

BURNFOOT

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

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

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

The information available to the Tribunal indicates that at 08.00 a.m. on Saturday, 23rd May, 1998, a search of property namely a Traveller's encampment was carried out by members of An Garda Síochána on foot of search warrants. This search, or the searches, was or were carried out on the apparent basis that there were reasonable grounds for the Gardaí to believe that the persons occupying the relevant place were in possession of a firearm. The grounds for the belief were said to have been based on "confidential information". A firearm and ammunition were apparently found in a shed on the property searched. Seven persons were subsequently arrested and detained.

The Tribunal will, in the first instance, seek to establish the facts in this case and consider the accuracy of the matters set out above. A Tribunal will

- (i) Enquire into and ascertain the facts in relation to the above matters;**
- (ii) Enquire into and establish the identities of those said to have been arrested and detained at Burnfoot on the 23rd May, 1998;**
- (iii) Enquire into and establish the circumstances in which it was found appropriate or necessary to search the area of Burnfoot, Co. Donegal on or about the 23rd May, 1998;**
- (iv) Enquire into and establish the grounds and/or material relied upon as the basis for an application made for the issuing of a search warrant or warrants for the purposes of searching an area of Burnfoot, Co. Donegal in or about May, 1998;**
- (v) Enquire into and establish whether the search and/or searches alleged to have occurred at Burnfoot, Co. Donegal in May, 1998 were related to some other investigation;**
- (vi) Enquire into and establish the extent to which the search and/or searches at Burnfoot, Co. Donegal were planned in advance;**

- (vii) Enquire as to whether any conference of members of An Garda Síochána was held prior to the said search or searches at Burnfoot, Co. Donegal;**
- (viii) Enquire into whether it was determined that on a planned and pre-arranged basis members of An Garda Síochána should arrest and detain certain individuals with a view to having them questioned in relation to the finding of any material or any other matter and if so enquire into the circumstances in which and the reasons for which such a determination was made;**
- (ix) Enquire as to whether there exist within the Garda Síochána any standards, practices or procedures applicable to the making of a determination in the course of an investigation to arrest and detain by pre-arrangement persons suspected in relation to a matter under investigation whether in the course of a search or otherwise and, if so, whether there exist any or any adequate safeguards against any potential errors in the decision-making process or misuse of power whether accidental or deliberate;**
- (x) Consider whether members of An Garda Síochána when making the arrests acted reasonably and in good faith;**
- (xi) Enquire into whether particular persons became the focus of unfounded or unreasonable suspicion and, if so, how and why this occurred;**
- (xii) Enquire whether in directing and/or making arrests members of An Garda Síochána proceeded with the arrests only when satisfied that in respect of each arrested person their suspicions were reasonable and/or that they exercised all appropriate care, caution and diligence in deciding to make an arrest with due regard to the presumption of innocence attaching to such persons and their right to fairness of procedures;**
- (xiii) Enquire into all aspects of the arrests and detentions including the extensions of custody carried out in the course of the investigation;**
- (xiv) Enquire into the information available and the circumstances which led to the search;**
- (xv) Enquire into the circumstances in which the firearm allegedly came to be on the property;**
- (xvi) Enquire into the role of the members of An Garda Síochána who searched the property and their relationship (if any) to the firearms apparently found on the property;**
- (xvii) Enquire into the treatment of the persons arrested;**
- (xviii) Enquire into the connection (if any) between arrests relating to this Term of Reference and any other of the Terms of Reference;**
- (xix) Enquire into the handling of informants and the information received (if any) in relation to the events the subject matter of this Term of Reference and in that regard the procedure**

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

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

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

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

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

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

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

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

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

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

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

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

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

At or around this time the travellers moved from Barnesmore Gap to the location at Burnfoot, and into the vicinity of some farm buildings, then disused,

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

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

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

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

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

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

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

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

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

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

statements made in July and September of 2001 indicated that he was talking to a friend called Kieran McDonagh and that either as a result of this, or perhaps as a result of his own information, thought that the Casey, Power, Collins and McCann families that were camped in Donegal in early 1998 had, in his words “a bit of hot stuff around their place”. He claimed that they had “the country bled and they are getting away with it”. Within a short time of speaking to Kieran McDonagh he rang John White in Donegal. Initially he indicated to the Carty team that he did not say anything about a gun but that Kieran had said to him to tell John White to be careful in case there was a gun. Mr. Ward claimed not to have information about the death of Mr. Fitzmaurice or to have passed on that information to Detective Sergeant White. There was nothing to suggest to him that the Collins and the Powers families had anything to do with the apparent robbery of Mr. Fitzmaurice. He claimed to have telephoned John White in Donegal, acting out of concern and friendship.

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

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

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

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

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

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

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

Superintendent McGinley thinking that there was no time to get the people involved at the incident room in Swinford is noteworthy in the light of the communications already outlined and the fact that on that day Detective Sergeant White had told Detective Garda Kilcoyne that the investigation team from Swinford would be coming up to assist in the search.

