



REPORT OF THE TRIBUNAL OF INQUIRY

Set up Pursuant to the Tribunal of Inquiry
(Evidence) Acts 1921-2002
into Certain Gardaí in the Donegal Division

CHAIRMAN:
The Honourable Mr. Justice Frederick R. Morris

**REPORT ON THE
INVESTIGATION INTO THE DEATH
OF RICHARD BARRON
AND
THE EXTORTION CALLS TO
MICHAEL AND CHARLOTTE PEOPLES**

Term of Reference (a) and (b)

Solicitor to the Tribunal: Bernadette Crombie
Registrar to the Tribunal: Brendan O'Donnell

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Tribunal of Inquiry into complaints concerning some Gardaí of the Donegal Division

Established by The Minister
for Justice Equality and Law Reform
by the Tribunals of Inquiry
(Evidence) Act 1921
(Establishment of Tribunal)
Instrument 2002



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Sole Member
The Honourable Mr. Justice Frederick Morris

My Ref: FM/SC

Your Ref:

If telephoning please ask for:-

Judge Morris

19th May, 2005.

**RE: Tribunal of Inquiry set up pursuant to the Tribunal of Inquiry
(Evidence) Acts, 1921 – 2002 into certain Gardaí in the Donegal
Division.**

Dear Minister,

I enclose herewith my report in respect of Term of Reference (a) and in respect of the first module of Term of Reference (b). These are respectively

- a) **The Making of Extortion and Hoax Telephone Calls to the home of Michael and Charlotte Peoples on the 9th November, 1996 and the subsequent Garda investigation into that complaint.**
- b) **Investigations into the death of Mr. Richard Barron of Raphoe, County Donegal on the 14th October, 1996 with particular reference to the arrest....and progress management and effectiveness of the Garda investigation with particular reference to the management of informants.**

It is the intention of the Tribunal to revert to deal with the balance of this Term of Reference **Treatment of Persons in Custody in connection with that investigation** at the earliest possible opportunity. By reason of the inability of witnesses to attend at the Tribunal, it has been necessary to postpone the consideration of this module.

When I wrote to you forwarding my last report, I reminded you that Section 3 of the Tribunal of Inquiry (Evidence) (Amendment) Act 2002 provides that if you consider that the publication of this report might prejudice any criminal proceedings, then you may apply to the Court for directions relating to the

Solicitor to the Tribunal: Bernadette Crombie, LLB., LL.M. Registrar to the Tribunal: Brendan O'Donnell

publication. With this section in mind, the following observations may be of assistance.

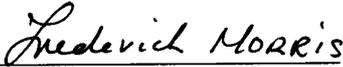
On the 4th May, 2005, the Tribunal wrote to Superintendent Terry McGinn, the Garda liaison officer to the Tribunal, with a view to ascertaining whether it was reasonably possible or reasonably probable that criminal proceedings might be brought arising out of the circumstances which are the subject matter of these modules. Superintendent McGinn replied on the 4th May, 2005. I enclose a copy of this correspondence.

In relation to four incidents identified in her reply, the following is my view, which you may find of assistance:

1. The Tribunal makes no findings in connection with the Shortt (miscarriage of justice) case;
2. While the Tribunal refers to the alleged misappropriation of material found in the "Lennon locker", it makes no findings in relation to it;
3. In relation to the making of extortion and hoax telephone calls to the home of Michael and Charlotte Peoples on the 9th November, 1996, the Tribunal makes positive findings that at least one of these calls were made by William Doherty with the knowledge and acquiescence of Garda John O'Dowd;
4. In relation to the death of the late Mr. Richard Barron the Tribunal finds that this occurred as a result of a road traffic accident. It makes no finding as to the person responsible. It finds that neither Mr. Frank McBrearty junior nor Mr. Mark McConnell were in any way involved in the incident.

On the 13th June, the Tribunal recommences hearing evidence in relation to Term of Reference (d) that is **the circumstances surrounding the arrest and detention of Mark McConnell on the 1st October, 1998 and Michael Peoples on the 6th May, 1999.**

Yours faithfully,


Frederick Morris,
Chairman of the Tribunal.

Michael McDowell, Esq., S.C.,
Minister for Justice, Equality & Law Reform,
Department of Justice, Equality & Law Reform,
94, St. Stephen's Green,
Dublin 2.

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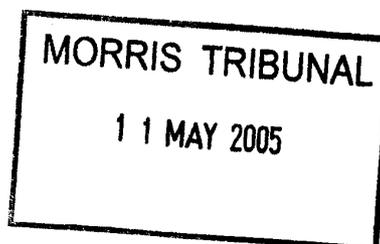
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Your Ref: BAR/MCB006-3/SD/BC/KO'C

PRIVATE & CONFIDENTIAL

**Ms. B. Crombie, LLB, LLM,
Solicitor to the Tribunal of Inquiry,
Belfield Office Park,
Beaver Row,
Clonskeagh,
Dublin 4.**



**Re: Tribunal of Inquiry into complaints concerning some Gardaí in Donegal.
Module: Barron Investigation 1 & 2 - Term of Reference (b) -
Investigation into the death of Mr. Richard Barron, the management of
informants and the arrest of suspects.
Module: Peoples' Extortion Calls - Term of Reference (a).
Actual or Potential Criminal Proceedings.**

A Chara,

I refer to your correspondence dated 4th May 2005 in above matter.

The following matters pertaining to the above Modules have been investigated, and the current position with each investigation is set out hereunder:

NO.	INVESTIGATION	CURRENT POSITION
1.	Issues arising from the judgement of Mr. Justice Hardiman - Shortt (Miscarriage of Justice) Case.	File with DPP - Direction awaited.
2.	Alleged Misappropriation of Funds resulting from material found in the 'Lennon Locker'.	File with DPP - Direction awaited.

Is é Mísean An Gharda Síochána

An leibhéal insroichte is aired a bhaint amach maidir le Cosaint Phearsanta, Tiomantas don Phobal agus Slándáil Stáit

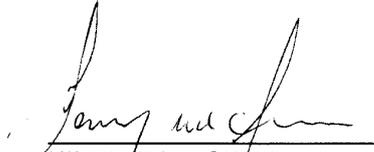
Mission Statement

To achieve the highest attainable level of Personal Protection, Community Commitment and State Security

3.	The making of Extortion and Hoax Telephone Calls to the home of Michael and Charlotte Peoples on the 9 th November 1996.	This matter is being re-investigated and a file is currently being prepared for transmission to the DPP.
4.	The death of Mr. Richard Barron on the 14 th October 1996.	The investigation into this matter is ongoing.

Should there be any developments in any of the above investigations, I will inform you without delay.

Is mise le meas,



TERRY MCGINN
SUPERINTENDENT

Is é Misean An Garda Síochána
An leibhéal insroichte is aired a bhaint amach maidir le Cosaint Phearsanta, Tiomantas don Phobal agus Slándáil Stáit

Mission Statement
To achieve the highest attainable level of Personal Protection, Community Commitment and State Security

Tribunal of Inquiry into complaints concerning some Gardaí of the Donegal Division

Established by The Minister
for Justice Equality and Law Reform
by the Tribunals of Inquiry
(Evidence) Act 1921
(Establishment of Tribunal)
Instrument 2002



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Sole Member The Honourable Mr. Justice Frederick Morris

My Ref: **MT/GDA/MCG010-01/SD/BC/ROC** Your Ref:

If telephoning please ask for:-

Wednesday, 04 May 2005

PRIVATE AND CONFIDENTIAL STRICTLY ADDRESSEE ONLY

Superintendent Terry McGinn
Liaison Officer
Garda Liaison Office
C/o Morris Tribunal
Belfield Office Park
Beaver Row
Clonskeagh
Dublin 4

Re: Module: Barron Investigation 1 & 2 – Term of Reference (b) – Investigation into the Death of Mr. Richard Barron, the Management of Informants and the Arrest of Suspects

**Module: Peoples' Extortion Calls – Term of Reference (a)
Actual or Potential Criminal Proceedings**

Dear Superintendent McGinn,

We refer to **paragraphs (a) and (b)** of the Tribunal's Terms of Reference which read as follows:

“[That the Tribunal shall inquire urgently into] [t]he making of extortion and hoax telephone calls to the home of Michael and Charlotte Peoples on 9th November, 1996 and the subsequent Garda investigation into that complaint;

and

[That the Tribunal shall inquire urgently into] [i]nvestigations in relation to the death of Mr. Richie Barron of Raphoe, Co. Donegal on 14th October, 1996 with particular reference to the arrest and treatment of persons in custody in connection with that investigation, the progress, management and effectiveness of the Garda investigation with particular reference to the management of informants;”

Solicitor to the Tribunal: Bernadette Crombie, LLB., LLM. Registrar to the Tribunal: Brendan O'Donnell

As you are aware, this Tribunal is governed by the **Tribunal of Inquiry (Evidence) Acts, 1921 – 2002**. **Section 3 of the Tribunal of Inquiry (Evidence) Act, 2002** reads as follows:

“(1) If, on receipt by the person to whom a tribunal is required, by the instrument by which it is appointed or any instrument amending it, to report of an interim or the final report of the tribunal, that person considers that the publication of the report might prejudice any criminal proceedings, that person may apply to the Court for directions regarding the publication of the report.

(2) Before the Court determines an application under subsection (1), it shall direct that notice of it be given to—

(a) the Attorney General,

(b) the Director of Public Prosecutions, and

(c) a person who is a defendant in criminal proceedings relating to an act or omission that—

(i) is described or mentioned in the report concerned,

or

(ii) is related to any matter into which the tribunal concerned inquired and which is so described or mentioned,

and the Court may receive submissions, and evidence tendered, by or on behalf of any such person.

(3) On an application under subsection (1) the Court may, if it considers that the publication of the report concerned might prejudice any criminal proceedings, direct that the report or a specified part of it be not published —

(a) for a specified period, or

(b) until the Court otherwise directs.

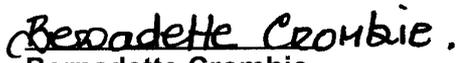
(4) An application under subsection (1) may be heard otherwise than in public if the Court considers that it is appropriate to do so.”

In the event that the Tribunal is in a position to furnish a report to the Minister within the next couple of weeks, it is important that we should be informed as to the reasonable likelihood of criminal proceedings being brought concerning the subject matter of **paragraphs (a) and (b)** as set out above. You are in a unique position, having attended most of the public sittings of the Tribunal and having acted in a most helpful way as Liaison Officer between an Garda Síochána and the Tribunal, to assist us in this regard. We would therefore ask you to make inquiries as to whether it is reasonably likely or reasonably probable that criminal proceedings might be brought at this juncture arising out of the circumstances that are the subject matter of this module.

Thank you for your ever helpful assistance and that of your Garda colleagues at the Garda Liaison Office.

We await hearing from you in due course.

Yours sincerely,


Bernadette Crombie
Solicitor to the Tribunal

**PARAGRAPH (a) AND (b) of the
TERMS of REFERENCE**

Set up Pursuant to the Tribunal of Inquiry
(Evidence) Acts 1921-2002

into Certain Gardaí in the Donegal Division

(a) and (b)

- (a) The making of extortion and hoax telephone calls to the home of Michael and Charlotte Peoples on 9th November, 1996 and the subsequent Garda investigation into that complaint;
- (b) Investigations in relation to the death of Mr. Richie Barron of Raphoe, Co. Donegal on 14th October, 1996 with particular reference to the arrest and treatment of persons in custody in connection with that investigation, the progress, management and effectiveness of the Garda investigation with particular reference to the management of informants;

NOTE TO THE READER

The reader will please note the following:

1. Quotations from the transcript are designated by a bold indented italic.
2. Quotations from documents are boxed.
3. Particularly important conclusions of the Tribunal are printed in a different colour.
4. A summary of the Tribunal's conclusions appears in Chapter 1 but this should be read in conjunction with the entire report.
5. Recommendations are set out in Chapter 9.

CHAPTER 1

OVERVIEW AND INTRODUCTION

Background

- 1.01. This is the second report of the Tribunal of Inquiry set up by Dáil and Seanad Éireann pursuant to the resolution of the 28th of March 2002. The first report of the Tribunal, concerning hoax explosives finds in Donegal during the years 1993 and 1994, was published in July of 2004. Of necessity, that report also dealt with related issues of fact which broadened the scope of the period to be enquired into from 1988 up to February of 1999.

Purpose

- 1.02. The purpose of this section is to provide the reader with a roadmap through the report. I recognise that someone coming to consider the series of events, which are recounted in this report, will be confronted with an extraordinarily involved story involving many different personalities. I realise that without some form of guide it would be difficult to read this report. However, I believe that it is of importance that the full narrative of the events as they happened should be told. If this means relating a complex story, then so be it. It would be unjust to take shortcuts.
- 1.03. Before going further, I believe that I should make it clear that what the Tribunal was mandated to do in its Terms of Reference to this module was to inquire into the way in which the Gardaí conducted the investigation into the death of the Late Mr. Richard Barron. The need for this inquiry arose because it was perceived that the Gardaí had made an appalling mistake and that two innocent people in Raphoe, Mr. Frank McBrearty Junior and his cousin Mr. Mark McConnell, were arrested for Mr. Barron's murder. Considerable public disquiet was caused by the apprehension that not only were there mistakes involved in the investigation of this incident but that, in addition, the two suspects had been deliberately targeted and framed by the Gardaí.
- 1.04. Accordingly, while the Terms of Reference of the Tribunal do not expressly provide that I inquire into who was responsible for the death of the Late Mr. Barron, nor does it provide that I should make any findings as to the guilt or innocence of either of the suspects for his death, **the reality is that as the work of the Tribunal proceeded it became more and more obvious that as a direct result of mismanagement and misconduct on the part of a number of the members of the Gardaí involved in the investigation, these two suspects were wrongly considered to have been responsible for Mr. Barron's death¹.**

¹ Members of the Gardaí are referred to by their rank as of the time the action mentioned in the report took place. When they give evidence they are referred to by the rank, if any, they held in testifying to the Tribunal.

- 1.05. Throughout the time that Mr. McBrearty and his family and Mr. McConnell attended at the Tribunal hearings, they proclaimed their innocence and they called upon a number of members of An Garda Síochána to accept that fact. The reluctance on the part of the Gardaí to do so, I believe, stems from the fact that while he was under arrest Mr. McBrearty is alleged to have made a confession to the murder. The validity of that statement falls to be considered in the next module. For them to have proclaimed the innocence of Mr. McBrearty would have amounted to an exercise of a prejudgement by them of the issues which it is my function to resolve. **However, it should be noted that at no stage throughout the Tribunal hearing was any suggestion ever made by a member of the Gardaí that either Mr. McBrearty or Mr. McConnell were guilty of causing Mr. Barron's death. In no sense were they 'on trial'.² They were never required to defend themselves against any accusation.** Tribunal counsel presented the evidence and, where necessary, challenged this evidence by cross-examination. The purpose of granting representation before the Tribunal was to enable those of whom criticism was made to defend themselves. **No criticism whatever was made of either Mr. Frank McBrearty Junior or Mr. Mark McConnell.**
- 1.06. The Report examines a number of events which, at first sight, might seem far removed from the inquiry by the Tribunal into the quality of the Garda investigation into Mr. Barron's death. The reader might be tempted to inquire what relevance these events had to the central point of the inquiry. It is therefore, I feel, desirable to indicate the connections that there were between these events and this central point which made them relevant.
- 1.07. The centre point of the inquiry was the discovery of Mr. Barron. Mr. Richard Barron was found dead on the roadway outside Raphoe, County Donegal, in the early hours of Monday the 14th of October 1996. His death looked like a hit and run incident. It was initially treated that way by investigating Gardaí. As a result of a rumour at Mr. Barron's wake, the Chief Superintendent of the Donegal Division came to believe that the death was a murder, committed by two local men: Frank McBrearty Junior and his cousin Mark McConnell. Mr. Barron's remains were examined by a hospital pathologist and buried. The murder theory was pursued as the cause of Mr. Barron's death. An incident room was set up. A 'Mr. X' was introduced as a witness who saw the two suspects coming from the scene of the killing. 'Mr. X' was revealed on the 29th of November as Robert Noel McBride, a local man of suggestible mind. Suspects were arrested a week later and an apparent confession statement is said to have been obtained from Frank McBrearty Junior. Further statements from alleged witnesses were added to the equation during the early months of 1997 which purported to show that the two

² When quoting from the transcript of proceedings, the Tribunal has checked its notes and in a very few cases has made corrections. The Tribunal has also modified the punctuation for the sake of readability. Quotations incorporating grammatical or other inaccuracies are left unamended and are not highlighted by the moniker (sic), or any other.

main suspects were behaving very strangely on the night of the death. The investigation team did not properly consider evidence in their favour. 'Mr. X', and others also, claimed that Mr. McBrearty Junior and his father were attempting to suborn witness to refuse to give evidence against them. In September of 1997, 'Mr. X' admitted that his statements were lies. He admitted that on the night in question, he was not in Raphoe. **The theory that Mr. Barron was murdered was never built on firm foundations. The six incriminating witness statements of 'Mr. X' had never been analysed. In particular, his statement of the 29th of November, 1996 which was a catalyst for the subsequent arrests, and which made reference to sightings of various people around the town of Raphoe on the night of Mr. Barron's death, was not analysed against the existing statements of honest people who had been in Raphoe but none of whom had seen him that night.** As soon as more diligent Gardaí challenged him on his account in September 1997, it was found to be false. Other witnesses also changed, or drew back, from evidence against the suspects. When Mr. Barron's body was eventually exhumed and examined by a forensic pathologist, for the first time, it was found that death was due to a vehicle/road impact. How all of this came about is the subject of this report.

The Foundation of the Garda Case

- 1.08. The original information which led to the belief that Mr. Barron had been murdered came from a criminal in the Raphoe area namely, William Doherty. He was also a Garda informer supposedly. He passed this information on to Garda O'Dowd. It was the same William Doherty who was one of the main players in other satellite events, such as the alleged information contained in bogus reports sent up to Garda Headquarters by Garda O'Dowd. He was the informer who had provided the information which led to a fruitless search which was carried out on an innocent farmer's lands. He was the person who introduced Robert Noel McBride, who was 'Mr X', as a witness who could give evidence against Mr. McBrearty Junior and Mr. McConnell. As will be seen, therefore, he became a figure of consequence. His relationship with Garda O'Dowd and Superintendent Lennon, his 'agent supervisor', accordingly became critical to the inquiry and gave rise to the need to fully examine these various events.
- 1.09. When the Tribunal was required to consider the manner in which the Garda investigation team in Letterkenny inquired into the circumstances of Mr. Barron's death, the first requirement of the Tribunal was to obtain a clear template of the way in which such an investigation should be conducted. At the outset of the investigations, the Gardaí gave consideration to the possibility that Mr. Barron's death might have been the result of a road-traffic accident or alternatively as a result of an assault. Accordingly, it was necessary for the Tribunal to obtain a template of the way in which each of these investigations should be conducted. That template forms the basis of Chapter 2.

- 1.10. Once the Tribunal had obtained such a template it should and would have taken no more than a matter of months to complete the Tribunal's inquiries. However, as the Tribunal proceeded it was observed that there were serious irregularities in the Garda investigation. Further investigation showed to my satisfaction that there was a deliberate planting of evidence by the Gardaí. This was done for the purpose of advancing the prosecution case against the two suspects.
- 1.11. **It was the unravelling of the whole complex story of how this came about and what actually occurred that took the Tribunal time. It was thanks to the very considerable efforts on the part of the Tribunal legal team and its investigators that so much of the truth as I have been able to present here eventually came to light.**

The Perceived Issues

- 1.12. Whenever Mr. Barron's death is referred to in the media and the quality of the Garda Investigation commented upon, four major criticisms are made of the Garda behaviour on the night. I now mention these four criticisms, in short form, for the purpose, firstly, of indicating that full and detailed particulars of these events are to be found in the body of the report but, secondly, to point out that these four criticisms, while they disclose disgraceful behaviour, are in reality peripheral to the real problems which attended the investigation. It would not have required a statutory Tribunal to investigate these complaints. However, for members of our national police force, An Garda Síochána, to claim that they are not obliged to account for their duties to the people of Ireland who pay them is a scandal. An example of this is the way in which Gardaí Mulligan and Mr. John O'Dowd refused to answer questions about their duties on the night of Mr Barron's death.

The Four Criticisms are as Follows:

- 1.13. Firstly, Garda Pádraig Mulligan, who was the Garda supposed to be on duty in Raphoe at the time of Mr. Barron's death, could not be found and he did not answer his call from Central Communications. **In fact, the evidence before the Tribunal was to the effect that he was drinking in a public house in Lifford with Garda John O'Dowd, his off-duty colleague, at the time.**

Secondly, when the Communications Centre at Letterkenny was alerted by a call from a householder requesting Garda assistance, this communication was relayed to Lifford Garda Station. I am satisfied that, contrary to the evidence which was given to me at the Tribunal, the crew of the Lifford Garda car, which was delegated to answer the call in the absence of Garda Pádraig Mulligan, deliberately delayed answering the call until after they would have had their meal break. Were it not for a second call from the householder repeating the request

for Garda assistance made to the Communications Centre that was relayed to Lifford, they would not have answered the call at that time. I am satisfied that the account of this incident which was given to the Tribunal by the Gardaí involved is not correct. An absurd story was told to the Tribunal that because the Sergeant in Lifford was unable to identify a 'Mrs. McBride' (being the name of the lady who made the call for help) as anyone residing in the townland of Townparks, Raphoe as was reported to him, he came to the conclusion that the call must have come from a Mrs. McBride in Townparks, Convoy. The Tribunal was told the call was referred to the Ballybofey Station since the Lifford patrol car call had no function to answer a call in Convoy. The Tribunal was told that the Ballybofey car set out to answer the call to Mrs. McBride in Convoy but, when it was discovered that this was the wrong venue, it was called back. **I am satisfied that this story is entirely false. I am satisfied that the crew of the Lifford car were on the point of going for their meal break when the call came. They were aware they were due to travel to Raphoe on public-order duty later on that evening and they deliberately deflected the call elsewhere to avoid answering the call. If any confirmation was needed as to the lack of enthusiasm that they had for answering the call, then it is provided by the scandalous way in which they behaved once they did answer the call. They did nothing to investigate the crime against Mr. Barron.**

Thirdly, there is justifiable concern about the behaviour of this group when they did answer the call. They attended at the scene of the accident. The ambulance had already arrived and departed with Mr. Barron. **They failed to preserve the scene; they failed to carry out any worthwhile investigations, either immediately or subsequent to their arrival at the call; they excused themselves from the scene by an alleged obligation to travel to Letterkenny to collect the deceased's clothing. It is worthy of comment that all three of them made this journey from the scene of the incident, out of the rain, to collect clothing that, in fact, they did not collect. They then wrote up reports and went home without informing a Superintendent of a suspicious death.**

Fourthly, Garda Mulligan refused to account for his movements on the night. When called upon to do so, he devised various methods of thwarting the superior officers making these enquiries. He perceived no obligation whatever to answer for his duties and he felt that he was justified on the basis of an entirely mischievous reference to his constitutional right to silence. Garda O'Dowd, his colleague on the occasion, was off duty and therefore should have had no difficulty whatever in accounting for his movements. He adopted the same attitude. The reality is that both of these officers sought to prevent the lawful enquiries made by their senior officers, by instructing their solicitors to write

letters threatening defamation proceedings in relation to the witness whom, it was believed at that time, was in a position to establish their whereabouts at the relevant time. **There was, in my view, no justification whatever for their shocking disregard of their duties.**

Having then referred to these four peripheral matters, which are in themselves important but do not constitute part of the major inquiry undertaken by the Tribunal, I now propose to pass to deal with the Tribunal's work in carrying out its investigations.

The Tribunal's Task

- 1.14. Proper Garda procedures require that a detailed picture be made of the whereabouts of individuals at relevant times. A clear picture must be made of the deceased's movements on the night of his death. **It is correct to say that the Gardaí built up a comprehensive picture of the Late Mr. Barron's movements.** This picture showed Mr. Barron drinking in a number of licensed premises in Raphoe and being intoxicated as he set off to walk home. He was found dead on the road at approximately 00.55 on the morning of the 14th of October 1996 at a point approximately 600 meters outside the town of Raphoe. There were a number of sightings of him as he walked towards his home. He was staggering, holding himself up by grasping at walls and clearly finding difficulty walking.
- 1.15. An important geographical feature of the area is the fact that one can approach the point at which Mr. Barron's body was found through the car park at the rear of Mr. McBrearty's licensed premises. By crossing the car park, and then traversing rough ground, one can come out through a breen near Mr. and Mrs. McBride's house on the roadway on which Mr. Barron was found dead.
- 1.16. Suspicions were aroused that Mr. Barron's death may have been as a result of an assault because the injuries which he sustained seemed, to untrained observers, to be inconsistent with his having been struck by a vehicle. The injuries were in the main confined to his head. Normally, in a typical road accident one expects to find that the victim has sustained injuries to his legs or body. Suspicions were enhanced by the fact that no debris was found on the roadway, of the sort normally associated with a road-traffic accident. There was no mud or glass on the road, such as would have typically been deposited by a vehicle involved in an accident and Mr. Barron's position on the roadway (lying straight) was unusual.
- 1.17. Rumours spread in the town of Raphoe that Mr. Barron had been assaulted. The finger of suspicion for these events was pointed at Mr. Mark McConnell because of a minor incident between them in a public house earlier in the night. This had

been no more than an exchange of words but it was also perceived that there had been a history of bad blood between their respective families. In the town of Raphoe a small group suspected that this incident happened because Mr. McConnell felt that the time had come to teach Mr. Barron a lesson and had decided to administer a beating to him.

- 1.18. For some reason which has never been adequately explained to me, the finger of suspicion also extended to Mr. Frank McBrearty Junior. He is Mr. McConnell's cousin and the theory, completely without foundation, was that these two men either waited for Mr. Barron on his way home or proceeded up the road after him and as he passed the boreen, which eventually gives access to the car park at the back of the licensed premises, they administered a beating which went further than they intended and resulted in Mr. Barron's death. Having done so, the theory went, they returned to the car park, crossed it and were admitted into Mr. McBrearty's licensed premises.
- 1.19. That then was the theory. Confronted with that theory, the Tribunal learned from expert evidence that the correct procedure for the Gardaí to adopt would be to establish the movements of the two suspects during the night and at the relevant time.
- 1.20. The Tribunal has reviewed the work which the Garda investigation team did in this regard and it is correct to say that numerous statements were taken in and around the town of Raphoe that built up a relatively clear picture of the activities of the people who were present in Raphoe that night. In particular, the Gardaí were in possession of numerous statements that enabled them to pinpoint the whereabouts of the two suspects.

Frank McBrearty Junior

- 1.21. With regard to Mr. McBrearty Junior, the statements showed that he spent the night working in his father's public house and disco premises. He was involved in a number of incidents ejecting patrons from the premises. Frank McBrearty Junior had virtually no possibility to absent himself from the premises for long enough to carry out the assault on Mr. Barron. At no stage during the night was he in Mr. McConnell's company.
- 1.22. Notwithstanding all of this evidence, the Gardaí were consumed by the notion that Mr. McBrearty was a guilty party and they rejected all of this compelling evidence on the basis that the witnesses were creating a smokescreen to protect Mr. McBrearty. They formed this view solely on the basis that the witnesses were either members of Mr. McBrearty's extended family or were his employees. In my view, there was no justification whatever for committing themselves to this view

on such a tenuous basis. The reader will read the detail of these statements and the events to which they refer in Chapter 3 of the report.

Mark McConnell

- 1.23. With regard to Mr. McConnell's position, the numerous statements taken by the Gardaí (with the exception of some to which I will later make reference) all indicated that he spent the night drinking in a bar in Raphoe and later left that bar at approximately 01:30 on the morning of the 14th of October, that is to say approximately thirty minutes after Mr. Barron had been found dead on the road. If that evidence is true, then Mr. McConnell could not possibly have been involved in the incident. However, it is correct to also point out that not all the evidence pointed in the same direction. The Gardaí had on file statements of some witnesses which, if true, identified Mr. McConnell as out and around the town of Raphoe at a much earlier time (around 00:30) and if he was not in the public house drinking, as he says he was, then this raised doubts as to his credibility, and raised suspicions that he had something to hide. However, there are two significant points to be made in relation to these contradicting statements. The first is that they are far fewer in number than those that confirm his presence in the public house which was in accordance with his own testimony and the second is that none of them put him in Mr. McBrearty's company at any stage.
- 1.24. There are a number of reasons why I say that the Gardaí were not entitled to regard the contradictory statements as proof of Mr. McConnell's guilt. They should have taken into account the personality of some of the witnesses, whom they might well have regarded as suspect by reason of their prejudice towards Mr. McConnell. Of more importance is the fact that a major conflict arose in statements concerning not Mr. McConnell's movements at and about the time of Mr. Barron's death but his movements in the early hours of the following morning. These inconsistencies and conflicts, if established as a fact, could easily have arisen for reasons of a personal nature, unrelated in any way to Mr. Barron's death. Fundamentally, if they were observed as being important inconsistencies then Mr. McConnell should have been re-interviewed with regard to them and asked to account for them. This was never done. When Mr. McConnell was interviewed at an early point in the investigation, he gave a full account of his movements and co-operated, with the Gardaí. He indicated his willingness to co-operate with them further. The very least he was entitled to was an opportunity to account for the perceived conflicts. Why he was not given this opportunity was never explained.

- 1.25. I am satisfied that while the investigation teams were perfectly correct to harbour some suspicions in relation to Mr. McConnell's activities, by reason of these contradicting statements, they were certainly not entitled to assume his guilt, as they appear to have done, by reason of them. This assumption arose because members of the incident room team were emotionally consumed by the presumption of his guilt.
- 1.26. In the report, the reader will see the numerous complex statements relating to the sighting of Mr. McConnell during this period, the majority of which support him. All of the detail of this is set out in Chapter 3.
- 1.27. It is at this stage that I need to refer to a sinister element that was identified in relation to what I am now referring to as the contradicting statements.
- 1.28. When the witnesses who gave these contradicting statements were called to give evidence, many of them complained as to the way in which the Gardaí took the statements and they withdrew and corrected them so that they no longer contradicted the remainder of the statements. This then lead me to suspect that the enthusiasm of the investigation members to obtain evidence prejudicial to Mr. McConnell was such that the statements were improperly taken. There is one particularly significant group of statements that I should refer to.
- 1.29. Mr. McConnell was noted by two young ladies (Ms. Connolly and Ms. Philomena Laird), who worked in a fast food café in Raphoe, as having called to them at 00.30. Their statements therefore constituted significant contradicting statements. In evidence, it transpired that their times were wrong. In fact, the correct time was approximately 01:30. They were able to confirm this to the Tribunal by reference to the time at which Ms. Laird's cousin, Ms. Wilma Laird, came to the café. Gardaí interviewed Ms. Wilma Laird; it transpired that she had told them the time of her visit to the café. This fact manifestly effected the time given earlier by the two ladies. Routine Garda procedures would require that where an obvious contradiction emerges between manifestly honest witnesses in relation to the time of a crucial sighting such as this, the witness would be re-interviewed and the position clarified. Not only was this not done, but also the interview with Ms. Wilma Laird, which gives rise to the conflict, was never noted at conference. No steps were taken to correct the error. The suspicions based upon this error were all allowed to stand. I believe it is an inescapable fact that elements within the investigation team deliberately allowed the incorrect time for the sighting of Mr. McConnell to remain on file. Details of this incident are fully presented in the report in Chapter 3.

The False and Untested Theory

- 1.30. Whilst the investigation originally started out on the basis that Mr. Barron's death might have resulted from a road-traffic accident, this theory was abandoned at an earlier stage by virtually the entire Garda investigation team. Only one or two officers continued to investigate this as a possibility. **The possibility that it was a road-traffic accident was abandoned, even though there was no forensic pathology report to support the belief that Mr. Barron had died as a result of an assault.**
- 1.31. **The first material support for the theory that Mr. McConnell and Mr. McBrearty had anything to do with this death came to the incident room in the form of an account of an interview with a witness who said that he identified Mr. McBrearty and one or two other men coming down from the car park, away from the scene of this incident, at a time relevant to Mr. Barron's death.** This account was supposed to have been given by a Mr. John Patton. The interview with this witness was misrepresented to the incident room team. Its relevance to the overall picture is that it appears to have conjured up a picture for what might have happened to the members of the incident room and it appears that they adopted it as being the facts of the case. **It would seem that a false statement, that of "Mr. X" to which I now propose to refer, adopted this picture and built a story around it. This is the central block in the entire investigation.**

The Statement of 'Mr. X'

- 1.32. A number of Gardaí presented to the incident room a statement of an alleged witness who said he saw Mr. McConnell and Mr. McBrearty coming down from the car park at the critical time. The statement reflected the story of Mr. Patton referred to above. In addition, the statement added that the witness had received a telephone call warning him, and threatening him not to go to the Gardaí to say what he had seen. This false witness was Robert Noel McBride. It was principally on the basis of this statement from Robert Noel McBride that all of the suspects were arrested. **This statement was fraudulent. The circumstances in which it was taken by the members of the Gardaí involved, was grossly improper and constituted grave misconduct.** I now summarise the circumstances in which it was taken. The reader is referred to Chapter 5 for the detail of this matter.
- 1.33. John O'Dowd has said in written statements, and in evidence to the Tribunal, that he became aware through an informer that Robert Noel McBride had seen the two suspects coming down through the car park and could give him this information. Instead of Garda O'Dowd calling on Mr. McBride and enquiring from him as to any information that he might have, he and Garda Philip Collins arrested him for the crime of stealing a television aerial. Mr. McBride admitted

this crime first of all. That, however, was not the end of the matter. Members of the Gardaí then proceeded, in oppressive circumstances, to coerce him to make a statement to the effect that he was in Raphoe on the night in question, that he intended to carry out a robbery at the technical school, that this brought Mr. McBride to a point adjacent to the car park and that, while there, he observed the two suspects coming down from the direction where Mr. Barron died. He said he later received a telephone call warning him not to go to the Gardaí. Those responsible for coercing this fraudulent statement are principally Garda Philip Collins and Garda John O'Dowd, but Sergeant Martin Moylan allowed himself to be carried along in this disgraceful matter. Garda Martin Leonard was the Garda charged under statutory regulations with protecting the prisoner. He did nothing to effect this. Instead he was content that a prisoner should be oppressed. These four Gardaí told multiple lies to the Tribunal about this matter.

- 1.34. I am satisfied that the precedent for McBride's alleged observations was created by the statement originally recounted to the incident room as available from the witness John Patton. The statement from McBride was doctored so that it told the story that the other witness was not prepared to tell. McBride was not in Raphoe that night. He tried to persuade the Gardaí that this was the fact. However, he was overborne and eventually agreed to say that he was. In the forced statement, McBride recounts the people that he says he saw that night. These people were, in fact, in Raphoe. Realistically, the only people who were in a position to recount that fact were the Gardaí that were interviewing him. Two of them were members of the incident room team. It is clear beyond doubt, in my opinion, that the contents of that statement came from the Gardaí.
- 1.35. Who then was responsible for this gross misconduct? Sergeant Martin Moylan was the senior Garda present and the other two Gardaí were Garda John O'Dowd and Garda Philip Collins. I am satisfied that they all participated in varying degrees in this incident. I am satisfied that the decision to do this was that of the three interviewing members. I am satisfied that Garda Collins was brought in on the incident from sick leave, in order to enhance the threat against McBride in order to persuade him to make the statement.
- 1.36. The question arises as to whether there were other people involved in this incident.
- 1.37. Garda Leonard was the member in charge on the night that the statement was taken. His function was to ensure that the prisoner was properly treated. I am satisfied that he was fully aware of everything that was happening in the interview room that evening and must have acquiesced in the activities which I have described.

- 1.38. Detective Inspector McGinley was the immediate superior officer of these members. He attended at Letterkenny Station during the time that McBride was in the interview room. There is a conflict between his evidence and that of some of the Gardaí involved in the taking of the statement. Gardaí Leonard, Collins and O'Dowd say that he was there throughout the taking of the statement. Garda Leonard says this despite only putting his head around the door at the end of the statement at a time when Detective Inspector McGinley agrees he was there. Inspector McGinley says that he visited the interview room as the taking of the statement was about to commence and at the end but that he did not witness any of the conduct which I have described and did not know what was happening.
- 1.39. Detective Inspector McGinley goes on to deny that he knew that McBride was to be taken in and questioned in connection with the petty crime used as an excuse for his arrest. However, I don't accept his evidence on that account. Garda O'Dowd made a telephone call to Detective Inspector McGinley's home arranging the details of the arrest and I accept that he knew that McBride was to be taken in and questioned. However, I am satisfied that he was not a party to the reprehensible conduct of the four members referred to above, and I believe that if he was aware of the fact that they were forcing a statement for McBride's signature he would have prevented it. I accept as a fact that he knew McBride was to be arrested for petty crime and this arrest was to be used as an opportunity to question him for what he might know in relation to the death of Mr. Barron. The fact that he allowed this to happen does him no credit but that is a criticism separate and apart from the reprehensible conduct of the other members referred to.

The Proper Response to the McBride Statement

- 1.40. The Tribunal is in no doubt as to what the proper response to the McBride statement of the 29th of November 1996 should have been. That response was noted in the diary of Superintendent Fitzgerald on the evening that it was taken. The statement should have been checked. As a matter of basic police procedure, all of the persons mentioned in the statement should have been contacted, apart perhaps from the suspects. They should have been asked: "Did you see Robert Noel McBride that night?". None of them were. If they had been, which the Tribunal is satisfied is routine for a major witness, this collateral checking would have revealed McBride for the fraud that he was, and could also have led to uncovering the plot against Mr McConnell and Mr McBrearty. One of the most important questions that has arisen that had to be resolved was the issue as to why this was not done. Was it utter negligence or does the existence of this fact point to corruption, in addition to the most gross form of negligence, among

those leading the investigation? I have earnestly debated this matter. I am grateful for the submissions of the parties. **After the fullest possible consideration, I am reluctant to make a finding that the investigation was corrupt in its leadership. It was prejudiced, tendentious and utterly negligent in the highest degree. Chief Superintendent Denis Fitzpatrick, Superintendent John Fitzgerald, Detective Superintendent Joseph Shelley and Detective Inspector John McGinley all share in various degrees the burden of fault for this matter.**

- 1.41. The full details of this event are to be found in the body of the report in Chapter 5. **However, there was further misconduct. There was a cover-up of vital evidence in the Peoples telephone calls investigation that, in itself, could have revealed the corruption in the Barron case.** Here the culpability is on Garda John O'Dowd, Chief Superintendent Denis Fitzpatrick and Superintendent Kevin Lennon. Brief conclusions on that are set out in a subsequent section. Details are to be found in Chapter 6.

The Vigilantes

- 1.42. I feel that it would be of assistance to the reader to have some short indication as to what is contained in Chapter 7.
- 1.43. After Mr. McBrearty and Mr. McConnell had been arrested and questioned they were released without charge. Mr. McBrearty is alleged to have made his statement accepting his responsibility for the death of Mr. Barron and implicating Mark McConnell in the event. While this statement would be admissible in evidence against Mr. McBrearty, if it was accepted that it was made voluntarily and in accordance with the Judges' Rules, it would not be admissible in evidence against Mr. McConnell in any prosecution in which he was alleged to have been implicated in this event. **There was accordingly no evidence whatever against Mr. McConnell.**
- 1.44. I am satisfied that a group of men in and around Raphoe, which have been termed 'the Vigilantes', set about creating such evidence.
- 1.45. The main witness which was presented to the Gardaí was Roderick Donnelly. Basically, the story that he told to the Gardaí was that he was sitting in a car in Raphoe at approximately 01.00 – 01.10 on the morning of the 14th of October when he saw Mr. McConnell pass by. It is impossible to give a definitive version of what he said because he changed his account so many times. However, the story that was originally presented to the Gardaí was that he had seen Mr. McConnell pass and that he "looked scared", that he "looked shook up as if he had been fighting" and that his clothes and hair were wet. The significance of this was that if one makes ones way down from the place at which Mr. Barron

was found, in through the car park at the rear of Mr. McBrearty's premises, one is required to cross a small stream.

- 1.46. A second witness was also presented to the Gardaí. That was Kieran Roulston, who was supposed to have been sitting in Mr. Donnelly's car. In summary, he said that he had been asleep while they were sitting in the car but, when he woke up, Roderick Donnelly then mentioned his sighting of Mark McConnell to him.
- 1.47. The third witness was Paul Roulston. He claimed to have recounted that he was in the parked car and he also saw Mr. McConnell who he described as "wet and scared looking". Insofar as this witness is concerned, not only did he not see Mr. McConnell but he later agreed that he was not even in the car.
- 1.48. **The person responsible for gathering these witnesses, I am satisfied, was Darcy Connolly, a friend of the Late Mr. Barron. I am satisfied that he orchestrated the presentation of these witnesses to the Gardaí in the hope and expectation of bolstering up the case against Mark McConnell. I am satisfied that he did so because there was, at that time, a group in Raphoe who had allowed themselves to become convinced that Mr. McBrearty and Mr. McConnell had been responsible for the death of Mr. Barron and were determined by whatever means to bring them 'to justice'.** I am satisfied that not only was Darcy Connolly responsible for harvesting these false witnesses but, in addition, he and William Doherty arranged that cards, similar to business cards, would be printed carrying derogatory slogans against Mr. McBrearty and that slogans would be painted on the roadway and that fliers would be distributed in and around Raphoe critical of the McBrearty family. I am satisfied that all of this was done as part of an orchestrated movement to generate hostility towards Mr. McConnell and Mr. McBrearty.
- 1.49. I stress that the foregoing is a mere outline of Chapter 7 of the report. I refer the reader to the full detail, which will be found, in Chapter 7 and to my conclusions, which are set out at the end of that chapter.

The Arrests

- 1.50. As a result of "Mr. X's" statement, the senior officers in the investigation made a decision to arrest Frank McBrearty Junior and Mark McConnell together with other members of their extended families and staff. The main reason for these arrests was this statement. The Tribunal has been told repeatedly that without it there would have been no arrests. These arrests were based on this false and corruptly-obtained statement. Despite the good faith of some of the arresting officers, the Gardaí could not rely on a document that was a fraudulent creation of members of the force. As I understand the law, an arrest based on a falsely

obtained warrant could not be valid. I do not see any difference between this situation and that one. This matter is dealt with in more detail in Chapter 3.

Superintendent Fitzgerald

- 1.51. I now intend to consider what responsibility, if any, attached to the District Officer for Letterkenny District. It was he that held the overall responsibility for the investigation and therefore must assume responsibility for this debacle over which he presided. He was Superintendent John Fitzgerald.
- 1.52. Time and again, I have heard evidence of the high regard in which those who worked with him, and served under him, held Superintendent Fitzgerald. **I have no doubt that he was an able, experienced officer. I am also satisfied that his work practices were based upon an ethic of trust. He assumed that his fellow officers and those that served under him would behave in a proper and trustworthy manner. I do not make a criticism of this fact. I point to it as an element that enabled the events outlined in this report to occur.** There are, however, a number of matters in relation to Superintendent Fitzgerald to which I feel bound to refer.
- 1.53. A conflict of evidence arises between Superintendent Fitzgerald on the one hand and the former State Pathologist Professor John Harbison on the other. Superintendent Fitzgerald says that he expressly summoned Professor Harbison to attend and carry out his duties as State Pathologist on the body of the Late Mr. Barron. Professor Harbison, while accepting that there was such a phone call, has no recollection of it. He says that if he were asked to attend in Raphoe by Superintendent Fitzgerald, he would have done so and accordingly denies that he refused to attend.
- 1.54. The detail of this event is set out in Chapter 4 of the report. **Having considered this in detail I am left in no doubt whatever that at no stage was Professor Harbison ever directly requested to attend.** I am satisfied that while a conversation took place between Superintendent Fitzgerald and Professor Harbison, that conversation amounted to no more than a request for assistance from Superintendent Fitzgerald. I believe that he was uncertain as to what steps he should take in relation to Dr. Harbison's attendance. I am satisfied that Dr. Harbison gave him advice but I am also satisfied that there was never an expressed request for him to attend. It is clear that if Superintendent Fitzgerald intended Professor Harbison to attend and made an unqualified request that he should do so, then arrangements would have been made by him to postpone the burial of Mr. Barron, due to take place shortly after the telephone conversation. No such arrangements were made. I believe that Superintendent Fitzgerald in recounting his version of the story, has allowed a process of self-justification to

colour his recollection. In recounting the story as he does, I do not believe that he is attempting to mislead the Tribunal.

- 1.55. It was a fundamental error by Superintendent Fitzgerald not to have summoned Professor Harbison to attend. He could have clarified that Mr. Barron had died as the result of a road-traffic accident. The murder hunt would then never have been launched.

Superintendent Fitzgerald and the Call to the DPP

- 1.56. Frank McBrearty Junior's alleged statement, in which he is alleged to have confessed to participating in the death of Mr. Barron, was completed on the 4th of December 1996 in Letterkenny Garda Station and was presented to Superintendent Fitzgerald. He later presented it to the incident room team. A discussion was held between a number of other officers and Superintendent Fitzgerald left the group, he says, for the purpose of communicating with the Director of Public Prosecutions to obtain his directions. This is the normal practice. He says that notwithstanding the fact that he telephoned all relevant numbers that he had available to him for this purpose, he failed to make contact with the Director's representative. The following morning he made no further efforts.
- 1.57. **I am satisfied that no such efforts were ever made and I am satisfied that the reason he did not do so was that he was apprehensive in relation to the validity of this statement.** Superintendent Fitzgerald acknowledged in evidence that he recognised Mr. McBrearty Junior's demeanour as somebody who would not be prepared to co-operate with the investigation by making a confession. When he left his post as Superintendent, in early February of 1997, instead of leaving the alleged statement behind him in Letterkenny Garda Station, which would be quite normal, he took it with him to his next posting and confirmed to the Tribunal that he would only hand it over "in exchange for a receipt". I am satisfied that this is the conduct of somebody who realised that the statement was attended by problems.
- 1.58. At no stage did he ever attempt to contact the Director of Public Prosecutions on the 4th of December. I do not consider this failure to be in any way improper. I accept that there are circumstances in which it would be acceptable not to do so. However, I am unable to accept as correct Superintendent Fitzgerald's evidence to the Tribunal that he attempted to contact the Director of Public Prosecutions Office. I make this finding with regret as Superintendent Fitzgerald has left the Garda force after a fine career with a high reputation.

The Arrest of Petty Criminals in Raphoe

- 1.59. The conference notes kept by the investigation team show that a decision was made to arrest about half a dozen petty criminals in and around the Raphoe District in late November 1996. There is a conflict of evidence as to why this was done. In particular, Superintendent Fitzgerald says that it was done in order to help out Sergeant Hannigan in Raphoe, whose work had been set back by reason of the attendance of his men at all of the murder conferences. A number of Gardaí have told the Tribunal in their evidence that this strategy of mass arrest was effected in order to cover over the fact that McBride was going to be taken in for questioning that day. A further explanation is that it was a strategy, sometimes legitimately used by police, to see what was known on the streets in Raphoe about Mr. Barron's death. I reject Superintendent Fitzgerald's explanation. I do not believe that in the middle of an important murder inquiry, personnel would be made available out of the investigation staff for the purpose of solving minor problems in Raphoe. Sergeant Hannigan rejects the suggestion that he asked for help. I believe that Superintendent Fitzgerald was being less than honest with the Tribunal in giving this version. I believe that Superintendent Fitzgerald was attempting to avoid criticism that would follow from allowing the investigation team to use their powers of arrest for the purpose of providing them with an opportunity to question prisoners about a crime in which the detained persons had absolutely no involvement whatsoever.
- 1.60. I formed the view in relation to Superintendent Fitzgerald that he relied far too much upon the honesty, integrity and truth of his brother officers. In so doing, he failed to exercise the necessary degree of care in ensuring that the correct procedures within the force were pursued. He was naive in believing, as he did, that all the members of the Force under his control performed satisfactorily. Further reference can be made to Chapters 3 and 5 for the detail of this matter.

William Doherty

- 1.61. The reader of this report will find there are numerous references made to an individual called William Doherty. He was a Garda informer and a criminal in and around the Raphoe area. It is necessary to outline where he fits into the events that are detailed in this report. He became an informer to Garda John O'Dowd. In the first instance his information related to ordinary crime but later he volunteered to join the self-styled terror group known as the 'Provisional IRA' and to inform on them. Garda O'Dowd says that he got clearance to handle Doherty as an informant from Chief Superintendent Denis Fitzpatrick who, in turn, appointed Superintendent Kevin Lennon to fulfil a supervisory role over this arrangement. It was Doherty who first planted the suspicion with Garda O'Dowd

that Mr. McBrearty Junior and Mr. McConnell were responsible for the death of Mr. Barron. He reported it as a rumour circulating in the town. Garda O'Dowd communicated this to his superior officers. I am unable to identify anything sinister in how he passed on this rumour to Garda O'Dowd because there is no doubt it was circulating in the town at the time. However, he did become involved in other activities with Garda O'Dowd and Superintendent Kevin Lennon, which I have no hesitation in describing as disgraceful and which constituted a gross misconduct on the part of these two officers.

- 1.62. To describe this activity it is necessary first of all to refer to the method by which Gardai communicate confidential information to their superior officers.
- 1.63. A Garda has available to him a 'Form C.77' in quadruplicate. On this he sets out his information and he transmits one copy of this form to his Chief Superintendent and two copies to Crime and Security Section in Garda Headquarters. He retains one copy for his own use. **I am satisfied that any Garda who is instrumental in furnishing worthwhile information to the Crime and Security Section of Garda Headquarters gains considerable kudos.** Garda O'Dowd sent up dozens of bogus C.77s to the Crime and Security Section. He had first submitted all of this information to Superintendent Lennon for his consideration and he, Superintendent Lennon, would have seen many if not all of the C.77 forms before they were transmitted. In fact, some of these he retained on the basis that they were of no value. While I strongly suspect that Superintendent Lennon was instrumental in generating many or all of these forms, I am unable to find this as a fact. **However, I have no doubt that he was fully aware of the fact that the forms were being transmitted. He was aware of their contents. He must have been aware that the information contained in them was bogus and I am satisfied that these two officers sent up this fraudulent information solely for the purpose of advancing their respective careers.** Superintendent Lennon's career at that time was in the ascendancy having recently been promoted to the rank of Superintendent. Garda O'Dowd was in the process of preparing himself and taking an interview to become a detective. I am satisfied that it would have advanced their cause significantly if Crime and Security had accepted the validity of the information furnished. In fact, some of the information had foundations in accuracy sufficient to give it a flavour of authenticity. Much of it was both false and dramatic. One significant feature of this whole transaction was that, notwithstanding the fact that the bogus information related to varied crimes to be carried out against persons resident in the Division, and notwithstanding the fact that it contained information which, if true, would mean that there were serious and detailed terror operations being planned by the 'Provisional IRA' in the immediate area, no action was taken in relation to this astonishing information. **It is, in my view,**

unthinkable that such information would pass without a reaction of a very significant nature.

- 1.64. I have no doubt whatever that Superintendent Lennon and Garda O'Dowd were involved in deliberately creating bogus C.77s and they did this for the purposes of personal advancement. The situation regarding C.77 forms is detailed in Chapter 8 of this report.
- 1.65. In his evidence, John O'Dowd has made the case that he, as a rank and file Garda stationed in Raphoe with no subversive experience, could not possibly know that the information was bogus. Moreover, he says, that Superintendent Lennon, his superior, appeared to accept it as valid. In addition, his Chief Superintendent once remarked to him that "this was great stuff" he was sending in, or words to that effect. He says, therefore, that it is unreasonable to hold him responsible if the information was bogus.
- 1.66. **I reject this submission.** One has to have no more than common sense to realise that it would be extraordinary if a newly- joined member of the 'Provisional IRA' (which it is alleged Doherty would have been) had access to the type of secret information that he was offering to Garda O'Dowd. Not only that, but given that the information included at least a number of immediate threats to the life of people in the locality, and given that it identified the location of a place used by subversives, it cannot but have seemed strange to Garda O'Dowd that the information that he was providing provoked no reaction from his superior officers. Even more mysterious is the fact that Garda O'Dowd did nothing by way of reaction to this information. I expressly reject his evidence that he visited a site mentioned in a C.77. I also reject his evidence that he called on the people whose lives were the subject-matter of the threat and I reject that this was a reasonable reaction to the information that such a threat existed. A small amount of further detail in relation to this matter can be found in the report. Because of an agreement with the Garda Commissioner, I will not quote from any of these documents. Both here and in the text of the report, they are touched on in only the most tangential way. The Garda Commissioner had real concerns of principle as to confidentiality. I thank him for the manner of his co-operation, which allowed this area to be illumined. Where documents are referred to in ordinary public session, I am entitled to, and sometimes do, quote them.

The Chief Superintendent and the Bogus Informer

- 1.67. The question arises as to the extent to which Chief Superintendent Denis Fitzpatrick was involved in this transaction.

- 1.68. The fact is that many of these bogus C.77 forms did not find their way into his office. Denis Fitzpatrick is unable to account for this. However, I am satisfied that from time to time he was contacted by the Gardaí working in Crime and Security in Garda Headquarters. They spoke to him about the contents of these C.77s. He discussed the matters to which they related and it is inconceivable that this would not raise doubts in his mind as to why this information was available to Crime and Security in Headquarters and yet had by-passed his office. While it may be that he knew of the event or information to which they referred by reason of his general knowledge of his Division, he could not but have been aware of the fact that they were not the subject of a C.77. **I am satisfied that any reasonable Chief Superintendent would have had suspicions and been alerted to the fact that all was not well in the reporting system and this should have given rise to an inquiry by him. Chief Superintendent Fitzpatrick knew that Garda O'Dowd was handling William Doherty as an informer and cannot be exonerated for his failure to make enquiries as to the circumstances in which C.77 forms were reaching Crime and Security without reference to his office.**
- 1.69. Of more importance is the fact that if Chief Superintendent Fitzpatrick believed that the matters contained in these reports were genuine, reliable information, then he would know that they were of considerable importance and it is inconceivable that he would have taken no action in relation to them.
- 1.70. The question arises: Does this mean that he was a party to submitting this bogus information to Crime and Security along with Superintendent Lennon and Garda O'Dowd?
- 1.71. I am presented with a substantial volume of evidence that might support such a finding. However, I will stop short of making such a finding in favour of making a finding that he was guilty of gross negligence in failing to react to a situation which called for action on his part. I believe that the reality is that he was paying little or no attention to his duties and this highly relevant evidence simply passed him by without making an impact. Many of the problems of the Donegal Division arose because of his lack of leadership. **He utterly failed to control his Division and this failure resulted in the irregularities which emerged from this report, not only in relation to the C.77s but in other respects.**

The Peoples Extortion Calls

- 1.72. Of the many apparently disconnected incidents to which I have to refer to enable the reader to have a reasonable opportunity of understanding this report, next in turn comes the series of five telephone calls made to the home of Michael and Charlotte Peoples on the evening of the 9th of November 1996. This event is intimately connected with the Barron 'murder investigation'. Mr. Michael Peoples

was, at one time, suspected of being one of the group that assaulted Mr. Barron. His name appears from time to time in the notes kept by the incident room. He and his wife received extortion telephone calls, which form part of the broader story because, again, William Doherty was involved.

