PRELIMINARY OPENING STATEMENT OF
PETER CHARLETON SC; PAUL McDERMOTT SC; and ANTHONY BARR, BL.

INTRODUCTORY REMARKS

Sir, this Tribunal of Inquiry was created by a Resolution passed by Dáil and Seanad Eireann on the 28th of March, 2002. The instrument setting up the Tribunal was made by the Minister for Justice, Equality and Law Reform on the 24th of April, 2002. We, your legal team, commenced work in what was, in effect, the first week of June of this year. Following your having read, Sir, the bulk of the documents with which this Tribunal is concerned, you delivered an explanation of the Terms of Reference on the 15th of July, 2002. What will now follow is a Preliminary Opening Statement of counsel on behalf of the Tribunal, addressed to you, Sir, and more widely to the people of Ireland at whose behest this Tribunal was initiated. The remarks which follow were not drafted solely by me, but were also drafted by Paul McDermott SC and Anthony Barr BL. Both counsel and the entire legal and administrative staff of the Tribunal are anxious to further your stated objective of a speedy resolution of this matter, with the delivery of a report as early as is possible consistent with your report to the Minister for Justice pursuant to the Resolution of Dáil and Seanad Eireann. In addressing you, Sir, I will continue to use the term "we" not out of presumption, but out of respect for the work of Mr. McDermott and Mr. Barr, whose remarks these are also, and out of deference to the work carried out by the remainder of your staff. (Those are listed on the web; in addition Sharon Kearney LLB works privately for counsel).

This Preliminary Opening Statement is being listened to carefully by the people of Donegal who have the closest interest in the completion of your work, Sir. In addition, no doubt, it will be reported. For the benefit of journalists engaged in the vital task of reporting matters of public interest, and for the benefit of the entire community, we are authorised to say that this Preliminary Opening Statement will be available on the worldwide web at www.morristribunal.ie. As each section is delivered, at lunchtime, or in the evening, so much of it as has been delivered will be posted for immediate access via that web site. We say this because we are conscious of the necessity for us to be accurate in what we say, and because this will allow for accurate reporting.

We turn first to the question of the material which we have been considering.

All of this matter began because of an investigation which was initiated into the death of the Late Richard Barron of Raphoe, County Donegal, on the 14th of October, 1996. Mr. Barron was the victim of events which are uncertain. One of the few uncontested facts in this entire matter is that he was an innocent victim of whatever killed him. For reasons to which I shall shortly turn, a murder

investigation was launched within two days of Mr. Barron's death. The report of Superintendent Kevin Lennon, on this issue, to the Superintendent's office in Letterkenny is dated the 2nd of March, 1998. It is headed:

> **Report regarding the Unlawful Killing of Richard (Richie) Barron, D.O.B. 08-10-42 of The Common, Raphoe, County Donegal at Townparks, Raphoe, County Donegal on Monday, 14th October, 1996.**

For lawyers the term "unlawful killing" has a specific meaning. That term designates a manslaughter, in other words the death of a person due to a particular kind of unlawful and dangerous act which is probably subsumed in the category of criminal negligence, or due to assault intending to harm that person. Even at the stage of the submission of the report, therefore, the possibility of death due to a road traffic accident, possibly amounting to dangerous driving causing death, seems to have been out-ruled by the senior officer submitting the report. However, this could simply be due to the application of a legal nicety where it is not appropriate.

The report of Superintendent Lennon itself contains witness statements from six hundred and eight witnesses. In addition, there is a volume of appendices. Some witnesses give more than one statement, one as many as thirteen. Arising from civil proceedings, initiated out of matters related to the investigation into the death of Mr. Barron, Assistant Commissioner Kevin Carty was appointed to conduct an investigation. He reported to the Director of Public Prosecutions on the 17th of May, 2000 and there are fifty five statements with that report. In addition there are four volumes of appendices. His report is headed "Allegations against members of An Garda Síochána in the Donegal Division and other related matters". His overall investigation had commenced on the 12th of February, 1999 and was specifically concerned with an inquiry into matters arising from the Garda investigation into the death of Mr. Barron. On the 31st of July, 2000 Assistant Commissioner Carty further reported to the Director of Public Prosecutions under the heading:

> **The Investigation of allegations that members of An Garda Síochána attached to the Donegal Division engaged in criminal and unethical behaviour in the execution of their professional duties, between 1991 and 1999.**

That report, in addition to the covering report, common to both the first Carty report and the Lennon report, contains the statements of one hundred and sixty three witnesses in its first part, many of these multiple statements; one hundred and eighty three witnesses in its second part and forty three witnesses in its third part. The fourth part consists of profiles of the individuals in question, a summary, together with recommendations and conclusions. There are twenty five volumes of appendices. An inquiry was also conducted under the control of Assistant Commissioner Fachtna Murphy. Deputy Commissioner Noel Conroy was also engaged in the inquiry initiated by Assistant Commissioner Kevin Carty. In addition, certain other documents were gathered by the Tribunal which are related to the Terms of Reference. The task undertaken by those

investigations was a mammoth one. They moved well outside matters related to the investigation into the death of the Late Mr. Barron.

It would be difficult for any objective observer not to be impressed by the thoroughness of the Carty investigation and the diligence and commitment with which those investigations were followed through. Before any witness, drawn from any of the files of documents to which we have referred, is called before this Tribunal, however, it is our intention to write to that person enclosing all the witness statements we have from her or him, from whatever source, to enable her/him to raise a query, if she/he wishes, as to any matter contained within the statement. It goes without saying, but perhaps it is just as well to say it, that we are not suggesting, Sir, that you rely on any of these reports. You will make your own mind up. It would also be counter-productive of the concise use of time, with a view to your reporting on this matter, were we to call every single person, for example, interviewed in the course of either the Lennon or Carty inquiries. On the 24th of September, 1999, the Chairman of the 'Alleged Corruption of Politicians Tribunal', Mr. Justice Moriarty, said:

> **The next main stage of the inquiry, assuming that evidence relevant to the matters into which the Tribunal is obliged to inquire exists, is the public hearing of witnesses in regard to such evidence. This stage, however, will require putting in place protections for people likely to be affected by the evidence. What the Tribunal contemplates is serving notice on persons likely to be affected by any such evidence with an outline of the evidence, where possible. This will enable any such person to be in attendance when the evidence is being given. Where necessary, and subject to the matters set out at the Tribunal's initial sitting, such persons will have an opportunity of cross-examining any relevant witnesses. It cannot be guaranteed that the Tribunal will always be in a position to serve notice of an outline or indeed give any indication of the nature of such evidence. It may transpire that in the course of the public hearings, evidence is given of which the Tribunal has no prior notice or knowledge. In such circumstances, in order to afford a person likely to be affected by such evidence an opportunity of considering what course to take, it may be necessary to adjourn the public sittings, or to take whatever other practical steps appear to be necessary to afford such a person an opportunity of dealing with the evidence. A person whose interests may be affected or have been affected by evidence, may wish to bring to the notice of the Tribunal other evidence and in that event, the Tribunal will consider such evidence and if appropriate, such evidence will be led by the Tribunal in public. The findings or conclusions of the Tribunal will be based only on appropriate evidence given at its public hearings.**

This Tribunal is not simply concerned with allegations made by people about the investigation into the death of the Late Mr. Barron. The nature of the scale of the inquiry which you, Sir, are mandated to conduct, the difficulties you may be faced with, and the reason why only part of your task concerns the activities of

Gardaí investigating the death of the Late Mr. Barron, is perhaps best seen from the following paragraphs of section 1 of the second Carty report:

> **The investigation team was based at Letterkenny Garda Station. The objective of the team was to investigate all events surrounding or arising from the Garda investigation of the death of Richard Barron. It was not intended that the inquiry team should carry out a full reinvestigation of the death of Richard Barron. On the 16th of March, 1999, which was thirty two days after the special inquiry team had commenced their investigations, there was an unrelated development, which was to impact on, and extend the scope of the initial inquiry. On that date the sister of the estranged wife of a Detective Garda attached to the Donegal Division made a complaint at Buncrana Garda Station. The complaint concerned the behaviour of the Detective Garda and it was to serve as a catalyst, which gave rise to the second element of the overall investigation. The Terms of Reference of the special inquiry team was extended to include the new complaint and hence the inquiry became known by the catch-all title of "The Investigation into the Allegations against members of the Gardaí in the Donegal Division". The Buncrana complaint concerned the behaviour of Detective Garda Noel McMahon and Superintendent Kevin Lennon, and their interaction with a female who professed to be a Garda informant. Mrs. Sheenagh McMahon, the estranged wife of Detective Garda McMahon made the allegations in a statement to the inquiry team. In essence the allegations indicate that Superintendent Lennon and Detective Garda McMahon engaged in a conspiracy with the purported informant to "plant" substances, materials and ammunition which were purported to be subversive paraphernalia, in the State and Northern Ireland. They would then report confidential information as to the location of the substances, with a view to enhancing their respective reputations and promotion prospects with their authorities. Adrienne McGlinchey, a thirty five year old single female from Letterkenny was the purported Garda informant who allegedly conspired with the two Gardaí. When interviewed by the inquiry team she...added to the allegations made by Mrs. Sheenagh McMahon. The allegations made by Adrienne McGlinchey further extended the scope of the inquiry and linked it back to where it started with the death of Richard Barron. She alleges that Detective Garda McMahon told her that two Gardaí killed Richard Barron. In this manner the two different elements of the inquiry fused together into a single investigation. In the course of the investigation further extraneous matters were reported to, or uncovered by the inquiry team. These matters were addressed in the course of the overall investigation. The new matters that continued to evolve as the investigation progressed had the effect of extending the investigation with the result that several anticipated deadlines for completion had to be extended. In the course of the inquiry approximately one thousand, one hundred people were interviewed and approximately eleven hundred**

> **statements and memorandum of interviews recorded. A total of twelve people were arrested including three members of An Garda Síochána...evidence has accumulated in some matters to allow recommendations to be made that persons, including members of An Garda Síochána should be charged with criminal offences. Other matters, while heavy with suspicion, lack sufficient corroboration...The inquiry team has exhausted every legal power in an attempt to establish the veracity or otherwise of the matters investigated. Despite the intensity of the investigation a number of matters remain unresolved. Two Gardaí have continued to refuse to give…account of their respective activities on the night Richard Barron was killed. This coupled with a pronounced economy of truth from some witnesses, and a distinct untruthfulness and obstruction from others leaves the investigation short of its overall objective, which is the establishment of the truth. Regrettably some potential witnesses who claim to have important information have chosen not to speak or identify themselves to the investigation team. They have remained anonymous and make different disclosures to public representatives and the media. This is unsatisfactory and not conducive to the successful investigation of the different allegations. There remains an undercurrent of suspicion, which it has not been possible to address despite the best efforts of the investigators. The suspicions revolve around the role of two purported Garda informants who are critical to the overall investigation...There is little doubt that both persons have sufficient knowledge to unlock the two principle elements of the inquiry. However, their reluctance to co-operate fully, coupled with the obdurate attitude adopted by some Gardaí to the inquiry leads to the unmistakable conclusion that the full truth remains yet to be uncovered.**

Both Superintendent Kevin Lennon and Detective Garda Noel McMahon have denied any allegations made against them. They have also given apparent supporting detail of what they say in reply. The nature of what the allegations are, and their response to them, are set out in the narrative which follows. In addition, the two Gardaí who have as yet failed to give an account of their full movements on the night of the death of Richard Barron, refused to do this to the Carty investigation team based apparently on legal advice, or some interpretation of legal advice. The two informers, or purported informers, have made multiple statements, the net effect of which is that it is implicit that they are making the case that they have fully co-operated. For every allegation that exists in these documents there is a reply by way of denial, explanation, or reinterpretation. In respect of some allegations, there are counter-allegations. We intend to refer to all sides of the accounts which are available to us.

In the course of this, every time an allegation is made, we will indicate the detail of what is alleged. We will indicate the reply or explanation given by the party against whom it is made, in equal detail. The nature of police work involves the investigation of allegations of misconduct, possibly amounting to criminal offences. Everyone against whom an allegation has been made has been

spoken to. We are anxious to present both sides of the story. Not only does this enhance your view of matters, Sir, it is also inherently fair that an allegation is not taken up and presented as a fact. People can and do make false and malicious allegations against other people. The work of the courts is concerned with that. It is only right that people should have an opportunity to reply. Hence, our attempt in what follows is to be as even-handed as we possibly can be. In the very few instances where no specific reply has been made to a particular allegation we have looked at the tenor of what those against whom a finger is pointed have otherwise said and attempted to give the implicit nature of their answer from the material available to us. But, one thing needs to be borne in mind. Paper will not refuse ink and the only person who can stop a malicious tongue is its owner. What we present to you now, Sir, can be nothing more than an account of the materials which we have studied and organised with a view to allowing you to order hearings. We intend to continue to do the best we can to attempt to assist you in giving your opinion as to where the truth of the various matters set out in the terms of inquiry lies. It should not, therefore, be taken by anybody that simply because we report that someone said something about another person that we have any view as to whether this allegation is true or not. We do not. Nor do we have any view as to the reply to that allegation or, as in many instances that you will hear of, Sir, the counter-allegation that is fired back.

You are mandated, Sir, to conduct an inquiry. You are not mandated to set out allegations against particular people or to do so in any form or detail. This is not a criminal trial. There is no plaintiff and there is no defendant and hence, neither is it a civil action. The fundamental characteristic of these two major kinds of litigation is that the parties are obliged to crystallise in advance the facts which they allege, and upon which they hope to rely to achieve a result. An inquiry is different. You, Sir, cannot possibly know what the facts are. A plaintiff who has suffered the unpleasant experience of seeing his cattle die following the start up of a nearby chemical factory, knows what he has experienced and knows what he must allege to obtain damages and an injunction. The Director of Public Prosecutions receives witness statements and, on the basis of the elements of offences formulated by statute, seeks to prove a series of facts beyond reasonable doubt. These limitations as to pleading are imposed upon the course of litigation. The result of criminal litigation may be the acquittal of the accused, so that he can never again be tried for the same offence, or his conviction and punishment. The result of a civil case is the granting or refusal of a civil remedy. Your powers, Sir, in pursuing this inquiry, are in effect equal with the High Court, and as regards the appointment of investigators more extensive than the High Court. The result of your inquiry is, however, limited. You are not entitled to make any orders beyond orders of discovery and compelling the attendance of witnesses. Your final report is, Sir, in a way nothing more than the expression of your opinion. That is because it carries no civil or criminal consequences. It may, however, involve the expression of a view to the detriment of the good name of a number of people. What the truth is, where the facts lie and what are the inferences to be drawn from those facts remain to be enquired into and to be decided. That is the nature of an inquiry through a Tribunal. As Keaton on 'Trial by Tribunal' (London, 1960) indicates:

> **In the ordinary criminal case...a definite charge is made against a particular individual, and all evidence not strictly germane to that charge against that individual is rigorously excluded...a Tribunal appointed under the Act of 1921 is itself responsible for the collection of evidence, taking statements from witnesses, presenting their evidence, then testing its accuracy and finally finding the facts. In an inquiry of this nature there is no issue between the parties for the Tribunal to decide, and no defendant to be tried. The Tribunal is appointed to find the facts and to give answers to the questions submitted to it.**

Sir, as you will be aware, the Tribunal has been in receipt of correspondence from a number of sources. Where persons have written to us indicating that they have additional or further complaints to make, our investigators have gone and spoken to them with a view to ascertaining as to whether anything which they might have to tell us could be germane to the terms of reference which set the border of the scope of this inquiry. Statements have been taken from them. In addition, correspondence has come through from solicitors representing unnamed clients who they say are members of the Association of Garda Sergeants and Inspectors or the Garda Representative Association. This correspondence indicates a stated mystification with what the Tribunal is about and a desire to know what you, Sir, are inquiring into. Here is some of the correspondence:

> **We have been consulted by certain members of the Association of Garda Sergeants and Inspectors in relation to the [Tribunal of Inquiry into complaints concerning some Gardaí in the Donegal Division]. We write to you now in particular in respect of the advertisement which has appeared in the National media over the past week regarding persons who might wish to seek representation before the Tribunal. We note that in the advertisement which has been placed in the National press it is stated that any person wishing to be represented before the Tribunal should write to you as registrar to the Tribunal by Monday, 8th July stating in writing the reasons as to why such representation is sought and furthermore such persons as would seek representation should appear before the Tribunal on the 15th July, 2002 at 2.00 p.m. to make further oral representations as appropriate. Our client's concern is that notwithstanding the detailed nature of the Terms of Reference contained in the Resolution of [both Houses of] the Oireachteas it is not by any means clear if any allegation of wrong-doing will be made against our clients during the course of the Inquiry. That said, it is also clearly the case that such allegations may be made. If such allegations are made then clearly it is in our client's interest to be represented before the Tribunal for the purposes of dealing with these allegations. We write to you in order to enquire as to what procedures it is envisaged will be followed in respect of persons against whom allegations are made. Is it the case that if the Tribunal forms the view that allegations will be made against certain**

individuals that those individuals will be notified of the existence of these allegations giving such individuals an opportunity both to prepare an answer to these allegations and more particularly every opportunity to seek representation before the Tribunal for the purposes of dealing with such allegations? You will appreciate that our clients are desirous of ensuring that whereas they would wish to be represented insofar as necessary..., they would be hopeful of not unnecessarily incurring costs.
(Letter from Sean Costello & Company Solicitors to the Registrar to the Tribunal dated the 1st July, 2002).

We act on behalf of [the Garda Representative Association] our above named client who has asked us to communicate with you as some of its members may be affected by your inquiry. We should be obliged if you would inform us of the following:

1. **What procedures does the inquiry intend to follow?**
2. **If an allegation is made against a Member will he be informed of it and given an opportunity to seek representation at the time when the allegation is made?**

(Letter from Hughes Murphy Walsh & Company Solicitors to the Registrar to the Tribunal dated the 4th July, 2002).

We are instructed by the Association of Garda Sergeants and Inspectors in relation to the...Inquiry...we have been instructed through A.G.S.I., by a number of members of An Garda Síochána who believe they may have some involvement with the investigations of the Tribunal. At this stage we cannot say whether these persons will be involved as witnesses or as persons against whom allegations are made. It may transpire that some of them will not be involved at all. In addition to the persons that have contacted us to date it is likely that we will receive further instructions as the Tribunal's investigations develops.
(Letter from Smith O'Brien Hegarty Solicitors to the Registrar to the Tribunal dated the 8th July, 2002. Note that letter, in the similar terms, was received from Sean Costello & Company Solicitors, addressed to the Registrar to the Tribunal, and dated the 8th July, 2002 and that this letter makes reference to the letter from Smith O'Brien Hegarty Solicitors and the sharing of instructions in regard to their mutual clients, the A.G.S.I.).

Sir, we cannot, and we will not, say anything which limits the scope of your inquiry. The only boundary to that inquiry is, as a matter of law, the explicit text of the Terms of Reference of which you have already given the fullest possible explanation. As we go through each Term of Reference we will quote that explanation before proceeding to an outline of the available material. It is from this material that you will, in the main, conduct your inquiry. As to where that inquiry leads you, in terms of the facts you find, or in terms of the inferences you draw, or in terms of the connections which you have drawn attention to which may exist between any particular Term of Reference and any other and as to what overall opinion you give is, Sir, entirely a matter for you. In what follows we

are not, Sir, offering you any opinion, but merely suggesting that the material to which we refer is germane to your inquiries. It is, of course, necessary to name people and to say what other people say about them. Fairness demands, as I have already indicated, that for everything that somebody alleges, that person is enabled to make a reply and is quoted as such. We are attempting, therefore, not only to be even-handed, but to provide assistance to people as to how they fit within the terms of the inquiry which you have begun. As will become more than apparent as this Preliminary Opening Statement proceeds, it is difficult, if not impossible, to think of a single person against whom, ultimately, you might give a critical opinion as to their conduct, who has not been spoken to and who has not given an account of themselves, or who has refused to give an account of themselves. Where that occurs, we regard silence as a denial. Where, in a very few instances, some allegation has not been put to a person, we give an account of their general attitude to the kind of conduct called into question in this Tribunal. As you have said, Sir, the fact that an allegation exists is no proof of its truth. Nonetheless, we will proceed to give as much detail as we adjudge to be necessary as to the matters which fall to you to be resolved and as to the persons with whom such controversies are concerned.

So what then are our procedures? You, Sir, have already helpfully indicated those on the 15th of July, 2002 when you said:

> **As the Tribunal addresses each module, the Tribunal will identify persons likely to be affected by the available evidence. The Tribunal will contact all such persons who are legally represented and, if not legally represented, will make every effort to contact them personally. It is hoped that all persons likely to be affected by material arising in a particular module will be furnished where appropriate with a CD-rom of all the evidence which is in the possession of the Tribunal relating to that module or where it is thought necessary of all the evidence in the possession of the Tribunal. They will be also furnished with a hard copy of the evidence which the Tribunal considers to be relevant to the particular module from which they can learn the manner in which they might be affected by that evidence. They may then consider this evidence and they may, if they wish, respond to it by making a written submission or a witness statement. The advantages of making such a witness statement or such a written submission are obvious, in as much as it will enable counsel for the Tribunal to present and consider that response. When I have determined that there is evidence of matters into which I am obliged to enquire, all the relevant evidence, if not already served, will be served on all persons likely to be affected by the hearing of that module and then the public hearing will be held. If at any stage during a hearing, assertions are made or evidence is sought to be addressed which might damage the reputation or good name of any individual, but of which the Tribunal has not had notice, then procedures will be put in place, either by an adjournment of the hearing or otherwise to deal with this situation, so as to ensure that fair procedures are observed.**

Sir, it seems to us, that there are a number of elements to what you have said. These include:

1. That you expect us to make every effort to ensure that persons whose reputation may be affected by the findings of the Tribunal are presented with the material upon which such findings might be based;

2. That if people wish to have an overall view of the documents in the possession of the Tribunal and which are relevant to any particular module, that they should be enabled to do so;

3. That the receipt of anything more than one's own witness statement puts a person on notice that there are matters in respect of them, contained in the documents served on them, which the Tribunal must enquire into;

4. That in the event that the Tribunal takes an unexpected turn and it appears possible that the reputation of additional people may be affected, they will be afforded the same rights:

In addition to the foregoing, we would wish to add:

5. That we have prepared hard copy books of statements and documents in respect of each module. These are clearly marked with their subject matter. In addition, a CD-rom is available of all the statements and documents which the Tribunal considers to be potentially relevant to all of the Terms of Reference, and this can be obtained on application;

6. We will, during the next few weeks, be furnishing hard copies and CD-roms to persons likely to be affected, in respect of any Term of Reference, by the enquiries undertaken;

7. As regards persons who are not likely to be affected, in terms of having to defend their reputation, their witness statements solely will be furnished to them. If they wish to resile from anything contained in those statements, taken by members of An Garda Síochána prior to the commencement of this inquiry, they will be invited to do so and to state reasons for any change they wish and to give an account of how the original statement came to be ascribed to them;

8. We have prepared, and are now delivering, a Preliminary Opening Statement.

It seems to us that for the reasons adumbrated by the Royal Commission on Tribunals of Inquiry, commonly known as the Salmon Commission, that an opening statement, though not necessary, is desirable. The Salmon Commission stated:

> **In its discretion the Tribunal will direct whether or not counsel instructed on its behalf should make an opening statement**

> **indicating the progress which has been made in the investigation before the evidence is heard...provided a sufficient time has been given for the inquiry, an opening statement by counsel for the Tribunal is usually helpful as it is otherwise difficult for persons who have been granted representation and members of the public to understand the line of inquiry which is being followed. An opening statement will also assist the press in reporting the proceedings.**

It is well established that people whose character and reputation are called into question have an entitlement to appear personally, or to be represented at a Tribunal of Inquiry. Unlike, for example, a Companies Act, 1990 inspection, the procedures at this Tribunal allow such persons to cross-examine witnesses against them. In addition, there is the right to make submissions. These safeguards of a Tribunal are procedures which are in excess of those predicated on the basis of sections 7, 8, 13, 14, 15 and 19 of the Companies Act, 1990. The fact that there is an entitlement in law does not mean that a person is required to exercise it. Equally, it does not mean that if people choose not to exercise their rights that you, Sir, are precluded from reaching conclusions. You have already indicated, in considerable detail in your judgment on representation of the 22nd July, 2002, the basis upon which you will allow people to be represented. They are equally entitled to represent themselves. You are entitled, Sir, to set the procedures for this inquiry and there is, we suggest, considerable flexibility provided those procedures are tailored to achieve fairness in order to suit the circumstances of the inquiry.

We, as counsel on behalf of the Tribunal, regard ourselves as having a particular and a special duty with regard to the examination of witnesses. We are not limited to an examination in chief. We are entitled to engage in cross examination and will feel ourselves able to pursue such an examination vigorously where it is in the interests of the truth. We feel it to be our duty to ask every relevant question open to us within the Terms of Reference with a view to establishing where that truth lies. Other people may examine witnesses, either on their own behalf or on behalf of clients, with a view to establishing a particular viewpoint. We have no such agenda. Our only purpose in presenting testimony before you, Sir, and in engaging in a rigorous examination of the circumstances which have led to this inquiry, is to establish the truth.

One would be closing one's mind to the obvious, or one would be very naive, if after having read these papers one were capable of coming to any other conclusion than that people have lied in relation to virtually every paragraph of the Terms of Reference. If there is a Term of Reference in respect of which everyone has told the truth, we find it hard to identify that Term of Reference and we find it hard to see how that could be so. It is equally apparent, reading the material with which we have been involved, that many people have become extraordinarily embittered as a result of events, or what they believe to be events, in County Donegal. Many people whose names will emerge over the next few days, consider themselves to have been victimised by other people. Some people feel that there are conspiracies afoot, not just one, but many of them, to damn their reputation or to fix them with liability for criminal offences or,

at the least, to make their lives very unpleasant. That situation is, from the point of view of policing in County Donegal, a very dangerous one. With so many rumours and suspicions flying about, people of this County may imagine that the forces of law and order, as represented by An Garda Síochána, have been tainted. Juries are always specifically warned by judges that there should be no pre-judgment of a case and that they should never come to a conclusion based on guilt by association. The reason that these warnings are given is because fair-minded people possess precisely that quality: they make very definite efforts to shut their ears to rumour, to take action on suspicions only if they have a reasonable foundation and to discount unpleasant innuendo in favour of logical inference. There is, of course, a solution to all of this: one which Chief Superintendent Carey mentions has been absent notwithstanding the years of work and the hundreds of witnesses who have so far been interviewed. It is the truth. When the human mind turns to deceit it distorts the reflection in our minds of the created world. If in twenty year's time someone were to deny that this address were made by us, on this date, and in this place, it would make not the slightest difference to reality. The past cannot be changed. The truth reflects reality without adding anything to it or taking anything from it. Reality, because it has happened, is beyond any power. The only honest answer is to reflect reality in truth.

It is not merely a pious exercise to call for the truth. It is, perhaps, more realistic of us to say to you, Sir, that we will do our best to uncover what the truth is in relation to the inquiry that you have been charged with undertaking. After all, what has all of this arisen from? If people have done dishonest things, if people have made mistakes, if people have leaped to conclusions where the law requires them only to act upon a reasonable suspicion, if officers of Sergeant rank, and above, have been neglectful in their duty of supervision, then, clearly, wrongs have been done. Those wrongs, however, might be ones which carry no legal liability. Even if they were serious wrongs, or very bad mistakes, they could have been cleared up within days or weeks by people honestly asking themselves whether they had failed in their duty, let people down through neglect, or simply acted wrongly. The reason for the enquiries conducted by Superintendent Lennon, by Assistant Commissioner Carty, by Assistant Commissioner Carey, by Assistant Commissioner Murphy, by Deputy Commissioner Conroy and by Shane Murphy SC (the latter based solely on documents) has been in very simple terms, a failure by people to confront themselves and to use the truth as the only possible reflection of reality. This Tribunal will be over very quickly if people tell the truth. This is not to say that we are not familiar, as you must be, Sir, with the phenomenon that honest people experiencing the same event may differently record or interpret it. It seems to us, however, and ultimately it is a matter for you, Sir, that in very many aspects of what you are to enquire into, people have foregone the truth in favour of a fantastic and embittered view of their experiences. Undoubtedly, in some cases, this amounts to self-deceit and the telling of lies to others. The function of discrimination is given to people so that they can exercise a judgment between right and wrong, the truth and lies, and good and evil. Even at this late stage it is surely not wrong to remind people that there is nothing more ennobling of a person than that they accept their own worst selves:

> **In reality the chief accuser is not outside, but the judge who dwells in our own hearts…this is nature's attempt to bring about a cure…If only people could realise what an enrichment it is to find one's own guilt, what a sense of honour and spiritual dignity!** (Carl Jung – Collected Works 10.416).

We would now like to say something about our approach to witnesses, Sir. We had considered a number of ways of approaching this matter. These included personally speaking with the witnesses making allegations against the Gardaí. To be even-handed it would be necessary to speak also to the Gardaí against whom allegations were made. We had considered writing to people enclosing the material upon which this address is based. We felt that without a guide to the material people would have little chance of understanding it. We have enquired into the procedures followed by other Tribunals and in each instance we found that the models which they adopted were tailored to the particular needs which they were attempting to meet. A Tribunal has a choice of procedures provided the fundamental principles which were enunciated in the explanation of the Terms of Reference are abided by. Because the truth is so deeply buried we were driven to the conclusion that we were obliged to approach this matter from the point of view of safeguards which would uphold the integrity of the inquiry.

In major criminal trials it is now common to meet with the victim, the family of the victim or the main complainant in advance of the trial. This was not always done. The changes were urged, first of all, by the Law Reform Commission in their Consultation Paper on Rape. Some members of the Bar had, even prior to that, adopted the practice of meeting witnesses as a matter of routine. These consultations now are, however, limited to an exchange of courtesies, an explanation of procedures and a tour of the court buildings. Their fundamental purpose is to reassure, and so to calm people prior to their appearing in court. The facts of the case in which they are concerned, as related to their particular testimony, have already been elicited in a professional manner by the Gardaí in advance. If any other factors appear of importance, these can be included in an advice on proofs, thus inviting the Gardaí in very limited circumstances to re-interview witnesses as to particular points without, at the same time suggesting anything to them. There are good reasons for this practice. Advocates appear in a case in order to present it as persuasively as possible within the set of facts with which they have been presented. We have no function in saying to a witness that we feel that a particular point, which they have not adverted to, is of particular importance and that they ought to make a further statement in relation to that point. We have no business in preparing statements for witnesses and even less in coaching them. In a criminal case it is also well to bear in mind that people may have self-interested, or downright malicious, motives for making allegations against other people. If a case is to be made against an accused person then a strong measure of detachment from the manner in which the elements of that case is put together is desirable. To act otherwise is to leave open the possibility that counsel created the case.

Although this is far-fetched, the possibility can, and should, be discounted by the safeguards which we have mentioned. Some of us have experience of where,

in the aftermath of the Law Reform Commission Report, people felt it right to discuss the circumstances whereby a victim was traumatised through a criminal offence, with them. This had consequences. The discussion at the trial shifted from the facts, the essence of the case, to the peripheral consultation with counsel. In terms of the preparation of a witness, as opposed to the proffering of legal advice, no legal professional privilege exists. Huge time was taken up in at least one such trial on the precise nature of consultations with counsel and the effect that this might have had on the witness's testimony. This operated as a diversion of the trial and a confusion of the main issue.

There is a second reason, Sir, whereby we must advise you that we do not propose to meet with the witnesses to these matters, beyond an exchange of courtesy. If there are inconsistencies, ambiguities, contradictions and opposition to the facts as stated by other witnesses to the same events, in the statements which we have to hand, and we must advise you, Sir, that there are many of these, we do not wish to engage in a process whereby any of these matters may be ironed out prior to your seeing those witnesses for yourself. The results of that might be a disservice to truth, and therefore, to the objective of justice. Witnesses who tell the truth may well contradict themselves and may well be confused. Witnesses who have all been part of the same event may see what has occurred to them differently from each other. You, Sir, are surely entitled to have the complete, unvarnished testimony of a witness with any apparent flaws that may attach to it because in that way the truth is more easily served. We are not persuaded that it is either useful or proper to meet with a witness and to point out to them apparent flaws in their statements, or series of statements and the contradiction of what they have said by other prescient witnesses. You, Sir, surely are entitled to judge the demeanour of the witness when they are first told, and we hope in a courteous fashion, of these matters. You are entitled to have the first view of their demeanour. Nothing will be smoothed out for you and we will not engage in a process whereby we might come to a view and thus present a witness's testimony to you in a way which, because of our unconscious reactions, is more conducive to the view which we may be accused of having taken.

As you will hear, Sir, people who have been interviewed are making the most serious allegations against each other. In each instance what they say amounts to a claim of very serious wrong-doing. You are not limited in your inquiries to the allegations which are made. It is as well to know that several statements explicitly accuse other people of acting maliciously; of attempting to fit them up with evidence of the commission of a criminal offence; of forging documents; of suborning potential witnesses; of conspiring to interfere with the course of justice; and of deliberately acting so as to ruin people's lives or careers. We therefore feel, that as regards the treatment of witnesses, that our approach is prudent.

As we have previously said, some witnesses have refused to answer particular questions in relation to events which are germane to the terms of reference. We do not believe that it is to the benefit of An Garda Síochána that people, when confronted about their duties by superior officers, are apparently allowed to remain silent. Within the internal discipline of a police force 'is blásta béal ina

thost' can not apply! The law as to the right to silence does not give people a blanket opportunity to simply refuse to answer questions. If this were so, then no employment relationship could subsist successfully. This is all the more so in the context of a force conferred with statutory powers in the investigation of crime, potentially armed with lethal weapons and organised with the structures of military discipline. The law is not that people are entitled to refuse to answer questions if it will have the potential result of incriminating them. The law is that where people are compelled to answer questions then the involuntary nature of their answers precludes the use of same to incriminate them in a criminal trial. You have the power, Sir, to require people to answer questions and as we go through this matter you may perhaps agree that, unfortunately, the exercise of that power is necessary if we are to assist you in attempting to discover the truth.

Our objective in what follows is to set out the nature of what we know on a preliminary basis. We are sharing that work with the parties so that they may have the benefit of our efforts. This is part of the fair procedures of the Tribunal. In opening this case to the people of Donegal, and to the wider community we are not, under any circumstances, saying that the statements, or documents, which we will read or refer to are true or accurate. We have no idea about this matter. Because our view does not count, in that the only view which does count will ultimately be yours, Sir, we are not proposing to express any view as to credibility. We have limited anything we say to an analysis of the available documents on a preliminary basis, thereby hoping to provide you, Sir, and the parties to the Tribunal, with a map of the available evidence. We may indicate some routes which the inquiry, we feel, might usefully follow. You have already indicated, Sir, your independence from this process and that you do not consider yourself in any way bound by anything which we may say.

In delivering your explanation of the Terms of Reference you referred, Sir, to your determination to follow through on this task with a view to the better implementation of policing in this county. This is what you said:

> **In relation to each of the Terms of Reference, the Tribunal would wish to go about its business by ascertaining the basic facts, by looking at existing Garda procedures, by looking at any deviation therefrom and by asking whether, if there was such a deviation, same was accidental or deliberate. The Tribunal must also look generally at the checks and balances within the system of criminal investigation and their adequacy. This is not intended to be a negative process. When a serious complaint is made against a State agency the facts must first be ascertained. If there is fault (whether by act or omission) then there is a potential for learning how that fault came about and how it might be avoided in the future. There is also potential for looking at the operation of the system within which that fault occurred and for making positive recommendations for better practice or procedure in the future.**

As that paragraph implies the entire work of this Tribunal will revolve around the work of members of An Garda Síochána with particular reference to the Donegal

Division. No matter what facts you find, Sir, and no matter what recommendations you make, membership of An Garda Síochána should always be regarded as a matter of pride. Since the foundation of the State many members of An Garda Síochána have given their lives in the service of the upholding of the public peace. When death occurs in the course of duty it is a tragedy for the family of those involved. Those who have died have quite often responded to impulses of the highest heroism. To take one example, on the 21st day of July, 1999 Tallaght Garda Station was attacked by a person armed with, among other things, a sword, two plastic canisters of petrol and two self-lighting flares. The Station housed a number of prisoners and there was a Sergeant and two uniformed Gardaí immediately at hand. The petrol was sprayed all over the public area before the attacker summoned the Gardaí and told them to evacuate the Station. His actions had put the lives of not only the members of An Garda Síochána, but the prisoners housed in the Station, at considerable risk. The senior officer present, Sergeant Andrew Callanan, did not hesitate to take responsibility. He responded to the attacker by moving from the area where he would have been safe into the public hallway, taking a fire extinguisher and spraying the attacker, forcing him to retreat towards the door. The attacker then let go of both flares and Sergeant Callanan lost his life. The attacker somehow left through a door and then entered his motor car and fled the scene. (For further examples see 'The Final Beat' by Liz Walsh, Dublin, 2001). The example of men such as Sergeant Callanan will remain as an ever present reminder that people who are called to serve their country within An Garda Síochána, do so with unlimited liability even at the price of their lives. They offer the highest sacrifice of themselves. It is not unreasonable, therefore, that proper and professional standards should be expected of their colleagues within An Garda Síochána in County Donegal.

MANAGING EXPLOSIVES FINDS

Sir, you are required pursuant to paragraph (e) of the Terms of Reference to urgently enquire into the matters of urgent public importance set out therein, which reads:

> **Complaints that some Gardaí in County Donegal may have been involved in hoax explosives and bomb-making equipment finds (in particular discoveries on 11th September, 1993, 19th November, 1993, 11th January, 1994, 14th March, 1994, 4th June, 1994, 13th June, 1994 and 18th July, 1994) and a review of the management and investigation of these issues.**

Sir, when the Tribunal first sat on the 15th of July, 2002 you gave an explanation of the Terms of Reference. This is what you said in relation to the foregoing paragraph:

> **The information which is available to the Tribunal contains allegations made by a number of persons that some members of An Garda Síochána "planted" subversive paraphernalia and later purported to discover it or have it discovered by third parties.**
>
> **The Tribunal proposes to**
>
> **(i) Enquire into and establish the facts in relation to these events;**
> **(ii) Enquire into and establish what "finds" were actually made, if any;**
> **(iii) Identify the nature of the materials said to have been found on these occasions;**
> **(iv) Enquire into and establish the events and circumstances which led to the making of these "finds";**
> **(v) Enquire into and establish the identity of such members of An Garda Síochána, if any, who acted with regard to these finds and attempt to discover whether their actions were proper or improper;**
> **(vi) Enquire into the normal Garda procedure and/or practice (if any) relating to the making of such "finds" including practice and procedures relating to preservation of materials found, forensic analysis of same, the preservation and examination of the apparent crime scene, and any other follow-up procedures and practices applicable to such a find and consider whether such procedures and practices were followed in relation to these "finds"**
> **(vii) Consider the adequacy of the procedures and practices applicable to the making of such "finds" having regard to the facts which may be established in evidence at the Tribunal;**

(viii) Enquire into the course and management of the investigations relating to these incidents;
(ix) Consider the use and role of informants in this matter: in that regard the approach already set out in relation to Term (B)(3) of the Terms of Reference will be applied;
(x) Enquire into and establish the manner in which the complaints made in relation to these events were dealt with by members of An Garda Síochána including complaints made to the Garda Síochána Complaints Board;
(xi) Enquire into and consider the relationship, if any, between the events the subject matter of this Term of Reference and any other Term of Reference.

Sir, the first date mentioned in this Term of Reference is, in fact, the earliest date referred to. Since what we are proposing to do in this Preliminary Opening Statement is to attempt to follow, as far as conveniently possible, a formula of ordering events chronologically, it seems right to begin with issues which concern apparent explosives finds. It also seems to us that we cannot simply begin in September, 1993, but must go back to events which occurred some years prior to the earliest date in the Terms of Reference. Sir, we have already explained how an investigation was commenced under Assistant Commissioner Kevin Carty into the Garda investigation of the death of the Late Richard Barron on the 14th of October, 1996. It was very shortly after that investigation commenced that allegations were made to the Carty investigation team which necessitated their enquiries expanding and embracing, among other things, the terms of paragraphs (e), (g) and (i). The credibility of certain persons looms large in this section of your work, Sir. In simple terms, two people, who are not members of An Garda Síochána, are saying that particular things happened and two persons who are members of An Garda Síochána are saying that they did not. What we intend to do is to present the statements alleging wrongdoing side by side with the response of those who state, in the main, that they were conscientious in carrying out their duty. In relation to the members of An Garda Síochána, a brief outline of their career may help the focus that needs to be brought on these issues.

Noel McMahon joined An Garda Síochána on the 11th of January, 1978 and on completion of training went to Buncrana in June of that year. The following year he was transferred to Burnfoot and after a period of nine months, at his own request, he was transferred to Dublin Castle where he took up duty as a Detective Garda in the Special Detective Unit. He stayed there for a period of nearly six years. During that time, on the 2nd of April, 1981 he married Sheenagh O'Doherty. Mrs. McMahon comes from Buncrana, County Donegal. Both her father and her sister are solicitors practising in that town. At the request of Noel McMahon, he was transferred on the 17th of June, 1986 back to Donegal and took up detective duties initially at Letterkenny and then, on the 23rd of October, 1987 at Buncrana. Noel and Sheenagh McMahon sold their house in Buncrana and purchased a house in Letterkenny for reasons which perhaps related to him being transferred from Buncrana to Letterkenny on the 12th of June, 1997. It would not be normal to speak of anyone's private life in the context of an inquiry such as this. However, it seems to us that certain

aspects of the private life of Noel and Sheenagh McMahon are of importance and have been the subject of an investigation by the Carty team prior to this. As we understand it, some form of protection or barring order was granted to Sheenagh McMahon by the Courts in Donegal in June of 1995 and just prior to Christmas of 1998 the couple separated. Something should also be said about the career and background of the two other people that will be mentioned frequently in relation to this.

Kevin Lennon comes from Cloone, County Leitrim and joined An Garda Síochána on the 8th of January, 1975. He served at Buncrana for eight years from June of 1975 until, in June of 1983, he was transferred to Burnfoot on being promoted to Sergeant. Almost two years later, in May of 1986, he was transferred to Letterkenny Garda Station. Almost six years later he attained the rank of Inspector in March of 1992. He was then transferred to Buncrana where he served until January, 1993. He was then transferred to Letterkenny Garda Station as an Inspector until in May of 1993 he was appointed a Detective Inspector. On the 7th of February, 1996 he was promoted to Superintendent and was then transferred from Letterkenny to Buncrana where he was stationed up until February of 1997. During that month he transferred back again to Letterkenny where he served up until April of 1999. When the Carty investigation began, we understand, he agreed that it was important that he should not be seen to be in any way capable of influencing that investigation and so he was allocated to Millford Garda Station on a temporary basis.

Adrienne McGlinchey was born in 1965 and now lives in Letterkenny. She is one of a family of five children and her father was prominent in the County, having once been a Senator. As we understand it, that family was also blighted by a separation. As far as we know, because the records are missing, Adrienne McGlinchey was arrested for the first time under section 30 of the Offences Against the State Act, 1939 on the 8th of July, 1991. She was released without charge. From some date in 1991 she rented a flat in Buncrana which she shared with a lady called Yvonne Devine. As we understand it, whatever disharmony there may have been between Adrienne McGlinchey and her mother and sister were resolved some time in 1995 and she returned from Buncrana to live with her mother and sister and in order to manage a shop in Letterkenny.

On the 16th of March, 1999 a solicitor, Moya Jane O'Doherty, called to Buncrana Garda Station and made a complaint in relation to the conduct of Detective Garda Noel McMahon. Her interest was both professional and personal since she is the sister of Sheenagh McMahon. Her complaint related to a telephone message left by Detective Garda Noel McMahon on the answering machine of his estranged wife. Three days later there was a formal interview with Moya Jane O'Doherty conducted by Detective Sergeant Leheny at her office. Both on the occasion of the complaint, and on this latter occasion, she declined to make a written statement. She did, however, request a further meeting that afternoon in the presence of her sister, Sheenagh McMahon. At that meeting Sheenagh McMahon made serious allegations against her estranged husband Detective Garda Noel McMahon and against Superintendent Kevin Lennon and, in consequence, these matters were

reported to Superintendent Thomas Long. It is important to note from the outset that in respect of every allegation made against both Superintendent Lennon and Detective Garda Noel McMahon by Sheenagh McMahon, and in respect of later allegations, to which we shall shortly refer, made by Adrienne McGlinchey, that these were denied in emphatic terms by both Superintendent Lennon and Detective Garda McMahon. Those denials are presented in parallel.

On the 29th of March, 1999 Sheenagh McMahon produced five items to Chief Superintendent Denis FitzPatrick. The first two were items which she claimed to have been under the impression were part of a mortar bomb. In fact, they were not and appeared to have had no sinister usefulness other than deception. One of them was a metal tube about three inches in diameter and fourteen inches high with a base of metal fins at the end. The other was a similar, but smaller item. The other items were documents, consisting of a handwritten sheet which she alleged was in Superintendent Lennon's handwriting; an unsigned typed report apparently addressed to Superintendent Lennon by her husband Detective Garda Noel McMahon and a notebook. The typed report apparently gives a glowing reference to Superintendent Lennon, speaking of his integrity and efficiency. The handwritten sheet states that Kevin Lennon never took part in, or authorised, any unlawful activity or operation, any illegal act on or off duty, or any illegality while participating in any operation. These documents are already public knowledge in the sense of having been referred to in the judgment of the Court of Criminal Appeal in the case of The People (DPP) -v- Frank Shortt delivered on the 31st of July, 2002. The notebook also makes a reference to Mr. Shortt's premises 'the Point Inn'.

Between the 26th of April and the 18th of May, 1999 Sheenagh McMahon made a number of statements which were signed on the 24th of May of that year. The items of hardware were handed over to Superintendent John F O'Connor, a member of the Carty investigation team, on the 28th of April, 1999. On the 9th of July, 1999 these allegations by Mrs. McMahon were withdrawn. On that occasion Mrs. McMahon was in attendance at Letterkenny District Court in respe ct of her family law proceedings. Her solicitor, Mr. Niall Sheridan, in a statement dated the 10th of December, 1999, described the circumstances as follows:

> **Outside the Court I was approached by Garda Martin Leonard who indicated to me that my client wished to withdraw certain allegations she had made in respect of her husband, Noel McMahon in his capacity as a member of An Garda Síochána. I indicated to Garda Martin Leonard that I was not instructed in this matter. However, I pointed out that I was aware that Sheenagh's physical and mental condition on the day was such that she was not capable of making an informed decision as to whether she wished to proceed with her complaints against her husband or withdraw them. I strongly urged to Martin Leonard not to take any such statement. He had suggested that I should assist in this matter and I refused. I subsequently discussed the matter with Sheenagh McMahon in Gallagher's Hotel. Sheenagh McMahon had been sitting with her husband in the lounge and I called her out to speak**

> **to her privately. I discussed the matter with her. I advised her that I did not think she was in any fit condition to make any decisions concerning the investigation into her husband's conduct as a Garda. She agreed with this advice. In fact I had also advised her that she was not in a fit condition mentally or physically to proceed with the related family matters before the District Court and indeed these were adjourned. I spoke to Garda Martin Leonard again and reiterated the view that I believed that Sheenagh was not capable of taking any decision in the matter and that he should not take a statement from her. I indicated to him that I had spoken to Sheenagh and she had agreed with my advice and did not want to make any decisions on that date. I have subsequently discovered that Sheenagh McMahon signed a statement in which I believe that she withdrew her complaints on the same day. This was contrary to Sheenagh's stated wish to me. It was further contrary to the further advice I gave to Sheenagh McMahon which I forcefully communicated to Garda Leonard. Furthermore, I do not believe that Sheenagh was in a fit state to make any statement and it is my opinion that it was wrong of Garda Martin Leonard to take any statement from our client on that date. Sheenagh was clearly under severe stress. This would have been apparent to anybody dealing with her on the day.** (10.12.99)

Garda Martin Leonard explains the circumstances, from his point of view, in his statement of the 24th of July, 1999, in the following terms:

> **...on Friday, the 9th of July, 1999 I was on duty at Letterkenny Circuit Court. I met Mrs. Sheenagh McMahon and she asked me to take a statement of withdrawal of a statement made to Superintendent Long and Superintendent O'Connor. I arranged to meet her at 4.00 p.m. at Tara Court, Letterkenny. I asked Garda Pauline O'Hara to accompany me and to witness the statement. On arrival at the appointed time I asked Sheenagh McMahon if she wished to make a statement and she replied yes. I pointed out to her that it was against the advice of her solicitor. I informed her that I was making a record of this in my notebook. I asked her if I could include it in her statement, but she declined. I proceeded to take the statement in writing including the declaration, read it over to her and she declared it was true and she signed it. I witnessed it as did Garda O'Hara and dated the statement...** (24.07.99)

Garda O'Hara made a similar statement. Mrs. McMahon, in that statement of the 9th of July, 1999 said:

> **I wish to withdraw my statement made to Superintendent Tom Long, Superintendent Jackie O'Connor in the presence of Moya Jane O'Doherty, solicitor made approximately two months ago at the Crescent, Buncrana. I am not happy with the way they conducted this investigation. I feel completely used by the**

> **investigation team. This statement has been read over to me...** (09.07.99)

On the 2nd of December, 1999 Mrs. McMahon explained that she was not well when she made the statement to Garda Leonard, but was aware of the advice which had been given both to her and to Garda Leonard by her solicitor. She said that her earlier statement, made to Superintendent Long and Superintendent O'Connor, from the 26th of April to the 24th of May: "is all factual and I now wish that it should remain on record". Apart from mentioning Superintendent Kevin Lennon and her husband Detective Garda Noel McMahon, Sheenagh McMahon also referred to the activities of Adrienne McGlinchey. It was as a result of this that Ms. McGlinchey was interviewed between the 31st of May, 1999 and the 23rd of March, 2000 by the Carty investigation team. The allegations which she had to make against Superintendent Lennon and Detective Garda McMahon were in addition to those already made by Mrs. McMahon.

One member of An Garda Síochána has expressed a strong view about the unfortunate breakdown of the McMahons' marriage. Garda Alison Teape was friendly with both Noel and Sheenagh McMahon. She describes the marital disharmony in the following terms:

> **When in Letterkenny I would call to the McMahons. I was aware from November, 1998 that Noel and Sheenagh's marriage was in serious difficulty. Sheenagh hated Kevin Lennon who was the Superintendent in Letterkenny with a vengeance. She was constantly giving out about him to me. She was always on about how Noel got Kevin Lennon promoted, but her big grievance seemed to be "The Policeman of the Year Award" and how Kevin Lennon got it instead of Noel. She said she had been told that Noel was getting it and I think it was for the drugs seizure at the Point Inn. I advised her on numerous occasions that she should let her hatred for Kevin Lennon go, as it was eating her up. On one occasion in their house Sheenagh McMahon showed me a handwritten letter which I didn't read. I wasn't in a position to read it as she was standing too far away from me. She said that it was a letter written by Kevin Lennon to Noel saying that Lennon didn't do anything wrong. She said to me that she was going to get Kevin Lennon with it. This was before Christmas, 1998.** (19.05.99)

It is important to note that Sheenagh McMahon has at all times indicated that she is telling the truth. Further, the physical items to which we have referred were, she indicated, stored by her in order to allow what she states to be the truth to be known at a later date.

Sir, it appears to be difficult to dispute the fact that between 1990 and 1994, Adrienne McGlinchey was treated by members of An Garda Síochána, at the highest level, in County Donegal as being an operative for, and simultaneously an informant against, the IRA. As this narrative progresses it might be reasonable, we feel, to have doubts in relation to her self-acclaimed role as

terrorist and as informer, and to wonder how she might appropriately have been handled. One advantage which senior officers within a police force ought to possess is that of experience in serious criminal investigation. One of the disadvantages, which is a burden on those who are removed from field work, and required to do mainly management and desk work, is that they tend no longer to be in touch with information on the ground. From that point of view, it is surely imperative for those at management rank within a police force to make enquiries of those doing field work and to listen seriously to their viewpoint. It is for you to say, Sir, whether these principles are important and whether they were abided by in relation to the matters under investigation.

Detective Sergeant Hugh Smith joined the Detective Branch in Letterkenny in 1986. Together with colleagues he was involved in border patrols and the monitoring of terrorist suspects. His colleagues included Gardaí Tolan and Gilroy. Garda Tolan's unit included Detective Sergeant Henry and Gardaí Gilroy, Smith and McMahon. Detective Garda Noel McMahon went on transfer to Buncrana after a short time with this unit. In two statements, Detective Garda Tolan says:

> **During the course of late 1989, early 1990 we became suspicious about the activities of Adrienne McGlinchey...as she was calling to suspect flats at Crievesmith, Letterkenny on a regular basis. As a result of this she was occasionally stopped and searched. At the time she was driving a white Montego car, the number of which I don't remember. The car was owned by her mother. On the night of the 12th of October, 1990 Detective Sergeant [Hugh] Smith and I were on patrol in the Letterkenny area where we met the Montego at Oldtown...it was heading towards the flats at Crievesmith. We turned and followed the car and it turned right off onto a side road before it came to the flats. We stopped and searched the car on this road. During the course of the search I found two maps which Adrienne had tried to dispose of behind the driver's seat. We took possession of the maps and copies of same were subsequently forwarded to Garda Headquarters. Over the ensuing months we received other items of intelligence from Adrienne McGlinchey, most of which was forwarded to Garda Headquarters. Some items which were very vague and which had no intelligence value were not forwarded...In the months following this Adrienne McGlinchey began to supply us with items of intelligence in relation to PIRA activity. Most of these items were passed to Garda HQ per intelligence reports. On one occasion she intimated to us that she had access to a handgun which was hidden in the attic of a flat in Ballyshannon. She stated that the gun had been taken from an RUC man. One night around this time we drove her to Ballyshannon to retrieve the gun. On the night in question she had drink taken. When we got to Ballyshannon she got us to park a short distance away from the flat. She left the car and returned some time later, saying that she could not go into the flat because there was some [person]…in the flat and that it wasn't safe. We returned to Letterkenny and did not go to Ballyshannon with her again. At the**

> **time I did not believe that such a gun existed. Then...on the morning of the 8th of July, 1991 a large bomb was found at Wachopes at Ballindrait. Adrienne McGlinchey rang me at home on the previous Saturday to inform me that there was something happening on the following Monday. She gave me no other details, but was to get back to me with further developments. I heard nothing further until approximately 6.00 a.m. on the Monday morning when the bomb was located. Adrienne McGlinchey was arrested in Letterkenny that morning under section 30...having been found commuting between the flats at Crievesmith and the home of the then O.C. of the West Tyrone Brigade PIRA. Shortly after this Adrienne McGlinchey went to live in Buncrana and I had no further dealings with her...** (Statements 10 and 10A, Carty Report, Section 1)

In addition to the foregoing Detective Sergeant Hugh Smith refers to the receipt from Adrienne McGlinchey of photographs of a housing estate and accompanying map about two weeks after the Coshquin bombing in November of 1990. Detective Sergeant Smith, in his statement, stated:

> **During all our dealings with Ms. McGlinchey she never produced any tangible evidence other than some documents after an incident had happened, i.e. Coshquin bombing. Around June or July, 1991 Ms. McGlinchey had a dispute with her family in which she took a cheque book from her home relating to a dormant account and cashed cheques in business premises around the town of Letterkenny. She subsequently left home and went to Buncrana where she lived in a tent for a while with Yvonne Devine, ex-Letterkenny. I had no further dealings with her.** (Statement 9, Carty Report, Section 1)

Sergeant Daniel Kelly has been stationed at Burnfoot since April, 1995. Prior to that time he was attached to the Detective Branch at Buncrana and worked on the same unit with Detective Garda Noel McMahon, for a period. He met Adrienne McGlinchey, for the first time, on the 8th of July, 1991 when she was arrested under section 30. We are not aware of the grounds of arrest, but, Sir, you will be aware that section 30 of the Offences Against the State Act, 1939 allows not only the arrest of persons suspected of crime, but of persons who are suspected of being in possession of information in relation to crime. He says:

> **From my meetings with McGlinchey and from my observations of her actions and behaviour over a period I formed the opinion that her antics were applied by her to distract the Gardaí and to seek Garda attention. I expressed the opinion I had formed regarding McGlinchey to Detective Garda McMahon on a number of occasions. The convent would be directly across the road from McGlinchey's flat. If carrying out surveillance on the flat it would also be from the convent grounds. I recall an occasion when I was on duty with Detective Garda McMahon I drove into the convent grounds. I am unable to recall the day or the date. I do recall that it**

> **was night time. On entering the convent grounds we encountered McGlinchey who was leaving the grounds. In the grounds of the convent I found a bag that contained fifty .220 bullets. I suspected that this bag of bullets belonged to McGlinchey and that she had probably dropped it when she saw our car entering the grounds. At no time did I ever question her in regard to this ammunition as I took this to be another ploy of hers to seek Garda attention...one night during November, 1991 accompanied by D. Garda McMahon we were carrying out surveillance on McGlinchey and Devine at the shore front, Buncrana. We were doing this from McMahon's father-in-law's grounds. I could see that McGlinchey was carrying a bag. I gave chase to her and during the chase she threw the bag onto the beach at the shore front. I retrieved the bag. In the bag was a walkie-talkie. This matter was reported...we never got this walkie-talkie to work. It was during 1993 that I was told that Letterkenny were taking over the handling of McGlinchey, the exact time I would not be sure of, but I believe it was in the early part of 1993. The units in D Branch were changed in late 1993. I was then working with D Garda O'Keeffe and D Garda McMahon remained working with D Sergeant Walsh.** (29.08.99)

In a later statement he refers to the aftermath of her arrest in July, 1991:

> **The next time I came across her was in early August, 1991. While on patrol one day I found her and her mate by the name of Devine staying in a tent at...Buncrana. I got talking to her and arranged a meeting with her. From that on for the next four or five months accompanied by D Garda McMahon we met her on a regular basis usually in the convent ground at Buncrana. It was usually during the hours of darkness on our late tour of duty. During this time she stayed in a number of locations in the Buncrana area. From the meetings I had with her you would always get small bits of information. Anything that was got was always put in a form C77. The District Officer at the time was always made aware of it. She always talked about arms dumps in the Buncrana area, but these were never identified. At no time did I ever see her with arms or explosives in her possession. Most of the information that was received from her related to incidents that had already happened. As she said herself one time, a percentage of what she tells is the truth. She also talked about a man called her boyfriend named as Paul Doherty nicknamed "Shorty". This man was never identified and was never seen. On at least two occasions she turned up battered and bruised as if she got a beating. "Shorty" was always blamed for it. It was a well known fact that if in bother she would talk to any member she met...Adrienne McGlinchey could be described as a Walter Mitty type person. She always liked to draw attention to herself. At times she would go on a spree of drinking and while doing this she would drink herself stupid and you would be liable to get her lying anywhere...** (Statement 11A, Carty Report, Section 1)

Detective Garda Noel Jones also had grave doubts about Adrienne McGlinchey. In a statement to the Carty investigation team he said:

> **Over the period McGlinchey and Devine stayed in Buncrana...there was a general instruction from the District Officer that if possible the ladies in question were not to receive any undue attention. It was a regular occurrence to observe Adrienne McGlinchey on her own or in the company of Yvonne Devine dashing across the roadway, hiding in cars, in hedges, laneways, etc. This activity took place in day time and at night time. At night time it was as though she was waiting for the headlights of a car to come upon her before she would make her move. She would generally have a carrier item of some description with her, ranged from plastic shopping bags to various sport carrier type bags. In all the times I personally checked Adrienne McGlinchey carrying bags I did not find any items which I considered useful to a terrorist group. I encountered her carrying small objects similar to the component parts contained within a commercial radio or TV, torches and batteries, in some cases the batteries were taped together. Lengths of coloured fine electrical wire, etc. Most of Adrienne McGlinchey's activities centred on the Crescent, St. Oran's Road, the convent/school grounds and shore front. During the period of McGlinchey's stay in Buncrana I do not recall any sightings of her in the company of known members of the PIRA or their associates...** (Statement 26, Carty Report, Section 1)

When Tom Shreenan retired in May of 1995 he had served thirty one years in An Garda Síochána and was, at the time, a Detective Sergeant attached to Buncrana for the previous fifteen years. He was working, during that period, with Detective Garda Noel McMahon. In a statement to the Carty investigation he says:

> **In or around 1991 Adrienne McGlinchey and Yvonne Devine came to live in Buncrana from Letterkenny...shortly after their arrival I became aware that Noel McMahon had a liaison there. At this stage I, as well as every other member in the Station [knew them] because of their unusual behaviour. It was obvious from their arrival, that they were seeking to attract the attention of the Gardaí by pretending to be involved in illegal activities. By this I mean that every time there was a Garda presence they were seen to be running away or hiding and it was obvious that they were encouraging members to pursue them or to stop them. It became known that Noel McMahon was getting information from them in relation to terrorist activities. It was at this time that Noel McMahon stopped submitting Form C77 in the usual manner. Any information that he may have been given by them was not available to the other members of the unit as heretofore. I found this unusual as it was my belief that these two women were not members of any illegal organisation nor did they appear to associate with any known**

> **members of illegal or unlawful organisations. In fact I had information from a reliable source that these two women would not be allowed near [a premises]...which was owned and occupied by members of the Provisional IRA on the run from Derry at that time. Shortly after their arrival in Buncrana Kevin Lennon was transferred to Buncrana as a uniform inspector. He was not long there when he started to work with Noel McMahon and ignored the remainder of the Detective Unit. It was known that they were handling the two women. I received instructions from Superintendent John P O'Connor on at least two occasions to lay off Adrienne McGlinchey and Yvonne Devine as they were supplying useful information regarding subversive activities to Noel McMahon. I could not understand this as it did not seem to tally with my information or with normal subversive activity on the ground. However, it was an instruction from a superior officer which I adhered to as much as possible.** (15.09.99)

Denis Doherty is also a retired member of An Garda Síochána, having served thirty years up to July of 1996. He served as a detective in Buncrana Station from 1981. He was also aware that the contact between Adrienne McGlinchey and Yvonne Devine was Detective Garda Noel McMahon. To the Carty investigation team he expressed this view:

> **It is my opinion from my knowledge of the subversives in the Buncrana district that Adrienne McGlinchey and Yvonne Divine were not trusted by the Provisional IRA. It is my opinion that they were attempting to draw attention to themselves by their actions, i.e. running aimlessly carrying bags, etc.** (20.09.99)

During the early years of the 1990's an incident occurred which might have led reasonable people to the belief that Adrienne McGlinchey enjoyed mischief. Detective Garda James Breslin, in a statement to the Carty investigation team, described it as follows:

> **...one night I was on duty in the Buncrana area accompanied by D Garda Noel Jones...I observed Adrienne McGlinchey...walking near the Buncrana Leisure Centre. She was carrying a bag. She walked off the footpath and headed in the entrance to the leisure centre. D Garda Jones stopped the car and we both got out. I asked Adrienne what was in the bag. I looked into the bag and saw that it contained an angle grinder. I took out the angle grinder to look at it. It was a 9 inch angle grinder. I cannot remember the make of it. I asked Adrienne what she had the angle grinder for. She stated that it was to fix her washing machine. We allowed Ms. McGlinchey to continue on then...** (Statement 116, Carty Report, Section 1)

Detective Garda Michael Galvin, attached to Buncrana Garda Station since August of 1991, in his statement to the Carty investigation team, described another undated incident during a tour of night duty:

> **Within a couple of hours of starting work at 10.00 p.m. our attention was drawn to the movements of Adrienne McGlinchey and Yvonne Devine, PIRA suspects, who I believe had a flat at the Crescent, Buncrana at that time. I am being asked about this incident five to six years on so my recollection is not great for the finer details. I believe that Garda John Murphy saw one of the girls I have mentioned throw a bag over the wall at the graveyard, Church of Ireland grounds...again my recollection is that a cloth or satchel bag was recovered with an item in it. I would describe the item as a small cylinder metal object with holes perforated along the sides of the metal tube. It was about 6 inches in length...there was no arrest made as a result of this incident, but we returned to the Station...these two girls were looked upon as being sympathetic to the PIRA and would have been stopped and searched by Gardaí regularly, but it is my belief that it was more messing that they were at...** (17.11.99)

On three occasions in 1991 Adrienne McGlinchey apparently came to the attention of the Gardaí in County Donegal as being drunk. As a result of an inquiry from the Carty investigation team, Garda Gerry Vaughan checked his official notebooks and recalled what happened on the 13th of July, 1991. He says:

> **I arrested Adrienne McGlinchey with an address at 3, Swilly Terrace, Buncrana at 7.40 p.m. on the 13th of July, 1991 for being drunk and a source of danger to herself. I have described her as being in her twenties and a female, with dyed blonde hair. I found her sleeping on the pavement in a very drunk state at St. Oran's Road, Buncrana. I took her to the Buncrana Garda Station, by official patrol car. At this time I am unable to say what member was working with me. She was detained in custody until 10.00 a.m. on the 14th of July, 1991 when she was released without charge...She was not prosecuted for this incident. I do not recall having been approached by anyone, asking me not to prosecute her. At the time of that arrest I was not familiar with Adrienne McGlinchey, however, I now know that Adrienne McGlinchey never resided at 3, Swilly Terrace, Buncrana and that the address should have been No. 5, The Crescent, Buncrana.** (14.06.2000)

Similarly, Garda Michael Guckian, as a result of an enquiry, gave a statement saying:

> **On the 24/11/91 I was on duty in Buncrana. At 1.07 a.m. I arrested Adrienne McGlinchey, The Crescent, Buncrana under section 59 for being drunk and incapable. Miss McGlinchey was taken to Buncrana Station and details entered in the custody record. Miss McGlinchey was then left home by patrol car. No prosecution was taken in this case. No representations were made to me in relation to this case.** (16.06.2000)

Similarly, Garda James Canning recalls an incident at Buncrana Garda Station which he believes to have occurred on the 23rd of December, 1991, at 1.50 a.m., this date being supplied by members of the Carty investigation team:

> **I remember the incident in question. I was on duty at Buncrana Garda Station when McGlinchey and Devine came to the front door. They were both intoxicated. I do not remember what they wanted. When I asked them to leave the vicinity of the Station they both became abusive and violent. They kicked on the Garda Station door and hurled abuse and banged the windows. When they refused to desist I arrested them both for a breach of the peace. They were taken into the Station and placed in the cells. I remember McGlinchey standing in the cell deliberately banging her head off the wall. I did not prosecute either of them for this incident. I was not approached by anybody in relation to the...matter.** (19.06.2000)

Finally, Detective Garda James Leheny had this to say to the Carty investigation team on the 5th of June, 2000, concerning Adrienne McGlinchey and Yvonne Devine:

> **Through time, I discussed with the majority of members of the Detective Branch, both at Letterkenny and Buncrana, the activities of both these ladies and in the early stages of my acquaintance with them, I formed the opinion that they were not members of the PIRA organisation, or any other illegal organisation and that both ladies were operating solo, in order to proclaim themselves as active members of the PIRA organisation...I am still totally satisfied that...any activities that they were involved in was for their own entertainment, gain, in order to give the reputation to the public in general and the Gardaí that they were both actively involved in subversive activity. On numerous occasions over the years while on duty, I encountered both these ladies. Their ploy was to be in possession of various types of baggages and acting in a suspicious manner. When Garda surveillance was put in place, they would carry out anti-surveillance methods. I recall on one occasion that Ms. McGlinchey had in her bag electrical components. I became suspicious as to the source of these items and subsequently confirmed them to be component parts from a TV set. On all occasions when I encountered these two ladies in such a situation, Ms. McGlinchey would be the spokesperson. She would act in an arrogant and challenging manner, while Ms. Devine would remain silent. Of all the items I observed which were found in their possession by the Gardaí over the years, i.e. electrical component partes, walkie-talkie sets, tripods, maps, fertilizer, electric cable, etc., I always formed the opinion that these items were obtained by themselves for the purpose of being detected by the Gardaí in possession of same, in order to give the impression that they were active members of the PIRA organisation. Over the years I can never recall observing both ladies in the company of known active**

members of the PIRA while they were engaged in subversive activity. Of the numerous incidents of subversive activity carried out in this division over the years, i.e. murder, explosive finds, shooting incidents, training camps, armed robberies, etc., these two ladies were never associated in any way, with these incidents. They would also give the impression of associating with high ranking members of the PIRA by calling to their homes on false errands...Each year Provisional Sinn Féin holds its annual Easter Commemoration Ceremony on Easter Sunday at Drumboe, Stranorlar, County Donegal. While the majority of people taking part in this commemoration would be members and sympathisers of PIRA/Sinn Féin, nevertheless a large number of the general public would attend out of curiosity. Down through the years, I often attended this annual event on duty. On the occasions I would see McGlinchey and Devine in attendance, they did not associate with any of the people present and played no part in the event. Their presence at the event often puzzled me, as this was an occasion where subversives and their supporters openly communicated with each other. (05.06.2000)

Adrienne McGlinchey claims that her involvement with Detective Garda Noel McMahon began as and from the 8th of July, 1991. The recollection of Garda Martin Leonard in relation to this matter is that she was arrested at 7.46 a.m. on this date. He recalls a serious terrorist incident in Lifford during the night and that three persons were returning from what he describes as "a well known Republican dwelling". Adrienne McGlinchey was taken to Letterkenny Garda Station and subsequently released without charge. It would appear that Adrienne McGlinchey was arrested on six occasions, from 1991 to 1994, under section 30 of the Offences Against the State Act, 1939. The custody records for Letterkenny, Buncrana and Lifford Garda Station are intermittently missing between 1990 and 1994. On all occasions, she was released without charge and on no occasion is there any mention made of her actually being in possession of any explosive substance or any munitions. As regards her arrest on the 8th of July, 1991, this is not an exception to the pattern. Adrienne McGlinchey claims that during the course of that interview she encountered Detective Garda Noel McMahon who asked her to provide him with information. Adrienne McGlinchey claims that she indicated to Noel McMahon that she was involved in distraction activities. We do not know what this means, or was taken to mean at the time. She claims that Noel McMahon told her to cease this, not to relate it to his colleague Detective Garda Kelly, but to resume the same type of activity on his instructions. As Detective Garda Kelly was moved out of the picture it may be that Kevin Lennon moved in. In itself, there is nothing sinister about this. As we know, as and from April, 1992 Kevin Lennon was in Buncrana. In her earlier statements, which Adrienne McGlinchey gave to the Carty investigation team, she claimed that she and Detective Garda McMahon simulated certain activities in order to impress Inspector Lennon, but then claims that he was a full and knowing participant in this activity. As has been said, both Kevin Lennon and Noel McMahon emphatically deny this allegation.

On the 11th of December, 1991, at 12.04 a.m., an anonymous male caller telephoned Buncrana Garda Station. He claimed that he had knocked down a female at the shore front and that, as she fell, a gun had fallen from her bag. The anonymous caller claimed that she had gotten up and put the gun back in her bag and walked away. The caller rang again at 12.15 a.m. and gave a description of the person he had knocked down. This fitted Adrienne McGlinchey. Detective Sergeant George Kyne and Inspector Hugh Coll interviewed Adrienne McGlinchey on the 13th and 14th of September, 1999. She related the issue of being knocked down by a car with another incident. This is how the officers report her statement:

> **She states that on another occasion she threatened a milkman that lived on the White Strand Road in Buncrana. She states that she got a taxi down to a park where she met this man. She was again in possession of Noel McMahon's official firearm and she produced it to this man and said "take a look at this, the next time I'll use it on you". She describes him as tall, over 6 foot 0 inches with reddish wavy hair in his twenties. She states that on both these occasions she was doing these deals on the instructions of Noel McMahon and Kevin Lennon. In relation to the milkman she was told by them that this man had made a report to the Buncrana Station and that the Provos would hear it back. She further states that as far as she can recall it, as she was returning from this second incident that she was knocked down and the gun fell out on the roadway. She thinks that it was because of this that Kevin Lennon and Noel McMahon came up to her flat in the Crescent in Buncrana and Noel McMahon beat her with the torch. She states that they were probably there to collect Noel's firearm.** (13/14.09.1999)

Noel McMahon denied these allegations in interviews with the Carty investigation team on the 25th of February and the 25th of March, 2000. Kevin Lennon was interviewed in relation to this matter on the 23rd of May, 2000 and said: "I know nothing about it. Her references to me in this are total lies and fabrication". The Carty investigation team went to considerable trouble to identify anybody who worked as a milkman, at or around the relevant time, in Buncrana. They obtained a statement from a Mr. Neil Doherty dated the 20th of September, 1999. He, together with his brothers, works in the milk distribution business. He said:

> **I have been asked by the Gardaí tonight if I have ever received threats in the past or if I was ever threatened with a gun. I recall an incident about four to five years ago where I was threatened. This incident happened at St. Oran's Road between 11.00 p.m. an 11.30 p.m. when I was walking home on my own from the Atlantic Bar. I had a good few drinks on me having been at a wedding earlier that day. Two girls, one of them a blonde one whom I knew as McGlinchey from Letterkenny, were standing on the footpath close to the convent. They had what I would describe as a large box, I think it was a cardboard box. At that time there was a lot of talk around Buncrana, that these two women were moving guns for**

> **the IRA. I said to them as a joke that's a big load you are carrying tonight. With that the smaller of the two women lashed out at me in an attempt to hit me. I am not sure if she made contact, I may have blocked it. I lashed a kick back at her and ran off. The McGlinchey girl shouted after me something like "she won't shoot me". At this stage my girlfriend now my wife had arrived on the scene. We ran off together towards my home. I did not see them again that night. A few days later a Garda spoke to me and asked me if I had been hitting my girlfriend. It was a Garda in uniform and was driving a marked patrol car. I was satisfied he was asking me in relation to that night. I told him I had no row with my girlfriend. I can't remember if the Garda mentioned anything about the two women...I had no more dealings with them.** (20.09.1999)

This is the first time that an anonymous call will feature in this narrative, but it is by no means the last. We would ask you to note, Sir, that a pattern of calls will emerge, whereby anonymous persons telephoned the Gardaí with apparent tip-offs in relation to matters you are charged with investigating.

As you have heard, Sir, Sergeant Kevin Lennon was promoted to the rank of Inspector in 1992 and allocated to Buncrana where Detective Garda Noel McMahon was also stationed. On the 21st of June, 1992 an undercover operation began which lasted until the 6th of August, 1992. As we understand it, this involved Noel McMahon and Garda Tina Fowley purchasing drugs at the Point Inn, a discotheque/bar premises, owned by Frank Shortt at Quigley's Point in County Donegal. The actual Garda raid which led to the criminal proceedings took place on the 2nd of August, 1992. Mr. Shortt was indicted on thirty four counts of allowing his premises to be used for various drug-related activities contrary to section 19 of the Misuse of Drugs Act, 1977, as amended. He was convicted on the 28th of February, 1995 on thirteen counts after a trial in Dublin Circuit Court and sentenced to three years imprisonment. He appealed to the Court of Criminal Appeal on the 23rd of June, 1996 and his application for leave to appeal was refused. On the 2nd of December, 1999 Mr. Shortt filed a further notice of appeal pursuant to section 2 of the Criminal Procedure Act, 1993 claiming a 'newly discovered fact'. On the 20th of November, 2000 the conviction of Mr. Shortt was quashed by the Court of Criminal Appeal. The Director of Public Prosecutions at this stage did not oppose the application. On the 31st of July, 2002 the Court of Criminal Appeal declared that the original conviction of Mr. Shortt had been a miscarriage of justice. The judgment is very largely based upon documents discovered since the first trial. Particular mention is made of the documents handed over to the Carty investigation team by Mrs. Sheenagh McMahon. The Court was critical of the activities of Superintendent Kevin Lennon and Detective Garda Noel McMahon. The Court also made a comment in relation to Garda Tina Fowley, but expressly indicated that they were not making any findings of fact against her. Since Garda Fowley was not called in evidence at the Court of Criminal Appeal the Court could not have been entitled to make any finding of fact against her. Kevin Lennon and Noel McMahon were, however, called in evidence and the Court's findings, in that regard, are contained in the judgment of the Court. In the papers relevant to this paragraph of the Terms of Reference, Sir, we intend to furnish to

interested parties the transcript of the proceedings before the Court of Criminal Appeal in the case of the People (DPP) -v- Frank Shortt and the judgment of the Court and the appendices. Although the point in case is not within the Terms of Reference, it would be foolish to pretend that serious issues of credibility do not arise from the handling of that case. You are not bound, Sir, by any finding of fact made by the Court of Criminal Appeal, but the judgment and proceedings before the Court may be otherwise of assistance to you and to interested parties.

On Thursday, the 28th of May, 1992 Sergeant Michael Murphy was on duty with Garda John Forkin at St. Mary's Road in Buncrana. In a statement dated the same day he said:

> **At about [0.25 a.m.]...we observed [Adrienne McGlinchey] carrying a holdall bag and I decided to search her holdall bag. Having searched her bag I found the following items in the bag: - four walkie-talkies, two detachable roof aerials, two balaclavas, two green army-type jackets, one green shirt, one small nine volt torch, an assortment of electric wire, and an AC/DC converter. She had no reasonable explanation as to why she had these objects. As a result of this search I obtained a warrant under section 29 of the OASA 1939 from Superintendent Brian Kenny to search McGlinchey's flat. I subsequently searched her flat at 2.30 a.m. on 28.5.92. I found one detachable aerial and nothing else was found.**

On the 26th of July, 1992 Adrienne McGlinchey was again arrested. Sergeant Liam Tighe described the circumstances, in a statement to the Carty investigation team made on the 16th of June, 2000, in this way:

> **At around 12.20 a.m. I was about to inspect the licensed premises known as the Central Bar, Lifford. As I walked in the front door I met Adrienne McGlinchey leaving the pub. She was in the company of another female. I noticed that she was carrying a plastic bag of which I was immediately suspicious. I asked her what was in the bag, I cannot remember her reply, but I then searched the bag and I found what appeared to be a homemade aluminium tripod. It was my opinion at the time that this was a device which was capable of being used by a subversive organisation to launch what was popularly known as, at the time, the horizontal mortar. Having received no satisfactory explanation from McGlinchey I arrested her under section 30 of the Offences Against the State Act, 1939 on suspicion of membership of an unlawful organisation. I also arrested her companion. They were both conveyed to Lifford Station. At the Station I asked McGlinchey to give an account of her movements, but she seemed to be hysterical with laughter and thought the whole thing was a big joke. As the facilities in Lifford were not suitable for female prisoners I arranged to have the pair moved to Letterkenny. This was done at 1.15 a.m. I arranged to have a team interview the pair the following morning and I would be commencing duty at 9.00 a.m. also so that I could properly question**

> **McGlinchey. The following morning I reported on duty at 9.00 a.m. to be informed that McGlinchey had been released. I was not consulted.** (16.06.2000)

It appears that the tripod was handed over to Detective Sergeant Henry within the next day or two and was brought to the Technical Bureau. It was later recovered from there and identified by Sergeant Tighe. We do not know who ordered the release of Adrienne McGlinchey. The treatment of the tripod was, it appears, in marked contrast to some of the later finds with which Adrienne McGlinchey seeks to associate herself. It was examined at the Ballistics Section of Garda Headquarters by Detective Garda Eugene Gilligan. He says of it:

> **This item was constructed from three legs of three quarter inch square, thirty six inch long lengths of light metal hinged together at their tops with a short length of metal and gutter bolts. An eighteen inch long length of light chain was attached to each leg and joined together to allow the legs to be opened. A five inch diameter U-shaped metal bracket was welded to the top of the tripod and at the top of the legs of this bracket were attached two - two inch long bolts. These bolts could be screwed inwards to retain an item with the U brackets. The purpose and design of this tripod is unknown and it is the only one of its type encountered by personnel from this section.** (Statement 157, Carty Report, Section 1)

In August of 1992 Superintendent John P O'Connor became District Officer at Buncrana. He remained there until February of 1996. Prior to transfer to Buncrana as Superintendent, John P O'Connor was a uniformed Inspector at Letterkenny. Very shortly after his transfer to Buncrana, Adrienne McGlinchey would have come to his attention in the circumstances outlined in the following statement:

> **On the 7th August, 1992 I was informed in the early hours of the morning of the alleged kidnapping of Adrienne McGlinchey from her flat at Buncrana. I took charge of the search operation and investigation. Ms. McGlinchey was found later that morning and denied any kidnapping. A fax message and report was sent to Chief Superintendent, Letterkenny. It was on this occasion I formally learned that Ms. McGlinchey was working for the Garda Síochána as a PIRA intelligence source. Prior to my transfer to Buncrana it was my understanding that Ms. McGlinchey was supplying information to Gardaí relative to subversives.**

Apparently, this scare was commenced by Yvonne Devine reporting to Buncrana Garda Station at 3.00 a.m. on the 7th of August, 1992 that Adrienne McGlinchey had been abducted by a number of men. In an interview conducted on the 31st of May, 1999 Adrienne McGlinchey denied that she was ever abducted by the IRA on that date. Since Yvonne Devine has been mentioned on a number of occasions it is as well to give you, Sir, the benefit of her perspective on these matters from her two statements to the Carty investigation

team dated the 31st of May and the 13th of September, 1999, which are reported in the third person:

> **She got to know Adrienne McGlinchey when she worked for the McGlincheys in the restaurant at Port Road, Letterkenny. Herself and Adrienne moved to Buncrana and stayed in a tent outside Buncrana. She stated that Adrienne McGlinchey had never anything to do with the IRA and that the IRA would have nothing to do with her. She stated that it was ridiculous to suggest that Adrienne McGlinchey and certain members of An Garda Síochána were involved in a conspiracy to plant explosives etc. in order that they could be found again. She stated that she was only sixteen when they moved to Buncrana and that she found freedom when away from home. She would describe her activities with Adrienne McGlinchey as the 'mad days'. This activity included running around Buncrana and Lifford with bags, etc. and being chased by Gardaí. She stated that Adrienne McGlinchey and her were in Bridgend one night with holdall bags. She did not handle any of them and that she had a row with Adrienne McGlinchey that night and walked away. She would not talk about fertilizer or anything else of that nature being in the flat. She would only repeat that they were 'mad days'. She denied any involvement in planting any devices, hoax or otherwise, in Strabane. She again emphasised that no Gardaí were involved in collusion with Adrienne McGlinchey in planting any fertilizer etc. to be found again... she expressed reticence to talk stating that she wanted to put all that behind her, that she was very young at the time, and it wasn't until it was all over that she realised the seriousness of it. Stated that she didn't know Kevin Lennon, had never spoken to him, saw him only once ever on the street. She knew Noel McMahon, had met him on five or six occasions, but never discussed explosives or anything of the like with him. She stated she was no longer friendly with Adrienne...expressed fear of talking and would under no circumstances make a statement or appear in court to give evidence, as she felt Adrienne was manipulative and very powerful politically. She also expressed concerns about how her own family who are Republican would react if she ever had to give evidence. Stated that shortly before they left the flat in Buncrana they had been visited by the IRA from Derry and threatened to desist from their activities as they, the IRA, were being blamed. Adrienne was not put off in the slightest by these threats. IRA considered her a mad woman. She spoke of why they moved to Buncrana in 1991, arrest for Raphoe bomb, interviewed by Gardaí from Buncrana including Noel McMahon. Adrienne besotted by Gardaí with big brown eyes. After her release wanted to move to Buncrana to be near McMahon. On her arrival there set out to attract his attention. She didn't for a minute believe Adrienne was ever a member of IRA. Adrienne told her about boyfriend Shortt from Derry. Yvonne never saw this fellow and believes it was all made up. I asked her about the fertilizer, etc. She said she would not incriminate herself.**

> **However, when I put a number of things to her she agreed that what Adrienne was saying was probably right...confirms the grinding of fertilizer in flat with coffee grinders. She doesn't know whether Noel McMahon knew of all the activities of Adrienne with fertilizer or not. Doesn't know what Adrienne told him. Adrienne is a very convincing liar, and will always tell the story that will find her in the best possible light...** (31.05.1999 and 13.09.1999)

Because of the many missing records, it is impossible to give precise details about some incidents. Superintendent John P O'Connor, for instance, states that on the 5th of October, 1992 Adrienne McGlinchey was arrested at Buncrana under section 30 of the Offences Against the State Act. He indicates that he conveyed intelligence gathered from the arrest to Superintendent FitzGerald in Letterkenny, but cannot recall any further details about this matter. Superintendent John P. O'Connor also reports that on the 18th of November, 1992 Detective Sergeant Shreenan told him in confidence that he felt there was a problem with Detective Garda McMahon and excessive drinking. The Superintendent asked Detective Sergeant Shreenan to monitor Detective Garda McMahon and claims that on the 24th of January, 1993 Detective Sergeant Shreenan reported back that he was "now okay".

Another hoax call comes into the picture on the 8th of September, 1992 but its relevance does not become apparent until later in December of that year. What happened was that the Fire Brigade in Letterkenny received a hoax call to go to the scene of a fire and departed urgently, leaving the station open. Two Motorola MX 1000 portable hand radios were stolen. On the 23rd of December Sergeant Cyril Meehan was on mobile patrol at High Road in Letterkenny at approximately 8.45 p.m. This is what he said to the Carty investigation team in his statement dated the 15th of June, 2000:

> **...I observed two ladies talking to each other on the street pavement. These two ladies, namely Adrienne McGlinchey, Port Road, Letterkenny and Yvonne Devine, Knocknashina, Letterkenny were well known to me. As I drove past the ladies I concluded that both were behaving suspiciously. Adrienne McGlinchey in particular appeared to be very uncomfortable with my presence. I further noted that she was in possession of a "backpack" type bag. I stopped the patrol car, got out and confronted the two ladies. At 9.00 p.m., as a result of my observations and suspicions, I arrested both ladies under section 30, Offences Against the State Act, 1939 on suspicion of membership of an unlawful organisation. I conveyed both prisoners to Letterkenny Garda Station. At the station a search of the bag found in the possession of Ms. Adrienne McGlinchey resulted in the discovery of two Motorola MX 1000 portable hand radios with batteries attached. I was already aware that similar radios had been stolen in the course of a burglary at the Fire Station, High Road, Letterkenny on the 8th of September, 1992. I contacted Detective Sergeant Jim Leheny who was then also stationed at Letterkenny and made him aware of the full facts of the case. He spoke briefly with Ms. Adrienne McGlinchey before**

> **leaving the Station for a brief period. When Detective Sergeant Jim Leheny returned he informed me that on the instructions of Chief Superintendent Sean Ginty, Divisional Officer for Donegal Division, both prisoners were to be released without charge. Detective Sergeant Leheny told me that if I wished to confirm the instructions I could make direct contact with Chief Superintendent Ginty by phone. I was satisfied to act on the instruction/direction of my superiors and as a result I caused both prisoners to be released without charge at 11.00 p.m. I kept possession of the two radios which had been found in the possession of Adrienne McGlinchey. As a result of subsequent enquiries I established that the two...radios, valued at £1,000 each were indeed the property of Letterkenny [Fire Station] having been stolen from the premises on the 8th of September, 1992. The said property was returned...by me personally on a later date against receipt.** (15.06.2000)

Detective Sergeant Leheny was called on to involve himself in the interrogation of Ms. McGlinchey and Ms. Devine at that time. In a statement dated the 16th of June, 2000 he recalled questioning Adrienne McGlinchey and calling on her to explain her possession of the portable radio sets stolen from the Fire Brigade. She constantly indicated, according to him, "that D Garda Noel McMahon could explain the circumstances as to how she was in possession of the radios". Every question that he put to Adrienne McGlinchey elicited a similar answer. He contacted Detective Garda Noel McMahon at Buncrana by phone. He requested that both ladies should be released. Detective Sergeant Leheny indicated that he would not do this, but intended to continue with his investigation. Detective Garda McMahon then requested that he contact Chief Superintendent Sean Ginty. He declined to do this, but returned to the interview room and continued with his interrogation. She continued to give the same answer. He therefore contacted Chief Superintendent Sean Ginty by going to his home. He explained the circumstances of the arrest and the requests made that he contact Detective Garda Noel McMahon. Chief Superintendent Ginty then directed the release of both ladies from Garda custody. Later, in January, 1993, a battery charger was found in the possession of Adrienne McGlinchey. Detective Sergeant Leheny brought this to the Fire Station where it was confirmed as being part of the theft of the 8th of September. Detective Sergeant Leheny concludes:

> **This concluded my dealings in relation to this matter and no Garda investigation file was prepared or submitted, to my knowledge, in relation to this crime. I have carried out a search at Letterkenny Garda Station for the Garda custody record in respect of the 23rd of December, 1992 and I have failed to locate same. I have been informed that the Garda custody records covering this period have been destroyed.** (16.06.2000)

Sean Ginty retired on the 12th of June, 1995 as Chief Superintendent for the Donegal Division. In a statement made to the Carty investigation team on the 14th of September, 1999 he says:

> **Some two or three years before I left Letterkenny, which would have been in the early 90's, I became aware that Kevin Lennon and Noel McMahon were dealing with a woman who was giving them information. This woman was close to the IRA and frequented the Provo house in Rahan, Letterkenny. I was aware that she supplied certain information to Kevin Lennon and Noel McMahon which I considered to be good and reliable. This resulted in certain actions being taken and items recovered. In one instance a person who was to visit Donegal from Northern Ireland was advised not to do so. In another a find of explosive materials was made at Bridgend. In another a find of munitions was made in Strabane by the RUC which followed information from the Gardaí and was a similar operation to that at Bridgend. These incidents suggested to me that this woman was a useful source of information and in my discussions with Kevin Lennon I became aware that she had more useful information and that she was inclined to go so far in regard to certain information and would not go all the way. I would have encouraged Kevin and Noel to develop this information as far as possible. I never met this woman on occasion. I only dealt with Kevin Lennon. I never had any dealings with Noel McMahon except on one occasion...I was aware that this source was arrested on a few occasions under section 30 OASA. One such occasion was following a search of her flat in Buncrana. I felt that these arrests would bring her under notice and that to charge her would bring her under further notice. I felt that she was more useful to the Gardaí while she was at large. I do not remember giving any specific direction to the Divisional Force in this regard, but I would have approved of this method of dealing with the situation and I would expect that my attitude in this regard would have filtered through to the members on the ground...** (14.09.1999)

On the evening of the 31st of January, 1993 a dramatic anonymous telephone call was received by Garda Edward Griffin at Burnfoot Garda Station. This is how he described the call in an interview with the Carty investigation team:

> **On the 31st of January, 1993 I was on duty in uniform in Burnfoot Station from 10.00 p.m. to 6.00 a.m. I recall some time around 11.25 p.m. I took an anonymous call from a male caller. This was not a 999 call. The caller stated that as he was coming from Manorstown Cross to Bridgend he approached a van that was parked at a vacant house that was beside the school. He was told by a woman in the van to move off and he was threatened then by a man. I knew at this stage he took the threat to this man very seriously. He was left with no impression other than he had to leave the area. I asked this caller for his name and he hung up. I would describe this voice as being that of a young person - a teenager, definitely male with a local accent. Subsequent to this call myself and Paul Reid went to the scene. Prior to leaving the Station we requested armed assistance. We went to the scene and found nothing suspicious. We carried out a full search of the area that night and found**

> **nothing. I got no other description of the vehicle from the caller. I had the impression that the caller was local and from the vicinity of the scene where he had been threatened...** (07.06.2000)

Superintendent John P O'Connor describes his involvement in the following way:

> **On the night of 31st January, 1993 I learned of an armed incident near Bridgend National School. It involved an armed man, a female, van and scanner. I directed a Garda operation and got assistance of Army. I believe a tripod was located as a result of operation. A report was sent to Headquarters.**

On the following morning the area was searched by a joint Army-Garda team. Corporal Pat Doherty noticed an area of freshly dug earth and a tripod was uncovered. According to Garda Paddy Battle, Superintendent John P O'Connor visited the scene. Someone took away the tripod and brought it to Burnfoot Garda Station. Fortuitously, Detective Sergeant Seamus Quinn was present. Somebody handed him a tripod and, apparently, informed him that the item was 'for destruction'. He received no paperwork in relation to same. He was not required to make any statements. He took the item to Clancy Army Barracks. He simply described it as "a homemade-tripod". An item was recovered from Clancy Barracks and shown, by the Carty investigation team, to Corporal Patrick Doherty and then to Garda Battle. Corporal Doherty indicates that it was not the tripod he located and Garda Battle stated that the tripod found on the search was lighter than that shown to him. On the 27th of June, 2000 the tripod was shown to Adrienne McGlinchey who indicated that she had never seen it before. In an interview of the 9th of August, 1999 she had proclaimed her involvement in this incident. She said:

> **I recall on one occasion either Kevin Lennon or Noel McMahon asking to get a tripod made. To the best of my knowledge it was Kevin Lennon who asked me to get it made because Noel McMahon was in some kind of trouble. I got this tripod made in a place beside the mart in Carndonagh. I think it folded in and it was made of steel. This tripod was taken to Bridgend and either Kevin Lennon or Noel McMahon was with me. We had a shovel and we went into a field opposite the school in Bridgend. We dug a hole and placed the tripod in it and covered it over then. I have recently pointed out this place to Detective Sergeant George Kyne. There are houses built in this place now. The tripod had been put in a black bag before we put it into the hole...at this time Noel McMahon made an anonymous phone call to Burnfoot Garda Station stating that there was suspicious activity around this area. I later learned that there was a find made in this area and as far as I can recall it was publicised.** (09.08.1999)

When asked about this matter on the 23rd of May, 2000 Superintendent Kevin Lennon stated:

> **I know nothing about it. On this date the 27th May, 2000 I wish to add that our allegation concerning I and Noel McMahon is in the alternative by means of the word "or". This is an absolute lie in so far as it concerns me and I have no knowledge of it.** (23.05.2000)

Noel McMahon was also asked about this allegation in interviews on the 25th of February and the 25th of March, 2000 and emphatically denied the allegations explicitly stating that Adrienne McGlinchey was a "liar". Adrienne McGlinchey also claimed that the tripod which she was involved in burying was similar to the tripod recovered from her on the 26th of July, 1992. The unusual feature of this incident is that somebody apparently told Detective Sergeant Quinn that a statement would not be required from him and that the item was for destruction. It is difficult to imagine how any member of An Garda Síochána could make that assumption at the beginning of an investigation. A new pattern possibly begins to unfold, Sir, of a failure to follow up incidents with appropriate paperwork. This pattern may or may not become more apparent as we progress.

In a statement made to the Carty investigation team on the 15th of May, 2000 Ciaran Noel Waldron indicates some information which he said he had heard about the Gardaí in Donegal. He also details an incident, which he says he was personally the subject of, at the hand of Detective Garda Noel McMahon. The latter denies that such an incident occurred.

On the 18th of May, 1993 Kevin Lennon was appointed to the Detective Branch. As a Detective Inspector it may be that he assumed a wider role within the Donegal Division.

On the 18th of May, 1993 a warrant pursuant to section 29 of the Offences Against the State Act, 1939 was issued to Detective Sergeant Shreenan to search the premises of Yvonne Devine at the Crescent, Buncrana, where Adrienne McGlinchey also resided. We understand that prior to the issue of this warrant Adrienne McGlinchey had been arrested, though the details are obscure. Superintendent John P O'Connor states that he later gave authority to have Ms. McGlinchey fingerprinted, palm printed and photographed. She was arrested at 12.15 a.m. and released six hours later at 6.15 p.m. During this detention she was questioned by Detective Garda John O'Keeffe. He indicated to the Carty investigation that, during the course of this interview, Adrienne McGlinchey had told him that she had been asked by a "leading PIRA member in Letterkenny to fax a drawing of a cylinder object from her place of employment to the...engineering factory at Ballybofey". Having mentioned, Sir, that Sheenagh McMahon in 1991 or 1992 had, as she claims in the interests of the truth, secured two steel items which she later produced to the Carty investigation team, and it is as well to note that another pattern possibly begins to emerge of these items appearing at various points in the narrative which follows. In the aftermath of the arrest of Adrienne McGlinchey on 18th May, 1993, Superintendent John P O'Connor, on the following day, directed Detective Garda Jones "not to compromise Ms. McGlinchey following his interview with her...". On the 20th of May he directed Detective Sergeant Shreenan "not to use Ms. McGlinchey as a tout as she was then being handled by another member Garda McMahon...and her life was not to be endangered". Superintendent

John P O'Connor asserts: "I gave this direction in compliance with instructions from senior management in Letterkenny". He also says that on the 25th of May, 1993 he directed Detective Sergeant Shreenan to report on what information Ms. McGlinchey gave to members when being interviewed under section 30 and referred to the need to bear in mind the contents of a Garda Directive on Secret Intelligence Gathering and Reporting. Superintendent John P O'Connor claims that on the 7th of September he met with Detective Sergeant Shreenan and Detective Gardaí Jones and Doherty at the request of Buncrana Station where he reminded "these members of the policy and directions of "hands-off" which all were informed about some months previously...". He says that Detective Garda Jones fully appreciated the "on-going need for compliance with Directives concerning Ms. McGlinchey".

On the 2nd of July, 1993, at 3.30 p.m., Brian O'Donnell, a Department of Agriculture employee secured his blue Mitsubishi van, registration 91 D 34294, at the Department of Agriculture compound at Raphoe. When he checked, on the afternoon of the next day, the van was gone. In the meantime it had been used in a bombing in Strabane. On the 3rd of July, 1993 a 100 lb van bomb exploded at the Court House in Strabane. At 9.20 a.m. Angela Ayton had seen a van being driven in the direction of Raphoe. She recognised the van and presumed that the driver was Brian Lynch. As it turns out it was not, but was obviously someone involved in a criminal conspiracy. She waved at the driver, but he did not acknowledge her, something which Brian Lynch would habitually have done. At 10.41 a.m. a caller telephoned the Samaritans in Derry/Londonderry stating that a bomb had been placed in Strabane. Apparently a second call was made to the Riverside 101 Radio Station. On both occasions the caller was male and no code word was used. The security forces in Northern Ireland conducted a search and discovered a blue van, namely the van stolen from the Department of Agriculture compound in Raphoe. The Court House and immediate area was evacuated and at 11.10 a.m. the bomb exploded causing blast damage and what are described as "minor injuries" to three people. According to the RUC, GC, the bomb consisted of about a 100 lbs of homemade explosives, which was a mix of ammonium nitrate, fertilizer, and sugar. We have mentioned the van because it is of importance in the context of allegations made by Adrienne McGlinchey against Kevin Lennon and Noel McMahon. The matter first came up in the statement of Sheenagh McMahon made between the 26th of April and the 24th of May, 1999. This is what she said:

> **I said earlier in this statement about Noel, Kevin Lennon and McGlinchey moving stuff around County Donegal. I have told you about the black plastic bags in the shed at our house at Porthaw. The Strabane bomb is the one that I heard about first and stands out in my head. I am talking about a bomb that went off at the Court House in Strabane. I don't know what year it was, but I know about it for years. Noel specifically mentioned a bomb at the Court House in Strabane. Noel told me that himself, Kevin Lennon and Adrienne McGlinchey had information that the bomb was going into Strabane, but it had to get through to save McGlinchey. I mean by this that Noel kept telling me she was a tout and she had to be**

> **protected. She had to get things done and had to be coming across for the IRA. The thing that annoyed me about this bomb was that a senior officer in the Guards like Kevin Lennon had information that a bomb was to go into Strabane and let it go ahead to explode. At the time I wasn't that annoyed as nobody was hurt. I thought it was part of the way Lennon, Noel and McGlinchey were operating. Noel kept telling me they were saving lives. I was well aware that McGlinchey was operating for Noel and Kevin Lennon and the IRA at the same time, but I knew she was more on the Guard's side. I was told by both Kevin Lennon and Noel never to mention McGlinchey's activities or she would get shot, which I never did. I fully believed this operation had the full sanction of the Gardaí from Commissioner down. I felt that Noel always had a problem with the activities he was involved in, it was obvious to me his conscience was bothering him. He mentioned the Strabane bomb quite a few times over the years. He would just say about the Strabane bomb "we saved lives".** (24.05.1999)

The statement of Adrienne McGlinchey in relation to this matter is not in any way structured. It is as well, therefore, to attempt to put order on it, if that be possible. She claims that Noel McMahon had asked her to get some nitroglycerine from the Regional College in Letterkenny. Nitroglycerine is not in fact in stock there. She claims instead to have got nitrobenzene, by bribing a student. This was, according to her, to make an arms dump that was being planned "more realistic". She claims that at the instigation of Noel McMahon she began grinding fertilizer and then putting it in black bin bags which were stored with the aid of other members of An Garda Síochána who were later interviewed in relation to this allegation, and expressly denied it. Adrienne McGlinchey first claimed that Detective Garda Noel McMahon and another Garda had driven off the van and that Noel McMahon had later told her:

> **In a threatening way that the fertilizer that I had ground down at Ashbrook House was used to bomb the Court House in Strabane. Kevin Lennon used to always throw this up at me as well. I met Kevin Lennon a few days ago in the car park of the Courtyard Shopping Centre in Letterkenny and he said to me "I hope that it never comes out that you bombed the Court House in Strabane". I was never involved in any way in the bombing of Strabane Court House. Noel McMahon had told me more than once that he drove a van bomb into Strabane and left it at the Court House. He told me that this van bomb exploded and there was 1,000 lbs of explosives in it.** (09.08.1999)

This description is of importance because it is utterly inconsistent with a description given shortly afterwards in the course of the same interview. This now places not Noel McMahon as the planter of the bomb, but Adrienne McGlinchey herself as the prime operative. She claims that Noel McMahon asked her how to put a bomb together and that she got details from "a number of individuals". She wrote down the details, she claims, and gave them to Noel McMahon. Then, she claims, she gathered together materials. She claims that

the van containing fertilizer was taken away from her house and then stored somewhere "at a Guard's house on the outskirts of Letterkenny" over a period of days. The van was then, she claims, picked up at Ballindrait. She claims that Noel McMahon had assured her that she would not be stopped by the British Army or the RUC on the east side of the border and that "he seemed certain of this". She claims to have gone into Strabane with the bomb, gone into the shops and walked around the shops for an hour and a half, then returned to Lifford and had tea. Apart from the two radically different accounts of how the bomb came to be placed, the bomb could not have been stored over a period of days, given that the actual van used in the Strabane bomb had been stolen just the day before. Adrienne McGlinchey, one might reasonably think, could hardly have walked around Strabane for an hour and a half blindly unaware as to when the bomb would explode. The description given of the bomb is vague and could be based upon media reports. Finally, she makes no mention of an explosion and as Lifford is only across the river from Strabane, this omission is hard to explain. Detective Garda John O'Keefe was interviewed by the Carty investigation team on the 3rd of June, 1999 because of the allegations initially made by Mrs. Sheenagh McMahon. In the course of that statement he said:

> **In relation to allegations concerning explosives I recall a night possibly in June or July, 1996 I was off duty and I called into O'Flaherty's Bar at Main Street, Buncrana. I was alone and I observed D Garda Noel McMahon seated at the bar. I joined his company. At the time I formed the opinion that Noel had consumed quite a lot of alcohol and he appeared intoxicated. I joined him for a drink. After a short while we moved from the bar to a seat at the rear of the bar. We had a general conversation concerning our job. I recall that Noel stated that he had driven a bomb into Strabane in order to assist two females, whom I was aware at that time were involved with Noel in relation to his duty as a Detective Garda. At the time I did not believe him, as I was of the opinion that he was trying to impress me. On previous occasions I found him untruthful regarding oral statements he made while under the influence of drink...** (03.06.1999)

In his interview commencing on the 23rd of May, 2000 (a memo of which he signed on the 10th June, 2000), Superintendent Kevin Lennon denied the allegations of Adrienne McGlinchey. These were put to him, out of necessity, in a piecemeal fashion and hence his replies, by way of questions and answer, tend to be somewhat disjointed:

> **I never knew the Gardaí had a navy coloured van and I know nothing about fertilizer being taken to Lifford...[in relation to the allegation that Kevin Lennon was behind the whole affair and orchestrated the van going into Strabane] that never happened, from my involvement, I know nothing about this van or this alleged incident. There was a permanent checkpoint on the British Army side, which included a tower and recorded all vehicles going into Strabane and was going back into a central computer system...I categorically say that this is a lie...I was never at her house...[in**

> **relation to the allegation that Kevin Lennon and another Garda drove off towards Raphoe] this is more lies, orchestrated lies, I was never in a van with [this Garda] I never sat in his car in my lifetime and I was never on an operation with him alone, other than when I was supervising operations on border security. I never had beer kegs in my possession anywhere including at my home because it is an offence to have beer kegs, the property of beer companies. I am one hundred percent positive I never met Adrienne McGlinchey in Ballindrait or indeed in the general Lifford area. I deny this as a scurrilous vexatious allegation, born out of malice.** (10.06.2000)

Detective Garda Noel McMahon was also interviewed. On the 14th of July, 1999 he claimed that he had heard Adrienne McGlinchey talking, apparently unspecifically, about a proposed bombing of Strabane Court House and that she had overheard the man whom we have had to mention earlier, namely Paul "Shortt" or "Shortie" Doherty, supposed to be of Strabane, talking about it. In further interviews, including following his arrest on the 10th of June, 2000, Noel McMahon denied these allegations. In that interview, the Gardaí put it to him that he had indicated to his wife that his conscience was troubled because of his possession of information that a bomb was going to go off in Strabane, but that it had to get through. At the notion that Adrienne McGlinchey could, in some way, make up a bomb, or be involved in it, he indicated that she "would not be able to let off a banger at Halloween". He said that he knew nothing of any such incident and that it was "utter fiction". In an interview conducted by Detective Sergeant James Martin and Sergeant Dermot Flannery at Ennis Garda Station on the 10th June, 2000, Detective Garda Noel McMahon made the following response to the allegation that he had information in relation to the bomb at Strabane Courthouse, but that it had to get through to save Adrienne McGlinchey, and his wife's assertion that this incident troubled his conscience afterwards. "It didn't trouble my conscience. I couldn't do anything about it."

Enquiries were made in relation to Paul "Shortt" Doherty. Detective Sergeant Michael Keane enquired of the RUC, GC, if such a person existed. No such person did exist, but, extraordinarily enough, his name does appear on RUC files. These, however, were opened as a result of enquiries in 1993 from the Gardaí in Donegal. Detective Garda Noel Jones, in circumstances which cannot be described as anything other than in pursuit of his duties, did make such enquiries in 1993 because of a contact which he had with someone who told him that Adrienne McGlinchey, as we have heard, used to often refer to such a person.

On the 30th of August, 1993 Kevin Lennon began a specialist "Supervisors Agent Handling Course" with the British security services in London. He completed this course on the 3rd of September, 1993. In that month, as well, Detective Garda Noel Jones and Detective Sergeant Tom Shreenan carried out a search at Flat No. 3, No. 5, The Crescent in Buncrana. This was a mistake because the flat which they wished to search was, in fact, Flat No. 2 in the same house. As a result they made contact with Ciara McLaughlin and Bernard Logue who were a source of some information as to the activities in the flat below, which was in fact occupied by Misses McGlinchey and Devine. It is

implicit in the statements of Detective Garda Noel McMahon that as he indicated that he had taken no part in this matter that he could not, equally, have been speaking 'in his cups' about his supposed role in it.

Three other Gardaí are dragged into what we can only describe as the confusing and contradictory narrative of Adrienne McGlinchey. Garda Matthew Tolan came across Adrienne McGlinchey in 1990. His view of her has already been quoted. He also recalled the specific incident where she claimed that she had access to a handgun hidden in the attic of a flat in Ballyshannon. She brought the Gardaí there and then claimed that she could not go into the flat claiming that a relation of a named person was in the flat and that it therefore "wasn't safe". In the middle of 1991 Adrienne McGlinchey had moved out of his area of operation in Letterkenny. He states:

> **In relation to an allegation made by Adrienne McGlinchey that I was in Ballindrait at some stage with her, Kevin Lennon and Noel McMahon in a van containing beer kegs, I wish to state that this is totally untrue. I have never been in Ballindrait with Kevin Lennon or Adrienne McGlinchey either individually or as a group. I have never been in a van with either Kevin Lennon, or Adrienne McGlinchey. The only vans I have ever been in with Noel McMahon have been official vehicles in the course of our duties. I have been to Ballindrait with Noel McMahon during the course of border patrols, but never in a van. I have never seen a van in Ballindrait with beer kegs in the back of it.** (Statement 10A, Carty Report, Section 1)

Michael Brennan, a retired member of An Garda Síochána, was interviewed by Detective Inspector O'Mahony and Detective Sergeant Treanor on the 8th of September, 1999. He said he was never at Adrienne McGlinchey's home in Ashbrook, Letterkenny and further that he never loaded fertilizer into a blue van or picked up a van from her in Strabane. Patrick Cafferkey is also retired. He was a Detective Garda stationed at Letterkenny from 1980 until 1999. He was, it appears, extremely angry when allegations made by Adrienne McGlinchey were put to him and stated that they were completely false. He said that he would "not allow D Garda Noel McMahon to come near his house and definitely not allow Adrienne McGlinchey near his house". He pointed to his long record of service and commitment to his duties.

Sir, you will recall the metal items secured by Sheenagh McMahon. A similar item emerges in this narrative in early September, 1993. The date is uncertain, but Detective Inspector A T Donnelly of the RUC, GC places it by reference to another incident to which we shall shortly refer. This definitely occurred in September of 1993. He says in his statement of the 2nd of May, 2000:

> **Around that time on another occasion Detective Inspector Lennon brought an object to Strand Road for me to view. I would describe this object as a metal cylinder 18 inches to 24 inches in height with holes drilled in the side. It is approximately 4 inches to 6 inches in diameter.**

Chief Superintendent Denis FitzPatrick also remembers an incident. In his statement made on the 13th of July, 2000 he refers to the metal object as follows:

> **Around that time D Inspector Lennon arrived to my office with a metal tube with fins welded at the end and painted silver, it was in a Dunnes Stores plastic bag. He told me that he got the item from Ms. McGlinchey who had it for the purpose of transporting it from Letterkenny to Buncrana and that we (the Gardaí) could only hold onto it for a short while, I think about two hours was suggested, and it had to be returned to Ms. McGlinchey. The item was supposed to be part of some new device the PIRA was manufacturing. It meant nothing to me. Because of time constraint I told him to take it to the RUC to see what they could understand from the item. The item was brought to Derry, Strand Road Station. I cannot be sure but I may have gone to Derry with D/I Lennon. I can recall discussing the item with D Inspector Donnelly of the RUC at some stage and the item was photographed. I described the items to members of the Ballistics Unit, but we could find no use or purpose for the item. I subsequently saw a similar item with Ms. Sheenagh McMahon at H C Doherty, Solicitors' Office, Buncrana on the 29/3/99 and later I saw another of these items at the D/Superintendent's Office, Letterkenny, after this inquiry had commenced.**

Let us stop here, Sir, and go forwards and backwards as to the appearance of rocket-like steel items. We have, firstly, the two steel items secured by Mrs. Sheenagh McMahon. Now we have this metal item and it appears to be the same metal item as Inspector Hugh Coll discovered in the Superintendent's office in Letterkenny on the 18th of March, 1999. That makes three. In addition, you will hear that on the 11th of September, 1993 Detective Garda Jones found Adrienne McGlinchey in possession of a cylinder with holes drilled through it. Finally, you will hear that in Adrienne McGlinchey's flat on the 14th of March, 1994, under the bath, another person saw a similar object. We actually have physical custody of three objects, one from the Superintendent's office in Letterkenny, and two from Mrs. McMahon. Before weaving these into this narrative further, it is as well to get an expert view. Superintendent Jack O'Connor, as part of the Carty investigation, gave Inspector Edwin S Hancock, a ballistics expert attached to the Garda Technical Bureau for the last twenty nine years, the three extant metal things. He says the following in his statement of the 29th of April, 1999:

> **[The first is] one galvanised steel cylindrical object, 30.2cm high, 8.1cm internal diameter, 8.9cm external diameter, 4mm thick. A series of twelve steel fins were welded around the external circumference at the base of the cylinder. Each fin was 4.8cm long by 3mm deep and 6.45mm thick, these fins were equidistant from each other. A series of forty five holes, varying in size from 5.92mm to 6.1mm in diameter were bored into the steel around the circumference running from top to bottom. The external surface of the cylinder and the fins had been painted with silver paint. The**

> **ends of the fins were roughly cut and with pieces of steel missing and bore traces of rust. The standard of welding was very poor. The cylinder weighed 2.84kg and was open at each end. This object, from a purely visual point of view, could to the uninitiated, resemble a propulsion unit from an improvised mortar bomb. However, in my opinion this object could have no practical application for use with a mortar - the fins have no aerodynamic practicability. It is possible to break the fins away from the cylinder by manually moving them to left or right.**

In relation to the other two items he gave measurements, a description and then expressed an identical opinion. Bernard Logue who, as we recall, lived in a flat downstairs from Adrienne McGlinchey, gave some assistance in relation to this matter to the Carty investigation team. In his statement dated the 14th of June, 1999 he described his involvement with these metal objects and in a statement dated the 6th of September, 1999 he indicated: "they didn't look real to me, they looked like something that you would use as a decoy. When I saw these things I knew they weren't Christmas tree holders". In the earlier statement he described that last, and peculiar, reference and related it to his dealings with her:

> **Adrienne McGlinchey's mother had a shop in Letterkenny and she said she was going to work there at weekends. She said to me that she was looking for Christmas tree holders for outside the shop and she wanted to know if I could do any welding. I said that I could, but that there was no place to do it at the flat. She asked me if I knew any person who could help and I said I didn't know anybody in Buncrana. One night Adrienne asked me to go with her to Marian Park and for me to ask a man there if he could do welding and that I would supply the piping and flat iron. Neither herself or Yvonne Devine wanted to ask this man. I don't know this man's name. I would describe him then as early twenties, 5 ft 9 inches, strong/well built, black hair and light moustache. Adrienne, Yvonne and I walked to Marian Park. They remained near the phone box while I went to this fellow's house which was close by. I had a sketch which Adrienne had drawn of what was wanted. I said to this fellow that I heard he could do some handiwork, welding and if he could make the items as in the sketch. I will draw for you roughly what they looked like - some of them had holes. I said that we needed something like six or ten of these and he said it was no problem and he asked for a few pounds for each of them. We were in his garage and I think he had an electric welder. I then returned to the phone box and told Adrienne that the man would do the job. It was either that night or the night after it. I went with them to a warehouse near the Drift Inn, Buncrana between the Inn and the bridge and on the same side. Here was the piping and the flat iron. I think that they dropped this stuff off near this man's house and then I left it at his garage. This all happened a number of weeks before Christmas, 1993. They paid for the piping at the warehouse and it was cut to lengths of 1½ to 2 feet. About a week later I went back to Marian Park and collected a sample of the item. I have been shown two**

> **exhibits...and it was like the smaller one - a piece of piping about 9 inches with four pieces of flat iron welded around the base. I brought this back to Adrienne McGlinchey at the phone box and she appeared to be happy with the work done. I then returned to the man and said it was okay to go on and make the rest. I had no more dealings with this man and Adrienne and Yvonne undertook to arrange collection of the rest. In their flat I later saw one or two of the items and I also saw a number of other similar items. These were longer, painted silver and with more prongs at the base. Some of them had holes drilled in them. I have now been shown a silver piece of piping with eleven prongs at the base and holes drilled into the tubing. This is similar to the ones I saw in their flat. In around the same time I saw Adrienne and Yvonne grinding an off-white coloured substance in a food processor/coffee grinder. Some time after that they asked me to look at the food processor/coffee grinder as the motor was broken. On examining same I knew the substance was fertilizer. The motor was knackered and I could not fix it. Also around this time I noticed circuit boards in their flat...I believed then that they were mixing fertilizer for bombs. I was worried for our safety living in a flat above these two girls...I remember also seeing one time large calibre empty shells in their flat and they were about 2 to 2½ inches long.** (14.06.1999)

The Carty investigation team arrested a man called Patrick Sweeney under section 30 of the Offences Against the State Act, 1939. He agreed that he had made Christmas tree stand-holders, but that he was certainly never involved in anything to do with the manufacture of explosives. He had done some work for Adrienne McGlinchey in relation to window grills for a shop in Letterkenny, but, having ordered them and left a deposit, he says that she did not come back; something which annoyed him. He was told by a taximan to stay away from her because, as his friend put it, "she was always in trouble with the Guards in Buncrana". He was shown the metal objects and said that the workmanship was "rough work...wouldn't like to make a gate like that". One of these items was shown to Superintendent Kevin Lennon by Inspector Hugh Coll. This is how he describes the circumstances:

> **On the 18th March, 1999 I arrived in Letterkenny Garda Station on a temporary basis to carry out an examination of the investigation into the death of Richard Barron and other related matters. I was allotted the Detective Superintendent officer's room, no. 227 at Letterkenny Station. On examination of the contents of the room I found a metal object with holes drilled in it and fins attached to it in a press in the office. I retained possession of this item and on the 24th March, 1999 Superintendent Kevin Lennon entered the office. Superintendent Jackie O'Connor, Sergeant Denise Flynn and I were in the office at the time. Superintendent Kevin Lennon was shown this metal object and he stated that he had got this from a tout and that [it] was a new prototype device being used by the PIRA for setting off barrack buster [bombs].**

On the 14th of June, 2000 Superintendent Lennon was interviewed by Superintendent McNally and Detective Inspector McHugh. He was asked the following question:

> **In relation to the steel rocket - steel item with fins which was shown to you by Inspector H Coll, was there any information that this was a new type rocket being made by the PIRA? On the first occasion you were shown this item by members of the investigation team you stated that it was a sample of a new prototype device developed by the PIRA for setting off barrack busters.**

He answered:

> **I had not information on it, as I have already stated. I went to seek information on it, but the ceasefire came and I did not pursue the matter. I knew from the way the fins were fitted that it could not be used. I have no recollection of saying it was a new prototype device to any members of the investigation team. I merely said it was [a] similar looking device to the one I handed over to my Detective Superintendent. I was never formally shown that piece of metal until I was interviewed on the 14th July, 1999 by Chief Superintendent McNally.** (14.06.2000)

Earlier in an interview of the 23rd of May, 2000 Superintendent Lennon had been asked about these three steel items by Detective Chief Superintendent McNally and Detective Superintendent McGarty. In answer to the question: "what do you know about these items?" he said:

> **I know nothing about them, other than I was shown three items by Inspector Coll on the 14/7/99. He suggested to me that one of the larger items with holes in it, was found in a press in the Detective Superintendent's office and that he had two more, one similar and one smaller one. I can say that one similar to the larger one shown to me by Inspector Coll was given to me in 1993 or 1994 by D/Garda McMahon who as far as I am aware was given it by Adrienne McGlinchey. However, I did not query the source of it, but I presumed it was Adrienne McGlinchey who gave it to Noel McMahon. I was aware from my professional knowledge and experience of subversive devices seized in this division and components used in explosive devices that it was not such an item from the Provisional's arsenal and I was happy in my own mind that it was a non-effective item. However, I had it checked out, bearing in mind that the PIRA were always developing new techniques and devices and phase testing them. I do believe that on one occasion I brought this item to D/Inspector Tim Donnelly at the Strand Road in Derry for him to view it. I also brought it to the attention of D/Superintendent FitzPatrick and it was my understanding from him that he had it checked out and my own views were satisfied that it was a useless item. I sought further clarification from Adrienne**

> **McGlinchey, personally, and the ceasefire subsequently came and that ended my contacts with Adrienne McGlinchey.** (23.05.2000)

Superintendent Lennon was also asked about an allegation by Adrienne McGlinchey that these steel items were made on the instructions of Noel McMahon and that Kevin Lennon had reviewed the items and said that they were perfect. Kevin Lennon said that this was total lies and that he was never in her shed at Ashbrook, as she had asserted in this context, or any other shed, where this conversation was supposed to have taken place. She also alleged that the tubes were supposed to be stuffed with semtex. She claimed that Kevin Lennon put a small piece of semtex into the top part of the cylinder in her presence. He said:

> **Other than the steel items that I have previously accounted for, I wish to state that I never saw, had possession of by way of actual possession or constructive possession of any other steel item relative to subversive activity...I never knew Noel McMahon to have semtex and I never saw him in possession of semtex, nor was it ever discussed...it is fabricated...I wish to state that I have no technical ability of any nature and I have no qualification in that field. I could not fix the leg in a chair if it was broken. It is criminal slander to suggest that I assembled some device which is suggested to be a rocket. I never had semtex in my possession in my life and certainly from my knowledge of viewing rockets from previous finds, such rockets have cone shaped heads made from copper and are not cylindrical at the top...I don't know why or for what reason Ms. McGlinchey would make such a scurrilous accusation against me.** (23.05.2000)

Detective Garda Noel McMahon in his statement dated the 14th of July, 1999, said:

> **I have been shown two items by Detective Sergeant Barker. They are both made of tubular steel and have fins welded to them. They are of different sizes. I recall Adrienne McGlinchey gave these items to me on a date that I cannot remember. She stated that they were PIRA equipment and she was giving them to me to see and have examined. I gave these items to Kevin Lennon and they were subsequently returned to me by Kevin Lennon. I think it was said that Denis FitzPatrick had shown them to the RUC and that they had never come across anything like them before. I left these items in the garage of my house at Porthaw. Adrienne McGlinchey asked me several times for to return them, but I wouldn't give them back to her.**

When questioned by Sergeant Flannery and Detective Sergeant Martin, following his arrest, on the 10th of June, 2000, Detective Garda Noel McMahon said that he never gave Adrienne McGlinchey any instructions to make rockets and that allegations about putting semtex in the rockets were malicious and "pure fiction". When shown one of the steel items he said: "I would have got that

from Adrienne and gave it to Kevin Lennon". Adrienne McGlinchey in various interviews refers to allegations that Noel McMahon got her to buy particular types of piping which she endeavoured to get processed into what she claimed, as we have heard, were items intended as weapons. She also claimed that Detective Garda McMahon showed her a picture of the thing that he wanted made and then showed her an item which he called a "barrack buster". She also claims in her statement of the 29th of June, 1999 that six steel items were made in her flat in Buncrana. The Carty investigation team point out that in April of 1992 Garda Headquarters issued a booklet which detailed the particular kinds of improvised weaponry in use at the time in the terrible campaigns of violence of the IRA. On the 20th of July, 2000 Detective Sergeant Kyne showed this booklet to Adrienne McGlinchey, but she claimed that she had never seen it before. However, she pointed at an item on page 22 which she claimed that she had seen in another larger Garda book shown to her by Noel McMahon. Sir, we draw to your attention that Detective Garda McMahon has described all of these attempts to implicate him with apparent rockets as "pure fiction".

Sir, we already told you that on the 7th of September, 1993 Detective Garda Noel Jones found Adrienne McGlinchey in possession of a steel item with holes drilled in it at the Shore Road in Buncrana, an item of which he did not take possession. That, however, is not all that happened on that day. This is the description of Detective Garda Noel Jones given to the Carty investigation team:

> **At 7.00 p.m. on the 7th September, 1993 Ciara McLaughlin alerted me at the Garda Station by phone to an envelope that had been left outside and close to the door to McGlinchey's flat a short time earlier. Ciara told me that McGlinchey and Devine were not at home at the time. I went to the location by foot and took the envelope to the Garda Station. The envelope was not sealed. I took this envelope to the office of Superintendent J P O'Connor where he was present and we examined it. It contained (1) thirty shot gun cartridges, (2) three dozen .22 bullets, (3) about 2 yards of electrical wire red in colour and (4) two handwritten notes. I photocopied these two notes and retained a copy in my possession. Following the examination of the envelope and on the instructions of Superintendent O'Connor I returned the envelope to the spot where I had taken it from. The envelope was in my possession for about ten to fifteen minutes. At 9.30 p.m. on the same date I observed Adrienne McGlinchey carrying a similar envelope openly at Main Street, Buncrana. I did not check her at that time.** (Statement 26, Carty Report, Section 1)

Superintendent John P O'Connor strongly disagrees with this statement. He made a number of statements from Tralee, where he is now District Officer, and we combine these:

> **...D/Garda Jones showed me an envelope which he said he had just come into possession of and which I noted contained "items of interest" and two notes, copies of which I made. I now believe these items were bullets. I have no record nor recollection of**

> **directing D Garda Jones to return the envelope and contents to where they were found as he alleges...I refute this allegation made by D Garda Jones. I received no direction or request to do anything with the bullets...I did not instruct D Garda Jones to return the envelope and bullets as previously stated. I refute that allegation. I cannot comment on alleged action taken by D Garda Jones not arising from direction given by me...later on the night of 7th September, 1993 I met D/Superintendent FitzPatrick in Letterkenny and brought all of the aforementioned matters to his notice and had a full discussion thereon. It was also decided that D/Superintendent FitzPatrick would meet the Detective Sergeant in my district re: the "hands-off" policy regarding Ms. McGlinchey. In the meantime I undertook to meet D/Sergeant Shreenan, D. Gardaí Jones and Doherty the next day to re-enforce this policy. (The apparent intrusion over this period of time by some Detective Branch members in Buncrana into the handling of Ms. McGlinchey, a State informant as I understood her to be, was of serious concern to senior officer in Letterkenny).** (One statement undated, the other 21.07.2000)

The allegation of Adrienne McGlinchey in relation to this is that Kevin Lennon and Noel McMahon became aware that Ciara McLaughlin was working for Detective Garda Noel Jones and therefore attempted to make him look foolish. She claims that she told Ciara McLaughlin that she was expecting a delivery and set her, and ultimately Detective Garda Jones, up by putting the padded envelope obviously outside her door containing the ammunition, or as Superintendent John P O'Connor puts it, the "items of interest". It was implicit in everything that Superintendent Kevin Lennon and Detective Garda Noel McMahon have said that they would not countenance such an action. Kevin Lennon says at page 5 of his memo of the 23rd of May, 2000:

> **I know nothing about that and Noel Jones never told me that he found an envelope. I might add at this stage, when I first met Adrienne McGlinchey in the capacity of a D Inspector, I warned her that if she breached the criminal law in any respect, or was found in possession of any materials within the meaning of the Explosive Substances Act, 1883 then, she should not expect that I would intervene on her behalf. She fully understood that. I know nothing about ammunition in an envelope as is suggested in this question and I still don't know anything about it as of today...**

The fact is that Detective Garda Noel Jones did file a report on the 13th of September, 1993. He also indicated to his authorities that Adrienne McGlinchey was trying to purchase a coffee grinder, that she had a box full of bullets, and that between August and September of 1993 she had a number of bags of strong smelling granulated mixture kept in her flat. In a statement to the Carty investigation team, Detective Garda Noel Jones indicated that his information was that these bags were removed on the 3rd September by a number of men. The ammunition in the envelope may be of importance in the context of what happened a few days later on the 10th of September, 1993. Bernard Logue

said that Adrienne McGlinchey paid him for some ammunition which he had. They were .22 bullets and cartridges. He also travelled with her to Carndonagh in order to get ammunition and to get fertilizer. He also recalled Adrienne McGlinchey accusing Ciara McLaughlin, his girlfriend, of talking to a Detective Garda Noel Jones. Patrick Doherty, a firearms dealer of Bridge Street, Carndonagh, was interviewed by the Carty investigation team and his records show that on the 13th of May, 1992 he sold two boxes of .22 ammunition on foot of a firearms certificate issued to Paddy Logue, who is, it seems, Bernard Logue's father. Mr. Doherty's belief is that the ammunition was in fact sold to Bernard Logue on the production of his father's certificate. It is also worth noting, Sir, that Detective Garda Noel McMahon was the holder of a firearms certificate in respect of a .22 rifle from 1980 to 1990. He then obtained a firearms certificate for a double barrelled shotgun which he held until the 6th of November, 1996 when his firearm and his official revolver were seized from him by Superintendent Kevin Lennon. The official firearm was subsequently returned: when we do not know.

At 6.00 a.m. on the 11th of September, 1993 an RUC search operation was carried out in the town centre in Strabane, County Tyrone. The immediate area was sealed off until 8.15 a.m. Detective Inspector A T Donnelly of the RUC, GC, spoke with the Carty investigation team and his interviews are recorded as follows:

> **On Friday evening 10.9.93 in Strand Road Station, Londonderry, Detective Inspector Lennon of the Garda Síochána informed me that a suspicious device had been placed on a ledge close to the bookies shop near the river in Strabane. I immediately passed this information on to the Superintendent in Strabane. From records made available to me I am aware that a search was carried out. At 06.00 on 11.9.93 on the water wall beside the bridge in Strabane Security Forces recovered a white plastic bag inside which was a tupperware box containing 50 x shotgun cartridges and 101 rounds of .22 ammunition...[I] kept no notes, but [my] recollection is that what is recorded in [my] statement is that a suspicious device had been planted and [I] passed on that information to Superintendent in Strabane and...had no further part in the operation...Kevin Lennon told [me] that it was a woman that was involved.** (02.05.2000 and undated)

Detective Sergeant Thomas Shreenan, now retired, also made a statement in relation to this matter on the 15th of September, 1999 where he said:

> **My suspicions were further aroused in 1993 by an incident in Strabane. I was returning from Monaghan with my wife and family and as I was crossing the bridge between Strabane and Lifford I observed Adrienne McGlinchey and Yvonne Devine walking across the bridge in the direction of Lifford. I remember saying to my wife what are them two doing there. A few days later I was talking to my counterparts in the RUC in Derry. While discussing subversive activity in general it was mentioned that Kevin Lennon had passed**

> **on information to them that a real bomb was to be located in Strabane on the same day that I had observed the two women crossing the bridge at Lifford. I was also informed that a device had been discovered and that it proved to be a hoax. I was aware that this information had been passed by Kevin Lennon to a new Detective Inspector in the Branch in Derry at that time. It was at this point that I became suspicious of these two women, that they were planting devices and explosives at locations along the border to be found by the Security Forces and that these locations were pre-arranged by them with whoever found these devices...**

You will note, Sir, that Mr. Shreenan's assertion of what he heard from his counterparts in the RUC is hearsay, but that what is said by Detective Inspector Donnelly is not. Chief Superintendent Denis FitzPatrick has also recorded a statement on this matter. He said:

> **In relation to the find of .22 bullets and cartridges in Strabane on the 11/9/93 by the RUC, I remember D Inspector Lennon telling me that Ms. McGlinchey and Ms. Devine had gone into Strabane with a packet and that he had already briefed the RUC. I recall that this packet was allegedly for the purpose of creating a security alert in Strabane on the following day which was a Saturday. Subsequently he told me that the packet contained .22 bullets and cartridges. I was annoyed that the operation was allowed to progress. The matter was not pursued further because Ms. McGlinchey was already working for the Garda Síochána and in the interest of cross border co-operation.** (13.07.2000)

Yvonne Devine initially told the Carty investigation team, in May, 1999, that she was not involved in planting "any devices, hoax or otherwise, in Strabane". However, in September of 1999 she agreed she was in Strabane and claimed that she: "saw Adrienne throw a package over a bridge and ran. Again, didn't know what it was all about". Mrs. Sheenagh McMahon told the Carty investigation team, as part of her main statement, of a number of meetings with Adrienne McGlinchey. These were, from their description, not pleasant meetings and the implication from them was that Adrienne McGlinchey was claiming that she had been falsely imprisoned by the Provisional IRA and was worried about her safety as regards Mrs. McMahon and what she might say. In consequence of these alleged encounters, Mrs. McMahon went to see Des Walsh, a former Detective Sergeant who had been very supportive of her in relation to the break up of her marriage. She says:

> **I told Des Walsh what she had said. I told him the whole story about McGlinchey saying about the loose talk about what was going on in our house at Porthaw, Buncrana over the years. I also told Des about Shortie Donnelly coming to see McGlinchey, as she told me. I told him about what she said to me that I'd better not talk about what was going on between her and Noel. I had a long talk/chat with Des Walsh. He said to me "listen Sheenagh that one is only a fraud". The conversation developed into talk about what**

> **was going on between Noel and McGlinchey and Lennon over the years. He talked about the hoax bomb in Strabane. Des said there was a hoax bomb in Strabane and the whole street was sealed off for a long time. He didn't tell me when this was and didn't say what street was sealed off. I gathered it was a good few years ago. Des said that the RUC realised afterwards that it was Kevin Lennon who was behind it and they were very upset about this. I don't remember what else he said about this hoax bomb.** (24.05.1999)

Sir, you will note that what was said to Mrs. McMahon by Mr. Walsh is hearsay. Mr. Walsh himself indicated that the source of his opinion was Detective Branch "gossip". He stated, in an interview with the Carty investigation team on the 16th of September, 1999, that on one occasion he mentioned "his suspicions" to Superintendent John P O'Connor and Chief Superintendent Ginty but, apart from that, kept it to himself because he was winding down towards retirement. He spoke of the unease and jealousy among Detective Branch and Station party Gardaí and his frustration at the whole situation. However, the word from his superiors was that she was 'a tout' and was to be 'left alone'. Noel McMahon, he said, was always going over his head in relation to matters about McGlinchey. He never saw any fertilizer or any other activity which might be related to bombs in Noel McMahon's house, which he often visited.

Sir, the allegations of Sheenagh McMahon were put to Superintendent Kevin Lennon on the 14th of July, 1999. He claimed that he had been asked by Chief Superintendent Ginty to supervise the handling of this informer and also claimed that she "had been acting as an agent of the State previously under the management of other members". Who these are, we are unable at the moment to identify. He accepts that he "assessed the informer". He continues:

> **Information then came to hand that an ammunition deposit was to take place in Strabane, County Tyrone within a set time frame. This information was supplied personally by Noel McMahon's informer to both myself and Noel McMahon. I consulted with Chief Superintendent Ginty and I notified Detective Inspector Tim Donnelly of Strand Road Police in Derry. It is my understanding that the ammunition which included cartridges was being deposited for the purposes of extracting black powder which was commonly used in explosive devices. This was the information supplied by the informer. There was no risk to life in the course of this deposit. I wasn't aware of the source of the ammunition, neither was I aware of the site of the pick up. I did however know that it was going to be collected by the informer and a friend and delivered to a location in Strabane along a road adjacent to the town where it was going to be collected by a female. I passed this information to Detective Inspector Donnelly and I was aware that the RUC set up an operation and recovered the material concerned. Shortly after this incident I became aware that the information I had passed to the RUC was somehow leaked back to a then serving member of the Detective Branch at Buncrana who is now a retired Detective Sergeant. I complained about this to Detective Inspector Donnelly**

> **of the RUC and I informed Chief Superintendent Ginty and Detective Superintendent Denis FitzPatrick of the situation. I subsequently learned that the RUC person who was suspected of leaking the information was admonished. I wish to clearly state that this Strabane incident was a joint operation between the Gardaí and the RUC legitimately carried out in the best interests of public safety and was not a hoax or intended to be a hoax and I take exception to the media presentation that a hoax device was placed in Strabane under my guidance or control.** (14.07.1999)

On the 14th of June, 2000 Detective Inspector Joseph McHugh asked Superintendent Lennon what was the exact information he relayed across the border to Inspector Donnelly. He claimed that his recollection on the matter was quite clear to the effect that there was ammunition and cartridges being moved and that he never used the word "device". He did not report the matter to Crime and Security at Garda Headquarters, but only to his Chief Superintendent and Detective Superintendent. In his interview of the 23rd of May, 2000, Superintendent Lennon claimed that the purpose of the delivery was to enable black powder to be extracted from cartridges and ammunition and then used as a propellant for bombs. Chief Superintendent Ginty, now retired, in his statement taken on the 10th of July, 2000, said this:

> **I have no recollection of having been informed of this movement of ammunition from Donegal into Northern Ireland prior to the incident in Strabane. I have no recollection of the time that this happened. I do recall having been informed about the incident in Strabane, about I am not sure who informed me or whether it was before or after the incident. When I was informed about this I was made aware that the person carrying the ammunition was Adrienne McGlinchey, from Letterkenny, but living at that time at the Crescent in Buncrana. It is my recollection that the ammunition was to be left at some location, I do not know, for collection there by some IRA person in Strabane. It is my further recollection that she became suspicious or afraid and as a consequence she dropped the ammunition at another location. I want to explain that this is a recollection after seven years of what was regarded at the time as being a relatively minor incident. As far as I can recall, Detective Inspector Lennon was in direct contact with the RUC in relation to this incident. I am unable to say whether this contact was before, during or after the incident. Incidents of this kind, it would have been the norm for me to have given D Inspector Lennon the go ahead, but I have no specific recall on this matter. I never became aware of any disciplinary action being taken against any member of the RUC in relation to this incident. I had no communication with the RUC in relation to this incident.**

Noel McMahon was interviewed on six occasions about this matter. On the 1st of June, 1999 he said that in September of 1993 Adrienne McGlinchey informed him that she was leaving "stuff, clothes" for collection at the bridge in Strabane and that this information was relayed to Superintendent Lennon. On the 13th of

July, 1999 he said that his information on the matter was that there was to be a drop off in Strabane and that he and Superintendent Lennon alerted the RUC and had nothing more to do with it. On the 14th of July, 1999 he said that in September, 1993 Adrienne McGlinchey informed him that she and Yvonne Devine, and another person, were to make "a drop" on the ledge of a bridge in Strabane. He said he relayed this information to Kevin Lennon. In interviews on the 25th of February and the 25th of March, 2000 he denied any allegation of impropriety and expressly indicated that he did not know what was found and did not arrange for the plant of anything. Adrienne McGlinchey's allegation on this is that she took a package from Buncrana to Strabane on the instructions of Noel McMahon and left it on a bridge. She cannot date the event, but she claimed that it was in the early stages of her dealings with Superintendent Lennon and Detective Garda McMahon. She claimed that Noel McMahon had purchased a lunchbox for her, but it is difficult to know why she needed somebody else to purchase such an article. Detective Inspector Hancock was asked about the notion that propellant could be removed from bullets and cartridges as a component of an explosive device. In his statement of the 29th of April, 1999 he said this:

> **I have been asked about the feasibility of the Provisional IRA removing the black powder from a hundred rounds of .22 LR ammunition and fifty shotgun cartridges and using this powder to launch mortar bombs and to be used in incendiary devices. The rounds of .22 LR ammunition and the shotgun cartridge cases do not contain black propellant powder, they contain nitrocellulose propellant powder, which is often referred to as smokeless powder. Black powder generates a large volume of smoke. I am not aware of any instance in which the Provisional IRA have removed the propellant powder from any cartridge cases and used same for explosives. The Provisional IRA are self-sufficient in the production of homemade high quality black powder which they have used in a wide variety of explosive devices. I have, however, frequently encountered improvised explosive devices, which have been attributed to Loyalist terror groups, and which contained propellant powder removed from shotgun cartridges.**

On the 7th of October, 1993 £60,000 was stolen from the Post Office at Main Street in Buncrana, managed by Carl McGinley. Wade McGinley subsequently pleaded guilty in the Dublin Circuit Court and received a suspended sentence. He was in fact the son of the manager of the Post Office. The investigator was Detective Inspector Kevin Lennon, then at Letterkenny. In relation to this, Adrienne McGlinchey claims that Wade McGinley handed her £5,000 to be passed on to Lennon and McMahon. However, it is important to note that this is not the recollection of Wade McGinley. He claims that he never knew Adrienne McGlinchey, apart from being able to recognise her on the street, and, he says, in his statement of the 7th of October, 1999, he "certainly never gave her any money". Nor, he says, did he give any money to Noel McMahon or Kevin Lennon. The fact that Kevin Lennon spoke up for Wade McGinley is not in the slightest bit unusual and is in conformity with the proud tradition of the humane disposal of cases by An Garda Síochána. The only recollection of Wade

McGinley in relation to a meeting with Kevin Lennon and Noel McMahon is one in the presence of his solicitor, Mr. Ronnie O'Doherty who has no recollection of this. The Garda side, Mr. McGinley recalls, offered to keep the incident in proportion in the event of a plea of guilty, but that was all. In the covering report on the Post Office robbery, Superintendent Lennon said that he had confidential information that the IRA carried out their own investigation into the robbery and that Wade McGinley had agreed to pay them the sum of £15,000, one third of which had already been paid. He goes into other theories in relation to the pursuit of a duress defence. When interviewed on the 23rd of May, 2000 Superintendent Lennon could not recall from whom he got the information in relation to the IRA investigation theory, but said it was a Detective Officer in Buncrana. Equally, Detective Garda Noel McMahon, on the 25th of February, 2000, denied all of these allegations by Adrienne McGlinchey.

On the 12th of October, 1993 behaviour occurred at Adrienne McGlinchey's flat in Buncrana which could only rationally be described as ostentatious. It is hard to imagine that it could be regarded as anything other than a deliberate attempt by her to draw attention to herself and her companions. This is how Garda Catherine McGonigle described it in her statement of the 6th of April, 2000:

> **I can recall being outside this flat with Detective Sergeant Tom Shreenan. There was steps up to Adrienne McGlinchey's flats and I remember being at the bottom of the steps. There was other [Gardaí] there, but D Sergeant Tom Shreenan was the only Guard that I can remember was there. I can't recall if it was day or night, but the area was well lit up. I could see a velux or roof window in Adrienne McGlinchey's flat and I could see a fine white powder running from this window down along the roof. This did not happen once, we were there for about a half hour and white powder came out of the flat window of Adrienne McGlinchey's flat several times. I can't recall seeing who was throwing this white powder out onto the roof. I can't remember what happened after that or what anybody else did...I would have expected arrests as Adrienne McGlinchey and Yvonne Devine were known to me as two Provos.** (06.04.2000)

One of the other Gardaí that was there is former Detective Garda, Denis Doherty. He recalls being with Detective Sergeant Tom Shreenan when they got a call to the flat because of suspicious activity. He says:

> **During my period there I heard taps running and toilets flushing on a constant basis. There was also a substance being thrown out by the women onto a roof on a lower level. I believed at the time that they were trying to dispose of some substance that...was illegal.** (20.09.1999)

The former Detective Sergeant, Tom Shreenan, said the following in his statement of the 15th of September, 1999:

> **On arrival there we noticed that there was water running from the taps in their flat (every tap seemed to be running - I could hear the**

> **water running). I could see the two women, Adrienne McGlinchey and Yvonne Devine, inside a window which was half open, they were throwing what appeared to me to be an explosive mix onto the roof of the building adjoining. This was a sloped roof and this substance was falling onto the ground below. Other Gardaí also arrived at the scene...I returned to the Station leaving other Gardaí at the scene and I made a telephone call to Superintendent John P O'Connor and I informed him of the situation and I requested that he issue me with a warrant under section 29 of the OASA, 1939 to search their flat. He said he would let me know. I returned to the scene and about an hour later, I was told on the walkie-talkie that there would be no warrant issued for the search of this flat. I withdrew from the area along with the other Gardaí. I was very annoyed and frustrated by this decision, but I felt there was nothing I could do about it.**

In an interview on the 3rd of June, 1999 he also referred to this incident and the fact that he had been told on a number of occasions "by the then Chief and by Superintendent O'Connor not to be stopping McGlinchey and to back-off". Mr. Doherty expressed a similar view in his statement when he said: "we withdrew from the area. I felt frustrated that no warrant was issued for what I thought had been a justifiable search". In his first statement to the Carty investigation team, which helpfully gives a chronological account of each event in relation to Adrienne McGlinchey as it occurred, Superintendent John P O'Connor deals with the request to him to issue a section 29 warrant for the search of her flat in this way:

> **On the night of the 12th of October, 1993, D Sergeant Shreenan rang me in Letterkenny seeking a section 29 warrant to search Ms. McGlinchey's Buncrana flat. He told me of a report received at Buncrana Station to the effect that there was unusual noise coming from [McGlinchey's] flat at the Crescent, Buncrana and the caller to the Station also alleged she thought she saw what looked like a gun or walkie-talkie through the window. D/Sergeant Shreenan had surrounded the flat while awaiting my instructions. Having considered the matter including consultations with Chief Superintendent Ginty, D/Inspector Lennon and the SO at Buncrana, I did not issue a search warrant as I believed there was no legal basis to do so. I directed Gardaí to call off the operation. On 13th October, 1993 I met D/Sergeant Shreenan again and reminded him of the instructions he had received from D/Superintendent FitzPatrick re: Ms. McGlinchey. He said he [understood] and would comply. He also said he had been in a difficult situation the previous night. On 12th November, 1993, I discussed an item of intelligence re: Ms. McGlinchey with D/Superintendent FitzPatrick.** (Statement 28, Carty Report, Section 1)

Detective Superintendent John P. O'Connor indicates that on one particular occasion, his only direct dealing with Detective Garda Noel McMahon, he was requested to call off a Garda search in Letterkenny where homemade

explosives were supposed to be kept in sheds in the vicinity. He called off the search. He indicated that he normally only dealt with D/Inspector Lennon, as one might expect. He recalls verbal briefings of his attitude that arrests of Adrienne McGlinchey, and more particularly charging her, would bring her under further notice which would not have been helpful to what he believed to have been her usefulness as a "good and reliable" informant. Superintendent Kevin Lennon recalls this event. In his interview of the 23rd of May, 2000 the statement of Adrienne McGlinchey on this matter was put to him. She recalls Detective Sergeant Shreenan knocking at her door and asking to be let in. She was in the company of Yvonne Devine and indicates there was a lot of fertilizer in the flat at the time, some of which she put down the toilet and some of which, inexplicably, she threw out of the window. Superintendent Lennon says:

> **I recall Superintendent John [P] O'Connor ringing me. My recollection of the event is that he, Superintendent O'Connor, then District Officer at Buncrana had been requested by D Sergeant Shreenan to issue him with a warrant under section 29 of the Offences Against the State Act, 1939 to search the flat of Adrienne McGlinchey. My recollection is that Superintendent O'Connor told me that D Sergeant Shreenan had seen somebody in the flat with a radio to his ear. I advised Superintendent O'Connor that I had no information that there was anything in the flat and that the issue of a section 29 warrant was a matter for him based on reasonable belief that the facts in his possession warranted his entitlement to comply with the provisions of section 29 and that the decision rested with him. I advised him that if he wished to seek advice, to seek it from higher authority than me. I did not seek to influence his judgment or negative his decision.**

As to the role of Detective Garda Noel McMahon, he was questioned about this during his detention at Ennis Garda Station on the 10th of June, 2000. At page 7/8 of the transcript he claims he was contacted by John Murphy to tell him about the search:

> **She was throwing stuff out the window. John knew I was dealing with her. I don't know if I rang Kevin Lennon at that stage. J P O'Connor called off the search because he knew she was passing information to me. I knew J P O'Connor and Denis FitzPatrick reprimanded Tom Shreenan over this in Letterkenny for interfering with Adrienne McGlinchey. I don't think Kevin Lennon reprimanded him...[Adrienne McGlinchey knows that John Murphy rang me because] I must have told her. I probably told her or Kevin [Lennon] [that Tom Shreenan was reprimanded].**

Sir, it is appropriate to make a comment at this point. Let us for the moment suppose that senior members of the Gardaí in Donegal had come to the conclusion, in good faith, that Adrienne McGlinchey should be protected against any unwarranted publicity by way of arrest or charge in order not to draw attention to her as a Garda informer. One wonders how any person who had heard the account from Detective Sergeant Shreenan as to her behaviour on

this evening could have so regarded her. Her actions in firing what was apparently ground-up fertilizer out the window of her flat and onto a roof, in full view of the public, and in making a racket apparently calculated to draw attention to herself must have had the potential effect of the creation of a public spectacle. It is hard to imagine, in these circumstances, why a warrant had been refused. It is, perhaps, even harder to reconcile the stated opinion of Gardaí of officer rank in Donegal as to the need for secrecy to protect Adrienne McGlinchey in the circumstances outlined. This is a point we must return to towards the end of the narrative of this particular aspect.

If there had been a search then the events of the next stated date in paragraph (e) of the Terms of Reference may have been looked at differently.

On the 19th of November, 1993 a section 29 warrant was issued, but not for Adrienne McGlinchey's flat, but instead for a vacant house at Ardchicken. Superintendent Michael Duffy, the Superintendent in charge of the Ballyshannon Garda District, issued the warrant. His recollection is, perhaps understandably, limited at this stage. He can recall issuing at least two search orders, one for a vacant house at Ardchicken, near Donegal town. It may be that he regarded independent verification as important before he would rely on the word of an informer. Inspector Thomas V O'Brien, then a Detective Sergeant stationed at Donegal town, recalls the incident in this way:

> **I recall during my time [in Donegal town] that there was a find of homemade explosive...in a vacant house at Ardchicken, Donegal town on Thursday 19th November, 1993. I also recall being instructed by Superintendent Michael Duffy (now retired) to covertly search a vacant house at Ardchicken, Donegal on the 18th/19th November, 1993 to confirm the presence of [homemade explosive] in the front room under timber. The house was described as being adjacent to the road on a bad bend. I recall searching the house under cover of darkness and discovering the presence of a fertilizer-like substance in plastic bags in the front room of the house under some broken timber. I confirmed the presence of the substance to Superintendent Duffy and the house was later searched pursuant to a warrant by uniform personnel from Donegal town. I was instructed not to have any Detective Branch personnel on the second search. I was not informed where the information had originated from...from 20th to 23rd November, 1993 I carried out follow up searches and house to house enquiries with negative results in the Ardchicken area.** (18.07.2000)

Superintendent Duffy states:

> **I have no recollection of asking Vincent O'Brien to check out a vacant house at Ardchicken...I do recall asking him to check out a house on the Rossnowlagh Road...which was believed to be in use by PIRA and I recall telling him not to tell anybody about that house, including members of Special Branch. I do not recall issuing any instruction to the effect that no Special Branch members were to be**

> **involved in the search of the vacant house at Ardchicken, Donegal town...** (19.07.2000)

Captain Colm Farrell was an explosive ordinance disposal officer at Finner Camp in Donegal at the relevant time. He examined the find and in a statement taken on the 19th of July, 2000 said:

> **This instance consisted of a find of what appeared to be a bulk explosive consisting of 61 x 5kg (approx) bags of white powdery substance... there was no means of initiation of the apparent bulk explosive present. I decided that it was safe to move this substance. I gave one bag to the Gardaí for forensic examination and the remainder I disposed of by dispersal.**

Sergeant Thomas McPartland took part in the search, but was not involved in any follow up investigation. Aidan Murray was then a Detective Sergeant based at Ballyshannon, and is now retired. He also took part in the search. As the scenes of crime examiner he retained a sample of the material which he subsequently sent to Garda Headquarters for examination, but he cannot recall what became of the sample, which was subsequently returned to him. Nobody was arrested or questioned in connection with the find. Dr. Sheila Willis examined the substance and found that it contained urea which is a constituent of fertilizer and some animal feeds. The owner of the house, Michael Rose, was not a person in any way associated with this kind of activity. Besides, anyone could use the property without his knowledge. The Carty investigation team were of the view that no Garda investigation was carried out into this discovery of explosives. It might be expected that if explosives were concealed in a disused house that surveillance might be kept over it, to see if anyone would come to retrieve it, or to otherwise deal with it. It might also be expected that there would be an attempt at developing forensic evidence or fingerprints. However, and this is a comment that needs to be made again, none of the obvious steps were taken to follow this matter up. We do not know why. In her main statement in this matter, Sheenagh McMahon recalls a conversation that she had with Adrienne McGlinchey where, apparently suddenly, she said "don't ever mention Donegal town". In answer to the question "why, what went on in Donegal town?" Adrienne McGlinchey is recorded as having smirked and said "never mind" with a laugh. Adrienne McGlinchey's allegations in relation to this matter include one that she taped a crucial conversation with Kevin Lennon and Noel McMahon in her house. However, this alleged recording has never been forthcoming. Her account of this matter is contained in her statement of the 9th of August, 1999. She claims that Noel McMahon had her purchasing and grinding, in coffee grinding machines in her flat, fertilizer with high nitrogen content. She claimed that bags of fertilizer were also stored in Detective Garda McMahon's house. These were dispensed into freezer bags. These bags were, indeed, the method of packing at Ardchicken, and then subsequently at Rossnowlagh on the 18th of July, 1994. She claims that apart from Detective Garda McMahon, that another Garda assisted in moving this apparent explosive. We are talking here about a weight in excess of 300 kg. Yvonne Devine in her statement of the 13th of September, 1999 is recorded as having said that she had gone to Donegal town twice with Adrienne McGlinchey

seeking a suitable location to leave fertilizer, but was not, she claims, there when the alleged concealment took place. Nonetheless, Adrienne McGlinchey refers to a bus journey from Letterkenny to Donegal town with Ms. Devine, where they persuaded the driver to stop near the house, on a pretext, with both of them carrying suitcases. On another occasion she claimed to have got a loan of a car. There seems to have been three deliveries in all. She says at page 29/30:

> **This third delivery to the old house was made in the evening time. It was winter time and I know that it was before Christmas. Noel McMahon contacted me before I delivered any bags to Donegal. He wanted more and more stuff left there and he knew beforehand about the two deliveries I was making with my friend. Noel McMahon arranged with me that he would bring Kevin Lennon to my house and that I was to tell Kevin Lennon about the dump in Donegal town. Noel told me what to tell Kevin Lennon. A couple of days after the last delivery to Donegal town Kevin Lennon and Noel McMahon arrived at our house in Ashbrook in Kevin Lennon's car. It was night time. We had a few drinks. Kevin Lennon was drinking Brandy. I don't think that Noel McMahon was drinking. I told Kevin Lennon about the dump in Donegal town as Noel McMahon and I had arranged. I didn't tell Kevin Lennon exactly where it was, but I told him I would bring him to it. He said that he would go up to the Garda Station and get the Special Branch car. Kevin Lennon went off in his own blue Honda car and arrived back with the red patrol car. Kevin Lennon, Noel McMahon and I then drove to Donegal town. I recall as we were approaching the old house Kevin Lennon said "there it is there, pull in there". I found this unusual as I was supposed to be pointing the house out to him. Noel McMahon must have been driving and we stopped opposite the old house...I stayed in the car and Kevin Lennon and Noel McMahon got out and went over to the old house...[they] returned to the car and Kevin Lennon was excited about what was in the old house. They then left me home to Ashbrook and they went off...Noel McMahon had told me afterwards that the Army was brought to this house in Donegal town afterwards. I had told Kevin Lennon on Noel McMahon's directions that the fertilizer was only being left there temporarily and was eventually to be made into a bomb and taken to Belleek. I continued to grind fertilizer in our flat at the Crescent in Buncrana after this. (09.08.1999)**

Adrienne McGlinchey claims that the back of the old house was over-grown and she was never there. She claimed not to know anything of a running tap at the back of the house, and not to understand what ‘a marker’ was. The owner of the house indicates that there was indeed a tap at the back wall of the house. In his statement of the 14th of July, 1999, Superintendent Lennon states:

> **In November, 1993 I received a phone call at my home from Detective Garda McMahon to the effect that there was subversive materials which were non-specified at some location in Donegal**

town. I asked D/Garda McMahon to bring his informer to Letterkenny to meet me. I took McMahon and his informer in my car to Donegal town to point out the location to me. We went out the Ballyshannon Road and actually passed the scene and returned to a disused house which the informer had pointed out to me. I parked the car away from the scene and the three of us moved towards the house. I took up a cover position and Detective Garda McMahon crawled through the undergrowth and briars to the house followed by his informer. The three of us went into the house which was a small, old dilapidated bungalow and in one of the rooms under the floor boards I noted a number of transparent plastic bags with some material in them. There was a tap running outside at the back of the house and I went to turn it off and the informer told me not to turn it off that it was a marker. We left the house and returned to Letterkenny. I queried the informer about the purpose of these materials and was advised that they were for the purpose of mounting an operation in the Fermanagh area. It was about 2.00 or 3.00 o'clock in the morning when we visited the house in Donegal. Later that morning I notified Superintendent Duffy, Ballyshannon Station and also my authorities at Letterkenny, namely Chief Superintendent Ginty and the D/Superintendent. For the purposes of the media and as a cover scenario for the informer it was dealt with as an anonymous tip-off and a search was conducted under the command of Superintendent Duffy and the materials recovered. I was in contact with Superintendent Duffy afterwards and learned what the materials consisted of. I have been asked by Chief Superintendent McNally to name the informer and I now do so as Adrienne McGlinchey. I wish to state that I was never in her flat at the Crescent, Buncrana nor did I enter any other accommodation owned or to which she had access either at her family home in Covehill, Letterkenny or elsewhere. I was often in her shop, while passing by, to buy cigarettes, but I was not in her shop since I became aware of this investigation on the 14th April, 1999.