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

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

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

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

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

approximately 150 – 200 yards from the site I felt sick. I felt like a criminal. I felt everything in my head was telling me I shouldn't be here, to get out, but I felt it had gone too far and I had no control of events. The dogs started barking ... but he said keep your eyes open and he stepped into the shadows of the buildings. When he emerged I knew he had planted the gun. We made our way back to the car. He was happy with the operation and all I could hope for was that the real gun would be found and that there would be no need to find this one, the planted one.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I was going to the toilet. I think that Garda Michael Moreton had left at this stage or was about to leave on my return from the toilet. I did not see Garda Eamon McConigley or Garda Seamus Patton coming into The Orchard Bar on the night of the 3/10/2001. I remained in The Orchard Bar for about one hour. I have no recollection of being told about a conversation between Garda Martin Leonard and Garda Eamon McConigley or of being asked to note any conversation that had taken place between Garda Leonard and Garda McConigley by Garda Martin Leonard. I have no recollection of any conversation taking place on the night ... in relation to the search at An Griannán Farm, Burnfoot about three and a half years ago where a firearm had been found. I was not involved in the search.

Further to my statement of 29/11/2001 I have heard a portion of a statement of Garda Martin Leonard read over to me where I allegedly told Martin Leonard not to be fighting John White's battles for him and undermining Garda Kilcoyne's statement. I have no recollection of ever saying this and I feel that if I did say it I would certainly recall it. I have no such recollection (latter part taken from statement of 17/1/2002).

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

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

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

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

1. Was any genuine information available to Detective Sergeant John White in relation to any possible connection that there might have been between the travellers encamped at Burnfoot and the death of Edward Fitzmaurice in May of 1998? If there was not, was the exercise in gathering together members of the Crime Investigation Branch from Dublin, members of the Edward Fitzmaurice investigation team from Swinford in Co. Mayo and a large party of Gardaí from the Donegal Division itself, set up in order to further some ulterior purpose of Detective Sergeant John White?
2. Did Detective Sergeant John White engage in the deception of Superintendent Lennon in relation to the issuing of the warrants under Section 29 of the Offences Against the State Act, 1939 which were the legal foundation for a valid search of the campsite at Burnfoot? Was there, on the face of it, anything that could or should have been done by Superintendent Lennon, or any other senior officer mentioned in the foregoing narrative, to check what Detective Sergeant White was saying, or to otherwise proceed, with a view to prudence and bearing in mind the rights of the searched and later arrested persons, before issuing the warrant?
3. Whilst, on the face of the custody records, and the statements available to the Tribunal at this juncture, the persons arrested at Burnfoot make no complaint of ill treatment while in Garda custody, the nature of their overall treatment should be enquired into.

4. A stark contrast between the statements of Detective Garda Thomas Kilcoyne and those of Detective Sergeant White arises as to the events of the 22nd/23rd of May, 2002, which, if any of them, is telling the truth? Is it the case that Detective Sergeant White, perhaps, identified Detective Garda Kilcoyne as being a person he could impress? Did he, thereafter, engage in a series of charades designed to bolster his purpose? On the other hand, is Detective Garda Kilcoyne painting himself as being naive beyond the point of credibility and has he, in this context, perhaps because of some ulterior motive, maliciously invented a series of lies against Detective Sergeant White in order to scandalise his reputation?
5. The manner in which the find at Burnfoot was reported and investigated needs to be checked against standard Garda procedures. We need to ask as to whether, if these procedures were not followed, how was this failure to follow procedures subsequently pursued. A subsidiary question arises as to whether a find of this kind, if not subjected to the proper type of paperwork, should have been looked at by senior officers and whether questions should have been asked by them.
6. Garda Eamon McConigley and Garda Tony Moran emerge as being persons against whom allegations, which they deny, are being made. No-one claims that at the time of the search at Burnfoot on the 23rd of May, 1998, that they had been seen to actually search the area where the gun was found. In order to find that gun, in any event, it was necessary to remove the door, to find the holdall bag and to open it. What is being alleged is that they engaged in jocose, or loose, talk to Sergeant John J. Coady, to Garda Padráig Mulligan and to Garda Martin Leonard. These persons, in turn, shared that apparent information with Detective Sergeant John White, with Sergeant Joseph Hannigan and with Garda John O'Dowd. One possibility which arises is that if what they said to these three persons was in fact said, and was in fact true, that they might, thereby, be accused of having planted the gun themselves. An alternative is that they looked upon their duties as members of An Garda Síochána in a less than appropriate manner and regarded everything to do with the search as being of no importance and positively funny. Again, there is a determination by more than one person, it would seem, to lie.
7. On the other hand, it needs to be asked why three persons, namely Sergeant Jack J. Conaty, Garda Padráig Mulligan and Garda Martin Leonard would falsely invent, if that be the case, a series of conversations, as to the first two of them, alleged against both Gardaí McConigley and Moran, and as to the last alleged conversation with Garda Leonard, against Garda McConigley alone. If these three members of An Garda Síochána have indeed invented these conversations and planted them into the minds of two persons, chosen perhaps as being on the search but as playing

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

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