- 1.73. On the evening of the 9th of November 1996, Garda O'Dowd met his informer William Doherty and drove him in his private car to his home. On the way there, Doherty spoke of how he had telephoned Mr. Michael Peoples and made a blackmail demand of him. He had told Mr. Peoples that he was aware that Mr. Peoples had been up the car park at the time relevant to Mr. Barron's death and he threatened that he would go to the Gardaí with this information unless he was paid his blackmail demand. With Garda O'Dowd's full knowledge, William Doherty placed another phone call to Michael Peoples from Garda O'Dowd's private house. In this phone call, William Doherty pretended that he had seen Michael Peoples coming down the car park away from the spot where Mr. Barron had been assaulted and he told Michael Peoples that he would go and tell the Gardaí this 'information' unless he was paid a very substantial sum of money. Mr. Peoples and his wife played along with William Doherty but immediately told the Gardaí of the phone call. Arrangements were made that they would proceed to the place where the money was to be handed over, with a view to identifying who the caller was. Unthinkable as it may now seem, this action by Mr. Peoples was construed by a prejudiced investigation team as an admission of guilt. The apparent fact, which was not a fact at all, that he was prepared to pay the blackmail demanded, meant that Mr. Peoples become confirmed as a suspect.
- 1.74. The most relevant aspect of all of this is that the last extortion phone call in the series was traced to Garda O'Dowd's house. He was confronted about this and he lied repeatedly about having had any involvement in it. The full detail of this is to be found in Chapter 6. **When Garda O'Dowd discovered that the call could be traced to his house, I am satisfied that he went to Superintendent Lennon with a view to having the matter hushed up and, at Superintendent Lennon's suggestion, altered his schedule of duty in Raphoe Garda Station for the 9th of November so as to indicate that he was in the Station at the time, thereby giving himself an alibi. When, exactly, this happened is a matter of conjecture.**

The Peoples Calls Cover-Up

- 1.75. John O'Dowd has told the Tribunal that not only did he go to Superintendent Lennon, but believed that Superintendent Lennon would speak to Chief Superintendent Denis Fitzpatrick. With that knowledge, Garda O'Dowd called on the Chief Superintendent to discuss what should be done. Chief Superintendent Fitzpatrick denies that he did so. However, there is irrefutable evidence before the

Tribunal that on one occasion Garda O'Dowd armed himself with a tape recorder when calling on Chief Superintendent Fitzpatrick. On the recording, which was played at the Tribunal, there is a clear reference made by Garda O'Dowd to "those phone calls are the problem" to which Chief Superintendent Fitzpatrick replied "Aye". I am in no doubt that there were communications between Chief Superintendent Fitzpatrick and Garda O'Dowd in relation to these phone calls and I am satisfied that Chief Superintendent Fitzpatrick, Superintendent Lennon and Garda O'Dowd were endeavouring to hide these phone calls and would have done so were it not for the efforts of a private detective, Mr. Billy Flynn, who through his own efforts provided evidence to the Gardaí that the phone calls had their origin in Garda O'Dowd's house. All of the scandal associated with this matter was covered up by a number of Garda officers. The full detail of this is contained in Chapter 6 of the Report. The repeated lies told by Garda O'Dowd in connection with these phone calls, and his general conduct with regard to the incident, raises considerable doubts about the reliance that can be placed upon his evidence. However, there are sufficient supporting circumstances and events that enable me to conclude to my satisfaction that he did involve both Superintendent Lennon and Chief Superintendent Fitzpatrick in the incident and that each of them was actively pursuing ways and means of hushing the matter up and would have done so if they had had the opportunity of doing so. This raises the question as to why a Superintendent and a Chief Superintendent would stoop to the level of hushing up this event to protect a Garda involved in misconduct. I am satisfied beyond any doubt that Superintendent Lennon's motivation was to avoid exposing the close non-professional relationship between himself, Garda O'Dowd and William Doherty. He felt it worth protecting Doherty's image as a valued informer. The removal of Doherty as an informer would have resulted in the loss of his supposed source for the bogus C.77s that he was sending in to Crime and Security office. Doherty's exposure would also have undermined his own credibility as the agent-handler's supervisor with Crime and Security.

Morale

- 1.76. One should not lose sight of the disgraceful extent to which the morale of the Gardaí in the Donegal Division had fallen during and as a result of all of this. One has an example of a Garda taping a conversation with his Chief Superintendent, apparently for his own protection. It demonstrates, in my view, a collapse in the leadership qualities, associated with an officer holding the rank of Chief Superintendent. This misconduct on the part of Superintendent Lennon as to the Peoples' extortion calls is, in my view, exacerbated by his conduct when formally reporting on this incident. It will be seen from the Tribunal report that

the extortion phone calls complaint was investigated and reported on by Detective Sergeant Sylvester Henry. He drew attention to the fact that one of the phone calls had been traced to a Garda's house. This, in the ordinary way, would, one can still hope, give rise to an immediate and profound reaction by any bona fide Superintendent reading that report and preparing his submission for the Director of Public Prosecutions. It generated none from Superintendent Lennon. Garda O'Dowd was never required to give an explanation and Superintendent Lennon's report concentrated on relatively minor matters, such as the delay on the part of the Garda who investigated the initial complaint, and disregarded this grave element. I believe that he did not refer to it in the hope of protecting Garda O'Dowd and even more so, protecting William Doherty, the informer who made the phone call, from the spotlight which a proper inquiry would have drawn on him. **I believe that he did this as he intended to use William Doherty for his own purposes and this would have been frustrated if William Doherty were to be prosecuted for these phone calls.**

- 1.77. Full details of this incident are set forth in the report in what I suggest is sufficient detail in Chapter 6. As always, this roadmap is intended as no more than a guide to the full report.

The Gallagher Farm Search

- 1.78. I now turn to address the search of the Gallagher farm, near Dooish, in terms of this roadmap. I do so for the purpose of attempting to point out where it fits into the overall picture. Again, we have William Doherty appearing as Garda O'Dowd's and Superintendent Lennon's alleged informer.
- 1.79. Mr. James 'Lofty' Gallagher is a highly respected person in the St. Johnstown locality. He and his family occupy a farmhouse and farm in that area. They have never been suspected of any association with subversives. They are decent people.
- 1.80. For some reason, which I have been unable to identify, the Gallagher family were repeatedly targeted by being branded as IRA supporters by William Doherty, Superintendent Kevin Lennon and Garda John O'Dowd. In early March 1997 Garda O'Dowd reported to a high-level meeting of Garda Officers in the Letterkenny Garda Station that his informant had passed on to him information in relation to a bomb in Mr. Gallagher's farmyard. There are a number of variations of what exactly was said but, basically, it related to Mr. Gallagher having a bomb in his farmyard associated with a trailer that had been stolen in Northern Ireland. It may be that this was the first alleged information, or it may be that there was earlier false information relating to some form of transfer of a

bomb at a nearby public house. It is not material in the overall picture which version in fact was given first. The fact is that a large-scale search was mounted of Mr. Gallagher's farmyard. It was quickly discovered that there was nothing there. The 'information' then passed to the fact that there was subversive paraphernalia on Mr. Gallagher's lands. The search was extended to there. Finally, Superintendent Lennon said that the information was that there was an IRA dump on the top of an adjacent hill and that he had been up there the night before with his informer and that they had marked the spot with a stick. The area was searched and nothing was found. While I readily appreciate that not all information furnished is necessarily correct, here we have, at the very least, three different stories from an informer resulting in a search that took upwards of five days involving the Detective Branch, ordinary Gardaí, the Emergency Response Unit, the Army and an Air Corps helicopter. It was a major search. It yielded nothing. It should never have taken place. Mr. Gallagher was never genuinely suspected of an association with the IRA. The local Detective Sergeants had warned against the likelihood of the information being correct. One significant point is that the local district officer Superintendent Lennon or the divisional officer Chief Superintendent Fitzpatrick never reported upon this search to Crime and Security in Garda Headquarters. It was as if it never happened. William Doherty gave an account in his evidence that he was asked by Superintendent Lennon to plant explosives on top of the hill so that they could be found. I generally place no credence in his evidence. I regard him as a devious liar. However, I search for some other explanation for this whole incident. It is accepted by Superintendent Lennon and Garda O'Dowd that they climbed the mountain at night with Doherty. They said they did this in order to mark out the spot where the IRA bunker was to be found and that they marked the place with a stick. I found it impossible to accept that this was the reason why they climbed the mountain. If the Superintendent were to bring a genuine informant up the mountain at night in this way he would be signing the informant's death warrant particularly as it has been alleged that he had been threatened "with a gun in his mouth" by the IRA. I cannot accept that the Superintendent, having his informant up the mountain with him pointing out the location of the bunker by putting a stick in the ground, could not himself have gone the one step further and discovered the bunker for himself so that he could lead the search party there the following morning.

- 1.81. The whole incident is so unlikely and bizarre as to lead me to the conclusion that William Doherty must be telling the truth. I confess that I can find no other explanation for the curious circumstances surrounding the Lofty Gallagher search.

- 1.82. The matter becomes even more mysterious when Superintendent Lennon informed the divisional officer, Chief Superintendent Fitzpatrick, that he was no longer prepared to handle Doherty because he had too much other work to occupy him and he attempted to pass him over onto another officer, Detective Inspector McGinley. I can see no justification whatever for Superintendent Lennon continuing to believe in Doherty as an informer, if he ever did. I cannot accept that a man of significant ability, as Superintendent Lennon is, would not have identified Doherty as a fraud and abandoned him long since. He certainly would not have acted upon him as a basis for the Lofty Gallagher search. There is an assertion in Superintendent Lennon's statement that he had assessed Doherty as an informer and rejected him approximately one month before the search. I make no finding on that issue. I do find, however, that given the disastrous chaos associated with the search of the Gallagher lands, Superintendent Lennon cannot have continued to believe in Doherty, as he appeared to have done, unless there was an unwholesome association between them. If one then adds in to this incident the fact that Garda O'Dowd and Superintendent Lennon were submitting C.77 information attributed to Doherty which they knew to be bogus, **I am forced to the conclusion that the search of the Gallagher lands was yet another vehicle which was intended by Garda O'Dowd and Superintendent Lennon to enhance their reputation but which, in fact, went wrong.**
- 1.83. The fact that Superintendent Lennon attempted to pass over Doherty to another officer is, I believe, significant. I believe that he did this in the hope that Detective Inspector McGinley would take him on and so share the blame and suspicion that were obviously coming for this event. Again, I am concerned that Chief Superintendent Fitzpatrick was party to this effort. However, I do not make this as a finding. I find he participated in making this 'offer' to transfer Doherty only so that the transfer would have his authority. He probably did so at Superintendent Lennon's request.

The Arrest of William Doherty

- 1.84. In September 1997, Detective Inspector McGinley and a number of members of the Detective Branch arrested William Doherty in connection with his alleged participation in the anonymous phone calls to Michael Peoples. They took him into custody at Milford and questioned him.
- 1.85. **I have no doubt that one of the reasons why they wished to question him was that some of these members, especially Detective Superintendent Shelley and Detective Inspector McGinley, had deep suspicions concerning the association between Garda O'Dowd, Superintendent Lennon and William Doherty. I believe that they suspected that the association gave**

rise to improper behaviour. However, they were unable at that time to confirm exactly what it was that these parties were engaged in. Among the questions that they asked Doherty was if he knew Superintendent Lennon and Garda O'Dowd.

- 1.86. Their suspicions were strengthened when they arrested Doherty because at his home, beside his bed, they found a Garda notebook the property of Garda O'Dowd in which there appeared to be the writing of Superintendent Lennon. Later they challenged Superintendent Lennon with what they said was his writing in the notebook. It was not his writing. Superintendent Lennon responded to this in a way, which I regard as totally exaggerated, by offering to have his fingerprints taken, refusing to touch the notebook in case his fingerprints would appear on it. He complained to the Chief Superintendent on the latter's return from leave and Detective Inspector McGinley was reprimanded for his behaviour by the Chief Superintendent.
- 1.87. What emerges from these incidents was the total breakdown in trust between the officers in the Donegal Division at that time. It is, to my mind, totally unacceptable that Detective Superintendent Shelly and Detective Inspector McGinley were required to carry out their duties in the atmosphere where they considered that there was a possibility that Superintendent Lennon was engaged in improper activities with an alleged informer. It is unacceptable, in my view, that the Chief Superintendent should allow such a situation to build up and exist among the officers in his Division and, when he became aware of it, to have taken virtually no steps to remedy it. It appears that having ticked off Detective Inspector McGinley no further steps were taken in relation to the matter. He appears to have carried out no enquiries whatever as to the background to the incident nor to have made whatever appropriate enquiries would have revealed the source of the trouble. To my mind, this was a grave dereliction of his duty. No force could be expected to operate satisfactorily in an atmosphere where officers hold suspicions of one another.

Other Lines That Should Have Been Pursued

- 1.88. This matter should never have been investigated as a murder without the benefit of a forensic pathologist's opinion on a forensic post mortem of the Late Mr Barron's body. The manner in which suspicion focused on certain people was emotion-led rather than a logical process. However, even so, there were other avenues that ought to have been considered by the Gardaí.
- 1.89. One of the major criticisms that was made of the Garda investigation, which the Tribunal had to consider, was the fact that from the outset the guilt of Mr. McBrearty Junior and Mr. McConnell was adopted as being correct by the

investigation team to the exclusion of all other possible suspects. It is suggested that there were a number of other possible culprits who, it was contended, were more likely to have been involved in this event and yet were virtually ignored. I now intend to give a short summary of why they might have been considered as suspects certain other persons, but I stress that in doing this it is in no sense to be taken that this is a suggestion that any of them were responsible for being involved in any way in Mr. Barron's death. They are referred to only to indicate the basis upon which the investigation team might have considered them as suspects.

- 1.90. Mr. Manny Hegarty is a gentleman who the Late Mr. Barron met in a public house in Raphoe and with whom he had a disagreement and altercation. There was evidence to support the view that Mr. Hegarty had consumed an amount of alcohol that evening and that he left shortly after Mr. Barron had left to walk home. There was no clear evidence as to whether Mr. Hegarty drove his car, once he had left the licensed premises. The altercation which Mr. Hegarty had with Mr. Barron was in the first instance more serious than the one he had with Mr. McConnell, which was no more than an exchange of words, and secondly, it was significantly later in the evening/morning. It occurred very shortly before Mr. Barron was found. Notwithstanding all of these matters, Mr. Hegarty was prematurely dismissed as a possible culprit, purely, it would appear on the basis that he was a gentleman of slight stature and unlikely to commit a physical assault. However, this did not have any relevance to the possibility that he was involved in a road-traffic accident.
- 1.91. A further possible suspect which it is submitted should have been but, apparently, was not, considered was William 'Washer' Ayton. Mr. Ayton had gone to Letterkenny with his girlfriend to a cinema that night. He drove home to Raphoe by an unusual route and on the way home he said that his car had run out of petrol. He said that he and his girlfriend had to get a lift from a friend who happened to be passing by. When interviewed, this friend denied that he gave the pair a lift.
- 1.92. It is correct to say that the Tribunal has identified who it was that possibly, if this is true, gave them a lift home. However, this was not known to the investigation team at the relevant time. It should have been as the Tribunal investigation team eventually found out. Given not only the inconsistency in Mr. Ayton's story about receiving a lift from a passing friend, the unusual route by which he drove home and the contradictions in the story relating to the manner in which he recovered his car, it is submitted Mr. Ayton should have emerged as a suspect of whom further consideration should have been given. He was later, under the Carty

investigation team, arrested for dangerous driving causing the death of Mr. Barron. He lives in Britain now. He has refused all efforts by the Tribunal to secure his attendance as a witness.

1.93. Garda O'Dowd had been with Garda Mulligan in a licensed premises in Lifford that evening. Within minutes of the time at which Mr. Barron was found injured on the road, Garda O'Dowd was stated by a witness to have been up the side roads in the general area in which Mr. Barron was found dead. The witness said he spoke to Garda O'Dowd and he was in a position at this time to tell him that a person was on the road injured. Conflicts arise as to the time at which this meeting between Garda O'Dowd and the witness took place. Conflicts arise as to what happened at the meeting. Suffice to say that unless resolved, the circumstances as they existed during the time when the investigations were proceeding justified considering Garda O'Dowd as a suspect. Garda O'Dowd refused to answer questions on this matter over a period of years. From a member of An Garda Síochána, this obstruction was despicable.

1.94. I am satisfied that the persons identified above should have been regarded as suspects. I am also satisfied that they were not followed up as suspects by the investigation team simply because they were blinded by the assumption, which they improperly made, of Mr. McConnell and Mr. McBrearty's guilt. The assumption of guilt of any party, to any crime, to the exclusion of any other possibility is contrary to best practice and to the approved investigation techniques sanctioned by the Garda authorities. To have allowed it to happen in the way that it did was a failure on the part of the officer with overall responsibility for the investigation, namely, Superintendent Fitzgerald and from February 1997, Superintendent Kevin Lennon.

What Was the Motivation?

1.95. How did it happen that this heavy presumption of guilt fell upon Mr. McConnell and Mr. McBrearty Junior? I am unable to draw any conclusion on this matter, save to say that the McBrearty family do not appear to have been held in high esteem by certain members of An Garda Síochána. I will make no comment as to whether this might have been justified or not. In the end it does not matter. The Barron family lost the centre of their lives in a tragic and criminal incident of dangerous driving. They were badly let down by the almost unbelievable conduct of members of An Garda Síochána. The McBrearty family were made into victims also. Part of the reason for this had to be the ability of hatred to transform myth into facts.

1.96. No such belief, to my knowledge, was ever held of, or concerning, Mr. Mark McConnell or his family who attended the Tribunal and co-operated with it. I found his profound knowledge of the facts of assistance in preparing this report.

There is not even an indication as to why the colour ascribed in Garda circles to the McBrearty family was beamed on to him. As to Mr McConnell, his behaviour before the Tribunal was exemplary.

Prior Enquiries into this Matter

- 1.97. The background to the Tribunal has been set out in the previous report. This report does not rely on the report furnished to the Commissioner of An Garda Síochána by Assistant Commissioner Kevin Carty. His inquiry began in early 1999. The genesis of the inquiry under the command of Assistant Commissioner Kevin Carty came from concerns that members of An Garda Síochána might have been involved in making a series of criminally-motivated telephone calls to the home of Michael and Charlotte Peoples in Raphoe, Co. Donegal on the 9th of November 1996. These calls referred back to events on the 14th of October 1996, when Richard Barron met his death on his way home to his residence from Raphoe. The author, or authors, of those phone calls accused Michael Peoples of murdering the Late Mr. Barron.
- 1.98. The Carty report does not fully deal with how Mr. Frank McBrearty Junior apparently confessed to murdering Mr. Barron. A confession statement is available which, on the face of it, indicates that Frank McBrearty Junior of Raphoe, together with Mark McConnell, killed the Late Mr. Barron. As the confession was allegedly made only by Mr. McBrearty Junior, it is admissible in law only against him. How that confession statement came to be taken will be the subject of a separate report.

This Report

- 1.99. This report focuses on the Garda inquiry into Mr. Barron's death and on the extortion phone calls made to Charlotte and Michael Peoples on the night of the 9th of November 1996. The investigation into the death of Richard Barron by An Garda Síochána continues up to the present day. No-one has been made amenable to justice for his violent death. From a constitutional viewpoint, a Tribunal of Inquiry is not entitled to usurp the function reserved under Article 38 to a jury trying a criminal charge. The focus of this report is on the possible presence of corruption and incompetence within the Garda Síochána in conducting the investigation into Mr. Barron's death, and the competency of the direction of that investigation. While it is possible to give definitive conclusions on these issues, and while it will be necessary to comment on certain factual matters, the Tribunal does not see it as its function to indicate that particular people are probably responsible for killing Mr. Barron. Any such issue is for a jury to determine. The Tribunal is entitled to state that certain facts are unexplained by evidence and the Tribunal is entitled also to indicate that certain persons

involved in these events have given a completely unsatisfactory account of their activities in Raphoe at the relevant time. The Tribunal is bound to adopt a standard of probability in determining facts. Where a higher standard of certainty has been reached, as with the 'beyond reasonable doubt' standard applicable in a criminal trial, then an indication of that standard is given where appropriate.

The Hearings

- 1.100. The hearing of this aspect of paragraph (b) of the Terms of Reference commenced in June of 2003 at the courthouse in Donegal town. Those hearings were interrupted in July due to the untimely death of Eamonn Leahy S.C. They recommenced in September of that year and were then adjourned to June of 2004, finishing with the final submissions on the matter in April of this year. Following the review by counsel of progress, I decided, as Chairman of the Tribunal, that it was important to cover as much ground as possible during the course of the hearings. As the testimony of Michael and Charlotte Peoples as to the extortion phone calls to their home on the night of the 9th of November 1996 had not been challenged by any party as being untrue, or inaccurate, expense and time was capable of being saved by adding in paragraph (a) of the Terms of Reference to the Tribunal's inquiry into the investigation by Gardaí of the death of Richard Barron. I decided to do this and in consequence this report covers both paragraphs (a) and (b) of the Terms of Reference with the exception of the question of the arrest and detention of suspects.
- 1.101. The Tribunal has heard 324 days of testimony, between this and the explosives module. It has gathered together and distributed many thousands of documents which resulted in the Book of Evidence relevant to this Term of Reference running to twenty-nine lever-arch files, comprising some ten thousand pages of documents. In my previous report, I have already commented on the burden assumed by Tribunals. The procedures under which a Tribunal of Inquiry operates are onerous. They involve the necessity to gather together all relevant documents; to interview all relevant witnesses; to distribute all relevant documents and witness statements to all interested parties; to allow representation involving the right to cross-examine and make submissions to all parties who might be criticised in a report, to call relevant evidence and test same; to hear submissions; to consider the form of a report and to furnish same to the Minister for Justice, Equality and Law Reform, thus allowing him or her to make a decision as to publication. Thus, before a person can be criticised in circumstances which do not involve any monetary loss or penal consequence, rights which are equivalent to those obtaining in a murder trial, for which the penalty is life imprisonment, must be afforded. The expense of this is enormous. I am grateful to counsel for accepting my invitation to become involved in this matter and for continuing to

diligently serve the Tribunal's best interests beyond the timescale I estimated for the conclusion of our work.

The Terms of Reference Explained

1.102. When delivering an explanation of the Terms of Reference, required by law of every Tribunal of Inquiry, on the 15th of July 2002, I made some general remarks as to procedures. Since procedure can affect substantive law, in the sense that it circumscribes and defines the right to rely on positive law, I find it important to quote what I said on that occasion:

Hamilton C. J. in delivering the judgement in *Haughey v Moriarty* [1993] 3 I.R.1 defined the proceedings of the Tribunal as involving the following stages:

- (i) A preliminary investigation of the evidence available.
- (ii) The determination by the Tribunal of what it considers to be the evidence relevant to the matters into which it is obliged to enquire.
- (iii) The service of such evidence on persons likely to be affected thereby.
- (iv) The public hearing of witnesses in regard to such evidence and the cross-examination of such witnesses by or on behalf of the persons affected thereby and
- (v) The preparation of a report and the making of recommendations based on the facts established at such public hearing.

For some weeks past, Counsel on behalf of the Tribunal, Peter Charleton, S.C., Paul McDermott, S.C. and Anthony Barr, B.L. have been engaged with me in making a preliminary investigation of the material which is available at the present time. They have been assisted by Bernadette Crombie, solicitor to the Tribunal, and by the entire Tribunal team. As a result of this preliminary investigation, it has been decided that the Tribunal will address each of the paragraphs of the Terms of Reference either in its entirety and alone, or in conjunction with another or other paragraphs, or it may address part only of a paragraph.

This is an enquiry. The Tribunal is not proceeding on the basis that certain people are accused of particular wrongs. It is attempting to ascertain what happened, why it happened and what might be learned from it. As it addresses each module, the Tribunal will identify persons likely to be affected by the available evidence. The Tribunal will contact all such persons who are legally represented and, if not legally represented, will

make every effort to contact them personally. It is hoped that all persons likely to be affected by material arising in a particular module will be furnished where appropriate with a CD-Rom of all the evidence which is in the possession of the Tribunal relating to that module or where it is thought necessary of all the evidence in the possession of the Tribunal. They will also be furnished with a hard copy of the evidence which the Tribunal considers to be relevant to that particular module from which they can learn the manner in which they might be affected by that evidence. They may then consider this evidence and they may, if they wish, respond to it by making a written submission or a witness statement. The advantages of making such a witness statement or such a written submission are obvious, in as much as it will enable Counsel for the Tribunal to present and consider that response.

When I have determined that there is evidence of matters into which I am obliged to enquire, all the relevant evidence, if not already served will be served on all persons likely to be affected by the hearing of that module and then the public hearing will be held.

If at any stage during a hearing assertions are made or evidence is sought to be addressed which might damage the reputation or good name of any individual but of which the Tribunal had not notice then procedures will be put in place either by an adjournment of the hearing or otherwise to deal with this situation, so as to ensure that fair procedures are observed.

May I now deal with discovery of documents. It is the wish and the hope of the Tribunal that there will be full co-operation with the Tribunal in the carrying out of its work and this would include the making of voluntary discovery. It is hoped that the Tribunal will not find it necessary to use its powers to make an Order for Discovery of Documents. However, it draws attention to the fact that such a power is vested in the Tribunal. Moreover, this Tribunal has been given the additional power with the consent of the Minister for Justice, Equality and Law Reform and the approval of the Minister for Finance under Section 6 of the 2002 Act to appoint "such and so many persons to be Investigators to perform the functions conferred on Investigators" by the section. These powers include the power to require a person to give the Investigators such information as may reasonably be required and to send them any documents or things in his power or control and includes a requirement to answer the Investigators' questions.

It is hoped that with co-operation it will not be found necessary to utilise these powers.

The Tribunal wishes to make it clear that prior to making any Orders for Discovery it will give the requisite notice identified by the Supreme Court in *Haughey v Moriarty*.

The Tribunal is charged under the instrument creating it to complete its work in as economical manner as possible and at the earliest possible date consistent with a fair examination of the matters referred to. With a view to establishing a procedure which will make the work of the Tribunal both orderly and assist in the completion of the work at the earliest possible date, the Tribunal would propose that where any party wishes to raise a matter of substance, either legal or factual, for the consideration of the Tribunal, it should in as far as possible, give notice to the Tribunal in advance, so that the attendance of witnesses can be dispensed with and the issue disposed of, either before the sitting of the Tribunal in the morning, or alternatively, later in the afternoon. The Tribunal does of course recognise that this may not always be possible, but the Tribunal would appreciate co-operation in this regard.³

The Relevant Terms of Reference

1.103. Paragraph (a) of the Terms of Reference reads as follows:

The making of extortion and hoax telephone calls to the home of Michael and Charlotte Peoples on 9th November, 1996 and the subsequent Garda investigation into that complaint.

Although that Term of Reference is completely understandable in the terms in which it is written, a decision of the Supreme Court obliged me, nonetheless, to explain it. In July of 2002, I therefore gave the following elucidation of that paragraph for the benefit of those who might be involved:

Michael and Charlotte Peoples complain that they received a number of anonymous extortion or hoax telephone calls to their home on the 9th November, 1996. In these calls, they complain, that the caller demanded a money payment and made certain threats if such payment were not to be forthcoming. The Tribunal in the course of its inquiry will

- (i) Enquire into and in so far as is possible, establish the basic facts relating to these alleged phone calls;
- (ii) Attempt to establish the origin of such telephone calls;
- (iii) Enquire into the identity of the person or persons making the alleged calls and to the telephone lines used in that regard;

³ This ruling is available on the Tribunal website: www.morristribunal.ie under the 'Opening Statement' link.

- (iv) Attempt to establish the motive for the making of such calls;
- (v) Enquire into the manner in which the complaint made by Mr. and Mrs. Peoples about these calls was dealt with by An Garda Síochána;
- (vi) under Section 13(2)(2a), and 2(b) of the Interception of Postal Packets and Telecommunications (Regulations) Act, 1993, seeking information as to such calls and the handling of same within An Garda Síochána and in Eircom Plc (or Telecom Éireann Plc as it then was);
- (vii) Enquire into the part which may have been played by any informer in the making, or arranging for the making, of these telephone calls;
- (viii) Enquire into the connection which there may be between the making of these calls and any other Enquire into an application made on the 18th December, 1996 matter referred to in the Terms of Reference.

1.104. Paragraph (b) of the Terms of Reference reads:

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

In July of 2002, with a view to elucidating the meaning of this Term of Reference, I referred to three individual, and highly complex, matters which it encompassed. These were the investigation itself; the arrest and treatment of persons in custody as part of that investigation; and the management of any informants in that investigation. The latter classification could refer to citizens giving ordinary assistance, who by reason of having witnessed some occurrence that could throw light on culpability for a crime, offer their assistance to the Gardaí, or it could refer to persons involved in crime who use their inside knowledge of criminal activities to assist the Gardaí on a confidential basis. The distinction is traversed in detail in my previous report on explosives finds and I do not intend to reiterate what I said then. It suffices to say that I considered it possible to look at the issue of the extortion phone calls, the investigation into the death of Mr. Barron and the use of informers, together during the course of one hearing. It is, therefore, relevant that I quote the portion of the explanation of the Terms of Reference relevant to the issues of the investigation and the use of informers therein:

Mr. Richard Barron died on the 14th October, 1996. The circumstances in which he died have not been established. One thing which is beyond doubt is that the Barron family suffered a bereavement by reason of Mr. Barron's untimely death. Before going any further, I wish to express my condolences to them, both on my own behalf and on behalf of the entire Tribunal team.

The Tribunal wishes to stress that it is no part of the Tribunal's function to establish who may have been responsible for Mr. Barron's death. However, the details surrounding his death are of relevance in so far as they relate to the investigations by An Garda Síochána in relation to his death and the matters set out at (B) above.

The Tribunal proposes to advance its inquiry in respect of paragraph (B) by addressing it in 3 parts:-

1st Part: The Tribunal proposes to enquire into the investigations made by members of An Garda Síochána into the death of the Late Mr. Barron. The Tribunal therefore will

- (l) Enquire into and in so far as is possible, establish what were the basic facts in this regard;
- (m) Enquire into the steps taken by An Garda Síochána in carrying out the investigation;
- (n) Enquire into and establish the normal approved practices and procedures which are prescribed or followed when investigating crimes in the apparent circumstances in which Mr. Barron died;
- (o) Enquire into whether the normal approved practices and procedures which are prescribed or followed in such circumstances were carried out or followed in the course of the investigation into the death of Mr. Barron;
- (p) Enquire into the adequacy of the Garda practices and/or procedures;
- (q) Enquire into the efforts made by An Garda Síochána to obtain expert evidence and the use made of such evidence by them in the course of the investigation;
- (r) Enquire generally into the progress, management and effectiveness of the entire investigation into the death of Mr. Richard Barron;
- (s) Enquire into the course of the investigation into the death of Mr.

Barron and the decisions which may have been taken in the course of the progress and management of the investigation, and enquire as to whether the investigation was in any way influenced by any external or improper factor and whether there is any connection between any of these matters and any other matter referred to in the Terms of Reference.

3rd Part: The Tribunal will enquire into the management of informants and will

- (i) Enquire into the basis upon which a person may be classified by the Garda Síochána as an informant and whether procedures and practices exist which apply to the classification and management of informants and whether these are adequate and appropriate and/or whether recommendations may be made for improvements in this regard;
- (ii) Enquire as to whether the procedures and practices for the classification and management of informants were applied in this investigation adequately, appropriately or at all;
- (iii) Enquire as to the procedure and practice (if any) by which the information gleaned from informants is marshalled, analysed, processed and/or verified by the Garda Síochána and if and how that was done in this investigation and whether recommendations may be made for improvements in this regard;
- (iv) Enquire into whether there was a misuse and/or over-reliance upon informants arising either as a result of the actions of the informants themselves or those dealing with informants or in the handling of the information supplied by members of An Garda Síochána;
- (v) Enquire into any aspect of this Term of Reference in so far as it may be connected to any other Term of Reference.

In this regard if it emerges in the course of establishing the facts in relation to the other Terms of Reference that informants were used by members of An Garda Síochána in the course of the events relevant to those Terms of Reference, the Tribunal will enquire into and consider in respect of all evidence which emerges before the Tribunal concerning informants, the adequacy and appropriateness of the procedures and practice in relation to the classification and management of informants and such information alleged to have been supplied by them in like manner to that set out above.

The Tribunal's Plea for Assistance

1.105. I do not intend to repeat what I stated in the first report on the difficulties encountered by the Tribunal in gathering evidence from serving members of An Garda Síochána. What was said there at paragraphs 1.46 through to paragraph 1.54 is equally valid here. After several more months of hearings into Garda corruption in Donegal, the spirit wearies at the lies, obfuscations, concealments and conspiracies to destroy the truth that would be apparent to any reasonable person who had sat through more than a few days of our hearings. **This entire matter could have been ended within months had there not been a determined effort to conceal the truth in favour of a twisted version of reality that would make it seem that this investigation into the death of Richard Barron was conducted properly and that no member of An Garda Síochána acted outside the law in targeting those whom they believed were involved in what they chose to believe was his murder.**

Garda Assistance

1.106. Superintendent Terry McGinn and Sergeant Brian Mahon, as liaison officers, did all that could reasonably have been asked of them, and more, in assisting the Tribunal's work. In addition, Tribunal counsel had regular meetings with Superintendent Hugh Coll, who was most open and helpful. Through counsel for the Garda Commissioner, every request for assistance from Headquarters was responded to in a lively and open fashion.

Time Taken

1.107. When, however, it came to witnesses, the Tribunal regrets to record that it was fed lie after lie. This process of investigation has been delayed by contempt for the truth. The Carty investigation team did all they could to draw truthful witness statements from people. Some Garda witnesses told lies or simply refused to answer on the basis of a warped interpretation of the right to silence. No society can survive if its public servants, including its police force, arrogate to themselves a privilege of refusing to report on their duties on behalf of the community. When, at the Tribunal, an obligation to answer was in place, lies replaced silence. The extent of this was both astonishing and wearisome. It has wasted time and money in abundance.

Structure of this Report

1.108. In my previous report it was necessary to proceed in minute detail through each event related to the relevant fraudulent explosives finds in Co. Donegal in chronological fashion. Having reviewed the matter, it seems to me that it would

be inappropriate to adopt the same format in this report. There are many strands to the happenings in Donegal that had their apparent origin in the death of Mr. Barron. In adopting a chronological layout to this report I would be confusing the reader. Furthermore, the particular themes that it is necessary for me to elucidate would be lost. The events and personalities concerned can best be explained by separating them out from the jumbled sequence of events and focussing in on them as part of sequences of events that are more related by theme than by time. Hence, while an exposition of the investigation proceeds in a chronological fashion, weaving in and out of that straight line in time are groups of vigilantes, a cluster of corrupt Gardaí, a lack of supervision and direction by superior officers, the exacerbation of the pain of the Barron family at their loss, the demonisation of the McBrearty, McConnell and Peoples extended families, and the abuse of information for ulterior purposes by a small number of members of An Garda Síochána. I therefore intend to report on the events in Raphoe during the days immediately after Mr. Barron's death (this is Chapter 3); the medical evidence relevant to his death (this is Chapter 4); the Garda murder 'hunt' (this is Chapter 5); the informers involved in the investigation (Chapters 2, 3, 5, 6 and 7); the vigilantes pursuing their own ends against a background of Garda misconduct (Chapter 7); the Peoples telephone calls (Chapter 6); the situation regarding the Department of Justice and Garda Headquarters (Chapter 8) and then to make recommendations (this is Chapter 9).

The Tribunal's Task

- 1.109. In furnishing this report, it is important that the Tribunal states that an elucidation of the facts in this report constitutes an alarming series of events that call, in themselves, for better leadership and management in An Garda Síochána. It is a matter for the Minister for Justice, Equality and Law Reform and the Garda Commissioner to take this report and to scrutinise for themselves how events could go so badly wrong in a small town in the north-west of Ireland, and to ask themselves what lessons need to be learned from this appalling debacle. At the end of this report certain recommendations are made. It is obvious that the Gardaí have excellent skills and personnel. Equally, it is urgent that a sense of responsibility to its fundamental mission be reinstated. Only the truth can further that task.

Issues

- 1.110. A careful scrutiny of the foregoing narrative will indicate that certain matters require comment and analysis. These include the following items:
1. No forensic examination was conducted of the scene of the crime until much later, after the removal of Mr. Barron's body and when same had been walked over and driven over and cleaned up as a result of the scandal of human blood being left on a public roadway that was close to neighbours of Mr. Barron's in Raphoe.
 2. No forensic examination was conducted of Mr. Barron's body.
 3. The funeral was not halted and Mr. Barron's body was buried when the correct course on initiating a murder inquiry according to the Garda Manual, which is quoted in the next chapter, explicitly requires that any violent death should be first proved to be a murder before a homicide investigation is initiated.
 4. Speculation at the wake of Mr. Barron was turned into a credible statement capable of being acted on that Mr. Barron had been murdered. This was relayed as "talk at the wake house" through Garda O'Dowd to Chief Superintendent Denis Fitzpatrick and, in turn, repeated as a fact to the District Superintendent, John Fitzgerald.
 5. From the very earliest days of the investigation, malicious speculation that Frank McBrearty Junior, Mark McConnell and, to a lesser extent, Michael Peoples were the culprits in this 'murder hunt' were recorded in the conference notes without any tangible evidence to support such a line of enquiry.
 6. There was no interference by vigilantes in the Garda investigation until January of 1997. By that stage all of the suspects, and those apparently aiding them as accessories after the fact to the 'murder' had already been arrested.
 7. There was nothing that could be thought of as interference in the investigation by Zimmerman & Co. Limited, private detectives, until March of 1997. By that stage, Frank McBrearty Junior had been arrested for a second time and plans were afoot to arrest Mark McConnell for a second time.
 8. A statement by Robert Noel McBride that, at around 01.00 hours on the morning of the 14th of October 1996, he had seen Mark McConnell and Frank McBrearty Junior coming up the car park from the direction of the pathway that might lead to the scene of the crime was taken as a crucial element to prove their involvement in 'murder'.
 9. The witness who gave this information was not in Raphoe on the night in question. The manner in which this statement was taken from him, and the subsequent dealings by the Gardaí with him, and their failure to check out collateral facts which might have proved, or disproved, the veracity of his story is commented on in detail later in the report.

10. A statement from Mr. John Patton, reported to the incident room, as part of the material used to build up the case against Mark McConnell and Frank McBrearty Junior was not borne out in written form when a statement was eventually taken from Mr. Patton almost a year after the start of the ‘murder hunt’.
11. In addition to the six false statements taken from Robert Noel McBride, the statements taken from the vigilante group under the leadership of Derrick ‘Darcy’ Connolly also proved to be unfounded and unworthy of credibility.
12. It is necessary to examine in detail the conference notes, the workbooks and the presence or absence of suspect elimination forms to determine what these show about the manner in which the investigation was conducted. They are considered on a logical basis and this is done in chapter 5.
13. It is necessary to consider the role of Chief Superintendent Denis Fitzpatrick, Superintendent John Fitzgerald and Superintendent Kevin Lennon who became District officer in Letterkenny in February of 1997, replacing Superintendent John Fitzgerald.
14. It is necessary to examine the medical evidence in detail following on the exhumation of Mr. Barron’s remains, to show what the Gardaí would have discovered had the direction on the first page of the Garda Manual dealing with murder investigations been followed.
15. It is necessary to examine the manner in which the informers were not treated with appropriate caution, never mind scepticism, and how the most important of these, namely Robert Noel McBride, came to make a statement. In addition, it is necessary to examine how the Gardaí tolerated him being under the apparent control and direction of William Doherty, a well-known criminal.
16. It is necessary to examine how the vigilante group were allowed to have a standing in the ‘murder investigation’ and how their ‘evidence’ was, or was not, scrutinised with appropriate care. The role of Detective Sergeant John White comes into particular focus in this context.
17. The Tribunal finds it necessary to comment on the manner in which the Garda force assisted the grieving family of Mr. Richard Barron. It is axiomatic that they were entitled to expect that in a modern European State, the national police force would pursue an investigation into the violent death of their father and husband in a coherent, skilled and rational fashion.
18. It is necessary to focus on the manner in which the McBrearty extended family were subject to an extraordinarily unpleasant sequence of events, in respect of which no citizen in Raphoe came forward to demand a halt and to examine the role of An Garda Síochána, and in particular Garda John O’Dowd, Detective Sergeant John White and Superintendent Kevin Lennon.
19. The role of Garda Headquarters vis-a-vis handling informers and how the prevailing systems failed to put a stop to the astonishing activity in Donegal.

THE MORRIS TRIBUNAL
Report – Chapter 1 – Overview and Introduction

20. The Gardaí in Donegal lacked coherent leadership and were faced with a Chief Superintendent at odds with the Letterkenny District Officer.
 21. Discipline had broken down to the extent that this report details Gardaí taping informers and Gardaí taping the Divisional Officer, in like manner, as a person treated on the same level of trustworthiness.
 22. Superintendent Kevin Lennon, on taking over the Letterkenny District, wrote reports to ensure that a cover-up was effected, and the investigation obstructed, into the Peoples phone calls.
 23. Mass arrest was used as a weapon of investigating a crime.
 24. Gardaí were left unaccountable for their duties.
 25. Important documents were destroyed by the most senior officers in Donegal.
 26. There was an astonishing delay in obtaining telephone records, a fact unaddressed by Garda Headquarters, the Department of Justice and Eircom plc.
 27. Finally, the Tribunal feels that certain recommendations need to be made.
- 1.111. The Tribunal will now proceed to discuss the evidence which it received from members of An Garda Síochána and from Chief Superintendent Brian Garvie of the Royal Canadian Mounted Police, as to how a murder case ought to be run. The Tribunal will then examine, in detail, the events which occurred in Raphoe over the few days beginning on the 13th of October 1996.

CHAPTER 2

RUNNING A MAJOR INVESTIGATION

Introduction

2.01. In order to embark on a critical appraisal of the Tribunal's assessment of the investigations in relation to the death of Mr. Barron it is necessary to have a point of comparison. The Tribunal regards it as important to set out its understanding of best police practice, both from a national and international viewpoint, as to how a major investigation is conducted. Paragraph (b) of the Terms of Reference requires the Tribunal to look at the progress, management and effectiveness of the Garda investigation with particular reference to the management of informants. During the course of the hearings, expert evidence was obtained from Garda witnesses who, in the opinion of the Tribunal, were trustworthy and diligent. In addition, the Tribunal legal team sought the assistance of Garda Headquarters and a detailed statement, later transmitted into sworn testimony, was obtained from Chief Superintendent W.J. Keane. His career pattern shows that he has been involved in several major investigations, with particular reference to homicide, in the Limerick city area. An international perspective on these matters was obtained through the assistance of Chief Superintendent Brian Steele Garvie of the Royal Canadian Mounted Police during his time as an investigator with the Tribunal. In addition, Chief Superintendent Garvie provided a written statement and returned from Canada to give evidence as to pertinent aspects of the Barron investigation. His experience within the Royal Canadian Mounted Police was of particular assistance to the Tribunal and his keen intelligence enhanced the investigation of the questions at issue. Finally, the Tribunal also had the benefit of the assistance of its current investigators. Michael Finn is a former Superintendent with An Garda Síochána with wide operational and investigative experience. Patrick Cummins is a former Assistant Commissioner with the Royal Canadian Mounted Police who has been involved in a wide range of police activities but with particular reference to discipline and training. Their assistance has been invaluable.

Major Crime

2.02. What is, and what is not, a major crime will be obvious from the facts presented to a Garda investigation team. Major crimes would include homicides; serious sexual offences; serious explosives and firearms offences; terrorist training and management; serious assaults; kidnappings; serious thefts and frauds; major counterfeiting of currency; serious forgery and fatal hit and run traffic accidents. The Garda Code, Chapter 28.2 provides as follows:

The primary object of the Garda Síochána is to deal with serious crime on behalf of the community. Due to the nature of crime, every contingency cannot be provided for in advance; but standard modes of procedure will in most cases ensure the efficient initiation and subsequent successful follow through of an investigation. The Crime Investigation Techniques Manual is the standard reference book on investigation techniques and all members are expected to be familiar with its contents. Computer systems which may assist in investigation will be utilised in appropriate cases ... A communication plan will be set up to keep superiors informed of the crime and of developments in the investigation. If at any stage the divisional officer considers that the investigation is not being properly conducted, Assistant Commissioner, 'C' Branch, will be informed, setting out fully the reasons for thinking that the investigation is not being properly conducted, having first so informed the District officer. Assistant Commissioner, 'C' Branch, may deem it prudent after consultation with the divisional officer concerned, direct the Investigation Section to carry out the investigation in collaboration with the local investigators.

In the case of very serious crime, application for the services of the Investigation Section, Garda Headquarters, may be made via the divisional officer to the Assistant Commissioner, 'C' Branch, to assist mainly in preliminary investigations and to advise and guide in the management and control of incident room procedures. The Investigation Section will, in consultation with the district officer, withdraw when existing lines of enquiry are exhausted; and thereafter their assistance in the investigation may again be requisitioned as necessary. While the Investigation Section remains in the district, the district officer will have their assistance in preparing the file for the law officers.

- 2.03. When the investigation into this crime was initiated, the officer in charge, in accordance with the relevant Garda manuals, was Superintendent John Fitzgerald. He was the district officer. The divisional commander was Chief Superintendent Denis Fitzpatrick. From February of 1997, the district officer became Superintendent Kevin Lennon. He remained as district officer, and therefore as officer in charge of the investigation, until its conclusion. It is to be noted that no complaint was made in accordance with the Garda Code that the investigation was not being properly conducted. This report, therefore, proceeds on the basis that Gardaí within the Donegal division concerned in the investigation of the circumstances surrounding the death of the Late Richard Barron were considered both by themselves, and their superior officers, to be acting properly.

Patterns

- 2.04. The commission of crime will tend to conform to patterns of human behaviour. People rarely commit acts of random murder or assault. For instance, the victims of theft are usually targeted because it is thought that they have property worth stealing. Over the course of years, personnel in any profession gain experience. They are entitled, and expected, to bring that experience to bear upon questions which require to be resolved. They must bear in mind, however, that patterns need not necessarily be repeated from case to case and that human nature can cause the most extraordinary aberrations in human conduct from time to time. During the course of his evidence, Chief Superintendent William Keane spoke of this matter. From 1997 through to 2004 he was involved in the investigation of forty-four murders in the Limerick city area. Thirty-nine of these were classified as having been successfully investigated.⁴ He indicated that murders tend to fit within categories. Homicides may occur as a result of a relationship being broken off with resulting fury in the person being left behind; as a result of hatred by a couple, the one for the other; as a result of jealousy in homosexual or heterosexual affairs; as a result of abuse within a domestic situation; as a result of gangland betrayals or jealousies; as a result of an assault which goes beyond what may have originally been intended; as part of a robbery; as a result of a drunken row which causes one person to fall, having been struck, injuring their head; and further generally identifiable reasons.

Garda Case

- 2.05. What follows is a summary of what the Gardai believed occurred on the night:
- There had been some difficulty in the past between the McBrearty extended family and the Barron extended family. Mr. Barron had had a disagreement and a verbal exchange with Mr. McConnell during the evening in a public house and the Gardai considered that this was the cause of reawakening the old difficulties. They believed that Mr. McConnell and Mr. McBrearty made up their minds to teach Mr. Barron a lesson. They believed that they may have communicated with each other by telephone and agreed to wait for Mr. Barron approximately 500 meters outside the town of Raphoe and give him a beating. They believed that they had returned to Raphoe leaving Mr. Barron on the road. The Gardai thought that the beating had been far more serious than intended and had a more grievous effect on Mr. Barron than was intended and that he died as a result.
- While all of this was possible, it was highly unlikely that it in fact took place. The disagreement between Mr. Barron and Mr. McConnell was trivial. It did not involve any blows being struck and was, in fact, of far less importance than a

⁴ Transcript, Day 217, page 5.

similar altercation which, had taken place between Mr. Barron and a Mr. Manny Hegarty later on in the evening. Mr. McConnell and Mr. McBrearty Junior were working in separate licensed premises on the evening and there was no communication between them. An examination of witness statements demonstrates that they were not together at any time, but, on the contrary, each was otherwise engaged during the relevant time when Mr. Barron died. In particular, there was ample factual evidence that Mr. McBrearty's activities, at and around the relevant time, were such as to leave him virtually no opportunity to engage in assaulting Mr. Barron.

These and other matters should have been taken into account by senior officers who were investigating the Barron death.

General Principal

2.06. The discovery of a dead body by the side of a road, or in a house, may or may not indicate circumstances of suspicion. If a man is found dead in his sitting room with a knife through his chest it is reasonable to make a working assumption that someone murdered him. All deaths which take place in suspicious circumstances, together with other categories of death, such as those taking place in prison, come within the coroner's jurisdiction. They should therefore be the subject of a pathology examination to determine whether or not a cause can be determined. The coroner's jurisdiction, however, is limited to identifying the person who has died, the time and place of their death and the physical circumstances, as opposed to the responsibility, leading to their demise. The Garda function is different from the coroner's function. The purpose of An Garda Síochána is to investigate serious crime on behalf of the community. If one assumes that a crime was not committed, or if one fails to investigate a suspicious death as a crime, then time will be lost. The evidence is clear that it is in the first hours and days following the uncovering of a major crime, in this instance a suspected homicide, that progress can be made. If this opportunity is lost it may never be recovered. Chief Superintendent Keane put the matter thus:

The golden rule ... is: "if in doubt investigate as a crime until the evidence proves otherwise." Because if you do not treat it as suspicious a systematic response will not follow ... and vital evidence will be lost. ... This is the whole basis of conducting a methodical investigation ... Because in most cases it will be very obvious and evident that it was as a consequence of foul play [that death occurred]; but in some cases it will not be that obvious. ... Where there is a body and death is unknown, or you have a suspicion about it, well then you have to go through the

procedure. That is: preserve the scene, conduct your preliminary enquiries, try to establish the movements of the individual in the hours leading up to his death. In other words – if I could quote a case that I dealt with myself about two or three years ago – where an individual was found dead outside the doorway of his own home. He was on a concrete path. The obvious circumstance was that his head was in a pool of blood. The scene was preserved. We arranged for the State pathologist to do the post-mortem examination, but while we were awaiting the arrival of the State pathologist we naturally conducted preliminary enquiries to try and establish where this individual had been. It transpired he had been in a licensed premises the night before, left in a very heavy state of intoxication, had been met by a number of people on route. And the scene: there was a step between the concrete landing ... and the doorway of his house and it was obvious that he, while putting the key in his door, [had] slipped back off his step and fell. But, we could not, while we were leaning towards that ourselves, we had to await the results of the post-mortem examination just to see was there any other injuries on the body or any other marks on the body or what the pathologist – the view, the pathologist came to as a consequence of the investigation.⁵

- 2.07. Chief Superintendent Brian Steele Garvie of the Royal Canadian Mounted Police gave expert evidence before the Tribunal on Day 236. He outlined the approach which should be taken by police officers who come upon a suspicious death, in the following way:

There is a generally accepted premise in police investigative techniques, that any suspicious death should be treated as a homicide until such time as the cause of death has been determined ... Now, what that means essentially is that proper procedure should be followed in every instance, however that the extensive procedures associated with a homicide investigation are probably appropriate at a suspicious death until you know otherwise, until an autopsy or some other factor has determined the cause of death. Superintendent James Gallagher also refers to this premise in the report that he forwarded to the Chief Superintendent in Letterkenny. So in my view, at least in the Garda, that was an acknowledged practice and procedure.⁶

⁵ Transcript, Day 217, pages 5-12.

⁶ Transcript, Day 236, pages 11-12.

- 2.08. All of the leading text books on forensic pathology contain chapters on interpreting the situation of a dead body found in suspicious circumstances. These would include, for example, the interpretation of gunpowder burn marks, ligature marks, stab wounds, poison substances and the general condition of the room, or premises, where the deceased has been found. A fracture of the hyoid bone will be a primary indication of death by strangulation. That could, however, have been caused through self-infliction or by homicide. Strangulation can also take place by accident. The presence of other marks on the body may be indicative of a struggle prior to a hanging taking place and so point towards homicide. The condition of the body, its position in relation to objects on the premises, may point towards various conclusions together with accounts that are gathered as to the last movements of the dead person.

Is It Murder?

- 2.09. The Garda Manual on crime investigation is entitled Crime Investigation Techniques. It was published in April of 1994 and contains much useful information and guidance for investigators. On page 338 it indicates the following:

The investigation of murder is the most important and most demanding task which any police force has to undertake. While the identification and conviction of the murderer is frequently a very difficult task, it will, occasionally, be even more difficult to establish the fact that murder has been committed.

The crime of murder can not be treated in isolation from other classes of unnatural death because it is only by being able to discount death from natural cause, accident or suicide that the crime of murder can be established. In many cases, a murder will be obvious even from a cursory examination of the body and scene, but there are other instances, for example death by poisoning and some blunt force injury deaths, when even after detailed investigation, the actual manner of death (i.e., whether as a result of accident, suicide or murder) may not be positively established. To determine the cause and manner of death in these circumstances calls for intelligent, painstaking and persevering investigation. A careful study of the circumstances of death, examination of the body, clothing and scene, a check on deceased's background, lifestyle, character and general disposition, and his movements and actions immediately before his death, are all essential.⁷

⁷ Crime Investigation Techniques, page 338.

- 2.10. The foregoing is but an instance of the philosophy that any apparent crime should be investigated in order to determine how it came about. There is no room for assuming murder, no more than there is any room for assuming accidental death, if a police force are following a coherent pattern of investigation. Drawing on his experience, Chief Superintendent Keane outlined a number of critical success factors with which Chief Superintendent Garvie agreed. To ensure that a major investigation is a success it must be:
- (i) Approached in an organised and methodical way;
 - (ii) Follow a plan of action;
 - (iii) Operate to a standard procedure and system;
 - (iv) Be led by an experienced management team; and
 - (v) Be resourced by properly instructed personnel.⁸
- 2.11. In this case, it will be noted by those reading the report of the Tribunal, murder was assumed. A road-traffic incident leading to death was sidelined as a theory requiring investigation at an unjustifiably early stage.

The Scene of Crime

- 2.12. Clues in relation to the commission of a crime should most often be found at the site of that crime. Here, the crime scene was the stretch of roadway leading from Irish Row up to Townparks in the immediate area where the Late Mr. Barron met his death. That scene was not preserved by the first Gardaí on the scene. The scene was preserved on two subsequent occasions, namely the following morning, and then upon the Chief Superintendent telling the Superintendent of the district that a murder had been committed in the area. The preservation had earlier been lifted because it was thought that all necessary tests had been conducted. Some people had, undoubtedly, by the stage the first Gardaí had come on the scene, either driven through or walked over the scene. Chief Superintendent Garvie gave the following evidence in relation to this matter:

Well, initially obviously the scene should have been protected and preserved, whether a member remains at the scene, does it physically, they roped it off with what we would refer to as crime tape. ... The traffic should have been diverted that no further traffic should have driven through the area or through that particular scene, and in my view it should have been protected in its entirety until the following morning. The area with respect to the blood should have been covered with a tarpaulin or something

⁸ Transcript, Day 217, page 8.

that would have prevented the rain affecting it, and there should have been, and I think it was conducted in a cursory way, an immediate search of the area for debris, for evidence, for a weapon, for those type of things.

The scenes of crime examiner should have been called and he could provide advice with respect to the containment of the scene and determining how it should be protected and he would have had some of the equipment with him, I would expect, to do that.

I think that there would have been benefit in calling the traffic Sergeant, or someone with extensive traffic experience, who could have provided expertise with respect to the investigation of a hit-and-run accident and who, I would expect, had attended a large number of serious accidents. And I think that a senior officer, once they were notified of the death of Richard Barron, should also have been advised.