On the 23rd of May, 2000, having been cautioned by Detective Chief Superintendent Austin McNally, Superintendent Lennon was asked as to what steps were taken to secure the area from the time he had seen it to the time it was reported to Superintendent Duffy. Superintendent Lennon said:

When we were at these locations I queried Ms. McGlinchey as to the risk to our personal wellbeing at the scenes and she advised me that she was aware that the PIRA were not operational on them particular nights, that she had personal knowledge of their whereabouts "that is the people that she said was involved in these deposits" and that they were not immediately to be moved into operations to the targets which I have already outlined in previous questions. It was quite late in the night time and I knew from my own experiences and from operational knowledge in this border area that the members of the PIRA didn't usually operate in striking targets after certain hours. The only attack, I am aware of that took

> **place in the late night or early morning, by that I mean before dawn, was the one at Cushquin Military Checkpoint. It was early morning time when I contacted Superintendent Duffy and it was over to him after that. At all stages I alerted my authorities to all the facts in my possession which included information passed to me.**

Sir, it is appropriate to note a potential pattern of terrorist organisations being 'off duty' at particular times.

Superintendent Lennon added to this in his interview of the 14th of June, 2000 by indicating that it was "up to Superintendent Duffy to do" written reports and that Adrienne McGlinchey had named a person as the crusher of the fertilizer and another as the deliverer. In his statement of the 14th of July, 1999, Detective Garda McMahon indicates how he cultivated Adrienne McGlinchey and, according to him with another Garda, how he gave her "a lot of attention which eventually led to her becoming very useful". He describes the Ardchicken matter as follows:

> **In November of 1993 I met with Adrienne McGlinchey and she told me that she knew of the location of a house outside Donegal town where a bomb was stored by the PIRA. I made immediate contact with Kevin Lennon and that night we went with Adrienne McGlinchey to find this house. We used the official surveillance van. I think Kevin Lennon drove the van. Adrienne McGlinchey would have been in the middle. We drove on her direction to Donegal town and on the Ballyshannon side of Donegal town in the townland of Ardchicken she pointed out a vacant bungalow...Kevin Lennon dropped McGlinchey and I and he drove off in the van. Adrienne McGlinchey came with me around to the back of the house and she opened the back door. It was obvious to me that she had been at and in this house before. She pointed out a room, when we had entered, and said that the stuff was in it...I saw that there were bags of stuff there. Once I had verified that there was stuff there we left and walked up the road and Kevin Lennon picked us up. She was not forthcoming with any more details on this find. In my opinion she was a person who could not live with the knowledge of knowing of the stuff if there was ever any loss of life. She appeared to be happy in passing on this particular piece of information as it would not come back to her. I informed Kevin Lennon that the stuff was there and he took it from that point. I know that the following day Gardaí from that area searched the vacant bungalow at Ardchicken and that stuff was found. The search I recall was conducted under the direction of Superintendent Mick Duffy of Ballyshannon. After she pointed out the house I would have dropped her back to Buncrana. Adrienne McGlinchey never discussed Ardchicken again with me and she never even looked for money or a reward for information. When we entered the house at Ardchicken it was about 12.00 midnight. There was a tap dripping on the wall at the back of the house. On the way out I went**

> **to turn it off and Adrienne told me to leave it alone and that it was a marker.** (14.07.1999)

Detective Garda McMahon explicitly denies being in any way involved in the grinding of fertilizer. In his interview, upon his arrest, on the 10th of June, 2000, Detective Garda McMahon at page 22 indicated that Kevin Lennon did not know where the house at Ardchicken was. He also said that Kevin Lennon had come into the house on that night and that it was he who wanted to turn off the running tap at the back of the house and that Ms. McGlinchey had "told him not to as if he did, it would be known there was someone at the house".

On the 7th of December, 1993 Detective Sergeant Shreenan was again told by Superintendent John P O'Connor of what one might call the "hands-off" policy in relation to Adrienne McGlinchey.

We now move into 1994. In doing so it is appropriate to mention an apparent incident which can only be dated to some time in 1993 or 1994. This incident was first reported to the Carty investigation team by Garda Seamus Gordon on the 16th of November, 1999. They had heard about the incident earlier and it was confirmed on that date by Garda Gordan. This is his recollection:

> **I recall that I was on duty in Buncrana Garda Station as Station Orderly one night from 10.00 p.m. to 6.00 a.m. the following morning...I recall receiving a radio message from Garda John Murphy before 11.00 p.m. that night to the effect that Adrienne McGlinchey who was known to me was observed by Garda Murphy carrying a large plastic bag under arm at Main Street, Buncrana. Garda Murphy requested assistance to have her stopped and searched...I believe that Adrienne McGlinchey was later stopped and searched by the Gardaí, but was not in possession of the black plastic bag or the item that had been in it...I recall that a follow up search located the black plastic bag which contained a tripod and that this was located in the general area of Church Street, Buncrana...I knew Adrienne McGlinchey from the Summer of 1991 when she first moved to Buncrana and took up residence in a tent at Ballymacarry Lower with Yvonne Devine. I knew that both of these women were well known to Detective Branch members and uniform members in Buncrana...I recall that after refreshments were availed of that night that Garda Tom McDonagh, Garda Michael Galvin and I were talking in the public office...we were joined by Inspector Kevin Lennon and D Garda Noel McMahon. There was a general conversation which was light-hearted and jovial. I cannot recall the exact content of the conversation...but I do recall that Noel McMahon reacted to something that I said to him. He was standing beside the table at this point and he leaned forward towards me and pointed his official Smith and Wesson revolver at my face. I knew from the movement of his hand that he cocked the hammer of the firearm after he pointed the gun at me. He then released the hammer and cocked it again and again he released it by placing gentle pressure on the trigger while holding the hammer with his**

> **thumb. I cannot remember how many more times he did this. The gun was approximately two feet from my face and the front of the barrel was pointing at the bridge of my nose. The gun was pointed at my face for approximately five to ten seconds. I sat still in the chair while the gun was pointing at me. Moments later, somebody stated "put the gun away". I believe that it was Inspector Kevin Lennon who said this. D Garda Noel McMahon then placed his firearm back in his holster. During the time that the gun was pointed at me I was in fear and I later learned that the gun had been loaded with bullets and this caused me greater anxiety over the following weeks and months. I had difficulty getting to sleep for months after this incident and I did not tell my wife about the matter as I did not want to worry her. I knew Inspector Kevin Lennon well and I regarded him as a conscientious officer and I expected that the matter would be addressed. Inspector Kevin Lennon never spoke to me about the matter and nobody in authority ever approached me about it. I did not pursue the matter as I knew my authorities were aware of it. Detective Garda Noel McMahon did not speak to me about the incident again and he never apologised to me for it...Inspector Kevin Lennon and D Garda Noel McMahon left the public office together shortly after the incident.** (16.11.1999)

Detective Garda Michael Galvin recalls the incident and in a statement of the 17th of November, 1999 he indicates that his attention was concentrated on the fact that the gun was pointed at Garda Seamus Gordon. He also recalls Inspector Lennon saying something to the effect of "Mac put away that gun" or "stop messing around with that gun" and their leaving shortly afterwards. Garda Thomas McDonagh recalls such an incident, describing it as occurring "for no reason that I can remember". He also recalls that Detective Garda McMahon was told to put away the gun by Inspector Lennon. Detective Garda Noel McMahon was interviewed in relation to this matter on the 25th of March, 2000 and said that he never produced his official firearm to Garda Gordon at Buncrana Garda Station. Kevin Lennon, when interviewed by Detective Superintendent Austin McNally and Detective Superintendent McCarthy on the 23rd of May, 2000 is reported as having said that of all the accusations levelled against him that this one seemed to have ‘a bit of substance’, but as there was a professional person making the allegations that he should have made notes and that the failure, in that regard, was more serious than the alleged event.

On the 11th of January, 1994 fertilizer and icing sugar were apparently discovered at Bridgend, County Donegal near a border crossing. Sheenagh McMahon, at page 12 of her main statement, recalls her husband making a reference to a bomb at Bridgend and saying "if I go down, I'll bring the whole...lot with me". She says that he was drinking a lot at the time and that Chief Superintendent Denis FitzPatrick had watched Adrienne McGlinchey carrying a bomb at that location. She also describes a drinking incident involving her husband, Kevin Lennon and Adrienne McGlinchey in her house. Adrienne McGlinchey deals with this matter at page 4 of her statement on the 22nd of June, 1999 and pages 31 to 33 of her statement of the 9th of August, 1999. In the earlier statement she claims that she was told by Noel McMahon to get a

taxi to Bridgend and to leave bags with fertilizer in them at a particular place. She claims that Denis FitzPatrick and Kevin Lennon were, according to Noel McMahon's plan, to be there and that Denis FitzPatrick "would be acting as a drunk man" and that there would be a Garda checkpoint. She describes arriving with Yvonne Devine in a taxi at Bridgend and throwing the bags over the wall. She claims to have seen Chief Superintendent FitzPatrick in his attitude of disguise. She claims that virtually immediately, the Gardaí moved in and that she knew this because she saw a Garda patrol at the roundabout and then Gardaí shining torches around the place. She claims to have done this 'drop-off' because "you could not say no to Noel. He would keep torturing me until I carried it out". She also claimed that if she did not do his bidding that he had threatened to tell her mother or father and "the Provos". In the later statement she claimed that she was to leave the fertilizer and sugar under pallets beside a bathroom store. She claimed that when the taxi stopped at this location Yvonne Devine paid the taximan and then walked over towards the roundabout to thumb a lift to Letterkenny. She then took, she says, the three holdall bags out of the boot of the taxi and left them behind a small wall "so that the taximan would not see where I was going to leave them". The plan about putting the bags on pallets was not fulfilled because "Yvonne shouted at me that there was a checkpoint over the road and I panicked". She claims to have recognised Chief Superintendent Denis FitzPatrick "from his demeanour and dress". After staying in a café, partaking of refreshments, and watching the Garda operation, she claims they thumbed a lift back to Buncrana. She claims that Kevin Lennon was hiding in a small forest area at the side of the bathroom store. She also claims to have known that there would be no Gardaí around Buncrana and that the taxi would not be stopped on its way to Bridgend.

It certainly appears to be the case that at 9.50 p.m. on the 11th of January, 1994 Garda Gerard Burke received an anonymous telephone call, from a man, which indicated that two people had left a number of bags to the rear of McCallions. The people were described as "youths dressed in dark clothing". The caller spoke "with a slight southern accent and from the sound of his voice...was a middle aged male". Garda Burke learned later that a number of bags had been found containing a suspicious substance. It is perhaps noteworthy that the operation to intercept the bags commenced immediately, a decision which, one would imagine, might have endangered Adrienne McGlinchey as a source because it was so proximate to her arrival at Bridgend. Garda Terence McMahon uncovered three holdall bags containing eleven freezer bags with ground fertilizer and four freezer bags containing icing sugar. This amounted to 42½ kilograms of fertilizer and 12 kilograms of icing sugar. The scene was preserved overnight with a search of the area on the following morning with no further results. Sergeant Michael Murray, a scenes of crime examiner, took samples and forwarded these to the Forensic Science Laboratory. Superintendent John P O'Connor has this to say:

> **On the night of 11th January, 1994 I met D Superintendent FitzPatrick and D Inspector Lennon in my office by appointment. We arranged a security operation in the Burnfoot border area between 8.45 p.m. and 10.00 p.m. At 9.50 p.m. Gardaí at Burnfoot Station received an anonymous call about youths acting**

> **suspiciously near Bridgend roundabout. Gardaí went to the scene and later three "holdall" bags were found with fifteen plastic bags of what was believed to be explosive mix. The seizure was later taken to Burnfoot Station. I visited the scene as did D/Superintendent FitzPatrick, D Inspector P Lennon. It was preserved overnight for technical examination. Telex message was sent to HQ. The following day I directed further enquiries into this find and gave media interviews...I have no recollection about the making of an anonymous call to Burnfoot Garda Station being discussed. Neither have I any recollection of knowing who was leaving the deposit at Bridgend on 11.1.94. I cannot recall considering the issue of surveillance at Bridgend on 11.1.94. As the scene of this find was preserved surveillance was not put in place.** (21.07.2000 and undated)

Chief Superintendent Denis FitzPatrick recalls being aware that the source of the information leading to the Ardchicken find was Ms. McGlinchey. He recalls the Burnfoot events in the following way:

> **I was informed by Detective Inspector Lennon that Ms. McGlinchey and Ms. Devine were going to transport crushed fertilizer from Buncrana to Derry for the PIRA. He had already a plan in operation to frustrate the consignment moving to Derry. I can recall we discussed the morning find by the RUC [in relation to a find of homemade explosives at Maureen Avenue, Derry in a wheelie bin] and the fact that they (PIRA) were going to take fertilizer mixture through a British Army/RUC checkpoint at Cushquin. The plan was that a taxi was to convey the two females and the mixture from Buncrana to Derry via Bridgend. A Garda checkpoint was to be in place at Bridgend which could be seen from the roundabout. When the taxi approached the roundabout the passenger would stop the taxi and discard the fertilizer mixture at the old galvanised sheds beside the roundabout. We were conscious that the PIRA would probably be monitoring our radio system. It was decided that a telephone call would be made to Burnfoot Garda Station to the effect that people were acting suspiciously at the sheds, and if the call taker asked the caller to identify themselves the caller would decline. I informed the RUC in relation to the operation. I met with Superintendent O'Connor, Detective Inspector Lennon at Buncrana just prior to the operation. I travelled to Bridgend with Detective Inspector Lennon. He drove to the border and I got out of the car at the border, it was approximately 8.50 p.m. I walked from the border in the direction of Bridgend. The Garda checkpoint was in place. Sergeant Michael Brennan was it with a number of Gardaí. I was on the left hand side footpath as one approaches the roundabout and I saw a red car pull up at the galvanised shed, I could see movement, but due to darkness I was unable to see what was going on. I saw the car go off in the direction of Buncrana. I could not see the number plate. I then saw two females walking on the road towards Letterkenny. I went to Detective Inspector Lennon, he was in his car**

> **near the front of the 'Nineteenth Hole Public House'. We left and went towards Buncrana. I made a telephone call to Burnfoot Station, the call taker did not ask for my name and I did not offer same. I told the call taker that two people were acting suspiciously at the sheds. Subsequently, Superintendent J P O'Connor rang me on the mobile phone and said that the Gardaí were at the scene and had the bags of mixture. On our way back to Letterkenny Detective Inspector Lennon and I stopped and viewed the scene and spoke with Superintendent O'Connor. I had no further dealings with the find.** (02.05.2000)

He later said that he presumed the two women were Ms. McGlinchey and Ms. Devine. He said in this later statement, on the 13th of July, 2000, that Detective Inspector Lennon was very happy and praised Ms. McGlinchey on the way the operation had gone off. He also says:

> **The idea of arresting them was never considered. In relation to the phone call, I can say that I only ever discussed this with Detective Inspector Lennon until now. I was pleased myself on the night with the operation and the fact that we had prevented the material moving into Derry. Prior to this I had been dubious of her activities, this incident and the one [at Ardchicken]...convinced me that she was being used by the PIRA to transport equipment, and that she had been helpful to the Gardaí by giving this information. Prior to this operation I would have expressed concern to D Inspector Lennon about Ms. Adrienne McGlinchey, he never accepted my concerns and said that himself and D Garda N McMahon could handle her. He told me he was keeping notes of their conversations with Ms. McGlinchey for comparison purposes so as to ensure she was telling the truth to them. I never saw any notes.** (13.07.2000)

Sergeant Michael Murray took a sample from each of the fifteen bags and conveyed them to Dr. Thomas Hannigan at the Forensic Science Laboratory. Captain Lenny White was called in and he weighed and destroyed the remainder of the fertilizer and icing sugar. Dr. Hannigan found the substance to be commercially available fertilizer and icing sugar. Yvonne Devine, in an interview of the 13th of September, 1999, claimed not to know the full extent of what was going on at Bridgend, but went along out of some ‘sense of fun’.

According to Superintendent Kevin Lennon, in his statement of the 14th of July, Detective Garda McMahon had notified him of an apparent transport of materials to Derry. He claims that as a result of this he informed Chief Superintendent FitzPatrick and set up the security operation. Detective Garda McMahon in his statement dated the 14th of July said that he was informed by Adrienne McGlinchey that this material was to be dropped at Moyne's Coal Yard, Bridgend, for onward transmission to Derry. He claims not to have witnessed the drop. He expressly denies that the matter was set up by him to impress ‘more experienced’ Gardaí, and those superior to him in rank.

There is nothing to suggest that the relevant bags were retained for fingerprint and forensic examination. Surveillance was not placed on the deposit to see who might come to deal with it. Given that the alleged plan, as apparently disclosed by the informant, was for a deposit to be made on one side of the border, and for someone to collect it and bring it to the other side of the border, the absence of surveillance is difficult to understand. Although Chief Superintendent Denis FitzPatrick did not see the number of the taxi, it would hardly be beyond the scope of the Gardaí present at Bridgend, for one of them to have noted its registration. If they had, or perhaps if they were interested, they could have followed this up and they would ultimately have spoken to the driver of the taxi John Francis Quinn. This is part of his account of his dealings with Ms. McGlinchey and Ms. Devine, taken by the Carty investigation team on the 17th of June, 2000:

> **I remember [Adrienne McGlinchey and Yvonne Devine] as, in my opinion, two loony bins. They were always giving the impression that they had something to hide and also that they were hiding from someone. I myself have strong Republican views and would come from a family background of being Sinn Féin/Fianna Fáil. I would not give them any credit at all to what they were claiming. They were generally making it known that they were couriers and decoys for the PIRA to distract the Gardaí. No one in their right mind would use them or have them as they were always mouthing and you could not trust them to keep quiet...I recall taking them to Bridgend, on a few occasions. On some of these occasions they would have nothing with them. However, there were a couple of occasions where they had carrier bags...on the occasion I lifted them with this bag Yvonne first came to the taxi rank and we drove into the Crescent where Adrienne was waiting with the bag. I would say it was about 9.00 p.m. to 10.00 p.m. on a Winter's night. I would have drove direct to Bridgend on the directions of Adrienne. Yvonne generally remained quiet...on this occasion I would have let them off at Bertie O'Neil's shop at Bridgend...Adrienne did not say what was in the bag, but would have said I hope the pick-up is on time because I think we were being followed by the Gardaí. On all the occasions I gave Adrienne a lift I was never stopped by the Gardaí...I don't know what they did afterwards...I never carried bags of fertilizer for them, and I don't remember carrying any metal objects for them either...on all the occasions I left McGlinchey and Devine to Bridgend I would never have to wait to take her back. What she would say to me was, "you never seen me, you don't know me" and things like this. I think this was to make herself feel important.**

Another taximan, John Bradley, recalls driving the two women around carrying sports bags. Reading this, one wonders why it was necessary for the Carty investigation team to do this work, by which we mean to query why it was not done before. More importantly than that, perhaps, one wonders why apparent terrorists would announce their presence by using taxis and asking complete strangers for discretion.

On the 11th of March, 1994 Yvonne Devine held a birthday party at the flat which she shared with Adrienne McGlinchey. The latter alleges that there was a padlock fitted to her bedroom door so that guests would not enter and discover the amount of fertilizer that she had there. Later examination discloses that there was a fitting for a padlock which, on interview, her landlord indicated that he had not put on the door. While she blames Detective Garda Noel McMahon for this security, we should remind you, Sir, that he has asserted that he had nothing to do with the fertilizer grinding operations which she alleges were located in that flat using two coffee grinders in rotation, one for ten minutes, and then the other, so that the motors would not burn out.

Sir, you will recall that on the 12th of October, 1993 a warrant was refused to search Adrienne McGlinchey's flat in the context of fertilizer-like material being fired out the window in public. On the 14th of March, 1994 a search warrant was issued in respect of the flat of Ms. McGlinchey and Ms. Devine. It would appear that after being held for a period of time under section 30 following their arrest, neither was charged, no investigation file was prepared and no effort was made to link either of them by forensic investigation to the material apparently found in their flat. A Ms. Vivienne Eccles lived in the Crescent block of apartments from March, 1993 to September, 1994. This is what she said in a statement dated the 30th of August, 1999:

> **There were two girls living in the flat overhead...there used to be a lot of noise coming from the flat above, a lot of banging and hammering, and also a whizzing sound. I complained to these two girls a few times but got no satisfaction. This noise often kept my son awake at night. There used to be fellows calling to this flat late at night. I recall seeing Noel McMahon call to this flat a couple of times. I don't think he was alone or perhaps there would be someone in the car with him. The Guards called to this flat on several times, uniformed Gardaí as well as Detectives. I remember one day I returned to the flat having left Jonathan to school and I found my kitchen floor very wet and water was coming through the ceiling. I went to a nearby phone box and called the landlord, John Mackey and told him of the water leak. At this stage Garda Tom Rattigan had called to my flat. I was at this time doing a line with him. About an hour later John Mackey and his wife arrived and they went upstairs to the flat above and Tom Rattigan and I went up. In looking for the leak Mr. Mackey went into the bathroom and water was coming out from under the bath. John Mackey pulled off the bath panel and there was something there that caused him alarm. Tom Rattigan had a look.**

We continue with the account of John Mackey given on the 11th of June, 2000:

> **After I entered the flat...I first checked the kitchen. I did not see anything unusual there. I then went to the bathroom and again there was nothing unusual to be seen. It was only when I took off the side panel of the bath, that I saw the metal tubular objects. I**

> **think there was two of them. Also on the ground strewn around loosely under the bath was what I thought was fertilizer. There were no bags or packages to be seen. I immediately became suspicious and concerned at what I had seen. I immediately contacted Tom Rattigan whom I knew was going with Vivienne Eccles in the flat below and who had reported the matter of a leak to me...I showed him to the bathroom and he looked at what I had uncovered. Neither of us touched anything that was there. I think Garda Rattigan and I glanced into the other rooms of the flat and the only thing I recall seeing was a bag of farm fertilizer in the bedroom to the left as you go towards the sitting room. This bag seemed to be a 1 cwt bag unopened lying on the ground and slightly under the bed.**

In his statement of the 4th of August, 1999 John Mackey said:

> **I think I let myself in through a broken pane of glass in the door. They had damaged the lock to the flat some time before. They said that it was faulty. I was checking the flat for a leak and I took off the bath panel and I saw metal tubular objects with fins attached and I became suspicious. I went downstairs and met Garda Rattigan who was visiting the girl downstairs, Vivienne Eccles. I brought Garda Rattigan upstairs and showed him the items under the bath. He also looked into a bedroom and I saw what looked like a bag of fertilizer. Garda Rattigan then said something like we've a bomb factory here. I said I'll go and leave you to it and I left. I knew then that something was up and I later became aware from a neighbour in The Crescent that the Guards were searching the flat. The following day I was called to Buncrana Garda Station and I spoke to Sergeant Walsh. I had my mind made up to get rid of these girls. A Detective asked me to leave them and they would keep an eye on them. I met this Detective a day or two later in Buncrana. I can't recall his name, but he lives around Buncrana. He approached me and was on about catching bigger fish. I had my mind made up and I got these girls out of the flat a few weeks later. I have never had any dealings with these girls since.**

Garda Thomas Rattigan indicates in one of his statements that on the report being made to him he ordered that everything should be left as it was and that he reported the matter. Mr. Des Walsh, an ex-Detective Sergeant from whom we have already quoted, recalls being involved in the search of Adrienne McGlinchey's flat when, as he put it, 200 cwt or 300 cwt of fertilizer was found. He believes that he got the warrant for the search from Superintendent John P O'Connor and says that any time he went to Superintendent John P O'Connor for a warrant for any place he always got it. Superintendent John P O'Connor has no recollection of issuing a warrant on this particular day because, as he says, he was attending a seminar at Letterkenny Garda Station. Sergeant Michael Murray, a scenes of crime examiner stationed at Buncrana, recalls being aware of Adrienne McGlinchey and Yvonne Devine whom he describes as "known active members of the Provisional IRA". Strangely, by the time he

arrived in the flat, he did not find any steel items with fins attached. This is his description:

> **Detective Sergeant Walsh identified a number of plastic bags, two suitcases, a holdall bag two 50 kg bags of fertilizer, which were located in the bathroom area of this flat. These items had been uncovered during the course of a search of the flat under warrant. The suitcases and holdall bag contained a number of plastic bags which contained white powder and granulated material. The plastic bags also contained white powder and granulated material. The two fertilizer bags contained granulated material. I conducted a thorough and detailed examination of the flat together with Detective Sergeant Walsh and I did not find any firearms or any other terrorist related equipment. The plastic bags, two suitcases, holdall bag and two 50 kg bags of fertilizer were taken possession of and taken to Buncrana Garda Station. On the morning of the 15th March, 1994...I took samples from each bag of white powder and granulated material, which I placed in nylon bags, sealed and labelled them. These samples were identified MM1 to MM341, inclusive. I retained these samples...until...I conveyed them to the Forensic Science Laboratory...where I handed over all the exhibits...to Dr. Sheila Willis, Forensic Scientist. Dr. Sheila Willis asked me to try and verify details related to one of the bags of fertilizer so as to assist her with analysis. I did not make reference to their being no proceedings in this matter as it is not within my remit to make such comments and the possession of materials of this nature is a matter for the Director of Public Prosecutions. I did not influence the forensic scientist nor was I ever asked to do so. My examination of the scene was carried out methodically...** (18.11.1999)

Commandant N Dowling visited the scene. He gave his view that fertilizer and icing sugar are principle constituents of most of the then recent PIRA homemade explosives. He described the contents. There were:

1. 37 x 5 lb. plastic bags containing a white substance which was fertilizer and icing sugar.

2. Two x 1 cwt of Maxisward fertilizer.

3. Five x 5 lbs plastic bags of granulated fertilizer.

4. Five x 1 lb plastic bags of icing sugar.

5. Welding rods and angle iron.

Dr. Sheila Willis recalls receiving samples of this material on the 16th of March, 1994. She states:

> **These were referred to as having been discovered in the flat of Adrienne McGlinchey and Yvonne Devine. At the time of receipt I was told there would be further communication if analysis was needed. As I have not heard since I am returning the materials to Sergeant Murray via the Liaison Office without examination.** (Statement 52A, Carty Report, Section 1)

The scene at the Crescent, Buncrana, it would seem, was not technically examined for fingerprints and forensic evidence. It would appear that no effort was made to establish the origin of the materials and that no investigation was conducted. No file was prepared and submitted to the Director of Public Prosecutions. At 9.10 p.m. on the 14th of March, 1994 Adrienne McGlinchey was arrested under section 30 of the Offences Against the State Act, 1939 by Detective Garda Noel McMahon and taken to Burnfoot Garda Station. She was detained for just under twenty four hours until 7.45 p.m. on the next day when she was released without charge. At 11.04 p.m. on the 14th of March, Yvonne Devine was arrested at Burnfoot by Garda Christopher Galligan and taken to Buncrana. She was detained until 7.00 p.m. the next day when she was released without charge. The custody records reveal that Adrienne McGlinchey made a complaint against Kevin Lennon. Inspector Patrick J McMorrow was, in March, 1994, attached to Buncrana. He recalls these arrests. His recollection is as follows:

> **I was acting District Officer on the 14th, 15th and 16th March, 1994 in the absence of Superintendent J O'Connor. I was aware that D/Inspector K Lennon of Letterkenny Garda Station was in overall charge of the operation. I was briefed from time to time by D/Branch members at Buncrana on the progress of the investigation. On the morning of the 15th March, 1994 I attended Carndonagh District Court as Prosecuting Officer. At around 3.00 p.m. on that date I can recall speaking to Commandant Paul Dowling of Finner Camp Military Barracks. Commandant Dowling informed me that from his preliminary examination of substance found he was of the view that it was ammonium nitrate mixed with icing sugar in a mixture known as ANIS. I was aware that Sergeant M Murray of Buncrana Garda Station was the scenes of crime examiner at the scene and that he had obtained samples of the substances for transmission to the Garda Forensic Laboratory...on the evening of the 15th March, 1994 I consulted briefly with D/Inspector K Lennon on the progress of the investigation. The member stated that there was insufficient evidence at that stage to link any of the accused with the substances found. The member stated that he was considering releasing both accused from the provisions of Section 30 OASA, 1939 and submitting investigation file in course for consideration by the DPP. Both accused were then released from custody on evening of the 15.3.1994. I did not have any further dealings with the matter.** (Statement 65, Carty Report, Section 1)

On the 14th of March, Garda Christopher Galligan was member in charge, according to the custody records at Burnfoot. He processed both prisoners. He recalls at 5.40 p.m. Adrienne McGlinchey saying to him that she wished to make a complaint, though she was not, as he puts it, "overly perturbed or excited, you would think she was serious but was laughing at the same time, it seemed to be a charade". The complaint was "about D Inspector Kevin Lennon's mannerism". She refused to elaborate. The officer who arrested Yvonne Devine was Garda Christopher Galligan. According to him, the officer who arrested Adrienne McGlinchey, was D Garda Noel McMahon. Garda Galligan recalls Detective Garda McMahon being accompanied that night by Detective Inspector Kevin Lennon. Adrienne McGlinchey's account of this matter is given in her lengthy statement of the 9th of August, 1999. She claims to have been building up quantities of fertilizer. She claims that there was a party shortly before the search, this is the one which necessitated, according to her, a padlock on the door to her bedroom. At page 35 she says:

> **On the following Monday I went to work in Jay Bee's. That afternoon I got a phone call from Noel McMahon. He said. "there is a problem". He went on to tell me that there was a leak in the flat and that the owner John Mackey had been to the flat and had discovered some of the fertilizer. Noel told me that he had reported this to the Guards and that the flat was going to be searched. He told me not to worry and for me to finish work and he would collect me. I finished work early and Noel McMahon collected me in Carndonagh and took me to his house at Porthaw, Buncrana.**

She claims that half an hour later Kevin Lennon arrived and that together they discussed her arrest. She claims to have been transported to the flat and then arrested. She claims that her interrogation was a charade. She claims to have been brought reading material and sweets. She claims never to have been questioned about the fertilizer. She claims to have been told during the day by Kevin Lennon that she should make a complaint, and this she did. In his statement of the 14th of July, 1999 Superintendent Lennon claimed not to have been at the scene of the find and did not recall any involvement in the arrest of Adrienne McGlinchey or Yvonne Devine or their detention in Burnfoot. On the 23rd of May, 2000 Superintendent Lennon, having consulted the custody record, accepted that he must have been in Burnfoot Garda Station. In answer to Adrienne McGlinchey's allegation that he was in her home when she got arrested, in his interview of the 14th of June, 2000, he said:

> **I was not in her house when she was arrested. I was on call out from Detective Sergeant Walsh in relation to this incident and I met Detective Garda McMahon on his arrival at Burnfoot Station with the prisoner. As far as I can recollect Detective Sergeant Des Walsh was with Detective Garda McMahon when I met them.**

Detective Garda Noel McMahon, in his statement of the 14th of July, 1999, stated that he did not recall this particular search and did not think he was involved either in it or the subsequent arrest of Adrienne McGlinchey. As far as he could recall, Kevin Lennon never interviewed Adrienne McGlinchey while she

was in custody. During detention at Ennis Garda Station on the 11th of June, 2000, Detective Garda McMahon acknowledged that he did arrest and question Ms. McGlinchey. In an interview the previous day he claimed that Adrienne McGlinchey had given him the names of PIRA members who had left fertilizer in her flat.

This matter was regarded as being of importance in District Headquarters in Letterkenny. A telex was sent from Letterkenny to the Superintendent in charge of the Communications Centre in Dublin Castle, to the Assistant Commissioner of Crime and Security and to the Garda Press Office. A copy marked to be sent to: the Secretary, Mr. O'hUiginn, Mr. Hughes, Mr. Brosnan, Mr. Cotter, and Runaí Aire. Chief Superintendent Conroy copied to the same people a note to the effect that Gardaí had recovered the items which we have earlier listed from a house in Buncrana and stated that Adrienne McGlinchey had been arrested. The telex, after having given details of the find, and the arrests, ends: "enquiries are continuing and developments will be reported". If the Carty investigation team are correct in their analysis, no investigation was carried out and, as might be expected, there were no developments to report.

Sir, as we recall from the statement of John Mackey, Adrienne McGlinchey and Yvonne Devine left the Crescent in Buncrana shortly after this, in mid-1994, and moved into a rented house in the Dumfries area near Buncrana. The next two finds, if that is what they were, occurred in June. Garda P J Thornton, states:

> **On 4th June, 1994 I was stationed in Letterkenny and I worked from 6.00 a.m. - 2.00 p.m. At approx. 7.00 a.m. I received information and accompanied by Garda Leonard went to a location near to Oatfield factory fence. There we found two holdall bags containing bags of a powdery substance. We placed these two holdall bags in the patrol car and brought them to Letterkenny Garda Station. Later on the same morning these two holdall bags were handed over to members of Detective Branch at Letterkenny Garda Station...I wish to state that I don't know the name of the man that reported this matter to me at the time and I have not seen him since. At the time I did not know this man's identity.** (19.04.2000 and 26.06.2000)

Garda Martin Leonard simply recalls accompanying Garda Thornton to an area adjacent to the Oatfield Sweet Factory in Letterkenny and recovering two holdall bags containing a powdery substance, taking them to Letterkenny Garda Station and informing members of the Detective Branch. He also says: "I assisted Garda Thornton when confidential information was received at the Station. I have no further statement to offer" (18.04.2000). A contemporaneous document exists which is in the form of a telex dated the 5th of June, 1994. It was sent from Divisional Communications in Letterkenny to the Superintendent in charge of the Communications Centre in Dublin, the Assistant Commissioner of Crime and Security and the Garda Press Office. It is headed "Suspected bomb making material found at Letterkenny, County Donegal on Saturday, 4th June, 1994". It says:

> **At 11.25 p.m. on Saturday, 4th June, 1994 a local person (known to Gardaí) reported that while he was out walking/exercising his dog in the vicinity of Oatfield Sweet Factory, Rathmelton Road, Letterkenny, the dog unearthed 'packages' concealed behind a wall/hedge in this area. Gardaí went immediately to the scene and recovered at least 14 stone weight of a white powdery type substance suspected of being ground/crushed fertilizer. The substance was contained in twenty seven polythene type bags, sixteen of which were packed into two large black coloured holdalls and the remainder was packed into three cardboard boxes. All the items are quiet (sic) dry suggesting that not a lot of time has elapsed since they were concealed there, possibly late afternoon as there were showery spells up to that time. This material is being held at Letterkenny Garda Station awaiting forensic examination to ascertain what precisely it is. Enquiries are continuing with a view to establishing its origin and possible destination. Developments will be reported.**

According to the Carty investigation team, they were unable to identify the Garda members to whom these explosive substances were handed. The location is adjacent to lands owned by the McGlinchey family. On the 13th of June, 1994 there was another apparent find of explosive substances at Covehill, County Donegal. The shed where the material was discovered was owned by the McGlinchey family. Chief Superintendent Carty reports:

> **No Garda investigation was carried out into these finds of explosive materials. No samples were forwarded to the Forensic Science Laboratory for analysis. The bags were not retained for fingerprint or forensic examination. This inquiry has established that the contents of these finds have been destroyed.**

Sir, we now come to the last date mentioned in paragraph (e) of the Terms of Reference. Mr. Des Walsh, former Sergeant whom we have mentioned before, recalls speaking about finds made on this date with Mrs. Sheenagh McMahon. He had a particular concern for her welfare, following the breakup of her marriage. He stated that he had mentioned a find of fertilizer in a vacant house near Ballyshannon as being part of Ms. McGlinchey's activities. This, however, was only surmise on his part as he had no evidence to back it up. This is apparently also the conversation as recalled by Sheenangh McMahon at page 17 of her statement of the 26th of April, 1999. Adrienne McGlinchey mentions these two apparent finds, which were at Ardeelan, Rossnowlagh, and at Rathfragan, Rossnowlagh, in her statement of the 29th of June, 1999. This is what Adrienne McGlinchey says at page 6/7 of her statement:

> **I made a couple of runs to Rossnowlagh and left ground down fertilizer, icing sugar, diesel, a beer keg and some bullets in the house. I probably purchased the bullets somewhere. On the last occasion I went to Rossnowlagh Noel McMahon called to the house in Clonmany. He was driving a beige Garda van. He reversed the van into the shed at the house and we loaded whatever ground**

> **down fertilizer was left into the van. I cannot recall whether Kevin Lennon was in the van at Clonmany or whether we picked him up in Letterkenny. Anyway, we drove to our shed at Letterkenny and loaded containers of diesel into the van from the shed. We then drove to the County Council offices in Letterkenny and loaded two beer kegs into the van. The beer kegs had been hidden in trees at the County Council offices. I may have carried the diesel over to the County Council offices and they were not collected at our shed as I previously stated. Kevin Lennon was told by Noel and I that the reason for moving this stuff was that the Provos was going doing a job in Bellecks and that I was asked to move this stuff for the Provos. This was only a story that was being spun to Kevin Lennon. Noel McMahon was driving the van. Kevin Lennon was in the front passenger seat and I was in the back. We drove to Rossnowlagh and Noel reversed the van down to a small shed and we unloaded the stuff into it. We then drove to a nearby derelict house where I had put the other stuff. We went up the stairs and looked at the stuff which was in an upstairs room. On today's date I drove with Inspector Coll and D/Sergeant Kyne to Rossnowlagh and I recognised the shed where the fertilizer, etc. were placed. I also now remember the house in Rossnowlagh where the stuff was put. Noel McMahon, Kevin Lennon and I then went back towards Letterkenny and on the way back we were stopped at a Garda checkpoint near Ballybofey. I cannot recall where I purchased the bullets that we put into the house at Rossnowlagh.**

The search warrant for the two houses was issued by Superintendent Michael Duffy, since retired. In his statement of the 25th of June, 1999 he stated:

> **On the 18th of July, 1994 two further seizures of homemade explosives were made at Ardeelan, Rossnowlagh, County Donegal. The information as to the location of the three seizures was brought to my notice by Superintendent Kevin Lennon. He was then an Inspector attached to Letterkenny Station. As far as I can remember I issued search orders in relation to at least two of the searches, the one at Donegal town and one of the searches at Rossnowlagh and I visited all locations after the discoveries were made.**

Mr. Martin Collins, a retired Sergeant formerly based at Ballyshannon, recalls receiving instructions from Superintendent Duffy that searches were to be carried out in Rossnowlagh on the 18th of July, 1994. His recollection is that three or four other search parties were organised. He was detailed to a vacant house at Ardeelan, just off the main road. There was nothing there except bales of hay. At another house, very close by, he decided to go upstairs, having been told that a quantity of explosive material was found, and, as he puts it in his statement of the 1st of July, 1999:

> **I went upstairs and in a front room on the first floor, I saw a number of clear plastic bags each containing a couple of kilos of white mixture. These bags were strewn on the floor in an untidy manner.**

> **There was also some tape, green and red in colour, pliers and torch lying on the floor...at the time I thought it unusual that subversives should choose such locations to hide explosive material by reason of the fact that both locations were wide open and exposed and no effort made to hide such a big amount of stuff.**

Mr. Collins also records finding some beer kegs about half a mile away from this find two days later. Mr. Aidan Murray joined the Garda Síochána in April, 1959 and retired in 1995. He was a member of the Special Branch when these finds were made. He recalls two finds of explosives, 400 lbs in all, and the recovery of two hundred rounds of .22 ammunition, one beer keg and four containers of diesel oil. The larger of the two finds was in the vacant house at Ardeelan, and the smaller one was in a vacant shed at Rathfragan. These were a half a mile apart. As scenes of crime officer he took samples and forwarded same to the Forensic Science Laboratory. At a later date he recalls receiving the results of the examination and filing them away. He recalls that no one was ever charged or questioned in relation to these finds and that an army team took away the explosives, beer keg and diesel oil. He does not recall the bags which contained the substance being fingerprinted. He states there were no house to house enquiries, but he himself made a few enquiries in the area. He states that no group claimed responsibility, but that it came back through the station party that the local branch of the IRA had claimed that they had nothing to do with it. Annette Forde, a forensic scientist, examined the samples. The liquid consisted of diesel oil and the white powder consisted of icing sugar. She states:

> **The main ingredient identified was ammonium nitrate. This is commonly present in some fertilizers, and the samples could not be classed as explosive mixtures. The combination of crushed ammonium nitrate fertilizer with approximately 10% icing sugar or crushed ammonium nitrate with approximately 6% diesel oil have been encountered in...homemade bombs.** (Statement 69, Carty Report, Section 1)

Detective Garda William Brennan received ninety three rounds of .22 ammunition from Sergeant Murray. They were high velocity hollow-point Winchester super speed bullets in excellent condition in the original wrapping and box. They can be used in a wide variety of rifles, pistols and revolvers. Detective Garda Noel Jones examined the records of Mr. Patrick Doherty, a firearms dealer in Carndonagh. These show that he sold two boxes of ammunition on foot of Mr. Paddy Logue's firearms certificate to Bernard Logue. Sir, as you recall, Bernard Logue had indicated that he had purchased ammunition on behalf of Adrienne McGlinchey. You will also recall that Sergeant Daniel Kelly encountered Adrienne McGlinchey in the convent at Buncrana and that on her leaving he found a bag containing some fifty .22 bullets. The owners of the houses in which these finds were made were persons held in the highest esteem both in the local community and among members of An Garda Síochána. Obviously, also, anyone can put anything in a deserted building. This is what was found in the vacant house at Ardeelan:

1. Seventy freezer bags containing fertilizer and icing sugar each weighing 11½ lbs;.

2. One 4 stone bag of sugar;

3. 3 gallons of diesel oil;

4. Ninety three rounds of .22 ammunition.

In the vacant shed at Rathfragan the following was found:

1. 3.5 cwt of ground fertilizer;

2. 84 lbs of icing sugar;

3. 12 gallons of diesel oil;

4. One beer keg.

Sir, you will note that freezer bags are also identified here. This may be relevant to the search of Ms. McGlinchey's flat on the 14th of March, 1994. Freezer bags were also present in the Ardchicken find on the 19th of November, 1993. As to Adrienne McGlinchey's allegation that she was stopped, together with Detective Garda McMahon and Superintendent Lennon, at a checkpoint, all of the Gardaí attached to the relevant centres were interviewed by the Carty investigation team and none of them can recall stopping these people at a checkpoint: see the statements of Sergeant Gabriel Bell, Detective Sergeant Keane and Detective Sergeant James Martin. Assistant Commissioner Carty makes the following comment:

> **The investigation has failed to identify any noticeable Garda investigation, which was carried out into the Rossnowlagh finds. The scene was not examined and items found were not preserved for fingerprint and forensic examination. Surveillance was not undertaken in order to detect those responsible. No effort was made to establish the origin of the materials, no suspects were identified and no arrests were made.**

Superintendent Kevin Lennon made a number of statements on this matter and we feel it is important to quote them. In his statement of the 14th of July, 1999 he said:

> **I have been referred to a find of explosive materials in Rossnowlagh on or about the 18th July, 1994. This information came to me via D Garda Noel McMahon. I went to the scene in Rossnowlagh with D Garda McMahon and his informer, Adrienne McGlinchey. From my recollection I drove my own car and they came with me. She had information that there was explosive materials in a disused shed in the Rossnowlagh area and that it was to be placed in a disused touring caravan up the road nearby and was to be taken to**

> **a British Army checkpoint at Beeleek, County Fermanagh and that the caravan was to be unhitched into the checkpoint. At the time, this appeared to me to be a similar operation to the devastation that was committed at Coshquinn in 1990. I was concerned about it and in accordance with the policy in existence in the Division I decided this should be taken out of commission. We drove around the Rossnowlagh area looking for the shed and Adrienne McGlinchey pointed out the shed, I think it had a red door which was broken, and it was near a junction on a side road. The three of us entered the shed and I saw transparent plastic bags containing what appeared to be fertilizer. It was night time. The three of us then left the scene and returned to Letterkenny. As far as I can recollect, I notified Superintendent Michael Duffy, Ballyshannon. I think I rang Superintendent Duffy either that night or early the following morning. I wish to add on reflection that when we drove to the shed in Rossnowlagh, Adrienne McGlinchey then took us to a ramshackle house further up the road and I further wish to add that she said there was a decoy at the top of the stairs that you would fall through and would be an indicator to the Provos that people had been in the house. I also remember seeing transparent plastic bags in an upstairs room in this house. I don't recall seeing any drum of diesel or other items in the room. The plastic bags contained what appeared to be fertilizer...I wish to add that I saw this as a legitimate operation based upon the best interest of the force and the public good. I acted on the information as I received it and in accordance with the obligations imposed upon me to do so. I also wish to add that I never took part in nor would I condone the conveyance of any materials, explosives or component parts of such explosives or munitions to any site. I always operated within the strict code of the criminal law and I would never condone anyone under my command to so breach the criminal law or participate in illegal activities with my expressed or implied knowledge.**

In his later statement of the 23rd of May, 2000 Superintendent Lennon indicated that he had met with Adrienne McGlinchey and Detective Garda McMahon at a point down the road from his house. An allegation by Adrienne McGlinchey that he and Detective Garda McMahon had unloaded material from a van into a small shed and then went and looked at other material in a different house was, he said, untrue. He indicated that they were not stopped by a Garda checkpoint on that occasion, but on another occasion in July or August of 1994. At page 34 he is reported as having said:

> **I asked her why this had been put there in Rossnowlagh and she said the Provos in Letterkenny were saying that the organisation in Ballyshannon were useless in mounting operations. I did no further search because I believed that there could be risk involved if some of the IRA members came upon us. I left and returned to Letterkenny with D Garda McMahon and Ms. McGlinchey. I took this at the time to be bona fide information and saw this as a legitimate operation.**

As a matter of fact, a mobile camper van was in the vicinity of these finds when the Gardaí made their searches. When interviewed on the 14th of June, 2000, Superintendent Lennon indicated that there were no written reports in relation to explosives finds at Ardchicken, Donegal town, Rossnowlagh and Bridgend. He indicated that it was up to Superintendent Duffy and to his Detective Superintendent in Letterkenny to do the reports. He also indicated that it was not up to him to arrange for surveillance of these apparent finds. What the appropriate procedures are, and where the responsibility lies, is a matter for you, Sir.

Detective Garda Noel McMahon in his statement of the 14th of July, 1999, stated his position as follows:

> **I am now being asked about two finds in Rossnowlagh on the 18/7/1994. These finds resulted from information supplied to me by Adrienne McGlinchey. My recollection on this is that having received information from McGlinchey I contacted Kevin Lennon and all of us, Kevin Lennon, Adrienne and myself, travelled in Kevin's car to Rossnowlagh some time after midnight in order that she point out the locations to me. Kevin dropped us off at a point where Adrienne pointed out an old vacant two storey house...she led the way in and I don't remember if the door was locked. It was an old derelict house. She led the way upstairs and pointed to a section of floorboards on the landing which were a trap and we had to stretch over them. She went straight to the door of a bedroom and opened it and pointed out that stuff was in there. I had a quick look in with my maglight and there were bags of stuff there. We then left the house and she then brought me with Kevin in the car down the road. She brought me to a shed on the opposite side of the road about a quarter of a mile from the house. I don't remember entering the shed, but I know there were bags of stuff in the shed. We then returned to Kevin and I confirmed to him that there was some stuff in both locations and I was finished with it then. We returned back to Letterkenny and back home to Buncrana. On the way back I recall we stopped for food at a chip shop in Donegal town. I think this was about 2.00 a.m.**

When interviewed by Detective Inspector Tadhg Foley on the 25th of March, 2000, Detective Garda Noel McMahon had put to him Adrienne McGlinchey's allegation that he and another Garda had brought fertilizer contained in freezer bags, and packed into holdall bags, to Ardchicken in his own car and he denied it.

Sir, on the 18th of July, 1994 at 17.00 hours a telex was sent from the Divisional Communications Centre in Letterkenny for the information of the Assistant Commissioner in Crime and Security and the Garda Press Office. Its subject is: find of homemade explosives at Ardeelan, Rossnowlagh, Ballyshannon, County Donegal on the 18th July, 1994. It reads:

> **At about 3.30 p.m. on this date Gardaí carrying out searches of vacant houses in above townland located a quantity of homemade explosives in a derelict house: the house, a two storey building contained seventy bags of homemade explosives each weighing 11½ lbs making a total of 805 lbs, a bag of sugar weighing 4 stone, 3 gallons of diesel oil and one hundred rounds of .22 ammunition were also recovered. Further searches are also contemplated. Developments will be reported.**

On the 19th of July, 1994 Mrs. Máire Geoghan-Quinn TD was sent a letter of congratulations by the Right Honourable Sir John Wheeler DL MP, Minister of State at the Northern Ireland Office in Whitehall. This reads:

> **Dear Máire,**
>
> **May I offer my congratulations to an Garda Síochána on their excellent find of explosives, bomb making equipment and ammunition in County Donegal yesterday. Invaluable counter-terrorist work such as this will maintain relentless pressure on the terrorist gangs. Members of the Gardaí and Irish Army can take satisfaction in the knowledge that their professionalism will surely prevent the death and injury of innocent people, and I sincerely hope that such efforts will continue to bring rewards. I understand that the Gardaí are hopeful of making arrests following the operation. Please convey my thanks to Pat Culligan and his colleagues on this heartening success.**
>
> **Yours sincerely,**
>
> **John**

This was transmitted through the British Embassy in Dublin to the Private Secretary to the Minister for Justice, Mr. John O'Dwyer. A copy of this was sent, on the direction of the Minister for Justice, to the Commissioner of An Garda Síochána. No arrests were ever made.

On the 29th of August, 1994 Detective Inspector Kevin Lennon accompanied by Detective Superintendent John Gallagher visited the scene of a find of a barrack buster bomb at Beeleek, County Fermanagh. Kevin Lennon told Superintendent Gallagher that he had received confidential information concerning a barrack buster bomb in the Ballintra area. Nothing came of this.

The two finds at Rossnowlagh on the 18th of July, 1994 constitute the end of what Adrienne McGlinchey claims were her operations in support of deception with Kevin Lennon and Noel McMahon. That is her claim and we have quoted their reply. In early 1995 Adrienne McGlinchey and Yvonne Devine moved to a rented two storey house belonging to the Late Mary Doherty at Ballyliffen, County Donegal. On the 16th of January, 1995 Detective Sergeant Shreenan called to Superintendent John P O'Connor's office and asked that the official firearm should be taken from Detective Garda McMahon, on the basis that he

felt it was a threat to his wife. Superintendent John P O'Connor says that he discussed this matter with Detective Sergeant Leheny and because it amounted to "hearsay rumour and innuendo" he left the weapon with Detective Garda McMahon. The matter was to be reviewed. On the 26th of January, 1995 Superintendent John P O'Connor says that he met with Detective Sergeant Shreenan and told him that he was keeping Detective Garda McMahon's position as an armed detective under review. On the 16th of June, 1995 some form of barring or protection order was granted to Sheenagh McMahon against her husband, Detective Garda Noel McMahon. We have already drawn your attention, Sir, to some aspects of that matter. In the aftermath of this Superintendent John P O'Connor claims that he met Detective Garda McMahon in his office to tell him that he was being monitored and to offer him the services of the Garda Welfare Officer. A similar meeting in relation to the firearms issue took place on the 17th of July, 1995. Detective Sergeant Leheny says in relation to this matter:

> **...on the 13th of January, 1995 I was transferred permanently back to Buncrana where I have remained ever since. On taking up duty in Detective Branch at Buncrana in January, 1995 the then District Officer, Superintendent J P O'Connor directed that I allocate myself to unit B in order to have D Garda N McMahon under my close supervision. I have known D Garda McMahon since his allocation to this district in 1978. On my return to Buncrana in January, 1995 I was fully aware of the serious matrimonial situation and other related matters which then existed in the McMahon family home.**

In February of 1996, John P O'Connor ceased to be District Officer at Buncrana. On the 7th of February, 1996 Kevin Lennon was promoted to the rank of Superintendent and allocated to Buncrana district. We would wish to remind you, Sir, that it was in June/July of 1996, in O'Flaherty's Bar in Main Street, Buncrana when Detective Garda Noel McMahon is supposed to have told Sergeant John O'Keeffe that he had driven a bomb into Strabane in order to assist Adrienne McGlinchey and Yvonne Devine. We should also remind you, Sir, that this is denied by Detective Garda McMahon and that Detective Garda John O'Keeffe in his statement of the 18th of June, 1999 specifically indicated that on previous occasions he had found Detective Garda McMahon to be untruthful in making statements under the influence of drink. On the 14th of October, 1996 the death took place in Raphoe, County Donegal of Mr. Richard Barron. At page 25 of her main statement, Sheenagh McMahon indicates that after her husband was transferred to Letterkenny he had told her that Superintendent Lennon had wanted him to take part in the investigation into the death of Richard Barron, but that he declined. His stated reason to her was: "I am not going on this case as there will be heads rolling over it". She notes this as a statement made at a time when he was drinking heavily. On the 24th of August, 1999 an extremely elaborate story was told by Adrienne McGlinchey to Inspector Hugh Coll and Detective Sergeant George Kyne. To summarise, she claimed that Noel McMahon rang her in Dublin because he needed to get his hands on money quickly because there was a Garda in trouble. He asked for £10,000 and she managed to raise £3,000. It was arranged that she drive to a hotel in Lifford and meet a person. There was a man in a Land Rover whom

she describes as "a farmer type person about fifty years of age". She gave him the money and in return, two weeks later she was asked to get another item. The same individual met her at Letterkenny Hospital and handed over an item "a metal weight". On instructions from Noel McMahon she put it in the bath and washed it. She claimed that this could be blood. She claimed that Noel McMahon told her that it had something to do with the death of the Late Mr. Barron. She then dumped it in a forest. Gardaí later searched the forest with negative results. She claims that Noel McMahon had told her the following:

> **He told her that two Guards were in a car driving outside Raphoe. They came upon this man who was very drunk and out on the road. They shouted at him to get off the road, but he told them...off. One of the Guards got out and there was a scuffle. The other Guard then got out and clobbered this person with this metal object that she had been given by the farmer type person. Noel talked to her about her DNA being found on it if it was ever found afterwards. She thinks that the story that Noel McMahon told her was rubbish.**

It is implicit in what Detective Garda McMahon has told the Carty investigators that none of this happened. There is nothing whatever to suggest that this story may be in any way true.

On the 6th of November, 1996 the legally held shotgun and the official revolver of Detective Garda Noel McMahon were seized from him by Superintendent Kevin Lennon. The official weapon was returned at some stage, a date cannot be established, but the shotgun was retained and was, at the date of the Carty investigation, still stored in Letterkenny Garda Station.

On the 5th of February, 1997 Superintendent Lennon was transferred to the post of District Officer at Letterkenny. He thereafter assumed some interest in the Barron investigation. Superintendent Lennon indicates, however, that he only became actively involved in September of that year. On the 3rd of March, 1997 a large operation was mounted to search lands at the instigation of Superintendent Kevin Lennon. These were lands owned by Jim "Lofty" Gallagher, a person held in high esteem within the community and among members of An Garda Síochána. Nothing was found. Later on the 5th of March, Superintendent Lennon told other Gardaí that he had actually marked the site of what he claimed was a ‘barrack buster bomb’ on the land with a stick, but that the search operation had walked over it. Superintendent Lennon claimed that the search had disturbed the operation which was supposedly to move such a bomb.

In 1997 Sheenagh McMahon, perhaps arising out her matrimonial difficulties, was moving out of her former home at Porthaw in order to move to Letterkenny. Sergeant Mick Brennan, who has since retired, was, she says, helping her to clear out the shed of the house. She states:

> **He called me and showed me a wee cardboard box with what looked like three detonators in the box. Mick Brennan told me they were detonators. I was aware he had been a Detective for years and**

> **would be very knowledgable in this stuff. I had never seen anything like them before and I called Noel. Noel looked at them and he said they were detonators. Mick Brennan told me he found them in the shed. We were in the shed together at this time, me and Mick Brennan. I asked Noel were they dangerous and he said they were not. I didn't ask Noel where the three detonators came from and how they got into our shed. He didn't tell me how they got there. Mick Brennan said "these are mine - I need this one". As far as I am concerned Brennan took them...**

In his statement of the 25th of May, 1999 Michael Brennan states that there were no detonators in the shed, but that he merely remembered coming upon "a lot of small boxes with fishing gear in them". In a later statement dated the 8th of September, 1999 he says this:

> **When they were moving house one day before they moved to Letterkenny, Sheenagh was with me. I found a box, a small box, with what looked like detonators. Two of them I think. I showed them to Sheenagh. I told her they were detonators. She said that she had seen them before. I can't remember wires coming out of them. I took them out to a fire that I was using to burn rubbish. They didn't explode. When they didn't explode I just thought they must not have been detonators. I have been asked if Noel McMahon came into the shed and I can't remember. "No, I don't think he was. I am sure the I put them in the fire".**

These allegations were put to Noel McMahon on the 14th of July, 1999 and on the 25th of February, 2000 and on the 10th of June, 2000. They were denied by him.

Sir, we now want to move through some details related to this paragraph of the Terms of Reference and to present them concisely. In February of 1999 Sheenagh McMahon met Adrienne McGlinchey and, Sir, we remind you that the latter claimed that she had been lifted by the Provisional IRA the previous night and held for eleven hours. Adrienne McGlinchey was concerned that her name should not be mentioned and, Sheenagh McMahon claims, pointed to her phone and told Mrs. McMahon not to mention her name or she would end up with a bullet in her head, saying "don't forget you have yourself and your three children to think about". On the 12th of February, 1999 the Carty investigation team was, as we have said, set up after Kevin Carty, the Assistant Garda Commissioner, Northern Region, conveyed his apprehension about the suspected involvement of a Garda in a failed extortion attempt, namely the phone calls to the Peoples' house on the 9th of November, 1996. In February/March of that year Sheenagh McMahon was receiving support from former Detective Sergeant Des Walsh. We have told you of the information that is to hand in relation to this matter.

In March of 1999 Superintendent Kevin Lennon voluntarily moved on transfer to Millford Garda Station in order to avoid any question as to conflict of interest in relation to the operations of the Carty investigation. On the 16th March, 1999, Moya Jane O'Doherty made a complaint at Buncrana Garda Station which led to

her being interviewed and which, in turn, as we have indicated, led to the complaints being made by her sister, Sheenagh McMahon which ultimately identified Adrienne McGlinchey whereby statements were taken from her.

On the 18th of March, 1999 Inspector Hugh Coll, moving into the Detective Superintendent's office at Letterkenny Garda Station pursuant to his duties with the Carty investigation team, discovered a rocket-like tube item with fins. We have already gone over the apparent similarity of this item to the item apparently seen by John Mackey in Adrienne McGlinchey's flat on the 14th of March, 1994, to the item found in the possession of Adrienne McGlinchey by Detective Garda Jones at Shore Road, Buncrana on the 11th of September, 1993, to the metal tube Kevin Lennon brought to Chief Superintendent Denis FitzPatrick and to the items secreted in 1991/1992 by Sheenagh McMahon which she says she obtained from her husband. Sir, we have told you about the items produced by Sheenagh McMahon to Chief Superintendent FitzPatrick on the 29th of March, 1999.

At that time, in other words in late March of 1999, Adrienne McGlinchey, according to Kevin Lennon, telephoned him. He called to her sweet shop on the next day. The video tape from the shop, which is not dated, shows him conversing with Adrienne McGlinchey in the shop for about five minutes. According to Adrienne McGlinchey, Superintendent Lennon called to her shop to tell her to go to Buncrana to get Sheenagh McMahon to shut up. She claims to have been lifted by the Provos and held for eleven hours. Superintendent Lennon says that Adrienne McGlinchey told him during this conversation in the sweet shop to go to Sheenagh McMahon and to tell her to shut up. This matter was not reported by Superintendent Lennon to the Carty investigation but, in fairness, it is possible that he did not know that the investigation had started or that it was his duty to report what he alleges was said to him by Adrienne McGlinchey.

On the 26th of April, 1999 Sheenagh McMahon commenced making written statements to Superintendent John F O'Connor and Superintendent Long which were eventually completed on the 18th of May and signed on the 24th of that month. On the 28th of April, 1999 she handed over to the Carty investigation team the items which she had already produced to them on the 29th of March, 1999.

On the 31st of May, 1999 Adrienne McGlinchey was interviewed and made further more serious allegations which, Sir, we have already outlined. On the 30th of June, Adrienne McGlinchey brought Detective Inspector Hugh Coll and pointed out the Ardchicken house where she said she left the fertilizer on the 19th of November, 1993. Sir, we have told you that on the 9th of July, 1999 Garda Martin Leonard was instrumental in Mrs. Sheenagh McMahon withdrawing her statement.

On the 25th of August, 1999, because Adrienne McGlinchey was complaining about death threats, she was afforded full time protection by members of the Emergency Response Unit. On the 31st of August, 1999 Adrienne McGlinchey was being interviewed by Inspector Hugh Coll and Detective Sergeant George

Kyne. She became agitated after receiving and making a number of phone calls on her mobile phone. She told them that Eleanor McDermott had been threatened. The Gardaí went and visited Eleanor McDermott who claimed to them that on the previous night a man had approached her after she was dropped home from work by Karen McGlinchey, a sister of Adrienne's, and that the man had told her to give Adrienne a message and took a gun out of his pocket saying "this will go in her mouth if she talks".

On the 13th of September, 1999 Detective Garda Noel McMahon's home at 2, Kiltoy Court, Letterkenny, County Donegal was searched under section 29 of the Offences Against the State Act, 1939. In it were found two bags of granulated substance together with assorted spent shells, ten rounds of assorted ammunition and six Hilty gun blanks, 1.983 grams of cannabis and an 'advice on proofs' type document, or response to same, in relation to the Frank Shortt case. The granulated material, according to John McCullough of the Forensic Science Laboratory, may have originated from commercial fireworks. Noel McMahon claimed that the cannabis came from his wife, even though it was in the breast pocket of a men's suit. The ownership of this cannabis was denied by Mrs. McMahon. In her statement of the 17th of September, 1999 she stated that she knew her husband had some cannabis in the house, but that it had been found at the Point Inn and brought back to her house by her husband. On the day of the search Detective Garda Noel McMahon was suspended from duty at 12.00 noon.

On the 20th of September, 1999, still under full time Garda protection, Adrienne McGlinchey told Detective Sergeant Jeremiah Twomey that someone had just smashed the windscreen of her car. He says that at 12.45 a.m. she got into her car at Port Road, Letterkenny and sped up the laneway to her home. When he followed her, he found her car was stopped and that Adrienne McGlinchey had a black glove on her left hand claiming that someone was after breaking her windscreen. He examined it and found that there was damage. On the 30th of September, 1999 Adrienne McGlinchey admitted that she damaged the car herself. On the 24th of October, 1999 Karen McGlinchey claimed that her house at Brookside House, Letterkenny was the subject of a burglary.

On the 15th of November, 1999 Eleanor McDermott was arrested under section 30 of the Offences Against the State Act in respect of information in relation to firearms offences. During the interview she admitted making silent telephone calls from public kiosks in Letterkenny to Adrienne McGlinchey at her instigation. These calls were made while she was being interviewed on the 24th of August, 1999. Adrienne McGlinchey has alleged that she received numerous similar calls but, according to Eleanor McDermott, these particular ones were made at her own instigation. She also told Gardaí that the report of the burglary at Karen McGlinchey's house was a false report, and that Adrienne McGlinchey had told her so.

On the 2nd of December, 1999 Sheenagh McMahon confirmed that the statements which she had made to Superintendents John F O'Connor and Long were factual and she said that she wished that they would remain on the record.

On the 23rd of March, 2000 the last of the statements of Adrienne McGlinchey to the Carty investigation team was made.

On the 10th of June, 2000 Detective Garda Noel McMahon was arrested by Detective Sergeant George Kyne at Ballycor Road, Newmarket-on-Fergus, Co. Clare under section 30 of the Offences Against the State Act, 1939 for possession of ammunition in County Donegal between the 9th and 11th of September, 1993. Sir, you will recall this is around the time of the envelope with bullets/Strabane incident. He was detained for thirty five and a half hours at Ennis Garda Station until his release at 10.10 p.m. on the 11th of June, 2000. On that day Kathleen Hayes made a statement to the Carty investigation team which is hearsay, because although she claims to have seen bags, she never looked in the bags and can therefore give no first hand information as to what might have been in them.

Sir, the foregoing outline was intended as a presentation of the issues which may be involved in this particular paragraph of the Terms of Reference, as already explained by you. It seems to us that certain issues may commend themselves to you as being worthy of a particular focus in the course of this inquiry. These include:

1. Whether there were doubts about the credibility of Adrienne McGlinchey from the inception of her first substantial dealings, as a supposed informant, with members of An Garda Síochána and subsequently throughout the course of these apparent events.

2. One might wonder whether those in command in the Donegal Division either did not know or chose not to listen to the concerns of those in other ranks of An Garda Síochána. It may be that they did listen, but felt that Ms. McGlinchey was a useful source of information in the context of the carnage occurring across the border. Perhaps an attitude grew up that any potentially useful source of information should be retained and cultivated in order to prevent further harm being done. It seems to us that you must enquire into the legitimacy of Adrienne McGlinchey as an informant and the motivation of those who accepted her throughout all of these events. The judgment of those involved must necessarily also be called into question.

3. It may be that some of these events are more understandable in retrospect or, as the proverb puts it: Tar éis a chítear gach beart. However, a question which continually springs to mind is as to when the involvement of Adrienne McGlinchey with An Garda Síochána was going to be ended by them. She, after all, could at any time have distanced herself from them or she could have continued, notwithstanding discouragement, to supply them with what was apparently information. There are a number of points throughout this narrative where one might wonder why Adrienne McGlinchey was not re-classified. These include the issue of the assault on the milkman in July of 1992; the hoax call to the Fire Station and the possession of walkie-talkies, and subsequently a battery charger, in December, 1992/January, 1993; the wild behaviour at

her flat on the 12th of October, 1993; and the Bridgend/Burnfoot episode on the 11th of January, 1994. If the taximan inveigled innocently into this matter had been interviewed in the aftermath of that incident a completely different perspective would have been potentially open on her behaviour. When, in early September, 1993 one of the metal yokes in the form of a rocket was produced to senior Garda officers, this was surely an opportunity for them to make available to themselves the opinion which we have now that this thing was of no useful purpose. Similarly, the Carty investigation team were able to interview a number of persons who flatly stated to them that Adrienne McGlinchey never had any connection with Sinn Féin or the IRA.

4. One wonders what is "cross border co-operation" and how that notion can justify the apparent sweeping under the carpet of the Strabane incident of the 10th and 11th of September, 1993. It may be that this matter was properly dealt with or it may be, Sir, that you might not regard the response of the Garda authorities as appropriate. We draw specifically to your attention, however, the later mention of a reason that Noel McBride, an 'informer' in the Barron case, should not be prosecuted in respect of false information given to the Gardaí. The stated reason why a prosecution might not be appropriate was in order apparently to preserve the standing of the Gardaí in Donegal among the local community. We shall be going on to give an outline of this shortly.

5. Lastly, as one goes through this narrative one asks oneself the question as to why the ordinary methodology of investigation was not applied, apparently again and again. In particular, we refer to the lack of a file in relation to the arrest of Adrienne McGlinchey on the 23rd of December, 1992; the lack of a file in relation to the tripod find of the 31st of January, 1993; the lack of a stake out, the lack of an apparent investigation, the lack of fingerprinting and the lack of forensic investigation in respect of the Ardchicken find of the 19th of November, 1993; the manner in which the search of Ms. McGlinchey's flat of the 14th of March, 1994 was dealt with by the disappearance of the rocket-like yoke and the failure to analyse the fertilizer and the failure to initiate a prosecution or send a file to the Director of Public Prosecutions; the absence of information in relation to the Oatfield sweet factory find on the 4th of June, 1994 and the destruction of the contents, the lack of fingerprints and the lack of 'stake-out' of the premises; a similar comment in relation to the Covehill find of the 13th of June, 1994; and the failure to preserve the Rossnowlagh finds overnight (apparently on the basis that the IRA were not operational at night), the failure to stake out the house and the failure to do fingerprint and forensic analysis.

These, Sir, are some of the questions which seem to us to be worthy of particular consideration. Paragraph (g) of the Terms of Reference also apparently involves an explosive and paragraph (i) may conveniently be considered in a context of its own. We, therefore, move on to these next.

ARDARA

This Module is centred on events which occurred in Co. Donegal in October and November, 1996 which are apparently related to the telecommunications mast at Ardara. Paragraph (g) of the Terms of Reference requires the Tribunal to enquire urgently into:

> **Allegations relating to the Garda investigation of an arson attack on property situated on the site of the telecommunications mast at Ardara, Co. Donegal in October/November, 1996.**

In your opening explanation of the Terms of Reference, Sir, you indicated that this particular paragraph was largely self-explanatory. Insofar as any expansion of that explanation is necessary you have also indicated that the principles which you applied to the Burnfoot investigation, namely paragraph (i) of the Terms of Reference, would apply, with appropriate changes, to paragraph (g). Both are, in essence, very similar.

Before moving to the apparent events of October/November, 1996 let us first of all give some background to the situation. As we understand it, up until 1997 radio and television signal on the national channels was received in South-West Donegal in the ordinary way. In addition, because the authorities in Northern Ireland were broadcasting their own radio and television signals, these could be received quite readily in most areas of Donegal, dependent on their situation and topography. Ardara is in the west of the county and because of a broadcasting facility at Enniskillen, across the border, the residents there could simply tune in to stations broadcast in Ulster fairly readily. As the importance of telecommunications grew nationally, the Department of Posts and Telegraphs, subsequently Telecom Eireann and more recently Eircom, engaged in forward planning. This involved them in the purchase of sites for the provision of facilities. When it comes to a question of beaming signals through the electromagnetic system, on the airwaves in other words, the availability of elevated sites gives a considerable advantage in bypassing geographical obstructions.

Sometime in the mid-1980's, Telecom Eireann purchased a site in the Ardara region called Altnagapple. As the name implies, this is an elevated area. A special road had to be constructed in order to facilitate the erection of a mast with ancillary buildings and equipment. The site was bought from Mary Bridget Diver, who is the mother of Hugh Diver, the late Anthony Diver, and Geraldine Shovlin. Mrs. Shovlin is married to Bernard Shovlin and they reside at Altnagapple, with a right-of-way over a portion of this new roadway.

The availability of an elevated site and a mast was attractive to Cable Management Ireland Limited (hereinafter referred to as C.M.I.). We understand that C.M.I. is a company which specialises in the development of local transmission systems for television and radio. The service offered by the company gives subscribers access to enhanced reception of various

television stations. In 1995, C.M.I. entered into an agreement with Telecom Eireann to place some of its equipment on the existing mast and to service same through equipment in a container proximate to it. The means of transmission was to be multipoint microwave distribution. The Tribunal is not asked to attempt to sort out the rights and wrongs of the situation which subsequently developed. It perhaps suffices to say that many local people felt that there was a health risk from the means of transmission proposed to be employed: it was also strongly felt in some quarters that if a signal was available already from Enniskillen that this development was unnecessary and potentially costly to local people.

Pursuant to the lease agreement between Telecom Eireann and C.M.I., the cable company had permission to avail of the facilities at Altnagapple. In order to avail of them they had to install equipment. Because of the widespread opposition from local residents protestors blocked their entry during November of 1995. Early in December of 1995 the cable company personnel again tried to access the site, in the presence of a force of Gardaí, but they were unsuccessful. In the early hours of the 13th of December, 1995 a large force of Gardaí escorted the cable company personnel and their equipment on to the site. A flavour of the events can be had from the statement of Superintendent Denis Cullinane, now retired from An Garda Síochána. He was then Superintendent-in-Charge of the Glenties Garda District:

> **In the early hours of 13/12/95 a large force of Gardaí escorted C.M.I. personnel and their equipment on to the site. When this became known to the protestors they were in high dudgeon and voiced their anger against the Gardaí – I received several letters from people in the area including one from Thomas Gildea [T.D.], Glenties, condemning the actions of the Gardaí. The protestors then proceeded to place pickets at Altnagapple on a 24-hour basis. Some time in March, 1996 I accompanied a party of Gardaí and C.M.I. personnel to Altnagapple where a large number of protestors had gathered. Some of the protestors were sitting on the access road to the site (one of them was chained to a cattle grid on the road) while the remainder kept walking in a circle on the public road. Thomas Gildea, Glenties introduced himself as spokesman for the protestors and told me they would not allow the C.M.I. personnel enter the site. I subsequently forwarded a report on the incident to the D.P.P. … During this time the Gardaí had to afford special attention to the site and during the course of night visits to the site Garda patrol cars had their tyres punctured by nails which had been thrown on the site access road. Rolls of barbed wire had also been placed along the road to obstruct Garda vehicles [from turning] and on one occasion Sergeant McKenna, Ardara had a light shone into his face while driving along the road.**

As we understand it, a series of four security lights were installed on the corners of the site with a view to deterring incursions. On the site there is a

lower gate and a gate providing access to the fenced-in compound at the mast. In addition there are locks on the Telecom Eireann building and on the cable company container. The cable company had hoped to be operational by March of 1996 but this ambition was not fulfilled, a delay which they ascribe, whether rightly or wrongly, to the protests which have been described.

An employee of Telecom Eireann, Terence Gallagher, visited the site on a number of occasions. On the 7th of October, 1996 the first gate could not be opened because of a glue like substance. On the 19th of October, 1996 the cable company issued High Court proceedings against a number of named individuals. This was to seek an injunction against picketing and interference with the company's employees. Terence Gallagher next called to the site on the 25th of October and found that he could not open the lower lock. At first, he recalled this as being yet another instance of gluing but, on reflection, he indicated to Sergeant John White in a statement dated the 14th of November, 1996 that while he did get the lock on the lower gate open, he could not close it due to stiffness and wear and tear. He then drove to Glenties and got a lock, putting one key into Bernard Shovlin's letterbox, because the latter had a right of way, and leaving another in Glenties Garda Station. When he next returned on the 7th of November, 1996 an even more serious instance of gluing had occurred. Both the lower and the compound gate locks had been glued. These were cut off in order to gain entry. As we understand it, the Eircom building locks were also glued. He noticed that the cable company container had been moved and that the roof vent was raised. An arson attack had been made on the cable company property. This is described by Mr. Paul Browne in his statement made on the 11th of November, 1996 to Sergeant John White:

> **On Thursday, 7th of November, 1996, Superintendent Cullinane, Glenties Garda Station informed me that the locks on the gates giving access to the Telecom Eireann compound and the locks of the compound itself had been interfered with and later that our container and equipment had been destroyed by fire. I visited the site on Friday the 8th of November, 1996 and examined the damage. All of our equipment in the container had been totally destroyed by fire.**

In the same statement, Mr. Browne gave an assessment of the damage caused by the arson attack:

> **The container contained receive and transmit electronics to a total value of £49,250. Our company has suffered a total loss of £55,250 resulting from the criminal damage caused by fire to our container and property at Alt na gCappaill, Ardara between 30/10/1996 and 7/11/1996.**

The previous Monday, the 4th of November, 1996, the cable company had been successful in obtaining a High Court injunction from Mr. Justice McCracken prohibiting certain named persons, and anyone having notice of

the order, from picketing the Altnagapple site or of interfering with employees of the cable company. This event could be regarded as the spur to the arson attack on the 7th of November, 1996, or it could be regarded as having been used by an unscrupulous person, or unscrupulous persons, as a means of directing blame against activists in the area. Insofar as we can see, the scene was properly examined and samples were taken from inside the container to the Forensic Science Laboratory where evaporated diesel oil was detected.

In the event that a reasonable suspicion for the crimes of malicious damage, in relation to the gluing of the locks, or of malicious damage by fire, were directed against any particular person, and in the event that an arrest took place, the powers of An Garda Síochána to question such a suspect would have been governed by the Criminal Justice Act of 1984. Up to 1991, offences of vandalism were dealt with under the Malicious Damage Act, 1861. This was an ancient and cumbersome piece of legislation making fine distinctions as to the elements of offences, and the penalty to be attached thereto, based on the nature of the property, the use it was being put to and the intention of the party attacking it. Probably spurred on by the failure of a prosecution in 1986, where the charge was malicious damage in relation to a place of public worship, and where the prosecution failed because the object damaged was a roadside shrine, the Oireachtas reformed the law. The result was the Criminal Damage Act, 1991. The reason we refer to this is that under the Offences Against the State Act, 1939, most serious offences of criminal damage had been scheduled offences. On the replacement of the 1861 Act with the Criminal Damage Act of 1991 no rescheduling took place. In practical terms, this meant that a case of vandalism up to 1991 allowed arrest and detention for 24 hours, with an extension for a further 24 hours authorised by a Chief Superintendent, under the Offences Against the State Act, 1939. Thereafter, offences of vandalism allowed only a 6 hour detention, followed by a 6 hour extension, because they were classified merely as a serious offence under the 1984 Act.

It stands to reason that, for investigation purposes, a potential detention of 48 hours may be more valuable than one of 12 hours. There was no evidence to suggest that an explosive had been used in the compound on the days prior to the 7th of November. The appearance of an apparent explosive giving rise to an inference of an apparent further attack on the mast would have had the effect of changing the investigative powers available to the Gardaí. It would be fatuous to suggest that every time an explosive is found that the Gardaí have planted it in order to enhance their powers. However the sequence of events to which we must now refer makes it important to investigate this allegation.

One of the factors which the arson attack has in common with the explosives finds, referred to in paragraph (e) of the Terms of Reference, is the publicity attendant on same. Two employees of the cable company were interviewed and the attack was outlined on the 1 o'clock radio news and the 6 o'clock television news on R.T.E. Whether this factor is significant or not, only you can judge, Sir.

On Sunday the 17th of November, 1995 Sergeant J.P. McKenna toured the area of the mast. This was done pursuant to instructions to give the site special attention in view of the protests. Two patrol cars had, on previous occasions, had their tyres punctured by devices placed on the road. These were just above the lower gate, which happens to be adjacent to the farmyard of Bernard Shovlin. On that Sunday, the 17th of November, Sergeant McKenna removed a line of nails from the road. On the way down to the lower gate after inspecting the mast and site a bright white light was beamed on the patrol car. Sergeant McKenna pursued a person around Mr. Shovlin's farm buildings but failed to locate this person.

Some time around or before lunch-time on the 19th of November, 1996, two employees of the cable company, namely Paul Browne and Tom Murray, visited the site in order to begin replacing the container and damaged equipment. Paul Browne's statement reads:

> **… [A] Telecom employee, I think it was Hugh O'Boyle, was also on site. It was about 1 o'clock. We had no problem gaining access to the site, there were no [protestors]. We drove to it by car and the replacement container came by truck. The container was installed and Tom Murray was walking around viewing the work. He drew my attention to an object taped with insulating tape to cables on the gantry, running from the mast to the container. It was about 8' up in the air. It was tube-type in appearance, 2' long and about one inch in diameter. We brought it to the attention of [a] Telecom Eireann employee, neither Tom or myself reported it to the Gardaí. We left that to Telecom Eireann. We left the scene before any Gardaí arrived. Between the 8th and 19th of November, Tom and I were on the site on a number of occasions, I would say about 3 times, one of which was with the insurance assessor. I had never noticed the object taped to the gantry before.**

Tom Murray had this to say to the Carty investigation team:

> **As I was there I was looking around and as I looked at the tray carrying the cables from the tower to the Telecom hut I noticed something which caught my eye as not being regular. It looked to me like part of a rubber hose which was taped to the tray. From an engineering point of view I knew it shouldn't have been there. I brought Paul's attention to it and I think I drew the attention of the Telecom man to it. I think it was the Telecom man who rang the guards and sometime later a Garda patrol car arrived …**

It is important to quote the foregoing because the authors of Section 3 of the Carty Report mistakenly take the view that Sergeant White visited the mast on that morning, unprompted by any call. This they describe as "quite a coincidence". It would seem unlikely that there had been no report by a Telecom Éireann employee to a Garda Station given the accounts we have just heard. It seems impossible to establish at this stage what Telecom

Éireann employees were present that morning. Ken McCallum indicated to the Carty investigation team that he was there. There had been a problem with telephone communications in West Donegal and the gluing of the locks, as part of the arson attack earlier in November, had required intervention in order to access the equipment in the telephone building. He has only a vague recollection of seeing the device or of having any contact with the Gardaí. His colleague Michael Carr does not comment in his statement about telephoning the Gardaí.

It is also somewhat uncertain as to who arrived from the Gardaí, apparently as a result of the discovery of this device. It is certainly the case that Sergeant John White arrived and he was either accompanied by Sergeant J.P. McKenna or by Garda George McNeill. Tom Murray claims that he visited the site about 1 o'clock, whereas Sergeant McKenna describes going to the site at 12.15 p.m. Sergeant McKenna is a trained Scenes-of-Crime Examiner and there is nothing to suggest that the performance of his duties on this day was anything less than professional. Because there was a suspicion that the device was an explosive the Army were dispatched. Commandant Larry Devaney, an explosives officer from Finner Camp, was called, arriving at the scene at 16.30 hours. On examining the device he described it as follows:

> **The device consisted of a length of black alcative piping 11½ inches long, attached to one end of this pipe was a 3 inch cork and attached to the other end was a short length of fuse (burned out) and some polystyrene. Inside the pipe there was some powder and a number of bangers or fire crackers. The device in question was a crude attempt at working an explosive mixture. It should be noted that the device did not function as intended. If the device had functioned correctly there would have been damage to the electric cables on the underside of the metal conduits. After having been shown this device, I proceeded as follows:- I cut the tape (yellow) holding the device to the inside of the conduit and removed it to a safe location. I experimentally opened the pipe and examined the contents. At that stage I was satisfied that the device no longer constituted a danger to anybody, personnel or property. I emptied the contents of the device into a transparent plastic bag. I remember putting the remainder of the device into other plastic bags. I explained to the Garda officer who was in charge that the contents of the pipe … should be forensically examined. … [On 15/7/2000] I have been shown a box containing the contents of the device mentioned above. I am satisfied that these are in fact the pieces of the device I dealt with … on the 19th of November, 1996.**

It would be fair to say that the device described was nothing more than an assembly of fireworks. John McCullough, a forensic scientist, who examined the powder from it, was of the opinion that it was likely to be from a commercial firework. He also looked at this in the context of the material found at 2 Kiltoy Court, Letterkenny, the home of Adrienne McGlinchey, to which reference has already been made, from the point of view of seeing

whether there was any connection between these two powders. His view was that there was nothing to connect the two cases other than the possibility that the origin of the material in both cases was commercial fireworks.

With a view to giving a complete picture, it is perhaps worthwhile to digress here and mention the fact that on the 12th of September, 1995 there was a seizure of fireworks from the traditional harvest fair held in Glenties. The fair attracts a huge number of street traders and because of the sale of illegal items, including fireworks, a large number of Gardaí are needed to police it. On the 12th of September Gardaí discovered a box of fireworks adjacent to a stall at Station Road in Glenties. The Gardaí describe it as being usual in cases of this type for the attribution of ownership to be a problem. The nearest stall holder denied that they were his property. The fireworks were seized and placed in a store at Glenties Garda Station. As to whether any of these were similar to the fireworks found in the device on the mast at Ardara it cannot now be said because they were later burned in a disused quarry in Glenties. In the intervening time they were placed in a store at Glenties Garda Station which does not appear to have been subject to any particular security arrangements.

Detective Garda William Brennan, of the Ballistics Section of Garda Headquarters, did not examine these Glenties fireworks. He did, however, examine the device from the mast. He said it consisted of a plastic waste pipe, a wooden handle for a gardening tool, a piece of foam steam pipe insulating jacket, 10 pieces of firework fuse wrapped inside the foam jacket, pieces of coloured plastic adhesive tape, 5 firework bodies each broken in two pieces, with the fuses attached, 5 separate firework fuses and 75.2 grams of a grey coloured powder. He says that the finished product would have resembled a large firework, and the protruding fuses were intended as a means of ignition. Carrying out tests on the fuses he found that they burned readily and evenly and were of commercial manufacture for use in fireworks. The grey powder, on the other hand, was difficult to ignite and only sparked when burned by a naked flame. In short, anyone who had five fireworks could have put this device together easily. We do not know, Sir, if it had been ignited whether it would have had much effect on the cable to which it was attached but, from these descriptions, that appears unlikely.

The device was brought back initially to Glenties Garda Station. There, an event occurred, to which we must make reference. On the 20th of June, 2000 T.V.3 transmitted a programme in its '20/20' series which covered the background to this dispute. During the course of the programme Hugh Diver, Geraldine Shovlin and Tom Gildea, T.D. were interviewed. Frank Connolly, a journalist, who was interviewed on the programme said that he had received information from a former member of An Garda Síochána to the effect that the explosive device had been assembled in the rear of a Garda Station in Co. Donegal. Hugh Diver also alleged that poteen had been planted outside his home by the Gardaí. Chief Superintendent McNally interviewed Mr. Frank Connolly in order to discover the identity of his informant, to make further enquiries, but Mr. Connolly claimed a privilege. The informant was described as "a retired Detective".

In April, 2000 Mr. Thomas Gildea, T.D. wrote to the then Minister for Justice, John O'Donoghue, giving him his opinion that the role of certain Gardaí in this matter should be "fully and independently investigated". Many serving and former members of the Gardaí who had connections of any kind with Glenties Garda Station were interviewed as to the possibility that this device was assembled in or around Glenties Garda Station. They had no information suggesting this. Similarly, civilian employees were also interviewed to negative effect. Mr. Tom Gildea, T.D. was spoken to on four separate occasions with a view to asking him to persuade his source to come forward to assist the Gardaí with their inquiries. To date the source has not come forward. However, the events which will now be outlined may, in part, explain why this allegation was made.

On the 6th of July, 2000 Sergeant J.P. McKenna was again interviewed. He said this:

> **I … recall later that evening of the 19th of November, 1996, having the device on the table in the conference room at Glenties Station. I recall having gloves on and I recall having the table covered in brown evidence bags to protect the table and having the bags laid out in front of me and of filling out the forms C56. I recall [Garda] John Kilbane coming in and I also recall Sgt. John White coming in. I remember Sgt. White requesting to have a look at the device. I remember showing him the bag containing the contents of the device. This bag was transparent. Sgt. White took a sample of the powder and took it out of the room. It is my recollection that the reason he did this was to test the substance to see if it contained an explosive. He left the room with the sample. I have no recollection of what conversation took place other than that he wanted to examine the substance as I have described. I have no knowledge of what test he carried out on the sample while he was out of the room. He returned a short time later and he commented to the effect that the powder was an explosive. He then left the room. I don't know whether John Kilbane left the room when John White was carrying out the test. This would all have taken place sometime between 8 p.m. and 10 p.m. on the 19th November, 1996 and I remember being clearly shocked at this procedure as it had never happened to me before or since. It was my intention to package the samples and have them transmitted to Dublin for testing prior to any decision or further decision being made in the case. John White took no more than a small spoonful of the substance for testing. I resealed the bags and retained possession of them until I handed them over to Garda Curran the following morning. After I had sealed the bags I called up to the Superintendent's office where Sgt. White was talking with Supt. Cullinane. They were making out S.29 [Offences Against the State Act] warrants to search the premises of Hugh and Anthony Diver and Bernard Shovlin the following morning …**

Garda John Kilbane was interviewed on the 7th of July, 2000 and he described that incident as follows:

> **Some time later on the 19th I went into the conference room at Glenties Station and saw Sergeant [J.P.] McKenna preparing the remnants of the device for transportation to the Technical Bureau. He had a number of bags on the table. I saw that one of the bags contained a grey/black dry powder. I saw a length of white pipe insulation about a foot long on the table. I saw pieces of yellow insulation tape. I cannot recall seeing anything else but there were a number of brown evidence bags on the table. Sergeant McKenna was wearing white disposable gloves. I did not touch or interfere with anything on the table. A few minutes later Sergeant John White entered the room and caught hold of the bag of grey/black powder. To the best of my recollection Sgt. White took a spoonful of powder from the bag and went out to the back yard of the station with it. I followed him out into the yard. He may have said that he wanted to see if the powder would light. When we got to the yard it is my impression that I gave him a box of matches. He left the spoon of powder on the steps outside the back door and attempted to light the powder with the matches I had given him. The powder did not ignite. It was a damp evening but the powder was dry. I cannot recall what he did with the powder on the spoon but he did bring it back into Sergeant McKenna. I have a vague recollection of Sergeant White attempting to light a strip of paper which is similar to that used in party crackers. This did not ignite as it looked damp. I don't know where he got that paper but it is my impression that it came from the device. On our way back into the station Sergeant White commented "That's an explosive substance", he then went up the stairs.**

It cannot be assumed that Sergeant White had any knowledge of the properties of explosive devices. It also needs to be questioned how it could be proper for a non-technical member of An Garda Síochána to treat an exhibit in the way described, if indeed any of this happened. It might be inferred that a person of normal prudence would not attempt to light a substance on a spoon if it was suspected of being an explosive. An enquiry therefore appears to be required so as to determine whether Sergeant White had some extra or special knowledge that it was safe to apply a naked flame to an apparently explosive powder.

On the 17th of May, 2000 and on the 31st of May, 2000 Detective Superintendent Joseph McGarty spoke to Sergeant White by telephone but was not in a position to put this matter to him. His answer in relation to the other queries raised was to refer to the advice of his lawyers that a comment should not be made. It is important to note that it is implicit in everything said by Sergeant John White upon his arrest on the 19th of March, 2000 that he would not countenance any illegal or criminal action. Further, his duty as a member of An Garda Síochána was to uphold and enforce the law.

Notwithstanding his having reason to be silent on this matter, following legal advice, there is not therefore the slightest doubt that he denies having any involvement in the making or planting of this device or in the use of it as a means to obtain search warrants and to arrest people.

In the aftermath of the arson attack discovered on the 7th of November, 1996 Sergeant J.P. McKenna states that he met with and interviewed many persons with a view to making progress in that investigation. One person was a confidential informant. This person seems to have learned of the burning of the container and its contents from Sergeant McKenna. The person is reported by him as having said "Somebody told me he was going to burn it but I never thought he would". A number of other questions from Sergeant McKenna led to information from which he inferred that the person who made this statement was Hugh Diver, although his informant did not say that. Garda Patrick O'Donnell also says that he interviewed a lot of people in connection with the matter. He says:

> **A few of the people who had been summoned to the High Court had told me they had come under fierce pressure from Hugh Diver and his brother Anthony Diver not to give any undertaking to the Court but to fight on. Hugh had indicated to at least two of these people that there was another way and had made a reference to burning. These people would not make statements and they only told me this on a confidential basis.**

Sergeant John White in his statement indicates that on Tuesday evening the 19th of November, 1996 he obtained a warrant from Superintendent Denis Cullinane to search the premises of Mr. Hugh Diver. He was accompanied by Sergeant J.P. McKenna. Sergeant McKenna indicates that he had told Superintendent Cullinane that he suspected Mr. Anthony Diver of being involved in the commission of the offence of placing the explosive device and of concealing items in relation to the commission of the offence. Superintendent Cullinane describes being of the opinion that some kind of an explosive device had been attached to the mast in furtherance of the protests of which he was aware. He also suspected the arson attack was related to the protests. He further justifies issuing the warrant in this statement:

> **Later that night I had a discussion with Sgts. White and McKenna regarding the incident and I issued orders under S.29 [Offences Against the State Act, 1939] to search the premises of Hugh Diver, Monargan, Glebe, Ardara; Anthony Diver, Clonkeeran, Ardara and the premises of their brother-in-law, Bernard Shovlin, Altnagapple. The Diver brothers were prominent in protests. They lived close to the site and Anthony kept cattle on Bernard Shovlin's land adjacent to the site. Access to the site was by means of a road running through Shovlin's land and this road was controlled by a locked gate the keys of which were kept by Telecom Eireann, the Gardaí and Bernard Shovlin. Mr. Shovlin's wife Geraldine was a very prominent protestor.**

It is entirely possible that those who spoke to the Gardaí intended maliciously to point the finger at the Diver family. It is a matter for judgement as to whether a warrant should be issued to search premises and this is legally possible where a reasonable suspicion exists that evidence in relation to the commission of an offence might be found at such a premises. The exercise of the power pursuant to the Offences Against the State Act, 1939 would not have been available but for the finding of an apparent explosive device. This is of less consequence than the power of arrest which follows because equal powers of search would have been available under the Criminal Damage Act, 1991. It was perhaps due to a combination of continuing and accumulative circumstances that Superintendent Cullinane decided to issue the warrant which led to the search of these premises and ultimately to the arrest of Hugh Diver, his brother, the late Anthony Diver and Bernard Shovlin.

It is important at this point that we indicate the attitude taken by these persons to the matter they were suspected of and to the suspicions which had caused them to be arrested. Hugh Diver's home was searched by Sergeant White and Sergeant McKenna. Before the completion of the search, Mr. Diver was arrested at 2.28 p.m. on the 20th of November, 1996 by Sergeant John White under Section 30 of the Offences Against the State Act, 1939 and conveyed to Glenties Garda Station for interrogation. Mr. Diver accepted that on the 18th of December, 1995 he had shone a light at a patrol car and then ran away but he indicated explicitly in the course of his interrogation that:

> **I wouldn't be in for damage to the mast or the container. Once the container was burned I didn't want to be involved any more … The Committee are trying to educate people to the dangers of [microwave broadcasting]. It is supposed to be monitored before [the signal is made operational] … I would not organise anything [after the High Court decision] [in order to have a stronger protest].**

Hugh Diver was interviewed at length and he was released at 2.15 p.m. on the 21st of November, 1996.

Anthony Diver was arrested at 9.27 a.m. on the 20th of November, 1996 by Sergeant J.P. McKenna. He was taken to Glenties Garda Station where he was also interviewed. Anthony Diver was, at that time, suffering from a severe illness. Members of the Gardaí at Glenties were aware of this and one of the statements from one of the custody officers indicated his concern to ensure that he knew that he could ring a bell to summon assistance while in his cell. Regrettably, Anthony Diver is since deceased. He indicated that he was aware that some people had been served with High Court summonses on the 19th of October, 1996 but that it was on the radio he heard it. After the arson attack there was a meeting among the protestors, in the ordinary course of events, on the Saturday night for the purposes of discussion. He gave a detailed account of his work as a farmer to interviewing Gardaí and explicitly condemned any actions of criminal damage which, he said, he didn't feel good about. He then said this:

> **I would like you to take note of an anonymous telephone call I received at 12.15 a.m. this morning. The caller was male and said his name was Tony. He said "We must meet tomorrow at 3 p.m. in a pub in Dungloe". He named the pub but I cannot remember it. This call lasted for a few minutes and I heard beeps which would suggest that the call was made from a coin box. I said to this caller: "You must have a wrong number". He said "No, aren't you Anthony?". He repeated the message twice. He said "You are doing a good job up there, you know what I mean". This call annoyed me greatly and I had full intentions of reporting this to Sgt. McKenna or Garda O'Donnell this morning. I did [not] get a chance to call the Gardaí. They called to me and I was shocked when I heard about the explosives device. I could not pinpoint the accent of this caller. I had nothing to do with this explosives device. Never in my life had I anything to do with any explosives. I have nothing to do with any subversive organisation.**

Anthony Diver was released from custody at 11.25 p.m. on the 20th of November, 1996.

Bernard Shovlin was arrested at 9.15 a.m. at his home by Garda Pat O'Donnell. He was taken to Donegal Town Garda Station where he was detained and questioned. He, again, gave a full account of his movements to the Gardaí. He said that from a health and a cost point of view he was totally opposed to the cable system being installed at Alt na gCappaill and he was upset that his wife Geraldine, who is the daughter of Mary Bridget Diver, and therefore the sister of Hugh and Anthony Diver, had not had explained to her the full implications of selling the land. He said he had never discussed damaging the container, gluing locks, or planting an explosive device with anyone and that he had no idea who would be responsible for these matters. He said he was definitely not involved in the burning, the gluing or the placing of an explosive device. Mr. Shovlin was released from custody at 6.30 p.m. on the 20th of November, 1996.

On the night of the 21st of November, 1996 Sergeant John White asked Garda Patrick O'Donnell if he would go with him to the home of Bernard Shovlin as he wanted to speak to Mrs. Shovlin in relation to a set of keys which Sergeant White said she had handed over to the Gardaí and in respect of which he said there was a problem in matching these to the lock on the gate in respect of which they had a right-of-way. When they arrived at the house the late Anthony Diver was there. Geraldine Shovlin recalls receiving telephone calls from the Gardaí at Donegal looking for a key for this lower gate. This was also mentioned, apparently, during the search. There would therefore seem to have been a reason for Sergeant White to call to the house. This is notwithstanding the fact that Garda Patrick O'Donnell had, on Bernard Shovlin being released from custody, been invited in for a cup of tea by Mrs. Shovlin. He had then taken a statement from her over the mislaid key. This is Geraldine Shovlin's account of the matter:

> **Anthony, my deceased brother, Bernard and myself were there. Sergeant White began to question me about the missing key. He seemed to be implying to me that I should know where the key was. At this stage Anthony became annoyed with him questioning me. White told him that he came to talk to me and not Anthony. Anthony told him that he had some cheek to come here after what he had done. He said to White, "You planted whatever was found up on that mast so that you could come and arrest us. It was a set-up and you set us up". I am not sure of the exact words but that is the gist of it. He told White to get out and never show his face around here again. White and Pat O'Donnell then left. Later that night I noticed the key on the key-ring inside the door. I rang Pat O'Donnell the following morning and he came here. I gave him the key.**

We return now to the question of the anonymous telephone call from "Tony" to Anthony Diver. When Hugh Diver was interviewed by the Carty investigation team on the 1st of May, 2000 he made a full statement. He recalled another anonymous telephone call on the night before his arrest. This is how he put the matter:

> **At about 12 midnight on the 19th of November, 1996 I was in my home with the four children who were in bed. My wife was stranded in Dublin on her way back from Birmingham Airport. I received a phone call and I picked up the phone and I felt that there was something not right about the call. I can't honestly explain it. The voice on the other end of the line said "What the hell is going on, on the hill?". I said "How the fuck do I know what's going on, on the hill, I am not on the fucking hill". The caller paused for a few seconds and the next thing the caller said "Could you meet me in Dungloe tomorrow?". I said "What the fuck would I want to meet you in Dungloe for tomorrow?". I also said "I have enough to do, without going to Dungloe to meet you". The caller again paused for a few seconds and then said "Ah leave it I will give you a ring tomorrow evening". The caller then hung up. The caller did not call me by my name and I did not ask who was calling. The caller spoke with a male voice and I thought that it sounded like a Cavan/Leitrim accent. The call would have lasted less than two minutes. The caller did not identify himself. I did not report this phone call to the Gardaí at the time … On the evening of the 20th of November, 1996 while I was at Glenties Garda Station, Sergeant John White asked me if I had received a phone call late last night. Sergeant White made some mention about Anthony, my brother had got a phone call. I told him that I did get a phone call. Sergeant White was standing at the door of the interview room when he asked me this. Sergeant White did not ask me any further questions about this call. During the course of my detention at Glenties Garda Station on the 20th/21st of November, 1996 I recognised the voice of Sergeant John White as the person [who] made the call to my home around 12 midnight**

> **on the 19th of November, 1996. This is the anonymous call that I received at my home and which I took at 12 midnight on the 19th of November, 1996 … I am also aware that my brother Anthony received a phone call on the night of the 19th/20th November, 1996. Anthony told me that the caller said "You are doing a great job on the hill, we must meet tomorrow in The Bridge Bar, Dungloe, I will be there at 4 p.m. and I will be wearing a black leather jacket". This message was repeated to Anthony a second time and Anthony said "You must have a wrong number". The caller said "No sure you are Anthony, aren't you?**

The Garda investigation team examined Sergeant John White's record of duty which indicates that he finished work at 11.45 p.m. on the 19th of November, 1996. Eircom were asked to supply billing records of calls made from Glenties Garda Station on the 19th and 20th of November, 1996 and they showed that no calls were made to the telephone of Hugh or Anthony Diver between the hours of 6 p.m. on the 19th of November and 6 a.m. on the 20th of November, 1996. Sir, it is proper to point out at this juncture that there is nothing to suggest that Hugh Diver had a lengthy or intimate acquaintanceship with Sergeant White whereby he would have been familiar with his voice. The identification of the voice as having a Cavan/Leitrim accent may also be significant since Sergeant White is a native of Bansha, Tipperary, having been born there on the 11th of September, 1955. We should also remind ourselves that visual identification has been the subject of express comment in our courts. The leading case is, of course, The People (D.P.P.) –v- Casey (No. 2) 1963 I.R.33 where the Supreme Court, through Kingsmill Moore J. said a jury trying a criminal case should be warned that mistaken identifications had taken place notwithstanding the fact that witnesses had ample time, with good lighting conditions and opportunity to note the features of what they later claimed was the suspect. In The People (D.P.P.) –v- Prunty, a case tried in 1985 by Judge Frank Martin, the accused had kidnapped the victim from his home in Co. Wicklow. A number of ransom demands followed which were tape recorded by Gardaí. These were identified by Detective Inspector Basil Lamb, an officer stationed in Bray. The basis of his identification was that he had known the accused over a period of years in the ordinary course of his living and working in Bray. Notwithstanding this long acquaintanceship, Judge Martin gave the Jury a full warning as to the dangers of voice identification in accordance with the outline suggested by the Supreme Court in Casey. It is important as well to reiterate that while Sergeant White, on legal advice, declined to speak to the Carty investigation team, that he has made it perfectly clear that at all times that he acted within the law and would not countenance disreputable behaviour.

Under the heading of the Ardara mast series of incidents, there is one other matter which needs to be referred to.

It is now necessary to return to the T.V.3 programme transmitted on the 28th of June, 2000. Hugh Diver, during that programme, had alleged that poteen had been planted outside his house by the Gardaí. Amongst the Gardaí on

the search of Mr. Hugh Diver's home on Wednesday the 20th of November, 1996 was Garda Martin Cullen. He says:

> **I accompanied Sergeant McKenna, and Garda Philip Curran, Glenties Garda Station down a set of steps to the cellar underneath the house. Items including one short handled yard brush and one tenon saw were taken possession of in the cellar and removed from the premises. I was aware of an unusual smell in the cellar. Sergeant McKenna drew my attention to the far corner of the cellar opposite the entrance. I searched in the corner and found nine bottles of a clear liquid in a cardboard box buried in straw. I handed the nine bottles to Sergeant McKenna. I was present when Sergeant McKenna asked Mr. Diver if the contents of the bottles were poteen. Mr. Diver replied "It is poteen". Mr. Diver further said "It's for my own use; I bought it in Glenties; I have no still; I want it returned".**

Sergeant J.P. McKenna made a statement, at the time, to the same effect. When interviewed by Sergeant White, Mr. Diver is supposed to have said in answer to the question as to where he got the poteen from:

> **I borrowed it. I keep it for my own use. I haven't paid for it. I have it a couple of weeks – a fortnight. There were nineteen or twenty bottles in it. I spilled some of it. I had a mind to pour the whole lot down the sink. I poured out six or seven bottles … I probably buy a few bottles every year … I do not know [who I asked for the poteen]. … I won't tell [you] who it was. … [I paid] six or seven pounds each.**

The poteen amounted to 9½ litres. Ten samples were sent to the Forensic Science Laboratory. On examination by Mr. Hugh Coyle the amount of ethynol by volume varied between 44 and 48% in each of the samples. A prosecution file was prepared in respect of the recovery of the poteen and two summonses, one of possessing unpaid spirits, and one of keeping or concealing unpaid spirits, were listed before Glenties Court on the 25th of April, 1997. On the 25th of April, 1997 statements in relation to the matter were requested for defence purposes. It appears that on the 23rd of May, 1997 Mr. Diver discharged his solicitor. An issue arose as to whether the original warrant for the search of Mr. Diver's house could be recovered but on the 27th of June, 1997 the judge at Glenties District Court dismissed the charges. According to the Carty investigation report, the circumstances of this dismissal were that a letter was produced to the District Court from Mr. Diver's doctor indicating that a rub of poteen on his limbs helped his arthritic condition. When interviewed by the Carty investigation team on the 17th of July, 2000 Mr. Diver again alleged that the poteen had been planted outside his house by the Gardaí. This is how he tells his story:

> **… I would like to explain the circumstances surrounding the finding of the poitin in the basement of my house during the search on the 20th November, 1996. A few days before the search,**

my daughter, Joleen was going out to school in the morning. She returned and told me there was a box of bottles between the two doors, that is between the porch door and the hall door. I got up immediately and I saw the box, a brown cardboard box. It contained 14 bottles of poteen. I took it down to the basement. I put it sitting at the far end of the basement to keep it away from the wee ones in case they found it and investigated what was in it. On the morning of the day I was arrested I saw Garda Martin Cullen parked near my house. I went to him and he asked me would I stay around for a wee while because a few of the boys wanted to talk to me. I says that I'll hang about surely. I came back into the house and while I was waiting for the guards, I emptied two bottles of poitin. This I had in my possession for rubbing into my joints and would be dangerous to drink. I poured it into the ground in the basement and it soaked away. The guards arrived a short time later. While carrying out a search at the basement, in which there was an obvious smell of poitin after me pouring the two bottles, they came across the 14 bottles of poitin. Sean [i.e. J.P.] McKenna, our local Sergeant in Ardara, took possession of the 14 bottles and said he would let a Judge decide what's done with it, or words like that. I believe the poitin was planted in the porch at my house by either Sean McKenna or John White or both of them, or by Detective John Feeley, Glenties Station. I have no evidence to support this but my belief is that they wanted to prosecute me for something. I have heard an extract from a memo of interview which was made while I was in custody in Glenties Station on the 21st November, 1996. In this memo I was asked where did I get the poitin. I replied "I consume it. I keep it for my own use. I haven't paid for it. I have it a couple of weeks – a fortnight. There were 19 or 20 bottles in it. I spilled some of it. I had a mind to pour the whole lot of it down the sink. I passed out 6 or 7 bottles". When I was asked "Who did you ask for the poitin?" I replied "I won't tell you who it was". I didn't make any allegation at the time because I didn't want them to suspect that I thought they had planted it. While I was being interviewed I remember John White asking me if the poitin came from the Letterkenny direction. I did not get a receipt from the guards for the poitin they took from my house …

Mr. Diver has in fact admitted the possession of poteen while being interviewed on the 20th of November, 1996 at Glenties Garda Station. This, however, may now be disputed. He has affirmed that admission to the Carty team but claims that, mysteriously, some of the bottles found in his basement were due to an unexpected delivery. Instead of pouring away the substance he stored it. His allegations against Sergeant White, Sergeant McKenna and Detective Garda Feely are not backed up by any evidence and cannot be regarded as anything other than speculation. We do not see, Sir, that mere speculation could merit a reply from Sergeant White, Sergeant McKenna or Detective Garda Feeley.

At this stage it may be helpful to suggest to you, Sir, the particular areas from the above narrative which may require a particular focus in the enquiries which the Tribunal is engaged in:

1. The background of the dispute relating to the use of the Telecom mast at Altnagapple for broadcasting is of importance. It seems to us that it can broadly be regarded in one of two ways. Undoubtedly, it was the case that there was a genuine dispute between local people and the cable broadcasting company. Members of An Garda Síochána cannot be blamed, on the face of the papers available to us at the moment, for the high feeling that there was in the area over the use to which it was proposed the mast should be put dating from March of 1996. Everything in the papers so far suggests that the Gardaí responded appropriately to the protests, attempting to enforce the law and to ensure that the protests remained within legal limits. From the point of view of civil law enforcement the cable company felt it necessary to seek an injunction, and this they were granted. The Gardaí responded to the dispute by extra patrols and the papers suggest that these were the subject of unwelcome attention from protestors.

   Under paragraph (g) you are asked Sir to enquire urgently into the Garda investigation of the arson attack which occurred some time at the end of October or the beginning of November, 1996. That attack might be regarded as an escalation of the protests that were already in place, perhaps precipitated by the granting of an injunction on the 4th of November. However, we do not know whether the arson attack occurred before or after that date. It is also possible that the arson attack was organised by persons who were not protestors, with a view to embarrassing the protestors. At this juncture, that may need to be seen in the context that the discovery of the attack was followed within a fortnight by the discovery of an apparent explosive device which allowed the use of greater Garda powers. So, either the arson attack was a continuation of, and escalation of, the existing protests, perhaps by hot-heads on the periphery of the large group of protestors, or else it was organised with a view to embarrassing the protestors.

2. The arson attack of late October and early November was an unattributable event. Garda investigations do not appear to have moved very far by the time the explosive device was apparently discovered on the 19th of November, 1996. That apparent find was the spur to greater Garda activity in the sense that 3 search warrants were issued on foot of the investigation which ensued, partially based on confidential information. The discovery itself allowed for the use of The Offences Against the State Act, 1939. Was the explosive device fitted up by someone, not with a view to causing damage, but with a view to providing a convenient excuse for the exercise of the powers available under the 1939 Act?

3. One must also focus on the issuance of the warrants by Superintendent Cullinane. Persons giving information to the Gardaí in confidence are entitled to have that privilege remain in place. That privilege cannot be waived by the Gardaí because it is the privilege of the informer himself or herself and he or she must expressly waive it before their identity can be revealed. Superintendent Cullinane seems to have been particularly concerned to pursue the information apparently furnished to Sergeant McKenna and to Garda Patrick O'Donnell. Without the discovery of the device, however, there would be nothing in respect of which he could have issued such a search warrant under the 1939 Act. Without the device there would have been no warrant and no searches and without those there would have been no arrest.

4. None of the persons arrested made any complaint as to their treatment in Garda custody, in terms of their questioning and the availability of humane facilities. Anthony Diver did, however, on the day after he was released, make a complaint that he and his brother and his brother-in-law had been fitted up. This needs to be explored.

5. Anthony Diver also made a complaint in Garda custody of the receipt of a telephone call. Four years later, when questioned by the Carty Inquiry, Hugh Diver also made a complaint as to the receipt of a telephone call. The Tribunal's inquiries in this regard are ongoing but the hearings must focus on these telephone calls. Do they have any connection with the remark allegedly made by Sergeant John White to Garda John Kilbane that "they will have a sleepless night tonight"?

6. The issue of planting poteen on Hugh Diver also arises. Because of the paucity of information or evidence available it may be that this is an item related to credibility only.

7. The allegations of Thomas Gildea, T.D. that an explosive device, later found on the mast, was assembled at the rear of Glenties Garda Station has been extensively pursued by the Carty investigation team. The Tribunal will continue its own enquiry. The Tribunal will also need to consider whether the statements of Sergeant J.P. McKenna and Garda John Kilbane are correct in relation to the alleged activities of Sergeant John White in the rear yard of the Garda Station and whether, if this is so, that this behaviour may account for the inception and spread of that rumour.

8. The Tribunal will need to consider what attitude it may take, in pursuing its enquiries, to seeking discovery or compelling response to questions by Thomas Gildea, T.D. The Carty Inquiry team interviewed Mr. Gildea on four occasions and it may be that Mr. Gildea can now persuade his source to come forward, to this open public forum, to present to it any information which may further the inquiries which have now been outlined. On the 30th of June, 2000 Superintendent Austin McNally interviewed Mr. Frank Connolly, who spoke on the T.V.3 programme of

the 28th of June, 2000. Mr. Connolly refused to disclose the identity of his informant but confirmed he was a retired member of An Garda Síochána who is not willing to be interviewed. Apparently that retired member did not view the device being assembled but "knew" that this had happened. That is hearsay. It may be that Mr. Connolly will persuade his source to come forward to assist the Tribunal in an open public forum. Absent to that cooperation the Tribunal will need to consider its position.

9. Finally, a Garda by the name of Michael Sweeney, of Doochary Garda Station, was on duty with 10 or 15 other Gardaí during one of the protests in late 1995 at the mast site. He was attached to Glenties Garda Station from 1989 to 1998. In the course of their enquiries the Carty investigation team took a statement from him on the 18th of July, 2000 where he said:

> I have been shown the remains of the explosive device which was recovered from the mast site at Ardara by Detective Inspector McHugh. This is not the device I saw at Glenties Garda Station that I mentioned in my previous statement. The item I saw at the time was two batteries, large-type with springs attached, held together with brown plastic marking tape. Also attached was a number of bangers or fireworks 2 or 3 I think. I am satisfied it was not an explosive device or bomb. I am not sure when I saw it or where it was in the Station. I am sure it was some time after the burning of the container at the mast site. I cannot recall where in Glenties I saw this device. I do not remember who told me it was found at the mast site but I am sure somebody did. I did not make any note of seeing this device in my notebook or bring it to the attention of any other member. I never saw any similar device before or since this incident.

The Tribunal needs to consider the credibility of this statement.

BURNFOOT

We now turn to paragraph (i) of the Terms of Reference. That paragraph reads:

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

In defining this paragraph of the Terms of Reference on the 15th July, 2002, the Chairman said:

> **The information available to the Tribunal indicates that at 08.00 a.m. on Saturday, 23rd May, 1998, a search of property namely a Traveller's encampment was carried out by members of An Garda Síochána on foot of search warrants. This search, or the searches, was or were carried out on the apparent basis that there were reasonable grounds for the Gardaí to believe that the persons occupying the relevant place were in possession of a firearm. The grounds for the belief were said to have been based on "confidential information". A firearm and ammunition were apparently found in a shed on the property searched. Seven persons were subsequently arrested and detained.**
>
> **The Tribunal will, in the first instance, seek to establish the facts in this case and consider the accuracy of the matters set out above. A Tribunal will**
>
> **(i) Enquire into and ascertain the facts in relation to the above matters;**
> **(ii) Enquire into and establish the identities of those said to have been arrested and detained at Burnfoot on the 23rd May, 1998;**
> **(iii) Enquire into and establish the circumstances in which it was found appropriate or necessary to search the area of Burnfoot, Co. Donegal on or about the 23rd May, 1998;**
> **(iv) Enquire into and establish the grounds and/or material relied upon as the basis for an application made for the issuing of a search warrant or warrants for the purposes of searching an area of Burnfoot, Co. Donegal in or about May, 1998;**
> **(v) Enquire into and establish whether the search and/or searches alleged to have occurred at Burnfoot, Co. Donegal in May, 1998 were related to some other investigation;**
> **(vi) Enquire into and establish the extent to which the search and/or searches at Burnfoot, Co. Donegal were planned in advance;**

(vii) Enquire as to whether any conference of members of An Garda Síochána was held prior to the said search or searches at Burnfoot, Co. Donegal;

(viii) Enquire into whether it was determined that on a planned and pre-arranged basis members of An Garda Síochána should arrest and detain certain individuals with a view to having them questioned in relation to the finding of any material or any other matter and if so enquire into the circumstances in which and the reasons for which such a determination was made;

(ix) Enquire as to whether there exist within the Garda Síochána any standards, practices or procedures applicable to the making of a determination in the course of an investigation to arrest and detain by pre-arrangement persons suspected in relation to a matter under investigation whether in the course of a search or otherwise and, if so, whether there exist any or any adequate safeguards against any potential errors in the decision-making process or misuse of power whether accidental or deliberate;

(x) Consider whether members of An Garda Síochána when making the arrests acted reasonably and in good faith;

(xi) Enquire into whether particular persons became the focus of unfounded or unreasonable suspicion and, if so, how and why this occurred;

(xii) Enquire whether in directing and/or making arrests members of An Garda Síochána proceeded with the arrests only when satisfied that in respect of each arrested person their suspicions were reasonable and/or that they exercised all appropriate care, caution and diligence in deciding to make an arrest with due regard to the presumption of innocence attaching to such persons and their right to fairness of procedures;

(xiii) Enquire into all aspects of the arrests and detentions including the extensions of custody carried out in the course of the investigation;

(xiv) Enquire into the information available and the circumstances which led to the search;

(xv) Enquire into the circumstances in which the firearm allegedly came to be on the property;

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

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

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

(xix) Enquire into the handling of informants and the information received (if any) in relation to the events the subject matter of this Term of Reference and in that regard the procedure

and approach set out at Paragraph (B)(3) of the Terms of Reference will be applied.

In order to understand this aspect of the Tribunal's enquiries it is necessary to go back in time and to give some background information on the two persons who are likely to be the central witnesses concerned. Detective Garda Thomas J. Kilcoyne joined An Garda Síochána in September, 1983. After initial training he came to Donegal and was stationed initially in Lifford where he was engaged on ordinary policing work. In various statements made to the Carty investigating team he seeks to indicate that the kind of police work he was engaged in was of an ordinary, or mundane, variety and that he himself was a somewhat naive individual. It may be, however, that someone who had worked as a police officer within the community for a period of nearly fourteen years at the time of the events with which we are concerned had gained at least some practical experience of life. Sergeant John White comes from Bansha in Co. Tipperary. He joined An Garda Síochána in 1974 and was allocated to Ballybofey on completion of his training. He moved to Castlefin in 1978 and Graiguenamanagh in 1979. In 1980 he was appointed to the Investigation Section of the Technical Bureau. In 1983 he served at the Central Detective Unit and with the Detective Unit in Kilmainham. In 1984 he was a Detective Garda in Blanchardstown where he served for ten years until he was transferred to Lifford in 1994. In 1995 he was promoted to Sergeant and allocated to Carrick. In January 1997 he was allocated to Raphoe and in August of that year he was allocated Detective duties in Letterkenny. A conclusion might fairly be reached, from the relative profiles of these two individuals, that John White, in terms of his duties within An Garda Síochána, and in particular working within the city of Dublin, was by far the more experienced of these two officers.

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

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

In the course of this statement he relates a number of extraordinary incidents which apparently involved the ongoing fraud investigation taking himself and John White to Dublin in 1995. On one occasion he claims he was given a

video camera inside a briefcase. He was directed to go into a chip shop and film a man. He was then dropped back by John White to his B & B. He then says this:

> **I was only there a short time and had just changed when John White phoned and told me to go to the top of the road … After fifteen minutes John White himself arrived with the video camera. He gave out to me for being in casual clothes, that I would stand out like a sore thumb with a briefcase. He said we were going to [a place] … He told me that a tout of his, [Mr. A] would be there. One or two nights before John White had driven to his house and went in leaving me outside. John White had briefed me that a meeting was to take place at this [place]. The meeting had been arranged by [Mr. A] … to introduce a person to [B]. The purpose of the meeting was to establish links between … Mr. B … and a [criminal group]. He also told me that [Mr. B] was extremely dangerous and would have no hesitation in killing a Garda if he decked me. I went into the cafe alone after White had dropped me off. He told me to get as close as I could as there was also a sound recorder in the case with the camera. I identified the three most likely people in the cafe. I put the case near them and told them to watch it for me. I went into the toilet and a fourth man followed me in and asked me who … was I. I gave [a false name]. I picked up the case and left. The next day the tape was developed and [Mr. C was identified …]. John White was very excited about this. I then accompanied John White to Detective Chief Superintendent Carty's office who was in charge of drugs. He appeared pleased with the operation and knew John White. This whole experience in Dublin left me in awe of John White. I got a great buzz from it.**

At this time John White, Garda Kilcoyne says, claimed to have done the Sergeants exam but was awaiting an appointment. He claimed to have contact with informants of a subversive kind. In February, 1996 Detective Garda Kilcoyne was transferred to Letterkenny on uniform duties. In February, 1997 John White came to Raphoe as the Sergeant-in-Charge, the party in which consisted of one Sergeant and three Gardaí. In the middle of September, 1997 Detective Garda Kilcoyne, together with three others, was assigned to the Richard Barron death investigation on which, as we already know, John White worked. On the 31st of January, 1998 a robbery occurred at Drumkeen Post Office. Our understanding is that a double-barrelled, side-by-side, sawn-off shotgun was used in this raid together with a fireman's axe.

Shortly afterwards, in the Spring of that year, a number of trailers were apparently stolen from John White's private property at Ballybofey. According to Detective Garda Kilcoyne this led to the renewal of the relationship between the two men. Obviously, John White was anxious to use his skills to follow through on the recovery of his property. It seems that he carried out general enquiries. One of these may be of interest to you, Sir. In early May of 1998 some members of the travelling community had established a camp site in

Barnesmore Gap, which is to the north of Donegal town on the main road up towards Letterkenny. On an occasion when John White was on mobile patrol with Tom Kilcoyne they stopped at Barnesmore Gap and engaged in discussions with the community there. John White indicates in his statement of the 20th of June, 2001 that from these discussions he did not suspect any of the persons there of stealing his trailers, or of stealing any other trailers from the area. He noted that the people were from the McDonagh and the Casey families whom, he says, he had never encountered before. Thomas Kilcoyne, however, indicates that the conversations they had concerned mutual acquaintances from Dublin. Vehicle registrations were noted.

At around the same time, and perhaps during the same week, a man called Edward Fitzmaurice lost his life in Charlestown, Co. Mayo. It would appear from the Garda material made available to the Tribunal that a number of intruders had broken into his house and left him tied up. His date of death was placed between the 1st and the 6th of May, 1998 because of the time gap between when he was last seen and the discovery of his body. Apparently he died as a result of a combination of being violently handled, and then violently restrained, with little hope of breaking free. It was possible, therefore, to regard this case from Co. Mayo as being a murder investigation. Certainly it was a crime which merited a high level of attention.

On the 8th of May, 1998 Sergeant Niall Coady was driving his car at 9.20 p.m. at Barnesmore. Two men were apparently acting suspiciously. He got out and spoke to them. They had, by this stage, gotten into a vehicle. The driver gave his name as John Collins, but gave the same date of birth as one John Casey who was subsequently arrested, and the passenger gave his name as Timothy McDonagh whose date of birth did not correspond to anybody who was later arrested after the Burnfoot search to which we shall shortly refer. Since a number of the people who were arrested after the Burnfoot matter gave false names it may be that both of these men were subsequently arrested at Burnfoot. Garda Coady demanded certificates of insurance and a driving licence from the driver. He was suspicious that something might have been concealed at this unidentified location in the Barnesmore Gap and, with another Garda from Donegal, later carried out a search there which yielded no result. He later discussed the matter with Detective Sergeant White and from the detailed descriptions given by Garda Coady, John White indicated that he might know one or other of the people involved.

John White puts the date when he and Detective Garda Kilcoyne stopped at the traveller encampment at Barnesmore Gap as being Monday the 11th of May, which would be after the incident with Sergeant Coady, but that appears not to matter. It appears to have been a few days later when Detective Sergeant John White claims that he met with an informant of his in Dublin who indicated that a strong suspicion in relation to the Fitzmaurice death pointed towards people at the traveller's encampment in Donegal.

At or around this time the travellers moved from Barnesmore Gap to the location at Burnfoot, and into the vicinity of some farm buildings, then disused, on the An Griannán estate. In his statement, while in Garda custody, on the

20th of June, 2001, Sergeant White indicated that there were two meetings with a long-standing informant, called A, on the 19th and 20th of May, 1998. On the following day a further informant, informant B, also came along. However, as a point of clarification, perhaps, he indicates at the end of his statement that perhaps the meetings took place on the 13th and 14th of May, 1998 rather than the 19th and 20th of May, 1998. Detective Sergeant White claims to have spoken to Detective Chief Superintendent Dermot Jennings on the matter of a connection between the community of travellers in Donegal and the Fitzmaurice murder, as he puts it "probably on the morning of the 20/5/98". This is how John White puts the matter:

> **On the 19th of May, 1998 I travelled to Dublin at the request of D/Chief Superintendent Dermot Jennings in relation to other matters not related to this investigation. While in Dublin I received a telephone call. I'm not sure whether I received the call or made the call or whether it was made or received on a landline or a mobile phone. This contact was with my informant in Dublin and I am unsure whether I rang him or he rang me. … The reason I was contacting my informant was to try to recover the trailers which were stolen from my home. My informant … (A) suggested that I should meet him … I agreed to meet him at McDonnell's Restaurant almost across from the Swiss Cottage in Santry, Dublin. It was either the 19th or 20th of May, 1998. … I think it was evening time. … I sat into my informant's van and I discussed the travellers who were parked at "Biddy O Barnes" Donegal and their possible involvement in the stealing of trailers. His view was that they would not be involved in stealing of trailers having heard the names of the families parked there. My informant said that these were very hot people and that he had information that they were involved in the killing of the old man in Mayo. I asked him to give me reasons for his suspicions. He said that a very close friend of his who was related to the McDonaghs in Donegal, that I had mentioned, had told him this. I asked my informant if he could arrange that I could meet this man who supplied him with this information. … He named him and I will refer to him as informant B. My informant agreed to speak to informant B and arranged with me that the three of us would meet at the same location the following evening which would be 20th May, 1998. My informant discussed with me about the movements of these families prior to them coming to Donegal and he said that they had been in Sligo before Donegal and the west of Ireland before that. I knew that my informant … was speaking about Mr. Eddie Fitzmaurice who was killed in Charlestown. … Probably on the morning of the 20/5/98 I discussed this matter and the Eddie Fitzmaurice death or murder with D/Chief Superintendent Dermot Jennings. … On the evening following [the] first meeting … I drove into the same car park … I think the same van was parked close to where it was the previous day … Both informant A and B were in the van. Informant A told informant B to fill me in on exactly why he thought that the McDonagh and Casey families were involved in the murder of the**

> **old man in Mayo. While I refer to my informants as A and B I do not wish to name them in this statement but I have given their names to Sergeant Traynor. Informant B told me that either his mother or his wife was crying in the caravan and when he asked her she said the boys had killed the old man in Mayo. He told me that he had a discussion with her and he had no doubt but that the families that I enquired about were the families involved in the death of Fitzmaurice. Informant B told me that there would be a black handled rubber fireman's axe found in one of the Casey family caravans. This axe was used in a robbery in Donegal in a Post Office according to informant B. … The day that I met informant A at the first meeting in Dublin may have been the 13th or 14th of May, 1998 rather than the 19th/20th of May, 1998. The other point I want to clarify is that my informant A told me to the best of my recollection that Matthew Hand from Blanchardstown was travelling with the McDonaghs and Caseys.**

It would seem likely that if these meetings took place that they were at the earlier rather than the later date. This is because there is a letter dated the 18th of May, 1998 from Detective Sergeant John White to Detective Chief Superintendent Dermot Jennings at Crime and Security Section of Garda Headquarters. In this letter, he says that he has received information from a Dublin-based member of the travelling community to the effect that four people were involved in the suspicious death of Eddie Fitzmaurice. He named them as (1) John Casey, (2) Matthew Hand, (3) Timothy Power and (4) David Power. The letter also says that on Monday the 11th of May, accompanied by Detective Garda Kilcoyne, he interviewed a small group of travellers at Barnesmore Gap and that some had given false names and that one of them knew a lot of travellers who were involved in serious crime in the Dublin area. He mentioned taking registration numbers and of being in a position to get further information from his informant on the 19th of May.

In Swinford, Co. Mayo, on the next day, a fax was received from Detective Sergeant White to the effect that he had received the same confidential information as is set out in the foregoing letter. The fax claims that the exact whereabouts of the persons named was unknown but that they were believed to be camped somewhere in Derry. It is important at this juncture to indicate by quotation what Detective Sergeant Kilcoyne says on the subject of informants and suspicions. Within days of the Barnesmore conversations with the travelling community the matter, according to Detective Garda Kilcoyne, developed further:

> **Within the next day or two Sergeant White told me that some of these people had been identified as suspects for the Eddie Fitzmaurice murder in Charlestown which had occurred approximately two weeks earlier. Sergeant White told me that some of these travellers had left the campsite prior to the Fitzmaurice murder and had subsequently returned. He also told me that there was other information that these people had been involved. He told me that this information had been received from**

> **Dermot Jennings, whom I believed to be a high-ranking officer in C3 … These travellers were alleged to be in possession of a sawn-off shotgun. John White told me that the information came from Dublin that they had acquired this gun for their own protection, that they were to give evidence in a trial. The gun was supposed to be in or close to one of the caravans … the caravans moved and I was asked by John White to locate them. I found them at Burnfoot beside the Griannán Farm. John White was excited and told me that people from the Swinford investigation would be up and for me to keep an eye on them and gather intelligence on who was visiting them and record the number of the vehicles in the camp.**

John White does not claim in his statement to have received this information from Detective Chief Superintendent Jennings. There was an existing relationship, we understand, which was of benefit in the detection and prevention of serious crime between Detective Chief Superintendent Jennings and Detective Sergeant John White. We have no reason to believe that the letter was not sent and received. Detective Chief Superintendent Jennings also indicates that on the 22nd of May, 1998 he received a number of phone calls from Detective Sergeant White. It is possible that, like the incident in the chip shop and the incident in the cafe in 1995, the nature of whatever was exchanged from John White to Dermot Jennings was regarded as sensational by Detective Garda Thomas Kilcoyne. The fact that X says to Y that Z said something to him, X, is never admissible against Z. Both from the point of view of the rule against hearsay and from the point of view of fairness, the Tribunal may have to consider what was said about Detective Chief Superintendent Jennings by Detective Garda White to Detective Garda Kilcoyne. That, however, does not establish that Superintendent Jennings said anything of the kind. By way of clarification this is what Superintendent Jennings says:

> **I have been shown a statement made by Detective Garda Thomas Kilcoyne … in which it is alleged that I passed information to a Detective Sergeant White concerning members of the travelling community who were parked in a campsite in Donegal and whom had been involved in the murder of Eddie Fitzmaurice. This never happened. It is also alleged in that statement that I informed Detective Sergeant White that the same members of the travelling community were in possession of a firearm. This is also untrue, however I can confirm that on the 22nd of May, 1998 I did receive a number of phone calls from Detective Sergeant John White. I have also noted that matters of a security nature are referred to in the statement but I do not intend to elaborate on them.**

The management of informants is one of the central questions in this inquiry. The person who appears to have been informant A cooperated voluntarily with the Carty Inquiry and allowed himself to be identified, notwithstanding the existence of an informer privilege. Mr. Christopher Ward in various statements made in July and September of 2001 indicated that he was talking

to a friend called Kieran McDonagh and that either as a result of this, or perhaps as a result of his own information, thought that the Casey, Power, Collins and McCann families that were camped in Donegal in early 1998 had, in his words "a bit of hot stuff around their place". He claimed that they had "the country bled and they are getting away with it". Within a short time of speaking to Kieran McDonagh he rang John White in Donegal. Initially he indicated to the Carty team that he did not say anything about a gun but that Kieran had said to him to tell John White to be careful in case there was a gun. Mr. Ward claimed not to have information about the death of Mr. Fitzmaurice or to have passed on that information to Detective Sergeant White. There was nothing to suggest to him that the Collins and the Powers families had anything to do with the apparent robbery of Mr. Fitzmaurice. He claimed to have telephoned John White in Donegal, acting out of concern and friendship.

In September, Mr. Ward said that he never met John White with Kieran McDonagh, that the information he gave to him was over the telephone. He claimed that later, after the arrest of the travellers in Donegal, he met John White in a McDonald's car park in Santry in connection with another matter. He claimed that Kieran McDonagh, who by this stage had made a statement to the Gardaí, waiving his privilege as an informer, in saying anything different was being untruthful.

Kieran "Johnny Boy" McDonagh had indicated to the Carty investigation team in a statement dated the 5th of September, 2001 that he knew a Christy Ward and that he knew that a Garda called John White was a good friend of his. He recalled an incident where he travelled with Christy Ward over to the car park of the McDonald's restaurant in Santry. They were in a van and, in due course, John White arrived in an unmarked car. While Mr. McDonagh remained in the car, Detective Sergeant White and Mr. Ward conversed for ten to fifteen minutes, walking around the car park. Ten days later the same thing happened again. On the first occasion the only communication between Mr. McDonagh and Mr. White was "hello how are you" and on the second occasion it was a wave. Ciaran McDonagh says:

> **I did not give information to John White at that time or at no time had no conversation with him whatsoever. I did not give any information to Christy Ward to pass on to John White at no time. I have no information in relation to the old man that was killed and robbed in Charlestown and Christy Ward and me never discussed anything about this. I never knew the Powers, the Collins, the Caseys ever having anything to do with guns. A few days after Christy met John White in the car park in Santry, this would have been the second time I was with him in the car park, I heard that the brother-in-law, Tom Collins, some of the family and the Powers were locked up. About a week after that, Christy Ward was in my house and he told [me] there was a gun found at some one of the trailers in Donegal where they were. About a week after this again Tom Collins and his wife Kathleen "Lally" called to my house … We had a bit of a chat about him being locked up and all**

that sort of chat. I asked him "what the fuck were you doing with a gun". He told me that he had no gun and knew nothing about it. I want to say at this stage that Christy Ward had a dislike for John Casey and had nothing good to say about him. I was never in a telephone box when Christy Ward rang John White. I never got any information … that I would have then passed on to Christy Ward, John White or anybody else. Christy never asked me about car trailers that might have been stolen.

On the 21st of May, 1998 there was a further communication to the incident room in Swinford as to the information in the possession of Detective Sergeant White. This was to the effect that the travellers in question had been located at a site in Burnfoot and that it was believed that they had a firearm in their possession for their own protection. Detective Sergeant White indicated that it was important to move on these suspects immediately as it was his information that they intended to move across the border into Derry within the next few days. As a result, it was arranged that the search should be carried out on Saturday morning the 23rd of May, 1998. Eight members of the investigation team at Swinford were scheduled to travel to Donegal to assist in the interview of the prisoners when they were arrested. Detective Inspector John O'Mahony also travelled from the Central Detective Unit in Dublin with eight other members of the investigation team.

We now move to Friday morning the 22nd of May. On that date Detective Sergeant John White called to the home of Superintendent Kevin Lennon. The Superintendent was told that the occupants of the caravans were at Burnfoot. Detective Sergeant White said that he had information in his possession to the effect that these persons had a firearm in their possession. Superintendent Lennon, in his statement, claims to have questioned Detective Sergeant White about his information "in depth". He claims to have elicited "detailed facts of their activities". He was advised of the source of the information together with some other matters. Mention was made of a fireman's axe being hidden there and the gun itself was described as being "a defensive weapon". Detective Sergeant White was under the District Officer at Buncrana but, it was explained, because he could not be contacted, he was going to Superintendent Lennon instead.

Four separate search warrants were issued in respect of named persons at the premises to Detective Sergeant Hugh Smith, and Detective Sergeant John White of Letterkenny, and Detective Sergeant Thomas Burke and Detective Sergeant James Leheny. Shortly after this, Detective Sergeant White spoke to Superintendent John McGinley. The information given to this Superintendent does not differ in any material respect from the detail given to Superintendent Lennon. Detective Superintendent McGinley however, indicates in his statement that he thought there was no time to get the people involved in the Charlestown investigation because of the urgency of the apparent move of the travellers, as Sergeant White had informed him. With the assistance of Detective Garda McEntee he organised personnel, including scenes-of-crime and photography specialists. The reference to Detective Superintendent McGinley thinking that there was no time to get the people

involved at the incident room in Swinford is noteworthy in the light of the communications already outlined and the fact that on that day Detective Sergeant White had told Detective Garda Kilcoyne that the investigation team from Swinford would be coming up to assist in the search.

Detective Sergeant Christopher Galligan and Sergeant Philip Gillespie, apparently unaware of the developments in relation to the search that was to take place, went that evening to the traveller encampment at Burnfoot. Their purpose was ordinary police work. They spoke to a number of the members of the travelling community there and ascertained their names and addresses, the number of vehicles that they had and their reasons for arriving there. They walked around the encampment and in their view there was nothing out of place. If, however, something had been hidden in a bag then, obviously, they would only have seen that object if the bag was opened. They did not engage in such an intensive search. It had been their practice, on occasion, to walk these unused farm buildings in furtherance of investigations into stolen property, and otherwise, prior to the arrival of the campers.

Mere presence at the scene of a crime is not a crime. A failure to interfere with the commission of a crime is ordinarily not a crime absent a duty imposed by statute, by contractual relationship or by the special nature of the relationship which parties have voluntarily entered into. This Tribunal must enquire into what happened on that Friday evening, the 22nd of May, 1998. Insofar as the Tribunal will be receiving evidence from persons who apparently assisted in unlawful activity or who, having a duty to prevent a crime, explicitly part of the role of a member of An Garda Síochána, did nothing, then the Tribunal should bear in mind the accomplice warning with which Judges analyse accomplice evidence and in respect of which juries are warned by trial judges. It is dangerous to act on the uncorroborated evidence of an accomplice because experience has shown that a person involved in crime may have a motivation for wrongly implicating his criminal confederates or for misdescribing his own role with a view to lessening his own involvement. Bitterness, or some other motive, may involve the accomplice implicating an uninvolved person in some crime which he cannot deny. Corroboration is some piece of evidence, independent of the accomplice, which tends to show a connection between the crime and the party charged with it that makes it logically more likely, apart from the accomplice's evidence, that the accused perpetrated that crime.

The facts so far, when added together, require to be enquired into with a view to considering whether Detective Sergeant John White ever received any information which would have tended to establish a connection between the Fitzmaurice murder in Mayo and the people camped in Co. Donegal. The variation between the accounts given by Mr. Ward and Detective Sergeant White must be resolved. The difference between what Detective Chief Superintendent Jennings' role was in apparently receiving information and the role ascribed to him by Detective Sergeant White to Detective Garda Kilcoyne must also be resolved. If there were information from a previously reliable source that the people at the campsite in Donegal had not been involved in the Fitzmaurice murder but did have a gun and had been involved in a

number of robberies then was there a sufficient reasonable suspicion to grant the issue of a warrant under Section 29 of the Offences Against the State Act, 1939? If, as Superintendent Lennon indicates, such an account was presented to him by an apparently reliable officer, and if he diligently enquired into it, then his role in issuing the warrant perhaps could not be impeached. The fact that another Superintendent took a similar view as to the issue of the warrant would tend to support this. If, however, genuine information from a reliable source had been twisted, for an improper purpose, then the reasonable basis of trust reposed by the authority issuing the warrant in the source of the information might be so undermined as to destroy the validity of the warrant. These matters are mentioned by us, Sir, because of the account, which it is better to quote in the original wording, given by Detective Sergeant Kilcoyne as to what happened on that Friday evening:

> **On Friday evening after all the arrangements had been made I was in Ballybofey with Sergeant White when he told me that he had a sawn-off shotgun that he was going to place it at the caravan site in Burnfoot. He said to me Dermot Jennings said "There is a gun there" and he said to me it had to be found. He also said they need a Section 30 arrest. Firstly, I was surprised that he had a sawn-off shotgun. From all I heard for that full week I was convinced that the information was correct, that these travellers were dangerous and did possess a sawn-off shotgun. I also presumed if the information was correct that the gun had to be close at hand because the information was that they had it for self-defence and from my knowledge of the camp I knew they had dogs, children and it would be impossible to get anyone near the campsite undetected. So what Sergeant White was suggesting was in my mind unnecessary, not to mention illegal. I told him about the dogs and the kids but I felt it wasn't my place to tell him it was illegal. He was my Sergeant and more experienced than me. He told me it was in Gortacor where I knew he had a lock-up store. I had been there before. He drove me there and I remained outside the store. He returned with a sawn-off shotgun. The shotgun was the most frightening thing I saw in my life … Sergeant White suggested we test it to see if it worked. He loaded it and attached a string to it about seven or eight feet long and placed it between two stones or beside a stone and pulled the string. He discharged it into a clay bank at the back of the shed. It worked and was very loud. We travelled in his car out to Burnfoot … I got out of the car and walked down the road where I used my mobile to call Falcarragh Garda Station … We then drove on into Burnfoot. He parked the car up on a road beside the Garda Station out of sight of the main road. We then walked towards the Griannán Farm. He was carrying the gun in a black zipper briefcase in his hand similar to the one you carry files in. I was relieved when a car came up the road. I thought Sergeant White would abort but he stepped into the shadows and the car went by. When we got to the edge of the farm buildings, approximately 150 – 200 yards from the site I felt sick. I felt like a**

> **criminal. I felt everything in my head was telling me I shouldn't be here, to get out, but I felt it had gone too far and I had no control of events. The dogs started barking … but he said keep your eyes open and he stepped into the shadows of the buildings. When he emerged I knew he had planted the gun. We made our way back to the car. He was happy with the operation and all I could hope for was that the real gun would be found and that there would be no need to find this one, the planted one.**

On the 23rd of May at approximately 7 a.m. there was a briefing for the members of An Garda Síochána involved in the imminent search at Burnfoot. There were approximately 25 people present. Sergeant White and Detective Superintendent McGinley attended. Both Detective Superintendent John McGinley and Detective Sergeant White gave the operational briefing. Detective Sergeant White told the Garda personnel present that he had information to the effect that members of the travelling community, whom he named, and who corresponded to the people later arrested, and who were camped at Burnfoot, were in fear of the McDonagh clan and that they had a firearm for their own protection. Sergeant White indicated that this firearm would not be kept by them in their caravans but would be kept in close proximity to the caravans. He told the Gardaí that he had information to the effect that all of the above named were involved in the aggravated burglary and murder of Edward Fitzmaurice at Charlestown, Co. Mayo earlier that month. He produced photographs of the alleged suspects. The combination of this information, from an apparently reliable source, with the finding of the gun, might seem on the face of it, to constitute reasonable grounds for suspecting the commission of an offence and that the personnel arrested had committed it.

After the briefing, the Gardaí proceeded to Burnfoot. The search was conducted in an orderly fashion with no attempt to make trouble by any of the persons subjected to it. Among the people involved in the search were Garda Tony Moran and Garda Eamon McConigley. The Gardaí divided into a number of search parties. Both Gardaí Moran and McConigley indicate, that although they served on the same unit, they were not part of the same searching group on that morning. Sergeant Niall Coady, who later found the weapon, while thinking that he may have searched in one party together with these two members, but in this respect he is unsure, indicates that this was not the area where the gun was later found and that certainly Garda McConigley, whom he positively remembers, was not seen by him searching the area where the gun was later found. This may be important in the light of allegations which are made later. It is important to note, that these allegations are made not on the basis of what anybody saw on the occasion in question, but on the basis of an alleged series of conversations between Garda McConigley and Garda Moran on the one hand, and a variety of other personnel on the other. This gives rise to the enquiry as to whether people have maliciously invented this series of conversations against Garda McConigley and Moran in order to establish a fraudulent counter-balance.

There were a number of personnel and caravans to be searched and a number of pieces of luggage or bags which were stored outside or underneath the caravans. Even searching for an item such as a firearm, this could hardly be expected to be a brief operation. However, the search proceeded for a time until the firearm was in fact found. Detective Sergeant White seems to have had a part to play in that regard. That part is not mentioned in the statement made by Sergeant Coady in April, 2000 to the Carty investigation team but it is mentioned in his later statement of the 19th of June, 2001. Following on the completion of a search of all of the caravans Sergeant Coady indicates:

> **… I recall D/Sergeant White and maybe one other Garda member walking in towards the An Griannán sheds at the rear of the parked caravans. D/Sergeant White shouted back for assistance in carrying out a further search and called out my name saying "You're always lucky" or something to that effect. I commenced a search of the sheds and I do recall D/Sergeant White and other Garda members also searching inside the sheds. At some stage I left the sheds and carried out a search of the perimeter. I have detailed this search in my previous statement. When the firearm was found by myself there were no other Garda members present outside the sheds and I do not believe I had contact with any Garda for at least fifteen minutes prior to finding the firearm and ammunition. I believe the first person to speak to me when the firearm was located was one or two traveller children, who happened to come around the corner. I recall them making some sort of remark that we had left the gun there, which I took to mean the Gardaí in general.**

When the gun was found it was in a particularly dangerous condition. The barrel was pointing upwards in a plastic bag. This was a holdall bag hanging at the rear of a large galvanised door. Some children's clothing was on top of the bag. The firearm had no trigger guard and was, when later examined, in a generally dangerous condition. A movement, such as the opening of the bag, could have caused it to discharge. Seven male adult members of the travelling community were arrested. They were questioned and their period of detention was extended in some instances. The seven people arrested were Thomas Collins, Michael McCann, Bernard Christopher Power, John McCann, David Power, John Casey and Timothy Collins. Most of the questioning of these people was in relation to the firearm. However, they were also questioned in relation to the Fitzmaurice death.

John McCann, when questioned, said that if they had a gun they would have hidden it in a safe place. He said that there was suspicious activity, involving a long white Ford transit van, on a number of occasions including the previous day. This appears to have nothing to do with the matter. The Carty investigation team indicated that an unmarked white Toyota van is one of the vehicles in the possession of the Donegal Garda Division but that on the previous day it was involved in surveillance and is in any event different in both make and size to the van described by John McCann.

Michael McCann thought that a planting of the gun on them was a possibility but he couldn't imagine who might do it. David Power said that he didn't know anything about the gun "that was planted there". Thomas Collins suggested that the gun should be fingerprinted in order to solve the crime and describes its discovery as "a set-up". Bernard Christopher Power said that he was being stitched up but made reference to a forthcoming trial involving someone called "Minor Charge" McDonagh. There were no fingerprints on the weapon and it was initially considered too dangerous to attempt to discharge a live cartridge from it. Ultimately, however, a ballistics expert discharged the firearm by fixing the gun in position and attaching a long string to it. There was no evidence of recent discharge.

The events of the 22nd and 23rd of May, 1998 are supposed to have played upon the mind of Detective Garda Thomas Kilcoyne. That is his account. He approached Detective Garda J. Foley and told him he had a concern about work. He didn't reveal the exact cause when this conversation took place in late May of 1998. In August of 1998 himself and Detective Garda Foley were moved to different Units. There is a further conversation shortly afterwards about a concern over work. Sergeant Coady found it peculiar that he had never been asked to make a statement in the context of a criminal investigation about his duties on the 23rd of May, 1998. It must certainly have been the case that there was concern or suspicion in relation to this matter because on the 11th of June, 2001 Sergeant Coady spoke to Chief Superintendent Rice at Letterkenny Garda Station and voiced his concerns there. He indicated that the doubts or suspicions as to whether the firearm had been planted by a Garda member had been discussed in his presence on at least three occasions in the intervening time. Sergeant Coady's own reputation was being tarnished by that kind of talk, he felt.

Garda Kilcoyne continued to think about the matter and early in the year 2000 he apparently confided in his wife. That confidence might have been reposed earlier, he asserts, but for a worry which she had on her mind which continued and apparently coincided with this matter. The Carty investigation team apparently began to examine this matter as a result of a letter dated the 14th of July, 2000 from solicitors acting on behalf of a member of the travelling community. This explicitly complains that Detective Sergeant John White was involved in the planting of a firearm, and that this had emanated from Raphoe Garda Station where it had been under lock and key. This allegation related to a Mr. Castles from Bridgend. For whatever reason, these rumours would not be quieted. On the 13th of June, 2001 Inspector Michael Keane telephoned Detective Garda Thomas Kilcoyne and asked him to come to the station. He was brought in to see Chief Superintendent Rice who told him that he had heard rumours that Detective Garda Kilcoyne had been involved in the planting of the gun at Burnfoot. Having been directly asked, he made a statement, from which the quotations have been taken, that same day. It is also fair to add that he was questioned in relation to this search, without a specific allegation of his being involved in the planting of the gun being put to him, by the Carty investigation team and made a bland statement as to the

search and subsequent interrogation of prisoners, without mentioning any other fact, on the 11th of July, 2000.

This revelation was the impetus for the later search on the 19th of June, 2001 of the home of Detective Sergeant John White at Drennan, Ballybofey. This was under the direction of Inspector Michael Keane who was in possession of a search warrant under Section 29 of the Offences Against the State Act, 1939, issued by Detective Superintendent T. Foley. A number of items were taken away. Of them, what appears to be of potential relevance to this aspect of the Tribunal's enquiries are a notebook containing references to John Courtney and a confidential report concerning the death of the late Edward Fitzmaurice.

Over the 19th and 20th of June, 2001 Detective Sergeant John White was extensively questioned in relation to the presence of the firearm at Burnfoot in May, 1998. It is fair to say that in the course of the two days of detention of Detective Sergeant John White at Letterkenny Garda Station, following his arrest on the 19th of June, 2001, members of the Carty investigation team asked him every possible question with a view to eliciting a reply. This was because throughout the entirety of the 19th of June he exercised his right to silence. This continued throughout the 20th of June up to the visit of his solicitor at 11.05 a.m. Half an hour later John White indicated that he wished to make a statement setting out his side of the story. This has been incorporated into what has already been said on this issue. Detective Sergeant White's response was that he had good information justifying him applying for a warrant: hence, he was not involved in the planting of a gun, and would not countenance such an action. On the 21st of June, 2001 Detective Sergeant John White was conveyed from Letterkenny Garda Station to the courthouse there by Garda Joseph Foley, Inspector Michael Keane, D/Sergeant Hugh Smith and Sergeant Dermot Flannery.

In relation to what is now about to be said it is important to refer to a legal principle which is no more than a reiteration of common sense. A person may tell a lie about another person and then may repeat that lie endlessly. The repetition of the lie does not transform it into the truth. A person may say something which is the truth about another person, or about a particular event, and the repetition of the truth cannot of course alter reality but the continued telling and retelling of a tale can distort it beyond recognition. The law takes account of this in rule against self-corroboration. This says that a person cannot corroborate themselves. If A tells B about a particular event, let us say that he was not responsible for a road traffic accident because the light was green when he proceeded through it, A alone is entitled to come to court and give his account of how he went through the traffic junction. B is not entitled to come to court and to say what A told him. The repetition of the tale by A to B is not admissible in evidence. There is an exception to this, which is rarely allowed, which is to the effect that if in cross examination A is attacked for recently inventing the point about the traffic light being green, he is entitled to call rebutting evidence to show that this was always part of his narrative. This, in itself, does no more than make a comment on the credibility of A in the first instance.

Much of the material that is in part of this paper, dealing with this section of the Tribunal's enquiries, infringes the rule against self-corroboration and will not be referred to here. This includes statements from Detective Garda John White's mother, from Garda John O'Dowd, from Sergeant John White himself and the reiteration of conversations between these parties and Sergeant Joseph Hannigan, and Garda John O'Dowd and Sergeant Conaty. Evidence which might sensibly be considered in this context is, in what is presented to be its apparent chronological order, contained in the statements of Sergeant John J. Conaty, Garda Padráig Mulligan and Garda Martin Leonard. To clarify: the precise point of this issue is the establishment of an apparent defence for Detective Sergeant John White in relation to the possession of a firearm at Burnfoot on the 22nd/23rd of May, 1998. What this body of statements proposes to establish is that two members of An Garda Síochána, namely Garda Eamon McConigley and Garda Tony Moran, had searched the precise area where Sergeant Coady found the firearm, just a few minutes beforehand, and had found nothing. Their presence in that area, or even together, does not otherwise appear to be established. A further gloss is that it is asserted that these Gardaí apparently found the finding of a firearm funny and had a laugh about it behind a caravan when Sergeant Coady announced his discovery. The people who are supposed to have been involved, namely Gardaí McConigley and Moran not only deny having searched the area, but also deny being together, laughing about the incident or telling anyone about it. Yet, Sergeant Jack J. Conaty, Garda Padráig Mulligan and Garda Martin Leonard all claim that one or other or both of them told them of this apparent search and its humorous aspect, whatever that might be supposed to be.

The apparent discovery of this matter occurred in the immediate aftermath of the charging of Detective Sergeant John White and had lain dormant for the previous three years. So, people who had apparently got something on their minds began to talk about it three years later. That may not be impossible, Sir, and we can make no comment on it. The first statement made in relation to this matter is that of Garda Martin Leonard on the 13th of November, 2001. As might be expected, Gardaí McConigley and Moran were spoken to and they indicated that they never had any such conversation relating to any such event with these persons and that the event apparently narrated by them had never happened.

So, let us try and put this in chronological order. In a statement dated the 18th of January, 2002, made to the Carty investigation team, Sergeant John J. Conaty said as follows:

> **I remember about the time of Sergeant White's arrest or time of statement made by D/Garda Kilcoyne, Gardaí McConigley and Moran called to my house at night. During the course of the guards' visit Eamon McConigley said they were both at the search of the travellers' camp in Burnfoot where the gun was found and the travellers arrested about some robberies in the west of Ireland. Both Tony and Eamon said they had searched the area where the gun was found just before it was found and it definitely**

> **was not there where the gun was allegedly found. Tony said there was something fishy about the find that morning. I told both men they had a problem as I saw it. They should have reported their suspicions when they came off the search to the local Superintendent that morning or either and especially now keep their mouths shut.**

Garda Tony Moran was asked about this on the 26th of January, 2002 and he indicated that while he had called to Sergeant Jack Conaty's house in Dunmore he had never discussed the search at Burnfoot with him and had never said to him, or anybody else, anything to the effect that he had searched the area where the gun was found, either before or after the gun was found. He indicated that the area where the gun was found was at least a hundred yards from where he was searching and that he did not go near that area at any time. Garda Eamon McConigley when asked about this matter on the 17th of January, 2002, indicated that Garda Moran and he were not on the search together, but were in different groups, and that he had never searched the area where the gun was found and never stated to anybody that he carried out any such search. He explicitly says: "I don't know why these lies are being fabricated". Sergeant Conaty is further supposed to have spoken to a Tommy Harkin and claimed that there was a tape recording.

