

## ARDARA

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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 13<sup>th</sup> 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 7<sup>th</sup> of October, 1996 the first gate could not be opened because of a glue like substance. On the 19<sup>th</sup> 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 25<sup>th</sup> 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 14<sup>th</sup> 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 7<sup>th</sup> 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 11<sup>th</sup> of November, 1996 to Sergeant John White:

**On Thursday, 7<sup>th</sup> 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 8<sup>th</sup> 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 4<sup>th</sup> 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 7<sup>th</sup> 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 7<sup>th</sup> 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 17<sup>th</sup> 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 17<sup>th</sup> 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 19<sup>th</sup> 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 8<sup>th</sup> and 19<sup>th</sup> 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 19<sup>th</sup> 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 Kilty 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 12<sup>th</sup> 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 12<sup>th</sup> 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 20<sup>th</sup> 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 6<sup>th</sup> of July, 2000 Sergeant J.P. McKenna was again interviewed. He said this:

**I ... recall later that evening of the 19<sup>th</sup> 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 19<sup>th</sup> 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 7<sup>th</sup> of July, 2000 and he described that incident as follows:

**Some time later on the 19<sup>th</sup> 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 17<sup>th</sup> of May, 2000 and on the 31<sup>st</sup> 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 19<sup>th</sup> 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 7<sup>th</sup> 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 19<sup>th</sup> 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 20<sup>th</sup> 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 18<sup>th</sup> 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 21<sup>st</sup> of November, 1996.

Anthony Diver was arrested at 9.27 a.m. on the 20<sup>th</sup> 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 19<sup>th</sup> 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 20<sup>th</sup> 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 20<sup>th</sup> of November, 1996.

On the night of the 21<sup>st</sup> 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 1<sup>st</sup> 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 19<sup>th</sup> 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 20<sup>th</sup> 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 20<sup>th</sup>/21<sup>st</sup> 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 19<sup>th</sup> of November, 1996. This is the anonymous call that I received at my home and which I took at 12 midnight on the 19<sup>th</sup> of November, 1996 ... I am also aware that my brother Anthony received a phone call on the night of the 19<sup>th</sup>/20<sup>th</sup> 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 19<sup>th</sup> of November, 1996. Eircom were asked to supply billing records of calls made from Glenties Garda Station on the 19<sup>th</sup> and 20<sup>th</sup> 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 19<sup>th</sup> of November and 6 a.m. on the 20<sup>th</sup> 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 11<sup>th</sup> 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 28<sup>th</sup> 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 20<sup>th</sup> 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 25<sup>th</sup> of April, 1997. On the 25<sup>th</sup> of April, 1997 statements in relation to the matter were requested for defence purposes. It appears that on the 23<sup>rd</sup> 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 27<sup>th</sup> 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 17<sup>th</sup> 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 20<sup>th</sup> 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 21<sup>st</sup> 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 20<sup>th</sup> 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 Feeley 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 4<sup>th</sup> 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 19<sup>th</sup> 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 30<sup>th</sup> of June, 2000 Superintendent Austin McNally interviewed Mr. Frank Connolly, who spoke on the T.V.3 programme of

the 28<sup>th</sup> 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 18<sup>th</sup> 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.