After the scene was protected, at least one member should, in my view have gone to the hospital, the body should have been preserved, the body should have been locked up. If they were ... Well, first, we are dealing with the issue of identity, someone has to identify the deceased, I think they were reasonably satisfied that it was in fact at that time Mr. Barron. But in protecting the body, the body obviously may have evidence, if in the case of a car accident the individual was struck by a car, obviously there may be trace evidence there, there may be paint, there may be fibres, any of those things, and the continuity subsequently for getting evidence into court requires that the chain of evidence be established. Therefore, in order for that chain of evidence to be consistent, then the body needs to be preserved, protected, locked up and that chain of evidence, obviously the continuity of that has to continue.

Now, that being said, it is my view that although they accepted that it was a hit-and-run accident, the evidence could have pointed also to a serious assault. It would have been incumbent on them to protect the hands and head and feet, to seize the clothes, and possibly initially to take some photographs because to some degree a body will change during, or prior to, the autopsy. So, to take photographs of the body as it was when it arrived at the hospital all of those things in my view should have been done.

The other reason, obviously, for someone attending the hospital, if someone had attended sooner, I'm not saying it could have happened, but it is possible that the victim could have made a statement. And in this case I think that was unlikely, but that is one of the reasons why you would dispatch a member to the hospital in a serious incident, is that you may get some further evidence of that nature from a statement.⁹

- 2.13. The Garda Manual makes it clear as to what the duties are of the first members of An Garda Síochána who arrive at the scene. What preservation means is ensuring that the scene remains unchanged until it has been completely examined and all relevant evidence has been collected. This involves excluding persons and traffic. It involves taking extreme care to avoid the obliteration of any clues such as finger marks, footmarks, tyre marks, blood spatter, human tissue or anything else which may have been left at the scene. Early action should also be taken to protect items of possible evidence so that they may not be destroyed by the elements or by human or animal interference. If there is any possibility of rain, dew, frost or snow, then all clothing, weapons, bloodstains and other marks should be covered for protection. Objects should not be touched, with or without gloves, in case fingerprint evidence might be smudged. Any apparent, or possible marks should be identified for later expert examination. Finally, nothing should be added, not even cigarette butts, to the scene by anyone visiting it. Paragraph 16.3 of Crime Investigation Techniques makes explicit the duties that a member of An Garda Síochána first arriving at the scene has:

16.3 Action of first member(s) to arrive at scene

The success of an investigation that involves a definable crime scene depends primarily on the initial observations and actions of the first member(s) to arrive at the scene. This statement is generally applicable regardless of the type of crime. While the circumstances of the particular case will naturally govern the action taken by the first member(s) to arrive at the scene, the following matters should be attended to:-

- (i) note time of arrival and weather conditions;
- (ii) if there is a body at the scene, call a doctor immediately either to certify death or to render medical assistance;
- (iii) if injured persons are discovered at scene, arrange for medical attention and identification;

⁹ Transcript, Day 236, pages 13-16.

- (iv) if any person appears to be seriously injured and is being conveyed to hospital, arrange (if possible) to have him accompanied by a member, but the preservation of the scene must take precedence;
- (v) if appropriate, be prepared to record a dying declaration;
- (vi) if a person seriously injured is being removed to hospital (and no member is accompanying him) or if such a person has already been removed, take steps to have a dying declaration taken;
- (vii) in rendering medical attention to an injured person, place no restrictions but make a careful written note of anything disturbed;
- (viii) identify the culprits, if possible, and apprehend if in danger of absconding;
- (ix) protect the scene; see 16.5;
- (x) obtain names and addresses of persons present at scene on arrival;
- (xi) locate and interview the victim and witnesses, if present; note names and addresses and record stories briefly;
- (xii) determine how the crime was committed, the extent of personal injuries and the nature and value of property stolen (if any);
- (xiii) in eye-witness cases, secure a description of the perpetrators and vehicle (if any) used and direction of flight.
- (xiv) arrange to have the following details communicated to appropriate station:
 - (a) type and nature of crime and time of commission;
 - (b) description of property stolen (if any);
 - (c) description of suspect(s);
 - (d) description of transport used and direction of flight.

When two or more members arrive at the scene or other members follow subsequent to the arrival of the first member, there should be an arrangement whereby the above duties will be divided. If the above procedures are carried out intelligently by the first member(s) to arrive at the scene, then hours of unnecessary enquiry can be avoided and the assistance afforded will prove invaluable in bringing the case to a successful conclusion.¹⁰

¹⁰ Tribunal Documents, pages 6407-6408.

- 2.14. Chief Superintendent Garvie was asked as to whether the question of preservation of the scene was a basic matter which ought to be known to all Gardaí, or whether it was a specialised piece of knowledge which would only be known by specialist officers; he stated:

I think that the basic training of any police officer includes the preservation of a scene, whether it's a traffic accident, a minor crime, a major crime, a break and enter or whatever, it's basics that I'm aware of are taught in almost every police recruit course worldwide and it's certainly included in ours, preservation of the scene of a crime.

- 2.15. In the course of cross-examination by Mr. Creed S.C. on behalf of Garda Pádraig Mulligan, it was put to Chief Superintendent Garvie that in Garda Mulligan's eighteen years' service as a Garda prior to October 1996, Garda Mulligan had never been involved in the investigation of a hit-and-run accident, nor had he ever been involved in the preservation of a crime scene. These instructions by Garda Mulligan to his counsel were a lie. To these suggestions Chief Superintendent Garvie responded as follows:

He told me that, yes, [that he had never been involved in a hit-and-run investigation]. However, he certainly in his experience had been involved in incidents of a fairly [serious] nature requiring the preservation of a crime scene. The standards that apply to a hit-and-run and to a break and enter, or to a robbery, the preservation of a crime scene are similar in nature. ... I am sure that I did, but if those are your instructions – it is incomprehensible to me that a member of his service would never have been involved in protecting any crime scene. ... I appreciate that, but with all due respect are you suggesting that Garda Mulligan has never been to a home break and enter, he has never been to a theft of a premises, any type of robbery, any type of assault where the scene of any nature, whether it's for fingerprints, for photographs, ever needed to be protected? ... I can only accept what he says, Sir. But I find it incomprehensible.¹¹

- 2.16. Earlier, the Tribunal Chairman had asked Chief Superintendent Garvie as to whether he understood that Garda O'Dowd and Garda Mulligan had been aware of the need to preserve the scene when they attended there in the early hours of the 14th of October 1996. The following exchange occurred between the Chairman and Chief Superintendent Garvie:

¹¹ Transcript, Day 236, pages 131-132.

Chairman: Chief Superintendent, did I understand you correctly to say that when you interviewed both of these members, that's Garda Mulligan and Garda O'Dowd, that you got the impression that they knew what their duties were at the scene? Did I understand you correctly to say that?

A. *You did.*

Chairman: Does that mean that they knew they were fully conversant with all of this, perhaps not in a detailed way?

A. *They were certainly well aware of what expectations were and what their responsibilities were with respect to preservation of the scene.¹²*

2.17. Chief Superintendent Garvie also pointed out that the Garda Manual of Crime Investigation Techniques specifically states that it is no exaggeration to say that, in the majority of cases, the members who protect the scene and the members who search the scene play a critical role in determining whether the scientific expertise available will be utilised to the best advantage. He also pointed out that the Manual specifically states that the first members to arrive at the scene of a suspected crime automatically incur the responsibility of preserving the scene until otherwise instructed. He was asked how important it was to the investigation of crime to preserve the scene; he stated: "It is unequivocally critical".¹³

Specialist Assistance

2.18. Chief Superintendent Garvie made explicit in his evidence, and in his written reports, what investigative techniques could have been considered, had the scene been properly preserved. In Canada, the Royal Canadian Mounted Police has established in the province of Alberta the Criminal Collision Investigation Team. Their role is to investigate collisions where death or serious bodily harm is involved and where criminal action is suspected. The personnel of this unit include trained collision analysts, dedicated traffic supervisors and dedicated traffic members. These will all have received training in accident analysis investigation, vehicle placement at accident scenes, vehicle examination, scene photography and measurement. The case management would be similar to those used in major investigations. A blood-spatter expert, had forensic assistance been summoned, might have been able to determine, as was likely, whether blood had flown from the wounds on Mr. Barron's head, and if so in what direction and from what direction. This was never done. By the time assistance arrived, the scene had remained unpreserved overnight and in rain. Fibre and trace evidence,

¹² Transcript, Day 236, page 20.

¹³ Transcript, Day 236, page 18.

using appropriate lifting and microscopy techniques, could have perhaps uncovered trace elements. This follows the principle that people or objects that come into contact with other people or objects result in the transfer of physical evidence. Although tyre marks may not have been obvious at the time they could have been of assistance had they not been obliterated, if present, through rain, vehicle movement and human traffic. The Major Case Management Manual of the Canadian Police College makes this explicit by stating:

Supported by computer capabilities and the establishment and maintenance of a suitable data bank, investigators can now query vehicular "footprints". With the careful maintenance of this data bank and proper evidence gathering at the scene, it is possible to identify suspect vehicles, eliminate a number of makes and models of suspect vehicles, or match vehicles with crime scene evidence.¹⁴

- 2.19. Finally, from the point of view of the scene, a visit by the forensic pathologist has often proved useful in Ireland in the past, and could have been of assistance in this instance. The State pathologist, during 1996, was Professor John F. Harbison. He is a person of extraordinary experience whose view of the body or scene might have provided a reference point in terms of the behaviour patterns of those who commit homicide and the likely connection with the situation as it presented itself in Raphoe. The Canadian Manual states:

The forensic pathologist can assist in finding and collecting evidence – photographic and other exhibits at the scene and post mortem exam(s), equipment, notes, and sketches, where to look for trace evidence, blood stains and spatter, clothing, and footwear, correlation of soiled or damaged clothing to wounds, stains and imprints, DNA, safety/hygiene when handling an "infected" corpse, touching and temperature records, moving and transporting a body.¹⁵

- 2.20. In the course of his evidence, Chief Superintendent Garvie stated that obviously where the body of the deceased is still in situ, there would be much to be gained by having the forensic pathologist attend at the scene to carry out a preliminary examination. However, even where the body has been moved from the scene, he stated that where the police are looking for the best evidence then there was still an advantage in having the forensic pathologist visit the scene. He was asked by the Chairman as to whether a forensic pathologist should be called to the scene in every fatal case or only when there is a suspicion that it might have been something more than a road-traffic accident. He answered that a forensic pathologist should be called in to the scene if there is suspicion of the death being other than a road-traffic accident.

¹⁴ 6th Edition, May 2002 quoted in the statement of Brian Garvie, Tribunal Documents, page 6411.

¹⁵ 6th Edition, May 2002 quoted in the statement of Brian Garvie, Tribunal Documents, page 6411.

Summoning the Pathologist

- 2.21. The purpose of forensic pathology in a homicide case is in essence threefold:
- (i) To out rule suicide, accident and natural causes;
 - (ii) To establish the means whereby human interference with the deceased's life caused his or her death; and
 - (iii) To relate the crime scene and potential instruments of homicide to the physical signs on the deceased's body.

2.22. As has been previously stated, Ireland was extremely fortunate at that time to have a distinguished and enormously experienced State Pathologist in the person of Professor John F. Harbison. More recently, Dr. Marie Cassidy, having previously occupied the post, created a number of years after the Barron investigation, of Deputy Pathologist, has now become State Pathologist and she, in turn, has a deputy. A number of other pathologists in Ireland have a degree of expertise in forensic pathology. Such experts, however, are very few. They need to be summoned. Their presence is essential. The following exchange between Superintendent Keane and counsel for the Tribunal illustrates why:

Q. There is one other question arising out of that: If the pathologist's opinion is merely that it is possible that death was as a result of an assault, are you moving in any way towards, I suppose, "if in doubt investigate as a crime"?

A. If in doubt you investigate as a crime ... Regardless, unless the pathologist is quite happy that it was from natural causes, then obviously investigation then would be focused really on the inquest and the coroners act But otherwise he will investigate until the evidence proves otherwise ... I think that has to be a golden rule, Mr. Chairman.

Q. If you are going to court with a murder case, I take it that you need something more than a pathologist to merely say, oh, it's possible this was as a result of human intervention?

A. Of course, absolutely, yes.

Q. You need to be able to prove that beyond reasonable doubt?

A. At that stage you do, yes ...

Q. But you have never prosecuted a murder case where the pathologist is merely saying, oh, it's possible this was a murder?

A. The pathologist will not say that, I don't think. ... They will say,

death was as a result of X, Y, Z ... If that death was as a result of injuries inflicted in the course of the assault, or whatever, then you may get your murder charge [as directed] from the Director of Public Prosecutions.¹⁶

2.23. At Chapter 16.8 of Crime Investigation Techniques it states:

The authority of the Minister for Justice is necessary for the employment of the State Pathologist in particular cases. Requests for the pathologist and forensic scientists will be made in writing to Detective Branch and give briefly the facts and how the analysis or examination will assist in the investigation. In urgent cases, officers may telephone the facts to the Commissioner 'D' Branch outside office hours to Harcourt Square, when provisional authority may be obtained. In such cases, written applications should be forwarded as soon as possible.¹⁷

2.24. Chief Superintendent Keane indicated that over the course of approximately forty cases, he had followed this procedure. He described the procedures as simple and he described the officers designated to deal with requests as being helpful.¹⁸ The matter is resolved by calling the Garda Technical Bureau who will then arrange for the attendance of a forensic pathologist. If it is necessary to summon a forensic pathologist outside office hours then the Inspector in charge of the Communications Centre at Harcourt Square Garda Station will arrange it. The request is then followed with a fax giving particulars of the events surrounding the death and the necessity to seek the services of the State Pathologist. The following exchange occurred between the Chairman of the Tribunal and Chief Superintendent Keane:

Chairman: Would you ever have had occasion to contact the State Pathologist directly, without the intervention of the...[INTERJECTION]

A. No, I haven't had in my time and I have been involved in quite a number of them. That's the procedure really and it's the procedure I always followed. It's as simple as picking up the phone and ringing the Inspector in charge and it will be done from there on. They will obviously have the numbers of the person that is on call, I will not have that information, we'll say, myself in Limerick, I will not know maybe what pathologist is on at a particular time.

¹⁶ Transcript, Day 217, pages 19-20.

¹⁷ Transcript, Day 217, page 22.

¹⁸ Transcript, Day 217, page 22.

Chairman: I could well understand you having an input to arrange transport or to identify the location that he is to come to, that sort of thing is the practical nuts and bolts of the situation?

A. Yes.

Chairman: I am concerned with the actual summoning of the pathologist. Are you telling me that under no circumstances would that summons be direct from you to him or her?

A. No, I've never done that personally, Mr. Chairman, in my fourteen years.

Chairman: Very good.

A. No, I never done it, because, as I said, I will not know at that given time what persons is actually, we'll say, on call, for the want of a better word, over a weekend or whatever.

Chairman: Yes.

A. So, I've always gone through the procedure, either the Garda Technical Bureau during office hours, they now have that staffed up to 12 midnight and thereafter the inspector in charge of communications.

*Chairman: Thank you very much.*¹⁹

2.25. In the course of his examination in chief, it was put to Chief Superintendent Garvie that, in Ireland, it was not the practice generally to call in the State Pathologist in cases where it was clear that death had resulted from a road-traffic accident. He accepted that such a policy was reasonable. He stated that a forensic pathologist should be called in in the following circumstances:

... I think that the generally accepted practice aside from homicide investigation is also suspicious deaths, and my point with respect to this is that the determination now may well be that it was a road accident, but the nature of the scene that the members attended indicated the possibility that it could have been much more than that. It was subsequently investigated as a homicide. A suspicious death, such as this one, would have benefited by having a forensic pathologist there in that he or she might have been able to give a certain amount of strength to the argument (a) that it was a homicide, or it was a road-traffic accident. ... So when I talk about road-traffic accidents, I am talking about two vehicles

¹⁹ Transcript, Day 217, pages 26-27.

*colliding head on and it's obvious that the death, the death resulted from a road-traffic accident. Now you can argue the merits of did somebody drive into one vehicle or the other, and there may be certain circumstances where you would want to have a forensic pathologist outside of that, but generally I am suggesting that for suspicious deaths, or for homicides, as you have stated, there is a certain advantage to having that individual come.*²⁰

This Case

2.26. Turning to the circumstances which pertained on the morning of the 14th of October 1996, when Mr. Barron had been pronounced dead in Letterkenny General Hospital, Chief Superintendent Garvie was asked as to whether a forensic pathologist should have been called at that stage. He was of opinion that a decision should have been made to call in the State Pathologist at that time. He went on to state that as matters developed on the ground in the course of the investigation carried out on the 14th and 15th of October 1996, the decision ought to have been made at that time to call in the State Pathologist. He stated that it was his view that in this particular case the circumstances and the information that was developed warranted calling in the State Pathologist.

2.27. Chief Superintendent Garvie was asked as to whether, given the views expressed by the pathologist in Letterkenny General Hospital who had carried out the post mortem on the afternoon of the 14th of October 1996, the decision should have been made then to call in the State Pathologist. He stated as follows:

*Again they would have to assess it on the total extent of the information that they had at the time. If they were satisfied with the Sergeant's comments that, based on his experience and knowledge, he had some major concerns, if he was able to convince the district officer that such action should be taken, then I come back to the fact that that's a command decision that someone has to make because that's what it says in policy, that the district officer or the acting district officer as I understand it, has to make the call and make the request. And predicated on what I know and what you have told me, the information available indicated that there would have been benefit in having a forensic pathologist there. I think some of the issues that are being discussed today may well not have been discussed if a forensic pathologist had attended and was able to give an informed opinion or assessment prior to and after the conducting of the autopsy.*²¹

²⁰ Transcript, Day 236, page 29.

²¹ Transcript, Day 236, page 32.

- 2.28. By the morning of the 16th of October 1996, things had moved on due to ‘the information’ which had come in from Garda John O’Dowd which had been forwarded to Chief Superintendent Fitzpatrick and relayed by him to Superintendent Fitzgerald. Chief Superintendent Garvie was of opinion that the totality of the information which had been received at that time supported the need to call in the State Pathologist. He stated:

By the morning of the 16th the totality of the information received, albeit there would be some discussion about the veracity of that information, the totality of the information received, would support the need to call the State Pathologist, forensic pathologist to attend and provide expertise.²²

The Incident Room

- 2.29. In order to conduct a major investigation, an incident room should be set up. This should be situated in the local Garda station, or at a suitable Garda station adjacent to the scene of the crime. The location must be kept secure because the investigation will generate a lot of original documentation which must be kept safe. Conference room facilities are required together with computers, printers, photocopiers, filing cabinets, office furniture, a notice board, a blackboard or whiteboard with markers, and general office supplies. The standard books and stationery required for an investigation include job fliers, jobs books, jobs index, statement index, a correspondence file, original statements file, working copy file, suspects file, paper exhibits file, press cuttings file, maps and a register of electors.
- 2.30. The function of the incident room team is to provide the investigating officer and investigators with timely and accurate information; to accurately maintain all records; to show the current status of enquiries and jobs outstanding; to facilitate enquiries from and by investigators and others engaged in the investigation; to index, file and secure all original documentation; to prepare a file on the investigation with all available evidence for submission to the Director of Public Prosecutions seeking a decision on the issue of prosecution; and to deal with all discovery-related issues should a charge be preferred or should a subsequent audit of the investigation become necessary.²³
- 2.31. The investigation should maintain a conference book which notes the items of information brought to conference and the decisions and opinions thereon, and a jobs book which records the jobs allocated as a result of information being analysed by conference.

²² Transcript, Day 236, page 33.

²³ Tribunal Documents, page 6553-6554.

- 2.32. Investigation jobs are allocated to various members of An Garda Síochána on the basis of jobs fliers which are noted in a jobs book. Chief Superintendent Keane explained:

Job fliers are detachable carbonised sheets on which all jobs and enquiries relating to the investigation are recorded.²⁴ The original flier is a blue colour. It is affixed to the left side of the jobs book, and the first copy, a white colour, is allocated to a nominated Garda for inquiry. The second copy which is pink in colour is retained in the incident room, and each flier is allocated a number, and the fliers are kept in sequential order. ... The jobs book is a book set up to record all job fliers in a numbered sequence as they are allocated. The original flier is affixed to the left side of the jobs book and the name of the Garda to whom the job is allocated is recorded on the right side of the jobs book along with the relevant date of allocation of the job and all information relating to that enquiry and movement of the job flier until it is eventually finalised. ... The jobs index. ... That book in essence should contain everything relating to that investigation. It should contain all the information and everything that was done in the course of that investigation. It's the record of it.²⁵

- 2.33. The jobs index alphabetically indexes reference registers to all jobs recorded in the jobs book and gives them a relevant number. This allows for ease of retrieval. When statements are taken they are alphabetically indexed with names, addresses and allocated numbers for each potential witness for reference purposes. A correspondence file is also kept which indicates what correspondence was sent from or received at the incident room from either Garda or outside sources. A file is kept of original statements which would contain, in numerical sequence, all original statements of witnesses in the investigation. A working copy file is made up from the original statement file. It consists of typed copies of those statements in the same numerical sequence as that of the original statements. These are working copies for reference by the incident room team and members of the inquiry team. Copies are made, through typing, in order to keep the original documentation secure.
- 2.34. The procedure outlined in evidence by Chief Superintendent Keane, was reviewed by Chief Superintendent Garvie. He gave the opinion that the procedure for the establishment and operation of an incident room as outlined in the Crime Investigation Techniques Manual of An Garda Síochána and as outlined by Chief Superintendent Keane in his statement, conformed to the generally

²⁴ Transcript, Day 217, page 29.

²⁵ Transcript, Day 217, pages 29-30.

accepted international standards for proper police investigation of serious crime. Subject to some differences in terminology, the Irish system was comparable to that used by the police in Canada for the investigation of serious crime.

Suspects

- 2.35. A suspect file is opened which contains details of all suspects who come to light in the course of the investigation. It will include profiles of their background, any previous convictions they may have, and any other intelligence pertinent to them in regard to the investigation. A suspect file may consist of as little as a sheet or two of paper. Where witness statements indicate the nature of the suspicion that may focus on a particular person, they may be included or referred to in the separate files on the separate suspects. A suspect elimination form is provided. This is in standard form which gives the name, age, occupation, alias, photo, address, particulars of motor vehicle, description and address at the relevant time of particular suspects. The form states who the suspect has been nominated by and gives reasons for the suspicion. The form should contain details as to the suspect's movements and corroboration that he or she was indeed moving in the particular place at the particular time, or such other particulars as would eliminate the suspect. The observation of members would then be important as to why suspicion has ceased to focus on a particular person.
- 2.36. In the course of the hearing, Chief Superintendent Keane was asked about the problem of people who lie to investigating members, and as to whether this automatically made them suspects. He indicated that standard forms were available whereby house-to-house, or street-to-street, questionnaires would be produced in standard form. While forms are given in the various manuals, these are tailored to meet the suspected crime in question. Such standard forms contain a place for the observations of the Gardaí conducting the questionnaire. They are entitled to give their opinion as to whether the person was evasive. There might be some small written observation that caused them, when conducting house-to-house enquiries, to have a suspicion. Thus, all the members of An Garda Síochána, whether of Detective rank or otherwise, have a role to play in major investigations once they are assigned jobs. It was observed to the Tribunal that it was quite often the case in major investigations that house-to-house enquiries have resulted in the culprit being interviewed at an early stage. These early impressions are of considerable importance.
- 2.37. The issue of lies as corroboration in relation to a crime is an area which has received some attention in case law. In order for a lie to provide corroboration against an accused that he or she has committed a crime, it must be a lie which relates to a material issue, it must be a deliberate and knowing lie, and it must

have been told by the accused because he or she is aware of his or her own burden of guilt and has a determination to distance themselves from the crime.²⁶ It must be borne in mind that people can have the silliest of reasons for lying. They may have been asked to involve themselves in a domestic errand and may have gone elsewhere. A classic example is a Garda who lies that he was in a particular place at a particular time. That lie does not indicate that he murdered someone at that time. The lie could be told simply because he has been drinking on duty in a public house elsewhere. People can lie in order to cover up discreditable conduct other than that of being involved in a crime. Also, they can simply lie out of a sense of mischief. A proper investigation involves co-ordinating the information to hand. Both Chief Superintendent Garvie and Chief Superintendent Keane made it clear that once a picture of events begins to emerge from statements, then this requires crosschecking. No potential testimony by a potential witness can be treated as sacrosanct. There is no reason not to crosscheck a witness's statement. If a witness says that he was in a particular place at a particular time, then people who were in that place at or around that time should be questioned as to whether they saw him. If statements already exist from these people indicating his presence then some support is available. If his name is not mentioned by people who are undoubtedly at the scene of an event, then they need to be questioned as to why they did not see the witness, or suspect, and as to why that person was not previously mentioned.

- 2.38. The nomination of a suspect is a crucial point in any police investigation. Chief Superintendent Keane expressed the matter thus:

Once a person is nominated as a suspect then it is up to the team, be it the other members on the team, to give in as much information as they have on that individual person. In other words, research that individual; try to get to know what is to be known in relation to that individual person, their background, their associations, who they are associating with, what their movements were, the recent movements [of that suspect] over the particular period of time. Whatever is relevant, whatever is known, is brought in and recorded on that suspect file. ... It is recorded and jobs will then emanate from that into the jobs book. If a job emanates from that. But, generally, it's for background. It's for informational purposes rather than anything else at that stage. It's to build up a profile of the individual who is nominated as a suspect. The jobs would more relate to corroborating the information. In other words, to try and corroborate was the individual in the vicinity of the crime: was he even in the town

²⁶ The People (DPP) v Rose and Others, Court of Criminal Appeal, November, 2004; and R v Lucas [1981] QB 720.

when the incident happened? So, you have a two-pronged approach. ... One would be to try and corroborate the information nominating the suspect and the other will be just for record purposes to record as much information as possible on that individual when it comes to interviewing that person down the road or whatever. ... If a person comes to light by, say, the statements for instance, that some person said, "I saw so and so at that corner", it might be corroborated by another individual and that individual, you might have a suspicion that this person could well have a motive, then that person is automatically slotted in as a suspect. It's back down at the end of the day to the Superintendent in charge. But, obviously, he'd have the benefit of the experienced team that he has with him there as well; the investigators and the detectives. ... Strictly speaking, if you are a suspect there should be a file there. There should be a file on each of the suspects. And, again, the suspect elimination form is the only way that that person can be taken off that list ... You attach to that form, then, whatever you have to support taking that person off the suspect list. You attach it to that elimination form, be it a statement of some individual that offers an alibi and that alibi checks out or whatever.²⁷

2.39. When it comes to the question of arrest, what is gathered in relation to the suspect becomes crucial in terms of providing the legal justification of reasonable suspicion required for an arrest. There is, however, a fundamental purpose to all of this police work. The following exchange occurred between counsel for the Tribunal and the Chief Superintendent Keane:

Q. Am I wrong in thinking this, now if I am, please correct me: as well as trying, obviously, to indicate a weight of evidence against a particular suspect you are also involved in trying to exclude people as innocent.

A. Absolutely, yes.

Q. If you don't try and exclude people as innocent, as the investigation goes on, what is the result in terms of the weight that you would have to carry ...

A. The whole purpose, I suppose, when a person is nominated as a suspect, the whole purpose then is to either get evidence to support that or otherwise. In other words, to prove or disprove the person's involvement in the crime.

²⁷ Transcript, Day 217, pages 55-59.

Confessions and Chief Witnesses

- 2.40. If a confession statement is made, it is logged in the same way as any other statement and is kept securely as an alphabetically indexed statement of that particular person in the index room.²⁸
- 2.41. There is no basis for keeping information away from the conference. The conference should be chaired by the Superintendent. Everyone at the conference should know the full story. If there are delicate issues that might not be suitable for discussion or airing between twenty or thirty people, the Superintendent, the Detective Inspector and the Detective Sergeant, if such members are assigned to the investigation, may have a more private discussion in relation to that aspect. However, the information will always be put in the jobs book. It is possible to indicate, to the conference, that information to a particular effect has come to hand. The information will be recorded in the conference book and jobs will be allocated on the basis of it. People who are at the wrong level need not necessarily know who the information came from but the statement will be filed in the conference room. There is no basis for either the statement of a chief witness, or a confession statement, disappearing, or not being to hand as part of the materials in the incident room.

Leadership

- 2.42. The chief investigator of a major crime is the district officer. The Superintendent in charge of the district should take charge of the investigation and should chair the conferences. Conferences should take place on a regular basis. They should be noted as to the important information coming to conference and any decisions, opinions, or theories on the matter. The Superintendent should assume a leadership role. He or she is entitled to draw in the expertise available from the division. Expertise available from Garda Headquarters should also be sought. However, the Garda Manual specifies that one person is in charge of the investigation, namely the district officer, and that responsibility does not shift.

Office Manager and Other Key Personnel

- 2.43. A central co-ordination role is taken up by the office manager. He or she will oversee the efficient running of the incident room and ensure that all information is recorded in an organised and methodical way. He or she will be a Sergeant or a Detective Sergeant. That person will be familiar with all aspects of the investigation and will ensure that every enquiry is routed through the incident room without delay so that it can be examined and dealt with expeditiously. He or she will ensure that all scenes are preserved and technically examined and will keep in regular contact with all the teams including the Garda Technical Bureau

²⁸ Transcript, Day 217, pages 33-39.

team and the Forensic Laboratory staff and keep the investigating officer fully briefed. He or she will organise case conferences as directed by the investigating officer and notify all concerned. The member will act as a note taker at conferences to ensure that all matters of significance are recorded and not overlooked and will keep a record of all persons attending conferences. He or she will identify inadequacies within the incident room team and inquiry team and bring same to the attention of the investigating officer. The office manager should be someone with a good working knowledge of the criminal law and should possess good report writing skills.²⁹

- 2.44. A member of An Garda Síochána is also put in charge of the jobs book in order to manage and index all job fliers issued and to record the fliers in numerical sequence in the jobs book and record the result of each job flier enquiry into the jobs book until the enquiry is finalised. This is undoubtedly a pivotal role at the centre of an investigation and is crucial to the success of a major investigation.
- 2.45. An exhibits officer will be appointed at the commencement of an investigation and the function of this Garda is to take possession of, carefully record, track and store, all exhibits acquired during the investigation. A record of the movement of all exhibits will be maintained by the exhibits officer until the termination of court proceedings.
- 2.46. A Garda will also be put in charge of statements. The function of this Garda will be to properly number, index and file all original statements. Typed copies will be made and statement readers will carefully read all statements so that as they come into the incident room, they can examine and cross-check all of the evidence and ensure that nothing is missed. Jobs for further investigation, or corroboration by the enquiry team, should be issued and these jobs will then be cross-referenced to the statements in question. A synopsis of the statements will be prepared for quick reference for the benefit of management and the investigators.
- 2.47. A Garda will also be put in charge of suspects. He or she will oversee all enquiries relating to persons who come under suspicion in the course of the enquiry. Assumptions and presumptions should be avoided when dealing with persons under suspicion and all information coming to hand must be analysed, tested and validated under the supervision of this Garda.
- 2.48. A member in charge of key witnesses will be appointed. He or she will oversee and maintain liaison with key witnesses and ensure that all relevant information has been obtained from that witness and that it has been properly recorded. Where it is necessary, support should be offered to the witness, perhaps by way

²⁹ Tribunal Documents, pages 6554-6555.

of assurance, protection or, ultimately, the witness protection scheme in the rare cases where this is deemed appropriate and necessary.³⁰

Searches

2.49. If searches are to take place then the personnel involved should be properly trained and equipped. There should be a Sergeant in charge of that team and he or she will oversee and make sure that all the searches are conducted properly and that whatever is found is properly documented and recorded and that the incident room is kept abreast of the places that are searched and whatever evidence has been found.³¹

Items in Particular Focus

2.50. In investigations particular matters may come into particular focus. In essence, the principle is to try and identify sources from which information will come. Apart from people, close-circuit TV cameras, persons taking video or photography for amateur or professional purposes who may be coincidentally present at a scene, and telephone traffic may be of particular importance. All relevant data should be gathered and then analysed. Even though, at the current time, applications for mobile telephone service are not favoured by the criminal community, nonetheless, valuable information may be gleaned from both fixed-line and mobile-telephone traffic. An identification should be made of the relevant telephone numbers and thought should be given as to how these might connect with each other as a source of potential information for the investigation. 'Pay as you go' mobile telephones should not be discounted as potential sources of information. The five numbers most frequently dialled on a particular telephone may indicate its owner. The mast from which the first and last mobile telephone was bounced at night, and in the morning, may indicate either a pattern of movement or where a person habitually stays. Till rolls, slips from ATM machines and other items of physical evidence, which are beyond the scope of the hearsay exclusionary rule, should all be gathered and analysed.³²

Discrepancies between Witness Statements

2.51. One of the issues which confronted the investigation team in the early stages of this investigation, were the number of discrepancies between times of sightings of various key people which were given by various witnesses. This was particularly evident in relation to statements concerning the movements of Mark and Róisín McConnell. Chief Superintendent Keane gave evidence that where such discrepancies existed among witness statements, it would be appropriate for the investigation team to go back out to re-interview the witnesses to try to clarify those aspects which were a cause of concern. He stated that in certain

³⁰ Tribunal Documents, pages 6549-6593 and Transcript, Day 217, pages 1-72.

³¹ Transcript, Day 217, page 63.

³² Transcript, Day 217, page 63.

circumstances it might be appropriate to send out a new team of detectives to take a further statement from a particular witness. Chief Superintendent Garvie agreed with this approach. He pointed out that in Canada there would be a trained analyst who would review all statements of a critical nature. The analyst would be responsible for drawing the nexus between times, dates, timelines, linked charts and other important material. He would subsequently present his findings to the team or they might be presented as evidence in court. Where discrepancies were found to exist between witness statements on important matters, such as the timing of sightings of relevant persons, he stated that it would be appropriate to re-interview the witnesses concerned so as to clarify the matter. He stated:

That would be appropriate and what you may well do is have a different set of investigators conduct the second interview and get a different perspective, or you may send the original investigator with a colleague to conduct the second interview and get a different perspective. One of the things you may then consider doing is have a number of members of the investigative team sit together and discuss the issues that arise from multiple statements and try to come to some conclusion about the content thereof.³³

Strong Feelings among Different Groups

2.52. Chief Superintendent Garvie was asked as to whether there were any pitfalls or dangers for the police when carrying out an investigation into a suspected crime, where there are strong feelings among different factions within the community. He stated that while that was a factor, it was only a pitfall for the police if the police as individuals, or as a unit, allowed themselves to become involved in the emotion of the circumstances. He stated that it was incumbent on the police only to deal with the facts as presented to them. They would have to take into account that in giving statements, certain persons may have a particular agenda. In such circumstances, it would be prudent of the officer who took the statement to discuss any concerns that he may have about it with other members of the investigation team. Crucial to the entire process of a major criminal investigation is maintaining objectivity. A professional police force searches for the truth. It does not act to confirm prejudice.

Informers

2.53. The issue of informers has already been dealt with in the first Tribunal report. What was said there applies equally in this case. In addition, however, there was a peculiar facet to this investigation: persons who were witnesses were classified

³³ Transcript, Day 236, page 47.

as informers. Their evidence was treated as in some way sacrosanct or beyond question. This is completely wrong. To act in this way is a distortion of the principles applicable. Chief Superintendent Garvie stated:

I think that it's important to understand, particularly with respect to the death of Richard Barron, that the actions of the Gardaí were implicitly impacted by information that they received from informants or individuals perceived to be informants. For example, William Doherty, Robert Noel McBride, Paul Gallagher, John Patton, and to a lesser degree Roderick Donnelly. The manner in which they presented information to the Garda had a significant impact on the investigation and how that information was received.

In particular, the inability of the investigation team to determine the veracity of the information that had been provided, in hindsight, probably caused irreparable damage. In general, an informant has to be handled with sensitivity, discretion and receive ethical direction. And it is imperative that relationships with the informants stand up to public scrutiny. During the course of the Barron investigation individuals were interviewed in members' houses, there were what I would consider inappropriate action by members of the Gardaí in terms of dealing with individuals that they were receiving information from.

Now, I understand that the argument may well be that they are witnesses not informants but, regardless, it has to stand up to public scrutiny, and where one individual is interviewing someone in their home, it is very difficult at the end of the day to then suggest that the manner in which the information was obtained could be considered appropriate.

I think that if the individual is providing information, providing a statement, a legitimate statement, the appropriate place to take that statement is in the Garda office, unless you possibly need to go to the individual's home to take a statement or whatever. But I have never, nor am I aware of a member of the Canadian police force, taking a statement from an individual in their own home and I think that's totally inappropriate.

I think that overall, and we have talked about this before, the informant has to be protected, there is a role for the handler to

play, the handler needs to be experienced in the handling of informants. When it's appropriate there should be an ultimate handler appointed, and again, all this has to stand up to public scrutiny. There is a role to be played in interviewing of informants to determine the appropriateness of the manner in which they were handled, whether payments were made, those type of things.

As I stated, in Canada there is an annual interview conducted to determine those things, to discuss if there is any problems with the relationship, to confirm the amount of the payments that were made and the arrangements that exist and it is my view, for example, that William Doherty should have been subject to such an interview.

I think that members generally need to be aware that there are a number of reasons for people providing information, they provide it for self-serving reasons, they provide it to eliminate competition, they deliberately provide misleading information so that there is a diversion from their own criminal activity or actions, but that they are doing it for a particular reason.

There are countless numbers of reasons why someone might provide information. That being said, I think it's important that members who handle informants are trained appropriately and if they have a minimum, or no experience, that they are provided direction or assistance by a member who is trained and can provide that assistance. That there should be debriefing reports submitted and that it is in the Canadian system, any time that an informant is met and information is received, a report is completed, it's disseminated appropriately, it's sent to Headquarters, the information is graded and when necessary not the name of the informant but the information is shared with relevant agencies or individuals.

There must be safeguards in using an informant. I think it's an imperative that personal history be completed with respect to them. That the member have a clear understanding and the organisation have a clear understanding of, if possible; why they are informing; what type of information they have provided in the past; have they ever spoken to other members; what is their criminal record like; do they have a criminal record; does that give

any view on why they might be providing information? Are they even valuable as informants, do they have the capacity or ability to ingratiate themselves into a criminal organisation? Because the individual that is buying joints, you can't retrospectively send that individual into a major crime organisation and all of a sudden expect them to buy pounds [of new drugs]; it just doesn't happen.

Those safeguards, you need to understand why, if possible, an individual is giving information and to know as much about the individual as possible, prior to either employing them, or providing them with direction, or accepting information from them.

Most importantly there should be a stringent policy with respect to informants. And we do have that. And that policy should be set down in writing and every member that is dealing with informants should be aware of the policy and the expectations of that policy.³⁴

Identification

2.54. The use of an identity parade should be considered in appropriate cases. Where photographs are potentially to be used, they should be assembled in the same way, and according to the same principles, as a formal identification line-up. If an informal identification procedure is to be adopted, then it should be followed for good reason, such as the non-availability of a suspect for a formal identification procedure, and in accordance with the principles which the courts have outlined. This includes having a sufficient number of people of similar age, type and general appearance in the vicinity, noting or recording as far as possible the activity in persons present and ensuring that no attempt is made to influence a witness by stating that a suspect will definitely be present, or by in any way identifying a person as being the suspect in question. Formal line-up identifications are the subject of Garda circulars which should be followed. In the course of this case, Chief Superintendent Garvie made the following comment:

My only comment with respect to that is, again, if you are looking at best evidence, if you are seeking evidence that will stand up in court, then you need a formal, either photo line-up or identification parade. If you are using it simply as an investigative aid then informal identification may well be fine. In these particular cases, they were seeking evidence and, in seeking evidence, you will need to present your evidence in such a way that it will be acceptable by rule of law and to a court of law. Therefore, I would not have done it that way and my view is that

³⁴ Transcript, Day 236, pages 49-52.

*a formal identification parade or photo line-up should have been utilised in order that the evidence will be admissible in court. Again, if you are simply using it as an investigative aid, it may well be appropriate.*³⁵

- 2.55. The careful reader will note that John Patton, who saw Frank McBrearty Junior in the car park of Frankie's at the relevant time, said that he was accompanied by another person or possibly two. The early use of a photographic line-up would have eliminated Mark McConnell.

Other Aspects of Witness Statements

- 2.56. It can happen that people that will go to the Gardaí to give information as to what a particular witness said that he saw. When the Garda takes a statement from the witness, it may transpire that what he actually saw was markedly different to that which had earlier been represented to the Gardaí. An example of this in the Barron case occurred in relation to the statement of Roderick Donnelly. It had been represented to Detective Garda Pat Flynn by Mr. Darcy Connolly and Mr. Paul Roulston that Roderick Donnelly had made a significant sighting of Frank McBrearty Junior and Mark McConnell together on the night of the 13th/14th of October 1996 at approximately 00.30 hours. When Roderick Donnelly made his statement to Detective Garda Flynn in Lifford Garda Station on the 20th of January 1997, he said something totally different. This episode is dealt with in detail later in this report.
- 2.57. In the course of his evidence, Chief Superintendent Garvie was asked by counsel for the Tribunal as to whether anything should be done by a Garda when he receives a statement from a witness, when that statement differs markedly from information which the Garda had previously obtained from other people as to what that witness had seen. Chief Superintendent Garvie outlined the approach which ought to be taken by the Garda in such circumstances as follows:

Obviously, common sense dictates that the investigator, or investigators, would have to determine the veracity of one or other of the statements to the best of their ability and to seek common factors or evidence which would allow them to make an informed decision about what they perceive to be the truth ... If the individual knows that [that there was a difference between what was represented that the witness had seen, and what the witness actually said he saw] yes, it should be pointed out. It may well be that they don't, it may have been someone else who received, and that is the role of the individual who acts as the

³⁵ Transcript, Day 236, page 67.

analyst or the nexus between investigators to review those statements and to come to those conclusions and deal with them appropriately ... [If the Garda is aware of the difference] at the very least he should inform the file co-ordinator and the principle investigator that the statements are significantly different and if appropriate then that should be followed up with correspondence that details for record purposes the fact that they're different. It may be appropriate at that time for him to itemise the differences so that the investigators can then go out and rationalise the difference between the two statements.³⁶

Other Tasks

- 2.58. A family liaison person should be appointed in major investigations to keep the family informed as to the elements of progress which they are entitled to know of. Victim support should be offered. Proofreaders should be assigned to checking typed statements and reports.
- 2.59. The purpose of these procedures is to ensure that a major investigation carries a reasonable chance of success. The items detailed herein have been the subject of an outline only. On the ground experience, coupled with a determination to find the truth and a determination to apply the presumption of innocence while investigating matters, and persons, that appear suspicious are the hallmarks of good investigators.
- 2.60. The keeping of elaborate books, while apparently a paperwork burden, is no more than the common-sense requirement that where matters go beyond the scope of fallible human memory, they should be recorded, cross-checked and shared in a form that will ensure their easy availability to team members.
- 2.61. Leadership is crucial in any investigation. If leadership shirks its responsibilities then corruption and incompetence, natural facets of human nature, will inevitably emerge to destroy the good work of others.

Conclusions

- 2.62. The procedures indicated, and the paperwork which they involve, allows the audit of an investigation if that becomes necessary. As will emerge in this report, conferences in the Barron inquiry were not properly noted, jobs books are chaotic and several important books have pages missing. Some conferences were not even the subject of a note as to who was present.
- 2.63. Chief Superintendent Garvie made the following comment on this issue:

³⁶ Transcript, Day 236, pages 68-69.

The reason I mentioned it in my initial statement of evidence and what brought it profoundly to my attention was my interview with Chief Superintendent Fitzpatrick, and Chief Superintendent Fitzpatrick informed me when I took a statement from him that he had destroyed all of his log books. He had done so at a time when the Carty investigation was in full swing and he could not but have known that the investigation was occurring and that the notebooks that he had may well have been relevant. On other occasions, whether they had them or not, Gardaí showed up at interview without them. There are numerous recorded incidents in statements that have been obtained, and in evidence before the Tribunal, that notes were destroyed when Gardaí retired, when they left a particular station. And it would be my view that if there isn't policy, there should be with respect to retention of notebooks, or that notebooks and investigations at the end of the investigation become part of the investigational file and are retained for the length of time that the file is retained and therefore cannot or should not be destroyed.³⁷

- 2.64. In his statement to the Tribunal, Chief Superintendent Garvie pointed out that the Garda Code at Chapter 4.10 specifies that entries will be made in the official notebook beginning at the front of the book. Entries should start with the day, date and time and contain sufficient detail to be useful as an aid to memory. Completed notebook refills should be preserved for five years thereafter or until the completion of a case. Members leaving the service are advised to keep them for a similar period before destroying them. The official notebook should be used to accurately and clearly record notes in chronological order on all evidence required for a prosecution while details are fresh in the memory. Reference to the notebook is permissible when giving evidence. Supervisors are obliged to check notebook entries periodically. The destruction of records in this case is a scandal.
- 2.65. Bearing these principles in mind the Tribunal will now proceed to examine the facts of this investigation in detail. It should be noted that Garda procedures are adequate for dealing with a major investigation. Members such as Chief Superintendent W J Keane exemplify how talent is available in An Garda Síochána. When it is promoted to the right level and properly guided, such talent can make a crucial difference in giving proper policing to a community. Unfortunately, the situation in Donegal shows the other aspect of how bad policing can become a justifiable cause of scandal.

³⁷ Transcript, Day 236, pages 69-70.

CHAPTER 3

RAPHOE – THE 13TH AND THE 14TH OF OCTOBER 1996

- 3.01. This chapter is concerned with the examination of the movements of very many persons around the town of Raphoe on the evening of the 13th and the early morning of the 14th of October 1996. The Tribunal has endeavoured to establish, insofar as it can, the movements of the various parties including the Late Mr. Barron and those who subsequently became suspects in this investigation namely, Mr. Frank McBrearty Junior, Mr. Mark McConnell and Mr. Michael Peoples. This chapter will also focus upon the early Garda response to Mr. Barron's death, in particular, the immediate Garda response to it. The Tribunal is satisfied that the investigation of Mr. Barron's death went through a number of phases. The first phase in time extends from the 14th of October 1996 until the 5th of February 1997 when the District Officer in charge of the investigation, Superintendent John Fitzgerald, moved to a new post at Manorhamilton and was replaced by Superintendent Kevin Lennon as District Officer and the officer having charge of the investigation. The second phase of the investigation can be regarded as that which extends from the date of Superintendent Lennon's appointment as District Officer in Letterkenny to his furnishing of a file to the Director of Public Prosecutions on the 2nd of March 1998. In endeavouring to assess the progress and management of this investigation, the Tribunal sought to isolate the state of knowledge of members of An Garda Síochána involved in the inquiry at the time at which various decisions were made. In this regard, it would be unfair to saddle the investigating team with knowledge of the facts which became available after particular decisions were taken. Therefore, the Tribunal has taken into account the dates upon which various statements were made by the many witnesses interviewed, and in many cases re-interviewed, in the course of the investigation and the many instances in which witnesses have changed their accounts of what they say they saw or heard concerning the death of Mr. Barron. In attempting to assess their significance, the Garda Síochána, however, were the professional investigators. It was their task to evaluate what they were told, competently, with a view to obtaining the truth, pursuing the guilty and protecting the innocent. If their standards of competence and excellence were not constantly observed and applied, the guilty could sleep easier in their beds and the innocent would be put at risk of wrongful pursuit and prosecution. That is what happened.

What Analysis Was Carried Out on Witness Statements and Where Did it Leave the Investigators?

- 3.02. The first phase of the investigation under the command of Superintendent Fitzgerald gathered hundreds of statements, mostly of a routine but not

ultimately decisive nature. As seen in Chapter 2, statements once gathered should be subjected to a searching and objective cross-checking so that their significance can be gauged in the context of established facts. **Two faults emerge in the work undertaken. The cross-checking was not as extensive as it should have been. Where cross-checking occurred, appropriate deductions which should or could have been made, were not objectively drawn. The reason for this was the second fault: The team directing the inquiry and others involved at a lower level were driven by the unwavering view that Frank McBrearty Junior and Mark McConnell and/or Michael Peoples were guilty of the unlawful killing of the Late Richard Barron. This fixed view crippled the investigation.** Objective analysis of statements obtained, which would have demonstrated that there was little or no opportunity for Frank McBrearty Junior to have absented himself from his place of work for the purpose of committing a crime, was absent or ignored. No account was taken of the absence of independent evidence to show that Frank McBrearty Junior or Mark McConnell were in contact or together at Frankie's nightclub or communicated in any way with each before or after the supposed killing. **No cross-checking was made of the lying statements of Robert Noel McBride with the statements of others known to be present in Raphoe or in the vicinity of Frankie's nightclub and car park at the time when Mr. McBride said he was there.**

- 3.03. Any witness who made a statement supportive of the proposition that neither of these men committed the offence was treated as a relative or friend of the suspects, and part of a lying conspiracy to hide the truth, or as a person whose memory was affected adversely by the over-consumption of alcohol on the evening. **Not only were they dismissed as witnesses, but subsequently, they became the unjustified subjects of criminal investigation and arrest.**
- 3.04. The case has been made that an 'open mind' was maintained throughout this inquiry by investigating members and that the theory that the Late Mr. Barron had been assaulted was also accompanied by investigations that he was involved in a fatal 'hit-and-run' accident. **The Tribunal rejects this submission. It accepts that there is evidence that certain inquiries were pursued in respect of the vehicles which attended the scene and other related matters. However, as more fully explained in subsequent chapters, the focus from an early stage was on the theory that death was a result of an assault.** This can be demonstrated by the treatment of Detective Sergeant Henry when he made a significant effort to focus on the road-traffic element of the matter. Although he was allowed to pursue any jobs he wished on that front the evidence suggests that this was mere tokenism on the part of the senior members

who were conducting and directing this inquiry. In particular, he focussed on Paul 'Gazza' Gallagher as a suspect driver who may have been involved in an accident with Mr. Barron that evening. Detective Sergeant Henry carried out a great deal of work on this matter. **His contribution was not valued; it was openly treated as a joke at conferences and he was disgracefully treated in a demeaning way by his superiors while he was trying to carry out and conclude a sensible inquiry.**

- 3.05. If the first phase of this investigation was marked by this lack of cross-checking, analysis, and lack of objectivity, the second phase which resulted in the production of the Lennon report which was submitted to the Director of Public Prosecutions in March 1998, did not achieve much more in this respect. From the 5th of February 1997, Superintendent Lennon was in charge of the district, from the 10th of that month he was in overall charge of the investigation as the new District Officer following his arrival. He later was given the task of finalising the inquiry and producing his report in September 1997 to the exclusion of other duties. Throughout that period and up to the completion of his report a number of internal reports were produced concentrating mainly upon a murder theory and a case against Frank McBrearty Junior and Mark McConnell. He reconstituted the investigation team, replacing personnel in the incident room to carry out the cross-checking and analysis required. Sergeant Moylan was replaced by Sergeant John White. There was no different result. The Lennon report is replete with the same failures as the initial phase of the investigation. The difference between the Lennon report and the first phase of the inquiry is that Superintendent Lennon raised serious questions in respect of the alleged statement of admission made by Frank McBrearty Junior on the 4th of December 1996. It was on this basis that he recommended that there be no prosecution against Frank McBrearty Junior. **The Lennon report continued to disregard statements made in support of Frank McBrearty Junior and Mark McConnell and dismissed them as statements made by relations or persons who were intoxicated or otherwise not to be believed. It is difficult to understand how two teams of investigators and analysts were guilty of the same inadequacies of performance. The approach of the Lennon team was as unjustified as that of the first team that led to the arrests of December 1996.** It is inexplicable and remains unexplained by Superintendent Lennon. Those who bore the brunt of the criticism of the Lennon report were the Gardaí from the National Bureau of Criminal Investigation in Dublin by reason of their close involvement in the taking of the alleged confession which led to Superintendent Lennon's recommendation that no prosecution be taken against Frank McBrearty Junior.
- 3.06. Shortly after the completion of this report, Superintendent Lennon prepared a debriefing document which he forwarded to the Chief Superintendent at

Letterkenny on the 6th of March 1998. The personnel involved in the first phase of the investigation were not interviewed or invited to make any contribution to this document. Ironically, the document is highly critical of the first phase of the investigation, and its lack of cross-checking and analysis. **The shortcomings perceived by Superintendent Lennon were never addressed or remedied by Chief Superintendent Fitzpatrick or anyone else within the division. They were not brought to the attention of anyone outside the division, at headquarters or in the Department of Justice, Equality & Law Reform who at this stage were showing particular interest in the inquiry. It remained a simple record of criticism.**

3.07. In order to criticise the absence of cross-checking and analysis, Superintendent Lennon and his team must have understood them to exist. If that is so, why did his report to the Director of Public Prosecutions not contain a different view to that of the first phase of the investigators in respect of his team's fresh analysis? On the contrary, the Lennon report continues to analyse the statements made by Michael Peoples, Frank McBrearty Junior, Mark McConnell and their family and friends in the same way as the first phase investigators. Indeed, there is at least one occasion when the Lennon report went out of its way to ignore a development in its own inquiry vis-à-vis the important sighting of Mark and Róisín McConnell said to have been made by Philomena Laird and Carmel Connolly, namely, the evidence of Mrs. Wilma Laird. **The question arises whether this was motivated by a decision to deflect criticism from the Donegal division and, in particular, the nature of the investigation carried out by the first phase investigators or, to deflect attention from controversies concerning William Doherty and Garda John O'Dowd (because of Superintendent Lennon's association with same) or, whether it was simply a species of continuing negligence by the personnel involved in the second phase of the investigation. The Tribunal suspects that it was a combination of each of these factors. This is unsatisfactory. Whatever the reasons, the Tribunal is satisfied that the cross-checking was deficient and when it was done much of what must have become obvious was suppressed or rejected in favour of the presumption of guilt that pervaded the investigation against Frank McBrearty Junior and Mark McConnell.**

3.08. The remainder of this chapter is divided into four parts. The analysis of movements of various persons in Raphoe over the 13th/14th of October 1996 begins with a review of the death and last known movements of the Late Richard Barron (Part I). This is followed by a review of the initial Garda response to his death (Part II), which the Tribunal has concluded was shockingly deficient. A criticism that is made of this response is that it was unreasonably and scandalously delayed. The Garda who took the initial call was lax in his approach.

Garda Pádraig Mulligan who was supposed to be on duty at Raphoe was absent drinking in a pub in Lifford at the time of the emergency. When an attempt was made to summons a patrol car from Lifford the call was deflected: the Gardaí were about to go on a meal-break and the Tribunal is satisfied that they chose to ignore the call until pressurised to respond by a further call from Letterkenny Communication Centre, prompted by a civilian at the scene. **Lifford Gardaí, Gardaí Birney and McDwyer, together with Garda Mulligan and Garda John O'Dowd (who was then off duty) finally arrived to the scene but Gardaí Birney, McDwyer and Mulligan decided not to follow basic police procedures. They decided not to preserve the scene or carry out necessary local inquiries. Whilst at the scene they were informed that the victim had died. They still did nothing. They left for Letterkenny Hospital to collect the clothing of the deceased as "directed" by Letterkenny. They failed to preserve the body and clothing of the deceased. They did nothing. The hospital porter was left to do it. Gardaí O'Dowd and Mulligan failed to explain Garda Mulligan's failure to respond to the initial call. They engaged in a scandalous process of deceit about this issue until 2003.** These issues were relatively simple and straightforward, especially compared to the labyrinthine facts of the subsequent investigation of the Late Mr. Barron's death. Though simple, the issues were serious. The Gardaí should have responded quickly to the call to the scene. The operational failures at the scene and at the hospital compromised the investigation from the beginning. Given the nature of forensic examinations and how easily minute and important trace elements can be lost, it will never be known how seriously damaged it was. Garda Mulligan should not have been in a pub while on duty.