This alleged conversation with Sergeant Conaty is supposed to have happened, it would appear, some time in late June, 2001. The next allegation of a conversation is made by Garda Padráig Mulligan and he places this in September, 2001. He claims that, as a result of going golfing in Ballybofey, with Sergeant Conaty the earlier conversation was relayed to him. Therefore, in the first or second week of September, 2001 he went down to Jack Conaty's house in Carrigans. Only Mrs. Conaty was at home. He claims to have rung Jack Conaty who said he would be away for the day. He claims that he asked Mrs. Conaty to ring Garda Eamon McConigley and ask him to come down to Sergeant Conaty's house to see him. It is useful to quote Garda Mulligan's statement of the 17th of January, 2002:

> **She asked him to call up. It was my intention to see him at some stage about what he had said about the search. I was curious about what was being said. Nobody asked me to see him about this, I was just curious. Garda Eamon McConigley and Garda Tony Moran called up to the house. Jack's wife left us along in the kitchen. I asked them about the rumour that they had searched the area where the gun was found that morning. We were chatting and during the course of the conversation they both said that they searched that area together and found nothing a few minutes before the gun was found. They said they had just gone around the corner when they heard a shout that a gun was found. They said they felt silly about it at the time. I asked them did they make statements about this and they said that they did. They felt bad about it at the time. Jack Conaty's wife did not hear any of the conversation, I think her name is Carmel. They stayed**

> **about fifteen minutes with me. They did not seem surprised that I was enquiring about this matter. I also spoke to Garda Martin Leonard about this matter some time before I had this meeting with Eamon McConigley and Tony Moran. … My meetings with Garda Leonard and Gardaí McConigley and Moran would have been in early October. I do not have specific dates and I don't have any notes. I told John White what Gardaí McConigley and Moran had said to me about the search.**

Garda Tony Moran has a completely different perspective on this conversation which is completely at variance with the foregoing account. He says:

> **I recall a date before Sergeant Conaty's arrest, I don't know the date. I received a call from Sergeant Gaynor to go to Sergeant Conaty's house. I went up there with Garda Eamon McConigley. I thought we were going up to see Jack Conaty. When we arrived up there, Carmel Conaty, Sergeant Conaty's wife was there. I was surprised to see Garda Padráig Mulligan with her. We went into the kitchen and Carmel left the room after a minute. We spoke in general to Padráig to see how he was getting on. Out of the blue he said to me "Was it only the two of you on that search in Burnfoot". I was very surprised he said this and I asked him what he was going on about. I said there were at least twenty members there. This conversation did not go any further but I remember the question specifically because it did not relate to what we had been talking about. I definitely can say that I never said that I searched the area where the gun was found prior to it being found to Padráig Mulligan that day or to any other member at any time. I have no doubts about this matter. I did not say these words and if somebody is saying I did, it is total rubbish and lies.**

Earlier, on the 17th of January, 2002 Garda Eamon McConigley had given his account of this meeting:

> **I recall the 15th of October, 2001. I was working a 6 a.m. to 2 p.m. tour of duty on the Carrigans patrol car with Garda Tony Moran. I recall this day because it was the day before Sergeant Jack Conaty was charged … at Carndonagh District Court. I received a phone call from Carmel Conaty, wife of Sergeant Conaty, at the station. I believed that she had phoned me because Superintendent Gallagher, Inspector McGovern and another Sergeant had visited her home on Friday. She did not discuss much with me but she wanted me to call up to her house. She did not mention the fact that Sergeant Padráig Mulligan was in her house or that he wanted to see me. I believe I told Sergeant Gaynor … that I was going up to her house. When we arrived there it was between 10 a.m. and 11 a.m. Garda Padráig Mulligan was in the house with Carmel Conaty. We spoke to them both for a moment, then Carmel left the room but she told me she would talk to me before I go. Padráig Mulligan asked both of us if we**

> **were on the search. I told him that there was about twenty of us on the search and he expressed surprise at this and said he only thought it was the two of us. I have now been informed that Garda Mulligan has made a statement and alleges that we said "We searched the area together and found nothing a few minutes before the gun was found and that we had just gone around the corner when we heard a shout that a gun was found". I can swear that I or Tony Moran did not say that because it simply is not true. In fact Garda Moran and I were not on the search together we were in different groups. I have to say that Padráig Mulligan is telling lies on this matter. I left the kitchen at that stage and went down to Carmel Conaty who asked me why those men had called at the weekend. I surmised that Jack Conaty was about to be charged and I told her this.**

A further allegation is made by Garda Martin Leonard against Garda McConigley. It is possible to place the date of this alleged conversation as being the 3rd of October, 2001. This is because Garda Martin Leonard, who, as you recall, Sir, is a G.R.A. representative, was accompanied by a number of his colleagues who placed the date at this time. However, despite the fact that Garda Leonard looks to at least one of them for support of his account as to what was said to him by Garda McConigley, that such is completely absent. It seems undisputed that on the 3rd of October, 2001 a Divisional meeting of the Garda Representative Association at Letterkenny Garda Station was held in a room called the fines-on-the-spot office. Four people attended, Garda Martin J. Leonard, Garda Larry Walsh, D/Garda Michael Moreton and Garda Michael O'Boyce. The meeting went on from 9.30 p.m. to 11 p.m. The four Gardaí then walked across to The Orchard licensed premises to have a drink. Gardaí Moreton and Leonard were apparently drinking together and Gardaí Walsh and O'Boyce were drinking together. This is what Garda Martin Leonard says in his statement dated the 29th of November, 2001:

> **After a short period, at around 11.30 p.m. on the 3rd of October, 2001 Garda Eamon McConigley and Garda Seamus Patton, Lifford Garda Station, to the best of my knowledge and another member whom I don't know, came into The Orchard … I was standing at the counter with D/Garda Michael Morton when Garda McConigley came into the pub. As Garda Eamon McConigley passed me on his way into the pub I asked him if he was a member of the search team that found the gun at the caravans in Burnfoot a while ago. I was referring to the gun that was found, which is the gun that D/Sergeant John White is charged with. D/Garda Michael Morton would not have heard me ask Garda McConigley this question. The reason that I asked Garda McConigley this question was that I had heard that he had made a laugh of the circumstances of the finding of the gun. Garda McConigley replied that he was on the search team and searched the area, three minutes prior to the finding of the gun and he did not see it and that he and another member, Garda Tony Moran, Carrigans Garda Station, went around to the side of a caravan and had laughed at the idea of the**

> **gun being found. I then asked Garda Eamon McConigley if he would make a statement and he said no, as he only had a couple of years to go and he would keep his head down. Garda Seamus Patton was not present during this conversation. It was a one-to-one conversation that took place between Garda McConigley and I. Garda McConigley then walked over to the corner of the pub and as he reached the corner of the bar he said the grass may have been long and laughed. I then spoke to Garda Michael O'Boyce and I asked him to specifically note that I had spoken to Garda McConigley and I informed him of the contents of the conversation. I was not involved in the search party when this gun was found …**

This statement was checked against other persons and the Carty investigation team decided that further questions were appropriate. These were posed to Garda Martin Leonard on the 5th of December, 2001 who indicated he would make a statement. This he did on the 3rd of January, 2002 and added the following detail:

> **I turned to Garda Michael O'Boyce, my C.E.C. representative and I asked him to specifically note that I had been talking to Garda McConigley. I informed him of the contents of the conversation. He was not pleased to hear it. He told me I should not be fighting John White's battles and that I was undermining Garda Kilcoyne's statement. I did not agree and I explained that it was every member's duty to make available all evidence whether favourable or unfavourable. I argued that it was incumbent on all Gardaí to establish the innocence of a person, as it is to prove the guilt of a person. This has always been my attitude. Garda Michael O'Boyce knows this very well.**

So, what does anybody else who was in the pub say about this alleged meeting? The lengthy conversation with Garda O'Boyce, following on the apparent revelation, according to him, did not take place. Garda Michael O'Boyce in a statement dated the 29th of November, 2001 says:

> **When the meeting was over the four of us went over to The Orchard … the four of us went into the bar section … we were standing just inside the front door near the counter. The four of us were together. Garda Larry Walsh and I were in a round and we were talking. After about fifteen to twenty minutes of going into the pub or it could be anything up to twenty-five minutes of me going into the pub, I went to the toilet which is situated at the back corridor of the premises. On my way back from the toilet I saw Garda Eamon McConigley, Carrigans Garda Station and Garda Seamus Patton, Lifford Garda Station standing at the back of the bar, and near the corridor. I spoke to these two members, just for a few minutes and I returned to my own company. Garda McConigley and Garda Patton were not at the rear of the bar when I was going to the toilet. I think that Garda Michael Moreton had**

> **left at this stage or was about to leave on my return from the toilet. I did not see Garda Eamon McConigley or Garda Seamus Patton coming into The Orchard Bar on the night of the 3/10/2001. I remained in The Orchard Bar for about one hour. I have no recollection of being told about a conversation between Garda Martin Leonard and Garda Eamon McConigley or of being asked to note any conversation that had taken place between Garda Leonard and Garda McConigley by Garda Martin Leonard. I have no recollection of any conversation taking place on the night … in relation to the search at An Griannán Farm, Burnfoot about three and a half years ago where a firearm had been found. I was not involved in the search. ….**
>
> **Further to my statement of 29/11/2001 I have heard a portion of a statement of Garda Martin Leonard read over to me where I allegedly told Martin Leonard not to be fighting John White's battles for him and undermining Garda Kilcoyne's statement. I have no recollection of ever saying this and I feel that if I did say it I would certainly recall it. I have no such recollection (latter part taken from statement of 17/1/2002).**

Garda Patton indicates that on that night he did go in to The Orchard for a drink with Garda Eamon McConigley. They went and joined another Garda, called Nigel Keown. Going through the bar area he noticed Garda Leonard, D/Garda Moreton, Garda O'Boyce and Garda Walsh who were known to him as members of the G.R.A. He did not engage them in conversation but went over and joined Garda Nigel Keown. The four G.R.A. members were near the door and he passed them as he came in. His recollection is that Garda McConigley passed in by them and joined in the company with Garda Keown. He cannot say if anything was said between Garda McConigley and Garda Leonard but he could not recall any real contact beyond what seems to have been a flippant remark "Is there a G.R.A. meeting on" or something to that effect. He did not hear Garda McConigley saying anything to them. D/Garda Michael Moreton has no recollection of Garda Eamon McConigley or Garda Seamus Patton coming into the pub or joining the company of the four G.R.A. representatives. There was no conversation about the search at Burnfoot that he recalls. Garda Laurence Walsh did not see Garda Eamon McConigley speak to Garda Martin Leonard on the way into the pub and he did not hear Garda Leonard say anything to Garda O'Boyce about a conversation with Garda McConigley. He recalls no conversation about the search at Burnfoot in the pub on the night of the 3rd of October, 2001. Garda Eamon McConigley has this to say about the alleged conversation:

> **I have heard the contents of a statement read over to me which was made by Garda Martin Leonard on the 13th of November, 2001 by D/Superintendent Joseph McGarty. In this statement Garda Leonard describes a meeting between myself and himself on Wednesday the 3rd of October, 2001. I have no recollection of this meeting. Garda Leonard further states that we discussed the search and the finding of the firearm at … Burnfoot. I can**

categorically state that no such conversation ever took place, either then or at any other time. Garda Leonard further states that I told him that I had searched, with another, the spot where the firearm was found three minutes prior to the finding of the gun. I can categorically state that this is not true and that no such discussion ever took place. Garda Leonard further states that I said that myself and another member went to the side of a caravan and laughed at the idea of the firearm's appearance. This is also untrue and no such discussion every took place. I know Garda Martin Leonard, who is attached to the Traffic Unit at Letterkenny Garda Station. I know him for the past ten years, but I would only meet him perhaps once a year. I cannot think of any reason why Garda Martin Leonard would make that statement. It is possible that the last time I could have been in the same room as him was at Garda John Foley's retirement function on the 25th of October, 2001 at Letterkenny Golf Club.

Sir, You have already articulated in precise terms an explanation of the Terms of Reference and the enquiries that will be necessary therefrom. It is perhaps useful to summarise, at the juncture, how this summary may more particularly focus the work of the Tribunal.

1. Was any genuine information available to Detective Sergeant John White in relation to any possible connection that there might have been between the travellers encamped at Burnfoot and the death of Edward Fitzmaurice in May of 1998? If there was not, was the exercise in gathering together members of the Crime Investigation Branch from Dublin, members of the Edward Fitzmaurice investigation team from Swinford in Co. Mayo and a large party of Gardaí from the Donegal Division itself, set up in order to further some ulterior purpose of Detective Sergeant John White?

2. Did Detective Sergeant John White engage in the deception of Superintendent Lennon in relation to the issuing of the warrants under Section 29 of the Offences Against the State Act, 1939 which were the legal foundation for a valid search of the campsite at Burnfoot? Was there, on the face of it, anything that could or should have been done by Superintendent Lennon, or any other senior officer mentioned in the foregoing narrative, to check what Detective Sergeant White was saying, or to otherwise proceed, with a view to prudence and bearing in mind the rights of the searched and later arrested persons, before issuing the warrant?

3. Whilst, on the face of the custody records, and the statements available to the Tribunal at this juncture, the persons arrested at Burnfoot make no complaint of ill treatment while in Garda custody, the nature of their overall treatment should be enquired into.

4. A stark contrast between the statements of Detective Garda Thomas Kilcoyne and those of Detective Sergeant White arises as to the events of the 22nd/23rd of May, 2002, which, if any of them, is telling the truth? Is it the case that Detective Sergeant White, perhaps, identified Detective Garda Kilcoyne as being a person he could impress? Did he, thereafter, engage in a series of charades designed to bolster his purpose? On the other hand, is Detective Garda Kilcoyne painting himself as being naive beyond the point of credibility and has he, in this context, perhaps because of some ulterior motive, maliciously invented a series of lies against Detective Sergeant White in order to scandalise his reputation?

5. The manner in which the find at Burnfoot was reported and investigated needs to be checked against standard Garda procedures. We need to ask as to whether, if these procedures were not followed, how was this failure to follow procedures subsequently pursued. A subsidiary question arises as to whether a find of this kind, if not subjected to the proper type of paperwork, should have been looked at by senior officers and whether questions should have been asked by them.

6. Garda Eamon McConigley and Garda Tony Moran emerge as being persons against whom allegations, which they deny, are being made. No-one claims that at the time of the search at Burnfoot on the 23rd of May, 1998, that they had been seen to actually search the area where the gun was found. In order to find that gun, in any event, it was necessary to remove the door, to find the holdall bag and to open it. What is being alleged is that they engaged in jocose, or loose, talk to Sergeant John J. Coady, to Garda Padráig Mulligan and to Garda Martin Leonard. These persons, in turn, shared that apparent information with Detective Sergeant John White, with Sergeant Joseph Hannigan and with Garda John O'Dowd. One possibility which arises is that if what they said to these three persons was in fact said, and was in fact true, that they might, thereby, be accused of having planted the gun themselves. An alternative is that they looked upon their duties as members of An Garda Síochána in a less than appropriate manner and regarded everything to do with the search as being of no importance and positively funny. Again, there is a determination by more than one person, it would seem, to lie.

7. On the other hand, it needs to be asked why three persons, namely Sergeant Jack J. Conaty, Garda Padráig Mulligan and Garda Martin Leonard would falsely invent, if that be the case, a series of conversations, as to the first two of them, alleged against both Gardaí McConigley and Moran, and as to the last alleged conversation with Garda Leonard, against Garda McConigley alone. If these three members of An Garda Síochána have indeed invented these conversations and planted them into the minds of two persons, chosen perhaps as being on the search but as playing

> no particular role in anything that morning, a very serious situation potentially emerges. That is, with a view to ensuring that Sergeant White would have available to him a defence in relation to the charge which he faced, principally on the evidence of Detective Garda Thomas Kilcoyne, that they would together, and perhaps in consultation with others, invent a story, invent likely suspects to carry that story, and then pursue that story in defiance of the truth for some ulterior motive. If that happened, then, Sir, one possible available inference would be that, if this indeed occurred, that they were involved with Detective Sergeant John White in the manufacturing of a defence for him notwithstanding that it besmirched the standing and reputation of innocent persons, namely Gardaí McConigley and Moran.

All of this apparently goes to show that for every event which apparently seems to take place, there is a possible falsehood underlying it. For every explanation of that falsehood there is a potential further falsehood attracting further innocent persons in order to undermine the discovery of that falsehood in the first instance. The Tribunal is entitled to look at this, and must indeed look at it, from the point of view of credibility making its own findings of fact in the inquiry which it is undertaking.

THE BARRON INVESTIGATION

Richard Barron died in the early hours of the morning of Monday, the 14th of October, 1996. As a result of his death a murder investigation was launched. In explaining the Terms of Reference, Sir, you indicated that there were three main aspects to paragraph (b) of the Terms of Reference. This paragraph reads:

> **Investigations in relation to the death of Mr. Richie Barron of Raphoe, Co. Donegal on the 14th October, 1996 with particular reference to the arrest and treatment of persons in custody in connection with that investigation, the progress, management and effectiveness of the Garda investigation with particular reference to the management of informants.**

The three aspects relate to the investigation itself, the arrest and treatment of persons in custody in the course of that investigation and the use of informers to apparently further Garda enquiries. In relation to the investigation, the explanation given by you, Sir, indicates:

> **The Tribunal proposes to enquire into the investigations made by members of An Garda Síochána into the death of the late Mr. Barron. The Tribunal therefore will**
>
> **(i) Enquire into and in so far as is possible, establish what were the basic facts in this regard;**
> **(ii) Enquire into the steps taken by An Garda Síochána in carrying out the investigation;**
> **(iii) Enquire into and establish the normal approved practices and procedures which are prescribed or followed when investigating crimes in the apparent circumstances in which Mr. Barron died;**
> **(iv) Enquire into whether the normal approved practices and procedures which are prescribed or followed in such circumstances were carried out or followed in the course of the investigation into the death of Mr. Barron;**
> **(v) Enquire into the adequacy of the Garda practices and/or procedures;**
> **(vi) Enquire into the efforts made by An Garda Síochána to obtain expert evidence and the use made of such evidence by them in the course of the investigation;**
> **(vii) Enquire generally into the progress, management and effectiveness of the entire investigation into the death of Mr. Richard Barron;**
> **(viii) Enquire into the course of the investigation into the death of Mr. Barron and the decisions which may have been taken in the course of the progress and management of the investigation, and enquire as to whether the investigation was in any way influenced by any external or improper factor and whether there is any connection between any of these matters and any other matter referred to in the Terms of Reference.**

In relation to the linked issue of informants, the explanation of the Terms of Reference given was:

> **The Tribunal will enquire into the management of informants and will**
>
> **(i) Enquire into the basis upon which a person may be classified by the Garda Síochána as an informant and whether procedures and practices exist which apply to the classification and management of informants and whether these are adequate and appropriate and/or whether recommendations may be made for improvements in this regard;**
> **(ii) Enquire as to whether the procedures and practices for the classification and management of informants were applied in this investigation adequately, appropriately or at all;**
> **(iii) Enquire as to the procedure and practice (if any) by which the information gleaned from informants is marshalled, analysed, processed and/or verified by the Garda Síochána and if and how that was done in this investigation and whether recommendations may be made for improvements in this regard;**
> **(iv) Enquire into whether there was a misuse and/or over-reliance upon informants arising either as a result of the actions of the informants themselves or those dealing with informants or in the handling of the information supplied by members of An Garda Síochána;**
> **(v) Enquire into any aspect of this Term of Reference in so far as it may be connected to any other Term of Reference.**
>
> **In this regard if it emerges in the course of establishing the facts in relation to the other Terms of Reference that informants were used by members of An Garda Síochána in the course of the events relevant to those Terms of Reference, the Tribunal will enquire into and consider in respect of all evidence which emerges before the Tribunal concerning informants, the adequacy and appropriateness of the procedures and practice in relation to the classification and management of informants and such information alleged to have been supplied by them in like manner to that set out above.**

In this section, we propose to review the materials available on the investigation and on the use of informers. In the next section but one, we propose to review the materials available in relation to the arrest and treatment of persons in custody arising from same. Since persons can only be arrested on the basis of a reasonable suspicion that an arrestable offence was committed, and that the person to be arrested committed it, we will focus on the justification for those arrests in the context of the next section merely mentioning in this section the relevant apparent facts as they occur. At the risk of some repetition it is perhaps also as well to include some outline in relation to those matters in this section.

One of the major sources of information in relation to the manner in which the Gardaí conducted their enquiries into the death of Mr. Barron is the report furnished by Superintendent Lennon to the Director of Public Prosecutions, to which reference has already been made. That report is critical, to a degree, of the manner in which the investigation proceeded. However, much more stinging criticisms are made by Superintendent Lennon in his report to the Superintendent's Office in Letterkenny dated the 2nd March, 1998. We now propose to quote those criticisms because they put in context what will follow, in terms of our remarks, as to the apparent defects that might be seen in relation to this entire matter. In this report Superintendent Lennon says:

> **The initial report received at the Communications Centre was not immediately acted upon, in that an officer or sergeant was not informed of this suspicious death for a period of approximately seven hours. One of the sergeants on duty in the district on that night should have been informed of the circumstances of the death of Richard Barron. The scene was not preserved from the time of the first arrival of the Gardaí at 1.40 a.m. until 9.10 a.m. that morning despite an alert to the District Officer at 7.45 a.m. and the scene was not continually preserved until the termination of the examination of same. It has become apparent that Garda McDwyer discovered human tissue with hair attached on the roadside at the scene and actually lifted and examined of same before replacing it on the roadway, prior to leaving the scene unattended. This piece of vital evidence was not ever recovered by the investigating members for examination. The scene and surrounding areas were not properly preserved and searched for any weapon or other evidence associated with the suspicious death of the deceased until 11.00 p.m. on the 15.10.1996, two days afterwards. Despite the searches undertaken after the scene had been preserved for a second time on the 15.10.1996, a suspected murder weapon, (a stick) was located near the scene during a further search of same on the 6.12.1996. The body of the deceased was not preserved from the time of the arrival of the first Gardaí at the hospital at 2.00 a.m. until its removal to the morgue at 5.50 a.m. The body of the deceased was not preserved at the morgue from the time of its arrival from 5.50 a.m. on the 14.10.1996 until the actual autopsy was carried out at 3.30 p.m. on the 14.10.1996. It has become apparent to the investigation team that the autopsy was carried out...[where]...the pathologist was given to understand from the outset that the deceased's death was due to a hit and run traffic accident. We are in the unfortunate position at this moment in time, that we are unable to state with certainty the cause of Richard Barron's death. I feel that an application should have been made for the services of Dr. John Harbison (State Pathologist) from the outset. Consultation after the autopsy per telephone was insufficient in order that he reach a conclusion. The photographs of the body are incomplete and of little use to the investigation team. There are not any photographs of the deceased in a totally naked form, which would have been helpful in relation to his injuries. Back and frontal naked**

photographs should have been obtained. The deceased's watch was not taken possession of by the investigating members at Letterkenny Hospital. The deceased's money was not taken possession of at Letterkenny Hospital. The investigation proper did not take place until Wednesday, 16th October, 1996, a delay of over fifty six hours. The house to house questionnaires were not completed satisfactorily. From the records it is apparent that a total of forty three questionnaires were returned to the incident room, during the initial investigation. A large percentage of these were not completed in a satisfactory manner. It was necessary for the second investigation team to return to the majority of the persons questioned in the aforementioned forty three questionnaires and complete same. It was also necessary to complete questionnaires in respect of a further forty persons who had not been questioned initially, and who were in the immediate vicinity of the scene. It was discovered that houses within a hundred yards of the scene were not visited at all. It appears that there [was] not any co-ordination or overall responsibility taken in the initial investigation from the outset. There does not appear to have been any co-ordination within the incident room itself. The majority of statements taken were of very poor quality and relevant questions were not asked. This resulted in a large percentage of witnesses having to be re-visited and questioned a year later. Of the six hundred patrons who attended the disco on the relevant night, only one hundred and sixty were interviewed. There was extreme difficulty in acquiring statements of evidence of members involved in the investigation and despite several oral and written requests, statements were still unavailable until 1.3.1998. In fact the investigation team are still awaiting statements from members. Despite extensive inquiries the investigation team are unaware as to who actually contacted the DPP in relation to the statement of admission [allegedly] made by Frank McBrearty junior or if there was any contact made as is set down in procedure. The investigation team on this date are still unaware, despite requests made in this manner, as to whether the aforementioned statement of admission was made on a single sheet of paper or on two sheets. This is significant in that the investigation team are aware that the main body of this statement has not been assigned or initialled by Mr. McBrearty junior. In fact this all important statement is not in the possession of the investigation team and has not been viewed by them. It is clear that proper conference notes were not kept by the initial investigation team and that for some unapparent reason separate sheets of paper containing notes were attached to the original conference book with the aid of paper clips. The conference notes are lacking any detail and there are not any pre-arrest conference notes recorded. It appears that suspect elimination forms were not introduced at any stage by the initial investigation team, resulting in suspects still being in the system on the 29.9.1997 who could have been eliminated at a very early stage. Jobs in the jobs books were written off without being properly completed. Jobs of an urgent

nature were not completed and returned to the incident room. Records were not kept of members who took part in the various searches during this investigation, thus difficulties were encountered in locating the identity of such members. Records were not kept of members who performed duty at Letterkenny Hospital during the periods Frank McBrearty senior spent in hospital. Members of the bar staff of both Frankie's Niteclub and the Tudor Lounge were not interviewed. Statements entering the incident room were not proof-read, resulting in an enormous task at the latter part of the investigation. Statements entering the incident room were not evaluated in the initial investigation, resulting in a further 254 jobs being undertaken by the subsequent investigation team over a year after the incident. It is clear that there was an apparent lack of knowledge as to the contents of the statements. Two important statements taken by members were not forwarded to the incident room for over a period of a year. On one occasion two witnesses gave their version of events in the form of one joint statement, which was signed by both witnesses. I am of the belief that the majority of statements that were accepted in the incident room were not cross checked on their entry to the system, resulting in confusion. I am satisfied that in some occasions additions were inserted into member's statements. This is apparent as these additions are not present in the original member's statements. This may result in embarrassment in the event of a successful order of discovery being made by the suspected persons involved in this investigation. It would appear that the conferences initially held were too large and regular attendance of these conferences by members involved in the investigation was not ensured. The powers of arrest were not properly researched, resulting in possible High Court actions being undertaken at a later date by some of the persons arrested. The extraordinary delay in the application for a warrant under section 10 of the Criminal Justice Act, 1984 in respect of Mark McConnell, may result in a successful application to the High Court in the future. Upon acquiring this section 10 warrant there was an unaccountable delay of two weeks in its execution, which may result again in a successful High Court application for damages by Mark McConnell. I believe that certain members had important information in their possession which was not made available. It is apparent that members who interviewed suspects, while in custody did not make written notes of any kind for each period of interview. It appears that suspects while in custody were not questioned in sufficient detail to justify the reasons for their arrest. It is obvious that certain matters and items of evidence were not put to and shown to one of the main suspects in this investigation, namely, Frank McBrearty junior during his detention. The investigation team had in their possession at the time of his detention, a possible murder weapon (a bill hook) which was not shown to him and he was not questioned about [this] at all. Detailed background reports on suspects and the deceased were not prepared by the initial investigation team. Liaison with the

> **Barron family was not undertaken in a satisfactory manner during the first year of the investigation. The introduction of the term Mr. X was unhelpful to the investigation. There was not any effort made to corroborate the several damning statements made by Noel McBride. Sightings of witnesses mentioned by Mr. McBride in his first statement were not cross checked by the incident room staff, which could have resulted in discrediting him at a very early stage. Had Mr. McBride's statement been properly evaluated and cross checked with existing statements already in the system, by the incident room staff, the progression of the investigation on one single line of inquiry could have been avoided. The delay in the evaluation of Noel McBride's 'bona fides' could have been avoided had items of tangible evidence, namely the bicycle (allegedly given to him by Frank McBrearty senior) been examined and it's origins investigated as soon as it came to the knowledge of the investigation team. Application was not made to trace the origin of the telephone call allegedly received by Noel McBride on the Sunday morning immediately after the incident, which he claimed had been made by Frank McBrearty senior. This could have resulted in discrediting Mr. McBride as a truthful witness at an early stage. It appears that the typing of statements was not coordinated in an efficient manner and that every word processing unit in the station was used without proper records being kept. This resulted in serious difficulties being experienced in the preparation of a master file of statements, with several having to be re-typed. A proposal for the future would be that one typist and at least one word processing unit be utilised for the typing of statements, resulting in easy retrieval of statements at a later date and uniformity in the finished product. The co-ordinator of the incident room was making enquiries, arresting and interrogating persons, etc. without paying due attention to the proper co-ordination of the incident room. Complaints made by solicitors during the investigation seemed to have been lost in the system and never recovered. Forwarded for your information.** (Private and confidential report of the de-briefing conference at the termination of the investigation into the suspicious death of Richard Barron at Raphoe on the 14th October, 1996, signed by Kevin Lennon and addressed to the Chief Superintendent at Letterkenny).

On the weekend of the 12th and 13th of October, 1996 the Barron family of Raphoe, County Donegal experienced first of all a very happy event followed by the tragedy with which paragraph (b) is centrally concerned. Richard Barron's daughter, Geraldine is married to Frankie McElwee of Strabane, County Tyrone. On Friday, the 11th of October, 1996 Geraldine Barron went into Altnegalvin Hospital in Derry as she was expecting her first child. On Saturday morning a baby boy was born. On Sunday, the 13th of October, Nora Barron, the wife of the deceased, called to the McElwee household and, together with her daughter's in-laws, they visited the maternity hospital. Mrs. Barron returned home that night. Richard Barron was probably planning to visit his new grandson on a later occasion, but on that Sunday, he went out drinking.

The McBrearty family were, and are, the proprietors of a public house and ballroom premises in Raphoe which was generally known as "The Parting Glass". This, apparently was a successful business attracting patrons from a wide catchment area to discotheques on weekend nights, including this particular Sunday night. Those entertainments took place in what was known as "Frankie's Nightclub". The business, through Frank McBrearty, Snr., sponsored a football team in which Frank McBrearty, Jnr., played. As it turned out, they had a match that afternoon which was unsuccessful from the point of view of the local team. Frank McBrearty, Jnr. who was playing for the side was taken off by the manager in the second half: this led to the exchange of excited views, and the expression of agitation, by both Frank McBrearty, Jnr. and Snr. Probably by the time the match had finished, and the players had returned home, Mr. Barron was in the process of leaving his house. We know that he left there at around 5.45 p.m. and was saluted by a neighbour as he walked from his house at the Commons, near Raphoe, into town. The Late Richard Barron had a lot to drink on that particular night. In the aftermath of his death, the deceased was found to have a blood alcohol level equal to 283 mg percent and a urinary alcohol level of 308 mg percent.

The movements of the Late Richard Barron can be traced with some exactitude from the time at which he left his house at around 5.45 p.m. It would seem to us, Sir, that it is not necessary to call every person who had contact with the deceased on that Sunday evening/Monday morning. As you have said, this is an inquiry into an investigation, but, of necessity, the treatment of the basic facts by the Gardaí in the course of that investigation are germane to this inquiry. The walk from Mr. Barron's house to the centre of Raphoe meant that he arrived there at approximately 6.30 p.m.

At around the same time as Mr. Barron was arriving in Raphoe another man, who, we understand, has since died, left his home at Massreagh, Kilmacrennan, County Donegal to go to a church service at Letter. Mr. Hugh Stewart arrived back home at 9.40 p.m. He then noticed that he had left his house key in the back door. On going in he remarked that the chainsaw which he always kept in the hallway was missing. He reported this to Garda George Healy at Kilmacrennan, believing that nothing else was missing. However, a day or two later he went to look for his slash hook, which was always kept beside the chainsaw, and could not find it. Strangely, this fact becomes of significance later on in the context of allegations made by Paul "Gazza" Gallagher.

The statements as regard to where the Late Mr. Barron was are confusing. No one was paying any particular attention to him because there was no reason why they should. In respect of two incidents, the attention of other drinkers, and of people around the town, was drawn to Mr. Barron. Even in this respect, there is no agreement as to the time. It would seem that Mr. Barron was first seen both inside the Central Hotel and around the Diamond up until around 9.00 p.m./9.30 p.m. when he left and walked to the Town and Country, a public house owned by the Quinns. Some people might have had the impression that he was in that pub on a continuous basis until around 11.30 p.m., but, it would seem, if recollections are correct, that he left the Town and Country for about

half an hour and then returned to it. While he was absent he seems to have visited the Tir Chonaill bar and to have cashed a cheque in the Diamond bar. It seems to us, Sir, that all of these are mere details with which you do not have to concern yourself beyond reading the appropriate papers. However, this narrative begins to focus on the Garda investigation by reason of what is alleged to have happened at some time after he returned to the Town and Country pub. Again, people cannot agree on the time of this incident, but it was probably around 11.00 p.m. Since what happened in the Town and Country/Quinn's is of importance, many statements were taken from people who witnessed what was later described as an altercation. Geoffrey Dolan, a patron of the bar, described the incident as follows:

> **About twenty minutes or half an hour after I came in an argument and a bit of a scuffle broke out between Richie Barron and Mark McConnell. Mark appeared to be coming from the toilets. Before Mark went in [to] the toilets he spoke to Richard McBrearty. On the way out the argument and scuffle broke out. Richard McBrearty got Richie and held him back. Richie Barron was fairly thick and looked to be very warm. He was wearing a navy snorkel jacket. He was shouting abuse at Mark McConnell. I can't remember what was said. Mark said catch yourself on go home to your bed you auld man or something like that. Mark looked annoyed, but didn't look angry enough to fight.** (Statement of 16/10/96).

In the aftermath of this incident Mark McConnell spoke to Charlotte Peoples and, according to her, said "sure he was taunting me all night and sure its only drink". (Statement of 18/10/1996). Mark McConnell, when later arrested and questioned said:

> **Between 10.30 p.m. and 11.00 p.m. I noticed Richie Barron staring at me. Richie was sitting at the corner of the counter and I was standing at the right hand side of the wee table inside the door. About five minutes later I went to the gents. As I was returning and as I passed Richie Barron he tugged at my top. I continued on back to the table. Richie Barron came towards me and said to me "you are a poor excuse for a McBrearty". Richie appeared to be taking off [his] coat as if to fight me. Mark Bogle held Richie back. I said to Richie "go on home you are an old man". Mark Quinn told me to go into the pool room...I went into the pool room and remained there for a while. When I came out to the bar Richie was gone. Around 1.00 a.m. I asked Mark Quinn for another pint and he refused me. My wife and I left Quinn's pub around 1.20 a.m. We walked over towards the Parting Glass. As we were passing by Súile Tavern we spoke to Stephen McCullagh and his wife. We walked up to Sarah's Cafe where I ordered a chicken curry for collection after the disco. I think it was Philomena who took my order.** (Statement in Garda custody on 4/12/96).

Roisín McConnell added only one detail to that account. It was that Richard Barron was annoyed and roared something like "let me at him". (Statement of

16/10/96). Derek Ayton adds that after Mark McConnell went to the pool room he heard Richard Barron apologising to Mark Quinn about some row. Martin Quigley adds that Mark Quinn had requested the deceased and Mark McConnell to "stop arguing". He later asked Mark McConnell what the argument was about and was informed that it was something that had happened years ago between the McBrearty family and the Barron family. Apparently, Mark Quinn may have stood between the two parties, and Mark Bogle may have held Richard Barron back. The account taking the most serious interpretation of this incident is that of Mark Bogle. In his statement dated the 16th of October, 1996 he said:

> **At about 10.30 p.m. I got up to buy a drink for the company and I saw Richie Barron sitting at the counter along with Derek Ayton. I asked Richie and Derek did they want a drink and bought them one. I thought Richie was well on with drink at this stage. Richie shook my hand for buying him the drink. I noticed that Richie was well cleaned up that night. He was shaved, his hair was combed and his clothes were tidy...some time between 11.00 p.m. and 11.30 p.m. I was getting up to go to the bar again for a drink when I saw a skirmish getting up between Richie Barron and Mark McConnell. Richie shouted at Mark "I'll kill you, you bastard" and Mark said "come on ahead then". Richie then made to go for Mark and I caught hold of Richie and held him back. Richard McBrearty from Brocagh, St. Johnston was there and he caught hold of Richie as well. Mark Quinn the owner of the bar was lifting glasses and he caught hold of Mark McConnell. Mark was taken out to the kitchen by Mark Quinn to calm things down, I've no idea what the row was about. I sat down with my back to the bar again. I think Richie must have left Quinn's around then. Mark McConnell came back into the bar again, but I never got to hear what the row was about. Around 12.30 a.m. on 14/10/96 me and the wife left Quinn's and went driving up to the Parting Glass. When we got to McGranaghan's Corner at the bottom of Irish Street, Richie Barron was standing on his own against McGranaghan's...lighting a cigarette...He looked well drunk and I thought if we get him into the car we wouldn't get him out...that was the last I saw of Richie.**

It is difficult to say what time Richard Barron left the Town and Country/Quinn's because this depends upon interpretations as to when the incident just described took place. Probably it was around 11.30 p.m. because it was at 11.45 p.m. that Declan McCullagh, the barman of another public house, the Súile Tavern, heard a knock on the door. He thought it might be the Gardaí, checking up on closing time, but when he looked out he saw it was Richie Barron on his own and let him in. He described him as: "drunk, but not legless. I've seen him worse". The deceased got a small whiskey. He was chatting with a man call Phonsie Crawford. Here is Declan McCullagh's account given on the 17th of October, 1996:

> **Phonsie and Richie were drinking and chatting together. Manny Heggarty started annoying Richie about money he maintained**

> **Richie owed him from way back. This was to do with a deal they were both in for a horse. Richie was waving his hand at Manny to stop annoying him. I went out working in the lounge then and I was called into the bar by one of the girls because Manny and Richie were fighting. At this stage Eugene Gamble had got in between them, but I had to give a hand to hold Richie back because he is very strong. I didn't see any blows struck, but Manny had a cut on his head that I didn't see earlier on him. When we got them separated Richie went to go out the door. He had his hand on the lock, but Phonsie Crawford pulled him back and told him to sit down and finish his drink. Richie sat back down. Phonsie and Richie sat for no more than ten minutes and during that time Manny Heggarty kept nagging Richie on about the money he was owed. I checked Manny a good few times to keep quiet and he eventually shut up when I told him to get out or shut up. Phonsie had left within ten minutes of the row ending and Richie left five to ten minutes after that. I saw Richie to the door. I am not sure of the time he left. When Richie was going out he was joking about his trousers. The top button kept opening and the trousers kept falling...I asked him at the door did he want a taxi to leave him home and he said "no I'll walk it".**

John "Manny" Hegarty described the incident as an exchange of punches and an entanglement. Significantly, he says: "Eugene Gamble the barman separated us. He put Richie out. Richie came back in again and fell asleep at the counter". (Statement of 14/10/96). Sir, these incidents are of importance because as a result of them both John "Manny" Hegarty and Mark McConnell became suspects. Even though the Hegarty incident was, on the face of it more serious than the McConnell incident, for reasons which we will shortly go into, the Gardaí began to believe that Mark McConnell became inspired by motives of revenge over this relatively trivial incident. However, there was nothing whatever to suggest, it seems to us, from any other witness who had any contact with Mark McConnell on that night that he was in any way upset, much less vengeful, over what had occurred.

It might be noted, Sir, that a telephone call from the Town and Country to the Tudor Lounge (a premises adjacent to the Parting Glass, also owned by the McBreartys) at approx. 11.00 p.m. on this night formed the background to a complaint to the Garda Complaints Board. Suffice to say at this point, that it was allegedly put to Mark McConnell while in custody that this call had been made by him to Frank McBrearty, Jnr. sometime after the altercation with Richie Barron to arrange for them to meet up to seriously assault/murder Mr. Barron. Frank McBrearty, Snr. later alleged that the misapprehension as to who made this call, a matter that could have been easily resolved had an investigation of same been properly carried out, had in part led to the arrests that were later made in the context of an alleged conspiracy to murder, between Frank McBrearty, Jnr. and Mark McConnell. In a statement to Supt. P. Forde on 2nd February, 1999, the investigating officer at the time of the arrests, Supt. John J. Fitzgerald said that: "The phone call referred to…had no bearing on

decisions to arrest any person in connection with the investigation". (See Garda Complaints File 971126).

After the deceased left the Súile Tavern he was seen alive by four other people, that we know about. David Parke (statement of 15/10/96) described his sighting as follows:

> **I parked beside the Diamond petrol pumps facing in the Convoy direction. I had a good view of the Irish Street area. At 12.30 p.m. I saw Richie Barron staggering past McGranaghan's shop. He was coming from the Súile Tavern direction. As he turned up Irish Street he was holding onto the wall. He was using his two hands. He appeared to be very drunk. I was thinking to myself that I better be careful going up the road in case that man is lying on the road. I had seen [him] walking up the road in the past drunk and staggering on the road. After I seen him going around the corner he held onto the wall until he went out of my view. That was the last I seen of him...I do not remember any car going up or coming down Irish Street after that until I saw Lee Parker going up Irish Street, that's not saying that cars did not go up or down Irish Street. No car came to my attention by the way it was driving.**

Perhaps contemporaneous with this sighting was that of Roberta Browne (statement of 16/10/96) who places it a few minutes later:

> **...at approx 12.35 a.m. I was walking down the Diamond in Raphoe. I was after leaving McCarron's pub at about 12.30 a.m. I was walking down the street alone. I was walking past Jim McGranaghan's shop and I was heading for "Frankie's" Nightclub. I met Richie Barron coming towards me. When he was going passed me he caught me by my leather jacket and pulled me back. He turned around and he said to me "have you enough money or do you want a few pound". I said no thanks I'm alright and I walked on. After a few seconds I looked behind and he was nowhere to be seen. He must have turned up Irish Street...he seemed in good form when I met him, he was staggering a good bit. He seemed to have a lot of drink in him.**

At 12.38 a.m. the watch which the deceased was wearing stopped. This seems to be a total coincidence because when it was later examined by a watchmaker, George Patton (Statement 19/11/96), he got it to go again simply by winding it: Mary Joe McGranaghan and her boyfriend, Shane Scanlon, had been to the cinema in Lifford from where they returned to Raphoe, turning up Irish Street and parking. They noticed two men leaving Patsy's pub and remarked on the time at 12.35 a.m. She continues (statement of 16/10/96 and see also 21/10/96):

> **The next thing I remember is three girls from Convoy turning up the street. I do not know what they were up to, but they made a bit of noise at our door and actually disturbed my mother in the house. I**

> **recognise these girls as Paula McClafferty from Main Street, Convoy, her sister whose name I don't know. The third girl was Helena Meehan from Convoy. This was all shortly after 12.30 a.m. I then saw Sidney Vance pass up and straight down again. He only had time to reach his home and no further. I saw Gavin Gillen a red haired lad from Glen pass down strolling with his hands in his pockets. There was somebody else with him whose identity I do not know. I cannot say exactly what the time this was at. It was between 12.45 and 1.00 a.m. About 12.50 a.m. I saw Richie Barron turn up the street. He was obviously drunk and was swaying from one side of the street to the other. It appeared that there was no co-ordination between his head and feet at all. I thought he might bump into our car as we sat there. He went on up passed us. During the whole time I was there I saw no cars pass down Irish Street towards town. I recall seeing two cars pass up after Richie Barron passed us by. One of these was Roy Barnett. He lives up towards Mongorry...the second car was a red Golf with an old registration. I believe this car belongs to a girl who is now living in Mongorry and married with a family. She was Sylvia Laird before she married. She is now Barnett or Park, I am not sure. I believe that the drivers of these cars should have seen Richard Barron on the road as the speed he was going when he passed us would mean that he was still on the road when they went up. I went in home about 1.05 a.m. and I did not see or hear anything pass up or down the street after that.**

Richard Barron met his death some time between 12.45 a.m. and 12.54 a.m. It was at the later time that his body was discovered. The next person, whom we know about, who saw Richard Barron was Lee Parker. He had earlier seen the deceased at some time between 12.15 a.m. and 12.30 a.m. after leaving the Súile Tavern. He said that he "looked to be right drunk and was pulling up his trousers". In his statements (15/10/96) and (18/10/96) he describes driving from Raphoe up Irish Row:

> **I got into my car and drove up the Glenmaquinn Road. As I came near to Matt McBride's house at Townparks, Raphoe I saw a man lying on the road...I had a fair idea it was Richie Barron, because I saw him drunk down town earlier. I pulled out to go around him and saw the blood on the road. Just beyond the body I turned the car and drove back by the body again. As I was driving slowly past him I saw it definitely was Richie Barron. He was lying half way between the left hand side of the road as you go up and the centre of the road. He was lying on his back parallel with the hedge. His head was towards Raphoe and his feet towards Glenmaquinn. His legs were crossed from the knee down only. I saw a big hole in his forehead. The blood was running down the top of his head and going towards the hedge on the left hand side as you leave Raphoe. I saw no other marks on him. I don't know where his arms were placed. I saw a serious amount of thick blood around his head on the road. I saw no glass or debris or dirt or anything on the road.**

> **All I saw was Richie and the blood. At this time it was dry. It hadn't rained for about half an hour, but the road was damp. I didn't get out of the car at all. I drove on a few yards to McBride's gate and parked. I ran in and knocked on the door...I told [Rita McBride] to phone the Guards or an ambulance...I looked at my watch and saw it was 12.55 a.m. When I got back to where Richie was lying Edward Johnston and Sean Duffy were already there...the body was in the same position as I found it.**

Mr. Parker had come from Raphoe towards the scene of Mr. Barron's death. Sean Duffy had come to Raphoe by the straight narrow road over the hills which joins the main Letterkenny/Donegal town road. Neither saw any cars. When Mr. Duffy came he did not realise that the body had already been discovered. He tried to see if there was any pulse. He noticed that the deceased's trousers were pulled down, as he put it, and his underpants could be seen. He saw a considerable amount of blood on what he took to be a scrape on his forehead (Statement 15/10/96). The deceased's son, Stephen Barron, arrived shortly afterwards. He was called from his home. Edward Johnston, coming from Raphoe stopped because he saw the lights on Mr. Duffy's car and then a body. He said "there was a right bit of blood on the road. I noticed a mark on the front of his forehead" (statement 17/10/96). Sidney Vance, who probably passed the deceased on his way home did not encounter any cars on this road, again, going out of Raphoe and up towards Townparks, which is up the hill and to the right. Stephen Barron found his father's dentures were broken and he attempted to let in air by clearing his mouth. Those who arrived later do not materially add to details of this description. They include Paul Holian, Matt McBride and Stephen McCullough. Mr. Holian had come from the north west road into Raphoe and again, his statements indicate that he did not see any cars.

Sir, at this point, a potential misunderstanding needs to be addressed. The initial report into the death of Mr. Barron, compiled by Superintendent Lennon, does not include the fact that within 300 metres of the scene of his death a road branches to the right up the hill. Driving this road shows that it leads into an area of substantial forestry, with a choice of four turns within 3 kilometres which will lead you onto a warren of roads that can ultimately bring you back on to the main Letterkenny to Lifford/Strabane or Derry roads. There are a further two turns to the right in the same direction up the hill towards Glenmaquinn within 3 kilometres. The first turn to the left, to take a road that might ultimately lead one back to Raphoe, on the Convoy to Raphoe road, occurs a further distance away. If someone had killed the deceased by negligent driving then, if they were not already facing towards Glenmaquinn, they could turn in that direction and disappear into the warren of roads to the north within literally one minute. We have also taken the opportunity to look at the scene. From Raphoe up towards Glenmaquinn, and the turning to the right towards Mountain Park, the road both kinks and dips. There is a steep hill from the north west coming down towards Raphoe. The public lighting which is now in place was, we understand, at this time placed further back from the scene of Mr. Barron's death. Apart from going back into the warren of roads around Mountain Park one might also be able to go to the outskirts of Irish Row and turn immediately northwards. These

possibilities are not discussed in Superintendent Lennon's report and one of the issues for you, Sir, must be as to whether any consideration was given to this in the Garda conferences which followed.

Garda Patrick Boyce was manning the Divisional Communications Centre at Letterkenny Garda Station. Here is his account of the relevant communications on that morning:

> **...at 1.05 a.m. I received a telephone call on direct line from Hilary McBride, Townparks, Raphoe. She told me that Richie Barron was struck by a vehicle and he is lying on the side of the road at Townparks, Raphoe. Caller said that an ambulance was called for and that Gardaí were required at the scene. The caller spoke in normal tone when giving the details. I immediately phoned Lifford Garda Station and passed the details onto Garda P.J. McDermott. At 2.15 a.m. I received a phone call from Lifford Garda Station informing me that Richie Barron had died. At 3.45 a.m. I received a phone call from a male caller who wanted to remain anonymous, that Paul Gallagher, Dr. McGinley Road, Letterkenny was driving a Renault 9 car reg. no. 880 IH around Raphoe last night and that he was very drunk. I passed this information onto Sergeant Joseph Hannigan immediately. Caller spoke in normal tone when giving details. At 6.25 p.m. I received a phone call from a female caller who stated that a Renault car travelled down the Mongorry Road last night at approximately 1.00 a.m. and failed to stop at the junction with the Diamond. She said that the driver was from Dr. McGinley Road, Letterkenny and that he was drunk. Caller spoke in a quiet and sound tone. I immediately passed this information on to D/Sergeant S Henry at Letterkenny. Kevin Monaghan and Leonard Diver, ambulance men went immediately to the scene having received a call "at approximately 1.00 a.m. while...at Letterkenny General Hospital".** (Statements of 16/10/96 and 17/10/96).

The ambulance and crew arrived at the scene at 1.20 or 1.25 a.m. The crew described the deceased as having a lot of blood coming from his head. Mr. Monaghan and Mr. Diver indicated that there was a lot of blood on the roadway, some of which was congealed. Mr. Monaghan states:

> **...I...radioed control at Ballyshannon and spoke to John Kennedy. I told him that it looked like a hit and run and that he better get the Guards out to let them know. We took the man onto Letterkenny Hospital after being helped by onlookers...Leonard was in the rear of the ambulance giving the patient all the assistance he could...we arrived at Letterkenny Hospital about 1.50 a.m.**

Mr. Diver noted, in addition, that Mr. Barron was bleeding from the nose and mouth. He said that he did not see anything on the road such as debris or glass and that he would usually see if there was glass at the scene. Dr. Hamad Mahmad Zuhairy received the emergency at Letterkenny Hospital and found no

sign of life, despite attempts at resuscitation. He reports that the deceased was clinically dead on arrival at 1.50 a.m.

In Raphoe, Garda Patrick Mulligan was on duty. Garda John O'Dowd, also stationed in Raphoe, was off duty, but was apparently with him at or around the time when the ambulance came to Raphoe. Garda Mulligan, possibly accompanied by Garda O'Dowd, indicates that he had moved off to deal with an incident in the town down the Convoy Road. They therefore did not apparently see or hear the ambulance which came through the town and up Irish Row to the scene of Mr. Barron's death. It was a considerable time after Mr. Barron's death that any Garda arrived at the scene. The ambulance had then come and gone. Some part of the possible explanation for this may be found in the statement of Garda P J McDermott who is the Station Orderly at Lifford Garda Station. He says (statement of 10/2/98):

> **A few minutes after 1.00 a.m. on 14th October, 1996 I received a phone call from Communications Centre, Letterkenny, informing me that a hit and run accident had occurred at Townparks, Convoy. I informed the member in Communications that Lifford patrol car crew did not normally attend to events in Convoy as we were also responsible for events in Carrigans and Raphoe sub-districts in addition to our own sub-districts. At this time, the crew of Lifford patrol car, Gardaí Birney and McDwyer were on their meal break. I suggested to the member in Communications that Ballybofey car would normally attend to incidents in Convoy sub-districts. I was then told that the Ballybofey car would be contacted to go to the scene. I then took it that everything was in order and asked Garda McDwyer to relieve me for my meal break. Garda McDwyer complied with my request. I was about ten minutes away when Garda McDwyer contacted me at home by phone, and informed me that he had received a message from Communications Centre, stating that the hit and run traffic accident had occurred at Townparks, Raphoe and not Townparks, Convoy. He requested that I return to the Station immediately. I arrived back at the Station at 1.20 a.m. As soon as I arrived back, Gardaí Birney and McDwyer left in the patrol car and went to Raphoe.**

Garda James McDwyer gave three statements relevant to this matter. In the last of them (24/4/2000), he indicates that he left Lifford approximately ten minutes after the first call and travelled 6.5 miles to Raphoe, arriving at the scene of the accident at 1.34 a.m. He claims that together with Garda Birney, who accompanied him, and Garda Mulligan and Garda O'Dowd, whom they met there, they examined the scene for thirty five to forty five minutes. However, none of the Gardaí preserved the scene. You will have to focus, Sir, on the issue as to whether this was a crucial omission in the context of what follows. No-one has ever said that this was the correct way to proceed. In this first statement (17/10/96), Garda McDwyer described approaching the Garda Station in Raphoe as a result of the fact that he was aware that someone was speaking on the 'Green Man' telephone device from there to Garda Boyce:

I saw no one at the Station nor in the environs of the Station. I remarked this to Garda Birney and we both thought it a little odd. We turned right at the Garda Station as the townland here is Townparks, we drove to the end of the Royal and Prior School, but we saw no sign of an accident. We decided the accident was in another area of the town, our knowledge being that there were several "Townparks" in Raphoe. We entered the town and turned left at the "Diamond". While driving along here I said to Garda Birney there's Garda Mulligan over the street, maybe he will lead us to the accident. Garda Birney drove over to where Garda Mulligan was on patrol. I saw...Stephen McCullagh speaking to Garda Mulligan. I informed Garda Mulligan of the accident and did he know about it? His reply was that he was just getting the information from Stephen McCullagh and that he saw the ambulance come down Irish Street a few minutes before we arrived. I spoke to Garda John O'Dowd who was sitting in his own car nearby. Garda Mulligan got into Garda O'Dowd's car and told us to follow them. We drove after Garda O'Dowd up Irish Street and just past McBride's house a little way up the hill. I saw a group of people standing on the roadway and Garda O'Dowd stopped his car...I walked over to a point where Gardaí O'Dowd and Mulligan were standing as did Garda Birney. We examined the road. I saw a large concentrated pool of blood just left of the centre of the roadway with a trickle of blood running towards the left hand side and into a tunnel in the ditch. This blood mass was located opposite a tree at the edge of a hedge...I saw a white blanket in the hedge. The road was wet and during our examination it started to rain heavily. I examined the scene closely again and curiously nothing was present to indicate a vehicle, no dirt marks, no impact area, no paint flakes or glass. I walked the area studying the road closely. I found a piece of human skin with hair attached to it lying on the road adjacent to the pool of blood. I stepped the difference in distance between the piece of skin and the pool of blood and I found it to be five feet in length. This piece of skin was located on the Letterkenny side of the blood mass. I could find no other foreign object at the scene.

In his statement of 24/4/2000, Garda McDwyer says that the "scene was contaminated as there were several people present and traffic had already passed over the scene". He says that Garda Birney, Garda Mulligan and he then went to Letterkenny General Hospital to obtain Mr. Barron's clothes and "preserve them for examination". Garda John Birney has since retired from An Garda Síochána. He gives a similar account to Garda McDwyer. He also says that he could not find any trace of glass, paint, plastic parts of a vehicle or dirt on the road and that there were no tyre marks. He does not mention the piece of flesh. When later interviewed on the 26th of April, 2000 he could not find his official notebook of the time.

One of the issues which arises is as to what Gardaí Mulligan and O'Dowd were doing. Garda Mulligan was officially on duty. Garda O'Dowd, who was not

rostered for duty, claims that he called at 12.45 a.m. to Raphoe Garda Station on the 14th of October, 1996 in order to leave some paperwork with him. Otherwise, he was not on duty. He took Garda Mulligan out for a drive in his private car and, according to him, drove the 'outlying areas' of the sub-district. In his original statement of the 23rd of November, 1996 he claimed to have passed the entrance to Frankie's and saw no sign of bouncers, or any of the McBreartys, which he claims to have "thought unusual as they would always be stuck in any incidents". He then saw the ambulance coming away from the scene of the accident, when he drove back into the centre of Raphoe. Stephen McCullagh then walked over to him and told him that Richard Barron had been knocked down. Garda Birney and McDwyer then pulled up stating that they had a report of a hit and run accident. His account of the scene also involves a lack of debris or glass. He claims to have spoken to Matt McBride in his adjacent house and farmyard to check if the tractors had been recently driven and was satisfied that the engines were cold. In his first statement, he claims to have returned home after having "stopped a number of vehicles in the Glenmacquinn area to establish their movements around 1.00 a.m. to no avail". Garda Patrick Mulligan said that at about 1.15 a.m. he attended to a fight outside Frank McBrearty's disco. He gives a similar account of Garda Birney and McDwyer arriving. He, similarly, could not find any physical evidence of a road accident. How closely anybody looked, we do not know. He also agrees that he went to Letterkenny General Hospital. He said that he arranged with the porter to keep all the clothes because he would return in the morning.

We now return to an incident in relation to the movements of Garda John O'Dowd. He says that he arrived home at around 4.00 a.m. Eamonn Strain, in his statement taken on the 9th of November, 1997, states that he went to the pictures in Letterkenny with his girlfriend Anne Toye. She resides at Rooskey, Manorcunningham and so he left her home. He says:

> **After I had dropped Anne off at her house I drove down from Anne's house and turned right at the bottom of the road leading up to her house, for Corkey, Manorcunningham. As I had just turned right the lights of a car came on behind me, I assumed it was the Guards and I stopped, I want to say now that this time would have been 12.45 a.m. on the 14/10/96...I then saw the door of this car open and a man in the driver's seat appeared to be looking for something. The man then got out of his car and came up to the passenger door of my van...I began to wind down the window, he opened the passenger door and put his head and shoulders into my vehicle and rested his knee on the passenger seat. He said to me that there was a poor [person] knocked down before he said that he said that we are investigating a hit and run and he mentioned a place where it happened, but I can't remember that now. He then said something else, but I can't remember now. I did not speak to him at all. He then said to me don't be feared. He was chatting with me for about three or four minutes, but I really can't remember what else he said. He eventually said that's alright and closed the door of my van. I then drove off.**

In later statements, he says that he heard the news of Mr. Barron's death on the following morning, possibly from a 10.00 a.m. bulletin and that from the time given on the bulletin he claims to have realised that he was stopped about five to ten minutes before the time of discovery as stated on the radio. He then discussed that time with his girlfriend. The opening question he then remembered as being "were you in Raphoe tonight?". Anne Toye was interviewed by the Carty investigation team, as was her mother. Apparently both were going from Fál Carrach to Dublin on the 7.30 a.m. bus that morning. Ms. Toye believed that she returned home at 12.00 midnight or very shortly afterwards. She recalls a car driving past from the Raphoe direction at a normal speed at around 12.10 a.m. She says she had no encounter with Garda O'Dowd. In his second statement on the issue of the investigation of the Barron death, Garda O'Dowd said:

> **In an effort to make enquiries following the suspicious death of Richard Barron and in the belief at the time it was a hit and run accident, I proceeded to the townland of Kincraigy, Manorcunningham to check if John McArt's brown Opel Kadett was at home. I was aware at the time he had an uninsured vehicle...the vehicle wasn't at home. While in that area I stopped a car which came down a side road. This road is one of very poor quality which leads back to Raphoe. I spoke with the occupants of this car, a man and a woman. The woman said she was Toye from up that road and I was aware there was a family by that name up there. The man said he was Strain from Burnfoot. I was in my own private car and wearing civilian attire. I believe I had a torch. I asked them where they had come from and if they had been in Raphoe that night. They said they weren't in Raphoe and were coming from Toye's house. I identified myself as a Garda and explained that a man had been knocked down in Raphoe earlier. I asked them if they had seen any other vehicles on the road, to which they replied no.**

When spoken to, in the presence of Garda Patrick Mulligan, by the Carty investigation team on the 9th of May, 2000, Garda O'Dowd was told that Anne Toye had said that she was not in Mr. Strain's car on the night that he stopped it. Garda O'Dowd said that his recollection was now unclear and that he could not be sure if the "Toye girl" was in the car, or not. In a further report prepared under the direction of Deputy Commissioner Noel Conroy, Leonard Toye was interviewed with the result that he indicated that Eamon Strain would not have left his house until much later than Mr. Strain believed at the time; report of Deputy Commissioner Noel Conroy, 22nd July, 2002, page 14.

On the 28th of April, 2000 the Carty investigation team took a statement from Garda James Connolly who is attached to Mountcharles Garda Station. In it, he refers to the Sunday evening, the 13th of October, 1996. He had finished 'BSE duty' on the bridge in Lifford at that time and then travelled to Donegal town to meet a friend. He then says he went to Daly's pub in Main Street, Lifford. He continues:

> **It would have been approximately 11.00 o'clock by the time I got to the pub, I'm not exactly sure. I went there on my own and had a few drinks in the lounge area of the bar. I spoke to a few locals, I am pretty sure Billy Kelly and Angus Stewart both from Lifford were there. Normally I play cards with these two men on Monday nights but I did not play cards on this night the 13.10.96...at a particular stage, I cannot be absolutely sure but it was some time around 11.30 of maybe even 12.00 o'clock or later I recall seeing Garda Pauric Mulligan and Garda John O'Dowd standing at the bar having a drink. I could see them from where I was standing in the lounge. As far as I can recall Garda Mulligan had a civilian jacket over his uniform shirt and Garda O'Dowd was wearing plain clothes. Pauric Mulligan was facing me and John O'Dowd had his back to me. I wasn't talking to them at any stage that I can recall. I can't say even whether we saluted each other or not. I remained in the pub until 1.00 a.m. or maybe even a bit later. I was on duty the following morning at 6.00 a.m. I am pretty sure that Pauric Mulligan and John O'Dowd were not there when I was leaving. I did not see them leave...the reason why I recall Pauric Mulligan and John O'Dowd being in the pub that night is that when I came on duty at 6.00 a.m. on Monday morning the 14.10.96 I heard about a hit and run accident in Raphoe the previous night and I knew the members were stationed in Raphoe, but I didn't know whether they were on or off duty. Some time after 8.00 a.m. on this morning the 14.10.96 I was directed to Raphoe to preserve the scene of this accident accompanied [by] Garda Niall Coady and it would have been in my mind that Pauric and John were in Daly's the night before and it was unusual for Pauric Mulligan to be there.**

When Gardaí Mulligan and O'Dowd were informed on the 9th of May, 2000 by Detective Superintendent McGarty and Detective Inspector O'Loughlin that there was a witness who placed them in the pub at this time, Garda O'Dowd, in circumstances where it would be fair to say that he was speaking for both, indicated that any witness who says that he saw them in a pub must be mistaken about the date. Both readily agreed to submit their cars for technical examination. This was later done and the examination was negative as to any forensic connection with the death of Richard Barron some four years earlier. On the 18th of May, 2000, Garda Martin Leonard, of the Garda Representative Association, met Inspector O'Loughlin and Detective Sergeant Healy and told him that "we are conceding the pub issue in full". He asked him would they guarantee ‘a Regulation 7’ caution only. Inspector O'Loughlin and Detective Sergeant Healy indicated that they could not give any such guarantee. If, Sir, you accept that Garda Martin Leonard made such an assertion it will, of course, be necessary for you to decide whether it was done on express instructions and in his role as a representative. We must expressly draw to your attention that this apparent statement is flatly contradicted by what was said on the 9th of May by Garda O'Dowd in the presence of, and with the apparent consent, of Garda Mulligan.

A further point for confusion may arise if people read the statement of Mr. Thomas Peoples, a taxi driver from Letterkenny, in isolation from other material. In that statement, dated the 4th of June, 1997, he indicates encountering two men approximately one hour after Mr. Barron met his death. We believe that this statement should be read in conjunction with those of Paul Holian and Shane Durning which are statements 12 and 13 in the report by Superintendent Lennon.

Sir, we have taken this digression with a view to pointing out the materials which are available as to the movements and actions of the Gardaí who came to the scene of Mr. Barron's death on the night in question. Having dealt with that, we now propose to return and give a very brief outline of what the main suspects say about their movements on the night in question. We refer to them in this way because they were treated in this manner in the course of the Garda investigation. It is therefore important to have a brief outline as to where they say they were at this stage. We would ask you to note, however, Sir, that as their apparent movements, and what people said about their movements, were made the basis of a foundation of what was claimed by the Gardaí to be a reasonable suspicion justifying arrests, that this issue will be gone into in detail in the next section dealing with the arrest and detention of suspects.

Mark and Roisín McConnell are a married couple and at this time had one child, who was then an infant. They live at Tullyvinny. On the evening of Sunday, the 13th of October, 1996 Mark McConnell dropped his wife off, together with their infant, at 330, St. Eunan's Terrace in Raphoe. This is the home of her parents. Mark McConnell went to the Town and Country/Quinn's pub shortly after in order to drink and to play pool. He was apparently joined by his wife at some time around 8.00 p.m. She went in the company of others and during the night the McConnells were joined by Katriona and Eunan Brolly. They met a lot of people and a full account of this will be given later. One of the facts in issue will be as to what time the Town and Country/Quinn's pub closed at. It was certainly after licensing hours, and according to some of the patrons it could have been as late as 1.00 a.m. to 1.15 a.m. when the house was finally cleared. At whatever time they left, which on their case was after Richard Barron was already dead, they went to Sarah's Cafe and ordered a takeaway which was to be collected and consumed after they had gone to and stayed for a while in the disco in Frankie's Nightclub/McBreartys.

Mary McGranaghan made a statement on the 8th of November, 1996 to the effect that she had observed Mark McConnell, accompanied by Eamonn Meehan, walking past her shop between 11.00 p.m. and 11.50 p.m. on that night. However, in January, 1997 in a statement made to Sergeant Thomas McMenamin, Mary McGranaghan claimed that it was not Eamonn Meehan that was with Mark McConnell, but that the person was in fact Michael Peoples. When interviewed by the Carty investigation team, she said that Michael Peoples was not known to her and claimed that one of the local Gardaí in Raphoe had said to her that it was not Eamonn Meehan because their information was that he had left Raphoe at 9.00 p.m. She cannot recall who might have made this alleged suggestion to her. The Carty investigation team spoke to Sergeant Thomas McMenamin who said that he was either contacted

by the Incident Room at Letterkenny, or that Mary McGranaghan may have contacted Newtowncunningham Garda Station directly herself, in order to clarify her identification. He certainly did not ask her to acquaint herself with Michael Peoples after he took an initial statement from her on the 8th of November, 1996.

Frank McBrearty, Snr. at that stage ran what appears to have been a major nightclub/disco business out of Frankie's Nightclub. This is to the rear of, and is attached in some way to the Parting Glass/Tudor Lounge bar/lounge premises. No one has made the case that Frank McBrearty, Snr. was in any way involved in the circumstances which led to the death of Richard Barron. We do not believe that there is any controversy in relation to his movements on the evening in question. He seems to have spent the entire of this evening either in or around his own premises. For the majority of the time, up to around midnight, he was in the Tudor Lounge. A number of patrons were then invited by him to go into the discotheque/nightclub on a free entry basis. During the time he was in this nightclub, or otherwise in his bar/lounge premises he was seen by numerous people dealing with the kind of situations that might arise in the ordinary running of such a premises.

Sir, as you will have gathered, one of the other significant movers in the discotheque/bar/lounge business, which we have referred to, was Frank McBrearty, Jnr. At the time, we understand, he was married and had two children aged around six and seven years. A number of incidents occurred at the discotheque in respect of which there is a controversy as to whether he was involved. His case is that he was in or around the discotheque premises at all material times, by which we mean from midnight to 1.00 a.m. There were a couple of incidents which occurred during this time, but, again, it is impossible to find a consistent thread in the accounts which places the occurrence of these incidents at a particular time. At some time between a time approaching 12.30 and a time which could have been as late as 12.45 a.m. a man called Paul "Gazza" Gallagher was ejected from the disco. Mr. Gallagher claims that he was ejected at 12.30 a.m. Glenda Muldoone says it was at 12.45 a.m. to 12.50 a.m. and there are further conflicting accounts as to time. There is also a conflict as to whether Mr. McBrearty, Jnr. was involved in this ejection. However, if he was, it might account for him looking as if he was upset or had exerted himself. Some time around 1.00 a.m. there were a number of other men ejected from the discotheque. These may have been the people to whom the attention of Garda Patrick Mulligan was attracted, causing him to move away from the Diamond area and thus miss the arrival and the departure of the ambulance, apparently. The case made by Mr. McBreaty, Jnr. was that if he left the discotheque premises at all during this evening then, at the material time, it was to deal with trouble makers, but that he certainly never, or by any route, went to the scene some three hundred and fifty metres away, as the crow flies, where Mr. Barron met his death.

Sean Crossan is an electrician by trade, but worked part time in Frankie's Nightclub. He was there on the evening in question. His account of his movements involves him being there from 9.00 p.m. until after the discotheque had closed which, again by reason of inexact recollection as to time, seems to

have been some time around 2.00 a.m. His statement of the 18th of October, 1996 is of importance, since the car park of this discotheque backs onto a river, on the other side of which are fields which ultimately go towards the McBride house with adjoining laneway onto the roadway where the deceased met his death. Mr. Crossan's presence there, and the role the car park played in the investigation must surely be taken into account. He says:

> **Frank McBrearty, Snr. asked me to look after the car park at around 12.30 a.m. I normally do the pay box all night. When I went up to two wee girls in the car park then, one of them was sick. I was up about five minutes and went down to get the wee girl a tissue. I don't know who these girls are. When I went down Frank McBrearty, Snr. was at the pay box and he asked me to go down around the corner in case some boy he put out broke windows. I don't know who he put out. I didn't ask him, but I went down the corner towards the Diamond. There was nobody at all about. I only went down as far as the bar door, but I could see nobody as far as the Diamond. I didn't see any cars about. When I went back up I went to the front door of the disco. Frank senior was standing at the pay box and I asked him who he put out and he said Gallagher. I didn't know who Gallagher was. It was around 12.40 at that stage. I went up the car park again to the two wee girls. I was up there to 1.45. I kept going up and down the car park to them. I didn't see anyone else going into Frankie's Nightclub that night that I knew. No one came down through the grounds of the nightclub while I was there. They were all in cars.**

In a later statement dated the 17th of November, 1996, to which, the Gardaí attached much significance, Mr. Crossan indicated that at 12.40 a.m., which if other witnesses are right was a time at which Mr. Barron was still alive, "three fellas came down the car park of Frankie's Nightclub". He described them as being young, nineteen-twenty years and well-dressed. One of them said that he had been up with two young girls who were getting sick. Despite this, he didn't know who the girls were, but thought they might be from Lifford. Sergeant Hannigan questioned him as to the clothes of those people, and he says that none of their clothes were dirty. So, what does the reference to sick girls in the car park mean? The next day Mr. Crossan gave a formal statement in which after describing the sick girls, to whom he was attending intermittently from 12.30 a.m. for about the next forty minutes, he said:

> **I walked straight back up to the girls. Three boys came down the car park. They came from the direction of the wall to the field. What caught my eye was the fact that no car had gone up the car park before these fellas came. I didn't see anyone sitting in a car beforehand. That's what caught my eye more was that they came down the car park and no car went up first. They were chatting to each other on the way down, no laughing or joking. I never saw these three fellas before. They went down towards the dance hall. I don't know if they went in or not. I can't describe them individually. The three of them were eighteen or nineteen years of age and thin. I**

> **can't say what colour their hair was. They were dressed casually and had not coats on. They were clean. I lost sight of them. Their clothes didn't look to be dirty.**

The two girls who were in the car park, because one of them was feeling unwell, were identified as Victoria Barrett and Catherine Vaughan, who are first cousins from Lifford and Strabane. The statement of Victoria Barrett was not taken until the 10th of December, 1996. It seems to us to be an important account of what was happening that night. She describes arriving in the Parting Glass at 11.45 p.m. and meeting her friend and first cousin Catherine Vaughan. Ms. Barrett was with her boyfriend, Rodney Roulston. She continues:

> **At 12.40 a.m. my friend Catherine felt ill so I took her out to the fresh air. I did not pass any remarks on who was at the door. We went around the back of the Parting Glass to the place where a new wall is being built. We sat on the wall. My friend got sick and I comforted her as best I could. We were there ten minutes when one of the McBrearty's men who was in the car park came over to us. I know this man to see but I do not know his name. I would describe him as being forty five to fifty years, bald with hair combed over from the right. He is about five foot nine inches and is heavy build. He was not well dressed. He may have had on a jacket and trousers. He asked me if my friend was alright and he went to get tissues. It was not long until he returned with the tissues. I stayed with my friend at the wall until 1.20 a.m. when we got into my boyfriend's car...McBrearty's man stayed with us for approx. ten minutes. I do not know where he went when he left us. My boyfriend came out of the disco at 2.00 a.m. and brought my friend to Letterkenny Hospital. I did not notice or pay any attention to who else was in the car park. At one stage somebody passed us when we were at the wall somebody spoke to me by name but I was too busy with my friend to look around to see who was looking at me. I do know Frank McBrearty, Snr. and Frank, Jnr. but I do not recall seeing them that night.**

No statement from Catherine Vaughan has been supplied to us, Sir. As to whether this presence in the car park was even taken into account in the Garda investigations, we do not know.

Eunan Brolly, as you will recall, Sir, witnessed the incident between Mark McConnell and the deceased in the Town and Country/Quinn's. He and his wife, Katriona, had gone to this pub at approximately 7.00 p.m. His recollection is that Mark McConnell joined him at around 9.00 p.m. and that later his wife, Roisín as well as Kay Quinn, Mark and Mary Bogle, Paul and Sue Quinn and Charlotte Peoples were in the company. He says that he and his wife would have left the bar at approximately 12.00 midnight. His wife, Katriona Brolly, gives a similar account. His statement is dated the 16th of October, as is hers. Neither of them, at that stage, mention the fact that they had an arrangement for Mark and Roisín McConnell to come and stay in their home that night. Mark McConnell, in his statement of the 16th of October, 1996, says that after leaving

the Parting Glass, sometime between 1.45 a.m. and 2.00 a.m., they: “came out home first and got stuff to stay the night with Eunan and Katriona Brolly”. After leaving the pub, some baby requisites were required by Mark and Roisín McConnell from their house. They were therefore driven there by Edel Quinn and Ebby Walsh, collected these items and were then driven to the Brolly household where apparently they had to knock up Katriona in order to get in, to stay the night. “We had arranged this earlier on in the night to stay with them", he says.

In her statement of the 16th of October, 1996 Roisín McConnell also mentions going down to the Brollys' "after collecting the curry in Sarah's Cafe". It seems that the Brollys were not interviewed again prior to the arrests which took place on the 4th of December and neither were the McConnells. Roisín McConnell, in her statement of the 16th of October, 1996 indicated that her sister, Edel Quinn, came into the Parting Glass/McBreartys', while she and her husband were there and related to them that Richard Barron had been knocked down and killed. She says that she asked Frank McBrearty, Snr. about it and that he told her that he was not dead. In his statement, made while under arrest on the 4th of December, 1996 Mark McConnell gives a similar account. We do not suggest, Sir, that you should draw any inference in relation to this slight discrepancy as the earlier statements are short and experience shows that re-interview can be necessary in order to elicit all relevant facts. This, in part, of course depends on the skill of the interviewer. That, however, is a matter for you. Certainly, as and from about 2.30 a.m., Mark and Roisín McConnell are in the home of Eunan and Katriona Brolly.

Among the other patrons in the Town and Country/Quinn's when the McConnells were there, were the Dolans and a man called Duke Quinn. The Dolans consisted of Stan Dolan, Laura Dolan, Frankie Dolan and Irene Dolan, all of whom were apparently in the company of Jimmy Deery. Irene and Frankie Dolan are married to each other. When the Dolans returned home, at some time between 1.00 a.m. and 2.00 a.m., to their residence at Townparks, Raphoe, a birthday celebration began because it was Laura Dolan's birthday. Irene Dolan remembers a telephone call to her house; but in her statement of the 17th of October, 1996 she does not mention this. There is a note of an interview with her on the 16th of January, 1997 where it is mentioned and then, eventually, on the 20th of November, 1997, in a statement taken by Detective Sergeant John White she says:

> **We got a carry out as we left the pub to have a drink in the house. This was a spur of the moment decision just before we left the pub. Laura, my daughter, Jimmy Deery, Frazer Worth, my husband, myself and Darren my son, all came back to the house. We had drinks from the time we came home to our house until 4.00 a.m. or 5.00 a.m. Laura called me to the telephone in the hallway at some stage that morning. I don't know what time. Roisín McConnell was on the phone. She asked me was her husband, Mark, at my house. I told her he was not here. She seemed very worried about Mark. She said that Richie Barron had been knocked down in a hit and run accident and that she was worried about Mark, her husband, as he**

> **had been involved with Richie earlier in the night. Roisín seemed worried and I took it that she was worried that Mark may have been hurt with him as well. I don't know how long I was talking to her. We had more conversation, but I cannot remember it. I cannot remember when I met Roisín McConnell after that, but she never mentioned the telephone call to me after that. I don't know where she was that night she telephoned me. I took it for granted that she was in her own house.**

A witness who confirms that Mark McConnell was indeed upset was Garrett Friel, who made his only statement to Garda John O'Dowd on the 23rd of October, 1996. He was driving around Raphoe on that night and then parked in the town. He says:

> **I saw Roísin McConnell and Edel Quinn on the opposite side of the road just outside Frankie's bookies. They were walking on the roadway on the side of the parked car. The next thing I saw was Mark McConnell coming behind with a fellow I now know as Edel Quinn's boyfriend. I noticed that Roisín and Edel seemed to be keeping their distance from Mark and Edel's boyfriend in that whenever Mark and Edel's boyfriend quickened their pace the girls in front also increased theirs. What I noticed about Mark was that he was crying. I saw this because Mark was standing across from my van for three/four minutes and Edel's boyfriend was patting him on the back and even looking up into his face. The two women seemed to disappear. I didn't see them after this. The spot where Mark and Edel's boyfriend were standing would be approximately the end house of these rows of houses up from the Parting Glass and across from Reynolds.**

Laura Dolan was born on the 13th of October, 1966. In consequence, that Sunday was her birthday, though the birthday celebration seems to have taken place in the early hours of Monday morning. In her first statement of the 23rd of October, 1996 she, again, does not mention the telephone call. The first mention of it appears to be in a statement dated the 1st of December, 1997 taken by Detective Sergeant John White. In this she says:

> **Some time in the morning the telephone rang in our hallway. I answered the phone. It was Roisín McConnell. She asked me for my mother. We did not have any other conversation, that's Roisín and I. I don't know how long my mother spoke to her. Later my mother told me that Roisín was looking for her husband, Mark.**

There was a further interview on the 12th of March, 1997 at Letterkenny Garda Station with Detective Garda Michael J Carroll. The added details are that she says that Roisín McConnell wished her a happy birthday and that she apparently declined to answer a particular question stating: "No, I don't want to get Roisín into any sort of trouble?". Of course, by that stage, as you will hear, Sir, a lot had happened.

The account of Mark and Roisín McConnell is that they retired to bed and, that at the time this phone call was made, he would have been in the room with his baby. If therefore the Dolan account is correct, it is hard to know how Mrs. McConnell could have been ringing up looking for her husband. Strangely, during her time in custody on the 4th/5th of December, 1996, Roisín McConnell was not asked about this telephone call. In a meeting with the Carty investigation team on the 17th of November, 1999 Mark and Roisín McConnell gave a more detailed account of their movements. Additional details included leaving Quinn's pub at 9.00 p.m. in order to set the video to record "Londons Burning" on UTV, Mark McConnell parking his car, and moving it later. Roisín McConnell accepted that she did ring Dolan's house. Her purpose was, however, to see if her brother, Gerard Quinn, was there. She said that she was talking to Darren Dolan and that she never spoke to Irene Dolan. She said that she never asked about Mark, her husband, as he was in Brollys' with her. The only statement that we have from Darren Dolan is one dated the 17th of October, 1996 which does not mention any telephone call or indeed the later party in his home. To add to the complication, Mark McConnell indicates in his statement dated the 4th of December, 1996 to Detective Sergeant Leheny and Detective Garda O'Malley that on hearing about the accident to Richard Barron, as it seems to have been treated at the time, his wife, Roisín McConnell got upset. The words ascribed to him are:

> **She is a very emotional person. She started to cry as we left Frankie's, as she was concerned about him due to the words we both had in Quinn's pub...I decided to ring the hospital and enquire about him. I did not give my name and told them I was a relative. The hospital refused to give me any information stating that Richie's relatives were already in the hospital.**

On the 27th of October, 1996 Martin Laird gave a statement to Garda John O'Dowd. All that he says in that statement was maintained in a later interview with Detective Garda Foley on the 2nd of December, 1997. We quote:

> **I reside at Tullyvinney, Raphoe. I am a next door neighbour of Mark McConnell and I know him for a number of years. On Monday, the 14th of October I left my house between 7.00 a.m. and 7.15 a.m. I headed off for Raphoe walking. I left from my house and headed down the back lane. I would have passed by the rear of Mark McConnell's house, but I didn't notice any vehicle there. I am saying I don't know whether there was a car there or not. Somewhere along the main road I got a lift from Seamus Campbell's wife. His daughter was along with her. I got off at the Chapel and walked down to my mother's house where I had breakfast. I then went over and opened up the yard at 8.00 a.m. The only one that was there was Billy Strain. Patrick Quinn is supposed to be there also, but he didn't turn up that day. Patrick is a brother of Mark McConnell's wife. Myself and Billy Strain then headed up the town. On our way I met Mrs. McCarron, Magherahane (husband's name Jim RIP) who told me that there was a hit and run in the town. That was the first I knew of it. Further on near the Ulster Bank Sheila**

> **McBride who lives with Walter Vance told me Richie Barron had been killed and she thought it was [a] hit an run. I continued on and at Sheep Lane I picked up a wheel trim. I would have been in that spot between 8.10 a.m.-8.15 a.m. I later gave the wheel trim to Sergeant Hannigan. A few minutes after that which would put at 8.20 a.m. I saw the door of Quinn's pub open, that is the red door under the Town and Country sign. I actually painted the sign myself. This red door leads into the bar. When the door opened Mark McConnell stepped out. He pulled the door behind him. I saw no one else at the door. When he came out he walked around by the Marathon Hall and up the Close. I am trying to think but I cannot say what Mark was wearing. When I saw Mark he appeared to be walking normal. I didn't notice any sign that he had drink taken. When I saw Mark I was standing at the first window of the Hardware and Grain as one walks from Sheep Lane. He didn't speak and I didn't speak either. I cannot recall what vehicles were around Quinn's pub at the time. Billy Strain was on ahead of me past Quinn's pub when Mark McConnell walked out so he wouldn't have seen him...after I saw Mark McConnell leaving the Town and Country pub on the morning of the 14th October, 1996, I definitely do not recall telling anybody that day...or the next day of this sighting. The stories and rumours of Richie Barron's death had been going around and in the early days an appeal for information was on Highland Radio. I did not mention the sighting of Mark McConnell to any one that I can remember until Garda Dan Curran came to my home along with Garda John O'Dowd to take a statement from me, which I made to them. This sighting of McConnell by me stayed in my mind because Paddy Quinn, Mark McConnell's brother-in-law did not turn up for work that morning and I assumed they had an all night drinking session, celebrating the birth of Mark Quinn's baby.**

As far as we know, this is the only suggested sighting of Mark McConnell on that morning. Mark McConnell does not accept that this sighting could have been correct by reason of his movements and his interaction with the Brollys, and later the Peoples, on that morning. We will go into that shortly. However, for the moment, it is important, before going to those accounts, to indicate that some people also claim to have seen Roisín McConnell on that Monday morning, about fifteen minutes later, in a completely different location at a time when, on their account, she, her husband and their baby would still have been sleeping in the Brolly's house prior to their first breakfast.

Three people claim to have seen Roisín McConnell. The first, Collette McGlinchey made two statements on the matter, to Garda John O'Dowd on the 23rd of October, 1996 and secondly to Detective Garda Thomas Kilcoyne on the 21st of December, 1997. The second, Michael McNulty made his first statement, on the same day as Collette McGlinchey, to Garda Philip Collins and this was then followed up by a further statement to Detective Garda J. O'Toole on the 5th of December, 1997, to Detective Garda Thomas Kilcoyne on the 9th of December, 1997 and finally a statement to Detective Garda J O'Toole on the

10th of December, 1997. Gary McCullagh made his first and only statement on the 24th of October, 1996, the day after Collette McGlinchey and Michael McNulty. Collette McGlinchey expresses apparent certainty as to what she saw, according to the account taken by Garda John O'Dowd:

> **I reside at Tullyvinney, Raphoe at...On Monday morning the 14th October I walked from my house to St. Bridget's Well sign where I was expecting a lift to take me to my work at McMenamin Engineering at Killygordon. I was waiting at the Well at 8.10 a.m. My lift came between 8.10 a.m. and 8.15 a.m. The lift was from Michael McNulty, Townparks, Raphoe...he was accompanied by Gary McCullagh...I got into this white van shortly before 8.15. We have to be at our work at 8.30 a.m. As Michael drove over the road going in the Killygordon direction I saw Roisín McConnell walking towards Raphoe on Roisín's left hand side of the road. She would have been about a hundred yards from her own house. I am aware that Roisín works in the Fruit of the Loom and the reason that I definitely know it was on the Monday I saw her was because I believed Fruit of the Loom was closed on Mondays and it stuck in my mind. Also on that particular morning I had heard on Highland Radio that there had been a hit and run in Raphoe the previous night in which a man had been killed. I wasn't in Raphoe myself the previous night...after I made the statement to Garda John O'Dowd, Michael McNulty came down to my office the same day and said that he had his doubts about whether it was the Monday or the Tuesday. He said that he did remember seeing Roisín McConnell walking on the road one morning, but could not be sure which day of the week it was. I never discussed seeing Roisín McConnell on the road that Monday morning, the 14th of October, 1996 at Tullyvinney at about 8.15 a.m. with either Michael McNulty or Gary McCullagh except immediately afterwards until the day the Gardaí arrived on the 23rd October, 1996. I personally have no doubt it was the Monday, the 14th October, 1996. The reason being is that I had been standing at St. Bridget's Well every morning at about that time for a year and I would know the same people on the road every morning and I would remember if I saw somebody out of place. I knew Roisín was on a three day a week at the Fruit of the Loom and that I remarked to myself that she would not be going to work on a Monday morning. Also I had never seen her walking or in a car any other morning. However, I have seen her other mornings since in a white car with two girls in the front and her in the back. I know Roisín McConnell well to see and I have met her in her own home and I know that it was definitely her on the road and she looked stressed more or less like someone who did not have much sleep.**

We now turn to the statements of Michael McNulty which we quote in sequence:

> **Last Monday week, the 14th October, 1996, it was the morning after Richie Barron was killed in Raphoe I left the house as usual 8.10 a.m. and went towards Killygordon. I picked up Gary**

McCullagh, St. Eunan's Terrace, Raphoe at the Chapel. He works with me. We travelled up the road and lifted Collette McGlinchey from Tullyvinney at Frank McMonagle's house, Tullyvinney. We travelled on up the road and we met Mark McConnell's wife walking along the road. She was about eighty to one hundred yards away from her own house walking on the left side of the road heading towards Raphoe. I passed a comment to Collette that Mark and her must have had a bit of a tiff, or something like that. I never seen Roisín McConnell on the road before this at this hour of the morning. She looked as if she was very upset looking. She was wearing blue jeans. Going past the house I saw Mark McConnell's car there. I am sure of this. It was a white Corolla. When I seen Roisín McConnell she was very distressed looking. She didn't seem to be rushing. I heard about Richie Barron being killed in Raphoe at 2.00 a.m. or after that night when I had gone home. My sister Angela told me...I have heard my original statement read over to me by D/Garda Carroll. I am happy about it. The reason I didn't say anything to the first Guard who asked me about this incident was because I was unsure if it was connected to what happened to Richie. When Phil Collins the Garda called to me on the 23/10/96 I made that statement to him. I was speaking to Collette McGlinchey and I believed it was Tuesday morning when I saw Roisín. I stick to my original statement to Garda Collins. It could have been Monday morning...further to the statements I have made to the Gardaí...to the best of my recollection I saw Roisín McConnell...walking on the road alone to her home on Tuesday, the 15th October, 1996 at 8.10 a.m. even after I made the statement to Garda Collins I immediately went downstairs and spoke to Collette McGlinchey who was in the van with me the morning we seen Roisín McConnell. I told her I was unsure it was the Monday morning. My reasons for that were that I knew the Fruit of the Loom factory were on a three day week and I knew that nobody would be working in the Fruit of the Loom on a Monday morning. This is the only reason I believe it was a Tuesday morning that I saw Roisín McConnell. I am certain that I saw Roisín McConnell walking at Tullyvinney, Raphoe, on either the morning of the 14th October, 1996, Monday or Tuesday, the 15th October, 1996...further to my statement made to the Gardaí on the 6/12/96 I want to clear up the confusion regarding the morning I saw Roisín McConnell at Tullyvinney. I believe that it was Tuesday morning the 15th October, 1996 and not Monday morning as I previously stated.

Finally, of the three people who habitually travel, from Tullyvinney to Killygordon, in Mr. McNulty's car, we quote the statement of Gary McCullagh:

On Sunday night the 13th of October, 1996 I was babysitting my wee brother. On Monday morning the 14th of October, 1996 I got up at 7.45 a.m. to get ready to go to work at Killygordon Engineering Works - McMenamins. I walked up to the Chapel a distance to two hundred yards to a spot where I was to meet Michael McNulty who always carries me to work in his white Opel van. Michael collected

> **me at about 8.10 a.m. and then drove on to collect [Collette] McGlinchey at St. Bridget's Well at Tullyvinney. He collected her before 8.15 a.m. She got into the back. I was the front seat passenger. Michael had said to me that there was a man knocked down in Raphoe. When Collette got in we further discussed it. We drove onto our work in Killygordon. As we drove on we met Roisín McConnell walking towards Raphoe walking on her left hand side of the roadway. I want to say I don't know what day of the week this was. I think she was wearing a white top and black ski pants. When we met her she was just about one hundred yards from her house and as I passed her house I don't know whether there was a car parked in front of the house or not.**

In his statement of the 4th of December to Detective Sergeant Leheny and Detective Garda O'Malley, Mark McConnell outlines that at 10.00 a.m. on the 14th October, 1996 the phone rang in Brolly's house and it was Eunan Brolly's boss looking for him to go to work. Therefore, because Eunan Brolly was going out, a lift was available to Mark McConnell. He collected his car, then drove and collected his wife and son, and drove to the Peoples house in St. Eunan's Terrace. Michael and Charlotte Peoples were both there and, as it turned out, Michael Peoples was also cooking breakfast. They all sat down together to a fry.

Michael and Charlotte Peoples had earlier been in Quinn's pub, as you will recall, Sir, and had witnessed the incident between Mark McConnell and the deceased. Michael Peoples had left around midnight in order to go to a 'Banklink machine' to get money. Geoffrey Dolan and Michael Peoples went there together and then returned to Quinn's, leaving at around 12.30 a.m. Three of them, Michael and Charlotte Peoples and Geoffrey Dolan went into the Parting Glass/Frankie's Nightclub and had some drinks. The previous night Michael and Charlotte Peoples had heard of a "hit and run" incident involving Richard Barron. They had gone to the scene of the accident. They saw people standing around the scene, but "no Guards, no ambulance, nothing". Geoffrey Dolan accompanied them and they returned home to their residence at 264, St. Eunan's Terrace. They then had tea. Apparently Charlotte Peoples' mother, Dolly Eaton, rang the hospital from her home to enquire about Richard Barron. Apparently she hung up when she got the information that he had died. The Peoples accept that the McConnells came to their house the following morning and had breakfast, staying about an hour or so, the Peoples putting their time of arrival at around midday. While in custody, on the 14th of December, 1996, it was specifically put to Charlotte Peoples that there was some talk of an alibi being discussed. This was denied. She indicates, however, that there was some upset with Mark McConnell due to the fact that the person whom he had just had a row with was now dead. In her statement of the 22nd of September, 1997, Catherine "Dolly" Eaton accepts that she did phone up the hospital. She was, in fact, a relation of the deceased and knew him very well, apparently they were second cousins. Her motivation for ringing was, it seems, her understandable upset at him being in hospital.

A similar account is given by Michael Peoples. Dealing with the phone call he simply says: "if anybody did it, it was probably my mother-in-law Dolly".

Martin and Joseph McCallion worked as doormen at Frankie's Nightclub for two years prior to the events in question. He first made a statement on the 23rd of October, 1996 and in it he indicated that he checked in for work some time after the bus from Strabane came, which was usually around 11.30. He records a number of incidents. The first was in relation to Paul "Gazza" Gallagher who was supposed to have been giving a girl "hassle". He manhandled Mr. Gallagher out of the disco and, he claims, Frank McBrearty, Jnr. opened the door. He doesn't put a time on it. Although he knows Mark McConnell, he cannot remember whether he was there on that Sunday night or not. Later, it seems, after the ejection of Mr. Gallagher "a boy called Porter" was seen arguing with a girl. Because he had been banned a week before, he put him out as well. Frank McBrearty, Jnr., on this account, joined in this ejection also. Martin McCallion was later arrested on the 8th of December, 1996.

The final arrested person to whom we wish to refer is Damien McDaid. He is an electrician who carried out some work installing a new lighting system in Frankie's discotheque. He said that he was in the disco from about 12.30 a.m. on the 14th of October, 1996 and saw Frank McBrearty, Jnr. there. He drives a navy blue transit van which he parked in the car park at the rear of Frankies. He left at 1.00 a.m. and the only people he saw in the car park were one of the bouncers "a baldy headed boy" whom he describes as being "along with a few women". He says that one of these women was getting sick. As he drove out there was some kind of a fight involving, as he thought, prisoners temporarily released over a weekend.

Sir, we have described the foregoing people as "suspects". This is because they were later arrested. On the 4th of December the following people were arrested: Mark McConnell; Roisín McConnell; Frank McBrearty, Jnr.; Catriona Brolly; Michael Peoples; Edel Quinn; Charlotte Peoples and Mark Quinn. On the 5th of December Frank McBrearty, Snr. was arrested. On the 8th of December Martin McCallion was arrested. On the 11th of December Sean Crossan was arrested and on the 17th of December Damien McDaid was arrested. Having given an account of the movements of those so-called suspects we must now return to Raphoe and that Monday morning.

At 3.50 a.m., according to Eircom records, a phone call took place from Raphoe Garda Station (074-54114) to the home of Garda John O'Dowd (074-25858; see appendix 32 of Carty II). When asked about the matter later, Garda John O'Dowd said he could not recall receiving such a phone call. At 6.45 a.m. the C9 form, reporting Mr. Barron's death for the first time, was sent to Garda Headquarters. This indicated a fatality and was something that ought to have been done some hours earlier. Equally, the District Officer should have been informed. This happened at 7.45 a.m. when Superintendent John FitzGerald was told of the incident. His main statement on this matter is dated the 8th of March, 2000. On that particular Monday he was on leave. He says:

> **I received a phone call at 7.45 a.m. that morning from Garda John McManus, Garda Communications Room, Letterkenny. I was notified by him that a fatal hit and run accident had occurred at Raphoe at about 1.00 a.m. that morning...I immediately made enquiries from Garda McManus as follows. Was the scene properly preserved, who was the Scenes of Crime Examiner, was there proper identification and was that end of things covered, was the injured party's clothing taken possession of, was the matter circulated and the nature of the circulation, was anybody got or were there suspects, was a C9 forwarded, was Superintendent S FitzPatrick who was on call that weekend notified, and why was I not immediately notified...while getting ready to go into the Garda Station at Letterkenny I rang Garda McManus again and expressed my total dismay at not being notified because during my time as Superintendent at Letterkenny for nearly five years all the points raised were emphasised over and over again and were always covered...I contacted Inspector Jim Gallagher, Letterkenny, to ensure that he was properly briefed as he was acting District Officer in my absence. I also immediately contacted Inspector John McGinley, Letterkenny to take charge of the case on the ground and to ensure that everything was covered in total detail, including a detailed postmortem and I also emphasised the importance of use of photography at the postmortem...I learned that Garda Birney and McDwyer, both from Lifford...were on duty that night and that Garda Mulligan, Raphoe was on duty at Raphoe that night and that Garda O'Dowd, Raphoe had joined him then that morning and that they looked after the deceased man's clothing, that they made local enquiries and searches, but that the scene was not preserved and not yet examined by a scenes of crime examiner. I learned that Garda Coady, Castlefinn, now Sergeant Coady, had been contacted by Garda McManus so I rang him myself at 8.30 a.m. and ordered him out to the scene forthwith. I then rang Lifford to order Garda Connolly to get out to the scene forthwith or to leave a member out there...I was very annoyed, disappointed and surprised by the initial actions of the four Gardaí who are all experienced and well used to serious incidents...**

In fact at 8.00 a.m. Garda Niall Coady had been told of the incident. At 8.05 a.m. Sergeant Hannigan, the Sergeant in charge of Raphoe, was told of the incident. However, notwithstanding the note of apparent urgency in the statement from Superintendent FitzGerald there was again a considerable delay in anyone arriving at the scene. At 9.00 a.m. Derek "Darcy" Connolly arrived at the McBride's house proximate to the scene. Some ten minutes later Simon McBride, together with “Darcy” Connolly and others, washed the scene where there was blood on the roadway. They thought it was a disgrace that school children might be going up and down and would have to see the human blood on the roadway. It was at 9.20 a.m. when Gardaí Coady and Connolly finally arrived at the scene as the roadway was being washed. Sergeant Coady puts his time of arrival at 9.10 a.m. He says:

> **At the scene I saw one Matt McBride, Townparks, Raphoe...there were a number of other persons unknown to me also near the scene. I saw a bucket of water sitting on the roadway near an area where I could see what appeared to be small pools of blood. I did suspect that there were heavy blood stains on the roadway. I also saw one yard brush in Mattie McBride's possession. I removed Mattie McBride and other persons from the area of the blood stains and directed Garda Connolly not to allow any persons or vehicles access to the scene. I can describe the roadway as 16 feet wide at the scene and the roadway was very straight. The main concentration of blood and blood clots on the road were located between the entrance to Matt McBride's house and...yard...from examination of the scene I saw blood, blood clots, hair strands and skin on the roadway approximately one metre from the edge of the road on...McBride's house side...**

Sergeant Coady indicates that he recovered a glass particle, a blood sample and what appeared to be seven paint flakes. He also took samples of hair from the scene. Some time during that day, it would seem around 10.30 a.m., Detective Sergeant J S Henry went to view the body in the morgue. He noted some wounds. In his statement of the 14th of November, 1997 he says:

> **I was suspicious as to the cause of death and left the hospital to report to my superiors. I spoke to Inspector Gallagher at the Garda Station and accompanied him back to the morgue to review the body. I was again accompanied by D/Garda Keating. I did not touch the body on the second visit, but remained there while Inspector Gallagher had a look at the body. We left a short time later. I am unable to say whether the marks on the backs of the hands or the injury to his fingers were defence marks. I felt it suspicious that he had these marks on his hands and no other marks or injury to any other part of his body other than his head.**

This account, it seems to us, Sir, raises even stronger reasons than usual why proper postmortem photographs should be taken. One also wonders, in the light of these stated suspicions, why Dr. Harbison was not called in from Dublin. However, it would appear that this is not Detective Sergeant Henry's responsibility. Where that responsibility lies is not a matter for us.

At 11.30 a.m. Garda Kevin O'Malley photographed the scene. He was also the photographer for the postmortem which took place that afternoon. At 3.00 p.m. Dr. David Barry, Consultant Pathologist at Letterkenny General Hospital, performed an autopsy on the body of the deceased. In summary, his opinion was "death was due to...head injuries". Dr. Barry is not a forensic pathologist. In his report dated that day he noted the following:

> **A Y-shaped laceration with crushed edges and open end inferior was found extending into mid-line of forehead to behind the hairline. This measured 10 cm max. length. Arms max 4 cm. This wound gaped and measured 3 cm max across. Fractured skull**

bone visible beneath. Bleeding from left ear. Dermal bruising on both sides of gaping wound in forehead. Abrasions on left side of this wound in an area 4 cm, coming to 4 cm of wound. Scattered abrasions back of right hand and wrist and right index finger. Abrasions knuckle of left hand. Left little finger showed laceration of tip region with partial avulsion of pulp and skin from below the distal phalanx. A straight clean-edged laceration 3.5 cm was found lying in rostal caudal line left posterior parietal area. Limited bruising of skin inner angle right eye.

There is no note of any bruising or wounds to the torso or leg. Dr. Barry notes fractures of the fourth and fifth ribs on the right, but because there was no bleeding he indicates an impression that they were postmortem injuries, perhaps associated with attempts at resuscitation. The base of the skull showed extensive comminuted fractures extending into the anterior middle and posterior fossae on the left with extensive associated fractures of the left squamous temporal, and occipital, bone on the left. In addition there was a mid-line fracture in the frontal bone which extended up and curved through the anterior parietal to reach the squamous and temporal area on the left. There were extensive blood clots to the brain with traumatic subarachnoid extravasation on the convexities. There was an area of superficial laceration in the left temporal pole and interior surface of the left temporal lobe and the interior surface of the left temporal lobe showed extensive contusion. There was a transection done of the brain stem and there were a number of haemorrhagic foci in the pons. There were also haemorrhages and contusions in other parts of the brain. In a letter to this Tribunal dated the 3rd of September, 2002 Dr. Barry indicates that "two possible causes for the injuries were being considered". The reason that mention is made of a fatal road traffic accident on the test results for blood/urinary alcohol level was because on "general principles" he would have selected the less sensational of the possibilities. It is not understood how, at this stage, anybody could have understood that, apart from a road traffic incident, there was a possibility that Mr. Barron had been murdered. Dr. Barry says that he was not told of any suspicions prior to the postmortem and that if he had been told he would have declined to be involved and would have immediately referred the case to the State Pathologist. Dr. Barry says that this suspicion of murder emerged from the postmortem findings and his comments on them which, he says, were made at the time to the Gardaí. He says that he "pointed out that the findings would be unusual for involvement in a road traffic accident, and a blow from a blunt instrument appeared more likely". He said that later on, he was told of a possible grudge or animosity, which was not specified, towards the deceased which the Gardaí felt could have had a bearing on the case. Dr. Barry was not told of the presence of a piece of flesh with hair attached at a distance of five feet from the body until the 30th of September, 1997. It is not known why he was not told this on the 14th of October, 1996. When Dr. Harbison was told this on the 26th of April, 2000, he indicated that a piece of flesh on a roadway was normally suggestive of a traffic accident. At the postmortem examination Dr. Barry accepts that he may have said that the injury was consistent with "being struck with a blunt instrument".

We now move onto the next day, Tuesday, the 15th of October, 1996. In his statement made on the 21st of February, 2000, Chief Superintendent Denis FitzPatrick says this:

> **I can recall that on the 15th October, 1996, at approximately 10.00 p.m. Garda John O'Dowd telephoned me at my home to inform me that he had good information to the effect that Frank McBrearty and Mark McConnell killed Mr. Richard Barron and that it was murder and not a hit and run accident. I recollect that I did not discuss the source of the information, but that I assumed it was probably William Doherty. I telephoned Superintendent J J FitzGerald on the night and discussed the matter with him briefly. Subsequently on the next morning, 16th October, 1996, I discussed the investigation, and went to the scene with Superintendent FitzGerald. I have no recollection of discussing the source of Garda John O'Dowd's information with Superintendent J J FitzGerald at that time.**

We now turn to Superintendent Lennon's report on this matter. Under the heading "Investigation into Unlawful Killing" the report reads:

> **Following the postmortem examination a full scale Garda investigation was commenced and an Incident Room was established at Letterkenny Garda Station with operations being directed from that centre. An investigation team was assembled which comprised of members of Detective Branch from Letterkenny, Milford and Lifford and uniform personnel from Letterkenny, Raphoe and Lifford. A conference was convened at 6.00 p.m. on Tuesday, the 15th October, 1996 at Letterkenny Garda Station and was chaired by Superintendent John FitzGerald who had visited the scene earlier that morning accompanied by Detective Inspector John McGinley and Superintendent Jim Gallagher who was then an Inspector. The investigation team were advised at this conference to keep "an open mind" as to how the deceased had sustained his injuries and to carry out the investigation accordingly. Some time later that night information came into the possession of Garda John O'Dowd which suggested that this was a case of murder and that two individuals, namely Frank McBrearty Jnr and Mark McConnell were observed approaching "Frankie's Nightclub" from the direction of the scene at a time crucial to the estimated time of the attack on the deceased. By the time the reader comes to the end of this report it will be seen that this information transpired to be both false and misleading. This information came from a source of proven reliability in the past and the investigating members had no reason to doubt the veracity of this information at this time and it was therefore accepted on merit.**

The report goes on to state that a hit and run accident was subsequently ruled out. This is not withstanding the injuries to the deceased, the finding of a piece of skin with hair attached some five feet away from his body, the recovery of a

piece of glass and flaked paint at the scene and abrasions on the deceased's watch which contained a trace of red paint along its glass face. This paint could perhaps have come from the red Bedford van of Richard Barron, but equally it could have perhaps come from another red vehicle. Investigations by a fresh team of Gardaí, on this issue, are ongoing. In addition, the deceased's dentures were smashed. Unfortunately, there is no description of the entirety of the deceased's body in the pathology report, and no photographs were taken of his unclothed body for the purpose of later analysis. As to the supposedly reliable source this was thought, at the time, by both Chief Superintendent Denis FitzPatrick and Superintendent FitzGerald to be William Doherty. In another statement dated the 2nd of May, 2000 Chief Superintendent FitzPatrick comments:

> **In relation to William Doherty, I can recall asking Detective Inspector Lennon to make contact with Garda O'Dowd and meet with Garda O'Dowd and William Doherty to assess his usefulness in relation to his ability to supply information to the Gardaí on Subversive and Criminal matters. I cannot recall the date I made the request, but it was just after he returned from England where he had completed a course. I recall that it took months for him to do the job, and in fact he had been promoted in the meantime and gone on transfer to Buncrana. He was transferred to Buncrana on the 22nd February, 1997. Eventually, around December, 1996, he told me that he had done an assessment on William Doherty and that he was a promising source and that he would keep in touch with him and Garda O'Dowd, my instructions were to put all information on form C77.**

Even if the source was reliable, which as a matter of fact he was not assessed as being in October, 1996, it is difficult to know how a man coming up his own car park with his own first cousin could be the foundation of any reasonable suspicion that he had murdered somebody. As to the information about people coming through the car park it is not understood whether this was relayed orally or whether the conversation with Garda O'Dowd was as blunt as Chief Superintendent FitzPatrick puts it. Nor is it understood how, if the Gardaí genuinely believed that a murder had taken place, they allowed Mr. Barron's body to lie above the ground for a number of days without calling in a forensic pathologist. Superintendent John J FitzGerald was more than annoyed at the way in which the investigation had been carried out to date. He wrote a report to Inspector Gallagher on that day, the 15th October, 1996, making a number of points; as to why it took thirty five minutes to respond to the emergency call, why the scene was not preserved; why a scenes of crime examiner was not immediately contacted; why the clothing of the deceased was not immediately secured; why the Superintendent was not notified until the following morning; or why even the Sergeant in charge at Raphoe was not contacted. He also could not understand why Garda Mulligan was not available for radio contact. It might be reasonable to ask, in the light of all of those criticisms of other people, possibly justified, the question as to why an examination by a forensic pathologist was not identified as being the most appropriate next step to take. Superintendent John J FitzGerald in his statement of the 8th of March, 2000

says that there was nothing found at the scene to suggest a hit and run accident. It is difficult to know how this could be said and, more particularly, how a conclusion of murder could have been arrived at given that the scene had been driven over all night in its unpreserved state and had been trampled over that morning and washed by people acting, they assert, out of the best of intentions. We quote Superintendent John J FitzGerald as to the next steps in the investigation:

> **I had consultations with Inspector John McGinley, Dr. Barry, Pathologist and the Coroner on Wednesday morning, the 16th October, 1996. Resulting in these consultations I contacted Professor Harbison, the State Pathologist. I organised Dr. Barry to fax his pathologist report to Dr. Harbison and both doctors discussed the findings. Dr. Harbison enquired if photographs were taken during the postmortem and it was confirmed positive...I contacted Professor Harbison again in the presence of Inspector MrGinley who stated that Dr. Barry's pathologist report was in great detail and stated that it would be duplication for him to examine the body of Richard Barron deceased and his considered opinion was to bury the body. The photographs were also made available to Professor Harbison as soon as they became available. I contacted the Coroner, briefed him on the up to date position and he directed burial. I prepared a preliminary report and forwarded it on that date, the 16th of October, 1996 to the Chief Superintendent, Letterkenny and this was forwarded to Assistant Commissioner C Branch...in that report I stated that the postmortem revealed heavy injuries to the skull with multiple fractures which was the cause of death. I also referred to an injury caused to his left ring finger. I also referred to my consultation with Professor Harbison as already covered. I also stated "this is a most unusual case and is being pursued with open mind, all avenues are being explored and a full investigation is in place". I recall clearly having a brief conversation with Chief Superintendent Denis FitzPatrick, Divisional Officer, Letterkenny. I went across from the conference room to his office and I believe it was either Tuesday night, the 15th October, 1996 or Wednesday, the 16th of October, 1996, it was certainly I think as early as that. The Chief Superintendent said to me "John, Richie Barron was murdered, Frankie, Jnr. and Mark McConnell did it". My answer was "thanks very much, I'll take that on board, but we must investigate this with an open mind". There was no question or nothing said as to where the information came from, but I immediately assumed myself that it came from Garda O'Dowd or Superintendent Lennon. I assumed that because if it were anybody else I would have been told. I did not give that aspect any thought, but I did consider the information and decided not to mention it at conference, that it would be much better allow the investigation take its course and I emphasised that people must approach that matter with open mind. That information very soon spread and a Mr. X was introduced by Garda O'Dowd as to having been in the car park of Frankie's Nightclub and putting Frankie, Jnr. and Mark**

> **McConnell [there] at the vital time. As time went on I specifically requested at conference that a statement would have to be taken from this Mr. X because I wanted corroboration of this information and the best way to do it was to get the statement and to have it fully checked out so that if Mr. X saw somebody in the car park then it was vitally important that somebody saw Mr. X there. I prepared press releases and radio releases...conferences were held almost daily where developments were discussed and further directions given. Various avenues of enquiry were followed up as they arose, cars were forensically examined and every effort was made to have the scene at Raphoe as it actually was at the time of Richard Barron's death at about 1.00 a.m. on the 14th of October, 1996. The inquiry involved hundreds of statements, numerous questionnaires, searching, forensic examinations.**

In this account Superintendent John FitzGerald does not say that he told Dr. Harbison that the Gardaí now had "information" that the deceased was murdered.

On Wednesday, the 16th of October, 1996 after Requiem Mass at 10.00 a.m. Richard Barron was buried. It was to be nearly four years before a forensic pathologist got to look at his remains.

Let us go back to Tuesday, the 15th of October, 1996 because then something else is supposed to have happened. A billhook could slice off a piece of someone's scalp. There is abundant evidence, apart from the phone calls to the Communications Centre in Letterkenny, that Paul "Gazza" Gallagher was driving dangerously around Raphoe on the night in question. It was also him, as it later emerged, who stole the billhook and the chainsaw from Hugh Stewart's house (see his statement of the 10th of September, 1999 when interviewed by D Gardaí Hugh Maloney and Tommy Flynn). Paul Gallagher claimed during this interview in 1999, that two Gardaí had spoken to him on this Tuesday, the 15th of October, 1996 and had asked him about his activities and further told him that he was being blamed by Frankie McBrearty for killing Richard Barron and that McBrearty had made a statement implicating him in the murder. Paul "Gazza" Gallagher claims that the Gardaí gave the impression that they knew who killed Richard Barron and that they told him to get his story right, but that they didn't care how he did it, but "to stitch Frankie up". He claims to have told them details about what he had done in relation to burglaries and in relation to disposing of the billhook. In the course of that interview he named Gardaí. We do not propose to give these names as all available evidence points to the falsity of this aspect of the statement in question. Later on the 10th of September, 1999 Paul Gallagher was again interviewed, but this time by Detective Inspector John O'Mahoney and Detective Garda Richard Caplice. It was pointed out to him that one of the Gardaí, and in particular the one whom he was alleging was the principal, was in fact on United Nations duty in Bosnia. Paul Gallagher then claimed that it must have been somebody else (see the memorandum prepared by Detective Inspector O'Mahoney of that date). What does appear to be the case, however, is that what Paul "Gazza" Gallagher said to the Gardaí was both false and was used as a justification for continuing with the murder enquiries

and specifically against those they already claimed to suspect. Either Paul Gallagher was malicious in making the allegations which he later did make that he had information that Frank McBrearty, Jnr. was involved in the murder or he was both malicious and inspired by somebody to make these allegations. He then constituted the second strand of the foundation of apparent reasonable suspicion against Frank McBrearty, Jnr. As with the first strand, it was later withdrawn. As with all the strands to which reference will be made it is difficult to think of any explanation other than that they were inspired by somebody who was acquainted with the basic facts of the case. Although it was assumed that the information, so called, supplied by Garda John O'Dowd to Chief Superintendent Denis FitzPatrick had come from William Doherty, it will later emerge that it supposedly came from Noel McBride.

Before continuing, let us summarise the available information. William Doherty was in bed in Raphoe on the night in question and therefore could not have been in a car park. Noel McBride was at a christening miles away and could therefore not even have been in Raphoe. Paul "Gazza" Gallagher had stolen the billhook from the home of Hugh Stewart and could therefore not possibly have got it from Frank McBrearty, Jnr.

Before continuing with the general chronology it is as well to deal with Paul Gallagher now. On the 18th of October, 1996 Detective Sergeant J S Henry obtained a search warrant to search for stolen property at the home of Paul Gallagher in Letterkenny. During this search he arrested him. The focus of the later questioning was on burning and stealing cars. Detective Sergeant Henry examined that matter in some depth. During the course of his interviews on the 18th of October, 1996 Paul Gallagher had claimed that he had returned to Frankie's Nightclub in Raphoe and further claimed that he had been told to do so by Mr. McBrearty, Jnr. who he alleges then told him to burn out the car he was then driving. The written statements available to us do not contain such an account. Sergeant Henry became aware from Paul Gallagher, however, that a billhook of some kind was of interest to the Gardaí on the 29th of October, 1996 when Paul Gallagher appeared at Letterkenny District Court. Afterwards he told Sergeant Henry that he wanted to talk to him and asked him for bail. He then stated that he had found a billhook in his car after he returned to it on Sunday night/Monday morning after being thrown out of Frankie's Nightclub. Sergeant Henry was naturally interested in this and on the 19th of November, 1996 he went to Mountjoy Prison where he met Paul Gallagher. He refused to make any statement and would not say anything while there was any paper in front of Sergeant Henry. He continued to press for Sergeant Henry to negotiate some kind of a deal to get him out on bail, overtures which Sergeant Henry rebuffed. He said that he had been put out of Frankie's Nightclub on the night/morning of Mr. Barron's death at 1.10 a.m. He implied that Frank McBrearty, Jnr. knew where his car was and that when he came back to it he found the car turned and the device which he used to start this car was, he said, missing from the dash board where he had left it. When looking in the boot he discovered that the spare wheel was missing, implying that someone had interfered with his car. The implication was that Frank McBrearty, Jnr. had put something in his car. This was, it was implied, the billhook. Explicitly he claimed that he was asked to return the next night when Frank McBrearty, Jnr. asked him to burn out his car

and it was then that he drove away, stopped his car and discovered 'a hook' in the boot. In what appears to us to be a patently ridiculous allegation, he claimed that young Frank McBrearty had given him £500 in the toilets prior to putting him out. The time of this was, however, at 11.30 p.m. on the 13th of October, 1996 when, as we know, Mr. Barron was then alive and would be alive for a further hour and a quarter. It is not known how this could possibly be accepted at face value unless this was turned into some kind of a belief on the part of the investigating Gardaí that as early as 11.30 p.m. a premeditated murder was being planned with the billhook as the chosen weapon of attack. There is nothing to suggest, by the way, that Detective Sergeant Henry did anything other than pursue his enquiries diligently and report what he had discovered to the Incident Room personnel. On the 16th of January, 1998 Paul Gallagher made a statement to Detective Garda Thomas Kilcoyne and Detective Garda J Foley along the lines which he had already outlined to Detective Sergeant Henry. At the end of the statement he also recounts an incident when he claimed that Frank McBrearty had accused him of killing the deceased in the presence of two men, in the bar, on a later occasion. He ends the statement by saying:

> **This statement is one hundred percent correct that was only lies I told to Silvie Henry was about getting £500 out of young Frank McBrearty the only reason was because I wanted to get bail. I just want to say I hate lies.**

This statement was recanted by Mr. Gallagher in an interview on the 31st of May, 1999 with Detective Sergeant George Kyne and Detective Sergeant Ken Barker, part of the Carty investigation team. It is reported as follows:

> **He was ejected by a bouncer with long hair and a glass eye. He met Frank, Jnr. on the way out and asked why he was being put out. He confirmed that it was in relation to a bottle being thrown the week before. Frank, Jnr. told him to come back and see him and it would be alright. Frank, Jnr. did not tell him that there was anything in the boot of his car. He (McBrearty) did not know where it was parked. He did not tell him to get rid of anything either.**

The memorandum in relation to the interview reads:

> **Paul Gallagher is adamant about this. When questioned as to his reasons for alleging in his statements that Frank, Jnr. had asked him to get rid of the item in the boot of his car, he states that he had heard rumours that the McBreartys were alleging that he had been involved in the death of Richie Barron. He made the statement including the allegations in relation to the billhook in order to put the blame back on them.**

In a memorandum of the 25th of April, 2000, Detective Sergeant George Kyne and Detective Sergeant Fergus Traynor record Mr. Gallagher as saying the following: "He confirms that two burglaries that he committed and him calling back to Raphoe on the Wed. night". When he was questioned about why he

said that McBrearty had offered him the £500 and why he had given information (false) about Frank McBrearty he said that he was told by the Gardaí that he was being blamed for the death of Richie Barron and that the Gardaí told him that he had been in Frank McBrearty's pub and that he had used the 50p coins he had stolen from the Border Inn to pay for his drink. He said that this was in fact the truth and this confirmed for him that the Gardaí had in fact been talking to McBrearty and that he then believed that he was being blamed by McBrearty for the death and that he then put the blame back on McBrearty.

Let us again, having dealt with Mr. Gallagher, the second strand to Garda suspicions concerning the McBreartys, return to Raphoe in the aftermath of Mr. Barron's death. It would seem that what Superintendent John J FitzGerald said, in his already quoted statement, about the "information" coming from Garda John O'Dowd quickly becoming more widespread, has some validity. For instance, Jason Porter, who lives in Raphoe says:

> **On the day Richie was buried I was working in a chipper and I think it was there that I heard the rumours that he was murdered. I am sure it was that evening anyway. I think it was coming out of the Wake house that Tom Hastings says to me that the mark on Richie was something of an angle iron would do...**(Statement of 6/11/97).

On the 17th of October, 1996 samples from the autopsy and the scene were sent to Liam Fleury in the Forensic Science Laboratory. In his report Mr. Fleury says that he examined the samples to see if there was any support for the allegation that the deceased Richard Barron had been knocked down by a motor vehicle. He came to the conclusion that nothing was found to support the suggestion that Richard Barron was knocked down by a motor vehicle. In a letter to this Tribunal dated the 31st of July, 2002, Dr. James Donovan indicates that it is usually the case that there is a considerable amount of relevant evidence left at the scene of a car accident. This case, he comments "diverges in many ways from any norm". Nothing in the samples indicated a definite assault or a definite hit and run.

On the 21st of October, 1996 Detective Superintendent Joseph Shelly came to Donegal. On the 22nd of October, 1996 Detective Garda Patrick Tague passed on information to Detective Inspector John McGinley. We know that this was the date of the beginning of the third strand of Garda suspicions only because in a section of Superintendent Lennon's report it says:

> **Garda Tague stated that John Patton, a thirty eight year old single farmer residing with his parents at Midcut, Drumkeen, Stranorlar, County Donegal, informed him that he had observed two or three men coming down the car park towards the entrance door to "Frankie's Nightclub" on the morning of the 14th October, 1996. These people appeared to be "hurrying as if coming from or going to some kind of a handling". The informant was adamant that he would not make a statement in writing in regard to his observations and insisted on this information be treated as strictly confidential.**

Sir, the word "handling" in this context means a scuffle or some kind of a fight. You will have noted that it was necessary, some time around 12.30 – 12.50 a.m., for the nightclub to eject Paul "Gazza" Gallagher and, later, at around 1.00 o'clock, to eject some other men who seem then to have carried on a fight down the street. As to how this information could form the basis of a reasonable suspicion is at present unclear. What is clear, however, is that there is nothing in the papers supplied to suggest that John Patton gave this information in anything other than in good faith. Regrettably, no statement was taken from John Patton until the 28th of August, 1997. Even more regrettably, even though from this very early stage the investigation was assumed to be into a murder committed by Frank McBrearty, Jnr. and Mark McConnell, steps were not taken to assist Mr. Patton in identifying the person who was with Frank McBrearty, Jnr. In his statement of the 28th of August, 1997, taken by Detective Inspector McGinley, Mr. Patton describes parking beside Sarah's Cafe, almost opposite the McBrearty's premises. He then walked towards the entrance to the disco, which also leads to the entrance to the car park. He says:

> **When I was about five or six yards from the entrance to the Parting Glass I looked to my left and saw Frank McBrearty, Jnr. and another man coming from the direction of the car park. They were approaching the corner of the building when I first noticed them. Frank McBrearty, Jnr. was on the inside. I did not know the man who was with him. He was walking alongside Frank McBrearty. I think Frank McBrearty was wearing a black jacket. I did not notice anything else he was wearing. The man who was with him was wearing a white sweatshirt. I did not notice anything else. I would describe him as about the same height as Frank McBrearty (Jnr.) but not as well built. I passed no further remarks on them and I walked on into the disco. Both these men were walking towards me at a normal pace. I paid into the disco...Frank McBrearty and another man did not come into the disco after me and I did not see them again that night.**

Sir, you will note that, in contrast to the paragraph in Superintendent's report, there are now definitely two men, as opposed to "two or three men". There is no mention of them "hurrying as if coming from or going to some kind of a handling". One further matter: our understanding is that at the relevant time Mark McConnell weighed 18 stone. He could not therefore have been "not as well built" as Frank McBrearty, Jnr. When spoken to by Sergeant Fox and Detective Garda Molloy on the 22nd of June, 1999, Mr. Patton repeated his descriptions. The interviewers discovered that Mr. Patton was a regular attender at the disco and would have known most of the staff. He did not recognise the person with Frank McBrearty, Jnr. as being a member of the staff. Sergeant Fox showed Mr. Patton a photograph of Frank McBrearty Jnr. and he readily identified it. Sergeant Fox then showed him a photograph of Mark McConnell and asked him if he knew the man in the photograph. John Patton replied that he did not recognise him and that he had never seen him before. He commented that this could not have been the man he had seen with Frank McBrearty, Jnr. Three months later, on the 28th of September, 1999 the contents of the report made by Detective Garda Pat Tague were read over to

him by Detective Inspector John O'Mahony and Detecive Sergeant George Kyne. He denied that he had seen Mr. McBrearty running down the car park. He denied ever saying that Mr. McBrearty, Jnr. was ever in a "rise state". In his final interview on the 14th of October, 1999 with Detective Sergeant George Kyne and Detective Sergeant Fergus Traynor, Mr. Patton indicated that Frank McBrearty may have been a bit "rise" looking. He at all times has abided by his original account of seeing Mr. McBrearty, Jnr. and another man coming from the direction of the car park as he entered the lane way to go to the disco. Again, it is hard to see how there could be anything sinister attached to a person being on or in the vicinity of their family business when they have a reason to be there. Equally, it is hard to see how someone involved in ejecting people from a discotheque could be expected to universally maintain a happy demeanour.

Sir, we are now at a point which is one or two weeks after the death of Mr. Barron. The Gardaí apparently have a murder investigation on their hands, but they do not have a report from a forensic pathologist. The Gardaí apparently believe that Mark McConnell and Frank McBrearty, Jnr. have murdered Richard Barron, but they do not have any evidence that Richard Barron was murdered. Further, it is appropriate to ask what they have in terms of advancing a suspicion, be it reasonable or unreasonable, that Mr. Barron was murdered by Mr. McConnell and Mr. McBrearty, Jnr.? Apparently they have a bald statement to that effect from Garda John O'Dowd. This was made to Chief Superintendent Denis FitzPatrick and repeated to Superintendent John J FitzGerald. It is nothing more than an assertion because it contains absolutely no information as to how the crime was committed. Further, it is completely lacking in any detail whereby a police officer might put himself in the position of the informant and ask himself whether, knowing what the informant purports to know, he would come to the same conclusion. The source of the information was assumed by everybody to be William Doherty who, although described by Superintendent Lennon as a reliable source, had yet to have his reliability checked thoroughly, if at all. A statement from Mr. Paul Gallagher, “Gazza”, was in the process of being formulated, and was finally given, as we have seen, to Detective Sergeant J S Henry on the 19th of November, 1996, about sinister behaviour by Mr. McBrearty, Jnr. and a slashhook. One might suspect that the reason why the slash hook was mentioned at all in this context was that a piece of flesh with hair attaching to it had been found some five feet from the deceased's body. Finally, we have the statements of Mr. Patton about which we need not say any more. It is at around this time, some two weeks after the death of Mr. Barron, that Noel McBride first becomes involved in this through the agency, according to Mr. McBride, of William Doherty. Any involvement Mr. Doherty or Mr. McBride may have, we ask you to note, Sir, cannot be real if, as appears to be the case, neither were in Raphoe that night. Let us therefore dispose of that straight away. As to Patrick Doherty, William Doherty's father, he had this to say in a statement taken by Detective Sergeant John White on the 11th of January, 1998:

> **I remember the night of the 13th of October, 1996. My wife Mary and myself went to bed at about 10.30 p.m. I was lying in bed, but I did not go to sleep until between 12 midnight and 1.00 a.m. I heard my son William and my daughter leaving the house that night before**

> **11.00 p.m. They were gone about fifteen minutes and were back in our house at about 11.10 p.m. I heard them going to bed shortly after that. Nobody got out or left the house after that, I would have heard them if they did. I am a light sleeper. I got up first in the house next morning at about 6.00 a.m. or shortly before it. William got up shortly after that as I called him.**

On Sunday, the 6th and Sunday, the 13th of October, 1996 christening parties took place at the Lantern Inn/Roper's Pub premises in Killygordon. On the 6th of October the baby of Stephanie McBride and Séamus Gallen was christened and there was a party in the lounge at Roper's Lantern Inn. On the following Sunday, the 13th of October the baby of Mary Gallen (nee Alexander) and Michael Gallen was christened and again there was a party in Roper's Lantern Inn; see statements of Kathleen Roper dated the 24th of September, 1997 and the 16th of November, 1997. The connection with Noel McBride is through the Alexander family. We quote the statement of Sharon Alexander, made on the 17th of September, 1997:

> **I remember Sunday, the 6th of October, 1996, Stephanie McBride...and Séamus Gallen were having their baby Megan christened...after the christening we went to Roper's pub...At the reception...I met Noel McBride, Stephanie's brother for the first time. He lives in Figart, Raphoe with his mum and dad. We went out together that night and he is my boyfriend since. Myself and Noel and a group at the christening party...got a mini-bus from Roper's to the Parting Glass Nightclub in Raphoe...I was with Noel all night at the disco until roughly 2.00 a.m...I also remember the following Sunday, the 13th October, 1996 I had another christening. This time it was my sister Mary's child who was getting christened...when the christening party was finished the meal [was in Roper's] [and] I asked my sister Mary if I could invite my boyfriend Noel over to the reception. She told me that was okay and I went up to the phone box beside the post office and phoned Noel at home. I told Noel to come over and his brother Gary left him over to Roper's at 2.30 p.m. Myself and Noel spent the day together in Roper's until about 10.00 p.m. or 11.00 p.m. at which time we decided to go to Heany's. Myself and Noel travelled to Ballybofey with Francis Gallen, his girlfriend Linda Patton and Gary Harvey...Myself and Noel stayed at the disco in Heaney's until about 2.00 a.m...the following morning, Monday, I went up to Noel...Noel did not go to work and we spent the day together in his mobile until 11.00 p.m. During the day I heard on the radio that there was a man killed in Raphoe. I think it said Richard, but now it was Richie Barron...about two or three weeks after I started going out with Noel we were in Killygordon one night walking about and Noel told me that he got a call from a friend of his that he had not heard from in a long time. He said he was William Doherty. That was the first I heard of William Doherty. After that Doherty started ringing my home on a regular basis looking for Noel. Sometimes he would ring twice in the one night. After a couple of months of this Noel would tell run and answer the phone**

if it was Doherty to tell he was not in...Garda John O'Dowd rang her house a good few times looking for Noel. I answered the phone a few times that John O'Dowd rang and I gave the phone to Noel. Noel would tell me afterwards it was John O'Dowd. The mountainbike which Noel has at the moment was one he bought from my brother-in-law Liam O'Donnell around March of this year. I now remember it was Easter because [he] got double dole and was fit to buy it a week earlier as he had been saving up for it. He paid £190 for it.

It seems to us, Sir, that the only way to rationally approach the role of Noel McBride in this is to indicate in chronological order the statements which he made, being aware that this statement if ultimately you accept testimony to this effect, indicates that Noel McBride could have had no knowledge of anything in Raphoe at the time of the death of Richard Barron. We will come to that shortly.

On Sunday, the 27th of October, 1996, Frank McBrearty, Snr. accosted Garda John O'Dowd and Garda Dan Curran and told them that people in the village were calling him a murderer. Shortly after that, on the 5th of November, 1996, the McBreartys claim that they received the first of about twenty three hoax bomb and abusive calls. This apparently went on until about the 12th of January, 1998. As paragraph (a) of the Terms of Reference indicates, other phone calls are also of interest to this Tribunal. On the 9th of November, 1996 five phone calls were made to the home of Michael and Charlotte Peoples accusing Michael of having killed Richie Barron and demanding money. On the following day he made a formal complaint to the Gardaí in a statement in writing made to Garda Philip Collins. We will reserve the detail in relation to this matter to a separate section of this Preliminary Opening Statement dealing specifically with this issue.

On the 11th of November, 1996 the death of Richard Barron was featured in the course of the Crimeline programme on Télefis Éireann. Superintendent John J FitzGerald gave an interview which constituted the main part of the programme. It is worth quoting:

Interviewer: **John FitzGerald, originally this was thought to have been a hit and run, but you have changed your mind on that totally now.**

Superintendent: **You must remember that Richie Barron was found at 1.00 o'clock in the morning, the 14th of October last. He was found on the road way with severe head injuries. He was found by a passing motorist who reported the matter as a hit and run.**

Interviewer: **As he would presumably?**

Superintendent: And that is correct. As a result of our own investigation, our examination of the scene in the morning, and indeed there was a post mortem, and forensic evidence and our own enquiries, Richard Barron may have been the subject of a severe beating.

Interviewer: Okay, so you are not ruling out a hit and run one hundred percent or putting the other one in as one hundred percent, it's still there, but the likelihood is he was the victim of a beating.

Superintendent: He may have been the subject of a serious assault.

Interviewer: Let's talk about his movements that evening. He came into the town around tea time.

Superintendent: Yes, he lives about three quarters of a mile from the village and at about 6.00 o'clock that evening he walked down to the town, he walked down through Townparks, down through Irish Row and into the town itself. Now, he visited a number of licensed premises, about six licensed premises and he would have spoken to quite a number of people in those premises and he would have been on the street of course quite a bit going from premise to premise.

Interviewer: Having a few jars?

Superintendent: That's right. At about 12.00/12.30 that morning he was making his way up home. He would have met people on the Diamond. He walked along the Diamond, he turned left into Irish Row and then he walked on up home, towards home, to Townparks. Now, people would have seen him on the way up and of course it was at Townparks that he was found in the condition that we have already described.

Interviewer: At 1.00 a.m. on a Sunday morning going into Monday, busy time in Raphoe? Many people about?

Superintendent: Well, Raphoe in the weekends would be an attractive location because it has discos there. On that night there would have been up to a thousand people extra, shall we say, in the town. Many of those would have attended a local

disco. Now there would have been quite a bit of movement of people around the Diamond, that was the town square, and there would have been quite a number of people, as I said, attending the disco.

Interviewer: **Okay, well let's be specific. What are you actually looking for? What are you really trying to get out of this tonight?**

Superintendent: **We are looking for anybody who saw what happened. Anybody who was in the area at the time of this incident and anybody that would have seen people go away from that area after the incident.**

Interviewer: **Okay, we can see here now where Richie Barron was found, that's the road to Glenmaquinn. You're looking for anybody who may have been in the following areas; that's the school...**

Superintendent: **That's correct, yes. Well, first of all, an obvious route for people to go afterwards would be up the Glenmaquinn road which would be the direction he was walking anyway or back into the town in the direction from which he came. Now, there are other routes, shall we say. The Close is another area there and then there are two shortcuts back into town: one that would take you to the vocational school and the other would take you back down onto the disco car park where there would have been quite a few people and that would take you out onto the main street again.**

Interviewer: **You are suggesting then, John, that people would have escaped having committed this offence. So, are you saying that he may have been followed or were people lying in wait for him. You don't know, but what would your suspicions be?**

Superintendent: **Well, first of all that his movements would have been very predictable because he would have been a very regular visitor to Raphoe town, but he may have been followed and somebody may have lay in wait for him.**

Interviewer: **Okay, but we're looking for people who were in the area of Raphoe that night and also in those specific areas.**

Superintendent: **That is true and we would also like to speak to people who the Gardaí have not already spoken to and indeed, people who the Gardaí have already spoken to, but who may now have information, may now have seen something or heard something.**

Interviewer: **You've had a good response to date?**

Superintendent: **We have had a tremendous response from the people. A tremendous response from the people even on the telephone and people calling in personally.**

Interviewer: **But do you need more?**

Superintendent: **Well, we do. We need more especially along the lines that I have requested.**

Interviewer: **Okay, John, thank you for that. If you were in the area at the time, if you know anything about this incident that happened in Raphoe, the very suspicious death of Richie Barron, please call us now. Our number here is 1850 405060.**

A map was shown in the course of this interview which has two notable features. Firstly, it shows a non-existent road running north to south whereby the Glenmaquinn road is joined to the Convoy road. Secondly, it shows an arrow going from McBride's laneway, southwards, which may denote an assumption that this was used as an escape route after what the Gardaí were treating as a murder.

It emerged for the first time on the 29th of November, 1996 who the confidential informant of Garda John O'Dowd was supposed to be. You will recall, Sir, the theft that occurred of a TV aerial from Raphoe Regional Technical College on the 19th of June, 1996. This was reported to the Gardaí by Mr. Alan Foley. His statement, made to Garda John O'Dowd is dated the 21st of June, 1996. In it, he says that the aerial had been broken off at the stump. As this statement is the beginning of a series of statements implicating the two main Garda suspects in the case , Mark McConnell, Frank McBrearty, Jnr., it is, we feel, appropriate to quote both Noel McBride's words at the time and the statements of the Gardaí who indicate that they were involved in taking that first statement. Garda John O'Dowd, in his statement made on the 20th of November, 1997, says that on the previous day he went with Garda Philip Collins to the home of the Alexanders in Killygordon in order to arrest Noel McBride for an offence of theft. He says:

> **I had information in my possession which indicated to me Noel McBride had stolen an aerial from the Technical School in Raphoe some time in June, 1996. I also had important information in my possession relevant to the death of Richard Barron which was derived from the same source. I discussed these matters with the investigation team and they were aware that I intended interviewing Noel McBride in relation to both matters.**

Lest there be any confusion, Sir, the source in question had to be William Doherty. Garda O'Dowd then recounts eventually meeting with Mr. McBride and arresting him. At 7.10 p.m. Garda Collins and he interviewed Noel McBride. He first denied stealing the aerial. After Garda Eamonn Early had been sent to the Noel McBride home to collect this aerial, he changed his mind and admitted stealing the aerial. A written statement was not, however, taken at this time. Garda O'Dowd continued in his statement by saying that while awaiting the arrival of the aerial they discussed the night of Mr. Barron's death. Mr. McBride told them that he was at a christening in Roper's. The Gardaí asked him whose christening it was and he said it was his sister, Stephanie McBride's baby. As we know, if Sharon Alexander's statement is accepted, it was, in fact, her niece. Garda Collins checked this and discovered that the McBride baby was christened on the 6th of October. When confronted with this, the prisoner made no comment, according to Garda O'Dowd. He continues:

> **At the time I left the interview room McBride had not volunteered any information in relation to the death of Richard Barron. I then went to my house for a meal break. While there I phoned D Inspector John McGinley at his home at 9.30 p.m. I informed him of the up to date position with the arrest of Noel McBride and that he was denying he was in Raphoe on the night of 13.10.96 to 14.10.96. I asked him to come in to assist us in relation to the interview of McBride. I had previously discussed the information I had in my possession with D/Inspector John McGinley. He agreed to come down straight away. I then left my house and proceeded to Letterkenny Station arriving there at 9.45 p.m. Outside the station I met Garda Collins who informed me McBride had made an admission to being in Raphoe on the 13.10.96 to 14.10.96 and that he had seen Mark McConnell and Frank McBrearty, Jnr. coming down from the top car park at 1.00 a.m. At 9.55 p.m. Garda Collins and I took McBride to the interview room from the cell. At this stage Garda Early had arrived from Raphoe with the stolen aerial. In the interview room Garda Collins showed McBride the aerial which was taken by Garda Early from his home. He immediately agreed this was the aerial he stole from the Technical School and agreed to make a full written statement admitting to the crime...at the termination of the statement the prisoner was released after consultation with D/Inspector John McGinley. At 9.20 p.m. the member in charge [Garda Martin Leonard] notified Noel McBride he was being released and was free to leave...he agreed to stay on to clear up about the night of the 13.10.96 - morning of the 14.10.96 in the presence of D/Inspector John McGinley, Sergeant Marty Moylan**

> **and Garda Phil Collins. I asked Noel McBride to tell me what he knew about the death of Richard Barron and to give me an account of his movements on the night...I took down what he said in the form of a written witness statement after carefully reading over the declaration to him that this statement was true to the best of his knowledge and belief and that he was making it knowing that if it was tendered in evidence he would be liable to prosecution if he stated in it anything which he knew to be false or did not believe to be true. During the course of the statement Sergeant Moylan produced an aerial map of the area and asked him to mark out points on the map where he stated in his statement he had observed Mark McConnell and Frank McBrearty, Jnr. on the morning of the 14.10.96 at approximately 1.00 a.m. During this interview Noel McBride volunteered this statement and did not at any stage mention any christening other than his sister, Stephanie's baby's christening which was established at the time was on the 6.10.96. On completion of the statement I read it over...he then signed it. Sergeant Moylan and Garda Collins countersigned the statement.**

The statement of Garda Philip Collins made on the 21st of November, 1997 does not materially differ, but adds that when Garda O'Dowd went for a meal break he was joined at 8.35 p.m. by Sergeant Martin Moylan. Garda Collins describes that part of the interview as follows:

> **We assured Noel McBride that he had nothing to be afraid of and if he had any information to say so...we kept talking to Noel McBride and after a period he admitted to being in Raphoe on the night of the 13th/14th of October, 1996 and seeing Mark McConnell and Frank McBrearty, Jnr. coming down the car park of "Frankie's Nightclub" at 1.00 a.m. that night. He stated that he was going up to break into the tech at the time when he met them coming down. Sergeant Moylan drew a rough sketch of "Frankie's" car park and Noel McBride pointed out where he was at certain times and where he met Mark McConnell and Frank McBrearty, Jnr. He said he was afraid that is why he did not come forward. He said that he had received a threatening phone call "not to go to the Guards or else" and that was why he was afraid to say anything. In the light of this revelation we consulted with Inspector McGinley and it was decided to clear up the other matter first. In the meantime Garda O'Dowd had returned and Garda Early had arrived at the station with the TV aerial...he...made his statement to the effect that he stole the aerial from the vocational school...he signed his statement on completion...he was then released from custody. Noel McBride then volunteered to talk about the incident in Raphoe on the 13th/14th of October, 1996. Garda O'Dowd, myself, Sergeant Moylan and Inspector McGinley were present when he again started to go over the events of the 13th/14th of October, 1996. He stated he was in Raphoe that night and he went over the events again as he had previously with Sergeant Moylan and I. He was shown a**

> **photograph of the area by Sergeant Moylan and he indicated on it the different locations where he had seen Mark McConnell and Frank McBrearty, Jnr. He again said he had received a threatening phone call and that was the reason he was afraid...he made a detailed statement in relation to the events...Garda O'Dowd took this down. He signed this statement. When he had finished his statement the time was approximately 2.00 a.m. After this I took Noel McBride home in my private car...I reassured him not to be afraid and I told him to tell me or Garda O'Dowd if he got any more threats or telephone calls.**

Sergeant Martin Moylan made three statements, the first of which is short and is undated. The second statement is dated the 26th of January, 1998 and the third is dated the 11th of March, 1998. He refers to the early conferences and Detective Inspector McGinley supplying information, somehow received verbally from a confidential source, that at 1.00 a.m. on the night of Mr. Barron's death he saw two men coming down the car park, one of whom was recognised as Frank McBrearty, Jnr. He says that a Detective Garda was directed to keep in contact with this witness and to obtain a witness statement. He says a statement was subsequently supplied by the witness. This is, apparently, a reference to the information supplied by John Patton to Detective Garda Patrick Tague. He goes on to indicate that a week to ten day's later further information was supplied by Garda John O'Dowd which identified both Frank McBrearty, Jnr. and Mark McConnell and placed them up near some barrels at the back of the car park. In relation to the first piece of information he says that a Detective Garda was detailed to obtain a witness statement, and this is presumably a reference to Detective Garda Patrick Tague. In relation to the second witness he says that Garda John O'Dowd was directed to pursue the matter and get a full statement from this witness. He says he learned after one conference that the witness in question "was McBride from Raphoe".

To give a further insight into the issue as to when the various strands of information, supposedly placing Frank McBrearty, Jnr. and Mark McConnell in the car park around the time of Richie Barron's death, came together, I would draw your attention, Sir, to the following statement of Detective Sergeant J. S. Henry, a member of the initial investigating team made to the Carty team on the 4th April, 2000:

> **On the 14th of February, 1998, I made a statement in connection with the suspicious death of Richie Barron in Raphoe on the 14th of October, 1996. In that statement, I stated that Detective Garda Pat Tague supplied information to the investigation team at a conference held at Letterkenny Garda Station on the 22nd of October, 1996 to the effect that he had a witness who stated he had seen Frank McBrearty, Jnr. and another person coming down the car park at the rear of the Parting Glass pub at 1 a.m. approx. on the night that Richie Barron was killed. The reason I knew it was the 22nd of October, '96, I took a rough note of it while I attended that conference…A day or two later Garda John O'Dowd said he had a witness also who saw Frank McBrearty, Jnr., Mark McConnell as the**

two people who entered the car park from the top and walked down through it and entered the Parting Glass through the Tudor Lounge. I did not make a note of this but I knew it was a day or two later."

It is perhaps noteworthy, Sir, that this account would suggest that Garda O'Dowd revealed this strand of information at conference more than a month before the statement of Noel McBride on the 29th of November. We cannot understand this to be a reference to anyone other than Mr. McBride, who was not yet an informant.

Returning now to the account of Sergeant Martin Moylan of the interview with Noel McBride on the 29th November, he says that on the night of the arrest, Garda John O'Dowd arrived at 8.30 p.m., appearing in a hurry, and stated "I need help". Garda O'Dowd identified to Sergeant Moylan that McBride was now in custody. At 8.35 he went downstairs and this is Sergeant Moylan's account:

I met Garda Phil Collins who was interviewing a prisoner. Garda Collins introduced him to me as Noel McBride from Raphoe and that he was interviewing him about a stolen aerial...at 8.40 p.m. the prisoner was provided with a meal. Garda Collins put various questions to him about the aerial. McBride stated that he stole the aerial and that it was at the side of his house in Figart, Raphoe. Arrangements were then made for Raphoe Gardaí to collect the aerial and bring it to Letterkenny. At 9.40 p.m. the prisoner was placed in the cell. I returned to the investigation office. At 10.15 p.m. I returned downstairs to the interview room. Present were the prisoner, Garda John O'Dowd and Garda Phil Collins. They were finished interviewing him about the aerial...I directed one of the Gardaí present to inform the member in charge, Garda M. Leonard, that they were finished with him as regards his custody. I sat beside Noel McBride and explained to him in ordinary language that he was released from custody and could leave the station at any time. He acknowledged that he understood same. Garda Leonard, member in charge, then entered the room and explained it again to him. Garda O'Dowd and Collins then asked him about the death of Richard Barron and if he knew anything about it. He stated that he knew about his death. Garda O'Dowd asked him if he (McBride) was in Raphoe that night. Noel McBride denied he was in Raphoe that night. I asked him where he was on the night Richie Barron was killed. McBride stated he was at home. I put it to him that I thought it very strange for a young fellow not to go out on a Sunday. I asked him why he did not go out that night, he stated he had no money. I then asked him how he had well over £100 in his possession when he was arrested that evening. He said it was dole money...he stated he got £120 back money and had spent some of it...I asked him what the back money was for, but he did not know. I asked him if he paid any money to his mother for his keep in the house and he said no. I asked him again where he was getting all this money and he stated it was dole money. Garda O'Dowd then put it to him that he was in Raphoe the night Richie Barron was

> **killed. Noel McBride denied it. Garda O'Dowd then stated to Noel McBride "sure I seen you there myself". Noel McBride then stated he was in Raphoe on the night of Richard Barron's death. He outlined verbally how he walked into Raphoe from his home that night and stood outside DJ's chip shop for about two to three hours and that he thought about breaking into the technical school. I then asked if he had stood in the one spot all night and he stated that he went up and down the town a few times to keep himself warm...he named some people whom he saw going into the disco...he stated that he walked up through the disco car park at 1.00 a.m. as the town clock struck 1.00 o'clock. As he went up an embankment he saw two men coming towards him from near some barrels. He recognised them as Mark McConnell and Frank McBrearty, Jnr. and he knew them well. He immediately turned and walked back down in case they recognised him. He stated that he stood outside the chip shop again and saw Mark McConnell and Frank McBrearty, Jnr. talking to a bouncer and then they walked down to the street, knocked on the window of the Tudor Lounge and the door opened and they were let in. He stated that he spoke with them as they were walking down. After the verbal account of what he saw that night was given by Noel McBride, Garda Collins asked him if he would make a statement in writing about what he had told us. Garda John O'Dowd had left the room at this stage. I directed Garda Collins to take the statement...Garda O'Dowd then entered the room and stated he wanted to take the statement. Garda O'Dowd then sat at the desk and took the statement from Noel McBride in writing. When he was describing where he was positioned in the car park I drew a very rough sketch of it and asked him to point out where he was. I then produced an aerial photograph...I got Noel McBride to mark out points...**

In his last statement, on this issue, Sergeant Moylan indicates that the reason he asked Noel McBride about money was because of his awareness of intimidation in the Raphoe area. As regards the alleged verbal statement by Garda John O'Dowd, "sure I seen you there myself", he indicates that he did not make a note of this at the time. He placed this statement by Garda O'Dowd in the context of his contribution to conferences that he and Garda Mulligan had attended a row outside a chip shop at about 1.10 a.m.

In his first statement of the 29th of November, 1996 Noel McBride describes leaving his home on the relevant Sunday and walking into Raphoe. He claims to have bought a burger and to have stood around until he heard the chimes of the town clock for 11.00 o'clock. He describes speaking with Derek and Sean Crawford and seeing Andy McBrearty and Damien Murphy. He then decided, he claims, that he was going to break into the technical school. He goes on:

> **I decided I would go on up through Frankie's car park, on up through the rough ground at the rear of the car park and in through an entrance in the hedge which leads into the technical grounds. As I walked up from DJ's and as I approached the entrance to**

Frankie's I saw one bouncer on the door. I would describe him as big and broad, skinhead type hair cut, black in colour. I walked on up past this entrance. I noticed none of Frankie's staff in the car park. I know Sean Crossan and he wasn't in the car park. I walked on up through the car park through the driveway where the cars coming and going would normally use. Just as I was in the middle of the car park I heard the chimes of the town clock. It struck once for 1.00 o'clock. Just before I came to the top of the car park I noticed a courting couple in a red Opel Escona, old type with the square boot type. There was good lighting in the area...as I walked up the embankment to the top of the car park I saw two men approaching me...the spot where I first saw them, there are a pile of rusty barrels. As these two men approached I immediately recognised them. The first one coming was Mark McConnell. I knew him from school, he was a few years ahead of me and he now lives less than one mile from me at home. I would describe him as heavy stocky build, with black fairly long hair and a goatee type beard. I don't know what he was wearing as I paid no attention to it. Coming behind McConnell and a wee bit to his side was young Frank McBrearty...I don't know what he was wearing as I took no notice. As soon as I had seen them I turned on my heels as I was afraid in my own mind someone might be aware I intended to breaking into the technical school...when I first saw the two of them they were walking at an average pace. I turned and walked straight down the embankment, through the car park, past the entrance to Frankie's and down and stood outside DJ's. As I walked down through the car park I never looked behind me as I was afraid they might see me. As soon as I got to DJ's I turned and faced Frankie's entrance. I saw Frank McBrearty, Jnr. and Mark McConnell speak to the same bouncer I saw earlier on...they spent about two minutes talking together, that is the three of them just outside Frankie's entrance on the tarmac. When they had finished young Frank McBrearty and Mark McConnell walked down to the Tudor Lounge entrance and the skinhead bouncer went back in...Frank McBrearty, Jnr. knocked on the window of the disco...after knocking three times the door opened and [they] went into the Tudor Lounge...as Frank McBrearty and Mark McConnell came down from the main entrance to the disco to the Tudor Lounge entrance, I said hello to them and both of them said how's it going. I stayed for about ten to fifteen minutes outside DJ's and then I walked home to Figart. I got home about 1.45 a.m. as I remember looking at the clock when I went in. I have been shown a photograph...and...I have on the photograph drawn a red line...the point where I saw them walking...I have also marked a point...where I was standing...

Sir, the Gardaí knew of the relationship between Noel McBride and Sharon Alexander. His movements could have been checked beyond a perhaps hurried phone call to the owner of a lounge. This point, however, pales into insignificance beside the detail contained in the statement. How did it get there if you accept that Noel McBride was not in Raphoe on the crucial night?

Garda O'Dowd indicates that on the 4th of December he met William Doherty and Noel McBride and that Mr. McBride claimed that Frank McBrearty, Snr. had given him £500 to keep quiet. After taking a witness statement, and having been directed by the investigation team to find out which bouncer was at the entrance door when Mark McConnell and Frank McBrearty, Jnr. had supposedly entered, he obtained the surveillance van and eventually contacted Noel McBride. He collected him in Raphoe and drove into Frankie's car park where, apparently without identifying him, he named Marty McCallion as the apparently relevant door man. In his statement of the 4th of December, to Garda John O'Dowd, Noel McBride says:

> **Further to my statement of the 29/11/96 I now wish to offer the following information in relation to the night of the 13/14 October and the death of Richard Barron. A couple of days after the death of Richard Barron, I would say either the following Wednesday or Thursday, I was walking out home from Raphoe towards Figart. I was walking alone past O'Flannagan's house near the bad bend when a large silvery car pulled up beside me. I immediately recognised the driver of this car as Frank McBrearty, Snr. owner of the place known as Frankie's Nightclub in Raphoe. He offered me a lift and I got in beside him. He was alone in the car. He drove on over half a mile and just past Mark McConnell's house he pulled up. Up till this stage we were talking normal chat. After he pulled up old Frank asked me what did I see the night Richard Barron died. I said I know nothing at all. He asked me was I up in the car park that night. I said I wasn't. Just then Frank put his hand into the glove box in the door and pulled out a cloth bank bag. He reached in and counted out £500...it was all punts. He said to me take that there and say nothing. There is plenty more where that came from and we will look after you from here on in. He put the bundle of notes up in front of me and I refused them at first. He kept pressing me to take the money and after three or four times I eventually accepted the money and put it in my pocket. Old Frank then said to me you are not to tell the Guards or your family anything about this and everything will be alright. When I first got into the car...old Frank was asking me in the car about my financial situation. I told him I had no money, only lying about the house all day doing nothing and that all I had was the dole...the only other contact has been the anonymous phone calls to my house in Figart which I received at 1.00 a.m. On the third Sunday after the death of Richard Barron. Since I have received this money and the anonymous phone calls I am afraid of my life of the McBreartys and that is the main reason why I am staying up in Killygordon since the death of Richard Barron. I don't go into Raphoe either and I am terrified...I bought some clothes, a watch and some things for my girlfriend.**

On the 30th of December, 1996 Edward Moss complained to the Gardaí that he had been assaulted at Frankie's Nightclub by Frank McBrearty, Jnr. Apparently, Frank McBrearty, Jnr. was detained in relation to this on the 4th of February,

1997. Paragraph (f) of the Terms of Reference specifically requires you, Sir, to enquire into this matter. It is more conveniently dealt with under a separate heading.

