

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

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**INTRODUCTORY REMARKS**

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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](http://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.