- 3.09. It is difficult to understand how these simple issues were not examined and dealt with by the senior officers in the Donegal division, Superintendent Fitzgerald and Chief Superintendent Fitzpatrick, in an efficient and effective response by way of discipline. The facts were clear. It required local action. It never happened. It should not have required a Tribunal of Inquiry to remedy this matter. Local management was inefficient, negligent and indecisive. **The Tribunal is satisfied that the actions of the local officers were calculated to sweep these matters under the carpet, probably because they would reflect badly on their management of the Donegal division.** The Carty team was thwarted in its attempts to get to the truth concerning the 'pub' incident, by the actions of Gardaí Mulligan and O'Dowd. This part also includes an analysis of the movements of Garda John O'Dowd on the evening because enormous suspicion was generated concerning his potential involvement in a fatal 'hit-and-run' accident with the Late Mr. Barron by reason of what could be regarded as his attempts, at the time and later, to hide his movements that night.

- 3.10. The focus of Part III of the chapter is upon the movements of Frank McBrearty Junior, Mark McConnell and Michael Peoples because each became the focus of Garda suspicion of involvement as principals in the death of the Late Mr. Barron. The statements gathered concerning Frank McBrearty Junior indicate that he was at his place of work at the time of the Late Mr. Barron's death and that he had little or no opportunity to be involved in it. Many of the statements gathered in respect of Mark McConnell supported his contention that he was in the Town & Country pub at the time of the Late Mr. Barron's death. Evidence tending to suggest that Mark McConnell was innocent of any alleged assault was discounted, on the basis that witnesses giving evidence in support of Mr. McConnell's contention were related to him, his friends or drunk. The presumption seemed to develop that he was guilty of the offence for reasons which will be explored in a later chapter of the report. The movements of Mark and Róisín McConnell and where they spent the remaining early hours of the morning of the 14th of October from 02.00 hours to midday approximately, were the subject of further Garda inquiries and statements. This was a period well after the time at which the Late Mr. Barron was thought to have met his death. Though there were suspicions about conflicts which arose concerning this period between the statements of the McConnells and persons who support their version of events and others, there was no basis upon which to build a suspicion of Mark McConnell's involvement in the death of the Late Mr. Barron on the grounds of those apparent conflicts. Once again, proper procedures when such conflicts arise, such as the re-interviewing of witnesses, were not followed. **Those conflicting with the McConnells were preferred. Indeed the Tribunal is satisfied that in some instances the manner of the taking of the statements of some of these witnesses was improper. Some of them were lying. Once again, the investigators acted in accordance with their presumption of guilt.**
- 3.11. As far as Michael Peoples is concerned, the Tribunal is puzzled and surprised that he became such a focus of suspicion to justify his arrest as a principal for murder on the 4th of December 1996. Extraordinarily, the Gardaí who made statements concerning the making of the decision and the carrying out of the arrest also expressed surprise that he was arrested as a principal for murder and now maintain that it was only intended to arrest him as an accessory after the fact. The documents all show the arrest of Michael Peoples for murder rather than accessory. This occurred in the course of a series of arrests where that very distinction was discussed and understood by Gardaí who attended conferences in respect of the matter. It is yet another bizarre aspect of this sorry story. Michael Peoples was the victim of a crime – the extortion phone calls; he was the subject of a number of malicious allegations. Conclusions drawn against him in the course of the investigation by members of An Garda Síochána were overblown

reactions to statements that were inadequately cross-checked and investigated and entirely unwarranted. The scandalous nature of his treatment is also documented in this part.

- 3.12. Two other persons also became suspects in relation to the death of the Late Mr. Barron to a much lesser extent than Frank McBrearty Junior and Mark McConnell, namely Paul 'Gazza' Gallagher and Mr. John 'Manny' Hegarty. In addition, the movements of another couple, William Ayton and Amanda Sloyan who were driving in the Raphoe area on the same evening, came under suspicion during the course of the Carty inquiry. Their movements are examined in Part IV of this chapter. The extent of the narrow focus of this inquiry upon Frank McBrearty Junior and Mark McConnell may be gleaned from the manner in which Detective Sergeant Henry was treated by the investigating officers and others when he concentrated his professional efforts in the investigation of Paul Gallagher.

PART I

The Death of the Late Richard Barron

- 3.13. On the 14th of October 1996, Garda Patrick Boyce was on duty at the Communications Centre of Letterkenny Garda Station when he received a phone call at 01.05 hours from a Ms. Hilary McBride.³⁸ She stated that there had been a traffic accident at Townparks, Raphoe and that a man had been hit by a vehicle and was lying on the side of the road. She named this man as the Late Richard Barron. She told him that an ambulance had been called and that the Garda Síochána were required at the scene. Garda Boyce recorded this message in an incident book that he kept for that purpose in the communications room. He attempted then to call Garda Pádraig Mulligan, a member who was supposed to be on duty in Raphoe at this time, but got no response. He called Lifford Garda Station at 01.08 hours. He stated that these matters were recorded by him in the incident book as soon as he had passed the message to Lifford Garda Station.
- 3.14. The Late Mr. Barron was found lying on the road by Mr. Lee Parker, who lived approximately one mile up the Mongorry Road leading out of Raphoe. He had been in Raphoe between 00.15 and 00.30 hours on the morning of the 14th of October and had seen Mr. Barron coming out of the Suíle Tavern. He described him as "drunk and pulling up his trousers". He observed the Late Mr. Barron moving along the street and said that he staggered over to McGranaghan's Public House and passed Duffy's butchers. He was in a car with Mr. Edward Johnston and Mr. Sidney Vance. He then drove around the town and met a number of other people and at approximately 01.00 hours drove home. His path took him up Irish Row and out the Mongorry Road. He was on his own at this stage. When he went up the road he saw the Late Mr. Barron lying at the side of the road.

³⁸ Extract from Letterkenny Communications Room log, page 1130 and Transcript, Day 46, pages 126-127.

Initially, he drove around him, “ because I thought he was lying drunk, like I was going to tell his son to come get him but I went around him and I saw blood, then I turned back into Matt McBride’s to phone for an ambulance and the Guards.” The McBride family lived in a house adjacent to the location in which Mr. Parker had found the Late Mr. Barron.

- 3.15. Mr. Parker described the Late Mr. Barron as lying on his back with his head back towards Raphoe and his feet pointed away from Raphoe, approximately in the centre of the left-hand carriageway of the road. His legs were crossed. He recalled seeing a substantial flow of blood from the Late Mr. Barron’s head onto the roadway flowing towards the hedge.³⁹
- 3.16. Mr. Parker then went to the McBride house to raise the alarm and knocked on the door. He thought that the time was approximately 00.55 hours.
- 3.17. The Tribunal has had the benefit of hearing a number of witnesses who were concerned in seeking assistance from the ambulance services and the Garda Síochána for the Late Mr. Barron. From this evidence, the Tribunal is satisfied that Ms. Rita McBride answered the door to Mr. Parker, who informed her that he had found the Late Mr. Barron on the roadway and asked her to call an ambulance and the Gardaí. She informed her daughters Hilary and Alison McBride of the situation and requested them to telephone Stephen Barron’s home (he being the son of the Late Mr. Barron) and for an ambulance. Ms. Hilary McBride then telephoned Ms. Hazel Barnett who was then Mr. Stephen Barron’s girlfriend. It would appear that the ambulance service and the Garda Síochána were then contacted.
- 3.18. The Tribunal is satisfied from the evidence that the Ambulance Call Centre at Letterkenny received a call at 01.01 hours and that Mr. Kevin Monaghan and Mr. Leonard Diver were called to the scene by the Control Centre at approximately the same time, just after they had arrived at Letterkenny General Hospital with another patient. They arrived to the scene at approximately 01.20 to 01.25 hours.⁴⁰ They arrived at Letterkenny Hospital at approximately 01.53 hours. Their reaction was prompt, professional and exemplary. The Garda Síochána arrived at approximately 01.35 hours shortly after the departure of the ambulance.⁴¹
- 3.19. Other motorists whose evidence was received by the Tribunal also describe coming across the scene at the early stages of its discovery at approximately 01.00 hours. These include Mr. Sean Duffy,⁴² Mr. Edward Johnston,⁴³ Mr. Shane Durning⁴⁴ and Mr. Paul Holian.⁴⁵

³⁹ Transcript, Day 48, pages 85-105 – various references.

⁴⁰ Transcript, Day 47, pages 81-115. (See also Job 318, page 7637).

⁴¹ Tribunal Documents, pages 1133, 1145, 1153, 1187, 1190.

⁴² Tribunal Documents, pages 990-992.

⁴³ Tribunal Documents, pages 993-996.

⁴⁴ Tribunal Documents, pages 1347-1348.

⁴⁵ Transcript, Day 48, pages 122-134.

The Last-Known Movements of the Late Mr. Barron

- 3.20. Evidence was also received in relation to the movements of the Late Mr. Barron on the evening of the 13th of October 1996, prior to his being found by Mr. Parker at 00.55 hours on the 14th of October.
- 3.21. The Late Mr. Barron resided with his wife at Townparks, Raphoe. She described in evidence furnished to the Tribunal that on the morning of Sunday, the 13th of October 1996, she got up at 08.45 hours. Leaving her husband behind in bed she went to St. Eunan's Terrace to visit her father. She left her father's house at 11.00 hours to attend Mass in Raphoe. She returned home after Mass and stayed there for approximately half an hour. At this stage, her husband was getting up and she left home again and returned to her father's house at 12.45 hours where she remained until after 17.00 hours. She intended to go to Altnagalvin Hospital in Derry to visit their daughter Geraldine who had had a baby on the previous day. She asked her husband if he was coming with her to the hospital. He declined, saying that he would visit their daughter on either the Monday or the Tuesday as there would be a lot of people in the hospital on the Sunday evening. She then went to hospital with her grandson Daniel and intended to stay overnight at Geraldine's house in Strabane. She last saw her husband at 17.00 hours on the afternoon of the 13th of October in the bathroom of their home.⁴⁶ Mr. Stephen Barron's girlfriend furnished evidence to the Tribunal that she and Stephen Barron visited his sister Geraldine at Altnagalvin Hospital. Before going, Stephen Barron went next door to talk to his father at approximately 18.00 hours. They returned home at approximately 22.00 hours.⁴⁷
- 3.22. The Late Mr. Barron was seen later that evening by Ms. Siobhán Kelly and Ms. Brigid Kelly in McCarron's bar between 22.00 and 22.45 hours, in the course of which he appears to have consumed two glasses of whiskey.⁴⁸ He then went to the Town & Country bar.
- 3.23. He entered the Town & Country bar that night shortly before 23.00 hours and remained there until approximately 23.30 hours. During this time an incident occurred involving him and Mr. Mark McConnell. Various accounts have been given by those present during the course of this incident to the Tribunal and the Tribunal is satisfied that the incident was of a very minor nature and was not as serious as that described in respect of another incident that night between Mr. Manny Hegarty and the Late Mr. Barron. There was a large number of people in the Town & Country pub at the time of the incident and the Tribunal is also satisfied that Mr. Barron was restrained by one or more persons during the course of the incident and was noted as the instigator of the minor exchange.

⁴⁶ Transcript, Day 49, pages 162-164.

⁴⁷ Transcript, Day 49, page 65 and Day 214, Q.77-79.

⁴⁸ Tribunal Documents, pages 1430-1437, Statement of Brigid Kelly, the 18th of October 1996 to Detective Garda McGowan and Statement of Siobhán Kelly to Detective John Harkin, the 17th of October 1996.

- 3.24. Mr. Mark Bogle also attended the Town & Country pub that evening. He restrained the Late Mr. Barron in the course of this incident, following which Mr. Mark McConnell went to or was directed to a nearby pool-room where he had already been engaged in playing games of pool with other men present. Some short time after this incident the Late Mr. Barron left the Town & Country and went to the Suíle Tavern.
- 3.25. Mr. Sydney Vance described how he had gone out on the evening of Sunday, the 13th of October 1996. He first went to the Suíle Tavern Public House and then went to the Town & Country Public House. He returned to the Suíle Tavern at approximately 22.45 hours and later, while there, he recalled, “a wee fallout” between a Mr. Manny Hegarty and the deceased. He described it this way: “There was a few slaps just went on, nothing major like, a wee scuffle [which lasted] a couple of seconds.” The scuffle was broken up by the barman and the protagonists were separated and went to opposite corners of the bar. This incident appears to have occurred between 23.45 hours and shortly after midnight. At approximately midnight, Mr. Vance left the Suíle Tavern in order to go to Frankie’s nightclub. He remained there for a short time until approximately 00.20 to 00.30 hours when, for some reason, he left to go to the toilet. In order to do this, he turned up Irish Row which brought him in the direction of the Mongorry Road and stopped to relieve himself on a bend some distance up Irish Row. At this point, he saw the Late Mr. Barron making his way home: “He was staggering a wee bit, but still travelling along like, still going on ahead” with his back to Mr. Vance. He then returned to the nightclub. He thought it was approximately 01.00 hours when he saw the Late Mr. Barron.⁴⁹ It would appear that he was the last identified person to see the Late Mr. Barron alive before he met his death on the Mongorry Road.
- 3.26. When Mr. Mark Bogle subsequently left the Town & Country, at about 00.00, hours he drove with his wife over to Reynolds shop where he parked the car with the intention of going into Frankie’s nightclub. On the journey over they saw the Late Mr. Barron standing with his back against McGranaghan’s shop on the corner of Irish Row lighting a cigarette and facing towards the Diamond.⁵⁰ At or about the same time between midnight and 00.15 hours Mr. Frank McBrearty Senior saw the Late Mr. Barron standing at the window of the Suíle Tavern and they spoke briefly to one another.⁵¹
- 3.27. Some time between midnight and 00.10 hours Mr. Frank McBrearty Senior was walking with his son, Mr. Andy McBrearty and his girlfriend Ms. Patricia McGrath in the Diamond, where they had parked their car, when he saw the Late Mr.

⁴⁹ Transcript, Day 49, pages 92-109.

⁵⁰ Transcript, Day 49, pages 110-123.

⁵¹ Tribunal Documents, pages 3258-3260 – statements made to Sergeant Joseph Hannigan on the 14th of October 1996 and to Detective Garda Michael Carroll on the 18th of October 1996.

Barron at the window of the Suile Tavern and described him as standing up straight and not drunk. He asked him, "How's it going Richie?" to which he replied "I'm just middling". He did not see any marks on him.⁵² Mr. Andy McBrearty and Ms. Patricia McGrath both made statements stating that they had arrived in Raphoe at approximately 22.30 hours, parked the car and gone to Friel's Hotel. They then went to Frankie's nightclub between 23.15 and 23.30 hours. Andy McBrearty acknowledged that he had a lot of drink taken and was walked down to the car by his father. Ms. McGrath confirmed that Mr. McBrearty Senior left with them at approximately midnight and that they arrived at their car at 00.05 hours approximately. She recalled that on the way Mr. McBrearty Senior had spoken a few words to some man whom she did not recognise.⁵³

3.28. That evening Eugene Gamble and Declan McCullough were working in the Suile Tavern. At midnight, or shortly thereafter, both recall the Late Mr. Barron came into the premises. He was drunk. He had an argument with Mr. Manny Hegarty concerning some issue related to horses. A row developed between them. It was described by Mr. Gamble as follows: "It was just a slap or a kind of shove or whatever, it was all over then. Richie got a blow to the chin or just a slap on the face or something, it didn't cut him or mark him or nothing like." Mr. Gamble says he was able to separate them and they both went back to their drinking. At approximately 00.20 to 00.25 hours, Mr. Barron made to leave the public house and Mr. Gamble offered to give him a lift and/or Mr. McCullough offered to get him a taxi but this did not happen. Mr. Barron left the public house at 00.30 hours approximately.⁵⁴

3.29. A Mr. Derek Ayton, who had been drinking since about midday on the 13th and had also seen the Late Mr. Barron at the Town & Country bar earlier in the evening some time after 23.00 hours, left the Town & Country some time after midnight. According to his girlfriend, Ms. Brigid Kelly, she and her sister Siobhán met Mr. Ayton at 00.15 hours and they all headed back towards D.J.'s café opposite Frankie's nightclub. On the way they met the Late Mr. Barron standing in the doorway of the Suile Tavern. Ms. Brigid Kelly described the encounter as follows:

⁵² Statements of Frank McBrearty Senior made on the 14th of October 1996 and the 18th of October 1996 to Sergeant J. Hannigan and Detective Garda Michael Carroll respectively, Tribunal Documents, pages 3258-3260.

⁵³ Statement of Patricia McGrath made on the 21st of October 1996 to Detective Sergeant Henry, Tribunal Documents, pages 1727-8 and Statement of Andy McBrearty to Detective Garda Michael Carroll on the 21st of October 1996, Tribunal Documents, pages 1756-7 – these statements are also important in that they should have been analysed when the Gardai received the statement of Robert Noel McBride on the 29th of November 1996.

⁵⁴ Transcript, Day 58, pages 157-169, Transcript, Day 203, pages 108-142. Tribunal Documents, page 1608 – Further statements in relation to the movement of Mark McConnell and Michael Peoples were made by Eugene Gamble which are dealt with later in the report.

One of the doors was closed and the other door was open and Richie was leaning against the closed door. At this stage Richie's clothes were in disarray. His shirt was open and his trousers were hanging down, the waistband of his trousers was turned inside out. Declan McCullough from Ballindrait was standing beside him ... I spoke to Declan but Richie did not recognise me.

She then went on to D.J.'s café to place an order for a take-away.⁵⁵

- 3.30. Derek Ayton informed the Tribunal then when they encountered Mr. Barron he had a short conversation with him as follows:

*I said, "How is she going Richie?" He just said, "I'm beat I'm heading home", and that was it. I went to the chip shop and I never seen him after.*⁵⁶

- 3.31. Ms. Roberta Browne was also socialising in Raphoe on the Sunday evening and at 00.28 hours she left McCarron's bar where she had been talking to a Mrs. Crawford. She left in order to meet her father who had gone on ahead of her to Frankie's nightclub. She was precise about the time because she was keeping a close eye on the clock, which was positioned just above the bar, because she did not wish to be unduly delayed in meeting her father. She said it was "two minutes to the half" when she left. She met the Late Mr. Barron just past McGranaghan's foodstore as he approached her, coming from the direction of the Suile Tavern in the vicinity of Duffy's butcher shop. She noted that, "[Mr. Barron] was pretty drunk ... he was staggering ... no worse than he was any other night". They shared a small joke about whether she would go dancing with him and she walked on. She turned around moments after and he had gone up Irish Row. They had been chatting for a few seconds. She also noted two other men coming behind her; she presumed that they went into the Diamond bar or went up Irish Row. They were young men approximately 20 to 25 years.⁵⁷ She thought the two men she had seen were strangers in the town. She went on to Frankie's nightclub. In a further note of interview with Roberta Browne, made on the 17th of October 1996 at 12.40 hours, Ms. Browne saw nobody else on the street or at the door apart from Frank McBrearty Senior, Sean Crossan and Willie Logan.⁵⁸

- 3.32. Mr. David Parke was a young man who was driving around the Diamond in Raphoe from about midnight on the 13th until approximately 01.00 hours on the 14th. Initially, he toured around the Diamond for a while and then parked at the petrol pumps. He saw the Late Mr. Barron walking from McGranaghan's shop

⁵⁵ Statement made by Brigid Kelly on the 18th October 1996 to Garda Denis McGowan.

⁵⁶ Transcript, Day 57, Q.1025-1028.

⁵⁷ Transcript, Day 49, pages 144-161.

⁵⁸ Tribunal Documents, page 1680 (Subsequently on the 9th of June 1997 she was interviewed by a private investigator and told him specifically that she did not see Mark McConnell or Frank McBrearty Junior that night – Tribunal Documents, pages 1681-1682).

around the corner up Irish Row. He described him as: "right drunk ... he was walking kind of holding onto the wall around the corner ... coming from the direction of McBrearty's on the same side as the Diamond as The Suile Tavern." He described him as staggering, holding onto or walking close against the wall as he went round the corner up Irish Row. He timed his sighting at between 00.45 and 01.00 hours on 14th of October. Mr. Parke's car was parked with two other cars and he was in the company of their occupants. He separated from this group at 01.00 hours, and about fifteen to twenty minutes later he recalled the ambulance arriving in Raphoe. This coincides with the testimony of the ambulance crew as to the time of their arrival in the town and renders it likely that Mr. Parke's estimates of time are approximately correct. The Tribunal notes that Mr. Parke had not been drinking.⁵⁹

3.33. Mary Jo McGranaghan was in a car with her then boyfriend, Mr. Shane Scanlon, parked in tight at the right-hand side of Irish Row looking down towards Raphoe. She arrived at approximately 00.30 hours and remained in the car until 01.03 hours. The time, she noted, was displayed on the clock in the car. She was conscious of the time because she was aware that she had to get up early the next morning for work. She saw the Late Mr. Barron turn up Irish Row. He passed the car on the right-hand side of the road as she looked down towards the Diamond. She also stated that he was staggering and using the wall to help him on his way up the Row. She thought he was going to bang into the car because he was swaying. The time was between 00.30 and 00.40 hours. She also described a number of cars that passed up Irish Row after the Late Mr. Barron had passed their car. She thought three cars drove up, including one driven by Mr. Lee Parker. She could not recall whether his was the first or second car to pass up. The cars passed up some ten minutes after Mr. Barron had passed their car. She thought it strange that he had been able to make his way so far up the road before he was killed, because she thought that these cars would have overtaken him on the way. She did not recall any car coming down the roadway from the direction of the Mongorry Road into the Diamond. Two men came out of the Diamond bar and got into the car which was parked behind the car in which she was seated and travelled off in the direction of the Mongorry Road after the other cars had passed by.⁶⁰

3.34. Lee Gillen and his cousin Gavin Gillen were together that evening in Raphoe. At some time between 00.40 and 01.00 hours they walked up Irish Row because Lee Gillen wished to relieve himself and wished to see if a particular car was parked in the vicinity of the Close. However, neither of them reported to the Gardaí that they had seen the Late Mr. Barron or Mr. Vance. Lee Gillen stated that

⁵⁹ Transcript, Day 49, pages 133-143 (see also statement of Shane Scanlon on the 18th of October 1996 Tribunal Documents, page 1683 and Memo of Interview with Mary Jo McGranaghan and Shane Scanlon on the 21st of October 1996, Tribunal Documents, page 2445).

⁶⁰ Transcript, Day 48, pages 135- 149.

he saw a courting couple standing on the right-hand side of the street on the way up, just before the cinema, and also recalled seeing the lights of a car coming down the road from the Mongorry direction. However, he could not say if this car pulled up and parked, or whether it came on down the street into Raphoe. It did not turn up the road towards the Close. He did, however, recall the lights of the car shining on the couple. Gavin Gillen, who was then fifteen to sixteen years of age, did not admit that he had been out of his house or up Irish Row at that time, initially, but when he was re-interviewed on a number of occasions he gave an account which broadly coincided with that of Lee Gillen. His initial failure to tell the full truth in respect of this matter was the subject of considerable work by the investigative team, in order to obtain the full story from him.⁶¹

- 3.35. From all the above evidence, the Tribunal is satisfied that the Late Mr. Barron was last seen alive as he made his way, in an inebriated state, from the Diamond area of Raphoe to the spot outside the McBride home where he was killed. He left the Súile Tavern and walked along the footpath towards the junction of Irish Row and the Diamond. On his way he encountered Ms. Roberta Browne and exchanged some words with her. He was also seen by David Parke sitting with his friends at the junction of Irish Row and the Diamond. He may have stopped to lean against McGranaghan's shopfront, at the corner facing into the Diamond, to light a cigarette before turning up Irish Row. He was then seen by Ms. Mary Jo McGranaghan who was in a car with her boyfriend, Mr. Shane Scanlon, some way up Irish Row. He was last seen by Mr. Sidney Vance further up Irish Row at a point where the street bends towards the Mongorry Road. He was walking on the McBride side of the roadway approximately 100 yards beyond Mr. Vance. He was walking in the direction of the McBride house with his back to Mr. Vance, who having seen Mr. Barron then turned and came down to the Diamond and went to Frankie's nightclub. It would have taken about five minutes for a person in full control of their faculties to cover the distance travelled by Mr. Barron from the junction of Irish Row to the location in which he was found. It is more likely, given his inebriated condition, that he took ten or more minutes to travel that distance on that night. The times given by the witnesses to the Garda Síochána, at the time of the initial investigation, and in evidence to the Tribunal are accepted by the Tribunal. The Tribunal is satisfied that Mr. Barron turned up Irish Row at some time between 00.30 and 00.40 hours and had completed his journey, with fatal consequences, at some time between 00.40 and 00.55 hours. In considering this matter, the Tribunal has made all due allowance for the disparity in times furnished by various witnesses. However, certain times are fixed. The call to the Ambulance

⁶¹ Tribunal Documents, pages 1805, 2404-2427 (Statements of Lee Gillen to Garda Denis McGowan and Garda John Harkin on the 21st and 23rd of October 1996 respectively). Tribunal Documents, pages 1808-1816 and 2419-2423 (Statements of Gavin Gillen made to Garda John Harkin and/or Garda McGowan on the 17th and 20th of October 1996 and 19th of November 1996).

Centre is fixed at 01.01 hours. The call to Letterkenny Garda Station is fixed at 01.05 hours. Ms. Barnett and the ambulance service received calls before the call to the Garda Síochána. It is likely, therefore, that Mr. Parker came across the body of the Late Mr. Barron shortly before this, at approximately 00.55 hours. There was a very short interval between the last sighting of the Late Mr. Barron and his death. From the times given in evidence, the incident which gave rise to his death (whatever it was) had to have occurred between 00.40 and 00.55 hours approximately.

- 3.36. It is noteworthy that none of the persons, referred to above, who were interviewed by the Garda Síochána in relation to the last movements of the Late Mr. Barron, saw either Mr. Mark McConnell or Mrs. Róisín McConnell at or about 00.30 hours in or around the Diamond area. If they had made their way from the Town & Country bar to D.J.'s Café (the chip shop) across from Frankie's nightclub arriving there at 00.30 hours, it is likely they would have been seen by and/or encountered the same persons who saw Mr. Barron. This did not happen. The two exceptions were Mr. Martin Quinn and Mr Paul Barron, to whom reference will be made later in this Chapter.

PART II

The Initial Garda Response

- 3.37. The initial Garda response to the death of the Late Mr. Barron was crucial to the proper investigation of his death. Simple, straightforward and basic police procedures require that a call from a member of the public be properly and efficiently answered. Matters of life and death may be involved. **The initial response of the Garda Síochána in this case was undermined by inefficient communications between Letterkenny Communications Centre and Raphoe and Lifford Garda Stations; an unwillingness on the part of the Lifford Garda personnel to respond to the call received due to indolence; a hopelessly negligent treatment of the crime scene by the Gardaí who attended and the absence from Raphoe of Garda Pádraig Mulligan, who was drinking in a pub in Lifford with his off-duty colleague Garda John O'Dowd, when he should have been available at his work in Raphoe.** The following is a chronicle of these events which are then contrasted with the procedures and standards expected of members of An Garda Síochána who attend the scene of fatal road accidents followed by the Tribunal's conclusions regarding Garda behaviour that night.

Communications

- 3.38. As already noted, Garda Patrick Boyce received a telephone call at 01.05 hours at Letterkenny Garda Station from Ms. Hilary McBride on the 14th of October 1996 reporting the death of the Late Richard Barron.

- 3.39. As Garda Boyce told the Tribunal, Ms. Hilary McBride informed him that there had been a traffic accident and that a man had been hit by a vehicle and was lying on the side of the road at Townparks, Raphoe. She told him that an ambulance had been called and the Gardaí were required at the scene. The message was clear and was recorded by him in the incident book retained for that purpose.⁶²
- 3.40. Garda Boyce then attempted to contact Garda Pádraig Mulligan, whom he believed to be the member on duty at Raphoe Garda Station at that time. He had made contact earlier on the evening of the 13th of October 1996 with Garda Mulligan. He was aware that Garda Mulligan did not have a patrol car, as the Gardaí at Lifford Station were using the Raphoe patrol car that evening. Garda Mulligan was on duty on his own in Raphoe.⁶³
- 3.41. Having failed to contact Garda Mulligan, Garda Boyce then telephoned Lifford Garda Station at approximately 01.08 hours and spoke to Garda P.J. McDermott. He informed Garda McDermott that he had received a phone call from Ms. Hilary McBride, Townparks, Raphoe to the effect that a man had been knocked down and was lying on the side of the road and that the Gardaí were required there immediately and that an ambulance had been called. Garda McDermott responded that he was not aware of any Townparks in Raphoe and told Garda Boyce that:

*It must be Townparks, Convoy. I said the message I got was from a Ms. Hilary McBride in Townparks, Raphoe, that the accident was in Townparks, Raphoe. He again said that as far as he was concerned there was no Townparks, Raphoe, that it must be Townparks, Convoy and to pass it on to the Guards in Ballybofey.*⁶⁴

- 3.42. Following a reprise of this conversation with Garda P.J. McDermott, Garda Boyce then decided to contact Ballybofey Garda Station and request that they check out Townparks, Convoy. Garda McDermott declined to ask the two Gardaí who were on duty in the patrol car at Lifford to go over to Raphoe to check out whether there had been an accident at Raphoe.⁶⁵ Garda Boyce had not taken a telephone number from Ms. McBride when she phoned and he could not contact her to confirm the location of the accident (if there were indeed any doubt about it). **It would have taken less than ten minutes for the Lifford car to come over to Raphoe from Lifford, to check out any confusion which may have arisen but Lifford declined to come and Garda Boyce felt that he had been dismissed by his colleague in Lifford, Garda McDermott.**⁶⁶ The Tribunal was totally dismayed by this evidence.

⁶² Transcript, Day 46, Q.337-344 – The extract from the incident book contained at Tribunal Documents, page 1129.

⁶³ Transcript, Day 46, Q.349-351.

⁶⁴ Transcript, Day 46, Q.412-423.

⁶⁵ Transcript, Day 46, Q.426-427.

⁶⁶ Transcript, Day 46, Q.438-450.

- 3.43. Garda Boyce stated that he contacted colleagues in Ballybofey and requested that they call out to Townparks, Convoy to check if there had been an accident there. He told the Tribunal that the Ballybofey Gardaí sent a patrol car out to check the possible location of an accident at Townparks, Convoy. He told the Tribunal that this car was recalled when the location of the accident was clarified by Mrs. McBride. **The Tribunal has investigated events at Ballybofey Station on that evening. There is no record in the Occurrence Book of any call from the Communications Centre at Letterkenny in respect of any suspected accident at Townparks, Convoy. None of the Gardaí on duty in Ballbofey that evening (including the crew of the patrol car) have any recollection of receiving any such call.**⁶⁷
- 3.44. Ms. Hilary McBride phoned Letterkenny Station again, approximately ten minutes after the first call. At this stage, Garda Boyce asked her to confirm that the accident was at Townparks, Raphoe which she did. She reported that the ambulance was at the scene and that there was no sign of the Garda Síochána. Garda Boyce then immediately telephoned Lifford Garda Station and spoke to Garda James Birney. He told him that there was a serious traffic accident at Townparks, Raphoe and that a man was badly injured on the side of the road and that the Gardaí were to attend immediately. This call was not logged in the incident book. Garda Boyce confirmed that at all times the message from Ms. Hilary McBride was clear; the accident was in Townparks, Raphoe. He was clear in his mind that it was at Townparks, Raphoe also. He was not confused about this.⁶⁸
- 3.45. Initially, Garda Boyce said that he had not asked Ms. McBride for a precise location of the accident at Townparks, Raphoe but when pressed on this matter he said that he may have asked but he did not remember. Certainly, he did not log the second call or quote any more precise details of the location of the accident. He felt it was sufficient to log the first call. He also stated that his priority was to get back onto Lifford straight away and get them out there immediately. **The Tribunal considers that some effort should have been made to obtain precise details of the location of the accident, given the difficulties which Garda Boyce says he was experiencing with his colleagues at Lifford in going to the scene and in order to enable him to direct them to the scene. In addition, the second phone call should have been logged with all the relevant details. There was ample time to do this after Garda Boyce had re-contacted Lifford and directed them to attend at the accident at Townparks, Raphoe.**
- 3.46. Garda P.J. McDermott, in evidence to the Tribunal, stated that the normal period for a meal-break at Lifford Station was between 01.00 and 01.45 hours. He was acting as the station orderly, shortly after 01.00 hours, when he received a call

⁶⁷ Tribunal Documents Vol. 29 pages 9929-9933

⁶⁸ Transcript, Day 46, Q.465-472.

from the Communications Centre at Letterkenny Garda Station requesting that Lifford Station send their car to the scene of a traffic accident:

The exact location of this accident was unclear or uncertain. ... The member in Communications wasn't sure whether it was Townparks, Raphoe or Townparks, Convoy.⁶⁹

- 3.47. He stated that the fact that it was unclear where the accident had occurred in the first place and that he knew of a Mrs. McBride of Townparks, Convoy tipped the scales in favour of the location being Convoy rather than Raphoe.⁷⁰ Garda McDermott denied treating Garda Boyce in a dismissive way. When asked whether, when a doubt existed as to whether the location of the accident was in Raphoe, a car should have been sent just to be sure that an accident had not taken place, he accepted, in hindsight, that that probably would have been the best option, "but at the time we didn't know what the seriousness of the accident was."⁷¹ He stated that the matter was resolved in that, "we sort of agreed together that it [the accident] must have been [in Convoy]." He said it was a "misfortunate misunderstanding". He said that when they had finished speaking to each other they were fully satisfied that it must have been Convoy.⁷²
- 3.48. Garda Boyce rejected the suggestion that he either told Garda McDermott initially it was Townparks, Convoy as per Garda McDermott's earlier statement⁷³ or that he was confused and did not know the exact location, and informed Garda McDermott that the traffic accident had occurred in either Townparks, Raphoe or Townparks, Convoy, as stated by Garda McDermott in an interview with the Tribunal investigators and in evidence.⁷⁴
- 3.49. The issue of the meal-break, of which the Garda car crew and Garda McDermott were availing at the time of the call to Lifford Garda Station by Garda Boyce, was addressed by Garda McDermott. He rejected the suggestion that this call from Letterkenny was treated as a nuisance call which would have interrupted their meal-break and that he therefore deflected the call. He said that he had on many occasions foregone meal-breaks over his thirty years of service, as he thought that one should always go the extra mile and that he had done that.⁷⁵
- 3.50. The patrol car was that night manned by Garda James McDwyer, the observer, and Garda John Birney, the driver.

⁶⁹ Transcript, Day 47, Q.517-521.

⁷⁰ Transcript, Day 47, Q.560.

⁷¹ Transcript, Day 47, Q.562-564.

⁷² Transcript, Day 47, Q.568-575.

⁷³ Tribunal Documents, page 1131.

⁷⁴ Tribunal Documents, page 3602. Transcript, Day 46, Q.488-494.

⁷⁵ Transcript, Day 47, Q.725-726.

- 3.51. Garda Birney said, in evidence to the Tribunal, that he was in the station with his colleague Garda McDwyer at the time the call was received from Letterkenny by Garda McDermott. As they were going upstairs to their meal-break, Garda McDermott put up his hand which he took to mean that he wanted them to hold on and not go up to the kitchen. He was on the phone at the time. When he put down the phone he informed them that the Communications Centre in Letterkenny had been on to him about a road-traffic accident in Townparks, Convoy and that he had told them that the Lifford car did not cover Convoy because it had Lifford, Carrigans and Raphoe to cover and that the Ballybofey car covered Convoy. Garda McDermott reported to them that Letterkenny were sending the Ballybofey car to the scene of the traffic accident in Convoy. He stated that he overheard the end of the conversation, and the gist of it was that Garda McDermott was talking about a McBride of Townparks, Convoy but he did not know at that stage what the nature of the conversation was. He did not think it strange that Lifford received a call about a Convoy incident. It happened quite a lot. The Communications Centre would have to be told that it did not cover the area covered by Ballybofey. However, if Ballybofey were busy they would go out. Townparks, Raphoe wasn't mentioned to them. He did not know anything about the confusion about the location of the accident as to whether it was in Townparks, Raphoe or Townparks, Convoy. He maintained that though he had never spoken to Garda Boyce about the matter, he had spoken to Garda McDermott after the event and that he was adamant that it was Townparks, Convoy that Alpha (the Communications Centre) had given him.⁷⁶
- 3.52. Garda McDwyer confirmed much of the evidence given by Garda Birney in relation to the receipt of the phone call by Garda McDermott at Lifford Garda Station from Garda Boyce. He said that when they had returned off patrol at about 01.00 hours on the 14th of October 1996 they went to the kitchen to avail of their meal-break. Shortly afterwards, he said that Garda McDermott came up to the kitchen and told them that a road-traffic accident had occurred at Townparks, Convoy. Garda McDwyer stated that he told Garda McDermott that it had nothing got to do with them in that it was not their area. He replied that the Ballybofey car would attend. He then left to go on his meal-break. There was no discussion downstairs about this matter.⁷⁷ Garda McDwyer also stated that Garda McDermott told them that someone had been injured in the accident. He thought it odd that Lifford should be contacted at all about an accident in Townparks, Convoy.⁷⁸
- 3.53. **The Tribunal does not accept the evidence offered to it by Gardaí Boyce, McDermott, Birney or McDwyer to the effect that there was any confusion about the location of the accident. It was reported by Mrs. McBride as**

⁷⁶ Transcript, Day 199, Q.276-315.

⁷⁷ Transcript, Day 202, Q.715-718.

⁷⁸ Transcript, Day 202, Q.719-727.

being Townparks, Raphoe. The Tribunal is satisfied that she was clear and unambiguous about the location of the accident. The story presented to the Tribunal by Garda McDermott, and supported by the patrol crew Gardaí Birney and McDwyer and to some extent by Garda Boyce, to the effect that because Garda McDermott knew a Mrs. McBride from Townparks, Convoy but did not know of a Mrs. McBride from Townparks, Raphoe they decided that the accident must be at Townparks, Convoy was contrived for the purpose of explaining the failure to respond to Mrs. McBride's call. If Mrs. McBride had not phoned a second time to Letterkenny Communications Centre, the Tribunal has no doubt the Gardaí would not have answered this call. Further, the Tribunal is satisfied that no effort was made to contact Ballybofey Garda Station in order to request that the Ballybofey car attend at Townparks, Convoy. There is no record of any such call either in the Communications Centre at Letterkenny or in the Occurrence Book at Ballybofey Garda Station. The Gardaí in Lifford simply decided not to answer this call. They were aware that they were due to travel to Raphoe on public-order duty later in the morning and they deliberately deflected the call to continue with their meal-break. This was a scandalous neglect of duty.

Patrol Car from Lifford Garda Station

- 3.54. When Garda McDermott went on his meal-break, the phone calls were then transferred to the kitchen area of Lifford Garda Station in the event of any further calls being made to the station during the meal-break period. Shortly after this, Garda McDwyer states that he returned to the day room and switched the phone back to the day room. Within a minute or two, Garda Boyce phoned again and informed him that the accident had occurred at Townparks, Raphoe and that a man had been seriously injured. Garda McDwyer informed Garda Boyce that Garda McDermott had just gone on his meal-break and that once they had informed Garda McDermott to return to the station, and he had returned, he and his colleague would attend at the accident scene. This phone call, he said, was received between 01.10 hours and 01.15 hours. Five minutes or so later, Garda McDermott arrived back at the station enabling the two Gardaí to leave in the patrol car for Raphoe. Apparently, the two Gardaí could not have left until Garda McDermott arrived back because that would have left the station unmanned. They left Lifford Garda Station in the patrol car for Raphoe at approximately 01.20 hours.⁷⁹
- 3.55. The patrol car travelled to Raphoe via the village of Ballindrait, a journey of approximately six miles. Garda Birney was the driver and Garda McDwyer was his observer. When they were approaching Raphoe, about 200 yards from Raphoe Garda Station, they heard on the radio part of a conversation between

⁷⁹ Transcript, Day 199, Q.306-317 and Transcript, Day 202, Q.717-733.

Letterkenny Communications Centre – Garda Boyce – and a person who was making contact with Letterkenny from the ‘green man’ machine attached to the front of Raphoe Garda Station and by which communication can be made with the Garda Síochána when Raphoe Garda Station is closed.⁸⁰

- 3.56. This call to Letterkenny Communications Centre via the ‘green man’ was made by Lee Dillon and Alison McBride. Lee Dillon saw the ambulance arriving from William Street and going up Irish Row. He followed it up “fairly soon after”:

Somebody suggested going to get the Gardaí. Alison McBride came along with me in the car and we went to the Garda Station at Raphoe. There was nobody around there. We spoke to Gardaí at Letterkenny on the Green Man. He told us the Garda would be there in five minutes. I then left Alison McBride back up home. The ambulance had just left by this time.⁸¹

- 3.57. This was an obvious attempt by those present at the scene of the accident to obtain Garda assistance. This call was not logged by Garda Boyce in Letterkenny Communications Centre. For the second time that evening a call in relation to this accident was not recorded. The identities of those calling does not appear to have been taken, indeed, when requested to furnish information in respect of the matter Garda Boyce confined himself to stating that he received a phone call from Hilary McBride at 01.05 hours informing him:

That Richie Barron was struck by a vehicle and that he was lying on the side of the road at Townparks, Raphoe. The caller said that an ambulance was called for and that Gardaí were required at the scene. At 1.08 a.m. I phoned Lifford Garda Station and passed the details onto Garda P.J. McDermott. At 2.15 a.m. I received a phone call from Lifford Garda Station informing me that Richie Barron had died.⁸²

Conclusions Concerning the Logging of the Calls

- 3.58. All calls in relation to this accident should have been logged by Letterkenny Communications Centre. There was no excuse for failing to enter the appropriate details in the log concerning these calls. It is understandable that the priority of communications would be to ensure the attendance of Gardaí at the scene of an accident. However, once that was done, there was ample time and opportunity to provide a full log of what had happened in relation to these calls. A recording of only one call from Ms. Hilary McBride gave a false impression of a prompt response that was totally at variance with the facts. When viewed with the totally

⁸⁰ Transcript, Day 199, Q.318-320.

⁸¹ Tribunal Documents, page 1663 – statement made to Garda J Harkin on the 8th November 1996 (there is no reference to this journey by Alison McBride in statements made by her to Garda John O’Dowd on the 16th of October 1996 and Detective Garda Michael Carroll on the 28th May 1997 – Tribunal Documents, pages 982-984).

⁸² Tribunal Documents, page 778.

inadequate description of events furnished by Garda Boyce to Superintendent Gallagher, the Tribunal could be driven to the conclusion that an effort was made by Garda Boyce to hide records from his superiors of the second and third calls which obviously indicated anxiety on the part of the civilians present concerning the failure of the Garda Síochána to respond within a reasonable time. However, his evidence in respect of the logging of calls made no effort to conceal any relevant fact. The response of the Lifford Gardaí, on the other hand, was lacking in any sense of urgency or application to duty. The Tribunal has heard their excuses and finds them disgraceful and unbelievable.

The Patrol Car Arrives at Raphoe

- 3.59. Having overheard this conversation between Letterkenny and the person using the 'Green Man', the Garda car stopped briefly at the Garda Station but Garda McDwyer did not see anybody there and they then turned right and drove down past the mart, which was also in the area known as Townparks in Raphoe but could see no sign of the accident. They then turned right and went back out towards the Ballinalecky Road for about three or four-hundred yards and then turned back and went up to the town. They drove into Raphoe village and stopped momentarily at the hardware store. Garda Birney stopped the car in the Diamond near the bank, at which point Garda McDwyer saw Garda Mulligan standing at the bottom of Irish Street near McGranaghans and the Suile Tavern public house. Garda Birney, according to Garda McDwyer, then drove the car directly around the Diamond and back up to Garda Mulligan.⁸³
- 3.60. Garda Birney described driving into Raphoe from the Lifford Road. He drove up as far as the station but saw nobody. Both Gardaí thought that was peculiar because a person would not have had the time to move away from the station and no car had pulled out from the station yard. He turned right towards the cattle mart and down towards the Royal Prior School on the Old Letterkenny-St. Johnston Road which was also known as Townparks, Raphoe. He thought it had taken maybe six or seven minutes maximum for them to arrive at Raphoe from Lifford. Having gone down past the Royal Prior School they came back up again past the station and headed for the Diamond. They went down on the left-hand side of the Diamond past the banks and he was going to turn left again towards the old Castlefin Road when Garda McDwyer pointed out Garda Mulligan. Garda Mulligan was directly across from Duffy's butcher shop. He was on the Diamond, across the road from the Suile Tavern.⁸⁴

The movements of Gardaí Pádraig Mulligan and John O'Dowd

- 3.61. Garda Pádraig Mulligan came on duty at 20.00 hours on the evening of the 13th of October 1996 at Raphoe Garda Station. He told the Tribunal that, having

⁸³ Transcript, Day 202, Q.745-765.

⁸⁴ Transcript, Day 199, Q.343-368.

completed some paperwork, he went out on foot patrol in the town. Having completed this patrol he returned to the station following which Garda John O'Dowd called to the station at about 23.30 hours. Garda O'Dowd was off duty and had arrived unexpectedly. Garda Mulligan was happy to see him. He was on his own in the station and was glad of someone to whom he could chat. Garda O'Dowd informed him that he had purchased a new car. Garda Mulligan went out for a spin with Garda O'Dowd in this car.

- 3.62. Garda Mulligan had earlier described these events in a statement made on the 22nd of October 1996 in which he said:

I walked round the town until 11.30 pm to 11.45 pm that night. I went back to the Garda Station to do some typing. At 12.45 pm on the 14th of October 1996 Garda John O'Dowd called to the Garda Station. He had summonses to give to me. We decided to go for a spin around the town and outside areas of the town. We drove around for a while.⁸⁵

In a further statement on the 16th of September 1999, he changed the time for the arrival of Garda O'Dowd from 00.45 hours to 23.45 hours. In that statement he said that Garda O'Dowd had summonses for Garda Mulligan which he had got signed by the District Court Clerk for a particular family.⁸⁶ He said the reason that he made the error as to time in the first statement was because he was put under pressure by the Detectives who called to obtain the statement and that having re-read it, he knew the time to be incorrect.

- 3.63. He described the route he took with Garda O'Dowd. They drove to the Ballindrait crossroads, turned left and headed towards Letterkenny. They turned right and then drove a mile or two to the Idle Hour pub and turned the car and drove to Duffy's licensed premises which took them back to the main Lifford to Letterkenny road. At this stage, Garda O'Dowd suggested that they go for a cup of tea to his house in Letterkenny. He did so after which Garda Mulligan suggested that they return to Raphoe. They then drove back towards Raphoe on the main road out of Letterkenny. As they approached the Ballinalecky crossroads, Garda O'Dowd said that he wanted to get cigarettes in Lifford. He asked Garda Mulligan would he go with him and Garda Mulligan agreed.
- 3.64. They drove to Lifford and pulled into the back of the Garda Station. They got out of the car, walked out the gate of the station yard and went round the corner to Brannigan's public house which they entered, he said, at about 00.30 hours. They each had a pint. They stayed in the public house until about 01.00 hours. They then returned to the car and drove out to Raphoe. **On this evidence, Gardaí Mulligan and O'Dowd were in Brannigan's pub sharing a pint at the time the Late Mr. Barron met his death.⁸⁷ It should not require to be stated, but**

⁸⁵ Tribunal Documents, page 1152.

⁸⁶ Tribunal Documents, page 1156.

⁸⁷ Transcript, Day 212, Q.217 and various references.

it is utterly wrong and disgraceful that a member of An Garda Síochána should be drinking alcohol in a public house whilst on duty. It is a measure of the Tribunal's assessment of the extent to which discipline within the Garda Síochána had deteriorated that the Tribunal should find it necessary to state what would, in other situations, be regarded as blindingly obvious.

- 3.65. Garda John O'Dowd made a statement on the 23rd of November 1996 in which he indicated that at 00.45 hours on the 14th of October 1996 he called to Raphoe Garda Station to leave some paperwork with Garda Mulligan. He was off duty. He said:

I took Garda Mulligan out for a drive in my private car as he was on duty on his own and our patrol car was attached to Lifford Garda Station for BSE duties at the time. Things were quiet around the town so I drove out to outlying areas of the sub district i.e. Ardagh, Drumoghill areas. At 1.15 a.m. I was back in the town and parked across from Al's chip van facing in the general direction of Frankies. At that time I noticed two youths fighting outside DJ.'s on the Main Street. I decided to drive up to see what was going on. I then saw these youths run out the Convoy road with another youth following. As I passed the entrance to Frankies. I had a clear view up to the new entrance, I saw no sign of any bouncers or any of the McBreartys which I thought unusual as they would be always stuck in to any incident. These youths ran out to the top of St. Eunan's Terrace. Garda Mulligan got out and spoke with them. They seemed to quieten down. I spoke with one fellow who told me it was a family row and that it was over now. I didn't take his name. They then moved off quietly.⁸⁸

- 3.66. In evidence to the Tribunal, Garda O'Dowd stated that he was off duty that weekend and attended Raphoe at about 23.30 hours. He drove around the town and though not sure whether he picked up Garda Mulligan in the Diamond, he recalled that he attended at the Garda Station, "because I had to leave in summonses." He then took Garda Mulligan out for a spin in his new 'Cavalier'. He thought the summonses would go out of date and needed to be served soon. The Tribunal has no evidence to support the proposition that any such summonses existed or were served in the days following the death of the Late Mr. Barron.⁸⁹ He also described, in evidence, the trip to Letterkenny for a cup of tea in his house with Garda Mulligan and the trip back to Lifford for a drink in Brannigan's Pub. He said they arrived at Brannigan's at 00.30 hours and remained there until 01.00 or 01.05 hours following which they drove straight back to

⁸⁸ Tribunal Documents, page 1190.

⁸⁹ Transcript, Day 287, Q.109 and Q.220-232.

Raphoe through Ballindrait. He said they arrived back in Raphoe at about 01.10 hours, when they saw a number of people out on the street fighting.⁹⁰

- 3.67. Mr. Sean Crossan gave evidence to the Tribunal that he saw Garda Pádraig Mulligan in Raphoe at 00.35 hours, approximately at a time when Garda Mulligan maintains that he was in the pub in Lifford with Garda O'Dowd. Following the expulsion of Paul 'Gazza' Gallagher from the nightclub, Mr. Crossan was asked to go down and check that the young man who had been thrown out had not come back to the premises to break windows or cause trouble of some kind. He said:

I went down to the corner ... I looked down the street and there was nobody on the street but a Guard ... standing in the street ... down towards the Diamond facing up the opening where Mr. Barron would go home. He was uniformed ... Garda Mulligan.

- 3.68. He then reported back to Mr. McBrearty Senior. He told him that the young man was not to be seen and that the only one in the street was a Garda whom he did not name to Mr. McBrearty Senior.⁹¹ However, Mr. Crossan had made a statement on the 18th of October 1996 to Sergeant Joseph Hannigan in which he described this incident as follows:

When I went down Frank McBrearty Senior was at the paybox and he asked me to go down around the corner in case some boy he put out broke windows. I don't know who he put out. I didn't ask him but I went down the corner towards the Diamond. There was nobody at all about. I only went down as far as the bar door but I could see nobody as far as the Diamond. I didn't see any cars about.⁹²

- 3.69. Mr. Crossan, in evidence, stated that he informed Sergeant Hannigan of his sighting of Garda Pádraig Mulligan in the manner described in evidence, but that Sergeant Hannigan did not include this in the statement taken on the 18th of October 1996. He goes further and maintains that when he informed Sergeant Hannigan of the time of the sighting of Garda Mulligan, Sergeant Hannigan replied that that was correct.⁹³ For his part, Sergeant Hannigan maintained that the statement recorded by him on the 18th of October 1996 was an accurate representation of what was said to him by Mr. Crossan.⁹⁴ If Garda Mulligan was present on his own in the Diamond at 00.35 hours, it would mean that Garda Mulligan was telling lies in respect of his being with Garda O'Dowd in a pub in Lifford at that time and also that Garda Connolly was mistaken, or worse, in respect of his sighting of the two Gardaí. **The Tribunal does not accept that**

⁹⁰ Transcript, Day 287, Q.128-129.

⁹¹ Transcript, Day 50, pages 52-54.

⁹² Tribunal Documents, page 3274.

⁹³ Transcript, Day 50, Q.531-535.

⁹⁴ Transcript, Day 222, Q.134-139.

Sergeant Hannigan did not include a reference to Garda Mulligan made by Sean Crossan on the 18th of October 1996. It does not accept the evidence of Mr. Crossan on this issue. Consequently, his evidence in respect of the sighting of Garda Mulligan is regarded as unreliable and untrue. In addition, if Garda Mulligan was present at that time in that vicinity, he would undoubtedly have been seen by the various witnesses present in and around the Diamond who have already been referred to in this report.

- 3.70. One of the more disturbing aspects of the initial investigation into the death of the Late Mr. Barron was the absence of Garda Pádraig Mulligan from his post in Raphoe. Efforts by Letterkenny Communications Centre to raise Garda Mulligan by walkie-talkie were unsuccessful. Garda Mulligan told the Tribunal that his means of communication that evening when out of the station was by walkie-talkie. When he went into the pub in Lifford he switched off his walkie-talkie and left it in John O'Dowd's car. It had been switched on when he was in the car and it was switched back on when he returned to the car. He was puzzled by the fact that he never heard any talk between the Lifford car and Letterkenny or any other traffic on the walkie-talkie. He did not hear Letterkenny Centre communicating with a Letterkenny car at any stage. The evidence from the car crew is that there was no communication between Letterkenny and the car during that period. His walkie-talkie could not pick up communications from Letterkenny to persons on the 'Green Man' system as the patrol car did.⁹⁵
- 3.71. For his part, Garda Boyce presumed Garda Mulligan could not be contacted on his walkie-talkie by reason of technical difficulties caused by the terrain in the area which had been experienced in the past. However, it would appear that Garda Mulligan was on his way back from Lifford at the time when Garda Boyce was trying to make contact with him on the walkie-talkie which Garda Mulligan then says was turned on. **The Tribunal has no doubt that difficult terrain had nothing to do with the failure to contact Garda Mulligan.**
- 3.72. The whereabouts of Garda Mulligan did not become known to senior Garda authorities, apparently, until years after the event. Garda James Connolly made a statement on the 28th of April 2000 wherein he stated that he had been in the public house (off duty) in Lifford, at approximately 23.00 hours on the evening of the 13th of October 1996 playing cards with a number of locals. This was a pub which was frequented by Gardaí from Lifford Station. He recalled that Garda Pádraig Mulligan and Garda John O'Dowd were present in the public house that evening. He said that it was around 23.30 or midnight, or somewhat later, when he saw the two Gardaí. He was not sure whether there were any other members of the Garda Síochána present that evening or not. He remained in the public

⁹⁵ Transcript, Day 212, Q.16-37.

house until 01.00 hours approximately. The two Gardaí were not present at that stage.⁹⁶

3.73. Garda Birney heard a “rumour” from other members in Lifford Station a few days after the death of the Late Mr. Barron to the effect that another member of the Garda Síochána (Garda Connolly) had seen Garda Mulligan down at the pub in Lifford that night. He did not recall which of the twenty-two members stationed at Lifford had told him this but the rumour was circulating widely amongst the units of the station. It was a part of the rumour that Garda Connolly had informed an officer in Letterkenny of this fact. He said: “... it was kept sort of quiet at the same time. It wasn’t talked about very openly, but it was talked about.” It was a rumour of short duration about a matter deemed to be of little consequence at the time.⁹⁷

3.74. The Tribunal is satisfied that this information concerning the whereabouts of Garda Mulligan did not become available until years after the event because of deliberate obstruction by members of An Garda Síochána. As described later in this report it is another example of the manner in which the Garda Síochána has been turned into an industrial relations battleground. There is no doubt that there was knowledge within Lifford Station and wider afield within An Garda Síochána that Garda Mulligan was in the pub at Lifford. It was partly due to the mentality that one should not report on a colleague that this information remained buried for many years. The people of Ireland have a right to be served by their police force on the basis of openness and truth, which in this instance was relegated to a poor second place. This has to be reversed by the Minister for Justice, Equality and Law Reform and the Garda Commissioner.