On the 20th of January, 1997 a further statement was made available to the Gardaí, this time apparently taken as capable of implicating Mark McConnell. This was, potentially, the fourth and last strand of any case to be made by witnesses. That statement was made by Roderick Donnelly to Detective Garda Patrick Flynn of Lifford Garda Station on that date. By the time the Lennon report was submitted, he had been interviewed by Detective Garda Foley of Letterkenny and the entire perspective of his potential testimony had by that time altered. Here is the relevant section of his statement made on the 20th of January, 1997:

> **On Sunday, October 13th, 1996 I came into town with Kieran Roulston, Carnshannagh, Raphoe in Kieran's car, a red Vauxhall...we came into town...at about 10.30 p.m. We drove about for a while and then drove to the technical school gates above the Parting Glass at the top of St. Eunan's Terrace. We parked there and sat for a good while. That was after 11.00 p.m. Kieran went to sleep a little later and woke up at about 12.45 a.m. (14/10/1996). He drove the car down to Brolly's Hairdressers and crossed to Reynolds shop and parked. Kieran went off to sleep shortly after he parked. Between 1.00 a.m. and 1.10 a.m. I was still sitting in Kieran's car and he was still asleep. I saw Mark McConnell and two women coming walking up the street from the Diamond direction. They were on the same side of the street as the Parting Glass. Mark looked very scared looking and his hair was wet and tossed. His clothes looked to be wet as well. He was staring straight ahead of him. I don't know the two women with him and cannot describe them either because I paid no attention to them. They were definitely with Mark because there was one on each side of him. The three walked by the Parting Glass and I could see they were going towards Mark's car, a white Toyota Corolla. This was parked near a pole in a small car park opposite Reynolds near the technical school gates. I didn't see them get in the car as I looked round to my front again. We sat in the car in the same place until 2.00 a.m. I never noticed Mark McConnell or the women go past. I didn't see his car either. When Kieran woke up about 1.30 a.m. I told Kieran about Mark McConnell and how he looked scared and shook up like he had been fighting. We drove about a while after 2.00 a.m. and then went home. I saw nothing more that was unusual that night. I didn't hear about [Mr.] Barron being killed until the next day. I never saw Richie at all that Sunday night.**

In his note of the interview, or perhaps more accurately, attempted interview, with Mr. Donnelly, Detective Garda Foley records on the 12th of November, 1997:

> **I made an approach to Roderick Donnelly at his home in Ballylennon...this approach was made in an effort to confirm a sighting which he made in Raphoe on 14th October, 1996. I was investigating the validity of this sighting as I considered it crucial as part of the investigation into the suspicious death of Richard Barron on 14th October, 1996. I spoke to Donnelly in the yard at his home. I asked him was he sure about the time of his sighting of Mark McConnell and also about the appearance of McConnell, as stated by him by way of a statement made by him to D/Garda P Flynn on the 20th January, 1997. Donnelly stated he did not wish to speak to me. When I asked him about the appearance of McConnell particularly about his clothing and hair being wet, he stated that having [seen] McConnell on different occasions since he now states that McConnell's hair always looks wet. He then stated that under no circumstances did he wish to speak to me any further in relation to this investigation and asked me to leave. The only other thing he mentioned was that if I wanted to know more go and speak to Darcy Connolly from Raphoe. Donnelly then walked into his house. I then left.**

It was apparently in the aftermath of this last attempt at an interview that Detective Garda Joseph Foley went to Kieran Roulston, because certainly his statement is dated the 19th of November, 1997. In this statement Mr. Roulston gives an account of driving around Raphoe on the night in question, falling asleep and waking up some time around 1.00 a.m., as far as he could remember. He says:

> **Roderick Donnelly said he saw Mark McConnell walking up from the town towards the technical school on the opposite side to where [we] were parked. Roderick said he looked to be wet and he might have said something like that Mark McConnell looks scared. I don't remember him saying anything about McConnell's car. I don't remember him saying anything else. I do not remember the times very well now as it is over a year ago. I knew Richie Barron and I did not see him that night. I know Mark McConnell, but I did not see him that night.**

When the Carty investigation team came to this matter they were interested in how Roderick Donnelly came to make his first statement because it was, after all, regarded as being integral to the suspicions which pointed towards Mark McConnell. They were also interested in Kieran Roulston. He was interviewed on the 14th of May, 1999 and stuck by his original statement. He took a similar attitude on the 7th of September, 1999. On the 7th of March, 2000, when interviewed by Detective Garda Tommy Flynn he repeats the details of this night driving around Raphoe with Roderick Donnelly, but changes when he says he was told about the supposed sighting of Mark McConnell. Kieran Roulston says:

> **At this stage now, I believe that Roderick Donnelly definitely did not mention Mark McConnell, his wife or Frank McBrearty, Jnr. that**

> **night, or anything about seeing them that night. I now believe that the comment about seeing them walking down the street with Mark McConnell and looking scared, came from Roderick at a later stage. I remember the following Sunday, Roderick and myself again went to Raphoe and we were stopped at William Street, Raphoe by a Garda checkpoint. We were both asked if we were in town the previous Sunday night and if we saw anything strange. We both told the Guards we were in town that night and he took our names. There was a pile of cars behind us and as I was taking off the car conked out. I could not get it started as I still had the weak battery in the car. I asked the Guards for a push and after a wee push it started. I know now from looking back at it that Roderick hadn't mentioned Mark McConnell to me at this stage. At this time young Frank McBrearty and Mark McConnell were the two main people linked to the murder of Richie Barron. If Roderick had mentioned Mark McConnell to me, that he had seen him, I would have put two and two together. This was not the case.**

We now turn to the later statements of Roderick Donnelly. In doing so, Sir, we ask you to note that in the course of them he claims that it was said to him by other parties that there was an advantage in making a statement in relation to a drunken driving case, which he was then facing. We do not repeat that allegation because those who are supposed to have said it, who would have personal knowledge of it, do not repeat it in their statements. Neither was any member of An Garda Síochána interviewed in relation to such an allegation. Finally, the relevant drunken driving case of Roderick Donnelly was, apparently, prosecuted to a positive conclusion and he received a £700 fine. In his statement of the 9th of March, 2000 Roderick Donnelly recites again the details of himself and Kieran Roulston "scooting around the town in Kieran's car". He recalls then being parked in front of the Tudor Bar next to the entrance to Frankie's car park where he could not see the lower end of the Tudor or the Diamond and Kieran Roulston falling asleep. He says:

> **Around (1.30 a.m.) I was sitting in the passenger seat...with Kieran asleep and I saw Mark McConnell walking from the direction of the entrance to Frankie's car park. He was on the street directly beside the entrance to the car park of Frankie's Nightclub. He looked as if he walked down from the entrance to the car park/Nightclub. I had full view of the entrance to the car park, but not a view of the entry door to the Nightclub. There were two women with him one on each side of him. I didn't know either of them. I knew Mark McConnell as both of us had worked on different Fás schemes at the same time. I didn't know him well, but I knew him to see. Mark and the two women walked towards the Teck, St. Eunan's Terrace direction. What caught my eye was the two women with Mark, one on each side of him. I knew he was married and the only thing that drew my attention was the two women with him. Mark McConnell looked like a boy that had a good drop of drink taken. That's about the height of it. Mark and the women walked past Kieran's car on the opposite side of the street. I did not look up the street after them, but I**

> **remember that there was a white Corolla parked up the street beside the pole at the Tech and I assumed that it was Mark's car.**

Mr. Roulston then goes on to say that after the death of Mr. Barron there were stories around Raphoe firstly of a hit and run accident, but after a day or two rumours started that young Frank McBrearty and Mark McConnell were involved in some way in the death. Sometime later, he cannot put a time on it, he mentioned what he had seen to Kieran Roulston. Then he claims that Paul Roulston came to him asking what he had seen in Raphoe. Then Derek "Darcy" Connolly called to his house, he claims. Shortly after that, Roderick Donnelly was caught for drunken driving in Lifford. Paul Roulston was already up on a reckless driving charge. Paul Roulston asked him what he had seen, having told him it didn't seem to be of importance to him. Paul Roulston then returned and suggested an advantage if he made a statement, the advantage being in relation to his drunken driving charge. He claims that “Darcy” Connolly also urged him to make a statement to the Gardaí. He also claims to have heard from a Garda in Raphoe that young Frank McBrearty and Mark McConnell "were supposed to have gone up through the Nightclub car park and gave Richie a hammering or something". There was mention of a "handling" with one of them in one of the pubs earlier. Derek “Darcy” Connolly seemed convinced of the guilt of Mark McConnell and asked Roderick Donnelly to make a statement "that I seen Mark McConnell on the street that night and that he looked like a fella that had been fighting". He claims that Paul Roulston was urging him to the same effect, but that the final incentive was the thought of getting off on the drunk driving before making a statement to the Gardaí. He claims that he, Paul and Kieran Roulston discussed the statement and then the three of them went to the Garda Station in Lifford where his initial statement was taken by Detective Garda Patrick Flynn in the presence, he claims, of Paul Roulston and Kieran Roulston and with their support as to some details. He also says that he feels that it was at a later stage, and not immediately when Kieran Roulston woke up, that he mentioned to him about having seen Mark McConnell. Roderick Donnelly's last statement of the 10th of March, 2000 does not seem to us to add materially to this account, Sir.

Paul "Pip" Roulston made four statements to the Carty investigation team; on the 25th of February, 2000; the 13th of March 2000; the 4th of April, 2000; and the 4th of May, 2000. In them he recounts a reckless driving episode where he came around a bend between Letterkenny and Lifford on the wrong side of the road and, as he says, "put an unmarked Garda car into the hedge". He fled from the scene, but was later arrested. He claims to have told Derek "Darcy" Connolly that two of his brothers were in Raphoe on the night of Mr. Barron's death and that Mr. Connolly wondered why they would not make a statement to the Gardaí. He then learned about Roderick Donnelly being present and seeing Mark McConnell. This is how he puts it in his first statement:

> **While I was asking my brothers about this Roderick Donnelly was present and he said he was on the street in Raphoe that night and he saw Mark McConnell and his wife and young Frank McBrearty walking up the street from McGranaghan's corner. Roderick said Mark McConnell's wife was crying and the two boys were soaking**

wet. Roderick said he saw Mark and his wife getting into Mark's white car near the Teck and drive away and young Frank went up to the nightclub.

It was never mentioned in any of Roderick Donnelly's statements to the Gardaí that he had ever seen Frank McBrearty. Paul Roulston claims to have gone back and told Mr. Connolly this. As a result, he asserts, statements were made to the Gardaí. He claims that Mr. Connolly was interested in him making a similar statement; despite the fact that he was at home in his bed in Carnshannagh. He claims to have made a written statement to a Garda as outlined at page 4 of this statement, but there is no record of this. Indeed, the name Paul Roulston does not even feature in the index of statements taken in the course of compiling the Lennon report. He claims to have made a number of statements against the McBrearty family, but, again, there is no trace of these statements. The Carty investigation team noted that there were certain complaints recorded in the Occurrence Book at Raphoe Garda Station, but the Gardaí in question stated that no statements had been taken from Paul Roulston. He also detailed a meeting in the Summer of 1998 at the Barron family home which was attended by Superintendent Lennon. At that meeting, he says, he repeated the lies about threats from the McBrearty family and Superintendent Lennon told him to make a statement to the Guards any time there was such interference. Paul Roulston's view is that Kevin Lennon thought that he was genuine. He claims also to have made a statement to Garda John O'Dowd alleging that Frank McBrearty, Jnr. had driven at Derek "Darcy" Connolly at a roundabout in Letterkenny, another false statement. He claims to have witnessed William Doherty going to a card printing machine in Letterkenny and some one hundred cards being printed up concerning the "murdering McBreartys". He details the distribution of these. At page 10 of the statement he claims to have spoken to a Garda and told him that he was lying.

Sir, the mere fact that a witness makes false and misleading statements to the Gardaí does not of itself indicate that they were involved in a conspiracy. In his statement of the 4th of April, 2000 Paul Roulston claimed that he had told the truth because he was "sick...of lying". He claimed that since the birth of his child he wanted "everything right". He claimed there were ten to eleven statements made to Raphoe Garda Station in relation to complaints against the McBreartys, and in particular Hugo McBrearty. The Carty investigation team were unable to find these. In his last statement, by way of question and answer, he deals with the allegations of dangerous driving made against Frank McBrearty, Jnr. by Derek Connolly.

Derek Connolly made nine statements to the Carty investigation team. He said he was friendly with the deceased. On that particular weekend when Mr. Barron was killed he was at the Curragh racing with a few horses and only arrived back at 3.00 a.m. On the 9.00 o'clock news he heard that a man had been knocked down in Raphoe and, in consequence, on arriving back he went to the McBride's house and helped to wash blood off the road. He puts the time at 10.30 a.m. On the 24th of March, 2000 Detective Garda Hugh Maloney arrested Mr. Connolly for an offence under section 12 of the Criminal Law Act, 1976. Superintendent Joseph McGarty extended his period of detention for a further

six hours. The reason for the arrest was a complaint made on the 25th of January, 1997 about an incident of supposed dangerous driving/assault with a car in William Street, Raphoe and a further such incident on the roundabout in Letterkenny on the 29th of January, 1997 and a subsequent allegedly false statement in relation to this matter on the 30th of January, 1997. Mr. Connolly claimed that Frank McBrearty, Jnr. swerved at him on the 25th of January, 1997 in Raphoe when he was driving one way and Mr. McBrearty was driving the other. On page 4 of the statement he named a Garda who would "get into bother" if he accepted that these incidents were not true. He recalled the same meeting in the Barron house with Superintendent Lennon that Paul Roulston detailed. It seems to us that no negative inference could arise, on the state of the information available, against Superintendent Lennon in relation to this particular meeting. He described the complaints that he had made as to driving as to being "the kind of stuff that wains would be at school, that was between us and the McBreartys". He said that he was friendly with the Barron family.

In his next interview with Sergeant Dermot Flannery and Detective Garda Thomas Flynn he described the alleged incident in William Street, Raphoe on the 25th of January, 1997 as Frank McBrearty, Jnr. making a "jerking motion towards me with his car". He said that he was not in Raphoe on the night that Richard Barron was killed, but some seven or eight days later he claims to have heard that Richard was murdered and described himself as being "even more shocked and upset then when I heard he was dead". He said that Paul Roulston had told me he was in Raphoe, but when he said he had seen nothing he claimed not to have believed him. He said that he wanted Paul Roulston, Kieran Roulston and Roderick Donnelly to go to the Gardaí. He said: "I was sure McConnell and young Frank were involved in Richie's murder". He therefore said that he wished to put pressure on both of them. He claimed not to be interested in Paul Roulston's or Roderick Donnelly's driving charges, but was only interested in getting "the murder solved". He then agreed to make a formal statement, which is dated the 24th of March, 2000, which was taken by Sergeant Flannery and Detective Garda Flynn. He said:

> **From talking to people around Raphoe I was fully convinced that Frank McBrearty, Jnr. and Mark McConnell were involved in Richie Barron's murder...I had heard rumours around the town about Mark McConnell's movements on the night Richie Barron died, I was fully convinced that Mark McConnell was involved in Richie Barron's murder and it was my wish to help the Gardaí solve the murder of my good friend Richie Barron and it still is.**

He then describes being happy "that Paul Roulston had a story to tell the Gardaí" and therefore arranging for him to speak to Detective Garda Pat Flynn. He also spoke to Kieran Roulston about making a statement to the Gardaí, but claims that he didn't want to get involved. He goes on:

> **Roderick Donnelly told me how he seen nothing the night of Richie Barron's death. I would have met Paul Roulston, Roderick Donnelly and Kieran Roulston on a number of occasions where we spoke of Richie Barron's death and where Mark McConnell and Frank**

McBrearty were on the night. My main aim was to get these three boys to go to the Gardaí and tell their story. There was nothing in it for me other than to help solve the murder of Richie Barron. Any information I had in relation to the death of Richie Barron I gave to Garda John O'Dowd because I knew him best. I felt after Richie Barron's death the only men who were doing anything to get the people responsible for it were John White and John O'Dowd. During the investigation of Richie Barron's death I was involved in a number of handlings on the road with McBreartys. One of these was at William Street, Raphoe, where I met young Frank McBrearty, we were both driving and going in the opposite direction. Frank McBrearty made a jerking motion with his car to me, I continued in a straight line. I reported this to Garda John O'Dowd. Looking back on this now I feel it was foolish behaviour on both our parts. I have been asked about an incident at the roundabout in Letterkenny on 29/1/97, I recall it now that you have mentioned it to me, but I can't recall who was with me in the van as I suffer from epilepsy which causes memory lapse.

In a further interview with Detective Sergeant Fox and Detective Garda Maloney on the 24th of March, 2000 he was asked what his motivation was in relation to these matters, and he replied "I just wanted to find out who killed Richie Barron". He claimed that Paul Roulston had said there were three people in his car. In relation to the statement he made to Garda John O'Dowd on the 30th of January, 1997, about the two supposed dangerous driving incidents, he declared: "I'd rather it wouldn't be there". On the 17th of May, 2000 he was again interviewed and asked about the allegations of dangerous driving. Here is part of the interview:

Q. Could you offer any explanation as to why Roulston and Donnelly made false statements to the Gardaí?

A. I never saw the statements. I did not know they made false statements.

Q. Would you now accept that Paul Roulston, Roderick Donnelly and Kieran Roulston saw nothing the night Richie Barron died?

A. They told me they had seen nothing, and I don't know what they said in their statements.

Q. In relation to the writing on the road, had you anything to do with it or had you anything to do with the posters?

A. I saw the writing on the road alright, but I had nothing to do with it.

In a statement taken by Detective Sergeant Brennan and Detective Inspector Hogan from the 17th of May, 2000 Mr. Connolly again returned to the question

of how allegations against Mark McConnell had been made to the Gardaí and said:

> **Stephen Barron and I went to Roderick Donnelly's house and had a chat with him because we were convinced that he should have seen something. I met him again with Stephen in the White Cross Pub. I asked him what he saw that night and he said he saw nothing, but I was convinced that he had seen something. I told him he had better go and see the Gardaí. He asked us in the pub was it supposed to have happened. I told him what the word was around the town and that it was Mark McConnell and Frank McBrearty, Jnr. that killed Richie Barron. He said that he would go and speak to the Guards. I would have stressed to him the importance of him going to the Guards and giving a statement saying what he had seen. I think Pat Flynn or some other member of the Gardaí called to see him after that. I knew he went to Lifford to make a statement. While I did talk to Pat Flynn saying that he should talk to Roderick, I don't remember talking to Pat Flynn after he made the statement. I don't recall speaking to Kieran Roulston about making a statement, but I could have talked to him about it. I would know Kieran to see, but not well. I encouraged the boys to make a statement to the Guards because I believed that Mark McConnell and Frank McBrearty, Jnr. were involved in Richie's death and they were sitting in the car and must have seen something. The reason I talked with Roderick and Paul was to put pressure on them to make statements to the Guards about what they had seen.**

He then goes on, in this statement, to maintain that the allegations of dangerous driving which he has made against Frank McBrearty, Jnr. were correct.

It is as well, Sir, to draw to your attention the original statement made on the 30th of January, 1997 by Derek Connolly to Garda John O'Dowd concerning the two alleged incidents of dangerous driving by Frank McBrearty, Jnr. on the 25th and 29th of January, 1997. This is what it says:

> **Last Saturday morning the 25th of January, 1997 around 10.30 a.m. I was driving my Peugeot 305 van registration number 91 DL 534 at William Street Raphoe. Michael Brown, Coollatee, Lifford was my passenger. That morning as I rounded the bend at McCarron's pub and travelling out of Raphoe towards the Garda Station I met a red Primera 96 DL 2802. It was being driven by young Frank McBrearty. As I met him he jerked his car at me as though he wanted to hit me. He then straightened up his car and drove on. This type of incident has occurred a couple of times. The most recent incident was yesterday the 29.1.97 in Letterkenny. I had approached the roundabout at Quinnsworth and it was my intention to go around it heading for Oatfields at about 12.00 o'clock. As I entered this roundabout young Frank McBrearty was about to enter the roundabout coming from the Dunnes Stores direction. On this occasion he was also driving the red Primera. He had his wife on**

> **board. As I was driving in the roundabout Frank McBrearty, Jnr. made a drive at my van, this was a jerk type action in that I don't know whether he was going to hit me or not. After he made this jerk type movement with his car he stopped, and I continued on with my journey. This type of incident has been happening too much with him in the recent past. A couple of times, at least twice while I have been driving my van past his premises young Frank McBrearty has spat out on the windscreen of my car. I at no stage have gotten into ever any verbal discussion or argument with young Frank McBrearty in the past.**

We now move away from the issue of the role of Derek "Darcy" Connolly in this matter. On the 4th of February, 1997 Frank McBrearty, Jnr. went to Raphoe Garda Station. There he was arrested and questioned by Garda John O'Dowd and Sergeant John White in relation to the alleged Edward Moss incident on the 30th of December, 1996 at Frankie's Nightclub. This is dealt with in a separate section. On the 5th of February of that year Superintendent Kevin Lennon was transferred from Buncrana to Letterkenny. Apparently on the same day Mr. William D Flynn, a private investigator, was brought onto the scene to conduct a private investigation on behalf of Frank McBrearty, Snr. Certainly, on the next day Mr. McBrearty told the Gardaí of his engagement of Mr. Flynn.

Sir, you will recall the request by Chief Superintendent Denis FitzPatrick to Superintendent Kevin Lennon to assess the reliability of William Doherty as an informant and the eventual report some time in December of 1996 of his promising status. You will also recall what the Lennon report says as to the reliability in a positive sense of the source of the information supplied the day after Mr. Barron's death. There was a second meeting on the 7th of February, 1997 and this therefore seems an opportune time to quote what Superintendent Lennon had to say about Mr. Doherty in his statement made on the 23rd of June, 1999:

> **I say I have been asked by Chief Superintendent McNally about meetings I had in an official capacity with William Doherty, a suspect in the investigations [of hoax/extortion calls to the home of Michael and Charlotte Peoples on the 9th of November, 1996]. I am to state that during the period I was based in Buncrana and towards the latter part of 1996 I had a telephone call from Chief Superintendent Denis FitzPatrick. He advised me that Garda John O'Dowd had been developing an informer in the subversive field and that it looked promising. I was not advised that the individual was an informant as distinct from an informer. Nevertheless...I did not meet Mr. Doherty in order to assess him and later received a second call from the Chief Superintendent so directing that I meet him...as soon as possible...I never had met William Doherty previously and was not aware of his background. However shortly before Christmas 1996 (after the return of Garda O'Dowd off annual leave). I did by arrangement with Garda O'Dowd meet Doherty at Garda O'Dowd's home at Oaklands Park, Letterkenny...there I had discussions with him on the subject on which I was sent to assess**

him. He knew many of the personalities involved in such activity by name. He said he was not a member of their organisation, but was willing to join Sinn Féin. I said we would not encourage him to join any organisation and that he had free will. I decided that any work he did would be voluntary and of his own free will, but that the criminal law could not be breached in any activity he was or may become involved in. He understood this. I queried his background and he advised that he had one conviction for assault and one case of assault pending. After this meeting I had no further meeting with him until my return from Templemore which was on the 7th of February, 1997 and towards the end of that month. At that second meeting which was again held at Garda John O'Dowd's home I requested that he produce evidence of a factual nature supporting what he was purporting and suggesting as concrete information. He did not and I had no further interest in his information, which was unsupported. I had at this time checked his background to establish any criminal convictions on record and in fact he had lied to me and I told him so. That was the end of my direct meetings with him. I beg to state that I prosecuted Doherty for various offences...including assault...I never had or have I now any friendship with William Doherty or his family and never bartered for any information, which might interfere with the criminal process. The contact I had with him was...truly in the interest of the obligations imposed upon me as a member of the force in the common law obligation to protect life and property...it has been suggested to me by Chief Superintendent McNally that confidential information in the possession of the investigation team suggests that I met Mr. Doherty in or about the time of the investigation into the death of Mr. Richard Barron and that I was upstairs in McGranaghan's Bar in Raphoe with him or words to that effect. I absolutely refute these allegations as vexatious and untrue. I will appreciate if the source of that information can be disclosed and put to proper test as to his or her motive and credibility. I wish to add that William Doherty never misled me in any activity or in my assessment of him. I further state that I never attended a licensed premises in the Raphoe area.

On the 19th of February, 1997 Garda John O'Dowd submitted a confidential report, the effect of which was that there was an arms dump at Dooish Hill, Ardh, St. Johnston. This was supposed to be secreted on a farm, the property of Mr. James "Lofty" Gallagher, a person held in the highest esteem, both in the local community and among members of An Garda Síochána . A further report of the 1st of March, 1997 from Garda O'Dowd claimed that a mortar launch device was being prepared on that land for a possible attack against the RUC Station in Castlederg. On the weekend of the 1st and 2nd of March, 1997 Superintendent Lennon briefed Chief Superintendent FitzPatrick, Detective Superintendent Shelly and Detective Inspector McGinley on information that a "barrack buster" bomb was prepared, and ready to be moved across the border, with a possible target of Strabane or Castlederg. A major security operation was initiated. On the 3rd of March, Superintendent Lennon met with these officers

again and stated that the activity of the previous night "had blown it". Mr. Gallagher's premises were then searched pursuant to a section 29 warrant and nothing was found. On Wednesday, the 5th of March, 1997 Superintendent Kevin Lennon claimed that the bomb had not been found, but that he had gone there and attempted to mark the relevant area with a stick. Here is Superintendent Shelly's account:

> **I can recall that at that time both Detective McGinley and I were involved in interviewing candidates for appointment to the Detective Branch for the Donegal Division. Garda John O'Dowd of Raphoe Garda Station was one of the Gardaí who presented himself for interview. I can recall Superintendent Lennon asking Detective Inspector McGinley and myself at one stage how Garda O'Dowd had performed at his interview and we told him that he did not do a good interview. Superintendent Lennon expressed no surprise at that and he went on to tell us that both Garda O'Dowd and himself were out until the early hours of the morning on Dooish Mountain trying to establish the exact location where they believed that the explosives dump was hidden. I can recall at one briefing session that Superintendent Lennon informed the search parties that both Garda O'Dowd and himself had placed a marker (a stick) in the ground where their informant alleged that the arms dump was hidden. The marker was eventually located, but nothing was found in that area. Chief Superintendent FitzPatrick suggested that Detective Inspector McGinley would have to act as agent handler for Garda O'Dowd's informer as he said that Superintendent Lennon could not maintain his level of commitment with this person as he had a busy District to manage in Letterkenny. Garda O'Dowd reported directly to Superintendent Lennon in relation to the intelligence he was obtaining on the activities of the PIRA in the Donegal area. He never to my knowledge reported any of this information through the Detective Branch in Letterkenny. The searches continued until the 6th March, 1997. However, no arms or explosives dumps were discovered and the jeep and trailer that were to be used in transporting what was known as a "barrack buster" to Northern Ireland was never located.**

On the 18th of March, 1997 Noel McBride made his third statement to the Gardaí implicating the McBreartys. In his statement of the 20th of November, 1997 Garda John O'Dowd describes the circumstances leading to this statement. He says that at around the end of February or early March, 1997, his informant contacted him again and told him of a run-in between Frank McBrearty, Jnr. and Noel McBride. The gist of this information was that Noel McBride had been told to check himself into St. Conal's Psychiatric Hospital and to say that everything he had told the Gardaí was false. Garda O'Dowd then contacted Noel McBride and this story was ‘confirmed’, as far as he was concerned. He had then called to a pre-arranged place and picked up Noel McBride. Garda O'Dowd noted that he had seemed nervous. After the reading over of the witness declaration, Noel McBride made a statement which was later handed to Detective Superintendent Joseph Shelly. This third statement

claimed that on Wednesday morning, the 26th of February, 1997 Noel McBride was asleep at his home in Figart when he got a phone call from young Frank McBrearty who said "I'm going to get you, you touting bastard". On the following Friday he claimed he was walking towards his home when a car repeatedly passed him. It then stopped and young Frank McBrearty demanded that he should "get in". Mr. McBrearty, Jnr., he claims, was interested in the questions the Gardaí had asked him. The statement goes on:

> **I said I didn't know anything. Frank said "you do, you touting bastard you". He then said "I'll give you money if you sign yourself into St. Conal's, tell them you were going mad at the time and that the story you told the Guards about me was all bullshit". I then said to young Frank, "how much". Young Frank said "£800 - £1,000". I said "no thanks". Young Frank then went hysterical in the car. He was roaring and shouting at me. He then shouted at me "I heard you were making threatening phone calls to my father". I said to him "I was not", and I then said to him "go and blame someone else you big fat bastard". He then got out of the car and started running after me, but I was too fast for him and he gave up the chase. He shouted after me "if I ever get you in Raphoe...I'll kill you". He then got into his car, banged the door and drove off spinning the wheels.**

Garda John O'Dowd continues in his statement of the 20th of November, 1997 by telling of another encounter "sometime around the middle of April or a little earlier". This concerned a bicycle and more money which Mr. McBride was supposed to have got from Frank McBrearty, Snr. Garda O'Dowd then says that he contacted Noel McBride and asked him to show him the bicycle. He met him one Thursday night and he had a red gent's bike with him. Garda O'Dowd then offered him a lift and on the way Mr. McBride told Garda O'Dowd about getting cash and this bicycle from Frank McBrearty, Snr. Garda O'Dowd said he spoke to him at length about the rights and wrongs of telling "the honest truth". He received an assurance. Garda O'Dowd asked him as to why he was always in McBrearty's premises at the weekend when he claimed to be afraid of them. Garda O'Dowd continues:

> **He stated his girlfriend wanted to go there and he often gets free drink from old Frank. I decided not to take any more statements from McBride. I brought this incident to the attention of the investigating team at the Incident Room in Letterkenny. I spoke with D/Inspector John McGinley about this matter and asked him to interview Noel McBride.**

Garda O'Dowd said that two dates were set which were broken by Noel McBride. Then, he says, his informant, meaning William Doherty, contacted him again and arranged for Mr. McBride to wait at an agreed location. When on the 4th of May, 1997 he drove there both Mr. McBride and Mr. Doherty were present. Noel McBride wouldn't get into the car without William Doherty. On arrival at Letterkenny Garda Station, Noel McBride said he wouldn't go into the Garda Station. He then agreed to go to Garda O'Dowd's private house, but only

if William Doherty was with him. In his statement on this matter, Superintendent John McGinley states:

> **I was later contacted by Garda J O'Dowd who asked me to come to his house to meet Mr. McBride as he did not want to be seen in the Garda Station. I went to the home of Garda John O'Dowd to meet Noel McBride. On arriving at the home of Garda J O'Dowd, I met Noel McBride and another man who was introduced as William Doherty...I had not known William Doherty and did not know he was going to be present. I indicated to Garda J O'Dowd that I could not take a statement or interview Noel McBride while William Doherty was present, but Garda J O'Dowd stated that William Doherty was friendly with Noel McBride and that Garda J O'Dowd, that he knew him personally and that he would vouch for him. I agreed to meet Noel McBride and hear what he had to say. During the course of the meeting William Doherty stated that he knew Noel McBride since they were both four years old and that they were friends for many years. During the course of this meeting Noel McBride outlined how he had contact with Frank McBrearty, Snr. and junior on a number of occasions. He stated that both Frank McBrearty and junior had given him money and a bicycle. I was also aware that Noel McBride had made statements to Garda J O'Dowd covering other meetings between Noel McBride and Frank McBrearty, Snr. and junior. During the course of the meeting William Doherty occasionally interjected and supported Noel McBride assertions. On one occasion I asked William Doherty how he was aware of these matters, and he said that he had been told by Noel McBride. Following this meeting I had doubts as to the credibility of Noel McBride and his account of events.**

Sir, for what it is worth, the detail of this fourth written statement to the Gardaí by Noel McBride indicates an encounter on the 31st of March, 1997 with Frank McBrearty, Snr. Together they travelled, he asserts, from Noel McBride's home to the nightclub/bar premises where Frank McBrearty, Jnr. joined them. Frank McBrearty, Snr. is said to have told Noel McBride that he would give him "a few grand" to go down to the Gardaí and say that he had been making false allegations against the McBreartys. Young Frank McBrearty is supposed to have asked about William Doherty and when Noel McBride asked why, he said that they were going to "do him in very shortly". He was then given £150 and a promise of a bike. He talks about the proposal to check himself in to St. Conal's. He claimed that Frank McBrearty, Snr. proposed that he should "put on a wire and go to the Guards", in other words to tape-record a conversation. He indicates he had received a total of £750 and a new bicycle. Despite claiming that he bought some items for Sharon Alexander this, it would appear, was never checked out.

In the meantime, other things were happening. On the 20th of March, 1997 at 9.02 p.m. a nuisance call was made to the home of Frank McBrearty. It accused him of murder and predicted that he was going to be murdered "next Monday". On the 21st of April another unpleasant call was made to

Mr. McBrearty, Snr. at 9.48 a.m. The telephone bill suggests that the connecting line was the home of William Doherty. More phone calls were made on the 10th and 18th of May, 1997 to Mrs. Rosaleen White, the wife of Sergeant John White. She says these were of an unpleasant nature. William Flynn was later charged and convicted in relation to these calls to Mrs. White. On the 27th of May, Patrick Doherty, the father of William Doherty and the subscriber in respect of their home phone line, spoke to Detective Sergeant Henry about an accusation that had been levelled at him by a third party that he was responsible for the telephone calls to the home of Michael and Charlotte Peoples on the 9th of November, 1996. As a result, on the 16th of June, Mr. Patrick Doherty produced his itemised telephone bills to the Gardaí.

Garda John O'Dowd describes his next encounter with Noel McBride. He says:

> **I had no further contact with McBride except one day I took D Inspector McGinley and D Sergeant Hugh Smith to Alexander's home in Killygordon to show them where it was and have a word with McBride. On that occasion D/Inspector McGinley made an appointment to meet McBride. On a later occasion one Friday night in June, '97 I spoke with Noel McBride briefly in Raphoe. He was standing alone outside the 'Súile Tavern' pub. He just turned his two wrists up to me and said "look what I did". They were fresh lacerations on both wrists, but were not deep and he wasn't in any danger. I asked him why did he do that. He said he had a row with his girlfriend and that she had gone off with another fella. I saw her standing below the Central Hotel chatting to some fella. I told McBride I would come back as soon as I could as I was dealing with another matter. When I came back both were together again.**

On the 7th of June, 1997 there was a bomb threat to McBrearty's premises. Apparently the threat was phoned to Highland Radio. Garda John O'Dowd dealt with the matter and, as we understand it, indicated to Mr. McBrearty, Snr. that the call was from a serious source. Mr. McBrearty refused to clear the hall. The Carty investigation team indicate that between November, 1996 and January, 1998 the premises of Frank McBrearty, Snr. was the subject of a total of twenty three hoax bomb calls. Ten were made from telephone kiosks in the Raphoe, Letterkenny, Manorcunningham and Carndonagh areas; twelve calls remain untraced so far; and one call was traced to the home of William Doherty: (Carty report, section II page 187).

On the 25th of June, 1997 Mark McConnell was arrested for the second time because of what was alleged to be new information, that is to say the confession supposedly made by Frank McBrearty, Jnr. after his arrest on the 4th of December, 1996. This is dealt with under a separate section.

On the 7th of July, 1997 Noel McBride made his fifth witness statement to the Gardaí, specifically to Detective Inspector John McGinley and Detective Sergeant Hugh Smith. Detective Superintendent McGinley, in his statement on the matter, says that this statement was taken in Letterkenny Garda Station and that he was present for the latter half of the statement and when it was read over

to Mr. McBride. The text of this statement recounts Noel McBride being in the Tudor Lounge on Friday, the 27th of June, 1997, of meeting Frank McBrearty, Snr. and then having a private conversation with him in an office upstairs. He claimed that Frank McBrearty, Snr. said to him "if you withdraw all the statements you made to the Guards I'll give you £5,000 in your hand, cash". Mr. McBride in his statement alleges that Mr. McBrearty, Snr. then said "all you have to do is say Garda John O'Dowd paid you to make a statement in relation to the murder...I want to get that John O'Dowd...and get him the sack". He then claims to have gone outside on the street and met Frank McBrearty, Jnr. who threatened to kill him because he was suspicious that he was co-operating with the Gardaí. He then claimed to have gone back into the nightclub and met his girlfriend Sharon Alexander and to have been given three free pints by Mr. McBrearty, Snr. He then, for the first time in his written statements, mentions William Doherty. He claims to have told William Doherty what had been said to him and claims that William Doherty urged him to go to the Gardaí and report it: sometime later William Doherty rang him and told him that he had made an appointment, which he then kept, resulting in the statement we have just described. He also claimed to have telephoned Garda John O'Dowd after these alleged events to find that he was not there.

On the 31st of August, 1997 there was a raid on the McBreartys' licensed premises by the Gardaí. Bernard Conlon was in a position of being "found on premises" after hours, apparently being served alcohol. The prosecution in relation to this matter was initially listed for February of 1998 with a civilian witness, that is to say Bernard Conlon, as part of the prosecution case. This entire issue will be dealt with under a separate heading.

Detective Superintendent McGinley recounts in his statement that on the 13th of September, 1997 he and Detective Sergeant Smith went to the home of Noel McBride in order to corroborate certain facts in relation to the accounts which he had given. Noel McBride talked about the label on his bicycle and the denominations in which Frank McBrearty, Snr. had counted out the alleged bribery money. Because Noel McBride was unable to offer support for his statements they came to the view that he was lying. Detective Superintendent McGinley comments:

> **I had grave doubts as to truthfulness of the statements he was making to the Gardaí. I was also aware that the investigation into the suspicious death of Richard Barron was at an advanced stage and that a great deal of credence was being placed on the information supplied by Mr. McBride who was seen as the principle witness.**

It would appear that earlier on the same day William Doherty had also made a statement. In it he says:

> **I think it was a Friday about six weeks after the death of Richie Barron. I phoned Noel McBride...and asked him if he would come for a drink. The time was roughly between 11.30 a.m. and 12 mn. I told him I was in Raphoe and to meet me in Patsy McGranaghan's**

> **pub. Noel came into the pub at about 12.30 p.m...I bought him a drink. We talked generally. We decided to go to Strabane as I wasn't to get my pay out of the bank. We got a taxi from Raphoe and went to Strabane...I got money out of the banklink machine. We went into Paddy Mac's Bar in Strabane and had a few drinks. We were chatting generally and we spoke of Richie Barron's death and what he had seen that night. Noel then said "I got money to keep my mouth shut from Frankie McBrearty, Snr.". I did not believe him at first and he then said "look" and pulled out a ball of money. I took it off him and looked at it as I thought there was something funny. It was unbelievable to see Noel with that amount of money. The money was made up of £20.00 and there may have been a £50.00. I'm not sure. It was all punts. I counted it and there was approximately £450 in it. I asked him where did he get it or how he got it and he said "that old Frankie got him into the car out the road and asked him what he had seen the night of Richie's murder" and when Noel said he saw nothing - Frankie said that's the way to keep it and pulled out a bag of money from the door of the car and handed him a lally of money saying there's more where that came from. Noel said "that he got £500.00". We drank for the day and got a taxi here. Early this year around January or February Noel McBride showed me a new mountain bike that he maintained Frankie had given him to keep his mouth shut. Noel showed more money he got from Frankie senior around the beginning of January '96. It was before he got the bike anyway. Noel said there was £200 in it. He said he got it from Frankie senior, but he did not say when. I was never with Noel when he received the money, but he showed me jeans, shirts, sweatshirts, trainers and a new watch which he said he bought with the money. He told me he bought jewellery for his girlfriend, but I did not see it. He also told me that Frankie junior gave him money out the road one day, but I cannot remember the details.**

On the 16th of September, 1997, Detective Sergeant Henry and Detective Garda McHale interviewed Noel McBride. The Gardaí first called to Mr. McBride's home. They then went to Sharon Alexander's house where they found Mr. McBride "very agitated". They had asked to see the bicycle allegedly given to him by Frank McBrearty at his home, but that he had said it was over in his girlfriend's house. He denied that it was there, but when a bicycle was pointed out at the side of Sharon Alexander's home, Mr. McBride agreed that this was the one he had got from Frank McBrearty. Detective Sergeant Smith then asked to see the jewellery bought for Sharon Alexander with Frank McBrearty's money:

> **He stated he could not show us the jewellery as he had given it away. I informed him that he was telling us lies and that I was going into the house to speak to his girlfriend. I went towards the door and Noel McBride called me back. He stated he was under a lot of pressure, he repeated that he was under a lot of pressure. He asked him who or what was putting him under pressure and he eventually**

stated that he was under pressure from William Doherty. We again asked what kind of pressure and he stated that all the statements he made to the Gardaí about receiving money and the bicycle from Frank McBrearty were false.

He was then cautioned and withdrew his first six statements to the Gardaí. He said that he was never in Raphoe on the day or night of the death of Richard Barron. He then gave this account as to how he made what he claims are false statements:

...on the Monday I heard on the radio that a man had been killed in Raphoe and I later heard his name was Richie Barron whom I know to see. About three days to one week later I got a phone call to my house about 7.00 p.m. from William Doherty...I know him for twenty years...he...asked me "did you hear about Richie Barron being killed". I said I did. He said "if the Guards come questioning you about being in Raphoe that night say you were...Say you were in McBrearty's car park to do a job in the Teck in Raphoe and say you saw McBrearty, young Frank McBrearty, and Mark McConnell coming down through the car park. Say he stopped with a bouncer Marty McCallion and then went to the Tudor Lounge to get in". He told me times 11.00 p.m., 1.00 a.m. and the bell ringing. I was surprised at this. He told me to say I was standing outside DJ's chip shop at 11.00 p.m. and up around the McBrearty's car park at 1.00 a.m. He also told me to say I saw Damien Murphy and Shaun Crawford going into the disco at 11.00 p.m. I said I would think about it. We left it at that and over the next couple of weeks William Doherty rang me several times pressurising me to go along with the story and said "I'll give you another hiding if you don't". By this I knew he was chatting about a beating he gave me about a month before this down behind the Castle in Raphoe. He said at that time that I said something about him. One time when William Doherty was on the phone to me he said "tell the Guards that old Frank McBrearty threatened you on the phone and offered you money". One Friday in November, '96 Garda O'Dowd and Collins from Raphoe called to my girlfriend Sharon's house and arrested me about an aerial I stole in Raphoe. They took me to Letterkenny Garda Station and while I was there I told them I took the aerial. They started chatting to me about the Richie Barron murder and it was put to me that I was in Raphoe that night. I told them about the christening and that I was not in Raphoe. I kept denying I was in Raphoe and they kept saying I was. I eventually told the Guards what Doherty had told me to say. I told them I was in Raphoe and that I had seen Frankie junior and Mark McConnell coming down the car park at the back of Frankie's at 1.00 a.m. This was not true, but I did not tell the Guards that. I also told them I received a threatening phone call from old Frankie. This was not true - William Doherty told me to say this, but I did not tell the Guards he told me. I made a statement outlining all this to the Guards and signed it and I was released...a couple of days after I was arrested William Doherty rang

me at home and said "I heard you were arrested - what was it about" and I said "you know what it was about". I made further statements to the Guards saying that McBrearty, Snr. and junior offered me money to keep my mouth shut. I also told the Guards that Frankie senior bought me a new mountain bike. William Doherty told me to say all this. Doherty told me to say that old Frankies followed me out the road and gave me a lift. He told me to say Frankie gave him £500 in cash that day from a bag in the door of his car. I made a statement to the Guards about this, but it's not true. Every time Doherty told me to say I got money from the McBreartys the Guards would call to me and I would tell them what Doherty had told me to say. The amounts that he told me to say I got from the McBreartys at different times were £500 from Frankie senior, £150 from Frankie junior and another £50 and a mountain bike from Frankie senior. These were all false reports because William Doherty asked me to say this. The mountain bike...I bought last March for £190...I made up the story about Frankie giving me the mountain bike myself. Before I got work in Nena Models I used to work an odd day with William Doherty. One morning William Doherty picked me up in his lorry at my house in Figart. It was before 11.00 a.m. He was leaving me up to my girlfriends house. He stopped the lorry at the card phone in Killygordon. Both of us went into the phone. Doherty rang McBrearty at the pub and called him a murdering bastard. Doherty then phoned old Frankie's wife at home, but I cannot remember what he said to her. I don't remember what day of the week it was, but it was before 11.00 a.m. I had been under a lot of pressure over all this and I felt like committing suicide over all the lies I told. Since this all happened I cut my wrists three times. The whole thing was never my idea. The last day Doherty rang me was last Saturday about 4.30 p.m. He rang me at my girlfriends house...and said the Guards were with him and asked him how much money had Noel McBride and he told them £400. He said "the pressure is on me" when the money ran out.

Noel McBride's next written statement, his eighth, was made at his girlfriend's home to Detective Sergeant J S Henry. In this eighth written statement, dated the 17th of September, 1997, he gives an account of his movements and recounts being told while in custody approximately ten months earlier that he had been seen in the town. He also claimed that William Doherty had, approximately three months before, which would be July, 1997, called to his house and picked him up and told him to make a statement saying that he went to the Tudor Lounge and had been offered £5,000 by Frank McBrearty, Snr. The office was described to him: in fact he was never upstairs in this office at all. He also claimed:

I wish to state that everything I said and everything I did William Doherty told me to say it. He rang me at home and to my girlfriends a lot by that I mean nearly every night. John O'Dowd rang me a lot as well. He always seemed to be putting words into my mouth, like if I said one thing, he would say no, no, it's not that, he would

change it to say another thing. I also wish to state that I don't know if there is an office upstairs in Frankie McBrearty's or not, I was never in it.

After this eighth statement, on the 19th of September, 1997, Superintendent Shelly met with Superintendent Lennon at Letterkenny Garda Station and briefed him of developments, which were now to hand, to the effect that Noel McBride had attended two family christenings, meaning the McBride and Alexander families, on the 6th and 13th of October, 1996 and thus was never in Raphoe at the relevant time. They discussed arresting William Doherty in respect of information which had come to hand suggesting that some of the phone calls to the home of Michael and Charlotte Peoples on the 9th of November, 1996 had been made from his line. Detective Inspector John McGinley was also present. The offence suspected was that set out under section 17 of the Criminal Justice (Public Order) Act, 1994. Clarification was obtained, according to Superintendent Shelly, from the Director of Public Prosecutions office. At 5.00 p.m. Superintendent Shelly, who was in fact the 'border Superintendent', made the decision to arrest William Doherty. He said he was also mindful of a further call on the 20th of April, 1997 from Doherty's house which we have already described (see statement of Superintendent Shelly, undated, but numbered 59 in the Carty II report).

Prior to this first arrest of William Doherty, Sir, we would ask you to note that he had made a number of statements to the Gardaí. On the 13th of June, 1997 he had told Detective Garda Stewart Doyle of being called out of bed late at night and seeing a figure standing in the porch of his family home. He described the figure as wearing a baseball cap pulled down over his eyes. He claimed that his sister went hysterical and that there were bangs at the kitchen window. In his statement to Detective Sergeant Smith and Herraghty he said that he had known Noel McBride since he was four years old and that Noel McBride had told him of getting money from Frank McBrearty because of what he had seen on the night of Richard Barron's death. He also made a statement on the 3rd of July, 1997 about a private investigator. On the 20th of September, 1997 William Doherty was arrested by Detective Sergeant Henry at his home in Doorable, Manorcunningham. While searching William Doherty's bedroom, Detective Sergeants Henry and Smith found a "Rino" notebook containing references to Michael Peoples. Mr. Doherty denied ownership of the notebook or having anything to do with the entry. This notebook later transpired to be the property of Garda John O'Dowd and, when asked about the matter, he indicated that he believed it had been stolen from his jacket pocket after a conference in Letterkenny Garda Station (see statement of the 12th of May, 1998 and statement to Inspector Hugh Coll of the 27th of May, 1999, which latter statement claims that the notebook was planted in William Doherty's bedroom). In various memoranda of interview over the 20th/21st of September, 1997, William Doherty indicated that he had never seen the notebook before and that it was not in his writing. In relation to the issue as to whether he had got Noel McBride to manufacture evidence which misled the Gardaí he said: "McBride's a liar - I'll tell the world". He also claimed that he had never met Superintendent Kevin Lennon. With regard to any conversation between him and Noel McBride concerning "the murder" he said:

> **One night I met him he told me he saw boys up the car park in Frankies and he was up there, that's what he told me. I told him to go to the Guards...one night he said he was threatened by McBrearty and about getting £500 from McBrearty and a mountain bike - a good one - reddish one...to keep him quiet...not to go to the Guards...he was up the car park - he saw something coming through the car park. He said he saw Frank McBrearty, Jnr. and Mark McConnell coming down through the car park on the night of the murder at 1.00 o'clock.**

He claimed that he had never spoken to Garda John O'Dowd. When phone records were put to him, specifically "these hundred calls to his number" he said: "you said it's John O'Dowd's number. I never had any association with John O'Dowd". He said that Sergeant John White had called to his house about four or five times about different things, including the man "with a balaclava seen out the back". He said that he was at home on the night of Mr. Barron's death. Telephone records were put to him showing a call on the 20th of April, 1997 to Frank McBrearty and a call, three calls before it, to John O'Dowd, and a call after that to Letterkenny Garda Station. He made no reply. He said there was "no way I put Noel McBride up to anything". It was put to him that he made a call threatening Mr. McBrearty and threatening his daughter and about him killing someone in Scotland and he said "I never made the call...I am telling the truth". When Detective Inspector McGinley read extracts from a statement made by Noel McBride blaming Mr. Doherty, he said he was “a liar”. He also denied beating him up.

Sir, insofar as this narrative might impact on any member of An Garda Síochána who dealt with Mr. McBride or Mr. Doherty, it is important to point out the stark contrast in the narrative given by each of them and to draw to your attention the issue as to credibility which must automatically arise in relation to these witnesses and their conduct.

On the 30th of September, 1997 Superintendent Lennon and Garda Dillon met Dr. Barry, Consultant Pathologist, at Letterkenny General Hospital; (see page 209-212 of the Lennon report.) Dr. Barry is reported as having said, at this meeting, that from the outset he was of the opinion that the injuries were not at all consistent with normal traffic accident type injuries and that they could only have been sustained in the most exceptional circumstances, such as if the deceased were sitting or lying on the road and received a severe glancing blow from the bumper of a passing vehicle. You will recall, however, Sir, how Mr. Barron’s trousers were described as falling down and how he was described by witnesses as holding on to the wall to steady himself, as he made his way home. The Gardaí report him as indicating that other injuries should also have been present. He is reported as finding the absence of injuries to the face difficult to understand in the absence of it being covered; though he did explain that it could happen where a body is swathed in clothing a vehicle could drive over it without causing "that much damage". Dr. Barry is reported as having said, off the record: "he would now be happy that the dead man had either been

pinned down or held rigid when he received a fatal blow or blows". The doctor was then asked if this blow could have been delivered with a stick:

> **Dr. Barry immediately ruled out any type of light stick such as a walking stick or similar implement. When asked if a pailing post could possibly have been used the doctor stated that this was unlikely as it would not be too easy to get leverage. He stated that the blow was of such a severe nature that something like an iron bar was a much more likely type of weapon to have been used. Dr. Barry was then informed that one of the first Gardaí to the scene had noted the location of a piece of flesh with hair attached at a distance of five feet from the body. He expressed great interest in this and stated that he was not aware of this fact prior to being now informed. Superintendent Lennon asked him if this piece of flesh could contain anything of evidential value and Dr. Barry stated that it could lead to the identity of the weapon used as it might contain wood splinters, paint flakes, rust, etc. Dr. Barry, when asked, completely ruled out the possibility of a billhook having caused the injury received by the deceased. At this point the doctor once again...ruled out a traffic accident as there would certainly have been other injuries present if this man had been struck by a passing vehicle...the doctor did not offer any opinion as to what might have caused the injuries to the fingers and hands stating the he had been carrying out tests on the basis that he was dealing with the victim of a road traffic accident. Superintendent Lennon informed Dr. Barry that he was exploring the possibility of informing the State Pathologist, Dr. John Harbison, with a view to possibly exhuming the body of the deceased man.**

In a letter to this Tribunal dated the 3rd of September, 2002 Dr. Barry said that he had speculated on a number of occasions as to various scenarios in an attempt to explain certain features of the body. One of the things that he had believed was that the head would probably need to have been fixed to sustain the pattern of injury. As to the speculations reported in the foregoing document he says:

> **In effect I would have been saying: "if it is given that the injuries result from an assault, then it is likely that they were sustained in the following way...I do not recall the reported discussion...regarding the piece of flesh". Clearly this is potentially important evidence. It is of interest that the possible types of trace evidence mentioned appear to relate to both weapon and vehicle, i.e. both of the mechanisms under consideration.**

Dr. Barry also recalls speculating on the possibility of a crush-type injury through vehicle impact with a head fixed against a stone wall; this refers to the later meeting of the 26th of April, 2000. On the 3rd of October, 1997 Superintendent Lennon met Dr. Harbison in his office. Superintendent Lennon noted Dr. Harbison as saying that it was impossible for him to offer a learned opinion from a distance. He would have to view the body of Richard Barron or to be in

possession of all the facts. In the circumstances he could neither fully agree or disagree with the findings of Dr. Barry. He thought that the photographs taken at the autopsy were inadequate. The marks on the deceased man's hands were not typical of the victim of a road traffic accident. He thought the absence of x-rays on the deceased was a major obstacle to any subsequent analysis, but he felt that the exhumation of the body of Richard Barron might lead to some marginal achievement, but on the other hand, it might also provide answers to some of the questions. One of the speculations Dr. Harbison is reported as having made, in the absence of being invited to view the body, was of Mr. Barron being hit on the top of the head with some large awkward implement.

On the same day as Superintendent Lennon was meeting Dr. Harbison, Noel McBride made his ninth written statement in relation to his role in the Garda investigation to Sergeants Smith and Henry at Raphoe Garda Station. There are a number of additional points of interest in this statement apart from the repetition of assertions from the previous two statements. Noel McBride claimed that William Doherty put him up to this process of false informing on the basis that he was going to make money out of it. He said:

> **I never went to the Garda Station voluntary. I was always forced to do so by William Doherty. I only rang Garda John O'Dowd at his home once. I got his number from William Doherty...I also wish to state that after I made my first statement to Garda O'Dowd I was approached by William Doherty that the Guards wanted me to go to McBrearty's to pick out the bouncer at the Parting Glass that I had seen on the night that Frankie junior and Mark McConnell came down the car park. I knew who the bouncer was meant to be. I was supposed to pick out Marty McCallion. I had known this before Garda O'Dowd arrived as Doherty had told me to pick him out. Later that night John O'Dowd picked me up in a white van at Sharon Alexander's house. I should say that William Doherty was in the van driving it when the van arrived. I got into the front along with Doherty at the house. We drove down the lane from Alexanders'. Garda O'Dowd was standing in the hedge, he just popped out. He got in and drove and myself and Doherty got into the back...we went to Raphoe. We sat there at Reynold's house at Raphoe waiting for Marty McCallion to come up in the car. William Doherty knew what type of car McCallion had. Marty McCallion did come. John O'Dowd drove up to the car park so I'd pick him out. William Doherty then said to me "is that him there", I said "ye it was". Then Garda O'Dowd asked me again and I said it was him.**

Sir, you will note the contrast between this method of identification, as asserted by Mr. McBride, and that described by Garda O'Dowd in his statement. In essence, the difference is that Garda O'Dowd says that there was no identification, but that Mr. McBride knew "the fellow at the door that morning was Marty McCallion". Noel McBride was shown the notebook taken from William Doherty's bedroom and said that he had never seen it before. He says: "I never got anything from Frankie McBrearty. I never got a free pint from him". He

describes his statements alleging an attempt to pervert the course of justice on the part of Frank McBrearty, Snr. and Jnr. as "total lies".

Under section 47 of the Coroner's Act, 1962, a coroner may request the Minister for Justice to order the exhumation of a body where he has been informed by a member of An Garda Síochána, not below the rank of Inspector, that the deceased met his death in a violent or unnatural manner. The Minister may then make or refuse to make an order, but if the order is made then the coroner has the same powers as he would have over an unburied body. On the 8th of October, 1997, Dr. Fred Keye, the relevant coroner in County Donegal, wrote to the Secretary of the Department of Justice requesting exhumation. Part of his letter reads:

> **A protracted Garda investigation subsequently concluded that the deceased may have met his death by violent means other than the initial theory of Hit and Run accident. I have been informed on this date by Superintendent Kevin Lennon of An Garda Síochána, Letterkenny, County Donegal, that it is his opinion that the death of Mr. Richard Barron occurred in a violent and unnatural manner and that he is further of the opinion that Richard Barron was murdered.**

By letter dated the next day Superintendent Lennon wrote to the Secretary of the Department of Justice attaching the aforesaid letter and adding:

> **What I seek to establish here is how the deceased Richard Barron met his death. The initial PM report suggests "head injuries" which is in my opinion inconclusive in establishing the exact cause of death. It is my considered opinion that the deceased met his death by means other than a road traffic, hit and run accident. I am satisfied from consultations with Professor John Harbison that he may be in a position to establish through further examination of the remains, the means whereby the deceased met his death. It is my view that the desired process in achieving comprehensive, conclusive and factual results is by way of exhumation. Accordingly I recommend such course as directed by the coroner.**

Sir, we have examined the exhumation file on this matter which was supplied to us by the Department of Justice. An admirable memo, concisely summarising the law and the facts, was drawn up by Ms. Orla Kenny on the 14th of October, 1997. The relevant orders were prepared, but not signed. A handwritten note on the file reads:

> **Superintendent Lennon rang Séamus Hanrahan today 16/10/97 and asked that this order be put on hold until further notice.** (Initialled and dated).

In a document prepared for oral answer to a Dáil question by the Minister for Justice, in answer to a question from Deputy Jim Higgins, the following appears:

> **On 10th October, 1997 the Senior Garda Superintendent, charged with the investigation into the death of the Late Mr. Barron, forwarded a request from the coroner for an Exhumation Order, based on a request made by the Superintendent to the Coroner. The necessary papers...were prepared...to authorise the exhumation. However, on 16th October, 1997 the same Garda Officer telephoned the Department and asked that his request for an Exhumation Order be put on hold until further notice. In the circumstances, the deputy will appreciate that it would have been inappropriate for the Department of Justice, Equality and Law Reform to take any further action in relation to the Exhumation Order request. No further action was taken in relation to the request for the Exhumation Order until a further request for an Exhumation Order in this case was received from the Coroner for Donegal South East (associated with a fresh request from the Gardaí) on 27 June, 2001. The Exhumation Order was issued on 3 July, 2001. (Further, action might have jeopardised any investigation being carried out by the Gardaí in relation to the death).**

There is no provision in the legislation for the withdrawal of a request for exhumation. The exhumation file indicates that there are about three requests for exhumation orders made to the Department of Justice on an annual basis. It is difficult to understand, therefore, why this matter was not followed up. We do not know how an exhumation could have "jeopardised" the Garda investigation. Nor do we know where such an idea came from.

On the 14th of November, 1997, Noel McBride made a series of further statements to the Gardaí. There was also another statement concerning the burning of a trailer taken on the 3rd of October, 1997. Noel McBride had been arrested for an offence committed under section 12 of the Criminal Law Act, 1976 and taken from his home at Figart to Letterkenny Garda Station. These statements were taken by Sergeant Sarah Hargadon, with Detective Garda Foley, by Detective Gardaí Hugh Dillon and Thomas Kilcoyne and by Detective Sergeant John White. In essence, Noel McBride claimed that approximately one week to ten days after the murder of Richard Barron, William Doherty had telephoned him and requested to meet him. They met at the Diamond, Raphoe and he recalls school children from the Royal and Prior Comprehensive School going past. He claimed that William Doherty offered him between £400 and £500 in return for making fictitious statements. He was asked as to why Mr. Doherty might want to frame Frank McBrearty, Jnr. and Mark McConnell and he simply answered: "he didn't like them". He claims that when he went to the car park on the 4th of December he had picked out the wrong bouncer. William Doherty is supposed to have said "that's not him", but then he saw the right bouncer and pointed him out. Because Garda O'Dowd was in the front of the van, he said he was not sure as to whether he would have heard him picking out the wrong man and William Doherty telling him that he had picked out the wrong man. He said he was not scared of William Doherty. He said he did not think about whether his statements had been responsible for the arrests made in the Barron investigation, but that he found it "very wrong" the thought that people could be convicted of the death of Richard Barron and sent to jail. He claimed

that William Doherty had offered that he would get off in relation to an offence he was worried about, of burning trailers, if he made statements, because he claimed to know a detective, but did not mention his name. He fully admitted misleading the Gardaí for money.

In a lengthy confidential memo dated the 24th of August, 1999, Detective Sergeant John White outlined to the Chief Superintendent at Letterkenny, his dealings with the Doherty family. He said that on the 23rd of September, 1997, along with several other Gardaí under the direction of Superintendent Kevin Lennon, he became part of the investigation team working on the Barron case. He claimed that when he discovered that Noel McBride had given false evidence he decided that a further interview would be necessary. He claimed that Superintendent Lennon instructed Detective Garda Kilcoyne and himself to attempt to interview William Doherty and if possible to use a recorder "to protect ourselves from possible vindictive complaints". On the 6th of December, 1997 he called to William Doherty and a transcript of this is available at appendix 58 to the Carty II report. Garda Thomas Kilcoyne, in his statement dated the 31st of May, 2000 indicated, that while he was aware that Sergeant White used a tape-recorder frequently, that it was only after the end of this conversation that he realised that the tape was on. In this taped conversation William Doherty claims that the notebook found in his room was not in his room and that he had never touched it at any time. Much of the conversation centres on William Doherty's arrest on the 20th of September, 1997. William Doherty claimed to know people who were up Irish Row that night. These people, Alan Crawford and Eugene Toner were subsequently spoken to. Eugene Toner, in his statement of the 13th of June, 2000 said that he had been questioned by Garda John O'Dowd as to whether he had received money from Frank McBrearty, Snr. However, he places this conversation three months after the death of Mr. Barron. Alan Crawford, in his statement of the 8th of June, 2000, said he recalled Garda John O'Dowd and Sergeant John White calling to his home on a number of occasions about whether he and Eugene Toner had been up Irish Row and had seen anything. He said he was not up Irish Row that night and was never approached by anybody to say that he was up Irish Row the night that Richie Barron died and further that he had not seen Eugene Toner at all on the night in question. He had previously made a number of statements to the Gardaí regarding his movements, which did not include any trip up Irish Row. During the taped interview with William Doherty, Detective Garda Kilcoyne asked him whether he knew of anyone who might have seen something. At one point Sergeant John White says to William Doherty "I wish you would be truthful with me Willie, its a...serious matter". It is fair to say that the conversation meanders.

On the 10th of January, 1998 Olivia Doherty made a statement to the Gardaí indicating that her brother, William Doherty, could not have been in Raphoe at the time of the murder because although they had gone to Raphoe for ten or twenty minutes at 11.00 p.m., they had returned home and that William had retired to bed. On the 3rd of February, 1998 there may have been an incident between Mark McConnell and Stephen Barron, son of the deceased, in the Diamond in Raphoe. This alleged incident was investigated by Gardaí Leonard, Gillespie and Mulligan. If what is alleged happened then, Sir, it may be

indicative of the degree to which bad feeling, and polarisation of view, had become an unpleasant feature of life in the town.

On the 18th of February, 1998 a prosecution against the McBreartys for "after hours drinking" on the 31st of August, 1997 was listed in the District Court. Bernard Conlon was a witness. This matter will be considered under paragraph (d) of the Terms of Reference. On the 2nd of March, 1998 the investigation file in relation to the death of Richard Barron was submitted to the DPP. This lists twenty one reasons why the statement of admission supposedly made by Frank McBrearty junior, following his arrest on the 4th of December, 1996, was not of itself sufficient to sustain a prosecution for homicide. Having diligently set out the problems in relation to the information apparently supplied by Noel McBride, Superintendent Kevin Lennon signed off the report by indicating that a separate criminal file in relation to his activities would be forwarded within a few days.

On the 7th of April, 1998 Detective Garda Joseph Foley, accompanied by Detective Garda A McHale, went to Townparks, near Raphoe. There he met William McBride, who we understand is not related to Noel McBride. William McBride was accompanied by Stephen Barron. Mr. McBride took Garda Foley to a point in the river which runs by the side of his home and which, in turn, runs along by the Killygordon road and ultimately behind the car park of Frankie's nightclub. There they saw a car jack which they recovered for further examination.

On the 12th of May, 1998 Garda John O'Dowd made a statement identifying the notebook found in William Doherty's bedroom as his property. He stated that he discovered this notebook to be missing after attending a conference in Letterkenny Garda Station in mid-1997. It is important to indicate to you, Sir, what he said:

> **I have also been shown a notebook by D/Sergeant Henry which is mine. Each and every page is in my handwriting. I had this notebook for the purpose of taking notes on general issues concerning State security and issues relating to the murder of Richard Barron and had it on every occasion at each conference at Letterkenny Garda Station. I had the notebook in mid-1997 in the conference room in Letterkenny the date I cannot be specific on. I discovered this notebook missing after arriving in Raphoe Garda Station after one such conference. I was very concerned at the loss of this notebook. I was very careful at all times with this notebook and always knew where it was. I did not report the loss of this notebook because of the sensitivity of the information contained therein, but I was hoping that it would be returned sooner or later because I did not believe it to be lost. I searched and searched for this notebook, but didn't recover it, but to my shock it was shown to me by D/Sergeant Henry on the 9.4.98 when he told me where he recovered it. I was relieved it had been located. In relation to information regarding the murder of Richard Barron which was contained in this notebook, I forwarded this information to the interview room and all matters were openly discussed with those in**

> **charge at the investigation centre who were aware of the identity of my source.**

The investigation file in relation to false reporting to the Gardaí, in the course of the Barron investigation, was forwarded to the Director of Public Prosecutions, having been signed off by Superintendent Kevin Lennon, in June, 1998. In a report Superintendent Lennon informs the Director of Public Prosecutions that the available evidence indicated that Mr. McBride had acted in concert with Mr. Doherty. However, the report also states:

> **I am of the view that Doherty by his actions did not breach section 12 of the Criminal Law Act, 1976 in that he gave no direct information or statement as is required by this Section. He was merely a facilitator to the offences of Mr. McBride. In addition, McBride has a mind of his own and yet continued to offer intelligence and false statements until captured by the investigation.**

Superintendent Lennon expresses the view, which is hardly surprising, that there was sufficient evidence to prosecute Robert Noel McBride for offences of giving false information to the Gardaí. If that is so, then an agreement between two people to provide false information is an indictable conspiracy. Mr. Doherty was not prosecuted for conspiracy to supply false information. Superintendent Lennon did not advert to this charge or recommend it. He also made the following recommendation to the Director of Public Prosecutions as to whether Mr. McBride should be prosecuted:

> **If I may respectfully suggest there is a balance of consideration to be reached in this matter. Such balance on the one hand suggests that McBride be prosecuted for the offences under section 12 of the 1976 Act. On the other hand, it is my respectful submission that any sanction imposed by the Courts upon the conviction of McBride will be less damaging to his already poor reputation than that visited upon the general Garda force within the Garda District of Letterkenny in adverse publicity. In all the facts of this case, I leave the decision as to criminal proceedings in the hands of the Director of Public Prosecutions.**

There is nothing to indicate that criminal proceedings were initiated against either Noel McBride or William Doherty at that time.

On the 21st of July, 1998 Bernard Conlon, the person found drinking on the McBrearty premises after hours on the 31st of August, 1997, made a claim to the Sligo Gardaí that two men had called to his house and threatened him with a silver bullet. This matter is dealt with under paragraph (d) of the Terms of Reference. However, it may be apposite to mention here that Mr. Conlon alleged that he had been called "Informer Conlon" and that the visitors were described by him as having one silver bullet for himself and the other for "White". Ultimately, Mark McConnell was arrested on the 1st of October, 1998 and Michael Peoples was arrested on the 6th of May, 1998. Bernard Conlon made a number of court appearances at which these men also attended giving

him the opportunity to be identified as being involved in the "silver bullet" incident.

We understand that on the 15th of February, 1999 the Commissioner of An Garda Síochána directed an investigation "to examine all aspects surrounding the death of Richard Barron at Raphoe on the 14/10/96 and subsequent developments". The investigation under Assistant Commissioner Carty began on the 19th of February and you will recall, Sir, what we have said about the complaints of Sheenagh McMahon concerning explosives finds which were made shortly thereafter in March. On the 24th of April, 1999, Garda John O'Dowd reported unfit for duty. On the 25th of May, Garda John O'Dowd was transferred from Raphoe to Lifford Garda Station. On the 27th of May, 1999, Garda O'Dowd produced to Inspector Hugh Coll a note claiming that his notebook was stolen and planted in William Doherty's bedroom and that false memoranda in respect of William Doherty had been prepared. He also said he was nervous of the investigation into the extortion phone calls to the home of Michael and Charlotte Peoples on the 9th of November, 1996. He claimed that he suspected that Detective Inspector McGinley and Detective Sergeant Henry were trying to frame him for something which he did not have anything to do with. In relation to this allegation, Sir, it is appropriate to state that there is nothing in the papers which tends to support this. He also handed Chief Superintendent McNally a tape which he claimed was of a conversation between himself and Noel McBride.

On the 4th of June, 1999, Garda O'Dowd was interviewed by Superintendent John F O'Connor and Inspector H Coll. He said that he had been advised by his solicitor, Mr. Paudge Dorrian, to make no statement to the Gardaí. When reminded that he was a member of An Garda Síochána he said: "maybe I'm wrong but that is the legal advice I go on and I am making no statement". Superintendent John F O'Connor rang Mr. Dorrian and told him that Garda O'Dowd was a member of An Garda Síochána and obliged to assist in the investigation, which at this point was focusing on the calls to the Peoples' home. Mr. Dorrian said: "he is making no statement and that is it". Inspector Coll then asked Garda O'Dowd to make a further written statement concerning his written statement alleging that his notebook was stolen from the conference room in Letterkenny Garda Station. Garda O'Dowd said that he had supplied a statement on the matter and that they should "start with the people mentioned in the statement". He then speculated as to who might have stolen, as he was claiming, the notebook. At 3.15 p.m. on the 10th of June, 1999, Inspector Hugh Coll informed Garda John O'Dowd that he was being suspended in accordance with the Garda Disciplinary Regulations by Chief Superintendent Denis FitzPatrick for a period of one day. He was then arrested at 3.20 p.m. in respect of the extortion phone call on the 9th of November, 1996 to Michael Peoples, under section 17 of the Criminal Justice Public Order Act. On the same day Noel McBride was arrested and William Doherty was also arrested. The questioning focused on the phone calls to the home of Michael and Charlotte Peoples.

William Doherty said, in the course of interviews, that he was only in Garda John O'Dowd's house on one occasion and that was with Noel McBride who went there to make a statement to Inspector John McGinley. He claimed that Noel McBride had asked him to be there with him. He said he did not know how the notebook of Garda John O'Dowd had ever got into his bedroom. He said that he never telephoned Garda John O'Dowd at his home or place of work. In the next interview he said that he had met Garda John O'Dowd four or five years previously when arrested under section 30. He denied having any dealings with Garda John O'Dowd except on the one occasion when he was in his house. After being confronted with Garda John O'Dowd while both were in custody, he was once asked for his version of events. In September of 1999, William Doherty approached Detective Garda Richard Caplice who was on duty at the Diamond in Raphoe with Detective Garda Sean Heraghty. He indicated that he wished to speak to Detective Garda Caplice alone and claimed he had information in his possession which could be of assistance to the Carty investigation team. On the 3rd of March, 2000, Detective Garda Caplice and Sergeant Bell met William Doherty at Carrickmacross Garda Station. He gave a history of being stopped for no insurance by Garda O'Dowd and as a result of that became his informant in relation to minor crime. He claimed that he spent the night of Mr. Barron's death completely away from the scene of the incident. The next day he claimed to have met Gerard Mulrine in McGranaghan's shop. Mr. Mulrine, he claimed, told him that Richard Barron was murdered and that he had seen somebody following him up the road. In consequence of this he contacted Garda John O'Dowd. When interviewed by the Carty investigation team on the 19th of April, 2000, Mr. Mulrine says that on Sunday, the 13th of October, 1996 he was in the Parting Glass, playing cards or watching a football match on the television. He said that he was at home well before 11.00 o'clock. He had no recollection of meeting William Doherty inside or outside McGranaghan's shop on the next day, when he heard about Mr. Barron's death, and did not make any comment to him to the effect that anyone was involved in the death of Richard Barron. On the 10th of June, 1999 William Doherty continued by claiming that he was approached by Garda John O'Dowd who told him that he had the murder "wrapped up". He then accused Garda O'Dowd of having asked him would he be able to say that he saw Frank McBrearty junior and Mark McConnell coming down the car park at the back of Frankie's from the murder scene. He claims to have told Garda John O'Dowd that he could not, because his family knew he was at home that night, but that he might know of somebody who would do it. The original statement of Noel McBride made on the 29th of November, 1996 was read over to him. He claimed that this was the story told to him by Garda O'Dowd which he relayed to Noel McBride, going over it three times until he had it "inch perfect". He claimed that he had met Detective Sergeant White who had told him that Noel McBride would have to point out the bouncer in order to make the story credible. He claimed that Sergeant White was then in the party which travelled to the car park of Frankie's Nightclub on the 4th of December, 1996. He claimed that Garda O'Dowd had given him Frank McBrearty's private telephone number so as to allow him to start abusing him. William Doherty claimed that defamatory leaflets were printed and given to him by Sergeant White to distribute. These were the leaflets about "the murdering McBreartys". He claims to have distributed these.

In relation to the phone calls to the Peoples he claims that Noel McBride made some phone calls that he did not know about on the night in question from his, Doherty's, phone. He claims they went to John O'Dowd's home and William Doherty stood by while Noel McBride made a phone call and that O'Dowd got into a panic. He claimed that Garda O'Dowd then phoned Garda Philip Collins.

In a second statement on the 3rd of March, 2000, William Doherty claimed that he had supplied Garda John O'Dowd and Superintendent Kevin Lennon with information on subversive activity. He claims to have gone with Garda O'Dowd and Superintendent Lennon in a white Transit van to check out a location at Ardagh, St. Johnston where they wanted to plant explosives, on Mr. Jim Gallagher's land. They agreed a location, but had no time to do it because a huge search operation was commenced. He claimed to have got money from Sergeant White, in the form of a stolen bank draft, for the purchase of a car. Mr. Kieran Boyle, from whom he purchased the car, was indeed paid £4,000 by William Doherty with a bank draft, but was later contacted by the bank and informed that the draft was a counterfeit. Mr. Boylan then recovered the car in a garage owned by Mr. James Connolly in Sion Mills where it had been left in for repairs by William Doherty. William Doherty also claimed that he was involved in the larceny of £25,000 worth of beef from Artigarvin, Strabane with Sergeant White. He claimed that Detective Sergeant White was involved in the purchase of stolen cars. He claimed that Sergeant White had taken his car 96 W 1010 and despite the fact that there was hire purchase money due on it he sold it. The car is missing and there is no evidence to show that Detective Sergeant John White was involved in this sale. He claims that another car was purchased by Sergeant White, which was stolen from Belfast. He claims that Sergeant White wanted him to go and pick up two cheques for Emmet Coyle, who in fact had sold sheep for £39,000 to find that there was no money lodged in the name of the person who had bought them. He also repeated the story about Gerard Mulrine. The Carty report comments:

> **On dates between 20/10/1999 and 25/10/1999 Detective Garda Richard Caplice and Sergeant Gabriel Bell made contact with William Doherty. They noted all the contacts and all the pre-arranged meeting times with him. As can be seen from their notes, William Doherty led them on a merry dance over this period. It is clear that William Doherty is a compulsive liar and totally unreliable as a witness.**

On the 21st of October, 1999, William Doherty outlined how he first got to know John O'Dowd again. He claimed that he was also collecting packets of money and handing them over to Sergeant John White. He claimed that he had broken the passenger window in Garda John O'Dowd's car and taken his notebook. This possibility was examined by Detective Garda John Higgins who examined the car and noted that all the window glass was etched with the original number of the car when Garda O'Dowd had purchased it in the United Kingdom. The window could therefore not have been broken and replaced. William Doherty claimed that he moved explosives for Kevin Lennon, John White and John O'Dowd, that he bought cars for these members of An Garda Síochána and that these were stolen across the border. The man he names as being the vendor of

the cars, Johnnie Donegan has denied any involvement with Doherty. He also claimed to have purchased barrels for Garda O'Dowd, Superintendent Lennon and Sergeant White. He claims that Garda John O'Dowd and Sergeant White gave over uniforms to Gerard "the Gaffer" Foley in return for guns. Mr. Foley described William Doherty as "a psycho". On the 11th of April, 2000, William Doherty was re-arrested for possession of firearms. During the course of interviews he denied selling or supplying any firearms to a man in St. Johnston, County Donegal. He admitted knowing this man and selling him clothes. He then described an incident where he was in a white Transit van with Superintendent Lennon and Garda O'Dowd out near a farm belonging to Mr. Jim "Lofty" Gallagher. He claimed that they were there to find a spot upon which to plant stuff, but on the way back discovered that a search was being conducted in this area. On the return journey he claims to have been stopped by Sergeant John Conaty. Sergeant Conaty was interviewed by the Carty investigation team and stated that he never stopped nor spoke to Supt. Lennon, Garda O'Dowd or William Doherty in any car or van. In relation Garda John O'Dowd's notebook being in his bedroom he changed the story about breaking a window of Garda O'Dowd's car and simply said that he was in the car one night and just took it. He also named two people who he claimed were responsible for painting slogans on the roads in Raphoe in relation to the supposed murder of Mr. Barron. He claimed that there was an altercation on the 28th of June, 1997 with Frank McBrearty junior. When interviewed by the Gardaí he claimed that he was involved in criminal activities in Scotland. When summoned to court on the 28th of June, 1997 he had given evidence on oath that he was in Scotland, which had been false. He claimed that Sergeant John White told him to stick to his story in court, but had later warned him that if he ever spoke to the investigation team again he would be prosecuted for perjury. During a subsequent interview he admitted cashing forged cheques. He blamed Detective Sergeant John White and Garda John O'Dowd for what he claimed were all of his troubles. The Carty investigation team comment:

> **A failure to properly evaluate William Doherty as a source of information by Kevin Lennon and John O'Dowd has caused untold damage to the reputation of An Garda Síochána in the Donegal Division.**

At one point, William Doherty was brought in to where Garda John O'Dowd was being held while both were in custody. The allegations made by Noel McBride that Garda O'Dowd concocted all the information was put to him and he, in effect, denied this as ludicrous by laughing. When William Doherty was brought into the room William Doherty said: "I am no informer. I don't know why he said that about me. I'd like him to tell me why he said I was an informer - I'm not. Why am I here - why is all this happening". Garda O'Dowd exercised his right to silence in relation to this confrontation. He indicated the following early on:

> **I have been advised not to answer questions or make a statement by my solicitor. I have co-operated...this is not right. I have done nothing wrong and that's that.**

He further said that he had given all the information he had in his possession in good faith to the Chief Superintendent first and then to Inspector McGinley. He said his arrest was a disgrace. Noel McBride, in his interview, again blamed William Doherty for what he described as "the whole mess". He denied having anything to do with making any extortion phone calls to the home of Michael and Charlotte Peoples. He denied ever giving information to the Gardaí about crime and stated that Garda O'Dowd did not know that he was telling lies. He again described the circumstances of the identification of Marty McCallion, but claimed this time that "John O'Dowd should have seen or heard me pointing out the wrong man". He claims to have done all this for William Doherty as he had promised him money. In a later interview with Detective Garda Hugh Maloney and Detective Garda Thomas Flynn he said that he never stole an aerial from the technical school in Raphoe and that his admission, in that regard, was lies. He said that when questioned by Gardaí O'Dowd and Collins in relation to the death of Richard Barron he got tired of the questioning and wanted to go home and in consequence admitted being in Raphoe, guessing the names of a few people who would most likely be around on a Sunday night. He then added the detail about seeing Frank McBrearty, Jnr. and Mark McConnell walking down the car park. Some days after his arrest, he alleged, William Doherty asked him whether he wished to make some money and told him that all he had to do was to make a statement to Garda O'Dowd about Frank McBrearty, Snr. offering him money to keep his mouth shut about what he had seen in the car park. He claimed that he was schooled for an hour by Doherty in this prior to making any statement to Garda John O'Dowd.

It is probably sensible now to deal with later interviews with Noel McBride. On the 21st of September, 1999 he confirmed to Detective Inspector John O'Mahoney and Sergeant Fergus Traynor that the interviews which he had given in Manorhamilton Garda Station, on his arrest on the 10th of June, 1999, were the truth. Three days later on the 24th of September, 1999 he was again interviewed by the same Gardaí in relation to a newspaper article which he denied having any involvement with. He was then interviewed by Sergeant Fergus Traynor and Detective Sergeant George Kyne with a view to clarifying when Noel McBride had met Marty McCallion previous to his identification of him. He said that one night he was in McBrearty's pub and spoke with Michael McConnell and told him the truth about his involvement in relation to the investigation of the death of Richard Barron and the statements he had made to Garda John O'Dowd and his association with William Doherty. Mr. McBride claimed that this was then brought to the attention of Mr. McBrearty, Snr. which resulted in Noel McBride being summoned by Frank McBrearty outside where they sat into his car with Marty McCallion and John Mitchell. During this meeting Noel McBride claims that he told Marty McCallion that he had made a false identification of him at the behest of William Doherty and that Frank McBrearty, Snr. made notes of this.

On the 1st of December, 1999, Detective Garda Hugh Maloney and Detective Garda Thomas Flynn met with Noel McBride at his home in Figart. He again outlined the chain of events which he claims led to a meeting with Frank McBrearty, Snr. and Marty McCallion. He claimed that it was John Mitchell who was making the notes. He also said that he in fact did steal the aerial from the

roof of the technical school, but that the aerial recovered on the night of his arrest, the 29th of November, 1996, was not the correct aerial because the aerial from the school had been already disposed of. On the 1st of March, 2000, Sergeant Fergus Traynor and Detective Garda Edward Whelan met with Noel McBride in order to discuss the statement made to the Gardaí on the 29th of November, 1996. At this meeting he claimed: "I told the Guards I was not in Raphoe that night, but they said I was there, I was tired and it was late at night, I went along with the story". Arrangements were made to meet him the next day, but these fell through because he was required to return to work. He was again interviewed on the 7th and 8th of March, 2000 by Detective Sergeant George Kyne and Sergeant Fergus Traynor. He said that it was William Doherty who procured him to make false statements through an offer of money. He said that he had known William Doherty and that they had committed crimes together over the years. He further alleged that William Doherty had also claimed that he could get Noel McBride off charges in relation to burning a trailer for which he was then before the courts. He was again interviewed on the 15th of March, 2000 by Detective Sergeant Kyne and Sergeant Traynor. He affirmed that his initial statements pre-September, 1997, which we have called 1, 2, 3, 4, 5 and 6 were false and claimed they were made at the behest of William Doherty. Statements 7, 8 and 9 were read to him and he claimed that these were correct. A number of previous interviews were read over to him. He again reiterated that William Doherty had promised him money and that he would get him off the charge of malicious damage in relation to burning trailers.

Garda Philip Collins was again contacted on the 22nd of June, 2000 with a view to going over the circumstances of the statement of the 29th of November, 1996 made by Noel McBride. He said that he had been told by Garda John O'Dowd that he had information that Noel McBride was going up the car park on the night in question and had met Frank McBrearty, Jnr. and Mark McConnell. He said the aerial theft was a reason to get him into the Station in order to talk to him about this.

On the 21st of March, 2000 Sergeant John White was arrested in relation to the silver bullet incident, that is in relation to allegedly procuring Bernard Conlon to make a false statement in relation to same. While the focus of the questioning on this occasion was in relation to Bernard Conlon, it is implicit in Sergeant White's statements that he would not condone any illegality such as those described by William Doherty. All of those allegations by William Doherty must be seen to be strenuously denied. You must also have regard, Sir, to the numerous self contradictions of William Doherty. On the 24th of March, 2000, Derek "Darcy" Connolly was arrested. We have already told you, Sir, that he claimed to have acted ‘in the public spirit’ and alone. On the 11th of April, 2000 William Doherty was re-arrested in respect of a firearms offence at Castledooey, St. Johnston, County Donegal. He claimed that the notebook in his house, Garda O’Dowd’s notebook, was stolen by him one night from O'Dowd's car.

On the 26th of April, 2000, Dr. Barry and Dr. Harbison met and discussed the case with the Gardaí. These included Detective Chief Superintendent McNally, Detective Sergeant McGarty, Detective Inspector Foley and Detective Inspector O'Loughlin. They examined a number of possible murder weapons. The

billhook, referable to the Paul "Gazza" Gallagher allegations was regarded as being inconsistent with the injury. The carjack discovered by William McBride on the 7th of April, 1998 near the scene was regarded as capable of causing similar injuries to those on the deceased, but it was dismissed as being "unlikely". On the 11th of May, 2000, Garda Patrick Mulligan submitted his car to the Technical Bureau. There was a damaged wing and some hair was recovered. That did not match the hair of Mr. Barron. On the 12th of May, 2000, Detective Inspector O'Loughlin and Detective Sergeant Henry met Garda John O'Dowd and handed him a list of twenty seven questions which they wished him to answer. Those questions have never been answered. On the 15th of May, 2000, Garda John O'Dowd handed over his car for technical examination. This car also had a damaged bumper and there was some hair on it. A paint sample was taken. The hair did not match the hair sample from the deceased. On the same day Garda O'Dowd was shown the notebook taken from William Doherty's home and agreed that it was his. On the 17th of May, 2000, Detective Inspector O'Loughlin rang Garda John O'Dowd. He asked him where did he get the initial information in relation to the involvement of Frank McBrearty, Jnr. in the death of Richard Barron. Garda O'Dowd said that he got the information first from William Doherty and rang the Chief Superintendent in Letterkenny on Tuesday, the 15th of October, 1996. On the 18th of May, 2000, Detective Inspector O'Loughlin and Detective Sergeant Gerry Healy met Garda John O'Dowd in a car park in Letterkenny where he handed them the original statement which he had taken from Derek "Darcy" Connolly in 1997. They pressed him for a statement of evidence which he said he would have "tonight or tomorrow". He said he had accepted what William Doherty had told him in good faith, that he did not think that Doherty would let him down in this fashion, but that he now accepted that Doherty had told him lies.

On the 19th of May, 2000, Garda Patrick Mulligan reported unfit for duty. Mr. Podge Dorrian, solicitor for Gardaí O'Dowd and Mulligan, then made a representation to the Carty investigation team that they were "intimidating" his clients. On the 23rd of May, 2000, Garda John O'Dowd spoke to Detective Inspector O'Loughlin on the telephone. He referred the letter from Mr. Dorrian and said that he would have to follow, what he put was, his advice. On the following day at 6.10 p.m. Garda O'Dowd telephoned Detective Inspector O'Louglin. The Inspector told him he had a number of questions for him. Garda O'Dowd wanted to know was he under investigation. He then said that he would meet him only with his solicitor. On the 25th of May, 2000, Garda Mulligan was called on at home by the Carty investigation team. He was in an upset state so no statement was taken. On the 7th of June, 2000, Detective Superintendent McGarty recommended "disciplinary action" in respect of Garda John O'Dowd.

On the 13th of June, 2001, Assistant Commissioner Carty and Detective Inspector Foley met with Dr. Harbison who said that the only way to resolve any of the matters in relation to the death of Mr. Barron was to examine the skull fractures. On the 3rd of July, 2001 an order to exhume the deceased was signed by the Minister for Justice. On the 6th of July, 2001 the deceased was exhumed and a report was written by Dr. Harbison. The deceased was largely decomposed. The skull was removed and, after chemical cleaning, was reconstructed. Dr. Harbison noted two groups of fractures involving the left side

and left skull base and those involving the right frontal area, that is the right side of the forehead and the right side of the orbit and the right side of the upper jaw. He comments:

> **By far the greatest area of bone damage was on the left side, where there was severe fragmentation of the bone, extending back from the left temple to the mid-line at the occiput...and downwards to the foramen magnum...over twenty bone fragments could be counted. There can be no doubt that this left side fragmentation was the result of very considerable force, though the absence of frictional lines on the outer surface, would suggest that this was due to one massive impact, such as the left side of the back of the head striking the ground, though vehicular impact at that point cannot be totally excluded. This left sided fracture with its severe fragmentation must have been the result of a severe inward depression of the left side of the head and adjacent base of the skull. Nowhere on these fragments could I find any external friction injury. Quite different is the area on the right side of the forehead or right frontal impact, which corresponded with a large laceration or wound on the right side of the forehead. Here the main feature is a major crack fracture, with neither fragmentation of bone nor depression of the skull...this fracture can be traced from the upper margin of the uppermost bone fragment on the left side of the head, thence diagonally forward and to the right, across the front of the vault of the skull to a point almost two inches above the centre of the right eyebrow. From there the fracture runs downwards into the right orbit, down along its medial...wall, into the right nasal bone, thence inward into the right side of the heard pallet where it terminated. A fine crack extended vertically upwards and backwards into the vault of the skull, for one and three quarter inches where it petered out. The most striking feature of this right-sided forehead fracture and its difference from the "fragmentation" [of] the fracture on the left side, is the presence of some nine or ten gently curving parallel scuff marks on the bone surface. These are one and three quarter inches long and curve from below right, upwards and towards the left. They begin one and a quarter inches above the brow and curve upwards and towards the mid-line, to a point two and a half inches above the bridge of the nose. The principle fracture extends along virtually the same curving pathway, backwards and to the left as the scuff marks, but goes much further, so that it reaches the "crazy paving" appearance of the left-sided "fragmentation" fracture. I have not found any scuff marks on this fragmented area, implying that its impact was not either a glancing one nor perhaps sustained at as fast a pace as on the forehead. The point of impact of the force causing this fracture was one inch above the most prominent part of the right orbital prominence or brow. I state this because the scuff marks are deepest there. I have searched the bone fragments from the shattered left side of the skull and cannot find any scuff marks on any of the bone fragments. These bone marks could not have been**

seen easily at the time of the original injury because of the overlying soft tissue.

1. **The cause of the Late Mr. Barron's death, remains as before, i.e. laceration of his brain and fractures of his skull.**

2. **I am of the opinion that the primary impact to Mr. Barron's skull was from a moving object, against Mr. Barron's forehead on its right side, most likely a motor vehicle. Movement of the inflicting force relative to the deceased is indicated by the nature of the bone injury, namely abrasion or scuffing on the surface of the bone, at the sight of impact of the forehead.**

3. **The movement was from below, upwards, backwards and to the deceased's left. The upwards component is indicated by the gradual decrease in depth of the grooves upwards, because the scrapping force of the bone was greatest at the deeper, lower ends of the scuff marks. These scuff marks took the form of a series of some ten gently curving, parallel grooves.**

4. **The bone fragments beneath the more extensive head injuries at the back of Mr. Barron's head, on its left side does not show any scuff marks. Therefore these bone injuries lack the high velocity grazing component seen on the forehead, even though they were more extensive. The skull is also somewhat thinner and therefore weaker in the temporo-parietal area.**

5. **Had Mr. Barron's impact with the ground been of his face, I would have expected widespread abrasions there. Instead the skin laceration on the right side of his forehead was accompanied by a minimum of abrasion and there was no other facial injury.**

In April, 2002, Dr. Marie T. Cassidy, the Deputy State Pathologist, also examined the relevant materials and the partial remains, which continue to be held above ground, in relation to the examination of the deceased. Her interpretation accords with that of Dr. Harbison. She indicates that in her view there are two sites of impact to the head. In her report she says:

> **The forehead laceration and grooves on the skull indicate movement of the head over a rough surface, such as the road. The linear fracture would have been caused at the moment of impact and the grooving could have been caused as the head continued across the road surface. It is much less likely that the forehead injury could be caused by a blunt object, which would have to have an irregular surface, striking the head, as there would be expected to be some more extensive fracturing of the skull in relation to this**

type of impact. This type of injury is also described in persons sitting in the front seat of a vehicle which is involved in a collision, their heads contacting with the jagged or irregular surround of the broken windscreen.

Whereas Dr. Cassidy says that the accused could have been hit a glancing blow or a side swipe by something projecting from the vehicle, and be then propelled to the ground, causing the frontal injury, we again feel we need to draw to your attention, Sir, to the descriptions of Richard Barron walking home and having difficulty, because of drink, in holding himself up. Because of the extensive difficulties that have been occasioned by the burial of Mr. Barron's body and its exhumation only at an advanced stage of decomposition, we, Sir, have requested Dr. Harbison to arrange another examination of the relevant papers, photographs and partial remains. A report is expected from Professor Helen Whitwell, a forensic pathologist in the neighbouring Kingdom. Ongoing investigations are being conducted by the Gardaí in relation to the death of Mr. Barron as a result of an impact with a motor vehicle.

Sir, it seems to us that the major questions which arise in relation to the investigation into the death of Richard Barron are very simple. They are:

1. Was the investigation carried out competently? At any level, in relation to the scene, in relation to the failure to call Dr. Harbison from Dublin, in relation to the checking out of the stories told by informers, were these issues followed through on and disposed of competently?

2. What is the point at which a supposition, or a bare suspicion, can be translated legitimately into a reasonable suspicion which justifies the exercise of Garda powers? What was acted on here?

3. How does it emerge that a full scale murder hunt can be launched in the absence of forensic pathological evidence of even the fact that a murder had been committed?

4. How can such a murder investigation be directed at particular people merely on the basis of the word of an anonymous informer, of untested reliability, and relayed by a Garda to a Chief Superintendent?

5. How can anyone who purports to be an informer in this case have had anything to do with receiving knowledge in relation to the death of Richard Barron when they were nowhere near the scene of his death on the night in question?

6. How does the statement of John Patton come to be taken in a form with which he later expressed dissatisfaction, and then apparent satisfaction?

7. Where did the detail in the informers' statements come from and, if they were set up, who set them up and why?

8. How could a murder investigation be directed on the basis of a person, together with his first cousin, perhaps looking annoyed, being in the vicinity of a family business, at least three hundred metres from what was supposed to be the crime scene?

EXTORTION CALLS

We now move on to consider paragraph (a) of the terms of reference which logically would seem to us to fit into the narrative at this point.

Paragraph (a) requires you, Sir, to enquire urgently into:

> **The making of extortion and hoax telephone calls to the home of Michael and Charlotte Peoples on the 9th of November, 1996 and the subsequent Garda investigation into that complaint.**

In your explanation of the terms of reference delivered on the 15th of July, 2002, Sir, this is what you said:

> **Michael and Charlotte Peoples complain that they received a number of anonymous extortion or hoax telephone calls to their home on the 9th November, 1996. In these calls, they complain, that the caller demanded a money payment and made certain threats if such payment were not to be forthcoming. The Tribunal in the course of its inquiry will**
>
> **(i) Enquire into and in so far as is possible, establish the basic facts relating to these alleged phone calls;**
> **(ii) Attempt to establish the origin of such telephone calls;**
> **(iii) Enquire into the identity of the person or persons making the alleged calls and to the telephone lines used in that regard;**
> **(iv) Attempt to establish the motive for the making of such calls;**
> **(v) Enquire into the manner in which the complaint made by Mr. and Mrs. Peoples about these calls was dealt with by An Garda Síochána;**
> **(vi) Enquire into an application made on the 18th December, 1996 under Section 13(2)(2a), and 2(b) of the Interception of Postal Packets and Telecommunications (Regulations) Act, 1993, seeking information as to such calls and the handling of same within An Garda Síochána and in Eircom Plc (or Telecom Eireann Plc as it then was);**
> **(vii) Enquire into the part which may have been played by any informer in the making, or arranging for the making, of these telephone calls;**
> **(viii) Enquire into the connection, which there may be between the making of these calls and any other matter referred to in the Terms of Reference.**

Michael and Charlotte Peoples are a married couple who resided at the relevant time in Raphoe. We understand that Charlotte Peoples is a first cousin of Róisín McConnell, and that their respective families were, at all relevant times, on friendly terms. Róisín McConnell is, of course, married to Mark McConnell. The two couples are friendly with each other and we have already outlined what they

have had to say about their interaction on the night of the death of the late Richard Barron. In addition to that, Mark and Róisín McConnell say that they called to the house of the Peoples on the morning of the 14th of October, 1996 and had breakfast there. This matter concerns the telephone calls which were made to their home in Raphoe on the 9th of November, 1996. On the 2nd of October, 1997 Charlotte Peoples made a statement to Detective Sergeant John Henry about the matter and it is worth quoting this:

> **On the 9th of November, 1996 I was at home here with Michael when the phone rang. Michael was upstairs. Shortly after 8.00 p.m. the phone rang, I answered it. It was a male caller and he said is Michael there, I said ye hold on a minute I'll get him for you. I called Michael down from upstairs. I handed the phone to Michael and I sat down to watch the TV. I could hear Michael saying who is this, who is this. I then heard Michael saying to the person on the phone "you seen me killing Richie Barrons". I got up and went to the phone. I think Michael hung up the phone saying something back to the caller. This was the second time the phone had rang, the first time the phone had rung, the caller who was a male asked was this Peoples and then hung up. During the second call I took the phone from Michael. I asked the caller "why are you doing this to us" and said "I am going to call the Guards", he said "call in all the Guards you want". At this stage Michael took the phone off me again. I was very upset, I was crying. Michael said to the caller you are upsetting my wife, stop this carry on. I wasn't on the phone again. After the second telephone call my husband Michael called the Garda Station, he spoke to Garda Pat Flynn. I spoke to Garda Pat Flynn also on the phone, he said he would call but not to worry. A few minutes later the phone rang, it was the same caller. I knew from Michael that the caller had demanded money off him. I had the door open waiting on the front street for the Gardaí to come. The Gardaí called, it was Pat Flynn, he came between the third and fourth call. He told us to play along. We asked him could he not go down and wait or let a Guard go down and wait. He said it would be a waste of time as times before it didn't work, nobody showed up. He was more or less saying it was a waste of time. After Pat Flynn left there was another call again from the same caller alleging that Michael was involved in the murder of Richie Barron. This was setting up a place to hand over the money. The place was the White Cross. I was very upset. It was now about 8.30 p.m. There was no other call from this caller until 10.05 p.m. This time my husband told the caller that he could not raise the £1,000, but could get £500, they agreed to meet at the White Cross pub. A short time later Michael left, I'd say it was about 10.45 p.m. to 10.50 p.m. to go to the White Cross. He was on his own. I rang Letterkenny Garda Station and told them that my husband had gone to the White Cross. I had been told by Garda Flynn to ring if there was anything. About a half hour later Michael returned and told me that nobody had shown up. This was the last call I received from that caller. Garda Collins came down the following day and took a statement from my husband.**

When arrested by the Gardaí on the 4th of December, 1996 Charlotte Peoples also gave an account of the telephone call from which a little bit of additional detail emerges. She indicated that when she answered the phone the person asked to speak to her husband Michael, but that she did not recognise his voice. Immediately when the allegation was made that Michael Peoples had killed Richie Barron, which she learned because her husband exclaimed, in surprise, something to the effect of "I killed Richie Barrons", her husband immediately asked the caller to call the Gardaí and to tell them all that he knew. The caller apparently said that he could not, giving the excuse that he was in a robbery that night and that he had left his prints there and that they were an addition all over, which they understood to mean that his fingerprints were well known to the Gardaí. During the second of the conversations Michael Peoples told the caller "you're only a gobshite". It would be hard to dispute this assessment. The caller wanted money. During the last phone call, Charlotte Peoples records that the caller gave an apparent description of himself. We understand that she was listening beside her husband to the phone call going on and it is again worth quoting that account:

> **He was looking for £2,000. At first I think the first call was for £6,000. The second call was looking for £2,000...[Michael said to him] I could not gather up that kind of money, I will give you £500. The caller said I am not a hard man to bargain with. In the first phone call, Michael asked this man how he would know him. This man said he would be wearing a black leather jacket and a white Levis T-shirt and brown cords. Michael said to him "have you a phone number, I will ring you back". He gave a phone number. My mother later rang that number, it was McConnells number at the White Cross. My mother did not say why she was ringing. She just said hello is that Duffy's and somebody answered McConnells...he made arrangements to meet Michael at the White Cross pub at 11.00 p.m. on that night. He told Michael to walk in and that he would walk out after him or something like that...I rang Raffoe Garda Station and was put through to Letterkenny Garda Station...we wanted to know why he picked on us. That is why we called the Guards in. We wanted to keep on the right side of the law. Whoever done this to us even if he is a next door neighbour, I want to see him taken up for this...[my husband] wanted to know who he was. We were playing along with him as advised by the Gardaí. I rang Letterkenny Garda Station to tell the Gardaí that my husband had gone to the White Cross Bar.**

It would appear that the number which the caller gave to the Peoples was given mischievously as will later emerge when we consider the analysis of the telephone records obtained, after a considerable delay, from Telecom Éireann. On the day after the phone calls occurred, Garda Philip Collins called to the home of Michael and Charlotte Peoples and took a statement from Michael Peoples. His statement does not materially differ from that later given by his wife. Charlotte Peoples on the 18th of October, 1996, and Michael Peoples on the 19th of October, 1996, had previously given statements as to what they

knew about the Sunday night/Monday morning, the 13th and 14th of October, 1996, when Richie Barron had been killed. This is what Michael Peoples told Garda Collins about the phone calls:

> **At approximately 8.05 p.m. on Saturday, the 9th of November, 1996 my wife Charlotte called me downstairs to the phone, that I was wanted on the phone. I took the phone and a male voice asked me are you Michael Peoples. I said that's right. He said "remember the carry on that you were at on Saturday night". I said "what carry on". He said "you know that carry on". I said I don't know what you're talking about. He said "you killed Richie Barron, I seen ya" - "I seen you and your wife outside the Parting Glass at twenty past one". He said "you drive a bread van and you're the only one in Raphoe who carries a baton in their van". I thought it was a wind-up. He said "I seen ya, ya go running down the field, I seen ya hitting Richie Barron with the baton and running down the field". I said you're only talking shite. He said "you're going to Mountjoy, you'd better get your hole ready". He said I want money, I'm going to the Guards. I told him to fuck off and hung up the phone. At one stage during the conversation Charlotte got the phone and asked the caller why he was doing this to us. About a half an hour later I answered the phone again. It was the same man on the phone. He asked me "are you going to take me serious". I said "why don't you go to the Guards". He said I was in a robbery that night and I left my fingerprints all over the place, that's why I can't go the Guards. We had a conversation for about three or four minutes and he demanded £2,000 and to take me serious. I offered him £1,000. He said to meet him at the pub at the Whitecross with the money. He said he would be wearing a black leather jacket, white Levis T-shirt and brown corduroys. I said I would meet him. He said to meet him at 11.00 o'clock. At about 10.25 p.m. that same evening the phone rang again. In the meantime I got a small tape-recorder from a friend in Letterkenny. It was the same man again, I taped this conversation. I think he said have you got the money or are we going to meet. I said "aye no problem". He asked me have you got the money. I said I'll give you £500, I cannot raise more than that. He said "I am not a hard man to bargain with you know". I said £500 cash is all I have and agreed to meet him at the 11.00 o'clock at the Whitecross. I said "there'll be no trouble", I'm not sure what he asked me. He said to be on my own, I said I'm coming on my own and right then and hung up. This conversation lasted less than a minute. Just before 11 o'clock myself and my father-in-law left the house in Charlotte's car and went to the Whitecross pub. I went into the pub and stayed a minute or so, but seen nobody fitting the description of the man. I went outside and waited a few minutes, three or four boys came out of the pub while I was there, but I didn't know any of them...we came back home then. We had three calls in all that evening. My wife Charlotte answered the phone at 8.00 p.m., but nobody answered when she lifted the phone. It was the same person on the phone the three times and he had a local accent. We**

> **have never had phone calls like this before. Our phone number is (074) 45901. Our phone number is in the phone book. We have had this number for the past six or seven months. I am a subscriber of Telecom Eireann and I have no objection to my phone being monitored by them to trace the calls if necessary.**

As Michael Peoples indicated, the last telephone call was tape-recorded. Unfortunately, only a portion of it came out and the recording appears to have begun in the middle of the phone call. It is fair to say that it is precisely in conformity with the account of Michael Peoples and adds nothing to that account. Logically, one should now proceed to the Garda response. When questioned by the Gardaí following her arrest on the 4th December, 1996 Charlotte Peoples indicated that Garda Pat Flynn had come out to them and told them to "keep cool if we got another call and play him along". She is also supposed to have told the Gardaí that Garda Pat Flynn had told her that "four others got calls as well". Here is Detective Garda Patrick Flynn's account of the matter which he gave on the 19th of September, 1997:

> **I remember Saturday, November 9th, 1996. At 8.20 p.m. on that date I was in Raphoe Garda Station on duty. I was alone there at that time. I was involved there in an investigation into the suspicious death of Richard Barron. I answered a phone call made to the station at that time. It was from a Michael Peoples, St. Eunan's Terrace, Raphoe. He stated that he had received two telephone calls to his home accusing him of murdering Richard Barron and telling him to bring money to the "White Cross" public house. Both calls had been received that day. He stated that his wife was very upset and afraid. I immediately left the station and went to Peoples' home at St. Eunan's Terrace. There I met Michael Peoples and his wife Charlotte. Also there were Charlotte's parents, Charles and Dolly Eaton. I spent some time there calming down Charlotte Peoples and assuring her that this type of crank caller was not unusual. Charlotte Peoples was in a visibly distressed state. Michael Peoples was in a very angry and somewhat aggressive mood about these calls and I spent some time calming him down. I explained that with his permission he could have his telephone line monitored in an effort to trace this caller. Mr. Peoples appeared to be satisfied with this course of action and calmed down considerably. I suggested that a member of the Gardaí would call tomorrow to take statements when everybody would be less agitated and more calm. I did not think it a suitable time there and then to take statements. Charlotte then stated she would like Garda Phil Collins to deal with the case. On returning to the station I relayed the details of the incident to Garda Collins and he undertook to call to the Peoples' home the next morning.**

It is as well to turn now to the phone records available in relation to this matter. Michael and Charlotte Peoples live, as we know, at St. Eunan's Terrace in Raphoe. Their phone number is 074 45901. Patrick Doherty lives at Doorable, Manorcunningham in County Donegal, together with his family which includes

William Doherty, and is a subscriber on the line 074 57310. Garda John O'Dowd lives at Oaklands in Letterkenny and is a subscriber on the line 074 25858. This is what the phone records disclose:

On the 9th of November, 1996 the Doherty phone rang the Peoples' phone at the following times and for the following durations:

At 20.08.07 for 4 seconds.
At 20.09.48 for 2 minutes, 59 seconds.
At 20.14.42 for 1 minute, 50 seconds.
At 20.23.24 for 3 minutes, 36 seconds.

In addition to that the O'Dowd phone line was in contact with the Peoples' phone line on the relevant date:

At 22.06.48 for 35 seconds.

In addition to that it may be worth noting that the Doherty phone line and the O'Dowd phone line were in contact with each other at various other times around this period.

On the previous day, November 8th, 1996:

At 17.58.55 the Doherty phone line contacted the O'Dowd phone line for 2 minutes, 50 seconds.

On the following day, the 10th of November, 1996 the O'Dowd phone line contacted the Doherty phone line:

At 00.15.32 for 7 seconds.

And the Doherty phone line contacted the O'Dowd phone line:

At 21.54.38 for 10 minutes, 3 seconds.

The phone records in relation to the Doherty line indicate that the four telephone calls after 8.00 o'clock in the evening at 20.08.07, at 20.09.48, at 20.14.42 and at 20.23.24 were consecutive to each other.

Sir, I will refer in due course to statements made by persons claiming to identify the voice on the last tape recordings. This was done in the context of a broader Garda investigation when Garda Philip Collins had, on the 10th of November, 1996, taken possession of the tape from Michael Peoples. The impetus for this broader investigation centred around events concerned with the informants and the Barron case. The “Crimeline” programme of the 11th of November, 1996 made no mention of the extortion/hoax calls to the home of Michael and Charlotte Peoples. Two days later, on the 13th of November, 1996, a conference was held in Letterkenny Garda Station. The contents of the notes appear to indicate that this was one of a series of conferences held in the context of the investigation into the death of the Late Mr. Barron. Some of these

references are difficult to explain. The 9th of November was a Saturday. As we have heard, the maximum amount that either Michael or Charlotte Peoples can remember being demanded of him was £6,000. Phone calls came after 8.00 o'clock and after 10.00 o'clock in the evening. The notes appear to be a mixture of references to these phone calls and to other events. For example "Wednesday night...12.30 phone calls - McBrearty...came down car park...72 hours...£10,000...2.30 a.m...local accent - mobile...Derek Connolly...baton in van...total calls equals 3 - Michael Peoples...statement...calls - Quinns. McBreartys. Peoples' house...Mary...searches - to be left till nearer arrests..."(this does not constitute an entire transcript). Sergeant Martin Moylan, who made up these notes, save for the last entry, gave a statement to the Carty investigation team on the 21st of June, 2000. He says as follows:

> **To explain the entries, I say that there was a discussion about telephone calls at 12.30 a.m. Wednesday night demanding money from the Peoples and that they had 72 hours to pay up £10,000 and that McBrearty had come down the car park. At 2.30 a.m. another call local accent, Derek Connolly, baton in van. I do not remember the context of this note. That Michael Peoples received three calls and that a statement was required from him. there was a discussion about the people in Quinn's pub and their statements were to be taken out and compared against each other. The reference to banklink - Michael Peoples probably means to check if he withdrew money after leaving Quinn's pub on the night of the killing. The reference to job call to Quinn's, McBreartys and Peoples house means that an application was to be made to trace calls and the reference to Mick Leahy or Christy Power probably means to telephone them to see if they could be got quickly. The reference to searches - to be left till near arrests is self-explanatory. I can recall that an application was subsequently typed out requesting calls from various numbers as per attached sheet...I recall there was an enormous delay in trying to get lists of calls despite several calls and reminders. Eventually some lists came in 1997 about April or May, but a report arrived from Garda Headquarters that there was no record for calls to or from People's house. We could not understand this and thought that it was very strange as D Sergeant-Henry was in possession of a list of some 300 calls supplied by William Dohertys father to D Sergeant Henry, from Doherty's phone showing calls to Peoples house. I recall D Superintendent Shelly then sending off this list of calls pointing out that they were calls made to Peoples phone. The lists of calls then eventually arrived...**

At the present time, it is a mystery to us as to how anyone in An Garda Síochána in Donegal could have imagined that there were telephone calls at 12.30 a.m. on a Wednesday night or how there could have been a reference to £10,000 or how there could have been a reference to 72 hours to pay some kind of a ransom demand. The reference to three calls is more understandable as the statements from the Peoples tended to be quite confused, in the context of the pressure they were being put under, as to the number of calls received and

their precise timing. This is understandable, but the mistranslation of the then-existing statement of Michael Peoples is, at this time, unfathomable.

It is logical now to attempt to deal with the attempts made by Gardaí in the Donegal division to trace the phone calls made to the Peoples' home. Sir, we believe that you can take judicial notice of notorious facts and this must include basic information as to the way the telephone system operates. Here, we are dealing with land lines which are altogether a much less complex situation than is the case with mobile phones. When one telephone attempts to call another telephone nothing will be recorded until such time as the called party lifts the receiver and thus establishes a connection between the two lines. For billing purposes the time at which that call is made, the duration of the call and the cost of the call, which in itself is dependent on whether it is made at a weekend or in the evening or during peak business hours, is then recorded. The fact that telephone A makes a connection with telephone B is, of course, evidence of that. There can be circumstances, perhaps, where an inference might be made through the use of the telephone that a particular person spoke to another person. It may also be that where someone is giving evidence of having had a conversation at a particular time by telephone that their telephone records may offer some support to their testimony. With this in mind on the 21st November, 1996 Detective Superintendent John McGinley made an application to the Crime and Security Section of An Garda Síochána to trace the calls on certain telephone lines. Eight telephone lines were in question, of which only one of these related to the Peoples. In addition, as regards the Peoples, application was made in respect of the billing records for two nights, that is to say from midnight on the 14th of October, the night on which Mr. Barron died, and from 8.00 p.m. to 11.00 p.m. on the 9th of November, 1996, the night of the extortion/hoax phone calls. This application was processed through Chief Superintendent Denis FitzPatrick on the 5th of December, 1996 and was ultimately signed in Garda Headquarters by Chief Superintendent Michael Diffley, to indicate his approval, and passed on to Telecom Eireann in accordance with the relevant legislation on the 18th of December, 1996. In the meantime, as we will be aware, some other things had happened and, at the risk of repetition, Sir, I remind you of them. On the 29th of November, 1996 Noel McBride had been arrested in the context of the larceny of a TV aerial from Raphoe Technical School. On the 1st/2nd of December, 1996 information came to Garda John O'Dowd, through William Doherty, that Noel McBride had supposedly received money from Mr. McBrearty senior in order to keep quiet. On the 4th of December the bulk of the arrests took place with Frank McBrearty senior being arrested on the following day. These, of course, were mainly predicated on the statement from Mr. McBride. Literally nothing, it would appear, as regards the Garda investigation of the calls to the home of Michael and Charlotte Peoples, happened for the next nine months. One has no idea as to whether anything would have happened, but for the fact that Mr. Frank McBrearty senior, in February of 1997, engaged Mr. William Flynn to privately investigate the death of Mr. Barron. On the 27th of May, 1997 a complaint was received by Detective Sergeant John Henry from Patrick Doherty, the subscriber to telephone line 074 57310, and the father of William Doherty. This is how Patrick Doherty, in a statement taken on the 3rd of July, 1997 by Detective Sergeant John Henry describes the matter:

> **I am a subscriber of this telephone number (074) 57310. It is a coinbox phone. It is in the hall inside the front door and beside the sittingroom door. I do not know Michael Peoples, St. Eunan's Terrace, Raphoe. I do not know his wife, Charlotte. She was Charlotte Ayton [correct spelling Eaton] whose mother was Quinn. I do not know their telephone number. I did not ring Michael or Charlotte Peoples on the 9th of November, 1996 nor any other time. The reason I now know Charlotte Peoples is by me visiting Vincent Temple for a long number of years. Vincent Temple's wife Bernie is an aunt of Charlottes. I do not know of any other person having rang from my telephone to the Peoples on the 9th of November, 1996. About two or three months ago a Mr. Billy Flynn, a private investigator began to ring and write to me. Any letters he wrote I gave them to the Gardaí. He made allegations to me that I made various phone calls to different people including some to Michael Peoples. He gave me dates but I am not quite sure what they were. As a result of these allegations my wife Mary sought an itemised bill from Telecom Eireann listing all calls made from my telephone over a period from the time of Richie Barron's death to the present day. The itemised bill arrived dating back to the 23rd of October, 1996. They were unable to go back to the 14th of October, 1996, the date of Richie Barron's death. When I received this itemised billing we checked the telephone book for Michael Peoples telephone number. I discovered it was on my itemised bill for the 9th of November, 1996 when four telephone calls were made from my phone to the Peoples between 20.08 and 20.23 hours on the 9th November, their telephone number is 45901. I marked that number on the bill and on Monday night the 16th of June, 1997 about 10.00 p.m. myself and my wife Mary brought the entire printout into Letterkenny Garda Station where I handed them over to Detective Sergeant S Henry. Nobody else uses the phone other than maybe somebody that would be broken down or so.**

Thus the complaint in relation to the accusation was made on the 27th of May and the actual itemised bill was handed over on the 16th of June, 1997.

Again, matters moved on more swiftly than the response that one is entitled to expect to the official application made from Garda Headquarters to Telecom Eireann. On the 10th of July, 1997 the Office of the Assistant Commissioner of An Garda Síochána, with responsibility for crime and security, got a letter from Mr. William Flynn. The context appears to have been that Mr. Flynn sought from Chief Superintendent Noel O'Sullivan a copy of the recording made by Michael Peoples of the last telephone call on the night of the 9th of November. Mr. Flynn then says:

> **I have furnished Mr. Peoples with the enclosed phone records of Mr. Patrick Doherty and Garda John O'Dowd to refer to Detective Henry. I have not given him the originals to protect my source, but I**

assure you I have same in my possession and that the copies are accurate.

The schedule of enclosed calls which is referable to John O'Dowd at telephone number 074 25858 is not referable, on the face of it, to any source. It runs from the 11th of October, 1996 through to the 18th of November, 1996 and is only a partial record. In it, however, for the first time, as regards information to the Gardaí, is a reference on the 9th of November, 1996 to a call having been made at 22.06.48, lasting 35 seconds, to telephone number 45901, the phone line of Michael Peoples. This is an identical record, in terms of its information, but not its format to the ones ultimately received from Telecom Eireann in respect of Garda John O'Dowd, their subscriber at this number, of Oaklands, Letterkenny, County Donegal. It would appear that it was as a result of this that Detective Sergeant Henry renewed his application for phone records. In this context, the next day on the 11th of July, 1997, he attached a written permission from Michael Peoples to have his billing records provided, which permission he had obtained on the previous day.

Again, at the risk of repetition, it seems appropriate, Sir, to remind the Tribunal that on September 16th, 1997 Noel McBride admitted that he had misled the Gardaí. He claimed that the lies that he told had been inspired by instructions given to him about ten days after the death of Mr. Barron by William Doherty. As a result of the foregoing, on the 20th of September, 1997, William Doherty was arrested in connection with the extortion phone calls to the home of Michael and Charlotte Peoples and was taken to Millford Garda Station. He denied involvement in the extortion calls. He said that he did not make the extortion calls, that he was not attempting to "help the investigation" into the death of Mr. Barron, that he was not short of money, but was in possession of £2,000 to £3,000, but that he would not deny, as he put it, the "black and white" of the printout of the telephone calls from the Doherty house. He further said he did not know anything about a call made from John O'Dowd's home to the Peoples on the 9th of November, 1996. He said he was not in John O'Dowd's home at this time. He said he had nothing to do with approximately one hundred calls made from his house to John O'Dowd's house, an allegation put to him by members of An Garda Síochána apparently on the basis of billing records then in their possession. When played a tape of the last call to Michael Peoples he said: "it's like two dogs fighting". He said that it was not his voice demanding money on the tape. Later on, he briefly agreed that he was in John O'Dowd's house on the night with Noel McBride, but had not told this to the Gardaí in order "to protect Noel McBride". When asked the question "why did you ring John O'Dowd and the Garda Station in Raphoe after the calls to Peoples on 9/11/96?". He said "I didn't ring anybody". He then declared "I was never in John O'Dowd's house". He said that if a phone call was made from his house to John O'Dowd's house that he did not know who had telephoned him. He said that he had not made the calls to Michael and Charlotte Peoples. He then made a reference to his deceased godfather, the late Richie Barron: "I will swear on Richie Barron's grave. I am telling the truth that I never made calls to Michael Peoples or to John O'Dowd, or that I made a call from Garda John O'Dowd's house to Peoples on the 9/11/96". On a number of questions he exercised his right to silence. He indicated that he was friendly with Noel McBride, but the

impression comes through that he often responded to Noel McBride because he was telephoned by him. He explicitly indicated that the voice on the tape demanding money was not him and that as he had done nothing wrong he would have no problem.

This, however, was not William Doherty's last word on the subject of the phone calls of the 9th of November, 1996. Here, perhaps, it is best to take things a little bit out of chronological sequence for the sake of clarity. On the 10th of June, 1999 Garda John O'Dowd, Noel McBride and William Doherty were arrested. William Doherty said that there was a man called Thomas Doherty from Raphoe who was an informer for John O'Dowd. We understand that Thomas Doherty is now deceased. He said that John O'Dowd was also:

> **...in collusion with my sister Olivia and Thomas Doherty. O'Dowd could have made the calls from my house that night to draw Peoples out. Thomas Doherty, O'Dowd's informer was alive at the time of the phone calls to Michael Peoples and it must have been the way that the phone calls came out. I...didn't make them calls to Michael Peoples. If I made the calls I would tell you now off the record that I did it to draw Peoples out...do you think I would make phone calls to Peoples from my own phone. I am not that...stupid. I am dealing with the Guards from when I was sixteen years old, thats ten years. I am not that stupid to know it couldn't be traced...if I wanted to set McBreartys up I would have done it myself. If I was making the phone calls to Peoples and O'Dowd why would I hand the phone list to the Guards. If I was going to make a phone call to Michael Peoples I would have gone to a public box...**

Finally, William Doherty again referred to the matter on the 3rd of March, 2000 when speaking to Detective Garda Richard Caplice and Sergeant Bell at Carrickmacross, in the context of the Carty investigation. He had come to the station voluntarily and had indicated in the statement that he knew he was free to leave at any one time. This is what he said:

> **On the 9th of November at around 7.00 p.m. Noel McBride landed to my house in Daniel Bonner's taxi. He said he was to meet John O'Dowd and he had a few phone calls to make. I said what time had he to meet him and he said he had to phone him. He made a number of phone calls from our phone 57310, I do not know who he rang. I don't know what he said. I didn't know he was making extortion phone calls. I am not taking the rap for that. At around 9.00 I took him and Noel McBride to John O'Dowd's house where he was to meet John O'Dowd. When we arrived at John O'Dowd's house McBride had a conversation with John O'Dowd. McBride said he was getting the money, but he had to ring him back. This was in the house, Noel McBride, John O'Dowd and myself present. John O'Dowd said ring him from there. They told me they were trying to flush out Michael Peoples and he was meeting them with money at the White Cross pub to keep them from going to the Guards. John O'Dowd stood by Noel McBride while he made the**

> **phone call and I said to him yous are mad using your own phone. O'Dowd got into a panic. He was for taking McBride down to the White Cross to see if there was any activity. I said if Peoples has nothing to do with it the Guards will be all over the place. He was nervous and he rang Phil Collins to see if anything was reported, he said he could trust Collins. Collins told him that there was a report from Charlie Ayton. He told me that Collins would fix him up in the book to cover him being in the station and not at the house when the call was made. All this took place in John O'Dowd's house. I only discovered about three weeks later that McBride had made the calls from my house to Peoples, he John O'Dowd said there was an investigation into it and some of the calls were made from my house, he said sit there and say nothing and not to say McBride made calls on the phone which is a pay phone. He said say nothing when you are lifted they can't prove anything. When I was arrested for this I first denied making the calls and on the second occasion in Manorhamilton I admitted that Noel McBride made them. I am not taking the rap for this part of it. I am not that stupid, if I was making these calls I would use a public phone...**

It may be by reason of those contradictions that during the later interviews with Noel McBride that he does not appear to have been pressed in relation to this allegation made against him by William Doherty. In an earlier interview dated the 10th of June, 1999, Noel McBride had said that he was present when William Doherty had made a threatening call to Frank McBrearty. He said that he had never taken part in any such telephone call and that he never knew, and had never heard of, Michael Peoples and his wife and had never made a phone call to them, nor was he ever asked to make a phone call to them, either asking for money, or at all. Since serious allegations were ultimately made by William Doherty against Garda John O'Dowd and against his colleague Garda Philip Collins we must turn immediately to their account of the relevant events. The earliest statement made by Garda John O'Dowd in relation to this matter appears to be that dated the 21st of January, 1998. He had earlier on the 14th of January, 1998 handed to Detective Inspector John McGinley a copy of his home phone records covering the relevant period. The relevant portion reads:

> **On the 24th of June, 1997 Michael Peoples called to Raphoe Garda Station and handed me a document, a copy of which is attached. This document was written by a Mr. William Flynn and addressed to a Ms. Helen Cullen at the Office of the DPP. In it there were allegations that my phone was used to phone Michael Peoples on the 9/11/97. I wish to state I did not make any telephone calls from my home to Mr. Peoples and neither am I aware who did this. From memory I cannot recall this date specifically and I was not aware till then i.e. when Michael Peoples handed me the document that my phone could have been possibly used like this. I have checked station records of the 9/11/96 and note that I was in Raphoe until 10.30 p.m. that evening. I wish to state nobody other than myself has a key to my house. Shortly after being threatened by Frank McBrearty senior on the 28/10/96 that he would get me sorted out I**

> **noted interference on my phone line. There was also clicking noises, but nothing ever said. I reported this matter to communications centre at the time as I believed my phone was being interfered with. In April, 1997 I cancelled my account with Telecom Eireann due to persistent calling by Mr. William Flynn and this despite several requests not to be calling me at home. I reported some of these calls to communications centre at the time. I lost faith in the confidentiality of my phone line and contacted a solicitor with a view to establishing who had access to my telephone accounts and also to establish whether or not it is possible to gain illegal access to my telephone line from outside my house. Since then my girlfriend's parents have received numerous silent phone calls in the middle of the night...I have on numerous occasions since I received the document from Michael Peoples offered myself for interview to sort this matter out as I feel I am being unfairly left in Limbo and have to suffer derogatory remarks from persons who are presently under investigation in relation to the murder of Richard Barron. I find this whole situation very disturbing.**

Garda O'Dowd made later statements in May of 1998. This may have been, in part, due to the fact that Detective Inspector McGinley and Detective Sergeant Henry had questioned him about the phone calls on the 9th of April, 1998. He indicated that he would be replying to their questions in the form of a statement. His statement of the 12th of May, 1998 reads, in part:

> **In my statement I am replying to an interview I had with Detective Inspector John McGinley and Detective Sergeant S Henry on the 9/4/98 where they informed me they were performing a criminal investigation into extortion phone calls made to Michael Peoples on the 9/11/96 which is contrary to section 17 of the Criminal Justice (Public Order) Act, 1994. I will now address this issue. It is alleged my phone was used to make such a call at 22.06.48 on the 9.11.96. I wish to refer to my previous statement of the 21.1.98. I did not know until the 24th of June, 1997 that my phone line was used in such a fashion. I did not make this phone call which is acknowledged by Michael Peoples in the document he handed to me on the 24th of June and I don't know who made it. I cannot recall this date it is so long ago and I can only rely on station records which indicate I terminated duty at Raphoe on that date at 10.30 p.m. and therefore could not have been in my house until 10.50 p.m. at the earliest. Station records state I commenced duty in Raphoe on that date at 2.00 p.m. At that time my telephone account was forwarded directly to my credit union and paid by them every two months. Telecom Eireann did not send me a list of calls made on my phone line as it was not their policy so I was never aware what calls were made on my phone line and I did not notice any increase in the amount of payment on my phone bill. Consequently I never considered the necessity to query my account as I didn't envisage that there could be problems. It is almost a year and a half since this incident took**

> **place. I made every effort to assist the Gardaí who were investigating this incident. I approached Detective Inspector McGinley in August, 1997 to have this matter sorted out. He showed me a printout of phone calls made from my telephone number. I offered to have the matter sorted out there and then but was informed he couldn't do this as the printout shown to me was provided to him by Billy Flynn and had been illegally obtained by Billy Flynn. I didn't give anyone permission to have access to my telephone accounts. I spoke with Detective Inspector John McGinley on the 3.11.97 and again asked him to do something to get this matter sorted out as it was causing me distress. He informed me he was waiting for my printout to come through official channels and that it was a slow procedure. I again spoke with Detective Inspector McGinley on the 5.11.97 and the 9.11.97 to review developments and requested an interview on each occasion. In the meantime I contacted Telecom Eireann and requested a printout of calls made from my phone covering the relevant period and presented these to D Inspector McGinley on the 14.1.98 in an effort to get things sorted out and requested an interview. Eventually on the 21.1.98 I presented a statement to D Inspector John McGinley explaining my situation as I had no indication of any impending interview to sort this matter out...**

In the aftermath of this statement, investigations continued into the phone calls to the Peoples. On the 3rd of June, 1998 Detective Sergeant J S Henry sent a report for approval to Detective Superintendent Lennon, prior to same being sent to the Director of Public Prosecutions Office. In it he notes that Michael and Charlotte Peoples had said to him that it was not Garda John O'Dowd's voice which they heard on the phone "as he has a much deeper voice". Detective Sergeant Henry refers to his belief in "an elaborate conspiracy which was going on between William Doherty and Noel McBride" and his firm belief that Garda John O'Dowd was totally unaware of this. On receiving the investigation file Superintendent Lennon raised a number of queries with the Detective Superintendent in Letterkenny. He also complained to the Chief Superintendent in Letterkenny of the response of the Gardaí to the complaints of the Peoples on the 9th of November, 1996. On the 18th of June, 1998 Chief Superintendent FitzPatrick required that the matter should be concluded within ten days. On the 29th of July, 1998 the final file was submitted to the Chief Superintendent in Letterkenny by Superintendent Lennon. He gives a number of reasons why the prosecution should not be initiated. This is what he says:

> **I can from my professional knowledge indicate that criminal proceedings are unsubstantiated in the case based on the following professional reasons:**
>
> 1. **Absence of admissions verbal or written.**
> 2. **Mr. and Mrs. Peoples indicate local accent which is unidentifiable either by them or on tape-recording of one of the said telephone calls to their home.**

3. **That in order to prove constructive possession, one must prove actual possession of the telephone from which the call was made and in this I refer to the case judgement in "The Minister for Posts and Telegraphs -v- Campbell". This judgement gives a way out in the absence of other material evidence.**
4. **By way of section 99(2) of the Telecommunications Act, it is possible to argue that a call can be made from any telephone apparatus without possession or control of the line or telephone.**

On the 30th of November, 1998 Superintendent Lennon then forwarded the file for the scrutiny and directions of the Director of Public Prosecutions to the State Solicitor of County Donegal. An additional reason for not prosecuting is added to those already adumbrated which is: "that records at Raphoe Station indicate that Garda O'Dowd was working at Raphoe Station on the 9th of November, 1996 and was recorded off duty by Garda Collins at 10.30 p.m. on that date".

It was after the submission of this file, on the 10th of June, 1999, that Garda John O'Dowd was arrested by Inspector Hugh Coll under section 4(3) of the Criminal Law Act, 1997 for an offence under section 17 of the Criminal Justice (Public Order) Act, 1994. To the information available to us up to that point, Garda O'Dowd had something additional. That information is perhaps best taken by condensing the question and answer session which he had at 8.30 p.m. at Manorhamilton Garda Station, on the date of his arrest, with Sergeant Jim Fox and Sergeant Kevin English, he says:

> **I made no...call, I have done nothing wrong...I accept it was [made from my house] its on the record. Tommie Doherty is the most likely person who could have made the call - but he is dead now...he gave me information. He organised that I could stop the Friel fellow from Lifford and a Kee girl, St. Johnston at William Street, Raphoe. This was in the early part of the investigation October/November 1996. Tommie Doherty was often in my house. I rang him regularly, he rang me. It was always work related. I never had a pint with him. I was often in his house. He was a good source...Frank McBrearty sacked Tommie Doherty years ago as a bouncer - Tommie wouldn't make a statement about something...it is possible when Tommie Doherty was in my house that I could have left him alone. I trusted him...he had no doubts that the 'bucks at the corner' i.e. the McBrearty's were involved. Often I met Tommie by appointment at the "Tops" - farm relief centre near Raphoe...I don't know [would Tommie Doherty have an opportunity to make the call on the 9/11/96]...no call was made in my presence of a menacing nature demanding money...I only heard about the call in June, 1997. A fellow called Billy Flynn was ringing me up the whole time...[as to Noel McBride from Figart] I have already supplied the relevant info in statement form. I have told you I don't know [did he ring Michael Peoples from my phone in my house on 9/11/96].**

When asked later about Tommie Doherty, and was he related to William Doherty, Garda John O'Dowd gave the cryptic answer "we are delving into matters dealing with the security of the State". A similar cryptic answer had been given to Inspector Coll and Detective Sergeant Kyne on the 27th of May, 1999 when Garda O'Dowd was asked as to whether he had an association with William Doherty and Noel McBride.

Sir, you will note that Garda John O'Dowd relied heavily on the stated fact that on the 9th of November, 1996 his tour of duty from 2.00 p.m. to 10.00 p.m. in fact terminated about half an hour late at 10.30 p.m. You will also note what William Doherty had said in relation to the alleged activities at Garda John O'Dowd's house which is supposed to relate to the event shortly after 10.00 p.m. on the 9th of November, 1996. It is therefore appropriate to turn to the statement made, in that regard, by the other Garda on duty on that shift with Garda John O'Dowd, namely Garda Philip Collins. The first account of this matter is a memo of interview recorded by Superintendent J S O'Connor and Inspector Coll on the 26th of March, 1999. The relevant part reads:

> **Garda Collins said he signed himself and Garda John O'Dowd off duty in the Station Diary at Raffoe Station at 10.30 p.m. on the 9th November, 1996. He is almost certain Garda O'Dowd was not present in the Station at 10.30 p.m. when he signed both of them off duty. Garda O'Dowd would have told him earlier in the day to take him off duty at 10.30 p.m. Garda Collins said D Garda Flynn came back to the station from Peoples house and told him about the anonymous telephone calls they had received. D Garda Flynn told him that Peoples wanted him (Collins) to deal with the case. He was sure Garda O'Dowd was not present in the station when he was speaking to D Garda Flynn. If Garda O'Dowd had been present he would have arranged with him to go to Peoples the next day. Garda Collins said he did not answer the telephone in Raphoe Station at 10.48 p.m. on the night of the 9th November, 1996. He was paired with Garda O'Dowd in the murder investigation, but couldn't remember working with Garda O'Dowd that day, 9th November, 1999. Garda Collins said he definitely signed off at 10.30 p.m. that night. He signed Garda O'Dowd off too...**

In a statement of the 16th of June, 1999, taken by Detective Sergeant Ken Barker and Inspector Hugh Coll, Garda Collins had this to say:

> **On the 9th of November, 1996 I was on duty at Raphoe. I commenced duty at 2.00 p.m. I was involved in the investigation into the death of Richard Barron in Raphoe in October, 1996. That evening between 9.00 p.m. and 10.00 p.m. I was in Raphoe Garda Station. Some time between those times D Garda Pat Flynn arrived at the station and he informed me that Michael and Charlotte Peoples had reported to him that they had received threatening telephone calls and that they required a local member to call with them in relation to this. I called Peoples home on the telephone and after they explained the circumstances to me, I arranged to call with**

> **them the following day. The only member that I can be certain was in the station that night was D Garda Flynn...**

The rest of the statement goes on to talk about Mr. William Flynn and meeting with him.

A further statement was made by Garda Collins on the 23rd of June, 1999 to Detective Sergeant Kyne and Detective Superintendent Tadhg Foley. It reads:

> **Further to my statement of the 16/6/1999 I wish to add the following. On the 9th of November, 1996 at Raphoe Garda Station I reported off duty at 10.30 p.m. I also took Garda John O'Dowd off duty at 10.30 p.m. I do not recall Garda O'Dowd asking me to take him off duty. The reason for the second entry in the diary at 10.30 p.m. being tipexed over is because I inadvertently took myself off duty twice.**

The next statement was taken on the 21st of September, 1999 after caution. Garda Philip Collins is recorded by Detective Sergeant George Kyne and Inspector Hugh Coll as stating the following:

> **Inspector Coll has shown me a copy of the Station Diary for Raphoe Garda Station for the 9th of November, 1996 and also a copy of my form A85 for the cycle ending the 1st of December, 1996. Inspector Coll has drawn my attention to the two entries in this copy of the Station Diary where I have recorded both myself and Garda John O'Dowd reporting off duty at 10.30 p.m. My attention has been drawn in particular to the figure 3 in both entries. I have been informed by Inspector Coll that the original Station Diary has been sent to documents section and that it is their evidence that the zero in the time has been changed to the figure 3 in both these entries. I confirm that I made the two original entries for both myself and Garda John O'Dowd at 10.00 p.m. I am now basing this on what I have been told and shown by Inspector Coll. It is the first time that I noticed this. From what I have been shown now I see that the entry has been altered, but I do not know anything about the alterations. I can definitely say that I did not change these two entries to 10.30 p.m. and I do not know who changed them or what reason they had for changing them. In relation to the entry recording the name Garda John O'Dowd and where I have referred in my previous statement to the entry being tipexed, the name O'Dowd from a glance does not look like my writing. I have acknowledged on the rear of the copy of the Station Diary that I have been shown this document. In relation to the entry of the 9th of November, 1996 in the copy of my form A85 for roster period ending the 1st of December, 1996 Inspector Coll has drawn my attention to the entry for this date in the period of extra duty column, this states that my period of extra duty was from 10.00 p.m. to 10.30 p.m. I have examined this copy form A85 and from my observations for the date, the 9th of November, 1996 and from the rest of the figures I**

> **would have to state that the entry for 9/11/1996 from 10.00 p.m. to 10.30 p.m. was not entered by me. I have acknowledged on the rear of the copy of the form A85 that I have been shown this document. These documents were completed three years ago and my memory of making specific entries at that time is very vague.**

A further short statement was made to Inspector Hugh Coll and Detective Sergeant Ken Barker on 22nd June, 2000. It is as follows:

> **On todays day, the 22nd of June, 2000 I have been shown the Station Diary for Raphoe Garda Station for the 9th of November, 1996 by Detective Superintendent T Foley. I have looked at the entries which show both myself and D Garda O'Dowd being taken off duty at 10.30 p.m. I can see that the time was altered from 10.00 p.m. to 10.30 p.m. in both entries. I did not make these alterations as I had no reason to. D Superintendent T Foley has read over the following extract from the statement of William Doherty of Doorable, Manorcunningham made on the 3rd of March, 2000 as follows, "O'Dowd got into a panic, he was for taking McBride down to the White Cross to see if there was any activity. I said if Peoples has nothing to do with it the Guards will be all over the place. He was nervous and he rang Phil Collins to see if anything was reported and he said he could trust Collins. Collins told him there was a report from Charlie Ayton. He told me that Collins would fix him up in the book to cover him being in the station and not at the house when the call was made". This is total lies. The only report that I got about this call was from D Garda Pat Flynn.**

Reference was made in the foregoing interviews to a document analysis. On the 20th of September, 1999 the relevant Station Diary, a form A85 in the name of John O'Dowd, and form A85 in the name of Philip Collins were given to Detective Garda Ray Jackman of the document section of the Garda Technical Bureau. He also examined some other documents. He says, in relation to the Station Diary:

> **I examined the questioned entries on exhibit A1 using a stereo microscope and found evidence to show they had been altered. The original entries in my opinions were both 10.00 p.m. These entries have been altered to now read 10.30 p.m. I then examined the questioned entries on line 6 of exhibits A2 and A3. I found no evidence to show that these entries have been altered.**

The latter reference is the overtime forms. Something now needs to be said in relation to the delay in receiving an official response to the request of Chief Superintendent Michael Diffley forwarded to Telecom Eireann on the 18th of December, 1996. At the risk of repetition, it is as well to try and consolidate what happened subsequently. On the 16th of June, 1997 Mr. Patrick Doherty had handed over a printout of his calls covering the 9th of November, 1996. He and his wife denied having made the calls to the Peoples home that appeared on that bill. On the 10th of July, 1997 the letter from William Flynn alleging that an

extortion phone call was made to the Peoples on the 9th of November, 1996 from the home of Garda John O'Dowd was received at Garda Headquarters. On the 11th of July, 1997 Detective Sergeant Henry renewed an application for phone records attaching the written permission of Michael Peoples. On the 2nd of October, 1997 a letter was received by the investigating team from Crime and Security Branch indicating they were experiencing very long delays in having requests for phone records processed by Telecom Éireann. Later the same month a report was received from Telecom Éireann indicating that no calls had been made to the Peoples home on the date in question. How did this happen? Since this was known to be nonsense it was queried. On the 6th of November, 1997 an acknowledgement was received from Telecom Eireann at Garda Headquarters that the previous report, in relation to no phone calls to the Peoples on the 9th of November, 1996 had been incorrect. The next report contained a record of the phone calls from the Doherty's home, but strangely enough no record from the phone of Garda John O'Dowd at 22.06 p.m. on the 9th of November, 1996. On the 14th of January, 1998 Garda John O'Dowd handed to Detective Inspector McGinley a copy of his home phone records showing the relevant call. He then, as we have seen, made a number of statements denying making the extortion call and ultimately indicating that it may have been made by Tommie Doherty in his absence, or without his knowledge. On the 25th of June, 1999 a renewed application was made to Telecom Éireann for a printout of all the calls received by Michael Peoples on the 9th of November, 1996. On the 24th of March, 2000 Eircom produced phone records for Michael Peoples' phone on the 9th of November, 1996 containing a record of four calls received from the phone of subscriber Patrick Doherty and one from the phone of subscriber Garda John O'Dowd. The detail of this has already been referred to. On the 5th of July, 2000 an application was made by the Gardaí to Eircom requesting a statement from an Eircom engineer as to whether the phone of Garda John O'Dowd had been interfered with, as he had alleged.

On the 12th of June, 2000 the tape-recording made by Michael Peoples of the last call at 10.00 p.m. on the 9th of November, 1996 was reported on by Mr. J.P. French, a forensic consultant based in York in the British Island. The report states:

> **I have carried out a preliminary examination of the recording, both by listening and by computer, and it is clear from this that the voice at the distant end of the telephone line...is too poorly recorded for forensic speaker identification tests. It is only just possible to hear some of what he is saying and no meaningful instrumental readings can be carried out.**

Two members of An Garda Síochána purported to make an identification of the voice on this tape of the last phone call. Sir, we indicated, in relation to the investigation arising from the finding of an apparent explosive at the mast at Ardara, County Donegal in November, 1996 what the law is in relation to voice identification. It suffices to say at this point that voice identification belongs to a category of evidence in respect of which a judge should, in our view, warn a jury as to the infirmities attaching to same. Mistakes can be made by persons having an acquaintance with the person apparently speaking and a good opportunity to

listen to their voice on the occasion in question. It can therefore be dangerous to rely on same in the absence of some corroboration. Reliance beyond reasonable doubt can be made by a jury at a criminal trial, bearing in mind that warning. Sergeant Gabriel Bell, in a statement of the 1st of June, 2000 says of this recording:

> **On the 23rd of May, 2000 I removed from the property room at the incident room, Letterkenny, a sealed envelope containing a dictaphone tape marked 'threatening phone calls tape Michael Peoples'. I played this tape on a dictaphone with a set of head phones. The tape was of poor quality and I listened to this tape a number of times. I heard two voices on this tape, one of these voices belongs to William Doherty, Doorable, Manorcunningham, County Donegal. I am familiar with William Doherty's voice and I have spoken to him face to face on a number of occasions in the past three months. I can hear William Doherty speak to Michael Peoples who recorded this conversation on the 9/11/96 at his home at St. Eunan's Terrace, Raphoe...**

Similarly, Detective Garda Richard Caplice made a statement of identification. In this he says:

> **On the 23rd of May, 2000 I received a tape from Sergeant G Bell. This was a micro-cassette M60 Sony make. I listened to this tape on a Sony dictaphone with the aid of an earphone headset. The tape-recording was poor in quality with background interference. I listened to the tape on a number of occasions and I identified one of the voices on the tape as that of William Doherty of Doorable, Manorcunningham, County Donegal. Over the past six months while engaged in an ongoing investigation in County Donegal I have become very familiar with this person having spoken to him on a one to one basis for up to sixty hours...**

We draw to your attention, Sir, the fact that William Doherty has, in the quotations we have already set out, explicitly denied taking any part in the relevant phone call, or phone calls and indicating that the party speaking was Noel McBride. We also recall to your attention, Sir, the explicit denial of Noel McBride in that regard, and the account given by Detective Garda John O'Dowd which, if accepted, exonerates him.

There are a number of matters arising from the foregoing narrative which we feel this enquiry might usefully focus on without, in any way, derogating from the explanation which you have given, Sir, as to the Terms of Reference.

1. If there was any relationship between Garda John O'Dowd, William Doherty and Noel McBride, it may well be elucidated by these events. They cannot be seen in isolation from what needs to be considered concerning the investigation into the death of Richard Barron and how that death came to be seen as an investigation into murder.

2. If it be the case that an alteration to the Station Diary at Raphoe occurred, and if, Sir, you are able to attribute responsibility in that regard, we suggest that you do not lose sight of the possibility that for every apparent happening it may be possible to engage in means to conceal its occurrence. On the issue of the Station Diary, apart from the denials which we have adumbrated in relation to same, you should also look to the availability of opportunity and motive in respect of other persons, should that emerge in the course of the enquiry.

3. On the face of it, the series of telephone calls to the home of Michael and Charlotte Peoples operated as a deeply disturbing experience for them. Whoever made the calls was clearly maliciously motivated. It may be that what was involved was nothing more than nasty malice: the anonymous terrorising of innocent people in the apparent exercise of a sense of black fun. On the other hand, Sir, it would appear that the investigation into these phone calls was much delayed so that it appears that a private detective could do better, in that regard, than the resources of the Donegal Garda Division. The allegation by the Peoples that they had received such phone calls may have been mixed into the series of suspicions in relation to the question of the manner of the death of the Late Richard Barron and who was responsible for it.

4. Fundamentally, Sir, you will have to try to find out who made these phone calls and for what purpose. Since Michael and Charlotte Peoples were in fact arrested on the 4th of December, 1996, less than a month after receiving the phone calls, on suspicion of accessory after the fact to murder, this series of phone calls cannot be left in isolation, but must be considered in the context of the overall murder investigation.

5. The efficiency of the Garda response to the Peoples on the 9th of November, 1996 is in question. The efficiency of the follow up investigation is also in question. The making of these phone calls was a serious matter and the response not only of rank and file Gardaí, but of senior officers, needs to be considered. If there was inefficiency, we suggest, Sir, that you should bear in mind that a lack of determination in relation to an investigation, and follow through in relation to its elements, may be explicable not only on the basis of carelessness, but might also involve a wilful blindness to look at any other facts whereby previously existing suspicions might be undermined. In that regard, the apparent conference held to discuss the issue of the extortion phone calls comes into sharp focus especially if it emerges that there was already a determination to arrest Michael and Charlotte Peoples at that point. We can make no comment beyond calling this to your attention, Sir, as a possibility.

THE ARRESTS AND DETENTION OF SUSPECTS

We now turn to consider, Sir, the investigation into the death of Richard Barron with reference to the arrest, detention and treatment of persons in custody in connection with the investigation. A total of twelve persons were arrested in the course of this investigation (one of them twice). Those arrested were:

(1) Frank McBrearty, Jnr.
(2) Mark McConnell – who was arrested twice
(3) Roisín McConnell – the wife of Mark McConnell
(4) Frank McBrearty, Snr.
(5) Michael Peoples
(6) Charlotte Peoples – the wife of Michael Peoples
(7) Katriona Brolly – sister of Roisín McConnell
(8) Martin McCallion
(9) Mark Quinn
(10) Edel Quinn – sister of Roisín McConnell
(11) Sean Crossan
(12) Damian McDaid

Whilst it is intended by the Tribunal to examine each of these cases in detail, it is also important to understand the legal and factual context in which, as a group, they came to be the focus of the Garda investigation.

All but one of the arrests which took place were said by each of the arresting members of An Garda Síochána to have been carried out at common law. The exception, Frank McBrearty, Snr. was arrested pursuant to Section 30 of the Offences Against the State Act, 1939 to which reference will be made later. Once a person is arrested at common law they must be brought before a District Judge for the purpose of charging with an offence at the earliest opportunity. However, Section 4 of the Criminal Justice, 1984 enables an arresting member of An Garda Síochána to seek the detention of an arrested person "for the proper investigation" of the offence for which he has been arrested. A person so detained may be held in custody for an initial period of six hours, which may be extended by a further six hours by direction of an officer of the Garda Síochána not below the rank of Superintendent. The initial detention may occur only where the member-in-charge of the station, to which the arrested person has been brought, has reasonable grounds for believing that his detention is necessary for the proper investigation of the offence. The detention may be extended only where the Superintendent concerned has reasonable grounds for believing that such extended detention is likewise necessary. During the course of such detention, detainees may be questioned by investigators and this would appear to have occurred in all of the instances to be considered by the Tribunal.

When a person is detained, certain procedures must be followed by the Garda Síochána in accordance with the provisions of the 1984 Act and the Regulations contained in the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987.

Apart from carrying out the important duty of authorising the detention under Section 4 the member-in-charge of a Garda Station to which the arrested person is brought is also obliged to inform him that he is entitled to consult with a solicitor and to have notification of his detention, and of the station where he is being detained, sent to another person as soon as practicable. The member-in-charge is responsible for overseeing the application of the Custody Regulations and visiting the detainee from time to time. A custody record is maintained by the member-in-charge in respect of each detainee and if the member-in-charge considers that a direction given, or action taken, by a member of higher rank is inconsistent with the proper application of the Regulations he has a duty to inform that member. Unless the matter is resolved he must report his concerns, without delay, to another member of or above the rank of Superintendent. At the conclusion of the period of detention, the detainee must be released and should not be re-arrested again for the same offence except on the authority of a District Court Judge who is satisfied on information, to be supplied on oath by a member of An Garda Síochána not below the rank of Superintendent, that further information has come to the knowledge of the Gardaí since the person's release as to his suspected participation in the offence for which the arrest is sought.

In addition, there are certain administrative rules governing the interviewing of persons known as the "Judges' Rules" which should be followed by interviewers questioning persons in custody. These Rules require a caution to be administered to a person under questioning that he is not obliged to say anything unless he wishes to do so but that anything he does say will be taken down in writing and may be given in evidence. Any statement made should whenever possible be taken down in writing and signed by the person making it after it has been read over to him and he has been invited to make any corrections he may wish.

The fruits of an interview may assist the investigating members in a number of ways. It may result in a person admitting his guilt in respect of a criminal offence and this admission or confession may lead to a decision on the part of the Director of Public Prosecutions to prosecute such a person, but this is not inevitable. It may result in the total exoneration of the interviewee by reason of further information which he may be able to provide and of which the investigators were unaware. It may lead to a different line of enquiry by the investigating team. All of those things can occur where those interviewing the prisoner keep an open mind.

Ultimately, if the person detained and interviewed is charged with an offence and brought to trial what was said, or not said, by him in the course of his detention may be of crucial importance to the case presented by the prosecution or to his own defence.

Whatever the results of the detention, it is axiomatic that the process of criminal investigation can only be advanced if the powers vested in the Garda Síochána are exercised in good faith, in accordance with law and exercising all due care, independence and integrity in the investigation of an offence.

The Constitution provides by Article 40.4.1 that "no citizen shall be deprived of his personal liberty save in accordance with law". The Criminal Justice Act, 1984 was enacted, as an aid to criminal investigation, in circumstances in which it was felt that the Garda Síochána needed further powers of detention in order to operate as an effective investigating force. From this brief, and by no means complete, resumé of the Garda powers conferred by the provisions of the Act restricting the rights of the citizen, it is clear that the Oireachtas has reposed a great deal of trust in the exercise of these powers in individual Gardaí. It is also the case that the effectiveness of the protections afforded the citizen, when subjected to this procedure, depends entirely upon the willingness of the relevant members of An Garda Síochána to treat the protections seriously and in a manner which ensures that they are protections of substance rather than of form. Much of what happens during the interviewing of persons in custody occurs in private between the interviewers and the detainee. For many years, as you, Sir, are aware, issues in relation to allegations against members of An Garda Síochána have been heard and determined by judges in the course of criminal trials who are dependent entirely upon the oral testimony of those who are present in the interview room. In this context, the detainee might be considered to be at a disadvantage were it not for the extensive protections to which he is entitled in law and which members of An Garda Síochána are obliged to afford him. Unless the highest standards and levels of integrity are observed in the execution of these duties, the investigation of offences and the administration of justice run a serious risk of being undermined.

We turn now, Sir, to your explanation of the Terms of Reference delivered on the 15th of July, 2002 in which you stated:

> **The Tribunal will enquire into the arrest and treatment of persons in custody in connection with Mr. Barron's death. In this regard the Tribunal will:-**
>
> **(i) Enquire as to whether it was determined that on a planned and pre-arranged basis members of An Garda Síochána should arrest particular individuals with a view to having them detained pursuant to Section 4 of the Criminal Justice Act, 1984 and/or questioned in relation to the death of Richard Baron and if so enquire into the circumstances in which and the reasons for which such a determination was made;**
> **(ii) Enquire as to whether there exist within the Garda Síochána any standards, practices or procedures applicable to the making of a determination in the course of an investigation to arrest and detain by pre-arrangement persons suspected in relation to a matter under investigation and, if so, whether there exist any or any adequate safeguards against any potential errors in the**

decision-making process or misuse of power whether accidental or deliberate;
(iii) Enquire into and establish the identity of persons arrested in respect of the investigation into the death of Richard Barron, the reason for such arrests and whether such reasons were based on correct legal grounds and as to how the arrests were effected;
(iv) Consider whether members of An Garda Síochána when making the arrests acted in good faith and/or reasonably;
(v) Enquire into whether particular persons became the focus of unfounded or unreasonable suspicion and, if so, how and why this occurred;
(vi) Enquire whether in directing and/or making arrests members of An Garda Síochána proceeded with the arrests only when satisfied that in respect of each arrested person their suspicions were reasonable and/or that they exercised all appropriate care, caution and diligence in deciding to make an arrest with due regard to the presumption of innocence attaching to such persons and their right to fairness of procedures;
(vii) Enquire into all aspects of the arrests and detentions including extensions of custody carried out in the course of the investigation and the treatment of persons whilst in custody;
(viii) Enquire into and establish the standard Garda procedure and practice in relation to the treatment of persons in custody and whether such procedures and practice were observed in the course of the arrests and detentions and treatment of those in custody in connection with the investigation and further, the adequacy and fairness of such procedures and practice having regard to the facts which may be established in evidence at the Tribunal;
(ix) Enquire into any aspect of this Term of Reference in so far as it may be connected to any other Term of Reference.

It is now proposed, Sir, to outline insofar as it can be ascertained, from various statements available to the Tribunal, the Garda assessment of the course of the investigation up to the date of the arrests. It is a version of events based on material and observations made by members of An Garda Síochána with which members of the McBrearty family or others may disagree or may have already disagreed. It affords, however, some insight into the approach of the investigating team leading up to the first series of arrests.

The first arrests, predicated on the stated reasonable suspicion that Richard Barron had been murdered, took place on the 4th December, 1996 when Frank McBrearty, Jnr., Mark McConnell, Roisín McConnell, Michael Peoples, Charlotte Peoples, Katriona Brolly, Mark Quinn, and Edel Quinn were arrested. It would appear that it was intended to arrest Frank McBrearty, Snr. on the 4th December, 1996 also but he was away from home that day. Martin McCallion was arrested on the 8th December, 1996. Sean Crossan was arrested on the 11th December, 1996 and Damian McDaid was arrested on the 17th December, 1996. Mark McConnell was re-arrested on the 25th June, 1997. A number of statements have been made by senior

Garda officers who were part of the investigation team in relation to the general progress of the investigation and the factors which led to the decision that the arrests should take place.

Prior to the arrests on the 4th December, an incident room had been established at Letterkenny Garda Station and all matters relating to the investigation of the death of Richard Barron were channelled through this room. Sergeant Martin Moylan, Sergeant Brendan Roache, Detective Garda John O'Toole and Garda Tina Fowley were apparently assigned to this room. Conferences were held on a 'daily basis' and all matters relative to the investigation were discussed. A local District Officer, Superintendent John Fitzgerald, was in charge of the investigation and he was assisted by D/Superintendent Joseph Shelly (who commenced duty in Letterkenny on the 21st October, 1996, Inspector (now Superintendent) John McGinley and Inspector (now Superintendent) James Gallagher.

From the papers available to the Tribunal, it is suggested by the senior investigating members of An Garda Síochána that a number of conferences were held prior to the arrests and that a decision was made to make a number of arrests in or about November, 1996.

In a statement made by Superintendent Joseph Shelly to the Carty investigation team (Carty I – s.72) he identifies a number of factors which contributed to the decision to make the arrests. Those may be summarised as follows:

(i) In the early stage of the investigation Garda John O'Dowd made it known that he had received information from a witness to the effect that two local men from Raphoe were seen 'acting suspiciously' in an area not far from the location where the body had been found i.e. information to the effect that two men, Frank McBrearty, Jnr. and his first cousin, Mark McConnell were observed walking down through a car park at the rear of Frankie's Night Club – a fact made more significant by the fact that the sighting was at 1 a.m. or 'at or about' the time Richard Barron died;

(ii) D/Garda Tague had been informed by another source that Frank McBrearty, Jnr. was seen, in what were concluded by the Gardaí to be suspicious circumstances, accompanied by one or two other people and was believed to be in an excited state at the time;

(iii) The Garda investigation encountered, the Gardaí believed, considerable difficulties involving certain intimidatory tactics being employed by Frank McBrearty (Snr.) against some of the people interviewed by the Gardaí and the Gardaí themselves causing visits by senior officers to Mr. McBrearty, Snr. and a caution about his behaviour. He had refused (according to the Gardaí) to stop interfering with people interviewed by the Gardaí. Mr. McBrearty, Snr., it should be noted, denies any wrongdoing in this regard;

(iv) It is suggested by D/Superintendent Shelly that during the course of the investigation in the months of "October/November '96" all of the available intelligence and information to hand led the investigating team to the main suspects i.e. Frank McBrearty (Jnr.) and Mark McConnell;

(v) Friends and associates of the McBrearty family were also believed to have been in possession of vital information regarding the death of Richard Barron;

(vi) The Gardaí were aware of the incident which had occurred between Mark McConnell and Richard Barron in Quinn's Bar on the 13th October.

In his statement Superintendent Shelly then describes that:

> **It was decided to arrest and detain a number of suspects in relation to their involvement in the death of Richard Barron. The proposed arrest of certain suspects was discussed at conferences and all issues pertaining to this stage of the investigation were attended to. Assistance was sought from the National Bureau of Criminal Investigation in Dublin and this was sanctioned.**

It is clear that the arrests were part of an extensive Garda operation described by Inspector (now Superintendent) John McGinley in this manner:

> **The details involved were discussed and plans drawn up for this operation. The various details involved included – persons to be arrested, powers of arrest, preparation of briefing files, interview of suspects, search of premises, transport and escort of prisoners, arranging interview rooms at stations concerned, meals, duties of member-in-charge and various other logistical matters associated with this type of operation.**

A decision was also taken to seek the assistance of the Garda National Bureau of Criminal Investigation (GNBCI) in the arrests, and questioning of prisoners, and a request was made for the assistance of members of that Unit. Seven of those arrested were to be taken to Letterkenny Garda Station and two to Lifford Garda Station. Briefing files were prepared in respect of all those to be arrested. A separate file in respect of each individual was prepared and each file "included details of information coming to hand during the course of the investigation, statements made by witnesses and any other useful information". These files also included other relevant matters including sketches of the scene. All the briefing files were made available in the incident room for the information of those involved in the investigation. Members of the National Bureau of Criminal Investigation were sanctioned to travel to Donegal and, having arrived, were 'fully briefed' on Monday, 2nd December and Tuesday, 3rd December, 1996 by Superintendent Fitzgerald, Inspector McGinley, Inspector Gallagher and Superintendent

Shelly. The Bureau members who were assigned to Donegal were Detective Sergeant John Melody, Detective Garda John Fitzpatrick, Detective Sergeant Gerard McGrath and Detective Sergeant Eamon O'Grady. Apparently, they visited the Raphoe area and were shown the various locations relating to the death of Richard Barron. How extensive their pre-arrest enquiries were, we do not know apart from this assertion.

