMG and Mr. TM as witnesses before the Tribunal and to inquire into the truthfulness of their allegations in respect of the alleged eavesdropping at Mallow Garda Station in 1992. The determination of the truthfulness or otherwise of their allegations would involve the Tribunal in further extensive inquiries, interviews and prolonged hearings in order to attempt to ascertain the truth concerning this matter. However, that in itself would not deter me from pursuing these further inquiries and convening further hearings in respect of this issue, if I thought that it was necessary in the interests of justice and in fairness to Mr. White that it should be done, in order to enable him to present his case to the Tribunal in respect of the alleged bugging of interview rooms at Letterkenny Garda Station by Mr. Joseph Costello between the 3rd and 7th of December 1996.

Mr. White submits that the two Cork Gardaí should be called as witnesses in support of his contention that Mr. Joseph Costello attended at Letterkenny Garda Station on the 3rd of December 1996 and placed listening devices in a number of interview rooms and/or visiting rooms at the station to facilitate the recording of conversations between solicitors and prisoners and/or visitors and prisoners. He states that their evidence, if believed, would enable the Tribunal to infer that Mr. Costello carried out this covert audio recording as part of his normal work which was commonplace within An Garda Síochána as evidenced by the events in Cork. In addition, he submits that his wider proposition that the covert listening was carried out nationwide and regularly by Mr. Costello is corroborated by the evidence available from the Cork witnesses. Even if I accept, as I do for the purposes of this Ruling, that all they say is true, this would not in my view entitle me to infer as a matter of probability that what Mr. White says, occurred in Letterkenny. However, it would be evidence, if accepted, that the Garda Síochána had the capacity to place listening devices in a Garda station and listen to and record conversations in an interview room between interviewing Gardaí and a prisoner, and between Mrs. Y and a prisoner, and did so on this occasion in Cork in 1992. However, from the materials available to me, this incident did not involve Detective Sergeant Costello or the Television and Technical Support Unit from Garda Headquarters. It would be wrong of me to infer from such

evidence that because some other Gardaí in Cork carried out a broadly similar eavesdropping operation to that alleged against Detective Sergeant Costello, that Detective Sergeant Costello did so in Donegal in 1996, and that further, he was employed regularly in carrying out similar duties throughout the country. The account of the Cork Gardaí is not sufficiently cogent as to provide a nexus between the events recounted by them and the events in Donegal. Clearly, it would not be logical or fair to infer that because a bugging operation occurred in Cork in 1992, that a similar bugging operation was carried out in Letterkenny Station in December 1996 or that it was carried out by Mr. Costello in circumstances where it is not even contended that Mr. Costello participated in any way in the events in Cork.

As already noted, if the account of events in Cork in 1992 is accepted, a conclusion could be reached that the Gardaí had the technology available to them to carry out covert recording of interviews in interview rooms in a Garda station and did so in Cork in 1992. In my view, much stronger evidence has already been adduced before the Tribunal in the course of this sub-module to this effect from Mr. Joseph Costello and Superintendent Sharpe, who have given evidence to the effect that this technology was available, if the Gardaí were minded to use it, in 1996. In addition, Mr. Costello volunteered to Tribunal investigators that he was involved in 1992 in the placing of a listening device in a cell at Ballinasloe Garda Station. On that occasion, two prisoners were placed together in a cell and their conversation was recorded by Detective Sergeant Costello in accordance with directions given to him by a senior officer. In subsequent criminal proceedings taken against one of the prisoners, the transcript of this recording together with other relevant materials, were disclosed to the defence lawyers in the case. This occurrence is documented and has been recounted in evidence to the Tribunal by Detective Sergeant Costello. Mr. White has also given evidence that prisoners were from time to time "boxed" together in this manner for the purposes of eliciting any valuable information that might arise from conversations between two prisoners. It is clear, therefore, that the evidence presented to the Tribunal by Mr. Costello and Mr. Sharpe indicates that Gardaí had the capacity to do what Mr. White alleges Mr. Costello did. This constitutes significant evidence in support of Mr. White's contention that the Gardaí and, in particular, Mr. Costello, had the capacity and experience to carry out such an operation at Letterkenny Garda Station in 1996. In addition, the acceptance by Mr. Costello that he carried out what might be regarded as a broadly similar operation in Ballinasloe in 1992, under the direction of his superiors, might also be regarded as supporting Mr. White's proposition that Mr. Costello was regularly engaged in this type of activity, in a manner which the evidence proposed to be tendered by the two retired Gardaí from Cork does not.

Consequently, it is not intended by me to call the evidence of the two retired Gardaí from Cork in relation to the events of 1992. It has already been established to my satisfaction that the Garda Síochána had the necessary technology available to it if it was desired to place listening devices in interview rooms or visitors' rooms at Letterkenny Garda Station in 1996. In addition, it has been established that on at least one occasion in 1992 Mr. Costello carried out a broadly similar operation in Ballinasloe Garda Station as directed by his superiors. It is not suggested that Mr. Costello is in any way implicated as a participant in the alleged events in Cork in 1992. Mr. White will not be in any way prejudiced in my not calling this evidence and I do not accept that it will in any way assist me in determining the issue as to whether

the alleged bugging was carried out by Mr. Costello in Letterkenny Garda Station in December 1996. Even if the evidence of the retired Cork Gardaí were accepted in full, the Tribunal could not draw any adverse inference from it against Mr. Costello or in support of Mr. White's case in respect of what happened in Letterkenny Station in December 1996.

This Tribunal of Inquiry is mandated to inquire into its Terms of Reference and to complete its inquiry in "as economical a manner as possible and at the earliest possible date consistent with a fair examination of the matters referred to it". The relevant case law indicates that Tribunals of Inquiries, such as this one, have "a significant measure of discretion as to the manner in which they carry out the important task which has been entrusted to them by the Oireachtas": see Keane CJ in *Flood v Lawlor*, Supreme Court unreported 24th November 2000 and *O'Brien v Moriarty* [2006] 2 I.R.221. The interpretation of the Terms of Reference of the Tribunal is a function for me as Sole Chairman. It is for the Tribunal to decide when and whether to conduct private investigations or to proceed to public hearings. The present sub-module is concerned with alleged bugging of interview and visitors' rooms at Letterkenny Garda Station during the course of the detention of twelve persons in December 1996 in the course of the Barron investigation - Term of Reference (b). It is a matter for the Tribunal as to what evidence it deems relevant to the inquiry and what evidence should be adduced at public hearings. It is for the Tribunal, to exercise its own judgement on the application of the parties before it as to the necessity to call any witness or any evidence concerning any issue raised. However, in making that determination, I must have regard to fairness of procedures for all parties, including Mr. White, and ensure that he is not unfairly prejudiced in any decision that I make, in limiting the evidence to be heard in public session. Having regard to the scope of this inquiry, the nature of the evidence to be adduced, the evidence already heard by the Tribunal, the specific events under inquiry in this sub-module and my obligation to focus upon the real issues to be determined in respect of those matters, I do not intend to call the proposed Cork witnesses or to inquire further into that matter by way of public hearings. I do not accept that hearing this testimony will assist me further in resolving the issues to be determined in this sub-module, nor do I accept that Mr. White's case or his position will be prejudiced by my declining to hear this evidence.

Signed:

Frederick Morris
Mr. Justice Frederick R Morris
Sole Member of the Tribunal

Date:

13th June 2007