Gardaí Mulligan and O’Dowd Return to Raphoe

3.75. Garda Mulligan told the Tribunal, that having left the pub in Lifford at about 01.00 hours with Garda O’Dowd they returned in Garda O’Dowd’s car to Raphoe via Ballindrait. On arrival in Raphoe, they drove around the Diamond once. Everything was quiet. They pulled up. Shortly afterwards, at about 01.10 hours, he saw two young men running out of Frankie’s nightclub. They were scuffling on the street outside and made their way towards St. Eunan’s Terrace. Garda O’Dowd drove up after them. At St. Eunan’s Terrace, Garda Mulligan got out of the car and told the men to stop fighting. They immediately broke up and said that there would be no bother. They went back towards Frankie’s nightclub. He returned to the car and they drove back down to the Diamond, drove around it once and parked on the Diamond, opposite McGranaghan’s shop. He thought the two boys who were fighting were from Artnagavern and he did not think that they were individuals who had been referred to as “the boys from Aghyaran” ,

⁹⁶ Transcript, Day 201, Q.911-942 (His statement is at Tribunal Documents, Vol. 4, page 1314).

⁹⁷ Transcript Day 199, Q.959-986.

who were supposedly on temporary release from prison in Northern Ireland. However, the only encounter described at about this time is that involving the boys from Aghyaran.⁹⁸

- 3.76. Garda Mulligan got out of the car when it pulled up at the Diamond as Garda O'Dowd was going to head home. As he did so, he was approached by Stephen McCullagh who asked him whether he had heard about the accident at Townparks, Raphoe in which the Late Mr. Barron had been knocked down. Garda Mulligan was shocked when he heard this. While he was engaged with Mr. McCullagh the Lifford patrol car arrived. Mr. McCullagh, as later reported in Part III, is the same man who met the McConnells shortly after 01.00 hours on the way to Frankie's nightclub.
- 3.77. Garda John O'Dowd, in his statement of the 23rd of November 1996, also said that while he was parked in the Diamond near Al's chip van:

I saw an ambulance coming down Irish Street and turning left for William Street. Shortly after that I saw a red Carina 85 DL 74 driving down Irish Street very fast. It turned right out of Irish Row and up towards Frankies. It was being driven by Lee Dillon. After a few minutes I noticed a crowd gathering outside the Suile Tavern. Stephen McCullagh then walked over to my car. He seemed very upset. He told us that Richie Barron had been knocked down up near Matt McBride's house. Just then Gardaí Birney and McDwyer pulled up behind my car and stated they had a report of a hit-and-run accident. From my conversation with Stephen McCullagh I informed Garda Birney that the scene of the accident was up the Mongorry Road. Garda Birney drove off first towards the scene. I followed him a few moments later when I had finished speaking with Stephen McCullagh.⁹⁹

The Patrol Car Crew Join Up with Gardaí Mulligan and O'Dowd at Raphoe

- 3.78. When Garda McDwyer told Garda Birney that he had seen Garda Mulligan they drove over to him outside the Suile Tavern. Garda Birney asked him whether he knew anything about a hit-and-run accident and was told that in fact he was getting information at that moment (from Stephen McCullagh) though Garda Birney did not realise the identity of the person at that time. Garda Mulligan was speaking for only a few seconds to this person when he headed back to Garda O'Dowd's car which was parked in front of the patrol car. He did not realise Garda O'Dowd was present at all until he saw the car parked. On the way over to Garda O'Dowd's car Garda Mulligan said, " follow us up here. It is up at McBrides, Hilary McBride's". Garda Mulligan was in uniform and Garda Birney thought that he

⁹⁸ Transcript, Day 212, Q.7-9.

⁹⁹ Tribunal Documents, pages 1190-1191.

had the walkie-talkie with him but he was not a hundred percent sure. He presumed at the time that Garda O'Dowd was off duty, because he never normally worked the same hours as his crew. He then followed Garda O'Dowd's car up by turning left up Irish Street to the scene of the accident.¹⁰⁰

3.79. Garda McDwyer also described the arrival in Raphoe. He said that they drove straight into Raphoe village and at the old hardware building they stopped momentarily.¹⁰¹ He confirmed that Garda Birney stopped the car and said that he saw Garda Mulligan and then spoke to him and asked him whether he was aware of the accident. Garda Mulligan was standing on the footpath outside the Suile Tavern, at the junction of Irish Street and the Diamond, speaking to Mr. McCullagh. Garda Mulligan told him that the ambulance had just left. Both Gardaí McDwyer and Birney stated that they asked Garda Mulligan whether he was aware of the accident. Both seemed to have been aware that Garda Mulligan had not been contacted when asking this question. He was of the opinion that the Garda on duty in Raphoe could not be contacted. It was hard to contact members at Raphoe in certain situations: "They could be somewhere and they could be dealing with something else and there are radio black spots." He did not regard this as unusual. He did not speak to Garda Mulligan about it then or afterwards.¹⁰²

3.80. Gardaí Mulligan and O'Dowd say that they followed Gardaí Birney and McDwyer up to the scene of the accident. Garda Mulligan in evidence said that Garda Birney parked his patrol car behind the car of Lee Parker. Garda O'Dowd drove his car down the side of the road by overtaking the other Garda car and other cars parked there. He drove up to a gate, turned the car, came back and faced towards the scene with the headlights on, in order to illuminate it. The scene had not been ascertained before they drove up to the entrance gate in which the car was turned. Garda Mulligan stated that this did not involve driving through the scene, because Garda O'Dowd drove on the right-hand side and the blood that indicated the scene was on the left-hand side. Garda Mulligan got out of the car before Garda O'Dowd turned. There were about fifteen people standing at the scene of the accident and a number of cars parked on the left-hand side of the road. He noted Stephen Barron's car behind which Lee Parker's car was parked and also noticed the car belonging to Edward Johnston. This line of cars extended from the entrance to the McBride house back towards Raphoe on the left-hand side of the road as one drives out from Raphoe.

¹⁰⁰ Transcript, Day 199, Q.361-393.

¹⁰¹ Transcript, Day 202, Q.755-763.

¹⁰² Transcript, Day 199, Q.164-781.

3.81. In his statement of the 23rd of November 1996, Garda O’Dowd stated that:

Garda Birney drove off first towards the scene. I followed him a few moments later when I had finished speaking with Stephen McCullagh. I then drove up to the scene where I saw a white towel with blood on it. I drove on past and turned at Matt McBride’s sheds and faced my car towards Raphoe town with my lights on the scene. The Lifford patrol car was parked on the other side of the scene. It was raining very heavily at the time. I inspected the scene from the headlamps of the patrol car.¹⁰³

In an interview with Tribunal investigators, Garda O’Dowd agreed with Garda Mulligan that they followed the Lifford car up to the scene of the accident and gave similar evidence in relation to his attendance at the scene.¹⁰⁴

3.82. Garda Birney and Garda McDwyer, contrary to Gardaí Mulligan and O’Dowd, said that they did not know where the accident site was, even after they met up with Gardaí Mulligan and O’Dowd and intended to follow them up to the scene of the accident. They followed about fifteen to twenty seconds behind the O’Dowd car.¹⁰⁵

Evidence of Gardaí Mulligan, O’Dowd, Birney and McDwyer in respect of what they did at the scene

3.83. Garda Mulligan told the Tribunal that on arrival at the scene he spoke to Lee Parker who said that he was driving up home when he saw a body lying on the road. He recognised the body to be that of the Late Richard Barron and thought he may have been drunk. He sought help at the McBrides. A statement was not taken from Lee Parker at this stage. Garda Mulligan said that this was the first scene of a fatal road-traffic accident in which he had ever been involved. He searched around for debris and got into a drain at the side of the road and searched it with his torch but found nothing. He then checked back down towards McBrides and up towards the vicinity of the McBride shed area and on the far side of the road. At the scene he saw “a blood mass” on the roadway. He said to Garda Birney that this was very unusual. The matter was reported to him as a traffic accident and he was puzzled that there was no debris on the road. He expected to find something at the scene. Some five to ten minutes later, he got a call informing them that the Late Mr. Barron had died in hospital and there was a further radio call in respect of his clothes. Having received the news that the Late Mr. Barron had died, Garda Mulligan had a discussion with Garda Birney and Garda McDwyer about preserving the scene. Garda Birney indicated that there was no point preserving the scene as there was nothing there. He was not blaming Garda Birney for this. He acknowledged it to be the wrong decision. The

¹⁰³ Tribunal Documents, page 1191.

¹⁰⁴ Tribunal Documents, pages 3647 and see Transcript, Day 287, Q.128-132 and other references.

¹⁰⁵ Transcript, Day 199, Q.387-400, Transcript, Day 202, Q.779-785.

decision was made because they were told to go to Letterkenny to get the man's clothes and it had started to rain very heavily which was washing away the blood at the scene; they could see nothing else on the road. In addition, if they had looked for a Scenes of Crime Officer that morning they would not have obtained one at that hour. As a result of making the decision not to preserve the scene, they did not call Lifford Station or Letterkenny Communications Centre in order to obtain the services of a Scenes of Crime Officer. It was acknowledged that had they sought a Scenes of Crime Officer, the person requested would have tried to arrange it. Garda Mulligan was not making any complaint that there was an unsatisfactory procedure for contacting the scenes of crime man. There was only one discussion about preserving the scene, not three as suggested by Garda Birney.

- 3.84. Garda Mulligan recalled that the first time he heard that Garda McDwyer found a piece of skin with hair attached, was on Thursday, the 17th of October 1996 at a conference. Nothing was drawn to his attention on the night of the accident.
- 3.85. When at the scene, Garda Mulligan took the names and addresses of the people who attended and made a note of roughly where the cars were parked and made a rough sketch in his notebook. His notebook was not made available to the Tribunal. He said he had also entered in that notebook, the time at which he heard about the accident from Mr. McCullagh and the time of his arrival at the scene. The notes were made that night, sitting in the car before they went to Letterkenny Hospital. The notebook was one of a number of notebooks kept by Garda Mulligan in a 'pigeon-hole' at Letterkenny Garda Station where he kept his files. The notebook had been there for some six months before it disappeared, in or about 2000. He did not report its disappearance to anyone in the station. He was asked for it by a member of the Carty team in or about May 2000, but informed the member that he could not find it at that time. The other notebooks which he kept in the same place were not missing. He had last seen his notebook in 1999. He did not know what happened to his notebook and presumed that somebody had taken it because they were short of a notebook. Any member of An Garda Síochána at the station could have had access to his notebook. He denied that the notebook was unavailable because there might have been something embarrassing to him in it had it been produced to the members of the Carty team or to the Tribunal.¹⁰⁶
- 3.86. The Tribunal views with great suspicion the fact that this notebook went missing. The Tribunal does not find satisfactory the suggestion that Garda Mulligan left this important notebook that dealt with the death of the Late Mr. Barron, which by the time of its loss had developed into a controversial murder inquiry, in a 'pigeon-hole'. It is difficult to believe

¹⁰⁶ Transcript, Day 212, Q.140-154 and Day 213, Q.1-50.

that it is the only notebook that went missing from that pigeon-hole in which other notebooks retained by Garda Mulligan had been stored. The Tribunal does not regard as credible the suggestion that some other Garda just took this notebook because he needed one. It seems to the Tribunal to be highly unlikely that Garda Mulligan left this notebook, given its great importance, lying open in a cubby-hole in the manner described. The Tribunal concludes that Garda Mulligan withheld this notebook from the Carty team, either because there were details in it which would cause him embarrassment or because there was so little detail in it that he was embarrassed to produce it.

- 3.87. Five or ten minutes after they arrived at the scene, Garda John O'Dowd told Garda Mulligan that he was going off to check something and went down to check the tractors around McBrides in the yard nearby. He appeared to be happy enough with the check that he made and then:

He went off to check a car belonging to an individual ... because he knew this man used to park his car up McBride's yard and that he normally didn't have insurance on it.

- 3.88. He was going off to see if this man's car was at his home. He did not expect him to come back to the scene. Garda Mulligan heard later that the result of his check was that the car was not at the house when he called. Garda O'Dowd was going to check with the man the next day or the day after. The man lived three or four miles away. This man usually parked his car in McBride's yard. It was not there and Garda O'Dowd thought that he had gone off and wanted to check his car to exclude it. The man sometimes parked his car down beside the old cinema in Raphoe. However, he did not check this by going down to see if his car was there. Later, at 03.40 hours at Lifford Station, Garda Mulligan telephoned Garda O'Dowd's house to see whether he found the car that he went looking for. Garda O'Dowd told him there was no car there.¹⁰⁷ As appears in the narrative later in this report, this man was Mr. John McArt.

- 3.89. Garda James McDwyer stated that on arrival at the scene, jobs were not divided up amongst the Gardaí present. They concentrated on examining the scene and getting whatever information they could from the people who were there. They could find nothing on the roadway to indicate the occurrence of a road-traffic accident such as vehicle parts, dirt, debris or any visible impact point. He saw a blood mass three feet out from the left-hand side of the roadway as one comes from Raphoe which had a circumference of about two feet. There was a lot of blood. There was a culvert leading into a drain at the edge of the roadway. About five feet from the blood towards the Letterkenny direction he discovered " a piece

¹⁰⁷ Transcript, Day 212, Q.156-181 and Q.225-235.

of skin". It was pretty dark at the time and he did not notice what it was, at first. He examined it under torchlight but was still unsure as to what it was. He said that he, "touched it with my pen and ... saw that there was some hair on it so I knew then it was skin." There was nothing else other than the blood mass and the skin at the scene, though he searched each side of the roadway. He pointed the skin out to Garda Birney but did not take any steps to preserve this material because: "I believed it was for the crime scene examiner to study or remove anything that was found at the scene".¹⁰⁸

- 3.90. However, no attempt was made to procure the attendance of a Scenes of Crime Officer to the accident site. When the message was received by Garda Birney that the victim had died, Garda McDwyer says that he suggested to his colleagues that the scene be preserved, but:

I was overruled, it was a mistake. I believe now I should have had the strength to take on the responsibility but I didn't.

- 3.91. When asked why he did not even cover the tissue found before leaving the scene for Letterkenny Hospital, he replied that he did not have anything with which to preserve it. No attempt at improvisation was made. He did not make a note of the location of this piece of tissue or of measurements which he said he made; though he did make other notes such as the names of persons at the scene. He said Garda Mulligan was making notes:

I didn't feel that I was investigating a road-traffic accident for this incident. I was assisting.

- 3.92. He explained that Garda Mulligan made notes but he could not recall showing the piece of tissue to Garda Mulligan, whom he regarded as the investigating member in the case because the accident happened in the Raphoe sub-district.

- 3.93. Mr. Birney told the Tribunal that he spoke to Lee Parker at the scene and then searched the blood-covered area and down along the sides of the road. The blood was situated three to five-and-half feet from the left-hand grass margin as one travelled out of Raphoe. It began to rain heavily and the blood started to run down a small gully on the left-hand side of the roadway into a drain. He examined the left side of the roadway between the scene and the entrance to a farmyard a number of yards beyond the bloodstain and also the right-hand side of the roadway. He saw:

Absolutely and utterly nothing that, in my opinion, could connect any particular vehicle to the scene. There was no debris, no bits of glass, bits of paint or broken bits of car or wing mirror or headlight, bumper or anything like that. There was absolutely nothing there.

¹⁰⁸ Transcript, Day 202, Q.797-829.

- 3.94. Mr. Birney differs in two serious respects with the evidence of Garda McDwyer. Firstly, he disagrees with the proposition that Garda McDwyer pointed out the skin or tissue to him or told him about it at the scene. The first he heard about this piece of tissue was at a conference at Letterkenny Garda Station on Thursday, the 17th of October 1996 and he was very much surprised when Garda McDwyer mentioned finding it. He said:

I can't imagine a situation where you'd find something that you perceived to be part of a human being and just not do anything, ignore it completely, I don't know.

- 3.95. The three of them were searching the same area. If the tissue had been brought to his attention:

... It would have made a scene out of it, there was something there that perhaps we'd want ...It would have been extremely important because in my opinion that piece of tissue would most probably have been in contact with whatever caused the injury to the injured party.

- 3.96. Secondly, he disagreed with the proposition that Garda McDwyer proposed that the scene be preserved. Mr. Birney's position was that Garda Mulligan was the member in charge of the investigation because he was from Raphoe Station and had a lot of experience and the accident had occurred in his area. He stated that Garda Mulligan asked for his opinion as to whether the scene should be preserved, and he said that it should not. He added that they had not seen anything at the scene which would render the scene worth preserving for technical examination. All three members present agreed with the decision not to preserve the scene. They searched for a bit but could not establish a point of impact. The initial decision not to preserve the scene was taken prior to receiving information that the victim of the accident had died. That information was received from Garda McDermott at approximately 02.10 hours. There was a further discussion as to whether the scene should be preserved, and they again all agreed that it should not be preserved prior to going to Letterkenny Hospital. This was an operational decision as far as Mr. Birney was concerned. He said:

... operational decisions are made every day. Like, we get as close as we can to making the right one. Most of the time we do our damndest to make the proper ones, and this one, it wasn't that it was forgotten about or omitted or anything like that, it was discussed and it was an operational decision that was made at the time that there was no value in preserving the scene because of

*the rain and what have you, and the people that had been congregating around the place while the body was there and the vehicles going up and down the road before we had arrived and what have you. That was the decision that was made, and it was made, as far as I am concerned, completely honestly for that reason because I didn't believe there was anything there.*¹⁰⁹

- 3.97. He also accepted that in hindsight this decision was a mistake.
- 3.98. Mr. Birney also indicated that having attended at Letterkenny Hospital, the three Gardaí returned to Raphoe Garda Station. Prior to leaving Garda Mulligan off at the station and as he was getting out of the car, he asked Gardaí Birney and McDwyer whether they were agreed that there was nothing at that scene that was of any value to preserve. The two members agreed that there was not.¹¹⁰
- 3.99. Garda Niall Coady attended at the scene at approximately 09.10 hours on the 14th of October and made a sketch of the area. On this sketch he indicated a pool of blood and a number of x's which indicate a spot in which he found hairs on strands of skin which he lifted from the scene. He described this as follows:

*On close examination of the road surface I could see that there were hair follicles and long hairs embedded in the tarmac. It was a tarmac surface, ... and ... had embedded in some ... crevices [in the tarmac] some lengths of hair and skin attached to the follicles of the hair, and the skin was narrow in appearance. It was as if it had been ... this is only my opinion, it was ... brushed with the surface of the road which gave a linear affect on the skin and on the hair ... if the brush hadn't touched it, it would have its natural look. It appeared to have been affected by a brush and had been brushed into the roadway, it wasn't very big there wasn't much hair and there wasn't much skin.*¹¹¹

- 3.100. He had heard the evidence of Garda McDwyer but he said it was difficult to say if what Garda McDwyer described was the same piece that he found. He said:

*The skin wasn't very big. It was effectively attached to the follicles of the hair. It wasn't a separate piece of skin ... I lifted it with tweezers ... and I placed it in the forensic evidence bag. It was embedded in the roadway ... nothing was visible ... if I was to walk that roadway unaware that an incident had occurred eight hours earlier, I wouldn't have noticed anything on the roadway. I would have walked by. You nearly wouldn't even see the blood on the road.*¹¹²

¹⁰⁹ Transcript, Day 199, Q.422-529.

¹¹⁰ Transcript, Day 199, Q.578-584.

¹¹¹ Transcript, Day 206, Q.133-134.

¹¹² Transcript, Day 206, Q.134-143.

- 3.101. However, he acknowledged that between 01.00 hours and 09.00 hours that passing traffic could have affected anything lying on the road and pushed it into the road surface. A yard-brush could also have embedded it in the surface depending on the brush movement.¹¹³
- 3.102. Sergeant Coady accepted that the material he found appeared to be in the same position as the tissue said to have been found by Garda McDwyer, approximately.¹¹⁴
- 3.103. The Tribunal does not accept the evidence of Garda McDwyer that he pointed out to Garda Birney the presence of the piece of human tissue on the roadway but that Garda Birney did not wish to take any steps to preserve this material.
- 3.104. It is clear that the decision not to preserve the scene was wrong and contrary to proper procedure. Sergeant Coady gave evidence which the Tribunal accepts, and which is borne out in the directions in “Crime Investigation Techniques” and the Garda Code that in a fatal hit-and-run the scene must be preserved. There is no operational decision to make. There is no discretion not to preserve such a scene. It is clear that Garda Coady found something similar to what was described by Garda McDwyer at the scene of the accident, which consisted of hair follicles attached to a tiny piece of skin. If such an item were found by Garda McDwyer and he drew it to the attention of his colleagues, there was absolutely no basis upon which to make an operational decision not to preserve the scene, even if such was open to them, which it was not. The Tribunal is satisfied that Garda McDwyer found the material. Notwithstanding the finding of the material at the scene, it is also satisfied that he did not bring it to the attention of his colleagues. The Gardaí at the scene decided not to preserve it, even though they knew that such a scene had to be preserved. This was a disgraceful neglect of duty.

The Gardaí Leave the Scene and Travel to Letterkenny Hospital

- 3.105. When the Gardaí received a further call, to the effect that Mr. Barron had died, they were told that they would have to go and collect his clothing in Letterkenny Hospital because the Letterkenny car “was tied up”. Garda Birney contacted Garda McDermott and asked the Lifford or Letterkenny car to go to the hospital and obtain the clothes from the deceased. Garda McDermott called back and informed them that they would have to do it themselves. They were not informed of the extent to which the Letterkenny patrol car was unavailable or for how long. It was not thought appropriate that the Gardaí present should return to Raphoe in order to carry out inquiries concerning the movements of the Late Mr. Barron, or to ascertain what vehicles were in the vicinity, or drove out the

¹¹³ Transcript, Day 206, Q.144-156.

¹¹⁴ Transcript, Day 206, Q.604-610.

direction of the Mongorry Road at that time, or whether witnesses were available in the town. Garda Mulligan accepted, in hindsight, that those things should have been done but were not done. He accepted that there should have been inquiries made in Raphoe that night in an attempt to ascertain who was driving the car that knocked down the Late Mr. Barron.¹¹⁵

- 3.106. On arrival at Letterkenny Hospital, Garda Mulligan went to the casualty area and spoke to Mr. Stephen Barron, the son of the Late Mr. Barron, in one of the cubicles. Mr. Barron's family was present. He did not wish to intrude upon their grief at the time and he returned to Garda Birney and said to him that they would have to wait in order to get the clothing from the deceased. Garda Birney told him to inform the hospital porter to get the clothes and that they would collect the clothing the following morning. He returned to the hospital and arranged with the porter that, when the deceased's relatives left the hospital, the porter would gather and retain the clothing and that Garda Mulligan would collect the clothing the following morning. The remains of the deceased were in the resuscitation area of the casualty department at that time. He understood that the hospital porter understood how to deal with the preservation of the clothing. He thought that this was an adequate way in which to deal with the matter. Garda McDwyer was with him in the casualty department. They then returned to the patrol car and Garda Birney drove them back to the Garda Station at Raphoe where they left Garda Mulligan. He intended to follow them down to Lifford to do out a report.¹¹⁶ *The body of the Late Mr. Barron should have been preserved by one of the Gardaí who should have remained at the hospital. The clothing should also have been preserved and not left to be dealt with by a hospital porter. The preservation of the body and material evidence is not a job for the hospital porter; the Gardaí knew it was their job and decided not to do it. They accomplished nothing at Letterkenny Hospital.*

Preservation of a Scene – How it Should be Done

- 3.107. In order to ensure that all available evidence is gathered in relation to a fatal road-traffic accident, it is essential that the scene in which that accident occurred be preserved by members of An Garda Síochána. The importance and usefulness of the examination of the scene in such cases is emphasised by the Garda Síochána in their handbook, Crime Investigation Techniques (1994), where it is stated:

Fatal Traffic accidents

When a vehicle collides with a body, paint may be transferred but this is very often the top layer of paint transferring in the form of a smear. There is potential for the transfer of a wide variety of materials in such cases. Fibres or indeed portions of cloth from the victim's clothing may be caught

¹¹⁵ Transcript, Day 212, Q.181-201.

¹¹⁶ Transcript, Day, 212, Q.202-225.

on the damaged front of the car. Blood or hair may transfer from the victim to the car. Any broken surfaces (e.g. windscreen or headlamp) may transfer to the victim. Some useful information may be gained about the suspect vehicle from paint on the clothes or items left at the scene. Therefore, all potential evidence should be collected from the scene of a fatal traffic accident. The following is a checklist of some items:

(i) Victim:

Clothing (this should be packed in paper)

Blood sample from post mortem

Combed head hair sample

(ii) Suspect vehicle:

Control paint

Sellotape lifts from damaged area

Control samples taken from windscreen/headlamp

Any other materials damaged – various indicator units, etc.

(iii) Scene:

Any paint, glass or broken items should be recovered from the scene.

The laboratory keeps a library of information to assist in tracing cars. The data consists of two main types, vis., (a) paint and (b) headlamp and indicator units.

(a) Most manufacturers use at least three layers of paint on their cars, i.e., a primer, undercoat and decorative top layer. As different manufacturers use different combinations and colours, it is possible to use this information to trace the car to a particular type.

If a chip of paint recovered from the scene contains the manufacturers original three layer finish, it may be possible to assign a make, model and year to the car from which the paint originated. Some times the information is limited because a number of manufacturers may use a particular combination.

(b) The headlamps and indicator units of cars contain markings which enable them to be traced. The laboratory has a reference collection of this data. Sometimes even portions of the markings or letters enable a particular lens to be traced.¹¹⁷

¹¹⁷ Crime Investigation Techniques (2nd Edition) (1994) paragraph 26.19.

- 3.108. The Garda handbook, Crime Investigation Techniques, also spells out the duties to be performed by the first member(s) to arrive at the scene and how the scene should be preserved. In respect of the duties of the first member(s) to arrive at the scene it states:

The success of an investigation that involves a definable crime scene depends primarily on the initial observations and actions of the first member(s) to arrive at the scene. This statement is generally applicable regardless of the type of crime. While the circumstances of the particular case will naturally govern the action taken by the first member(s) to arrive at the scene, the following matters should be attended to:-

- (i) note time of arrival and weather conditions;
- (ii) if there is a body at the scene, call a doctor immediately either to certify death or to render medical assistance;
- (iii) if injured persons are discovered at a scene arrange for medical attention and identification;
- (iv) if any person appears to be seriously injured and is being conveyed to hospital, arrange (if possible) to have him accompanied by a member but the preservation of the scene must take precedence [emphasis supplied];
- (v) identify the culprits, if possible, and apprehend if in danger of absconding;
- (vi) protect the crime scene; see 16.5;
- (vii) obtain names and addresses of persons present at scene on arrival;
- (viii) locate and interview the victim and witnesses, if present; note names and addresses and record stories briefly;
- (ix) determine how the crime was committed, the extent of personal injuries ...;
- (x) arrange to have the following details communicated to appropriate station:
 - type and nature of crime and time of commission;
 - description of suspect(s);
 - description of transport used and direction of flight.

When two or more members arrive at the scene or other members follow subsequent to the arrival of the first member, there should be an arrangement whereby the above duties will be divided.

If the above procedures are carried out intelligently by the first member(s) to arrive at the scene, then hours of unnecessary enquiry can be avoided and the assistance afforded will prove invaluable in bringing the case to a successful conclusion.¹¹⁸

- 3.109. The handbook also deals extensively with how a scene should be preserved. In many respects, the directions in the handbook conform with commonsense:

The best physical evidence is normally found at or near the sight of the most critical action taken by the criminal against the ... victim; thus, one is more likely to find important physical evidence in the immediate area surrounding the body in a homicide case than some distance away... While it is quite possible that the dimensions of a crime scene will be large, there will usually be obvious priority areas that should be given immediate protection. On the other hand, valuable evidence may be discarded or inadvertently deposited by the criminal at some distance from the immediate scene. Therefore, the area to be protected may eventually extend far beyond the limits of that considered to have the higher priority.

Evidence is always present at the scene of a crime. Whether it is found is another matter. That it is not found does not prove its absence.

Failure to find evidence at the scene of a crime may be due, among other things, to faulty crime scene preservation, careless search, inadequate search, poor investigation or poor technique.

It is no exaggeration to say that in the majority of cases the members who protect the scene and the members who search the scene play a critical role in determining whether the scientific expertise available will be utilised to the best advantage.

The first member(s) to arrive at the scene of a suspected crime automatically incurs the responsibility of preserving the scene until otherwise instructed. If the first member(s) to arrive at the scene is/are in doubt as to whether there has been a crime at all the worst should be suspected and the fullest possible precautions taken.

In some cases, valuable traces may well have been obliterated by other persons who are at the scene before the arrival of the first member; this is unavoidable in the present state of education of the public in these

¹¹⁸ Crime Investigation Techniques (2nd Edition) (1994) paragraph 16.3, pages 295-296.

matters, but after the first members arrive, no more useful traces should be lost.

The scene of a suspected crime should be preserved until a complete and thorough examination has been made.¹¹⁹

- 3.110. This section also directs that no unauthorised person should be allowed to encroach upon the scene other than a Garda engaged in the search of the scene or specialist until it has been completely examined. The identity of each person (including members of the Garda Síochána) entering the scene should be recorded, as should the time of their arrival and the reason for their entering the scene. This normally entails the use of a scene-preservation log, which does not appear to have been used in this case.
- 3.111. The handbook specifically spells out what preservation of the scene means. It means that the Garda Síochána ensures that the scene remains unchanged from the time of the arrival of the first member until the scene has been completely examined and evidence collected. The scene must be delimited, as far as possible, to isolate it from its surroundings and to do so in such a way that no valuable clue is lost, i.e. it should not be drawn too narrowly. It means also that: unauthorised persons are not allowed to enter the scene or to move, touch or interfere with any articles at the scene prior to the completion of the examination. It notes that this may involve enlisting the aid of reliable civilians at the outset. It means also: "if the scene is a public thoroughfare, re-routing traffic away from the scene, if necessary." It requires, "taking extreme care to avoid the obliteration of such valuable clues as ... footmarks, tyre marks, blood etc., which may have been left at the scene" and "taking early action to protect items of possible evidential value that may be destroyed by rain ... or other causes before the scene is examined. For example, a raincoat or piece of canvas or plastic may be used to cover impressions in the earth that are exposed to rain. Buckets and wooden or cardboard boxes may be placed over obvious traces such as indentations, impressions or stains, whether the crime has occurred indoors or in the open ..." ¹²⁰
- 3.112. It is emphasised that in respect of outdoor scenes an ample area should be allowed, to ensure the exclusion of all unauthorised personnel and that consideration should be given to the laying out of tapes around the scene. In respect of a crime scene which is that of a "major crime", a separate record should be kept showing the particulars of the member(s) responsible for preserving the scene. The member in charge of the investigation, on arrival at the scene, has the duty to oversee the preservation of the scene and ensure that it is being carried out properly. It is underlined that "If rain or dew is likely, clothing, weapons, bloodstains, etc., should be covered for protection." ¹²¹

¹¹⁹ Crime Investigation Techniques (2nd Edition) (1994) paragraph 16.5, pages 297-298.

¹²⁰ Crime Investigation Techniques (2nd Edition) (1994) paragraph 16.5, pages 299-300.

¹²¹ Crime Investigation Techniques (2nd Edition) (1994) paragraph 16.5, pages 300-301.

- 3.113. The Code also directs that it is important to ascertain the point of impact in road-traffic accidents. It is also directs that careful measurements should be taken, especially of track or skid marks and the position of any broken glass, blood stains, oil, water, etc., on the roadway:

Anything evidential should be taken possession of and retained by the member in charge of the investigation. The nature and condition of the road surface and also the main features of the locality should be noted, particular attention being given to blind corners, bridges, road depressions, fences, etc., may have a bearing on the causation of the accident. The width of the carriageway, height and width of the footway and grass margin should be measured. Weather conditions should be noted, particularly whether visibility or road surfaces were affected.¹²²

- 3.114. It is also provided that:

Road-traffic accidents involving fatal or serious personal injuries and hit-and-run accidents will be reported by way of preliminary report by telephone or fax by the member in charge to the District Officer.¹²³

- 3.115. There is a further obligation on District Officers or acting District Officers or inspectors attached to stations to visit and examine the scenes of fatal, hit-and-run and serious personal injury traffic accidents as soon as possible after the occurrence. They should render every possible assistance, co-operation and advice to investigating members to ensure the speedy investigation of the accident to a satisfactory conclusion. The fact that the scene was visited and examined in this manner should be referred to by District Officers when submitting investigation files. Specifically, in relation to the investigation of 'hit-and-run' accidents the Garda Code provides as follows:

- (1) The member in charge of the station will immediately notify all stations and give all available details of the accident and a description of the suspect vehicle.
- (2) The scene of the accident should be closely examined for clues, such as parts broken off, articles dropped from the vehicle, etc. Pieces of glass, paint flakes, etc. should be collected and preserved. The probable damage caused to the missing vehicle should be ascertained e.g. lamps or screen broken, paint marks likely to be on it, dents on wings, panels, etc.
- (3) Appropriate steps should be taken to trace the missing vehicle, for example, checkpoints, appeals for information in press and radio,

¹²² Garda Code 24.1 (2) (g).

¹²³ Garda Code 24.1 (2) (m).

inquiries at garages, filling stations, hotels, pubs, etc. If a person in the missing vehicle is believed to have received injuries, inquiries should be made at hospitals and from chemists.

(4) It is also provided that the member who examined the scene and possesses the articles, if any, found there should examine any suspect vehicle.¹²⁴

3.116. The reporting of fatal traffic accidents is also governed by the Garda Code. When the preliminary investigation of a fatal accident is complete the investigating member should immediately complete a preliminary Accident Report Form C(T) 69 in respect of each fatal accident. The member in charge of the station must forward a copy of the completed Form C(T) 69 to the district and divisional office. A preliminary report of the fatal accident must be faxed within 24 hours to the Assistant Commissioner, A Branch, Services (Traffic) by the District Officer in whose district the fatal accident occurs. On receipt of the preliminary accident report, the Divisional Officer must examine any remedial action (if any) recommended and take whatever action is considered necessary to prevent a similar occurrence in the future.¹²⁵

3.117. The Garda Code also contains a chapter on "Crime: Reporting and Recording". This imposes a duty upon a member who obtains the details of any crime to complete an appropriate crime report form before his tour of duty ends and submit it to the member in charge. In respect of this reported crime the member in charge must then appoint a "member in charge of the case" for each reported crime. The fact of this appointment must be recorded at the "Investigated By" section of station or detective branch copy of the Form C1. The duty of the "member in charge of the case" includes the duty to bring the investigation to a satisfactory conclusion, reporting, via official channels, on difficulties arising outside the members control, furnishing reports via the member in charge to the station or unit on all significant developments in the matter and the retention in his custody of all exhibits in connection with the case and the maintenance of an inventory of exhibits including statements retained by other members. The copy of the crime report Form C1 filed at the Garda Station "will alone comprise the Station Crime Record." They are filed in numerical sequence beginning on the 1st January for each year. This chapter also provides in respect of the recording of manslaughter (traffic) and dangerous driving that:

(a) All cases of fatal road-traffic accidents where a manslaughter charge has been preferred on the direction of the D.P.P. will be recorded on Form C1.

¹²⁴ Garda Code 24.2.

¹²⁵ Garda Code 24.8.

(b) Hit-and-Run fatal traffic accidents, where the drivers responsible have not been traced will also be recorded as cases of manslaughter, and likewise accounted for on Form C1. Should, however, such driver(s) be subsequently traced and the D.P.P. does not direct proceedings for manslaughter form C1 should be amended as appropriate. A fatal road-traffic accident arising out of a hit-and-run must be included in “ Group 1 – Offences Against The Person on Form C1 ” .¹²⁶

- 3.118. In addition, there are further provisions in the chapter on “ Crime: Investigation ” directing adherence to the provisions of the “ Crime Investigation Techniques ” manual in respect of the proper preservation of the scene.¹²⁷
- 3.119. In carrying out its inquiry the Tribunal sought the assistance of the Garda Commissioner and requested that a senior and experienced officer assist the Tribunal in outlining correct procedures to be followed in the investigation of a serious road-traffic accident. Chief Superintendent M.J. McCarthy gave expert evidence to the Tribunal on this matter.
- 3.120. Again many of the obligations cast upon members of An Garda Síochána in relation to their attendance at a road-traffic accident are also set out in Chapters 24 and 27 of the Garda Síochána Code and are rooted in common sense. It is clear from Chapter 24 of the Garda Code that the duties of members attending the scene include that of taking a note of time of arrival at the scene, noting the names, addresses and ages of injured persons and witnesses at the scene and the procurement of statements as soon as possible from them and before they leave the sub-district.¹²⁸
- 3.121. Chief Superintendent McCarthy outlined how the scene of a fatal road-traffic accident should be dealt with and the responsibility of members of An Garda Síochána who attend at such a scene. Much of this is set out in the extracts of the documents already quoted above to which reference was made by the witness in evidence.¹²⁹
- 3.122. In the course of his evidence, Chief Superintendent McCarthy also reviewed how the four Gardaí who arrived to the scene executed their duties in relation to the matter. He said that all four members attending at the scene should have been aware of their general duties under the “Garda Code” and “Crime Investigation Techniques” manual. His conclusions are summarised as follows:
- (1) the members failed to preserve the scene;
 - (2) traffic diversions should have been put in place to await the preservation of the scene;
 - (3) Garda McDwyer noted a piece of skin with hair attached lying on the roadway and failed to preserve this item;

¹²⁶ Garda Code 27.5.

¹²⁷ Garda Code 28.12

¹²⁸ Garda Code 24.1 (2) (a) and (b).

¹²⁹ Transcript, Day 217, Q.111-117.

- (4) a Garda should have gone to the hospital to formally identify the victim at an early stage;
- (5) a Garda should have met with the doctor who examined the deceased [Dr. Zuhairy] in order to see whether he had any preliminary views as to the cause of death;
- (6) contact should have been made with the Communications Centre in Letterkenny seeking assistance with the technical examination of the scene;
- (7) Gardaí at the scene, once they had preserved the scene and obtained brief details of the persons present, should then have notified the station orderly at Lifford or the Communications Centre at Letterkenny giving the details of the type and nature of the incident;
- (8) the Member in charge of the station at Lifford should also have reported the hit-and-run accident by way of preliminary report by telephone or fax to the District Officer. During the initial stages of this investigation, there was no communication by the member in charge of the station to either a sergeant in the district or to the District Officer. The purpose of communicating from the scene to the Communications Centre is to keep supervisory ranks informed, to seek their assistance and the assistance of technical support and to obtain assistance in tracing suspect vehicles;
- (9) before they left the scene, the Gardaí had been informed that the victim had died. This should have reinforced the importance for these Gardaí of the requirement to preserve the scene even if it had not been done so at the earlier stage;
- (10) on receipt of the details of the incident communicated to Lifford Station, the member in charge of the station should have appointed a member in charge of the case. In fact, this was not done until Superintendent Fitzgerald was contacted later in the morning at 07.45 hours by Garda McManus from the Communications Centre at Letterkenny. It was only at 08.20 hours that Superintendent Fitzgerald was then able to contact Inspector John McGinley and appoint him as member in charge of the case. It took seven hours between the initial call to the Gardaí before Superintendent Fitzgerald took the various steps for procuring a scenes of crime examiner, a photographer and appointing a member in charge of the case, which should have been done earlier in the evening;
- (11) none of the vehicles present at the scene should have been allowed to leave the scene on the night of the accident. Each vehicle that entered the scene that night should have been detained and examined there and then, or preserved and examined at the earliest opportunity. There was a delay of five days before those who were at the scene returned their vehicles for examination;

- (12) though statements were taken from those who were present at the scene of the accident between the 15th and 18th of October 1996, this should have been done straight away especially in the case of Mr. Lee Parker who was the first person to arrive at the scene. This would have been in accordance with proper procedure. This applied also to the Garda patrol car and the car driven by Garda John O'Dowd which had driven beyond the scene and may have driven through it;
- (13) other items of evidence which were introduced to the scene, namely a blanket, and a yard-brush were not preserved or examined or taken possession of at an early stage and subsequently had to be retrieved;
- (14) when the Gardaí were notified that the victim had died, a Garda should have been dispatched to the hospital for the purpose of identifying the deceased, establishing the cause of death with the doctor who had pronounced death, and for the purpose of preservation of the body and clothing which form a crucial part of the evidence. The body of the deceased should have been preserved to prevent any interference with the evidence until a thorough examination and autopsy was carried out. A Garda should have remained with the body;
- (15) clothing should have been left intact with the body and been examined by the State Pathologist because of the danger of losing vital evidence from the clothing. In this instance, clothing was removed from the body of the deceased at some point while in the casualty department. It was not retrieved by the investigating Gardaí because of sensitivity to the feelings of the deceased's relatives. Notwithstanding this, the witness felt that the preservation of the body also involved the preservation of everything on the body and to do with the body.

3.123. The Tribunal is satisfied that there were a number of appalling deficiencies in the manner in which the scene of this crime was handled, in the initial stages of the investigation conducted by Gardaí Mulligan, O'Dowd, Birney and McDwyer. The Tribunal is satisfied that all of the criticisms made by Chief Superintendent McCarthy are warranted. The scene was not cordoned off and preserved at the earliest opportunity. Potential evidence located at the scene was not preserved. The body of the deceased, inclusive of all belongings and clothing, was not identified at an early stage and preserved until the post mortem. Details of the nature and type of incident were not properly communicated, in accordance with the procedures laid down, for the information of adjoining stations and supervisory ranks at an early stage. A member in charge of the investigation was not assigned to the case at an early stage. The District Officer was not informed at the earliest opportunity.

Statements were not taken at the scene and the motor vehicles at the scene were not examined until returned days later. In fact, the Garda patrol car and Garda O'Dowd's car were not examined at all. There was a complete breakdown of proper investigative procedure in relation to what was being treated initially as a fatal road-traffic accident. Indeed, what is most shocking is that the Gardaí concerned were not ignorant of proper procedure but decided not to follow it. The fact that they felt that they could do this suggested there was a complete lack of discipline and professionalism amongst the serving ranks at Lifford Garda Station and Raphoe Garda Station in respect of compliance with their duties which are clearly set out in the manual and Code already quoted in this section. It also suggests lack of control by senior ranks in this district, if members with longstanding records felt they could make such a decision with impunity and without even applying minimum investigative standards. The confidence that they could do so without consequence at that time is understandable when one considers the weak and ineffectual review of their behaviour under the direction of Superintendent Fitzgerald which will be dealt with later in this section.

Where Had Garda O'Dowd Gone When He Left The Scene?

- 3.124. The Tribunal now sets out the further movements of Garda John O'Dowd following his arrival at the scene at Raphoe. It is important to understand that though suspicions have been expressed about his possible involvement in a road-traffic accident leading to the death of the Late Mr. Barron, it is not the function of this Tribunal to determine who was responsible for his death. One scenario which presented itself to the Tribunal was whether Garda O'Dowd was involved in an accident with the Late Mr. Barron and had as part of a cover-up of that involvement sought to deflect attention onto others, namely Frank McBrearty Junior and Mark McConnell, and away from any possible inquiries into his involvement in the accident. This theory was also fuelled by the further theory that the two members would not have hidden their drink in Lifford with such energy and failed to co-operate with the Carty team on this issue if they had something more serious to hide. **Though the Tribunal has reached the conclusion that Garda O'Dowd was involved in a conspiracy to frame Frank McBrearty Junior and Mark McConnell for the death of Mr. Barron it does not conclude that Garda John O'Dowd was involved in his death. Garda John O'Dowd strongly rejects any such suggestion.**
- 3.125. Garda O'Dowd has made a number of statements and given evidence to the Tribunal concerning his movements following his attendance at the scene of the death of Late Mr. Barron. The accounts which he has given have been extensively investigated by the Tribunal. As will appear from the following account, there remain, a number of unexplained contradictions within his own statements and evidence and the accounts of witnesses whom, he says, he encountered after he left the scene. One of those is a Mr. Eamon Strain, who was stopped by Garda

O'Dowd after Garda O'Dowd had driven from the scene. If that had occurred at a time just after he had knocked down the Late Mr. Barron, it would appear unlikely that he would draw attention to himself by going out of his way to stop a car at that time. It is, perhaps, more likely, that he stopped the Strain car as some sort of follow-up investigation. The alternative explanation may be that he stopped the car because he feared that he might be identified then or later as a person driving in the vicinity that night and might need to explain his presence there at a later stage. There are aspects of the story recounted by Garda O'Dowd which are strange and raise suspicions in respect of a number of matters concerning his movements that night.

Garda O'Dowd Checks the McBride Tractor(s)

- 3.126. In his statement of the 23rd of November 1996, Garda O'Dowd gave an account of his movements following his arrival at the scene from the turning of the patrol car:

It was raining very heavily at the time. I inspected the scene from the headlamps of the patrol car. I saw nothing only blood. I saw no debris or glass. I felt at this stage that a car wasn't involved. I believed a tractor could have been. I spoke with Matt McBride in his house which was the nearest house to the scene. I was aware that he had a number of powerful tractors in his sheds. I asked him if I could check these. He immediately unlocked his sheds where I saw three tractors which I was satisfied had not been recently driven. I then went out to my car and drove off to make more inquiries while the other members were still at the scene. I then drove to Kinraigy to make inquiries in that area. I checked out an individual who would drive on that road without insurance but I established he didn't use that road that night. I stopped a number of vehicles in the Glenmaquinn area to establish their movements around 1 a.m. to no avail. I didn't return to Raphoe again that night but arrived home in Letterkenny around 4 a.m.

- 3.127. In an undated statement, said to have been made in March 1997, Garda O'Dowd elaborated on his movements. He said:

In an effort to make inquiries following the suspicious death of Richard Barron and in the belief at the time it was a hit-and-run traffic accident, I proceeded to the townland of Kinraigy, Manorcunningham to check if John McArt's brown Opel Kadett was at home. I was aware at the time he had an uninsured vehicle and would drive with drink on him. The vehicle wasn't at home. While in that area I stopped a car which came down a side road. This road is of very poor quality which leads back to Raphoe. I

spoke with the occupants of this car, a man and a woman. The woman said she was Toye from up that road and I was aware there was a family by that name up there. The man said he was Strain from Burnfoot. I was in my own private car and wearing civilian attire. I believe I had a torch. I asked them where they had come from and if they had been in Raphoe that night. They said they weren't in Raphoe and were coming from Toye's house. I identified myself as a Garda and explained a man had been knocked down in Raphoe earlier. I asked them if they had seen any other vehicles on the road, to which they replied no. Later that day, 14th of October 1996 I made contact with John McArt and asked him where his car was. He told me that it was at Collins' in Carnshannagh, Raphoe, that he had sold it. I jacked it up and examined it closely underneath. There were no signs of any damage. The fenders all around were rusty but were straight.¹³⁰

- 3.128. There is evidence from Garda Mulligan, already noted, which supports the contention that Garda O'Dowd went to look at a McBride tractor. There is also a statement made by Gary McBride, who was fourteen years old at the time, to the effect that he was at the scene and:

A short while after the ambulance left the Guards came along. I think a Guard came into our garden and looked at our tractors. I think he had a uniform on but I could be wrong about that.¹³¹

- 3.129. Hilary McBride also described the arrival of the Gardaí following the departure of the ambulance and recalled a Garda going over to their shed to check a tractor belonging to her uncle, William McBride:

There was only one tractor around the house that night as the others were away harvesting.¹³²

- 3.130. Rita McBride made a statement to a similar effect. It is noted by the interviewing Gardaí in this memorandum:

Yet Garda John O'Dowd in his statement of evidence states that he checked three tractors in the shed belonging to Matt McBride.¹³³

In this regard, the Tribunal notes that reference to the checking of the tractor does not occur in the earlier statements of these witnesses and the discrepancy noted by the interviewing Gardaí.

¹³⁰ Tribunal Documents, page 1192.

¹³¹ Tribunal Documents, page 988 – statement made on the 22nd of April 2000 to Detective Sergeant Michael Keane.

¹³² Tribunal Documents, page 979 – statement made on the 31st of August 1999 to Detective Garda T. Flynn and Detective Garda H. Maloney.

¹³³ Tribunal Documents, pages 973-974 – Memo of Interview on the 30th of August 1999 with Detective Gardaí Maloney and Flynn.

Garda John O’Dowd and John McArt

- 3.131. Prior to stopping Eamon Strain, Garda O’Dowd states that he visited the premises of John McArt because he wanted to check out Mr. McArt’s vehicle. Having examined the tractor(s) in the McBride sheds he said:

I went back to the scene then and I thought I would go up the road then, and I had seen John McArt when I came into the town. It’s just a thing that dawned on me. I’d sort it out, I’ll check it out. So I went up Glenmaquinn and I went over that road there. When you turn right at Glenmaquinn crossroads, you go over about one hundred yards, I’d say, or two hundred yards and the road goes back down right for Manorcunningham. So, I drove over that road there where John McArt lives at Kincaigy. I drove up on the street and I drove up at the back of the sheds because that’s where I thought he might keep a car. I know there is a wall there at the present moment but that wall wasn’t there at that time. So there was nothing there and there was no car there at all, so I turned about and came down on the street and I’d seen the lights of this car coming down from the opposite side and that’s when I stopped this guy in the red car, Eamon Strain.¹³⁴

- 3.132. Garda O’Dowd maintained that he had seen the same Mr. McArt in Raphoe earlier that evening and he suspected that he may have driven out the Mongorry Road and perhaps been involved in this accident. In a statement, which he says was made in 1997, he described Mr. McArt’s car as a “brown Opel Kadett”. He said: “I was aware at the time that he had an uninsured vehicle and he would drive with drink on him. The vehicle wasn’t at home.” Garda O’Dowd told the investigators that he had seen John McArt outside McCarron’s bar in Raphoe alone, when he drove into the town at approximately 23.30 hours on the 13th of October 1996.¹³⁵ He suspected that he had his car with him in Raphoe and that he would keep to the back roads because he suspected that he would have no insurance, because he had a number of convictions for same. He said that he drove into the back of McArt’s, where there were some sheds. He did not take the matter any further that night, but later on the 14th of October he called out and Mr. McArt was not there. Garda O’Dowd said:

I spoke with his mother and she told me he was gone to Letterkenny and I found him ... and I asked him was he on the road last night and he said he was. I said will you show me what you were driving so he said he would so he took me out and we drove out the main Letterkenny/Lifford road through Manor roundabout ... he brought me out ... to Michael Collins’

¹³⁴ Transcript, Day 287, Q.131.

¹³⁵ Tribunal Documents, Interview with Garda John O’Dowd on the 14th of July 2004, pages 6060-6062.

place there and Michael Collins had an old house ... which he rented out to people and he showed me this brown Kadett parked in there. I checked this yoke up. I had a good look underneath it. There was no damage done to it and I was quite happy that it wasn't involved in anything.¹³⁶

- 3.133. Garda O'Dowd maintained that Mr. McArt had informed him that he had been driving this brown Opel Kadett on the night of the 13th and that he had left it there as he was selling it to a man in Donegal Town.
- 3.134. Mr. McArt, in a statement to Detective Garda P. Keating on the 21st of November 1996, agreed that on Sunday, 13th of October 1996 he had driven to Raphoe but in a Ford Escort car. He also confirmed that he sold his car to a man in Donegal Town afterwards.¹³⁷
- 3.135. The Tribunal investigators also interviewed a Mr. Sam Kennedy on the 19th of November 2004 in respect of his dealings with Mr. McArt in October 1996. He confirmed that Mr. McArt had purchased a "blue" Ford Escort from him. He also recalled the incident in which he had towed the "blue" Escort which had broken down for Mr. McArt to a yard which he had rented from a Mr. Collins on an occasion close in time to the death of the Late Mr. Barron. He stated that he never had an Opel Kadett in the rented yard. He said: "The only car that I had was John McArt's and the car that broke down was a Mark III Escort." After two or three days, Mr. McArt got the car into running order. He was aware that Mr. McArt had traded this car for another car which he believed to be an Opel Kadett estate which was "an orangey burgundy colour." He was able to name the man to whom the Escort had been sold. Mr. Kennedy towed the car from a field near the rectory in Raphoe to his rented yard at Carnshannagh.¹³⁸
- 3.136. Mr. McArt, for his part, though he states he never had a brown Opel Kadett, confirmed that Garda John O'Dowd had called to see him at his mother's in Letterkenny. He brought him over to the place at Carnshannagh to which his Ford Escort had been towed on the 14th of October 1996. Garda O'Dowd wanted to see the car because he was investigating the death of the Late Mr. Barron who had been killed the previous night. He also told the Tribunal investigators that Garda O'Dowd had not informed him that he had called to his premises the previous evening and, in addition, it was not possible to drive around to the back of the house as Garda O'Dowd had described. In addition, Mr. McArt denied that he had been standing at McCarron's corner in Raphoe on the evening of Sunday, the 13th at 23.30 hours, though he had been in a café in Raphoe that evening.¹³⁹ However, Mr. McArt described to Detective Sergeant Fox that he had parked his "grey" Ford Escort near Quinn's pub on the evening of the 13th of October and

¹³⁶ Tribunal Documents, pages 6064-6066.

¹³⁷ Tribunal Documents, page 1852.

¹³⁸ Tribunal Documents, pages 8396-8397.

¹³⁹ Tribunal Documents, pages 8360-8379.

went over to Connolly's restaurant where he had something to eat. He remained there until 23.30 hours when he walked over to McCarron's pub where he had a glass of Tennents. The car remained overnight where he had parked it and he collected it the following morning. However, he says that two days later inquiries were made about his whereabouts on the 13th of October and he gave the Gardaí an account. It was also noted that he said at that time that he had a brown Opel Kadett which he sold to a man called Kennedy living in Collins's house. He later denied to the Tribunal investigators that he told Sergeant Fox about a brown Opel Kadett.¹⁴⁰

- 3.137. It should be noted that by letter dated the 3rd of February 2004 Garda O'Dowd's solicitors brought his concerns, about a discrepancy between his description of Mr. McArt's car which he examined on the 14th of October 1996 as a brown Opel Kadett and Mr. McArt's description of his car as a Ford Escort, to the attention of the Tribunal. The Tribunal carried out extensive inquiries into this matter and has taken the matter of Garda O'Dowd's dealings with Mr. McArt as far as it can go. There remains a difference between them as to the make and model of car which was examined by Garda O'Dowd on the 14th of October 1996. Mr. McArt's statements are, to a large extent, supported by Mr. Kennedy. If Mr. McArt was correct, his car – a Ford Escort – would have been readily seen in Raphoe by any Garda who had bothered to return to Raphoe village to ascertain what vehicles were in the vicinity at the time. Garda O'Dowd made the presumption that Mr. McArt had driven the route home and may perhaps have knocked down the Late Mr. Barron in doing so. This was a presumption based on very little and was totally unwarranted. The question might arise as to whether the McArt story was an invention by Garda O'Dowd calculated to justify his presence on the road when he met Mr. Strain. According to Garda Mulligan, Garda O'Dowd discussed aspects of the search of Mr. McArt's property for his vehicle with him when Garda Mulligan telephoned him later that morning at approximately 03.40 hours. He did not inform Garda Mulligan of his encounter with Mr. Strain.