On the 3rd December, 1996 a conference was held at Letterkenny Garda Station involving a large number of Gardaí including the senior officers already referred to and the members from the GNBCI, those members who carried out the arrests, those members who carried out the interviews of the arrested persons, and other Gardaí. Also present (according to Superintendent John McGinley) were the members-in-charge of Letterkenny and Lifford Garda Stations on the 4th December, 1996.

Sir, it is appropriate at this stage to set out what appears from the papers to have been the state of the Garda investigation prior to the arrests on December 4th. Superintendent John Fitzgerald in a statement dated the 8th March, 2000 indicates that as the investigation progressed there were many issues that led to the suspicion that Richard Barron was murdered. He states:

> **The pathologist report, the earlier altercation, statements taken, information of Garda Teague of the witness in the car park on whom I placed solid credence, the activities of Frank McBrearty, Snr., the statements of Noel McBride, the statements of other witnesses, the discrepancies of accounts given by witnesses later arrested, phone calls made, the suspicion of a cover up of facts all led to suspicion that Richard Barron was murdered, that Frank McBrearty, Jnr. and Mark McConnell were involved and that the several other persons arrested as accessories after the fact were accessories and suspected as such. All these matters were discussed at conferences and everybody on the investigation including all who made the arrests were fully briefed, updated and abreast of developments.**

A reference has already been made to some of the issues referred to in this extract. Nevertheless it is useful to have regard to each of the matters referred to by Superintendent Fitzgerald at this stage.

(a) The Pathologist's Report: This has already been addressed at an earlier stage and it can be recalled that the pathologist, Dr. D.P. Barry had reported that "death was due in my opinion to head injuries";

(b) In respect of the altercation between Mark McConnell and Richard Barron earlier in the evening, the 13th October, 1996, a number of witnesses had given statements in respect of this incident in which no blows were exchanged and which does not appear to have been initiated by Mr. McConnell.

(c) Information was received by Superintendent John McGinley on the 22nd October, 1996 from D/Garda P. Teague who told him that he had received confidential information from a reliable source that Frank McBrearty, Jnr. and one or two other persons were seen running down the car park at the rear of Frankie's Night Club between 00.55 and 01.00 hours on 14th October, 1996 and that Frank McBrearty, Jnr. appeared "rise". The witness was unsure of the time and of the identity of Frank McBrearty, Jnr. It transpired that this information had been furnished by Mr. John Patton. In his subsequent statement he did not mention that Mr. McBrearty, Jnr. appeared "rise".

(d) Suspicions raised in the minds of the Gardaí appear to have been raised further by what are alleged to have been the activities of Frank McBrearty, Snr. The Gardaí allege that Frank McBrearty, Snr. interfered with and intimidated or attempted to intimidate or interfere with the investigative process and followed Gardaí in the course of their investigations. Mr. McBrearty, Snr. does not accept any of these allegations.

(e) The information received from Noel McBride has already been extensively dealt with and it will be recalled that at approximately 22.00 hours on the 15th October, 1996 Garda O'Dowd telephoned Chief Superintendent Denis Fitzpatrick and informed him of information that had come to him from an informant which suggested that Frank McBrearty, Jnr. and Mark McConnell had been seen coming from waste ground and through the car park at the critical time. On the night of the 15th or morning of the 16th October, 1996 Chief Superintendent Fitzpatrick said to Superintendent Fitzgerald "John, Richie Barron was murdered, Frankie Jnr. and Mark McConnell did it". Nothing was said about where the information had come from but Superintendent Fitzgerald assumed that it came from Garda O'Dowd or Superintendent Lennon. He did not intend to raise this matter with his investigating team but shortly afterwards at a conference a Mr. X was introduced by Garda O'Dowd as having been in the car park and putting Frank McBrearty, Jnr. and Mark McConnell there at the vital time. Superintendent Fitzgerald pressed Garda O'Dowd to obtain a statement from Mr. X.

On the 29th November, 1996 Noel McBride made a statement to Garda O'Dowd in relation to a sighting of Frank McBrearty, Jnr. and Mark McConnell. He also told of threatening phone calls that he had received in relation to giving information to the Gardaí. On the 4th December, 1996 he made a further statement to Garda O'Dowd alleging that he had received £500 from Frank McBrearty, Snr. a couple of days after the death of Richie Barron on the following Wednesday or Thursday. Frank McBrearty, Snr. was alleged to have said to McBride "Take that there and say nothing". A very

large issue arises in relation to the reliability of this statement as has been earlier set out.

(f) The suggested discrepancies of accounts given by persons later arrested appears to relate to the timing of the movements of Mark McConnell in the early hours of the morning of the 14th October, 1996. He had stated that he remained in Quinn's Pub all evening from 19.00 hours until circa 01.20 hours on the 14th October, 1996. After that, he had left the pub with his wife and ordered a take-away from Sarah's Cafe for collection after the disco following which he went into the disco. However, certain statements were made to the Gardaí which showed some discrepancies about the time that he may have left the pub. Some witnesses stated they had seen him in The Diamond and at the chip shop before 01.00 hours.

In particular, Mark Quinn, the pub owner, initially did not include Mark and Roisín McConnell in the names of those who remained in the pub after 00.30 hours. Carmel and Philomena Laird both stated that Mark McConnell ordered a take-away for collection after the disco. They put this at 00.20 hours and between 00.30 and 35 hours respectively though Philomena Laird later changed her statement and gave a much later time. There was considerable variation from other witnesses who attended the premises as to the time the McConnells left. There were also some discrepancies thought to exist by the Gardaí in relation to accounts given by some of those arrested and other witnesses which will be dealt with in more detail as we deal with each of the arrested persons.

Each of the matters which we have just set out is controversial and is outlined in an effort to summarise elements which apparently underpinned the decision to make the arrests as gleaned from various statements made by senior investigating officers. They will, of course, be the subject of further investigation by you, Sir, in the course of the taking of evidence.

In endeavouring to construct the broad outline of what happened in respect of the various arrests and detentions, which took place on the 4th December, 1996 and later, we have relied on source material which includes statements by members of An Garda Síochána made in the course of the investigation of the death of Richard Barron and contained in what is known as the Lennon Report, statements made by members of An Garda Síochána to investigating members of the Carty team, statements made by those arrested, and in some cases their relations and friends, to the Carty team or to investigating members appointed by the Garda Complaints Board to investigate complaints made by them in respect of their arrest and detention and in the case of Frank McBrearty, Jnr. and Roisín McConnell taped interviews between them and a Mr. William Flynn (private investigator) and other material supplied by him.

The Arrest and Detention of Frank McBrearty, Jnr.

Turning now, Sir, to the first seven persons who were arrested on the 4th December, 1996 we deal firstly with the arrest and detention of Frank McBrearty, Jnr. The relevant facts appear to be that at 7.30 a.m. on the 4th December, 1996 at Letterkenny Garda Station, Sergeant Joseph Hannigan briefed Detective Sergeant John Melody, D/Garda John Fitzpatrick, D/Sergeants Gerry McGrath and Eamon O'Grady, D/Gardaí Tina Fowley and Martin Anderson in relation to the arrest of Frank McBrearty, Jnr. A party of Gardaí travelled to Thorn Road, Letterkenny in order to set up a Garda checkpoint at which it was proposed to stop the car driven by Frank McBrearty, Jnr. who it was anticipated would, that morning, drive his children to school at the national school in Raphoe. D/Gardaí Anderson and Fowley were to take care of any children who might be present. The Gardaí were briefed by Sergeant Hannigan as to the location where he intended to make the arrest and the positions which he required them to take up at the scene. The party travelled to the scene of the arrest, the checkpoint was set up and the Gardaí took up their positions. Also alleged to have been present at the scene were Detective Gardaí Keating and P. Cafferkey. It is clear from the statements obtained from members of An Garda Síochána and the arrangements made in respect of the children, that it was anticipated that Mr. McBrearty would in all probability be intercepted whilst bringing his children to school and before he had dropped them off.

At 9.20 a.m. Sergeant Joseph Hannigan arrested Frank McBrearty, Jnr. of 67 Elmwood Downs, Letterkenny "at common law for the murder of Richie Barron at Townparks, Raphoe on the 14th October, 1996". He states that he informed Frank McBrearty, Jnr. of his arrest and the reason for it and that he cautioned him in the ordinary way that he was not obliged to say anything unless he wished to do so but anything he did say would be taken down in writing could be given in evidence. Sergeant Hannigan in his statement states the reasons for the arrest as

(a) The previous disagreements and rows between the McBrearty's and the Barrons; and

(b) The fact that Frank McBrearty, Jnr. and Mark McConnell were seen by a witness coming from 'the murder scene' on the night of the 14th of October, 1996.

At the time of the arrest, two of Frank McBrearty's children, then aged approximately 7 and 6 years, we believe, were present in his car. As noted, this had been anticipated by members of An Garda Síochána and gave rise to considerable trouble at the time of the arrest. Frank McBrearty, Jnr. was described by Detective Garda John Fitzpatrick as "roaring and shouting and making a scene. His children who were in the green Primera car were becoming upset by him". On the other hand, Mr. McBrearty makes a complaint about the manner in which he was arrested and the fact that he could have been arrested at his home. He had concerns about his son who is asthmatic and complained that Gardaí were shouting and abusive towards

him and calling him names. He also complained that D/Garda Anderson was shouting in at the children at the time of the arrest.

Following his arrest, Frank McBrearty, Jnr. was placed in a Garda patrol car and taken to Letterkenny Garda Station. The Garda account of the journey to the station suggests that he was conveyed in a car containing Sergeant Joseph Hannigan, Detective Sergeant Melody, Detective Garda Cafferkey and Detective Garda Keating. Detective Sergeant Melody suggests that he sat in the back of the car with Mr. McBrearty and Detective Garda Cafferkey. Detective Garda Keating was driving the patrol car and Sergeant Hannigan was in the front passenger seat. This version differs from Mr. McBrearty's account which suggests that Detective Garda Keating and perhaps Detective Garda Cafferkey were in the back of the patrol car with him. He describes Sergeant Keating as being in the front passenger seat and an unknown Garda driving the car. Mr. McBrearty complains that he was poked and punched by the two Gardaí in the back of the car on the way to the station and that he was verbally abused by Sergeant Hannigan and these two Gardaí. This is denied by the Gardaí.

At 9.30 a.m., following his arrival at Letterkenny Garda Station, Sergeant Hannigan states that he explained to Garda Martin Leonard, the member-in-charge of Letterkenny Station, the "reasons and the circumstances" of the arrest. Garda Leonard indicates that Sergeant Hannigan consulted privately with him in this regard. He requested the detention of Frank McBrearty, Jnr. under the provisions of Section 4 of the Criminal Justice Act, 1984. Garda Leonard's account of the consultation was that he was informed by Sergeant Hannigan that the reason for the arrest was

(i) The fact that the prisoner was seen coming through The Parting Glass car park at the relevant time of the alleged murder which was 12.30 to 1 a.m. in the company of Mark McConnell;

(ii) The fact that bouncers at McBrearty's gave 'false alibis' for the prisoner; and

(iii) The fact that the prisoner had 'previously confronted' members of the Barron family.

Having been requested to authorise Mr. McBrearty's detention, Garda Martin Leonard did so on the basis of these three reasons and read over a notice of rights (Form C72) to him. Mr. McBrearty acknowledged this occurrence by signing the relevant paragraph of the custody record. Mr. McBrearty, Jnr. accepts that the signature on the custody record at paragraph 24 is his.

A number of Gardaí complained about the detainee's behaviour on his arrival at the Garda Station. It is alleged that he was abusive and aggressive towards members of An Garda Síochána including Garda Leonard. Sergeant Hannigan alleges that he "got out of his seat and made at D/Garda Cafferkey". Frank McBrearty, Jnr. complains that on his arrival at the station he was pushed down on a seat by D/Garda Cafferkey. He was sat down on the seat,

handcuffed. He complained that the handcuffs were too tight and he asked for information about his wife, who was unwell, and his children. Mr. McBrearty Jnr. states that Sergeant Hannigan indicated that the handcuffs were not necessary but two Detectives present insisted upon handcuffs saying "handcuff the murdering bastard".

He goes on to complain that Detective Garda Cafferkey came over and put his knee against his chest "two eyes popping out of his head". A detective came over to D/Garda Cafferkey and told him to remove his knee. The handcuffs were removed and he was walked down a corridor. During this period he also alleges that Detective Garda Keating punched him in the back "continuously" whilst going down the corridor. He states that Detective Garda Keating was told to stop this by Inspector John McGinley. However, Inspector John McGinley was then said to have turned to four strange Gardaí saying to them "When you get him into the room …… give it to him". It is at this stage that he states he had his first dealings with Garda Martin Leonard who shouted at him to sign the book indicating the place in the custody record where he was to sign. He states that he was then taken by Detective Gardaí Cafferkey and Keating to "the four boys from Dublin".

At 9.36 a.m. Mr. McBrearty requested his solicitor and at 10.15 a.m. Mr. James Sweeney of V.P. McMullin, Solicitors attended at the Garda Station and consulted with Mr. McBrearty, Jnr. between 10.20 a.m. and 10.50 a.m. Following this consultation, Mr. Sweeney brought to the attention of Garda Leonard a complaint made by the detainee that "he was poked and pushed about in car on way in, not Sergeant Hannigan".

Apparently there then occurred the first of a series of interviews with investigating members. Those assigned to interview Frank McBrearty, Jnr. were four members who had attended from the National Bureau of Criminal Investigation in Dublin: D/Sergeant John Melody, D/Garda John Fitzpatrick, D/Sergeant Gerard McGrath, and D/Sergeant Eamon O'Grady. In their account of this first interview the Gardaí state that D/Sergeant McGrath took notes. Mr. McBrearty, Jnr. was cautioned but refused to sign this when requested. The record of the interview is in 'question and answer' form and in the course of the interview he denied the accusation of murdering Richard Barron with Mark McConnell. He denies being in the car park of Frankie's at any time during the night. It is suggested to him that the Gardaí had a witness who stated that he saw Frank McBrearty, Jnr. in Frankie's car park at 1 a.m. approximately on the 14th October, 1996. This is denied and then it is further suggested to him that he was first seen by this witness at the "rusty barrels of Frankie's car park". He stated that he did not leave Frankie's that night and that he was "working there from 8 p.m. to 3.30 a.m. in the morning". It is stated to him that the Gardaí have "evidence that you were involved in this murder". He acknowledged that he didn't like Richie Barron but stated that he didn't hear about the row between Richie Barron and Mark McConnell for three days afterwards and that he didn't see the deceased that night. He states that he first heard of Richie Barron's death from Michelle Scott. "She said he was after being knocked down". He was then asked did you do that hitting to which he said "I am an innocent man".

The second interview was conducted by Sergeant John Melody and Detective Garda John Fitzpatrick and again proceeded on a 'question and answer' basis. Once again, Mr. McBrearty denied any involvement in the murder of Richie Barron. He stated that Mr. Barron was a messer and that "He only ever had a run-in with his son Stephen". He repeated much of the material which was contained in the first statement and stated that he had gone to the Club at 8 p.m. on the 13th October, 1996. He stated that the bouncers came in at 10 p.m. and that they saw him there. He named one of the bouncers as Marty McCallion. He denied that Marty McCallion answered the door to him and Mark McConnell after they had come across the car park at about 1.03 a.m. on the 14th October, 1996 or that he had advised him to go around to the main door of the pub. He did not accept the proposition that he had been seen talking to Marty McCallion at the door of the Club at about 1.03 a.m. or that he had then gone around to the main door of the pub, knocked and was let in. He denied that Mark McConnell had told him what had happened in Quinn's pub earlier that night and stated that he only found out about that a few days later. He accepted that Mark McConnell went into the Club that night and that he had let him in with Roisín, his wife. At this stage he gave written permission for his house to be searched and stated that he would give a blood sample for analysis having been informed by the Gardaí that it was for forensic comparison. He also agreed to give finger and palm prints and have his photograph taken. When notes were read over, according to Gardaí Melody and Fitzpatrick, Mr. McBrearty, Jnr. agreed they were correct but refused to sign them. This interview concluded when Garda Martin Leonard returned to the interview room to ask the interviewing officers to terminate the interview and allow the prisoner a period of rest at 1.35 p.m. according to the custody record.

Frank McBrearty, Jnr. makes a number of allegations in relation to D/Sergeant Melody and D/Garda John Fitzpatrick in respect of this interview. He states that when they came into the interview room "they were a nightmare the things they were saying to me". He alleges that they accused him of

(a) Not caring about his wife;

(b) Not caring about his children; and said

(c) That his father beat him up when he was a young fellow and that he was consequently brain damaged.

He also alleges that Sergeant Melody was repeatedly poking him and that D/Garda Fitzpatrick was pulling at his hair and his ear and they were telling him to "come on admit you're a murderer, you're a murderer you're a murderer". He described both members as "really evil". Mr. McBrearty, Jnr. complains that he had been asking about his wife and his children's welfare all day and was particularly worried about his wife and his son who by reason of the day's events, he thought, might have been susceptible to an asthma attack. He alleged that the Detectives, Melody and Fitzpatrick, kept at him all day and in particular that Detective Sergeant John Melody was at his leg and

when he protested that he wasn't going to be kicked any longer, D/Garda Fitzpatrick grabbed him. He says that when Fitzpatrick grabbed him he grabbed Fitzpatrick and put him over the table and told Fitzpatrick that he shouldn't even try to put his strength against his (McBrearty's). He says that D/Sergeant Melody then said he would get the boys outside if he didn't calm down. Frank McBrearty, Jnr. states that D/Sergeant Melody kept kicking him the whole day. All of those allegations are denied, Sir, and the relevant Gardaí assert that all the interviews were properly conducted.

Following this interview at 1.35 p.m., application was made for the extension of the detention of Frank McBrearty by Detective Sergeant John Melody to Superintendent John Fitzgerald. D/Sergeant Melody informed Superintendent Fitzgerald that Frank McBrearty was:

(a) Holding back on vital information relating to the murder to Richard Barron;

(b) That the account of his movements and actions on the 14th October, 1996 was in conflict with the statements taken from witnesses; and

(c) That he did not believe the account given by Frank McBrearty, Jnr.

An order extending the detention of Frank McBrearty, Jnr. was made at 2.50 p.m.

Detective Sergeants O'Grady and McGrath returned to the interview room at 2.43 p.m. and continued to interview Frank McBrearty, Jnr. This continued up to 5 p.m. and notes were taken by Detective Sergeant O'Grady. Questions were put by Detective Sergeant McGrath. Mr. McBrearty, Jnr. repeated much of what had already been stated by him in the course of the previous interviews but added that while he was working in Frankie's he went around to the Tudor Lounge a number of times, he thought between five and twenty times. He did this by going out the entrance of Frankie's and walking around the side of the Tudor Lounge to the front. It was put to him that the Gardaí had a statement from a person who saw him up on the embankment at the back of the car park of Frankie's Night Club. He denied being there. He stated that the first time he saw Mark McConnell that night was late or near the end of the disco. He did not bring Mark McConnell around to the Tudor Lounge. There was some discussion about the activities of Frank McBrearty, Snr. in questioning various potential witnesses. The notes were read over to him and he agreed they were correct. He was invited to sign the notes but declined. The accuracy of these notes does not appear to be an issue but the interview is not without controversy. Mr. McBrearty, Jnr. complains that:

> **Around half three the two Johns were interrogating me and Gerry and Eamon came in with this statement and showed me the statement that Mark McConnell was supposed to have made saying that I killed Richie Barron … They read it out to me wee bits of it, I says let me see it, but they wouldn't let me hold it.**

They showed me the signature Mark's signature but it wasn't Mark's signature at all.

He goes on to explain that he noticed 'McConnell' was spelt incorrectly on the document i.e. not McConnell but Conel. He explains that this is how he knew, as he puts it, that it wasn't Mark's signature. It was explained to him that Mark was "going to get off with it".

There appears to be some suggestion by him, at this stage, that photographs were shown to him of the deceased. Certainly that allegation is made in respect of a further interview which occurred at 5 p.m. and which was conducted by D/Sergeant Melody and D/Garda Fitzpatrick.

In the course of this interview, which lasted until 6.10 p.m., D/Sergeant Melody and D/Garda Fitzpatrick describe how they both put a number of questions to Frank McBrearty, Jnr. and D/Sergeant Melody took a written note of these questions and the replies given. D/Sergeant Melody states that he read over to Frank McBrearty the notes taken during the course of the interview and asked him if they were correct. He agreed they were correct but refused to sign them when asked to do so. During the course of this interview questions containing a number of propositions were put to Frank McBrearty, Jnr. including that:

(a) Mr. McConnell had told Mr. McBrearty what was said in Quinn's pub by the Late Mr. Barron and that the two had decided to do something about it after Barron was seen heading home drunk;

(b) A number of people saw Messrs. McBrearty and McConnell coming over the hill at the car park just after Mr. Barron had been killed;

(c) An allegation was made regarding his father that all employees in the bar and Club had been asked about the police investigation and that one employee had left the Club because of it and that his father had offered a bribe to a witness not to give evidence;

(d) Richard Barron sustained severe head injuries and the Gardaí knew he had received a blow from some type of blunt instrument on top of his head near his forehead and that he died as a result of one or more blows to the head and that either he or McConnell had hit him on top of the head with something – they didn't know what.

Mr. McBrearty, Jnr. denied all the allegations made against him. At the conclusion of the interview the notes record the following exchange between the interviewers and Mr. McBrearty:

Question: You should consider telling us the truth and make a written statement about what happened that night. Do you understand? Answer. I'll think about it.

At this point it is recorded that the notes were read over to him and that he agreed they were correct but refused to sign them. They were then witnessed by Detective Sergeant John Melody and D/Garda John Fitzpatrick at 6.10 p.m.

There is considerable disagreement between Frank McBrearty, Jnr. and the interviewing members as to what happened during the course of this interview. Mr. McBrearty, Jnr. has a number of complaints to make against the interviewers. He complains that D/Sergeant Melody was kicking him throughout the interview and that he was shown photographs of the deceased, in other words post mortem photographs. He also contends that he was shown a statement allegedly made by Mark McConnell and containing Mark McConnell's signature and that portions of this 'statement' were read to him. He complains that the interviewers spoke to him about Mountjoy and that he was going down for twenty years and that Mark McConnell was going down for fifteen. They told him that Mark McConnell was saying that "he (McBrearty, Jnr.) had done it and that he held him and you done it." For the sake of clarity, Sir, it is as well to point out, at this point, that no-one is now saying that Mark McConnell confessed to the murder while in Garda custody, or at all. Mr. McBrearty also alleged that D/Garda John Fitzpatrick had threatened to throw him out of a window and that in response he (Frank McBrearty, Jnr.) had told him that if he tried he would be coming with him. He complained that D/Sergeant Melody said to him "Do us a … favour Frank. When you go down to the cell for your dinner, hang yourself because if you don't … hang yourself they'll shag you in Mountjoy". These particular allegations are made at pages 61 to 72 of the transcript of the taped interview with William Flynn.

From the custody record, it would appear that a break occurred in the interviewing of Frank McBrearty, Jnr. at this stage. At 6.15 p.m., it is recorded that Mr. McBrearty was given two 'headache tablets' and water and at 6.50 p.m. Garda Leonard records a phone call received from Rosalind McBrearty, his mother. It is recorded that he reassured her as to her son's condition and that her son would be released in two hours.

Perhaps the most controversial episode in the entire course of this detention took place in the following interview at 7 p.m. It was during this period, between 7 p.m. and 8.30 p.m. in the course of which he was interviewed again by Detective Sergeant John Melody and Detective Garda John Fitzpatrick, that it is alleged that Frank McBrearty, Jnr. confessed to hitting Richie Barron with a bit of timber in circumstances which it is contended by the investigating officers are set out in a statement dictated by Frank McBrearty, Jnr. It is useful, Sir, to set out the text of this statement as follows:

> **The statement of Frank McBrearty born 22.05.69, 67 Elmwood Downs, Letterkenny, Co. Donegal made to D/Sgt. John Melody after being cautioned as follows:**
>
> > **"You are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be given in evidence".**

Listen, I'll tell you what happened on the 14.10.96. I heard that Richie Barron was up to his old tricks again, mouthing about the McBrearty's, Mark McConnell he's my first cousin told me this. He had a row with him in Quinn's pub that evening. His wife Roisín was also there. Mark was very annoyed over the row and what Richie Barron said to him. When he came over to the Club that is Mark McConnell he told me that he had seen Richie off at the top of the road. We went up the back way across the car park and got on to the main road. We waited for Richie Barron there. We intended having a word with him. We saw Richie coming, he was on his own. I picked up a bit of timber. When we stopped him he lashed out at us but he missed. I hit him a slap on the head and he fell back. We then ran. I dropped the timber I had on the way back. We got into the Club and it was not until later that I heard that Richie had been knocked down by a hit-and-run. Michelle Scott told me. My father found out about what happened and he said he would look after it for us. My father never intimidated anyone. He never offered to my knowledge money to anyone to not give evidence against me. This statement has been read over to me and is correct.

Frank McBrearty, Jnr.
John Melody, D/Sergeant
8.25 p.m., John Fitzpatrick D/Garda
4/12/1996

The circumstances in which it is alleged this statement came to be made are central to this aspect of your enquiry. A number of statements have been made by Detective Sergeant Melody and Detective Garda Fitzpatrick. They were the interviewers and, as such, they furnished statements in the normal way in the course of the investigation into the death of Richard Barron and subsequently, made further statements to members of the Carty investigation team arising out of the allegations and complaints made by Frank McBrearty, Jnr. in relation to what he said transpired during the course of this interview. Mr. Frank McBrearty, Jnr.'s account of the interview is taken from the transcript of the taped interview with William Flynn, a statement made in the course of an investigation by the Garda Complaints Board into complaints made by him in respect of his arrest and detention and correspondence from his solicitors, V.P. McMullin. Apart from these conflicting statements, from which it is clear to us the interviewers have denied all allegations of wrongdoing, there are other relevant aspects of this alleged statement to which we will refer at a later stage. What follows is our understanding of the allegations and the responses made to these allegations based on the materials available to us. This does not preclude any person who may have information to give to the Tribunal by way of amplification, clarification or further evidence from assisting the Tribunal in its understanding of these events by way of further statement. Of course, Sir, this invitation applies in respect of all issues referred to in this opening statement and is extended to any person having information relevant to the Terms of Reference.

In a statement made on the 15th December, 1996 Detective Sergeant Melody describes how at 7.05 p.m. he and D/Garda Fitzpatrick took Mr. McBrearty, Jnr. to an interview room, cautioned him and again informed him that they were investigating the murder of Richie Barron in Raphoe on the 14th October, 1996. He states that he asked Frank McBrearty, Jnr. "to tell us the truth" about what happened to Richie Barron and "he then stated that he would tell us the truth about what happened that night". He asked Mr. McBrearty if he would make a cautioned statement in writing about what happened. He said that he would. D/Sgt. Melody then wrote down the heading to his statement including the words of the caution. He states that he then read this over to him and Frank McBrearty, Jnr. dictated a statement to him which he wrote down in writing. "When he finished the statement I read it over to him."

This account is repeated by D/Sergeant Melody in a statement made by him on the 20th April, 2000 to D/Superintendent Joseph McGarty. In that statement the following is added

> **Frank McBrearty, Jnr. became emotional during the making of this statement when relating what happened between himself and Richard Barron on the 14th October, 1996.**

Further detail is given by D/Sergeant Melody in a further statement to D/Superintendent Joseph McGarty on the 27th July, 2000 when he states:

> **There was no other written memo taken during this interview. The taking of this statement from Frank McBrearty, Jnr. took some time, due to the fact that he would lose concentration and become erratic. He also became emotional when he related what happened between himself and Richard Barron on the 14/10/1996.**

His colleague, Detective Garda John Fitzpatrick, in his first statement, confirms much of what D/Sergeant Melody stated in relation to the taking of the statement. In a further statement made to D/Superintendent Joseph McGarty on the 20th April, 2000 he states that the statement was made after D/Sergeant Melody requested that he (Frank McBrearty, Jnr.) would make a cautioned statement "about the whole affair and tell us the full truth". He also adds in this statement that "while making the statement Frank McBrearty, Jnr. got emotional when he was relating what actually happened on the night of the 13th-14th October, 1996". In a further statement made on the 27th July, 2000 to D/Superintendent Joseph McGarty he added that "during the taking of this statement Frank McBrearty, Jnr. started talking about family problems and he became emotional when he was telling us about what he did to Richard Barron".

Both Gardaí state that Frank McBrearty, Jnr., having had the statement read over to him and having acknowledged its correctness, signed the statement.

Both interviewers in their accounts of what happened lay particular emphasis on a change made they say at the direction of Mr. McBrearty, Jnr. It could

perhaps be said that if a correction was made this tends to suggest that Mr. McBrearty, Jnr. knew what was in the statement and had control over its contents. Both members addressed this issue on being interviewed on behalf of the Carty team on the 16th July, 2000.

D/Sergeant Melody addresses it in the following way

> **Prior to finishing his statement he said that his father never offered to his knowledge money to anyone to not give evidence against him. In writing down this sentence, I read it over to Frank McBrearty and he corrected the sentence by putting the word (not), that is why this word appears to be out of line. The statement was then read over to Frank McBrearty, Jnr. He acknowledged that it was correct and signed it when I asked him to. I also asked him to initial the front page of the statement, but he refused to initial or sign it.**

D/Garda John Fitzpatrick in his statement of the same date states:

> **When this statement from Frank McBrearty, Jnr. was completed, D/Sergeant John Melody read it over to him. When Detective Sergeant Melody read over the reverse page to Frank McBrearty he asked him to put in (not) where Detective Sergeant Melody had "anyone to give evidence against me". He asked D/Sergeant Melody to put in the word (not) between to and give. Frank McBrearty signed the statement after it was read over to him …**

As can be seen, both appeared to differ somewhat in their recollection as to the sequence of events in the course of which the amendment was made.

Sir, we refer in such detail to what might be regarded as a small part of the story of the alleged taking of this statement because it highlights the type of issue of fact which is peculiar to controversies of this kind and which you, Sir, will be called upon to resolve in the light of the oral evidence ultimately adduced.

The statement allegedly made, and which will be available to the Tribunal, is a single page document containing writing on the front and on the reverse. It is one of the most important documents which the Tribunal will have to consider because if made by Frank McBrearty, Jnr. it is an acknowledgement that he was involved in a very serious assault on the late Richie Barron which may have led ultimately to his death. At the very least, therefore, it is an admission to unlawful killing. Mr. Frank McBrearty, Jnr. has at all stages denied that he ever made any such admission and says that the contents of the confession are untrue. Consequently, it will be necessary to put before you, Sir, in a very detailed way, the chronology of events concerning the alleged composition of this statement and of the complaints made in relation to the behaviour of the interviewers concerned, their responses to these complaints having had an opportunity to consider them, the investigation carried out into the events surrounding the taking of the statement by members of the Carty investigation

team, and the forensic examination of the document together with other related events.

To return to the alleged correction of the statement. The importance of that correction looms large in your consideration of the making of this statement. As already stated the alleged confession by Frank McBrearty, Jnr. is a single page document. The portion which is alleged to have been corrected occurs on what is said to be the second page of the statement. In fact the only material which appears on page two (the reverse side) consists of two sentences:

> **My father never intimidated anyone. He never offered to my knowledge, money to anyone to not give evidence against me. This statement has been read over to me and it is correct.**

Just beneath this appears what is said to be the signature of Frank McBrearty, Jnr. and the interviewing members Melody and Fitzpatrick and the time and date of the statement.

As far as we understand it, it is Mr. Frank McBrearty, Jnr.'s contention that he never made, saw or had read over to him or signed any admission or statement to the effect contained on the first page of the document. Further, if his signature appears on the second page it was obtained by a trick. In this regard, Sir, your attention is drawn to the fact that there is no mention whatsoever of the death of Richard Barron on the reverse side of the document and no part of the first page is initialled or signed by Mr. McBrearty, Jnr. This may be significant but, on the other hand, it may not be.

Frank McBrearty, Jnr. also contends that the first knowledge he had of the existence of the confession alleged to have been made by him came from an affidavit sworn in the course of High Court proceedings entitled "The High Court Record No. 1999 No. 2852P between Frank McBrearty, Snr. – plaintiff and Sergeant John White, the Commissioner of An Garda Síochána, the Minister for Justice, Ireland and the Attorney General" in the course of which an affidavit was sworn by Chief Superintendent Denis Fitzpatrick on the 21st April, 1997. At paragraph 5 of this affidavit he states that Frank McBrearty, Jnr. was one of two main suspects in relation to the death of Richard Barron and had indeed made a statement of admission in relation to his involvement in Mr. Barron's death. He purported to exhibit this statement of admission, together with a shorter statement confirming same, and typed copies thereof, as exhibit A in the affidavit.

In this respect, it may be thought somewhat odd that though Superintendent Shelly had earlier been in contact with the Office of the Director of Public Prosecutions concerning a legal issue in respect of the arrest of Roisín McConnell, no attempt seemed to have been made, of which we are aware, to contact the Office of the Director of Public Prosecutions, or whatever legal assistant was on duty at the time, seeking directions as to whether a charge of murder or any charge should be laid against Frank McBrearty, Jnr. arising out of the alleged confession. One might normally expect such contact following

the making of a confession in these circumstances. However, it would appear that the Director of Public Prosecutions first became aware of the confession from the Lennon Report which was dated 2nd March, 1998.

We now turn to deal with the signature which D/Sergeant Melody and D/Garda John Fitzpatrick contend is that of Frank McBrearty, Jnr. Frank McBrearty, Jnr. is vehement in his denial that he ever made any admission that he was involved in the death of Richard Barron. His comments in relation to the composition of this alleged statement are to be found in the interview which was conducted by William Flynn and which was video taped. It is his strong contention that he never appended his signature to any document containing an admission of involvement in the killing of Richard Barron. Insofar as we understand what Mr. McBrearty says about the signature, it would appear that he contends that he never signed any document amounting to an admission but that he may have been tricked into signing page two of the document which does not make any reference to the killing of Richard Barron. The other possibility which he raises is that his signature was forged on to the document. It is appropriate that a relevant extract of the interview between Mr. Flynn and Mr. McBrearty, Jnr. should be referred to at this stage. In the course of this interview he states that anything which he did sign he read twice and it was read to him also:

Interviewer:	**Please explain this confession to the murder of Richie Barron for me please.**
F. McBrearty:	**Do you see the signature on that, do you see a signature on that?**
Interviewer:	**That's page one.**
F. McBrearty:	**Do you see a signature on that?**
Interviewer:	**No …**
Interviewer:	**Could you please look at page two.**
F. McBrearty:	**There is nothing on that to say that I killed Richie Barron, is there? And as far as I am concerned that is not my signature. Because I didn't say what it says at the bottom, I cannot read that, I can read the print at the bottom, it says "Has been …" what does it say?**
Interviewer:	**Are you telling me that two very …**
F. McBrearty:	**I am telling you .. they .. forged my signature, either they tricked me, they put that in there to an affidavit and very funny, anybody who was arrested after me there was never a confession mentioned to them, even me father.**

Interviewer: **Let me read this statement out to you. I typed it out. It's very hard to read.**

F. McBrearty: **And I'll deny that and I'll be taking that to the European Court of Human Rights when I'm … finished with them in the High Court and you can tell them that.**

Interviewer: **You haven't explained to me why your signature is on**

F. McBrearty: **I am explaining to you, I signed something like that, but I didn't sign the bit that is at the bottom. And it's away to an expert to get checked out because I refute that that is my … signature. And it doesn't look like my signature. …**

Interviewer: **You are saying you didn't sign it.**

F. McBrearty: **I am saying I didn't sign that. No … way and if I did sign it I was tricked into signing it.**

The interview continues and the full text of the statement was read over to Mr. McBrearty, Jnr. The interview continued and the following exchange took place:

Interviewer: **Have a look at your signature there ..**

F. McBrearty: **… I deny that's my signature.**

Interviewer: **Did you look at it carefully. Are you saying, perhaps you signed that page and it is your signature. Is it possible that you signed a page which is unrelated to the murder?**

F. McBrearty: **That is possible. As I said my father never intimidated anybody to my knowledge. That's possible. But this bit at the bottom, I definitely didn't see it.**

The bit at the bottom referred to in this exchange appears to relate to that portion of the statement which refers to an assault or murderous attack on the Late Richard Barron on the first page.

On the 13th December, 1999, Inspector Hugh Coll and Detective Sergeant James Fox on behalf of the Carty Inquiry met with Frank McBrearty, Jnr. and his wife Patricia McBrearty at the Mount Errigal Hotel, Letterkenny. In the course of this meeting Mr. McBrearty complained of the manner in which he was arrested and his treatment in custody. He related that D/Sergeant

Melody and D/Garda Fitzpatrick started late in the day talking about his father intimidating witnesses and that they read some notes to him and that he signed them. He said that the notes that Gardaí Melody and Fitzpatrick had made were on a page and it was some way down the page. Sir, you may feel that this implies that the notes were made at the same time as they spoke to him about his father intimidating witnesses. There are notes relating to such a conversation in what is presented as page two of the alleged admission already referred to. McBrearty, Jnr. states that he only signed notes made on a page and "three quarter way down the page".

The original of the controversial statement was sent for document analysis by Detective Sergeant John P. Lynch who examined the questioned signature of Frank McBrearty, Jnr. on a statement made on the 4th December, 1996 and compared it with signatures attributed to him on a number of other documents. He found no evidence of copying or tracing of the questioned signature but he found "common handwriting features between the signatures which he examined and in his opinion the questioned signature was consistent with having been written by Frank McBrearty, Jnr." A similar examination was carried out by Mr. Kim Harry Hughes, a forensic document examiner in England. In his report dated the 28th February, 2000 he concluded that:

> **The questioned signature is pictorially similar to the specimens of McBrearty and the degree of similarity is such that it must be either a genuine signature written by him or a simulation of McBrearty's signature by some other person. The questioned signature contains some letter formations which cannot be exactly matched in the specimens of McBrearty. However it corresponds closely in many respects in its letter design and general writing habits such as fluency, punctuation and relative height of letters. The questioned signature is not associated with any aids to forgery such as faint guidelines or indented impressions. In my opinion the questioned signature is a genuine signature written by McBrearty and not a simulation by some other person.**

It may be, Sir, that on the evidence, the issue in relation to the signature reduces itself to the question as to how this signature of Frank McBrearty, Jnr. came to be appended to the alleged statement of admission on the 4th December, 1996. The interviewing Gardaí, Melody and Fitzpatrick, state that the signature is appended in the normal proper way and that a statement of admission to involvement in the killing of Richard Barron was made by Frank McBrearty, Jnr. voluntarily, was read over to him and acknowledged by him as correct and then signed by him. Frank McBrearty, Jnr. denies making any confession, denies any involvement in the death of Mr. Barron and contends that if his signature appears on this statement of admission it was obtained by a trick; in circumstances in which the second page on which a signature appears claims no reference to the death of Mr. Barron and there is no signature on what is said to be the first page of the statement of admission. This necessarily implies that D/Sergeant Melody and D/Garda Fitzpatrick made up the statement of admission in an effort to procure Frank McBrearty,

Jnr.'s wrongful conviction for murder. It is well to remember that when confronted with allegations of wrongdoing in relation to the detention of Frank McBrearty, Jnr. of any kind, D/Sergeant Melody and D/Garda John Fitzpatrick denied all such suggestions. Mr. Hughes later examined a number of tables from Letterkenny Garda Station interview rooms. This added nothing of value to his existing opinion.

Sir, we now turn to an incident which may or may not have some bearing on the determination of the issue to be decided in relation to the signature and the making of the statement. On the 16th June, 1999, Inspector Hugh Coll approached Garda Martina Fowley at Letterkenny Garda Station, and in the course of his conversation with her, she expressed a number of concerns. The one relevant to this section of the inquiry is that on the 4th December, 1996, while on duty in the incident room at Letterkenny Garda Station, Garda Fowley stated that she had seen Detective Inspector John McGinley writing on a half sheet and that he had a photocopy of a Form C8 witness statement on the table in front of him. She described how Detective Inspector McGinley drew her attention to the signature of Frank McBrearty on this sheet and that he posed the question to her "Is that a good likeness?". He was apparently, as she says, laughing as he was saying this. Inspector Coll informed her that he would get back to her in respect of this matter and on the 23rd June, 1999 he spoke with her again at Letterkenny and instructed her to speak to her divisional officer, Chief Superintendent Denis Fitzpatrick.

On the 17th August, 1999 Chief Superintendent Fitzpatrick contacted Garda Martina Fowley and spoke with her in relation to the concerns she had raised with Inspector Coll. Chief Superintendent Fitzpatrick states that on the 17th August, 1999 when he gave Martina Fowley a lift on her way home from work he brought up the subject. She said Inspector McGinley was sitting at the centre of the conference room table in Letterkenny Garda Station writing something on the 4th December, 1996 and when she got up to get something he showed her a ruled half sheet and said words to the effect "Is that a good likeness?". She said she looked at the sheet and a third of the way down the page saw the signature "Frank McBrearty" and, beside it, a Form C8 with Mr. McBrearty's signature on a white page with black writing. She said Inspector McGinley just laughed and went out the door. She said she discussed this incident only with Sergeant Brendan Roache and Inspector Coll. She was requested to make out a report and subsequently did so on the 19th of August, 1999.

The report by Garda Fowley states that on Wednesday the 23rd June, 1999 she had spoken with Inspector Coll in the corridor in Letterkenny Garda Station and that his "instructions from Sligo" were that she was to speak to her own Chief on the matter. She was surprised that matters brought to the authorities attention were not going to form part of the investigation by the Carty team. She understood, from the general consensus, that such was the purpose of the team. She left the matter in abeyance "in the expectation that they would revert to me". On the 16th August, 1999 she was aware that the investigation team had returned and based themselves in Letterkenny. She states that on the evening of Tuesday the 17th August, 1999 Chief

Superintendent Fitzpatrick contacted her and spoke to her about her concerns. It is perhaps as well to quote fully from her report as follows:

> **On the 4th December, 1999 I was on duty at Letterkenny Garda Station. I was detailed for duty in the incident room. There were a number of persons in custody in connection with the murder of Richard Barron including two of the main suspects at the time namely, Mark McConnell and Frank McBrearty, Jnr. During the course of the afternoon I was present in the conference room with Sergeant Roache and Inspector John McGinley. I was seated into the left hand side of the conference room at the lower end of the room. Sergeant Roache was seated at the opposite end of the room to the right of the entry door. Inspector McGinley was seated at the conference table facing towards the door and almost adjacent to it. He was writing on an official half sheet. I had cause to retrieve some papers from this table. In doing so I passed behind, he turned to me and showed me the half sheet he had been writing on. It was a sepia coloured ruled half sheet. There was writing on this sheet of paper covering approximately a third of the page. There was also the name of Frank McBrearty written in longhand at the end of this writing. Also on the table in front of Inspector McGinley was a black and white photocopy of a manuscript signature of the name Frank McBrearty. From my recollection this signature was a photocopy of a Form C8. Inspector McGinley showed me the half sheet and asked me was "that a good likeness?". I took this to mean were both signatures alike. I thought it was a practical joke, I started laughing and so did he. I returned to my seat and Inspector McGinley left the room with the papers he had been working on shortly after.**

She spoke with Sergeant Roache and he asked her what that was about and, when she told him, Sergeant Roache dismissed the matter as a joke and commented that it was another one of Inspector McGinley's pranks. She continues "I took it to be a ruse and thought no more about it until recently when concerns about the veracity of the statement of admission obtained had been expressed in the public media". Thus, the matter is reported over two years after she said it happened.

In a further statement, made to Detective Sergeant George Kyne and Detective Inspector John O'Mahony on the 13th October, 1999 in respect of her report, she acknowledged to both of them that she could "definitely say that the two original documents, both statements of Frank McBrearty, Jnr. made on the 4th December, 1996 were not the documents in the possession of Superintendent McGinley in the incident room/conference room on the 4th December, 1996." Inspector (now Superintendent) McGinley denies any such incident as described by Garda Fowley ever took place. However, Sergeant Brendan Roache gives a similar description to Garda Fowley concerning his knowledge of her report to him of this incident and states that it occurred at approximately 3 to 4 p.m.

Sir, this alleged occurrence really only has relevance to the statements allegedly made by Frank McBrearty, Jnr. if the Tribunal accepts that there is a real issue of substance in relation to the forgery of Frank McBrearty, Jnr.'s signature – i.e. was it actually forged or was the forging of his signature on any document in the course of his detention actually contemplated whether by Inspector McGinley, or D/Sergeant Melody or D/Garda John Fitzpatrick or any other member from An Garda Síochána. In this matter, the evidence of Frank McBrearty, Jnr. and the handwriting experts may have some value.

Sir, this incident also has implications in relation to the detention of Mark McConnell because it is alleged by Mr. McConnell that sometime before 8.20 p.m., i.e. approximately ten or fifteen minutes before he was released from detention, Detective Inspector McGinley read to him, or showed to him, a handwritten document three or four pages in length purporting to be a statement of admission from Frank McBrearty, Jnr. upon which he alleges he saw Frank McBrearty's name. We will return to this aspect at a later stage.

Returning now to consider the alleged confession of the 4th December, 1996, by Frank McBrearty, Jnr. it is instructive to enquire as to what happened to this statement after it was allegedly made.

D/Sergeant Melody when interviewed on 27th July, 2000, stated that following the interview he spoke with Detective Sergeants McGrath and O'Grady outside the interview room and that he had a file with him. He states that he informed the two members that Frank McBrearty, Jnr. had made a cautioned statement about what happened between himself, Mark McConnell and Richard Barron on the 14/10/1996:

> **I showed them the statement and read over the contents of it to them for their information, as they were about to take over the interviewing of Frank McBrearty, Jnr. These two members then went into the interview room where Frank McBrearty, Jnr. was. I still had possession of his statement.**

He goes on to state that both himself and D/Garda Fitzpatrick then went looking for D/Superintendent Shelly or Superintendent John Fitzgerald:

> **When we located them I informed them what had occurred. We all went into either the office of Detective Superintendent Shelly or Superintendent Fitzgerald. There we discussed what had transpired with Frank McBrearty. Both Superintendent Shelly and Superintendent Fitzgerald read the statement made by Frank McBrearty, Jnr. I have given over possession of Frank McBrearty Jnr.'s statement to Superintendent Fitzgerald when we were in his office or D/Superintendent Shelly's office. I cannot say exactly what time this statement was handed over to Superintendent Fitzgerald but it was a considerable time before Frank McBrearty, Jnr. was released at 9.16 p.m. … therefore this was between 8.30 p.m. and 9.16 p.m. on the 4/12/1996. We had been joined at some stage by D/Inspector McGinley when we were in the office discussing the**

> **contents of Frank McBrearty's statement with D/Superintendent Shelly and Superintendent Fitzgerald. Superintendent Fitzgerald held on to the statement of Frank McBrearty, Jnr. from that time onwards.**

D/Garda Fitzpatrick states that the 'statement of admission' was read over to D/Sergeant McGrath and D/Sergeant O'Grady but not given to them and that they then went to look for Superintendent Fitzgerald and Superintendent Shelly to inform them about the contents of the statement. He describes in his statement, also made on the 27th July, 2000, how the statement was handed over to Superintendent Fitzgerald before 9 p.m. on the 4th December, 1996 and states that "Superintendent Fitzgerald read the statement of Frank McBrearty, Jnr. over to Superintendent Joe Shelly and D/Inspector John McGinley who came in during that period".

While Superintendent John Fitzgerald confirms that the making of the statement by Frank McBrearty, Jnr., and also that a brief subsequent statement, was brought to his notice very shortly before the prisoner's release from custody he does not outline the circumstances in which this happened. He confirms that he took possession of those original statements and held them in his possession until he handed them over to Chief Superintendent Austin McNally on the 30th April, 1999.

Sir, what may be regarded as an unusual situation developed in relation to the custody of these two statements. (The second statement will be referred to later in the opening). A Garda report was submitted to the Chief State Solicitor by Superintendent Kevin Lennon on the 2nd March, 1998. Superintendent Lennon also composed a debriefing document dated the 6th March, 1998. In the course of the debriefing document at paragraph 4.10 the Superintendent notes the following

> **The investigation team on this date are still unaware, despite requests made in this matter, as to whether the aforementioned statement of admission (4th December, 1996) was made on a single sheet of paper or on two sheets. This is significant in that the investigation team are aware that the main body of this statement has not been signed or initialled by Mr. McBrearty, Jnr. In fact this all important statement is not in the possession of the investigation team and has not been viewed by them.**

Having regard to the controversy which then surrounded the making of this statement the situation may be regarded as extraordinary. Though Superintendent Lennon comments extensively on the statement of admission at pages 326 to 330 of his report to the Director of Public Prosecutions, he does not raise in the Lennon Report the difficulties referred to in the debriefing document. In fact he goes on to describe the statement as follows:

> (2) The caution incorporated in the heading of the statement is neither signed or initialled by Frank McBrearty, Jnr.

(3) While the signature on the statement appears to be that of Frank McBrearty, Jnr. from visual comparison with the custody record the main content of the admission are not signed or initialled by him.

(4) The top or bottom of the pages of the statement are neither signed or initialled.

Superintendent John Fitzgerald had moved to Manorhamilton on the 5th February, 1997. Of particular importance in this regard is why the Director of Public Prosecutions was not informed of a matter which Superintendent Lennon believed to be of the utmost importance i.e. whether the statement was on one or two pages and why despite requests was Superintendent Lennon not informed as to whether it was on one or two pages. In the light of the importance ascribed by Superintendent Lennon to the 'confession statement' in his debriefing document one might also wonder why Superintendent Lennon purported to describe a document to the Director of Public Prosecutions which he had not seen and why he apparently left out of that description any reference to the question of whether it was on a single or two sheets.

It may be that the retention of an original exhibit by the officer-in-charge of the case (particularly in relation to the originals of statements) is considered the norm. Even so, it would be most unusual if a senior officer sought sight of an original exhibit that it would not be shown to him or at least described to him at his request. Peculiarly, the handing over to Chief Superintendent Austin McNally on the 30th April, 1999 of the original of the statement occurred nine days after Superintendent Denis Fitzpatrick purports to exhibit the original and a typed copy thereof in an affidavit to the High Court already referred to.

The impression given by Superintendent Lennon, in the concerns set out in his debriefing document, implies that he is not receiving cooperation from Superintendent Fitzgerald or from others who could answer his enquiries in relation to the simple fact of whether the document was on one or two pages. This may or may not have significance for your consideration of the essential question as to whether the statement was concocted by members of An Garda Síochána or not. It is not clear to us how the requests alleged to have been made by Superintendent Lennon were made and to whom. Neither is it clear what purpose would be served by not indicating to Superintendent Lennon that the statement was on a single sheet of paper - front and reverse. It may be that Superintendent Lennon's concerns can be clarified in the course of the Tribunal's hearings at which stage their relevance, if any, to the composition and/or making of the alleged statement may be more fully understood.

At this point, Sir, it may be appropriate to consider the terms in which the alleged admission was made. It is useful sometimes to cast a critical eye over the contents of a confession and examine to what extent the confession coincides with the facts as known in relation to the event under investigation. A confession can be relied upon by a court of trial if it is voluntary and if it is

true. However, the legislature has been mindful of the fact that there have been instances in which confessions have been found to be unreliable or untrue. For that reason it recognised that a degree of caution was required when receiving confessions in evidence. Nowadays, in a criminal trial a confession standing alone and uncorroborated must be the subject of advice by the trial judge to the jury to have due regard to the absence of corroboration. Section 10 of the Criminal Procedure Act, 1993 provides that:

> **Where at a trial of a person on indictment evidence is given of a confession made by that person and that evidence is not corroborated, the judge shall advise the jury to have due regard to the absence of corroboration.**

We think it is useful therefore to look at the content of the statement allegedly made by Frank McBrearty, Jnr. to D/Sergeant Melody and D/Garda John Fitzpatrick and compare them with other information or potential evidence gleaned in the course of the Garda investigation.

Frank McBrearty, Jnr. is said to have stated:

> **We got into the Club and it was not until later that I heard that Richie Barron had been knocked down in a hit-and-run. Michelle Scott told me.**

Michelle Scott, in a statement to D/Garda Michael O'Malley on the 23rd October, 1996, stated that she did not see Frank McBrearty, Jnr. around the disco on the night of Richard Barron's death. She states that she was in Sarah's Cafe across from Frankie's Disco at approximately 1.40 a.m. on the 14th October, 1996. She was told about the fact that Richie Barron had been killed by a man called Sean Duffy. On her way back to the disco, she met a William Logan whom she told about Richard Barron's death. Mr. Logan then shouted over to Mr. Frank McBrearty, Snr. and informed him about Mr. Barron's death. Mr. McBrearty, Snr. seemed shocked about this. Interestingly, in a note of an interview held between 12.04 p.m. and 1.35 p.m. earlier in the day, Detective Sergeant Melody records Frank McBrearty, Jnr. as stating that he had heard from Michelle Scott that Richard Barron had been knocked down in a hit-and-run and that she had told him this on the night of Mr. Barron's death. This was something Mr. McBrearty was already recorded as having said to D/Sergeant O'Grady and D/Sergeant McGrath in an interview conducted between 9.40 a.m. and 12.04 p.m.

There may be a number of possible explanations for the appearance of this reference to Michelle Scott in the alleged statement of admission. It may be that Frank McBrearty, Jnr. was mistaken as to the identity of the person from whom he first heard that Mr. Barron had been knocked down by a hit-and-run and that he reiterates his mistake in his narrative of the events. It would therefore be an honest mistake which does not detract from the overall admission. Secondly, if one takes it that Michelle Scott is truthful and accurate and that she did not inform Frank McBrearty, Jnr. of the fact that Richard Barron had been knocked down by a hit-and-run, that element of the

statement can be regarded as incorrect. The Tribunal may then consider whether it was incorporated into a false confession in order to give it an air of authenticity. Knowing that Frank McBrearty, Jnr. twice in the course of interviews made a reference to Michelle Scott telling him that Richard Barron had been involved in a hit-and-run, did D/Sergeant Melody and D/Garda Fitzpatrick incorporate that reference into a false confession in order to give it an air of authenticity? Thirdly, it should be recalled that the previous two references to being told that Richard Barron had been knocked down by Michelle Scott, occurred in the course of interviews in which he was being accused of the murder of Richard Barron in the company of Mark McConnell which he denied. Consequently, if Michelle Scott is correct, and did not tell Frank McBrearty of Richard Barron's death, it may be that he was telling an untruth in order to support his denial. If that were the case, it might be thought unusual for that lie to reappear in a statement in which Frank McBrearty, Jnr. is alleged to be openly and voluntarily telling the truth about his involvement in the killing of Richard Barron. Why would he perpetuate the lie in such circumstances? Indeed, it never seemed to occur to any of the investigating members that the reference to Michelle Scott was at least mistaken and that some effort should be made to clarify this aspect of his statement (if the statement had been made) with Frank McBrearty, Jnr. The opportunity for this was provided in an interview which immediately followed the alleged making of the first statement.

Another aspect of the statement which bears consideration in a similar way concerns the implement allegedly used by Frank McBrearty, Jnr. The statement contains the following:

> **I picked up a bit of timber. When we stopped him he lashed out at us but he missed. I hit him a slap on the head and he fell back. We then ran. I dropped the timber I had on the way back.**

No piece of timber was ever found at the scene. A stick was recovered on the 6th December, 1996, the examination of which resulted in negative findings. Two pieces of wood which were found at or near the scene were referred to as items 28 and 29 in a forensic report provided by Dr. Brid McBride. They were found at the scene on the 6th December, 1996, following a further search of the area and are described as "a long rounded piece of wood … wooden stick" and "a piece of wood". Dr. McBride did not find blood on the sticks found at the scene. Curiously, no such piece of timber was found at the scene where it was alleged to have been dropped. One might reasonably conclude that the bit of timber used to cause the fatal injury would be of some significant size and weight. Frank McBrearty, Jnr. was never asked to describe the "bit of timber" or describe the area in which he had dropped it or the route which he had taken back from the scene.

It is said that Frank McBrearty, Jnr. also stated "I hit him a slap on the head and he fell back". From the materials available, Dr. John Harbison, the State Forensic Pathologist, is of the opinion that the injuries suffered by Mr. Barron were caused, most likely, from a moving object against Mr. Barron's forehead on his right side, most likely a motor vehicle. He states:

> **Movement of the inflicting force relative to the deceased is indicated by the nature of the bone injury mainly abrasion or scuffing on the surface of the bone at the site of the impact on the forehead.**

He goes on to state that had Mr. Barron impacted with the ground he would have expected widespread abrasions there. Instead the skin laceration on the right side of the forehead was accompanied by the minimum of abrasion and there was no other facial injury. The Tribunal will have its own independent pathologist report available at a later date and at that stage may further review the consistency or inconsistency of the alleged statement of Frank McBrearty, Jnr. in this regard with the pathologists' conclusion.

We are conscious that statements of admission may not be entirely accurate. Even though a person may be attempting to give as complete a picture of their involvement in the commission of a crime as is possible, mistakes can be made. However, we draw attention to these matters in the context of the difficulties which have been experienced in the past with confessions which have ultimately proved to be unreliable or untruthful. This is another tool which may be available to the Inquiry in its work. Of course, it would probably have been a more fruitful device had a full and proper forensic examination of the scene been carried out.

We return to the forensic examination of the document alleged to be the statement of admission made by Frank McBrearty, Jnr.

Sir, one of the propositions which emerges from the complaints made by Frank McBrearty, Jnr. is that he may have been tricked into signing the document, i.e. the second page of the alleged statement of admission which does not refer to the killing of Richard Barron, and that at some other stage, and/or unbeknownst to him, the incriminating page was written. It is important therefore to note that a forensic expert, Mr. Kim Harry Hughes examined the document. He found by examination of the reverse of the document that certain of the ink strokes on the front page particularly those which are more heavily impressed into the page appear to have picked up what he describes as "dirt" from the surface on which the paper was resting when they were written. There was no evidence from the front of the statement that any of the entries made on the reverse of the page were written on a "dirty" surface.

By examination of the front of the statement he found evidence that the "McBrearty" signature and possibly the text of the statement had been written on an uneven surface. There was no evidence from the reverse of the statement that any of the entries on the front page of the statement were written on an uneven surface. He concluded therefore that:

> **It is possible … that the text on the front of the statement was written while resting on a different surface to the reverse.**

He could not assess the significance of this finding but said that in turning the page over it could have been moved from one surface to another. There was

no evidence, in his opinion, to suggest that the inks used on both sides were dissimilar.

D/Sergeant Melody and D/Garda Fitzpatrick were interviewed by members of the Carty Inquiry and their comments in relation to the findings of Kim Harry Hughes were invited.

D/Sergeant Melody noted that the statement was taken on a wooden topped table desk on a half sheet of paper. He could not say for certain if there were other 'half sheets' or a file underneath. When he came to end of the first page he simply turned over the page and continued the statement. He paid no particular attention to the surface upon which the statement was written. He could give no explanation as to how the picking up of dirt could have occurred apart from the fact that the table top could have been dusty or the half sheet or the file cover could have been dusty. D/Garda Fitzpatrick could not say if there were any half sheets, or a file cover, when Mr. McBrearty signed, or, whether it was signed by him directly onto the wooden table. He said he would have had a file cover with him with the briefing statements in it, and that D/Sergeant Melody would have had 'half sheets'. He could not say if there was a 'half sheet' or a file under the page when the statement was being taken. When the page was being turned over he could not say if the page, upon which the statement was written, was on a 'half sheet' or on a file cover or put directly onto the table. He could not account for the dirt on the reverse side of the page because the dirt could have been on the table, the 'half sheets' or the file cover. It may be, Sir, that one might expect that there would have been no difference between the front and reverse sides of this document had they been written at the same time. It may be that the page was simply turned from a dirty and even surface to a clean and uneven surface in the course of writing and that this has led to a horrible coincidence of circumstances in which an innocent turning of the page tends to support the shocking complaint of fabrication made by Frank McBrearty, Jnr. Another proposition, of course, open for consideration by you is that Mr. Hughes' opinion supports or tends to support the complaint made by Frank McBrearty, Jnr. regarding the fabrication of this document.

It may be that some further expert assistance may be obtained in the linguistic analysis of the statement allegedly made by Frank McBrearty, Jnr. by exploring the extent to which (if any) the language used in the statement can by means of linguistic analysis be attributed to any one person, to more than one person, or whether or not it is capable of being attributed to any particular person, or indeed, whether a linguistic analysis can lead to the conclusion that it ought not to be attributed to Frank McBrearty, Jnr. This may form part of the investigation to be carried out by the Tribunal.

Sir, the manner in which this alleged statement came into being forms one of the core elements of the enquiry in relation to the arrest and detention of Frank McBrearty, Jnr. We have endeavoured to set out the narrative which is available from the investigation file, the complaints which are made by Frank McBrearty, Jnr. and his representatives in relation to how this statement came into being and statements furnished by those against whom complaints

are made. The allegations made in respect of the taking of the statement, if accepted as truthful, have the most serious consequences for those involved in the alleged taking of the statement. Fabrication of a statement of admission in respect of a murder enquiry is a truly awful attack upon the rights of the prisoner. It is calculated to procure his wrongful prosecution and conviction and to deprive him of his personal liberty, perhaps for his life, if convicted of murder. His family would be subjected to the most terrible odium and social estrangement in a local rural community.

We return to what appears to be the chronology of events which followed the allegedly illegal making of the statement. It would appear that at the conclusion of the interview with D/Sergeant Melody and D/Garda Fitzpatrick at 8.30 p.m., Detective Sergeants O'Grady and McGrath returned to the interview room. D/Sergeant Gerard McGrath and D/Sergeant Eamon O'Grady encountered D/Sergeant Melody and D/Garda Fitzpatrick as they exited the interview room at 8.30 p.m. In a statement to D/Superintendent Joseph McGarty made on the 21st April, 2002, D/Sergeant McGrath stated that he was made aware by them at this time that Frank McBrearty, Jnr. had admitted his part in the crime and had made a statement. He confirmed this in a further statement on the 27th July, 2000 in which he added that D/Sergeant Melody read over the contents of the statement to him and his colleague D/Sergeant O'Grady. He saw the statement in D/Sergeant Melody's hand and, he says:

> **It was signed by Frank McBrearty, Jnr. I did not have possession of this statement. My recollection of the statement is that it was a single document and it was written on both sides.**

D/Sergeant O'Grady also confirmed these facts, including the suggestion that D/Sergeant Melody read the contents of the statement over to them and that it included the admission in relation to Richard Barron. He was satisfied it was signed by Frank McBrearty, Jnr. and as far as he could recall it was written on both sides of the same sheet of paper. They then returned to the room and they stated that they continued to interview Frank McBrearty, Jnr. concerning the murder of Richard Barron. They go on to state that Frank McBrearty volunteered to make a further cautioned statement to them. It was taken down in writing by D/Sergeant McGrath and when this statement was completed, Mr. McBrearty signed it and it was witnessed by them both. The interview terminated at 9.15 p.m. It is a very short statement and merely says:

> **I have already made a statement to the other two Gardaí, I have cooperated with them, I told them the truth about what happened.**

It is the only record of an interview which appears to have lasted for three quarters of an hour. Statements made by D/Sergeant O'Grady and D/Sergeant McGrath suggest that further questions were asked of Mr. McBrearty, Jnr. concerning the death of Richard Barron. They both elaborated on this on the 27th July, 2000 in further statements. D/Sergeant McGrath states that when he entered the interview room:

> **I informed Frank McBrearty, Jnr. that we were continuing to investigate the matter under investigation which related to the death of Richard Barron … and (he) then relayed that he had made a statement to the other two Gardaí and cooperated with them and told them the truth about what happened. I then asked Frank McBrearty, Jnr. if he wished to make a statement about what he said to me and he said he would. I then took a formal cautioned statement from him which I have outlined in my previous statement.**

It is difficult to understand the somewhat obscure basis upon which this interview appears to have been conducted. It is useful to pause at this stage and consider the next appropriate step that might be taken by an interviewer who has obtained what is regarded as a confession to murder. It is also useful to recall Rule 7 of the Judges' Rules which states:

> **A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said. For instance if he has mentioned an hour not saying whether it was morning or evening, or has given a day of the week and day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.**

Far from clearing up ambiguity, it might be thought that this additional statement was redolent of ambiguity. If the Gardaí already had a confession to murder, why was it thought necessary to have confirmation of the previous statement in respect of which presumably no controversy arose as it is contended that it was free and voluntary? The nature of this kind of statement is, of course, that it admits to nothing. It is meaningless if there is no record of the context in which it is made. A direct reference to the admission to murder, or the production to the person who is verifying his previous statement of the original of that statement or, at least, a true copy of it would have ensured that everybody present understood exactly what was under discussion. It would also ensure that anyone reading the statement thereafter would clearly understand the context in which it was made. It may be regarded as worthy of inquiry that these experienced investigators and interviewers were satisfied to proceed in this manner knowing that it was likely that the fruits of their work could be produced in the Central Criminal Court as part of the evidence on which a jury would be invited to consider a verdict of guilty in respect of a charge of murder.

It is appropriate, at this stage, to note that Frank McBrearty, Jnr. accepts that he signed "a quarter page of notes" when D/Sergeant McGrath and D/Sergeant O'Grady came into him after the session with D/Sergeant Melody and D/Sergeant Fitzpatrick and started to talk to him about "telling the truth". (Statement on 13th December, 1999). He also acknowledges in his interview with Mr. Flynn that he "signed a thing to say that I cooperated with the guards in their investigation" and that he had read that item before signing it. There is no reason why a man would not sign such a statement if he had so

cooperated with the Gardaí in answering their questions and stating his innocence in relation to a charge put to him. The issues raised in relation to the taking of this statement will require further investigation in the course of the Tribunal's hearings.

Following the interview between D/Sergeant O'Grady and D/Sergeant McGrath and Frank McBrearty, Jnr. he was released from custody at approximately 9.16 p.m. when it is recorded in the custody record that he had no complaints. The record is signed by Frank McBrearty, Jnr. and he acknowledges that it is his signature. However, he had complaints to make about the way in which he was treated at the time of his release. He stated that he was approached at that time by D/Superintendent Shelly and Superintendent Fitzgerald who apparently wanted to 'have a word' with him. He exchanged angry words with Superintendent Fitzgerald and he recalls that the corridor down which he walked was lined with Gardaí. He claims that he got down on his hands and knees and vowed that every one of them were going to pay in court for what they had done to him that day.

Prior to this release, he describes D/Sergeant Melody in the following way. He states that D/Sergeant Melody kept putting his head around the door before he was released saying things such as "five minutes to go Frank, going to charge you now in five minutes" repeatedly. He also complains that when he was brought down for release he found Gardaí Collins, Mulligan and Sergeant Hannigan waiting for him. Garda Collins, he alleges, said to him "You're in our … territory now, aren't you?" They exchanged angry words and then he says that Garda Leonard threatened to arrest him for causing a disturbance. At this point, he states that D/Sergeant McGrath intervened and told Garda Leonard to stay quiet and told him to go on ahead home. It is important to restate that all allegations of impropriety or wrongdoing made by Frank McBrearty, Jnr. are denied by all members of An Garda Síochána against whom he has made a complaint.

There are further aspects of Frank McBrearty Jnr.'s period of detention, which will require further exploration and investigation prior to the oral hearing. Before we move from the topic, however, it is worthwhile to recall how the authorities used and viewed the alleged statement of admission. We have already referred to the use made in the course of civil proceedings of the two statements made by Mr. McBrearty, Jnr. on the 4th December, 1997 in the affidavit of Superintendent Denis Fitzpatrick sworn on the 21st April, 1997 where they appear as exhibit "A". We have also outlined Superintendent Lennon's account of what he perceived as difficulties in obtaining sight of the original statement in the course of his investigation. Superintendent Fitzgerald indicates that he passed the statement to Chief Superintendent Austin McNally on the 9th March, 1999. Therefore the statement was in the physical possession of Superintendent Fitzgerald apparently at the time of the swearing of the affidavit. There is nothing to suggest, as far as we are aware, that any contact was made with the Director of Public Prosecutions at this stage by the investigators.

Superintendent Lennon, in his report dated the 2nd March, 1998 at page 325 states:

> **The only evidence against Frank McBrearty, Jnr. in this case is the statement of admission he made during the course of an interview at Letterkenny Garda Station on the 4th December, 1996, and to a much lesser extent, the sighting of him by John Patton, who observed him approaching Frankie's Night Club from the direction of the rear car park with an unidentified male while John Patton was approaching the main entrance. This sighting, if correct, cannot be construed as evidence on its own, without supporting evidence, and is, therefore, regarded as inconclusive, bearing in mind the exact location at which John Patton observed the subject which is in close proximity to the night club and some 400 yards from the scene by the nearest route.**

In recommending that no prosecution be taken against Frank McBrearty, Jnr. he states that:

> **It is felt that if this case were to go to trial on the strength of this statement of admission made by Frank McBrearty, Jnr. it would not stand the rigours of cross-examination. The barrister representing the defence could by way of example raise the following points: -**
>
> **(1) The legal obligation upon a presiding judge to warn a jury of conviction based on an uncorroborated statement;**
>
> **(2) The caution incorporated in the heading of the statement is neither signed or initialled by Frank McBreary, Jnr.;**
>
> **(3) While the signature on the statement appears to be that of Frank McBrearty, Jnr. from visual comparison with the custody record the main content of the admission are not signed or initialled by him;**
>
> **(4) The top or bottom of the pages of the statement are neither signed or initialled;**
>
> **(5) The statement has to date not been withdrawn and it is my considered professional view that this has been done on sound legal advice as to withdraw it would be an acknowledgement of its existence. The fact is that Frank McBrearty, Jnr. now denies making the statement;**
>
> **(6) The physical condition of Richard Barron as described by various witnesses who observed him shortly before his death suggests that he was in a highly intoxicated state i.e. that he was observed holding on to walls for support, his trousers were falling down, he was experiencing difficulty in trying to hold his trousers up, he was staggering on the road, all**

suggest that if he "lashed out" at his two attackers as stated by Frank McBrearty, Jnr. in his statement of admission, he would, most certainly, have fallen onto the road;

(7) Frank McBrearty, Jnr. stated that he picked up a piece of timber and hit Richard Barron on the head with it. This is at total variance with the opinions expressed by both Professor John Harbison and Dr. Barry who state that the injuries sustained by the deceased suggest that he was hit with a heavy object – possibly an iron bar and in the view of Professor Harbison he suggested to me that it may be an angle type injury …

(8) In the event that the D.P.P. recommended a prosecution it is felt that both the pathologists would totally refute the scenario as outlined in the statement of admission …

(9) A defence would argue before a jury that there is no evidence either actual, visual or factual to support the assertions in the statement of admission;

(10) The State Pathologist, Professor John Harbison stated that the injuries sustained by Richard Barron were not consistent with the injuries a man would sustain if he'd fallen backwards. This would dispel the facts as outlined by Frank McBrearty, Jnr. in his statement when he stated "I hit him a slap on the head and he fell back";

(11) Frank McBrearty, Jnr. states in his statement of admission that he was informed of Richie Barron's death by Michelle Scott. However, in her statement she makes no mention of seeing Frank McBrearty, Jnr. and only states that she informed Frank McBrearty, Snr. and one of the doormen, namely, Willie Logan;

(12) There are no facts in the statement which give an outline of his subsequent behaviour i.e. the exact location where he discarded the piece of timber he stated that he used in the attack on the deceased and he was not asked to return to the scene to point out where he had discarded the stick …

It was pointed out that there was amongst other things a "total lack of corroborative evidence" and consequently, no prosecution was recommended.

The other use to which the alleged statement was put followed the making of the affidavit by Superintendent Denis Fitzpatrick on the 21st April, 1997. As will be described subsequently, Mark McConnell was arrested on the same date, 4th December, 1996 as Frank McBrearty, Jnr. and was detained until 8.20 p.m. on that date. It will be recalled that the statement allegedly made by Frank McBrearty, Jnr. is stated to have been made between 7 p.m. and

8.30 p.m. Consequently, it was not concluded at the time of Mark McConnell's release.

D/Superintendent Joseph Shelly, on Wednesday, 11th June, 1997, swore on information before District Justice Thomas Fitzpatrick at Letterkenny District Court for an order under Section 10 of the Criminal Justice Act, 1984 reciting that further information against Mark McConnell had become available since his release as to his suspected participation in the offence of murder, in that a written statement after caution had been obtained from Frank McBrearty, Jnr. implicating Mark McConnell in the murder of Richard Barron, and that such statement had been signed at 8.25 p.m. It was not possible, therefore, to put the statement made by Frank McBrearty, Jnr. to Mark McConnell, prior to his release. It was further submitted to the judge that a further written statement to the Gardaí was made between 8.30 p.m. and 8.58 p.m. (i.e. the statement to Sergeants O'Grady and McGrath). As a result of the application, a warrant issued for the arrest of Mark McConnell who was then, subsequently, arrested and detained on the 25th June, 1997. It is clear, therefore, that if this statement was fabricated it caused an application to be made to a court and the presentation of material to that court which was false, leading to the making of an order which was therefore wrongfully and unjustly obtained through no fault of the learned Judge. This, in turn, led to the issuing of a warrant and the arrest of Mark McConnell, the deprivation of his liberty and his interrogation for a second period with all the difficulties and consequences personal, familial and social, that this entailed.

The further questions which, Sir, you may wish to address during the course of these oral hearings relate to the manner in which the authorities viewed the taking of this statement. Those issues include:

(1) If the Director of Public Prosecutions was not informed of the making of this statement by Frank McBrearty, Jnr., why was he not informed?

(2) Why was there a delay in using a statement of admission as the basis upon which to make application for the further arrest and detention of Mark McConnell under Section 10 of the Criminal Justice Act, 1984 if he had been implicated in the murder of Richard Barron in the statement of admission?

(3) What if anything occurred between the 21st June, 1997 when Chief Superintendent Denis Fitzpatrick was happy to rely upon the alleged statement of admission by way of exhibit in his sworn affidavit filed in the High Court, the 11th June, 1997, when Detective Superintendent Shelly was happy to rely upon the same statement in the sworn information made before Judge Fitzpatrick and the making of the report by Superintendent Lennon dated 2nd March, 1998 in which the same statement is regarded for the most part as unreliable and uncorroborated.

The arrest and detention of Mark and Roisín McConnell

Mark McConnell is the first cousin of Frank McBrearty Jnr. Roisín McConnell, his wife, is related to a number of other persons who were arrested on 4th December 1996 including Edel Quinn, her sister; Katriona Brolly, her sister; Charlotte Peoples her first cousin, and Mark Quinn another first cousin. In 1996 Mark McConnell was approximately 25 years of age and Roisín McConnell was 31. Mr. McConnell was a member a Derry-based band at the time called "Snod Grass" and Eunan Brolly, married to Katriona Brolly, was also a member of the band. At the time of her arrest, Mrs. McConnell was an employee of "Fruit of the Loom" in Raphoe and had been for a number of years. In 1996 they had an infant child Dean. Both Mark and Roisín McConnell were arrested on 4th December, 1996 and Mark McConnell was rearrested on 25th June, 1997 in respect of the death of Richard Barron. In order to understand why Mark and Roisín McConnell became the focus of the investigation team in the course of the enquiries into the death of Mr. Barron and were ultimately arrested, it is necessary to review the progress (such as it was) of the investigation into the death of Mr Barron up to 4th December, 1996.

Following the arrests, further enquiries took place, more statements were taken, and, in some instances, potential witnesses were re-interviewed. In retrospect this might effect ones view of potential evidence available, or thought by some to have been available, at the time when the decisions were made to make these arrests. The reasonable suspicion which must be held before a power of arrest can be exercised must be held at the time of arrest. Hindsight can, of course, provide clarity when assisted by additional knowledge which gives greater understanding of certain events. Hindsight based upon additional knowledge obtained after the arrests cannot act as a basis upon which to excuse or justify arrests and detentions which may have been based upon erroneous or fabricated evidence if this error or fabrication was known or ought to have been known to those in authority. Before hindsight can be plausibly deployed as a defence to, or explanation for, events; before it can be said "that if we knew then what we know now" we would not have acted in this way information which was then available, and the rigour with which it was or ought to have been scrutinised by those whose duty it was to investigate, must be thoroughly assessed. Therefore, Sir, we believe that is of importance that the state of the investigation in respect of the McConnells must be examined in detail. It is precisely because some assessment was allegedly made of the information then allegedly available that arrests and detentions occurred. Was that assessment adequate?

In respect of the McConnells it appears to have been the case that suspicion focused on Mark McConnell in respect of the death of Richard Barron because:

(a) information was supplied by Garda John O'Dowd emanating from William Doherty, and ultimately we understand Noel McBride, which placed Mr. McConnell in the company of Frank McBrearty, Jnr. at about the suggested time of Mr. Barron's death in the vicinity of the

car park of Frankie's Nightclub – information which you may find to have been deeply flawed;

(b) there were alleged discrepancies between the account given by both of the McConnells in respect of their movements on the night of the 13th and early hours of the morning of 14th October, 1996 when compared to statements furnished by other persons which referred to sightings of the McConnells between the relevant period of midnight and 2 a.m. on the morning of 14th October, 1996; and

(c) a row which broke out between Richard Barron and Mark McConnell and which it is suggested flared up before midnight on 13th October at the Town and Country Pub (Quinn's Pub) which some Gardaí believed provided a motive to Mark McConnell for the killing of Richard Barron and so annoyed Frank McBrearty, Jnr.that it caused him to go off with Mark McConnell and ambush Richard Barron on his way home.

The course which the investigation took appears to indicate that the Gardaí did not favour the accounts given by Mark McConnell and Roisín McConnell and ascribed her statement to an attempt on her part to provide an alibi for her husband. It is, perhaps, therefore instructive to review statements made by those who allegedly saw the row between Richard Barron and Mark McConnell at the Town and Country Pub and the demeanour of both and also to review the statements made as to the movements of Mark McConnell and Roisín McConnell and the assessment which was made of their statements in the light of other known events. Sir, it will be important to enquire, in this regard, as to why some statements were deemed worthy of acceptance at face value and why others were discounted (in some instances where they tended to favour or perhaps render more likely the sequence of events as outlined by the McConnells). As will be seen, it sometimes happened that statements which tended to favour the McConnells were not simply discounted but were, perhaps, used as the basis upon which to implicate those making those statements as accessories after the fact to murder.

Statements by Mark McConnell and Roisín McConnell

In the early stages of the investigation into the death of Richard Barron, Mark McConnell and Roisín McConnell made statements to Gardaí. Mark McConnell made a statement on 16th October, 1996 at Raphoe Garda Station to Garda Phillip Collins in relation to his movements on 13th and 14th October, 1996. The statement is described as a witness statement and in it he describes how he went into Raphoe at 7.00 p.m. on 13th October, 1996 and went up to Mark Quinn's Pub where he met Eunan and Katriona Brolly – his wife's sister and her husband. A short while later he was joined by two other persons Mark and Mary Bogle. He states that his wife Roisín came into the pub with him and he describes how they left the house together. He goes on to describe an encounter with the late Richard Barron, whom he described

as sitting in the bar at 10 p.m. He hadn't noticed him coming in but he said that:

> **He kept looking at me. After about twenty minutes I went to go to the toilet. On my way back from the toilet I was going by Richie Barron and he tugged my shirt.**

He describes how he proceeded without exchanging words but that a minute or two later Richard Barron arrived over to where he was standing and said to him "you are some excuse for McBrearty". Mark McConnell states that he replied "sit down …… I am not a McBrearty". He then describes how Mr. Barron went to sit back down but got back up and went to take his coat off -walking forward in an aggressive and angry pose. He came towards Mark McConnell and was told to go out home. Mark Quinn, the Proprietor, stood between them and Mark Bogle held Richard Barron back. He states "we were exchanging aggressive words, Mark Quinn pushed me back and he said I don't want this bother about my pub". Mark Quinn walked him into the poolroom and, after about 20 minutes, somebody came in and told him that Richard Barron had left the bar. It was about 11 p.m. He then goes on to state how he stayed in the Town and Country until about 1 a.m.. He thought he left Mark Quinn's at approximately 1.20 a.m. with his wife and walked up to the Parting Glass Pub. He states that they passed Stephen McCullagh who chatted to them outside the Suile Tavern. They went to the Parting Glass at roughly 1.30 a.m. He says that he was in the Parting Glass at 1.45 a.m. when he heard that Richard Barron was dead. He left at around 1.45 a.m. and Edel Quinn and her boyfriend, who was Edmond "Ebby" Walsh, went with them. They went first to their own home and got necessities, which they needed in order to stay the night with Eunan and Katriona Brolly.

Roisín McConnell also made a statement to D/Garda Michael O'Malley at her home on 16th October, 1996 in respect of the 13th /14th October, 1996. She also described leaving her home with her child Dean at 7 p.m. and travelling to the house at 330 St. Eunan's Terrace, Raphoe. Her husband left her and the child off at her mothers and went to Mark Quinn's pub, the Town and Country. At 7.55 p.m. she left her mother's house and her recollection was that she walked to the pub. She joined her husband Mark, her sister, Katriona Brolly and her husband, Eunan Brolly. She describes incidents during which "Mark and Richie were having words" in the pub and ten to fifteen minutes after this incident noticed that Richard Barron had left the pub. At 12.15 a.m. she stated that the Brolly's left the pub and she recalled asking the proprietor Mark Quinn for another drink at 1.10 a.m. Five or ten minutes after this, both she and her husband left Mark Quinn's pub and moved towards the Parting Glass (Frankie's Nightclub). On the way they met with Stephen McCullagh and his wife outside the Suile Tavern and stood talking to them for about five minutes. They then crossed to Sarah's café and ordered a curry. She recalled that Philomena Laird took their order and they were told they could collect it after the disco in the Parting Glass (Frankie's Nightclub). They went to the disco and stayed for about 15 minutes. Whilst in the disco, she was told by her sister Edel Quinn that Richard Barron was knocked down and killed. When leaving the disco she asked Frank McBrearty, Snr. if he had

heard about Richard Barron being knocked down. He said that he had but he wasn't dead. They then left and went on to Brolly's after collecting the curry in Sarah's café.

In the course of the investigation into the death of Richard Barron a large number of other statements were taken, to which reference has already been made, from persons who were in and about the Town and Country Pub (Quinn's Pub), the Diamond in Raphoe, and Frankie's Nightclub and its environs on the evening of the 13th and into early hours of 14th October, 1996.

It is useful, Sir, to recall the material which became available to the Garda Síochána investigating the death of Richard Barron in respect of the movements of the McConnells in the early days of the investigation in order to attempt to understand the events which followed in December. In this regard, it should also be recalled that a number of persons changed their accounts subsequent to the arrests and detentions and to remember that any decisions taken, by An Garda Síochána up to the 4th December, 1996 were on the basis of the materials available to them up to that time. This is not to approve of, or disapprove of, the use made of such materials or the investigations that were, or might have been or were not carried out in respect of the original statements.

The important time to be considered in this context is the interval between midnight and 2 a.m. on the 14th October, 1996. Mark McConnell states that he and his wife left the Town and Country at approximately 1.20 a.m. and walked to the Parting Glass (Frankie's Nightclub). His wife Roisín McConnell recalled that she sought a final drink at 1.10 a.m. and left the Town and Country with her husband five to ten minutes later at 1.15 a.m. to 1.20 a.m. Therefore, at the approximate time of Mr. Barron's death they maintain they were in the Town and Country.

What material exists to support this proposition? Those attending the Town and Country that evening included persons who made statements concerning their own movements and sightings of the McConnells. These include people who were in the company of the McConnells at the Town and Country and those who were simply in attendance at the pub. Those who were in the company of the McConnells were Eunan and Catriona Brolly, Michael and Charlotte Peoples, Gerard and Kay Quinn, Paul and Sue Quinn, and Mary and Mark Bogle. References to statements made by these people are to statements made before the 4th December, 1996. For the most part they were made in the week or two following the 14th October, 1996.

Eunan and Catriona Brolly recall that when they left the Town and Country between 12.15 and 12.30 a.m. the McConnells were still in the bar. Michael Peoples said he left the pub with Geoffrey Dolan at about midnight to go to the Bank Link machine nearby and returned some ten minutes later to collect his wife Charlotte Peoples. At the time they left, the McConnells were still in the pub. Gerard and Kay Quinn were also in the pub and Kay Quinn maintains that the McConnells left at 12.30 a.m. and also states that she and Gerard Quinn left at 1 a.m. She also says that they left Paul and Sue Quinn in the

pub. However, Paul and Sue Quinn maintain that they left the Town and Country at approximately 1.10 a.m. when the McConnells were still in the pub. They were collected by a taximan, William Bogle, who confirms that he collected them at between 1.05 to 1.10 a.m. and left them home. Paul O'Brien left the Town and Country at 12.15 a.m. and places the McConnells in the pub at that time and Damien McCarren left the pub at 12.45 a.m. at which point he describes Mark McConnell as being in the bar.

A number of members of the Dolan family were also in the Town and Country that night. Frankie Dolan and Irene Dolan recalled leaving the pub at approximately 1.30 to 1.45 a.m. Together with their daughter, Laura and her boyfriend at the time, James Deery, Mr. Dolan believed that they were the last to leave the pool room of the pub at that time. The times given by the Dolans are important because Mark Quinn, the owner of the Town and Country, in a statement, stated that most of the people in the bar had left the premises at about 12.30 a.m. and that his barman, Martin Quigley, left at about 12.45 a.m. Those remaining included Gerard and Kay Quinn and the Dolans previously mentioned. He says they had one more drink and all left shortly after 1 a.m. If Mr. Quinn's timing is wrong and the Dolan timing is correct one can then allow for the proposition that the McConnells could have left the Town and Country between 1.15 to 1.20 a.m.

In further support of the McConnell proposition, the statements of Stephen McCullagh and Ann McCullagh, supported the McConnell version of a meeting between McCullaghs and the McConnells outside the Suile Tavern at 1.15 a.m. which is further supported by Declan McCullagh (a brother of Stephen McCullagh) who observed the McConnells when ordering a take away at 1.15 a.m. walking up from The Diamond in Raphoe. Geoffrey Dolan states that as he left Frankie's Nightclub between 1.15 and 1.20 a.m. he met with the McConnells as they were going in. Richard McBrearty, in a statement, states that he was in Quinn's chatting with Mark McConnell until 1.10 a.m. when he left and went straight home. Shane Dolan and his girlfriend, Andrea McCobb, left the pub at 1 a.m. approximately. Andrea McCobb thought the McConnells had left before them and Shane Dolan wasn't sure whether there was anyone left at the time. They both then stated that they went to get chips at the chip van and at The Diamond saw the ambulance pass up. Since the ambulance men maintain that they arrived at the scene between 1.25 a.m. and 1.30 a.m. it would appear that the Dolan departure may have been somewhat later than 1 a.m., therefore, their accounts may not contradict the McConnell version but are arguably consistent with it - the distance between the Town and Country and the chip van being relatively short. Much of this material appears to have been disregarded or dismissed as unreliable because of the fact that those involved were either friends or relations of the McConnells.

Other material also existed prior to the 4th December, 1996 which tended not to support the McConnell version of events. Martin Quigley, a barman in the Town and Country, states that he left the bar at approximately 12.30 a.m., a time which is confirmed by Desmond Nee, who was with Martin Quigley, and puts the time of departure at 12.30 to 12.40 a.m. and to the best of his

knowledge nobody was left in the bar at that stage. Paul Barron states that he saw Mark McConnell at approximately 2.30 to 2.35 a.m. walking past the Suile Tavern towards Frankie's Nightclub. Carmel Connolly and Philomena Laid, in their original statements, put the first visit of the McConnells to Sarah's Cafe that evening at 12.20 a.m. and between 12.30 and 12.35 a.m. respectively. Eugene Gamble, in a statement, maintained that the McConnells entered Sarah's Cafe at approximately 12.50 a.m. but when he left at 1.00 a.m. the McConnells were still there. Rodney Bogle puts the McConnells as coming into the disco at 12.50 a.m. Mark Quinn, the bar owner, did not include the McConnells as amongst those remaining after most of the people had left at 12.30 a.m. and his barman, Martin Quigley, had departed at 12.45 a.m. Sean Kerr placed the arrival of the McConnells at the disco at between 1 and 1.15 a.m.

There were a number of other witness statements which suggested that the movements of the McConnells having left the disco, as described by them in their previous statements, were not correct. For example, Martin Laird made a statement on the 27th of October, 1996 stating that he saw Mark McConnell leaving the Town and Country at 8.20 a.m. on the morning of the 14th October. This is denied by Mark Quinn, the bar owner, which denial, apparently, led to his arrest and will be described later. A number of witnesses also placed Ms. Roisín McConnell walking around Raphoe at approximately 8 to 8.15 a.m. on the 14th October, 1996 when her statement indicated that she was at the Brollys. They include Collette McGlinchey and Gary McCullagh. This gave rise to Garda suspicions to the truthfulness of the account given by the McConnells. This then was broadly the context in which the Gardaí determined that discrepancies existed between the accounts given by the McConnells and other witnesses. In an endeavour to understand the state of the investigation prior to the 4th December, 1996 we lay emphasis in this section on statements then in the possession of the Garda Síochána. Some of these witnesses changed their statements at a later date with significant consequences and we have referred to some of these already.

The other matter of concern to the Gardaí was that there had been a row between Richard Barron and Mark McConnell in the Town and Country. Many of the patrons at the Town and Country viewed this row and for the most part describe it as being relatively minor in nature. It was sorted out by the intervention of Mr. Quinn and/or other patrons very quickly. There does not appear to have been any physical contact between Mr. McConnell or the Late Mr. Barron or if there was it was, of a very minimal nature. Certainly, the encounter between Mr. Barron and a Mr. Hegarty in the Suile Tavern later in the evening seemed to have been of a much more serious nature. We will endeavour in the course of the hearings to present all of the material believed to be in the possession of the investigating members prior to the arrests and at the various conferences so that you, Sir, can have as clear an understanding as possible to the extent and the limitations of the knowledge of the investigators prior to the arrests which commenced on December 4th.

Arrest and Detention of Mark McConnell and Roisín McConnell

Mark and Roisín McConnell were arrested on 4th December, 1996. Roisín McConnell, it will be recalled, worked at the Fruit of the Loom factory at Raphoe and she had left her home and was arrested en route to her work. Mark McConnell was at home at Tullyvinney, Raphoe, with his son Dean who was then aged approximately 18 months. It will be recalled also that at a pre-trial conference on 3rd December, 1996 various officers were allocated the function of arresting various persons and it would appear that it was contemplated the McConnell's, parents of an 18 month child, would be arrested at the same time. Apparently, Garda Tina Lohan was assigned the task of dealing with the infant Dean. At the conference, it was also decided that Mark McConnell and his wife Roisín would be arrested in respect of the death of Richard Barron. Garda O'Dowd was assigned the task of executing the arrest of Mark McConnell with Sgt. James Leheny.

At this conference there was some alleged controversy about the propriety of arresting Roisín McConnell as an accessory after the fact to murder and whether this could lawfully be done. Garda Tina Fowley recalls that she was present at the pre-arrest conference "when concerns were expressed by some members in relation to a power of arrest in particular in the case of Roisín McConnell, wife of one of the main suspects in the case". She recalled that Supt. John Fitzgerald, D/Supt. Joseph Shelly and Inspector (now Supt.) John McGinley were the officers present at the conference and that

> **It was pointed out that Roisín McConnell being the wife of a suspect could not in law be an accessory after the fact as it was clear from all the evidence to hand that she could only have become aware of the happenings of that night after the event. D/Supt. Shelly assured all members present that there was absolutely no difficulty in respect of the arrest of any of the individuals as the matter was well grounded in law and that in any event was only for the purpose of investigation and not for court proceedings.**

In this regard Sgt. Brendan Roche indicates that he would have discussed the power of arrest with Garda Fowley prior to the arrest of Roisín McConnell and says he expressed his concerns in relation to the power of arrest. He says he expressed those concerns to Inspector McGinley and Supt. Shelly prior to the pre-arrest conference and again expressed them at the pre-arrest conference itself. Supt. Shelly said that there was no problem with the arrest and quoted a reported case as authority on the matter.

Supt. Shelly, in a statement, recalls this issue arising at the conference on 3rd December, 1996. He confirms that it was Sgt. Brendan Roache who raised the issue and that the issue was discussed at some length and it was agreed that Mrs. McConnell could in fact be arrested as an accessory after the fact to the murder of Richard Barron. From his recollection of events Sgt. Roche was of the contrary opinion. He denies that he ever mentioned or suggested that Mrs. Roisín McConnell was only being arrested for the

purpose of the investigation and not for court proceedings, as he understood Garda Tina Fowley to be alleging. His recollection was that Garda Fowley made no contribution to the discussion and he expressed some amazement that she should now make such an allegation some three years after the event. He goes on to state:

> **In fact I recall that I sought advice on the matter from the Office of the Director of Public Prosecutions, in that I discussed this issue with the Legal Assistant of that Office at that time. The evidence available to the Investigation Team at the time was to the effect that Mrs. McConnell had knowledge of the involvement of her husband in the murder of Richard Barron and that she was shielding her husband in such a way that would enable him to evade justice.**

We do not know who this legal assistant was or what her or his advice was.

Supt. John Fitzgerald in a statement dated 8th March, 2000, referring to the correctness of arresting Roisín McConnell, states:

> **This was totally resolved to my mind because she herself was suspected as accessory to murder and this was an investigation of a murder not a court of law whereby a wife being a competent witness against a husband might arise. The matter was discussed and all present were quite satisfied that her arrest would be in order. I cannot recall any specific reference to any case law by anybody at conference.**

Inspector (now Supt) John McGinley recalled the issue being resolved on the basis that:

> **It was felt that Sgt. B. Roache was comparing the compellability of a witness against her husband with the powers of arrest. I recall D/Supt. Shelly contributed to this discussion...He certainly did not state that the arrest was merely for the purpose of the investigation.**

On the 4th December, 1996 at 8.18 a.m. Roisín McConnell was travelling to work with friends in a car when it was stopped at William Street, Raphoe. Present at the scene of the arrest was Sgt. John White (then in uniform) D/Garda John Dooley (Glenties) D/Garda Pagraic Scanlon (Letterkenny) and Garda John Harkin (Newtowncunningham). Also present was Garda John O'Dowd who operated a checkpoint on the road along which Mrs. McConnell's car was to travel. When stopped, he sought her name and address and informed her that he was arresting her:

> **On suspicion of having been an accessory after the fact to the murder of Richard Barron on 14th October, 1996 between 12.30 a.m. and 1 a.m. at Raphoe, County Donegal.**

She was then cautioned and he then states that he had her transferred to Letterkenny Garda Station.

The custody record records that Sgt. White arrived at 8.40 a.m. at the Station with Roisín McConnell and sought her detention from the member-in-charge Garda Martin Leonard (who it will be recalled was apparently at the pre-arrest conference). The basis on which he sought Mrs. McConnell's detention was that she:

> **Was in her husband's company prior to and immediately after her husband's suspected involvement in the murder of Richard Barron and that she was aware of his involvement after the murder.**

He also outlined to Garda Leonard that she had made a written statement to D/ Garda O'Malley (the witness statement previously referred to) in which "she knowingly lied and gave false information as to an alibi for her husband". Garda Leonard decided to detain her under Section 4 of the Criminal Justice Act, 1984. It is clear that an arrest on this basis is linked to the alleged involvement of Mark McConnell (her husband) in the killing of Richard Barron. Whilst further more detailed submissions will be made at a later stage concerning the law and further enquiries have yet to determine which of the legal officers of the Director of Public Prosecutions proffered advice on this matter, it is perhaps appropriate at this stage to consider the law in relation to accessories after the fact.

If a husband who has committed a crime is received and sheltered by his wife she is not regarded by law as becoming by such "bare reception" an accessory after the fact because she is bound to receive him. Kenny's Outline of the Criminal Law (12th edition 1926 page 89) stated that

> **It should be noted that since it is a wife's duty to aid her husband and to keep his secrets, she incurs no liability if, after he has committed a felony she hides him from justice. But a husband enjoys no similar exemption when he assists a felonious wife; he becomes accessory to her felony.**

An accessory after the fact is one who, knowing a felony to have been committed by another, receives, relieves, comforts or assists a felon. It is necessary at the time when the person assists or comforts a felon that they should have notice direct or implied that he had committed a felony. Any assistance given to one known to be a felon in order to hinder his apprehension, trial or punishment is sufficient to make a person an accessory after the fact. The rule of common law is that a married woman does not become an accessory after the fact to a felony committed by her husband by receiving him. The law considers that she is bound to receive him and not to discover him. In this jurisdiction, the common law rule that a wife could not be convicted of being an accessory after the fact for a felony committed by her husband has not been abolished. Consequently, at common law if a wife could not have committed such an offence it is difficult to contemplate how

there could be any reasonable suspicion of her having committed the offence. If one could not have a reasonable suspicion of commission of an offence which the suspect could not in law have committed it is then difficult to see how the arrest of Mrs. McConnell could have been lawful.

Following the arrest of Mrs. McConnell, she was brought to Letterkenny Garda Station. Shortly after her arrest, Garda John O'Dowd, Sgt. James Leheny, D/Garda Michael O'Malley and D/Garda Patrick Tague arrived at the McConnell home at Tunnyvinney and arrested Mark McConnell there at 8.20 a.m. Mr. McConnell dressed and then dressed his baby son. He suggests in a statement made on 18th February, 1998 to Supt. Carey that a female Garda present tried to take Dean off him when Mr. McConnell had him in his arms and wanted to take him to his mother's house. Mr. McConnell says that he refused to let the child go and that he was then taken to his mother's house where he left Dean in her care.

The Garda's version of the initial stages after the arrest is that the welfare of Mr. McConnell's son was discussed and it was decided that he would be afforded some time to ready himself and the child who would then be brought to his grandparents home because his mother, Roisín McConnell had already left for work that morning at the Fruit of the Loom. Mr. McConnell got himself and the child ready and carried the child to the car. He secured the front door of the dwelling with his key and acknowledged, apparently, that the Toyota Corolla parked outside the house was in fact his. He is described as not having any objection to the removal of the car for forensic examination to Letterkenny Garda Station. How this fits into the matter, we do not know. He was cautioned in relation to the results of any such examination and stated "its clean, that car was not involved in the accident". Garda O'Malley was given the key to the car and conveyed it to Letterkenny Garda Station.

Following his release from custody, a letter was received from his solicitor's V.P McMullin & Co dated 10th December, 1996 in which he complained amongst other things of the fact that D/Garda O'Malley and Sgt. Leheny wrongfully took the keys of his house and his car together with certain items of clothing, including items of children's clothing, at the time of his arrest and took his car from his premises without his permission and further, obtained items of clothing in a bag in the boot of his car. This complaint is also repeated on the 18th February, 1998 when he states that when being arrested he gave his keys to D/O'Malley and he saw him opening his car door as he was leaving. He later saw his car in the yard of the station in a jacked-up position. Nobody had told him or asked him about taking his car, he claimed.

At the time of the arrest he is described as retaining "full control of his emotions and all his mental faculties".

Mr. McConnell is described following his arrest as sitting into the rear of the Garda car with his child in his arms. He was driven to Letterkenny Garda Station having left off the child with his grandparents. On leaving his mother's house he asked her to contact McMullins, solicitors and she undertook to do so. They were at his parent's house for approximately 15 minutes. He arrived

at Letterkenny Garda Station at approximately 9.15 a.m. where he was processed by member-in-charge, Garda Martin Leonard. Garda O'Dowd required a detention under Section 4 of the Criminal Justice Act and he and Garda O'Dowd had a private consultation in the course of which Garda O'Dowd informed Garda Leonard that

> **He had a statement which showed that this prisoner had a confrontation with the deceased on the 13th October, 1996 at roughly 11 p.m. and that he was seen coming through the car park of Frankie McBrearty's Nightclub at 1.00 a.m. the relevant time of the murder and that a false statement regarding his alibi was made by his wife Roisín McConnell to D/Garda O'Malley.**

Garda Leonard recorded that as a result of this consultation he was satisfied that the offence was one defined by Section 4 of the Criminal Justice Act, 1984 and authorised the detention of Mr. McConnell.

At 9.17 a.m. Garda Leonard states that he informed Mr. McConnell that he was detaining him under the provisions of Section 4 of the Criminal Justice Act, 1984 for a period not exceeding six hours from the time of his arrest as he had reasonable grounds for believing that the detention was necessary for the proper investigation of the offence for which he was arrested "that of suspicion of murder of Richard Barron". He states he handed him a Form C72, which is, headed "Information for Persons in Custody" which is a standard notification of rights for persons detained under Section 4 and he states that he explained that the detention was based on the consultation which he had had with Garda O'Dowd. He states that he explained that if Mr. McConnell did not wish to exercise his right of access to a solicitor or to notify another person of his detention at that time that he was not precluded from doing so later. These transactions are recorded in the Custody Record document kept for the purpose of recording significant events in the course of detention. Mr. McConnell acknowledged receipt of the Notice of Rights and signed his name in respect of same.

At 9.20 a.m. Mr. McConnell was taken to an interview room by D/Sgt. James Leheny and D/Garda Michael O'Malley for interview. This questioning continued until approximately 11.35 a.m. At 10.30 a.m. James O'Donnell, solicitor consulted with Mark McConnell for approximately 40 minutes.

This interview took the form of a question and answer session. The record of the interview is contained in a note signed by D/Sgt. Leheny. Essentially, Mr. McConnell reiterated what he had said to the Gardaí on the 16th October, 1996. When answering a number of questions he informed the Gardaí that he had last seen Richard Barron between 10.30 p.m. and 11p.m. on the 13th October, 1996 when he "noticed Richard Barron staring at him". He went to Frankie's Nightclub at 1.30 a.m. having ordered chicken curry for collection after the disco. A girl called Philomena had taken the order. He went to the disco in the company of Edel Quinn and Ebby Walsh. He stated that in the course of the disco his wife had told him that Mr. Barron had been knocked down in a hit and run. She was upset and they left shortly afterwards.

Mrs. McConnell apparently asked Frank McBrearty Snr. on the way out whether this was true and he said, "he is not dead. The ambulance has taken him to hospital". Having left Frankie's they drove to their family home to get clothes in Ebby Walsh's car because they were staying at Brolly's for the night. This had been arranged earlier. "Me and Mr. Walsh went to Sarah's café to collect the curry and then to Brollys'. At Brollys', Katrina Brolly was still up. Roisín McConnell was still upset about Richie Barron." He described his wife as "a very emotional person……. She was concerned about him due to the words we both had in Quinn's Pub". He decided to ring the hospital and to enquire about Richie Barron. He did not give his name. He said he was a relative and was told relatives were there and was refused information. He describes then how the following morning he took a lift with Eunan Brolly to the car park at Sheepslawn and drove back to Brolly's and collected his wife. He then drove to the home of Michael and Charlotte Peoples at St. Eunan's Terrace. They both had breakfast at the Peoples' and he went on to say that his wife was the first to tell him that Richie Barron was dead. Apparently she had heard it on Highland Radio. He had not spoken to Frank McBrearty, Jnr. at the discotheque. He had not been in the Tudor Bar "at any time that night". He was not in McBrearty's car park "at any stage that night". He did not discuss his row with Richie Barron "with any of the McBrearty's". Following the termination of the interview the notes were read over but he refused to sign them stating that his Solicitor advised him not to do so. These notes were signed by D/Sgt. Leheny.

Mr. McConnell in his statement of the 18th February, 1998 focuses on the first two Gardaí who interviewed him. They were D/O'Malley and another Garda in plain clothes whose name he did not know. He goes on to state:-

> **D/O'Malley was very aggressive. He was roaring and shouting and kept calling me a murdering bastard and that I would never see my wife and wain again. They asked me to stand up now and again. D/O'Malley then would ask me to stand up. They both pushed me from side to side from one to the other. They were with me for a couple of hours at first. Garda O'Dowd kept coming into the interview room and kept asking me to sign an authority to search my house. I refused. After three or four times, I agreed but said that my Solicitor and one Garda would have to be present. This never happened and my house was not searched.**

Sgt. James Leheny, in a statement made on 28th April, 1998 to Chief/Supt. John Carey denies the allegations in their entirety.

D/Garda Michael O'Malley in a statement on 28th April, 1998 to Chief/Supt.Carey also denies the allegations made in respect of the taking of the car and in respect of the alleged ill treatment and assault in the first interview.

At 11.20 a.m. it was recorded in the Custody Record that Mark McConnell was provided with tea.

Garda Leonard recalls that Mr. McConnell had no complaints when asked at this time. D/Garda O'Malley told him privately that no progress had been made yet. This is not recorded in the Custody Record.

At 11.35 a.m. Mr. McConnell was interviewed by D/Garda P.Tague and Sgt. P. Hennigan. This interview was commenced by Sgt. Hennigan stating that the Gardaí had read his statement and "there is a lot of differences in what you said and what we know now". He was immediately asked by Mr. McConnell what these differences were but he was not apparently told. He was then questioned. In reply to a number of questions he gave the following information. He stated that he collected his car between 10 and 10.30 a.m. on the Monday and did not go into Quinn's on the morning of the 14th. He confirmed that he had spent the night in Brolly's and again spoke about the row in Quinn's Bar and gave an account of what happened, though for some reason this was not noted by the interviewing members. After an interruption at 12.10 p.m. he was asked for a full account of what happened on the Sunday evening. He was interrupted in the giving of this account and answered a number of questions. He was asked whether he left Quinn's and went to the Parting Glass and he said he did not. It was suggested to him that he was seen outside the Pub. He denied this. He went on to say that he left the pub at about 1.00 a.m. because he spoke to Paul Quinn and his wife who were collected by a taximan Willie Bogle after 1 a.m. He asked Paul Quinn whether he was going up to the Parting Glass and he was considering this when the taximan arrived. He thought this occurred about 1.25 or 1.30 a.m. He says he then went up to the Parting Glass (Frankie's Nightclub) with his wife. He thought that either Frank Snr. or Willie Logan were at the door but he did not see Frank Jnr. He then gives more or less the same account, which he had given Gardaí in the previous interview, and in his previous statement, in respect of his movements.

He states that he slept with his wife and child in the same room at Brolly's and got up between 9.30 and 10.00 a.m. on the 14th. When he collected his car he went back to Brolly's with the car and then his wife "told me that it was on the radio that there was a Raphoe man dead. I knew it was Richie". He then went to Charlotte and Michael Peoples and had breakfast there, and went home. Notes of the interview were read over to Mark McConnell at 1.12 p.m. and he agreed with them but did not wish to sign them. They were witnessed by Sgt. Hennigan and D/Garda Tague.

At 1.30 p.m. Mr. McConnell was provided with a meal, according to the Custody Record, and was in a cell until 2.05 p.m. During this period, Superintendent John Fitzgerald granted to Garda Leonard permission to photograph and finger print Mr. McConnell. In addition, Garda Leonard informed the Superintendent that he had consulted with the interviewing officers and that no progress had been made at the interviews. He asked the Superintendent if he would extend the period of detention for a period not exceeding six hours. The Superintendent gave this permission and Garda Leonard noted this in the Custody Record. Sir, you may wish to consider whether Garda Leonard's involvement in seeking the extension order constituted an involvement by him in the investigation of the offence beyond

what one might expect of a member in charge having regard to the provisions of Regulation 4(3) of the Custody Regulations. Superintendent John Fitzgerald states that he made the extension after having a consultation with Sergeant Hennigan and Gda. Leonard. Sergeant Hennigan told him that he did not believe the account given by Mark McConnell as to his movements and actions on the night and morning of the murder of Richard Barron and that his account was in conflict with other witnesses. He believed Mark McConnell was not telling the truth and was denying facts put to him concerning the crime for which he had been arrested, and that he was holding back on vital information in his possession in relation to the 'murder of Richard Barron'. He confirms that it was Garda Leonard who requested the further detention of Mark McConnell for a period of six hours.

The next interview session took place apparently at 2:16 p.m. when D/Sergeant James Leheny and D/Garda Michael O'Malley went to the interview room. This interview continued with some interruptions until 4:31 p.m. It was recorded that at 2:35 p.m. Mr. James O'Donnell solicitor spoke with Mark McConnell on the phone. At 2:37 p.m. Garda Cannon requested a voluntary blood sample from Mr. McConnell and this was declined. However, following a further consultation by telephone with his solicitor at 2:55 p.m. Mr. McConnell agreed to provide a blood sample, provided it was divided in two.

In the course of this period, it was also recorded that Detective Inspector (now Superintendent) John McGinley came to the interview room. He had been made aware, apparently, that Mr. McConnell had been cautioned, but that he "was not responding to questioning and that he would not answer questions put to him". He told Mr. McConnell that "it would appear he was telling lies and covering up". This was denied by Mr. McConnell, who restated that he did not leave the pub until 1:30 a.m.. It was suggested to him that this was not so, that several witnesses had seen him in the main street at 12:25 a.m.. He said they were lying. Inspector McGinley in a statement contends that it was pointed out to Mr. McConnell that there were two witnesses in the chip shop when he entered with his wife Roisín, who both stated that he came into the shop at 12:30 a.m.. Mr. McConnell, apparently, invited him to put the statements on the table. Inspector McGinley then read from the statements and showed them to Mr. McConnell. Mr. McConnell stated that he would say that they were lying.

The context of this questioning is perhaps relevant in that Carmel Connolly had made a statement on the 21st October, 1996 stating that at around 12:20 a.m. Mark McConnell came into the restaurant (Sarah's) and ordered a chicken curry to be collected after the Parting Glass. She recalled the time because it was 'just after the pubs', but she did not look up at the clock. She thought it was early and Mr. McConnell said he was going up to the Parting Glass to the disco and would collect the curry afterwards. Philomena Laird, also serving in Sarah's café, made a statement on the 19th October, 1996, stating that between 12:30 and 12:35 a.m. on the 14th October, 1996, Mark McConnell and his wife Roisín came into the chip shop and Roisín ordered a chicken curry and rice for after the disco. She was sure of the

time and, although they had drink taken, they were not really drunk. Subsequently, Philomena Laird changed her statement on the 22nd September, 1997, when she told D/Garda Gerry Foley that she was not correct in stating that Roisín and Mark McConnell called into the café where she worked at 12:30 – 12:35 a.m.. She had realised since her first statement that the correct time was 1:20 a.m. because, having spoken to Wilma Laird a few weeks later and having discussed with her that she (Wilma Laird) had come in at 1:10 a.m., she knew the correct time was approximately 1:20 a.m. because the McConnell's had come in after Wilma Laird. This was confirmed in a further statement on the 27th January, 1998. This may, Sir, be regarded as a matter in respect of which it was appropriate for the Gardaí to investigate Mr. and Mrs. McConnell's version of events which differed from that provided by Carmel Connolly (who has not since changed her statement) and the then existing version of events of Philomena Laird which placed their arrival at Sarah's café at 12:20 a.m. to 12:35 a.m..

In a further statement contained in the Lennon Report (43C), Detective Inspector McGinley gives a further account of his participation in this interview between 2:45 p.m. and 3:55 p.m. It should be recalled, at this stage, that he also attended at the home of the McConnell's on the 16th October, 1996 when the first statements were taken from them. Mr McConnell did not sign the notes of the interview. Although Detective Inspector McGinley states that he left the interview room to get the statement of Philomena Laird and read over same to Mr. McConnell, his departure from the interview room for this purpose is not recorded in the custody record. Garda Leonard records that he checked Mr. McConnell at 3:31 p.m. and confirmed that he was okay and in no need of medical attention and that he made no complaint to him. This interruption is not recorded by D/Sgt. Leheny or D/Garda O'Malley.

An incident apparently occurred at 3:20 p.m. when Mr. James O'Donnell, solicitor came to the station and requested a meeting with his client. Garda Leonard went to the interview room to consult the interviewing officers who indicated that the prisoner had consulted with his solicitor on a number of occasions and that it was unsuitable for such consultation, at that time, to take place. It was felt that the solicitor had had reasonable access already. Detective Inspector McGinley recorded that he was informed by Garda William Cannon (not Garda Leonard) of these events at 3:20 p.m.. This was changed by him subsequently in a statement in which he nominates Garda Leonard as the officer with whom he consulted. He goes on to state that at no time was Mr. McConnell subjected to any form of threats, insults, assault, physical or mental abuse or to any form of intimidation during the course of the interview: he made no complaint to Detective Inspector McGinley at any time.

Garda Leonard states that, following a meeting with the interviewing members, he returned to the Solicitor and informed him that he had had reasonable access which lasted 40 minutes and had spoken to his client on the phone. He states:

> **The solicitor alleged that his client was making specific allegations of a Garda abusing him and was refusing to give his name to his client. That he was asked to come to the station in relation to the abuse. I informed the Solicitor that I had just gone to the interview room to see if his request to see his client was suitable and there was no abuse of his client and he made no complaint of such to me.**

Garda Leonard then informed the solicitor that as member in charge he felt the prisoner "had his consultation with his solicitor" and that further access was unreasonable and refused access. Garda Leonard continues:

> **The Solicitor then asked me to check about the medical assistance of his client. I felt at this stage the Solicitor was intimidating me into allowing another consultation. I explained that as member in charge it was my responsibility to see that all regulations regarding treatment of persons in custody were complied with. If his client required medical assistance, it was the member in charge's responsibility. I felt these allegations were very unfair to me as member in charge. The Solicitor required a copy of his allegations which were provided. The Solicitor left the station at 3:30 p.m. and immediately I went to the interview room.**

This is the occasion upon which the prisoner was said to be okay and in no need of medical attention and made no complaint to him.

In the body of the custody record at 3:20 p.m. the solicitor's complaint is recorded as "made allegations. I handed copy of allegations to Solicitor". It is not clear from the papers what document was handed to the solicitor and further inquiry will be made in relation to this aspect. Following his return to the interview room at 3:31 p.m., Garda Leonard expressed himself "completely satisfied that the prisoner was treated in accordance with regulations". There are statements from D/Garda O'Malley, Inspector McGinley and Sergeant Leheny confirming Garda Leonard's return and the fact that no complaint was made by Mr. McConnell.

At 3:55 p.m. D/Inspector McGinley recalls that Garda Leonard entered the interview room and said that the doctor had come "to examine" the prisoner. In fact, the doctor was there to take a sample of blood which Mr. McConnell had already agreed to give and this was done at that time. It is not suggested by the doctor in his statement that he was there "to examine" Mr. McConnell. Dr. McColgan took the sample in the presence of D/Gardaí Jennings and Coady and, following this interlude, Detective Sergeant James Leheny and D/Garda Michael O'Malley returned to the interview room at 4 p.m. They remained with him until 4:31 p.m. Accounts given by the Gardaí of this interview state that Mr. McConnell reaffirmed the account of his movements given for the night of 13/14th October, 1996 and declined to answer any further questions put to him in relation to the death of Richard Barron, saying that he

was doing so on the advice of his solicitor. We are not aware of any notes having been taken in the course of this interview.

At the conclusion of this interview, it is recorded that Garda Coady was given possession of the outer clothing worn by Mr. McConnell who was then interviewed by Sergeant Hennigan and D/Garda Tague. This interview continued until 6:00 p.m. when Mr. McConnell was placed in a cell. Notes were taken at this interview by D/Garda Tague and they were said to have been read over to Mr. McConnell at its conclusion. Again he refused to sign them. The entries in the notes convey the information that Mark McConnell was drinking in Quinn's on the 13th, that he had no wish to fight with Richard Barron, as he was an old man, and that when he left the pub he went to the Parting Glass with his wife and spoke to Stephen McCullagh at the Suile Tavern on the way. He denied any involvement in the death of Richard Barron. He stated that his wife was a very emotional person and was worried about the words which he had in Quinn's Pub with Richard Barron. He again confirmed that he had phoned the hospital and that he wanted to inquire about Richard Barron but had not given his 'full name'. He denied being in McBrearty's car park and stated that he did not tell anyone at McBrearty's about the words he had with Richard Barron and that he had nothing to do with Frank McBrearty Jnr. that night.

Mr. McConnell in his statement to Chief Superintendent Carey on the 18th February, 1998, described the first interview, and went on to describe events which happened thereafter, and which took place in the course of the afternoon:

> **Garda O'Dowd kept coming into the interview room and kept asking me to sign an authority to search my house. I refused. After three or four times, I agreed but said my Solicitor and one Garda would have to be present. This never happened and my house was not searched. I was interviewed by other teams of Detectives who verbally abused me. In the afternoon, sometime, I was interviewed by Detective Tague. I think this is his name. I did not know his name at the time but I saw his name on the custody record. This man is about 5' 9" or 5' 10", black hair and would have been in his late 30's or early 40's. I have seen him drive a white Daihatsu Jeep in Letterkenny in the last few days. I think it is a Daihatsu, it is one of them big jeeps, a four wheel drive. There was another man with him. Inspector John McGinley kept coming in and out during the interview. Detective Tague was the first to produce the post-mortem photographs of Richie Barrons. I refused to look at them. He tried to make me look at them. He bent my ear to force me to look at them. He pulled my ear. Another time, he pulled my hair to make me look at them. Inspector John McGinley kept coming in. One time he came up close to my face and called me a murdering bastard. He spat in my face. Detective Tague punched me in the side with his fist. He kept poking me in my eye. I pulled away his hand at one stage. He asked me to hit him. He said "please hit**

> **me".....Martin Leonard came in I think twice during the whole day. On one of these occasions, I made a complaint to him about the abuse I was getting from Detective Tague and others. He asked the Guards present if they witnessed this abuse. They replied "no". He then said aggressively "what are you making a complaint about so".**

It would appear from the custody record and through various Garda statements, that Garda O'Dowd did have dealings with Mr. McConnell. In respect to requesting a blood sample, he had dealings with him at 12:30 p.m. and 12:55 p.m.

In a statement made on the 28th April, 1998, D/Garda Patrick Tague denies all of the allegations made by Mark McConnell and states:

> **At no time did I assault, threaten, intimidate, engage in oppressive behaviour, inflict other emotional or physical harm or harass Mark McConnell in any way during these periods of interview, nor did any other member in my presence. Mark McConnell did not make any complaint of assault or otherwise to me and neither did he make any complaint in my presence to any other member. At no time did Detective Inspector John McGinley enter the interview room while we were interviewing Mark McConnell. At no time, were photographs of the deceased Richie Barron produced while I was in the interview room.**

Detective Inspector (now Superintendent) John McGinley denies that he subjected Mark McConnell to any form of threats, insults, assaults, physical or mental abuse or to any form of intimidation during the course of the one interview which he had with him between 2:45 p.m. and 3:55 p.m. on the 4th December, 1996 in his statement made 28th April, 1998 to Chief Superintendent Carey. He adds that Mr. McConnell was treated "with the utmost courtesy and consideration. He made no complaint to me at any time". Apart from constituting a denial to the allegations made by Mr. McConnell in respect of the afternoon's events, he was also indicating in this statement that he interviewed Mr. McConnell only once and during the course of that interview left the room only once in order to get the statement of Philomena Laird. Therefore, he was not on his own account, Sir, constantly going in and out of the room during this interview. Also, it is clear that he maintains the interview was not conducted with D/Garda Tague but was in the presence of D/Sergeant Leheny and D/Garda O'Malley as recorded in the custody record.

The significance of this statement is that Mr. McConnell claims in his statement to Chief Superintendent Carey, to which reference has already been made, that later on in the evening, Detective Inspector McGinley had further involvement with him. He states:

> **As the evening wore on and the 12 hours was nearly up, four detectives came into the room. Inspector John McGinley was**

one of them. Tague and O'Malley were also there. They produced a four-page statement. They said it was a confession of Frank McBrearty. I cannot recall which of them read it. I can recall the start of it. It said "I, Frank McBrearty, Jnr. am showing remorse for what I have done". The statement said that me and him went up the road, that I held Richie Barron's and that Frankie hit him and that he fell and hit his head on the ground. It was signed and all. They pointed it out. It wasn't Frank McBrearty's signature because he has a funny signature. I have seen his signature before. I definitely know it wasn't his signature. The address wasn't right either. I cannot remember exactly but I was suspicious of the signature. I did not make any statement while I was in custody.

Detective Inspector McGinley states that the only statement which he showed to Mr. McConnell was the Laird statement in the earlier interview, which was the only occasion upon which he says he had any dealings with Mr. McConnell while he was detained at Letterkenny Garda Station. D/Garda Michael O'Malley, in his statement of the 28th April, 1998 again to Chief Superintendent Carey, denies any allegations of wrongdoing in respect of Mark McConnell. He further says that while he was interviewing Mark McConnell he was not aware that Frank McBrearty, Jnr. had made a statement of confession regarding the 'murder of Richard Barron'. Indeed, the account given by D/Garda O'Malley and D/Sergeant Leheny of the last interview with Mr. McConnell is that it took place at 7:05 p.m. when Mr. McConnell was brought from the cell to the interview room and continued up to 7:45 p.m. No note has been furnished to us in relation to this interview. It is only very shortly described by both interviewing members. D/Sgt. Leheny (in Lennon Report – 232) states that Mr. McConnell was cautioned and then informed that they wished to further interview him in relation to the death of Mr. Barron. Apparently, he stated that he had given an account of his movements for the night and, on the advice of his solicitor, wasn't going to say anything further. He confirmed the written account that he had given earlier in the first interview and declined to elaborate further on any aspect of the investigation apart from denying his involvement in the death of Richard Barron saying "I know you suspect me because of the row between myself and Richie in Quinn's Bar but I had nothing to do with his death". D/Sergeant Leheny in his statement of the 28th April, 1998, also to Chief Superintendent Carey, denied all of the allegations of Mark McConnell and denied that in his presence any statement was read over to him by D/Inspector McGinley purportedly made by Frank McBrearty, Jnr. relating to the murder of Richard Barron. He described this allegation as totally untrue and unfounded and stated that no such statement was read over by him or D/Inspector McGinley or D/Garda O'Malley.

There was a further short period, between 7:45 p.m. and 8:20 p.m., during which D/Garda O'Malley was in the interview room with Sergeant Hennigan and Mark McConnell. It is not clear whether an interview was conducted during this period, as we are not in possession of any notes in respect of same. At 8:20 p.m. he was released from custody.

This complaint in respect of the alleged presentation to Mr. McConnell of what purported to be a statement of admission of Frank McBrearty, Jnr. was again referred to by Mr. McConnell in an interview he had with D/Gardaí H. Moloney and T. Flynn on the 10th January, 2000 at the Parting Glass, Raphoe. He was accompanied by his wife on this occasion and he was asked in the course of the interview whether he had been shown any documents during the course of his detention at Letterkenny Garda Station on the 4th December, 1996. It is interesting perhaps to consider why this inquiry was made of him by the two Gardaí. They were part of the team acting under the direction of Assistant Commissioner Carty investigating certain matters in Donegal. In this context another member of that team, Inspector Hugh Coll, you will recall, Sir, was informed by Garda Tina Fowley on the 16th June, 1999 that whilst on duty in the incident room at Letterkenny Garda Station on the 4th December, 1996, she had seen Detective Inspector John McGinley writing on a 'half sheet' and that he had a photocopy of a form C8 Witness statement on the table in front of him. She described how Detective Inspector McGinley drew her attention to the signature of Frank McBrearty on this sheet and that he posed the question to her "is that a good likeness". He was apparently laughing as he said this. We considered this aspect at some length in respect of the arrest of Frank McBrearty, Jnr. The relevance of the Garda Fowley observations in respect of these alleged attempts by the then Inspector McGinley to copy the signature of Frank McBrearty Jnr. apparently gave rise to this interview with Mark McConnell on the 10th January, 2000. A note which the Detectives made of this interview contains the following relevant material:

> **Mark McConnell was asked if he was shown any documents during the course of his detention in Letterkenny Garda Station on 4/12/1996. Mark McConnell stated that about 10 or 15 minutes before he was released from custody John McGinley read to him, or showed him a hand written document, three or four pages in length, purporting to be a statement of admission from Frank McBrearty, Jnr. Mark McConnell said he had a poor recollection about the detail in the document, but remembered seeing or hearing the following words at the beginning, "I, Frank McBrearty show remorse……". McConnell said he remembered that as, "not words which Frank McBrearty Jnr. would use". He also remembered that he saw either Frank McBrearty's name and address at the end of the document, one of which was spelt incorrectly. He could not remember if his own name was mentioned in this document and when asked, he could not recollect if the document implicated himself in any wrongdoings. Mark McConnell said he mentioned this document to his Solicitor at that time.**

It may be, subject to clarification, that this inquiry by the Carty team proceeded in parallel with that of the Garda Complaints Board Investigating Officer. It is not clear to us whether D/Gardaí Moloney and Flynn realised at the time of their interview that the question which they were now posing to

Mr. McConnell had actually been dealt with by him in his statement of complaint to Chief Superintendent Carey made on the 18th February, 1998 and from which we have already quoted in this regard. This inquiry arose out of a letter of complaint sent by Mr. McConnell's Solicitors dated 10th December, 1996 to which he will refer in a moment. It is interesting to note that there are rules in respect of confidentiality, which apply to disclosure of information relating to such a complaint, and it seems the Carty investigators would not necessarily have known of this detailed statement made by Mr. McConnell in respect of the reading of the alleged Frank McBrearty Jnr. confession at the time when they conducted the interview. Therefore, it may be that the information supplied by Garda Tina Fowley to Inspector Coll, and the occasion of the making of the complaint in respect of the alleged reading of the Frank McBrearty confession by D/Inspector McGinley to Mark McConnell, are entirely separate unrelated events which originated from two different sources. This may give some credibility to the allegation made or it may simply be ascribable to coincidence.

In this regard, it may also be observed that there is no reference to this incident in the letter from his Solicitors, V. P. McMullin & Sons dated 10th December, 1996 to the Superintendent, An Garda Síochána, Letterkenny complaining about a number of matters in respect of Mr. McConnell's detention. That letter contains complaints about the seizure of the keys of his house and his car and an allegation that unless he signed a form saying he had no complaints to make against the Gardaí before he was released, he would be detained for a further 12 hours and a generalised complaint that he was "continually harassed and abused during his detention". In this regard, of course, it would be useful to have access to the solicitor's attendance in respect of Mr. McConnell and the instructions which he gave in this regard. These are not available to us at the moment, perhaps because of reasons connected to legal professional privilege that exists between Mr. McConnell and his solicitor.

It should also be noted that Garda Tague states that he was not present when Mark McConnell signed the 'no complaints section' of the custody record and that he says he did not in any way force or encourage him to sign same. Garda Leonard also denies any suggestion of unlawful behaviour. In fact, all Gardaí interviewed in respect of this matter deny any wrongful behaviour as alleged by Mark McConnell. The interview, they say, was totally normal.

Mr. McConnell's set of complaints, in relation to his treatment while in Garda custody contained in the letter of the 10th December, 1996, was not forwarded to the Garda Complaints Board until the 17th October, 1997 when it was sent in by Superintendent Lennon. The processing of that complaint by the Garda Síochána Complaints Board will be the subject matter for consideration under Term of Reference (j).

The Second Arrest of Mark McConnell

On the 11th June, 1997, Detective Superintendent Joseph Shelly swore an information before District Judge Thomas Fitzpatrick at Letterkenny District Court for an Order under Section 10 of the Criminal Justice Act, 1984. This provides that a person who has already been arrested and detained pursuant to Section 4 of that Act, and released without any charge having been made against them, shall not be rearrested again for the same offence or be arrested for any offence of which, at the time of the first arrest, the member of the Garda Síochána by whom he was arrested suspected him or, ought reasonably to have suspected him. The Section also provides for an exception to this prohibition, in that on the authority of a Judge of the District Court, who is satisfied on information supplied on oath by a member of an Garda Síochána not below the rank of Superintendent, that further information has come to the knowledge of An Garda Síochána since that person's release, as to his suspected participation in the offence for which he is sought, he may be rearrested for the same offence.

When the information was presented and sworn before Judge Fitzpatrick, it recited the facts of the previous arrest and detention of Mark McConnell on the 4th December, 1996. It then recited the further information which had come to the attention of the Gardaí since his release in respect of his suspected participation in the offence of murder. That further information was:

> **A written statement after caution has been obtained from another suspect, i.e. Frank McBrearty (Jnr.) implicating Mark McConnell in the murder of Richard Barron.**

Under the Act, this new information had to have come to hand since that person's release.

Superintendent Shelly informed Judge Fitzpatrick, inter alia, that Frank McBrearty, Jnr. signed a written statement after caution at 8.25 p.m. on the 4th December, 1996 in which he admitted striking Richard Barron with a piece of timber in the company of his cousin, Mark McConnell. He continued

> **As Mark McConnell had already been released from custody, it was not possible to put the contents of this statement to him. Frank McBrearty (Jnr.) made a further written statement to the Gardaí between 8.30 p.m. and 8.58 p.m. on the 4th December, 1996 and likewise it was not possible to put the contents of this statement to Mark McConnell.**

Judge Fitzpatrick granted the warrant for arrest on the 11th June, 1997. It was given to Superintendent James Gallagher (Milford Station) who arranged for its execution.

At 9.06 a.m. on the 25th June, 1997, Garda John Nicholson arrested Mark McConnell pursuant to this warrant at Sessnacully, Raphoe, Co. Donegal. Garda Nicholson was in the company of D/Garda Casey,

D/Garda Patrick Maguire and Garda John McHale. Garda Nicholson had travelled from Sligo to effect this arrest.

At 9.35 a.m. Garda Nicholson arrived at Letterkenny Garda Station with Mr. McConnell in custody and Garda William Cannon, the member-in-charge, processed Mr. McConnell.

The custody record indicates that Garda Cannon complied with Mr. McConnell's request for a solicitor and contacted Mr. Ken Smyth of Binchy & Company in Dublin. At 10 a.m. Mr. McConnell took a phone call from Mr. Smyth and at 10.30 a.m. a further phone call from Mr. Shiels, Solicitor and another at 11.35 a.m. He received a visit from a solicitor, Mr. Cathal Quinn at 1.45 p.m. which consultation continued until 2.33 p.m. Following this consultation with his solicitor, a complaint was made to the member-in-charge, Garda William Cannon which was noted in the custody record as follows:

> **Mark McConnell tells his solicitor that he was told by the interviewing Gardaí we can do a deal with you, if you help us or words to that effect. He was also informed that Stephen Barron will be coming to get him and there will be no Garda protection available for him and that he, Stephen Barron, knows who murdered his father. The purpose of this is to frighten him, Mark McConnell.**

Mr. Cathal Quinn, solicitor of Quinn Dillon and Company, Letterkenny made a statement on the 25th February, 1998 in respect of this incident. He was asked to attend the station by Mr. Ken Smyth of Binchy's, solicitors who, it will be recalled, had already received a phone call from Mr. McConnell. He took handwritten notes of the consultation with Mr. McConnell. In his statement he states:

> **Mr. McConnell informed me that the Gardaí were now saying that they knew that he (Mr. McConnell) had nothing to do with the murder but that "young Frank did the killing". Mr. McConnell alleged that the Gardaí who interviewed him earlier on the 25th June said: "We can do a deal with you". He informed me that he had told the interviewing Gardaí that Frank Jnr.'s statement was forged and that they had denied this.**

At a later stage in the interview with the two Gardaí they allegedly told him:

> **Stephen Barron will be coming to get you and there will be no Garda protection available for you.**

He told me that the Gardaí had informed him that they had told Stephen Barron:

> **Everything and he knows who murdered his father.**

Mr. Quinn said that he could not be certain that at the time Mr. McConnell made any connection between the statements that there would be no Garda protection available for him and his claim that they would be willing to do a deal with him. He was told about these two matters at different stages of the interview and therefore it may be that Mr. McConnell did not make any association between the two. Mr. Quinn described him as being calm and not making any complaint that, apart from this, he was being ill-treated or abused. He was annoyed that he had been arrested a second time on foot of what the Gardaí said was new evidence. He stated that when they were interviewing him they were simply going over the same old ground and did not appear to have any new evidence at all. He was advised that the Gardaí were not entitled to offer to do any deal with him or to try to frighten him into making a statement, by saying that there would be no Garda protection available for him if Stephen Barron were to come to get him. He was advised as to his legal position and appeared calm. Garda Cannon took a note of his complaint as outlined already.

A suggestion by a member of An Garda Síochána to a suspect, Sir, that he could do a deal with him in respect of charges which might arise out of a murder investigation in order to induce him to make a statement is entirely unlawful. The only authority vested with the power to grant immunity from prosecution to any individual is the Director of Public Prosecutions. A Garda may not make an offer, express or implied, to a suspect under interview that he will not be prosecuted in respect of any particular charge. Any confession or admission procured from a suspect, in such circumstances, can be regarded as inadmissible in law since it would constitute an involuntary statement in the sense that it had been procured from the suspect by inducement. In order to be admissible in law, a statement must be free and voluntary in the sense that it has not been obtained by threats or inducements. In any event, no admission of any kind was made by Mr. McConnell. The second element in the complaint made by Mr. Quinn on behalf of Mr. McConnell constitutes a threat, if it were made.

It is interesting, in this regard, to look to the notes made in respect of this interview by Garda Nicholson (the note taker). It will be recalled that the complaint was entered in the custody record at 2.36 p.m. Later in the evening, at 7.20 p.m., Mr. Quinn visited Mr. McConnell for ten minutes, leaving at 7.30 p.m. Immediately afterwards, Garda John Nicholson and D/Garda Paul Casey returned to the interview room. Those Gardaí say they read over notes of the earlier interview to him and that he agreed that these notes were correct. There appears to be no mention between them of the allegation made on behalf of Mr. McConnell by Mr. Quinn. Neither is there any explanation as to why the short notes of the earlier interview were not read over to Mr. McConnell at the conclusion of the earlier interview, as one might have expected.

Mr. McConnell also gave an account to Mr. Quinn about the other questions asked of him during the course of this interview in respect of a phone call he was alleged to have made at 11.05 p.m. from the pub (The Town and Country) to The Parting Glass. He stated he did not make this phone call and knew nothing about it and also explained that the Gardaí were suggesting that

the purpose of this call was to make contact with Frank Jnr., or somebody else in The Parting Glass, and to request that they give Mr. Barron a beating on his way home. This was to be by way of revenge for whatever Mr. Barron had said during his argument with Mr. McConnell. He told Mr. Quinn that this was not the case and could not have been the case even had he phoned as his argument with Mr. Barron took place at about 11.30 p.m. whereas the Gardaí were saying a phone call was made to The Parting Glass at 11.05 p.m. Nothing of this appears in the notes made by Garda Nicholson which were read over to the prisoner at 7.30 p.m. and the accuracy of which he apparently accepted but he declined to sign them.

Garda Nicholson, when interviewed in relation to this matter on the 5th June, 1998, denied that there was any inducement, threat or promise offered to Mr. McConnell by him or any other member of An Garda Síochána. He adds "No member of An Garda Síochána offered a bribe to Mark McConnell. There was no mention of Stephen Barron's coming to get him or that the Gardaí wouldn't provide protection". Similarly D/Garda Paul Casey who interviewed Mr. McConnell with Garda Nicholson denies these allegations in a statement made on the 24th February, 1998. Again, on the Garda account, the interview was totally normal.

Mr. McConnell was further interviewed between 2.33 p.m. and 6 p.m. by D/Gardaí John McHale and Patrick Maguire. There is a memo of interview in respect of this period (Lennon – 70D). Between 2.33 p.m. and 2.50 p.m. there is a discussion in respect of the previous statement of Frank McBrearty, Jnr. in the course of which Mr. McConnell states that it is rubbish and that he saw one full page, one quarter page and another quarter page. He said he did not know Frank McBrearty, Jnr.'s signature and thought the Gardaí must have switched a bit of paper. He said that there was a conspiracy in the Garda station. He was asked why he was crying down the town on the night and he said that he was not crying but that he knew a lot that they didn't know.

A break occurred in the interview between 2.50 p.m. and 3 p.m. during which an extension order for a further six hours was obtained by D/Garda Maguire. The notes then resume and in the course of the interview the prisoner denied that he was at Quinn's pub at 8.10 a.m. on the Monday morning. There is then some discussion about the amount of drink he had consumed that evening and other matters. After a meal break at 6 p.m. the interview resumed and continued then until 7.20 p.m. when Mr. Cathal Quinn visited as we outlined earlier.

When Garda John Nicholson and D/Garda Paul Casey resumed the interview at 7.30 p.m., apart from allegedly reading the notes referred to earlier, D/Garda Casey took further notes of the interview which occurred between 7.30 p.m. and 8.58 p.m. During this time Mr. McConnell told the Gardaí that Mr. Flynn, the private investigator, would look after the investigation and furnish whatever information he had to them. He suggested that the Gardaí had messed up the investigation. When asked about the accuracy of notes read back to him he said, "If you're happy then I'm happy". He declined to sign the notes. He was

released from custody at 9.02 p.m. It is recorded in the custody record that he had no complaints at that time.

It is important to refer to the letter of Mr. Cathal Quinn, of Quinn Dillon & Company, Solicitors, Letterkenny of the 3rd July, 1998, in which he sets out the complaints mentioned in the custody record to Garda William Cannon and elaborated upon in his statement of the 25th February, 1998. This letter is a form of short report to Binchy's, at whose request he had attended on Mr. McConnell at Letterkenny Garda Station.

There is one aspect of the allegations made by Mr. McConnell to which it is appropriate to have regard. The initial complaint was made to Mr. Quinn at around lunchtime on the 25th June at a time when he had only been interviewed by Garda Nicholson and D/Garda Paul Casey, though he had been conveyed to the station by all four Gardaí from Sligo, who ultimately interviewed him. There were no further complaints made to Mr. Quinn when he attended the station at 7.20 p.m. However, in his statement of the 18th February, 1998 to Chief Superintendent John Carey in respect of this matter, Mr. McConnell stated:

> **All four of them threatened that Stephen Barron and his family would come and get me and there wouldn't be any Garda protection. They said it could happen any time, in Raphoe or when I was going into my house. While I was in custody, I was visited by my solicitor. His name is Cathal Quinn. I understand he made a complaint on my behalf.**

The other two Gardaí, D/Garda Patrick Maguire and D/Garda John McHale deny any wrongdoing or making any suggestions of offering inducements or threats to Mr. McConnell. The statement made by Mr. Quinn clearly refers to "the Gardaí who interviewed him earlier on the 25th June" as the Gardaí who suggested they could do a deal for him. The allegation with regard to the Stephen Barron references also appears to have originated at that time, according to the statement of Mr. Quinn. The statement of Mr. McConnell to Chief Superintendent Carey seems to extend the allegation in respect of the Stephen Barron references to all four interviewing Gardaí.

Sir, the question as to whether it was appropriate, in the circumstances, to rely upon the statement of Frank McBrearty, Jnr. in order to secure the warrant authorising the re-arrest of Mark McConnell may depend, to a large extent, on your determination in respect of the issues surrounding the arrest and detention of Frank McBrearty, Jnr. If the statements allegedly made by Frank McBrearty, Jnr. was indeed made by him at a time when Mark McConnell was being released from custody on the 4th December, 1996 there may well have been no opportunity to put these statements to Mark McConnell prior to his release and some of this material might, in that context, be regarded as coming into the possession of the Garda Síochána after his release having regard to the timing of the two statements. Mark McConnell was released on the 4th December, 1996 at 8.20 p.m. Frank McBrearty, Jnr. allegedly completed his first statement at 8.25 p.m. to D/Sergeant John Melody and

D/Garda John Fitzpatrick and made the shorter statement between 8.30 p.m. and 9.15 p.m. to D/Sergeant Eamon O'Grady and D/Sergeant Gerard McGrath. It may be useful to enquire why this process was delayed until June of 1997 from December, 1996 having regard to the seemingly sensational development of a confession to murder by Frank McBrearty, Jnr. on the 4th December, 1996. If a confession had been made at that time by Frank McBrearty, Jnr. it had immediate and enormous implications for Mark McConnell and perhaps it would not have been surprising that the Gardaí, if they shared real credence in this statement, would have move swiftly to confront him with these contents. Why they delayed will be a subject of further enquiry and consideration. Of course, if the Gardaí did not believe the statement made by Frank McBrearty or, if they thought it had not been made at all they ought not to have made application for the re-arrest of Mr. McConnell. If, despite some misgivings, they felt it ought to be investigated further with Mr. McConnell, then equally they ought to have outlined any difficulties which they thought existed in relation to the taking of these statements to Judge Fitzpatrick.

In respect of the second detention of Mark McConnell, no allegations beyond those set out by us have been made of physical or mental abuse. He himself states that he was treated very properly by Garda William Cannon, the member-in-charge. Therefore, the conflict of fact in relation to this period in detention centres upon the allegations made concerning the alleged deal offered and threat made in relation to the non-availability of protection, which might otherwise have been afforded, by the Gardaí to Mr. McConnell from Stephen Barron. As already noted, for a Garda to represent that he has authority to grant immunity from prosecution would be unlawful as that authority is vested solely in the Director of Public Prosecutions. For a Garda to indicate that he would not protect a citizen from a threat emanating from another seems to militate against his duty to keep and preserve the peace and prevent, to the best of his power, the commission of any offences against the peace. Though it has clearly been recognised, in the case law in this jurisdiction, that involuntary confessions can, from time to time, be obtained by threats or inducements, the use of such means is unlawful and will result in the confession being treated as inadmissible in evidence at any subsequent trial. Unfortunately, it can be the case that sometimes an assessment is made by investigating policemen that their wrongdoing will not be discovered and that, though inducements or threats have been, in fact, offered in order to procure a confession, a calculation may be made that their version of events will be accepted by a trial judge in a subsequent trial and that the evidence of the accused will be rejected. On the other hand, it is sometimes the case that unscrupulous accused persons lie about alleged threats or inducements with a view to trying to convince a trial judge that there is a reasonable doubt as to the voluntariness of the statement which has been made.

In this case, of course, no statement of admission was made by Mr. McConnell. The question to be resolved is whether the Gardaí, in an unscrupulous attempt to obtain a confession from a man whom they believed to be guilty of the 'murder of Richard Barron' but in respect of whom they had no evidence (other than a confession by Frank McBrearty, Jnr. which could

not be used against him), pushed the barriers out beyond the legal limits and offered the inducement and made the threat complained of with a view to securing a confession to that crime which they believed to be truthful – on the basis that the end justified the means.

Roisín McConnell

We have already referred to the decision which had been made to arrest various people at the pre-arrest conference on the 3rd December, 1996. It was clearly part of this plan that Roisín McConnell would be arrested at or about the same time as her husband. It would appear to have been decided that she would be arrested on her way to work in Raphoe. Her infant child, at this stage, was expected to be with her husband at the family home. Mrs. McConnell was arrested at 8.18 a.m. by Detective Sergeant John White in the presence of D/Garda John Dooley and D/Garda Padraic Scanlon and Garda John Harkin. Garda John O'Dowd, who operated a checkpoint on the road, was also present. Mrs. McConnell was taken from the rear seat of the car in which she was travelling with her friends and conveyed to Letterkenny Garda Station. She shouted to her friend to go and get Mark, her husband.

On the way to the station, a number of comments were made by Mrs. McConnell, according to D/Garda Harkin, who states that he took a note of them which he handed to a D/Sergeant Coyne on the 23rd June, 2000 – the note had been made in Garda Harkin's notebook. Mrs. McConnell is said to have asked whether she had to answer any questions and she spoke about the Barron family saying "It's wild for his family it's going to be wild for my family", and "You have a lot of evidence … what evidence do you have on him. If you have evidence on him why are you not lifting him?" This, apparently, was a reference to her husband, Mark McConnell. She is also noted as having said "You have one argument with a man and you're blamed for murdering him". She asked for the names of those in the car, which were given apparently as White, Scanlon, Dooley and Harkin. There was some discussion about her new home and as the car approached Letterkenny she asked "Can I make a phone call to Katrina at home to get a childminder?" She was told that she could and then she asked "I can have a solicitor as well" and she was told that she could. She apparently went on to say that she would not get any solicitor at this time of the morning and, after a short pause, said that she didn't need a solicitor, that she had done nothing wrong.

It is well to pause, ourselves, Sir, at this stage and note that the circumstances surrounding the arrest, detention and treatment of Mrs. McConnell in custody are a source of enormous controversy having regard to the number of complaints, which Mrs. McConnell has made in this regard. Shortly after her arrest on the 23rd December, 1996, a letter of complaint from V.P. McMullin & Son, solicitors was sent to the Superintendent of An Garda Síochána, in Letterkenny expressing the solicitors "grave concerns at the atrocious manner in which Mrs. McConnell was treated while in Garda custody". The letter outlines a number of serious allegations made in relation to her detention. In addition, in a taped interview between Roisín McConnell and William Flynn, Mrs. McConnell gives a graphic account

of what she says is the shocking manner in which, Sir, she was treated in the course of her detention and interrogation at Letterkenny Garda Station. An additional statement in this regard was made to Chief Superintendent Carey on the 10th February, 1998 whilst he was investigating the complaints set out in her letter of the 23rd December, 1996 which were eventually referred to the Garda Complaints Board on the 17th October, 1997. The allegations made by Mrs. McConnell have been denied by the various members of An Garda Síochána with whom she was obliged to deal during the course of her arrest and detention. It is proposed, Sir, to set out insofar as we can what we understand to be the chronological sequence of events during this period as outlined by the respective parties involved.

Car Journey to Letterkenny

We have already referred, Sir, to D/Garda Harkin's record of the journey to Letterkenny. Mrs. McConnell's recollection of this journey is that Sergeant John White "started into my face" and "he started roaring into my face". She states that she did not know the identity of the two Gardaí in the front of the car and was unaware that Mark McConnell had been arrested or was being arrested at that time. She complained that D/Sergeant White shouted at her that she was "a vicious murderer and a brutal murderer and that animals done it to Richie Barron". She states that she sat back in the car, stunned, and that he just kept going on in this fashion until they arrived at Letterkenny Garda Station. When she arrived at Letterkenny Garda Station she got out of the car and Sergeant White asked her if she believed in God and she said that she did and he replied that he did also.

Arrival at the Station and Detention

The custody record indicates that at 8.40 a.m. D/Sergeant White arrived at the station with Roisín McConnell who was then processed by the member-in-charge, Garda Martin Leonard. Apparently, Sergeant White informed Garda Leonard that "he believed that Roisín McConnell was in her husband's company prior to and immediately after the husband's suspected involvement in the murder of Richard Barron and that she was aware of his involvement after the murder". D/Sergeant White also outlined to him that she had made a written statement to D/Garda O'Malley in which "she knowingly lied and gave false information as to an alibi for her husband". D/Sergeant White requested that she be detained under the provisions of Section 4 of the Criminal Justice Act, 1984 for the purpose of the proper investigation of the offence as an accessory after the fact to murder. She was so detained and, according to the custody record, she was handed a Form C72, 'Information for Persons in Custody', which was read over and explained to her and the receipt of which she acknowledged by signing the custody record.

At 8.49 a.m. it is recorded that Mrs. McConnell requested a solicitor and a phone call. Though attempts were made to obtain a solicitor for her from V.P. McMullin's, her request for a telephone call was denied. Garda Leonard states, in this regard:

> **I consulted with Sergeant White about the call and he believed such a call would have hindered the investigation at this time. I informed the prisoner that the call would not be allowed at this time as it may hinder the investigation. Perhaps later she could.**

It may be noted at this stage that this telephone call was denied to Mrs. McConnell despite the fact that she had been informed (as recorded by D/Garda Harkin) that she would be able to make a call when she arrived at the station. How a call about a child might hinder an investigation, Sir, we cannot imagine.

It would appear that the person whom she wished to call was either her sister, Katrina Brolly or home in order to arrange a childminder. Given the age of her infant son, Dean, the fact that her husband had been arrested, and the fact that Katrina Brolly had also been arrested, it may be that it would have been a kindness to allow her to make this telephone call to allay her own worries in relation to the care of her child. This is so, particularly having regard to the fact that her husband had been arrested and that she was embarking on a six hour period of detention which could be extended by a further six hours, if that were thought to be appropriate. The refusal to allow a phone call was perhaps less understandable in the light of the earlier promise in the car. What, Sir, had changed in the intervening twenty minutes to half an hour?

Whilst in one sense the denial of a phone call might be considered a small matter, in this regard it is appropriate to draw your attention, Sir, to Regulation 11 of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Stations) Regulations, 1987 which states at sub-paragraph 5(a) that:

> **An arrested person may make a telephone call of reasonable duration free of charge to a person reasonably named by him … provided that the member-in-charge is satisfied that it will not hinder or delay the investigation of crime. A member may listen to any such telephone call and may terminate it if he is not so satisfied …**

Garda Leonard refused the call, presumably in exercise of this authority. It is, however, a facility, which should normally be afforded a detained person and denied only for the reason set out in sub-paragraph 5(a). It will be necessary to enquire further into the reason for this denial of the phone call. Sometimes, the denial of a call can be for a good reason. If a person has been arrested and detained following, for example, a robbery, one might deny them access to the use of a phone in case they might alert accomplices or arrange for the disposal of evidence. On the other hand, a wrongful denial of access to loved ones, or to those who might care for one's child, might be calculated to upset or distress the detained person. Following the visit of her solicitor at 11.56 a.m. there is an entry in the custody record which states "Solicitor asked about child" which appears to indicate the continuing concern on the part of Mrs. McConnell in respect of the care of her son.

In this regard, in her interview with Mr. Flynn, Mrs. McConnell stated that when she signed the custody record having arrived at Letterkenny Garda Station "they kept on and on about who was going to watch the wain, then I kind of copped on then that Mark was going to be lifted". D/Garda John Dooley apparently kept on about who would watch her child, whether Katrina would watch Dean or whether her mother would watch him. Somebody came out apparently and said that Mark McConnell was being arrested. She asked that her mother not be phoned as she was unwell.

She was then taken for interview where she was on her own with Sergeant White and D/Garda Dooley.

At 10.55 a.m. Mrs. McConnell consulted with her solicitor, Mr. James Sweeney and D/Sergeant White and D/Garda Dooley left the interview room. They apparently spoke with Garda Leonard and indicated that no progress had been made. During the course of his consultation with Mrs. McConnell, Mr. Sweeney invited D/Sergeant White and Detective Dooley back to the interview room. He requested that he be provided with a copy of the memo of interview, which the two Gardaí had been in the process of writing down. Sergeant White informed Mr. Sweeney apparently, that the memo of interview was practically finished but he had some other questions to put to Mrs. McConnell. Mr. Sweeney asked if they could resume the interview in his presence and then terminate it. The two Gardaí did so. D/Sergeant White asked some further questions and wrote down questions and answers. This was read over at 11.34 a.m. and Mrs. McConnell agreed that the note was correct but declined to sign it. It is recorded that D/Sergeant White and D/Garda Dooley left the interview room at 11.35 a.m. and Sergeant White states that at this time he had a further conversation with Mr. Sweeney who allegedly demanded a copy of the memo of interview. He informed Mr. Sweeney, he says, that that would not be possible at that time.

In a letter of complaint dated the 23rd December, 1996, V.P. McMullin & Son, solicitors complained to the Superintendent at Letterkenny that prior to the reading of the memorandum of interview, D/Sergeant White informed Mr. Sweeney that he would give him a copy of this memo once he had read it. The letter continues:

> **Our Mr. Sweeney also asked him for a copy of a statement which Mrs. McConnell had previously made and Garda White said that he would also furnish a copy of same. Having read the memo of interview, Garda White then left the interview room and said he would return with copies of the memo of interview and the initial statement. He returned a short time afterwards and said "he was not now furnishing copies of same".**

The reference to an earlier statement made by Mrs. McConnell is presumably to the statement of the 16th October, 1996 made by her to D/Garda Michael O'Malley. In that statement, she had outlined her movements on the 13th/14th October, 1996 to which reference has already been made. She describes asking the proprietor, Mark Quinn for another drink at 1.10 a.m. at

The Town and Country and how five or ten minutes after that she and her husband left Quinn's pub and moved towards The Parting Glass. She then relates how they met with Stephen McCullagh and his wife outside the Suile Tavern and stood talking to them for about five minutes. They then crossed to Sarah's Cafe and ordered some kind of a curry. Philomena Laird took their order and they were told they could collect it after the disco in The Parting Glass. They went to the disco and stayed for about fifteen minutes. Whilst in the disco she was told by her sister, Edel Quinn that Richie Barron was knocked down and killed. When leaving the disco she asked Frank McBrearty, Snr. if he had heard about this and, as previously referred to, he said he had but that Mr. Barron wasn't dead. They then left and went down to Brolly's after collecting the curry in Sarah's Cafe.

In the course of the question and answer session, with Sergeant White and D/Garda Dooley between 8.51 a.m. and 11.55 a.m., Mrs. McConnell essentially repeats what she has said in this statement of the 16th October. She listed a number of persons as present at 1.10 a.m. in the Town and Country including Martin Quigley, Gerard and Kay Quinn, Eileen and Frankie Dolan, Shane, Lorna, Darren and Kim Dolan. She also says, that when she went to Sarah's Cafe with her husband, having spoken with Stephen McCullagh and his wife, she remembered that Wilma Barnett of St. Eunan's Terrace, Raphoe was present. The notes of the interview do not reflect the interruption for the solicitor's consultation between 10.55 and 11.10 a.m. and the period thereafter when the solicitor was present for the balance of the interview.

In a further statement made 1st June, 2001 to Assistant Commissioner Rice, Mr. James Sweeney stated:

> **The two Gardaí had been interviewing Roisín McConnell for some time. My recollection is that they had summarised the interview by reading through their notes. They told me not to take any notes, as they would give me a copy of their notes. Having read the notes they left the room for an unusually long period. I think about twenty minutes, for the purpose of photocopying these notes. During that time I advised my client. When they returned they said that they were not now willing to give me the notes. This was said by Sergeant White.**

It is perhaps appropriate, Sir, at this stage to refer briefly to an allegation subsequently made by Sergeant John White through the private investigator, William Flynn, to senior Gardaí and ultimately by making a statement himself in which he purports to reveal that during the 4th, 5th and 6th December, 1996 facilities were put in place at Letterkenny Garda Station for the recording of, amongst other things, interviews between solicitors and their clients then detained and in particular, interviews between Roisín McConnell and her solicitor, James Sweeney.

The practical importance of having access to a legal advisor is that a detainee is allowed to obtain independent, and confidential, legal advice in relation to

their situation. This means that they receive advice in relation to their rights and obligations whilst detained in Garda custody. As noted by the former Chief Justice Finlay, C.J., in The People (Director of Public Prosecutions) –v- Healy [1990] 2 I.R. 73:

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

A detainee, therefore, has a constitutional right of access to a solicitor in the light of which one may then have regard to Regulation 11(1) of the Custody Regulations, which states that:

> **An arrested person shall have reasonable access to a solicitor of his choice and be enabled to communicate with him privately**

and Regulation 11, sub-paragraph (3):

> **A consultation with a solicitor may take place in the sight but out of the hearing of a member (of An Garda Síochána).**

It goes without saying, that the effectiveness of a right of access between a solicitor and his client in such circumstances is enormously undermined if the Gardaí are listening to what passes between them in order to inform their approach to the detainee and their investigation. Such a violation would render useless the attendance of a solicitor at a Garda Station and render meaningless the constitutional rights to be afforded a detainee. The recording of such conversations violates the confidentiality between solicitor and client and is calculated to undermine the fairness and integrity of any criminal investigation, and ultimately any criminal trial which may occur.

How this allegation came to be made and how it was then investigated by Assistant Commissioner Rice will be addressed fully in the course of the hearings of the Tribunal.

In the course of his investigation Assistant Commissioner Rice appears to have established that Sgt. Costello in fact was asked to attend Letterkenny Garda Station at the request of Superintendent Joseph Shelly made to him directly at the Technical Support Unit at Garda Headquarters. Superintendent Shelly states his assistance was sought because he could provide “technical covert surveillance of suspects which might come to light out of the interviews”. How that might arise is not at all clear. In any event Sgt. Costello states that he attended with a video camera and night vision equipment. He returned to Dublin

without carrying out any duty using this equipment. His supervisor, Inspector James Sharpe could not find any record in the files of his section in respect of this request from Donegal but did find a claim form from Sgt. Costello in respect of travel expenses. Most of his colleagues in Letterkenny have little or no recollection of meeting him there over the period of his stay. Garda Tina Fowley indicates in a statement made on the 7th March 2002 that she was aware that the assistance of the Technical Support group was sought and that she "understood the purpose was to install a listening device on conversations between the prisoners and any visitors they may have had", though she saw no equipment and heard no tapes.

Unsurprisingly, Sir, Mrs. Roisín McConnell is not the source of this serious allegation, nor is her solicitor, as one does not normally expect persons who are being secretly recorded to know of the fact. The source of the allegation is one of the interviewers, Sergeant John White. He alleges in a statement made on the 25th February, 2002 to Inspector J. Sheridan and D/Garda Michael O'Driscoll that on the 4th December, 1996 he met a D/Sergeant Joseph Costello of the Technical Support Section of the Garda Technical Bureau, Garda Headquarters at Letterkenny Garda Station. He introduced him to his colleague, D/Garda John Dooley and then:

> **I asked D/Sergeant Costello how the tapes were going and he replied we had trouble with them early in the morning but they are OK now … I was aware from talking to Joe Costello that conversations between prisoner and other persons were being recorded. I didn't know who or where. I interpreted this from my conversation which I have already mentioned with Joe Costello and from my experiences over the years as a member of the Investigation Section at Garda Headquarters and as a member of other Detective Units in Dublin, mainly at Blanchardstown Garda Station. …Later, on the 4th December, 1996, after my discussion with Joe Costello, I called to the door of the D/Inspector's office in Letterkenny Garda Station, I put my hand on the door handle, but it was locked. I heard voices within the room. The door was then opened by D/Inspector John McGinley, who is now a Detective Superintendent. I entered the office alone, John McGinley locked the door after I had entered. He had a long, black, coloured, twin-deck tape recorder on his table. I asked him if there was anything of interest on the tapes regarding my interview with Roisín McConnell and he said, there was not. I asked him what the quality was like and he pressed a button on the tape recorder and I heard a voice, who I recognised as Mr. James Sweeney, Solicitor speaking. D/Inspector McGinley turned off the machine and we both agreed that the quality of the recording was perfect. I did not hear anyone else speaking on the machine. Before I left the D/Inspector's office I asked him to contact me if anything of interest relative to Roisín McConnell came up. I did not hear or see any tape recorders after this. … How I know that the voice on the tape recording I heard with John McGinley at Letterkenny Garda Station on the 4th December, 1996 was that of James**

> **Sweeney, Solicitor, is that I had earlier spoken to Mr. Sweeney in Letterkenny Garda Station that day, while he was present when I was interviewing Roisín McConnell for about twenty minutes. From the time that D/Superintendent John McGinley pressed the button on the tape recorder until he turned it off, five to seven seconds had elapsed. I do not remember the words spoken by Mr. Sweeney, they were of no interest to me. This tape was played solely to show me the quality of the tape.**

These allegations in respect of the recording of the solicitor's consultation, Sir, have been fully denied by Superintendent John McGinley and Sergeant Joseph Costello (now retired). However, it may be indicative of the atmosphere prevailing in Letterkenny Garda Station that, when interviewed in relation to this matter, Mr. James Sweeney, solicitor, on the 1st June, 2001 told Assistant Commissioner Rice that he did not suspect the taping of his conversation with his client but "I would have been suspicious about members of the Force listening at the door or window". He said he believed, without any proof, that his conversations with Mrs. McConnell and/or Frank McBrearty, Jnr. were taped and "I may have told my clients, and probably did, to keep their voices down as they were particularly tetchy interviews". In respect of Mrs. McConnell he stated:

> **On recollection of my interview with Roisín McConnell, one matter which aroused my suspicion that my interview may have been taped was that on arrival to the station I entered the interview room in which Roisín McConnell, Sergeant White and another Garda were present. The two Gardaí had been interviewing Roisín McConnell for some time, my recollection is that they had summarised the interview by reading through their notes. They told me not to take any notes as they would give me a copy of their notes.**

Apparently, his suspicions in respect of taping were aroused by the fact that they left the room for what he thought was an unusually long period of time in the region of twenty minutes in order, as he thought, to photocopy the notes. In fact they returned and indicated they weren't willing to give him the notes.

There are further and wider allegations contained in the statement of Sergeant White to which reference has been made. For the moment, it is sufficient to note that the allegations made in respect of the recording of solicitor/client conversations in respect of Mrs. McConnell require further investigation.

To return to the interview carried out by Sergeant White and D/Garda Dooley between 8.51 a.m. and 11.55 a.m., we have already referred to the Garda version of this interview. However, Mrs. McConnell, in her taped interview with Mr. Flynn, stated that at the beginning they were not too bad but then D/Sergeant White started on about Mark McConnell being a murderer and called him names and alleged that Frank McBrearty, Jnr. had murdered Richard Barron and that Mark McConnell had gone up and witnessed it. He was suggesting that Frank McBrearty, Snr. was sitting back laughing at the

whole lot of them and that they were going to take the business off Frank McBrearty, Snr. and that some new boy was going to come in and take it over. Frank McBrearty, Snr. would be out of the way. She interpreted this as meaning that they were going to try to close Frank McBrearty, Snr.'s business down. She reaffirmed her previous statements and stated that she and her husband did not leave the Town and Country pub until about 1.15 a.m. but the Gardaí kept insisting that they had left the pub at 12.30 a.m. She repeatedly denied this. She alleges that Sergeant White was calling her a 'lying bitch' and a 'lying murdering bitch'. They were roaring and shouting at her but they weren't as bad at this stage as they became later she said.

She complained that D/Garda Dooley started talking to Sergeant White about taking down photographs of Richard Barron to show her, both in her taped interview and her statement to Chief Superintendent Carey. She claims that in this interview (apparently after her solicitor left), D/Sergeant White started to talk about taking her child off her and putting him into care and that she would do seven years in jail if she didn't tell him what happened that night. D/Sergeant White allegedly told her to tell the truth and everything would be all right and that Mark McConnell would not get as heavy a sentence if he told the truth that Frank McBrearty, Jnr. had done it.

At the conclusion of this interview, Sir, D/Garda Dooley and D/Sergeant White were replaced by D/Garda Scanlon and Garda Harkin at 12.05 p.m. They remained with her until some time around 12.30 p.m. when Garda Georgina Lohan entered the room. At 12.45 p.m. this interview terminated and Mrs. McConnell was allowed to rest. A meal was provided for her at lunchtime. Garda Leonard records that Sergeant White had asked him to allow Mrs. McConnell to remain in an interview room as he would prefer that she would not to be placed in a cell. If this is so it perhaps shows a degree of courtesy.

The interview between 12.05 and 12.45 p.m. took the form of a question and answer session during which D/Garda Harkin made notes which were read over to Mrs. McConnell who, when asked if they were correct, replied "That's what you have down" according to the Gardaí.

In the course of this interview she again confirmed that she left the Town and Country at 1.20 a.m. and that the row between Richard Barron and her husband was not serious. Then she asks "Who is minding my child now?", but does not appear to have been told by the interviewers. She states that when she left the disco her husband, Mark was upset because he had just heard that the man he'd had a row with was dead. She noted that they went into the disco at 1.30 a.m. There appears to have been a break in interviewing over lunchtime, during which Superintendent John Fitzgerald authorised the taking of the fingerprints and photographs of Mrs. McConnell and was informed by Garda Leonard that "little or no progress had been made with the prisoner". It is not clear what was meant by this and why it was said by the member-in-charge. At 2.10 p.m. Superintendent Fitzgerald indicates that during the course of his consultation with D/Sergeant White he was told that Roisín McConnell still had 'vital information' in her possession relating to

'the murder of Richie Barron' and the movements and actions of persons responsible, and that she was denying facts put to her concerning the crime for which she had been arrested. He believed the further detention of Mrs. McConnell for six hours was necessary for the proper investigation of the offence. Mrs. McConnell was notified of this at 2.21 p.m. and at 2.25 p.m. D/Sergeant John White and D/Garda John Dooley entered the interview room and joined Mrs. McConnell and Garda Georgina Lohan. This interview apparently continued until 4.20 p.m. Sergeant White states that he asked Mrs. McConnell how she was feeling and she replied she was alright. He informed her they were going to ask some further questions regarding discrepancies in her first memo of interview. Apparently, she remained silent. At 2.50 p.m. Sergeant White began a question and answer type interview and recorded the questions and answers in the form of a memorandum. He says that at the end of the interview he read over the memo and asked if it was correct. She apparently agreed it was correct but declined to sign it on the advice of her solicitor. At 4.08 p.m. D/Sergeant White says he asked Mrs. McConnell if she wanted a cup of tea or coffee. This was declined but she stated she wished to use the toilet. This was supervised by Garda Lohan and she returned at 4.12 p.m. and D/Sergeant White says they had a "further conversation" with Mrs. McConnell "regarding her new home and we discussed the advantages and disadvantages of either building a home or buying one". At 4.20 p.m. they left the interview room and Garda Lohan remained with Mrs. McConnell.

When D/Sergeant White and D/Garda Dooley left the interview room Garda Lohan is recorded as remaining on her own with Mrs. McConnell for a period of approximately twenty minutes until 4.40 p.m. and the record shows that Garda John Harkin then went to the interview room. In his statement (Lennon – 242), he reports that Mrs. McConnell was tearful and he asked whether she was OK and she replied that she was. He then cautioned her and made notes of an interview. He asked her a number of questions. At 4.45 p.m. Inspector John McGinley entered the interview room and also asked a number of questions. At 6 p.m. Detective Inspector McGinley is recorded as leaving the interview room. The interview was terminated at 6.15 p.m. and Mrs. McConnell was taken to a visiting room. The interview concluded when Mrs. McConnell was told that her mother, Mrs. Anna Quinn, was there to visit her and she appeared emotional at this news and was tearful. Apparently, the notes were read over to her by Garda Harkin and she was asked if they were correct. She nodded her head in agreement and when asked if she wished to sign, declined to do so.

The record of the interview to 4.45 p.m. (the time of Inspector McGinley's arrival) records a number of questions asked of Mrs. McConnell in the course of which she again confirmed the time at which she left the Town and Country pub.

Mrs. McConnell thought Mark Quinn would be afraid to tell the Gardaí the proper times because he was afraid to tell the Gardaí that he was serving drink well outside the hours permitted.

When Inspector John McGinley entered the interview room at 4.45 p.m. he apparently put the following proposition to Mrs. McConnell:

> **I am going to put this scenario to you and you tell me if I'm telling you a lie? Your husband, Mark McConnell had a row with Richie Barron in the pub. There were no blows struck, but he insulted the McBreartys and he insulted your husband. He did not like it. He left the pub with you and you ordered your food after walking over and meeting the McCullaghs. You went into Frankie's on your own. Mark met Frankie McBrearty and told him what happened. They decided to teach Richie Barron a lesson. They walked up through the car park and met Richie Barron staggering home, as he always did. He got one wallop and that was it. As far as they were concerned Richie was down, he got a wallop as he often did before, it was no big deal. They were not to know the man would die. They left him and went back down, walked down in fact and went into The Parting Glass. Now, tell me, did I tell you a lie?**

Her reply was that it was all lies. He continued to suggest to her that her husband was not with her when she entered the nightclub and she confirmed that he was right behind her. She was challenged about leaving out some of her movements in her account given to Gardaí on the 16th of October and was implicitly criticised for not insisting on having her statement read over to her to make sure that it was correct. Mrs. McConnell was recorded as being tearful at the beginning and end of this interview period.

Her recollection of Inspector John McGinley is that he called Frank McBrearty, Jnr. "Rambo" and called her husband, Mark a "big fat pussycat". She said that he put it to her that Rambo went up the hill, did it and the big fat pussycat went up and witnessed it. She was questioned by him about the time she'd left the pub and she reaffirmed that she'd left at 1.15 a.m. at which stage she was called a liar and they insisted that she'd left at 12.30 a.m. She alleges Inspector McGinley said to her "You're like something with some of the I.R.A. I said to him I can understand the Guildford Four now. They were all innocent." She said McGinley said "You're just like an I.R.A. woman, that's the way the I.R.A. go on there." She alleges he kept smirking and laughing away. She couldn't remember exactly what he was saying to her. She was a bit upset though she thought she was still bearing up at that stage.

Just after this session, Mrs. Anna Quinn visited her daughter, Roisín McConnell. Mrs. McConnell maintains that Sergeant White came into the room and said to her "Did you not confess yet?" and she says she just looked at him. He then said "That murdering bitch deserves a cell". The interview room door was open while he was saying these things to her and when she left the interview room she saw her mother, Mrs. Quinn standing in the hallway beside the door leading to the interview room. She was brought to another interview room by Garda Georgina Lohan where she was allowed to have a visit with her mother who then told her that her sister, Edel Quinn was arrested for the same thing. She recalls the visit from her mother lasting

approximately twenty minutes and it is recorded that she remained with her mother from 6.16 p.m. to 6.45 p.m.

At 7.25 p.m. interviewing resumed with D/Sergeant John White and D/Garda John Dooley who took Mrs. McConnell back to the interview room. D/Sergeant White's account of this interview is he initially offered her a cup of tea or coffee which was refused because she had just partaken of a meal shortly before. A question and answer type interview was commenced and D/Sergeant White made a note of this interview. It is again recorded by him that she was questioned in relation to discrepancies said to exist in the first two memoranda of interviews. The note of this memoranda is, apparently, untimed (contrary to Regulation 12(11)(a) of the Custody Regulations). Mrs. McConnell was questioned, he states, about whether she woke her sister, Katrina Brolly on arrival at her house between 2.30 a.m. and 3 a.m. on the morning of the 14th October and she confirmed that she did and that Mr. Brolly did not get up. She went to bed after a couple of hours and did not make any telephone call from Brollys' house that night or morning, nor was one made by her husband or the Brollys'. She spoke of her movements in the disco and essentially confirmed previous answers. It was again suggested to her that she was on her own when she entered the disco and was alone in the disco for a considerable period of time and that she was aware that her husband had met Frank McBrearty, Jnr. before the two of them had entered the disco but this was denied.

It was also suggested to her that she was aware that her husband was in Frank McBrearty's company that night from 12.35 a.m. for a half an hour or so and was involved with him in the murder of Richard Barron on his way home from the town of Raphoe. She was accused of telling lies consistently to the Gardaí regarding her husband's and her own movements on the 13th and 14th October.

After a break at 8 p.m., to allow Mrs. McConnell to use the toilet facilities in the company of Garda Lohan, the interview continued and D/Sergeant White says that at the conclusion of the interview he read over the notes to her and asked if they were correct. She agreed they were but declined to sign them. She was released from custody at 8.12 p.m.

Mrs. McConnell has very serious allegations to make against D/Sergeant White and D/Garda Dooley in respect of this later interview. When she was returned to the interview she claims that she was smoking and they made her put out the cigarette. They took her cigarettes and put them over on a filing cabinet and said that she had had a 'good enough day', or something along those lines. She told Mr. Flynn that D/Sergeant White threw her off the chair and told her to stand up and flung the chair across the room. He told her to get off it and pushed her up against the filing cabinet. 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 the wall. She complains that they were pushing her around the room. D/Sergeant White was enraged. She describes that he was roaring and shouting that much that he was spitting

(not deliberately) into her face. This was, Sir, because froth was coming out of his mouth, he was roaring and shouting that much.

She alleges that she was shown photographs of Richard Barron's dead body. She described these photographs in graphic detail. She states that they were shoving the photographs into her face and that they began to switch on and off the lights. She complained that while D/Sergeant White was pushing photographs up against her face she kept closing her eyes. D/Sergeant White was calling her Satan and the devil and said she would never see her father in heaven and that she would go to hell for what she was doing. She states that D/Garda Dooley was smirking away and at one stage turned around to D/Sergeant White and told him to watch it, that there was somebody out in the hallway. They then quietened down for a minute and listened to see if there was anybody in the hallway and then started again.

She complained that D/Garda Dooley kept telling D/Sergeant White to show her the photographs "Let the murdering bitch look at them". She alleges that D/Sergeant White made allegations of infidelity in order to try to get her to turn against her husband saying that he was having a relationship with somebody else. She alleged that D/Sergeant White was verbally abusing 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. D/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 she was telling the truth. This reply, she says, caused D/Sergeant White to loose his temper again.

At one stage she recalled Garda Georgina Lohan sitting in the room for a number of minutes, while she was being interrogated by D/Sergeant White and D/Garda Dooley, and that she walked out of the room, either out of, what Mrs. McConnell thought was embarrassment, or, because she was afraid herself. Her recollection of Garda Lohan was that she had made a phone call to her mother for her when she was leaving the station and said to her on the way out "If it's any help to you … I know you're innocent" at which Mrs. McConnell says she started to cry.

Following the episode involving references to her deceased father, Mrs. McConnell's recollection is that she was brought to the toilet and then she was told she was being released.

She recalled that Garda Leonard asked her had she any complaints. When she complained about D/Sergeant White pushing her, Garda Leonard turned to her and asked her in a very sarcastic tone whether she needed a doctor to look at her. She told him to leave it. She states Garda Martin Leonard then said "you have no complaints" and she answered "no". She had no recollection of Garda Leonard coming into the interview room but during the day she did recall another "kind Garda" coming in with tea.

We have already made reference to the letter of complaint written on the 23rd December, 1996 from V.P. McMullin & Son, Solicitors on behalf of

Mrs. McConnell to the Superintendent of An Garda Síochána setting out a number of complaints. In addition to the complaint made in respect of Mr. James Sweeney, and the fact that he was not furnished with the two memoranda, which he sought, the letter goes on to state that on the evening of her release Mrs. McConnell called to the solicitor's office:

> **She was obviously in a very distressed state as a result of the appalling methods of interrogation employed by the interrogating officers … Mrs. McConnell also informed him (the solicitor) that her hair was pulled and that she was generally abused both physically and mentally. As a result of this Mrs. McConnell has now been admitted to St. Conal's Hospital for psychiatric treatment.**

The letter also complains that:

> **Photographs of the body of Mr. Richard Barron were presented to her and were in fact pushed into her face and the interrogating officer put it to her that this was "the work of her husband". He also stated to her that her husband had been unfaithful to her.**

A letter was sought by way of response with comments in respect of the above allegations. There appears to have been some acknowledgement to V.P. McMullin, the date of which is unclear from the bad copy available, but a number of months passed before anything else happened in relation to this complaint. A delay in relation to dealing with this complaint and the fact that it was not forwarded to the Garda Complaints Board until many months later will be the subject of further inquiry under Term of Reference (j).

We have already indicated that the Gardaí alleged to have been involved in this behaviour have denied any wrongdoing and have responded to these allegations by making statements to Chief Superintendent Carey in the course of the investigation carried out by the Garda Complaints Board. D/Sergeant John White, in a statement furnished on the 2nd June, 1998 notes that he was instructed by Superintendents Fitzgerald and Shelly at a conference at Letterkenny Garda Station to arrest Mrs. McConnell as being an accessory after the fact to the murder of Richard Barron. He denies assaulting her, or ill-treating or abusing Mrs. McConnell in any way during her detention at Letterkenny Garda Station, either physically or mentally, nor did he witness any other person doing so in his presence. He was not aware for several months that she had in fact made any complaint. His participation in the investigation, he says, was confined to the three days at Letterkenny Garda Station following which he returned to Carrick and Glenties Stations. He deals with the issues raised by Mrs. McConnell at pages 19 to 23 of his statement and by reference to his original statement made in the course of the investigation into the death of Mr. Barron.

His recollection of his dealings with Mr. Sweeney, solicitor is that Mr. Sweeney attended Letterkenny Station and visited his client. D/Sergeant White states that he informed him that he and D/Garda Dooley were in the process of taking a

written memorandum of an interview with Mrs. McConnell and that Mr. Sweeney requested that he be allowed to remain in the interview room when this interview was resumed until its termination. D/Sergeant White regarded this as a most unusual request but he agreed to it because he believed his interview with Mrs. McConnell was "entirely in accordance with the Garda Custody Regulations". The memorandum was read over to her and she declined to sign it as did Mr. Sweeney on her behalf. There is a large measure of agreement between Mr. Sweeney and D/Sergeant White in describing events up to this point.

D/Sergeant White states that Mr. Sweeney then asked him for a copy of that memo of interview and any other statements that Mrs. McConnell had made. D/Sergeant White states that Mr. Sweeney was adamant "that he was entitled to them at that stage by law". He states that he informed Mr. Sweeney that he would leave the interview room and discuss the matter with Superintendent Fitzgerald. He did so, and was instructed by Superintendent Fitzgerald not to give copies of the statements or memos of interview taken from Mrs. McConnell to her solicitor at that stage and to inform him that he should apply for them in writing, as was normal procedure. He states that he returned to the interview room and so informed Mr. Sweeney and that Mr. Sweeney did not have any complaints in respect of the interview with Mrs. McConnell. He goes on to disagree with Mr. Sweeney and state that his letter is incorrect when he states that Sergeant White promised to give him a copy of Mrs. McConnell's memo of interview prior to reading it over to her. Sergeant White states he never supplied a statement taken from a prisoner to the prisoner's solicitor during the period of detention and could not possibly have promised Mr. Sweeney that he would do this. He goes on to state that he only discussed the matter with Superintendent Fitzgerald because of Mr. Sweeney's insistence that he was entitled to it. He believed that he was more than cooperative with Mr. Sweeney in continuing the interview in his presence and was surprised at his attitude in the letter.

D/Sergeant White notes Mrs. McConnell did not complain of any ill-treatment to the member-in-charge. In relation to allegations concerning marital infidelity he states that neither he nor D/Garda Dooley had any knowledge of the McConnells, or any person in Raphoe, therefore it was impossible for them to claim any knowledge of their private lives. He noted that the solicitor's letter of the 23rd December, 1996 did not contain the allegation made by Mrs. Connell of being forced to kneel down and pray to her dead father, the putting on and off of lights and the pushing and spitting into her face. He goes on to state that it has been established that Mrs. McConnell knowingly lied in her interviews with D/Garda Dooley and himself on the 4th December, 1996 in relation to numerous material facts with reference to the account of her movements on the morning of the death of Richard Barron. He also believed that the shocking allegations made have become worse as time goes on (thereby implying that they have been embellished over time) and that they are made in the belief that they would frustrate investigation into the death of Richard Barron, in which both she and her husband were suspects. He describes the allegations made by her as "amazing".

On the 17th April, 1998, D/Garda John Dooley made a statement denying the allegations made by Mrs. McConnell and gave his account of events in respect of her arrest and detention. In particular, he denies the pulling of Mrs. McConnell's hair or any abuse of her in any way. He did not show her any photographs of the deceased Richard Barron and there were no photographs in the interview room whilst he was present. He did not accuse her husband of being unfaithful to her and this was not said in his presence to her. He described the allegations in the McMullin correspondence as without foundation and he stated: "I vehemently refute them".

Garda Georgina Lohan, in a statement made the 15th April, 1998 describes her dealings with Mrs. McConnell and she states that she doesn't recall Detective Inspector McGinley referring to Mark McConnell in any disparaging fashion in the afternoon of the 4th December, 1996. She adds that "The allegation that Roisín McConnell was pushed by Sergeant White and Garda Dooley did not happen while I was present."

In a statement made on the 28th April, 1998 by D/Inspector (now Superintendent) John McGinley, he denies that Mrs. McConnell was subjected to any form of threats, insults, assault, physical or mental abuse or other form of intimidation during the course of this interview. He denies referring to Mark McConnell or Frank McBrearty in any disparaging way and denies referring to Mrs. McConnell as an "I.R.A. woman".

In a statement on the 2nd April, 1998 Garda Martin Leonard gives his account of his dealings with Mrs. McConnell and records that, on her release from custody, he asked her if she had any complaints to make regarding her treatment and she said she had none. He then states that she asked him to call a number and arrange for transport home, which he says he did.

Garda John Harkin, in a statement on the 31st March, 1998 confirms that he took notes of what Mrs. McConnell said in the course of the car journey to Letterkenny Garda Station following her arrest. He states that nobody shouted at Mrs. McConnell and that she seemed 'exceptionally calm' in all the circumstances. He was present during the course of the afternoon when Detective Inspector McGinley interviewed Mrs. McConnell and denies that Detective Inspector McGinley was in any way abusive towards her though he acknowledges that she was tearful part of the time but that she said she was OK. D/Garda Padraic Scanlon did not appear to be the focus of allegations made by Mrs. McConnell but he did make a statement on the 27th April, 1998 describing his involvement in the arrest, detention and interviewing of Mrs. McConnell. All was normal, according to this account.

A further development, which may be of relevance to the detention and interviewing of Mrs. McConnell, arises from a statement made by Garda Tina Fowley on the 13th October, 1999. This states that in September, 1997, she was requested to assist in the preparation of a file relating to the death of Mr. Barron. Her job was to compile the custody file in respect of those arrested, including Roisín McConnell. A number of statements and notes in respect of interviews with Roisín McConnell had not been submitted and it was therefore

difficult to complete the file. She drew attention to two distinct sets of notes of one particular period of detention, that is, an original set of notes and a typed set of notes and pointed out that "the typed set did not reconcile with the original" – everything that was in the original set of notes did not appear in the typed version. These were notes, which had been taken by Garda John Harkin. His writing was apparently difficult to read and the typist had difficulty in dealing with them. When she discovered the discrepancy in the notes she informed Sergeant Brendan Roache and was instructed to leave the notes to one side and that it would be dealt with later. She was under strict instructions from Sergeant Roache not to release any documentation.

Superintendent John McGinley allegedly asked her for the notes but she did not give them to him and instead contacted Sergeant Roache at his home. He directed her to hand over everything to Superintendent Lennon to whom she spoke. He, in turn, told her to hand everything to D/Sergeant John White, which she did later in the evening. This is supported by Sergeant Roache in his statement of the 18th October, 1999. The interview, in respect of which this issue arose, is that which took place between 4.40 p.m. and 6 p.m. on the 4th December, 1996 involving Detective Inspector John McGinley. We have looked at the discrepancies said to have arisen between various documents purporting to be the record of the interview. The relevant records of interview are:

(a) A copy longhand note made by Garda Harkin of the entire of the interview;

(b) What is said to be the typed version of this note;

(c) The note of a question and answer session incorporated into the statement of Garda John Harkin made the 3rd September, 1997 – it is unclear whether there is an original longhand manuscript form of this statement; and

(d) A note made during the course of the interview by Detective Inspector McGinley in respect of which there exists a manuscript note and a typed copy.

Having considered the alleged discrepancies we simply want to state at this stage that the Garda personnel involved in this interview have all made statements in respect of the alleged discrepancies and will be called to give evidence in respect of same before you, Sir. Having said that, whilst the emphasis of each document may differ it is not clear to us that the sense of what is alleged to have been said by Mrs. McConnell was to any or any large extent distorted as a result of these discrepancies. However, it may be of significance to the extent that the taking of notes in the course of interviews is required pursuant to the Custody Regulations for the purpose of ensuring that there is an accurate record of what is alleged to have been said by detainees in the course of interview. Of course, in the course of hearings it may be that other submissions will be made to you, Sir, in respect of the significance of these

discrepancies, either in the light of the materials already available or as a result of further material, which may be made available to us.

We now turn, Sir, to other persons who were arrested on the 4th December, 1996.

Five other persons whom one might think were relevant to the movements of Mark and Roisín McConnell on the evening of the 13th into the early hours of the morning of the 14th October, 1996 were also arrested on the 4th December, 1996. They were Michael Peoples, Charlotte Peoples, Katrina Brolly, Mark Quinn and Edel Quinn.

Michael and Charlotte Peoples

It will be recalled that Michael and Charlotte Peoples attended the Town and Country bar on the 13th October, 1996 at approximately 9.30 p.m. Charlotte Peoples went up stairs to see Donna Quinn while her husband Michael remained in the bar watching highlights of the Grand Prix on television. Mrs. Roisín McConnell was visiting Donna Quinn also that evening and both Roisín McConnell and Charlotte Peoples came back down to the bar and sat into some company, which included Eunan and Katrina Brolly, Paul Quinn and Sue Quinn, Mark McConnell and Mark and Mary Bogle. Michael Peoples recalled, in a statement to Garda Philip Collins on the 19th October, 1996, that there was a row between Mark McConnell and Richard Barron. He also recalled that at around 12.00 o'clock he and his friend Geoffrey Dolan left the bar and went to the bank link at the Ulster Bank, as they had decided to go to the Parting Glass. They returned to the Town and Country to collect Charlotte Peoples and then went to the Parting Glass in Mr. Dolan's car. Michael Peoples states that he spoke to Frank McBrearty Snr. at the door and that when they were leaving the Parting Glass some girl came in and told them that the man who had been arguing with Mark McConnell had been killed. They left the Parting Glass at about 1.30 a.m. His wife Charlotte also made a statement to the Gardaí in respect of her movements. Again this was a statement to a Garda Philip Collins made on the 18th October, 1996. She was rather more precise about the time her husband left to go home to get his bank link card. She puts it at 12.10 a.m. and states that they came back about ten minutes later and the three of them then left and went over to Frankie's Nightclub in Geoffrey Dolan's car.

Geoffrey Dolan on 16th October, 1996 made a statement to D/Garda Patrick Flynn and he also made a further statement on the 4th November, 1996 to Garda John O'Dowd. He apparently left shortly before the Peoples and joined a friend of his for about ten or fifteen minutes in his car. Apparently he witnessed a row before seeing the Peoples emerge from the Parting Glass and having just been told of the death of Mr. Barron. He collected them in his car.

The following morning 17th October, 1996 Mark and Roisín McConnell called to the Peoples' house at 10 a.m. or thereabouts and had breakfast. They talked about the death of Richard Barron.

The next important event is the complaint, which they made to the Gardaí in respect of the extortion telephone calls to their home which is being dealt with under Term of Reference (a), to which we have already referred. Thus, by the 3rd December, 1996 it would appear that Gardaí were investigating, or at least the Peoples were given to understand that they were investigating, extortion telephone calls to the Peoples' house. It will be recalled that in the course of statements made to the Gardaí in November, 1996 concerning these calls that Mr. Peoples had told the caller who was threatening him to go to the Gardaí in respect of alleged information which the caller said he had concerning Mr. People's alleged involvement in the death of Mr. Barron, that he should go to the Gardaí. Having told the Garda Síochána about the calls an investigation was initiated and followed what might be regarded as a very slow course as described earlier in this statement.

Given this resume of Mr. & Mrs. Peoples involvement in these events, let us now try to explore the reason they were propelled to the forefront of a criminal investigation in respect of the death of Mr. Barron.

D/Sgt. Michael Keane (Lennon – 244A) states that he arrested Michael Peoples for the murder of Richard Barron in Raphoe and brought him to Lifford Garda Station where he informed the member in charge that, from enquiries made and information received, he had reasonable grounds to suspect that Mr. Peoples was involved in the murder of Richard Barron. Garda Bosco Gallagher, member-in-charge at Lifford, authorised the detention of Mr. Peoples under Section 4 of the Criminal Justice Act, 1984 because he had "reasonable grounds for believing that his detention was necessary for the proper investigation of the offence for which he had been arrested under Common Law for the murder of Richard Barron". He based his reason, for detaining Mr. Peoples, "on the contents of the conversation I had with D/Sgt. Keane". This was not elaborated upon. Subsequently, having sought permission from Supt. John Fitzgerald to finger print and photograph Mr. Peoples at 1.05 p.m., he contacted Supt. John Fitzgerald at 1.45 p.m. and supplied him with information that Mr. Peoples was still detained at Lifford. He says:

> **That the prisoner was not telling the truth and was denying facts put to him concerning the crime for which he had been arrested. That he had vital information in his possession in relation to the murder of Richie Barron and the movements and actions of the person responsible for his murder.**

He therefore requested the further detention of Mr. Peoples for a period not exceeding six hours. Supt. John Fitzgerald confirms what Garda Bosco Gallagher told him. He states that, having all the facts of the investigation in his possession, he authorised the extension of detention.

It may be, Sir, that Mr. Peoples reaction to the first question put to him by the Gardaí was understandable in that when he was asked did he understand the caution in the first interview following his detention he answered "aye but I

don't know what I am doing here". Between 8.27 a.m. and 10.22 a.m. he was interviewed by D/Garda Flynn and Garda V. Bourke covering not much more than what was outlined in the statement of 19th October, 1996. In the second statement, when interviewed by Garda Phillip Collins and D/Sgt. Keane, he was asked about the time he left the pub, which he repeated, was 12.00 o'clock and described the identity of those left behind. He repeated an account of his movements and described how he went to the Bank Link and then came back to the pub to collect Charlotte. He then went to the Parting Glass. He said that Geoffrey Dolan was with them and that they left at approximately 1.30 a.m. He also indicated that he had an argument with his wife Charlotte about leaving, in that she did not wish to leave. He said he had fallen out with Charlotte and was going to go down to Quinn's pub for a pint. This surely suggests that he expected to be served at Quinn's pub at that time. He then describes how all three of them got into the car and he was driven up to the area at which Mr Barron had been killed and how they then left for home. He wasn't aware that anybody made a phone call from his house and, if anybody did, it was probably his mother in law. He was again interviewed by D/Garda Flynn and Garda Bourke between 3.23 p.m. and 6.00 p.m. when he gave some further details about the row between his wife and himself outside the Parting Glass on the Sunday night Monday morning.

In a further statement, Garda Gallagher stated the arresting Garda told him that the grounds for the arrest were as follows:

> **He told me the grounds for the arrest were telephone calls made from Peoples' home in the middle of the night of 14th October, 1996 to Letterkenny Hospital enquiring about the condition of Richie Barron and caller refused to identify themselves and also Michael Peoples own admission to Garda Philip Collins that he offered an anonymous caller by phone the sums of £1000 and later on £500 on condition the caller did not contact Gardaí about information he had linking Peoples to the murder of Richie Barron and also confidential information received by Gardaí that three men were seen coming through the car park of the Parting Glass from the direction of the murder.**

In this account, Sir, Mr. People's complaint to members of An Garda Síochána concerning an attempt to extort money from him, which he had reported, is now used against him. Further, he alleged that this complaint underwent a mutation whereby it now becomes, at the hands of Detective Sergeant Michael Keane and Garda Bosco Gallagher, an admission of offering to pay an anonymous caller sums of money. Mr. Peoples' account was that the caller sought to blackmail him about alleged information concerning his involvement in the death of Mr. Barron. Part of your Inquiry, Sir, should focus on why such an interpretation was placed on a complaint which we are led to believe was the subject of an on going, if somewhat dilatory, Garda investigation.

Mr. Peoples does not seem to have been challenged in any way about the truthfulness of what he was saying. He did not appear to deny any facts put

to him concerning the death of Mr. Barron nor was it suggested to him that he had any vital information in his possession relating to the murder of Mr. Barron, or, the movements and actions of the persons responsible for his murder. Mr. Peoples was released from custody at 7.53 p.m. It would be useful to enquire further, from the members of An Garda Síochána involved, what their particular brief was in relation to the interviewing of Mr. Peoples and how precisely it was thought that he could assist the investigation of the death of Mr. Barron beyond his statement of the 19th October, 1996.

Of course, Mrs. Charlotte Peoples was also arrested at 9.00 am. on 4th December, 1996 at the Demesne, Raphoe, County Donegal and taken to Letterkenny Garda Station. The member in charge was Garda Martin Leonard. The arresting member, D/Sgt. S. Henry told Garda Leonard that he had arrested Mrs. Peoples and then informed him that he had been involved in the 'murder investigation' of Richard Barron and that it had transpired that Charlotte Peoples was seen leaving the Parting Glass pub at 1.25 a.m. in a distressed state. He said that she was crying and was accompanied by a man other than her husband. She got into a car and was driven down the street in the direction of where 'the murder' was committed and returned sometime later with her husband in the car. He informed Garda Leonard that a phone call was made to Letterkenny General Hospital enquiring about the deceased Richard Barron, by a caller who was a female and gave a false name to the hospital authorities. It was his belief that this call was made from the home of Charlotte Peoples and that she was in the possession of vital information relating to the murder of Richard Barron. There are four elements to this:

(a) the fact that she was seen leaving the Parting Glass Nightclub in a distressed state and that she was crying and accompanied by a man other than her husband;

(b) that she got into a car and was driven down the street in the direction of where 'the murder' had been committed;

(c) that she had returned sometime later with her husband in the car; and

(d) that a phone call had been made to Letterkenny General Hospital by a woman enquiring about the deceased Richard Barron, who gave a false name and that it was his belief that the call was made from the home of Charlotte Peoples and that she was in possession of vital information relating to the murder of Richard Barron.

Over the period of her detention she was questioned about a phone call made to the hospital. Although she initially failed to tell the truth about this, she eventually revealed that it was her mother-in-law Mrs. Catherine "Dolly" Eaton who had made the call in the early hours of the morning to Letterkenny Hospital. She asserted that there was no harm in the call and that she hadn't told the truth about it because she wanted to protect her mother. Her mother, though not interviewed until 22nd September, 1997 in relation to a matter, of

apparently such vital importance, confirms that she indeed made this call: statement made to D/Garda Thomas Kilcoyne.

Mrs. Peoples was also questioned about whether she was in a distressed condition, and crying, when she emerged from the Parting Glass and whether she was on her own at the time. She stated that she emerged with her husband who had a lot of drink taken. He kept saying that he was going to the van, but in fact their van was in Letterkenny and eventually they were collected by Geoffrey Dolan. They were then driven up to the scene of the accident and then home. They encountered Martin Quinn on route who apparently confirmed to them what they had heard in the nightclub about Mr. Barron. She also told them the fact that her husband's keys had been left in Mr. Dolan's car and that they had made attempts to contact Mr. Dolan to retrieve the keys.

Charlotte and Michael Peoples have not made any complaints in relation to their arrest and detention to the Garda Complaints Board and do not appear to have issued any civil proceedings in relation to what occurred to them on the 4th December, 1996. They have made complaints in relation to hoax telephone calls to their home, which understandably caused distress and upset. This inquiry does not, as of yet, appear to have concluded and, as far as we are aware, no person has been prosecuted in respect of the hoax calls.

The issue which you, Sir, may wish to consider in relation to Michael and Charlotte Peoples, apart from that set out in Term of Reference (a), relates to their arrest and detention; whether this was, in fact, justified having regard to all the information available to the Garda Síochána at that time. In relation to these arrests, and the arrests of others, the movements of a number of persons were of interest to the Gardaí in respect of the 13th/14th October, 1996. The position in which the Gardaí found themselves may be that they sought further information, which they felt, was not forthcoming. The power of arrest at common law requires a reasonable suspicion that a suspect has committed an offence. This is different, in kind, from a power of arrest which exists to a limited extent in this jurisdiction under Section 30 of the Offences Against the State Act, 1939; the basis of a suspicion in that case could be that the arrested person was suspected of being in possession of information relating to the commission of an offence. It is an abuse of a power of arrest, on reasonable suspicion of having committed an offence, if it is used, not on the basis of the existence of such a reasonable suspicion, but on the basis that it is suspected that an individual has information in relation to the commission of an offence which the Gardaí wish to question him/her about. There is no power to arrest people because they may be able to help with Garda inquiries There was no power at common law on the 4th December,1996 to arrest Mr. or Mrs. Peoples on suspicion of their being in possession of information relating to the commission of an offence. This distinction is recognised in Section 30(1) of the Offences Against the State Act, 1939 which provides:

> **A member of the Garda Síochána may without warrant stop, search interrogate and arrest any person ……whom he suspects**

> **of having committed or being about to commit or being or having been concerned in the commission of an offence under any Section or sub-section of this Act or an offence which is for the time being a scheduled offence for the purpose of Part V of this Act…… or whom he suspects of being in possession of information relating to the commission or intended commission of any such offence as aforesaid.**

That power of arrest is confined to a limited number of offences under the Offences Against the State Acts, not including murder. It may be appropriate for you to consider, Sir, whether the distinction to which we have referred became somewhat blurred in the minds of those investigating the death of Richard Barron and those who effected or directed the arrests of persons whom they may have believed were in possession of relevant information concerning the movements of persons on the night of Mr. Barron's death.

The Arrest and Detention of Edel Quinn

Edel Quinn, sister of Roisín McConnell, was arrested at 8.35 a.m. on the 4th December, 1996 at Tullyvinney, Raphoe, County Donegal by Detective Garda Patrick Tague. He claims that he believed her to be an accessory after the fact to the murder of Richard Barron on the 14th October, 1996. He conveyed her to Lifford Garda Station arriving at 8.53 a.m. and informed the member-in-charge, Garda Bosco Gallagher, of the circumstances and nature of the arrest. Detective Garda Tague does not elaborate on what exactly was said to Garda Bosco Gallagher. However, Garda Gallagher in his statement states that:

> **Detective Garda Tague explained to me that Edel Quinn had information in her possession regarding the movements of Mark McConnell and others, suspected of the murder of Richard Barron at Raphoe on the 14th October, 1996 and that she had been seen with Mark McConnell and his wife Roisín outside Frankie's Nightclub at 1.30 a.m. and that Mark and Roisín McConnell were distressed and crying and Edel Quinn comforted them, and that Quinn did not mention this in a statement.**

Simply because Edel Quinn had information in her possession in respect of the movements of Mark McConnell, and others who were suspected of 'the murder' of Richard Barron, would not of itself afford a basis upon which to arrest and detain her. The fact that she had been seen with Mark McConnell and his wife Roisín outside Frankie's Nightclub at 1.30 a.m., comforting them because they were crying is, of course, open to the interpretation that she was a nice person acting towards her sister and brother-in-law as any sister would if they were upset.

She did in fact make a statement outlining in detail her movements on the night of the 13th October, 1996 to Detective Garda Michael O'Malley on the 19th October, 1996, at her home. In that statement, she outlined how at 7.00 p.m. her sister Roisín called to 330 St Eunan's Terrace, Raphoe with her

son Dean. She left Roisín and Dean to the Town and Country pub in William Street and returned home. She then went to collect her boyfriend Edmond (Ebby) Walsh in Strabane and arrived back at Raphoe at approximately 8.45 p.m. to 9 p.m. They first went to Friel's bar and then to the Tudor lounge where they arrived at 11.p.m. At 12.30 am. to 12.35 a.m. Frank McBrearty (Snr.) approached them and told them to go up to the disco. They went with Frank McBrearty Jnr. so that they would not have to pay going in. Sometime around 12.45 a.m. to 1.00 a.m. she recalled that the Peoples and Geoffrey Dolan arrived at the disco, and at around 1.30 a.m., her sister Roisín and Mark McConnell arrived into the disco. They joined her table. She left the disco with Mark and Roisín McConnell and Ebby Walsh and walked up to Ebby's car. They were asked if they would drive out to the McConnell house to collect necessities for the baby. They did so, and on the way back stopped at Sarah's café and obtained a takeaway. Then they dropped the McConnells to Brollys' house.

At the time of arrest, the only apparent criticism of Edel Quinn was that she did not mention that Mark and Roisín McConnell were distressed and crying as they left Frankie's Nightclub at 1.30 a.m. and that she had comforted them. It is clear that a further enquiry must take place in order to understand the basis of this arrest and detention.

Interestingly, her then boyfriend, Edmond (Ebby) Walsh, made a statement to the same effect and also omitted to say anything about the distress of the McConnells at that time. When asked to attend at Lifford Garda Station on 14th January, 1997 he spoke about this distress, which appeared to relate to Mark McConnell who apparently was very upset that earlier in the evening that he had words with a man who shortly afterwards had been killed. Mr. Walsh did not have to be arrested in order to make this statement. It should also be noted, Sir, that when questioned, by Detective Sergeant Desmond Sheridan and Garda Pauline Golden, Miss Quinn seemed to have no difficulty in telling them about Mr. McConnell's distress on hearing of the death of Richie Barron. She described him as being shocked and stunned.

Though Miss Quinn appears to have instituted a civil action against the Commissioner of An Garda Síochána, Ireland and the Attorney General in relation to alleged false imprisonment and breach of constitutional rights on the 4th December, 1996, we are not aware of any complaints by Miss Quinn about her treatment during her period of detention. The main question that arises in respect of Miss Quinn may be whether there were any grounds upon which the arresting member could have formed a reasonable suspicion that she was an accessory after the fact to murder, the foundation for which, one would have thought, ought to be substantial - certainly beyond mere suspicion or suspicion that somebody is withholding or has not furnished the information in their possession.

In the light of the pre-arrest conference, Edel Quinn is a person whose arrest was determined by high-ranking officers of An Garda Síochána, the reason for which will be a matter for further inquiry.

Arrest and Detention of Mark Quinn

Mark Quinn was arrested at 5.05 p.m on the 4th December, 1996 in Raphoe by Detective Garda P.J. Keating, on suspicion that he was an accessory after the fact to murder. He was conveyed to Letterkenny Garda Station where he arrived at approximately 5.25 p.m. and the member-in-charge, Garda Martin Leonard was informed of the circumstances of the arrest. He then informed Mr. Quinn that he was detaining him under Section 4 of the Criminal Justice Act, 1984. In a further statement, Detective Garda Keating states that he informed the member-in-charge that:

> **I was in possession of a written statement from a Mr. Martin Laird, Tullyvinney, Raphoe in which he states that he saw Mark McConnell leaving Mark Quinn's pub at 8.20 a.m. on the morning of the murder the 14th October, 1996. Mark Quinn denies Mark McConnell was in his pub at that time or left at that time Mark McConnell being a suspect for the murder of Richie Barron on 14.10.96. Garda Leonard informed the prisoner Mark Quinn he was detaining him under Section 4 of the Criminal Justice Act, 1984**.

Mr. Quinn had furnished a voluntary statement on the 16th October, 1996 to Garda Philip Collins. In this statement he gave an account of his movements on 13th October, 1996. He stated that he and his wife lived above the bar and that he was in the bar most of the day. Martin Quigley, a barman, took over work in the bar from him at 7 p.m. Most of the time between 7 and 10 p.m. he spent upstairs, though he came down a few times during this period to answer the phone. He met Richie Barron, sitting in the corner of the bar, sometime after 10.00 p.m. and returned upstairs. He came down once again to take a phone call, ten minutes later, and returned upstairs where he showered and changed. About a half an hour later, he then went into the poolroom. He cleared some glasses, Sir, from the poolroom area and, on his return to the bar, found Richard Barron facing Mark McConnell. The way they were looking at each other he thought there was 'something up' and he told Mark McConnell to go to the poolroom. At about 11.20 p.m. he noticed that Richard Barron had left. He goes on to state that:

> **Most of the people in the bar left the premises at about half twelve. The bar man Martin Quigley left at about a quarter to one. There was myself and Gerard and Kay Quinn, Irene and Frankie Dolan and Laura Dolan and the boyfriend Jimmy (Deery), left in the bar at this time. We were in the poolroom. There was nobody in the bar. We had one more drink and they all left then, shortly after 1.00 a.m. We tidied up and went to bed at about 2 a.m.**

We quote this statement because of the fact that it does not mention Mark McConnell and does not include Mark and Roisín McConnell as amongst those who were left in the bar at 12.45 a.m. Both Mark and Roisín McConnell were pressed, by members of An Garda Síochána who interviewed them in the course of their detention, on the issue of the time at

which they left Quinn's pub in the light of statements then in the possession of the Gardaí from Carmel Connolly and Philomena Laird, which would suggest that slightly before or around 12.30 a.m. the McConnells had left the Town and Country. Had Mr. Quinn been of a mind to assist the McConnells in this regard, one might have thought that his opportunity to do so occurred when he made the statement on the 16th October, 1996. It is possible that the McConnells might have regarded his statement of the 16th October, 1996 as less than helpful.

Notwithstanding this state of affairs, senior Gardaí and the arresting Garda appear to have decided that Mr. Quinn should be arrested on the basis of the observations of Martin Laird, which had never been canvassed with Mr. Quinn.

Martin Laird is a next door neighbour of Mark McConnell. He informed Garda John O'Dowd, in a statement taken on the 27th October, 1996 at his home, that he had seen Mark McConnell come out of the Town and Country at 8.20 a.m. on the morning of the 14th October, 1996. The significance of this observation may lie in the fact that it had been suggested by Mrs. Irene Dolan that she had received a phone call from Roisín McConnell as to the whereabouts of her husband sometime before 3 a.m. on the morning of 14th October, 1996 – a call Mrs. McConnell maintains, was not about her husband. Certainly, the questioning of Mr. and Mrs. McConnell gives one to understand that the investigating Gardaí did not accept that Mark McConnell remained at the Brollys' and slept there until he was brought to collect his car by Eunan Brolly sometime after 10 a.m. on the morning of the 14th. There was also some suggestion of sightings of Mrs. McConnell before 10 a.m. in the town of Raphoe. It is in this context that, perhaps, Garda suspicion was heightened in respect of Mark McConnell's whereabouts after 1.30 a.m. approximately. If he did spend the remainder of the night other than in Brollys' with his wife they could legitimately enquire where else he may have spent the night and why. The partial answer to that question may have been provided by Mr. Laird's statement. Following Mr. Laird's statement, on the 27th October 1996, a statement was obtained by Garda John Harkin and Detective Garda P.J. Keating from Mrs. Donna Quinn on the 7th November, 1996 in which this matter appears to have been raised with her. But at the conclusion of her statement she states:

> **I would have gone to bed myself around 11 or 11.30 p.m. I would have gotten up around 1 a.m. It could have been later. There was nothing unusual happened that I can recall. There was just ourselves in the house here that night. This statement has been read over to me and it is correct.**

By that time, of course, the Gardaí had the statement of Martin Laird made 27th October, 1996 in their possession. Mrs. Quinn does not appear to have been challenged in relation to her statement nor do the Gardaí seem to have thought it appropriate to return to Mr. Quinn at any time between the 16th October, 1996 and the 4th December, 1996 to canvass this matter with him.

The methodology and thought process applied to the determination by senior members of An Garda Síochána, and the arresting member, which led to the conclusion in these circumstances that there was a reasonable suspicion that Mark Quinn was accessory after the fact to the murder of Richard Barron, will be explored more fully in the course of the Tribunal's hearings.

The arrest and detention of Katriona Brolly

We now consider the arrest and detention of Miss Katriona Brolly. She was arrested at 8.25 p.m. on the 4th December, 1996 at the car park of Letterkenny Garda Station at common law on suspicion of being an accessory after the fact to the murder of Richard Barron on 14th October, 1996. It will be recalled that Mrs. Brolly, wife of Eunan Brolly is the sister of Roisín McConnell. She also had made a statement on 16th October, 1996 to Garda Philip Collins, which was taken at her home. She described her movements and those of her husband on the evening of 13th October, 1996 when they both went to Mark Quinn's pub the Town and Country at approximately 7.00 p.m. She was joined by a number of people to whom reference has already been made including Mary and Mark Bogle, Gerard and Kay Quinn, Paul and Sue Quinn together with Charlotte and Michael Peoples and Mark McConnell. They witnessed the argument between Mark McConnell and Richard Barron, and described how Mark Bogle got up beside Richard Barron, and how Mark Quinn took Mr. McConnell over beside the door towards the poolroom. She described how she left the pub at 12 midnight with her husband Eunan and went straight home, arriving at 12.15 to 12.30 p.m.

On the same date her husband Eunan Brolly made a statement at his home to D/Garda Michael O'Malley. He gave a similar account of the evening, which he spent with his wife at the Town and Country bar. There does not appear to be any basis upon which to dispute their account of the evening, which they spent at the Town and Country pub.

There appeared to be a number of matters, which the Gardaí wished to clarify in respect of the night's events and on the 4th December, 1996 prior to the arrest of Katriona Brolly, Garda Tina Fowley and D/Garda Noel Jones went to her home around teatime and recorded a further statement from her. In this statement she describes how the McConnells, including the baby Dean, arranged to stay at the Brollys on the night of the 13th October. Her own son and daughters had been babysitting Dean and when she got home, she got the child to bed before she and her husband went to bed at around 1 a.m. She recalled the arrival of Roisín and Mark McConnell into the house but she did not know at what time this had occurred. She went down to the kitchen and recalled that there was a take away, which was consumed. Mark McConnell went to bed before her and then she went to bed. Roisín McConnell had to go and attend to Dean who had woken up. She recalled how she had awoken at around 8 a.m. the following morning. She had slept soundly and had not been disturbed from the time she retired to bed. At the time she left for work Mark, Roisín and Dean were sleeping in the house as

was Eunan Brolly. He left some time around 9.45 a.m. She stated that she and Roisín McConnell had discussed the argument that Mark had, earlier that night, with Richard Barron and she described Roisín as being upset and as being of a sensitive nature. Roisín McConnell had asked for Mark to phone the hospital to see how Mr. Barron was but he said he wasn't phoning and left to go to bed.

The Gardaí took an additional statement from Mr. Eunan Brolly on the evening of 4th December, 1996. In it, he describes returning home at 12.10 a.m. approximately. He made a cup of tea and watched television for a while. Prior to his going to bed he was aware that arrangements were made whereby Mark and Roisín McConnell were to "probably stay in our house that night". He went to bed shortly after 1 a.m. The McConnells had not arrived at this stage but his wife Katriona, he thought, was still up at the time. He got up next morning at 10 a.m. made tea and got ready for work. He was not aware that the McConnells were in the house until Roisín McConnell joined him in the kitchen at 10.30 a.m. Mark McConnell then came into the kitchen a few minutes later. He asked him where he was going and Mr. Brolly replied that he was going to work. Mark McConnell asked him for a lift up the town so that he could collect his car. He dropped him by Dr. Quinn's entrance and then left for work.

After these statements were completed, and signed by the Brollys, Katriona Brolly attended at Letterkenny Garda Station to collect her sister, Roisín. She had earlier attended the station in order to visit her sister Edel Quinn and had not been arrested. She had not been arrested by Garda Tina Fowley or her colleague at teatime on the same date. Now, however, D/Garda Patrick Tague states that from enquiries made and information received he went to the Garda Station car park Newline Road, Letterkenny and arrested Katriona Brolly at 8.25 p.m. "for felony murder of Richie Barron on 14th October, 1996 believing her to be an accessory after the fact". She was then conveyed to the Garda Station where she arrived after some considerable time at 8.40 p.m. Garda Leonard was told of the time circumstances and the nature of arrest according to D/Garda Tague and detained her under Section 4 of the Criminal Justice Act, 1984.

Garda Martin Leonard, member-in-charge described the arrival of Katriona Brolly at Letterkenny Garda Station and the fact that Detective Garda Tague consulted privately with him as to the circumstances of the arrest. It was explained to him that:

> **This prisoner was with a suspect, Mark McConnell after the murder of Richard Barron on 14.10.96. That she harboured the suspect in her house and was aware of the suspect's involvement in the murder. That she made a phone call to the hospital enquiring about Richard Barron on the night of the murder and that she provided a statement which gave a false alibi to Mark McConnell.**

Interestingly, none of these propositions of fact were put or appear to have been canvassed with Mr. or Mrs. Brolly before this arrest. Mr. Brolly was not arrested.

Mrs. Brolly was detained in custody until the following morning at 8.15 a.m. It is noted in the Custody Record that she was "released with no complaints". In the course of the evening, she had been interviewed on a number of occasions by a number of Gardaí. At 8.58 p.m. she was brought to an interview room by D/Garda Keating and Garda Georgina Lohan. D/Garda Keating was replaced by D/Sergeant Paul Heffernan at 9.20 to 9.25 p.m. and at 9.27 p.m Garda Georgina Lohan left the interview room. Mrs. Brolly had a consultation with her solicitor Mr. James O'Donnell at 9.25 p.m. which continued until 10.10 p.m.

At 10.12 p.m. D/Sergeant Paul Heffernan and D/Garda John Jones interviewed her which continued with some interruptions until 11:40 p.m. when they were replaced by D/Garda Dooley and Detective Sergeant White. In the meantime, her solicitor Mr.O'Donnell had requested that statements made by his client be given to him and that this request be recorded in the Custody Record.

Mrs. Brolly had a right to have her questioning suspended at 12 midnight under the provisions of Section 4 of the Criminal Justice Act, 1984. However, it is recorded in the Custody Record that she wished to continue, and did not wish to avail of the suspension of questioning. At 1.35 a.m., D/Garda Dooley and Sergeant White were replaced by D/Sergeant Heffernan and D/Garda Herraghty. At 2:20 a.m. Superintendent John Fitzgerald directed that Mrs. Brolly be detained under Section 4 for a further period of six hours and it is recorded that she was informed of this at 2.25 a.m. D/Sergeant Heffernan and Herraghty were replaced at 2.45 a.m. by Sergeant White, D/Garda John Dooley and Garda Joan Gallagher. This interview continued until 4.00 a.m. when they were replaced by D/Sergeant Heffernan and D/Garda Herraghty. At 5.30 a.m. Mrs. Brolly was told that she was getting a rest period and D/Sergeant Heffernan and D/Garda Herraghty left the interview room and she was taken to a cell.

In the course of these interviews, it is recorded that in the first interview between 9:27 p.m. and 11:40 p.m., Mrs. Brolly was questioned, apparently, about a shopping trip to Belfast that occurred on the 13th October, 1996. She was then interviewed by D/Garda Dooley and D/Sergeant White who interviewed her up to 12:50 a.m.. The notes of this interview are in question and answer form. She was questioned about the arrangements which were made for Mark and Roisín McConnell, together with their son Dean, to stay at her home on the night of the 13th and whether anybody had made a phone call from her house that morning. She confirmed most of what was in her earlier statements. She was asked about her children, and their ages, which apparently were 13, 10 and 9, and the time at which they left for school. She was then questioned about her movements on the 14th October, 1996. She stated that she thought her sister Roisín had made a phone call to Irene Dolan during the night.

She was further interviewed by D/Garda Sean Herraghty and D/Sergeant Paul Heffernan at 1:35 a.m. until 2:35 a.m. during the course of which she was asked about those present at the Town and Country on the evening of the 13th October.

These interviewers were replaced at 2:45 a.m. by Sergeant John White and D/Garda John Dooley who remained with her until 4:00 a.m. However, it is not clear from the notes what was discussed during this period, though Sergeant John White's statement suggests that Mrs. Brolly was questioned as to what had occurred in her home on the morning of the 14th October, 1996. There is reference in Garda Dooley's statement to the reading over of notes taken by D/Sergeant White, at the conclusion of the interview with her in the earlier period and we note that there is no such reference in his statement in respect of the second period, nor is there any such reference in D/Sergeant Whites statement. It is unclear to us what notes, if any, were taken during this period. The taking of notes, of course, is an obligation cast on interviewing members under the Custody Regulations (Regulation 12(11)). D/Garda Herraghty and D/Sergeant Heffernan then continued to question Mrs. Brolly in respect of her movements and after she left the Town and Country with her husband and the arrival of the McConnells at their home.

Questioning stopped at 5:30 a.m. when Mrs. Brolly was brought to a cell. She was brought again from the cell at 6:15 a.m. to the interview room. At this stage, other questions which had been put to her and her replies thereto were read over to her. She did not wish to make any alterations or additions to those notes. Those members left the interview room at 7:10 a.m. and were replaced by D/Sergeant White and D/Garda Dooley. Mrs. Brolly was again, apparently, questioned about events at her home on the morning of 14th October, 1996. Again, there is no reference to the taking of notes during this interview or the reading over of same in the statements of D/Sergeant White or D/Garda Dooley and it remains unclear as to whether such notes were taken or whether there was a breach of Regulation 12(11).

It does not appear that any new information was obtained from these interviews. Mrs. Brolly confirmed that she and her husband went to the Town and Country at approximately 7:00 p.m. At that stage, her daughter Kristine was with them. At about 9:00 p.m., her 13-year-old son took her daughter home. Katriona Brolly and her husband stayed in the Town and Country until approximately midnight following which they went directly home. An arrangement had been made that Mark and Roisín McConnell would stay the night with them and she left the key out for them. Their son Dean was already at the Brolly house and Mrs. Brolly stated that at approximately 1 a.m. she was awoken by Mrs. McConnell who stated that her husband had bought a curry and chips. She also told her that Richie Barron had been involved in a hit and run accident, but was not dead. Katriona Brolly stated that she got out of bed and went down to the kitchen and had a conversation with Mark and Roisín McConnell. Mark McConnell then went to bed and she went to her bed sometime later. Roisín McConnell stayed up as her son was awake at the time and the following morning she left for work at the usual time at

around 9:45 a.m. She could not say for definite if the McConnells were still in the house, but she thought that they were. She thought that her sister had phoned Irene Dolan in the course of the night.

Mrs. Brolly, Sir, makes a very serious complaint about the way in which she was treated whilst detained in Garda custody. On the 10th December, 1996, a complaint was made by Messrs. V. P. McMullin, Solicitors to the Superintendent, Garda Síochána, Letterkenny in respect of her detention. She had instructed them that:

> **During the course of her detention, she was repeatedly harassed, abused, and physically assaulted on two occasions when her hair was pulled by a female garda. Our client instructs us that during the course of her questioning, this Garda pulled our client's hair out while she was being questioned by other members of the Gardaí…she was told that she would not be released until she signed a form stating that she had no complaints regarding her detention. Our client has instructed us that she only signed this form to secure her immediate release. She instructs us that she wishes to make an official complaint in relation to the treatment she received by a female member of the Garda Síochána during her detention.**

This complaint, though dealt with by the Garda Complaints Board was not received by them, until it was forwarded by Superintendent Lennon in October, 1997. Superintendent Carey of Mayo was appointed as the investigating officer on the 28th November, 1997 and a final report issued in respect of the complaint on the 16th November, 1998. How this complaint was processed will be dealt with under Term of Reference (j).

Mrs. Brolly made a statement through Chief Superintendent Carey on the 10th February, 1998. Her reason for going to Letterkenny Garda Station at 8:25 p.m. on the 4th December, 1996 was to collect her sister Roisín who had been in custody there since early morning. She states that she was sitting in her brother's car outside the station in the car park when Garda Tina Fowley approached her and asked her to step out of the car. She did. She was then arrested by another Garda in plain clothes who brought her into the station. She declined to call a solicitor, when asked. Her brother, Paul Quinn, with whom she had attended the station was told that he could go home. Mrs. Brolly presumed that he would tell the rest of the family what had happened and, therefore, she did not seek to contact anybody at that stage. Mr. James O'Donnell, solicitor attended the station, having been requested to do so by Paul Quinn, her brother. She had no complaints to make at that stage. He then gives the following account:

> **Sometime around 11 p.m. I was being interviewed by John White and John Dooley. A Garda came into the room. I don't know his name. He spoke to John White. He said her husband is in reception, he wants to visit her. John White said "that bastard is having no visitors". I wasn't allowed to see my husband. After**

the Solicitor had left earlier, I asked Paul Herring if I could make a phone call about 11 just to see how the wains were. Sometime later, I reminded him. He made no reply to this. I did not ask anybody else. Sometime later, I was asked if I wanted to go to bed or if I wanted to continue questioning. I said I wanted to continue. I was also told that my period of detention was being extended. It was done by a Garda who had replaced Garda Leonard. After my being extended I had John White and John Dooley in to question me. Joan Gallagher was also in the room. John Dooley told me to stand out in the middle of the floor. The lights were turned down low. They had photographs of Richie Barron's body. John Dooley rubbed them against my face. John White said "we know it wasn't Mark done it that it was young Frank". Joan Gallagher said "you lying bastard" and she caught me by the hair of my head. A few minutes later she reached for me again by the hair of my head. I said "no more" to John White. "I came in to answer questions, not to be abused". They continued to ask me questions but I would not answer them. Joan Gallagher then left the room. They gave me a seat and told me to sit down. One of them, either John White or John Dooley told me they were going to take my wains away from me. They said they were going to lift my mother. They would put her into a cell and take off her shoes. John White said he would have to get my husband that he was a cocky little bastard.

She relates how John Dooley made disparaging remarks about Mark McConnell and accused him of infidelity with his wife. She alleges both D/Sgt. White and D/Garda Dooley continued to verbally abuse her. Then they asked her if she had been unfaithful. They asked her if Frank McBrearty was bribing her and if that was why she was afraid to talk. Mrs. Brolly confirmed that, he had made informal complaints, but she said that she told two other interviewing Gardaí, 'Garda Herring' and his partner of the abuse. She may well be referring to D/Sergeant Heffernan and D/Garda Herraghty. The response of this Garda was to say "Did I touch you". She confirmed that neither of these Gardaí abused her or touched her. She did not see any point in making a complaint.

She states that at 3 p.m. on the 5th December, 1996, she called to her solicitor James O'Donnell and told him that she had her hair pulled in the Garda Station. She told him it was a female member and that her name was Joan, but also states that she could not recall whether she had told her solicitor that her name was Joan. She did not know her second name at that time. She also told her solicitor that she was verbally abused and that the photographs were rubbed in her face. She could not recall if she told the solicitor the names of the Gardaí who abused her.

Mrs. Brolly's husband, Eunan Brolly also made a statement on the 10th February, 1998 to Chief Superintendent Carey. He stated that the Gardaí called to the house shortly after 8 p.m. looking for Katriona and were directed to her mother's house. Then, D/Garda O'Malley and another Garda

called to the house and stayed for about 2 hours and questioned him concerning different things about Richard Barron's death. They left shortly after 10 p.m.. At this stage, of course, his wife had been arrested. He was told of this by Paul Quinn who called between 10:30 p.m. and 11 p.m.. He phoned Letterkenny Garda Station and when he asked to speak to someone in charge was put through to a Detective whose name he thought was 'Paul Herring'. He told the Detective that he had not been informed of his wife's arrest and asked whether it would be possible to see his wife. He was told that the Detective thought it would be possible and that he should come down to the station. He arrived at the station at around midnight. He asked to speak to a Detective named Paul whom he had spoken to earlier and met him at the front desk. The Detective explained to him what his wife had been arrested for, took him in to the building, and asked him to wait a minute. A short time later, he came back to him and told Mr. Brolly that he could not see his wife and that 'enough hours' had not passed since she had been arrested. He asked when he could see his wife and he was told to phone in about an hour or two. As he was speaking, a Garda in plain clothes, whose name he did not know went through the doors of the main entrance of the station. He describes this event in the following way:

> **He had a fattish face with a heavy build. He said to me "what time were you at your work that day". I took this to mean the day Richie Barron died. I said I was late and he replies "either you or that bastard upstairs is lying". He then left. I did not get to see my wife and I went home.**

Detective Sergeant John White was extremely surprised at the allegations made by Ms. Brolly because he was of the impression that they had parted company on good terms. He denied all allegations of wrongdoing. Interestingly, he states that during her period of detention, he made written memos of interview of conversations with Mrs. Brolly. As we have already stated, some of the notes of interview in respect of Mrs. Brolly do not appear in papers furnished to date. It is hoped that all notes in relation to all of the interviews will be made available to us. He states that nobody mistreated Mrs. Brolly in any way, either physically or mentally. The interview was normal.

D/Garda Dooley also made a statement in respect of this matter to Chief Superintendent John Carey on the 17th April, 1998. He denied that he pulled Ms. McConnell's hair or abused her in any way . He denied that any photographs were shown to her by him or in his presence. He did not state that her husband was unfaithful to her and this was not said in his presence. He denied that he harassed or assaulted Mrs. Brolly at any time during the course of interviews. He said that these allegations were without foundation and he refuted them vehemently.

Garda Joan Gallagher also made a statement on the 1st April, 1998 to confirm that at 10:55 p.m. on the 4th December, 1996, she had her first dealings with Mrs. Brolly. At 2:45 a.m. on the 5th December, 1996, she entered an interview room at Letterkenny station along with D/Sergeant White and

D/Garda Dooley. She left the interview room at 4:00 a.m. accompanied by both of these members. During this period, she states she did not witness any ill treatment of Mrs. Brolly and she was not aware that she was harassed or abused in any way. She denies that she pulled her hair. She said that she spoke to Mrs. Brolly on several occasions during the night when she was checking on her welfare and bringing her tea. She states that she was not present when she was released. She described the allegations as totally unfounded. They caused her immense distress. She considered them to have had "a negative impact on my professional and private life". She was a member of An Garda Síochána for 16 years and this was the first time that a complaint had been made against her. She denied that she made any statement to Mrs. Brolly that she would not be released from custody unless she signed a form saying that she had no complaints. She felt that she had been put under enormous pressure by the making of this complaint and the manner in which it was ultimately pursued.

Apart from the issues of law that arise, in relation to whether or not a sufficient basis existed for the existence of a reasonable suspicion that Mrs. Brolly was or could have been an accessory after the fact to the murder of Richard Barron, serious issues of fact are raised by the complaints made by Mrs. Brolly in relation to the behaviour of those who dealt with her and her husband during the course of her detention.

The Arrest and Detention of Frank McBrearty, Snr.

Frank McBrearty, Snr. was arrested at 7.55 p.m. on the 5th December, 1996 at his home at Tullyrap, Raphoe, Co. Donegal by D/Sergeant Paul Heffernan pursuant to the provisions of Section 30 of the Offences Against the State Act, 1939 on suspicion of having committed a scheduled offence under Section 7 of the Conspiracy and Protection of Property Act, 1875. This provision provides that:

> **Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without authority**
>
> 1. **uses violence to or intimidates such other person or his wife or children, or injures his property; or**
> 2. **persistently follows such other person about from place to place; or**
> 3. **hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or**
> 4. **watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or**
> 5. **follows such other person with two or more other persons in a disorderly manner in or through any street or road,**

> **shall on conviction thereof by a court of summary jurisdiction or on indictment be liable either to pay a penalty not exceeding £20 or to be imprisoned for a term not exceeding three months …**

The limited nature of the penalty applicable to such an offence meant that the provisions of Section 4 of the Criminal Justice Act, 1984 could not be invoked against Mr. McBrearty, if he were arrested. However, because the provision constituted an offence which was a scheduled offence under Section 30 of the Offences Against the State Act, 1939, he could be arrested under the provisions of that statute and be detained for a period of twenty four hours followed by a subsequent period of twenty four hours if the period of detention was extended by an officer of the Garda Síochána not below the rank of Chief Superintendent. Consequently, Frank McBrearty, Snr. was exposed to a detention following his arrest in respect of this offence for a period which exceeds that to which he would have been exposed had he been arrested on suspicion of committing murder. This detention did not by law require the sanction of, or any intervening decision by, the member-in-charge of the station.

The background to this arrest is set out in a statement by Detective Superintendent Joseph Shelly (Lennon 229A) whom we know was a senior officer involved in this investigation since in or about the 22nd October, 1996. He describes how, in the weeks following the commencement of the Garda investigation into the death of Mr. Richard Barron, he, apparently, became aware that there was increasing concern amongst investigating Gardaí regarding the issue of persons being subjected to intimidation and pressure from Mr. Frank McBrearty, Snr. who had been interviewed by the Gardaí and had made written statements to them. He felt this situation was totally unacceptable, particularly as Raphoe was a small close-knit community where everyone was well known to each other and was the centre of a lot of Garda activity at the time. He states that Mr. McBrearty, Snr. ran a successful business in Raphoe, had many local people employed, and that he was a person of some influence. This issue, apparently, was discussed at a number of investigation conferences and D/Superintendent Shelly decided that he would have to speak to Frank McBrearty, Snr. about it. Therefore, on the 19th November, 1996, accompanied by D/Inspector John McGinley and Sergeant Martin Moylan, he called to Mr. McBrearty's licensed premises in Raphoe, in order to talk to him about his alleged behaviour towards certain witnesses. Since he was not there, they called back the following day, this time accompanied by Inspector John McGinley at approximately 11 a.m. Superintendent Shelly told Mr. McBrearty of the concerns of the Garda Síochána in relation to this alleged interference and intimidation of some of the persons whom the Gardaí had interviewed, and from whom they had taken statements during the course of their enquiries. Frank McBrearty, Snr. denied these allegations. When asked why he had questioned certain people about what they had told the Gardaí, he said that he was interested in what they were saying, because of his family, and that none of his family were involved in the death of Richard Barron. He denied that he had watched any person's home while they were being interviewed by the Gardaí or that he had attempted to stop people making statements.

D/Superintendent Shelly lists a number of people who made statements expressing concern about the approaches made by Frank McBrearty, Snr. Those included Ms. Brigid Kelly, Ms. Aileen Campbell, Daniel Lynch and Caroline Lynch. They had been approached about statements which they had made to the Gardaí. On November 4th, 1996 Garda Philip Collins attended a person's house in relation to a separate matter. According to Garda John O'Dowd, Frank McBrearty, Snr. sat in his car watching the patrol car on this occasion. On the 10th November, 1996 Garda Philip Collins states that he called to the house of Michael and Charlotte Peoples to make enquiries about the threatening telephone calls said to have been received by them on the 9th November, 1996. He parked his patrol car outside the house and, whilst in the house he observed Frank McBrearty, Snr., drive his car past the house. He was looking into the house. He drove up and down the road on a number of occasions according to Garda Collins. It appeared to Garda Collins that Frank McBrearty, Snr., was following him while he was carrying out his enquiries. He goes on to state that he was also in possession of confidential information to the effect that a witness had informed Garda John O'Dowd that he was approached by Frank McBrearty, Snr. and given £500 in cash and told to take it and say nothing. This was apparently Noel McBride to whom we have already referred.

As a result of this information, D/Superintendent Shelly was satisfied that there were reasonable grounds for believing that there was sufficient evidence relating to the commission of a scheduled offence under Part V of the Offences Against the State Act, 1939, as amended, and that such evidence was to be found at the home and licensed premises of Frank McBrearty, Snr. He therefore issued two search warrants to D/Sergeant Heffernan on the 3rd December, 1996. He also stated that because of Frank McBrearty's behaviour to certain witnesses in the case who had made statements to the Gardaí, he was of the opinion that Mr. McBrearty would have to be arrested and formally interviewed in relation to the matter. He was satisfied that he had reasonable grounds for this course of action from the information which was in his possession. It will be part of our function to further enquire into and present such evidence as may exist in relation to these claims in the course of the Tribunal's hearings.

D/Sergeant Heffernan attended at Frank McBrearty's residence with the search warrants on the 5th December, 1996. He was accompanied by a number of other Gardaí and a search was carried out and various items were taken, including diaries, letters and various lists. During the course of the search a priest, Fr. Kieran Harkin, and Dr. Martin Coyne called and spoke to Mr. McBrearty, Snr. and his wife. There seems little doubt that Mr. and Mrs. McBrearty were extremely annoyed, if not outraged, by this search and by the seizure of items in their home. At 7.50 p.m. D/Sergeant Heffernan arrested Mr. McBrearty, pursuant to Section 30 of the Offences Against the State Act, 1939. Before they left the house he was informed by Mr. McBrearty, Snr. that he needed to take medication for a heart complaint from which he suffered and he did so. Mr. McBrearty, Snr. was then conveyed to Letterkenny Garda Station, arriving there at 8.10 p.m.

The member-in-charge then dealt with Mr. McBrearty who declined to take a copy of the notice of rights according to Garda Rouse and refused to sign the custody record to acknowledge having received the notice.

At 8.25 p.m. James O'Donnell, solicitor arrived and was allowed to speak to his client in the interview room. At this time also, Mr. McBrearty, Snr. was given a drink of water at his own request. The solicitor left at 9.13 p.m. and asked Garda Rouse to call a doctor to examine his client. This request was repeated by Mr. McBrearty, Snr. at 9.15 p.m. and, at 9.25 p.m., a Dr. Coyne was contacted, but was unable to come to see Mr. McBrearty, Snr. At 9.35 p.m. Mr. McBrearty, Snr. was informed of this, and he requested that Dr. Kelly be contacted. He was not in a position to attend either. When informed of this, Garda Rouse says that Mr. McBrearty did not want any other doctor. Garda Liam Dowd then took over as member-in-charge.

At this time Frank McBrearty, Snr. again requested a doctor and a drink of water. He had a phone conversation with his solicitor at 10.08 p.m. and at 10.25 p.m. Dr. McGeehan was contacted and agreed to come to the station but indicated he had a call to do first. In any event, Dr. Kelly arrived at the station at 10.30 p.m. At 11 p.m. Dr. Kelly, having examined Mr. McBrearty, Snr., informed Garda Liam Dowd that Mr. McBrearty was in danger of having a heart attack or a stroke, and that he should be taken to casualty. At 11.16 p.m. he was taken to the casualty department of Letterkenny Hospital by D/Gardaí Herraghty and Keating. Prior to his transfer to Letterkenny General Hospital, he had been interviewed by D/Garda P.J. Keating and D/Garda Sean Herraghty. In this interview he was questioned about some alleged conspiracy and that he had something to hide or cover up, which he denied. He says "I was trying to take notes about what was happening to my family and to me." He was told he would be in the station for the next couple of days and denied any intimidation.

Mr. Frank McBrearty, Snr. was conveyed from Letterkenny Hospital to Blanchardstown Hospital on the 11th December, 1996. He spent an hour in Blanchardstown Hospital and was then returned to Letterkenny Hospital, arriving back at 9.15 p.m. At 4.30 p.m. on the 12th December, 1996 he was discharged from Letterkenny Hospital and taken back in custody to Letterkenny Garda Station by D/Garda Cathal Gilroy and D/Garda Matthew Tolan. Prior to his discharge, D/Garda Gilroy states, that he spoke to a nurse in charge of the patient who handed him medication and instructions for discharge of same for Mr. McBrearty. Garda P.J. Thornton processed Mr. McBrearty at the station, at the conclusion of which D/Garda Gilroy handed three sets of medicine for Frank McBrearty, Snr., which he had received at the hospital, to Garda Thornton. These were placed in separate envelopes, on which instructions were written. It is recorded in the custody record that Mr. McBrearty spoke with his solicitor on the telephone and phoned his home at 4.35 p.m., and that he was interviewed by D/Gardaí Frain and Jennings until 7.55 p.m. There was an interruption between 6 and 6.25 p.m. to enable a consultation with his solicitor to take place and another between 6.25 p.m. to 6.42 p.m. for a visit from his wife and daughter. In the

course of this interview he denied allegations of intimidation and following the Gardaí. Medication was given to him during the course of the interview. He explained that a number of the documents which had been seized were notes which he had made criticising a Crimeline programme which had been made about the death of Richard Barron. He believed that this programme was inaccurate in a number of important respects. Mr. McBrearty, Snr. was then interviewed from 7.55 p.m. to 8.30 p.m. by D/Garda Jennings and D/Garda Andersen after which he had a rest period between 8.30 p.m. and 9.15 p.m. He was then interviewed from 9.27 p.m. to 10.15 p.m. by D/Garda Jennings and D/Garda Frain and from 10.15 p.m. to 11.55 p.m. by Superintendent Fitzgerald and D/Inspector McGinley.

On the 13th December, 1996 Frank McBrearty, Jnr. complained of chest and stomach pain and requested to make a telephone call to his wife and Dr. Kelly. He was interviewed by Detective Sergeant Henry and D/Garda Jennings from 8.35 a.m. until 11.10 a.m., following which he was interviewed by D/Sergeant John Melody and D/Garda John Fitzpatrick from 11.35 a.m. to 12.25 p.m. At midday he requested that he be examined by a doctor. Between 12.25 until 12.40 p.m. he was examined by Dr. McColgan who directed that he should be taken to Letterkenny General Hospital for an ECG test. He was admitted to Letterkenny General Hospital at 12.50 p.m. and remained there until 4.45 p.m. on the 18th December, 1996 when he was transferred to Beaumont Hospital. On the 19th December, 1996 at 5.10 p.m., a decision was taken to withdraw supervision and Mr. McBrearty, Snr. was informed that he was released from Garda custody.

The last interview which took place with D/Sergeant Melody and D/Garda Fitzpatrick consists of a number of questions put to Frank McBrearty, Snr., in the course of which they pointedly put to him the suggestion:

> **A man was murdered and your son, Frank, Jnr., has admitted his part in this murder. You are not entitled to intimidate witnesses to influence them not to give evidence against your son.**

In this context it will be recalled that Frank McBrearty, Jnr. contends that the first knowledge he had of the existence of a statement of admission alleged to have been made by him in respect of the death of Mr. Barron, came from a statement to that effect in the affidavit of D/Superintendent Denis Fitzpatrick, sworn on the 21st April, 1997 in proceedings initiated by his father. However, in this interview, the two Gardaí who allegedly took that statement, raise it on the 13th December, 1996 with Mr. Frank McBrearty, Snr. These are aspects of the arrest and detention which will require further enquiry and consideration. It might be thought that if the Gardaí who had interviewed his son told him that his son had made a statement of admission in respect of the death of Richard Barron, Frank McBrearty, Snr. might very soon afterwards have discussed this matter with his son and other members of the family and indeed, if it were an untruth, he or his son might have complained, at or about that time, of the fact that the Gardaí had made up or fabricated a statement of admission attributed to Frank McBrearty, Jnr.

The complaints which emerge from this period of detention concern Frank McBrearty, Snr.'s health. On the 12th December, 1996, solicitors acting for Frank McBrearty, Snr., Messrs. V.P. McMullin & Son, sent a letter to the Superintendent at Letterkenny Garda Station enclosing a signed letter by a consultant physician in which he stated that he was of the opinion that "any stress would certainly exacerbate his condition and it would therefore not be in his best interests to be interrogated at this time". The solicitors, accordingly, requested an undertaking that upon Mr. McBrearty's release from hospital he would not be subjected to further interrogation. D/Sergeant Sylvie Henry states that he was shown the letter from the physician by Mr. McBrearty's solicitor at the hospital. He states that "I did not pay much notice of the letter and was not aware of its content until later". He did not, he says, receive a copy of this letter at the time. He states that on the 12th December, 1996, on his return to the day room at Letterkenny Garda Station, he found a letter addressed to him. This was the letter dated the 12th December, 1996 from Mr. McBrearty's solicitors and contained a copy of the letter from the physician. He thinks that the letter was left into the station at approximately 6.05 p.m. on that date. He received the letter between 6.30 p.m. and 7 p.m. He brought it to the attention of D/Superintendent Joseph Shelly and Detective Inspector John McGinley. He added "A decision was made by the Superintendent that the questioning of Frank McBrearty should continue ensuring that all concerned were aware of his medical problems". Superintendent Lennon deals with this matter at page 279 of his report. He stated that:

> **It would appear that the instructions of the solicitor were not immediately complied with as a result of the attitude expressed by Frank McBrearty, Snr., when he stated to D/Sergeant Sylvie Henry at 17.00 hours, following his return from hospital, that he wished to clear his own name as well as that of his family, and he agreed to continue being interviewed. D/Sergeant Sylvie Henry, who received a copy of the letter from the solicitor with the doctor's report attached, brought it to the attention of the investigating Garda officers present in the station at that time. In view of the attitude expressed by Frank McBrearty, Snr. it was decided to adopt this course of action and continue with the interviews.**

The statement furnished by D/Sergeant Sylvie Henry is to the effect that when Frank McBrearty was told, on his discharge from the hospital, that he was still in custody and would be taken from the hospital back to Letterkenny Garda Station, he stated "I want to clear my good name and that of my family, I have done nothing wrong". This appears to be, as yet, uncontradicted. It would seem that he made a similar statement upon his arrival at the Garda Station. However, it does not appear that D/Sergeant Henry or any other Garda informed Mr. McBrearty, Snr., of the content of the letter which had been issued by the consultant physician. Accordingly, his statement that he wished to clear his own name cannot be seen as given in response to the information contained in the doctor's letter. Accordingly, it could possibly, Sir, be argued that this was therefore not a sound basis upon which the senior Gardaí could

elect to disregard the content of the doctor's letter and continue with the interrogation.

Of importance, in this regard, is a statement made by Garda P.J. Thornton on the 4th July, 2000 to D/Sergeant Michael Coppinger and D/Sergeant J.G. Healy. Garda Thornton was the member-in-charge when Mr. McBrearty, Snr. was brought back from Letterkenny General Hospital to Letterkenny Garda Station. He was shown a report from Dr. Brian Callahan, Consultant Physician, Letterkenny General Hospital in respect of Frank McBrearty, Snr. dated the 12th December, 1996. He stated this was the first occasion that he had seen this document. He emphasised that no letter accompanied the prisoner from the hospital and that during his period in charge, that is up to 5.45 p.m., he was not made aware of any such letter from the physician. He expressed surprise that he had not been shown the letter, having viewed its contents. He further stated that had he seen this letter he would not have permitted questioning of Mr. McBrearty to continue.

Mr. McBrearty, Snr. made a number of complaints in relation to this period of detention. The initial letter sent by Messrs. V.P. McMullin & Son on the 10th December, 1996 alleges that Mr. O'Donnell, solicitor asked the member-in-charge, Garda John Rouse, to get a doctor for his client. It is alleged that the Garda replied that Mr. McBrearty, Snr. was only wasting Garda time. He refused to get a doctor. The solicitor asked that the request and refusal should be noted in the custody record. The letter from the solicitor also asks for clarification on certain matters such as whether their client was still in custody, whether he was being detained under Section 30 of the Offences Against the State Act, 1939 and whether, he would be free to leave the hospital when medication had been finalised. The letter goes on to request copies of the statements made by their client and a copy of the custody record. It alleges that the client was harassed and verbally abused from the time he was taken into custody.

This letter was acknowledged by letter dated the 11th December, 1996 signed by Inspector James Gallagher on behalf of the Superintendent. It was eventually forwarded to the Garda Complaints Board on the 17th October, 1997 and Chief Superintendent Carey was appointed as investigating officer in respect of this inquiry on the 28th November, 1997. He took a statement from Mr. Frank McBrearty, Snr. on the 3rd February, 1998 in relation to his complaints. In relation to this complaint Mr. Frank McBrearty, Snr. simply stated as follows:

> **These complaints were made by my solicitors at the time, V.P. McMullin & Son, and he would have to take it up with them. This relates to my period in custody and my period in hospital.**

Neither Mr. James O'Donnell nor Mr. James Sweeney, solicitors of Messrs. V.P. McMullin & Son, Solicitors wished to make any comment or statement regarding this complaint. They indicated this by letter dated the 12th February, 1998.

A statement was obtained from Garda John Rouse on the 27th April, 1998. He was the member-in-charge when Frank McBrearty, Snr. was brought to the station at 8.10 p.m. on the 5th December, 1996. He states that he had telephoned two named doctors at the request of Mr. Frank McBrearty, Snr. but, on being informed that they were not available, he indicates that Mr. Frank McBrearty, Snr. did not want any other doctor called. He ceased duty at 10 p.m. A statement was also obtained from D/Garda P.J. Keating. He stated that he had been interviewing Mr. McBrearty, Snr. from 9.15 p.m. He indicated that Garda Rouse told the prisoner at 9.30 p.m. that he could not get Dr. Kelly and then goes on to state that "At 21.35 Garda Rouse came into the room again and said that he could not get a doctor". This is somewhat different to the account given by Garda Rouse. D/Garda Keating also notes that at 10 p.m. (which was the time at which the member-in-charge changed) Mr. Frank McBrearty, Snr. requested a drink of water and a doctor. He was examined at 10.40 p.m. by Dr. Kelly who advised at 11 p.m. that he be brought to hospital.

D/Garda Keating denies that he, in any way, assaulted, threatened, intimidated or engaged in any oppressive behaviour towards Frank McBrearty, Snr., and denied inflicting any emotional or physical harm or harassing him in any respect. He states that during his stay in hospital he was in plain clothes and Frank McBrearty, Jnr. was allowed free access to and from his room at all times. He had regular visits from friends, relatives and solicitors every day. He denies that he ever entered the room. Mr. McBrearty was in Garda custody and he had to bear in mind the necessity of custody being continued while Mr. McBrearty, Snr. was in hospital. He gives details of the trip to Beaumont Hospital and states that Frank McBrearty, Snr. was friendly with him and shook hands with him and the other Garda and, apparently in a pleasant way, wished them and their families a happy Christmas.

In a further letter of the 16th December, 1996 from Messrs. V.P. McMullin & Son, solicitors on behalf of Frank McBrearty, Snr., confirmation was requested that Mr. Frank McBrearty, Snr. was not in custody at the time of writing. He was at that time in Letterkenny General Hospital. It also alleges that despite a letter dated the 11th December, 1996 from Dr. Brian Callahan, which advised against further interrogation of the patient, Mr. McBrearty, Snr. was further interrogated by the Gardaí which resulted, it was claimed, in his being hospitalised on the 13th December, 1996. The letter went on to state that their client had issued instructions that he did not wish to make any further statement and that any statements made by him were made under duress under a belief that he was obliged to do so. This letter was acknowledged by Superintendent J. Fitzgerald by letter dated the 18th December, 1996 but was not forwarded to the Garda Complaints Board until the 17th October, 1997.

Again, Chief Superintendent Carey was appointed investigating officer in respect of this complaint. Frank McBrearty, Snr. simply referred him to his solicitors on this aspect but by letter dated the 12th February, 1998 they indicated that they did not propose to make any comment or statement in relation to the complaints made by their client. The adequacy or otherwise of

the manner in which the Garda Complaints Board dealt with this complaint will also be dealt with under Term of Reference (j).

The issue as to whether Mr. McBrearty remained in custody at Letterkenny General Hospital, and the legality of the procedures surrounding his detention, will be the subject of further enquiry by us. In addition, the further questioning of Mr. McBrearty, Snr. in the light of the report issued by his consultant physician concerning his condition will require further enquiry as will all other aspects of the detention and interviewing of Frank McBrearty, Snr.

The Arrest and Detention of Damien McDaid

Damien McDaid is a self-employed electrician. He had been interviewed on the 8th November, 1996 by Garda John Harkin and D/Garda P.J. Keating. On the night of the 13th October, 1996 he came to Raphoe at about 12.30 a.m. and parked his van in the car park at the rere of Frankie's Night Club. He was on his own and went into the night club and recalled seeing Frank McBrearty, Snr. and Jnr. there. He stayed for approximately half an hour. He left and went to get his van in the car park at 1 a.m. He saw a 'bouncer' in the car park along with a number of girls, one of whom was getting sick. When he was leaving the car park there was a fight going on at the main entrance and his way was blocked. Frank McBrearty, Snr. and Jnr. were dealing with a number of young men and they appeared not to wish to allow them to enter the premises. He blew his horn in order to get them out of the way and was home by 1.30 a.m. He did not sign this statement.

On the 17th December, 1996 Mr. McDaid was arrested by Sergeant Martin Moylan at Main Street, Newtowncunningham at 9.10 a.m. The reasons for the arrest which were conveyed to the member-in-charge at Letterkenny Garda Station, Garda Declan Martin, were:

> **That in his statement he had stated that he was in the car park of Frankie's disco on the night of 13th October, 1996 at the time when the culprits for the murder of Richard Barron were believed to come down the car park.**

He was detained pursuant to Section 4 of the Criminal Justice Act, 1984 and remained in custody until 9.02 p.m.

In the course of a number of interviews, he stated that he had arrived in Raphoe at 12.30 a.m. He parked his van in the car park of Frankie's Night Club. He tidied the van and hid some cash in it. He then went into the disco. He was annoyed that he had to pay in as he had done electrical work for Frank McBrearty, Snr. He only had one drink and stayed for half an hour. He left the premises at around 1 a.m. He said that Frank McBrearty, Jnr. followed him out when he was leaving, and asked him what was wrong. He also asked him as to how the electrical work in his own home was progressing. Mr. McDaid said that Sean Crossan was in the car park with two girls, one of whom was getting sick. He accepted that he did work for Messrs. McBrearty, Snr. and Jnr. and that Mr. Crossan worked for him in his electrical business.

He also said that he had seen two men arguing with Messrs. McBrearty, Snr. and Jnr., as stated in his original statement.

Mr. McDaid does not make any complaints about his arrest or his detention and no such complaint has been received on his behalf by the Garda Complaints Board and no civil proceedings have been instituted by him.

It is appropriate, Sir, that the basis upon which Mr. McDaid was arrested and the lawfulness of his arrest and subsequent detention be fully explored. All that Mr. McDaid had done in this case was to make a statement to members of An Garda Síochána as a witness in which he gave a certain time sequence for events. For reasons which are not entirely clear to us, Sergeant Martin Moylan claims to have formed a reasonable suspicion that he was an accessory after the fact to the murder of Richard Barron. The only reason given for his arrest was that he was in the car park of the disco at the time when the culprits for the murder of Mr. Barron were believed to have come down the car park. It is appropriate to enquire as to whether that is a sufficient basis for the existence of such a reasonable suspicion.

The Arrest and Detention of Sean Crossan

Sean Crossan is an electrician by trade and worked part-time at Frankie's Nightclub in Raphoe. In respect of events with which we are concerned, he was working at the Nightclub on the night of the 13th October, 1996. He made a statement to Sergeant Joseph Hannigan on the 18th October, 1996 in which he outlined his movements that evening. His duties were that from 10:30 p.m. on the 13th October, 1996 to 12:30 a.m. on the morning of the 14th October, 1996 he was on duty at the pay box. He recalled that Frank McBrearty Jnr. was present on the premises as were William Logan, Liam O'Donnell, Mickie McGahern and Martin McCallion. He recalled that at around 12:30 a.m., Frank McBrearty, Snr., asked him to look after the car park. He describes how he attended to two girls in the car park, one of whom was sick. He spent about five minutes with her and went down to the Club to get one of them a tissue. He did not know who these girls were. When he went down to the Nightclub, Frank McBrearty, Snr., was at the pay box and he asked him to go around the corner in case some young man who had been put out of the club broke windows. He was not aware who had been put out and didn't ask, but he went down to the corner towards the Diamond. He returned to the front door of the disco. Frank McBrearty, Snr. was standing at the pay box and Sean Crossan asked him whom he had put out. He said "Gallagher". It was approximately 12:40 a.m. at this stage. He went back up to the car park to the two young girls and was there until 1:45 a.m. He did not see anyone else going into the Nightclub that night that he knew, and no one had come through the car park other than those who arrived in cars.

Subsequently, Sean Crossan approached Sergeant Hannigan at the Diamond in Raphoe at 4:30 a.m., on the 17th November, 1996. He stated that he now remembered that three fellows came down through the car park at Frankies Nightclub at 12:40 a.m. on the 14th October, 1996. He described them as 19 – 20 years old and well dressed. He noticed them going down through

the car park because he did not notice a car coming up first. He stated their clothes were not dirty. He said that he was up in the car park with some young girls, one of whom was getting sick at the time. He also noticed a couple sitting in a red car in the car park that night, but he did not know their identities, though he did say that he would try and establish their identities. He requested Sergeant Hannigan not to report their conversation to Frank McBrearty, Snr. According to Sergeant Hannigan the conversation terminated at 4:56 a.m..

In yet a further statement made on the 18th November, 1996 at his home, again to Sergeant Joseph Hannigan, he again gives an account of his movements, stating that Frank McBrearty Snr. sent him out to the car park at 12:30 a.m., and that sometime between 12:30 a.m. and 1:00 a.m., he returned to the hall. He met Willie Logan in the hall who was taking in empty bottles and glasses from the door. He went out the back door and Mr. Logan was with him. The back door was open because it was a warm night and there was a bouncer standing beside it. He thought it was Mr. Gerard Coyle. He stopped then beside the girls on the wall, one of whom was sick. He stayed with the girls and Mr. Logan separated from him. He left the girls, went down to the door and came back after a few minutes. He noted three boys coming down the car park from the direction of the wall to the field. After that, he went to the front street again. He met Mr. Logan and Frank McBrearty, Snr. and it was now after 1:00 a.m.

He then states that Michelle Scott from Convoy told him, Frank McBrearty Snr. and William Logan, that Richard Barron had been killed in a hit and run. He remembered going up to the top of the car park and telling the girls about the hit and run. Damien McDaid's van was parked above the girls and he was speaking to him when he came in at around 12:30 – 12:35 a.m. Damien McDaid returned to his van at about 1:40 a.m., and when driving out, had to slam on the brakes because there was a row at the lower exit. He blew the horn at Mr. McBrearty.

On the 10th December, 1996, a statement was made by Victoria Barrett of Coolatee, Lifford to D/Garda P. Tague, in which she said that she had attended the Parting Glass at about 11:45 p.m. with her first cousin Catherine Vaughan of 20, Willow Road, Strabane. At 12:40 a.m., her friend Catherine fell ill, so she took her out to the fresh air. She says that they went around to the back of the Parting Glass to the place where a new wall was being built. They sat on the wall and her friend became sick and she comforted her as best she could. She was there about 10 minutes when one of Mr. McBrearty's men who was in the car park came over to her. She describes this man and he asked her if her friend was alright. He went to get tissues for her. A short time later, he returned with the tissues. She says that she stayed with her friend at the wall until 1:20 a.m. when they got into her boyfriends car which was parked beside them. She stated that Mr. McBrearty's man stayed with them for approximately 10 minutes. Her boyfriend came out of the disco at 2:00 a.m. and brought her friend to Letterkenny Hospital. This statement was made the day before Mr. Crossan was arrested. We have already referred to this earlier in more detail.

At 11:10 a.m. on the 11th December, 1996 D/Sergeant Sylvie Henry arrested Sean Crossan at Meeting House Street, Raphoe at common law on suspicion of his being an accessory to the murder of Richie Barron. He was taken to Letterkenny Garda Station. D/Sergeant Henry was accompanied by D/Garda Padraic Scanlon and they arrived at Letterkenny Garda Station at 11:30 a.m. The member in charge at the time was Garda Martin McDonnell and D/Sergeant Henry informed the member in charge that Mr. Crossan had been arrested and requested that he detain Mr. Crossan pursuant to Section 4 of the Criminal Justice Act, 1984. In a statement made in the course of the investigation (Lennon – 223A) he stated that he told Garda McDonnell that:

> **On the night that Richie Barron was murdered, the prisoner Sean Crossan was in the car park at the Parting Glass Pub, Raphoe where he was employed as an attendant/bouncer, that when first interviewed he denied he saw three men come into the car park at around the time of the murder but that some days later he made a statement saying that he did see three men enter the car park but he did not know who they were. I informed Garda McDonnell that I believed Sean Crossan knew exactly who these three men were and was covering up for them so that they would not be implicated in the murder of Richie Barron.**

At this stage it is interesting to note that Victoria Barrett recalled that somebody passed by when she, her friend, and Mr. Crossan were at the wall, and spoke to her by name. She was too busy with her friend to look around to see who it was. However, she does state that she knows Frank McBrearty Snr. and Frank McBrearty Jnr. but did not recall seeing them that night.

Garda Martin McDonnell confirms the conversation with D/Sergeant Henry and that, as a result of what he was told, he was satisfied to detain Mr. Crossan pursuant to Section 4 of the Criminal Justice Act, 1984.

Mr. Crossan in a statement made to Chief Superintendent John Carey and Superintendent Pat Forde described what happened following the making of his original statement:

> **During the following few days, I realised that I had forgotten things that I saw in the car park that night. On the following Saturday morning at about 3:30, I saw Sergeant Hannigan in a patrol car. I went over to him and I told him that I had more to add to my written statement made to him a number of days previous. As a result of this conversation, Sergeant Hannigan called to my house on the following Monday night. I made a second statement to him in which I stated that I had seen a fight beside the exit door at the side of the nightclub. This was about 12:45 or 1:00. I saw Frank McBrearty, Jnr. at the exit door. He was helping the bouncers and putting a group of Castlederg fellows out of the nightclub. In my first statement, I had forgotten that I did see Frank McBrearty, Jnr. at the exit door. When making my first**

> **statement, Sergeant Hannigan asked me did I see Frank McBrearty that night. I was so nervous that night, that I forgot that I did see him. I also stated in my second statement that I saw three youths coming from the top of the car park towards the nightclub. The time was then after 1:00. I signed this statement which was taken by Sergeant Hannigan.**

He then goes on to relate how in early December, 1996 when putting up Christmas lights outside McBrearty's Pub between 10 and 11 a.m., Sergeant Hannigan and a second person whom he believed was a Superintendent approached him, and allegedly said to him, that his second statement was "all lies". Mr. Crossan goes on to allege that Sergeant Hannigan then said "you better come looking for me, before I come looking for you". On the afternoon of the same day, he alleges that he met D/Sergeant John White in the dancehall of the nightclub. D/Sergeant White asked him about the difference in his two statements concerning three fellows in the car park. Mr. Crossan says that he took him up to the car park and showed him where he saw a car parked with a boy and a girl in it. He also showed him where he had seen the three fellows coming down from the top of the car park and the location on the wall where the two young girls were sitting that evening. He alleges that Sergeant White then said to him "I am giving you until the weekend to change your statement". Mr. Crossan said he then went on towards the nightclub and went into the dancehall. The following Tuesday, 11th December, 1996 he was arrested.

In a statement made by D/Sergeant Sylvie Henry, on the 1st April, 1998 to Superintendent Forde and Chief Superintendent Carey, D/Sergeant Henry elaborated on the basis for his arrest. He said, based on information from D/Garda Pat Tague, received on the 22nd October, 1996, that Frank McBrearty, Jnr. and another one or two men were seen in the car park of the Parting Glass which they left and then entered the disco, around about the time that Richard Barron was killed. He was aware of Garda John O'Dowd's report to an investigation conference that he too had information from a source, that suggested Frank McBrearty Jnr. and Mark McConnell had entered the Parting Glass at 1.00 a.m. on the 14th October, 1996. He was also aware that on the 4th December, 1996, Mr. McBrearty Jnr. had made a written statement after caution whilst in custody that he had in fact been involved in the incident with Richard Barron. In this statement, he stated that when in possession of all these facts he formed the opinion that Sean Crossan had indeed witnessed and identified the two men in the car park as being Messrs. McConnell and McBrearty, but that he was trying to provide false information so that the culprits would not be apprehended by the Gardaí. He stated that Garda McDonnell was satisfied to detain Sean Crossan on the basis of all the reasons set out in this statement of which he was informed. This however, is not what is set out in either the statement of Garda McDonnell or D/Sergeant Henry made in the course of the investigation to which reference has already been made. He maintained that he dealt at all times with Mr. Crossan in a courteous and respectful manner. In his statement, made on the 9th June, 1998, Garda McDonnell, simply states, that he could not recall what transpired in relation to the arrest, but, he added that

he must have been happy that the arrest was lawful and that he had good reason for detaining Mr. Crossan.

A letter of complaint was received dated 11th December, 1996 from Messrs. V. P. McMullin & Sons, solicitors addressed to the Superintendent, Letterkenny Garda Station, in which the solicitor complained that when Mr. James McDonnell, solicitor attended at the station on the morning of the 11th December, 1996, he asked to speak with the arresting Garda D/Sergeant Sylvie Henry. He states that he was told by Garda McDonnell that D/Sergeant Henry was not available. Garda McDonnell stated that he did not know what Sergeant Henry's cause for arresting Mr. Crossan was. When Mr. Sweeney asked to speak with the interrogating member, he was told by Garda McDonnell that D/Sergeant Henry was the interrogating member but was not available at that stage. The solicitor then called upon the Superintendent to confirm the reasonable cause which D/Sergeant Henry had for arresting Mr. Crossan. He went on to say that it would appear that the arrest of his client was unwarranted and without cause. He also requested sight of the custody record which he claimed had been refused to him at the time of his visit on the 11th December, 1996. He also requested copies of the statements already made by Mr. Crossan. Apparently, a letter of acknowledgement was sent by Superintendent John Fitzgerald on the 12th December, 1996 in reply to this letter. However, it was not until 17th October, 1997 that a copy of the letter of complaint was transferred by Superintendent Lennon to the Garda Complaints Board. It should be noted that the Solicitors letter appears to be confined to a complaint alleging a lack of grounds for the arrest of their client and a denial of access to the custody records.

A further allegation is made by Mr. Crossan that, during the course of the interview with Sergeant Henry and D/Garda Scanlon, he was asked by them both to make a written statement to the effect that Frank McBrearty, Snr., gave him £500 to make a second statement which he had made to Sergeant Hannigan. He alleges that Sergeant Henry took out a thick red book and opened it. He alleges that Sergeant Henry pushed his head into the book and showed him something at the top of the page which was something to do with getting ten years for lying. He acknowledges that he had not told his solicitor about this allegation that Frank McBrearty gave him £500. He maintains that he informed Mr. Flynn, a Private Investigator. The Gardaí deny any such incident. According to them this did not happen.

In proceedings issued in respect of these events, Mr. Crossan seeks damages for unlawful arrest, false imprisonment, malicious prosecution, assault and breach of his constitutional rights and in a statement of claim, delivered in High Court proceedings, record no. 13540P/1997, he claims that he was assaulted and battered, that he was threatened by Sergeant Henry and Garda Scanlon that if he did not sign a statement to say that he got £500 from Frank McBrearty, Snr. in return for making two statements and a further statement to say that he saw Frank McBrearty, Jnr. and Mark McConnell coming down a car park covered in blood on the night that Richard Barron had been found he would be sentenced to ten years imprisonment. He also

complained that Sergeant White stuck his finger in his eye and cut him above the eye. He goes on to complain that Sergeant White assaulted him by sticking his fingers in the plaintiff's ear and injuring the right side of his face, spat into his mouth and punched him in the heart and genitalia. He complains that he was forced to remain seated on a chair with wheels and was violently pushed around an interview room by Sergeant White who continuously shouted verbal abuse at him. Mr. Crossan suffered apparently from back and knee problems but was not permitted to stand up and was caused intense trauma as a result. He complained that he was told by Sergeant White, that Frank McBrearty was a murderer and that he was a menace to society and that he would be better off if he killed himself. He complains that he was threatened by Sergeant White that he would take his car from him and take it to customs officers and also that he would take his children and have them put into care by social workers. He also complained that he requested a doctor from the Gardaí who were interrogating him and the member-in-charge but was not given any medical assistance.

The statement of claim goes on to allege that Mr. Crossan was forced to make statements to the Gardaí and that they failed to comply with their duties under the Criminal Justice Act and Custody Regulations. He complains of being subjected to mental abuse and torture and that he was presented with photographs of the remains of the Late Mr. Barron. He goes on to complain in the statement of claim that Sergeant White and Garda O'Dowd made derogatory comments to his children and that, on an occasion other than his arrest, he was threatened by Sergeant Hannigan and an accompanying Superintendent that the statement he had made was lies and that he had better come and see Sergeant Hannigan first before Sergeant Hannigan came looking for him. He contends that the Gardaí knew that he was a person who was on medication for a nervous disorder. They refused to allow him any medical attention in this regard whilst intimidating and verbally abusing him. The statement of claim goes on to outline the consequences for Mr. Crossan of this treatment in relation to his health and his personal life and the medical treatment which he has received as a result. These complaints were repeated in a letter dated the 8th July, 2002 from Binchys, solicitors to the Tribunal on foot of which legal representation on behalf of Mr. Crossan was sought by them. It should be noted, however, that an opportunity has been given to the Gardaí concerned to comment upon these allegations and statements have been made available from a number of them. We understand that all of the allegations are denied. Though the proceedings sought against the Commissioner of An Garda Síochána, the Minister for Justice, Equality and Law Reform, Ireland and the Attorney General were commenced on the 14th November, 1997 they have not yet been brought to a conclusion.

In February, 1998, Messrs. V. P. McMullin & Sons indicated that they were not in a position to assist the Garda Complaints Board with their inquiry in respect of the complaints contained in the letter of the 11th December, 1996.

From the note of the interview made by D/Sergeant Henry in respect of the two periods from the 11th December when he interviewed Mr. Crossan with his colleague, D/Garda Scanlan, it seems that the questioning centred on the

identity of the three individuals whom Mr. Crossan had said he had seen crossing the car park. He said he got his nights mixed up in terms of the three young men crossing the car park and was now unsure as to which night he had seen them. He confirmed that he did not see Frank McBrearty, Jnr. between 12:30 a.m. and 1:45 a.m. He did not see Mark McConnell and Frank McBrearty in the car park. He rejected the proposition that he was trying to create an alibi for Frank McBrearty Jnr. and hinder the Gardaí in their inquiries.

Mr. Crossan was also interviewed by D/Sergeant White and D/Sergeant Keane from 2:30 p.m. to 4:35 p.m.. He was alone with D/Sergeant White from 6:05 p.m. to 6:20 p.m. and interviewed again by D/Sergeant White and D/Sergeant Keane between 6:20 and 7:35 p.m.. He answered a number of questions about the further information which he had supplied about the three men crossing the car park on the night of Mr. Barron's death. He said that he was not happy with the second statement during the course of these interviews, and that he was not sure that the three men had come down through the car park on the night of Mr. Barron's death. When asked why he had approached Sergeant Hannigan on the 17th November and informed him that he had seen these three men on that night, he said he just did not want to answer that question and did not want to talk about it. He was now stating that his statement made to Sergeant Hannigan on the 18th November was not true. He had seen three fellows walking down through the car park but not on the night Mr. Barron was killed. He thought he had been inside the disco between 12:55 a.m. and 1:00 a.m..

His final interview of the evening was with Sergeant Martin Moylan and Detective Sergeant John White. He confirmed to the Gardaí that before approaching Sergeant Hannigan on the 17th November in order to furnish him with this new information about the three men coming through the car park, he had been talking to Frank McBrearty Snr. and that, shortly after speaking to Sergeant Hannigan, Frank McBrearty Snr., called to his house. He denied that the second statement made to Gardaí was on Mr. McBrearty Snr.'s instructions. When asked why he made a wrong statement to the Gardaí he said "I don't want to answer any more questions about it".

Mr. Crossan was released at 11:05 p.m. on the 11th December, 1996, and signed an acknowledgement that he had no complaints in the custody record. His detention had been extended by D/Superintendent Joseph Shelly at 4:55 p.m.

Further inquiries will be carried out in relation to aspects of Mr. Crossan's detention relating to the allegations which have been made on his behalf by Binchys Solicitors and in respect of the making of his second statement to Sergeant Hannigan.

The arrest and detention of Martin McCallion

Martin McCallion in 1996 was a 25 year old doorman at Frankies Nightclub. He had worked there for two years and on Sunday night the 13th October, he

commenced work at 10:10 p.m.. He remained on the main disco door until the Strabane bus arrived and it usually came at about 11:30 p.m.. He then went into the disco hall at around 11:45 p.m. to midnight. All this is described by him in a statement taken on the 22nd October, 1996 at Lifford Garda Station by Sergeant Joseph Hannigan. He said Frank McBrearty Jnr. was on the front door until 12:10 a.m. and then acted as a "floater" and went up to what they called the "crows nest" which is on the first level of the disco and from which, apparently, one has a good view of the hall. Mr. McCallion stated that Mr. McBrearty Jnr. did not remain there long but came down from that position and walked around the hall. He then goes on to describe an incident with Paul Gallagher with which he dealt. Frank McBrearty Jnr. assisted him in removing Mr. Gallagher from the premises at approximately 12:30 – 12:45 a.m.. Mr. Gallagher was shown out of the premises through the old entrance that was then a side exit door. He recalls how he and Frank McBrearty Jnr. returned to the hall and split up. Frank McBrearty Jnr. went towards the D. J.'s box and watched the crowd. He then describes another incident which occurred between 1:00 and 1:15 a.m. when another individual was ejected from the premises. Again, Mr. McCallion was assisted by Frank McBrearty, Jnr. Liam O'Donnell and Gary Kennedy. He could not say whether Frank McBrearty Jnr. was there on these two occasions, but, as he put it, "he is usually in the thick of it". He met Mr. McBrearty Jnr. between four and six times in the hall after that. We are not aware that Mr. McCallion has made any complaints arising out of his arrest or detention on the 8th December, 1996. No complaint appears to have been lodged through the Garda Complaints Board and no civil proceedings appear to have been issued by him in respect of these matters.

At 9:45 p.m. on Sunday, 8th December, 1996 Garda John O'Toole stopped a motor car driven by Martin McCallion at Townparks, Lifford and informed him that he believed, as a result of information from a witness, that Mr. McCallion was an accessory to the murder of Richard Barron after the fact. He arrested him at common law at 9:48 p.m. Mr. McCallion requested that he be allowed to leave his car at his mother-in-laws house and D/Garda Michael Carroll agreed to leave the car and keys where Mr. McCallion had requested. Mr. McCallion was taken to Letterkenny Garda Station where he arrived at approximately 10:10 p.m. Garda Martin McDonnell was the member in charge and he was given details of the arrest and the grounds for the arrest.

Garda O'Toole states that he informed Garda McDonnell that he was aware that a statement had been made by a witness who saw the suspects for this crime coming down through the car park of Frankie's Nightclub, approach an exit door of the nightclub and speak with the bouncer. He added that: "The description was given of the bouncer, and it described Mr. McCallion". Mr. McCallion had made a written statement to investigating Gardaí and he had omitted this meeting with the suspects. Garda O'Toole believed that Mr. McCallion was deliberately withholding this evidence. Garda McDonnell detained Mr. McCallion at the request of Garda O'Toole. Superintendent John Fitzgerald extended Mr. McCallions detention for a further period of 6 hours at 3:40 a.m. and the questioning of Mr. McCallion continued at intervals up until

9:45 a.m. on the 9th December, 1996 when he was released. He signed the custody record at that time and had no complaints to make.

Apparently, the description which Garda John O'Toole thought fitted Mr. McCallion had been given by Noel McBride in a statement made to Sergeant Martin Moylan, Garda John O'Dowd and Garda Philip Collins at Raphoe on the 29th November, 1996 to which we have already referred. He described the 'bouncer' as a "big and broad, skinhead type hair cut, black in colour".

Mr. McBride had described how Mr. McBrearty Jnr. and Mr. McConnell having come through the car park spoke to this man for a brief period after which Mr. McBrearty, Jnr. and Mr. McConnell walked down to the Tudor Lounge entrance. The man went back into Frankies Nightclub. It was apparently, on the basis of this description, that Garda O'Toole reached his conclusions in respect of Martin McCallion.

As already noted, Mr. McCallion was interviewed at length in relation to his movements on the evening of the 13th into the early hours of the 14th October, 1996. In the course of his questioning by D/Garda Carroll and D/Garda O'Toole between 10:30 p.m. and 11:45 p.m., he confirmed to them that Frank McBrearty Jnr. was between the hall and the front door all night. He confirmed that he was asked by Frank McBrearty, Snr. to write down what the Guards had asked him about Frank McBrearty Jnr. They asked him (Martin McCallion) to state where everybody was including Frank McBrearty Jnr. He did not recall speaking to Frank McBrearty Jnr. and Mark McConnell outside the disco that night.

He was also interviewed by D/Gardaí Anderson and Scanlan. He stated that he would never cover for a murder and again confirmed that he had thrown out Paul "Gazza" Gallagher between 12:30 a.m. and 12:45 a.m., and that he had nothing to hide. He was also interviewed by D/Gardaí Carroll and Tague, and was questioned about the same matters. He was also asked about whether he had seen Frank McBrearty, Jnr. after Mr. McBrearty had been arrested. He replied that Mr. McBrearty, Jnr., had come to the disco on the Saturday after his arrest but only stopped for a short time which was unusual for him. He was asked had Mr. McBrearty Jnr. spoken about what was said to him in the Garda Station. He said that Mr. McBrearty had told him that he had got a hard time, and that he had been shown photographs which had a bad effect on him. He said he got slapped about the place.

Between 8:00 a.m. and 9:45 a.m. Mr. McCallion made a statement to D/Garda Michael Carroll and D/Garda Jennings. In this statement, he again gives an account of the removal of Paul Gallagher from the premises at between 12:30 a.m. and 1:45 a.m. assisted by Mr. Frank McBrearty, Jnr. They returned to the disco hall and stood around for a couple of minutes and then separated. He removed another young man about half a hour later and fifteen to twenty minutes later he was involved in another incident with a number of other doormen including Frank McBrearty Jnr. and a number of young men who were involved in a fight. This was at approximately 1:15 a.m.

– 1:30 a.m. Both these young men were from Agheyaran, Castlederg, County Tyrone. He first heard of Mr. Barron's death from his sister-in-law on Monday afternoon 14th October, 1996. He described making his statement to Sergeant Hannigan and the fact that Mr. McBrearty Snr. asked him and a number of other doormen to make statements and write out what they had already said to the Gardaí and what questions they had been asked by the Gardaí.

It may be the case that Mr. McCallion again fits into the description of someone from whom Gardaí wish to obtain further information which they thought was being withheld from them. It is also appropriate that we inquire further into the sufficiency or otherwise of the grounds given for his arrest and detention and perhaps this can be further considered in the light of such facts as are established in respect of the statements said to have been made by Noel McBride who appears to be the source of the information upon which the Gardaí acted in respect of this arrest.

THE 'SILVER BULLET' ISSUE

The next Term of Reference to which we wish to refer is the Term of Reference (d) in respect of which you are to enquire into

> **(d) the circumstances surrounding the arrest and detention of Mark McConnell on 1st October, 1998 and Michael Peoples on 6th May, 1999.**

Sir, in your explanation of this Term of Reference on the 15th July, 2002 you said

> **The information which is available to the Tribunal suggests that there was an arrest and detention of the persons named on the date set out in the Terms of Reference. An arrest is a deprivation of a citizens liberty. An arrest is justified where there is a suspicion on good faith, against the person proposed to be arrested, that he committed an offence which carries with it, in law, a power of arrest. Following the exercise of a power of arrest the detention of the person arrested may be sought under the provisions of Section 4 of the Criminal Justice Act, 1984, for the proper investigation of the offence in respect of which the person has been arrested. These principles apply where an arrest is considered in the context of any of the Terms of Reference, with necessary modifications. The Tribunal understands that the complaint here is that the arrests and detentions should not have been made and occurred for reasons other than those permitted by law.**
>
> **The Tribunal will:**
>
> **(i) Establish in so far as possible the facts surrounding these arrests and detentions and the treatment of the two men whilst in custody;**
> **(ii) Ascertain, in so far as possible, the material available to the Garda Síochána when the arrests and detentions were made,**
> **(iii) Enquire into and establish the reason for such arrests and detentions and whether such reasons were based on correct legal grounds;**
> **(iv) Enquire into and establish whether members of An Garda Síochána when making the arrests and detentions acted reasonably or in good faith or on any or any sufficient, reasonable suspicion;**
> **(v) Enquire into whether the two individuals had become the focus of unfounded or unreasonable suspicion and, if so, how and why this occurred;**
> **(vi) Enquire into whether there was any or any legal justification for seeking to extend or extending the period of detention of**

either of the parties;
(vii) Enquire into whether in making these two arrests members of An Garda Síochána proceeded with the arrests only when satisfied that in respect of each arrested person their suspicions were reasonable and/or that they exercised all appropriate care, caution, and diligence in deciding to make an arrest with due regard to the presumption of innocence attaching to these two persons and their rights to fairness of procedures;
(viii) Enquire into the motive for any conduct which may be disclosed;
(ix) Consider the circumstances in which the Garda Síochána came into possession of the material available to them at the time when the arrests were effected and in this regard consider the use of informants, if relevant, using the same approach as set out in relation to Term of Reference (B)(3);
(x) Enquire into and consider the relationship, if any, between the material arising in this Term of Reference and any other Term of Reference.

The central event which resulted in the arrest of Mark McConnell and Michael Peoples, on the dates referred to, arose from a complaint made by one Bernard Conlon of 61 Cartron Bay, Sligo that on the 20th July, 1998 two men had attended at his home and, when he opened the door, addressed him as "informer Conlon" and showed him a silver bullet. He said words to the effect that "there is one for you and one for White" and "White has a trailer missing and he will be missing too" were spoken to him by the man with the silver bullet. The same man, it was alleged, told Bernard Conlon before he left that if he turned up in Court to give evidence in a prosecution under the Liquor Licensing Acts against the McBreartys, in Letterkenny District Court, he would get the contents of this man's pocket; meaning bullets. Bernard Conlon on the evening of 20th July, 1998 requested his flat mate, Mr. Tony Doyle, to phone the Gardaí in respect of the attendance at his home by these two men and the threats which they had made. As a result, D/Garda Michael Reynolds and D/Sgt. (now Inspector) Gerard Connolly (Sligo Garda Station) attended at his home and initiated an investigation which involved the taking of a more detailed statement from Mr. Conlon on 21st July, 1998. Ultimately, this led to the two arrests which are the focus of this Term of Reference. Eventually Mr. Conlon told Gardaí that his complaints were false and, he claimed, had been made at the instigation primarily of D/Sgt John White.

The events relevant to this Term of Reference appear to date back to the Summer of 1997. In order to understand the extensive deceit which was apparently maintained, in respect of Mark McConnell and Michael Peoples, it is necessary for us to chronicle the events and the very numerous statements made relating to these events by those allegedly involved and especially by Bernard Conlon. This will include reference to the statements which were the means of his alleged deceit and those statements which, bit by bit, led to the unravelling of it. If this narrative therefore appears somewhat disjointed at times, this is because the unpicking of what is alleged to be this tangle of lies

took place only by degrees. We will now attempt to outline this from the papers made available to us.

In the mid 1990s, Bernard Conlon attended on a number of occasions as a patron of Frankie's Nightclub, Raphoe. For some reason, he developed a grievance in respect of the failure of the owner/licensee of Frankie's Nightclub to provide him with a meal, as he would have been obliged to do in order to comply with the terms of his license when serving alcohol to clients or customers outside the normal statutory hours. At 2.54 a.m on 31st August, 1997, as you will recall, Sir, Bernard Conlon was found to be on this licensed premises after hours with a number of drinks on the counter. He identified to the Gardaí the barman who, he said, had served him the drinks and on the 8th September, 1997 he made a statement to Garda John Nicholson at Sligo Garda Station about how he had been served this alcohol after hours. A prosecution arose out of these events. On the 19th February, 1998 Bernard Conlon was summonsed as a witness to the District Court, Letterkenny in order to give evidence on behalf of the prosecution in respect of a breach of the licensing hours by the licensee. On the 11th December, 1998 he gave evidence to the Court in respect of this prosecution.

Initially, Sir, it is appropriate to consider how Bernard Conlon came to be a prosecution witness and to examine his relationship with the Garda Síochána. According to the information available to us, Mr. Conlon is a native of Trim, County Meath and was born on the 14th April, 1956. Without any disrespect to Mr. Conlon, we note that some of the materials available to us describe him as a person of limited education and intelligence. Between 1981 and 1989 he was convicted of a number of criminal offences including offences of dishonesty. In or about 1990 Mr. Conlon came to Sligo town and was convicted of larceny, from the hostel in which he worked, on 3rd October 1992. Between that date and Summer of 1997 he did not incur any other convictions. Sometime before 1996 Bernard Conlon had become a tenant of Mr Bernard McGuire who resides at 3 Cartron Bay, Sligo. According to Mr. McGuire, Bernard Conlon did not work for him but was on disability payments. He denied that Mr. Conlon had worked for him in the collection of rents from people in other flats though these tenants may have handed Mr. Conlon rent, which he then gave on to Mr. Maguire as a favour or convenience. Mr. Bernard McGuire worked with his brother Thomas Maguire in a Company called Nappa Developments which apparently built houses in the Sligo area.

Mr. Conlon had a number of other friends, Mr. Tony Doyle, with whom he resided, and Mr. Anthony Kearns and Miss Catherine McGovern who went with him from time to time to Raphoe for a night out. They used to stay, on those outings, in Mary and Jim McGranahans, Raphoe for bed and breakfast before returning to Sligo by bus the following day. Bernard Conlon apparently had visited Frankie's Nightclub as a patron six or seven times before he was found on the premises after hours on 31st August,1997. The early paperwork in relation to his being on the premises on that date consists of a statement made on the 8th September 1997 to Garda John Nicholson in the presence of the then student Garda Eamon Gallagher. In this statement, Mr. Conlon

describes how he arrived in Frankie's Nightclub at approximately 12.10 a.m. to 12.15 a.m. on the morning of the 31st August, 1997. He states that on arrival he paid an entrance fee to a man at the door and Anthony Kearns and Catherine McGovern paid £6 each also. A country and western band was playing and had just come on to the stage when they got into the Nightclub. Mr. Conlon recites his complaint as follows:-

> **When we went inside I received no meal ticket and the only ticket I got going in was a small cloak room ticket when I gave my £6. As I went into the ballroom one of the bouncers took this ticket as he was collecting them. I knew when I was going into the place that I was entitled to a meal after 12 midnight but I got no meal and none of my two friends got one either. A few times previous to this I complained to the bouncers about getting no meal and they told me that I was alright, that there was plenty of drink there for me. They told me if I was hungry that I could go out into a chipper across the road and return back into the Nightclub. I did this on one previous occasion and returned to the Nightclub after getting grub in the chipper**.

He goes on to recite how he had purchased 7 pints of beer between 12.15 a.m. and 2.25 a.m. At 1.00 a.m. a female Garda Sergeant was described as arriving in the Nightclub accompanied by a male Garda and the barman pulled down the shutters in front of the bar in the ballroom. He alleges that as soon as the two Gardaí left, the barman opened the shutters again and began serving drink. Then at 2.25 a.m. he alleges that he purchased two pints of Smithwicks for himself, in case the bar would close down. The band finished at 2 00 a.m. but after the two Gardaí left the Nightclub after 1.00 a.m. he states that there was a lot of drink served and a lot of people were buying up at the bar. He also commented that there were about four or five bar staff serving drink and they were all very busy. Serving of drink allegedly continued up to approximately 2.55 a.m. when two male Gardaí came into the nightclub again. A number of people who were at the bar at that time, having bought some drink, left their drinks on the counter and walked away. He remained at the bar drinking a pint of Smithwicks and Catherine McGovern was standing beside him and he had another pint in front of him. Both drinks had been purchased at about 2.25 a.m. A Garda took his name and address and he informed the Garda that a barman, whom he identified to the Garda, served him the drink. Mr. Conlon became annoyed when the Garda took his name and left the Nightclub at about 3.05 a.m. with his two friends. On his way out of the Nightclub he states that a man whom he thinks was a bouncer told him to go back and tell the Garda that he did not know which barman had served him. Mr. Conlon stated, "I am finished here and I was in bad humour and would not come back to the premises again. I think Frankie's is a rip off, paying £6 without a meal and the drink was top price. I would say the place was overcrowded and not a lot of comfort but the music was good". He states, in this account, that he knows that he was on licensed premises during prohibited hours and requests that no prosecution be taken against him.

It should be noted that this statement is taken in the form of a witness statement and not that of a person under suspicion likely to be charged in respect of a criminal offence, arising from his being on the premises consuming alcohol outside the permitted hours, contrary to the provisions of the liquor licensing laws.

How this statement came to be taken is described by Garda John Nicholson in a statement dated 1st February, 2000. He states that sometime between 6.00 p.m. and 10.00 p.m. on 8th September, 1997 Inspector Bernard Lyden asked him to take a statement from Bernard Conlon. He had known this man for years. He brought him up to the crime office. Garda Nicholson stated that the man had a complaint to make and that Inspector Lyden asked him to take the complaint as other members in the station were busy. He goes on to outline how Mr. Conlon felt he was being ripped off and was getting no meal after paying admission which should have included food and he was "very high about the fact". He stated that he had on a previous occasion complained to the doorman and to unnamed Gardaí in Raphoe who were on duty outside the nightclub. He was asked why he had not made a statement to Gardaí in Raphoe and he simply said that he wanted to make the statement in Sligo. He made the statement and he was asked whether the two persons named as his companions on the evening, Mr. Kearns and Miss McGovern, would verify his story. Later both of them were asked to make statements but refused according to Garda Nicholson.

Garda Nicholson was adamant in this statement that his first knowledge of Bernard Conlon being caught in a pub was when he called into Sligo Garda Station to make the statement. The Garda who was with him was Garda Eamon Gallagher. Inspector Bernard Lyden in his statement dated 25th April, 2000 confirms that Mr. Conlon had attended the Station and made a statement to Garda Nicholson. Inspector Lyden stated that he read the statement made by Bernard Conlon and the following Wednesday when asked for advice by Garda Nicholson advised him to forward the original statement to Raphoe Station and retain a typed copy. As far as he could recall, he thought Garda Nicholson attached a minute to the original statement with a typed note and handed it to him. Inspector Lyden forwarded it to the Sergeant-in-charge of Raphoe, who was personally known to him.

On 19th February, 1998 Bernard Conlon was summonsed as a witness to the District Court at Letterkenny. He attended at various adjourned dates in Letterkenny, and Donegal, District Courts in respect of the liqueur licensing prosecution against the McBreartys.

In the midst of these adjourned hearings, on 20th July, 1998 the alleged event which we will refer to as "the silver bullet incident" allegedly occurred. In an initial statement, in respect of this incident made on 21st July, 1998 to D/Garda Michael Reynolds and D/Sergeant Gerry Connolly, Bernard Conlon stated that he was at home at 61 Cartron Bay Estate, Sligo at 11.45 p.m. on 20th July alone when he heard a knock on his front window. He went to the front door

and put on the porch light. As soon as he opened the door he alleged that he saw two males standing outside. His statement continued:

> **One of the fellows said to me "are you informer Conlon? I seen you in the Court in Letterkenny on a few occasions. You are a state witness against Frank McBrearty snr."…. I said to them "it was none of your business" and he said back to me "it is our business". I was very frightened at this stage as I was on my own and I had no phone in the house. The spokesman took a silver coloured bullet from his jacket pocket and held it up to me and said "there is one for you and one for White and that White has a trailer missing and he will be missing too". I knew straight away that those boys were serious and knew what they were talking about. I knew White was a plain clothes Garda in Letterkenny. I started going into a trance and the fellow that was doing all the talking said "I saw your statement". I could feel myself shaking and getting weaker at the legs. I banged out the door and as I was doing this one of them shouted if you turn up in Court the next day you will get the contents of what I have in my pocket. I then went into the living room and turned down the television and sat on the couch.**

Sir, if this had happened it was shocking. That is apparent from Mr. Conlon's statement where he goes on to relate how he was terrified and that when Tony Doyle, his flat mate, arrived, Mr. Doyle asked him if he was all right. He informed Mr. Doyle that he was upset and frightened and so asked him to ring for the Gardaí. He apparently did so and the investigating Detectives, D/Garda Michael Reynolds and D/Sgt Gerard Connolly, arrived at 12.50 a.m. They found Bernard Conlon seated on a couch in the living room and he appeared to them to be frightened and distressed. He was sitting in the dark. He told them the story of the two callers and D/Garda Reynolds noted this in his notebook. D/Garda Reynolds also noted that Mr. Conlon's voice was "trembling and he appeared breathless at times". A description of the two males who had called was given to the Gardaí and they arranged to call back the following morning to take the statement already referred to which was made between 6 and 7 p.m. on 21st July, 1997 at Sligo Garda Station.

The descriptions furnished to the Gardaí are as follows:

> **The fellow that did all the talking, I'd describe him as a stout lump of a lad with scraggy hair and a goaty whisker, about 5' 7" and aged between 22 and 25 years. His hair was black. He had a rough appearance and spoke with a rough northern accent. He was wearing a tea shirt which I would describe as brown to darkish and he had a black longish leather jacket. This is the man that produced the bullet. I am almost certain I saw this lad in the Courthouse in Letterkenny the last time I attended. He appeared to be with a gang that was at the Court. I'd say I'd know him again if I saw him. He also wore a pair of white and blue runners which I clearly remember observing.**

The other male is described as:

> **between 29 years and 30 years and somewhat taller about 5' 9" having black hair cut tight. He wore blue jeans and shoes and a shirt with no collar which I describe as a grandfather shirt. He also wore a leather jacket which was zipped up half way. He kept his hands in his pockets of the jacket and stared me straight into the eyes. He wore an ordinary pair of shoes….. he had a stud ear ring in one of his ears ….I never saw this guy before but I feel that I would recognise him again.**

He went on to say that he had no doubt that this was connected to a case to come before the courts in Letterkenny where he was to give evidence on behalf of the state i.e. the after hours drinking case against the McBrearty's.

At 1.00 a.m. on 21st July, 1997 Sgt. Gerry Connolly contacted Letterkenny Garda Station and informed Letterkenny to bring the incident "to the immediate attention of Supt. Lennon". Sgt. Connolly had a further phone conversation with the Superintendent some days later when he read out the descriptions of both suspects. Supt. Lennon stated that he thought one of the descriptions fitted Mark McConnell from Raphoe. This appears to be so. Sgt. Connolly asked with whom he could verify this and Supt. Lennon told him to contact D/Sgt. John White as he had worked in Raphoe. Sgt. Connolly later spoke to D/Sgt. White on his mobile phone and informed him of the conversation with Superintendent Lennon. He informed him that Superintendent Lennon thought one of the descriptions fitted Mark McConnell. D/Sgt. White confirmed this and Sgt. Connolly informed D/Sgt. White that he wished to arrange an informal identification parade. Sgt. Connolly asked D/Sgt. White whether he could find out where McConnell might be viewed in the presence of a number of people. D/Sgt. White informed him that he would let him know. There were follow-up phone calls between them. This culminated in a call in the last week of September 1998 made to Sgt. Connolly by D/Sgt. White who informed him that Mr. McConnell was attending Letterkenny District Court on the morning of the 1st October, 1998 as a witness in an assault case.

It should be noted that the narrative to which we now refer relates to the course of an investigation which resulted in the preparation of two files which were referred to the Director of Public Prosecutions for consideration in relation to the prosecution of Mark McConnell and Michael Peoples arising out of the silver bullet affair. Having completed the narrative, in relation to the course of that investigation, we will return thereafter to an account of a further investigation carried out by Assistant Commissioner Carty and his team into suspicions which arose in respect of the truthfulness of Bernard Conlon in respect of his allegations against Mr. McConnell and Mr. Peoples.

On the 1st October, 1998 Sgt. Gerard Connolly arranged to convey Bernard Conlon to Letterkenny with D/Garda Reynolds and describes that when they arrived in Letterkenny they went to a restaurant for breakfast. As they were

leaving he saw D/Sgt. John White sitting on a seat near the window and spoke to him. D/Garda Reynolds and Mr. Conlon left ahead of them. He arranged to meet D/Sgt. White in order that he could point out the location of the courthouse, as apparently Sgt. Connolly did not know where it was situated in Letterkenny. D/Sgt. White drove ahead in his own car. He drove down by the courthouse and then apparently came back to them and pointed out the door of the courthouse which, for some reason, was not obvious to them from where they were sitting. They then remained in the car for thirty minutes.

At 10.30 a.m. they all got out of the car and stood across the road from the courthouse and at 11.05 a.m. Mr. Conlon apparently became very excited and pointed to a man across the street who was walking towards the courthouse. He identified this man as the person who had threatened him with the bullet at the door of his home on 20th July, 1998. It was apparently Mark McConnell.

At 11.07 a.m. Sgt. Connolly arrested Mark McConnell under Section 30 of the Offences Against the State Act 1939 "on suspicion of being concerned in the commission of a firearm's offence under the Firearms Acts, 1925 as amended (namely) possession of a bullet at 61 Cartron Bay Sligo on 20th July, 1998". He was cautioned and informed that he was being taken to Letterkenny Garda Station for questioning and remained in custody until 11.00 p.m. on the 2nd October 1998. The period of detention was extended beyond the initial 24 hours pursuant to a direction of Chief Supt. Denis Fitzpatrick. Over this period Mr. McConnell was interviewed by a number of members of An Garda Síochána. He gave accounts of his movements on the 20th and 21st July, 1998. During the course of his presence in the station he met Supt. Lennon whilst being brought to various locations and put to the Superintendent in trenchant terms that this was "another one of his tricks". His solicitor at 6.45 p.m. on the 1st October, 1998 objected to an identification parade being held and asked the member in charge to note this in the custody record; such an exercise would be a waste of time, according to the solicitor, having regard to the manner in which the initial identification procedure had been conducted. This objection was restated at 8.15 p.m. by Mr. McConnell in respect of the identification parade and he declined to stand in one because he had already been picked out "so if you pick me out once what is the purpose of standing in an ID parade again. Did you look at the description that was given. You can search my house, you can look for a long leather coat. I never had a long leather coat".

At this point he maintained that D/Sgt. White and another had set Bernard Conlon up to make a false allegation against him. He said he would give the Gardaí an itemised phone bill, whatever it showed. He speculated out loud that Bernard Conlon had been put up to making the statement and that it had to do with the Gardaí being defeated in the District Court cases against his uncle. He thought this was another way of getting at his uncle in order to "blur the Judges eyes". He invited the Gardaí to "take a good read of the statement. It doesn't stand up. The description is wrong".

In a further interview, at 9.20 p.m. on the 1st October, with D/Sgt. Connolly, Mr. McConnell reiterated that he believed that D/Sgt. White was behind Bernard Conlon. He asked was Bernard Conlon ever in trouble and declared that the Gardaí would be proved wrong about the allegations. He emphasised in interviews that he only had one charge against him at Letterkenny Court in relation to a public order offence concerning Garda John O'Dowd; once it was heard he would be gone out of the court.

Once again, on 2nd October, 1998 he declared that he thought Mr. Conlon was setting him up for some financial gain. He noted that Mr. Conlon was not a state witness against him and had nothing whatsoever to do with him. He reiterated his belief that Bernard Conlon must have had a dodgy background if, as he put it, he could concoct a bundle of lies. He added, "you would want to be an idiot to go to Sligo and do what this man Conlon alleges. You must think I am an idiot to go down to Sligo….anyway this man has nothing to do with me".

Mr. McConnell's detention was extended by Chief Supt. Fitzpatrick at 11.00 a.m. on 2nd October, 1998. This extension was granted to Sgt. Connolly who states that he told Chief Supt. Fitzpatrick the circumstances of the arrest and detention and "how the detention was progressing". Chief Supt. Fitzpatrick states that he regarded McConnell's further detention as "necessary for the purpose of the investigation". On being told of the extension, Mr. McConnell said that he thought that the Gardaí were "a disgrace". Further interviews took place and the detention terminated at 11.00 a.m. on 3rd October, 1998.

On 4th February, 1999 Binchy's Solicitors wrote to the Garda Complaints Board and enclosed a four page handwritten statement from Mr. McConnell complaining about his arrest and detention on 1st October, 1998. This complaint (Board Ref. No. 990128) was ultimately deemed by the Board to have been constructively withdrawn by reason of the failure of Mr. McConnell to sign a statement to the investigating officer appointed by the Board. He had made a statement which was unsigned. Because of the manner in which the complaint was dealt with, further enquires need to be carried out in relation to this complaint before addressing it in substance. Regrettably, the Garda Complaints Board did not do this.

On the 27th January, 1999 D/Sgt. Gerard Connolly wrote a report in which he recommended that no further action be taken in respect of the allegation of Bernard Conlon against Mark McConnell. He did so on the grounds that Mark McConnell had no previous convictions but Bernard Conlon had convictions. He believed no Court would convict Mr. McConnell of the alleged crime "while there may be grounds to prosecute McConnell". This report was furnished to the State Solicitor by Supt. J. Sheridan. In the course of his report he stated:

> **You will be aware from this file that Mark McConnell would have every reason to intimidate Conlon and to attempt to prevent him from giving evidence against the owner of the Nightclub Frankie**

> **McBrearty. You will note that Mark McConnell is a nephew of Mr. McBrearty's.**

He says the question is simply whether or not there is evidence on file to suggest a charge of coercion against Mark McConnell contrary to Section 9 of the Non Fatal Offences against the Person Act, 1997. He states the only evidence on file to sustain the prosecution is the informal identification of Mr. McConnell by Bernard Conlon. He added that if the State Solicitor thought that the informal identification was sufficient "then obviously I would be recommending that Mark McConnell should be prosecuted for coercion".

This report was furnished to the Director of Public Prosecutions. By letter of 24th February, 1999 to Mr. Hugh Sheridan, State Solicitor for Sligo, Mr. Michael Mooney, Professional Officer with the Director of Public Prosecutions wrote that

> **…it seems extraordinary that anybody would go to such lengths to threaten a prosecution witness over a minor prosecution for breach of the Licensing Acts. It is all the more extraordinary when one considers that Conlon himself was an accomplice to any alleged breach of the Licensing Acts since he too was apparently found on after hours. Since the Gardaí inspected the premises it is not clear why or in what capacity Conlon's evidence is required on behalf of the prosecution. Since the Gardaí who inspected the premises could presumably prove their case without resorting to Conlon it is not clear why the license holder or anybody on his behalf would bother threatening Conlon. The injured party's statement reads somewhat theatrically and has not the ring of reality about it. Mark McConnell's replies in the course of interview on the other hand are compelling and further call into question Conlon's credibility McConnell unlike Conlon has no previous convictions**.

In a further letter concerning this case dated 14th December, 1999, Mr. Mooney wrote to Mr. Sheridan stating that the interviews of Mr. McConnell and Mr. Peoples:

> **Have a ring of truth about them which I cannot dispatch. Their accounts are to the effect that Conlon is ill disposed towards them and that his complaint is false and maliciously inspired. Having considered their interviews in detail I have been unable to satisfy myself that the suspects are being other than truthful. Accordingly I would agree with you that there is not a prima facie case against either suspect and, therefore, there is to be no prosecution.**

As can be seen from the reference in Mr. Mooney's letter of the 14th December, 1999, an investigation had also been carried out in respect of Michael Peoples. On the 8th December, 1998 Bernard Conlon attended Letterkenny Courthouse in respect of the McBrearty liquor licensing case. Garda Thomas Ward, of Ballybofey Station, was also in attendance. He was

seated at the back of the courthouse and received a tap on his shoulder. When he turned around a man whom he apparently did not know, but was Bernard Conlon, informed him that one of the men that was down at his house in Sligo when he was threatened on 20th July, 1997 was present in the court room: he then purported to point him out. This man was Michael Peoples. Garda Ward did not know who the man was and enquired of his colleague Garda Noel Keaveny who apparently identified him by name as Michael Peoples. As a result of this, on 6th May, 1999, some six months later, D/Sgt. Gerry Connolly, along with his colleague D/Michael Reynolds and D/Garda E. McHale, arrested Michael Peoples at Liskey, Ballindrait, Lifford. Again he was arrested under Section 30 of the Offences Against the State Act and he was informed that he had been picked out at the court house at Letterkenny on 8th December, 1998 as being one of the two men involved in the silver bullet incident. He was interviewed at considerable length about his alleged involvement in the incident and he denied all knowledge of it. Peculiarly, Gardaí Caplice and Hunt at 9.05 p.m. on 6th May, 1999 also interviewed him extensively about the Richard Baron death. At 1.50 p.m. Mr. Peoples agreed to stand in an identification parade to which Bernard Conlon was brought. Mr. Peoples was picked out by Bernard Conlon as one of the two men who called to his house on 20th July.

Mr. Peoples gave his view that Bernard Conlon was put up to it and speculated that D/Sgt. White definitely had something to do with it. He also believed other Gardaí were involved. Mr. Peoples denied all the allegations made by Bernard Conlon. In his report ultimately destined for the Director of Public Prosecutions, D/Garda Michael Reynolds concluded that while it was suspected that he accompanied McConnell to Mr. Conlon's house at Cartron on 20th July, 1998 there was no evidence to suggest that he made any threat to Mr. Conlon. No prosecution was recommended. The report is stamped 30th November, 1999 and directed to D/Sgt. Cryan. However, as already noted Mr. Mooney concluded that the interviews with both Mr. McConnell and Mr. Peoples had a ring of truth about them which he couldn't ignore and therefore, as in the case of Mr. McConnell, directed that there be no prosecution in respect of Mr. Peoples.

By the 8th December, 1998 Bernard Conlon had made four statements to the Garda Síochána in respect of the breach of the liquor licensing laws at Frankie's Nightclub and the silver bullet affair. It will be recalled that on the 8th September, 1997 Mr. Conlon made his original statement of complaint to Garda John Nicholson in the presence of student Garda Eamon Gallagher concerning the 31st August, 1997. Then on 21st July, 1998, Bernard Conlon complained regarding the silver bullet threat allegedly made to him on the 20th July, 1998 to D/Garda Reynolds in the presence of D/Sgt. Connolly. On the 10th November, 1998 Mr. Conlon made a statement regarding his identification of Mark McConnell at Letterkenny courthouse on the 1st October, 1998 to D/Garda Michael Reynolds. On the 8th December, 1998 Mr. Conlon made a further statement regarding the identification of Michael Peoples in Letterkenny courthouse to Garda Thomas Ward. Subsequently, on the 7th May, 1999 he made an additional statement concerning his formal

identification of Michael Peoples at an identification parade at Manorhamilton Garda Station.

On 27th April, 1999, Bernard Conlon made a further statement of complaint, this time in relation to Mr. William Flynn, a private investigator, who had worked on behalf of the McBrearty family on matters relating to the death of Richard Barron. In his statement of complaint of that date, made at his home, to Inspector Michael J. Barrett and Sgt. P. J. Gallagher, Mr. Conlon complained that at 5.30. p.m, on Thursday, 22nd April, 1999 whilst at his home in 61 Cartron Bay, Sligo a man called to his front door, whom he described, and introduced himself as Mr. Flynn from Enfield County Meath a private investigator. He alleged that Mr. Flynn asked him whether he would be interested in changing his statement to the Gardaí about McBrearty's Nightclub. He said that if he cooperated with Mr. Flynn he would make one phone call to Frank McBrearty and that he could have £10,000 in his pocket if he went to a solicitor with him and made a statement about D/Sgt. White and a Garda O'Dowd in Letterkenny. Mr. Flynn was said to have stated that Mr. McBrearty wanted to get D/Sgt. White moved. Mr. Conlon told the two Gardaí that he wasn't going to tell lies and wanted no money. Mr. Flynn was said to have stated that he would write to Bernard Conlon but that he was not to mention anything to the Gardaí about his visit. Bernard Conlon went on to allege that on Monday 26th April, 1999 he had received a typed letter addressed to him from William J. Flynn, private investigator which he handed over to the Gardaí. He said he was very upset about Mr. Flynn calling to his house and that he contacted Garda Nicholson in Sligo for his help. He also alleged that this Mr. Flynn had told him that D/Sgt. White had had him (Mr. Flynn) up in court for making abusive phone calls. He appeared to Mr. Conlon to have a grudge against D/Sgt. White and Garda O'Dowd. It was alleged that Mr. Flynn had said that the Minister for Justice was dealing with D/Sgt. White and that he was going to be shifted.

Further reference will be made to this statement, which was ultimately stated by Mr. Conlon to be a fabrication on 17th February, 2000. It will be noted that the complaint in respect of William Flynn was made some eight days before the arrest of Michael Peoples in respect of the silver bullet affair.

Sir, whilst it might be thought that the supposed evidence against Mark McConnell and Michael Peoples in respect of the silver bullet affair was weak, and that the observations of Mr. Michael Mooney leading to his conclusion that no prosecution should be initiated against either Mr. McConnell or Mr. Peoples were well founded, it is not exactly clear from the papers as to why Bernard Conlon became the focus of a Garda inquiry or why suspicions were aroused about the veracity of his statements in respect of Mr. McConnell and Mr. Peoples. Witnesses may make mistakes. Identification, though honestly made may be mistaken. This does not necessarily mean that the witness who purports to make the identification is dishonest. There is reference in the papers available to us to a number of phone calls made to various Garda Stations but no elaboration as to how such calls caused suspicion to fall on Mr. Conlon or if they did or why. Members of Assistant Commissioner Carty's investigation team interviewed Bernard

Conlon over a number of months. This process culminated in his admissions that his allegations concerning the silver bullet were lies. In the course of his retraction he implicated D/Sgt. John White, and to a lesser extent Garda John Nicholson, as the persons who procured lying statements from him with a view to prosecuting Mark McConnell and Michael Peoples wrongfully for offences which they knew had never been committed.

These investigating officers were also informed by Bernard Conlon that he had received money in respect of his Letterkenny and Donegal town District Court appearances. He had attended both Letterkenny and Donegal town District Courts on approximately twenty three occasions and received a total of £1,443.60 in witness expenses. He also contended that he had received other sums in cash from D/Sgt. John White. Though the total, which may exceed £2,000, may appear to be relatively small it was, perhaps, to a man of Bernard Conlon's limited means, a significant amount of money.

On the 20th January, 2000 D/Inspector Tadgh Foley and D/Sgt. James Fox met Bernard Conlon at Manorhamilton Garda Station by arrangement. The allegations made by Bernard Conlon in respect of the silver bullet incident were discussed. During the course of the meeting both officers formed the opinion that Bernard Conlon was not telling the whole truth in relation to these matters.

On 27th January, 2000 D/Sgt. Fox met with Supt. John Fitzgerald at Sligo Garda Station and briefed him on the situation. He informed the Superintendent that he was of the belief that Bernard Conlon was in possession of information regarding the commission of a schedule offence under the Fire Arms Acts and he requested him to issue a search warrant under Section 29 of the Offences Against the State Act 1939 in order to carry out a search of Mr. Conlon's residence. This warrant was issued. A search was carried out later that evening at 5.15 p.m. involving a number of Gardaí. At 6.24 p.m. on the same evening Sgt. Fox arrested Bernard Conlon pursuant to Section 30 of Offences Against the State, Act 1939. He was conveyed to Manorhamilton Garda Station and during the course of his detention was interviewed on a number of occasions.

In an interview on 27th January, 2000 with D/Sgt. J. Fox and D/Garda H. Moloney, Bernard Conlon gave an account of his first ever meeting with D/Sgt. John White which he recalled was about a month before he had his name taken in Frankie's. D/Sgt. White had been on duty outside the nightclub with another Garda at about 2.30 a.m. He complained of not getting food in McBrearty's and D/Sgt. White wrote down his name in his notebook and asked him did he want to make a complaint. He said he did not.

In a further interview on 28th January, 2000, with D/Sgt. D. Flannery and D/Garda T. Flynn, Bernard Conlon alleged that D/Sgt. White asked him if he was willing to be caught on the premises after hours by arrangement with D/Sgt. White and become a State witness for him against the proprietor Mr. McBrearty. D/Sgt. White said he could arrange for him to be seen late drinking in the nightclub and that he would send in members of An Garda

Síochána to the ballroom. Mr. Conlon agreed to do this and was asked to do it the following Saturday.

Mr. Conlon goes on to give a lengthy account of how the following Saturday Garda John Nicholson pulled up beside him in a motor car, when he was coming out of his driveway at 11.30 a.m, and told him that he got a phone call from Raphoe informing him that D/Sgt. White had the matter arranged for that evening. He understood this to mean that he was to travel to Raphoe that night and be in Frankie's when the Gardaí inspected the premises. Garda Nicholson supposedly told Mr. Conlon how D/Sgt. White had told him that Mr. Conlon should have as much drink as possible in front of him when the Gardaí came in to inspect the nightclub. He was to be in the low bar in the dancehall.

Following this conversation with Garda Nicholson, Bernard Conlon alleges that he had phoned D/Sgt. John White who said that he would meet him in Raphoe in plain clothes outside McGranahans shop in the Diamond at 9.30 p.m. He did so and D/Sgt. John White drove him out past the ballroom and told him he was "but a man after his own heart": he was to have as much drink as he could in front of him between 2.30 a.m. and 2.45 a.m. There would be Gardaí going into Frankie's but he wasn't to take any heed of them. He then describes how a male and female Garda came into the premises at 12.30 a.m. and the shutters came down but that the shutters went up after the Gardaí left. He did as requested by D/Sgt. John White and when the Gardaí were inspecting the premises he pointed out the barman who had served him. He was most annoyed, he asserted, to have his own name taken.

The following Wednesday, Mr. Conlon contends that D/Sgt. White called to his home in Sligo and asked him to go to Sligo station and ask for Garda John Nicholson to whom he was to make an official complaint. He gave him, he claims, two fifty pound notes in a brown envelope which he understood was payment for what he had done in Raphoe. Bernard Conlon then describes going to Sligo Garda Station the following Monday and looking for Garda John Nicholson to whom he gave the statement on the 8th September, 1997. He describes also how Garda Nicholson subsequently came to his home and gave him a copy of the statement he had made and asked him to give D/Sgt. White a call. When he did phone D/Sgt. White at Letterkenny Garda Station he claims that D/Sgt. White told him there would be more money coming to him but also that if any members of An Garda Síochána from Sligo or anywhere else came to him he was not to say he knew D/Sgt. White or Garda Nicholson.

Mr. Conlon also alleges that, a few days after this conversation, on a Sunday morning (he thought) D/Sgt. White came to his house to tell him that he would be getting a summons by registered post in connection with being 'found after hours' in Frankie's. He was not to mention D/Sgt. White's name at all, especially if cross-examined by Mr. McBrearty's barrister. Mr. Conlon contends that D/Sgt. White gave him another £100, in five by twenty pound notes, from an envelope. Again he was advised not to tell anybody else about his dealings with D/Sgt. White.

Bernard Conlon was further interviewed by D/Sgt. Fox and D/Garda H. Moloney. He was asked to tell the truth about the incident at 61 Cartron Bay and he asked who would look after him if he did and he was told D/Sgt. Fox would.

Then, he gave an account of events in which he describes how D/Sgt. John White spoke to him about setting up Mr. McConnell and Mr. Peoples shortly before Monday 20th July,1997. Mr. Conlon states that the suggestion was made by D/Sgt. White when D/Sgt. White met him at the toilets near the stairway of Letterkenny Courthouse at a time when D/Sgt. White was on his own and had a file with him. Mr. Conlon alleged that D/Sgt. White stated that he was under a bit of pressure and asked Mr. Conlon if he would do him a turn. Mr. Conlon alleges that D/Sgt. White then pointed to two men in court with the McBrearty's who were a number of feet away from them. He thought he mentioned both men's names and recalled one as Martin O'Connell but could not remember the second name mentioned. D/Sgt. White wanted Mr. Conlon to "set them up". Mr. Conlon alleged that D/Sgt. White indicated that he would look after him and pointed two fingers at him which Mr. Conlon understood to mean that he would get £200 from D/Sgt. White. The detective sergeant said that he would call to Mr. Conlon's house but did not tell him at that stage what exactly he wanted him to do.

On a date which may have been Friday the 18th July, 1998, D/Sgt. White called to 61 Cartron Bay in an unmarked Garda car. This was the Friday before the alleged silver bullet incident was reported to the Gardaí. Bernard Conlon alleges that D/Sgt. White referred to the two men whom he had pointed out to Mr. Conlon in the Courthouse and said he was going to describe them to him. He allegedly indicated that he wanted to take Mark McConnell out of circulation, that he had a grudge against him, as he had had him in on several occasions, and that Messrs. McConnell and McBrearty were the main suspects for the murder of Mr. Barron in Raphoe.