Garda O'Dowd Stops Eamon Strain

- 3.138. The first official information that came to the investigation team concerning the involvement of Garda John O'Dowd in the events of the 13/14th of October 1996 came, not from Garda John O'Dowd to his authorities but from a Mrs. Madge Toye, an occupational nurse, who lived nearby with her husband and children. Her daughter, Ann Toye, was at the time a student in Derry and was at home that weekend and was not returning to her studies until Tuesday of that week. Ann Toye had a boyfriend at the time, Mr. Eamon Strain from Burnfoot, and had gone out with him on the Sunday night. Mrs. Toye was with her

¹⁴⁰ Tribunal Documents, pages 8356-8357.

daughter Ann in Dublin on Monday, the 14th of October 1996 and records that she heard of the death of the Late Mr. Barron on the Monday. Her daughter returned to Derry on the Tuesday, the 15th of October 1996. In a statement made to the Carty team she said:

A day or two later Ann rang me from Derry and told me that her boyfriend, Eamon, had been stopped at the crossroads beside McArt's on his way home from our house on the Sunday night. She told me that Eamon was frightened at the way in which he was stopped as the man that stopped him had used vulgar language and knelt into the car to talk to Eamon. I felt very strongly that the matter should be reported to the Guards. However, my husband felt that we should not interfere in Eamon's affairs. I was working in Lifford District Hospital at the time. A few days after, Ann told me about Eamon being stopped, I was driving into Lifford on my way to work. I am not sure of the time but it was bright and it may have been at dinnertime, at 12.30 p.m. or 1.00 p.m. On my way into work I saw a Guard on duty on Lifford bridge beside the Customs Offices. I decided that I would report the matter to him. I parked my car on the left-hand side of the bridge and walked for approximately ten yards over to the Guard who was on duty on the bridge. I told him who I was and that Eamon Strain had been stopped on the Sunday night of Richie Barron's death. The Guard took out a notebook and recorded the details. I told him that Eamon had thought that it was a Guard that stopped him and he replied that there would have been no Guards operating checkpoints in that area that night or words to that effect.The Guard asked me for Eamon's address and all that I could tell him was that he was from Burnfoot. I told him that Ann would be able to help him and I gave him our phone number. He did not ring me about this again.¹⁴¹

3.139. Though Mrs. Toye gave a description of the Garda with whom she spoke to the Carty team, he has not been identified to the Tribunal and has not come forward to identify himself, and, of course, no notes are available of this encounter.

3.140. The Tribunal is satisfied that Mrs. Toye's statement is correct and that she did make a report which ultimately was conveyed to Sergeant Joseph Hannigan. Job No. 87 dated the 18th of October 1996 reads:

Miss Toye, Rooskey, Convoy, in a car with boyfriend (Strain, Burnfoot) seen near Glenmaquinn and knew about accident.

3.141. The job was assigned initially to Detective Sergeant Michael Keane at conference but Garda John O'Dowd, when it was mentioned at conference, indicated that he knew about this and would take on the job of investigating this aspect.¹⁴²

¹⁴¹ Tribunal Documents, pages 1335-7 – Statement to Detective Sergeant James Fox and Sergeant Dermot Flannery made on the 2nd of May 2000.

¹⁴² Tribunal Documents, pages 7169-7170.

- 3.142. Garda John O’Dowd, in an interview with the Tribunal investigators, on the 16th of November 2004, noted that there was no mention of a Garda on the job sheet which issued on the 18th of October. Garda O’Dowd said:

I am certain sure that the information that I responded to was the information that somebody says there was a Strain fellow from Burnfoot and a Toye girl stopped by a fellow that was a Guard and that is what clicked with me. This also indicated to me some other member possibly D.S. Keane interviewed the Toyes after the initial info of 18/10/96 ... I can guarantee you certainly ... that I got nothing to do with that job because the only job I did in relation to that was as a response to what I have already explained to you and the fact that my name is written in differently there just doesn’t indicate to me that I got it at that time anyhow ... I didn’t get that job because I would remember about it.¹⁴³

- 3.143. His recollection was that he did not say anything at the meeting of the 18th of October 1996 indicating that he was the Garda who stopped Eamon Strain. He was not aware that Mrs. Toye had spoken to a Garda at Lifford bridge within days of the incident. He said that he recalled being present at a conference when the issue of the stopping of Eamon Strain came up, this was: “a couple of months later.” He then put in a statement roughly around the time the information came in about “the Guards” stopping the two. In his statement of the 23rd of November 1996 (the only statement made in relation to this matter by Garda O’Dowd in 1996), he merely says that having checked out an individual:

I stopped a number of vehicles in the Glenmaquinn area to establish their movements around 1 a.m. to no avail.

- 3.144. Mr. Eamon Strain was not interviewed in respect of this occurrence until the 9th of November 1997, when he made a statement. He said that on Sunday, the 13th of October 1996, he and his girlfriend Ann Toye had been to the pictures in Letterkenny after which he left her home. After he had left her home to her house:

I drove down from Ann’s house and turned right at the bottom of road leading up to her house, for Corkey, Manorcunningham. As I had just turned right the lights of a car came on behind me, I assumed it was the Guards and I stopped. I want to say now this time would have been 12.45 a.m. on the 14/10/96. The car behind me then reversed a short distance for about three or four yards. The headlights were still on. The car then came forward again to where it was parked originally ... I was looking at this car moving in the mirror. I then saw the door of this car open and a man in the driver seat appeared to be looking for something. This man

¹⁴³ Tribunal Documents, pages 8294-8295.

then got out of his car and came up the passenger door of my van. I want to say that it took this man about a minute or so to come up to my van after he had got out of his car. The headlights of his car were still on. He approached the passenger door of my van. I began to wind down the window, he opened the passenger door and put his head and shoulders into my vehicle and rested his knee on the passenger seat. He said to me that there was a poor ould cunt knocked down before he said that we are investigating a hit a run and he mentioned a place where it happened but I can't remember that now. He then said something else but I can't remember now, I did not speak to him at all. He then said to me don't be feared. He was chatting with me for about 3 or 4 minutes but I really can't remember what else he said. He eventually said that's alright and closed the door of my van. I then drove off. The other car did not follow me but turned around and went in the other direction. I would describe this man as being 45 years of age, sandy hair, full head of wavy hair. I would describe it as dirty fair, he was clean shaven and was wearing a green coat light type three quarter length. I can't remember what type of trousers. His hair was cut short. He was carrying a torch less than one foot long. His accent did not stand out in my memory. I did not get a smell of alcohol. He was clean looking and his coat was in good order. I think the car he was driving was a Sierra. I based this on the type of seats in the car and the colour of the upholstery. The headlights were also similar to that of a Sierra ... The torch he was carrying was black in colour. While stopped at this location I was under the impression that this man was a Garda. Some time later that week I told the Toye family about this incident. Later on that date 14/10/96 I heard on Highland Radio about a man having been knocked down and killed. I remember the time mentioned on the radio, and that the incident with me at Rooskey was fifteen minutes later. I think the time on the radio was 12.30 a.m.¹⁴⁴

- 3.145. He also told Detective Sergeant Fox on the 7th of October 1999, that when the man whom he stopped opened the front passenger door of the van:

He put his right knee on the passenger seat and put his upper body into the car. He had his face within six inches of Eamon's face. Eamon became frightened after he opened the door of the car.

- 3.146. Mr. Strain was not asked for his name or his driving licence. Mr. Strain did not tell the man that he had been to Toye's; the man did not mention Toye to him. He was not asked where he was going. He got home at about 02.00 hours. He

¹⁴⁴ Tribunal Documents, pages 1321-1322. Statement made to Detective Garda McHale on the 9th of November 1997 which was subsequently confirmed by Mr. Strain to Detective Sergeant Fox on the 7th of October 1999 and Detective Gardaí Flynn and Maloney on the 17th of April 2000 – Tribunal Documents, pages 1318-1322.

recalled hearing the news on the radio the following morning that a man had been killed in Raphoe the night before and he thought the man on the radio said that the body was found at 00.45 hours and he knew that he was stopped about five or ten minutes before the time that was stated on the radio. He then telephoned his girlfriend, Ms. Ann Toye, on the following Wednesday night (the 16th of October). He was aware that Mrs. Toye had informed the Gardaí about this. He thought it odd afterwards that he had been asked about a man being knocked down but was not asked whether he had been in Raphoe.¹⁴⁵

- 3.147. In a Memo of Interview on the 17th April 2000, Mr. Strain indicates that he heard about the accident on the radio. The time given in his statement of the 9th of November 1997 was estimated in accordance with the time of the accident as given on the radio: 00.30 hours. Therefore, he believed that he was stopped at 00.45 hours. He thought the man did not sound like a Garda as, " He was cursing and he never asked me my name or anything. He never looked at my car." ¹⁴⁶
- 3.148. Miss Ann Toye made a statement on the 27th of October 1999 in which she confirmed that she had gone out with Mr. Strain on the evening of the 13th of October to see a film in Letterkenny which concluded at 22.30 hours. After they left the cinema they went for a post-film drink (the Tribunal notes in this regard that Mr. Strain did not drink alcohol). They left the Pin Tavern shortly before midnight but they may have gone for a take-away locally and then returned to her family home at Rooskey, Manorcunningham, via the Manorcunningham roundabout, the Lifford road and Corkey – a journey of approximately fifteen minutes. They sat in the van for some time, after which Mr. Strain left and drove towards Manorcunningham. She thought they were about half an hour outside in the car. She went to bed not later than 01.00 hours. She recalled speaking to Mr. Strain about the incident involving a Garda on the following Tuesday night. Prior to making her statement she had been visited by Sergeant Fox and Detective Garda Flynn on the 24th of May 1999. On that occasion, she is recorded as saying Mr. Strain parted company with her at approximately 00.30 hours.¹⁴⁷
- 3.149. The difficulty presented by these accounts is that Mr. Strain's encounter with the "Garda" occurred within minutes of his leaving Miss Toye and on both of their accounts it must have occurred between 00.30 hours and 00.45 hours – before the body of the Late Mr. Barron was discovered. The location of this encounter is only minutes away from the spot in which Mr. Barron was killed. The question then arises, if the times given by Mr. Strain and Miss Toye in their statements are correct, how could Garda O'Dowd have encountered Mr. Strain and informed him that a person had been

¹⁴⁵ Tribunal Documents, pages 1324-1327 (Memo of Interview with Eamon Strain on the 7th of October 1999 with Detective Sergeant James Fox).

¹⁴⁶ Tribunal Documents, pages 1328-9 – Statement of Eamon Strain to Detective Gardai Hugh Maloney and T. Flynn.

¹⁴⁷ Tribunal Documents, pages 1330-1334.

knocked down in Raphoe approximately fifty minutes to one hour before he arrived at the scene of that accident. One explanation is that Garda O'Dowd may have been present at the scene at the time of the accident and perhaps been involved in it. The other explanation is that Mr. Strain and Miss Toye were completely wrong in their times.

- 3.150. Garda O'Dowd, by his own actions, added a suspicion to the encounter by failing to report it in the normal way. Even when he made his statement on the 23rd of November 1996, he failed to mention Mr. Strain or the fact that he had stopped Mr. Strain's car and that it was the only car that he stopped. In fact, he refers to stopping a number of vehicles in that statement. One would have thought it highly important in a hit-and-run accident that a car that was stopped by the Garda in the course of an investigation (in which he was now involved) was stopped, checked and cleared of any involvement in the occurrence. No follow-up could be carried out in relation to Mr. Strain's movements if they were not reported to the Incident Room. Equally, Garda O'Dowd failed to report that he had departed the scene and gone to Mr. McArt's premises in order to check out a vehicle which he thought Mr. McArt might have been driving that night. This also was useful information in respect of a job which he had carried out and may have been relevant in excluding or indeed even raising a question in relation to the movement of Mr. McArt's vehicle. **In addition, when the job was given out on the 18th of October 1996, the Tribunal is satisfied that Garda O'Dowd was assigned that job but nothing was done about it until September 1997 and then by Detective Garda McHale and not Garda O'Dowd. The job is marked as open, i.e. not completed in a proper way.**
- 3.151. The Tribunal is further concerned that in the preliminary report compiled in respect of this incident, the Garda who attended at the scene, Garda Mulligan, failed to mention the fact that Garda O'Dowd was in his company that night at all. The Tribunal is satisfied that once a member of An Garda Síochána involves himself in an investigation (even if he is off duty at the time) he is obliged to act as a member of An Garda Síochána. He cannot simply be airbrushed out of the story when reports are furnished in respect of the investigation. Any information gleaned by him, or any investigation carried out by him relevant to the inquiry, should form part of the information available to the investigation team. It was entirely wrong to present an incomplete record of the investigation of the occurrence which failed to mention Garda O'Dowd.
- 3.152. Eamon Strain, in evidence to the Tribunal, confirmed substantially what he had said in his statements and memos of interview and put his time of arrival back at the Toye house at 00.15 hours approximately, where he remained in his vehicle talking to Miss Toye (who his now his wife) outside the house for less than half

an hour. Some discrepancies in relation to the time emerged in the evidence of Mr. Strain. Mr. Strain confirmed that it would take twenty minutes to get from the junction where he met the Garda home to his house. In one of his statements, he said that he got home around 01.15 or 01.20 hours. However, in a memo of interview taken by Sergeant Fox in October 1999 he recalls that he got home about 02.00 hours and went to bed. The latter account would put the encounter with the Garda at approximately 01.40 hours, the former would put it at 01.00 hours approximately which was a time to which he initially adhered in evidence. Subsequently, when faced with the statement of Leonard Toye that he was of the opinion that Mr. Strain had left the Toye house much later than Mr. Strain had said, he acknowledged that he would not be a hundred per cent sure of the time. He accepted the possibility that the encounter may have occurred at 01.40 to 01.45 hours, rather than 00.45 hours.¹⁴⁸ However, the following day, having thought about matters overnight, he reasserted in evidence that the time of the encounter was between 00.30 and 01.00 hours. Under cross-examination when confronted with the proposition that he could not have been asked about the accident at approximately 00.30 hours in which the Late Mr. Barron was not involved until some time between 00.45 and 01.00 hours, he said that “I think I was stopped around 12.30 to 1 o’clock” and he did not think he was wrong on that.¹⁴⁹ In this regard, the Tribunal notes that the timeframe offered by Mr. Strain of between 12.30 and 01.00 hours for the encounter with Garda O’Dowd fits within the timeframe maintained by the investigating team and should be regarded in the light of the Tribunal’s findings that it is likely that Mr. Barron met his death between 00.40 hours and 00.55 hours. Consequently, it was possible for an encounter such as he described to occur within the timeframe provided by him but, of course, it would imply that Garda O’Dowd was at the scene some forty to fifty-five minutes in advance of the time given by him for his attendance.

3.153. There are features of Garda O’Dowd’s evidence which are highly suspicious. He told the Tribunal that his reference to having stopped a number of vehicles in his statement on the 23rd of November 1996 was referable to “his grammar”, which the Tribunal does not accept.¹⁵⁰

3.154. In the further account furnished by Garda O’Dowd in the statement made in or about March 1997, he states that having checked John McArt’s premises, he stopped Mr. Strain’s car which came down a side road. He spoke with the occupants of the car, a young woman who gave her name as Toye and a man who gave his name as Strain from Burnfoot. He asked them where they had come from and if they had been in Raphoe that night. They said they had not been in Raphoe but were coming from Ms. Toye’s house. He identified himself as a Garda and explained that a man had been knocked down in Raphoe earlier. He

¹⁴⁸ Transcript, Day 49, pages, 185-189.

¹⁴⁹ Transcript, Day 50, pages, 8-21.

¹⁵⁰ Transcript, Day 287, Q.316-322.

asked them if they had seen any other vehicles on the road to which they replied “No”.¹⁵¹

3.155. The Tribunal is satisfied that when stopped, Mr. Strain was alone and had left Ms. Toye at her family home. The Tribunal is also satisfied that Mr. Strain and Ms. Toye gave honest and credible accounts of the evening of the 13th/14th of October 1996, to the Garda Síochána and the Tribunal in evidence. Ms. Toye was not in the car when it was stopped. Garda O’Dowd said, in evidence, that he made his statement after some Garda had said at a conference, “there was a Strain and Toye girl stopped by somebody who said he was a Guard.”¹⁵² However Garda O’Dowd, when asked about why he had said Ms. Toye had been in the car when he stopped it said in evidence:

A. *Because it happened. Simple as that ... it’s as simple as that.*

Q. *Is that your answer?*

A. *It’s as simple as that.*

Q. *It happened?*

A. *It happened ... that was my belief.*

3.156. He sought to explain this further in evidence to the Tribunal as follows:

*Information that came into the conference room a couple of months after the night was that a Strain and a Toye girl were stopped by somebody who [they] thought he was a Guard. I had completely forgotten about it, and I was told to make out a statement about it, and I made out a statement, believing that she must have been in the car. When I stopped that car I didn’t open the door at all. Somebody wound down the window and ... Mr. Strain is saying I knelt in on the thing and I didn’t. Somebody wound down the window and I spoke with a guy for a few minutes and I was quite happy with him and he went away and I never thought another thing about it ... and I put in my statement on the basis that maybe she was in the car because I don’t remember speaking with her but perhaps she was in the car. I didn’t open the door, someone wound down the window and there was a Toye family up that road and I knew that and I put two and two together and I made my statement out. And it’s as simple as that.*¹⁵³

3.157. Apart from the fact the Tribunal accepts Mr. Strain’s account to the effect that the door was opened and that the Garda put his foot in on the seat beside him when

¹⁵¹ Tribunal Documents, page 1192. The relevant section of this statement is fully set out earlier in this section.

¹⁵² Transcript Day 287, Q.154-166.

¹⁵³ Transcript Day, 287, Q.174 and Q.272.

speaking to him, the question also arises as to why Garda O'Dowd made up elements of his statement, rather than furnish the simple account of what he actually remembered of the event and in this account did not remember whether Ms. Toye was in the vehicle or not. He placed her in the vehicle in his statement and then made up a complete conversation in respect of the event which never occurred. The account was a complete invention. **The Tribunal is baffled as to why a Garda, acting bona fide, would not simply state the truth as he recalled it. No sensible explanation was offered as to why this occurred. There was no suggestion of Garda O'Dowd suffering from shock as a result of attending the accident scene or being under the influence of alcohol or being in any other way incapacitated. A suspicious feature of these events is that he made this statement because somebody else brought the matter to conference and only then did Garda O'Dowd choose to outline his encounter with Mr. Strain.**

Conclusions in respect of the Movements of Garda John O'Dowd

- 3.158. It is clear that during the course of the Carty inquiry suspicions were raised in respect of the whereabouts of Garda John O'Dowd and Garda Pádraig Mulligan at the time of the death of the Late Mr. Barron. In the course of inquiries, what was said by them to be the same motor vehicles driven by them in October, 1996, were examined in 2000 forensically but nothing was found implicating either of their vehicles in the death of the Late Mr. Barron. Garda O'Dowd's claim that he drove the same car at the time is supported by vehicle registration documents to an extent and by some of the witnesses. The Tribunal is not empowered to, nor does it, draw any conclusion as to who is responsible for the incident which led to the death of the Late Mr. Barron. Having reviewed all of the evidence set out above, the Tribunal is left with a conflict in time between Mr. Eamon Strain and Garda O'Dowd as to when their encounter took place. If Mr. Strain's time is correct, he was stopped by Garda O'Dowd some forty to fifty-five minutes before Garda O'Dowd says he arrived at the scene of the accident. As already noted, Mr. Strain is an honest witness and his evidence is accepted in terms of his description of the encounter with Garda O'Dowd in preference to that of Garda O'Dowd's where there is a conflict. However, it is possible that he is mistaken as to time.
- 3.159. Garda O'Dowd said that he drove up the area behind Raphoe to Mr. McArt's premises, in order to check out a vehicle. An alternative suggestion is that Garda O'Dowd may have sought a route of escape from the accident in which he had been involved and drove up behind Raphoe in order to maximise his chance of not being detected by avoiding the traffic on the main roads around Raphoe. As already said, it is not part of the Tribunal's function to determine who killed the Late Mr. Barron but it notes that had Garda O'Dowd thought to make himself scarce by

travelling up behind Raphoe in the manner described it would be somewhat foolhardy to stop the Strain car. It may well be that the car was stopped in the course of an investigation being carried out by Garda O'Dowd following the accident.

- 3.160. Such a conclusion, however, does not explain why Garda O'Dowd has been so disingenuous in the manner in which he dealt with the encounter with Mr. Strain. Initially, he chose not to furnish the fruits of his investigation (if that is what it was) when he stopped Mr. Strain, to the Incident Room. He omitted any description of the encounter in his initial statements. He stated that he stopped a number of vehicles but later changed this, and said he stopped only one. His description of his encounter with Mr. Strain and Ms. Toye was a complete invention. He included Ms. Toye as a passenger in the car when she was not present. He made up a conversation which he said he had with two people and not one, elements of which involve a one-to-one conversation with Ms. Toye. He did not complete the job which he volunteered to do at conference and follow up Mrs. Toye's information. There was a dispute between Garda O'Dowd and Mr. McArt about which vehicle was shown to Garda O'Dowd. Mr. McArt's contention was that he was the owner of a Ford Escort and not an Opel Kadett at the time, and was supported in this by Mr. Kennedy. Mr. McArt said that Garda O'Dowd could not have driven up behind his house on the night of the 13th because it was not accessible. Garda O'Dowd never appears to have mentioned to Mr. McArt, when he encountered him on the 14th of October, that he had been up to his premises the previous night looking for his vehicle. One could legitimately ask the question as to whether there was a pretence of going up to Mr. McArt's premises, conjured up by Garda O'Dowd after the encounter with Mr. Strain and followed through with Mr. McArt the following day, in order to justify his presence on this roadway at a later stage. It is difficult to understand why, if Garda O'Dowd had nothing to hide, he told so many lies about his behaviour that evening.
- 3.161. However, it must also be borne in mind that any suggestion that Garda O'Dowd may have been involved in the accident would also have required a degree of knowledge on the part of Garda Pádraig Mulligan. He has given an account of being in the company of Garda O'Dowd in the course of the evening and when they attended the scene of the accident, and effectively gives an alibi to Garda O'Dowd for that period. It is somewhat supported by the time sequence furnished by Garda Connolly in relation to the presence of Gardaí Mulligan and O'Dowd in the pub in Lifford. However, he also changed his original time for Garda O'Dowd's attendance at Raphoe, from 00.45 hours to 23.45 hours. Both Gardaí continued to hide their movements for the crucial period for years after

the death. It would clearly mean that Garda Mulligan was lying in respect of his being in the company of Garda O'Dowd, if Garda O'Dowd had been involved in an accident on his own or was actually in his company when the accident occurred. Apart from factors already mentioned, there is no evidence to support that proposition, apart from that of Sean Crossan, previously discussed, and upon which the Tribunal is not happy to rely in respect of this matter.

- 3.162. The Tribunal is unable to take this matter any further on the foregoing evidence.

Further Deception by Gardaí O'Dowd and Mulligan Concerning Their Presence in the Pub in Lifford

- 3.163. The Tribunal has already examined the movements of Garda O'Dowd and Garda Mulligan on the night of the 13th/14th of October 1996. It also considered the subsequent inquiries carried out in respect of the failure of Garda Mulligan to respond to the call of the accident. Still later inquiries were carried out concerning the presence of Garda Mulligan in the public house at Lifford by the Carty team. The response by Gardaí Mulligan and O'Dowd was calculated to ensure that the truth would not come out in respect of this event. From time to time the right to silence was employed, the Garda Representative Association's functionaries were used and the members hid behind a cloak of legal formalism which is facilitated by the present disciplinary regime within An Garda Síochána. This cannot be allowed to continue and must be addressed by the Representative Associations, the Minister for Justice, Equality and Law Reform and the Garda Commissioner. For more than eight years these two members were able to avoid the answering of one simple question in relation to Garda Pádraig Mulligan's duties. Where was he on the night of the 13th/14th of October 1996 at a time when he was employed and paid to carry out his duty as a member of An Garda Síochána in Raphoe? It is baffling and extraordinary that a member of An Garda Síochána can avoid answering this question to his immediate superiors or to any officer of any rank, up to and including an Assistant Commissioner, sent to investigate this matter on behalf of the Commissioner of An Garda Síochána. It was something which the Commissioner and, ultimately, the people of Ireland were entitled to know. Any other employer would be entitled to know the answer to the question. Why is the Garda Síochána so different? It is the Tribunal's view that it is not and that, indeed, given the range of powers and responsibilities vested in a member of An Garda Síochána, it is all the more necessary that if a question is asked by a superior in relation to one's duty it be answered promptly and honestly. A respondent should not be entitled to envelope it in a mist of legal formalism.

- 3.164. Garda Mulligan said on a date which appears to be the 18th of August 1999 that he met with Chief Superintendent Denis Fitzpatrick in a corridor of the Garda Station at Letterkenny. He was asked: "What roads were you on back on the 13th

October?” He thought it a strange question and asked the Chief Superintendent why he was asking this question three years after the event. He asked whether he was a suspect in the matter or what was going on. He was told he was not a suspect and that the Chief Superintendent simply wanted to know what road he was on that night. He became fearful because the Carty team had been down inquiring into the matter earlier in the year. The Chief Superintendent also asked whether Garda John O’Dowd had gone home the Mongorry Road and Garda Mulligan told him that he had. He then told the Chief Superintendent what roads he had travelled and the conversation came to an end. However, he was summonsed to the Chief Superintendent’s office on the 16th of September 1999 and asked why he did not produce a statement which had been requested of him by the Chief Superintendent on the date of their conversation. He was placed in the museum room of the Garda Station and told not to come out of it until he had produced a statement.¹⁵⁴ He made a statement. In it he confirmed his previous statement in every respect. His new statement, like his old statement, did not contain a reference to his visit to the pub in Lifford.¹⁵⁵

- 3.165. On the 26th of October 1999, Garda Mulligan received a telephone call from the then Inspector Hugh Coll inviting him to a meeting which he attended with Garda Martin Leonard, his Garda Representative Association representative. Garda Mulligan was nervous to go in on his own and he just wanted Garda Leonard there as a witness. Present at the meeting were Inspector Hugh Coll and Inspector Tadgh Foley. The investigators told Garda Mulligan they wanted to pick his brain about the night he was working in Raphoe and Garda Leonard asked: “Is it discipline, criminal or complaints you are investigating?” They declined to speak with Garda Mulligan in the presence of Garda Leonard. He said the meeting was adjourned on the understanding that he would return the following day in order to try and sort the matter out. The notes made by Inspector Coll of this interview indicate that he:

Told Garda Mulligan that he was there so that we could discuss and clarify his duties as a member of An Garda Síochána on the night of the 13th/14th October 1996 when Richard Barron was killed. Detective Inspector Foley and I told him that he was there as a Garda witness and our queries with him were not in relation to him being involved in anything criminal or in relation to any discipline matter.¹⁵⁶

- 3.166. Garda Mulligan denied that he was told that the matter did not concern a criminal or disciplinary matter.
- 3.167. A further meeting took place the following morning on the 27th of October

¹⁵⁴ Tribunal Documents, page 1156.

¹⁵⁵ The memo of Chief Superintendent Fitzpatrick re: interview with Garda Mulligan on the 18th of August 1999, Tribunal Documents, page 3546.

¹⁵⁶ Tribunal Documents, page 3246 and also see notes of this meeting taken by Garda Martin Leonard, Tribunal Documents, page 3848.

1999 at 11.10 hours. The previous night Garda Mulligan met with his solicitor, Mr. Paudge Dorrian, who gave him advice that he should not speak with them unless his solicitor was present. Garda Leonard told the investigators this and said also that Garda Mulligan had complied with Garda regulations by making his statement in respect of the 13th/14th of October 1996 and was saying nothing more.¹⁵⁷ It was noted by Inspector Coll that when Garda Mulligan declined to clarify the issues in his statement, "Detective Inspector Foley told him that he was disappointed in his attitude and that it was a sad reflection on An Garda Síochána". He was right! Garda Mulligan says that he does not recall this.

3.168. Garda Mulligan said he was subsequently approached by Detective Sergeant Michael Keane of the Carty team who, "said something about if you made out a new statement the other one would be taken out." He presumed this meant that if he put in about the public house his other statements could be pulled and replaced with a new statement which contained an explanation concerning the excursion to the pub. He declined to do this. He complained to his solicitor. His solicitor sent a letter indicating that it was not intended to respond to a letter seeking a full statement from Garda Mulligan in relation to his movements of the 13th/14th of October 1996 on the grounds that Garda Mulligan had already submitted statements in the past. He complained that further pressure had been brought to bear on Garda Mulligan and that he had advised him that he should answer no further queries, unless in the presence of a solicitor. He complained that some person unknown asked a third party (Sergeant Keane) to intervene and make suggestions to Garda Mulligan that he should alter the statements already made and that these would be "pulled" from the original files. The solicitor found the actions of the investigating authorities reprehensible, and pressurising and threatened High Court proceedings. Detective Inspector Keane denies the allegation.

3.169. On the 8th of May 2000 Detective Inspector O'Loughlin and Sergeant Healy of the Carty team met Garda Mulligan at Letterkenny Station. He was confronted with the information that an independent witness placed him in a pub with Garda O'Dowd up to midnight, or shortly thereafter, on the night of the 13th/14th of October 1996. He was told also at the meeting "of accusations and rumours in the community and that the Gardaí had some involvement in the death of Richard Barron ... the rumours were not specific." He was requested to furnish his car for forensic examination and did this. He was noted as responding to the allegation of the independent witness by saying: "I am not going to say at this stage I was in the pub." In evidence to the Tribunal, he could not remember saying this. He believed at the time that lower ranks of the Garda Síochána would

¹⁵⁷ Tribunal Documents, pages 1158-1159.

be scapegoated by the Carty team and their investigation into the Raphoe death. His misbehaviour in going to the pub at Lifford would be focussed upon and not the real issues involved. This is what motivated his refusal to admit to his presence in Lifford. Garda O'Dowd said the witness must be mistaken.¹⁵⁸

- 3.170. On the 9th of May 1996, he returned for another meeting with Superintendent McGarty and Detective Inspector O'Loughlin accompanied by Garda John O'Dowd. The Carty investigators were assisted by their attendance at the scene in Raphoe and their description of various events to them. The investigators revisited the matters discussed the previous day with Garda Mulligan. He denied that he was involved in any way in the death of the Late Mr. Barron. At this meeting, the statement of Garda Connolly was specifically mentioned and explained to Gardaí Mulligan and O'Dowd. Garda Mulligan said that he was too afraid at this stage to tell the investigators that he was in the pub at Lifford.¹⁵⁹

Events Post the 9th of May 2000

- 3.171. Garda Leonard, who was representing Garda Mulligan on behalf of the Garda Representative Association, met with members of the Carty team on the 18th of May 2000 at the Mount Errigal Hotel. The meeting concerned "the pub issue only". He was trying to negotiate the resolution of this issue by ensuring that any breach of discipline could be dealt with as a minor matter under regulation 7 of the disciplinary code. On the 19th of May 2000, he again met with Detective Inspector O'Loughlin of the Carty team who conveyed to him the message that the Chief Superintendent would not agree to the matter being dealt with under regulation 7, to which Garda Leonard replied; that all agreements were off and the members would have to abide by their legal advice. Inspector O'Loughlin's note of the matter was that Garda Leonard:

Told us that the statements of Gardaí Mulligan and O'Dowd would be forthcoming ... and that the issue of them being in the pub in Lifford on the night of the death of Richard Barron was being conceded.

- 3.172. Given that the evidence was now in from Garda Connolly of their presence in the pub, Garda Leonard was trying to negotiate a deal on behalf of Garda Mulligan and unless they were dealt with under a regulation, the truth would not be forthcoming in a statement. However, the Chief Superintendent would not make a decision about disciplinary matters until he knew what the facts were.¹⁶⁰
- 3.173. On the 19th of May 2000, Garda Mulligan's solicitor Mr. Dorrian wrote the following letter to the Chief Superintendent at Letterkenny:

¹⁵⁸ Tribunal Documents, Page 1278.

¹⁵⁹ Transcript, Day 212 – various references and Day 213, Q.82-116.

¹⁶⁰ Transcript, Day 205, Q.498-647.

Dear Sir,

It has come to our notice that a most serious situation has arisen in relation to allegations made by Garda James Connolly who we understand is presently stationed at Mountcharles, Co. Donegal.

Would you please let us have a copy of the statement made by Garda Connolly affecting any of our clients as we understand that Garda Connolly has indicated that he was on licensed premises at a time prohibited by law and we want confirmation of this fact.

We are reserving our rights in relation to defamatory proceedings against Garda Connolly.

It is surprising that the investigation into the Richard Barron murder is so flawed that events that are alleged to have happened in 1996 are only now being brought to the notice of the authorities by Garda Connolly alleging impropriety on other members' parts. Why didn't Garda Connolly disclose this information at a date and time when our clients could be in a position to deny and produce alibis in relation to the allegations.

Yours faithfully

P.A. Dorrian & Co.

cc: Copy sent to Garda Connolly

3.174. This letter, which appears to be written on the instructions of Gardaí O'Dowd and Mulligan, clearly suggests that there is a basis upon which to deny the allegation made by Garda Connolly in respect of the presence of Gardaí Mulligan and O'Dowd at the public house in Lifford. It is a brazen and bullying attempt to peddle a lie and undermine the credibility of Garda Connolly. It is also calculated to pressurise Garda Connolly insofar as it threatens him with legal proceedings for defamation – clearly implying that he is lying – and by forwarding a copy of the letter to Garda Connolly. At this stage, the two Gardaí have obviously taken a further step. It is no longer a question of simply declining to offer any further statement or information. They are now setting up a false story.

3.175. On the same date, a letter was sent to Detective Superintendent McGarty, of the Carty team, on behalf of Garda John O'Dowd threatening legal proceedings and advising him that:

We have advised our client that he has constitutional rights which supersedes any obligations he may have as a member of An Garda Síochána and accordingly we have instructed him not to communicate with, reply to or in any way become involved in the ongoing intimidation

which apparently is a trademark for the present investigation and prior investigation in the Letterkenny area. It is abundantly clear to us that scapegoats are attempted to be found to protect the inefficiency and negligence of the original investigation into the death of Richard Barron.¹⁶¹

- 3.176. Garda Mulligan expressed regret at any hurt caused to Garda Connolly by virtue of this correspondence, or the manner in which his statement was dealt with by him, but explained it on the basis of his fear of the Carty inquiry and the consequences for him of revealing that he had been in a pub in Lifford on the night in question.¹⁶²
- 3.177. On the 12th of May 2000, Detective Sergeant Healy and Inspector O'Loughlin met with Garda Mulligan in a car park at Letterkenny and spoke with him for about twenty minutes, during the course of which they handed him a list of questions under a covering report of Detective Superintendent Joseph McGarty. He was requested to answer the questions. That day and on a number of occasions subsequent to it, members of the Carty team asked him for a statement replying to these questions.¹⁶³ The questions were answered for the Tribunal of Inquiry under a covering letter from Garda Mulligan's solicitor on the 7th of March 2003.¹⁶⁴ In that reply he stated he was in the public house for approximately thirty to thirty-five minutes and that he left the premises at 01.05 hours on the morning of the 14th of October 1996.¹⁶⁵
- 3.178. Garda O'Dowd, though off duty on the evening of the 13th/14th of October 1996, effectively engaged in the same scheme of obstruction and deception with Garda Mulligan concerning this issue on every occasion upon which an attempt was made to get at the truth in the course of the various Garda inquiries.
- 3.179. The sorry sequence of events in respect of this matter which was important to the investigating Gardaí is an appalling reflection on the standards of integrity, efficiency, management, discipline and trust between the various members and ranks of the Garda Síochána inside and outside the division. Rigid positions were adopted from the outset in respect of the matter. Despite the existence of an elaborate disciplinary procedure, established under statute, those under inquiry seem to have had no trust in the adequacy or fairness of the process or of the officers of An Garda Síochána with whom they were dealing. The adversarial nature of the disciplinary proceedings completely dominated the investigative phase. The public interest in resolving important issues of fact concerning the death of the Late Mr. Barron was subsumed under an

¹⁶¹ Tribunal Documents, pages 1307-1309.

¹⁶² Transcript, Day 213, Q.116-130.

¹⁶³ Tribunal Documents, pages 1168-1182.

¹⁶⁴ Tribunal Documents, pages 4149-4150.

¹⁶⁵ Transcript, Day 213, Q.219-243.

inflexible legal blanket. Though the law was employed to protect the “interests” of the two members, it no longer served the public interest. Gardaí looked to protect their own interests. The truth was to be buried. The public interest was of no concern.

- 3.180. The Tribunal recognises that the dishonesty of the two members concerned was primarily responsible for this situation. However, it is also clear that the manipulation of the legal framework within which disciplinary matters are dealt with facilitated the lie. The adversarial nature of these proceedings seems to infect relationships within the Garda Síochána between management and membership. Situations such as this will undoubtedly arise in the future again. Given the nature of the penalties applicable for breaches of discipline; the adversarial nature of the proceedings; the cover-up and code of silence which is perhaps a symptom of the lack of trust between the membership and management; the enormous delays which are inherent in the system; and the frequent recourse by members of An Garda Síochána to High Court proceedings arising out of disciplinary proceedings, it is time for the Minister for Justice, Equality and Law Reform to seriously consider a root-and-branch reform of this cumbersome method of enforcing discipline. The present system militates against openness and trust between management and membership, a speedy resolution of simple issues, and the eliciting of the truth.

Return to Raphoe

- 3.181. The three Gardaí returned from Letterkenny Hospital to Raphoe Garda Station. Garda Mulligan wished to leave his hand radio in the Garda Station and to contact Garda O’Dowd. Whilst at the station Patrick ‘Packie’ Gallagher arrived. He asked for a cigarette. He was drunk. He told them his name. He was the brother of Paul ‘Gazza’ Gallagher who was to become a suspect in the case. He wanted a lift to Letterkenny and a light for his cigarette. He was told about the occurrence of an accident and told them that his brother had been in Raphoe that night and was driving an old Renault and that he was “wild drunk”. He said that there were a few fellows from Castlederg after him in the town. After this exchange, Patrick Gallagher left. Gardai Birney and McDwyer went in the patrol car to Lifford Station and Garda Mulligan, having made his call to Garda O’Dowd, followed the other two to Lifford Station where he intended to draft his preliminary report on the computer there.¹⁶⁶

Phone call to Garda O’Dowd’s House

- 3.182. On his return to the station, Garda Mulligan telephoned Garda John O’Dowd’s

¹⁶⁶ Transcript, Day 212, Q.221-265; Transcript, Day 199, Q.603-627; Statement of Patrick Gallagher dated the 24th of October 1996 to Detective Sergeant Henry and Detective Garda Keating, pages 2384-2386.

house at 03.40 hours: " To see how he got on, did he find anything; to check to see did he find anything ... the car." ¹⁶⁷ He probably also said to him that he would see him the following day. He did not discuss the fact that they had been in Lifford together earlier in the evening with Garda O'Dowd. Garda O'Dowd informed him that there was no car where he had looked and he had gone home.¹⁶⁸ Garda O'Dowd had no recollection of what he spoke to Garda Mulligan about on this occasion but Garda Mulligan probably told him that Mr. Barron was dead.¹⁶⁹

The Preliminary Report

3.183. Garda Mulligan furnished a preliminary report on this " fatal hit-and-run accident at Townparks, Raphoe" on the 14th of October 1996. He completed this report with the assistance of Garda McDwyer. It was a short report giving the barest outline of the events. It stated that he had been contacted on the morning of the 14th of October 1996 while on foot patrol at Meeting House Street, Raphoe at 01.25 hours approximately, by the crew of the Lifford patrol car and informed that a pedestrian had been knocked down. A Lee Parker had told him that he had found the body of the Late Richard Barron lying on the road at 00.50 hours. He examined the scene and at 02.15 hours learnt that Mr. Barron had died as a result of his injuries. It was said that " our inquiries are continuing to establish as to the driver of the offending vehicle, but with no clues at the scene [we have very little to go on]." He noted that, " It is very possible that the owner of the offending vehicle lives somewhere between Raphoe and Letterkenny and would take this road home." ¹⁷⁰ **No effort was made by any of the Gardaí who attended the scene or in the Communications Room to make contact with a sergeant, inspector or superior officer. There is no mention of the presence of Garda John O'Dowd at the scene. No effort was made to contact a station sergeant, an inspector or any senior officer by Garda Boyce, or any of the Gardaí at Lifford Station or Garda Mulligan. This occurred only following a change of shift in the Communications Room in Letterkenny later in the morning.**

Notification to the District Officer

3.184. According to Superintendent John J. Fitzgerald, he was contacted at 07.45 hours on the 14th of October 1996 by a Garda McManus who had taken up duty in the Communications Room at Letterkenny at 06.00 hours, and was informed by him of the fatal accident at Raphoe. Superintendent Fitzgerald had been on annual leave from the Thursday to the Saturday of that weekend. Superintendent Frank Fitzpatrick was designated to carry out his duties between 17.00 hours on the Friday and 09.00 hours on Monday, the 14th of October 1996. Superintendent Fitzgerald had taken a day off on Sunday the 13th and a day's

¹⁶⁷ Transcript, Day 212, Q.227.

¹⁶⁸ Transcript, Day 212, Q.225-235.

¹⁶⁹ Transcript, Day 287, Q.323.

¹⁷⁰ Tribunal Documents, pages 1186-7.

annual leave on Monday the 14th of October. On the Monday, Superintendent Frank Fitzpatrick was to be replaced as acting District Officer by Inspector James Gallagher. Strictly speaking, Superintendent Frank Fitzpatrick should have received the call as the acting Superintendent for the district, which Superintendent Fitzgerald had received. In fact, Superintendent Frank Fitzpatrick was not contacted but attended at Letterkenny Garda Station at 08.45 hours prior to being relieved by Inspector Gallagher and remarked that he had, in fact, had a very quiet weekend. Superintendent Fitzgerald went to Letterkenny Garda Station and said that he made his annoyance and frustration known there about the fact that he had not been called, in relation to this matter and other deficiencies which were then apparent in how the incident had been dealt with.

3.185. Having spoken to Garda McManus, Superintendent Fitzgerald was not happy in that he had not been notified promptly of the fatal accident, no proper preservation of the scene had been carried out, and no Scene of Crime Officer had been requested to attend at the scene. He thought it a terrible situation, professionally. He directed Garda McManus to secure the attendance of a Scene of Crime Officer at the scene immediately. He also directed that he notify the station Sergeant and the Sergeant in charge of traffic at Divisional Headquarters at Letterkenny. He was surprised that he had not been contacted by Garda Boyce. It had been directed that in such an eventuality he was to be contacted at whatever hour and at whatever inconvenience. Garda Boyce's suggestion that there might have been reluctance to contact a senior officer in the early hours of the morning in respect of such an incident because the officer might not wish to be disturbed, was not accepted by the Superintendent as valid. He had been aroused and notified on previous occasions when acting as a Detective Inspector and Superintendent.

3.186. Shortly afterwards, Superintendent Fitzgerald went to Letterkenny Station. He went to the Communications Room to ascertain whether his directions had been complied with. Sergeant Coady had been directed to the scene at Raphoe. Sergeant Coady, a Scenes of Crime Officer, was on duty at Castlefin Station. However, when Superintendent Fitzgerald called Castlefin he was surprised to be answered by Sergeant Coady, who could not leave the station as he was on his own there. He had to be relieved before acting on the direction. He also spoke to Garda Birney in relation to the delayed response by the Lifford patrol car to the call in Raphoe. Garda Birney told him a story about how there had been confusion as to whether the accident had occurred in Townparks, Convoy or Townparks, Raphoe. Lifford had initially been told the accident was at Townparks, Convoy and Superintendent Fitzgerald was informed by Garda Birney that the patrol car had gone to Townparks, Convoy in response to the call.¹⁷¹

3.187. Superintendent Fitzgerald made a list of the shortcomings in the initial Garda

¹⁷¹ Transcript, Day 62, Q.833-911 and various references.

response to the call. He discussed this list with Chief Superintendent Fitzpatrick on Tuesday, the 15th of October. The Chief Superintendent agreed that the issues raised by Superintendent Fitzgerald would have to be properly inquired into. However, he told him that he was not to allow these issues to take precedence over his investigation and suggested that he hand them over to Inspector James Gallagher who should then deal with them. Inspector Gallagher was directed to prepare a report for the purpose of making a decision as to whether any breach of discipline had occurred on the part of those involved.¹⁷²

The Gallagher Report

3.188. In a letter dated the 15th of October 1996, Superintendent Fitzgerald requested that Inspector Gallagher should inquire into eleven questions " as a matter of urgency" . These questions were:

1. Why it took thirty five minutes to respond.
2. Why was the scene not preserved forthwith.
3. Why was the scenes of crime examiner not immediately contacted considering the weather conditions and the necessity to both gather and preserve evidence.
4. What arrangements were immediately made to secure the clothing of deceased.
5. The superintendent was not notified until 7.45am, why?
6. Was there any member of supervisory rank notified prior to 7.45am.
7. It was only on the directions of the superintendent on being notified at 7.45 am that the matters of the scene preservation and scenes of crime examination were initiated. Why?
8. On the instructions of the superintendent, the sergeant in charge, Raphoe was contacted and sergeant in charge, traffic. Why were such matters not attended to during the night, when a proper investigation could have been initiated forthwith.
9. What actions and inquiries were done and made by the three members, Birney, McDwyer and Mulligan once contacted.
10. What action was taken from the time of the initial report up to 7.45am on that morning by way of communication and circulation.
11. What form of communication had Garda Mulligan by way of radio contact.¹⁷³

¹⁷² Transcript, Day 62, Q.993-1021 and Transcript, Day 63, various references.

¹⁷³ Tribunal Documents, pages 165-766.

3.189. Superintendent Fitzgerald then forwarded a more extensive report to the then Superintendent Gallagher at Milford on the 21st of December 1997 in which he gave a fuller account of his recollection of events.¹⁷⁴

3.190. Superintendent Gallagher then reported, on the 4th of April 1997, to Superintendent Lennon who was the new Superintendent at Letterkenny in relation to the matter. At this stage he noted:

This crime is now recorded as a manslaughter it having been established that Richard Barron had not been the subject of a hit-and-run accident but had been feloniously assaulted on his way home from the pub. The fact that the scene was not preserved for technical examination has been the subject of local gossip and indeed the national press have expressed more than a passing interest in this case.¹⁷⁵

3.191. He noted in the body of the report that instructions at page 298 of "Crime Investigations Techniques" were very clear in terms of the duties of the first members to arrive at the scene of a suspected crime. They automatically incur the responsibility of preserving the scene until otherwise instructed. If they are in doubt as to whether there has been a crime at all, the worst should be suspected and the fullest precautions taken. The scene of a suspected crime should be preserved until a complete and thorough examination had been made. The preservation had not taken place in this case until 09.10 hours on the morning of the 14th of October. Superintendent Gallagher was satisfied that "this amounts to neglect of duty by the members concerned and warrants investigation under the Garda Síochána (Discipline) Regulations, 1989." He noted that Garda O'Dowd was not working on the night and that he had apparently called to the station, "so that he could have summonses served it being a busy night in Raphoe and a good night to serve summonses. In my view, he bears far less responsibility than the investigating members."

3.192. In respect of the questions posed by Superintendent Fitzgerald, he noted "some of these questions have not been addressed in the reports/statements attached and might be best answered during a formal investigation. This was agreed in an informal discussion with Superintendent Fitzgerald."¹⁷⁶

3.193. On the 5th of April 1997, this report was forwarded by Superintendent Kevin Lennon to the Chief Superintendent at Letterkenny. He wrote:

Having read the reports of the members concerned there is obviously grievous negligence on the part of the members concerned. In particular, I cannot see the necessity for three Gardai to travel to the hospital at Letterkenny and thereby leave the scene unattended.¹⁷⁷

¹⁷⁴ Tribunal Documents, pages 762-764.

¹⁷⁵ Tribunal Documents, page 760.

¹⁷⁶ Tribunal Documents, pages 760-761.

¹⁷⁷ Tribunal Documents, page 757.

3.194. Chief Superintendent Fitzpatrick's reply on the 14th of April 1997 simply states:

Report on the above matter is noted. What sergeants were working in the area on the night and what were they doing? Why did Garda Boyce not give out the message over the air, instead of phoning Lifford. For report please.¹⁷⁸

3.195. Nothing further occurred in respect of this matter and no action was taken by any of the divisional officers by way of discipline against any of those involved. Indeed, Gardaí Birney, Mulligan and McDwyer all indicated that they had never been asked any of the eleven questions posed by Superintendent Fitzgerald. Indeed, they had simply been asked to furnish statements to Inspector Gallagher which they did on various dates between October 1996 and February 1997.¹⁷⁹

3.196. Witness after witness has come before the Tribunal and expressed dismay at the failure to carry out basic procedures at the scene of this crime. The failure of duty on the part of those present was shocking and obvious. That Superintendent Fitzgerald and Chief Superintendent Fitzpatrick were aware of this within the first 24 hour and 48 hours of this investigation is obvious from the fact that Inspector Gallagher was directed to carry out some sort of inquiry into the matter. Superintendent Fitzgerald said that such dereliction could not be regarded as a minor breach of discipline subject to regulation 7 of the Disciplinary Regulations. It is equally shocking and appalling in the light of the known events that Chief Superintendent Fitzpatrick did nothing about the matter when he received Superintendent Gallagher's report. No member was made amenable to discipline for this neglect of duty. Matters such as this should be addressed and be capable of being addressed immediately without the necessity for protracted inquiries and investigations which lead to inaction and encourage indiscipline, inefficiency and negligence.

3.197. The dithering and procrastination in relation to this issue is underlined when one considers the testimony of Superintendent Gallagher, concerning the manner in which he felt obliged to conduct this inquiry and the status of his report. He felt from the beginning that it should have been a formal disciplinary investigation. Before one embarks on a disciplinary investigation, one had to make out a particular form under disciplinary regulations. This must give an outline of the facts of what the alleged breach of discipline was. He was tasked with the fact-finding mission on the basis of which the Chief Superintendent would make a decision to formally appoint another person who would seek to have the questions raised in the course of a formal investigation. His investigation,

¹⁷⁸ Tribunal Documents, page 756.

¹⁷⁹ Tribunal Documents, pages 767-778. See Transcript, Day 199, Q.678 and Day 203, Q.168 and Day 212, Q.660-666.

he thought was “absolutely worthless”. He said:

I was thinking that this is duplication and I should get this back or preferably it should have been given to a Superintendent who is not in the District who is not involved in the investigation ... nothing could have been done with the information that I provided in that report and those statements. Nothing could have been done with those because there is a formal Garda disciplinary regulation of 1989 in place. Though that information was on a file nothing could be done with it, unless first of all Chief Superintendent Fitzpatrick appointed someone to carry out a formal investigation. Then these questions could be put to them. The statements made prior to that investigation were worthless as far as I was concerned. This investigation by myself was a fact-finding one ... I think the Chief Superintendent and Superintendent were well aware at that stage that the scene wasn't preserved and that a disciplinary investigation could have been initiated immediately.

- 3.198. Superintendent Gallagher was clearly stating to the Tribunal that his task was to gather information which the Superintendent and the Chief Superintendent already had. A formal disciplinary inquiry could have been commenced in the normal way under the statutory regulations with the information they had in their possession and the questions which they sought to have answered could have been posed in the course of that inquiry. By reason of the regulations applicable to such disciplinary inquiries the fruits and/or conclusions of his inquiry could not be used in the course of the formal disciplinary inquiry. The Tribunal concludes, therefore, that this inquiry was a complete waste of time. Senior officers knew it; Gardaí under investigation knew it; the investigator knew it. This is a further example of shocking ineptitude on the part of Superintendent Fitzgerald and Chief Superintendent Fitzpatrick in the manner in which they sought to address this issue. An alternative view might be that Superintendent Gallagher's inquiry was simply a device to sweep the matter under the carpet. It had that consequence.
- 3.199. It is clear that in the light of the Tribunal's findings in respect of the evidence offered by them, Gardaí O'Dowd, Mulligan, Birney, McDwyer, Boyce and McDermott did not give a full and truthful account of their dealings with this incident to Superintendent Gallagher.¹⁸⁰

Further Action by Superintendent Fitzgerald

- 3.200. In his report of the 21st of December 1997, Superintendent Fitzgerald described

¹⁸⁰ Transcript, Day 282, Q.271-294.

the steps he took, having been informed of the occurrence of the accident. He called to Letterkenny Station at 08.20 hours. Having learnt that the scene was not preserved or examined by a Scenes of Crime Examiner but having been assured that Garda Coady had been contacted, he phoned him at Castlefin at 08.30 hours and instructed him to proceed to the scene forthwith. He also phoned Lifford Garda Station and instructed Garda J. Connolly to attend at the scene. He felt it was necessary to make these calls himself, notwithstanding the fact that he had directed Garda McManus to put these matters in train. Since Superintendent Fitzgerald was due to be on annual leave on that Monday the 14th, he directed Inspector Gallagher to act as Superintendent and Inspector John McGinley to take charge of the case and to ensure that everything was done, including a detailed post mortem. He briefed both Inspectors as best he could with the knowledge in his possession. He returned to Letterkenny Station on the night of the 14th of October and briefed himself on all of the developments during the day.

- 3.201. On the following morning, Tuesday the 15th of October, he visited the scene in the early hours and attended the Circuit Court. At lunchtime, he briefed Chief Superintendent Fitzpatrick. He then wrote his report to Inspector Gallagher outlining the eleven questions concerning which he wished him to carry out inquiries and handed it to him. At 18.00 hours on the evening of the 15th of October, he held a conference with all members involved in the investigation and he says that he directed that the investigation “be meticulously investigated with open mind”.¹⁸¹ Unfortunately, quite the opposite occurred.

Returning to the Scene Later on the Morning of the 14th October

- 3.202. The following morning, Mr. Matt McBride went with his wife to pay his respects at Mr. Barron’s house and to see if he could offer any assistance and support. On returning to his own house at approximately 09.30 hours, he met his son Simon McBride and William Hewitt outside the house standing on the roadway where the Late Mr. Barron had been found. It was decided to wash away the blood that remained on the roadway and they decided to do this because they were apprehensive at the upset that might be caused to schoolchildren passing the scene. Mr. Hewitt’s description of the scene suggested that there was a lot of blood on the roadway which they washed away using a brush into “a puddle hole” on the left side of the road.¹⁸²
- 3.203. Sergeant Niall Coady commenced work at 06.00 hours at Castlefin Garda Station on the morning of the 14th of October 1996, where he was detailed to perform station orderly duties. However, he was a trained crimes of scene examiner. At

¹⁸¹ Tribunal Documents, pages 763-764.

¹⁸² Statements of Matt McBride of the 1st of August 1997 to Detective/Garda Anderson, Tribunal Documents, page 999 and statement of William Hewitt, Senior of the 18th of December 1997 to Detective/Garda Foley, Tribunal Documents, page 1349.

approximately 08.00 hours he called the Communications Centre at Letterkenny Garda Station and spoke to Garda Joe McManus. The purpose of his call was related to an entirely separate inquiry but he was informed by Garda McManus that there had been a fatal hit-and-run incident that morning at Raphoe. He inquired of Garda McManus whether the scene had been preserved and who had attended the scene. He was told that the Lifford Gardaí were involved. He took it upon himself to phone Lifford Garda Station following his call to Garda McManus to see if he could offer some assistance. He could obtain no information from the personnel in Lifford because apparently the personnel who had been involved in the incident were no longer on duty. He then made a further call to Garda McManus and advised him to contact the District Officer and the Sergeant in charge of Raphoe because of the seriousness of the matter. He thought it somewhat peculiar that he could not get appropriate information from Lifford Station concerning this fatality. He attempted to contact Sergeant Hannigan, the sergeant in charge of Raphoe Station at his home but he was unable to contact him. He was making these efforts because Garda McManus had told him that the scene had not been preserved. At some time between 08.00 hours and 08.30 hours, he received a phone call from Superintendent John Fitzgerald. After being contacted by Superintendent Fitzgerald he made efforts over the following fifteen/thirty minutes to obtain station relief from his 24-hour-post as station orderly. In the course of a further phone call from Superintendent Fitzgerald, he explained his difficulty about obtaining relief, but shortly thereafter was able to leave the station and make his way to Raphoe with the scenes of crime kit. He was requested en route to collect Garda James Connolly at Lifford Station who was to carry out preservation duties at the scene. On arrival, he saw Mr. Matt McBride using a yard-brush and water to wash away the residue of blood on the roadway. As the scenes of crime examiner, he was perturbed by the fact that the scene had been contaminated and was then fully aware that his work was going to be very difficult. He was annoyed by the fact that the road had been swept. Mr. Matt McBride pointed out to him the point on the roadway where the Late Mr. Barron lay before he was taken away. At approximately 10.10 to 10.20 hours, Lee Parker arrived at the scene and pointed out where the deceased had been found. There were no other Gardaí present at the time of his arrival to provide the rudimentary information necessary to a scenes of crime officer.