More particularly, Mr. Conlon alleged that D/Sgt. White told him to let on that "the two boys", Mr. McConnell and Mr. Peoples, called to his house. He goes on to allege that D/Sgt. White told him to ring the Gardaí and tell them that the two men had called to his house and produced a silver bullet and to say that they threatened him and called him an informer. D/Sgt. White told him to say that Mr. McConnell produced the bullet and added that he (White) was totally against Mr. McConnell and that he would have him behind bars during his service in Raphoe and in Letterkenny. About the second man, D/Sgt. White said to Bernard Conlon that he had a tight haircut and gave him a description of the second man that he was to give to the Gardaí. Mr. Conlon indicated that he wrote nothing down, in relation to either of the descriptions which he was to give, or what he was to say. He went on to say that D/Sgt. White had also mentioned about his car being burnt and that he was suspicious of Mark McConnell and he told him that he had two trailers stolen – one a horse box and the other an ordinary trailer. D/Sgt. White allegedly told Bernard Conlon that he suspected Mr. McConnell of stealing the trailers and that he was to tell the Gardaí that Mr. McConnell had said to him that D/Sgt. White's trailer was missing and that

D/Sgt. White would go missing himself. Mr. Conlon went on to state that he did not make up any of the story, that he had told the Gardaí, and he only told them what D/Sgt. White told him to say. He said "I co-operated with them in every way. He called me his star witness". He also told the Gardaí that D/Sgt. White had allegedly called him "Detective Garda Conlon", as a joke on the phone. He stated that D/Sgt. White had told him to get somebody else to ring the Gardaí and that he should "be sitting on the couch terrified when the guards come up".

He told the interviewers how he had put on an act for the Gardaí who called to the house.

When interviewed on 29th January, 2000 Bernard Conlon continued his disturbing allegations. He described occasions upon which he attended at Letterkenny Courthouse on the 1st October, 1998 and at Manorhamilton Garda Station on 7th December, 1998 in order to identify Mark McConnell and Michael Peoples. He acknowledged that the identifications were false.

He reported that he first came to know Garda John Nicholson when he came to live in Sligo. He had spoken of his acquaintance with Garda Nicholson to D/Sgt. White when he first met him outside Frankie's Nightclub in Raphoe. In a further statement to D/Inspector Tadgh Foley and D/Garda Moloney and Sgt.J. Fox on 29th January, 2000, he stated that, in relation to the after hours drinking case, he rang D/Sgt. White on the Monday after the after hours drinking episode to tell him that he had his name taken. D/Sgt. White told him he would be in contact with Garda Nicholson and thanked him for what he had done. Mr. Conlon stated that he called to Sligo Station thereafter and made the statement described; he was then summonsed as a witness to give evidence on behalf of the State in relation to the after hours drinking in McBrearty's on 31st August, 1997. He goes on to allege that Garda Nicholson came to see him and gave him £100 (two fifty pound notes). He stated that subsequently he gave evidence in court and 'told the truth' about what happened on the night but did not tell the court that the whole thing had been a 'set up'.

Bernard Conlon was released from detention at 6.21 p.m. on 29th January, 2000.

Subsequently he made a very detailed statement to Detective Inspector Tadgh Foley, Sgt. Dermot Flannery and D/Sgt. James Fox when he met them by appointment at Manorhamilton Garda Station on 15th February, 2000. In this statement he covered initial meetings with D/Sgt. White in which he informed D/Sgt. White of his acquaintance with Garda John Nicholson and gave an account of his involvement in the after hours drinking episode on 31st August, 1997 and the setting up of Mark McConnell and Michael Peoples.

It is perhaps important, Sir, to have regard to this shocking statement. In relation to his initial meeting, he confirmed that his first meeting with D/Sgt. White was when he complained to him about getting no food when coming out of McBreartys one night. He met D/Sgt. White and another Garda who had inspected the night-club earlier. He gave D/Sgt. White his name, which he believed was taken down in D/Sgt. White's notebook. He told him that he

knew Garda John Nicholson in Sligo. He had visited Frankie's on a number of occasions after this. He was asked if he would like to make a complaint and he said he would see about it. About three weeks later he again met D/Sgt. White in Raphoe. Again, this was an occasion upon which he had received no supper in Frankie's though he knew that he had been entitled to one. D/Sgt. White started to talk to him about Frank McBrearty. He told him he was investigating the murder of Richie Barron and asked him whether he knew Mr. Barron or whether people were talking about it. Mr. Conlon said the only thing that he had said that he had heard was that Frank McBrearty was being hounded since the murder. D/Sgt. White said that young Frank McBrearty was involved. Bernard Conlon told him about what happened in the pub that night and that the shutters had gone up after the Gardaí had left the premises. He was then asked by D/Sgt. White if he could arrange to be in there late drinking and become a state witness for him against Frank McBrearty. Two Gardaí would be sent to the ballroom and he, Bernard Conlon, would be caught there: there would be money in it for him.

He goes on to describe then the arrangements made for the 30th/31st August, 1997 between Garda Nicholson and D/Sgt. White. His statement describes what happened, at page 5, on Saturday, 30th August, 1997:

> **John Nicholson approached me in the unmarked silver patrol car. He had been knocking at my door. He said jump in here Bernard. I sat in. He told me he had been speaking to Sgt. White and how John White had told him that had been arranged for tonight. I knew what he meant. I knew that I had to go to Frankie's in Raphoe and I was to be drinking after hours. He told me that Sgt. White wanted me to be in the lower bar of the dance hall and to have as much drink in front of me when the guards came in. I told him I wasn't fussy about the band that was playing there. He said don't be too interested in the band if you don't go you will be leaving down Sgt. White. I said o.k. John I'll be there. He said he would convey the message to Sgt. White. I rang John White and I had a chat with him. He told me he would meet me at the Diamond at 9.30 p.m. and he would be sitting in his own car in plain clothes.**

He related that Garda John Nicholson asked him if he was alright for money before he left him and he said that he was. Having travelled to Ballybofey, by bus, and taken a taxi to Raphoe, he booked into McGranahans at about 8.30 to 8.40 p.m. He allowed his friends Anthony Kearns and Catherine McGovern to go on ahead of him and he went and sat into a car with D/Sgt. White who knew he had been talking to Garda Nicholson. D/Sgt. White apparently took a note of what he was wearing and he goes on to describe the evening and the attendance by the Gardaí at Frankie's in the early hours of the morning to which reference has already been made. He noted that "I was happy enough doing what I did because I knew I had someone in authority behind me. D/Sgt. White told me he would look after me".

He states that on Monday, the 1st September, 1997 he phoned D/Sgt. White and told him that he was a bit upset that his name had been taken. He was told not

to worry about this and D/Sgt. White told him that he would call down and sort him out on Wednesday afternoon. On Wednesday afternoon D/Sgt. White called and told him to go to Sligo station to make a statement to Garda John Nicholson. He told him that all this must be kept very confidential and he said "that if you look after me I'll look after you". He was given £100 (two fifty pound notes).

Thereafter he attended at Sligo Garda Station on 8th September, 1997 and made his statement to Garda John Nicholson. He alleges that Garda John Nicholson said to him "you have a problem Bernard. I said I have, he said I know all about it". Garda Nicholson drove him home that evening and, outside his house, Garda Nicholson asked him if his friends Mr. Kearns and Ms. McGovern would mind making a statement relating to Raphoe. Ultimately, Sir, they did not make a statement.

He alleges Garda John Nicholson, some three weeks later, called down to his house to enquire whether he had been in touch with D/Sgt. White. He handed him a copy of his statement and told him he would be needing it. He told him not to show it to anybody and left. Afterwards, Mr. Conlon phoned D/Sgt. White who congratulated him on his statement and told him he would be down in a day or two to see him and that he had something for him. He told him that there was more money coming to him and not to mention it to any Garda in Sligo. A number of days later D/Sgt. White arrived at his home and told him a witness summons would be coming to him by registered post. He said that "McBrearty's barrister would be tearing me apart but to take no notice and to stand up to him and not to mention his name". He handed him a brown envelope with five twenty-pound notes. Bernard Conlon continued:

> **I thought it was good crack. I had plenty of money and I enjoyed myself. I was getting a buzz out of working with the guards, driving round with the patrol car and being called Detective Garda Conlon.**

Approximately a month later, he received a registered letter containing the witness summons for Letterkenny District Court relating to Frank McBrearty's premises. Garda Nicholson came to see him and he showed him the witness summons. He alleges Garda Nicholson said that it was nothing to worry about and that he should stick to his statement. He states that he was in regular contact with Garda John Nicholson and was brought on numerous occasions to sittings of the District Court in Letterkenny and Donegal. He was told that Garda John Nicholson would look after all his expenses. In respect of witness expenses he said the following, at page 12:

> **John Nicholson looked after all my expenses. He done the paper work. He told me he'd fax it up and then send it by post. John White and John Nicholson told me they would look after my expenses through the court clerk in Letterkenny. I never applied for expenses. John Nicholson did all that for me. I only signed a receipt when I got the cheque. Both parties told me they would get me £40 a day, a night over stay and travelling expenses. I went along with them. John White would bring me home some evenings.**

> **The first cheque I got Sgt. White would have given it to me in Sligo Garda Station. He told me he was going to a wedding…..**

He alleges that at one of the court appearances in Letterkenny in early July 1999 D/Sgt. White approached him and asked him would he do him a favour in relation to two fellows who were sitting in the court. He stated as follows:

> **I seen them and I said alright John. He put two fingers towards the ground. I said right John, I knew it meant £200. I had a good look at the two men. He told me one was Mark McConnell and other was Peoples. I seen them later in the courthouse and I had another good look at them. He told me he wanted to discuss it with me again. On the following Saturday I rang him from 64 Cartron Bay and he told me he would be down the following Sunday morning. He arrived down the following morning in an unmarked car……..I opened the door and he came in. He said Detective Garda Conlon how's it going. He started talking about what he wanted me to do. He told me (he) had Mark McConnell in about the murder in Raphoe and he was like a wall, he could get nothing out of him. He said I was the only man he could depend on. He wanted McConnell off the streets of Raphoe. He was convinced that Mark McConnell and young McBrearty had killed Richie Barrons. He said to me to say that Martin McConnell and Peoples called to my home and threatened me. He described to me Mark McConnell. He was a stout lump of a fellow with a goatee beard and bushy hair. He said to me to say that Martin McConnell produced a silver bullet from his pocket and to say I have seen your statement, I've seen you in court, you are a State informer. I was to say back to him it's none of your business. He would then produce the bullet and say to me there's one for you and one for White, that White had trailers missing and he would go missing himself. To say that Pimples (Peoples) put his hand in his pocket and stared me in the face. He never opened his mouth. I was to say that Martin McConnell was wearing tracksuit bottoms and a leather jacket and runners and the other fellow was wearing a black leather jacket as well. To say I just slammed the door in their face. He told me to get into a bit of a state and to get someone else to report it. He also told me he had a car burnt out and he suspected Martin McConnell and Peoples (Pimples). He reached to his inside pocket and took out his cheque book. He said that's no good to you. He put it back in his pocket. He took an envelope from his back pocket and handed it to me. He said there's a right few pound in that. He left saying he would see me the following morning in Letterkenny. I opened the brown envelope then. There was £200 in new twenty-pound notes. I was delighted. He told me I was to do it the following night when I returned from the Courthouse.**

He then goes on to describe how he met D/Sgt. White on the Monday morning at Letterkenny courthouse who told him it was on for tonight and "you know what the story is". He was returned to his home in Sligo, after the court proceedings

and later in the evening carried out the plan which ultimately resulted in the Gardaí being called to his house by Tony Doyle, as referred to earlier. He recalled, Sir, making the statement the following day to D/Garda Reynolds and confirmed that it was "false and misleading":

> **A day or two later I would have rang John White and told him I had made a statement. He said he would get the statement transferred up to Letterkenny and get it sorted out quickly. John Nicholson also called to my house around the Thursday or Friday after making the statement. He told me he had seen the statement. He spoke to me in the kitchen. He was accompanied by a female guard and he left her in the sitting room. I have seen the statement you made to Mick Reynolds stick to it. He gave me the impression that he knew that it was a false statement. He left the premises accompanied by the female Garda.**

He then describes how the arrangements were made for him to travel to Letterkenny to identify the two men.

He states:

> **In mid September 1998 John White called as arranged by previous telephone call to him. He told me that I would be calling up to Letterkenny in about a week or two, that it was all arranged upstairs in Letterkenny, that I would be travelling up to Letterkenny to identify the two men. I think he was travelling in a branch car. He told me to have a look at my statement. I had got a copy from Mick Reynolds. About two weeks later Gerry Connolly called, would I be ready the following morning to travel to Letterkenny to identify somebody**. (Page 28)

He goes on to describe travelling to Letterkenny, on what appears to be 1st October, 1998, meeting with D/Sgt. White at a cafe, and the journey into Letterkenny. D/Sgt. White travelled with the party then, from Letterkenny Garda Station to the courthouse, and left them after an interval. He then describes how he pointed out Mark McConnell and how Mark McConnell came to be arrested He then goes on to give an account of his attendance at Letterkenny District Court, on a date in December, 1998, as follows:

> **In early December I was attending Letterkenny District Court, I was sitting in the court and John White came over and sat down beside me. He said that's Peoples (Pimples) I said I know. He had his arm in a plaster as far as I can recall. White told me to identify him to the Ban Garda. He called her Sarah. She took over in Raphoe when he was transferred. She was sitting up beside the Judge. John White moved away. After a few minutes I got up, there was a guard sitting near me and I approached him. I told the guard there was a fellow over there with his arm in a plaster that was at my home and the guard looked over at him. I told him the Sligo guards would be looking to interview him. The guard got up and went to speak to**

> **Sgt. White. He came back down and sat beside me. I saw Sgt. White talking to Sarah. I then saw her looking at Pimples (Peoples). I had seen (Pimples) Peoples in court previously, but I hadn't intended to identify him until I was prompted by Sgt. White. I was unhappy about the whole thing; it was playing on my mind. The only reason I did it was because I was paid to do it. I didn't want to fall out with John White.**

Sgt. Sarah Hargadon has been interviewed in relation to this matter and she indicated that she was not approached in the manner suggested in this statement by Bernard Conlon. However, an incident of a similar type is confirmed by Garda Thomas Ward and Garda Noel Keavney, in that Garda Ward recalls being approached by Mr. Conlon and Garda Keavney recalls being approached by Garda Ward enquiring as to the identity of a person who turned out to be Mr. Peoples on the same date at Letterkenny District Court.

At page 20 of his statement, Bernard Conlon alleges that a few days after the identification by him of Mr. Peoples in Letterkenny District Court, he received notice from D/Garda Michael Reynolds that he was required in court the following day. On the same evening, D/Sgt. White phoned and told him that he would be in the witness box the following morning and that he wanted to have a chat with him that night. He told him that Garda John Nicholson would be down to see him. Later that evening

> **There was a knock on the window. I knew it was John Nicholson. I got up and went out. John Nicholson beckoned me out. I went in and got my coat and headed off with John Nicholson. He said to me what's going on. I told him I didn't know but I was for the box the following morning. We drove up and collected his girl from school. He said she was learning music. The school is up around the Ballytivnan area. He was driving his estate car… We then drove to the Petrol Station on the Bundoran road. He told me he had got a phone call from White and he was on his way down. We drove up the garage and we were there about ten minutes when White arrived in a red unmarked patrol car. He drove in around the back. John Nicholson got out and sat in with White. He was there for about five minutes. I was sitting in the car with Nicholson's daughter. John Nicholson came back to the car. He called me, he said John White wants to see you. I went over and got into the patrol car beside John White. John Nicholson got into the back of the car. We were talking, I said to John Nicholson I am not happy here and he said to John White go down to the back of the station. John Nicholson left and John White drove down and parked at the back of Sligo Garda Station. He pressed the buttons and the white pole went up. We were there a short time and John Nicholson came and sat in the back of the car. John White had a folder. He had the statement I made and my previous convictions on a computer print-out that had green stripes on it. We discussed the case fairly seriously for the best part of 20 minutes. They were saying stick to your guns and don't be afraid of the Judge or the Barrister. White said the first**

> **thing the Barrister will tear into you will be your previous conviction. He told me to say that I have turned over a new leaf and I have put them all behind me. He told me to keep looking up at Judge. He told me if I was asked about guards I was to say I have a belly full of them and I know what their made of. I forgot to say that when I got the phone call from White he told me there was a special escort coming down for me. He told me that if I was asked about him I was to say that I knew nothing about him and that he was just a member of the Garda Síochána like the rest of them. John White handed my statement to John Nicholson and he read my statement and bits and pieces I had to stick to. John White left but before he did he said under no circumstances say you saw me tonight. John Nicholson said if you are asked in court how did you find out an escort was coming from Letterkenny for you say a uniform guard came from Sligo to tell me. John Nicholson and I got out of the patrol car and John White drove away.**

A uniformed escort duly collected him the following morning, which we believe was December 11th, and brought him to Letterkenny District Court where he gave evidence. Following this, he was driven home he says by D/Sgt. John White. He alleges that D/Sgt. Gerry Connolly phoned and that D/Sgt. White told D/Sgt Connolly he "was a star witness the best I have ever seen". Garda Nicholson phoned on the same journey and he congratulated him and wished him a happy Christmas and told him that he would see him at Christmas with a hamper, which he did. When D/Sgt. White dropped him home he allegedly gave him a twenty-pound note and a bottle of Paddy whiskey wrapped in festive Christmas paper.

Bernard Conlon maintains that in 1999 he was still attending court and was in contact with D/Sgt. John White at the courthouse. He also states that he had regular contact with Garda John Nicholson in relation to 'bits and pieces' around the estate where he was living. Then, he alleges that in early May 1999, D/Sgt. John White called to his home at 61 Cartron Bay:

> **He arrived down in the afternoon. He told me that (Pimples) Peoples would be arrested and taken to Manorhamilton and I would be finished with Letterkenny for identification parades. A couple of days later Gerry Connolly arrived and he said to me that he was going to have someone in Manorhamilton Garda Station and would I mind going down to identify someone in the Garda Station. He asked me for my phone number. He said he would ring me.**

He then goes on to describe being brought to Manorhamilton station, on what appears to be the 7th May, 1999, and going into a room where he identified Michael Peoples to Sgt. Flannery. He states:

> **I know when I pointed out Peoples it was a stick up. I left and went to Gurns for a cup of coffee. Mick Reynolds then took me home. I was very upset on the way home. I knew there was nothing I could do about it. I could see it ending up in the High Court in Dublin.**

He states that he then phoned D/Sgt. White but he said 'fair play to you, and stick to your guns'.

The next incident, with which he deals in this statement, is related to the giving of evidence against the McBrearty's in the Liquor Licensing Acts prosecution and therefore the course of events under consideration under Terms of Reference (b) but which is also relevant to the Term of Reference (c) in respect of allegations of harassment. It will be recalled, Sir, that in the statement of the 27th April, 1999 Bernard Conlon made an allegation that William Flynn, the private investigator, attempted to bribe him on 22nd April, 1999 at 61 Cartron Bay. In pages 23 – 25 he outlines how his allegations in this regard were false. He states the true account to be that he got a letter from Mr. Flynn, which stated that he was interested in talking to him about an incident that happened in Navan and that there was 'money in it' for him. The letter was on a single sheet of paper. He indicated an interest in meeting with Bernard Conlon and requested that he phone him. Mr. Conlon thought the letter strange and phoned D/Sgt. White and asked him whether he knew Mr. Flynn. D/Sgt. White indicated that he did; Mr. Conlon was then asked for the letter. D/Sgt. White allegedly called down in the afternoon when it was shown to him:

> **He told me he had him up in the Court for making obscene phone calls to his wife. He had him in Letterkenny Court and was fined and bound over to keep the peace. He said he was a private detective for the McBreartys investigating Richie Barron's murder. He said he wanted me to stitch him up. He told me there was a few pound in it if I did it for him. I agreed to do it. He took away the letter and came back a few hours later. There was a second sheet attached to the letter. John White told me he had added a bit to it. He told me not to take it out of the envelope. I didn't obey his orders. I had a look at it. There was a second sheet, but there was no heading in the second sheet. I cannot remember what was on it. He gave me a description of Flynn that was supposed to have called to my home a few days before I got the letter. He picked the day. He said he would be wearing a suit with a flashy shirt and tie, stout blocky build fortyish with a beard. I was to say that he offered to take me to a Solicitor…….**

Before D/Sgt. White left that evening he allegedly told Bernard Conlon to report the incident as he had described it to Garda John Nicholson. He gave him five twenty pound notes out of his wallet . He told him he wanted to get Mr. Flynn put out of circulation and that it was all over Mr. Flynn making phone calls to his wife. Bernard Conlon said he was happy enough to do it and felt that he did not have much option. We do not know, Sir, whether this statement is indicative of the strength of character, or lack of it, of Mr. Conlon or of his credibility. As a result of this conversation, Mr. Conlon alleges that he phoned Sligo Garda Station and left a message for Garda John Nicholson to call. When he did, Garda Nicholson, he alleges, said

> **I know you're looking for me you got an old letter. I says that right John …. Tony Doyle was in the sitting room watching television and John Nicholson walked into the kitchen. He sat down at the table and I handed him the envelope. He put on his glasses. He took out the letter and read it. He turned it over and looked at the other page and he was smiling. He asked me when I got the letter. I told him I got it on this Monday. I told him what White had told me to say. He said, "I am already briefed". He stayed about 10 minutes. He took the letter away with him. He said that there would be someone calling and, to make a statement.**

The following morning Garda Nicholson arrived back with two people, an Inspector Barrett and a uniformed Sergeant. Garda Nicholson left and Inspector Barrett asked Mr. Conlon would he like to make a statement and he agreed. He made and signed what he now states was a false statement for he had never met and did not know William (Billy) Flynn.

It is important for us, Sir, to equally attempt to balance this account by setting out the responses of Garda John Nicholson and D/Sgt. John White to these allegations.

A number of interviews were conducted between members of An Garda Síochána, investigating the claims of Bernard Conlon, and Garda John Nicholson and D/Sgt. John White.

Garda John Nicholson's account of his dealing with Bernard Conlon concerning the after hours drinking case at Raphoe may be put in this way. He acknowledges that on 29th August, 1997 D/Sgt. White phoned him asking him to pass on a message to Bernard Conlon to be in Raphoe the following night as he was helping the Gardaí there with "a little matter". This was not discussed with him. He accepts that he went to Mr. Conlon's address and passed on the message. Mr. Conlon said to him that he was helping some Gardaí in Raphoe. He contacted D/Sgt. White and told him that he had delivered the message. He accepts that he took the statement from Bernard Conlon on the 8th September, 1997 in relation to the 'after hours drinking' complaint at McBrearty's on the 30/31st August, 1997. He does not accept that he told Bernard Conlon that D/Sgt. White wanted Bernard Conlon to be in the lower bar of the dance hall and to have as much drink as he could in front of him when the Gardaí came in, or that he should be not too interested in the band, or that if he didn't go he would be letting D/Sgt. White down. He denies asking Bernard Conlon whether he was alright for money on 30th August, 1997 or leaving Bernard Conlon home, in a silver unmarked patrol car, following the making of his statement on the 8th September, 1997. He denies that he called three weeks later to Bernard Conlon and handed him a copy of his statement. He acknowledged that, approximately twelve months later, he gave a typed copy of the statement to him as a matter or urgency and at the request of D/Sgt. John White. Sir, Garda John Nicholson denies ever telling Bernard Conlon not to show the statement to anybody. He also denied that he called to Bernard Conlon having been contacted at Sligo Garda Station by Mr. Conlon about the witness summons, which he had received. He states he never saw the witness summons and he never told

Bernard Conlon to 'stick to' his statement. He denies that he was in regular contact with Bernard Conlon.

When questioned about meetings, which he was alleged to have had with Bernard Conlon involving D/Sgt. John White prior to the giving of evidence by Bernard Conlon at Letterkenny District Court in respect of the after hours drinking case against the McBrearty's, he acknowleged that one evening at approximately 7.45 p.m. some months after September, 1997 he had received a phone call from D/Sgt. White requesting him to pass a message on to Bernard Conlon to meet D/Sgt. White at the Statoil Filling Station in Sligo at 8 p.m. He was in town, off duty, in his private car and immediately went to Cartron Bay to deliver the message. He met Bernard Conlon coming very fast towards the Bundoran Road. He stopped briefly and spoke to him and before he could say anything Bernard Conlon informed him that he was in a hurry and was meeting D/Sgt. White at the Statoil Filling Station at 8.00 p.m. He sat into the car and Garda Nicholson states that he drove Mr. Conlon fifty to eighty yards to the filling station where Mr. Conlon got out. D/Sgt. White pulled up in his car two minutes later and Mr. Conlon sat into the front. Garda Nicholson states that he immediately left. He did not speak to D/Sgt. White at the filling station.

On another occasion some months after the taking of this statement on the 8th September, 1997 between 8.00 and 11.00 p.m. he states that he received a telephone call from D/Sgt. White who told him that he was sitting in a car at the rere of Sligo Garda Station with Bernard Conlon and asked him to meet them for a minute. He went to the yard at the rere of the Station and met with D/Sgt. White and Bernard Conlon and he was asked to try and make arrangements for a lift for Mr. Conlon from Sligo to attend a court case in Letterkenny to give evidence. Something was said about Mr. Conlon's previous convictions being handed over to the defence counsel. He said he spent approximately two minutes, or less, in their company and left. This is an account which he gave in a statement of evidence made on the 10th February, 2000.

He was asked further, by D/Supt. Joseph McGarty and D/Inspector Joseph McHugh on the 4th April, 2000 at Santry Garda Station, about the alleged meeting the night, of what we believe to be December 10th, 1998, before Bernard Conlon gave evidence in Letterkenny District Court. When asked whether he made arrangements to have Mr. Conlon collected at the filling station in the Bundoran Road and taken to Letterkenny District Court, he replied that he had made an arrangement at Bernard Conlon's request to be collected outside the General Post Office at Sligo and taken to Letterkenny District Court. He was not aware that he had called to see Bernard Conlon on the night before he was due in Letterkenny District Court to give evidence. When asked specifically about whether Mr. Conlon went in his car to collect Garda Nicholson's daughter, who was learning music, Garda Nicholson replied that Mr. Conlon had sat into his car for less than a minute, that his niece was in the car and that he was taking her to the cinema. He stated that he met Bernard Conlon less than 100 yards from the Station and Mr. Conlon told him he was meeting D/Sgt. White. Garda Nicholson states that he drove him less than 100 yards and dropped him off at the Statoil Station on the Bundoran Road. He was going down to deliver the message to Bernard Conlon when he met him

near the filling station. He states that he never sat into D/Sgt. John White's car when D/Sgt. White arrived and didn't speak to him. He states that he did not get into the back of the car with D/Sgt. White and Bernard Conlon and Mr. Conlon did not say to him that he was 'not happy' to be there. When asked whether he got out of the car and drove down to the yard, behind Sligo Garda Station, he stated that on a date which he could not remember he met Bernard Conlon and D/Sgt. White at the back of Sligo Garda Station but this was a later occasion. He denied discussing the court case with Mr. Conlon and asking him to 'stick to his guns'. He accepted that he overheard a discussion between D/Sgt. White and Bernard Conlon concerning his criminal record and that it would be brought up in court. D/Sgt. White discussed Mr. Conlon's attendance at court and that the defence was going to have a go at him about his convictions. He did not have Bernard Conlon's statement and he did not accept that he read it in the car to him. He said "the statement was never mentioned". He denied telling Bernard Conlon that if he were asked in court how he found out there was an escort coming from Letterkenny to say that a uniform guard came from Sligo to tell him. He further denied dropping Bernard Conlon off and denied speaking to him after the court case in Letterkenny at which Mr. Conlon had given evidence in order to congratulate him and wish him a happy Christmas. He was aware Mr. Conlon had given evidence from D/Sgt. White. He did not see Mr. Conlon at Christmas and did not give him a hamper. He accepted that some three years prior to this Bernard Conlon would have received a hamper from the Social Services with which Garda Nicholson was involved. He denied any regular contact with Mr. Conlon in relation to crime in the housing estate in which he lived, as he regarded him as untrustworthy.

He also denied a conversation which Bernard Conlon had said had taken place after his identification of Mark McConnell on the 1st October, 1998 where he was alleged to have said "you done the business in Letterkenny I will fill in the certificate of lost earnings and give it to Mick Reynolds. He will get you a days wages". He describes this as a tissue of lies.

He also denies any discussions with Bernard Conlon about a statement made in respect of the silver bullet affair or indeed that incident. He also denies the incident in which Mr. Conlon alleges he attended at his house with a Ban Gharda and discussed the silver bullet statement with him.

He denies ever making any cash payments to Bernard Conlon but was concerned in the applications made for his witness expenses which we will refer to shortly.

Garda Nicholson acknowledged that he called down to Bernard Conlon in respect of the 'Flynn letter'. He denied saying to Bernard Conlon when he called "I know you are looking for me you have got an old letter". He did call down to him and collected the letter. He acknowledged that he more than likely received the envelope but could not honestly say one way or the other. Whatever he got, he gave to C/Supt. Austin McNally on the same date. He only vaguely glanced through the letter and did not read it. He could not recall any second page but it was quite possible that it was there - there was something about offering money to him if he withdrew the evidence in court. Bernard Conlon did not tell him what

D/Sgt. White had told him to say and he did not say to Mr. Conlon that he (Nicholson) was already briefed. In respect of the letter produced to him he said "the only page I saw was the first page. I did not see the second page". He did not tell Bernard Conlon that someone would be calling to take a statement. However, he accepts that he called to Mr. Conlon the following morning with Inspector Barrett and Sgt. Gallagher on the instructions of C/Supt.McNally. He did not tell Bernard Conlon that he was to say what D/Sgt. White and he (Nicholson) had told him to say to these Gardaí.

In respect of the investigation carried out by the Carty inquiry team, into the false allegation made by Bernard Conlon, Garda Nicholson stated in his statement of evidence made 10th February, 2000 that on Friday, 28th January, 2000 he spoke with Supt. Lennon on the phone and discussed with him the arrest of Bernard Conlon who was at the time detained at Manorhamilton Garda Station. On the same date, he also received a phone call from D/Sgt. White and discussed the same topic. The following day he received a telephone call from D/Sgt. White who again enquired if he knew anything further about the arrest of Bernard Conlon or whether he had been released. Garda Nicholson informed him that he knew absolutely nothing except what he had read on a telex message concerning the arrest. D/Sgt. White stated that he would try to contact Bernard Conlon through a contact number in a nearby house. Within fifteen minutes, he telephoned back and informed Garda Nicholson that Bernard Conlon was not at home. After receiving the call on 29th January, 2000, Garda Nicholson decided to try and contact Mr. Conlon the next day. The following day, Sunday, 30th January, 2000 Garda Nicholson telephoned a neighbour's house in Cartron Bay and asked to speak to Bernard Conlon. A short time later he saw Mr. Conlon walking and pulled up beside him in his car a short distance away but Mr. Conlon muttered something like "I cannot talk".

The following day, he received a telephone call from Supt. Lennon who informed him that he was in the Sligo Park Hotel and asked him to call to see him. He did so. Superintendent Lennon stated that he was completely honest and clean in relation to investigations in County Donegal and that he fully intended to be back as Superintendent in Letterkenny. Garda Nicholson was asked about Bernard Conlon by Superintendent Lennon and he informed him that he tried to speak with him the previous day and that Bernard Conlon had walked away. On 1st February, 2000 Garda Nicholson received two calls from D/Sgt. White on his mobile phone and he told him that he could not talk to him. The following day at 8.20 a.m. Garda Nicholson telephoned Supt. Lennon from Dublin Airport and requested him to speak to D/Sgt. White and request that D/Sgt. White not telephone him or speak to him again in the future. Since that date, Sir, he claims that he had no contact by telephone or in person from either Supt. Lennon or D/Sgt. White.

On the 21st March, 2000 at Newline Road, Letterkenny, County Donegal D/Inspector T.F. Foley arrested D/Sgt. John White under Section 4(3) of the Criminal Law Act, 1997 on suspicion of procuring the commission of an offence under Section 12 of the Criminal Law Act, 1976 in that between the 1st July, 1998 and 21st July, 1998 at Cartron Bay, Sligo he procured Bernard Conlon to make a false statement to the Gardaí at Sligo that a criminal offence had been

committed. He was detained at Letterkenny Garda Station from 7.05 p.m. on 21st March until his release without charge at 12.15 on 22nd March, 2000. He was suspended from duty, by Chief Supt. Denis Fitzpatrick, from 7.15 p.m. on 21st March, 2000.

The sequence of events which led to this arrest commenced, it would appear, on 17th March, 2000 when D/Supt. Joseph McGarty and D/Inspector Tadgh Foley met with D/Sgt. White. D/Sgt. White asked to tape the interview but the Superintendent declined this request. D/Sgt. White invited them to put the allegations to him and D/Supt. McGarty said it would be appropriate to caution him at which point D/Sgt. White consulted with his Solicitor. The advice which he claims he received was to 'say nothing'. The interview was terminated and at it's conclusion D/Sgt. White told D/Supt. McGarty that he had tapes and notes of conversations with senior officers and then said there was no need to go searching his house "you won't find them. Everything is with my Solicitor". D/Sgt. White then left the room. It was 10.25 a.m.

On 20th March, 2000 D/Sgt. White reported to Sgt. Michael Foy that his personal locker in Letterkenny Garda Station had been interfered with and a number of items removed from it. This alleged interference occurred between 11.30 a.m. on 17th March, 2000 (within an hour of his interview with D/Supt. McGarty and Inspector Foley) and 6.10 p.m. on the 20th March, 2000. The arrest then took place on 21st March, 2000 at 7.03 p.m. Whilst being processed by Sgt. Michael Foy, in relation to his detention, D/Sgt. White complained that Sgt. Fox had taken possession of his keys to secure his car at 7.03 p.m. He complained his arrest was 'illegal and unlawful' and explained that he had attended a meeting with Assistant Commissioner Carty at Hillgrove Hotel, Monaghan in which he brought to his notice certain aspects of the current investigation in Donegal which were as follows:

(1) that the statement taken from Frank McBrearty Jnr. On 4th December, 1996 was false and

(2) that the arrest of Michael Peoples on 6th May, 1999 was unlawful.

He stated that he had informed Chief Supt. McNally and D/Insp. John McGinley of "three very valid reasons why Michael Peoples should not be arrested for allegedly threatening Bernard Conlon". He stated that, at this time, both officers were asking him to carry out confidential enquiries into the whereabouts of Michael Peoples and to put surveillance on his house. He stated that he did this, and reported his findings by mobile phone to D/Insp. McGinley. He stated that Assistant Commissioner Carty advised him that Chief Supt. Fitzpatrick and D/Supt. John McGinley had informed Assistant Commissioner Carty that they strongly suspected him of being involved in a number of serious offences including the present allegation in respect of Bernard Conlon. He had assured the Assistant Commissioner that he was not involved in any criminal activities relating to the accusations. And he stated that the Assistant Commissioner did not believe that he had anything to do with any of the crimes. He stated that he believed "that this arrest was simply to discredit him in relation to any future court cases".

In the course of his detention, D/Sgt. White consented to Chief Supt. McGarty examining his personal diary. The envelope containing this was opened by Sgt. Foy and handed to D/Supt. McGarty in the presence of D/Sgt. White. D/Sgt. White said that he was not satisfied that D/Inspector Foley should examine his diary because there "may be reference to himself and his team in relation to criminal wrong doings on their behalf". At 12.13 a.m. D/Sgt. White was released from custody but objected to the seizure of his diary as a 'serious invasion' of his privacy. He repeated that it contained reference to wrong doings and possible criminal actions on behalf of the investigation team prior to this date.

It is of some importance to know that a complaint made to Sgt. Foy in relation to the alleged removal of materials from D/Sgt. White's locker at Letterkenny Garda Station relates to the alleged removal of all his official notebooks including all notebooks which he used in the case of DPP - v – McBrearty and others. There were apparently also several notepads in which he had taken notes of happenings at court cases. A notepad in which he had noted all dates and times of telephone conversations with members (serving and retired) who had dealings with Bernard Conlon was missing and perhaps other paper work, he claimed. A black/grey Sanyo dictaphone with tape inside and two videocassette tapes with covers were also missing.

In the course of his detention, D/Sgt. White was interviewed at length. In response to most questions concerning the Bernard Conlon silver bullet affair he had nothing to say or did not reply allegedly on the advice of his solicitors. At the conclusion of one of the interviews, with D/Supt. Joseph McGarty and D/Insp. Foley on 21st March, 2000, he stated, and this, Sir, is most important: "I wish to categorically deny any wrong doing in relation to my dealing with Mr. Conlon that's all". He had also indicated that he had nothing more to say but would forward a statement through his solicitor in the very near future. In respect of the second page of the 'Flynn letter' and the suggestion that he had supplied the second page of that letter and that it was in essence a forgery, he stated that he had never invented any typing on any typed document and certainly had not typed the second page. He goes on to say: "I have never in my life invented the typing on any typed correspondence" and referred to the miss spelling of McBrearty on the second page. Each of the allegations made by Bernard Conlon was put to D/Sgt. White in the course of interviews while he was detained. A reference was made to the fact that a statement would be furnished by his solicitor in the very near future. No such statement has been forthcoming in relation to the allegations of Bernard Conlon and the silver bullet issue to date of which we are aware.

Bernard Conlon has described two types of payment which he received in the course of his dealings with the Garda Síochána. The first are undocumented and mostly related to cash payments. These allegedly were made in the course of his dealings with D/Sgt. White and to an extent Garda John Nicholson. The second type of payment is documented and relates entirely to payments made by cheque to Bernard Conlon, for his attendances at Letterkenny and Donegal District Courts, as a witness and were dealt with in the form of seven separate claims.

In summary Bernard Conlon's account of the first type of payments are as follows:

(1) Mr. Conlon alleges that he received the sum of £100.00 (2 x £50.00 notes) from D/Sgt. White on what he believes to have been a Wednesday after 31st August, 1998 in return for making a statement concerning the alleged breach of the liquor licensing laws on 30th/31st August, 1998 at McBrearty's but before he made that statement on the 8th September, 1998.

(2) Some days after making the statement on the 8th September, 1998, but before he received the summons to appear in court as a witness in respect of the charge against the McBrearty's arising out of the 30th/31st August, 1998 Bernard Conlon alleges he received a further £100.00 (5 x £20.00 notes) from D/Sgt. White at his own home on what he thought was a Sunday morning.

(3) Mr. Conlon alleges that a payment of £200.00 in cash was received from D/Sgt. White on a Friday night before he reported the silver bullet incident to the Gardaí at Sligo. He has also given an account in which he states that this money was given to him on the Sunday before he reported this matter. This money was paid to him for making the false allegation against Mr. McConnell and Mr. Peoples in advance of making the allegation.

(4) Having given his evidence to the District Court in December, 1998 he alleges he was driven home by D/Sgt. White and given £20.00 and a bottle of Paddy whiskey.

(5) In April, 1999 Bernard Conlon received, he claims, a letter dated the 21st April, 1999 from William Flynn, Zimmerman & Company International Ltd. D/Sgt White then allegedly asked him to assist in making the false allegations against William Flynn which he agreed to do. These were made by him in a statement dated the 27th April, 1999 to Insp. Barrett. Mr. Conlon alleges he agreed to do this and was given £100.00 on the same occasion at his home by D/Sgt. White from D/Sgt. White's wallet (5 x £20.00 notes).

The balance of the payments received by Bernard Conlon were by cheque in respect of witness expenses, which were the subject of a number of claims. Bernard Conlon alleges that Garda Nicholson and D/Sgt. White told him that they would get him witness expenses for attending Letterkenny and Donegal District Courts against the McBrearty's. He had acknowledged that he was not employed in the sense of not working during these appearances. When asked why he was given money for loss of wages he said it was because:

John Nicholson and D/Sgt. White said they would sort this out and not to worry about it. John Nicholson said he would put me down for £40 a day and a night overstay and dinner after that and plus travelling expenses.

He said that Garda John Nicholson told him that loss of wages certificates were sent in for him signed by Ben McGuire. He knew he was not entitled to loss of wages but he "went along with the other two men. I was happy to get the extra money". Because he was travelling up and down to Letterkenny for weeks he stated "I felt I was entitled to get what they (meaning D/Sgt. White and Garda Nicholson) agreed on". One of the payments made was for his attendance at Letterkenny for the purpose of identifying Mark McConnell. He admitted he was not at any loss of wages and took the money because "it was money and it was offered to me as part of the agreement in relation to Letterkenny" – an agreement he said was made with him by D/Sgt. White and Garda Nicholson. He said he had not looked for expenses immediately after attending court in Donegal because he knew they would arrive fairly quickly. In fact, according to Rita Harmon a clerical officer who dealt with claims for expenses, he made at least one phone call to her in respect of each of the claims submitted. From the papers, it appears that 7 claims for witness expenses were made on behalf of Mr. Conlon supported by documentation. Inquiries have been made as to the appropriate level of payment, which ought to have been made by way of witness expenses to Bernard Conlon in respect of his attendances at court and at the identification procedure on the 1st October, 1998 and in relation to the authenticity of supporting documentation.

Supt. D. F. Walsh of the Finance Section, Garda Headquarters has made a statement, outlining the procedure which normally applies to witness expenses. Ordinarily, witness expenses for persons attending court on criminal cases are paid by the local Superintendent if they come within the agreed schedule of various fees. Headings under which the fees are payable, by way of witness expenses, are laid out in Garda Headquarters circular 97/89 of 18th October, 1989. A claim is initiated by the completion of a form A80 by the Garda member involved in the case. The form contains the name address and occupation of the witness and under various headings provides details of the case in which the witness was involved, including the place and date of court attended, the amount of time (in respect of a witness's time) required in order to attend, and the amounts to which it is claimed the witness is entitled. This document is signed by a member of An Garda Síochána declaring that the information given by him on the form is correct. It is submitted to the local Superintendent who certifies that the witness attended court as stated, that he was necessarily absent from home or business for the period shown, that he was entitled to the amount paid or payable to him and that such amount is in accordance with the authorised scale and has not previously been paid or claimed.

Ms. Rita Harmon, outlined the procedure applicable to the processing of these claims at Letterkenny Garda Station. The form A80, Certificate of Loss of Earnings and other related documentation, if appropriate, (for example travel

tickets if the witness travelled from overseas) is submitted to the District office at Letterkenny Garda Station by either the member in charge of the particular case or a member having the rank of Sergeant. As part of her duties, she would check each claim, to ensure that the relevant documentation was attached and that the amounts of money claimed were in accordance with the current rates. If the claim was deemed to be correct it was forwarded to the Superintendent, or the Inspector who was the acting Superintendent, for signature. No cheques were made out or issued until the claim was returned signed by the Superintendent or the acting Superintendent. They signed the claim in the space provided on form A80. If the claim was in order, a cheque was made out for the witness and returned to the Superintendent, or acting Superintendent, for signature accompanied by two letters, one addressed to the witness, the other addressed to the Sergeant in charge of the Station or Section from which the prosecution was brought. When the cheque was signed it was posted to the Sergeant in charge and accompanied by the letter addressed to the witness. Both letters were signed by the Superintendent, or acting Inspector. Details of the cheque payment were recorded in a cheque payment book and on the cheque stub.

At the end of every month, the original of all claims paid from the Garda Síochána account for the particular month are forwarded to the Finance Section, Department of Justice Equality & Law Reform, Deerpark, Killarney County Kerry as part of a monthly return. This is required so that the Department can reimburse the local Superintendent's account with the sum extended in the previous month. Included in the return are the original claims in respect of payments made to State witnesses. Supt. Walsh has carried out an examination of the claims made and the amounts paid in respect of Bernard Conlon: having regard to the fact that the loss of earnings certificates submitted were allegedly fraudulent has come to the conclusion that the Superintendent's account is at a loss, as a result of the submission and payment of bogus claims for loss of earnings, taking due account of the level of payment which would have been applicable to somebody (like Mr. Conlon) who was unemployed. The total amount paid out in respect of witness expenses claims to Bernard Conlon was £1,443.60. The total amount, which was due and which might properly have been paid, was £810.10. Therefore there was an overpayment or loss to the account of £633.50.

The focus of inquiry in this regard is primarily upon the claims made in respect of loss of wages certified in respect of each claim and attached to each claim form submitted. To take the various claims which are in issue.

The first of the claims made on the 29th May, 1998 was in respect of three attendances at court on the 9th March, 1998, the 27th April, 1998 and the 25th May, 1998. Attached to this claim, was a certificate that Mr. Conlon had been absent for five days from work at a rate of £40 per day due to his being a witness at Letterkenny District Court. It was dated 28th May, 1998 and signed by Bernard McGuire. Mr. McGuire denies that Mr. Conlon was working for him, that he issued this certificate, wrote it or signed it. A cheque was issued in the amount of £390.00 as a result of this claim, which was ultimately given to Bernard Conlon by D/Sgt. White. The claim was submitted by D/Sgt.

White. Mr. Conlon denies that he produced the certificate and says that in respect of all certificates, Garda Nicholson was to take care of all the paperwork. When all adjustments were made the Superintendent's account was at a loss of £144.00 in respect of this claim.

The second claim submitted by Sgt. Sarah Hargadon contained a certificate purportedly signed by Thomas McGuire dated the 24th June, 1998 and certifying that Bernard Conlon had attended court in Letterkenny on the 22nd and 23rd of June as a witness and was at a loss of £40 per day from his employment as a housing caretaker and gardener. Thomas McGuire in a statement states that Bernard Conlon was never employed by him as a caretaker or gardener. When shown the certificate he stated that he had never seen it before and had not signed it. Sgt. Sarah Hargadon, she claims, had some discussion over the phone in relation to this claim for witness expenses for the 22nd and 23rd June, 1998 with Mr. Conlon and she advised him to speak to Garda Nicholson at Sligo Garda Station. She states that Garda Nicholson informed her that he would send on the certificate by post and some days later as she had not received it, she contacted Garda Nicholson again who informed her that he would have it in the post as soon as possible. Some days later, she received the written certificate for loss of earnings of £40 per day purportedly signed by T. McGuire. She attached it to the claim and submitted it.

Garda Nicholson was interviewed in respect of this certificate and indicated that it was possible that Sgt. Hargadon requested a certificate from him on the 22nd or 23rd June, 1998. He denied writing out the certificate of earnings in respect of Mr. Conlon for those dates on a half sheet and when the certificate was produced to him could not recall seeing the certificate before. The total claim is for £132 and when all due allowances to Mr. Conlon were made the Superintendent's account was at a loss of £53 in respect of this claim.

The third claim submitted on the 14th November, 1998 by D/Sgt. White was a claim for £312 in respect of attendances by Mr. Conlon as a witness at Letterkenny District Court from the 7th to the 11th December, 1998. A reference to November on the face of this document is in error. The loss of earnings claim for £200 based on a certificate, which is undated, was purportedly signed by Ben McGuire and was attached to this claim. When all due allowances were made Mr. Conlon was entitled to £175 and therefore the account was at a loss of £137 in respect of this claim. Mr. McGuire again denied all knowledge of this certificate as he did of all these certificates. D/Sgt. White had no reply to make in respect of any alleged dealings with form A80 or other questions relating to the claims. In respect of whether he delivered the cheque to Bernard Conlon, he had no reply on the alleged advice of his solicitor and stated that "I will answer all this in a full statement which I will forward to you in the near future".

The fourth claim was in respect of appearances at Donegal town District Court from the 1st to 4th June, 1999 in the case of DPP v Frank McBrearty Snr. and others. This claim was accompanied by a letter from D/Sgt. White which stated that "Mr. Conlon was present in court on behalf of the State on the

explicit instructions of Judge O' Donnell". The total claim in respect of this appearance was £220. A certificate of loss of earnings was furnished in support of the claim, purportedly signed by Ben McGuire and claiming a loss of £40 per day for four days in respect of Mr. Conlon. With all due allowances, Mr. Conlon would have been entitled to £110.20 and accordingly the Superintendent's account was at a loss of £112. D/Sgt. White had nothing to say in respect of this claim, but, Sir, you have noted that he has denied any wrongdoing, or the acceptance of any illegal behaviour.

The fifth claim was allegedly submitted by D/Sgt. White on the 31st August, 1999 and was in respect of a court appearance at Letterkenny District Court against Mark McConnell brought under the Criminal Justice Public Order Act, 1994 on the 24th June, 1999. The amount claimed was £75. Once again a certificate of loss of earnings (undated) was submitted purportedly signed by Ben McGuire claiming £40 by way of loss of earnings as a housing caretaker for the 24th June. Mr. McGuire did not issue any such certificate. D/Sgt. White had nothing to say in relation to this matter when interviewed. The same comment as to his attitude applies in each instance.

The sixth claim was really a joined claim submitted on the 13th December, 1999 by D/Sgt. White apparently and was in respect of expenses for Mr. Conlon for attending at Letterkenny District Court on the 18th November, 1999 and then in a second claim of the same date there is a claim in respect of attendances at Donegal town District Court on the 6th and 7th September, 1999 and the 23rd November, 1999. This claim was accompanied by a loss of earnings certificate which was undated and purportedly signed by Ben McGuire for the respective dates of the court appearances purporting to certify a loss of earnings of £160. The Superintendent's account suffered losses allegedly of £19 and £84 respectively in respect of the two claims.

The seventh claim was somewhat different, in that Mr. Conlon attended as a witness at what was termed an informal identification parade, held outside Letterkenny District Court on the 1st October, 1998. This was a claim by D/Sgt. Connolly in respect of the occasion upon which Mr. Conlon travelled from Sligo to Letterkenny to make the false identification of Mark McConnell outside Letterkenny District Court as part of the alleged plan to accuse him wrongfully in relation to the silver bullet affair. D/Sgt. Connolly in respect of loss of earnings, believed that Mr. Conlon was employed by Ben McGuire and looking after cattle. He was also aware that Mr. Conlon supervised tenants in houses owned by Ben McGuire at Cartron Bay, Sligo. He asked D/Garda Reynolds to contact Bernard Conlon and request a receipt for any loss of wages from his employer that he wished to claim. D/Garda Reynolds obtained a receipt for £80 for loss of wages in respect of Bernard Conlon's attendance in Letterkenny. Form A80 was then completed and together with a typed report and the attached receipt for loss of earnings was forwarded on the 22nd November, 1998 to the Superintendent at Sligo.

This receipt was furnished to D/Gda Reynolds in the following way. D/Garda Reynolds called Bernard Conlon and requested a certificate regarding his loss of wages and Bernard Conlon told him that he would leave it in for him at the

Garda Station. He received a call from Bernard Conlon complaining that he had not received payment and Reynolds asked if he had sent his certificates. Bernard Conlon said he had not. He was told he would get no payment until the certificate was attached to the claim. Bernard Conlon complained and Reynolds told him he could do nothing for him. Shortly afterwards D/Garda Reynolds received a white envelope in his correspondence and on opening it he discovered the requested certificate. He left the certificate and correspondence for D/Sgt. Connolly. This was purportedly another loss of earnings certificate signed by Bernard McGuire who denies ever signing it or completing it. Making all due allowances, the Superintendent's account in Sligo was at a loss of £56.50. Of course, if this trip was part of a conspiracy, Bernard Conlon deserved nothing for it. People in Ireland are not paid by the State for framing people.

Bernard Conlon in a statement to D/I Joseph McHugh and D/Sgt. G. Giblin on the 25th April, 2000 answered a number of questions in respect of this claim. He stated that Garda Nicholson came down to him at his home at Cartron Bay, the day after the identification i.e. the 2nd October, 1998 and told Bernard Conlon that he was going to put in expenses for him travelling to Letterkenny i.e. expenses for "buses, grub and a days wages which were all lies". Bernard Conlon said that it was all lies in the sense that Garda Nicholson knew that Bernard Conlon hadn't got the bus. He was shown the certificate concerning loss of earnings in respect of this claim and said that he hadn't seen it before. When asked what he knew about it he said that Ben McGuire had not signed it at all and that Garda John Nicholson was looking after this and was sending all these up to D/Sgt. White in Letterkenny.

He stated that he had never asked either Ben or Thomas McGuire for the loss of wages certificates because he was not working for them. He had told D/Sgt. White and Garda Nicholson that he was not working. Garda Nicholson said not to worry about it that D/Sgt. White and himself would look after him because he had gone along with them. He was never asked by Garda Nicholson to ask Ben McGuire to get a receipt for him for loss of wages. All of the cheques issued were encashed by Bernard Conlon.

In a statement of evidence, made on the 28th March, 2000, Garda Nicholson stated that after Bernard Conlon's first court appearances he had telephoned Garda Nicholson at Sligo Garda Station stating that he urgently required his court expenses for attending Letterkenny as he was going away. Bernard Conlon apparently had spoken to D/Sgt. White who had informed him that the only way he would get his expenses was when he obtained a receipt from his employer Ben McGuire. D/Sgt. White had told Bernard Conlon to telephone Garda Nicholson and ask him to arrange a receipt from the employer and that he in turn would receive his expenses immediately. Garda Nicholson asked Bernard Conlon to go to Ben McGuire and get a receipt but he refused me and "informed me in a very surly manner that if we could not arrange this for him that he would never go down to court in Donegal again to give evidence". Bernard Conlon rejects this proposition and said that he never made such a threat. Garda Nicholson alleges that he informed D/Sgt. White by telephone of the position and:

> **White was most anxious that I or someone else in Sligo Garda Station would get a receipt to cover Conlon's expenses. D/Sgt. White informed me that he was seeking £40 per day as loss of earnings for attending court and stressed how important and vital a witness he was for the State. He stated that they could not afford to lose him or to do without him and that he was the only and most important civilian witness for the State against the Parting Glass Nightclub for the night of the 30th/31st August, 1997. I immediately set out looking for Ben McGuire in Sligo as I then realised the importance of the matter and that Conlon needed to get his expenses fast or that the State would lose him as their witness.**

He then states that he spent over an hour looking for Ben McGuire to get a receipt from him and visited a number of places but failed to locate him. He discovered that he was in Northern Ireland, where he owned land and lived part time. He alleges that he contacted Bernard Conlon and informed him that he could not locate McGuire. Mr. Conlon stated that if they could not get money to which he was entitled fast that he would wash his hands of the Gardaí and never attend court in Donegal again. Garda Nicholson explained that he was only trying to help him and D/Sgt. White and that it should not be his problem but he would do all he could to resolve it. He goes on to state as follows:

> **That day I discussed the matter and the great urgency attached to it with a close friend which I do not wish to name. As a result this person stated to me I would have a receipt fast, just give the particulars and the dates of Conlon attending court. Within half an hour this person handed me a receipt, which I did not question and immediately faxed it from Sligo Garda Station to Letterkenny Garda Station for the attention of either D/Sgt. White or Supt. Lennon. At no time did I write any of those receipts or request anybody to do so. In turn I would have forwarded a few similar receipts so that Conlon would receive his court expenses and on each occasion it was the same procedure as the first receipt.**

He states, Sir, that on all occasions there appeared to be the greatest urgency and as soon as Bernard Conlon returned from court he wanted immediate payment. He states that Bernard Conlon would contact him and he would contact D/Sgt. White. Then D/Sgt. White would request him to sort out the receipt and he, Garda Nicholson, would tell D/Sgt. White that he wasn't happy about this but was assured that everything was totally honest and above board in relation to the payments. Such was the urgency of payment, that D/Sgt. White agreed to send a patrol car from Letterkenny to Sligo on one occasion with the closed envelope addressed to Garda Nicholson within which was another closed envelope addressed to Bernard Conlon which he believed contained a cheque for expenses for attendance in court. D/Sgt. White telephoned him the previous evening and informed him that Bernard Conlon was on his back again for money and that he had made an arrangement with

him to send a cheque by car and asked Garda Nicholson to meet Bernard Conlon at the District Court the following morning to give the cheque to him. This Garda Nicholson did. Indeed, Bernard Conlon describes such an occasion in his interviews with the Gardaí.

Garda Nicholson in a further interview on the 4th April, 2000 denied that he looked after all the expenses and paperwork for Mr. Conlon. He accepted that he faxed and posted receipts for recovering expenses in court to Letterkenny Garda Station but denied telling Bernard Conlon that he would look after his expenses through the court clerk in Letterkenny. He did not phone Bernard Conlon to inform him to meet D/Sgt. White at Sligo Garda Station to collect cheques for expenses. He acknowledged meeting him at Sligo District Court in the circumstances already outlined. He agreed with D/Sgt. White's statement that he, Garda Nicholson, produced certificates of earnings for Bernard Conlon after each case and sent them by post to D/Sgt. White. He was not prepared to name 'the friend' who prepared the forged certificates. It was the same 'person' who arranged six certificates of earnings for Bernard Conlon but not 'the T. McGuire' one.

The question of this 'close friend' was further pursued in an interview between Garda Nicholson and D/Supt. Joseph McGarty and D/I. McHugh at Sligo Station on the 11th May, 2000. He said he was not prepared to name his 'close friend' who returned to him with the certificates of earnings in respect of Bernard Conlon when requested. He stated that he did not know they were forged and wasn't told that they were forged. They were given to him. He said he never made out a claim for witness expenses and did not question his close friend when he got the forged certificate because "he would be a very genuine friend and I did not see any reason to ask any questions". He did not ask his close friend to get a forged certificate of earnings for him in respect of Bernard Conlon.

He said his 'close friend' knew the date to put on the certificate and the amount he was claiming because the dates were given to Garda Nicholson by D/Sgt. White who in turn gave the dates to his close friend and he was sure that he was told the amounts by D/Sgt. White as well. He had spoken to Bernard McGuire once who had no problem with Bernard Conlon going to court and claiming expenses if he was attending court. He says that he was not aware at the time the certificates were supplied that they were forged but he believed now at the time of interview that they were. He was given no authority by Bernard McGuire to issue a certificate of earnings for Bernard Conlon for £40 when he was not working for him. Nothing like this was ever discussed with Bernard McGuire. He did not give any name for his close friend in respect of the certificate of earnings but his close friend would have been aware that Bernard Conlon was working for McGuire. He could not recall whether he said he wanted some of the certificates signed by Ben McGuire. He would not have said Thomas McGuire "I didn't say any name". He also added that he never had any conversation with Thomas McGuire.

Bernard McGuire states that Garda Nicholson never discussed anything about the certificates with him. Garda Nicholson was also asked why if he believed

the certificates were genuine he went to Bernard McGuire to tell him that he, Garda Nicholson, had sent on certificates in his name claiming witness expenses for Bernard Conlon. He replied that he went out to Mr. McGuire knowing that he was Bernard Conlon's boss "to let him know that Bernard Conlon was going to court in Donegal".

It should be noted that Bernard Conlon does not make any allegation of impropriety on the part of Sgt. (now Inspector) Connolly or D/Garda Michael Reynolds in relation to their inquiry into the silver bullet affair, in any respect, or indeed Inspector Barrett or Sgt Gallagher in respect of the 'Flynn letter'.

Garda John Nicholson was charged with a number of offences arising out of the bogus loss of earnings certificates attached to the witness expenses claims and the payments made on foot thereof to Bernard Conlon. On the 26th July, 2002 Garda Nicholson was charged with and pleaded guilty to three counts of uttering forged documents contrary to Section 6 of the Forgery Act, 1913 at Riverstown District Court, Sligo. He was dealt with by Judge Anderson under Section 1(1)(i) of the Probation of Offenders Act, 1907. Under the 1907 Act the Judge found the facts proved but did not record a conviction against Garda Nicholson. These charges related to uttering forged documents, namely documents purporting to be certificates of loss of earnings for Bernard Conlon and purported to be signed by Bernard Maguire, with intent to defraud. Garda Nicholson applied for retirement which took effect from the 4th September, 2002. On retirement he was recommended for classification as "very good" by Superintendent John J. Fitzgerald. Evidence of his good character was given to the District Court by Chief Superintendent J.W. Sheridan and Others.

We also understand that D/Sgt. John White though suspended during his detention was reinstated. He requested a transfer, which was granted and took effect on the 24th March, 2000 from his position in Donegal to the Special Detective Unit, Harcourt Square in Dublin. He failed to turn up for duty at his new post and at 1.30 p.m. on the 26th March, 2000. He reported unfit for duty suffering from 'severe stress' and has remained off duty since that time.

We propose to continue the inquiry and investigation in relation to the events surrounding the silver bullet affair and would be happy to receive further assistance from those having knowledge of these events.

EDWARD MOSS

Paragraph (f) of the Terms of Reference requires the Tribunal to enquire into:

> **The circumstances surrounding the arrest and detention of Frank McBrearty, Jnr. on 4th February, 1997 and his subsequent prosecution in the Circuit Criminal Court in relation to an alleged assault in December, 1996 on Edward Moss with particular reference to the Garda investigation and the management of both the investigation and the role of the Gardaí in the subsequent prosecution.**

Sir, you have already indicated on the 15th July, 2002, the manner in which you propose to approach this Term of Reference:

> **The information available to the Tribunal at present indicates that Mr. Frank McBrearty Jnr. was arrested and subsequently detained on the 4th February, 1997, at a time when he was attending at a Garda Station, apparently for the purpose of making a report or a complaint. He was apparently arrested in relation to an alleged assault in December, 1996 on an Edward Moss in respect of which he was subsequently prosecuted and acquitted. Allegations have been made that while he was in custody Mr. McBrearty Jnr. was assaulted, videotaped and otherwise improperly treated.**
> **The Tribunal proposes to:**
> **(i) Enquire into and establish the facts in relation to this event;**
> **(ii) Enquire into and examine the material which was then available to members of An Garda Síochána (if any) and consider whether such material had afforded members of An Garda Síochána grounds for reasonable suspicion for the arrest of Mr. McBrearty Jnr. on the 4th February;**
> **(iii) Enquire into whether the member of An Garda Síochána alleged to have arrested Mr. McBrearty Jnr. on the 4th February, 1996 proceeded with the arrest only when satisfied that in respect of Mr. McBrearty Jnr. his suspicions were reasonable and/or that he had exercised all appropriate care, caution and diligence in deciding to make an arrest with due regard to the presumption of innocence attaching to Mr. McBrearty Jnr. and his right to fairness of procedures;**
> **(iv) Enquire into all aspects of the arrest and detention of Mr. McBrearty Jnr. and his treatment whilst in custody;**
> **(v) Consider whether the member of An Garda Síochána who allegedly made the arrest acted reasonably and in good faith;**
> **(vi) Enquire into and examine the material which was available at the time as to whether the said material tended to implicate Mr. McBrearty Jnr. or justify his prosecution for the offence for which he was arrested;**

(vii) Ascertain whether any material available to members of An Garda Síochána in the course of their investigation came into their possession in accordance with lawful or unlawful practices or means;

(viii) Enquire into:

a) The investigation into an alleged assault on Edward Moss by Frank McBrearty Jnr.;

b) Any report and/or material submitted to the Office of the Director of Public Prosecutions in relation to this investigation;

c) The reasons for the decision and the decision to prosecute Frank McBrearty Jnr. in relation to the alleged assault on Edward Moss;

d) The prosecution and, in so far as it may be relevant, the trial of Frank McBrearty Jnr. in relation to the alleged assault on Edward Moss.

It should be noted that these matters will be investigated only in so far as they are relevant to the Terms of Reference of the Tribunal and it is no part of the Tribunal's function to question in any way the order of the Circuit Criminal Court in this regard;

(ix) Consider whether there was in all the circumstances any or any reasonable or probable cause upon which to initiate a prosecution against Mr. McBrearty in relation to the alleged assault on Edward Moss;

(x) Enquire into and establish the standard Garda procedure and practice in relation to the treatment of persons in custody and whether such procedures and practice were observed in the course of the arrest and detention and treatment of Frank McBrearty Jnr. following his arrest and detention on the 4th February, 1997, and further, the adequacy and fairness of such procedures and practice having regard to the facts which may be established in evidence at the Tribunal;

(xi) Enquire into the allegations made by Frank McBrearty Jnr. in relation to his treatment during the course of his arrest and detention;

(xii) Consider whether there was any use of informants and if there was the approach set out in relation to Term (B)(3) above will then apply;

(xiii) Consider whether there is any connection between the events covered by this Term of Reference and any other of the Terms of Reference."

The alleged facts relating to Paragraph (f) arise out of a complaint made by one Edward Moss of 49 Carn Road, Castlederg, Co. Tyrone at Raphoe Garda Station on the 31st December, 1997 to Sergeant John White. He claimed that he had been assaulted in Frankie's Night Club in Raphoe in the early hours of the 30th of December, 1996. A Garda investigation was initiated into this complaint and in particular into the alleged involvement of Frank McBrearty, Jnr., one Liam O'Donnell and a Martin McCallion (whom you will recall was one of those arrested in December, 1996 in relation to the investigation into

the death of Richard Barron). The subsequent Garda investigation resulted in the prosecution of Frank McBrearty, Jnr., Liam O'Donnell and Martin McCallion in respect of charges of serious assault on Edward Moss which were tried before the Circuit Criminal Court in Letterkenny on the 29th April, 1999. All of the accused were acquitted. The focus in this Term of Reference is on the Garda investigation into the alleged assault on Edward Moss, the subsequent arrest and detention of Frank McBrearty on the 4th of February, 1997, the management of the investigation and the role of the Gardaí in the subsequent prosecution of Frank McBrearty, Jnr., Liam O'Donnell and Martin McCallion. It is not, of course, intended to re-run the trial in respect of the complaints of Edward Moss but rather to present such evidence as has been, and will be, made available to us in respect of the actions, omissions and behaviour of all those concerned in the investigation and prosecution of this case.

To date the material available to us is contained in the file forwarded to the Deputy Commissioner, Operations, Patrick O'Toole and stamped August, 1999; a copy of the Book of Evidence in respect of "the Director of Public Prosecutions –v- Frank McBrearty, Jnr., Martin McCallion and Liam O'Donnell" and materials submitted to An Garda Síochána by Mr. William Flynn, a private investigator retained by the McBrearty Family; together with the materials assembled in respect of a complaint made by Frank McBrearty, Jnr. arising out of these events to the Garda Complaints Board in file number 971096.

It cannot be repeated too often that we would welcome information from any person who knows anything of the events relating to this Term of Reference and would invite any such person who has not already done so to furnish us with such information as soon as possible.

From a reading of the materials which are available to us it would appear that the events which gave rise to the complaint of Edward Moss occurred on Sunday, 29th December, and into the early hours of the morning of Monday, the 30th December, 1996. On the 29th December, 1996 Edward Moss, together with his then girlfriend, Ms. Pamela McCready of 29 Hillhead, Castlefin and with Mr. Larry Harper and his wife, Teresa, Castlefin all went to Frankie's in Raphoe. They arrived at the disco apparently shortly after midnight. In statements made subsequently to the Garda Síochána, Edward Moss indicates that he and his companions remained in Frankie's until approximately 1.45 a.m.; during which time they consumed a number of drinks. At that stage they went out onto the dance floor and remained there until 2 a.m. until the disco concluded with the playing of the National Anthem. At this stage Mr. Moss noticed that Mrs. Harper was becoming weak and seemed to be slipping to the ground and that Mr. Harper was trying to prevent her from hitting the ground. She ended up lying on the ground and appeared to be getting weaker. Mr. Moss states that he and Mr. Harper went to her assistance and carried her a distance of a few feet onto a carpet. At this stage it is alleged that a man pushed his way amongst them.

It is necessary to understand, Sir, why we now propose to outline in detail the allegations made by Edward Moss and a number of other non-Garda witnesses. Their statements appear in a Garda file that ultimately led to a decision by the Director of Public Prosecutions to prosecute the three persons referred to already and are, for the most part, contained in the Book of Evidence which was served on the three accused. Much of what is said by them is not accepted by the three persons who were ultimately prosecuted. It is outlined here so that the gravity of the complaints made, and the nature of the evidence coming from the civilian witnesses, can assist in the understanding of the context in which a Garda investigation was initiated and came to be focussed on Frank McBrearty, Jnr., Liam O'Donnell and Martin McCallion. In outlining these facts, we do not lose sight of the complaint made by Frank McBrearty, Jnr. that when arrested and detained on the 4th February, 1997 in respect of the assault on Edward Moss he was questioned primarily in respect of the death of Richard Barron and that his arrest on that date was in some way a pretext to continue the investigation and focus primarily on the death of Richard Barron rather than the assault on Edward Moss.

To return to the complaint made by Edward Moss. The man that is said to have pushed his way amongst the group was ultimately identified as Frank McBrearty, Jnr. who, it is claimed, said he knew first-aid. It is alleged that Mr. McBrearty pushed Mrs. Harper's head down between her legs and seemed to be handling her very roughly according to Mr. Moss. Mrs. Harper appears to have fainted. Frank McBrearty, Jnr. was told that Mr. Moss and Mr. Harper were going to take Mrs. Harper out for some air and he then got angry with Mr. Moss and it is alleged jumped up and squared up to Mr. Moss face-to-face. Mr. Moss goes on to describe how he was hit in the face by Frank McBrearty, Jnr. and was then grabbed by three men, dressed as bouncers, who grabbed him while Mr. McBrearty, Jnr. kept punching him on the upper body and head. Mr. Moss stated that he was held by his arms and around the throat.

His account continues and relates how he was then dragged towards the exit door and was pushed out by the bouncers and fell to the ground. In attempting to get off the ground, he realised that he had a severe pain in his right leg and was unable to stand on it. As he was raising his body up off the ground he alleges that Mr. McBrearty, Jnr. (who was now outside the exit door of Frankie's Night Club) hit him in the face and that he, Mr. Moss, fell to the ground. He received a number of injuries documented in medical reports, available in the papers furnished, including a spiral fracture of the lower end of the fibula, bruising below his right eye and around his nose and an abrasion on the lower aspect of the left side of his nose.

From other statements, taken from those present at the scene, it apparently emerged that one of the bouncers alleged to have grabbed Mr. Moss around the neck was identified as Liam O'Donnell and another bouncer alleged to have punched Mr. Moss in the face was Martin McCallion. Mr. Declan Dolan of Ardnasool, Ballindrait identified Mr. McCallion and Mr. McBrearty, Jnr. as having punched Mr. Moss before he was thrown out the exit door and

Mr. Liam O'Donnell as a person who pulled Mr. Moss by the neck towards the door. Another witness, Gregory O'Hagan, made a statement indicating that Liam O'Donnell was perhaps trying to protect Mr. Moss from McCallion's blows as he pulled him towards the door. Mr. Moss was helped away from the scene and was driven home with his partner to Castlefin by the Harpers. Later that day, Monday the 30th December, 1996 Mr. Moss attended the casualty department of Tyrone County Hospital at Omagh at 11.44 a.m. There he gave a history of having turned over on his ankle: he had a tender bruise over the medial aspect of the ankle. He was treated for a spiral fracture of the lower third of the right fibula. He was allowed home on the same day to be reviewed in the fracture clinic. He was seen again from time to time at the fracture clinic until the 14th February, 1997.

Mr. Moss attended at Raphoe Garda Station on Tuesday, 31st December, 1996 and made what was regarded as an official complaint and statement to Garda John O'Dowd. Witness statements, which have already been broadly summarised by us, were taken then from Ms. Pamela McCready, Mr. and Mrs. Larry Harper, Mr. Declan Dolan and Mr. Gregory O'Hagan between the 31st December, 1996 and the 9th January, 1997. The member-in-charge of the investigation appears to have been Sergeant John White assisted by Garda John O'Dowd. All of the civilian witness statements were made to Garda John O'Dowd with the exception of two supplementary statements made by Mr. Edward Moss; the first of which was made to Sergeant White and Garda O'Dowd and the second of which was made to Sergeant White.

Reference has already been made to the complaint made by Frank McBrearty, Jnr. to the effect that the motivation for the arrest on the 4th February, 1997 was a desire on the part of Garda O'Dowd and Sergeant White to re-interview him in respect of the death of Richard Barron. If Frank McBrearty, Jnr. was arrested on the 4th February, 1997 and further detained for that purpose this would constitute an abuse of the power of arrest and detention and also an attempt to circumvent the restrictions set out in Section 5 of the Criminal Justice Act, 1984 which have previously been referred to by us when considering the re-arrest of Mark McConnell in respect of Term of Reference (b). A person who has previously been detained in respect of an offence under Section 4 of the Criminal Justice Act, 1984 should not be re-arrested again for the same offence except on the authority of a District Court Judge who is satisfied, on information to be supplied on oath by a member of An Garda Síochána not below the rank of Superintendent, that further information has come to the knowledge of the Gardaí since the person's release as to his suspected participation in the offence for which the arrest is sought. It is only when such an application is made, and granted, that a person may be re-arrested in respect of the same offence and detained further under Section 4 unless it is intended to charge him. Though the case law would suggest that a person arrested and detained in respect of one offence may be questioned in relation to another, it does not envisage that the provisions of the Criminal Justice Act could be circumvented, as is alleged by Frank McBrearty, Jnr., by his arrest under common law and detention on suspicion of committing an assault on Edward Moss but made with the real purpose of interviewing him in respect of an alleged murder concerning which

he had been previously detained and questioned. Such an arrest, if made in bad faith, and a detention procured or granted in bad faith, would be regarded as unlawful.

On the other hand, a person may be suspected of involvement in a number of offences which are the subject of separate investigations. In those circumstances, even though Frank McBrearty, Jnr. had been arrested and detained on suspicion of murder, if he were also suspected on reasonable grounds of involvement in a serious assault on Edward Moss, contrary to Section 18 of the Offences Against the Person Act, 1861, he could lawfully be arrested and detained pursuant to Section 4 of the Criminal Justice Act, 1984, if it were deemed by the appropriate member-in-charge of the station that such detention was necessary for the proper investigation of that offence. It is, therefore, necessary to examine the focus of the investigation up to the time of the arrest of Frank McBrearty, Jnr. on the 4th of February, 1997 and examine material available to the arresting officer and on which the decision to arrest was based. It is also useful to look at the occasion of the arrest in this context.

There is also a related consideration. Some of the personalities involved in this investigation are the same as those involved in relation to many other matters to which the Terms of Reference relate. Therefore, it may be useful to bear in mind the relationship of the parties as it emerges in the evidence to be presented in respect of the other Terms of Reference; such as those relating to the death of Richard Barron; the arrests and detentions that followed in the course of that investigation; and the Term of Reference relating to the harassment of the McBrearty Family. It will be important to consider the motivations of those concerned in the investigation of the alleged assault on Edward Moss and whether that investigation was in any way affected by the previous interaction between these personalities.

We have already summarised the material which led to the initiation of the investigation into the alleged assault on Edward Moss and the material which implicated Frank McBrearty, Jnr., Liam O'Donnell and Martin McCallion in this assault. There appears to be nothing in the materials furnished to us to date to indicate that Edward Moss had any motive to make a false allegation against Frank McBrearty, Jnr. or that there was any history between Mr. Moss and the McBrearty Family, extended or otherwise, which might lead to the conclusion that there was any kind of 'bad blood' between them prior to December, 1996. The non-Garda statements tend to suggest that Mr. Moss was indeed assaulted by somebody in the early hours of the morning of the 30th of December, 1996 and that that assault appears to have taken place at Frankie's Night Club. As a result of that assault, Mr. Moss appears to have received injuries which are documented in the medical reports available. Those were serious, on an appraisal of those documents.

We have already referred to Mr. Moss's first complaint made on 31st December, 1996. On the 6th January, 1997 John Fahey, Solicitor of John Fahey & Co., Solicitors of 5 Church Street, Strabane, Co. Tyrone wrote to Garda John O'Dowd, who had taken Mr. Moss's statement, in respect of

the alleged assault and requested, from the Gardaí, a copy of the relevant statements taken from the witnesses. According to Mr. Moss, on that same day, Monday the 6th of January, 1997, Mr. Frank McBrearty, Snr., together with Ms. Josie Connolly, a neighbour of Mr. Moss's, who it is suggested worked with Mr. McBrearty, Snr. in Scotland for a number of years, visited Mr. Moss and purportedly blamed his son for being totally in the wrong. It is suggested that he wanted to come to an agreement with Mr. Moss to withdraw his complaint and not to take any civil action against him. Mr. Moss gives an account of this meeting, and a number of other meetings, in a statement made on the 21st January, 1997 to Sergeant John White at Raphoe Station. He states that no sum of money was mentioned; but there was an understanding that money would be paid to Mr. Moss for withdrawing the charges.

It should be noted that Mr. Moss states that, at the meeting on the 14th January, 1997, he signed a document which effectively settled his civil claim in respect of damages for assault (such as it was) against Mr. Frank McBrearty's Club (whatever person or entity owned it), his family and staff by agreeing not to take any action against them in respect of the injuries that he sustained. This meeting was allegedly attended by Mr. Moss's solicitor, Mr. John Fahey, Mr. Moss, and Frank McBrearty, Snr. Mr. Moss states that he was handed £15,000 (Sterling) in a plastic bag in consideration of this agreement. According to Mr. Moss there was a written document but he did not have a copy of it. It would be useful to the work of the Tribunal to obtain a copy of this document if it exists.

It is appropriate, Sir, to pause at this stage to consider the law relating to civil proceedings and the settlement or compromise of causes of action for the information of those who may not understand the principles applicable to such transactions. As you are aware, Sir, one may settle civil proceedings at any stage. It is quite acceptable and proper to settle a cause of action without acknowledging any liability on one's part and to pay a sum of money to a person proposing to issue proceedings if they agree not to do so and waive or compromise any cause of action on foot of which they believe themselves to be entitled to damages. The law of compromise, however, and the law relating to civil proceedings are to be viewed quite separately from criminal proceedings to which the law of compromise, of course, does not apply.

A person may make a complaint to the Garda Síochána and perhaps may, if they feel it appropriate, withdraw such a complaint, in which case there remains nothing for the Garda Síochána to investigate, if that be the only evidence available. Knowingly making a false statement, in the first instance is, as we know, a criminal offence. The Garda Síochána may also have other evidence which provides them with a basis for continuing their enquiries into an event in respect of which they believe a criminal offence was committed. The Garda Síochána in such circumstances have a public duty to investigate crime. An individual complainant does not necessarily determine when an investigation must end simply because he has withdrawn an original statement of complaint which gave rise to the investigation and, for whatever reason, now wishes that investigation to end. That is not a matter for him, it is a matter for the Garda Síochána. Similarly, if the Director of Public

Prosecutions initiates a prosecution against an individual it is not for the complainant to determine, by withdrawing his statement, that that prosecution should not proceed. If that were the case unscrupulous people could procure the withdrawal of a statement by inducement of money or threats and thereby frustrate a prosecution. That can not be in the public interest.

These considerations may become relevant because, following the meeting on the 14th January, 1997, a letter was received at Raphoe Garda Station from Mr. John Fahey informing the Gardaí that Mr. Moss had instructed them to formally withdraw his statement of complaint and to note that their client did not require any action on foot of the statement of complaint. Since this letter emanated from a solicitor, one must presume it was written on the instructions of the client, Mr. Edward Moss. As already noted, this does not necessarily determine whether an investigation proceeds or whether a prosecution is initiated. However, in many cases, practical considerations dictate that when a complaint is withdrawn, further investigation does not take place and consequently a prosecution is not initiated. In the case of Edward Moss, the withdrawal of his complaint clearly signals that the alleged victim of the assault will not cooperate further. Since he lives outside the jurisdiction at Castlederg, Co. Tyrone and is, therefore, not ordinarily compellable to attend court as a witness within this jurisdiction, the practical implications may be that it would be difficult, if not impossible, to continue an investigation and present a prosecution for assault against the alleged assailant. This was the scenario with which Garda O'Dowd and Sergeant White were apparently faced when Mr. Moss attended at Raphoe Garda Station on the 21st January, 1997 and informed them of the events which we have outlined and of his desire to withdraw his complaint.

At this meeting Mr. Moss indicated that he was advised by his solicitor that he should now withdraw any complaint of assault made on 31st December, 1996 to Garda O'Dowd and he was asking, in his statement of the 21st January, 1997, that this be done. However, Mr. Moss indicated on the same date that he would go to court if he were to be summonsed and that it was not really his idea to withdraw the complaint. Sergeant White, in his report stamped August, 1999, makes the comment that:

> **When Mr. Moss arrived in Raphoe Garda Station on 21.1.1997 he was certainly in a confused state of mind but was acting on his solicitor's instructions in requesting that he withdraw his statement of complaint. He clearly states in his statement that it was not his personal intention to withdraw it but felt that he was legally compelled to do so after he had accepted the money from Mr. McBrearty, Snr. When Sergeant White explained to him that this was not the case Mr. Moss assured the members that if the Director of Public Prosecutions took a case against Mr. McBrearty, Jnr. and the other doorman that assaulted him, that he would give evidence at their trial.**

It should be noted that that is not quite what Mr. Moss says in his statement of the 21st January, 1997 though he does indicate that if the Gardaí brought a

prosecution he would go to court if he were summonsed. The reference to money is made in a statement made by him subsequently on the 19th March, 1997. The report by Sergeant White states that Mr. Moss indicated that Mr. Fahey's advice was that he should not supply a copy of the agreement to the Gardaí as it would not be in his interest to do so. Apparently, Mr. Moss had never received a copy of this document from his solicitor. Mr. Moss felt that there was nothing in the written document about his withdrawing a complaint to the Gardaí and conveyed that this aspect of the agreement was made orally but not committed to writing. The odd aspect of the matter is that it is suggested in the report that the solicitor instructed Mr. Moss to attend the station and withdraw his complaint, whereas instructions usually come from the client to the solicitor. Sergeant White then went on, it appears, to advise a confused Mr. Moss that he was not legally obliged to withdraw his complaint and caused him to change his mind.

On the 19th March, 1997 the White Report indicates that Mr. Moss called to Raphoe Station and indicated "that he had given the matter a lot of thought and was now quite clear that he was not obliged in any way to withdraw his complaint against the men that had assaulted him on 30.12.1996". What he actually said was "I thought that because Frank McBrearty had paid me the £15,000 I had to withdraw my statement of complaint. I am now clear that this is not the case". He then goes on to indicate that he was very annoyed about the way he was, as he claimed, assaulted and that he wanted Mr. McBrearty, Jnr. and the other bouncers that assaulted him prosecuted and that he would give evidence at their trial. He was further interviewed by Sergeant John White and Garda John O'Dowd and made a statement to this effect.

What could be regarded as a peculiar development, is that on the 30th April, 1997, Mr. Moss's solicitors again wrote to the Gardaí at Raphoe stating the following:

> **Our client asserts that you have been continually harassing him by telephone and that you have insisted that he attend at the Garda Station to make further statements, which statements have not been made voluntarily. We hereby call upon you to desist from this course of action, otherwise we will be obliged to take the appropriate court proceedings to have you so restrained.**

The clear suggestion is that Mr. Moss is being placed under some sort of duress in relation to this case; it will be a matter for further enquiry as to what occurred between the 19th March, 1997 and the 30th April, 1997 which caused such a letter to be written. It may be that the successful attempt to convince Mr. Moss to proceed with his complaint can be regarded as a legitimate, worthy police objective in two senses. Firstly, it would lead to the successful conclusion of an investigation into a serious assault and the likely prosecution of the alleged perpetrators. Secondly, in police terms, it could be viewed as effective policing by Sergeant White who, we understand from previous statements in relation to his instructions when assigned to Raphoe, was directed to address public order issues. On the other hand, the pursuit by Sergeant White and Garda O'Dowd of an investigation concentrating on

persons whom, it is alleged, they wish to harass at every opportunity may lead to the possibility that it caused them to exercise considerable energy in getting Mr. Moss to proceed with his complaint in circumstances in which, without it, it was likely that the investigation and the prosecution could not realistically have been pursued. Of course, the two alternatives are not mutually exclusive and events may have afforded a double opportunity to pursue both objectives.

The White Report in respect of the investigation contains a summary by Sergeant John White of the investigation and of events which occurred during its course. The main events relating to the alleged assault on Edward Moss are covered in the statements which have already been summarised by us. There are additional features of the report which may perhaps be regarded as unsupported by any statements, notes or memoranda. For example, the report contains pejorative references to Frank McBrearty, Snr. and his family. It is suggested that:

> **All possible witnesses questioned have made it very clear that they would not attempt to give evidence against any of the McBreartys or their staff as they would fear that they would be assaulted themselves or at the very least barred from the Club. Enquiries made with Mr. McBrearty, Snr. and other members of the staff had met with a wall of silence with Mr. McBrearty, Snr. denying the assault ever took place in his Club or that his son or any of his doormen had any involvement in same.**

It may be, Sir, that one could understandably draw from this element of the report an implication that there are a number of witnesses who have been questioned and who have relevant testimony to offer in relation to the alleged assault but who are unwilling to give such evidence to the Garda Síochána or the courts. If a number of interviews took place with such "possible witnesses" and if they had relevant information to give in respect of this prosecution, it may be thought unusual that such material was never recorded, together with the nature and extent of the fears which were expressed. If it was relevant to the enquiry that Mr. McBrearty, Snr. had been interviewed, and had made a statement concerning the assault, and had relevant testimony to give, one would expect that this would be recorded by the investigating Gardaí. If a pejorative reference is being made against somebody in a report to the Director of Public Prosecutions one might perhaps expect that the statements upon which it is based would be recorded so that whatever substance lay behind the criticism could be examined. The payment of the £15,000 Sterling was categorised in the report as "an attempt to pervert the course of justice" in that it is suggested that pressure "both financial and pressure from his neighbours" was exerted by Mr. Frank McBrearty, Snr. It may be, Sir, that you wish to clarify, in the course of the enquiry, whether the report was drafted in a manner calculated to prejudice Mr. Frank McBrearty, Jnr. to the greatest possible extent in the eyes of those whose duty it was to review the papers in the Office of the Director of Public Prosecutions and to decide whether a prosecution should be taken. Perhaps those references are merely rhetorical. Further material in

the report involving an allegation against another person and touching upon the willingness of Mr. Moss to give evidence will also be investigated in the course of the enquiry.

There appears to be nothing in the papers which suggests that a plan was drawn up in the course of the investigation to arrest Frank McBrearty, Jnr. on the 4th February, 1997. Mr. McBrearty, Jnr. appears to have attended Raphoe Garda Station for an entirely different purpose just prior to his arrest. Frank McBrearty, Jnr. contends that he attended Raphoe Garda Station at approximately midday on the 4th February, 1997 in order to make a statement of complaint concerning difficulties he alleges he was having with Stephen Barron, the son of the Late Richard Barron. At Raphoe Garda Station, he met with Sergeant Hannigan and Garda John O'Dowd and he states that he made a statement to Garda John O'Dowd concerning his difficulties with Stephen Barron. He contends that Sergeant White came in and put on his uniform and walked outside. He goes on to contend that:

> **White had a video camera and he was videoing me. Garda O'Dowd followed me out and arrested me. He arrested me under Section 18. I asked him what was Section 18 but he wouldn't tell me. He told me to shut my mouth or something like that. I got into the patrol car in the back seat and Garda O'Dowd got in along with me.**

A statement allegedly made by Frank McBrearty, Jnr. at Raphoe Station in respect of the Stephen Barron issue has not, to date, been made available to us. A further enquiry will be carried out in relation to this matter. Sergeant White's account of the investigation leading up to the arrest of Frank McBrearty, Jnr. can be found in a statement made by him on the 2nd of June, 1998. He contends that, following his arrival in Raphoe on transfer on the 10th January, 1997 as a uniform Sergeant, he was briefed by Superintendent John Fitzgerald on his duties and the general situation in Raphoe in regard to crime. In particular, he states that he was made aware of the alleged serious assault on Edward Moss. He gives the history of the attendance of Mr. Moss on the 21st January, 1997 at Raphoe Station which has already been referred to and he gives his views as to why Mr. Moss wished initially to withdraw his complaint and these are presently the subject of continuing enquiry by us.

An initial approach appears to have been made by Garda John O'Dowd to Frank McBrearty, Jnr. at The Diamond, Raphoe on the 6th January, 1997 when Garda O'Dowd contends he encountered Frank McBrearty, Jnr. and questioned him in relation to the alleged assault on Mr. Moss. Apparently, Mr. McBrearty denied any knowledge of the assault and refused to speak further on the matter. This is described in the White Report and he concludes the paragraph by saying that "he was most unhelpful and warned Garda O'Dowd to stay away from his doormen".

Sergeant White's next statement in relation to how the investigation proceeded, and why the arrest took place, states that he discussed the matter

with his district officer, Superintendent John Fitzgerald, who agreed with him that the case should be fully investigated in the interests of justice and a file sent to the Director of Public Prosecutions for his directions. Following the suggested discussion, he states that Garda John O'Dowd arrested Frank McBrearty, Jnr. on the 4th February, 1997 outside Raphoe Garda Station on suspicion of being involved in the serious assault. There is no mention of Mr. McBrearty having attended Raphoe Station for the purpose of making his complaint in respect of Stephen Barron.

It may be, Sir, that Mr. McBrearty, Jnr.'s attendance at the station for the purpose of the making of his complaint afforded a convenient opportunity to further the investigation by making the arrest. It may perhaps be thought unsurprising that such an arrest would be made where civilian witnesses have identified an individual as an alleged assailant and a suspicion is then formed by an investigating Garda that this person committed the alleged assault and ought to be arrested and detained for the purposes of furthering the investigation of the offence whether by questioning or otherwise. A question may arise in relation to the timing of the arrest in the light of the rather fraught relationship between the McBrearty Family and the members of An Garda Síochána in Raphoe in the light of the description given by Mr. Frank McBrearty, Jnr. of the way in which he was arrested. That question is whether the arrest itself was a reaction to his attendance to make a complaint at the Garda Station which was, possibly, in some way seen as being cheeky or a provocation. This question perhaps bears some more serious consideration than it might otherwise because at the conclusion of the detention Mr. McBrearty, Jnr. was allegedly served with two summonses in relation to road traffic matters which will be considered under Term of Reference (c) in relation to harassment. It may be that the service of those summonses casts some light on the state of mind of the investigating officers and Gardaí in Raphoe suggesting perhaps an agenda beyond the straightforward investigation of the allegations of Mr. Moss or it may simply indicate a further coincidence of convenient opportunity.

It should be noted that allegations of misconduct are made by Frank McBrearty, Jnr. against Garda John O'Dowd and Sergeant John White which range from allegations of verbal abuse to assault, all of which are denied by both members in statements which they have made in the course of investigations carried out in relation to this detention. The allegations span the entire period from the time of his arrest in Raphoe to his ultimate release from detention at Letterkenny Garda Station at 10.18 p.m.

It is recorded in the custody record that on arrival at Letterkenny Garda Station, Garda Healy, the member-in-charge, authorised the detention of Frank McBrearty, Jnr., apparently on the basis of material outlined by Garda John O'Dowd who informed him about the arrest, the injuries sustained by Mr. Moss and the fact that a number of statements had to be obtained from witnesses to the incident. Garda Healy was relieved as a member-in-charge by Garda Martin Leonard at 2.02 p.m.

Mr. James Sweeney, Solicitor arrived at Letterkenny Station at 2.33 p.m. and asked Garda Healy to attach a note with his objection to his client's detention to the custody record. Between 2.05 p.m. and 2.40 p.m., apparently, Frank McBrearty, Jnr. was interviewed by Sergeant White and Garda O'Dowd. The note of this interview appears as Exhibit 6 in the Book of Evidence and contains reference to questions put to Mr. McBrearty, Jnr. concerning the alleged assault upon Mr. Moss and relating to the payment of £15,000 Sterling to Mr. Moss. Frank McBrearty, Jnr. makes the allegation that he was questioned primarily about the death of Richard Barron. Indeed, following a consultation at 2.40 p.m., ending at 3.10 p.m., with his solicitor, his solicitor, Mr. James Sweeney went to the member-in-charge, Garda Leonard requesting that his client be released immediately and alleging that his client had been questioned about matters other than the matter for which he had been arrested. His solicitor also asked to see the Superintendent.

At 3.15 p.m. Garda John O'Dowd alleges that he went to the interview room and sat down across from Frank McBrearty. He did not question him in relation to the alleged assault at this stage and all of a sudden Mr. McBrearty, Jnr. said "I am going to bang my head off that wall and I am going to blame you". Garda O'Dowd immediately took Frank McBrearty out of the interview room and put him in a cell. He reported the incident immediately, he says, to the member-in-charge, Garda Leonard, and also brought it to the attention of Mr. James Sweeney, the solicitor. He asked him to make a note of it. This incident is recorded in the custody record, as is the fact that at 3.30 p.m. Mr. McBrearty, Jnr. was taken from the cell to the interview room by Garda O'Dowd and Sergeant White. Sergeant White is then said to have gone to the toilet. This left Garda O'Dowd alone in the room with Mr. Frank McBrearty, Jnr. which, Sir, may be regarded as an odd development in the light of the allegation made about Frank McBrearty, Jnr.'s comments at 3.15 p.m. and his immediate removal from the room by Garda O'Dowd, presumably so that Garda O'Dowd would not be alone with him at that stage. Yet, within seconds of being returned to the room, Garda O'Dowd is left alone with him again.

Garda O'Dowd, in his statement made the 5th February, 1997, describes the incident in the following terms:

> **I again returned along with Sergeant John White and I took Frank McBrearty from the cell to the interview room. After entering the interview room I administered the usual legal caution. Sergeant John White informed the prisoner that we would continue our questioning in relation to the assault on Eddie Moss. Frank McBrearty seemed to get agitated and excited and said "If you ask me about Eddie Moss again I'll bang myself" putting his two fists up by the side of his head. Sergeant John White left the interview room. Frank McBrearty asked when was his doctor coming. I told him Dr. McFeely had been contacted and would be here as soon as he could. Frank McBrearty then said to me "I'm going to bang my head off that wall". He immediately jumped up from the chair and hit the wall with his forehead. As soon as he did that he began to punch himself with his fists around the eyes**

> **and the side of his head. I could see from the way he punched himself it was a boxer style. I immediately alerted a member, Garda John Rouse, who was in the corridor, to come into the interview room and witness what Frank McBrearty was doing to himself. Garda John Rouse was standing alongside me at the doorway while Frank McBrearty was busy hammering away at his own head. As soon as he became aware that there was another Garda standing watching him beat himself he stopped and sat down. I informed Garda J. Rouse to bring the member-in-charge to the interview room. I pointed out to Garda Martin Leonard redness on Frank McBrearty's forehead and around his eyes. I informed him Frank McBrearty was after inflicting these injuries on himself in the previous minute, firstly by banging his head off the wall and then systematically punching himself with both his fists around the eyes and head. Frank McBrearty made no response to this.**

Sergeant John White's statement supports Garda O'Dowd's version of events.

Frank McBrearty, Jnr. gives a totally different account of what happened. He states:

> **After the solicitor left I was alone in the room with Garda O'Dowd. I was sitting with my head in my hands. Garda O'Dowd punched me in the face two or three times. I shouted for help. A number of the Gardaí and my solicitor came into the room. …**

He then goes on to describe the exchanges which took place between the Gardaí present and his solicitor in respect of which further enquiry will be made. In his video taped interview with Mr. Flynn (transcript pg. 87) he states in respect of this incident:

> **O'Dowd just done that with my head on the … desk with the two punches in the face like … this was in the room on his own like**

and demonstrates what was done to him. He says his head was shoved into the desk and he was punched. He stated that he shouted for help and also shouted that O'Dowd had been beating him up. He had two black eyes and a bump on his head:

> **You know he turned around and he says he … beat himself up, he banged his head off the wall, he is just after punching himself and all. I says I didn't and the lawyer he was out in the hallway and the lawyer came in and I says to the lawyer if you don't get me out of here I'm going to … kill myself because these … are going to kill me.**

Garda John Rouse states the following in relation to the incident:

> **The prisoner was again taken to interview room by Garda O'Dowd and Sergeant White. A few minutes later Sergeant White left interview room. I was at this stage in the corridor beside the interview room. At 3.31 p.m. Garda O'Dowd called me and I observed the following. Frank McBrearty was standing in the room and he had his two fists clenched. He was punching himself on both sides of his face and around his eyes. Around his eyes and both sides of his face were red as he was punching himself with some force. As he looked around and saw me standing at the doorway he stopped beating himself. I immediately informed Garda Leonard, member-in-charge, and his solicitor, James Sweeney, who was in the day room of what the prisoner was after doing.**

The custody record indicates that Garda Rouse apparently told Garda Leonard to go to the interview room where Garda O'Dowd pointed out the redness on the prisoner's cheeks and forehead and indicated that the marks were self-inflicted. The member-in-charge had apparently brought the threat of such behaviour to the notice of James Sweeney, Solicitor, and after it was alleged to have happened Garda Leonard called Mr. Sweeney to the interview room and pointed out the marks and previous threats made by the prisoner. Garda O'Dowd states that he informed Garda Leonard that the injuries had been self-inflicted by Frank McBrearty, Jnr. by banging his head off the wall and then systematically punching himself with both fists around the eyes and head. He suggested that Mr. Sweeney was asked to make a written note of the threat to inflict self- injury made by Frank McBrearty. Mr. McBrearty's recollection is that Mr. Sweeney was rushed out of the interview room and treated very rudely. This is a matter which will require further enquiry.

There is no statement available from Mr. James Sweeney in respect of this matter, perhaps because of difficulties which arise in respect of legal professional privilege; though there is a letter dated the 12th February, 1998 indicating that he had no comment or statement to make regarding complaints made against An Garda Síochána by the McBrearty Family. However, at 3.45 p.m. the custody record records that Frank McBrearty, Jnr. was placed in a cell following a consultation with his solicitor after which Mr. Sweeney requested that questioning cease immediately pending the arrival of a doctor and required a meeting with a Superintendent. On behalf of his client he made an allegation that Garda O'Dowd had assaulted his client at 3.31 p.m. At 3.50 p.m. Mr. Sweeney met with Superintendent John Fitzgerald and it is not clear what transpired at this meeting because of the absence of a statement from Chief Superintendent Fitzgerald and Mr. Sweeney in this regard.

Dr. McFeely arrived at the station and examined Mr. McBrearty, Jnr. at 4.16 p.m. and left the station at 4.31 p.m. In a statement to Chief Superintendent Carey on the 17th February, 1998 he states that:

> **Frankie alleged his forehead was banged off a desk and that he had been punched on the face. I cannot recall if he said who**

> **punched him. He was in a rather distressed state and I said "I cannot take much more of this". I examined him. He had a raised red area about the size of a pound coin on his forehead. This would be consistent with early bruising. The areas around both eyes were red similar to his forehead. This was also consistent with early bruising. I was with him for approximately ten minutes as I recall. I did not find any other evidence of bruising on his body.**

Garda O'Dowd left the station at 3.45 p.m. but returned a while later. At approximately 3.45 p.m. Mr. McBrearty, Jnr. was placed in a cell but was taken from the cell at 4.17 p.m. for the purposes of medical examination. Garda Rouse remained outside. Apparently, Frank McBrearty, Jnr. was kept in the interview room until 4.37 p.m. when Sergeant White entered the room but Garda Rouse remained in the hallway. This left Sergeant White on his own with Frank McBrearty, Jnr. We now come to a period in which somewhat unusual events took place in the course of Frank McBrearty, Jnr.'s detention. At 4.38 p.m. it is recorded by Garda Leonard in the custody record that:

> **Prisoner walked out of interview room. Garda Rouse shouted to me. I went to interview room and saw Mr. McBrearty and he was refusing to answer or sit on a chair. Alleged he was going to kill himself. He then lay down on the floor. D/Sergeant Smith entered the room.**

Sergeant White states that when he entered the room at 4.37 p.m. Mr. McBrearty was there and immediately left it. "Garda Rouse was in the interview room at this stage". Garda Leonard walked down the hallway and the prisoner again entered the interview room. He refused to sit on a chair and then lay face down on the ground. Detective Sergeant Hugh Smith apparently entered the room at this stage. Gardaí Smith and White attempted to interview the prisoner who was still lying on the floor with his face down. It is recorded at 4.55 p.m. that D/Sergeant Smith left the room and Sergeant White operated a video camera. Indeed, a video recording exists in relation to what appears to be a period or a part of the period between 4.40 p.m. and 5.25 p.m. Sergeant White contends that when Mr. McBrearty, Jnr. returned to the room after Garda Leonard was called, Detective Sergeant Hugh Smith entered the room. After administering the usual legal caution to the prisoner he goes on the state:

> **I placed a video camera on a chair in the interview room and turned on same as I suspected that the prisoner would injure himself upon the departure of the member-in-charge. Both Detective Sergeant Smith and myself put several questions to the prisoner regarding the assault on Edward Moss. The prisoner lay face down on the floor of the interview room and did not answer any of the questions. At 4.55 p.m. D/Sergeant Smith left the interview room. I continued to put questions to the prisoner without ever receiving an answer. At 5.25 p.m. Garda Leonard entered the interview room and informed the prisoner that he was**

taking him to the cell. He did not answer and Gardaí Leonard and Rouse took him to the cell by dragging him along the ground.

In the statement of evidence of D/Sergeant Hugh Smith (contained at pg. 33 of the Book of Evidence) he confirms, for the most part, Sergeant White's account but does not suggest that he knew anything of a camcorder being used. He states that both D/Sergeant White and himself questioned Mr. McBrearty, Jnr. in relation to the crime for which he had been arrested but that he didn't reply to any of their questions and did not speak at all. He lay on his face on the floor during the entire interview. He felt that Frank McBrearty, Jnr. was doing everything in his power to restrict the interview. Detective Sergeant Smith states that his attendance at this interview was procured at about 4.45 p.m. when D/Sergeant White asked him to go to the interview room. He was told by D/Sergeant White that Mr. McBrearty, Jnr. had assaulted himself by banging himself off the wall and hitting himself round the face with his fists. He also stated that this happened whilst Mr. McBrearty, Jnr. was in the room with Garda O'Dowd. D/Sergeant White requested him to accompany him to the interview room and remain there with him until Garda O'Dowd returned. When he arrived at the interview room he saw Frank McBrearty, Jnr. lying face downwards on the floor with his head in his hands. His feet were preventing the door from being fully closed. D/Sergeant Smith asked him to get off the floor and he made no reply. Apparently, he thought that D/Sergeant Smith was in fact D/Inspector McGinley and said he didn't want to speak to him. When he realised it was D/Sergeant Smith he said he didn't want to speak to him either. An attempt was made to physically lift him on to a chair but since he made no effort to get up he left him on the floor. He was asked by Sergeant White about the assault on Edward Moss and didn't make any reply. Garda Rouse was outside as was Garda Martin Leonard.

Apparently, Garda Leonard knew of the use of the camcorder or its proposed use, because it is recorded at 4.55 p.m. that "Sergeant White operates video camera". This is acknowledged by Sergeant White as a "most unusual step". He placed the camcorder on the windowsill of the interview room he said "in order to protect Garda O'Dowd and myself during future interviews with Mr. McBrearty". He goes on to state that neither Garda O'Dowd nor he ever requested Frank McBrearty, Jnr. to withdraw any statement of complaint which he had made against Garda O'Dowd.

A viewing of this video recording indicates that is not the case. There is also some reference on this video recording to the death of Richard Barron.

Frank McBrearty, Jnr. complains that during this period when D/Sergeant Smith was present he wasn't interrogated by D/Sergeant Smith but was verbally abused by him which is denied by D/Sergeant Smith. After Detective Sergeant Smith left the room at 4.55 p.m. he complains that Sergeant John White kept poking him with a pen. He alleges that D/Sergeant White was smoking and down on his hands and knees and blowing smoke in his eyes and flicking the hot ash on the back of his neck. He was walking over him and standing with two feet on his back. He gives this description in his statement to Chief Superintendent Carey:

> **He kept poking me with a pen, a writing pen. He was smoking and down on his hands and knees and blowing smoke in my eyes. He was flicking the hot ash on the back of my neck. Somebody came into the room. White wiped the back of my neck. This person left again and I was alone with White. I was praying away to God, please get me away from this hell. He continued to mentally abuse me. I was still lying on the floor. He would walk over me. The last time he stood with his two feet on my back. He told me he would set me up and that I wasn't the first person he fitted up. I wouldn't speak or answer him. Two or three Gardaí came into the room. I just lay there as if I was dead. They turned me over and said "Maybe he is hurt". They then threw a glass of water on my face. They then dragged me out of the room and down the corridor to the cell. White was videoing me. I was then put into the cell.**

All the Gardaí who have been mentioned to date have denied all of the allegations made by Frank McBrearty, Jnr.

In particular. Sergeant White denies the allegation that Frank McBrearty, Jnr. was questioned for most of the time about the death of Richard Barron and not Edward Moss. He emphasises that this will be borne out by the video recording.

It should be noted in respect of the allegation that Sergeant White walked or stood on Frank McBrearty's back, that he was examined the following day by Dr. McFeely, following his release from custody, who describes his attendance as follows:

> **On the next day Frankie called to see me at my surgery … He complained of a pain in his back. He said he had been stood on while in Garda custody. I examined him but I could find no marks or other evidence on his back. He had an old history of back pain. On examining him I noted more florid bruising around his eyes and his forehead. I advised him to go and see his solicitor, James Sweeney.**

In addition, later that evening, at 8.40 p.m., Dr. McColgan arrived and examined Frank McBrearty, Jnr. on behalf of the Gardaí. He made a statement to Chief Superintendent John Carey on the 17th February. 1998 and stated that when examined, Frank McBrearty, Jnr. told him that:

> **He had headaches and back pain and that he had been assaulted by a Garda. I don't recall that he named the Garda. I am not quite sure if there was a Garda present when I spoke to him. He had bruising around the right eye and a bump on the left forehead. He also told me that he had back pain and that he had it for some time. I examined him just in relation to the complaints he pointed out to me. I gave him some tablets for pain relief …**

The video, Sir, is available and can be viewed and may be regarded as peculiar. It could be regarded as showing Frank McBrearty, Jnr. in a distressed condition lying on the floor. Derogatory remarks are made to Mr. McBrearty, Jnr. in the course of the recording. Apart from its contents, the atmosphere which prevailed in this interview room may, perhaps, be regarded as its most noteworthy aspect.

At 5.25 p.m. Gardaí Leonard and Rouse took Frank McBrearty to the cell "by dragging his legs and sliding him on the floor to the cell" according to Garda Leonard. Frank McBrearty, Jnr. states that they took his shoes and belt from him and that while he was in the cell they kept opening and closing the door and banging the door and that he was in the cell for nearly three hours.

An extension order was made in respect of his detention on the application of Garda Martin J. Leonard (the member-in-charge). In his application he set out the following:

> **I explained to the Superintendent that the prisoner was making no effort to answer any questions and was continually looking for doctors and making false allegations against Gardaí conducting the interview. He was acting stupid and lying on the floor and totally uncooperative. I required detention for a further period of six hours to continue to try and conduct an interview with the prisoner. I explained the allegations in a statement by the injured party to the Superintendent and he was satisfied to issue the detention and I immediately relayed this authority to the prisoner at 6.47 p.m. but he did not acknowledge my presence.**

In this regard, Sir, attention is once again drawn to Regulation 4(3) of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 which provides that "as far as practicable the member-in-charge shall not be a member who was involved in the arrest of the person for the offence in respect of which he is in custody in the station or in the investigation of that offence". It may be regarded as inappropriate in the controversial circumstances which had occurred in the station that Garda Leonard would be the person making an application for an extension of his detention. During his duties as member-in-charge, Garda Leonard may perhaps be viewed in these circumstances as involving himself in the investigation. It is not clear from the documentation to what extent Superintendent Fitzgerald was informed of the occurrences in the station such as the video taping of interviews and the extremely fraught situation which appeared to have developed with Frank McBrearty, Jnr.

At 8.28 p.m. Mr. McBrearty's solicitor complained to Garda Leonard that his client had been assaulted by Sergeant White and that he had kicked and slapped him on the floor and asked him to withdraw his complaint against Garda O'Dowd. He further indicated to Garda Leonard that his client would cooperate with Gardaí and need not be forced to do so.

From the custody record, it can be seen that the doctor's visit took place between 8.40 p.m. and 9.10 p.m. Mr. McBrearty's mother and wife visited the interview room at 9.20 p.m. and he was returned to his cell at 9.58 p.m. He was then taken to an interview room at 9.40 p.m. by Sergeant White and Garda O'Dowd. This interview continued until approximately 10.13 p.m. when he was placed in the cell again. Frank McBrearty's account of this interview is that he was questioned again about the death of Richard Barron. After about fifteen minutes he was questioned about Eddie Moss. He said Sergeant White was very angry and Garda O'Dowd was shaking when they took him back down to the cell. He says that they got fed up questioning him and Sergeant White told him that he'd wasted his day. Garda O'Dowd apparently asked him whether Martin McCallion or Liam O'Donnell had assaulted Mr. Moss if he hadn't. He then goes on to describe a menacing posture which he suggests was adopted by Sergeant White as he was returned to the cell and his response to this and some five minutes later at 10.18 p.m. he was taken to the day room and given his property and released from custody. As he was leaving Garda O'Dowd approached him and is alleged to have said "There's a wee present for you" and handed him two summonses in respect of road traffic offences. He insists that at the end of his time in the interview room he was asked to withdraw the complaint against Gardaí White and O'Dowd.

The material gleaned by the Gardaí from the interviews with Frank McBrearty, Jnr., together with the statements of those involved in the arrest and detention and interviewing of Frank McBrearty, Jnr., were included as part of the Garda file prepared by Sergeant White for onward transmission, ultimately to the Director of Public Prosecutions with the covering report to which reference has already been made.

Insofar as any reason is given for the video taping of portion of the interviews with Frank McBrearty, Jnr., this is justified by Sergeant White on the basis that he felt unwarranted allegations were being made by Frank McBrearty, Jnr. against interviewing members of An Garda Síochána and that this threat of baseless allegations could best be met by the use of a video recording machine or camcorder, in order to have a record of the interview should any issue arise or further allegation be made such as the allegation of assault made against Garda O'Dowd.

Therefore, from either perspective in relation to these events, use of the video recorder was highly unusual.

There is no statutory provision for using a video recorder in this way. However, Regulations which came into operation on the 1st March, 1997 under the Criminal Justice Act, 1984 (Electronic Recording of Interviews) Regulations, 1997 (S.I. No. 74 of 1997), provided for the electronic taping of interviews.

Though no such facilities were available at Letterkenny Garda Station at the time of these events it is understood that in more recent times full facilities for

the video taping of interviews have been installed at Letterkenny Garda Station.

The Regulations provide the basis upon which interviews may be electronically taped and set out detailed procedures to be followed in that event. No Regulations existed on the 4th of February, 1997 in respect of this matter. It is not clear whether authorisation from a higher ranking officer was sought by Sergeant White for using his camcorder. Mr. Sweeney, the solicitor, does not appear to have been informed of its intended use nor was the consent of the interviewee sought or obtained. Sir, it will be necessary to carry out further enquiries in relation to the use of the camcorder on this occasion both in the general sense and by having it technically assessed.

Two other relevant developments in the investigation relate to the other co-accused Liam O'Donnell and Martin McCallion. Liam O'Donnell was arrested at 6.20 p.m. on the 4th of February, 1997 by Garda Matt Tolan at Liskea, Ballindrait, Lifford, Co. Donegal on suspicion of being involved in an assault occasioning grievous bodily harm to Edward Moss. He was brought to Letterkenny Garda Station and there detained. Garda John O'Dowd was in the arresting party and accompanied it back to Letterkenny. Essentially, he had nothing to say in relation to the allegations of his involvement in the assault on Edward Moss other than to confirm that Frank McBrearty, Jnr. was present in the nightclub when Mr. Moss was put out. Martin McCallion was interviewed by Sergeant White on the 9th of February, 1997. This interview, unusually perhaps, took place following the administration of a caution to Mr. McCallion at 3.22 a.m. at Drumucklagh, Raphoe. Sergeant White states that he took notes of this interview in the form of a memo. in his "official notebook". Apparently, D/Garda Thomas Kilcoyne was with Sergeant White at the time. The notes of this interview are set out in the White Report and yielded nothing of evidential value to the investigating Gardaí.

In a letter stamped 4th December, 1997, received at Garda Headquarters on the 5th December, 1997 from the Chief Superintendent of the area, the office file (the White Report) was sent to the Assistant Commissioner for Crime and Security. This letter notes that Frank McBrearty, Jnr. was "the main suspect for the murder of Richard Barron". It goes on to state that:

> **It is interesting to note that due to the conduct of Mr. McBrearty while being detained the Gardaí decided to record the activities on video. It will ultimately be for the courts to decide whether this was a breach of the Custody Regulations. This decision is awaited with interest. The matter of his consent has not been adverted to in attached reports and will be queried on return of file.**

This was noted by the Deputy Commissioner, Operations, who wished to be advised of further developments in a memo. to the Assistant Commissioner, "C" Branch from the Office of the Deputy Commissioner (Operations).

Meanwhile, a letter had been sent to the Director of Public Prosecutions by C.F. MacLochlainn, Esq., State Solicitor, Buncrana together with the Garda file in the case.

The response from the Director of Public Prosecutions came from Mr. Niall Lombard (Legal Assistant) dated the 19th November, 1997. Mr. Lombard directed that the matter should be prosecuted on indictment in respect of offences contrary to Section 18 of the Criminal Justice (Public Order) Act, 1994: that is that the three suspects should be charged that on the 30th day of December, 1996 at Frankie's Night Club, Meeting House Street, Raphoe, Co. Donegal, a public place, they assaulted Edward Moss with intent to cause bodily harm and that they committed an indictable offence on Edward Moss by punching and beating him continuously and assaulting and injuring Edward Moss to the extent that his ankle was fractured.

In respect of that aspect of the White Report, concerning whether there should be any prosecution for an attempt or conspiracy to pervert the course of justice by the payment of the £15,000 Sterling, Mr. Lombard stated as follows:

> **It seems to be an undoubted fact .. that £15,000 Sterling was paid to the injured party but there is some confusion as to whether this was a settlement of a civil type, an attempt to get the injured party to withdraw his complaint to the Gardaí or indeed a compilation of both. It does not seem to me that the circumstances are sufficiently clear so as to warrant prosecution for attempt or conspiracy to pervert the course of justice. Such a prosecution will normally only take place in the most clear cut of circumstances and this is certainly not the case in this instance. Such a prosecution would in this particular case only serve to muddy the waters with regard to the main prosecution but such a background is not too surprising giving this ongoing saga.**

These directions were forwarded to the Superintendent at Letterkenny Garda Station on the 24th November, 1997 by the State Solicitor for Donegal and subsequently forwarded to the Assistant Commissioner, Crime Branch in or about 19th December, 1997.

Following a request for further information on the 9th January, 1998 from the Commissioner, Crime Branch, Garda Headquarters, a report was prepared by Sergeant White, dated 20th January, 1998, in which he gave an explanation as to why the camcorder was used and why no consent was sought or obtained from Frank McBrearty, Jnr. to use this camcorder while he was being interviewed. He confirmed that he had the original cassette tape used on the date in his possession and it could be produced if required. In a covering letter, again dated 20th January, 1998 and received at Crime Branch, Garda Headquarters on 22nd January, 1998, Superintendent Kevin Lennon stated:

> **While the recording was done in the view of the prisoner it could be interpreted to be a technical breach of the Custody Regulations as permission had not been obtained to photograph him at that**

> **time. However, I am of the view that this is a mere technical breach of the Custody Regulations which was carried out for the purpose of safeguarding the integrity of the members concerned, bearing in mind the volume of complaints resulting from any contact with the McBrearty Family.**

He noted that this matter had been raised in the report to the D.P.P. He noted that the Director had not addressed the matter in his response or commented on same. He thought that the issue in respect of the tape recording was likely to arise in the defence of the proceedings. It is hoped to present a more complete account of how the senior Garda authorities reacted to the unusual events in the interview room in Letterkenny Garda Station after further enquiry.

A prosecution was initiated upon the direction of the Director of Public Prosecutions in respect of Edward Moss. The case was returned for trial to the Circuit Criminal Court. It came before Letterkenny Circuit Court on the 28th April, 1999. The injured party, Edward Moss, failed to appear and a warrant was issued for his arrest. After contact was made with Mr. Moss he appeared on the 29th April, 1999 and the trial proceeded. All three defendants were arraigned and pleaded not guilty. According to a report to the Assistant Commissioner, Crime Branch from Inspector Eugene McGovern:

> **During the trial the charges against Liam O'Donnell and Martin McCallion were struck out on the instructions of the judge due to discrepancies in the evidence of two of the State witnesses. Mr. McBrearty's case was heard and the jury returned a verdict of not guilty after forty minutes deliberation.**

Notification of the result was forwarded to the Assistant Commissioner, Crime, Security and Traffic on the 5th August, 1999 and to the Deputy Commissioner, Operations, "C" Branch, Garda Headquarters by Assistant Commissioner Patrick O'Toole on a date in August, 1999.

Some further enquiries have now to be carried out by us in relation to events which we have outlined. Following the receipt of further documentation, including a transcript of the trial, it is hoped that we will be able to proceed to a hearing which will ultimately allow you, Sir, to conduct the enquiry to the fullest extent into this Term of Reference as envisaged in your explanation of the 15th July, 2002.

ALLEGATIONS OF HARASSMENT

Sir, we now turn to allegations made by members of the extended McBrearty family and their associates, that they were subjected to harassment by members of An Garda Síochána in the period after the death of Mr. Richard Barron in October, 1996. Paragraph (c) of the Terms of Reference requires the Tribunal to urgently inquire into:

> **Allegations of harassment of the McBrearty family of Raphoe, County Donegal and of relatives, associates and agents of that family by members of the Garda Síochána subsequent to the death of Mr. Barron including the issue and prosecution of summonses relating to offences alleged to have occurred between 28th October, 1996 and 28th September, 1998.**

In the explanation of the Terms of Reference given by you Sir in public session of this Tribunal on 15th July, 2002, this Term of Reference was defined in the following way:

> **Under this heading it would appear that members of the McBrearty family of Raphoe, County Donegal have complained that certain Gardaí in the Donegal area have singled them and their business out for special attention by conduct which could broadly be described as over-zealous performance of their duties, including the issue of numerous summonses alleging breaches of the Licensing Law in a licensed premises and surveillance of the premises in what is alleged to have been an oppressive manner. The Tribunal will interpret the word "harassment" as meaning a persistent or repeated improper use of power calculated to cause trouble, embarrassment, harm, torment or distress which may be effected and/or continued by acts or omissions on the part of an appropriate person to act when he should have acted. With regard to this paragraph, the Tribunal will interpret the term "the McBrearty family of Raphoe, County Donegal" in such a manner as to encompass persons who are members of the extended McBrearty family who consider that they have been subjected to harassment by members of An Garda Síochána because they have been identified as members of that family. The Tribunal will interpret the words "associates and agents" in the broader sense and will include in this group persons or bodies who appear to have been identified by members of An Garda Síochána as being associates or friends or agents of the family. In relation to this paragraph, the Tribunal will:**
>
> **(1) Establish the nature of the complaints of harassment made by the McBrearty family and the persons referred to in the Terms of Reference;**

(2) Attempt to establish the basic facts in relation to each complaint;

(3) Establish the number and nature of summonses relating to offences alleged to have occurred between 28th October, 1996 and 28th September, 1998 issued by members of An Garda Síochána or other prosecuting authorities;

(4) Ascertain what is the standard Garda practice and procedure with regard to the issuing and management of summons cases;

(5) Ascertain whether there was a departure from the Garda practice and procedure in the making of the complaints leading to the issue of the summonses;

(6) Inquire into the alleged basis, evidential or otherwise, upon which members of An Garda Síochána applied for the issue of the summonses or recommended a prosecution or pursued a prosecution in respect of the said offences alleged in such summonses;

(7) Inquire into the course of the investigations made by members of An Garda Síochána in respect of each summons issued or applied for and inquire into the origin and basis of the members suspicion and/or conclusions as to whether an offence or offences had been committed;

(8) Attempt to identify the members of An Garda Síochána, if any, implicated in the complaint of harassment;

(9) Inquire into and determine whether the alleged harassment, the subject matter of the Terms of Reference, by members of An Garda Síochána, took place;

(10) If harassment did take place as alleged, identify (if possible) the reasons or motives for such conduct on the part of the person or persons responsible and why such conduct continued;

(11) Inquire as to the extent and/or level of knowledge within An Garda Síochána in respect of the facts relevant to the allegations of harassment and the steps, if any, taken in the light of such knowledge;

(12) Inquire into the role (if any) of the Director of Public Prosecutions in relation to the prosecution of the summonses or any other fact relevant to this Term of Reference;

(13) Inquire into the connection, if any, between this Term of Reference and any other Term of Reference;

(14) Consider the use of information in relation to the conduct of which complaint is made. In this regard the same approach outlined in Term of Reference (B)(3) will be applied;

(15) Consider whether standard Garda practice and procedure with regard to the initiation and management of prosecutions by summons contains adequate safeguards.

This is a difficult section because one is not dealing with a single event, but rather with a series of events, which may or may not have been connected with each other, the cumulative effect of which series of actions, either singly or taken together, could be seen as constituting harassment of the McBrearty family, or their associates. We are of opinion that the areas of alleged harassment can best be examined under the following headings:

(a) Enforcement of the liquor licensing laws and Road Traffic and Public Order legislation by means of inspections of the McBrearty's premises and by mounting checkpoints and other Garda activity, leading to the issuing of numerous summonses against members of the extended McBrearty family;
(b) Other alleged acts of harassment by members of the Gardaí towards members of the McBrearty family generally;
(c) The creation and distribution of defamatory leaflets, slogans, posters and business cards concerning the McBrearty family;
(d) Abusive telephone calls and hoax bomb calls made to the McBrearty family;
(e) The making of possibly false complaints to the Gardaí by members of the public alleging road traffic and other offences perpetrated by members of the McBrearty family;
(f) Alleged harassment of Mr. William Flynn and Mr. Thomas Coffey the private investigators employed by the McBrearty family.

While it has been thought wise to break up the areas of alleged harassment into different categories for the purpose of this inquiry, two things should be borne in mind. Firstly, that much of the alleged conduct complained of occurred simultaneously. Therefore in considering whether such conduct constituted harassment, it is suggested that the Tribunal might reasonably take a global view of all the conduct dealt with in this module. Secondly, it should be borne in mind that some of the areas of alleged harassment could be seen as being connected with other matters of inquiry before this Tribunal. For example, it will become apparent that there was a connection between the alleged harassment of the McBrearty's business by means of inspections of the licensed premises and the issue of summonses consequent upon such inspections and the involvement of Mr. Bernard Conlon, which has been dealt with earlier in this preliminary opening statement.

It is the view of the Tribunal legal team that the key questions for determination by you Sir in examining this module are as follows:

(a) Did the Gardaí by means of overt action in the form of inspections of the McBrearty premises, mounting of vehicle checkpoints and the issuance of summonses, engage in conduct which constituted harassment of the McBrearty family and, if so, by whom and why was such harassment carried out?
(b) Did any members of An Garda Síochána have any involvement in any of the other types of conduct carried out by other persons, which could be seen as constituting harassment of the McBrearty family? If such involvement is found to have existed, it will be necessary to inquire into the motive for such conduct.
(c) Did any members of An Garda Síochána attempt to harass Mr. William Flynn or Mr. Thomas Coffey, the private investigators retained by the McBrearty family, in the carrying out of their investigation on behalf of the McBrearty family?

The first area for inquiry is the allegation by Frank McBrearty, Snr., that he and his business were subjected to harassment at the hands of the Gardaí, who, it is alleged, carried out frequent inspections of his licensed premises in Raphoe. He also alleged that the Gardaí harassed his business by mounting frequent vehicle checkpoints in close proximity to his bar and nightclub premises. It is also alleged that the Gardaí harassed him by issuing numerous summonses against him and his family for alleged breaches of the liquor licensing laws and for alleged public order and road traffic offences. In order to properly understand the nature of this complaint, it is necessary to briefly examine the history of Mr. McBrearty's ownership of the licensed premises and nightclub in Raphoe. It would appear that Mr. McBrearty purchased a public house known as "The Parting Glass" in Raphoe in or about 1977. Over time he extended the premises by purchasing land on either side of the original premises. He added a ballroom and also built an extensive car park adjacent to the premises. It appears that he carried out extensive refurbishment of the premises. It has a number of separate bars and a nightclub. This was opened circa 1990. According to an affidavit, in High Court proceedings, sworn by Mr. McBrearty on 30th May, 1997, he stated that as licensee of the premises he had five convictions for liquor licensing offences in the period 1977 to 1997. He gave details of the following offences;

(1) Conviction on 23rd January, 1986 for permitting intoxicating liquor to be consumed on the premises after hours at 11.35 p.m. on a Sunday night in July, 1985: in the affidavit it is stated that he was fined £10.00, but this is presumed to be a mistake and should read £100.00;
(2) Conviction on 26th April, 1990 for permitting persons to be on the premises after hours at 3.10 p.m. on a Sunday afternoon in the month of October, 1989: He was fined £100.00;

(3) Conviction on 25th October, 1990 for permitting intoxicating liquor to be consumed on the premises after hours at 1.15 a.m. on a Saturday morning in the month of May, 1990: He was fined £100.00;
(4) Conviction on 23rd May, 1991 for permitting persons to be on the premises after hours at 1.15 a.m. on a Saturday morning in February, 1991: he was fined £100.00;
(5) Conviction on 28th July, 1994 for permitting intoxicating liquor to be consumed on the premises after hours at 12.35 a.m. on 26th December, 1993: He was fined £200.00.

In the course of that affidavit, Mr. McBrearty, Snr., stated that he had maintained an orderly licensed premises and had been co-operative with the Gardaí in relation to the investigation of crime in the Raphoe area. He also stated that he had been particularly active in efforts to eradicate drug abuse in the locality. To an extent this was accepted by C/Supt. Dennis Fitzpatrick in a replying affidavit sworn by him on the 21st of April, 1997. At paragraph 11 of that affidavit he stated;

> **With regard to the good working relationship with the Gardaí, it is fair to say that the plaintiff (i.e. Mr. McBrearty, Snr.) has been reasonably co-operative in the past, in particular in the area of enforcement of the Misuse of Drugs Act, and in the investigation of assaults, both inside and outside the premises.**

He goes on to state in the affidavit that this co-operation ceased after the death of Mr. Barron in October, 1996.

From the documentation available to the Tribunal legal team at present, it would appear that in the 19 years from 1977 to 1996, Mr. McBrearty operated his bars and nightclub in a lawful manner, save for the infrequent and somewhat minor convictions as noted above. It is against this background that one might consider the actions of the Gardaí in the period commencing January, 1997.

The gravamen of Mr. McBrearty's complaint was that the Gardaí, and particularly D/Sgt. John White and Gda. John O' Dowd, were harassing him by carrying out inspections of his premises on a very frequent basis. In a statement made to Supt. Forde on the 3rd of February, 1998, he articulated his complaint in the following manner;

> **I feel that the Gardaí have harassed myself, my staff and especially my business and customers and in particular in the period January, 1997 to August, 1997. My bar manager kept a record of Gardaí visits to our premises. Our solicitors, V. P. McMullin & Co, told us to do that. I had gone to the solicitors and told them that we were being harassed. I wanted to get an injunction against the Guards to stop undue harassment by the Gardaí. The solicitors said that we had to have evidence. I have been shown by you a copy of the record. It is marked Appendix "C". This book has been put together from notes made**

by me and my staff on the nights. It was typed up by Billy Flynn of Zimmerman & Co. International Ltd. My complaint is that the Gardaí are inspecting my premises much earlier than any other similar premises in the county. They would come in and stand in my premises for two hours with two Gardaí at each bar. Sgt. John White and Gda. John O' Dowd are the principal ones. There have been other Gardaí as well. The other Gardaí were only doing what they were told. The Gardaí also performed checkpoints outside my premises and diverted traffic through the terraces. They said they diverted the traffic for public safety. This adversely affected my business. I considered it harassment. The checkpoints didn't go up until 11.30 p.m. or 12 m.n. The buses and taxis couldn't get up the street to collect their customers. Because of this the customers were hanging around on the streets and a certain number of fights and disorder occurred. There were incidents where people were put out of my premises for misbehaviour.

D/Sgt. White would follow them and he would try and get them to make statements against us. Some of them did, there is one girl in particular. He tried to get her to make a statement against the stewards and against me. He said that he would get a lawyer in Dublin for her. She is Catherine Kelly of William Street, Raphoe. My clientele is all over 25 on a Saturday night. Some of the top policemen in Ireland have visited my premises and danced in it, from Garda right up to Superintendent. Supt. Kevin Lennon and his wife have been in my premises on 4 or 5 occasions. This would be a Saturday night on Country & Western nights. Previous Gardaí and senior policemen have recommended me on the way I ran my premises and you can go back as far as you can go. I have always co-operated with the Gardaí.

A record or diary of these visits was kept by staff at the premises for the period January, 1997 to the end of July, 1997. Most of the entries were made by Mr. John Mitchell, the bar manager. A typed transcript of the entries in this diary has been made available to the Tribunal legal team. The diary records a total of 138 inspections by the Gardaí. The inspections were almost exclusively on weekend nights, with often more than one inspection per night. Complaint was also made that on many occasions the Gardaí would remain on the premises for an extended period of time.

From the documentation furnished to the Tribunal, it would appear that the Gardaí did not keep any record of inspections of licensed premises in Raphoe prior to January, 1997. However it appears that an Inspection Book was introduced in that month. The Tribunal legal team has seen a copy of the entries in the Inspection Book for the period January, 1997 to July, 1997. It shows a total of 128 inspections of the McBrearty premises, including the nightclub. This can be compared with the number of inspections of other premises in Raphoe. The Inspection Book showed 51 inspections of both the Súile Tavern and the Town and Country Bar, 44 inspections of the Tir Chonaill

Bar, 30 inspections of the Central Hotel, 25 inspections of the Idle Hour pub and 9 inspections of Rafters pub, for the same period.

The Carty investigation team looked at a more extended period. They noted that between December, 1996 and September, 1998, there were 214 inspections of the McBrearty's premises. They noted that in that period 112 summonses were issued against the McBrearty family, in respect of which 89 summonses related to alleged breaches of the liquor licensing laws, 18 referred to public order offences and 5 concern road traffic offences. They noted that the summonses represented a total of 25 cases. In respect of these D/Sgt. White and Gda. John O' Dowd were witnesses in 18 of the cases. They also noted that on one occasion 3 summonses in respect of alleged public order offences were issued against Frank McBrearty, Jnr., over a 9 minute period. The hearings in respect of these matters were adjourned from time to time, until eventually on 21st June, 2000, all the summonses were withdrawn by direction of the DPP.

The main focus of the McBreartys' complaints, in relation to inspections of their premises, seems to be confined to the period January, 1997 to July, 1997. According to Mr. John Mitchell, the bar manager, the alleged harassment by the Gardaí by means of frequent inspections ceased after July, 1997. In a statement furnished to Supt. Forde on 4th February, 1998, he stated the following in relation to the vehicle checkpoints:

> **On weekend nights, the Gardaí would set up a checkpoint approximately 100 yards from Mr. McBrearty's premises on the Diamond side of the town, commencing at about 11 p.m. and all traffic coming into the town would be stopped. This would continue to about 12, midnight or afterwards on some occasions. It is my opinion that Mr. McBrearty's premises was affected by these checkpoints. Shortly after 2.00 a.m. the Gardaí would set up two checkpoints, 100 yards on either side of Mr. McBrearty's premises. They would stop all cars coming out of the car parks. All of these cars, the occupants of which would be patrons of Mr. McBrearty's nightclub. It is my opinion that the Gardaí were harassing our customers so that they wouldn't return to our premises again. I wish to state that there have been no checkpoints set up near our premises since 25th/26th July, 1997. The situation has changed drastically with regard to Gardaí visiting our premises since July, 1997, to enforce the licensing laws. We are not getting any undue harassment since July, 1997.**

These allegations of harassment have been the subject of comprehensive statements furnished by the Gardaí, both in the course of interlocutory proceedings before the High Court and in statements made to the Garda Síochána Complaints Board. In essence, the Garda case is that from about 1994 onwards, a large public order problem developed in the town of Raphoe. In a statement dated the 15th of April, 1998, Supt. Kevin Lennon stated that after the closure of the Point Inn at Quigleys Point, County Donegal, the "rave" scene transferred to "Frankies" nightclub in Raphoe. He stated that a large

number of young people were coming into the town to attend the disco. He stated that there was a high level of drug abuse, with the commission of numerous assaults and public order offences by persons who had been attending the nightclub. He made the following comments by way of comparison between the level of police activity in Raphoe and in other towns in County Donegal:

> **It has been suggested by Mr. McBrearty, the complainant, that other towns such as Letterkenny have not got the same policing attention as has his premises. Letterkenny is known generally as the Mecca of social life in the North West. There are a total of 7 nightclubs in the Letterkenny town area, which in total attract on any weekend night between 7,000 and 8,000 patrons. In addition 4 out of the 7 nightclubs referred to trade 5 to 6 nights per week as opposed to Mr. McBrearty's 3 weekend nights. I can advise you in comparison to the crowd capacity of the said 7 nightclubs in Letterkenny, there is at total of 31 assaults reported which can be attributed to nightclub activity. This is in comparison to 31 recorded assaults attributed to Mr. McBrearty's over the same period. In Letterkenny town area arising from the crowd management policy of the Garda and law enforcement in the Letterkenny area a total of 531 prosecutions are recorded for public order offences. Out of a total of 228 inspections of licensed premises in Letterkenny for 1997, 26 prosecutions ensued. This is a measure of the degree of compliance with the law by publicans in Letterkenny. In comparison with Raphoe, I considered Ballybofey, which has two nightclubs trading and for the same period of 1st January, 1997 to 31st March, 1998 there were 18 minor assaults recorded as attributed to nightclub activity. There were 183 Garda inspections of licensed premises for the period of which 17 resulted in prosecution. In reaching these comparisons with the number of venues and population, I conclude that the assault statistics in relation to the sole activities of Frankies Nightclub are far in excess of the average of 4 attributed per club in Letterkenny and 9 in Ballybofey. In reaching this conclusion one must give due regard to the crowd numbers at Letterkenny and Ballybofey which are on average eight times higher in Letterkenny and twice as high in Ballybofey per night social population.**

Elsewhere in the statement he stated that Mr. McBrearty had installed a CCTV system, which he used to enable staff to monitor the arrival of Gardaí at the premises. He alleged that the shutters would be pulled down immediately prior to the arrival of the Gardaí and that immediately after the departure of the Gardaí from the premises, the shutters would be raised again. He stated that there was evidence from Sgt. Noleen Griffen who had attended on the premises on dates in April, 1997 and May, 1997 and had taken a video recording of after hours trading in the premises.

In an affidavit sworn on 21st April, 1997, C/Supt. Dennis Fitzpatrick stated that there was a serious public order problem in Raphoe. He also stated that there had been a number of serious assaults on the McBrearty premises. He stated that on 30th December, 1996, Mr. Edward Moss, had been seriously injured by Frank McBrearty, Jnr., during an assault on the premises. He stated that proceedings were pending at that time. Mr. McBrearty, Jnr., was subsequently acquitted of the charge of assaulting Mr. Moss. Chief Superintendent Fitzpatrick went on to state that on 26th January, 1997, a doorman employed at the premises had dragged a patron, Ms. Catherine Kelly from the premises and threw her into the street causing her injury. He also alleged that on 1st March, 1997, a Mr. Rory McCullagh was assaulted on the premises. He alleged that on 10th March, 1997, a Mr. Jonathan Minnock was seriously assaulted by another patron at the premises and that the stewards failed to take any action. He alleged that on 23rd February, 1997, Mr. McBrearty, Snr., had obstructed Gardaí and attempted to prevent them from entering the car park. He also alleged that on 10th February, 1997, a man was questioned in relation to the possession of 4 LSD tablets while on the premises. He stated that on 23rd March, 1997, D/Sgt. White was physically assaulted by a patron on the premises.

In a replying affidavit sworn by Mr. McBrearty on 30th May, 1997, he stated that although Mr. Moss had settled his claim with the McBrearty's and had been paid compensation, that when he tried to withdraw his complaint made to the Gardaí, Sgt. John White prevented him from so doing. He also alleged that Ms. Catherine Kelly was removed from the premises but not in the manner alleged by C/Supt. Fitzpatrick, but was expelled in a dignified manner, and that this was done for her own safety due to the fact that there appeared to be a serious family dispute emerging between her and other members of her family. He stated that D/Sgt. White had subsequently gone to Ms. Kelly and tried to entice her to make a complaint against Mr. McBrearty and the doorman and he alleged that D/Sgt. White had told her that if she did so, he would put her in touch with a firm of solicitors in Dublin who would mount a claim on her behalf and that she would receive money from Mr. McBrearty. Mr. McBrearty exhibited a letter from Ms. Kelly formally withdrawing any complaint that she had made against him. He went on to deal with the other allegations of assault contained in the C/Supt's. affidavit. He went on to state the following in relation to the number of vehicle checkpoints:

> **Checkpoints are set up every weekend outside or approximate to the plaintiffs premises which is completely contrary to the conduct and action of the defendants up until the arrival of D/Sgt. White and furthermore the checkpoints would last for a period of 1 hour at a time and would return and be set up outside the plaintiffs premises on a number of occasions throughout the evening and night.**

Sgt. John White swore an affidavit in the proceedings before the High Court. This affidavit is dated 23rd January, 1997 but it is presumed that this is a mistake and should read 23rd June, 1997. In this affidavit, D/Sgt. White states that it was due to the increase in levels of crime and public order offences in

the Raphoe area, that he was transferred to Raphoe as a Sergeant. He stated that on arrival in the area, he met with the publicans in the town and informed them that from that time on, the liquor licensing laws would be strictly enforced. He stated that with the exception of Mr. McBrearty, Snr., all the publicans were positive in their response to this Garda initiative. He stated that Mr. McBrearty received the same treatment as other publicans in the area. He stated that vehicle checkpoints affected all the licensed premises equally. He stated that the checkpoints were usually placed around the Diamond in Raphoe. This was close to other licensed premises as well as being close to Mr. McBrearty's premises. He stated that there were no complaints from other publicans in relation to the checkpoints. He denied that there was any intention to victimise Mr. McBrearty, Snr. In the course of the affidavit he exhibited a letter dated 19 June, 1997 signed by Mr. Jim McGranaghan on behalf of the Raphoe Diamond Traders Association wherein Mr. McGranaghan stated:

> **The residents of the Diamond and the traders are delighted at the presence of the Gardaí in town, especially at weekends. We look forward to your continued presence in the town and thank you for the help of the local Station.**

D/Sgt. White denied that the Gardaí had used the enforcement of liquor licensing laws as an attempt to get Mr. McBrearty to admit the involvement of members of his family in the death of Mr. Richard Barron. He stated that the McBrearty's were harassing members of the Barron family and in this regard he exhibited a letter from Ms. Geraldine McElwee, the daughter of the Late Mr. Barron, dated 19th June, 1997. In this letter she complained of intimidation and rude gestures being made toward her and members of her family by members of the McBrearty family. D/Sgt. White also made reference to the CCTV system and stated that Mr. McBrearty had installed it so as to enable bar staff to be alerted to the imminent arrival of the Gardaí at the premises. He stated that on many occasions the McBrearty's continued to serve alcohol after the Garda raid. In relation to the number of prosecutions which were pending at that time against Mr. McBrearty, Snr., D/Sgt. White stated at paragraph 13, "I made it clear to all publicans in the Raphoe area that I would not tolerate breaches of the liquor licensing laws. Mr. McBrearty refused to accept that he must comply with the liquor licensing laws and that is the reason there are a number of prosecutions pending".

D/Sgt. White denied any desire on his part to destroy Mr. McBrearty's business. He stated that he had not known Mr. McBrearty, or his family, until his arrival in Raphoe. He stated that Mr. McBrearty refused to co-operate in relation to running his premises in accordance with the liquor licensing laws. He denied that he put any pressure on any persons to bring claims against Mr. McBrearty and made particular reference to Mr. Edward Moss. He stated that he had not met Mr. Moss until 21st January, 1997 when he called to Raphoe Garda Station. This was apparently with a view to withdrawing his statement. His solicitor, Mr. Fahy, had already written informing the Gardaí that he wished to withdraw the statement. He stated that when Mr. Moss arrived at the Station, he was somewhat confused as to whether or not he

wished to withdraw the statement. D/Sgt. White denied that he put any pressure on him not to withdraw the statement. D/Sgt. White stated:

> **I did not prevail on Mr. Moss to repeat his statement of complaint under threat of prosecution if he did not do so. The fact of the matter is that Mr. Moss is the injured party in this case and he is anxious that the matter proceed in the Criminal Court. …**
>
> **I emphatically deny the suggestions or inferences that the Gardaí are using the Road Traffic legislation and Licensing Laws in order to investigate the death of Mr. Richard Barron. I and other members of the Gardaí are using that legislation for the purpose for which it was intended. The Gardaí have enforced the law in a reasonable and fair manner to all persons in the Raphoe area, including Mr. McBrearty. However, Mr. McBrearty is a person who wishes to impose his standards and views on all others, and he appears unable to accept the enforcement of, in particular, the liquor licensing laws.**

Included in the papers, which have been furnished to the Tribunal, is a draft of a further supplemental affidavit of Mr. McBrearty, which was unsworn. In that draft affidavit, he states that Raphoe was getting a level of Garda activity not seen elsewhere in Donegal. Mr. McBrearty stated that he had always complied with the liquor licensing laws and had applied for extensions for Saturday nights, when this was not done by other publicans, who merely kept their premises open without authority. He stated that the checkpoints were set up approximately 50 meters either side of his premises. He stated that it was therefore untrue to state that the checkpoints applied equally to other licensed premises in Raphoe. He stated that the other six pubs in the town were largely unaffected by the checkpoints. He denied that there were any breaches of the liquor licensing laws at his premises. He stated that D/Sgt. White had put pressure on Mr. Moss to bring a claim against him and he referred to an alleged letter from the solicitor acting for Mr. Moss wherein it was claimed of D/Sgt. White "you have been continually harassing him (i.e. Moss) by telephone".

The application seeking an interlocutory injunction did not proceed before the High Court. It was withdrawn by Mr. McBrearty on the morning of the hearing. The Tribunal legal team is not aware as to the circumstances which surrounded the withdrawal of this application. It is not known whether any agreement, tacit or otherwise, was reached between the parties. It is noted however that an instruction was issued subsequently by Sergeant Joseph Hannigan which appears to be dated 25th July, 1997 and was in the following terms:

> **<u>Re: Inspections of Frankie's Nightclub:</u>**
> **I have received instructions from Superintendent Lennon on this date that the premises of Frank McBrearty are to be inspected once each night for the next few weeks. Multiple visits are not to be made. Inspections should be carried out at a time when it is**

likely that offences are being committed. Members on visits should note whether food is being served etc. The District Officer states that he is not "going soft" on McBrearty but that members should concentrate for the moment on public order. Sergeants or in their absence the local member should continue to write up a comprehensive report in the Occurrence Book of each night's events (Friday, Saturday and Sunday nights).

For your information and compliance please.

Sergeant Joseph Hannigan.

It is noted that insofar as Mr. Mitchell was concerned, he had no complaint in relation to Garda inspections of the McBrearty premises after the month of July, 1997. On 30th October, 2002, the Tribunal legal team was furnished with a large volume of documentation by the Garda authorities. Among the papers submitted were a number of statements from Gardaí who had carried out inspections of the McBrearty premises. All of these Gardaí denied that there was any campaign mounted to victimise or harass Mr. McBrearty by means of carrying out inspections of his premises.

There is also a comprehensive statement from D/Sgt. John White in response to a complaint lodged by Mr. McBrearty with the Garda Síochána Complaints Board to the effect that the Gardaí were harassing his business. In the course of this statement D/Sgt. White goes over much of the ground that was already covered in his affidavit sworn in the proceedings before the High Court. In essence, he was putting forward the argument that there was a serious public order problem in Raphoe at the time and that Mr. McBrearty and his staff were un-co-operative with the Gardaí in their efforts to deal with the problem. In addition, he stated that Mr. McBrearty and his staff were consistently flouting the liquor licensing laws. It was for this reason that it was necessary for the Gardaí to take the actions that they did in relation to raids on the premises and the imposition of vehicle checkpoints in the area. He also dealt with the fact that Mr. Edward Moss had accepted compensation from Mr. McBrearty in the sum of £15,000.00 and stated that he was of opinion that the acceptance of this money was not in the best interest of Mr. Moss. He stated that Mr. Moss was anxious that the criminal prosecution should proceed. He denied putting any pressure on Mr. Moss not to withdraw his statement. He also dealt with the occasion when he was assaulted on the premises by a patron. He stated that some time later, when this patron was arrested, he was discovered to have £300.00 in crisp new notes on his person. This man could not account for where he had obtained these notes. He stated that this person was a single unemployed person. He speculated that this person had been paid by Mr. McBrearty to obstruct and assault him on that Sunday morning 22nd March, 1997. He stated that he had encountered numerous difficulties when attempting to inspect the McBrearty premises. He also referred to a covert video taken by Sgt. Noleen Griffen in April, 1997, which showed after hours drinking at the premises. The video had been furnished to the Garda Síochána Complaints Board and a copy thereof has been furnished to the Tribunal. In relation to the number of inspections carried out at the

McBrearty premises, he stated that all inspections were carried out in a legal manner and were included in the Inspection Book. He stated that, as can be seen from the entries in the Inspection Book, all other licensed premises in the Raphoe sub-district received similar attention. He stated that he had not received any complaints from other publicans in relation to the level of Garda activity. He stated that one publican, the owner of "Biddy Friels" pub, had stated in the Donegal People newspaper dated 14th May, 1997 that he did not have a problem with the Gardaí inspecting his premises. D/Sgt White stated that while the arrival of the Gardaí for the purpose of carrying out an inspection of a public house, was not always a welcome sight for the owners of such premises, they were always treated with respect. He stated that in contrast, when inspecting the McBrearty premises they were treated with derision by most but not all of the staff.

There is also a document, which is material to this question, which was drawn up by D/Sgt. White on 2nd July, 1997. This document is headed "Policing of Raphoe on Weekend Nights". A complaint was lodged by Mr. McBrearty, Snr., in relation to the content of this document which was dealt with by the Garda Complaints Board under file reference 990620. In the document D/Sgt. White states that in the month prior to 2nd July, 1997, management at Frankies Nightclub had introduced a special offer on Friday nights whereby the entry fee was reduced from £5.00 to £1.00 and all drinks in the nightclub were £1.00 each. There was also a "Happy Hour" between 20.30/21.30 hrs. in the pub portion of the premises where all drinks were £1.00. It is stated in the document that Mr. McBrearty, Snr., laid on buses to transport people free of charge from Derry, Strabane, Castlederg and Letterkenny. The document states that approximately 1,000 patrons attended on 27th June, 1997. These were mostly aged between 18 and 25 years. In June, D/Sgt. White had decided that extra Gardaí were needed to police the town at these times. He stated that it would be necessary to have one Sergeant and six Gardaí present. However, he states that on 20th June, 1997 there was total confusion in the town at 02.00 hrs. when 1,000 patrons exited the club and taxis were waiting and there were only three Gardaí present. He drew up an operational order so as to ensure that there would be proper Garda levels in the town on future dates. The plan was put into place for the following weekend. He stated that on 28th June, 1997, when the crowd emerged, many were intoxicated and, simultaneously, there were several fights at the entrance to the nightclub. He said prisoners were taken by the Gardaí but, due to a deterioration in the mood of the crowd present, Sgts. Hannigan and White decided to release the prisoners and deal with them by means of summons. He stated that reinforcements were requested and arrived within 30 minutes. However there were innumerable breaches of the Public Order Act. He states his opinion for the reasons as to why the area was so troublesome on the night, as follows,

(a) The size of the crowd,
(b) The large number of patrons attending from Northern Ireland,
(c) The drunken state of patrons due to the availability of cheap alcohol, and

(d) The fact that management and staff were criticising Gardaí within the hearing of the crowd.

In the document he stated that Mr. McBrearty, Snr., had said that if the Gardaí did not lay off, he would terminate the Country & Western nights on a Saturday and bus in 1,500 people on a Saturday evening and supply them with cheap drink until the Gardaí relented in their implementation of the liquor licensing laws. He went on to assert that the members inspecting the McBrearty premises found themselves subject to verbal abuse and threats at the hands of management and staff. This was dealt with by the issue of summonses under the Criminal Justice (Public Order) Act, 1994. In the document, he goes on to state that in May, 1997, undercover Gardaí saw frequent breaches of liquor licensing laws in McBrearty's premises with patrons being served alcohol until 01.50 hrs. on a Sunday morning with the shutters being closed moments prior to the arrival of the Gardaí. D/Sgt. White alleged that covert surveillance was the only method of detecting breaches of the liquor licensing laws due to the fact that Mr. McBrearty had installed a CCTV system both inside and outside the premises and therefore knew of the arrival of the Gardaí.

It should be noted that Mr. McBrearty, Snr., through his solicitor at the time, Mr. Ken Smyth of Binchys Solicitors, had attempted to lodge a complaint on 18th March, 1999, in relation to this document drawn up by D/Sgt. White. However, this complaint was deemed inadmissible by the Chief Executive of the Garda Síochána Complaints Board on the grounds that the conduct complained of did not constitute an offence or a breach of discipline. In addition, the Chief Executive was of the opinion that the document referred to in the complaint was internal Garda correspondence and, as such, was not intended for public use. This decision was appealed to the Garda Síochána Complaints Board. However, on 27th August, 1999, the Board confirmed the decision of the Chief Executive and ruled that the complaint was inadmissible.

Agreement with the view put forward by Supt. Lennon and D/Sgt. White is gained from the report made by Insp. Philip Lyons in respect of the offences, which took place in Raphoe on the nights of Friday 4th and Saturday 5th July, 1997. In a document bearing the title "Public Order Policing – Raphoe on the nights of Friday 4th and Saturday 5th July, 1997", dated 8th July, 1997, Insp. Lyons gave a graphic account of a very serious public order problem that ensued when the crowd exited from McBrearty's nightclub on the nights in question. He stated as follows in the conclusion/recommendation section of that report:

> **Without exaggeration the scene at Raphoe between 2 a.m. and 3.30 a.m. on Friday night/Saturday morning was the most serious I have ever witnessed in relation to a licensed premises. It cannot be denied that all of the trouble emanated from the abuse of the Special Exemption granted to Frankies Nightclub. Two of the five persons arrested were aged 15 and 16 years. (Name of girl), the girl who was injured was only 16 years. All were drunk from drink supplied on the premises. From my observation, drunkenness of**

an extreme nature was permitted on the premises. Of the three persons seriously injured, one was assaulted by a staff member, one was denied medical and Garda assistance and spirited away, taken to hospital and the third was a 16 year old girl supplied with brandy at £1.00 a time. As regard Saturday night Mr. Mitchell made no effort to deny that he ignored the licensing laws and was brazen in his attitude.

Overall I feel that the situation in Raphoe on a Friday night needs urgent and high profile attention. If it develops further then anything, including serious injury and death is possible. I recommend that consideration be given to the following remedies:-

(a) Object to renewal of Mr. McBrearty's liquor licence,
(b) Object to any special exemptions for a Friday night,
(c) Carry out an inspection on a Friday night for under age admittance, etc. (this would pose problems and require major manpower).

I further recommend that consideration be given to prosecuting Mr. F. McBrearty for the offences as disclosed in this report in respect of Friday and Saturday night.

Finally I wish to state that Mr. McBrearty spoke with me on Sunday morning the 6th July last and agreed that what transpired outside his premises on the previous Friday would not be tolerated. He said that from next Friday onwards that admission and drinks would return to normal prices and that buses from certain areas that carried troublemakers would be cancelled.

For your information.

Signed: Inspector Philip Lyons.

In summary, the Gardaí concerned make the case that the number of inspections of the premises, the number of vehicle checkpoints and the ensuing number of summonses which were issued against members of the McBrearty family, did not constitute a campaign of harassment against the McBrearty family, but were a necessary Garda response to a serious public order problem that existed in Raphoe at the time. They maintain strongly that the problem was caused or contributed to by virtue of the fact that Mr. McBrearty was consistently flouting the liquor licensing laws. Mr. McBrearty's case is that he was an ordinary, law-abiding publican but that he was singled out for abuse and subjected to harassment through misuse of Garda powers.

In order to resolve this conflict, it will be necessary for you Sir, to hear evidence from all of the relevant parties. It will also be necessary for you to hear evidence for comparative purposes as to Mr. McBrearty's record prior to

1996 in relation to his management of the licensed premises. You will also have to have regard to comparative statistics for other towns in Donegal. It is only with the benefit of such evidence, that you will be able to determine whether there was a public order problem in Raphoe at the time, or a problem in relation to observance of the liquor licensing laws by Mr. McBrearty and his staff, which might be asserted to have justified the level of attention to which the McBrearty premises was subjected in the relevant period.

It is not possible to deal further with the question surrounding the issue of the summonses at the present time. The Tribunal legal team does not have a copy of the summonses or the witness statements grounding same. This aspect will be dealt with after further investigation.

The second area of alleged harassment concerns complaints by members of the McBrearty family that members of the Gardaí were carrying out their duties toward them in a manner that constituted harassment of them. While numerous complaints were lodged by members of the McBrearty family with the Garda Síochána Complaints Board, not all were the subject of investigation by the Board, as some were lodged out of time, i.e. more than six months after the date of the conduct complained of and in others, the complainants refused to co-operate with the Garda officer who was appointed to investigate their complaint. Where the Gardaí against whom a complaint was made were not given the opportunity to respond to an allegation, they will not be identified in this preliminary opening statement. Some of the complaints could be seen as being somewhat minor in nature. However, if established in evidence, it is arguable that they show a pattern of conduct between some Gardaí and some members of the McBrearty family, which cumulatively could amount to harassment. The following is a summary of the complaints lodged, which might be deemed to constitute harassment of certain members of the McBrearty family.

On the 10th of May, 1997, Frank McBrearty, Snr., lodged a complaint that at 00.55 hrs. on that date, at a vehicle checkpoint in Raphoe, D/Sgt. White had said to him that the best thing for his son to do was to go to the station and to admit the murder of Mr. Richie Barron. It was alleged that D/Sgt. White had also tried to take the keys of the car. It was alleged that this happened in the presence of Mr. McBrearty's 11-year old daughter who was upset by the incident. It was alleged that Gda. O' Dowd was with D/Sgt. White at the time of the incident. D/Sgt. White and Gda. O' Dowd both made statements to the Investigating Officer (I.O.), C/Supt. Carey denying the conduct alleged against them. They stated that Mr. McBrearty drove through the checkpoint a number of times and was very aggressive and was swearing at the Gardaí. The I.O. interviewed Mr. James McGranaghan who said that he saw Mr. McBrearty passing through the checkpoint a number of times and swearing loudly at D/Sgt. White. The I.O. stated that there were conflicting versions of what transpired. He stated that the independent evidence, in so far as it went, supported the Garda version. He did not believe that there was any evidence to support any action against D/Sgt. White. In his report, the Chief Executive stated that he was of opinion that on the balance of the evidence Mr. McBrearty was acting provocatively and aggressively and he thought it was reasonable to accept D/Sgt. White's version of events as being the more credible. He recommended that the Garda Síochána Complaints Board should form the opinion that no offence or breach of discipline was disclosed. This complaint was withdrawn from the Board prior to any final determination being made thereon. The withdrawal of complaints is considered fully under paragraph (j) of the Terms of Reference.

On 14th May, 1997, Mrs. Patricia McBrearty made a complaint that Gda. P. Kilcoyne and D/Sgt. John White had come to her house late at night at 22.45 hrs., for the purpose of serving a summons on her husband, Frank McBrearty, Jnr. She stated that when she refused to take the summons, they threw same into the hallway and then drove away blowing the car horn loudly. She stated that D/Sgt. White pushed the summons into her

face and said "you take these summonses now or I'll sort you out, just like I am going to sort your husband out". D/Sgt. White made a report to the I.O. in which he stated that he had gone to the complainant's house at 22.42 hrs. for the purpose of serving the summonses. He stated that the downstairs lights were on at the time. He stated that he had told Gda. Kilcoyne to serve the summons. He states that he only partially got out of the car and put one foot onto the driveway and told Gda. Kilcoyne to leave the summonses with Mrs. McBrearty. He stated that he then sat back into the driver's seat of the car. He denied that either he or Gda. Kilcoyne behaved improperly at the time. He denied that he had any conversation with either of the McBrearty's on that visit. Gda. Kilcoyne also made a statement to the I.O. in similar terms to that given by D/Sgt. White. He stated that he had carried out his duties with the greatest respect and courtesy toward Mr. and Mrs. McBrearty. The I.O. in his report, noted that the summons only became available for service earlier that day. He stated, that given D/Sgt. White's "efficiency and professionalism", it was not surprising that he elected to serve the summonses as soon as possible. He was of opinion that service of a summons up to 23.00 hrs. was permissible. In his report the Chief Executive stated that it was very difficult to determine where the truth lay in relation to this complaint. He questioned why D/Sgt. White decided to serve summonses coming up toward 23.00 hrs. He suggested that the Board should defer consideration of the matter until all investigations into the complaints were complete. He recommended that D/Sgt. White should be invited to make representations to the Board as to why he had chosen to serve the summons at a late hour. This complaint was withdrawn before any determination thereon was made by the Board.

Mark McConnell lodged a similar complaint with the Garda Síochána Complaints Board alleging that D/Sgt. White had served a summons on him at 23.45 hrs. at his home on 15th April, 1997. He stated that when he told D/Sgt. White that he should not be serving summonses at that late hour as his wife had been in a psychiatric hospital, he alleged that D/Sgt. White replied that it was guilt which had put her there. Mr. McConnell stated that he said to D/Sgt. White that it would be proven that they had no part in the murder of Richard Barron, at which D/Sgt. White is alleged to have replied "I don't think so but I'll shake your hand if you prove me wrong". It was alleged that D/Sgt. White and Gda. O' Dowd drove off the property laughing. Mr. McConnell alleged that his wife was very upset by this incident. The I.O. took statements from the complainant and also from his wife and from her mother. These corroborated the account given by the complainant. A statement was also obtained from D/Sgt. White in which he claimed that the complaint was made a month after the date of the alleged incident. He implied that it was part of a vendetta or conspiracy by the McBrearty family and others against him. He denied that the incident occurred at 23.45 hrs. and said that it had in fact occurred at 22.45 hrs. He said that the downstairs lights were on at the time and that he could hear the noise of the television playing. He denied that he banged loudly on the door. He stated that Mr. McConnell was somewhat of a "night person" who played in a band and would often be up late at night. Gda. O' Dowd made a statement in which he corroborated D/Sgt. White's statement in relation to the time and the fact that lights were on downstairs in

the house. He stated that no complaint was made at the time by Mr. McConnell in relation to the hour at which the summons had been served. The I.O. stated that the complaint was not made until 14th May, 1997. He noted that the Station record made on the night supported the Garda version. He believed the Garda version of events. The Deputy Chief Executive stated that in his view it was at least inconsiderate and perhaps an abuse of authority to call to the house at that hour of the night. He recommended that the Board should form the opinion that a minor breach of discipline on the part of the members may be disclosed. He recommended that they should be invited to make representations to the Board under Section 7 (4) of the Act. It is not clear if this was ever done as the next correspondence on the file deals with the withdrawal of the complaint.

On 20th May, 1997, Mark McConnell made a complaint that on 16th March, 1997, a named Garda had stared at him in a nightclub and made actions as if hitting someone over the head. It was alleged that this was done in an attempt to provoke a row. It was further alleged that two named Gardaí later stared at the complainant and acted in an intimidatory manner toward him. Sir, the Gardaí against whom complaint was made have not been named in this statement due to the fact that this complaint was deemed inadmissible and therefore the actual content of the complaint was never put to the Gardaí concerned.

On 14th May, 1997, Michael McConnell made a complaint that on the previous day at 23.45 hrs. a named Garda had called to the house for the purpose of serving a summons on him. He stated that he was not in at the time. However, his mother and sister-in-law, Roisín McConnell were there and both were in a state of bad health. He complained about the late hour at which service had been attempted. Again, the Garda against whom the complaint was made has not been identified due to the fact that this complaint was deemed inadmissible by the Chief Executive and accordingly the content of the complaint was never put to the Garda concerned.

On 7th July, 1997, both Willie Logan and Mark McConnell lodged complaints concerning the conduct of D/Sgt. White toward them as they left the nightclub earlier that day. Mark McConnell alleged that D/Sgt. White stared at him and that when he stared back D/Sgt. White then booked him under Section 8 of some Act and accused Mr. McConnell of threatening D/Sgt. White's wife and children. He stated that D/Sgt. White threatened to arrest him. It was alleged that when Willie Logan arrived on the scene, D/Sgt. White had stared at him and then said something about Section 8 and asked Mr. Logan if he wanted to go in the van. The I.O. took statements from the relevant witnesses and from D/Sgt. White, who denied that conduct alleged against him. In relation to Mark McConnell's complaint, the I.O. was of opinion that the complaint lacked any credibility. In relation to the complaint of Mr. Willie Logan, the Chief Executive, stated that it was clear that there was an exchange of words between the parties. He was inclined to view the Garda version as the more credible. He recommended that the Board form the opinion that there was no offence or breach of discipline disclosed.

Frank McBrearty, Snr., lodged a complaint in relation to an alleged incident, which occurred on 19/20th July, 1997 in his nightclub, when it was alleged that D/Sgt. White made an allegation that he, Frank McBrearty, Snr., was bribing witnesses. He is alleged to have said to Mr. McBrearty, Snr., that he would have to increase the amount on offer from £500.00 to £1,000.00 like the Dublin criminals. The I.O. took statements from the complainant and from other witnesses in the nightclub. A statement was also obtained from D/Sgt. White who denied making any such allegation about Mr. McBrearty. In his first report, the Chief Executive, noted that there were two conflicting versions of events and it was difficult to decide which version was true. He recommended that the Board should await the decision of the District Court prosecutions before deciding the matter. On 18th May, 1999, the Garda Síochána Complaints Board decided to defer further consideration of this complaint. In a second report the Chief Executive recommended that the Board should form the opinion that no offence or breach of discipline was disclosed. The complaint was withdrawn before any final determination was made thereon by the Board.

On 14th June, 1997, Frank McBrearty, Jnr., made a complaint that earlier that day in the nightclub, a named Garda had called him a "murderer" and said to him "come on Frank, come clean and confess to everything". Insp. Greg Sullivan was appointed as I.O. to deal with this complaint. The complainant objected to his appointment and refused to deal with him. Accordingly a stalemate ensued and further investigation of the complaint did not take place.

On 26th November, 1997, Frank McBrearty, Jnr., made a complaint alleging that on 22nd October, 1997, while he had been sitting in his car in Letterkenny, D/Sgt. White stopped his car and came across the road and alleged that he, Frank McBrearty, Jnr., had been shouting at him. It was alleged that D/Sgt. White then commenced writing in his notebook. Mr. McBrearty alleged that this was harassment, or an attempt to provoke Mr. McBrearty into committing an assault against D/Sgt. White. C/Supt. Carey was appointed I.O. He took statements from the complainant and also from his wife. D/Sgt. White furnished a statement in which he denied the allegations made by Mr. and Mrs. McBrearty. He stated that Mr. McBrearty had been shouting abuse at him and that he had been illegally parked blocking the entrance to a fire station. He stated that Mr. McBrearty was very aggressive. In reaching his decision, the I.O. also had the benefit of a statement from an apparently independent witness, Mr. Colin Ferry, who had made a statement to the Gardaí on the day of the incident. It lent some support to the version given by D/Sgt. White. He had stated that Mr. McBrearty was very aggressive. However, he did not hear any of the conversation between the parties. The I.O. stated that he had spoken to this witness, but that the witness could not remember very much. He was not able to get a statement from him. He concluded by stating that there was a conflict of evidence and that he was inclined to believe D/Sgt. White's evidence. The Chief Executive in his report stated that D/Sgt. White's version of events seemed more credible. He recommended that the Board form the opinion that no offence or breach of discipline was involved. This complaint was withdrawn, along with all the

other McBrearty group of complaints, prior to any final determination thereon by the Board.

On 25th November, 1997, Ms. Katriona Brolly lodged a complaint that senior Gardaí had asked the RUC (as it then was) to make enquiries about the complainant at her place of work. A report was obtained from Supt. Kevin Lennon in which he stated that Sgt. Joe Hannigan was detailed to enquire via the RUC from the complainant's employer whether she was at work on 14th October, 1996. The complaint was held not to be admissible by the Chief Executive because it did not constitute an offence or a breach of discipline against the member complained of.

On 3rd December, 1997, Mr. Willie Logan lodged a complaint that on 25th November, 1997, D/Sgt. White had pulled his car in front of Mr. Logan's van and said "do you usually drive without your lights on?" Mr. Logan stated that he said that he did not want to talk to D/Sgt. White. He stated that he went to the Garda Station and requested a copy of what D/Sgt. White had written in his notebook. This was refused. Mr. Logan had then refused to leave the Garda Station. He alleged that Gda. Barrett then twisted his arm behind his back. The I.O. obtained statements from the complainant and also from his wife, who stated that he was driving with the lights on at the relevant time, which was 21.15 hrs. A statement was obtained from D/Sgt. White in which he stated that Mr. Logan had been driving the van at the relevant time without the lights on. Gda. Barrett denied twisting the complainant's arm. The I.O. was of the opinion that undoubtedly there was an altercation. He was not convinced that any breach of discipline had occurred. He recommended that no action be taken against the Gardaí concerned. The Chief Executive found the Garda version of events more credible. He recommended that in the event that no prosecution was directed by the DPP, the Board should form the opinion that neither an offence nor a breach of discipline was disclosed.

A complaint was lodged on 16th January, 1998, by Frank McBrearty, Jnr., that on 8th January, 1998, a named Garda had followed him in his car at 22.30 hrs. flashing his lights and driving close behind him. It was alleged that this was done in an effort to intimidate Mr. McBrearty. This complaint was not investigated because the complainant refused to deal with the officer appointed as I.O.

Mrs. Patricia McBrearty lodged a complaint on 26th January, 1998, that on 23rd January, 1998, Sgt. Roche, Gda. Fowley and another Garda had driven the patrol car onto her property for the purpose of speaking to her husband. When they were told to leave the property, Mrs. McBrearty alleged that they took a long time to leave. She thought that this was done in an effort to harass the family. A report on the matter was obtained from Supt. Kevin Lennon who merely stated that Sgt. Roche had gone to the house for the purpose of serving the summons but that he had left the property when told to do so. This complaint was deemed inadmissible by the Deputy Chief Executive.

Mrs. Patricia McBrearty and Frank McBrearty, Jnr., lodged a joint complaint on 12th February, 1998 that on 10th February, 1998, two named Gardaí had followed the complainants in their car and then overtook them and set up a roadblock further down the road. When the McBrearty's vehicle came to a halt at the roadblock, the Gardaí were alleged to have thrown a summons into the car and then laughed at them. The complainants stated that they were on their way to consult a doctor at the time and that their young children aged 7 and 8 years were in the car. The complainants refused to deal with the person who was appointed as I.O. and this complaint was accordingly not investigated.

In complaint bearing reference number 981199, Frank McBrearty, Jnr., alleged that a named Garda had spoken to him in a very loud voice in the foyer of Letterkenny Court House with a view to causing him much embarrassment. This complaint was not investigated as it was deemed inadmissible.

On 30th October, 1998, Frank McBrearty, Snr., lodged a complaint to the effect that while he had been socialising in Ballybofey at approximately 00.50 hrs. and while sitting in his car with members of his family, D/Sgt. White stared at them and then proceeded to follow the car from Ballybofey first to Convoy and then to Raphoe. D/Sgt. White made a statement in which he stated that he had been on duty in Ballybofey on the night in question. He stated that he observed Mr. McBrearty acting in a way that he thought suspicious. He admitted that he did follow the car in Ballybofey and subsequently at Convoy. The I.O. stated that there was no evidence to support the complaint made by Mr. McBrearty and he recommended that no further action be taken. The Chief Executive recommended that the Board should form the opinion that no offence or breach of discipline was involved.

On 30th June, 2000, Frank McBrearty, Jnr., lodged a complaint that on 24th June, 2000, a named Garda had driven in front of his car and parked and then got out and after some discussion had asked him in front of his children if he had threatened to kill Mr. Paul Barron. This complaint resulted in a stalemate as Mr. McBrearty refused to deal with the person appointed as I.O.

On 16th May, 2001, Frank McBrearty, Jnr., lodged a complaint that at a vehicle checkpoint on 5th May, 2001, a named Garda had behaved in an abusive and insulting manner toward him. This complaint was not investigated by the Garda Síochána Complaints Board. It is not clear why no investigation was carried out.

Complaints were also lodged by Frank McBrearty, Snr., in relation to circulars, which had been written by Chief Supt. Denis Fitzpatrick and Supt. Kevin Lennon, alleging that Mr. McBrearty and Mr. William Flynn were involved in a campaign to discredit the Gardaí. The Chief Executive ruled that the circulars were internal Garda memoranda and accordingly the complaint was deemed inadmissible. This decision was upheld by the Garda Síochána Complaints Board on appeal.

As already noted, Mr. McBrearty also lodged a complaint in relation to the document "Policing in Raphoe on Weekend Nights" drawn up by Sgt. John White. However, this complaint was not investigated as it was deemed inadmissible.

As can be seen from the summary which we have presented to you, Sir, while some of the complaints were investigated by I.O.'s appointed by the Garda Síochána Complaints Board, none of the complaints were actually ruled upon by the Board save for the two appealed in relation to admissibility, as all the McBrearty group of complaints were withdrawn before the Board made a determination on them. At the hearing of this module, because all of those matters are factually in dispute, it will be necessary for you Sir to hear the relevant complainants as well as the Gardaí concerned, in order to decide firstly whether the complaints were well founded and secondly whether such conduct on the part of the Gardaí constituted harassment of the extended McBrearty family.

The third area for investigation concerns harassment by means of the circulation of defamatory leaflets, posters and cards concerning the McBrearty family. This, as you will recall, Sir, occurred in or about the month of March, 1997. At the same time, slogans concerning the McBrearty family were painted on the roads in Raphoe. The leaflets or flyers stated the following about the McBrearty's:

> **The murdering McBrearty's, see them live, father and son, at Frankies Nightclub, on 15th March, 1997, with Eamonn McCann. "Daddy I think they are onto us". "Don't worry son, I have all the witnesses paid off. I got away with murder in Scotland. You'll get away with it here, just keep your mouth shut like the rest of us in the club". As Billy Flynn says: "when money speaks the truth keeps silent", Russian proverb.**

The posters stated, "Murderers house for sale. No offers refused. Owner for Mountjoy." The slogans, which were painted on the road, stated "Murdering McBreartys" with arrows painted on the road and elsewhere the slogan was painted "Murdering McConnells" also with arrows painted beneath it on the road.

It would also appear that business cards were produced which made reference in some way to the McBrearty's being murderers. The key issue for you, Sir, is to determine insofar as it may be possible, by whom was this campaign undertaken and more importantly, whether there was any Garda involvement in the planning or carrying out of any aspect of this campaign.

In a note of an interview between D/Gda Richard Caplice of the Carty investigation team and Mr. William Doherty on 21st October, 1999, Mr. Doherty is noted as having said the following, "John White gave me a bundle of leaflets which said come and see live on stage father and son, the murdering McBrearty's etc. and the bit from Billy Flynn's back (this I think should read "book"). I spread them around Raphoe". In a subsequent statement furnished on 3rd March, 2000, Mr. Doherty stated

> **About March, 1997, I think roughly, I was asked by John White would I do a job. I said what, he said distribute these leaflets around Raphoe. He handed me a bundle of leaflets and told me not to leave my prints on them, this was at my house at Doorable. The leaflets read the murdering McBrearty's, see them live on stage with Joe Dolan at 12 m.n. father and son, Oh Daddy I killed a man, don't worry son I did too, keep your mouth shut and say nothing I'll look after it, where money talks the truth stays silent old Russian proverb Billy Flynn's (or words like that). I distributed them that night around the streets of Raphoe. I had a hat on me as there is a camera at the P.O. It was around 3 a.m. I spread them all over town and the people got them next morning. Frankie went mad. It was the talk of the town next day. I can't say who printed them only they were given to my by John White and he gave me £100 the night he handed them to me to put around.**

Subsequent investigation by the Carty investigation team ascertained that there was a camera on the post office, but that it was a dummy camera, which had no film in it. In undated handwritten notes furnished by Mr. Doherty, he stated:

> **John White gave leaflets to put around Raphoe for him. He told me at first to put them in the newspaper outside the paper shop. I just put them along the street. The leaflets read murdering McBrearty's see them live father and son, live with Joe Dolan. Dad I killed a man, father don't worry son I'll pay them off I got away with it in Scotland when money talks the truth stays silent Russian proverb.**

In an undated statement of evidence prepared by D/Sgt. John White he denied any involvement in the production or circulation of the leaflets. He stated as follows:

> **I am aware that Mr. Flynn has since forwarded letters to members of An Garda Síochána of higher rank than myself, to members of the Dail and Senate and to the local paper circulating in County Donegal in which he states that Gda. O' Dowd and myself were responsible for the distribution of these aforementioned documents. I was not so involved at any time and while I was on duty in Raphoe up until 5.00 a.m. on Saturday morning 8. 3. 1997, I did not observe anything unusual or suspicious in the town. To the best of my recollection the only person driving around Raphoe or indeed visible on the street was Mr. Frank McBrearty, Snr., whose premises had closed at approximately 3.00 a.m. and who would not have any clear reason for remaining on the deserted streets up until that time.Mr. McBrearty was sitting in his car at the entrance to his nightclub at 5.05 a.m. in what was a completely deserted town at that time for no apparent reason. I personally own two computers and printers and would be willing to make both available for any examination necessary to prove that neither were used for the production of the aforementioned documents.**

On 28th October, 1997, Mr. McBrearty, Snr., lodged a complaint with the Garda Síochána Complaints Board to the effect that although he had made a complaint to Sgt. John White in relation to the flyers on 8th March, 1997 and furnished him with a copy of one of the flyers, he believed that D/Sgt. White had not investigated this complaint properly. In a statement made on 2nd June, 1998, D/Sgt. White stated that he had investigated the matter thoroughly. He stated that his investigation had been hampered due to the refusal by Mr. McBrearty and Mr. Flynn to furnish an original of the leaflet. They would only furnish a photocopy of same. They stated that they wished to carry out their own forensic tests on the original. He stated that he interviewed several people in relation to the documents but nobody was in a position to throw any light on their creation or distribution. He stated that he suspected that either Mr. McBrearty, Snr., or Mr. Flynn were behind the

distribution of the documents. He gave the following as what he considered were the reasons for this belief:

> **No. 1 I was present on duty with Gda. O' Dowd in Raphoe on that night and I observed that Mr. McBrearty, Snr., was the last person present in the town on that morning and he was sitting in his car at the entrance to his nightclub at 5.05 a.m. as I drove past in my private car. The lights in his nightclub were not on and the place was deserted. His club had been closed since 3.00 a.m.**
>
> **No. 2 Both Mr. McBrearty Snr., and Mr. Flynn had each several original documents in their possession by their own admission. Yet neither would supply me with one in order to have it forensically tested.**
>
> **No. 3 Part of the flyer/document contained an extract from Mr. Flynn's book, "Gibgate" and while he, Mr. Flynn had posted out some books to persons in County Donegal he had only done so on 5. 3. 1997.**
>
> **No. 4 In his book Mr. Flynn makes a comment regarding flyers being sent out about him on a previous occasion.**
>
> **No. 5 Mr. McBrearty Snr., at one stage offered a reward of £10,000.00 for information leading to the arrest of Mr. Barron's killer and later offered a reward of £50,000.00 for information leading to the prosecution of the persons responsible for distribution of these flyers. It appears that Mr. McBrearty was well aware that nobody could come forward with the desired information and collect the aforementioned reward. I certainly investigated the manner of the distribution of these flyers/documents to the best of my ability, keeping in mind the fact that not only did I not receive any assistance from Mr. McBrearty or Mr. Flynn but that I was actually hindered by the fact that neither would furnish me with one original document in order to proceed with my investigation. I refute Mr. McBrearty's allegation that this matter was not properly dealt with and I believe that this complaint is vexatious and malicious.**

It should be noted that it had been alleged by Mr. McBrearty, Snr., that when the leaflets had been found by people in Raphoe, there had also been a Garda document found among some of the leaflets. This was apparently some form of notice of rights, which would be given to persons in custody. However, Mr. McBrearty, Snr., did not furnish a copy of this document, which was allegedly found among the leaflets.

Supt. Lennon also furnished a statement in relation to this complaint, in which he denied that he had failed to have a proper investigation of the origin of the leaflets carried out. He referred particularly to the fact that Mr. McBrearty and Mr. Flynn both refused to hand over an original of the leaflets which they had found and stated that that refusal hindered the Garda investigation. A

statement was also furnished by Sgt. Hugh Smith who had also been deputed to investigate the matter. He stated that their investigation was hindered by reason of the fact that no original of the document could be forensically tested. It is clear that the Gardaí regarded this absence of an original document as being a serious impediment to their investigation. It is for you to judge, Sir, if this was a serious reason.

In the diary kept by Mr. John Mitchell, already referred to in relation to the inspections of the McBrearty's licensed premises, the following entry appears for the date 15th March, 1997, concerning an inspection of the licensed premises carried out by Sgt. John White and Gda. O' Dowd:

> **I then gave him one of the poison pen letters and said, here you look after that it might give you something to do. I said that it was handed in to the bar this evening but they can be found in any town around the area. He looked at it and handed it to Gda. O'Dowd and said, here John look after that it might be important.**

In this extract Mr. Mitchell is referring to handing the document to Sgt. John White. If the reference to a "poison pen letters" in that entry was in fact a reference to one of the defamatory leaflets, and if it accurately sets out what happened on that date, it would mean that what was perceived by the Gardaí as a serious impediment to their investigation of the matter, had been removed. It will be necessary for you Sir to hear oral testimony to ascertain the correctness of this entry and to determine the implications, if any, that may arise there from.

In relation to the slogans written on the road, in a statement made by Mr. Paul Roulston to the Carty investigation team on 25th February, 2000, he stated that on one occasion he had attended the court in Letterkenny for the purpose of giving evidence against members of the McBrearty family in connection with alleged road traffic offences. He stated that he went for lunch with a number of people in the nearby shopping centre. He described what he claims happened at that lunch:

> **At lunch time during the court hearings one day in Letterkenny myself, Darcy Connolly and William Doherty and Pat Doherty went to a café in the shopping centre in Letterkenny and William Doherty was bragging and bumming about writing slogans or graffiti on the road and on a bridge wall or somewhere close to young Frank McBrearty's and Mark McConnell's houses. William was bumming that himself and Darcy Connolly, Gavin Gillen, Noel McBride and the wee boy that died William Huet were involved in the writing on the roads. William said he wrote something like "the murdering something". The impression given to me at that time was that Darcy Connolly provided the transport for the boys that night they wrote on the road. I believed what William Doherty was saying Pat Doherty was joking about it as well.**

When this allegation was put to Mr. William Doherty in the course of questioning by D/Sgt. Fox and Sgt. Flannery on 13th April, 2000, he made no reply. Messrs Gillen and McBride denied to the Carty investigation team that they had any involvement in the writing of the slogans. In his statement to the Carty team, Mr. Derek (otherwise Darcy) Connolly made a statement in which he stated that he saw the slogans but had nothing to do with them. He stated the rumour was that William Doherty had written them.

Turning to the production of the business cards, in his statement to the Carty investigation team on 25th February, 2000, Paul Roulston, having referred to lunch at the shopping centre in Letterkenny, where Mr. Doherty was alleged to have bragged about writing the slogans on the road, he continued as follows:

> **I think it was that day as well, we split up after the dinner and myself and William Doherty and my brother Mark went to the Courtyard and William and me went to the card printing machine and William made up to 100 to 150 cards with the following writing on them. I think it was "murdering McBrearty's live at Frankies Nightclub this Saturday night" at whatever time it was "Admission…" or something to that effect. The machine printed out these cards immediately and William Doherty took the cards and threw a few of them around the street and asked me to take a few and hand them out. I wouldn't do it. Mark, my brother was with us all the time. William Doherty put these cards in Darcy Connolly's van that day before he went back into the court. I saw them in Darcy Connolly's van later that evening and did not see them again. William Doherty said he was going to post some of them to McBrearty's as far as I can think.**

In a statement made on 7th March, 2000, Mark Roulston dealt with this event as follows:

> **I met Paul at the court house around dinner time. William Doherty was with Paul. The three of us Paul, William and me intended to go to the Letterkenny shopping centre but we ended up in Mr. Chippies restaurant. We had food and the three of us left there and went up to the Courtyard shopping centre in Main Street. Paul, William Doherty and myself walked around the shopping centre for a wee while and William Doherty went over to a card-printing machine beside the car simulation game now positioned. William Doherty called Paul and myself over to the machine to show us what he was doing. He asked us to look at what he was doing. He was typing information into the machine and the machine started producing small caller type cards with writing on them. The writing on the cards was something like "the murdering McBrearty's" or something like that. I think there was a phone number on it as well. He must have printed maybe 50 of them, there was a wee pile of them. William Doherty asked me to pass them around. I refused to do it. He may have asked Paul to pass them around. I think he left a few of them lying around the arcade. I knew what William Doherty**

had printed on the cards related to Frank McBrearty's family in Raphoe and the death of Richie Barron. I can't remember what William said he was going to do with these cards. I can't remember if he threw any cards on the street in Letterkenny. These were small ID type cards. I'm not sure when this incident took place but I have a wild notion it was spring 1998. I have heard this statement read over and it is true.

Ms. Maureen Gibbons the manager of the Courtyard shopping centre at Lower Main Street Letterkenny, made a statement to the Carty investigation on 18th April, 2000, in which she described finding a card on the ground. It was the size of a business card. She recalled that it had the words "nightclub" and words "murder" printed on it. It also contained other words, but she couldn't recall what these were. She stated that this occurred a few months after the death of Mr. Barron. She stated that she tore up the card and threw it in the bin.

Mr. Derek (otherwise Darcy) Connolly denied any knowledge of the business cards to the Carty investigation team. He denied that they were left in his van. He denied ever seeing the cards.

There is no material in the papers in the possession of the Tribunal at present, in relation to who might have been responsible for placing the posters on the lampposts on the Convoy road. One of the posters was furnished to the Gardaí for forensic examination. An examination thereof was carried out by D/Sgt. John P. Lynch of the Garda Technical Bureau. He was given samples of the handwriting of Derek (otherwise Darcy) Connolly. He found that there was no handwriting evidence to link the writing on the posters with the handwriting of Mr. Connolly. It may be necessary for the Tribunal legal team to carry out further investigations on this matter prior to the oral hearing on this module.

In this area of alleged harassment, Sir, there are a number of conflicts of evidence. As regards the leaflets or flyers, there is the evidence of Mr. Doherty that he received them from D/Sgt. White and distributed them on his instructions. D/Sgt. White has denied any involvement in the production or distribution of the leaflets. He has stated it as his belief that they were manufactured by Mr. McBrearty and/or Mr. Flynn. If this was in fact the case, that would leave it to you, Sir, to attempt to fathom the motive for such alleged conduct on their parts. It would also leave unexplained the admission by Mr. Doherty that he distributed the leaflets. The Tribunal legal team is of opinion that it will only be at the conclusion of the oral evidence that you Sir will be in a position to determine this conflict of evidence.

It will also be necessary for you to consider carefully the content of the leaflets. The Tribunal legal team is of opinion that the leaflets were drafted in a sophisticated manner, which would suggest that the author was a cunning person of average intelligence. It is also noteworthy that the leaflets contain a quotation from Mr. Flynn's book. He had told D/Sgt. John White that he had sent copies of the book to Supt. Lennon, James McGranaghan,

Patsy McGranaghan, Gerard Quinn, Robert Allen, William Bogle, Mr. and Mrs. Peoples, Sean Crossan, Phonsie Crawford, Darcy Connolly and William Huet (RIP). These persons were interviewed by the investigating Gardaí, D/Sgt. White and Sgt. Smith. They denied any knowledge of the distribution of the leaflets. The Tribunal will have to consider the possibility that as the book was sent to Mr. Derek (otherwise Darcy) Connolly, that through him it could have come into the hands of others. Alternatively, any other person, including D/Sgt. White could have received the book from Supt. Lennon, for an entirely innocent purpose. Supt. Lennon has denied giving it to anyone. It will be necessary to consider what credence can be given to the evidence of Messrs. Doherty, Connolly and Roulston having regard to the fact that Messrs. Doherty, and Roulston have admitted telling lies on previous occasions and having regard to the entirety of their evidence both to the Gardaí and to the Carty investigation team.

It is only fair to point out at this stage that the Tribunal legal team has not seen any evidence suggesting that any members of the Gardaí were involved in any way in the painting of slogans or the production or distribution of the business cards, or the placing of posters concerning the McBrearty's house on lampposts on the Convoy road.

We turn now, Sir, to the fourth area of alleged harassment, being the receipt of abusive telephone calls and hoax bomb calls by Mr. and Mrs. McBrearty, Snr., at their home and also at their business premises, where some of the calls were taken by members of their staff. Brief reference has been made of this already, but more detail is now required. In the period 5th November, 1996 to 12th January, 1998, 23 calls in total were allegedly made. 12 of these were abusive telephone calls received by Frank McBrearty, Snr., his family or staff. There were 11 hoax bomb calls. Enquiries by the Gardaí through Eircom established that the calls were made from the following locations;

10 from public telephones in Raphoe, Letterkenny, Mannorcunningham and Carndonagh,
2 calls from the Adria factory in Strabane,
1 call was made from the home of Mr. William Doherty and
10 of the calls remain untraced.

The following is a brief outline of the telephone calls:-

(1) 5th November, 1996 12.00 m.n. – nuisance call made to Frank McBrearty's home the caller stated that he saw him, young Frankie, Mark McConnell, punching and kicking him referring to Mr. Richard Barron, and stating that he had 72 hours to come up with £10,000.00;
(2) 6th November, 1996 2.30 a.m. – nuisance call to Frank McBrearty's home, same caller as in call no. 1 and repeated the same things;
(3) 24th February, 1997 10.20 a.m. – nuisance call to Frank McBrearty's home, his wife Rosalind received the calls from a male caller who asked for Frankie, said something about changing a bad keg of beer: she informed the caller that her husband was at the pub;
(4) 24th February, 1997 10.23 a.m. – nuisance call to Frank McBrearty's pub, the caller said "this is P. J." and called Mr. McBrearty "a big fat bastard" and a murderer, repeated this a number of times and then hung up;
(5) 24th February, 1997 10.26 a.m. – nuisance call to Frankies pub, same details as in call number 4 above;
(6) 24th February, 1997 10.30 a.m. – nuisance call to Frank McBrearty's home. His wife Rosalind received the call: the male caller was abusive: he asked if she was the murderer's wife and said "I'll wipe you out in one go": the caller called her a Scottish bastard: Mrs. McBrearty hung up;
(7) 24th February, 1997 2.55 p.m. – nuisance call to Frank McBrearty's pub: the call was taken by Martina Gibbons, a barmaid: the caller asked if the fat murdering bastard was there;
(8) 24th February, 1997 3.10 p.m. – nuisance call to Frank McBrearty's pub: the call was taken by Martina Gibbons: the caller stated the same as in the previous phone call;

(9) 24th February, 1997 3.33 p.m. – nuisance call to Frank McBrearty's home: the call was answered by Mr. McBrearty: the caller just said "murdering bastard" and then hung up;

(10) 20th April, 1997 9.02 p.m. – nuisance call to Frank McBrearty's home: the call was answered by Mr. McBrearty: the caller accused him of murdering Mr. Richard Barron and stated that he, Mr. McBrearty, would be murdered on Monday;

(11) 21st April, 1997 9.48 p.m. – nuisance call to Frank McBrearty's home: Mr. McBrearty took the call: the caller stated "you murdered Mr. Richard Barron, see how you got on in court today: I'll get your little daughter at school": the caller repeated this several times;

(12) 4th May, 1997 12.25 p.m. – hoax bomb call to the house of Cannon Deegan of Raphoe: the caller stated that two devices were planted in Frankies Nightclub;

(13) 4th May, 1997 2.50 p.m. – hoax bomb call to Letterkenny General Hospital: caller stated that two devices had been planted in Frankies Nightclub;

(14) 18th May, 1997 11.30 p.m. – hoax bomb call to Letterkenny General Hospital: caller stated "bomb in Frankies, code Grey Eagle";

(15) 6th June, 1997 10.32 p.m. – nuisance call to Frank McBrearty's pub: call taken by Mr. John Mitchell, bar manager: the caller stated "tell Frankie he is going to be shot";

(16) 7th June, 1997 12.58 a.m. – hoax bomb call to Highland Radio: caller stated that "there was a bomb in Frankies Nightclub": caller said he was from the LVF: no code word given;

(17) 7th June, 1997 1.02 a.m. hoax bomb call to Highland Radio: caller stated that bomb was outside and not inside Frankies Nightclub;

(18) 24th September, 1997 6.15 p.m. – hoax bomb call to Highland Radio: caller stated that there was a bomb in the Parting Glass: the caller sounded drunk.

(19) 23rd November, 1997 12.51 a.m. – hoax bomb call to Telecom Éireann, Sligo: caller stated that there was a bomb in Frankies Nightclub, Raphoe;

(20) 27th December, 1997 10.43 p.m. – hoax bomb call to Letterkenny General Hospital: caller stated that there were two bombs to go off in Frankies Nightclub, one in the car park and one inside;

(21) 28th December, 1997 12.18 a.m. – hoax bomb to Divisional Communications, Letterkenny: caller stated that there was a bomb in Frankies Nightclub, Raphoe;

(22) 31st December, 1997 10.50 p.m. – hoax bomb call to Altnagalvin Hospital: caller stated that he was from LVF and that there was a bomb in Frankies Nightclub due to go off at 12.00 m.n. Code "Red Hand Commando";

(23) Finally, on the 12th January, 1998 1.10 a.m. – hoax bomb call to Highland Radio: caller stated that he was in a house in Raphoe

> and he was being forced to make the call: he stated that there was a bomb in Frankies Nightclub: no code given;

D/Sgt. Hugh Smith was directed to carry out an investigation into the source of the telephone calls. He made a report to Supt. Lennon on 20th February, 1998. In this report he gave a detailed analysis of each call. It is noteworthy that after the first two calls in November, 1996, Frank McBrearty, Snr., had his home telephone number changed. It was thereafter ex-directory. He received no further calls until February, 1997. D/Sgt. Smith obtained the telephone records. Somewhat curiously, calls numbers 3, 4, 5 and 6 which were made to Mr. McBrearty at his house on the morning of 24th February, 1997, did not appear on the print out from Telecom Éireann showing all calls to the McBrearty household in February, 1997. Sgt. Smith stated that when this was brought to the attention of Mr. McBrearty, he replied "the Guards are covering up".

At the time of Sgt. Smith's report he noted that in total 8 calls were unaccounted for. The rest were made from public telephone boxes around Donegal, save for one call, which was made at 21.02 hr. on 20th April, from the home of Mr. William Doherty. Sir, as you already know, Mr. Doherty was arrested by D/Sgt. Henry and D/Sgt. Smith on 20th September, 1997 and detained for 12 hours at Millford Garda Station. He denied making any of the calls. D/Sgt. Smith noted that since the time of arrest of Mr. William Doherty, the abusive calls ceased, but the hoax bomb calls continued. D/Sgt. Smith stated that Frank McBrearty, Snr., was hostile toward him and was un-co-operative as regard the investigation, which he was carrying out. He stated that despite his efforts and those of D/I. McGinley and D/Supt. Shelly, he had not been able to obtain records showing the origins of the calls made in November, 1996. He stated that while his investigation was continuing, he was not optimistic of obtaining sufficient evidence to charge Mr. Doherty in the matter. That report was compiled in February, 1998. We do not know why he was so pessimistic.

In a statement made to D/Gda. Caplice on 3rd March, 2000, Mr. William Doherty stated that:

> **(A named Garda) gave Frankies private telephone number to me, to Daryl Doherty, to John Doherty, to ring him and give him abuse. We did this on several occasions at about 3 or 4 a.m. from Adria in Strabane. I called him a murderer and gave him serious abuse, this was a campaign to break up the McBrearty's.**

The name of the Garda has been omitted from this statement because it would not appear that this particular allegation was ever put to him. The Tribunal legal team will investigate this aspect further prior to the hearing of the module. It should be noted that from the report of the telephone calls received from Eircom, it appears that none were actually made at 3 or 4 a.m. as alleged by Mr. Doherty. The latest calls were at 12.00 m.n. and 02.30 hrs. in November, 1996. Investigations by the Carty investigation team, established that the calls made on 5th and 6th November, 1996, were made

from the Adria factory in Strabane, Co. Tyrone. Inquiries made of the personnel manager at the factory confirmed that Mr. William Doherty was working in Adria at the time that the phone calls were made. A request has been made by the Carty investigation team to British Telecom seeking details of all calls made from the Adria factory in Strabane at the relevant time. A response to this request has not yet been furnished.

In the course of an interview between Noel McBride and D/Gda. Maloney and D/Gda. Flynn on 10th June, 1999, Mr. McBride was asked whether he was ever present with William Doherty when he made any telephone calls, to which he replied "Yes. When he made the calls to Frank McBrearty." He went on to describe that incident as follows:

> **I'm not sure who he said it to but he said on the phone "you're nothing but a murdering bastard go on back to Scotland". I assumed that those calls were made to Frankie McBrearty. Those calls were made from a phone box in Killygordon and I was standing beside William Doherty when he made the calls. William Doherty said it was Frank McBrearty he rang when he finished the call and he laughed after it.**

Noel McBride also dealt with the making of this telephone call in a statement made to D/Sgts. George Kyne and Fergus Traynor on 7th March, 2000, where he stated:

> **I have already mentioned the phone call from Killygordon to McBrearty's in February or around that time. I didn't know who he was going to ring until he stopped the truck and said he was going to ring Frank McBrearty's for the crack. He told me that Frank McBrearty had changed his phone number but that he had contacts in Telecom Eireann and he was able to get the new number.**

Mr. McBride denied ever taking any part in the phone calls. He stated that one phone call was made that day in the morning time.

We now turn to the hoax bomb calls, Sir. The first of these was the 12th call, which was received on 4th May, 1997. It was made to the home of Cannon Deegan. This call was made from the public phone box in Lifford. A report has been furnished by Gda. Pauline Goldin which states that at 12.28 a.m. on that date she was the Station orderly at Lifford Garda Station. She states that she received a telephone call from Cannon Deegan who informed her that he had received a telephone call approximately 10 minutes previously from a male caller stating that he was from the 'Blackhand gang' in Derry. The caller stated that there was a device placed at the front and back of the Parting Glass in Raphoe. She states that Cannon Deegan stated that he informed the caller that he was a retired priest and that he had no interest in that kind of carry on. The caller then hung up. Gda. Goldin stated that she informed B/Alpha of the phone call, she also informed the members in Raphoe, B.55, B.65 and B.62 and Insp. Griffen who all went to Raphoe. She stated that a short time later Letterkenny General Hospital received a similar type phone

call, which stated that the device would go off in 25 minutes. There were no codes given. She stated that the area was patrolled and it would seem that these phone calls were hoaxes. The second call made on 4th May, 1997 which was the call to Letterkenny General Hospital, had been made from a public phone box in Ballindrait. The next hoax bomb call was on 18th May, 1997 to Letterkenny General Hospital. It was made from a public phone box in Mannorcunningham. On 7th June, 1997, 2 hoax bomb calls were made to Highland Radio. The first was at 12.58 a.m. and was made from a public phone box at St. Eunan's Terrace in Raphoe. The second phone call was made at 1.02 a.m. from a phone box in the Diamond, Raphoe. On 24th September, 1997, a hoax bomb call was made to Highland Radio. The source of this phone call was not identified in the report furnished by Sgt. Smith. On 23rd November, 1997, a hoax bomb call was made on a 999 line to Eircom in Sligo. This call was made from a phone box in the Diamond, Raphoe. At the time of furnishing his report in February, 1998, Sgt. Smith had been unable to find the source of the remaining 4 hoax bomb calls. There is no doubt that the making of these hoax bomb calls was designed to cause maximum disruption to Mr. McBrearty and his business. On many occasions the nightclub premises had to be evacuated. On one occasion a band, which was retained to play at the premises, had to be cancelled.

Prior to the hearing of this module, Sir, it will be necessary for the Tribunal legal team to put the specific allegation made by Mr. Doherty to the Garda concerned. Having done that, you will be in a position to hear evidence from the relevant witnesses in relation to the making of the abusive telephone calls. You will also hear evidence from a witness from Eircom concerning the procedure for releasing ex-directory telephone numbers to persons other than the subscriber. It will be necessary to hear evidence from Mr. McBrearty, Snr., as to the persons who would have had access to his ex-directory home telephone number, after it had been changed in the wake of the abusive phone calls received in November, 1996. In relation to the hoax bomb calls, the Tribunal legal team will carry out further enquiries to ascertain how the Garda investigation into this matter has proceeded since February, 1998. Evidence will be obtained in relation to the persons who received the bomb calls initially and from the persons who dealt with the report of same at the Communication Centre at Letterkenny Garda Station. Having heard all the evidence that will be presented, it is hoped that you will be in a position to determine by whom some if not all of the calls were made and, more importantly, whether there was any Garda involvement in the making of such calls. On this aspect, the inquiries of the Tribunal are continuing.

The fifth area for inquiry, concerns alleged harassment by means of the making of false complaints by Derek (otherwise Darcy) Connolly and others concerning road traffic and other offences by members of the McBrearty family. On 30th January, 1997 Derek Connolly made a written complaint of dangerous driving on the part of Frank McBrearty, Jnr., on 25th January, 1997 at William Street, Raphoe and also on 29th January, 1997 at the roundabout outside Letterkenny. This complaint was made to Gda. John O' Dowd. It appears that as a result of this complaint charges were brought against Frank McBrearty, Jnr., which came before Donegal District Court on 10th March, 1999. It would appear that Gda. Joe Foley took a note of the evidence given at that prosecution. The Tribunal legal team is not at present aware of the outcome of these proceedings.

In an interview with the Carty investigation team on 24th March, 2000, Derek (otherwise Darcy) Connolly was asked about the complaint that he made concerning the dangerous driving on 30th January, 1997. He confirmed that the statement was correct. When asked if he was prepared to stand over the statement he said, "well I am not prepared to go to court. If I say it is not true (a named Garda) will get into bother". As in previous instances, the name of the Garda concerned has been deleted from this statement, due to the fact that this allegation has not yet been specifically put to the Garda concerned. Mr. Connolly goes on in the course of that interview to refer to a meeting in the house of Ms. Nora Barron, which was attended by Sgt. John White and a Superintendent whose name he couldn't recall. He stated that the Superintendent was in Letterkenny and was in Millford at the time of the interview. He said that the Superintendent told him to report all complaints that he had about the McBrearty's to the Gardaí at Raphoe. He went on to say that in relation to all the complaints he made them to Gda. John O'Dowd. When asked if they were of a frivolous nature, he said, "Aye it would be the kind of stuff wains would be at, at school that was between us and the McBrearty's". He later said, "it was stupidness, its still stupid". He said that he did not know what became of the complaints other than the dangerous driving complaint. He confirmed that he and Paul Roulston made complaints to the Gardaí "about these childish things". He said that if Paul Roulston was with him when any incident arose with the McBrearty's, they would make a statement about it. He said their conduct in making complaints was "like what women would be at". He said that it happened because things were dragging on and the Guards were doing nothing about it. He said that it all got out of control. He said "if I had to do it now, I'd have nothing to do with it". In relation to the statement made by him on 30th January, 1997, he said "I'd rather it wouldn't be there".

When it was put to Mr. Connolly that a passenger in his vehicle, Mr. Michael Brown had stated that no dangerous driving incident happened on 21st January, 1997, as alleged, he stated that Mr. Brown was lying. Similarly, he maintained that Mr. Roulston was lying when he stated that he was not present with him at the time of the Letterkenny dangerous driving incident on 29th January 1997. In his statement dated 20th May, 2000, Mr. Connolly insisted that the two dangerous driving incidents did happen and that Michael Brown and Paul Roulston were with him on the respective dates. He

stated that he had already given evidence on oath on these matters. On 24th May, 2000, Derek (otherwise Darcy) Connolly made a further statement to the Carthy Investigation Team wherein he stated that the initials "DC", which appear below the insertion of the registration number of the car driven by Frank McBrearty, Jnr., in the original hand written statement dated 30th January, 1997, were not put there by him.

A number of the matters stated by Mr. Connolly in these interviews and statements are supported by the statements made by Paul Roulston to the Carty investigation team. In his detailed statement made on 25th February, 2000, Paul Roulston outlined how he was working with Mr. Connolly in October, 1996. He stated that after the death of Mr. Barron, the town of Raphoe became divided between those who thought the McBrearty's were involved in the death of Mr. Barron and those who supported the McBrearty's. He also stated that around that time a charge of dangerous driving was pending against him in relation to an incident where he forced a Garda car off the road. He stated that Darcy Connolly told him that he could get the charge dropped if he could get Roderick Donnelly and his brother to make statements as to what they had seen in Raphoe in the night of 13/14th October, 1996. This is the genesis of the statements made by them to the original Investigation Team. This has already been outlined to you, Sir. He describes how he came to make his statement to Garda P. Flynn. He admitted that this statement was lies. He goes on to deal with the making of numerous complaints against the McBrearty's, in particular against Hugo McBrearty. He stated that Darcy Connolly asked him to go to the Gardaí in Raphoe and make false allegations against the McBrearty's. He stated that he did this on 10 or 11 occasions. He admitted that the statements were false. He said that they were made up by Darcy Connolly or William Doherty. He said Darcy Connolly would note in his diary any time that he saw Hugo McBrearty and would use this in making statements to the Gardaí. In relation to the complaint of dangerous driving at Letterkenny, he said that he was not there on that occasion, but that he had agreed with Darcy Connolly to make a statement to a particular Garda, stating that he was there. He stated that he made a statement to this Garda in the Courthouse at Letterkenny. He stated that it was all lies. He then stated, "I believe that (the named Garda) knew I was not in Letterkenny in a van that day". He does not give any reason for holding this belief. The name of the Garda has been deleted because this allegation has not yet been put to him. Mr. Roulston stated that on one occasion he spoke to Sgt. Hannigan at the Courthouse in Letterkenny and told him that he, Roulston, was finished going to courts to give evidence against the McBrearty's. He stated that he told Sgt. Hannigan that all that he had said was lies. He stated that he had decided to tell the truth because his girlfriend was pregnant at the time and that he had decided to go straight.

In a statement made to the Carty investigation team on 28th March, 2000, Sgt. Joseph Hannigan stated as follows,

> **It has been put to me by Insp. Coll that Paul Roulston approached me and informed me "that he was finished going to court against the McBrearty's" and also informed me that statements he made**

> **to the Gardaí were "all lies". This alleged conversation referred to Paul Roulston being a State witness in cases against the McBrearty family in the District Court. I wish to state that I never had any conversation with Paul Roulston in the matter and the conversation as described by Insp. Coll did not occur. If Paul Roulston had informed me that he had made false statements to the Gardaí I would have reported the matter immediately. I did not have any cases before the District Court in which Paul Roulston was a witness for the State and any of the McBrearty family were defendants.**

Mr. Michael Brown was interviewed by the Carty investigation team on 15th March, 2000. He stated that Mr. Connolly asked him to make a statement about the incident on 25th January, 1997. He went to the Garda Station with his mother but refused to make a statement because, as he said: "I have no reason to make a statement, because there was nothing to make a statement about".

Gda. John O' Dowd was arrested on 10th June, 1999, in relation to the alleged extortion telephone calls to Michael and Charlotte Peoples in November, 1996. He was subsequently questioned by the Carty investigation team. On 17th May, 2000, he was contacted by telephone by D/I. O' Loughlin and asked whether he had taken an original statement from Darcy Connolly in relation to the dangerous driving complaint. He stated that he had taken such a statement and that he thought that he had it in Convoy Garda Station. He stated that he would produce it on the following day. On 18th May, 2000, he handed over the original statement from Darcy Connolly to D/I O' Loughlin and D/Sgt. Healy at the car park of the Kentucky Fried Chicken in Letterkenny. The Carty investigation team had a number of questions written out which they wished to put to Garda O' Dowd concerning this and other matters. These questions were furnished to Garda O' Dowd but on apparent legal advice, he refused to answer same.

At present, there is no clear indication whether the making of numerous false allegations against members of the McBrearty family by other persons in Raphoe, was simply a campaign mounted by the persons concerned acting on their own account, or whether there was any Garda involvement in this aspect. This could, after all, be an instance of individual action or kind of mass hysteria. The only evidence of such input, at present, is the statement by Mr. Paul Roulston to the effect that he believed that the Garda to whom he gave a statement concerning dangerous driving by Mr. Frank McBrearty at the roundabout in Letterkenny on the 29th January, 1997, knew that he was not in fact in Mr. Connolly's van on the date in question. Mr. Roulston has not produced any explanation as to why he held such belief. It should be noted that Mr. Connolly has insisted that both Mr. Brown and Mr. Roulston were with him at the time of the respective alleged dangerous driving incidents. It is not clear as to what became of the other complaints made against members of the McBrearty family. Further investigation will be carried out to ascertain the exact nature of the complaints, to whom such complaints were made and

what action, if any, was taken on foot of them. It is not possible to put this matter any further at this stage.

The last area of investigation concerns an inquiry as to whether there was any harassment by the Gardaí of any agents or associates of the McBrearty family. From the documentation available to the Tribunal legal team at present, it would appear that after the death of Mr. Barron in October, 1996, Mr. McBrearty, Snr., became concerned at what he perceived as being an unsatisfactory Garda investigation into the circumstances surrounding the death of Mr. Barron. He became particularly concerned by what he saw, rightly or wrongly, as a desire on the part of the Gardaí to establish that his son and nephew had been responsible for that death. He felt, he claims, that the Garda investigation was not being carried out in a fair manner. He also felt that he and his family were being victimised by the Gardaí on account of a complaint that he had made some years earlier in respect of a Garda then stationed in Raphoe, which had set in motion a train of events leading ultimately to that member taking early retirement from the force. Due to what he perceived as the shortcomings in the Garda investigation of the matter, he retained a private investigator, Mr. William Flynn to carry out an investigation into the circumstances surrounding the death of Mr. Barron. Mr. Flynn was also retained to investigate the extortion telephone calls made to Michael and Charlotte Peoples in November 1996.

Mr. Flynn has made a number of complaints to the Garda Síochána Complaints Board, which, if substantiated, could be seen as harassment by the Gardaí. Mr. Flynn withdrew many of his complaints from the Board before any investigation was carried out. In these cases, statements were not obtained from the Gardaí against whom the complaint was made. Accordingly, in such cases it is not appropriate to identify the particular Gardaí at this stage. It is possible, at this stage, to briefly outline the nature of the complaints lodged by Mr. Flynn. In complaint reference number 981035, it was alleged that on 15th January, 1998, Supt. Kevin Lennon said at a meeting with Frank McBrearty, Snr. and Andy McBrearty that “that Billy Flynn would not be around when the trial came on for hearing”. Mr. Flynn took this to be a threat that something would be done to him which would prevent him giving evidence at a subsequent trial of the matter before the High Court. The Garda Síochána Complaints Board appointed an Investigating Officer who took statements from Frank McBrearty, Snr., and Andy McBrearty and also from Supt. Lennon. He denied making the alleged statement. He furnished his notes of the meeting. The I.O. preferred the recollection of Supt. Lennon because he was working from notes rather than from memory. He also thought that the complaint was not admissible because the actual complaint had been furnished by Mr. Flynn’s son who was not present at the meeting and therefore did not witness the conduct complained of. The Chief Executive wrote a report in which he held that the complaint was not admissible on the grounds that it was frivolous. On 26th March, 1999, the Garda Síochána Complaints Board ruled that the complaint was not admissible as being what it deemed to be frivolous.

In file reference 980975 Mr. Flynn complained that at a sitting of Letterkenny District Court on 7th July, 1998 Inspector T. O' Brien had maliciously given false information to the presiding Judge when asked as to whether Mr. Flynn had any previous convictions. Having obtained a statement from the relevant witnesses, including Insp. O' Brien, the I.O. concluded that there was no evidence that he had made any malicious or false allegations against Mr. Flynn. The Chief Executive agreed with the findings of the I.O. and recommended that the Board should find neither an offence nor a breach of discipline was disclosed. On 26th March, 1999, The Garda Síochána Complaints Board reached the same conclusion. In an affidavit, which was proffered on behalf of Mr. Flynn to the hearing of the criminal matter, he also alleged that a Garda had told people in Raphoe that he had convictions for stealing cars and that his book "Gibgate" was banned. He also alleged that the Gardaí had a vendetta against him because he had referred the McBrearty's to the firm of Binchys, Solicitors, in Dublin who had issued civil proceedings against the various Gardaí.

Mr. Flynn also lodged a complaint that a named Garda serving in Raphoe, had tried to discredit him by spreading malicious stories about him among Mr. Flynn's friends and associates at Enfield and Kilcock. He also alleged that the Garda was carrying out surveillance of him at his home. He alleged that the Garda had made nuisance telephone calls to him at his home. Supt. Thomas Gallagher was appointed I.O. However, before he could start his investigation of the complaint, Mr. Flynn informed the Board that he had set up a body styling itself the 'Garda Victims Association' and was withdrawing his complaints from the Board.

In complaint bearing file reference number 990273, he alleged that a named Garda had made allegations that in the course of his investigation, that he (Flynn) had tapped the telephone lines of Garda Stations. He also alleged that the Garda had interfered with his private and business telephone. Mr. Flynn also made complaints about a circular issued by C/Supt. Denis Fitzpatrick on 27th February, 1998, which was in the following terms:

> **Re: Campaign to discredit Gardaí in Donegal Division. I refer to the attempt to discredit Gardaí from this division and other members involved in the Barron Investigation. There is information to hand, which suggests that Frank McBrearty (Snr) from Raphoe is financing a campaign to discredit members of the force. The campaign is being operated mostly by Mr. Billy Flynn and sometimes trading as Zimmermann & Co from Enfield, County Meath. Members of your District Force and Gardaí who assisted in the investigation into the Richard Barron death should be notified of this matter and directed to report any incidents or unusual contact that may occur either with Mr. McBrearty and his extended family or Mr. Flynn and his employees. This document is for Garda use only and is confidential.**

Mr. Flynn also complained about an earlier circular apparently issued by Supt. Kevin Lennon, dated 18th March, 1997,which was in the following terms:

> **Re: Letters received from Zimmermann & Co. that Private Investigator, Richard (Sic) Flynn employed by Frank McBrearty, Raphoe. Reference to the above, it has come to notice that individual members are receiving personal letters from Richard Flynn, Private Investigator, hired by Frank McBrearty; these letters contain many disgraceful comments. Under no circumstances should members respond directly to these letters. Please forward any such letters to the District Office. Forwarded for attention and compliance please.**

By letter dated 12th March, 1999, Mr. Flynn alleged in the course of the same complaint that either one or both of two named Gardaí were responsible for the leaflets or flyers concerning the McBrearty's which were distributed in March, 1997. He also alleged that a named Garda had suggested in correspondence that the McBrearty's had retained him to obstruct the Garda investigation and pervert the course of justice. This complaint was not investigated as Mr. Flynn withdrew his complaint by letter dated 4th May, 1999.

There is also a reference in correspondence to an occasion when Mr. Flynn drove to Raphoe to conduct enquiries. He alleged that a Garda car stopped behind the parked car in which he and his family were then sitting. He stated that when he drove out of the town the Garda car followed them for some distance. He alleged that this was done in an effort to harass or intimidate him.

By letter dated 8th July, 2002 Messrs. McCartan & Hogan, Solicitors, wrote to the Tribunal regarding an application for representation which they proposed to make on behalf of their clients, who were members of the Flynn family. They stated the following in relation to alleged Garda harassment:

> **During the course of their investigations as agents for the persons named in paragraph 1 herein, our clients were subjected to an unwarranted level of Garda surveillance and intimidation. Our clients will be in a position to give detailed evidence of this surveillance and intimidation at the Tribunal hearing. In addition our clients believe that a number of circulars were prepared by the Gardaí and distributed to all Garda Stations in Donegal indicating that Mr. William Flynn was operating a campaign on behalf of Frank McBrearty to discredit members of the Gardaí. Mr. William Flynn is in possession of a copy of this circular and a copy thereof is attached to this letter. Furthermore, Mr. Flynn believes and has evidence in his possession that he was the subject of a Garda investigation solely because he had been retained by the McBrearty and other families to assist them firstly in relation to the allegations made against them arising out of the death of Mr. Richard Barron and secondly in relation to the defence of numerous prosecutions brought against the McBrearty family under the Licensing Act. Our clients believe that the**

> **investigation of them by the Gardaí merely because they had been retained as investigators was an abuse of Garda powers and the conclusions of that investigation amount to a personal attack on Mr. William Flynn and are unwarranted and unjustified in any circumstances. For these reasons, our clients believe that they were the subject of harassment as agents of the McBrearty family by members of the Gardaí subsequent to the death of Mr. Richard Barron and therefore, seek representation in relation to the definite matter detailed in paragraph (c) of the Terms of Reference of the Tribunal of Inquiry.**

In order to give a balanced view, Sir, it should be noted that the Gardaí were of the opinion that in fact it was Mr. Flynn who was harassing them while they were attempting to carry out their investigation into the death of Mr. Barron. In an affidavit sworn on 21st April, 1997 by C/Supt. Denis Fitzpatrick, he stated as follows:

> **Nor does he state that he has employed Mr. William (Billy) Flynn of Zimmermann & Co. International Ltd., to apparently investigate the circumstances surrounding the death of the deceased. Mr. Flynn rang me on 6th February, 1997, requesting copies of the pathologist report and witness statements and I politely informed him that he was not entitled to the same. Thereafter, he has attempted to contact witnesses and has written various letters to members of the force some of it grossly offensive and I beg to refer to a bundle of such correspondence upon which have been together marked with the letter B I have endorsed my name prior to the swearing hereof.**

In respect of phone calls made to Mrs. Rosaleen White, Mr. Flynn was convicted of offences under the telecommunications legislation. In an affidavit sworn by Mr. Flynn which was proffered to the court, he stated as follows at paragraph 18 thereof

> **I admit to this honourable court that I made these telephone calls, I do sincerely apologise again to Mrs. White for any anxiety or distress caused.**

Thus, all one can say at this stage is that there have been allegations and counter allegations of harassment passing between Mr. Flynn and members of the Gardaí. It is only when you, Sir, have had the opportunity of hearing all of the relevant witnesses give evidence before you, that you will be in a position to form any opinion on the conflicts of evidence that arise on this aspect.

The Tribunal will also have to consider whether there was any Garda harassment of Mr. Thomas Coffey, who was employed by Mr. Flynn to assist in his investigation on behalf of the McBrearty's. In a letter to the Tribunal dated 8th July, 2002, he alleged inter alia, that he had been subjected to unspecified types of intimidation and harassment culminating in an

unspecified document issued by the Gardaí which he alleged seriously defamed his good name. By letter dated 9th July, 2002, the Solicitor to the Tribunal, noted that he intended to apply for representation and said that the Tribunal would be grateful to receive a full statement from him concerning the matters referred to in his correspondence. When applying for representation before you Sir on 15th July, 2002, Mr. Coffey stated that he had been seriously assaulted by a person in the course of carrying out his investigations on behalf of his employer, Mr. William Flynn. He stated that it was his belief that that assault was perpetrated against him due to false information given to his assailant by the Gardaí. Mr. Coffey was granted representation before this Tribunal. To date, he has not furnished any statement concerning his allegations of intimidation or harassment by the Gardaí.

The enquiries undertaken by the Tribunal legal team in relation to the harassment of agents and associates of the McBrearty family are at a preliminary stage. It will be necessary to obtain comprehensive statements from Mr. Flynn and Mr. Coffey. The content of these statements will have to be put to the Gardaí concerned to enable them to respond to any allegations made against them. The Tribunal legal team will then consider whether there is evidence, which would suggest that there was harassment by the Gardaí of any agents or associates of the McBrearty family. If so, this aspect will become the subject of an oral hearing before you in due course.

GARDA COMPLAINTS

This module deals with paragraph (j) of the Terms of Reference which is in the following terms:

> **The effectiveness of the Garda Síochána Complaints Inquiry Process viz-a-viz the complaints made by Frank McBrearty, Snr., and his family between 1997 and 2001.**

In the explanation of the Terms of Reference, Sir, you stated the following in relation to this Term of Reference:

> **The information available to the Tribunal suggests that complaints were made by Frank McBrearty, Snr., and his family to the Garda Síochána Complaints Board. This may or may not be an effective way of dealing with serious complaints made by citizens against members of An Garda Síochána. It is the task of the Tribunal to consider the effectiveness of this entire procedure. The Tribunal will:**
>
> **1) Establish what complaints were actually made by Mr. McBrearty and his family between the relevant dates.**
>
> **2) Establish the manner in which these complaints were dealt with by the appropriate parties and identify where any of these complaints may not have been dealt with in a satisfactory manner, if that be the case.**
>
> **3) Consider the procedures, which exist for dealing with complaints under the Garda Síochána (Complaints) Act, 1986 as amended and the rules made there under.**
>
> **Inquire into the effectiveness of these procedures and advise, if it be the case, how these procedures could be improved.**

Prior to 1986, complaints by citizens against members of the Gardaí were dealt with by means of the internal disciplinary procedure operated by the Gardaí. In his book entitled "The Irish Police", Dr. Dermot Walsh of the University of Limerick has described the genesis of the Garda Síochána (Complaints) Act, 1986, in the following way. He states that the publication of the Criminal Justice Bill of 1983, with the sweeping powers that were conferred on the Gardaí therein, sparked a major public debate on the whole subject of police powers versus civil liberties. The bill of 1983 provided for some far-reaching and fundamental changes in the balance of the criminal justice system. Dr. Walsh argues that it was in order to assuage public concern about the extent of the powers given to the Gardaí, that the government was forced to postpone the introduction of a number of key provisions in the Criminal Justice Bill until an independent complaints

procedure was in place, along with regulations governing the treatment of suspects in police custody. He noted that although a Criminal Justice Bill became law in 1984, the new complaints procedure and the custody regulations were not in place until 1987.

When introducing the second reading of the legislation which was to become the 1986 Act, the then Minister for Justice, Mr. Michael Noonan, stated as follows:

> **The main object of any legislation establishing a procedure for dealing with complaints against police is to secure that the handling of complaints should be just, and be seen to be just, both to the complainant and to the police. It must be a system in which the public have confidence – confidence in the integrity and impartiality of the investigation of complaints and of the subsequent adjudication on them.**

The 1986 Act established the Garda Síochána Complaints Board. Any member of the public who is directly affected by the conduct of a member of An Garda Síochána, or who witnesses such conduct, and wishes to make a complaint, may do so either directly to the Board, or they may make a complaint at a Garda Station. In the event of a complaint being made at a Garda Station, the Garda who receives it must record it and forward it forthwith to the Chief Executive of the Board and to the Commissioner.

On receipt of a complaint, the Chief Executive must consider if it is admissible. The conditions for admissibility are set out in Section 4 (3)(a) of the Act. This section provides that a complaint shall be admissible if it satisfies the following conditions:

(1) The complainant was a member of the public;
(2) The complainant was directly affected by or witnessed the conduct alleged in the complaint;
(3) The conduct would constitute an offence or the conduct specified in the fourth schedule to the Act (i.e. conduct that would constitute a breach of discipline);
(4) The date on which the said conduct was alleged to have occurred was on or after the establishment day and within six months before the date on which the complaint was made;
(5) The application of the Act to the said conduct did not by virtue of Section 15 of the Act, stand excluded on the date on which the complaint was made (Section 15 provides that the Act shall not apply to conduct alleged in a complaint, if before the date on which the complaint was received, the Commissioner or Minister, had appointed someone to hold an enquiry into the alleged conduct, or if the member concerned was dismissed or reduced in rank by the Commissioner or the government in exercise of their respective powers);
(6) The complaint is not frivolous or vexatious.

If a complaint is deemed inadmissible by the Chief Executive, the complainant is notified in writing. The complainant can appeal this finding to the Garda Síochána Complaints Board. If the complaint is deemed admissible, the Chief Executive writes to the Commissioner seeking the appointment of an Investigating Officer (I.O.) to investigate the complaint. Section 6 of the Act provides that the Commissioner shall appoint a member of An Garda Síochána, not below the rank of Superintendent, or if he considers that the circumstances so warrant the rank of Inspector, to investigate the complaint. Once appointed, the I.O. must endeavour to complete his investigation and submit his report within thirty days of the date of his appointment. In carrying out his investigation, the I.O. first obtains a statement from the complainant, he will then usually obtain statements from any independent witnesses, from the Garda or Gardaí against whom the complaint was made and from any other Gardaí who might be in a position to assist in the investigation. He will also obtain such documentary evidence, e.g. custody records, as may be of relevance. The I.O. must investigate the complaint and consider whether an offence or breach of discipline is disclosed against the member concerned. A description of the conduct, which would constitute a breach of discipline, is set out in the fourth schedule to the 1986 Act. It includes conduct such as discourtesy, neglect of duty, falsehood or prevarication, abuse of authority, corrupt or improper practice, misuse of money or property, intoxication and discreditable conduct. It contains a definition as to what is meant by each of these terms. When the investigation has been completed, the I.O. submits his report to the Chief Executive.

Upon receipt of the report from the I.O., the Chief Executive writes his own report, which is effectively a summary of the report submitted by the I.O., together with his recommendation to the Garda Síochána Complaints Board as to the finding that they might make in relation to the complaint. Such recommendation could be that further representation should be obtained from the Garda concerned, or that the Board should form the opinion that no breach of discipline or offence is disclosed or that the Board should form the opinion that an offence or breach of discipline is disclosed on the part of the Garda concerned. The papers, comprising the investigation file, the I.O.'s report and the report of the Chief Executive, are forwarded to the Board for its consideration. The Garda Síochána Complaints Board consists of a chairman and eight ordinary members appointed by the government. The ordinary members must include at least three Barristers or Solicitors of ten years standing and the Garda Commissioner or his nominee. The chairman must be a Barrister or Solicitor of at least ten years standing. No Gardaí, other than the Commissioner or his nominee, are eligible to sit on the Board.

If the complaint involves an allegation of the commission of an offence, the Board must refer the matter to the Director of Public Prosecutions before making any decision. If the DPP decides not to initiate a prosecution, the Board then considers whether a breach of discipline is disclosed.

If the Board forms the opinion, Sir, that no breach of discipline is disclosed, it gives a ruling to that effect. The complainant is notified and can appeal that

ruling to the Garda Síochána Complaints Appeal Board. If the Board is of opinion that a breach of discipline is disclosed, the Board shall refer the matter to a Tribunal for further investigation. The Tribunal is appointed by the Board under Section 8 of the Act. It is made up of three members, two of whom must be members of the Board who have not been concerned with the investigation of the complaint at an earlier stage and one of them must be a Barrister or Solicitor of at least ten years standing. Neither of them can be a member of An Garda Síochána. The third member must be a member of An Garda Síochána of the rank of Chief Superintendent, or higher rank. In none of those cases, Sir, were there any hearings, as you will hear.

The procedure to be adopted before the Tribunal is set out in Section 9 of the Act. Further procedural rules are set out in S. I. 96/1988.

If a minor breach of discipline is disclosed, the Garda Complaints Board can refer the matter to the Commissioner for him to deal with it in an informal manner. This can only be done with the consent of both the Garda concerned and the complainant.

The Board has power to postpone taking action, or taking any further action, where civil or criminal proceedings involving the same issue have been instituted, but have not been finally determined.

Any party aggrieved by a decision of the Garda Síochána Complaints Board can appeal such decision to the Garda Síochána Complaints Appeal Board. The Appeal Board consists of a chairman, who must be a Judge of the Circuit Court and two ordinary members, at least one of whom must be a Barrister or Solicitor of at least ten years standing. There is no specific requirement in relation to the third member of the Appeal Board. However no past or present member of An Garda Síochána is eligible to sit on the Appeal Board. The procedural rules governing the Appeal Board are set out in Section 11 of the Act and in S. I. 192/1988.

Section 13 of the 1986 Act provides that the Garda Síochána Complaints Board must make an Annual Report to the Minister in relation to its activities during the year. Section 13 (3) provides that the Board must also keep under review the working of the system of investigation and adjudication of complaints and shall report thereon to the Minister at least every three years.

We turn now, Sir, to look at what can conveniently be termed the McBrearty group of complaints. In the period December, 1996 to November, 2001, a total of 61 complaints were made to the Garda Síochána Complaints Board from what can be termed the extended McBrearty family. This includes two complaints from Mr. William Logan and one complaint from Mr. Seán Crossan, who were employees of the McBrearty's. This does not include the complaints lodged by Mr. William Flynn, the private investigator retained by the McBrearty family.

Of the 61 complaints lodged, 19 were held inadmissible, 1 complaint was not investigated and the remaining 41 complaints were withdrawn in October and

November, 2001, before any substantive decision was made by the Board in relation to same. Following the withdrawal of the complaints, these were all marked "No Further Action – Complaints Withdrawn" by the Board at its meeting held on 3rd December, 2001.

The only substantive decisions made by the Board were in respect of two appeals brought against the decision of the Chief Executive in respect of two of the complaints that were deemed inadmissible. The Board upheld the decision on admissibility given by the Chief Executive. Thus, in summary, it can be seen that no actual substantive decision was taken by the Garda Síochána Complaints Board on any of the McBrearty group of complaints.

However, the figures given above, while correct in terms of the decisions actually recorded by the Board, do not give a completely accurate view of what happened to the complaints submitted by the McBrearty family. In some cases the Commissioner appointed as I.O., an officer who the complainants felt was too close to the Gardaí in Donegal against whom complaint had been made. In some of these cases the I.O. was changed, in others the nomination of I.O. was not changed, leading to an impasse in relation to the investigation of the complaint. In total, 10 complaints resulted in a stalemate for one reason or another, such as refusal on the part of the complainants to deal with the appointed I.O., refusal to sign a statement of complaint in the presence of the I.O. or failing to provide sufficient information in relation to the complaint submitted.

A more detailed analysis of the complaints actually submitted now follows.

In 27 of the complaints submitted, a recommendation was made that no offence or breach of discipline was disclosed as a result of the investigation carried out, 19 complaints were deemed inadmissible, 10 complaints resulted in a stalemate for the reasons set out above, in relation to 3 complaints a recommendation was made by the Chief Executive that representations should be obtained from relevant Gardaí and it appears from the papers submitted to date that 2 of the complaints were not investigated.

From an administrative point of view, the Garda Síochána Complaints Board, and more particularly it's Chief Executive, Mr. Seán Hurley and Deputy Chief Executive Mr. Brian O' Brien, were, it would seem, diligent in dealing with the complaints received by the Board. Receipt of each complaint was acknowledged promptly in writing. A decision on admissibility of the complaint was also given quickly. Once deemed admissible, the Chief Executive set about obtaining the appointment of an I.O. by the Commissioner. Once appointed, it appears that the I.O.'s worked diligently in producing their reports. Most of the McBrearty group of complaints was dealt with by C/Supt. Carey from the Mayo Division. He delivered his report to the Deputy Chief Executive on all of the complaints dealt with by him on 18th November, 1998. As well as furnishing reports in relation to the individual complaints, he also gave a general report concerning all of the McBrearty group of complaints dealt with by him and their interaction with the ongoing investigation into the unlawful killing of Mr. Richard Barron.

However, when one comes to look at how the substance of the complaints was dealt with by the Garda Complaints procedure, a somewhat different picture emerges. The first difficulty was in relation to the delay, which arose in the forwarding of the initial complaints; which happened during and in the aftermath of the arrest and detention of members of the extended McBrearty family in December, 1996. A number of complaints were made around this time by Solicitors on behalf of various members of the extended McBrearty family. These letters of complaint were sent to the Superintendent's office at Letterkenny Garda Station. Supt. John Fitzgerald was the Superintendent in charge at the time. Receipt of the letters was acknowledged by the Superintendent's office by letter, some of which were signed by Supt. Fitzgerald and some were signed on his behalf.

These complaints were not forwarded to the Garda Síochána Complaints Board. They only came to light when they were forwarded by Supt. Lennon to the Board in October, 1997. Supt. Kevin Lennon stated that the complaints only came to his attention when copies of them were handed by Mr. William Flynn, the private investigator retained by the McBrearty family, to Supt. Gallagher of Ballymoate. He immediately forwarded the copy letters to the Board in October, 1997. He stated that he had not been able to locate the originals of the letters among the papers held at Letterkenny Garda Station.

In a statement made on 17th July, 1998, Supt. John Fitzgerald explained the apparent failure to forward the letters to the Board in the following way:

> **Mr. McMullin's letters were not viewed as complaints to be forwarded to the Garda Complaints Board but as putting down markers should there be future proceedings against his clients. The letters received from McMullin were acknowledged and indeed I recall phone calls from Mr. McMullin, but never was there any reference to the Garda Síochána Complaints Board. These letters and replies would have been placed in the system to be dealt with as part of the investigation file. As stated all letters to my knowledge were acknowledged and if the letters that I dealt with were interpreted as complaints within the incoming of the Act, I would have no hesitation in forwarding same as I had done previously and since then other complaints. During my time as Superintendent I got several letters from Mr. McMullin regarding prisoners other than the McBrearty's case so it was not unusual at all to receive such letters subject of this complaint and these other letters were never meant as complaints under the Garda Síochána Complaints Act. I believe that in connection with the letters in this instance, Mr. McMullin would have clearly indicated if he wished to have them interpreted as complaints for the Garda Síochána Complaints Board.**

It should of course be stated, Sir, that any delay, which there may have been in forwarding the initial complaints, received on behalf of the extended McBrearty family, to the Garda Síochána Complaints Board, is not a matter in

respect of which any blame could attach to the Board itself. It will be for you, Sir, to decide whether the excuse given for the non-forwarding of the complaints was sufficient. It may also be necessary to investigate the reasons why the originals of the letters of complaint were mislaid or misfiled and, according to Supt. Kevin Lennon, could not be found by him when the copies of the letters of complaint were first produced to him in or around October, 1997.

The second area of investigation is in relation to the delay in dealing with any of the complaints, which had actually been received by the Board from October, 1997 onwards. In this regard, the documentation which has been supplied to the Tribunal's legal team to date, suggest that while Supt. Carey, the I.O. who dealt with the majority of the McBrearty group of complaints, furnished a comprehensive report to the Chief Executive in November, 1998, following which the Chief Executive prepared his Summary and Recommendation in respect of each complaint, a decision was subsequently made by the Garda Síochána Complaints Board at it's meeting held on 18th May, 1999 to defer consideration of all of the McBrearty group of complaints pending;

(a) Conclusion of the District Court prosecutions against the extended McBrearty family for offences under the Liquor Licensing Laws and for Public Order offences; and

(b) Until the investigations, which were then being carried out by Assistant Commissioner Carty and his team, had been completed.

Thus, as far as the McBrearty group of complaints was concerned, everything was put on indefinite hold as of from May, 1999.

On reviewing the files, it becomes apparent that nothing of significance happened in relation to any of the files after this date, save for writing a few "holding" letters to the Solicitor then acting for the McBrearty family, Mr. Ken Smyth of Binchys Solicitors. Indeed, as late as 17th May, 2001, letters were being sent to Mr. Smyth stating that the Executive of the Board was arranging for C/Supt. Carey to have discussions with A/C Carty. Mr. Smyth was told that the "Board will give further consideration to the complaints after the discussions referred to above". By further letter dated 3rd July, 2001 the Deputy Chief Executive, again informed Mr. Smyth that the Board would progress its consideration of the complaints as soon as the information had been obtained by the I.O.'s in relation to the matters under investigation by the Gardaí under the Carty and McAndrew investigations. By letter dated 3rd July, 2001, Supt. Gallagher, who had been appointed I.O. in respect of some of the McBrearty complaints, informed the Deputy Chief Executive that there was no overlap between his investigation and the Carty and McAndrew investigation. By letter dated 17th July, 2001 C/Supt. Carey stated that subject to some overlap, on one file involving a complaint concerning Mr. Bernard Conlon, there was no overlap between any of the

complaints which he was investigating and the matters being investigated by the Carty team.

From the papers submitted, it does not appear that anything further happened following upon receipt of these letters by the Chief Executive of the Board. By October, 2001, the McBrearty family and Mr. Smyth had apparently become totally frustrated with the lack of results. Letters were written by Mr. Smyth formally withdrawing all the complaints made by his clients to the Garda Síochána Complaints Board. The level of frustration felt by the complainants and their Solicitor is evident from the content of the letter sent by Mr. Smyth to Mr. John Roycroft of the Garda Síochána Complaints Board on 11th October, 2001. It is in the following terms:

> **Dear Sir.**
>
> **As you may be aware our clients are expected to believe that the campfires are still burning in Donegal, that Assistant Commissioner Carty conducts an investigation, devoid of delay, tactical or otherwise, which continues to serve some purpose other than damage limitation.**
>
> **Ab asino lanam.**
>
> **As you are well aware our clients have forwarded many complaints against a small number of Garda officers, over the past four and a half years, not one of which has, thus far, been determined.**
>
> **The delay of the Board is incomprehensible to our clients given the serious, but straight forward nature of the complaints concerned and the evidence that Garda Stations in Raphoe, Letterkenny and perhaps elsewhere became, for a time Garda Síochána Grudge Houses (GSGH), some of the denizens of which are, surely, if rumours of its existence are well founded, members of the esoteric Garda Síochána National Bureau of Underworlders (GSNBU), whose oeuvre, if it exists, has resulted in the obloquy of the Garda force in Donegal and elsewhere, athwart the heroic efforts of decent members of the force to uphold the rule of law and to protect our innocent clients from the vile conspiracy of their corrupt colleagues and other, civilian, members of the GSNBU.**
>
> **For the existence and honourable conduct of these decent members of the force in Donegal and, thankfully, elsewhere, our clients have offered many a Te Deum. If and when it should become possible to reveal the gniomh gaisce, den chead scoth, of these fine Garda officers, the reputation of the force will be comprehensively restored.**
>
> **Unfortunately, our clients have lost all confidence in the capacity of the Garda Complaints Board to conduct a competent and independent investigation of their complaints. If the Board had acted in a timely fashion, our clients have no doubt that they would have been spared years of oppression.**
>
> **Accordingly, our clients will not be pursuing their complaints before the Garda Complaints Board but will, instead, repose their reliance in juries of their peers in the High Court of Justice.**
>
> **Yours faithfully,**
>
> **Kenneth Smyth.**

Following upon receipt of this letter and a further letter in the month of November, 2001, which merely confirmed that all the complaints and outstanding were being withdrawn, the Garda Síochána Complaints Board met on 3rd December, 2001 and marked all the complaints
"No Further Action – Complaint Withdrawn".

In order to open this module in a comprehensive manner it is necessary, Sir, to give you some idea of the substance of the complaints lodged by the McBrearty group. To this end, we would propose to give a very brief summary of the complaints lodged, together with a statement of the outcome of any investigation carried out into the complaints. It is not proposed to go into any of the complaints in any detail, as the substance of many of them, such as those complaints arising out of the arrest and detention of suspects in December, 1996, have already been opened in detail in earlier parts of this preliminary opening statement, dealing with other modules. Where the Garda against whom a complaint was made, was not given an opportunity to respond to the complaint, his or her name has not been given in the summary.

The first complaint was received by the Board on 12th December, 1996 (Ref. 961171). It was brought on behalf of Frankie and Chantel McBrearty who are the children of Frank McBrearty, Jnr. It was alleged that the children were traumatised as a result of the words and actions on the part of the Gardaí at the time that their father was arrested on the morning of 4th December, 1996. It was alleged that the Gardaí said "we have you now, you murdering bastard" and other words to like effect. Insp. Greg Sullivan was appointed as I.O. He took statements from Patricia McBrearty, the mother of the children and from her sister, Ms. Jackie Gallagher. He also took statements from the Gardaí who were involved in the arrest of Mr. Frank McBrearty, Jnr. They denied that anything insulting or derogatory was said to him at the time of the arrest. They denied that he was mistreated in any way. The I.O. stated that in his opinion the Garda arrest team had anticipated the presence of children and included a female Garda for that purpose. He stated, "in conclusion, if any thing can be considered to be incorrect or insensitive in this matter, perhaps it is the decision to arrest Mr. McBrearty while he had his children with him rather than the conduct of the members complained of". In his report the Deputy Chief Executive, recommended that the Board should form the opinion that neither an offence, nor a breach of discipline was disclosed against any member. No decision was made by the Board in relation to this complaint prior to the withdrawal of same in October, 2001.

On 12th March, 1997, Michael McConnell made a complaint (Ref. 970238) in which he alleged that Sgt. John White had accused him of intimidating witnesses and told him that this was a serious offence and that he could go to prison. When considering the admissibility of this complaint, the Chief Executive obtained a report from Supt. Kevin Lennon, in which he stated that, from his knowledge, the complaint was a further effort to prevent Sgt. White from performing his legitimate functions in the Raphoe area. By letter dated 30th April, 1997 the Chief Executive wrote to the complainant telling him that the complaint was not admissible as the Chief Executive was not satisfied that

the conduct complained of would constitute an offence or a breach of discipline.

The third complaint arose out of a vehicle checkpoint set up in Raphoe on 10th May, 1997 (Ref. 970506). It was alleged by Frank McBrearty, Snr., that at this checkpoint, Sgt. John White had said to him that the best thing for Frank McBrearty, Jnr., to do was to go to the Garda Station and to admit the murder of Mr. Richard Barron. It was also alleged that Sgt. White tried to take the keys of Mr. McBrearty's car. It was alleged that this happened in the presence of Mr. McBrearty's 11-year old daughter who was upset by the conduct. C/Supt. Carey was appointed I.O. He took statements from the complainant and also from the Garda involved in the checkpoint. They denied that there was any improper conduct on their part. He also obtained a statement from an independent witness, Mr. James McGranaghan, who lived close to the area where the checkpoint had been set up. He stated that Mr. McBrearty had behaved in an aggressive fashion toward the Gardaí. The Gardaí alleged that Mr. McBrearty, Snr., had been very aggressive at the time. The I.O. stated that there were conflicting versions of what transpired. He stated that the independent evidence, in so far as it went, supported the Garda version. He did not believe that there was any evidence to support any action against D/Sgt. White. This complaint had originally been deemed inadmissible by the Chief Executive. However, this had been appealed to the Garda Complaints Board but the original letter could not be found. In a subsequent report the Chief Executive recommended that the complaint be deemed admissible. On 1st December, 1997, the Board ruled that the complaint was admissible. Following on the investigation carried out by C/Supt. Carey, the Chief Executive issued a second report in which he stated, "I am of the view that the balance of evidence is to the effect that Mr. McBrearty was acting provocatively and aggressively and accordingly I think it is reasonable to accept D/Sgt. White's version of events as being the more credible. I recommend that the Board form the opinion that no offence or breach of discipline is disclosed." The Chief Executive made a further report, in which he gave the same recommendation to the Board. This complaint was withdrawn prior to being determined by the Board.

On 14th May, 1997, Patricia McBrearty lodged a complaint that on the previous night, a summons had been served on her husband, Frank McBrearty, Jnr., at her home late at night by Gda. P. Kilcoyne and D/Sgt. John White. She alleged that the Gardaí drove away from her house blowing the car horn. Insp. Greg Sullivan was appointed I.O. He took statements from the complainant in which she alleged that this summons had been served at her house at 22.45 hrs. He also obtained statements from the Gardaí in which they admitted serving the summons at 22.42 hrs. They stated that the lights were on in the house and that there was no evidence that the occupants had gone to bed. They denied that they had acted improperly. In a letter dated 20th March, 1998 the I.O. stated that the summonses, which were in respect of alleged careless driving, became available for service on 13th May, 1997. They could have been served at any time up to 7 days in advance of the Court session on 26th June, 1997. He stated that given D/Sgt. White's "efficiency and professionalism" it was not surprising that he

elected to serve the summonses as soon as possible. He was of opinion that service of a summons up until 23.00 hrs. was permissible. In his report, the Chief Executive stated that it was difficult to determine where the truth lay in relation to this complaint. He stated that it was a case of the word of the complainant and her husband against the two Gardaí. He stated that one may question why Sgt. White decided to serve summonses coming up toward 23.00 hrs. He suggested that the Board might defer consideration of the matter until all investigations into all the McBrearty complaints were complete. If the Board did not wish to adopt this course, he recommended that a finding be made that no offence or breach of discipline was disclosed against Gda. Kilcoyne. He recommended that D/Sgt. White should be invited to make representations under S. 7 (4)(b) in relation to the serving of the summons at a late hour. This complaint was withdrawn before the Board reached a decision on it.

On 14th May, 1997, Mark McConnell lodged a complaint (Ref. 970508) in which he alleged that D/Sgt. White had served a summons on him at his home at 23.45 hrs. on 15th April, 1997. He stated that when he told the Sergeant that he should not be serving summonses at that late hour, as his wife had been in a psychiatric hospital, he alleged that the Sergeant replied that it was guilt, which had put her there. It is alleged that D/ Sgt. White read out the content of the summons in a loud voice. It was alleged that the Sergeant and Gda. O' Dowd drove from the premises, laughing. Mr. McConnell stated that his wife was very upset by the incident. He alleged that she had to spend the night in her mother's house and had to seek medical help. On 28th November, 1997, C/Supt. Carey was appointed I.O. He took a statement from Mr. McConnell and also took a statement from Mrs. Róisín McConnell and Ms. Hannah McConnell. He also took a statement from D/Sgt. White in which he noted that the complaint was made a month after the incident and implied that it was part of a vendetta or conspiracy by the McBrearty family against him. He denied that the incident occurred at 23.45 hrs. and said that it was in fact 22.45 hrs. He stated that the downstairs lights were on and that he could hear the noise of a television from the house. Gda. O' Dowd made a statement agreeing with the content of Sgt. White's statement. The I.O. stated "the complaint was not made until 14th May, 1997. The Station record made on the night supports the Garda version. I believe the Garda version." In his report, the Deputy Chief Executive stated "in my view it was at least inconsiderate and perhaps an abuse of authority to call to the house at that hour of the night. I recommend that the Board form the opinion that a minor breach of discipline on the part of the members may be disclosed. They should be invited to make representations under S. 7 (4) of the Act". It is not clear if this was done as the next correspondence on the file deals with the withdrawal of the complaint.

On 20th May, 1997 Mark McConnell lodged a complaint (Ref. 970511) in which he complained that a named Garda had stared at him in a nightclub and made actions as if hitting someone over the head. He stated that this was done in an attempt to provoke a row. He stated that later on that evening Sgt. White and Gda. O' Dowd stared at him and acted in an intimidatory manner. In deciding on the question of admissibility, the Chief Executive

obtained a report from Insp. P. Hughes. He merely stated that Mr. McConnell was related to the McBrearty's and had been arrested and interviewed in relation to the murder of Mr. Richie Barron. He stated that Mr. McConnell had submitted a number of complaints against the Garda concerned. On 8th September, 1997 the Chief Executive Mr. Sean Hurley, wrote to the complainant stating that he was not satisfied that the conduct complained of constituted an offence or a breach of discipline. By letter dated 9th September, 1997 the complainant indicated that he intended to appeal this decision however, it does not appear that any appeal was actually lodged. The name of the Garda concerned has been omitted as this complaint was never put to him and therefore he has not had an opportunity to respond to it.

On 14th May, 1997, Michael McConnell lodged a complaint (Ref. 970528) in which he alleged that two named Gardaí had called to the house at 23.45 hrs. for the purpose of serving a summons on him. He was not present in the house at the time. He stated that his mother and sister-in-law, Róisín McConnell, were at the house and both had bad health. On 28th May, 1997 the Chief Executive wrote to the complainant informing him that the complaint was deemed inadmissible because the complainant was not present, nor was a witness to the alleged conduct. The Chief Executive was also of opinion that the complaint was inadmissible as it did not appear to constitute an offence or breach of discipline.

On 7th July, 1997, Mr. Willie Logan lodged a complaint (Ref. 970657) in which he alleged that Sgt. White had accused him of staring at him. He stated, Sir, that this occurred outside the McBrearty premises. He alleged that D/Sgt. White had said something about Section 8 and asked if Mr. Logan wanted to go in the van. The Chief Executive obtained a report from Insp. Barry who stated that he was of opinion that there was an orchestrated campaign of making complaints against D/Sgt. White usually from persons in or connected with the McBrearty family. He was of opinion that the allegations were trivial and did not warrant further investigation. Subsequent to this a letter was written to the complainant in relation to informal resolution of the matter. No response was received. On 13th January, 1998, C/Supt. Carey was appointed I.O. He took statements from the complainant, and his witnesses and from the Gardaí involved. He formed the opinion that the version of D/Sgt. White was credible. He was of opinion that there were no grounds to take action against D/Sgt. White. In his report, the Chief Executive stated that it was clear that there was an exchange of words between the parties. He was 'inclined' to view the Garda version as the more credible. He was of the view that Mr. McConnell and Mr. Logan were the more likely to have been the instigators of the verbal exchanges rather than D/Sgt. White. He recommended that the Board form the opinion that no offence or breach of discipline was disclosed.On 7th July, 1997 Mark McConnell lodged a complaint (Ref. 970659) in which he alleged that upon emerging from the McBrearty nightclub premises with his wife, D/Sgt. White stared at Mr. McConnell and that he stared back at him. He stated that D/Sgt. White then booked him under Section 8 and accused Mr. McConnell of threatening Sgt. White's wife and children. He stated that the Sergeant threatened to arrest Mr. McConnell and that when Willie Logan arrived on the scene, he was booked by the

Garda as well. A report was obtained from Insp. Barry who was of opinion that the allegations made against D/Sgt. White were trivial in nature and did not warrant further investigation. In a letter dated 13th August, 1997, Supt. Lennon stated "they (McConnell and Logan) have used every means available to them in order to frustrate the actions of the Gardaí and in particular Sgt. White who is an extremely active member of the force". C/Supt. Carey was appointed I.O. He took statements from the complainant, and his witnesses and from D/Sgt. White. He formed the opinion "the complaint lacks any credibility. None of the witnesses agree as to any details. It should be noted that one of the witnesses, Willie Logan, made a similar complaint about an alleged incident earlier in the night". There does not appear to be any report from the Chief Executive on the file in relation to this complaint. No decision was made by the Board prior to withdrawal of this complaint.

By letter dated 11th December, 1995 Messrs. V. P. McMullin & Son, Solicitors, lodged a complaint on behalf of their client Mr. Seán Crossan (Ref. 971030) to the effect that when they visited the Garda Station at which Mr. Crossan had been detained the member in charge did not know the reasons for the arrest and the Solicitor requested in the letter that he be furnished with reasonable cause for the arrest of his client. He also asked for sight of the custody records and for copies of all statements made by his client. This letter was acknowledged in a letter sent by Supt. John Fitzgerald on 12th December, 1996. However it was not until 17th October, 1997 that this letter was transferred by Supt. Lennon to the Garda Complaints Board. C/Supt. Carey was appointed I.O. He took statements from Mr. Crossan and from the Gardaí concerned. By letter dated February 1998, Messrs. V. P. McMullin & Son stated that they did not wish to make any statement or comment in relation the matter. Having completed his investigation, the I.O. reached the conclusion that Mr. Crossan was properly arrested and detained. He was of opinion that Mr. Crossan did not intend to make a complaint to the Garda Complaints Board arising out of the letter from his Solicitor dated 11th December, 1996. He did not recommend any action be taken against any of the Gardaí involved. The Chief Executive in his report noted that as one of the Gardaí was no longer in the force, the Board had no jurisdiction over him. In relation to the complaint against the other Gardaí he was of opinion that Mr. Crossan did not come across as a credible witness. Accordingly he recommended that the Board should form the opinion that the complaint was vexatious. No decision was reached by the Board prior to withdrawal of the complaint.

By letter dated 10th December, 1996, Messrs. V. P. McMullin & Son, Solicitors, made a number of complaints on behalf of Katriona Brolly (971031) to the effect that she had been grossly mistreated during her detention by the Gardaí. These complaints have been examined in detail earlier in this preliminary opening statement. Having taken statements from the complainant and from the Gardaí involved in her arrest and detention, the I.O. stated:

This like other complaints must be looked at in the context of the overall background as outlined in the main file. There is no independent evidence. The complaint was not made until some days later and Solicitor Mr. J. O' Donnell declines to make a statement. I do not recommend any action against any member of An Garda Síochána.

In his report, the Chief Executive stated "There is nothing to support Ms. Brolley's allegation other than her own statement and the fact that she reported these allegations to her Solicitor. I do not find Ms. Brolley's allegations credible. The Garda version of events seems more plausible." As the complaint included an allegation of an offence, the file had to be sent to the DPP. However, the Chief Executive stated that in the event that no prosecution was directed, he would recommend that the Board form the opinion that neither an offence nor a breach of discipline was disclosed.

By letter dated 23rd December, 1996, Messrs. V. P. McMullin & Son, Solicitors lodged a complaint on behalf of Róisín McConnell (Ref. 971032) alleging that she had been mistreated during her arrest and detention by the Gardaí. The details of her complaints are given elsewhere in this statement. C/Supt. Carey was appointed I.O. He obtained a detailed statement from the complainant and also took statements from each of the Gardaí concerned with her detention. He also had access to the custody records. He stated, "this, like all the other complaints must be viewed in the context of the overall background. This statement of complaint differs from complaint lodged by her Solicitor. The Solicitor declines to make a statement. The complaint was lodged three weeks after alleged incident. There are no independent witnesses. Custody record shows no complaint recorded. I don't recommend any action against any member of An Garda Síochána." The report of the Chief Executive states that the Garda version of events seemed more credible on the basis of the investigation, than that of the complainant. He stated that as an offence was alleged, the file would have to be sent to the DPP. However, in the event that no prosecution was directed, he recommended that the Board form the opinion that neither an offence nor a breach of discipline was disclosed. In May, 1999, the Board decided to defer further consideration of this complaint. No decision was made prior to withdrawal of the complaint.

On 10th December, 1996, the Solicitors acting for Mark McConnell lodged a complaint on his behalf in relation to his treatment during his arrest and detention by the Gardaí. (Ref. 971033) As with the other complaints made at around this time it was not forwarded to the Garda Complaints Board until October, 1997. On 28th November, 1997 C/Supt. Carey was appointed I.O. He took statements from the complainant and from the Gardaí concerned with his arrest and detention. He stated as follows "there is a direct and irreconcilable conflict of evidence. There is no corroboration for the allegations. The seizure of property and vehicle is covered in D/Sgt. Leheny's statement. I do not recommend any action against any member of An Garda

Síochána". The report of the Chief Executive stated, "there is only McConnell's word for the allegations which he makes. All of the members

who had dealings with him strongly deny the allegations. As the allegations concern an offence they must be forwarded to the DPP. If no prosecutions come I recommend that the Board decide that neither an offence nor a breach of discipline is disclosed". The complaint was withdrawn prior to any decision by the Board.

On 11th December, 1996, a letter was written by Messrs. V. P. McMullin & Son, Solicitors on behalf of Frank McBrearty, Jnr., (Ref. 971034). It was alleged that Frank McBrearty, Jnr., was assaulted by Gardaí while being brought to the Garda Station and also during his periods of interrogation. This complaint was not forwarded to the Complaints Board until 17th October, 1997. C/Supt. Carey was appointed I.O. He took a detailed statement from Frank McBrearty, Jnr., and took statements from all the Gardaí who were involved in his arrest and detention. They denied that he had been mistreated in any way. He was not able to obtain a statement from Messrs. V. P. McMullin & Son as they had indicated by letter dated 12th February, 1998, that they did not wish to make any statement or comment regarding the complaint. In his report, the I.O. quoted from the custody record and noted that the complaint, which had been recorded therein at the request of the complainant's Solicitor was different to the account given by the Gardaí. The I.O. stated "we deny the complaints" and stated that Mr. McBrearty, Jnr., was "probably treated in accordance with the custody regulations". He noted that Mr. McBrearty signed the custody records without complaint. The I.O. went on to state that there was a complete conflict of evidence without any independent or corroborative evidence other than the note in the custody record. He stated that if there was physical abuse, it was, as he put it, very minor. He stated that the complainant was not likely to have been perturbed by verbal or minor physical abuse. He did not recommend any action against any member of the Gardaí. The Chief Executive in his report stated that there was only Mr. McBrearty's own word for it that he was ill-treated. He noted that there was no medical evidence to back up the claim. On the basis of the investigation he concluded that there did not appear to be any evidence against any of the members complained of. He stated that in the event that the DPP did not direct that a prosecution be taken, he recommended that the Board should form the opinion that there was neither an offence nor a breach of discipline disclosed. On 18th May, 1999, the Board decided to defer further consideration. The complaint was withdrawn prior to the Board reaching any decision in the matter.

By letter dated 10th December, 1996, a complaint was made by Messrs. V. P. McMullin & Son, Solicitors on behalf of Frank McBrearty Snr. (Ref. 971035). It was alleged that Mr. O' Donnell, Solicitor, asked the member in charge, Gda. John Rousse, to get a Doctor for his client who was then in custody. It was alleged that the Garda refused to get a Doctor. The Solicitor asked that the request and the refusal should be noted in the custody record. It was also alleged that Mr. McBrearty, Snr., was harassed and verbally abused by the Gardaí while in custody. C/Supt. Carey investigated this complaint. When he approached Mr. McBrearty, Snr., for a statement, he directed him to the Solicitor who had acted for him at the time, Messrs. V. P. McMullin & Son. They did not wish to make any comment or statement

regarding the complaint. C/Supt. Carey obtained statements from the Gardaí against whom complaint has been made. In his conclusion he stated that it was his opinion that neither Mr. McBrearty nor his Solicitor intended the letter dated 10th December, 1996, to be a complaint, which should be forwarded to the Garda Complaints Board. He stated that there was no evidence against the Gardaí in relation to this complaint. In his report, the Chief Executive stated that it was not clear to what extent the Solicitor was making a complaint and to what extent he was merely making points for the record. He stated that on the basis of statements furnished by the Gardaí, he was of opinion that there were grounds for the arrest of Mr. McBrearty, Snr. He stated that due to lack of supporting evidence from the complainant, in relation to the verbal abuse or harassment, he did not recommend that any inquiry forms be served on the members who dealt with Mr. McBrearty while in custody. There, being no evidence he recommended that the Board should form the opinion that there was no offence or breach of discipline involved.

By letter dated 16th December, 1996, Messrs. V. P. McMullin & Son lodged a further complaint on behalf of their client, Mr. Frank McBrearty, Snr., (Ref. 971036) alleging that despite a letter dated 11th December, 1996 from Dr. Brian Callaghan, which advised against further interrogation of Mr. McBrearty, Snr., he was further interrogated by the Gardaí which resulted in his being hospitalised on 13th December, 1996. On 28th November, 1997, C/Supt. Carey was appointed I.O. He took a statement from Frank McBrearty, Snr., in which the complainant simply referred him to his Solicitors on this aspect of complaint. However, by letter dated 12th February, 1998 the Solicitors indicated that they did not propose to make any comment or statement in relation to the complaint. The I.O. also took statements from the relevant Gardaí. The I.O. appeared to concentrate his investigation into the question as to whether the complainant was in fact in Garda custody while he was in hospital. He did not appear to carry out any investigation into the second limb of the complaint, to the effect that the interrogation was continued contrary to the advice of Dr. Brian Callaghan. He concluded as follows in relation to the letter of complaint, “I also believe that this letter was a legal one dealing with legal issues surrounding the arrest and detention of Mr. McBrearty. I doubt that either Mr. McBrearty or the writer of the letter had intended it as a complaint for investigation by the Garda Complaints Board at the time of writing. Subsequent events seem to confirm this. There is no evidence here”. The Chief Executive noted that neither Mr. McBrearty, Snr., nor his Solicitor, was willing to make a further statement. He recommended that no further action be taken by the Board.

In complaint bearing reference number 971037, Frank McBrearty, Snr., complained that from approximately December, 1996 onwards the Gardaí were acting in a coordinated and deliberate way by visiting his premises so as to harm his business and give people the impression that he was a suspect in the unlawful killing of Mr. Richard Barron. The I.O., C/Supt. Carey, took a statement from the complainant, who referred him to a Solicitor. However, neither of the partners in the firm of V. P. McMullin & Son were willing to make any comment or statement in relation to the complaint. He also obtained a statement from Supt. Kevin Lennon, which dealt at length with the background

to policing difficulties in the town of Raphoe in 1996 and 1997. He denied that there was any undue harassment of Mr. McBrearty or his business. Supt. John Fitzgerald also made a statement outlining the difficulties faced by Gardaí in policing the town of Raphoe. In his opinion the I.O. stated that both Supt. Lennon and Supt. Fitzgerald had outlined in detail the difficulty they had with Mr. McBrearty in regard to the Licensing Laws. He stated that there was no evidence that Mr. McBrearty was unfairly treated in this regard. Also on the Garda Complaints Board file is a comprehensive statement from Supt. Kevin Lennon as well as supporting documentation from Insp. Philip Lyons in relation to events on 5th/6th July, 1997. There is also a 26-page statement from Mr. William Flynn, the private investigator retained by the McBrearty family. There does not appear to be a report from the Chief Executive in relation to this complaint. At it's meeting on 18th May, 1999, the Board made a decision to defer further consideration of this complaint. The complaint was withdrawn prior to any final decision on the matter.

On 31st October, 1997, Sir, Frank McBrearty, Jnr., lodged a complaint concerning his treatment at the hands of the Gardaí following on his arrest on the 4th February, 1997. He alleged that he was verbally abused and physically assaulted by D/Sgt. White and Gda. John O' Dowd. The details in relation to this complaint have already been looked at earlier in this statement. The I.O., C/Supt. Carey, took a detailed statement from the complainant. He also obtained statements from two Doctors who had examined the complainant during his period in custody. He also obtained statements from all of the Gardaí involved in interrogating the complainant, who denied any mistreatment of him. The I.O. noted that there were differences in the accounts as to how the injuries occurred. He stated that Gda. Rousse gave clear evidence of self-inflicted injuries. He also referred to a covert video which had been taken by the Gardaí of Mr. McBrearty, Jnr., while in custody. He somehow regarded the video as being supportive of the Gardaí. He noted that Mr. McBrearty was a boxer and therefore would know about head injuries. He stated that there was a conflict, which may only be resolved before a Tribunal. He stated that there was no evidence to support the allegation of wrongful detention. He stated that overall, he personally believed the injuries were self-inflicted. The Chief Executive furnished a report in which he set out how the complaint first came to the attention of the Board by way of a telephone conversation between the Deputy Chief Executive, Mr. O'Brien and Mr. Frank McBrearty, Jnr., on 28th October, 1997. In relation to causation of the injuries he stated as follows, "it comes down to the credibility of the individuals involved. On the basis of the investigation I regard the Garda version of events as being the more credible". As the complaint involved an allegation of an offence, the file had to be referred to the DPP. In the event that no prosecution was directed, he recommended that Board should decide that neither an offence nor a breach of discipline was disclosed.

On 28th October, 1997, Mr. McBrearty, Snr., submitted a document to the Garda Complaints Board headed "Points of View". This document contained a number of complaints against the Gardaí. They were dealt with under separate files by the Garda Complaints Board (Ref. 971120). The first complaint was that nothing was done by Sgt. Joseph Hannigan in relation to a

report made by Frank McBrearty, Snr., concerning threatening telephone calls made to the McBrearty's on 5/6th November, 1996. It was alleged that no contact was made by the Gardaí with Telecom Éireann (now Eircom) to try and trace the calls. C/Supt. Carey obtained statements from the complainant and his wife and also from Sgt. Joseph Hannigan who stated that he forwarded details of the report to the Superintendent at Letterkenny and that thereafter D/Sgt. Hugh Smith was appointed to investigate the matter. A statement was obtained from D/Sgt. Hugh Smith outlining the investigation that he had carried out in relation to these threatening telephone calls. The I.O. stated that the subject matter of the complaint had been dealt with. He stated that this investigation was inextricably linked to the overall investigation. Speed or urgency of this investigation was a moot point, according to him. He stated that there were a number of factors contributing to the time factor. These were dealt with in his main report. The Chief Executive stated that investigations were carried out. It was not clear whether these were done promptly. Any delay there may have been was due to the Garda investigation into the death of Mr. Richard Barron. He recommended that the I.O. be directed to make further enquiries. On 19th May, 1999 the Board decided to defer further consideration of this complaint. In a second report, the Chief Executive noted that the criminal investigation had concluded and had established that the calls made on 5/6th November, 1996 were made from Northern Ireland. He noted that a suspect maybe charged in relation to these calls. He noted that the statements made by Sgts. Hannigan and Smith indicated that matters were dealt with at the time. He recommended that the Board should form the opinion that neither an offence nor a breach of discipline was disclosed on the part of the members complained of.

The second complaint in the document headed "Points of View" concerned the delay which had occurred in forwarding the letters of complaint sent by the Solicitors acting for Mr. Frank McBrearty, Snr., to the Garda Complaints Board. The letters had been sent in December, 1996 and were only forwarded to the Board in October, 1997 (Ref. 971121). D/Supt. Carey, the I.O., took a statement from the complainant and also from the Superintendent concerned, Supt. John Fitzgerald. His response has been outlined earlier in this statement. The I.O. accepted the explanation of Supt. Fitzgerald as being, what he termed, a reasonable one. He stated that many such letters were received at District Offices. He noted that while some allegations of abuse were made, many of the letters requested information on legal issues. He believed that the Solicitors did not pursue the matter because they did not intend the letters as formal complaints. It was his belief that this complaint was brought by Mr. McBrearty when he believed that he had the Gardaí in some trouble. In his first report, the Chief Executive did not agree with Supt. Fitzgerald's reading of the situation. He regarded the letters as containing complaints, which should have been forwarded to the Board. He was of a view that the non-forwarding of the letters was a serious matter. He recommended that further enquiries be made. On 18th May, 1999, the Board decided to defer any further consideration of this complaint. The Chief Executive in his second report noted that upon receipt of the report from the I.O. in November, 1998, he had recommended that further enquiries be made. As nothing was done in the interim, he felt that it would be inadvisable to

resume the investigation at that juncture, due to the delay that had arisen in dealing with the matter. He therefore recommended that no further action be taken. The complaint was withdrawn prior to the Board making any further decision in the matter.

The third complaint contained in the document headed "Points of View" concerned an allegation that no action had been taken by the Gardaí to investigate the complaint made by Frank McBrearty, Snr., to D/Sgt. John White in March, 1997 about defamatory flyers which had been circulated in the Raphoe area. C/Supt. Carey took a statement from the complainant and also from D/Sgt. White and Supt. Kevin Lennon. They denied that the Gardaí had failed to properly investigate the origin of the leaflets. They stated that the investigation was hampered by the refusal of Mr. McBrearty or Mr. William Flynn to co-operate with the investigation by handing over the original of the documents, which they had found for forensic testing. D/Sgt. White stated that he believed that Mr. McBrearty or his associates were behind the distribution of the defamatory leaflets. The I.O. noted that the Garda file on the matter disclosed that the Gardaí had serious suspicions in relation to the authorship of the flyers. He noted that an investigation had been carried out by the Gardaí. He was of opinion that there was no case to answer by any of the Gardaí. The Chief Executive in his first report recommended that further enquiry should be made as to whether the criminal investigation was ever finalised and/or if the results of same were ever communicated to Mr. McBrearty. In May, 1999, the Board decided to defer any further consideration of the complaint. In a second report, the Chief Executive stated that the matter had been investigated by the Gardaí and it must be assumed that the author was not found as nobody had been prosecuted. He recommended that the Board form the opinion that no offence or breach of discipline was disclosed.

The fourth complaint in the document headed "Points of View" concerned a complaint by Frank McBrearty, Snr., that the Gardaí had harassed him in relation to the number of raids on his licensed premises and also by placing vehicle checkpoints close to his premises. He stated that this had been done with such frequency as to constitute harassment, (Ref. 971123). Statements were furnished by the complainant and by the manager of his premises, Mr. John Mitchell. A diary kept by Mr. Mitchell in relation to the number of raids on the premises was also submitted. Statements were furnished by Supt. Kevin Lennon, D/Sgt. John White and Gda. John O' Dowd, who all denied that they had harassed Mr. McBrearty, or his business premises, in the manner alleged. The I.O. stated, "it is difficult to show or prove that Gardaí were acting even-handedly in situations like this. What is clear is that Mr. McBrearty's premises was badly run. Drug abuse, breaches of Public Order, and breaches of the Licensing Laws were common". There is no report from the Chief Executive on this file. The complaint was withdrawn before any decision thereon was made by the Board.

In the fifth item of the document "Points of View" Mr. McBrearty, Snr., wanted to know the names, of the Garda or Gardaí who had gone to the family of Mr. Richard Barron and told them that the McBrearty's were the murderers of

their father. By letter dated 18th November, 1997, the Chief Executive wrote to Mr. McBrearty requesting the date of the alleged incident. In a subsequent telephone conversation the complainant stated that the statement had been made by Gardaí to members of the Barron family more than six months prior to that date. A further fax was sent by the complainant stating that Gardaí had gone to the Barron family in early 1997 in either February or March of that year at which time the statements were made. By letter dated 6th February, 1998 the Chief Executive wrote to the complainant informing him that the complaint was not admissible under the six month admissibility rule.

The sixth item, Sir, in the document "Points of View" which was furnished on 28th October, 1997, concerned a request by Mr. McBrearty, Snr., to be told such facts such as where were the Gardaí on the night of the accident, why did it take them so long to reach the scene, why was the scene not preserved, what Gardaí were at the scene, were the deceased clothes forensically examined, why was he buried so quickly, why did Sgt. Hannigan take a statement from Mr. McBrearty on the day after the incident? (Ref. 971125) This complaint was deemed inadmissible because it was not made within six months of the date of the alleged conduct.

Item number seven in the document "Points of View" concerned a complaint by Mr. McBrearty, Snr., that a telephone call from the Town and Country Bar to Frankies Tudor Bar at 23.00 hrs. on 13th October, 1996, was never investigated properly. Mr. McBrearty claimed that this call was made by Ms. Charlotte Peoples to Frankies Tudor Bar looking for her sister Ms. Paula Ayton. He said that the call was answered by the bar manager, Mr. John Mitchell. Initially, Insp. Greg Sullivan of Buncranna was appointed I.O. The complainant objected to the selection of I.O. Subsequently, C/Supt. Carey was appointed as I.O. A statement was obtained from Frank McBrearty, Snr., in which he stated that the Gardaí had accused Mark McConnell of phoning Frank McBrearty, Jnr., at the Tudor Bar from the Town and Country Bar at 23.00 hrs. on 13th October, 1996. Mr. McConnell made a statement confirming that the question of making the telephone call had been put to him by the Gardaí. Mr. McBrearty stated that the private investigator, Mr. Flynn had found out that this call was in fact made by Ms. Charlotte Peoples to her sister Ms. Paula Ayton. A statement was obtained from Supt. Fitzgerald in which he stated that if the issue of the telephone call arose, it would have been thoroughly investigated and patrons would have been asked about it during questioning. He stated that the particular phone call had no bearing on the decision to arrest any of the suspects. A statement was also obtained from Sgt. Sylvie Henry who stated that the phone call was not significant. The I.O. stated that Mark McConnell mentioned the telephone call to Mr. McBrearty when he was being "debriefed" after the second arrest. He stated that Mr. McBrearty gave it much greater significance than it merited. The I.O. stated "this file should be read in conjunction with the main file". In his report, the Chief Executive stated "the investigation shows that there is no substance in the complaint". He recommended that the Board should form the opinion that no offence or breach of discipline was disclosed.

The eight item in the document headed "Points of View" concerned an allegation by Frank McBrearty, Snr., that D/Sgt. John White had made allegations concerning Frank McBrearty, Snr., that he was bribing witnesses. (Ref. 971127). Statements were obtained by the I.O. from persons who were in the public house premises and who were alleged to have heard the allegation being made by D/Sgt. White. However, the independent witnesses who supplied statements did not hear the alleged statement by D/Sgt. White. A statement was also obtained from D/Sgt. White who denied making any such allegation. Statements were also obtained from the other Gardaí who denied hearing any such allegation being made. The I.O. did not give any opinion in the matter. In his first report, the Chief Executive stated that there were two conflicting versions of the events in relation to what had happened on the night of 19/20th July, 1998. He stated that it was difficult to decide which version was true. He recommended that the Board should await the decision of the District Court in relation to the prosecution arising out of the incident on that night. On 18th May, 1999 the Board decided to defer further consideration of this complaint. In a second report, the Chief Executive recommended that the Board should form the opinion that no offence or breach of discipline was disclosed.

In the ninth matter raised in the document "Points of View", Mr. Frank McBrearty, Snr., wanted to know where the Gardaí got evidence to justify all the arrests on 4th December, 1996 and why nobody was charged (Ref. 971128). This complaint was deemed inadmissible because the complainant was not directly affected by the conduct, nor was he a witness to the incident complained of. It was also inadmissible because the complaint was not made within six months of the alleged conduct.

On 25th June, 1997, Mark McConnell made a complaint that while in Garda custody, he was offered a "deal" by the Gardaí if he would help them. He also alleged that he was told by the Gardaí that a member of the Barron family would be "coming to get him" and that there would be no Garda protection available for him (Ref. 971136). It is not clear when the complaint was submitted to the Board. On 28th November, 1997, C/Supt. Carey was appointed I.O. He took a statement from the complainant and also from Mr. Cathal Quinn, Solicitor. He also took statements from Gda. John Nicholson, D/Gda. McGuire and D/Gda McHale, who all denied that any such deal or statement was made to Mr. McConnell while he was in custody. In his report the I.O. concluded that if the allegation of being offered a "deal" were true, this would mean that any confession obtained would be inadmissible, but this, he opined, did not constitute a breach of discipline. He stated, however, that the threat could constitute a breach of discipline. He noted that the evidence of the complainant in relation to this aspect seemed credible having regard to the evidence given by his Solicitor and the entry in the custody record. He noted however that the Gardaí vehemently denied the making of any such threat. He then stated, "The question to be decided is whether this was a breach of discipline". He did not say any thing further on the matter. In his report the Chief Executive stated, "It seems incredible that four experienced Garda interrogators would make the type of comments complained of by Mr. McConnell. His story does not ring true". He

recommended that the Board form the opinion that neither an offence nor a breach of discipline was involved.

On 6th November, 1997, Frank McBrearty, Snr., made a complaint that there had been delay by Supt. Kevin Lennon in communicating to him the fact that the DPP had decided that no prosecution was to be brought against him. He alleged that this decision had been communicated by the DPP to Supt. Lennon some months earlier. The complainant alleged that he had made enquiry of Supt. Lennon during the summer of 1997 as to whether he was to be prosecuted. He stated that he only learnt that no prosecution was to be brought when a letter was sent to him by Supt. Lennon dated 15th September, 1997. It transpired that the direction from the office of the DPP had issued on 19th May, 1997. A statement was obtained from Supt. Kevin Lennon in which he stated that through courtesy he had advised the complainant that no prosecution was to be instituted. He stated that if there was some "minor delay" in communicating this information it was due to pressure of work in the Letterkenny Garda District at the time. The I.O. stated "having considered all aspects of Mr. McBrearty's complaint the writer is of the view that this complaint is frivolous". He stated that it was good practice to tell a suspect of the directions of the DPP but noted that there was, what he termed, no binding obligation on the Gardaí to do this. He noted that Supt. Lennon had stated that if there was a minor delay this was due to pressure of work in the Letterkenny Garda District. In his first report, the Chief Executive stated that in view of the Board's decision of May, 1999, to defer decisions in the McBrearty group of complaints pending further enquiries, he recommended that they defer any decision on this complaint. On 12th February, 2000 the Board decided to defer further consideration of this complaint. In his second report, the Chief Executive recommended that the Board should form the opinion that neither an offence nor a breach of discipline was disclosed (Ref. 971144).

On 6th November, 1997, Frank McBrearty, Snr., lodged a complaint (Ref. 971145) to the effect that there had been delay on the part of Supt. Kevin Lennon in furnishing a copy of the custody records to his Solicitor at the time, Mr. Ken Smyth. It appears that the custody records had been furnished in January, 1998. The I.O. concluded "the records were supplied, but there may have been a delay. I have been unable to establish relevant dates because Mr. Smyth has not come back to me. I called him on two occasions. Supt. Lennon says he cannot address the matter more fully with relevant dates, etc. I don't recommend any action against Supt. Lennon". The Chief Executive in his report stated that it was not possible for the I.O. to pinpoint when exactly the request for the records had been made. He was of the view that the custody records should have been provided more quickly. On this account, he concluded that there may have been a minor breach of discipline by Supt. Lennon. He recommended that the Superintendent should be invited to make representations. This complaint was withdrawn before any decision was taken on it by the Board.

On 6th November, 1997, Frank McBrearty, Jnr., lodged a complaint (Ref. 971146) in relation to the extension of his period of detention in Garda

custody on 4th December, 1996 and 4th February, 1997. He also lodged a complaint in relation to the impounding of his motor vehicle. The Board decided to split this complaint into three separate complaints dealing with the two periods of detention and also the impounding of the car. This complaint was in relation to the impounding of the car. It was deemed inadmissible because the complaint was made more than six months after the date of the conduct complained of.

On 14th June, 1997, Frank McBrearty, Jnr., alleged that a named Garda called him a "murderer" and allegedly said to him "come on Frank, come clean and confess to everything". It was alleged that this had been said in the McBrearty's nightclub in Raphoe. (Ref. 971153). Insp. Greg Sullivan was appointed I.O. The McBrearty's refused to deal with him. The I.O. submitted a letter to the Board stating that he could make no progress in the matter as the complainants were refusing to meet with him. In his first report, the Chief Executive stated that in view of the stalemate a letter should be written to the complainants stating that unless they co-operated the Board would take no further action. On 18th May, 1999, the Board decided to defer any further consideration of this complaint. In a second report, the Chief Executive made a recommendation that a letter be sent to the complainant seeking their co-operation. There are no further developments on this file prior to the withdrawal of the complaints in October 2001. The name of the Garda has been deleted because this complaint was never put to him.

In complaint bearing reference number 971192, Frank McBrearty, Jnr., alleged that on 22nd October, 1997, he had been harassed while sitting in a car in Letterkenny by Sgt. John White, who came across the road and alleged that he had been shouting at him and then the Garda Sergeant commenced writing in his notebook. He alleged that this was harassment, or an attempt to provoke the complainant into committing an offence. Statements were obtained from the complainant and also from his wife. A statement was also obtained from Sgt. John White and from an independent witness to the incident. The I.O. noted that Sgt. White contradicted a number of details in the complainant's statement. He noted that the complaint was made on 26th November, 1997 (in fact a complaint had been made by the complainant by telephone directly to Supt. Lennon on the day of the incident). The I.O. stated that the complaint must be viewed with the knowledge of the background as outlined on the main file. He stated that Mrs. McBrearty's credibility was open to question. A statement had been obtained from the independent witness on the day of the incident however, when the I.O. spoke to him, he could not remember very much. The I.O. could not get a statement from him. The I.O. stated that there was a conflict of evidence and that he was inclined to believe Sgt. White's evidence. In his report, the Chief Executive stated that Sgt. White's version of events, supported as it was by the statement of the independent witness, seemed more credible. He recommended that the Board should form the opinion that no offence or breach of discipline was involved.

On 25th November, 1997, Ms. Katriona Brolly lodged a complaint (Ref. 971193) that in May, 1997, senior Gardaí had to ask members of the

RUC (as it then was) to make enquiries about the complainant at her place of work. In order to decide on admissibility, a report was obtained from Supt. Kevin Lennon, who stated that such enquiries were in fact made by the RUC at the request of the Gardaí. This was in the course of the investigation into the unlawful killing of Mr. Richard Barron. The complaint was held not to be admissible by the Chief Executive because it did not constitute an offence or breach of discipline against a member complained of.

On 3rd December, 1997, Mr. Willie Logan lodged a complaint (Ref. 971227) to the effect that on 25th November, 1997, Sgt. John White had pulled his car in front of his van and accused him of driving without his lights on. He stated that when he subsequently went to the Garda Station requesting a copy of what had been written by Sgt. White in his notebook, this was refused and it was further alleged that another Garda twisted his arm behind his back while he was in the Garda Station. C/Supt. Carey was appointed I.O. He took statements from the complaint and from the complainant's wife. He also took statements from the relevant Gardaí. Sgt. White outlined the circumstances in which the van had been stopped for driving at 21.15 hrs. without the lights on. Gda. Barrett denied twisting the complainant's arm. In her statement, Ms. Bríd Logan stated that the lights had been on, on the van at the relevant time. The I.O. stated that undoubtedly there was an altercation. He was not convinced that any breach of discipline had occurred. He recommended no action be taken against the Gardaí concerned. The Chief Executive in his report, stated "this complaint comes down to the credibility of Mr. and Mrs. Logan versus the credibility of the Gardaí. I find the Garda version of events the more credible". The Chief Executive recommended that in the event that no prosecution was directed by the DPP, the Board should form the opinion that neither an offence nor a breach of discipline was disclosed. The complaint was withdrawn before any decision thereon was made by the Board.

In December, 1997, Frank McBrearty, Snr., lodged a complaint (Ref. 971253) to the effect that Gda. Barrett did not act properly in dealing with a bomb scare at his nightclub premises on 22nd November, 1997. C/Supt. Carey was appointed I.O. He took statements from the complainant and also from the bar manager and from Mr. Andy McBrearty. He also obtained statements from Gda. Barrett and from other Gardaí involved in dealing with the bomb scare. He was of opinion that the Gardaí acted reasonably on the night. In his first report the Chief Executive recommended that the Board form the opinion that no offence or breach of discipline was disclosed. On 18th May, 1999 the Board decided to defer further consideration of this complaint. In his second report, the Chief Executive gave the same recommendation.

On 17th December, 1997, Frank McBrearty, Jnr., lodged a complaint (Ref. 980044) that at the time of his arrest, he was punched in the back by one of two-named Gardaí, while being put into the patrol car. There was no investigation of this complaint as it was deemed inadmissible under the six-month rule.

On 12th January, 1998, Frank McBrearty, Jnr., made a complaint (Ref. 980046) that on 8th January, 1998 a named Garda had followed Mr. McBrearty in his car and flashed his headlights at him and that later on that night the same Garda and another Garda had again followed his car "bumper to bumper" flashing the headlights and that they then drove slowly past the entrance to Mr. McBrearty Snr's, house while the complainant was visiting there. This complaint had been made by the wife of Frank McBrearty, Jnr., on his behalf. The Deputy Chief Executive ruled that this complaint was inadmissible as a complaint could only be made by a person on behalf of another person if that person was mentally ill. However, a complaint which had been lodged by Binchys, Solicitors on behalf of Mr. McBrearty, Jnr., in relation to the same events was deemed admissible. That complaint was dealt with under file reference 980073. There is no report from the I.O. on that file. This is due to the fact that Insp. Greg Sullivan had been appointed as I.O., but the McBrearty's refused to deal with him, as they felt that he was too close to the Gardaí in Donegal. The Chief Executive stated that in view of the stalemate, which existed, he suggested that a letter should be sent to the complainant advising him that the Board would take no further action unless they co-operate with the investigation. No such letter is apparent on the file. The names of the Gardaí have been deleted, as the complaint was never put to them.

On 16th January, 1998, Frank McBrearty, Snr., lodged a complaint (Ref. 980074) concerning the Garda handling of a bomb scare at his premises on 11/12th January, 1998 and in particular the fact that the dance hall was cleared. This complaint was deemed inadmissible because, according to the opinion furnished, the conduct did not constitute an offence or a breach of discipline.

In complaint bearing reference number 980094, Patricia McBrearty complained that a Garda patrol car with three Gardaí in it came onto her property for the purpose of enabling the Gardaí to speak to her husband and that when she told them to leave, they took a long time to leave. She thought that this conduct was done to harass the family. This complaint was deemed inadmissible as the Deputy Chief Executive stated that he was not satisfied that the conduct complained of constituted an offence or a breach of discipline.

On 12th February, 1998, Frank McBrearty, Jnr., and Patricia McBrearty complained that two days earlier, two Gardaí had followed their car and overtook them and then set up a roadblock for the purpose of serving a summons on them. They stated that the Gardaí threw the summons into the car and then laughed at them. Insp. Greg Sullivan was appointed I.O. However, the McBrearty's refused to deal with him. The Chief Executive stated that in view of the stalemate he suggested that a letter should be sent to the complainants advising that the Board would take no further action unless they co-operated. No such letter is apparent on the file. (Ref. 980163)

In complaint bearing reference number 980914, Andy McBrearty, complained that Gda. Barrett was abusive to him when visiting the licensed premises on

4/5th July, 1998. Insp. Greg Sullivan was appointed I.O. He took a statement from Andy McBrearty and also from the bar manager, Mr. John Mitchell. Statements were obtained from Gda. Barrett and Gda. McCann. They denied that Gda. Barrett had acted in any discourteous manner toward Andy McBrearty on the night in question. The I.O. stated "in conclusion, the I.O. is not at all convinced that Gda. Barrett was abusive or discourteous on the night. He was particularly impressed with Gda. McCann in his forthright and uninhibited interview, unlike some of the other witnesses". The I.O. believed that the complaint emanated as a result of pressure on the complainant from Frank McBrearty, Snr. The Chief Executive furnished two reports in the matter and on both occasions recommended that the Board should find that no offence or breach of discipline was disclosed.

In complaint bearing reference number 981199, Frank McBrearty, Jnr., complained that a named Garda spoke to him in a very loud voice in the foyer of Letterkenny Court House causing him much embarrassment. The Chief Executive ruled that the complaint was inadmissible as it was not shown that the conduct complained of would constitute an offence or a breach of discipline.

On 30th October, 1998, Frank McBrearty, Snr., lodged a complaint (Ref. 981265) that while socialising in Ballybofey, D/Sgt. White stared at him and his wife while they were sitting in their car. He further alleged that Sgt. White followed him in his car from Ballybofey first to Convoy and then to Raphoe. Supt. M. Keane (RIP) of Ballyshannon was appointed I.O. He took statements from the complainant, and from his wife and his sister, which all supported the complaint. A statement was also furnished by the fortune-teller, who the McBrearty's were meeting on the night in question. She stated that she didn't see any other car following them and she felt that there was a grudge between Mr. McBrearty and D/Sgt. White. D/Sgt. White made a statement in which he stated that he observed Mr. McBrearty acting in a suspicious manner in Ballybofey on the night in question (although it is accepted that other than buying a take away meal they were in fact sitting in their car). D/Sgt. White stated that he did follow the McBrearty car first in Ballybofey and subsequently at Convoy. He stated that he suspected that Mr. McBrearty was involved in the burning of his car on 19th October, 1998 and in the entry of persons onto his driveway on 26th October, 1998. The I.O. stated that there was no evidence to support the complaint made by Mr. McBrearty and he recommended that no further action be taken. The Chief Executive submitted two reports in both of which he recommended that the Board should form the opinion that no offence or breach of discipline was disclosed.

In complaint bearing reference number 981322, Frank McBrearty, Jnr., alleged that Gda. McCann had committed perjury when swearing that he was unable to serve a summons on the complainant on 18th November, 1998 because the complainant stated that he was in the house at the time but would not open the door and that Gda. McCann was aware of his presence in the house. This complaint was ruled inadmissible due to the fact that evidence had been given by Gda. McCann in court and a ruling had been

made on the hearing of the "ex-parte" application at which in fact Mr. McBrearty had been represented. The Chief Executive stated that it was not the function of the Complaints Board to review a decision of the court. Furthermore, the complaint was held inadmissible because it had not been shown that the conduct constituted an offence or a breach of discipline. Mr. Mark McConnell lodged a complaint in February, 1999 (Ref. 990128) complaining that various named members of the Gardaí had "set him up" in relation to fire-arm offences involving Bernard Conlon. He alleged that a high ranking officer was involved in this "fit up" by authorising payment for Mr. Conlon. On 25th January, 1999, the complainant had furnished a detailed handwritten statement, which had been furnished to the Board by his Solicitor on 4th February, 1999. On 12th November, 1999 C/Supt. Carey, who had been appointed I.O., wrote to the Chief Executive stating that the complainant had made a statement to him, but that on the advice of his Solicitor, the complainant had refused to sign it. He asked as to whether he should continue to investigate the complaint. In his first report, the Chief Executive noted that it was the normal practice in Garda investigation not to commence an investigation without a signed statement from the complainant. He recommended that the Board should write to the complainant requesting that he sign a statement so that the investigation could proceed. A letter was written to the complainant on 14th December, 1999 requesting his co-operation. A further letter was sent to the complainant on 21st December, 1999. By letter dated 21st January, 2000 C/Supt. Carey informed the Board that he had had no contact from the complainant. In his second report the Chief Executive stated that as there had been no further contact between the complainant and the I.O., he recommended that the Board should decide to, what he termed, constructively withdraw the complaint and that no further action should be taken. On 10th April, 2000 the complainant telephoned the Board and was told that he must sign the statement in the presence of the I.O. He was told that he could have his lawyer present if he wished. The complainant stated that he would await further contact from C/Supt. Carey. There does not, Sir, appear to have been any further development on the file in this matter.

In complaint bearing reference number 990300, Frank McBrearty, Snr., alleged that members of the Gardaí had committed perjury at hearings in the District Court in Donegal, when they allegedly denied the existance of documents referring to the "Extended McBrearty Family" and "The Policing of Raphoe on Weekend Nights". C/Supt. Carey was appointed I.O. He obtained a statement from the complainant who alleged that a large number of Gardaí had given evidence on oath denying the existence of the documents. A statement was obtained from Sup. Lennon, who denied committing perjury, as he stated that he never gave evidence on oath he had merely addressed the court in his position as the prosecuting Garda. He stated that he had told the court that to his knowledge no circular "targeting the extended McBrearty family" existed. He stated "and I am satisfied that it does not exist". He stated that when the Judge ordered production of all circulars, he stated that what was produced was a memorandum and not a circular and it was not "targeting the extended McBrearty family". He stated that it was merely an information document for the force in order to protect themselves from the campaign by

Mr. McBrearty and Mr. William Flynn, a private detective, in an effort to discredit the Gardaí. He stated that the document headed "Policing in Raphoe on Weekend Nights" was an information document sent to him as District Officer and was handed in to the court. He did not deal with the alleged denial of its existence. The I.O. sent a letter dated 30th March, 2000 to the Board stating that he did not feel that Supt. Lennon or any other Gardaí had committed perjury. He stated "I don't feel any further investigation under the Garda Complaints Act is warranted or justified in the circumstances of this case". A letter from the complainants Solicitors identifying the Gardaí by whom the alleged perjured evidence had been given, was furnished to the I.O. He merely stated that such letter showed that Supt. Lennon did not commit perjury as alleged as he was not named in the letter. He did not propose that any further investigation should be carried out unless directed otherwise. It does not appear that any such direction was given.

A complaint was made by Mark McConnell on 30th March, 1999 (Ref. 990352) to the effect that in the course of a prosecution against Mr. McConnell in relation to a public order offence in the District Court, the prosecuting Garda had produced in the court a copy of a complaint made by Mr. McConnell to the Garda Síochána Complaints Board. C/Supt. Carey was appointed I.O. The complainant made a statement, but on the advice of his Solicitor refused to sign it. The Chief Executive then wrote to the complainant requesting that he furnish a signed statement to the I.O. This letter was written on the 21st December, 1999. On 21st January, 2000 the I.O. wrote to the Board indicating that no contact had been made by the complainant. On 4th April, 2000 the complainant was told that the statement must be signed in the presence of the I.O. but that he could have his lawyer present. On 10th April, 2000, the complainant was told the same information on the telephone. It does not appear that this was done nor were there any further developments in relation to this complaint.

In complaint bearing reference number 990619, Frank McBrearty, Snr., lodged a complaint concerning circulars written by C/Supt. Fitzpatrick and Supt. Lennon in relation to him and Mr. William Flynn and an allegation that they were engaged in a campaign to discredit the Gardaí. The Chief Executive ruled that this complaint was inadmissible as he was not satisfied that the conduct complained of would constitute an offence or a breach of discipline. He was also of opinion that the documents were internal Garda memoranda and as such were not intended for public use. The decision of the Chief Executive was appealed by the Solicitors acting on behalf of the complainant to the Garda Síochána Complaints Board. The Chief Executive wrote a report for the Board in which he noted that the documents were internal memoranda and were not intended to be in the public domain. The Board issued a formal ruling on 27th August, 1999 confirming the decision of the Chief Executive that the complaint was inadmissible.

A similar decision was reached by the Garda Síochána Complaints Board on appeal from a decision of the Chief Executive in relation to complaint number 990620 which concerned a complaint in relation to the document entitled

"Policing in Raphoe on Weekend Nights" drawn up by D/Sgt. John White. This complaint was ruled inadmissible.

On 15th September, 1999, Frank McBrearty, Jnr., lodged a complaint (Ref. 990924) complaining that D/Sgt. Melody and Gda. Fitzpatrick and two other named Gardaí had produced a false confession allegedly signed by the complainant while he was in custody in December, 1996. The Gardaí concerned had denied the allegation. The complainant alleged that he had not put his signature to the confession and was not aware of its existence until it was exhibited in an affidavit sworn by C/Supt. Dennis Fitzpatrick on 21st April, 1997. There was no investigation of this complaint as it was deemed inadmissible under the six-month rule.

On 17th September, 1999, Frank McBrearty, Snr., through his Solicitors requested C/Supt. McNally to investigate Bernard Conlon and his status vis-à-vis the Gardaí and in particular his relationship with Sgt. John White. C/Supt. McNally forwarded the Solicitors letter to the Board. The Chief Executive requested the complainant to state the conduct about which the complaint was made and to state whether he was directly affected by such conduct and to state the date of the conduct. Despite further correspondence, no response was received from the complainant. Accordingly, this complaint was not investigated.

On 2nd December, 1998, Frank McBrearty, Jnr., lodged a complaint (Ref. 990973) to the effect that summonses, in respect of which an application for substituted service was to be made, could have been served by means of registered post. This complaint had originally emanated from a handwritten fax sent along with a Solicitors letter dated 2nd December, 1998. It was not clear what points the complainant wished to have treated as complaints. Correspondence passed between the Executive of the Board and the complainant and his Solicitor in an effort to clarify this aspect. There does not appear to have been any decision on the admissibility of the complaint, no I.O. was appointed. There is no report on the file. No decision was made by the Board in respect of this complaint.

In December, 1998, Frank McBrearty, Jnr., made a complaint that when his wife went to the Garda Station to collect a summons for him, a named Garda refused to give the summons to her (Ref. 990975). Supt. McLoughlin was appointed I.O. The complainant refused to deal with this I.O. In view of the stalemate, the Chief Executive suggested that a letter should be sent to the complainant stating that no further action would be taken unless there was co-operation with the appointed I.O. It is not clear on the file whether such a letter was written prior to the withdrawal of the complaints. There was certainly no investigation of this complaint.

Frank McBrearty, Jnr., lodged a complaint to the effect that Supt. Lennon and Insp. O' Brien were going to apply ex-parte for substituted service of summonses knowing that this evidence was perjury. This complaint was made in respect of an application that was due to be made on the following day and although it was headed "ex-parte", it was in fact being made on notice

to him. A letter was sent to the complainant enquiring as to what exact complaint was being made by him against the Gardaí concerned. In a handwritten response, the complainant stated that in making the ex-parte application, the Gardaí were going to commit perjury in relation to the inability to serve the summons. This complaint was deemed inadmissible as in the opinion of the Chief Executive it was deemed that the conduct complained of did not constitute an offence or a breach of discipline.

In complaint bearing reference number 991013, Frank McBrearty, Jnr., lodged a complaint in relation to the swearing of the document to ground an ex-parte application in the District Court seeking liberty to serve a summons by post on him. He stated that it was untrue for the Garda to say that he was unable to serve the summons personally on the complainant. He stated that this was an attempt to blacken his name before the Judge. The complainant objected to the identity of the I.O. appointed to deal with this complaint and refused to have any dealings with him. Accordingly, no investigation was carried out into the complaint.

In complaint number 00132, Frank McBrearty, Snr., complained that certain named Gardaí had laughed at the complainant when he came down from the witness box after he had made a mistake when giving his evidence in court. A letter was sent from the Chief Executive to the complainant requesting more details of the complaint so as to enable him to decide on the admissibility of the complaint. No response was received to this letter. Accordingly no decision was made as to its admissibility, nor was it investigated.

On 30th June, 2000, Frank McBrearty, Jnr., made a complaint (Ref. 000698) that on 24th June, 2000, a named Garda had asked him in front of his children whether he had threatened to kill Mr. Paul Barron. Supt. E. McLoughlin (Buncrana) was appointed I.O. He wrote a number of letters to the complainant, but they refused to have any dealings with him. He then wrote to the Board stating that as no response had been forthcoming from the complainant, in such circumstances he recommended that no further action be taken on this complaint.

On 16th May, 2001, Frank McBrearty, Jnr., lodged a complaint (Ref. 010511) to the effect that a Garda had accused him of threatening to kill Mr. Paul Barron, nephew of the deceased. He alleged that this accusation had been made in front of his three children. Supt. E. McLoughlin was appointed I.O. Despite requests, the complainant would not contact the I.O. In such circumstances the I.O. wrote to the Board recommending that no further action should be taken on this complaint.

In complaint numbers 010511, Frank McBrearty, Jnr., alleged that a Garda had behaved in an abusive and insulting manner toward him and his family at a Garda checkpoint. Supt. E. Gallagher (Millford) was appointed I.O. Despite letters from the Chief Executive no report was furnished by the I.O., nor was there any communication from him. There does not appear to have been any investigation of this complaint.

On 22nd June, 2001, Frank McBrearty, Snr., complained (Ref. 010613) that a Garda had submitted a false report to the Garda Síochána Complaints Board alleging that Mr. McBrearty had tried to put pressure on an individual to make a complaint of assault against another Garda. It was alleged that this incident occurred on 23rd October, 1997. This complaint was deemed inadmissible by the Deputy Chief Executive on the grounds that conduct complained of had occurred more than six months prior to the date of the complaint.

In November, 1998, C/Supt. Carey also produced a covering report as a general overview of the 22 complaints submitted by the extended McBrearty family, that he had investigated up to that time. With the report he also furnished a large number of appendices, which were essentially documents and other materials, such as videotapes, which had been submitted to the Garda Síochána Complaints Board by both the complainants and the Gardaí.

In the covering report, Sir, he set out a background report of each of the complainants, as well as a report on Mr. William Flynn, the private investigator retained by the McBrearty's. The conclusions given in this report are worth noting because they show the general opinion, which C/Supt. Carey had formed, of the persons in respect of whose complaints he had been appointed to carry out an investigation. In setting out the Conclusion portion of the report, We have deleted the name of one ex-Garda who served in Raphoe and whose discipline file is referred to in the report. We have done this because he has not been given an opportunity to put in any statement or defence to what has been said about him in C/Supt. Carey's report. Accordingly it would be unfair to name him at this time. C/Supt. Carey had stated as follows at the Conclusion section of his report:

> **The complainants – Frank McBrearty and others through the various complaints are making the point that the Gardaí picked on the extended family and arrested them wrongly, abused them and also harassed the licensee through the enforcement of the Licensing Laws. I believe that I have dealt adequately with those matters in the individual files.**
>
> **I would make the following points however:-**
>
> **(1) <u>Policing in Raphoe</u> – over the years policing in Raphoe left a lot to be desired. Appendix 7 – discipline file (name of ex-Garda deleted) refers. It appears that Frank McBrearty, Snr., policed his own premises. Assaults and disturbances were dealt with by him in his own way. Very few were processed through the courts.**
>
> **(2) <u>Change in Policing</u> – in recent times, I believe the policy has changed but not for the reasons alleged by Frank McBrearty. Extra resources and more diligent workers were assigned to Raphoe. This was done because of the increased incidences of violence. Because much of this arose out of abuse of alcohol the Licensing Laws received**

particular attention. All licensed premises received the same attention.

The various appendices show this particularly 1, 2 and 10. Indeed the paper supplied by Frank McBrearty, appendix 16, also supports this.

(3) With regard to the investigation into the death of Richie Barron, I did not find any compelling evidence of abuse of the McBrearty family. I have read the file and I believe there is evidence on the file to show that the Gardaí were on the right track. Whether there is sufficient to charge anyone in respect of the death of Richie Barron is another matter. I don't believe there is. The file is with the DPP.

The file is forwarded for your information.

I am available to brief the Board on detail or any matter they wish to clarify in this investigation.

J. T. Carey, Chief Superintendent.

As the Garda Síochána Complaints Board had not been given an opportunity to furnish any statement as to its own view of the effectiveness of its handling of the McBrearty group of complaints, nor to respond to the criticisms contained in the letter from Mr. Ken Smyth on behalf of the McBrearty family, the Tribunal legal team wrote to the Garda Síochána Complaints Board on 10th September, 2002, offering it the opportunity to furnish a statement dealing with these matters.

In its statement dated the 25th October, 2002, the Garda Síochána Complaints Board noted that in the period December, 1996 to December, 2001, it had received 71 complaints from the extended McBrearty family and its associates. In arriving at this number, the Board would appear to have included the complaints received from Mr. William Flynn. The Board noted that one complaint was registered by it in 1996. There were 36 complaints in 1997, 14 complaints in 1998, 16 complaints in 1999 and 2 complaints in 2001 and also in 2002. The Tribunal has not yet been furnished with any complaints registered by the Board in the year 2002.

In its statement, the Board had the following to say in relation to its handling of the complaints which it received from the extended McBrearty family:

"At the outset the complaints from the McBrearty family were dealt with on an individual basis. When it became clear, however, that a large number of complaints would be involved and that, to a significant extent, they were linked by common allegations of Garda misconduct it was decided that the complaints should, insofar as possible, be pursued together as a specific group for

investigation and other purposes. This approach was adopted to enable the Board to obtain a full and proper appreciation of all the events underpinning the complaints.

The Board and its staff recognised that the complaints made by the McBrearty family were of a serious nature and in that context, within the office of the Board they were largely dealt with on a personal basis by the Deputy Chief Executive. This was a departure from normal procedure and an important step which must be viewed, in particular, in the light of the fact that, as outlined in the Board's annual reports for the years in question, the senior staff of the Board was under strength and the amount of other work requiring attention at that level was very significant. The Deputy Chief Executive also devoted a considerable amount of time to communications with the complainants. In addition, he met with a number of them in Co. Donegal and responded to the many concerns and queries they raised with him."

The Board has stated that in keeping with the coordinated approach adopted by it in relation to the McBrearty group of complaints, arrangements were made to have 26 of the complaints dealt with by a single Chief Superintendent. The Tribunal legal team notes that members of the McBrearty family appear to have had a good working relationship with this officer, because when they indicated that they had difficulty with the appointment of other officers as Investigating Officers, they indicated at the same time that they had no such difficulty with the appointment of Chief/ Superintendent John Carey as an Investigating Officer in respect of their complaints. The Board stated that the investigations carried out into the McBrearty group of complaints were complex and time-consuming. It noted that a large number of statements had to be taken from all interested parties. The Board dealt with the progress of the investigation of the complaints and the decision taken in May, 1999 to defer further consideration thereof, in the following way:

"Following receipt of the reports from the Garda Chief Superintendent and other investigating officers on a large number of the complaints, the documentation was examined in the office of the Board and summaries for each complaint were prepared containing, inter alia, the Chief Executive's comments and recommendation as required by Section 6(4) of the 1986 Act. The relevant material was circulated to Board members and a special meeting of the Board was arranged for May, 1999 to consider the complaints. In addition, the Board had been made aware that prosecutions were taking place in the District Court in respect of summonses taken out against members of the extended McBrearty family for mainly licensing and public order offences. In that regard the Deputy Chief Executive had been informed by some of the complainants that matters of importance in relation to the complaints generally would emerge during the District Court hearings. He was also requested to attend the hearings and he

attended a number of them. Furthermore, the Board understood that a major internal Garda investigation into matters in Co. Donegal, including certain matters linked to the McBrearty family, had commenced and was being headed by Assistant Commissioner Carty.

At its meeting on 18th May, 1999, the Board decided that it would not make decisions on the complaints from the McBrearty family pending the outcome of (i) the District Court hearings and (ii) the Garda investigation under the direction of Assistant Commissioner Carty into allegations against Garda members in Co. Donegal. The Board also decided that the Deputy Chief Executive and the investigating Garda Chief Superintendent should attend a sitting of the District Court concerned with licensing summonses against Mr. Frank McBrearty, Snr. and they did so attend.

In that general regard the Board considered that because of the limitations on its investigative capacity imposed by the 1986 Act, it should have available to it as much information as possible before making definitive decisions on the complaints. In particular, it was the view of the Board that it should be in a position to determine whether or not for the purpose of the 1986 Act, a sufficient case had been made out in respect of each of the complaints."

The Board goes on to note that no additional relevant information came to light in the course of the District Court hearings prior to the withdrawal of all charges against members of the McBrearty family by the D.P.P. in June, 2000. Subsequently, the Board understood that the inquiry of A/C Carty was close to completion. They requested the Investigating Officers to establish the extent of any overlap that may have existed between the internal Garda investigation and the matters which were being addressed by the Board. They stated that it was only after some time that that issue was finalised. The Board was satisfied that no significant overlap had arisen. The Board stated that work then commenced in relation to the re-submission of relevant papers to the Board in respect of the McBrearty complaints. However, it has stated that due to staff shortages, coupled with the retirement of the Deputy Chief Executive, this work was delayed. The papers were in the course of preparation for re-submission to the Board, when all complaints were withdrawn by Messrs. Binchys on behalf of the extended McBrearty family.

The Board concludes its statement by making the following observations in relation to the handling of the McBrearty group of complaints:

"As indicated above, the Board sought to deal with the complaints received from the McBrearty family as fully as possible and devoted a considerable amount of time and its limited resources to the complaints. Given the volume of complaints in question, this was, inevitably, a very demanding task for such a small body.

In addition, it must be borne in mind that the Board was required to operate within the confines of the 1986 Act. The shortcomings of that Act, which is very restrictive and limits the Board's ability to conduct investigations as it would like, have been the subject of comments and recommendations in successive reports of the Board which have already been made available to the Tribunal.

In particular, every effort was made to provide the Board with the maximum amount of relevant information to enable it to consider the complaints properly. While this undoubtedly gave rise to delays it was considered necessary to adopt that course due to the overall complexity of the complaints and the need to address them effectively. Moreover, the position of the Board was made more difficult because it did not have the staff it required to deal with the complaints as expeditiously as it would have wished. Throughout the process, however, on-going communication was maintained between the Board and the complainants, particularly through the Deputy Chief Executive.

The Board is aware that the complaints made to it by the McBrearty family and in particular the manner in which they were dealt with, will be the subject of examination by the Tribunal. In that context the Board recognises that specific issues relevant to the complaints are likely to be raised in the course of the proceedings of the Tribunal and it will ensure that the maximum level of cooperation will be extended to the Tribunal through the provision of documents and statements and by making the appropriate personnel available to give evidence, as required.

Dated this 25th day of October, 2002."

The Tribunal legal team notes that in the Annual Reports published by the Board in recent years, the Board has highlighted what it perceived as the shortcomings of the 1986 Act. It has also complained of lack of sufficient funding and manpower so as to enable it to deal with complaints in a prompt manner. In the Annual Report for 2000, the Board had the following to say in relation to the changes required to the system for dealing with complaints against members of the Gardaí:

"The Board considers that the current system for dealing with complaints should be replaced with a system which is based on the principle that it, the civilian body charged with oversight of Garda conduct, be granted the independence, the powers and the resources necessary to enable it to deal effectively with complaints made to it. As already repeatedly outlined in its published reports to date, the independence sought by the Board includes:

- **The right to decide how each complaint should be dealt with;**

- **The establishment of an independent civilian unit to conduct investigations where the Board considers this appropriate;**
- **The right to appoint Investigating Officers;**
- **The right to decide on the level of supervision of investigations;**
- **The right to refer a matter to the Attorney General where no complaint has been received and the right for the Attorney General to request the Board to conduct an investigation;**
- **The need for the Board staff to be independent of and to be perceived as being independent of, the Department of Justice, Equality and Law Reform;**
- **The need for the Board to be provided with sufficient resources to fulfil all of its responsibilities.**

By the end of the year under review, the Board was strongly of the view that, given the pervasive nature of the changes required, the most practical approach is to replace the Garda Síochána (Complaints) Act, 1986, rather than to seek to amend it."

In the most recent Annual Report, being for the year 2001, the Board welcomed the publication by the Minister for Justice, Equality and Law Reform of proposals for a new system for dealing with complaints against members of the Gardaí.

Having regard, Sir, to the history of the McBrearty group of complaints, the criticisms of the procedure articulated by the Solicitor then acting for the extended McBrearty family and the statement furnished by the Garda Síochána Complaints Board, it would appear that the following questions will arise for determination by you, Sir, on the hearing of this module:

1. Was the excuse put forward by Supt. John Fitzgerald for the failure to forward the initial complaints received by the Superintendent's office in Letterkenny in or around December, 1996, good and sufficient excuse? Consider further whether there is any adequate explanation for the delay in forwarding same until the month of October, 1997.

2. It would appear from the papers furnished to the Tribunal's legal team to date, that of the 61 complaints lodged, 2 were not investigated at all, 10 could not be investigated because of an impasse between the parties or due to lack of co-operation from the complainants, and 19 were ruled inadmissible at the outset. This left 30 complaints in respect of which an investigation was undertaken. In none of these did the I.O. find that there was any offence or breach of discipline disclosed as a result of the conduct the subject matter of the complaint. Where there was a conflict between the complainant's version and that of the Gardaí, the I.O. invariably preferred that put forward by the Gardaí.

   The Chief Executive agreed with the I.O. in nearly all of these cases, save for 3 cases where he recommended that further representations

be taken from the Gardaí and 1 case, where he recommended that the Board should make a finding of a minor breach of discipline on the part of the Garda against whom the complaint had been lodged. In these circumstances, you Sir will have to hear evidence and decide as to whether the complaints submitted by the extended McBrearty family in the period 1996 to 2001 were investigated by the I.O.'s in a fair and proper manner. Does this aspect say anything as to the overall effectiveness of the Garda complaints procedure generally?

3. You will also have to consider whether in the circumstances, the Chief Executive carried out any critical analysis of the I.O.'s reports when drafting his summaries and recommendations to the Board in each case.

4. It would also appear necessary for you to examine the reasons for the delay in dealing with the complaints, including consideration as to whether the reasons put forward by the Board in May, 1999, for deferring giving a decision on any of the complaints, were good and sufficient reasons at that time, and consider whether such reasons remained valid until the withdrawal of the complaints en bloc in October and November, 2001.

5. In the light of the conclusions reached on the foregoing, you Sir will have to consider whether the current system for dealing with complaints against the Gardaí could be improved, or whether same needs to be replaced altogether.

ANONYMOUS ALLEGATIONS

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

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

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

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

> **The information available to the Tribunal indicates that Deputy Jim Higgins (as he then was) and Deputy Brendan Howlin at or about the time indicated brought to the attention of the then Minister for Justice, Equality and Law Reform a fax, which had apparently been received by Deputy Higgins on the 25th June, 2000.**
>
> **The main allegations relevant to this module are that:**
>
> **(i) An investigation being carried out into conduct alleged against a member of An Garda Síochána was not being conducted in accordance with the Garda Commissioner's instructions due to the fact that the member under investigation had worked with two high ranking members of An Garda Síochána one of whom had charge of the investigation in respect of the alleged misconduct;**
>
> **(ii) When working with these two high ranking members of An Garda Síochána he was alleged to have been given the job of producing evidence by unlawful means to prove a case beyond reasonable doubt whenever such evidence "had to be got";**

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

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

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

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

The Tribunal proposes to:

(a) Enquire into this matter generally, and in so far as it is possible, ascertain the basic facts;
(b) Fully investigate each of the allegations contained in the document to ascertain whether there is any foundation for same;
(c) Consider the investigations carried out to date in relation to this matter and generally consider whether these allegations were scrutinised with the seriousness which they merit;
(d) Ascertain if there is any connection between this incident and any other incident referred to in the Terms of Reference;
(e) Attempt to ascertain if the author of the fax has any information which would justify the allegations contained therein; in that regard it would be necessary to ascertain the identity of this person and to seek his/her assistance for the work of the Tribunal;
(f) Attempt to ascertain whether the use of informants has anything to do with this matter and, if that is so, the same approach as set out in relation to Term of Reference B(3) will then apply;
(g) Attempt to ascertain the motive for sending this fax, if this is relevant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> **3. A large number of convictions were achieved "by planting" evidence and both Carty and Hickey were aware that White was the source of the "tramped op" evidence. Payback was extra expenses for White in the form of unworked overtime/travelling and subsistence allowances and this misappropriation of Department of Justice funds continued up to 1998 as White was given blanket permission to claim the aforementioned expenses.**
>
> **4. There is now a fear among members of the investigation team that if White is fully investigated he will use his knowledge of**

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

The notes taken by Mr. Howlin read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> **(e) Mr. Tougher reverted back to the relationship of Sergeant White and senior members of the Garda Force in particular Tony Hickey and because of same, that he was able to fraudulently obtain astronomical expenses. I should mention that in the months proceeding this attendance and indeed within weeks of Mr. Carty's appointment, Mr. McBrearty had contacted me and alleged that he was informed by Garda sources that Sergeant White had something on Assistant Commissioner Carty which would prevent Assistant Commissioner Carty from carrying out his duties. Further references and repeated references were made to Sergeant White was used to plant evidence and fit people up with the knowledge of Kevin Carty and Tony Hickey …**
>
> **Mr. Tougher and I discussed Sergeant White and Mr. Tougher alleged that the Gardaí could be facing a disaster situation, there was another word used which suggested or implied that individuals who were framed by White would be queuing up to have their convictions set aside and that it would cost the state millions. Mr. Tougher informed me that my phones were most likely taped and would not give me his phone number or address or to contact him in any way …**

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

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

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

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

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

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

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

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

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

1. The formulation of the document sent to Deputy Higgins sets out to make a show of its own importance. It refers to "confidential information"; it claims that this has come from "a serving Detective

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

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

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

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

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

3. You have indicated, Sir, that you intend to enquire into paragraph (h). The result of that is that there will be a full public inquiry in relation to matters which, as regards the police force of any country, could not be more serious. What evidence is there in support of those allegations? If there is none, were they made maliciously?

4. A question may arise as to whether a privilege attaches to communications making allegations on matters of public interest to public representatives. If such a privilege exists, and that is a matter which may need to be argued out before you, Sir, it can only enure to the benefit of the public representative and not to any other person used as a conduit for the allegations. I remind you, Sir, that Oonagh McPhillips, Private Secretary to the Minister for Justice, noted Deputy Higgins as stating that "his Garda source was willing to cooperate with a Garda inquiry, but not with the media".

> Notwithstanding this, it would appear that the document has been circulated to the media. For all we know, Sir, the source may be in a position to supply better information than the broad brushstrokes painted in the allegations which he or she has made. The cooperation of this person would therefore be welcome. As you have indicated that there must be an inquiry into the matter, Sir, we feel obliged to call forward all relevant evidence for your assistance. Since the source claims to have the best knowledge of these allegations we will use every endeavour legally available to us to also call the source.

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