- 3.204. Sergeant Coady prepared a sketch map of the area, on the basis of measurements taken at the scene and anything found by him there. He lifted a number of exhibits, including a tiny piece of skin with follicles of hair attached which was embedded in the roadway and labelled the exhibits for transmission to the forensic science laboratory for examination. Passing traffic was the biggest

problem at the scene in that the wheels of cars could have had an effect on exhibits. They could have pushed them back into the roadway or blown them away with wind current or indeed carried material elements away on their wheels. Apart from the hairs and piece of skin, he also found some glass particles and paint embedded at the scene. He concluded that these items were there for a long time, by reason of them being embedded in the roadway. It transpired that there were not of any evidential value and no positive result was obtained from them following tests. Garda Connolly assisted in the preservation of the scene. Some time afterwards, Sergeant Hannigan, Inspector McGinley and Sergeant Brendan Roche arrived at the scene, as did Garda O'Malley, the photographer and the traffic corps members from Letterkenny. He spent five hours at the scene, which was treated properly as a crime scene following his arrival. Other persons were kept out of the scene until he had finished his work, except for the photographer whom he allowed in.

3.205. Sergeant Coady's work at the scene and how he treated the various exhibits are described in his various statements; his notes and sketch were made available to the Tribunal.¹⁸³ The Tribunal is satisfied that Sergeant Coady carried out his duties on the morning of the 14th of October 1996 in an honest and efficient manner. He did his best in the worst of circumstances, from the point of view of the forensic examination of a scene. The difficulties encountered were not of his making but those of his colleagues.

3.206. All of the materials which were gathered by Sergeant Coady from the scene were furnished to the forensic science laboratory and examined by Mr. Liam Fleury, forensic scientist assigned to the forensic science laboratory in the Phoenix Park. He produced an extensive report in relation to his analysis of the various items furnished to him.¹⁸⁴ He examined these items together with items of clothing and other samples taken from the deceased's body at the post mortem on the afternoon of the 14th of October 1996. His examination was for the purpose of seeing if there was any support for the allegation that the deceased Richard Barron had been knocked down by a motor vehicle. In respect of the Late Mr. Barron's clothing, he told the Tribunal:

The dark green anorak which is property of the deceased was bloodstained around the collar area, the left front shoulder area and mid-back region, while the inner lining at the back of the anorak was torn. I did not observe any smears of paint, oil or any such items that one would associate with car accidents along the outer surface of this anorak. Traces of blood and soil were observed along the outer surfaces of the grey pants. However, no

¹⁸³ Tribunal Documents, pages 5330-5461.

¹⁸⁴ Tribunal Documents, pages 1379-1386.

smears of paint, soil etc. were observed on the outer surface. No marks of any significance were observed on the outer surface of the pair of brown leather slip-on boots, also the property of the deceased ... I examined the wrist watch also removed from the deceased and I observed that it had stopped at 12:37 pm ... I observed striations some of which contained slight traces of red paint along the face of the watch. This red paint was similar to the control red paint from the Bedford van, property of Richard Barron and could have originated from this van ... under high-powered microscopy I could detect very slight traces of red paint. They are really microscopic ones, so I couldn't do any further tests ... they were a similar shade to the sample of a Bedford van ... but in this case ... it was on the low side of a match.¹⁸⁵

- 3.207. Mr. Fleury found nothing to support the proposition that Mr. Barron may have been knocked down by a motor vehicle. He found no paint, glass, smears of paint or oil on the clothing of the deceased. He qualified this, however, by saying that:

In my personal experience ... I have come across a small number of cases, and my colleagues in the laboratory have also experienced it in their examination of cases; cases where we have known that cars have actually gone over people and nothing has been found. So the absence of paint or absence of trace evidence linking, suggesting a vehicle does not exclude the possibility of it having happened.¹⁸⁶

- 3.208. Sergeant Coady also examined a number of vehicles which were returned to Letterkenny Garda Station by a number of persons who had been at the scene of the accident and were requested to bring their vehicles to the station for examination. On the 19th of October 1996, Sergeant Coady examined the vehicles of Sean Duffy, Edward Johnston, Lee Parker, Stephen Barnett and the burnt out vehicle of Paul 'Gazza' Gallagher and a vehicle the property of Paul Holian, together with another vehicle which had been abandoned at Stranorlar. Some of these vehicles had been at the scene whilst the body was on the road. He took various appropriate samples from these vehicles, with the exception of that of Mr. Barnett. All of these samples were forwarded for forensic examination but there was nothing to connect any of these vehicles forensically to the death of the Late Mr. Barron. **The vehicles at the scene of the incident should not have remained unexamined for five days, steps should have been taken at the scene to ensure that they were properly examined by a scenes of crime officer. One of the Gardai present gave a cursory examination to the**

¹⁸⁵ Transcript, Day 52, Q.1042-1065.

¹⁸⁶ Transcript, Day 52, Q.1068.

vehicle of Lee Parker which was wholly inadequate in the circumstances.¹⁸⁷
This, of course, was not Sergeant Coady's fault.

The Examination of Mr. Frank McBrearty Junior's car

- 3.209. On the 4th of December 1996 motor car registration number 96 DL 2274, the property of Frank McBrearty Junior was brought to Letterkenny Garda Station. Initially, the car was examined and a number of exhibits were taken from the car. Subsequently, the car was brought to Garda Headquarters by Sergeant Coady and on the 9th of December 1996 further samples were taken from the car and, in particular, from the car seat.
- 3.210. In her report, Dr. Brid McBride, a forensic scientist, confirmed that she examined this motor car in the presence of Garda Coady and received from him, in the course of that examination, a control sample and a stained sample of cloth from the driver's seat of the car. In her report, Dr. McBride states her conclusions in relation to the samples taken from the car. She said:

I grouped the blood from the side of the driver's seat and found that it contained a group (PGM 1+1+) which is present in Frank McBrearty's blood and the blood of approximately seven point five percent of the population. The group is not present in Richard Barron or Mark McConnell's blood.¹⁸⁸

- 3.211. Sergeant Coady in evidence to the Tribunal stated that various samples were taken from Mr. McBrearty Junior's car which were subjected to tests which were negative. It was not Richard Barron's blood and it could be excluded from the case.¹⁸⁹
- 3.212. Mr. McBrearty, in the course of his cross-examination of Detective Superintendent Shelly, made the allegation that he had been told by some unnamed Garda that Garda Coady planted Richie Barron's blood in his car. The Tribunal is satisfied that this is not the case. No blood of Richard Barron's was found in Mr. McBrearty's car. That is the clear result of the tests carried out by Dr. Brid McBride on the materials taken from the car in her presence on the 9th of December 1996. Sergeant Coady carried out his duty in respect of those results when he received them from Dr. McBride and conveyed them to his authorities. The result is that there was absolutely no evidence to suggest that Richard Barron's blood was present in Mr. McBrearty's car.¹⁹⁰

¹⁸⁷ Tribunal Documents, page 5370.

¹⁸⁸ Tribunal Documents, page 1378.

¹⁸⁹ Transcript, Day 206, Q.479-493.

¹⁹⁰ Transcript, Day 238, Q.97-178 and Transcript, Day 240, pages 3-6.

PART III

The Movements of Mr. Frank McBrearty Junior, Mr. Mark McConnell and Mr. Michael Peoples

Introduction

- 3.213. The two individuals who became the main focus of the Garda investigation into the killing of the Late Mr. Barron were Mr. Frank McBrearty Junior and Mr. Mark McConnell. Also included as a suspect, for reasons which are not clear, was Mr. Michael Peoples. Mr. Frank McBrearty Junior and Mr. Mark McConnell are first cousins. Mr. McBrearty Junior's father, Mr. Frank McBrearty Senior, owns and operates the Tudor Lounge and Frankie's nightclub in Raphoe. Mr. Frank McBrearty Junior was employed by him in his business. Mr. Mark McConnell was an accomplished musician who was a member of a band that played at venues around the country. He was married to Mrs. Róisín McConnell (nee Quinn). The whereabouts of the two men on the night of the 13th and the morning of the 14th of October 1996 was the subject of Garda scrutiny from an early stage of this investigation.
- 3.214. The Garda Síochána developed a theory that the Late Mr. Barron was killed by Mark McConnell and Frank McBrearty Junior. The theory seemed to be that following the incident between the Late Mr. Barron and Mark McConnell at the Town & Country public house between 23.00 and 23.30 hours, contact was made between Mark McConnell and Frank McBrearty Junior either by telephone or later when Mark McConnell attended Frankie's nightclub where Frank McBrearty Junior was working. The theory required that Mark McConnell must have left the Town & Country and arrived at Frankie's nightclub at some time around 00.30 hours and met there with Frank McBrearty Junior. It also required that they then went together and lay in wait for the Late Mr. Barron and assaulted him at some time between 00.30 hours and 00.55 hours. In the alternative, a telephone call had to have been made by Mark McConnell from Quinn's pub. It was not. In this context, the investigation focussed on the movements of Frank McBrearty Junior and Mark McConnell though there were attempts to focus on Michael Peoples from time to time also. The theory with various adjustments permeates documents examined by the Tribunal from an early stage of the investigation.
- 3.215. At this stage it is proposed to set out the Tribunal's assessment of the state of Garda knowledge concerning the movements of the three men as it existed prior to the 4th of December 1996. On that date, Mr. McBrearty Junior, Mr. Mark McConnell and Mr. Peoples were arrested and detained on suspicion of the

murder of the Late Mr. Barron. In this context, it must be borne in mind that though the Garda Síochána concentrated mainly upon the alleged involvement of Mr. McBrearty Junior and Mr. McConnell in the death of the Late Mr. Barron, such involvement could only have occurred between 00.40 hours and shortly before 00.55 hours on the 14th of October 1996, outside the McBride house on the Mongorry Road leading out of Raphoe. In order for this proposition to have any validity, the two men, prior to 00.40 hours on the 14th of October 1996, would have had to take time to meet to plan an attack on the Late Mr. Barron; obtain a weapon or weapons; make their way up to the area near McBride's house; anticipate and await the arrival of the Late Mr. Barron at the scene; attack him; take the risk that they would be seen by anybody going to the scene carrying out the attack or returning from the scene; abandon the weapon or weapons at or on the way back from the scene or bring the weapon or weapons back to the Tudor Lounge; ensure that there was no blood visible on their person or clothing and then return to Frankie's nightclub where Mr. McBrearty Junior could resume his job and Mr. McConnell could 'innocently' continue with his social evening. There is no evidence that any of this occurred. The Tribunal is satisfied that it did not. Indeed, from an early stage of the investigation there was a great deal of evidence concerning the accounts of both men which tended to suggest that it did not happen. This evidence was ignored or discounted by the investigators.

A. The Movements of Frank McBrearty Junior

- 3.216. In 1996 Mr. Frank McBrearty Junior was employed by his father in a managerial role at Frankie's nightclub and had been for some two and half years. His brother Andy McBrearty was also employed there. Mr. McBrearty Junior gave evidence to the Tribunal that during the course of the afternoon of Sunday, the 13th of October 1996 he had been playing at a football match with his young son. After the match, he dropped one of his team mates home and then returned to his own home until he readied himself to go to work. He arrived at his father's premises for work at 20.30 to 21.00 hours. He parked his own car in the car park where it remained for the rest of the evening. Having entered the premises he went to the front bar, the Tudor Lounge, where he liaised with Josephine Simpson who was operating the bar. He obtained the keys for the nightclub and inspected various areas of the premises. He opened up the nightclub between 22.00 and 22.15 hours.
- 3.217. The staff who were in attendance on that evening according to Mr. McBrearty Junior were Mr. Mickey McGahern, Mr. Gerard Coyle, Mr. Gary Kennedy, Mr. Willie Logan, Mr. Sean Crossan, Ms. Sarah Logan (McColgan), Ms. Kathleen

Blackburn, Mr. John Mitchell (the head barman), Mr. John McQueen (his uncle), Mr. Eamonn McConnell, Mr. Jack Toner, Ms. Aileen Campbell, Mr. Kieran McElhinney (cloakroom assistant) and the disc jockey Mr. Brian Moore. These members of staff had not consumed alcohol and were sober. His father, Mr. Frank McBrearty Senior arrived between 21.00 and 22.00 hours. Mr. Sean Crossan, in addition to acting as doorman at the pay desk, was also obliged to act as a car park attendant periodically that evening because the regular attendant was not on duty that night. Mr. McBrearty Junior recalled that he carried out his duties that night in the normal way. He may have passed between the nightclub and the Tudor Lounge on approximately twenty to thirty occasions during the course of the evening up until the close of the Tudor Lounge because there were only two girls on duty. They had to cope with a large crowd on their own and they required assistance in relation to general supervision of the premises: for example, checking the toilet areas and obtaining additional stock.¹⁹¹

- 3.218. It was normal for patrons who had been drinking in the Tudor Lounge to be offered free admission to the nightclub in the earlier part of the evening if they so wished. Though he did not recall specifically dealing with them on the evening of the 13th of October a number of people recall being invited by Mr. McBrearty Junior to go up to Frankie's nightclub after drinking in the Tudor Lounge. A witness Lorraine Laird also placed Frank McBrearty Junior in the Tudor Lounge between 00.00 and 00.30 hours.¹⁹² The Tribunal has received evidence from Ms. Edel Quinn that at 00.30 hours approximately Mr. McBrearty Junior invited and accompanied Ms. Edel Quinn, Mr. Ebby Walsh, Mr. Sean Kerr and Ms. Joan Colhoun from the Tudor Lounge to the nightclub.¹⁹³ She described how they walked around from the Tudor Lounge and were allowed in from the side entrance to the nightclub through the ticket desk for nothing. Mr. Sean Kerr gave evidence to the same effect save that he indicated that they were invited to go up to the nightclub by Mr. Frank McBrearty Senior. Ms. Joan Colhoun, in her statement of the 22nd of October 1996, also confirms the incident but indicates they were told to go up by Mr. Frank McBrearty Senior. However, Mr. Ebby Walsh, who made a statement on the 19th of October 1996, confirmed that Mr. Frank McBrearty Senior indicated that they could go in for free and directed his son, Frank McBrearty Junior to take them up. Ms. Paula Eaton and Mr. Rodney Bogle were also in the company of Edel Quinn and Ebby Walsh in the Tudor Lounge. In statements made in November 1996, they say that they left the Tudor Lounge at 00.10 to 00.15 hours and went to Frankie's nightclub where they were joined at 00.20 hours by Edel Quinn and Ebby Walsh and Ms. Eaton said that she was told by Edel Quinn that they were escorted to the Tudor Lounge by Frank McBrearty Junior.¹⁹⁴ **This information was available to the Garda Síochána in the early**

¹⁹¹ Transcript, Day 56, Q.407-484.

¹⁹² Tribunal Documents, pages 2114-2115.

¹⁹³ Transcript, Day 53, Q.334-350.

¹⁹⁴ Tribunal Documents, pages 2052 and 2120.

stages of the investigation. For some reason, this and other information was considered to be part of some sort of conspiracy calculated to give Mr. McBrearty Junior an alibi for the period. If it were a conspiracy to create an alibi, he never seems to have taken advantage of it, either in statements to the Garda Síochána or in evidence to this Tribunal. The Tribunal is satisfied that it is a genuine alibi and is not manufactured like so many alibis in criminal cases.

Members of staff of the Tudor Lounge and Frankie's Nightclub

- 3.219. A number of persons employed by Mr. Frank McBrearty Senior in the Tudor Lounge and Frankie's nightclub were interviewed by members of An Garda Síochána during the course of October and November 1996. The staff in Frankie's nightclub were expected on duty at 22.00 hours on the Sunday evening. As already noted, amongst those who turned up for duty were William Logan, Liam O'Donnell, Michael McGahern, Gerard Coyle, Gareth Kennedy, Sean Crossan, John Mitchell, Martin McCallion (all doormen), and Kieran McElhinney who that night carried out duties in the cloakroom. A Gregory Campbell operated the lighting system in the nightclub and the disc jockey for the evening was a Brian Moore.
- 3.220. The Tudor Lounge that evening was staffed by Ms. Josephine Simpson and Ms. Aileen Campbell. Ms. Campbell worked in the Tudor Lounge until approximately midnight and then went over to the nightclub to continue her duties until 03.00 hours. The main burden of operating the Tudor Lounge bar appeared to fall on Ms. Josephine Simpson who worked in the bar until closing time at 00.45 hours when, she initially stated, she closed up the bar and brought the keys to Mr. Frank McBrearty Junior. She later changed her account and said that she had given the keys to Frank McBrearty Senior.¹⁹⁵ Other members of staff were also interviewed and where it is thought relevant reference will be made to their statements and/or evidence. As is the case with other witnesses whose statements were taken by members of An Garda Síochána a number of these witnesses made several statements to members of An Garda Síochána or to a private investigator employed to investigate the death of Mr. Barron on behalf of Mr. Frank McBrearty Senior. On occasion, it is important to draw a distinction between the information in the possession of An Garda Síochána up to the 4th of December 1996, which is the date upon which the initial arrests took place in respect of Frank McBrearty Junior and Mark McConnell and other members of the extended McBrearty family, and statements taken subsequently.
- 3.221. Ms. Josephine Simpson described to Detective Garda Patrick Flynn, in a statement made on the 8th of November 1996, how on Sunday, the 13th of October 1996

¹⁹⁵ Statement of Ms. Josephine Simpson, the 8th of November 1996 – Tribunal Documents, page 1862. In her first statement, Ms. Simpson suggested she brought the keys to Mr. Frank McBrearty Junior, but in subsequent statements suggested that she had brought them to Mr. Frank McBrearty Senior.

she commenced work at the Tudor Lounge at 18.00 hours with Ms. Aileen Campbell and Ms. Lisa Roulston. The bar was busy and at around 22.00 hours she was on her own behind the bar because the other girls were needed upstairs. There was a big crowd in the lounge and she did not finish her work there until 00.45 hours. She worked in the main bar of the disco until 02.00 hours until the bar closed. She described, as did other witnesses, how the disco was extremely busy. Having locked the premises at 00.45 hours, she returned to the nightclub and handed over the keys. She was subsequently assisted by Mr. Frank McBrearty Junior at 01.20 hours.¹⁹⁶

3.222. Ms. Aileen Campbell, on the 16th of November 1996, made a statement to Detective Garda John Doherty suggesting that she had worked in the Tudor Lounge bar with Ms. Simpson until approximately midnight and subsequently in the club from that time up to 03.00 hours on the 14th of October. She described an incident which occurred between 01.40 and 01.45 hours. A patron ordered drinks but had gone off without paying for them while she was totting up the bill at the till. She, with the help of Mr. Frank McBrearty Junior and then Mr. Frank McBrearty Senior, looked for this patron between 01.40 hours and 01.45 hours on the 14th of October.¹⁹⁷

3.223. Ms. Campbell made a further statement to Detective Garda Doherty on the 19th of November 1996. She stated that she was very annoyed about the way she was treated by Mr. McBrearty Senior who had questioned her about what she had said to the Garda Síochána about the 13th/14th of October 1996 and requested in strong terms that she write out a statement for him about that evening. On the 16th of November 1996 an incident occurred in the course of which Mr. McBrearty Senior is alleged to have demanded why Ms. Campbell had not written out this statement. When told that she did not wish to get involved he made, what she took to be, a threat to dismiss her. She said that she was very annoyed and upset about this and wanted to cry; she went out, got her coat and phoned her father to come and collect her from Mr. McBrearty's premises. The Tribunal draws attention to this alleged episode at this stage in order to highlight what might be regarded as a complicating feature of the Garda investigation. However, in terms of the statement made by Ms. Campbell to An Garda Síochána, it did not change the information furnished by her in respect of the 13th/14th of October 1996 about the movements of Mr. Frank McBrearty Junior.

3.224. From the evidence furnished by the bar staff and others who left the Tudor Lounge between 00.00 and 00.35 hours on the 14th of October 1996, the Tribunal is satisfied that the last patrons to leave the Tudor Lounge between 00.15 and 00.45 hours were offered free admission to

¹⁹⁶ Tribunal Documents, page 1862. In subsequent statements Ms. Simpson indicated that at 01.20 hours she had been assisted by Frank McBrearty Junior as she had seen a patron getting sick beside the bar, pages 1864-1869.

¹⁹⁷ Tribunal Documents, pages 1870-1.

Frankie's nightclub and were accompanied around to Frankie's nightclub probably between 00.30 and 00.35 hours by Mr. Frank McBrearty Junior, just prior to the locking up of the premises by Ms. Simpson.

- 3.225. Ms. Angela McNulty informed Sergeant Tom McMenamain, in a statement on the 26th of October 1996, that she had sought Mr. Frank McBrearty Junior's assistance in Frankie's nightclub at 00.30 hours as she had been having trouble with a young man. She did not subsequently see him before she left the premises at 01.10 hours but it is clear that there were a number of specific sightings of Mr. Frank McBrearty Junior between 00.20 and 00.35 hours which were known to members of An Garda Síochána in the early stages of this investigation.
- 3.226. Damien McCarron made a statement to Detective Garda Michael Carroll on the 23rd of October 1996, in which he said he left the Tudor Lounge at 00.45 hours and walked over to the disco in Frankies. He said:

Frank Senior was at the door when I was going in. I was inside for ten or fifteen minutes when I met Frank McBrearty Junior I spoke to him about football mainly the Liverpool United match of the previous Saturday.¹⁹⁸

- 3.227. His companion, Raymond Page, put the time of departure from the Town & Country at 00.15 hours on the 21st of October 1996 in a statement to Detective Garda Cafferkey.¹⁹⁹ These statements are discussed in detail later in this section. Gardaí seemed to reject the time furnished by Mr. McCarron for his departure from the Town & Country pub. He said that the McConnells were still in the Town & Country when he left. Both men had consumed a lot of alcohol. However, if the Garda Síochána properly discounted 00.45 hours and adopted the timeframe furnished by Mr. Page and, indeed, ultimately, much later in 1997 by Mr. McCarron as 00.15 hours for the time at which they left the Town & Country pub, and then if one adds some time for the walk to Frankie's nightclub and allowed ten to fifteen minutes before his conversation with Frank McBrearty Junior about football and then allowed some time for that conversation, his statement offers a good deal of support for the proposition that Mr. McCarron was engaged in conversation with Frank McBrearty Junior at Frankie's nightclub some time between 00.30 and 00.40 hours. However, the initial statement suggests that Mr. McCarron had arrived over at 00.50 hours approximately to Frankie's nightclub and spoke to Mr. McBrearty Junior some fifteen minutes later which would be circa. 01.05 hours. He affirmed the times originally given by him on the 21st of November 1996 to Detective Garda Michael Carroll.²⁰⁰ Subsequently, he told a private investigator that he had arrived at Frankie's nightclub at 01.00 hours.²⁰¹ Finally, in a statement made on the 6th of January 1998, he changed the time at which he had left the Town & Country from 00.45

¹⁹⁸ Tribunal Documents, page 1519.

¹⁹⁹ Tribunal Documents, page 1502.

²⁰⁰ Tribunal Documents, page 1521.

²⁰¹ Tribunal Documents, page 1522.

hours to 00.15 hours in a statement to Detective Garda Frank Feely.²⁰² However, what seems to have been ignored by the initial investigators is that if they discarded the original McCarron time in respect of Mark McConnell, it had implications for the sighting of Frank McBrearty Junior. It meant that Mr. McCarron was engaged in conversation with Mr. McBrearty Junior at 00.30 to 00.40 hours.

- 3.228. There were hundreds of patrons present at Frankie's nightclub on the 13th/14th of October 1996. Mr. Liam O'Donnell, one of the doormen, commenced work at between 22.00 and 22.30 hours and moved into the disco hall at about 22.45 hours. Mr. Frank McBrearty Junior was there also. Mr. Mickey McGahern, also a doorman, recalled working that night and was at the door between 22.00 and 00.45 hours after which he worked in the dancehall area. Mr. Gerard Coyle worked between 22.20 and 03.00 hours. At about 01.00 hours he says that Mr. Frank McBrearty Junior came into the area in which he was working at the back of the hall. They discussed keeping a watch on a number of people at the back of the hall. Mr. McBrearty Junior approached him having walked down through the dancehall from the pay-box area. Mr. William Logan, another doorman, who worked between midnight and 03.00 hours, placed Mr. Frank McBrearty Junior in the dancehall area between 00.00 and 01.30 hours though not by reference to any specific sighting.²⁰³ Each of these persons made initial statements in the early part of the investigation and, subsequently, made further statements expanding upon, and some times providing more specific detail in relation to sightings of Mr. McBrearty Junior, and other matters. The foregoing is the extent of the information provided to the Garda Síochána which was available to them from these persons up to the 4th of December 1996.

Mickey McGahern

- 3.229. Corporal Mickey McGahern, who was working in Frankie's nightclub on the night of the 13th/14th of October, was requested by Mr. Frank McBrearty Senior to return from Cork to make a statement to the Garda Síochána in the days following the death. He did so on the 24th of October 1996.²⁰⁴ He had concerns that questions were asked pointedly about the movements of Frank McBrearty Senior and Junior by Garda Collins and Garda O'Dowd during the course of an interview. He also had concerns about a suggestion made to him to the effect

²⁰² Tribunal Documents, page 1523 – statement taken in the second investigation.

²⁰³ Statement of Liam O'Donnell Tribunal Documents, page 1092 made to Sergeant Hannigan on the 22nd of October 1996. Statement of Mickey McGahern, Tribunal Documents, page 1909 made to Garda Philip Collins on the 24th of October 1996.

Statement of Gerard Coyle Tribunal Documents, page 1916, made to Garda Michael Herraghty on the 24th of October 1996.

Statement of William Logan Tribunal Documents, page 1894, made to Garda Philip Collins on the 22nd of October 1996.

²⁰⁴ Tribunal Documents, page 1909.

that he would probably go and speak to Frank McBrearty Senior about what he told the Gardaí. He said that Garda Collins then told him “ that there was a great big can of worms going to open up here in Raphoe town and I hope you are not stuck in the middle of it, seen the job you do, making reference to the Department of Defence.”²⁰⁵

3.230. This was reported back to Mr. McBrearty Senior who then went with Mr. McGahern to complain about the two Gardaí to Superintendent Fitzgerald. He did not think he got a satisfactory answer from the superintendent about the reasons for the nature of the questions asked. Mr. Frank McBrearty Senior has indicated that he was very taken aback at what Mr. McGahern had told him and the nature of the questions asked of him, particularly as he was co-operating fully with the Garda Síochána at the time. He then sensed that the investigation was focussing unjustifiably upon his family. However, in the normal course of events, an investigation pertaining to the whereabouts of various parties in the course of the evening would have been reasonable and Mr. McBrearty Senior’s reaction might have been regarded as overblown. As matters turned out, he was right to be worried.

3.231. Two other staff members who came under suspicion as accessories after the fact to the supposed murder of the Late Mr. Richard Barron which led ultimately to their arrest are Sean Crossan and Martin McCallion. They also gave accounts of their movements in the early stages of the investigation to members of An Garda Síochána.

Sean Crossan

3.232. Mr. Crossan gave a statement to Sergeant Joseph Hannigan on the 18th of October 1996 at Raphoe Garda Station.²⁰⁶ In this statement, he described taking up duty at 21.00 hours. He said he worked at the door. He stated that Mr. Frank McBrearty Junior was there, “ in the hall floating about ”. He was asked to look after the car park at about 00.30 hours. He looked after two girls in the car park and returned to the dancehall after about five minutes to get one of the girls a tissue. He did not know who the girls were. After this incident, he was asked to go around the corner to the front of the building by Mr. Frank McBrearty Senior “ in case some boy he put out broke windows.” He did not witness this expulsion but he carried out this duty; he did not see anybody. When he returned to the entrance door he was informed by Mr. Frank McBrearty Senior that the young man’s name was Gallagher but he did not know him. He put the time of this incident at about 00.40 hours. He indicated that he had not seen anyone coming down through the grounds of the nightclub while he was there. He said, “ they

²⁰⁵ Transcript, Day 320, Q.220.

²⁰⁶ Tribunal Documents, Tribunal Documents, pages 3274-5.

were all in cars.” This appears to have been an answer to a specific question put by Sergeant Hannigan in this regard.

- 3.233. Mr. Crossan had further dealings with Sergeant Hannigan on the 17th and 18th of November 1996. There is some controversy between the two men as to what happened at this time. Sergeant Hannigan, in a memo dated 04.30 hours on the 17th of November 1996, records how he had been approached by Mr. Crossan in the early hours of the morning. Mr. Crossan told him:

That he now remembered that three fellows came down the car park of Frankie's nightclub at 12.40am on 14.10.96. He stated he couldn't describe them, that they were 19/20 years and well dressed. I asked him if they went into the disco and he said that he did not know, that he was up the car park with two young girls, one who was getting sick. He did not know who the girls were, thought that they might be from Lifford. He said that he noticed the three fellows going down the car park because he did not notice a car coming up first. He stated that their clothes weren't dirty .. he asked that I don't inform Frank McBrearty of our conversation and requested that I call to his home.²⁰⁷

- 3.234. The following day, the 18th of November 1996, Sergeant Hannigan called to Mr. Crossan's home at 7 St. Eunan's Terrace, Raphoe and took a further statement from him.²⁰⁸ In his statement, he elaborates upon his dealings with the girls in the car park, one of whom was getting sick. The statement reads:

Some time between 12.30am and 1.00am I went back into the hall, I cannot mind what for. I met Willie Logan in the hall. He was taking in empty bottles and glasses from the door. I went straight up through and out the back door. Willie Logan was with me. The back door was open because it was very warm that night and there was a bouncer standing beside it. I think it was Gerard Coyle. I stopped beside the girls on the wall. One of them was sick. ... William Logan walked down the car park. I stopped with the girls and Willie went on. The girls were sitting on the wall that's on the road to the back exit. I left the girls and went down to the door and came back up after a few minutes. I walked straight back up to the girls. Three boys came down the car park. They came from the direction of the wall to the field. What caught my eye was the fact that no car had gone up the car park before these fellows came down. I did not see anyone sitting in a car beforehand. That's what caught my eye more as they came down the car park and no car went up first. They were chatting to each other on the way down, not laughing or joking. I never saw these three fellows before. They went down towards the dancehall. I

²⁰⁷ Tribunal Documents, page 3277.

²⁰⁸ Tribunal Documents, pages 3277-3278.

don't know if they went in or not. I can't describe them individually. The three of them were 18 or 19 years of age and thin. I can't say what colour their hair was. They were dressed casually and had no coats on. They were clean. I lost sight of them. Their clothes did not look to be dirty. After that I went to the front street again and met Willie and Frank Senior at the door, it was after 1 o'clock.²⁰⁹

- 3.235. The only specific sighting made by Mr. Crossan that evening of Frank McBrearty Junior was in the course of an incident involving a Mr. Damian McDaid some time after 01.00 hours. Mr. Crossan thought 01.40 hours but other witnesses suggest it was earlier than this. Mr. Crossan described how Mr. McDaid, who had gone into Frankie's nightclub, returned to his van in the car park at a time when Mr. Crossan was attending to the two girls. He drove out of the car park but had to slam on his brakes because there was a row at the lower exit door involving a number of young men from the North of Ireland. He described how Mr. McDaid slammed on the brakes and blew the horn at Mr. McBrearty Senior. This will be dealt with in greater detail later in this report.²¹⁰

The Two Girls

- 3.236. The two girls referred to by Mr. Crossan, were identified as Victoria Barrett and Catherine Vaughan. On the 10th of December 1996, Ms. Barrett made a statement to Detective Garda Tague. She said that she arrived with her boyfriend Rodney Roulston at Frankie's nightclub at 23.45 hours where she met her friend and first cousin Catherine Vaughan. Ms. Vaughan fell ill at 00.40 hours and Ms. Barrett took her out to get some fresh air. They went round to the back of Frankie's nightclub where they sat on a wall. Her friend was ill and she comforted her as best she could. She stated that they sat on the wall for about ten minutes, until one of Mr. McBrearty's men who was in the car park came over to them. He enquired if Ms. Barrett was alright and went to get some tissues for them. He returned shortly after with the tissues. She remained with her friend at the wall until 01.20 hours when they got into her boyfriend's car which was parked beside them in the car park. Mr. McBrearty's man stayed with them for approximately ten minutes. She did not notice or pay any attention to anybody else who was in the car park. She said:

I do know Frank McBrearty Senior and Frank, Junior but I do not recall seeing them that night.²¹¹

- 3.237. Attempts were made to make contact with Ms. Vaughan. Progress was made by the private investigator retained by Mr. Frank McBrearty Senior and ultimately Ms. Vaughan was contacted by telephone by Detective Garda John N. Jones on the

²⁰⁹ Tribunal Documents, pages 3277-3278.

²¹⁰ Transcript, Day 50, page 43-192, various references.

²¹¹ Tribunal Documents, pages 1962-1963 – there is a Memorandum of Interview between Ms. Barrett and a private investigator dated the 26th of April 1997, Tribunal Documents, page 1964.

21st of June 2001. She had little memory of the events due to the lapse of time. She indicated that she had spoken to a Garda at a checkpoint, a short time after the 14th of October and was asked a number of questions about that night. No record of such an encounter was furnished to the Tribunal.²¹²

The Three Men in the Car Park

- 3.238. The three young men described by Mr. Crossan as coming down the car park at approximately 00.40 hours did not bear any resemblance to Frank McBrearty Junior or Mark McConnell, or indeed Michael Peoples. He had never seen the three fellows before. They were each aged between 18 to 20 years. The papers available to the Tribunal indicate that a number of young men made statements to the effect that they were in the vicinity of the car park at about this time. On the 19th of October 1996, Martin Mangan told Garda John Harkin that he, together with Edward McBrearty, and a Martin Neilis travelled in a blue Suzuki car owned by Martin Neilis from McBride Street over to the car park at Frankie's " and parked well up the car park" . It was their intention to go into Frankie's nightclub. They had a disagreement at they went down towards the nightclub. A Michael McConnell turned into the nightclub car park at this stage and met them, close to the main entrance to the nightclub. Edward McBrearty flagged down this car and got into it and Michael McConnell and he drove off. Martin Mangan had had some nine pints of beer to drink and they went over to D.J.'s chip shop. This was at " around 1 a.m." They then saw a Mark Gillen come out of the nightclub and spoke to him for some ten minutes. They then went back up the car park and collected the car.²¹³
- 3.239. Martin Mangan stated that they drove over to the car park at 00.30 hours. In a statement made on the 9th of November 1996 to Detective Garda Patrick Flynn, Martin Neilis put the time at between 00.30 and 00.45 hours. He also described parting with Edward McBrearty and going to the chip shop with Martin Mangan. He stood outside the shop speaking to a number of young men including Sean and Derek Crawford, Mark Gillen, Michael Murphy and Alan Crawford. They then returned to collect the car from the car park at approximately 01.00 hours. He saw nobody in the car park going up into it or coming out of it.²¹⁴ He then drove out of the car park and saw nobody on the way out. Edward McBrearty could only recall meeting Michael McConnell who gave him a lift home.²¹⁵ Michael McConnell left his girlfriend's house at 01.00 hours in Raphoe and then went immediately to Frankie's car park, as he had a notion of going to the disco for a while. He had not been drinking that evening. He met Edward McBrearty with Mr. Neilis and Mr. Mangan. Edward McBrearty had a few drinks on him and was anxious to get home and so he brought him home.²¹⁶

²¹² Tribunal Documents, pages 4173-4177.

²¹³ Tribunal Documents, pages 1693-1695.

²¹⁴ Tribunal Documents, pages 1693-1695.

²¹⁵ Tribunal Documents, page 1715.

²¹⁶ Tribunal Documents, pages 1799-1800 – Statement made to Garda John Harkin on the 14th of November 1996.

- 3.240. Sean Crossan, in evidence, denied that the individuals referred to in the preceding paragraph were those whom he had seen coming down the car park at the time in question. On the materials available to the Tribunal they are the only group of three young men whom it can be established came down the car park at or about that time. Martin Mangan and Edward McBrearty were known to Sean Crossan at that time, and if he saw them, it would be difficult to understand why he could not identify them. It could be that Mr. Crossan did not wish to involve Mr. Edward McBrearty, a nephew of Frank McBrearty Senior, in his account of whom he had seen. In any event, the Tribunal is satisfied that these three young men walked down the car park at some time between 00.40 and 01.00 hours. **Each of these young men had made a statement to the Garda Síochána prior to the 4th of December 1996. The Tribunal is of opinion that these three individuals may well have been the persons seen by Mr. Crossan coming down through the car park.**
- 3.241. **The presence of these three young men in the car park and the subsequent encounter between Martin Mangan and Martin Neilis and Sean and Derek Crawford, Mark Gillen, Michael Murphy, Alan Crawford and Damian Murphy are of pivotal importance in the assessment of the false statement made by Robert Noel McBride against Frank McBrearty Junior and Mark McConnell on the 29th of November 1996. This matter will be dealt with in more detail in a later part of this report.**
- 3.242. The further importance of Mr. Crossan's statements is that they provided details of a number of incidents which merited further investigation because they offered the potential to provide a timeframe within which these incidents occurred relative to the death of the Late Mr. Barron. For the Gardaí who were interested in the movements of Mr. Frank McBrearty Junior, they also provided an opportunity to explore his movements because he was said to have been involved in, and/or present during, or at the conclusion of, each of these incidents. The main incidents which appear to have occurred between 00.30 and 01.30 hours in or outside Frankie's nightclub concerned the expulsion of Paul 'Gazza' Gallagher from the premises and the expulsion from the premises of a number of young men from the North of Ireland, following which there was a row outside the premises.

Statement of Frank McBrearty Junior

- 3.243. Mr. Frank McBrearty Junior also made a statement to Detective Garda Michael Carroll on the 18th of October 1996 in which he said:

I was working at the nightclub at Raphoe on Sunday night from 8.00pm until about 3.30am. I was doing a bit of everything, the door, the bar and stewarding. At some stage in the night maybe about half past twelve I

noticed Paul Gallagher of Letterkenny in the disco. He was along with a crowd from Letterkenny. I approached him and said come on get outside. I asked him how he got in here. It was one of the bouncers that said to me, hey Frank is that not the fellow that was put out of here the Sunday night before. It was Martin McCallion that said that to me. I then escorted him to the front entrance and he didn't resist. He pleaded with me not to put him out. He said that he didn't hit anybody with the bottle. He had hit a fellow with a bottle on the Sunday night before. He asked my dad who was at the door could he get back in. Then my dad asked me why he was put out. I told dad about him hitting the boy with the bottle the week before. My dad then told Gallagher that he couldn't get in and he went away in a temper. That's the last I seen of Gallagher that night.²¹⁷

- 3.244. It should be noted that this statement suggests that the incident with Paul Gallagher took place at about 00.30 hours. Given the proximity of The Close, and the time sequence suggested by other witnesses it would appear there was every reason to accept Mr. McBrearty Junior's statement in relation to this incident. However, it would appear from his statement that it occurred at 00.30 hours. This timing may place it five to ten minutes prior to its actual occurrence and may, in the light of statements made by others, be wrong; his timing was of less assistance to establishing an 'alibi' than the time given by others.

The Expulsion of Paul 'Gazza' Gallagher

- 3.245. Paul 'Gazza' Gallagher was a petty criminal from Letterkenny. He had been ejected from Frankie's nightclub the previous week for breaking a bottle over the head of another patron. Despite the incident which occurred the previous week, he was in the nightclub on the night of the 13th of October 1996. His former girlfriend, Ms. Glenda Muldoon, was also there. In an extensive statement made by Ms. Muldoon to Detective Sergeant Henry on 23rd of October, 1996, she outlined in detail what happened to her that evening. She said:

I got to Raphoe at about 12.30am. I went into the disco. I went to the bar and got a drink and then went out to dance. About five or ten minutes later, Gazza, Paul Gallagher came over to me on the dance floor. He was talking to me and wanted me to go back with him. I had finished with him about three weeks ago. I moved off the dance floor with Paula (Ms. McLoughlin) over to the stage and he followed us over. He was still talking to me saying the same type of stuff. Barry Orr came over and said hello. Barry Orr told Paula to get the bouncers to put Paul Gallagher out. Paula spoke to the bouncer who was no distance from us and he came over

²¹⁷ Tribunal Documents, pages 3279-3280. Frank McBrearty Junior disputes the authenticity of this statement but for the purpose of this section it is viewed as material which was relied upon by the investigators – see Part IV.

straight away and put him out. The bouncer was a small fat man. I believe that Paul Gallagher was put out of the disco at about a quarter to one. I haven't seen Paul Gallagher since, I left the disco at about 3.30am.²¹⁸

- 3.246. The doorman who dealt with this matter was Martin McCallion. In a statement also made on the 23rd of October 1996 to Sergeant Joseph Hannigan he described this incident as follows:

I was on the front door to about a quarter to twelve. Once the Strabane ones come I go into the hall. Young Frank was on the front door until ten past twelve. He usually floats about. Me and him are called floaters. Frank went up what we call the crows nest, that's up on the first level and near the D.J.'s box. You have a good view from there. He didn't stay there long. He came down the steps and he had a wee nose about. We walked around the hall. I was standing at the stage at the D.J.'s box when a girl complained that a boy who had been put out the week before for using a bottle, was over giving her and another girl hassle. I know now this man to be Paul Gallagher from Letterkenny. She pointed out to me where Paul Gallagher was and I went over to him. The first thing I did was take the bottle of Budweiser out of his hand. I didn't ask no questions. I took the bottle with my right-hand and put my left-hand around his neck and started walking to the door. He struggled a bit and I tightened the grip. Frank Junior came down the steps from the first level and met me and asked me more or less what happened. I says this was the boy that bottled a fellow last week. Frank said go on ahead, put him out. Gary Kennedy came on the scene at this stage as well. Frank opened the door at the old entrance and I walked him to the door. He [Gallagher] just walked out. It was between half twelve and a quarter to one. I don't mean the main disco door it was the old entrance that's now a side exit door. When I put him out I pointed up to the main door so they would know the face and not let him in again.²¹⁹

- 3.247. A Ms. Paula McLoughlin, who was with Ms. Muldoon at the time when this incident occurred, gave a much later time than Ms. Muldoon for its occurrence, namely 01.25 to 01.30 hours. However, the Tribunal has reviewed the other statements available to An Garda Síochána in the initial stages of the investigation which clearly support the proposition that the Gallagher incident took place between 00.40 and 01.00 hours. Having been ejected from the premises Paul Gallagher returned to a place called The Close, Raphoe which is just up from the Mart area where he had earlier parked a car. Mrs. Kathleen

²¹⁸ Tribunal Documents, pages 2110-1. Ms. Muldoon confirmed the times given in her first statement in a further statement made on the 10th of February 1998 to Detective Garda Foley, pages 2112-2113.

²¹⁹ Tribunal Documents, page 3293.

Ayton, Paul Ayton and Derek Ayton, her sons, resided at The Close, Raphoe. Mrs. Ayton gave evidence to the Tribunal that a man called to her house and knocked at the window some time after 00.30 hours on the 14th of October 1996. One of her sons, Derek, dealt with this man and assisted him in starting his car.²²⁰ Derek Ayton, who had been drinking all day, was in the Town & Country until closing time. As already noted, he had encountered Mr. Barron earlier as he was leaving the Suile Tavern; he left his girlfriend and returned home. There, as a result of the knock on the back window, he went out to find a man standing there whom he did not know, who said he wanted some help with his car. He wanted a push, in order to get the car started. The Gardaí met with him on a number of occasions to obtain statements in relation to the matter and told him that the man's name was Gallagher. He described how he pushed the car and it started in reverse. He thought this had occurred some time before 01.00 hours.²²¹ A statement was made by Kathleen Ayton on the 25th of October 1996 to Sergeant Joseph Hannigan²²² and by Derek Ayton on the 17th of October 1996 to Sergeant Paul Heffernan concerning this incident.²²³

- 3.248. Paul Gallagher, in evidence to the Tribunal, gave an account which substantially coincides with that given by Derek Ayton and Kathleen Ayton. Derek Ayton described how Paul Gallagher had taken off at high speed with wheels spinning when the car was started. In evidence, Paul Gallagher said that having parked the car he returned to it and pushed it down the hill initially. It would not start and then he obtained the assistance of Derek Ayton. He then went back down the town. He accepted that he came down Irish Row but not at speed. He turned up towards McBrearty's, turned around and went back out the town. He said that initially when he drove off he turned up at The Close and saw a Garda car parked at the end of The Close at McBride Street. He then turned back around The Close and came back down Irish Row onto the Diamond.²²⁴ He said he went down the Ballindrait Road in the direction of Derry to get petrol. He was photographed on CCTVT cameras obtaining petrol for his car at 01.56 hours on the morning of the 14th.
- 3.249. A number of other young people, some of whom were not drinking that evening, were present in the Diamond in Raphoe when Paul Gallagher drove his car down Irish Row. A number of these gave statements to the Garda Síochána in the early stages of the investigation on the 17th and 18th of October 1996. Jackie Craig and her boyfriend Damien Callan had driven into Raphoe at 23.00 hours. They did not go to the pubs but sat in the car and met other people at the Diamond. They said they were parked at the petrol pumps opposite Friel's Hotel initially and

²²⁰ Transcript, Day 210, Q.425-430.

²²¹ Transcript, Day 57, Q.1034-1043.

²²² Tribunal Documents, pages 2287-2288

²²³ Tribunal Documents, pages 1472-1473. Derek Ayton made two further statements to Detective Garda O'Toole on the 6th of September 1997 and Detective Garda Thomas Kilcoyne on the 21st of January 1998 in which the details of the first statement were substantially confirmed.

²²⁴ Transcript, Day 197, Q.402-436.

then later turned to face Frankie's nightclub. Jackie Craig saw Mr. Lee Parker driving up Irish Row.²²⁵ The Tribunal is satisfied that this sighting must have taken place shortly before 01.00 hours on the 14th, most likely at or about 00.50 hours, as Mr. Parker made the discovery of the Late Mr. Barron on the roadway at 00.55 hours approximately. Joseph Sweeney made a statement to Detective Sergeant Henry²²⁶ to the effect that he arrived into Raphoe with his friend Stephen McGrath and parked beside the car containing Jackie Craig and Damian Callan. At this stage, both cars were facing the direction of Frankie's nightclub and he noticed a car going down from the Mongorry direction as it came out at a very rapid speed. This was Paul Gallagher's car. Both cars followed Gallagher's car and parked near the technical school for five to ten minutes. Damian Callan also saw this car and though he gave an incorrect time (midnight) he also related the time to the arrival of Joseph Sweeney in Raphoe (01.00 hours).²²⁷ He named the driver of the car as Paul Gallagher and also said that they followed Paul Gallagher's car in the direction of Frankie's but met it coming back travelling in the opposite direction at Frankie's nightclub/public house. Jackie Craig also saw this car and placed the time of the sighting after Joseph Sweeney's arrival into Raphoe. Stephen McGrath, who was a passenger in Joseph Sweeney's car, also described this incident and thought the time would have been about 01.40 to 01.45 hours, but this time is entirely wrong.²²⁸

- 3.250. The Tribunal is satisfied that there was overwhelming information available to the Gardaí that Paul 'Gazza' Gallagher had been expelled from Frankie's nightclub at some time between 00.40 and 01.00 hours on the morning of the 14th of October 1996. Those involved in this incident place Frank McBrearty Junior at the scene during and after the incident. The timing of the incident as given by those involved including Martin McCallion and Glenda Muldoon is substantially corroborated in the statements given to the Gardaí by the Aytons and some of the young people present in Raphoe. This information, which was readily available to the investigating members, was not given any weight. It gave clear support to the proposition that Frank McBrearty Junior had a very limited, if any, opportunity to absent himself from Frankie's nightclub for the purpose of attacking the Late Richard Barron with Mark McConnell. It is likely that whatever happened to the Late Richard Barron was occurring at a time when Frank McBrearty Junior was engaged in the expulsion of Paul Gallagher. It is difficult to understand how considerable weight was not given to this material. It was a deliberate decision made by those supervising and conducting this investigation to ignore this evidence in favour of Frank McBrearty Junior because of some determination reached

²²⁵ Tribunal Documents, pages 2306-2307.

²²⁶ Tribunal Documents, pages 2310-11.

²²⁷ Tribunal Documents, pages 2308-2309.

²²⁸ Tribunal Documents, pages 2304-2305.

by them on the basis of other evidence, innuendo or rumour to the effect that Frank McBrearty Junior was somehow involved in this incident. There was a prejudice against Frank McBrearty Junior which led to a rush to judgement on the part of the Garda Síochána that he was guilty of involvement in the death of the Late Mr. Richard Barron. There were also elements within An Garda Síochána who set out to frame Frank McBrearty Junior and Mark McConnell.

The Expulsion of the Boys from Aghyaran

- 3.251. The second incident which occurred relates to a group of men from Aghyaran, near Strabane, who were expelled from the nightclub at about 01.00 hours on the 14th of October. The incident is described by a statement furnished by Liam O'Donnell on the 22nd of October 1996:²²⁹

Around one o'clock the barman John McQueen was complaining about a group of men at the bar. They were from Aghyaran. They were all big men. I remarked how big they were. All over six foot. One stuck the head in the other. I caught him and put him out the side door. Young Frank came down to the door when he seen the commotion. That was roughly one o'clock. The other doormen came to the side door and found out what was going on. Marty McCallion, Gerard Coyle and young Frank. I pointed out the other two and Marty McCallion and Frank McBrearty Junior took the first one and I took the second one. They were all outside and old Frank came down. Two of the Aghyaran boys started snapping then. They were scraping. The two that was having the bother ran up to the Terrace and started fighting. That's the last I saw of them. Frank Senior said to let them back in except the fellow who was the head. Frank Senior seemed to know them. The fellow who caused the trouble went to the chip door D.J.'s. He was a skin head with a wee goatee beard, a red beard. Frank Senior, Willie Logan and Sean Crossan stayed at the door. Young Frank stayed in the hall. His father rathers that Frank Junior stay in the hall when there is a commotion because he is too excitable. It was all quiet after that.

- 3.252. The incident was also described by Martin McCallion in a statement made on the 23rd of October 1996.²³⁰ After the Gallagher incident Martin McCallion described how he returned into the hall with Frank McBrearty Junior and split up. He said:

I went towards the bar and Frank [Jnr.] went towards the D.J. box and watched the crowd. Between one and a quarter past one a boy called Porter was standing near the entrance. I saw a girl clashing him. He was banned the week before and he had his hair dyed. Once she clashed him I caught him by the arm and went to put him out. Some Strabane boys

²²⁹ Tribunal Documents, pages 1902-1903, statement made to Sergeant Joseph Hannigan.

²³⁰ Tribunal Documents, pages 3292-3293 statement made to Sergeant Hannigan.

wanted to know why he was put out and I told him that the Letterkenny boys were after him and I wanted him off side. Gary and Liam O'Donnell and young Frank came over. Once one man moves the other doormen close in, that's the procedure to nip it in the bud before it gets going. I think Gary and O'Donnell put out a boy each. I couldn't really say if young Frank was there on these two occasions but he is usually in the thick of it. Liam O'Donnell asked me about Gallagher and I told him why I put him out. I met young Frank between four to half a dozen times in the hall after that. We were flat out all night. I can't see it being possible that young Frank was missing that night. He is usually in and out and our paths would cross in the hall.

- 3.253. A further account was given by Gareth Kennedy, a doorman, on the 25th of October 1996.²³¹ He said that though he could not be precise as to where Frank McBrearty Junior was during the course of the evening he was on duty around the hall. He stated:

I specifically remember him helping us to put four fellows out but I can't remember the time or I don't know who the fellows are. I don't remember where the fellows are from but I think I heard on the night that they were from Aghyaran. They were fighting at the bar with one another. I think we put them out the exit to the left of the main entrance. We put out two and another two. As far as I remember myself, Marty McCallion, Gerard Coyle and Liam put out the first two and the same crew with young Frank put out the second two.

- 3.254. It is clear from the text of the statement that he was asked specifically by Sergeant Hannigan as to whether Frank McBrearty Junior went missing, presumably, in the context of the Late Mr. Barron's death. He said he had never noticed him missing.
- 3.255. When the young men were expelled from Frankie's nightclub, a melee continued in the street outside for a short period. Both Garda Pádraig Mulligan and Garda John O'Dowd say that they arrived back in Raphoe from Lifford and drove once around the Diamond. Everything was quiet. They pulled up but shortly afterwards they saw two young men running out of Frankie's nightclub who were scuffling outside on the street and, therefore, Garda O'Dowd drove the car after them. At the top of St. Eunan's Terrace, beyond Frankie's nightclub, Garda Mulligan said he got out of the car and told the two to stop fighting and they immediately broke up and said there would be no bother. Garda Mulligan states that this occurred at 01.10 hours. The two men broke up and went back towards Frankie's.²³²

²³¹ Tribunal Documents, pages 1919-1920 statement made to Sergeant Joseph Hannigan.

²³² Transcript, Day 212, Q.6-10.

3.256. Gareth Friel and Annette Keys said that they arrived in Raphoe a few minutes before 01.00 hours on the morning of the 14th of October and drove their jeep up past McBrearty's nightclub. They turned in front of the vocational school and parked alongside the hairdressers opposite Reynolds electrical shop. They noticed a man run up past Reynolds with two fellows chasing him. At this stage, they saw a gold Cavalier following out the Convoy Road after these three people which contained one plainclothes Garda and a Garda in uniform. They saw the Gardaí speak with these people at the top of St. Eunan's Terrace. Gareth Friel put the time of this incident as "any time between 1.00am and 1.05am". Annette Keys estimated the time by reference to the digital clock in the car turning to 01.00 hours. She then saw the incident described. Both made their statements on the 23rd of October 1996 at Raphoe Garda Station. Gareth Friel made his statement to Garda John O'Dowd and Ms. Keys made her statement to Garda Philip Collins.²³³

3.257. Aishling Brogan and Karl Paul Doherty also appear to have witnessed this incident. In a statement on the 17th of November 1996 to Detective Garda John Doherty, Ms. Brogan stated that she left Paul Doherty's house at St. Eunan's Terrace with him between 23.30 and 23.45 hours. They walked up to a flat opposite McBreartys arriving at 23.50 hours and before going inside she said:

I saw Frank Junior across the road of McBreartys, he was wearing black jeans and charcoal coloured jumper ... at about 12.10 a.m. that night I recall there was a fight in progress some time that night I recall seeing Frank Junior and Senior and Marty McCallion [and another] at McBrearty's exit door [side exit]²³⁴

3.258. Karl Doherty on the 10th of November 1996 also made a statement to Detective Garda Doherty. He said that he originally saw Frank Junior and Willie Logan standing inside the entrance door to the disco at 23.45 hours. He said:

The next time I noticed anything was a fight had started at around 12.20 - 30 a.m. directly under our window, I saw two fellows fighting but I did not know them, they had been fighting in the disco and were ejected by Frank, Junior who I noticed had been watching along with Willie Logan at the front door of the premises ... the last I saw of Frank Junior was after the fight at about 12.35 a.m. - 12.40 a.m. going back into the disco.²³⁵

3.259. These times tend to suggest a lack of opportunity for Mr. McBrearty Junior to be involved in any incident with the Late Mr. Barron. Though Ms. Brogan was asked to fill in a questionnaire in relation to the events of that evening on what appears to be a subsequent occasion, no focussed inquiry in respect of time seems to have been made of them by members of the

²³³ Tribunal Documents, pages 2459 and 2462 respectively.

²³⁴ Tribunal Documents, pages 2036-7.

²³⁵ Tribunal Documents, pages 2468-9

first investigation team in order to resolve any difficulties which the Garda Síochána may have had in that regard. This is all the more surprising since many of the witnesses tend to suggest that this incident occurred some twenty to forty minutes later than that suggested in these statements.²³⁶

- 3.260. A sequel to this incident was described by Mr. Sean Crossan, in evidence to the Tribunal, in which he stated that he saw a Mr. Damian McDaid return to his car in the car park and drive down to the entrance. He slammed on his breaks, as a result of which Mr. Frank McBrearty Senior remonstrated with him. He was caused to stop by the fact that the men were being expelled from the dancehall. Apparently, there was some exchange between Mr. Frank McBrearty Senior and Mr. Frank McBrearty Junior. Mr. McDaid was doing some electrical work on Mr. Frank McBrearty Junior's new house and did not wish him to be treated in such a manner that he might be disinclined to complete that work. A similar description was attributed to Mr. Crossan in a statement made by him on 8th of November 1996 to Sergeant Hannigan.²³⁷ In his statement, he puts the time at 01.40 hours. Damien McDaid also made a statement on the 8th of November 1996²³⁸ in which he described the incident and indicated that he left Frankie's nightclub and went to get his van in the car park at 01.00 hours.
- 3.261. Gavin Gillen and some friends also witnessed this scuffle. He said the time was 01.20 hours in a statement made on the 19th of November 1996.²³⁹
- 3.262. The Tribunal is satisfied that the material available to the Garda Síochána in the early stages of the investigation clearly establishes that this incident happened some time shortly before 01.00 on the 14th of October 1996. Again, there is clear support for the proposition that Mr. Frank McBrearty Junior was present at, or involved in, this incident and that it occurred within minutes of the expulsion of Paul Gallagher from Frankie's nightclub for which Mr. Frank McBrearty Junior was also present or in which he was involved.

Other Sightings of Frank McBrearty Junior

- 3.263. A number of other witnesses gave statements to the Garda Síochána in the early stages of the investigation which confirmed sightings of Mr. McBrearty Junior throughout the evening of the 13th and the early hours of the 14th of October 1996. This included people who simply had sight of Mr. McBrearty Junior and others who had spoken to him but could not be specific about the times. On the 14th of January, 1998 Gregory Campbell, an employee at the nightclub said that he saw Frank McBrearty Junior sitting beside the paybox on a stool in the club at about 00.30 to 00.40 hours.

²³⁶ Questionnaire is set out at Tribunal Documents, pages 2037-1 to 2037-3. See also further statement of Aishling Brogan, pages 3037-4, made to a member of the second investigation team.

²³⁷ Tribunal Documents, page 3278.

²³⁸ Tribunal Documents, pages 3294-5.

²³⁹ Tribunal Documents, pages 2422-3, statement to Garda John Harkin.

Conclusions

3.264. The Tribunal is satisfied that in respect of the relevant period 00.30 and 01.30 hours on the morning of the 14th of October 1996 there was evidence to support the proposition that Mr. McBrearty Junior was indeed working in his father's nightclub and could not, given the short period of opportunity available, have been involved in any attack on the Late Mr. Barron. This is especially so if one takes into account a waiting period of at least twenty to thirty minutes when the 'killers' supposedly lay in wait for their victim. Mr. McBrearty could not have been an assailant. No reasonable person, given the strictures of time within which such an attack had to be carried out, i.e. a fifteen-minute period between 00.40 and 00.55 hours, could have come to any other conclusion in the absence of any other evidence in respect of Mr. McBrearty Junior. In order to arrive at a reasonable suspicion that Mr. McBrearty Junior was involved in this matter, the credibility of this evidence had to be totally undermined and set at naught. Notwithstanding the fact that the statements gathered by the Garda Síochána, when examined, create a picture supporting Mr. McBrearty Junior's presence at his place of work, and his involvement in the various incidents already described and that this information comes from several disparate sources, it was ignored. There was nothing in the contents of the statements to support a proposition that Frank McBrearty Junior was taking any steps to establish an alibi by way of positive assertion that he was specifically at a particular location between 00.40 and 01.00 hours. However, the statements gathered suggest that he was carrying out his duties at the nightclub during that period. As might be expected, if witnesses were being honest, there were times during which no-one could account specifically, or minute by minute, for his presence at Frankie's nightclub. Within that period there was no evidence to contradict his general assertion that he was at his work. There was absolutely no evidence that put him in contact with or in the company of Mark McConnell. The Garda Síochána made an assumption of guilt. An aura of suspicion was created in respect of a short period of fifteen to twenty minutes which was not capable of proof on the basis of the statements obtained. This thesis of guilt, once proposed and shared, was treated as fact. It was not sustainable in respect of Frank McBrearty Junior on the basis of any statement obtained from persons who were actually present in Raphoe that evening.

B. Movements of Mark and Róisín McConnell

3.265. Mr. Mark McConnell was the person who became the other main suspect in the course of this investigation into the death of Mr. Barron. He was arrested on the

4th of December 1996, allegedly on the basis of suspicion that he murdered the Late Mr. Richard Barron. His wife, Mrs. Róisín McConnell, was also treated as a person suspected of being an accessory after the fact to the murder of Richard Barron and was also arrested. If the theory being pursued by the investigating members was to be sustained, then Mark McConnell had to have left the Town & Country shortly before 00.30 hours at the latest in order to go to Frankie's nightclub and meet with Frank McBrearty Junior. He did not. In this context, there were two problems to be resolved according to the Garda Síochána. The first was a supposed conflict between the accounts furnished by Mark and Róisín McConnell and others concerning the time at which they had left the Town & Country to go to Frankie's nightclub. There were witnesses within the Town & Country, or outside, or at the nightclub, who supported or tended to support their account that they had left the Town & Country at about 01.15 to 01.30 hours. There were other witnesses who suggested that they had left earlier in sufficient time to enable Mark McConnell to rendezvous with Frank McBrearty around 00.30 hours at the nightclub. A second problem said to have been perceived by the investigating members concerned the movements of the McConnells later in the early hours of the morning of the 14th. This concerned statements which emerged which conflicted with the account given by the McConnells, the Brollys, and Edel Quinn and Edmund 'Ebbey' Walsh. Their accounts suggested that the McConnells had left Frankie's nightclub at approximately 02.00 hours and were driven to the McConnell house at Tullyvinney from which they went to the Brolly house where they were to spend the night. On this account Mark McConnell did not leave the Brolly house until approximately 10.30 hours on the morning of the 14th when he went to retrieve his car from Sheep's Lane. However, other witness statements obtained suggested that Mr. McConnell had been seen at 08.10 hours by a Martin Laird on the morning of the 14th emerging from the Town & Country pub. This had nothing to do with the death of Mr. Barron at around 00.50 hours. In addition, statements were received which indicated that Mrs. McConnell had been seen walking near her home at Tullyvinney at approximately 08.10 to 08.20 hours on the morning of the 14th. Similarly, this had nothing to do with the death of Mr. Barron at around 00.50 hours. The suggestion is made that the questioning of the movements of the McConnells was a legitimate line of inquiry which gave rise to understandable and reasonable suspicions on the part of the investigating Gardaí that the McConnells were not telling the truth in relation to the time at which they left the Town & Country and their subsequent movements later in the early hours of the morning. On the other hand, senior officers in An Garda Síochána were most reluctant in evidence to concede that Mark and Róisín McConnell or Frank McBrearty Junior were suspects in the case in the early stages of the investigation. Consequently, one might have thought that the normal procedures would be applied to investigating any discrepancies thought to arise

in respect of their statements. In this respect, the Tribunal notes that no effort was made to return to the McConnells in respect of any such perceived discrepancies prior to their arrests on the 4th of December 1996. The Tribunal was disturbed by the manner in which the movements of the McConnells were investigated by members of An Garda Síochána. It was also concerned with the ease with which the suspicion of murder was arrived at in respect of Mark McConnell based on the discrepancies perceived by the investigating members.

Statements of Mark and Róisín McConnell

3.266. In examining the movements of persons present in Raphoe, the investigating team focussed on the movements of the McConnells on the 13th and 14th of October 1996. The starting point for any examination of their movements lies in the statements which both made at their home at an early stage of the investigation to members of An Garda Síochána on the 16th of October 1996. Mr. McConnell made his statement to Garda Philip Collins and it reads as follows:²⁴⁰

On Sunday evening the 13th October 1996 I went into Raphoe at 7.00 p.m. I went into Mark Quinn's Pub "The Town & Country". I met up with Eunan & Katrina Brolly, my wife's sister and husband. I was drinking pints of Heineken. A short while later Mark & Mary Bogle joined us. My wife Róisín came into the pub with me. We left the house together. At about 10 p.m. I was standing beside the first table on the right-hand side as you come in the door. I noticed Richie Barron sitting at the bar. I did not notice him coming in. I saw that he was turning around staring at me. I ignored it. He kept looking at me. After about 20 minutes I went to go to the toilet. On my way back from the toilet I was going by Richie Barron and he tugged my shirt. I walked on there were no words between us. I stood where I was before a minute or two later Richie Barron arrived over to where I was standing. He said to me "You're some excuse for a McBrearty". I can't remember exactly what I said something like "sit down to fuck I'm not a McBrearty". He went to sit back down again and he got back up and went to take his coat off. He was walking forward, he was saying something but I don't remember off hand. His pose wasn't a friendly pose. He became aggressive and angry. He was coming towards me. I just stood where I was. He had a jacket on him. I might have offered him on, I told him to go on up home out of the road, that he was an ould man, Mark Quinn got in between us. I think Mark Bogle held Richie Barron back. We were exchanging aggressive words Mark Quinn pushed me back and he said I don't want this bother about my pub. He walked me into the

²⁴⁰ Tribunal Documents, pages 3266-3268.

Pool Room. Martin Quigley was doing the bar, but he never came out. The pub was well packed. There was a good few in the Pool Room. The Dolans & Duke Quinn and others. After about 20 minutes in the Pool Room somebody came, I don't know who and told me Richie Barron had left the bar. It was around 11.00 at this stage. Quinns was the only pub I was in all night. I stayed on in the pub after that. I was along with my wife and Kay Quinn. We stayed on there until about 1.00 a.m. I'd say roughly I left Mark Quinns at about 1.20 myself and Róisín walked up to Frankie's nightclub. We passed Stephen McCullagh and his wife and we chatted with them outside the Suile Tavern. We went into Frankie's nightclub at roughly 1.30 a.m. Before we left the pub Mark Quinn was cleaning up the bar and at 1.00 a.m. he would not give us any more drink, that is the reason we went to Frankie's nightclub. When I was in Frankie's nightclub at around a quarter to two I heard that Richie Barron was dead. I left at around quarter to and two o'clock and Edel Quinn and the boyfriend came with us. We came out home first and got stuff to stay the night with Eunan and Katrina Brolly. We had arranged this earlier on in the night to stay with them. I know this man my whole life but I wouldn't have been on speaking terms with him. There was ill feeling between us over an incident in the Bakers Corner about 10 years ago. We had a bit of an exchange up the street about 6 or 7 years ago. There were no blows struck. The incident in the pub that night was just of out the blue. Richie Barron appeared o.k. that night. He did not seem too drunk. In the duration of that night I would have had about 8 or 9 pints to drink. The incident in the Bakers Corner a few years ago was not directly involving Richie Barron. His son Stephen was involved. I have heard this statement read over and it is correct.

- 3.267. Mr. McConnell signed this statement which was witnessed by Garda Collins.
- 3.268. On the same date, Mrs. Róisín McConnell made a statement to Detective Garda Michael O'Malley at her home. She also signed and he witnessed it.²⁴¹

I reside at Tullyvinney, Raphoe with my husband Mark and one child. My husband Mark is unemployed. I remember last Sunday the 13th of October 1996. At approximately 7 p.m. my husband and I left home with our child and went to my mother's house at 330 St. Eunans Tce., Raphoe. Mark left our child and me off at my mother's house. Mark went over to Mark Quinn's pub, The Town and Country, and I told him that I would walk on over to the pub later on. At 7.55 p.m. I left my mother's house and walked over to Mark Quinn's Pub. There I joined my sister Katrina and her husband

²⁴¹ Tribunal Documents, pages 3269-3271.

Eunan and my husband Mark. Some time later my brother Paul and his wife Sue joined our Company as did Mark and Mary Bogle and Charlotte Peoples. Mark, my husband and Paul Quinn went to the Pool Room and played pool. They would have been back and over from the Pool Room to the bar getting a drink or change. I recall Derek Ayton and Richard McBrearty standing at the bar counter. I cannot recall Richie Barron at the counter. I remember the Grand Prix racing was on the television. At this time either Charlotte Peoples or Katrina Brolly said to me that Mark and Richie were having words. I looked up and saw Mark my husband saying to Richie Barron "Go home to your bed you're an old man", Richie appeared to be trying to take off his coat and at the same time he was roaring back at Mark something like "let me at him". I got up and stood in front of my husband and Mark Quinn was also standing in front of him and told him to go into the Pool Room. Mark Bogle and Derek Ayton were standing in front of Richie Barron. When this incident took place it was the first I realised Richie Barron was in the pub. Approx ten to fifteen minutes after this I went to the toilet which is up beside the pool-room and as I was returning I noticed that Richie Barron had left the pub. Martin Quigley from Ballindrait was serving behind the bar all night but now and again I saw Mark Quinn serving as well. At approx 12.15 a.m. Eunan and Katrina left the pub. I remember I asked Mark Quinn for another drink and he refused and said he wasn't serving anymore. I looked up at the clock and saw that it was 1.10 a.m. at this stage. Approx five or ten minutes after this my husband and I left Mark Quinn's pub. We walked over towards Frankie's nightclub. We did not speak to anybody as we walked over the street until got to the Suile Tavern. Stephen McCullagh and his wife were standing outside the Suile Tavern – they were eating chips and we stood talking to them for about five minutes. We then crossed over to Sarah's Café and we ordered one curry. Philomena Laird took our order and we told her that we would collect it after the Disco in Frankie's nightclub. We left the Café and crossed over to Frankie's nightclub. As we went into Frankie's nightclub Frank McBrearty [Snr.] was standing in the doorway. He then went into the pay box and I was giving the money to Frank but he said to "go on ahead in" and did not take any money. We remained in Frankie's nightclub for about fifteen minutes and while we were there my sister Edel told me that Richie Barron was knocked down and killed. As we were leaving the Disco I asked Frank McBrearty if he had heard about Richie Barron being knocked down and he said that he had been knocked down but he wasn't dead. We left then and went to Eunan Brolly's after collecting the curry in Sarah's Café.

- 3.269. During the course of the evening, Mark McConnell left the Town & Country pub once in order to move his car. In order to do this he approached Kevin McNulty, who had arrived at the Town & Country between 22.30 and 23.00 hours. Kevin McNulty was asked to move his vehicle by Mark McConnell. He described this in a statement made to Garda Philip Collins on the 22nd of October 1996 as follows:

After a couple of minutes Mark McConnell came over to me and asked me would I move my car and for him to get out. I said I would surely. I went out and Mark McConnell came out after me. I got into my car and I pulled back and went forward up The Close. I turned at Friel's back gates, and drove back down again the same road to Quinn's. Before I moved I saw Mark McConnell reaching in the passenger door of the white Corolla that was in front of me. When I got back down Mark McConnell's car was moved and there was a dark car in its place. ... parked again and when I got out of the car I spotted Mark McConnell come across the road from the hardware direction. I noticed the tail end of the white Corolla down the back road and the side of the hardware. I saw Mark McConnell go back into the pub. I went in after him.²⁴²

- 3.270. According to the statement of Eunan Brolly, made on the 4th of December 1996 at his home with Garda Patrick Mulligan, he drove Mark McConnell to this location in order to pick up his car the following morning.²⁴³ In the absence of any other statement to the contrary, it would appear that Mark McConnell's car remained where it was parked the previous night until it was collected by him on the morning of the 14th of October 1996 some time after 10.30 hours. There is nothing to suggest it was collected at any earlier time.
- 3.271. It is clear that the Garda Síochána did not at any stage complain about the adequacy of the statements of Mark McConnell and Róisín McConnell to them. As noted, no member of An Garda Síochána appears to have made any effort to return to the McConnells to clarify, seek an expansion of, query or challenge any elements of these statements. Events which the Garda Síochána, in the course of the investigation, thought to be of importance and worthy of further investigation were the incident which occurred between Mr. McConnell and the Late Mr. Barron at the Town & Country pub; the time at which the McConnells left the Town & Country pub; the time at which the McConnells arrived at and left Sarah's café and entered Frankie's nightclub and the time at which the McConnells left Frankie's nightclub. Insofar as the investigators of the death of Mr. Barron chose to doubt any aspect of the account given by the McConnells as to their movements between midnight and the time they left Frankie's nightclub,

²⁴² Tribunal Documents, pages 1542-1543.

²⁴³ Statement made in the presence of Garda Tina Fowley and Detective Garda Noel Jones, Tribunal Documents, pages 1571-2.

such doubts are referable mainly to the nomination, on the alleged information of 'Mr. X', by Garda John O'Dowd of Frank McBrearty Junior and Mark McConnell as persons who came down through the car park as described by his source at or about the time the Late Mr. Barron met his death. The Garda Síochána had to wait until the 29th of November 1996 before any statement could be obtained from that supposed source, Robert Noel McBride. There was nothing to suggest that Mark McConnell was seen by anybody else coming down through the car park or in the company of Frank McBrearty Junior outside Frankie's nightclub from any other source. The basis upon which the Garda Síochána focussed upon the McConnell's movements is examined elsewhere. For the moment, it is sufficient to note that it was a demonstrably false basis and a careful assessment of the supposed statement of Robert Noel McBride, once it had been made on the 29th of November 1996, would clearly have indicated this.

Leaving the Town and Country

3.272. When the statements which were gathered in relation to the movements of Mr. and Mrs. McConnell during the relevant period were examined, it is clear that the times furnished by the McConnells in relation to their movements on the 16th of October 1996 between the Town & Country bar and Frankie's nightclub were supported by a considerable number of other witnesses. These were apparently dismissed as being relatives of and/or friends of Mr. and Mrs. McConnell or the McBreartys or, as being unreliable by reason of the consumption of alcohol. Other witnesses were relied upon who did not support these times because, as the Tribunal was told, they were both independent and sober. If they were, they were also wrong.

McConnells Arrange to Stay with the Brolly's

3.273. Katrina Brolly is the sister of Róisín McConnell. On the evening of the 13th of October 1996, arrangements were made for the McConnell's, together with their son Dean, to stay overnight at the Brolly's house at nearby Guesthouse End Street which was approximately five minutes walk from the Town & Country. Earlier on the 13th of October, the Brolly's had been to Belfast with two friends and went to the Town & Country pub at about 19.00 hours, having left off their purchases at their home. The children came down to the pub about half an hour to an hour later and played pool. In the meantime, they had met up with Charlotte and Michael Peoples and the McConnells amongst others. The Brolly children took Dean McConnell under their wing until a crowd began to build up in the pub. Katrina Brolly described in evidence to the Tribunal how things developed:

As it got on and the crowd started to come in, I said to Róisín: "Sure Peter and them can take Dean down to the house because you don't like a child running about the pubs whenever the crowds come in." That would have been with a view of him staying all night because they would have taken him to bed ... They go to bed maybe around 10 or that, so they would have taken him to bed with them ... They left I would say around 9 o'clock Dean had stayed a few nights with us ... on a number of occasions.

- 3.274. Katrina Brolly told the Tribunal that this arrangement was not unusual and that she and her husband had looked after Dean overnight on previous occasions. Some times his parents had stayed overnight with him.
- 3.275. On this occasion, the McConnells were to stay the night because the following morning there would not have been anybody present in the house to look after Dean, if they had not been there. Mrs. Brolly, was going to work and the children were going to school. In addition, Mark McConnell did not want to drive because he had been drinking.²⁴⁴
- 3.276. Investigating Gardai were made aware of these events in statements made by Katrina Brolly and Eunan Brolly in the course of the investigation. In a statement made by Katrina Brolly on the 4th of December 1996 (taken at her home by Garda Tina Fowley and Detective Garda Noel Jones) she said:

Having arrived home on the night of the 13th of October 1996 my husband and I made a cup of tea. Róisín's wee boy, my sister's wee boy Dean, had been staying here. My own son and daughter were babysitting him. Dean had been staying all night as his mother and father intended staying here that night. I got Dean into bed with Debbie as she is the only one he'd cling onto. Eunan and I went to bed together around 1.00 am. When I was going to bed I left the key out.²⁴⁵

- 3.277. Eunan Brolly had also made a statement to Garda Patrick Mulligan on the 4th of December 1996, in which he said:

I left Mark Quinn's pub at 12 midnight on the 13th/14th October 1996. I left with my wife. I walked straight down home with my wife. I arrived home at 12.10 am approx. (On arrival at his home) I made a cup of tea and watched T.V. for a while. Prior to me going to bed I was aware that arrangements were made whereby Mark and Róisín were to probably stay in our house that night. Shortly after 1.00 am I went to bed. They had not arrived at that stage.²⁴⁶

²⁴⁴ Transcript, Day 57, Q.1119-1157.

²⁴⁵ Tribunal Documents, page 4234.

²⁴⁶ Tribunal Documents, page 1571.

- 3.278. Just prior to leaving the Town & Country pub, Katrina Brolly told the Tribunal, she informed Róisín McConnell that she and her husband were leaving. She knew Charlotte Peoples was encouraging Róisín McConnell to go to the nightclub. She told her sister that she was going home and if she and Mark wished to go to the nightclub that she would now be in the house. She wanted to leave her the option of going to the nightclub in the knowledge that she and her husband were back at the Brolly home looking after the children. If the McConnells chose to go to the nightclub they could come home later to the Brolly house and use a key in the porch to gain entrance. The McConnells had used this key to gain entrance to the house on previous nights when they had stayed. When the Brollys returned home they found that Dean was still up. Mrs. Brolly got the children to bed and they fell asleep.²⁴⁷
- 3.279. It would appear that once the opportunity was afforded to the McConnells to go to the nightclub they availed of it, as any young couple might.

Witnesses Supporting Mark and Róisín McConnell

- 3.280. Ms. Edel Quinn, a sister of Róisín McConnell, made a statement on the 19th of October 1996 to Detective Garda O'Malley. She confirmed that Mrs. McConnell had called to the family home at 330 St. Eunan's Terrace, at approximately 19.00 hours on the 13th of October 1996. She drove Mrs. McConnell to the Town & Country and dropped her off there with her young son. Ms. Quinn then left to collect her boyfriend Edward 'Ebby' Walsh in Strabane and returned at 20.45 to 21.00 hours. They initially went to Friel's bar and then to the Tudor Lounge. As already noted she indicated that she and her boyfriend and others were escorted to the nightclub by Frank McBrearty Junior. She said:

Some time around 12.45 a.m./1 a.m. Charlotte and Michael Peoples and Geoffrey Dolan came into the Disco. They sat at the table next to us. At around 1.30 a.m. my sister Róisín and Mark McConnell came into the Disco. They came over and sat down at our table. At about 2 a.m. Róisín and Mark, Ebby and me left the Disco. The four of us walked up to Ebby's car. It was parked beside the wall in front of the Tech (Technical School). Róisín asked Ebby if he would drive out to her house as she wanted to collect nappies and things for the baby. Ebby drove out to Róisín's house, she collected the stuff and we returned to Raphoe again. Ebby stopped the car at Sarah's café and both him and Mark went into the café for a take-away. After getting the food we left Róisín and Mark down to Brolly's house, Guesthouse, End Street, Raphoe. We returned to my home at 330 St. Eunan's Terrace, Raphoe.²⁴⁸

²⁴⁷ Transcript, Day 57, Q.1196-1212.

²⁴⁸ Tribunal Documents, pages 3296-3297.

- 3.281. She also recalled, in that statement, that after Róisín and Mark McConnell had joined their company in the disco, Carol McBrearty had approached them and informed them that the Late Richard Barron had been knocked down and killed. She had learned this from a Ms. Avril McBride.

Paula Eaton and Rodney Bogle

- 3.282. Paula Eaton is a sister of Charlotte Peoples, who made a statement to Detective Garda John Doherty on the 17th of November 1996. Her boyfriend, Rodney Bogle, called for her at 22.00 hours on the evening of the 13th of October and went with her to the Tudor Lounge. They were joined there by Edel Quinn and Edward 'Ebby' Walsh. At about 00.10 to 00.15 hours they walked to the disco in Frankie's nightclub and paid their entrance fee. Shortly afterwards they were joined by Edel Quinn and Ebby Walsh. They recalled that at the time at which they left the Tudor Lounge, Frank McBrearty Senior was calling time and after they had left he told the remainder of his customers, including Edel Quinn and Ebby Walsh, to go into the discotheque for free. She was told by Edel that Frank McBrearty Junior had escorted the bar patrons to the door and told the then doorman, William Logan, to let them in for free at 00.20 hours. Five minutes after that, the Peoples and Geoffrey Dolan joined up with them in the disco. They were also joined by Joan Culhoun and Sean Kerr. She recalled that Róisín and Mark McConnell later joined Ebby Walsh's table, some time after 01.00 hours. She recalled that Mark McConnell was wearing tracksuit bottoms, grey in colour, and a hooded top which had different colours. Mark and Róisín McConnell left their company along with Edel Quinn and Ebby Walsh, at about 01.50 hours. She and Rodney Bogle left at 01.50 to 01.55 hours.²⁴⁹ Rodney Bogle supported her account in a statement made on the 9th November 1996 to Detective Garda Doherty. He thought that Mark and Róisín McConnell joined Ebby Walsh's table at about 00.50 hours.²⁵⁰ There is a divergence of time between Paula Eaton and Rodney Bogle, as to the arrival of the McConnells. This called for further inquiries to be made of them because of the conflict with the McConnells' time. However, even if Rodney Bogle were correct in saying that the McConnells joined the company at 00.50 hours such a timeframe militated against the involvement of Mark McConnell in the death of the Late Mr. Barron.

Paul and Sue Quinn and Stephen and Ann McCullagh

- 3.283. The witnesses who provided specific support of the McConnells, in respect of their leaving of the Town & Country at approximately 01.20 hours, were Paul and Sue Quinn, Richard McBrearty and Stephen and Ann McCullagh. Paul and Sue Quinn made statements which indicated that when they left the Town & Country pub at about 01.10 to 01.15 hours, they left Mark and Róisín McConnell behind.

²⁴⁹ Tribunal Documents, pages 2052-3.

²⁵⁰ Tribunal Documents, pages 2118-9. See also statement of private investigator, pages 2120-1.

Richard McBrearty left the Town & Country at about 01.10 hours leaving the McConnells behind also. Having left the Town & Country, the McConnells say they met Stephen and Ann McCullagh outside the Suile Tavern shortly after 01.20 hours. This was confirmed by the McCullaghs. The Gardaí made inquiries concerning the Quinn and McCullagh statements which tended to support the times suggested by them in respect of their movements in Raphoe that night. The remaining question was whether they were correct in their accounts of their encounters with the McConnells. **Despite the confirmation of important aspects of their statements when investigated, the Gardaí did not see their accounts as verifying the McConnell statements, apparently because the makers were related to, or friends of the McConnells. However, it does not appear that the makers of the statements were ever viewed as liars by the Garda Síochána, or as acting in any way as accessories after the fact to the homicide of the Late Mr. Barron, as were others who did not offer such direct support to the McConnells, such as the Brollys, the Peoples and other witnesses. The Tribunal regards this as surprising, as these witnesses provided the most direct so-called ‘alibi’ evidence in favour of the McConnells. There seems to be no return visit to these witnesses up to the 4th of December 1996 to ascertain whether they might be mistaken as to their sighting of the McConnells. If it were thought that they were lying for the McConnells it seems likely, having regard to the nature of this investigation, that they would have been considered as likely candidates for arrest – perhaps more likely than those who were arrested. It is difficult to understand why more credibility was not attached to these statements, once important aspects of the movements and the times of the movements of the makers had been established independently by the investigating Gardaí. This was vital evidence tending to exonerate Mark McConnell. It was ignored. This was shocking and wrong.**

- 3.284. Paul and Sue Quinn, a married couple, attended the Town & Country bar on the evening of the 13th of October. Paul Quinn is Róisín McConnell’s brother. He gave a statement to Detective Sergeant Michael Keane on the 19th of October 1996.²⁵¹ He played pool in the pool-room for most of the night and Mark McConnell was his partner. He described how he came to leave the premises as follows:

At about 1 o’clock I asked Mark Quinn to ring a taxi. The taxi came for us in about 5 or 10 minutes. It was Willie Bogle. When we left there was still a few left on in the pub. Róisín and Mark McConnell, Irene and Frankie Dolan, Laura Dolan and her boyfriend Jimmy, ... my brother Gerard and his wife Kay (Quinn) were also left. I think it was about 1.15 a.m. when we got home. The babysitter, Ursula [Keaveney] Heaney was still up when we got home.” He said that he had consumed about six or seven pints of Heineken that evening.

²⁵¹ Tribunal Documents, pages 2519-2520.

- 3.285. His wife, Sue Quinn also made a statement to Detective Garda Brendan Regan on the 19th of October 1996.²⁵² She said:

Paul and I went to Quinns pub in Raphoe. The time was 9.45 p.m. We stayed there until 1.10 or 1.15 a.m. because when I arrived in home I looked at the clock and it was 1.30 a.m. That's how I know the time. Some time during the evening a fight or argument got up in Quinns pub between Richie Barron and Mark McConnell ... Paul and I left the pub then and left Gerard and Kay Quinn, Mark and Róisín McConnell and Mark Quinn, the owner, behind. We then came straight home to Convoy.

- 3.286. The Gardaí went to the trouble of interviewing Ms. Keaveney, the babysitter, with a view, presumably, to ascertain whether the time at which the Quinns arrived home corresponded with the time at which they left the Town & Country, leaving the McConnells behind. Ms. Keaveney, in the presence of her father, told Detective Sergeant Michael Keane on the 22nd of October 1996 that she was the Quinn's regular babysitter at the time and that they lived 100 yards away from her home. She recalled the night:

About nine o'clock I went up to Quinn's to see if they were going out for the night. They were unsure if they were going out but they eventually went out about 9.30 p.m. I do not know how they left the house. I remember it was between 1.25 a.m. and 1.30 a.m. when they returned home. I am sure of this because I looked at the clock in their house.²⁵³

- 3.287. The taxi driver who took the Quinns home, Mr. William Bogle, was interviewed on the 22nd of October 1996. Mr. Bogle outlined his business that evening and said that on the way back to Raphoe, having delivered a fare:

I got a call on my mobile phone ... from Mark Quinn the Town & Country pub, Raphoe. He said about a run out to Convoy. It was about 12.55 a.m. or thereabouts and it was between five and ten past one when I reached the Town & Country. I got out and tapped the window. Paul Quinn and his wife came out of the front door and I took them to Convoy. They were both sober and the form was good. I left them to their home.²⁵⁴

- 3.288. An important element of the Quinn evidence is that Róisín and Mark McConnell were in the premises when they left. The Gardaí established that, at the very least, the times furnished by the Quinns were accurate and supported by the babysitter, and the taxi driver who brought them home. He was both sober and independent, to use the Garda criterion. Yet, he was ignored. The Tribunal received evidence from Paul Quinn and Sue Quinn confirming their accounts of

²⁵² Tribunal Documents, page 1514.

²⁵³ Tribunal Documents, page 2525. This was confirmed by Ms. Keaveney in a further interview with the Gardaí on the 22nd of September 1997 – page 2526.

²⁵⁴ Tribunal Documents, pages 823-824.

the evening.²⁵⁵ It should also be noted that though a Mr. Thomas Curran said that he was collected by Mr. Bogle and brought home from the Central Hotel at 00.30 hours, arriving at St. Johnston at approximately 01.00 hours, Mr. Bogle believes he was late in the collection of Mr. Curran and collected him at 01.20 hours having delivered the Quinns home.²⁵⁶

3.289. Mr. Sean Duffy described, in a statement made on the 15th of October 1996, that he had come across the body of the Late Mr. Barron when driving down towards Raphoe shortly after 01.00 hours. He tried to attend to the Late Mr. Barron and remained at the scene for some fifteen minutes before returning to his own house at the Diamond, Raphoe. There he met Mr. McCullagh and apparently told him about the accident which had occurred to the Late Mr. Barron.²⁵⁷

3.290. Mr. Stephen McCullagh, the proprietor of the Suíle Tavern, made a statement on the 19th of October 1996 to Detective Garda Patrick Tague.²⁵⁸ He said that he was not working on the 13th but at 22.30 hours he and his wife Ann McCullagh went to Friel's hotel. He left Friel's around 01.00 hours with his wife and two others and walked to Sarah's chip shop. Having purchased a carry out they then walked to the Suile Tavern as they hoped to pick up a taxi. He said:

While we were at the Suile Tavern, Mark McConnell, Tullyvinney came along from the Friel's Hotel direction with his wife Róisín. Mark seemed to have a good drink in him. He stopped with us for a few minutes and then went on to the Parting Glass.

3.291. He then described how Sean Duffy pulled up beside him and told him about the Late Richard Barron. He was also joined by his brother Declan McCullagh who drove into Raphoe from Convoy. He stopped and they got into his car and travelled to the scene of the accident. Shortly afterwards, the ambulance arrived to the scene and he assisted the ambulance team. He also went to the hospital later that night. When he returned from the scene of the accident to Raphoe, he saw Gardaí Mulligan and O'Dowd and told them about the accident and its location. Mrs. Ann McCullagh also made a statement to Detective Garda Flynn and specifically put the time of the encounter with the McConnells as 01.10 to 01.15 hours, having left Friel's at 00.45 hours.²⁵⁹

3.292. Further statements were obtained from Mr. Christopher McCullagh and Mrs. Jacqueline McCullagh, who were in Friel's hotel with Stephen and Ann McCullagh, by the Garda Síochána on the 21st of October 1996 and substantially

²⁵⁵ Transcript, Day 51, pages 182-190 and Transcript, Day 52, pages 3-7, Transcript, Day 52, pages 53-58.

²⁵⁶ Statement of Thomas Curran made the 18th of November 1996 to Detective Garda Michael Jennings, Tribunal Documents, pages 1708-1709.

²⁵⁷ Tribunal Documents, pages 990-994.

²⁵⁸ Tribunal Documents, page 2487.

²⁵⁹ Tribunal Documents, pages 2501-2503.

agree with the accounts given by them. Specifically, Mrs. Jacqueline McCullagh states that the party left Friel's hotel at approximately 00.45 hours.²⁶⁰ Though the two couples had parted before Stephen and Ann McCullagh met with the McConnells, her statement tends to support the timeframe within which it must have taken place had it occurred.

- 3.293. Declan McCullagh gave evidence that he had returned to Raphoe at 01.13 hours, by the car clock, and went to the chip shop from which at 01.15 hours approximately he saw the McConnells making their way towards Frankie's nightclub. He gave an account of travelling up to the scene of the accident behind the ambulance and returning to Raphoe a number of minutes later.²⁶¹
- 3.294. Mr. Stephen McCullagh confirmed the contents of his statement in evidence to the Tribunal.²⁶² Mrs. Ann McCullagh who made her statement a few days after the Late Mr. Barron's death also gave evidence substantially confirming her statement to the Tribunal.²⁶³

Statements of Kathleen Quinn and Gerard Quinn

- 3.295. Kathleen [Kay] Quinn and her husband, Gerard Quinn, were also in the Town & Country bar that evening. Both made statements to the Garda Síochána. On the 16th of October 1996, Kay Quinn told the Gardaí that she and her husband had originally gone to Friel's hotel and from there to the Town & Country bar at 22.40 hours approximately. She recalled that the Dolan family were also in Friel's bar and came over to the Town & Country a short time afterwards. She sat with Paul and Sue Quinn, Katrina and Eunan Brolly and Rosin and Mark McConnell. Her husband, Gerard, went to the pool-room and thereafter was in and out of the bar a few times. She recalled the incident between Mark McConnell and the Late Richard Barron. She said that Katrina and Eunan Brolly left the bar around midnight. She then recalled how Mark McConnell and his wife Róisín McConnell left after that and stated they were going to the disco in Frankie's and she thought they had left around 00.30 hours. She and her husband left at 01.00 hours, leaving members of the Dolan family behind. Her husband, Gerard Quinn, made a statement to Detective Sergeant Henry and Detective Garda Jennings on the 16th of October 1996 and gave a similar account to that of his wife. The only reference which he makes in his statement to leaving the Town & Country is:

I left the bar shortly after 12 o'clock with my wife Kay. We came over to the chip van and got chips. We were talking to the Guard on duty. We then walked on home.

²⁶⁰ Tribunal Documents, pages 1730-1733.

²⁶¹ Transcript, Day 58, Q.610-638 and Q.640-666.

²⁶² Transcript, Day 58, pages 129-156 – Q.413-463 and Q.551-557.

²⁶³ Transcript, Day 58, pages 170-181.

- 3.296. Kay Quinn's statement suggests that Mark and Róisín McConnell left at 00.30 hours. It also suggests that Paul and Sue Quinn left before the McConnells. The investigators established from their inquiries that Paul and Sue Quinn were collected by Mr. Bogle between 01.05 and 01.10 hours and arrived home some minutes later according to Ms. Keaveney. Of course, on the evidence of Garda Mulligan and the statements furnished by Garda O'Dowd there was no member of An Garda Síochána to whom Mrs. Quinn could have spoken had they left the premises shortly after midnight. Garda investigations and Garda knowledge indicated that Sean and Kay Quinn were incorrect in their timing and there was no reason to disbelieve the statements of Paul Quinn, Sue Quinn, William Bogle and Ursula Keaveney, especially in relation to the times furnished which had been substantiated following further inquiries.
- 3.297. Subsequently, Kay and Gerard Quinn both indicated that they had brought back the time at which they had left the premises in order to protect Mark Quinn, as they did not wish him to get into trouble. They changed the statements, subsequently, to a private investigator and to investigating Gardaí on the 24th of April 1997 and the 28th of January 1998 respectively.²⁶⁴ It is clear that the conclusion that they were incorrect in the times furnished could have been reached as early as November 1996 on the basis of the material available to the Gardaí.

Statements of Mark Quinn, Martin Quigley and Dessie Nee

- 3.298. The staff in the Town & Country on Sunday the 13th were Mark Quinn (who with his wife was the joint proprietor) and Martin Quigley, the barman. Mr. Quinn's wife, Mrs. Donna Quinn, had a newly-born baby with whom she had just returned from hospital on Saturday, the 12th of October. Mr. Quinn was, for the most part that evening, concentrating on attending to his wife and newborn child, especially from approximately 22.00 hours onwards. Mr. Quigley bore the burden of most of the night's work. On the 16th of October 1996, Mr. Quinn made a statement to Garda Philip Collins,²⁶⁵ in which he stated that Martin Quigley had taken over the bar from him at 19.00 hours and that he had remained upstairs for most of the evening, between 19.00 and 22.00 hours. He described seeing the encounter between the Late Mr. Barron and Mr. McConnell. He "thought there was something up the way they were looking at one another." He told Mr. McConnell to go to the pool-room as it was his turn on the table. He also went to the pool-room and when he returned the Late Mr. Barron had left the premises. The time was between 23.20 and 23.30 hours approximately. He went on to say:

²⁶⁴ Tribunal Documents, pages 1498-1499 and pages 509-1513 respectively.

²⁶⁵ Tribunal Documents, page 3263.

There was still a good few people in the bar but a good few had left that had been in early. Most of the people in the bar left the premises at about half twelve. The barman, Martin Quigley, left at about a quarter to one. There was myself and Gerard and Kay Quinn, Irene and Frankie Dolan and Laura Dolan and the boyfriend, Jimmy, left in the bar at this time. We were in the pool-room. There was nobody in the bar. We had one more drink and they all left then shortly after 1.00am.

- 3.299. Mrs. Quinn confirmed much of what her husband said. She said Mrs. Róisín McConnell and Mrs. Charlotte Peoples, who were cousins of her husband, called up to see her and the baby in the course of the evening. She went to bed at between 23.00 and 23.30 hours and got up again at 01.00 hours. " There was just ourselves in the house here that night." ²⁶⁶
- 3.300. Martin Quigley also made a statement to Garda Philip Collins on the 15th of October 1996. He described how the Late Mr. Barron had come into the premises at about 22.00 hours and had been speaking to Richard McBrearty. He noticed the row between the Late Mr. Barron and Mr. McConnell and stated that he was there until between 23.15 and 23.30 hours. Mr. Quigley stated that he left the premises at approximately 00.30 hours and went to Frankie's nightclub with a Mr. Dessie Nee, his friend.²⁶⁷
- 3.301. Mr. Dessie Nee confirmed his presence in the Town & Country bar to Garda Philip Collins, in a statement made on the 19th of October 1996.²⁶⁸ He described the row between Mr. McConnell and the Late Mr. Barron as not being that serious. He said that he and Martin Quigley were the last to leave the bar at around 00.30 to 00.40 hours after Mr. Quigley had finished his work at the bar. He thought that they were in Frankie's nightclub before 01.00 hours. It should be noted that Mark Quinn, Martin Quigley and Dessie Nee did not state that Mark and Róisín McConnell were present in the Town & Country at the time at which they left. However, both Mr. Quigley and Mr. Nee confirmed in subsequent statements made in 1997 and 1998 that the McConnell's were present at the time they left the premises.²⁶⁹
- 3.302. The Tribunal notes the evidence given by Garda Tina Fowley, a member of the incident room staff, who acknowledged that when Mark Quinn and Martin Quigley gave their statements, Gardaí thought that the times given were furnished, " possibly out of fear of admitting a breach of licensing laws²⁷⁰ ... they

²⁶⁶ Tribunal Documents, page 3265, statement of the 7th of November 1996 to Detective Garda John Harkin and Detective Garda P.J. Keating.

²⁶⁷ Tribunal Documents, page 1148, statement timed at 5.55 pm. Note: Mr. Quigley changed the time at which he left to go to Frankie's nightclub to 12.45am from 12.30am in subsequent statements because he said he did not want to show the pub to be keeping late hours in his original statement – see statement to private investigator the 22nd of July 1997 and to Detective Garda Michael Carroll the 6th of December 1997, Tribunal Documents, pages 1450-1455.

²⁶⁸ Tribunal Documents, pages 1481-1482.

²⁶⁹ Statements of Dessie Nee of the 26th of March 1997 and Martin Quigley on the 22nd of July 1997 and the 22nd of January 1998, Tribunal Documents, pages 1150 and 1457.

²⁷⁰ Transcript, Day 219, Q.124-127.

were treated against the background that it could have been put back a bit, you know, to avoid an issue in relation to the licensing laws.” This was the reason also given by Kay Quinn for the incorrect initial time given by her as the time at which she and her husband, Gerard, left the Town & Country. **The Tribunal is satisfied that the times given by Mark Quinn and Martin Quigley were not treated as being in serious conflict with the times given by Mark and Róisín McConnell for their departure from the premises and were not treated as accurate by the investigating members. However, it was given an unwarranted importance when the agenda against Frank McBrearty Junior and Mark McConnell gathered pace and their arrests were sought.**

Statements of Geoffrey Dolan and Damien Gamble

- 3.303. Mr. Geoffrey Dolan made a statement to Detective Garda Patrick Flynn on the 16th of October 1996.²⁷¹ He went to the Town & Country at 22.40 hours to meet Michael and Charlotte Peoples. He described the incident in the course of the evening between the Late Mr. Barron and Mr. McConnell, as follows:

Mark appeared to be coming from the toilets. Before Mark went in the toilets he spoke to Richard McBrearty. On the way out the argument and scuffle broke out. Richard McBrearty got Richie and held him back. Richie Barron was fairly thick and looked to be very warm. He was wearing a navy snorkel jacket. He was shouting abuse at Mark McConnell. I can't remember what was said. Mark said catch yourself on go home to your bed you ould man or something like that. Mark looked annoyed but did not look angry enough to fight. Mark Quinn and Mark McConnell's wife got between Richie Barron and Mark and the scuffle broke up. Mark went into the pool-room and that was the end of it. Richie stood back at the bar again in the same place he was. ... I heard at the bar that the argument between Richie and Mark started after Richie said something about Mark's beard. Mark has a goatee beard.

- 3.304. Mr. Dolan then described how he left the Town & Country with Michael Peoples, in order to go to Mr. Peoples' house at St. Eunan's Terrace where he got his 'banklink' card. He then returned to the Town & Country, collected Mrs. Charlotte Peoples and then proceeded to Frankie's nightclub. He did not see Mr. McConnell after the row with Mr. Barron. He described Mr. McConnell as wearing "a white baggy sweatshirt." The tenor of his statement seems to suggest that he was asked for a description of Mr. McConnell because he added that he did not know what kind of trousers he was wearing. He stayed in Frankie's nightclub for an hour and a half and left between 01.15 and 01.20 hours on the 14th of October.

²⁷¹ Tribunal Documents, pages 1489-1490.

- 3.305. On leaving Frankie's nightclub he got into his car which was at the side of the building. He then said:

I came down as far as the door and I saw Mark McConnell and his wife walking into Frankie's nightclub. Mark stopped and spoke. He wasn't drunk and seemed his usual self. I commented on the row in Quinn's earlier and he said something like he's a wild man isn't he. He was wearing the same top he had on him in Quinn's pub. I'm certain it looked the same. Mark was in good form when he was speaking to me. He went on into Frankie's nightclub. I left Frankie's nightclub area at that stage. I went to Michael Peoples for tea and got home at about 2.20 am.

- 3.306. In a further statement to Garda John O'Dowd on the 4th of November 1996, he said that having left the disco he pulled out of the car park and turned right proceeding as far as the vocational school. He returned and pulled in behind Mr. Damien Gamble's car and then sat in with him. He then saw a fight at the old entrance to Frankie's nightclub. He described it as follows:

After sitting in the car a while maybe 10 or 15 minutes I saw a fight at the old entrance to the Parting Glass. There was 2/3 involved and it moved on out onto the street. The three then ran up towards St. Eunan's Terrace. Damien reversed the car and followed them up. When we drove up I saw Garda O'Dowd in his car and a uniformed Garda speaking to some of these people who were involved in the fight. Damien turned round on the street and went back down to where he had been previously parked. After we parked up I seen Charlotte and Michael Peoples coming out of the Parting Glass. I got out of Damien's car and then got into my own white BMW. Charlotte and Michael got in beside me with Charlotte in the front and Michael in the back. Charlotte said to me some Michelle girl was speaking to her in the Parting Glass and told her that Richie Barron was knocked down.

- 3.307. They then drove to the scene where Mrs. Peoples asked one of those present about the accident and they were told that Mr. Barron had been knocked down. Mr. Peoples did not speak with anyone. As soon as they were told this, they turned and went down home to Michael and Charlotte Peoples' house for tea. They were at the scene between 00.50 and 01.00 hours.

- 3.308. Damien Gamble gave a statement to Garda John O'Dowd on the 25th of October 1996. He arrived in Raphoe and said that:

At 12.45am I parked my car in front of Reynolds house. I was parked on the street and tight to the kerb facing the Diamond. I had a view of the

old entrance to Frankie's and while I was there nobody was ejected from it. I was in that spot til 1.30 am except for 5 minutes around 1.20 am. While I was sitting I hadn't a view of the main entrance to Frankies. A few minutes after 1.00 am I saw Geoffrey Dolan driving out of Frankie's car park. The reason I know it was after 1.00am was because it was a few minutes after I listened to the 1.00 am news. Geoffrey Dolan drove out his white BMW. He was on his own. He turned right from Frankie's car park and travelled up to the Vocational School, came to where I was parked and pulled in behind me. He then got out of his car and sat in beside me. He told me he was in Frankie's and he came out because it was crap inside. We talked in the car for a while. ...After a while I noticed a scuffle breaking out beside the old entrance to Frankie's disco. There were two people fighting and another fellow standing by. This fighting would have started at 1.10 am and continued for at least 5 minutes outside the old entrance to Frankies. At no stage was any bouncer to be seen to intervene in this fight. Definitely none of the McBrearty's were to be seen during this fight. Me and Geoffrey got out of the car and watched this fight. They then moved on out to the street, swinging fists and pulling at each other. They then ran out the Convoy road, three of them. Geoffrey and I got into my car. I drove down the Street and turned at the island and went back up to where the three boys ran to. I drove out by the Parting Glass and at the top of St. Eunan's Terrace I saw a gold Cavalier parked at the top of St. Eunan's Terrace. I saw a uniformed Garda chatting to two of these people. Geoffrey said he knew the driver of the Cavalier. I drove on up and turned at McHugh's petrol pumps. I drove on down and pulled up where I had been previously parked. The time now would have been definitely 1.20 am or maybe closer to 1.25 am. After we pulled up again I was asking Geoffrey who he was in the Parting Glass with. Just then Geoffrey saw a girl coming out of the disco and he said that he was with her and some fellow. He mentioned their names but I cannot recall them at the minute. I saw this girl coming out. She had her hand on her mouth and she was crying away. I don't know what she was wearing but she had shoulder length fair to blond hair. Geoffrey got out of the car when he seen her crying as he seemed to know her very well, she said something to Geoffrey but he slammed my door and put her into his car. He immediately took off and drove down the town with her. He came back up the town and passed my car approx 4 minutes later. He had a male passenger in the rear seat. I cannot describe him now but he definitely wasn't in the car when he first went down the street. Just after Geoffrey passed a friend of mine, Debbie Clarke came out of the Parting Glass and

told me that my uncle Richie Barron was after being knocked down by a car and was believed to be dead. I would like to say that I don't take a drink." He said that, "Matthew Walker was in the car beside him when Geoffrey Dolan drove passed him with his two passengers.²⁷²

- 3.309. The Tribunal will return to the references to Michael and Charlotte Peoples later in this section but for the moment it would appear that there was information available from these statements which supported the times which Geoffrey Dolan had given in respect of the times at which he had entered and left Frankie's nightclub. If Mr. Gamble was right, he was joined by Mr. Dolan shortly after 01.00 hours. Mr. Dolan put his emergence from Frankie's nightclub at approximately 01.15 to 01.20 hours. **Therefore, the Dolan statements support the proposition that some time shortly after 01.15 to 01.20 hours Mark and Róisín McConnell entered Frankie's nightclub having arrived from the Town & Country bar. Mr. Gamble's statements put Mr. Dolan's car as emerging from Frankie's nightclub a few minutes after 01.00 hours. The statements clearly supported the proposition that the McConnells arrived at the club at some time between 01.00 and 01.20 hours. Mr. Barron was then dead. They did not arrive before this time, either for the purpose of murder or any other reason. Much of what was said by Geoffrey Dolan was supported by Garda John O'Dowd who saw him at the time he dealt with the young men near St. Eunan's Terrace.**

Statement of Richard McBrearty

- 3.310. Mr. Richard McBrearty also made a statement to Garda John O'Dowd and Sergeant Paul Heffernan on the 16th of October 1996 at his home. He described how he visited his mother on the Sunday evening. He then visited the Tír Chonaill bar where he had a pint of beer, following which he went to the Town & Country bar, arriving there at approximately 22.55 hours. Having ordered a further pint of beer he noticed the Late Mr. Barron enter the pub. He had drink taken. They had a short conversation and after about half an hour the Late Mr. Barron bought Mr. McBrearty a pint of Smithwicks some time around 23.40 hours. He continued:

Shortly afterward ... Richard Barron said to me, 'look at that excuse for a McBrearty' referring to a cousin of mine, Mark McConnell, who at the time was passing me having come from the toilet. Mark McConnell then said to Richard Barron, 'who's an excuse'. Richard Barron then turned to face Mark McConnell to square up to him. Mark McConnell who appeared to be unbothered about the incident turned and went to the pool-room. I put out my arm to settle Richard Barron and get him to sit down and another person in the pub, a Mark Bogle, helped me to quieten down Richard Barron. About five minutes after the incident, some time near midnight, Richard Barron left the pub. Mark McConnell, my cousin, then

²⁷² Tribunal Documents, pages 2465-2467.

came up to me and we had a conversation about ordinary matters like houses and so on. We chatted on, Mark and I, 'til about ten past one and then I left and went straight home. When I left the pub the only persons I noticed in the pub were Mark McConnell and his wife Róisín, Martin Quigley, Dessie Veagh, Mark Quinn, the owner, and maybe others that I didn't notice. Before Richard Barron spoke to Mark McConnell he was staring at him for some reason.²⁷³

Statements of Members of the Dolan family

3.311. Also present in the Town & Country on the Sunday evening were members of the Dolan family and their friends. In the course of the evening, they celebrated the birthday of their daughter, Laura. Members of this party were also interviewed early on in the investigation. Amongst those interviewed were Frankie Dolan; his wife Irene Dolan; his daughter Laura Dolan and her boyfriend Jimmy Deery; his son Shane Dolan and his girlfriend Andrea McCobb and Darren Dolan, another son. They were playing pool with Mark McConnell and others in the course of the evening. Frankie Dolan made a statement to Detective Garda Michael O'Malley on the 21st of October 1996. Though he may have heard something about the incident between Mark McConnell and the Late Mr. Barron, he did not witness it. He said that he, his wife, his daughter Laura and Jimmy Deery were the last to leave the pool-room at 01.30 to 01.45 hours. Apparently, he was asked about Mark McConnell's clothing and his movements in the course of the evening. He said:

I think Mark Quinn may have mentioned to my wife, Irene, something about an argument between Richard Barron and Mark McConnell. Mark McConnell was back and over from the pool-room to the bar. As far as I can recall Mark was wearing dark coloured tracksuit bottoms and some type of a loose sweater. I know Mark McConnell was away from the pool-room for a while but I cannot recall for what length of time or at what time he left it at.²⁷⁴

3.312. Irene Dolan also made a statement on the 17th of October 1996 to Garda Philip Collins, but could offer no time at which the family left the Town & Country.²⁷⁵ Detective Garda O'Malley also interviewed Darren Dolan who had nothing useful to add, apart from the fact that he had been in the Town & Country until midnight with his friends with whom he left.²⁷⁶

²⁷³ Tribunal Documents, pages 1458-1459. Mr. McBrearty made a further statement on the 18th of March 1997 to a private investigator which substantially confirms the statement already furnished on the 16th of October 1996.

²⁷⁴ Tribunal Documents, pages 2565-2566. Subsequently, it would appear that Mr. Dolan changed the time which he gave for leaving the Town & Country to about 01.00 hours in a statement which appears to be made in 1997, Tribunal Documents, pages 2569-2570 taken by Sergeant John White.

²⁷⁵ Tribunal Documents, pages 2555-2556. Though Mrs. Dolan is said to have given a time to a private investigator for leaving the premises as 01.45 hours, she again confirmed that she did not know the time at which she had left when re-interviewed by Detective Sergeant White on the 27th of November 1997, Tribunal Documents, pages 2558-2559 and pages 2562-2563.

²⁷⁶ Tribunal Documents, pages 1536-1538.

- 3.313. Laura Dolan was also interviewed on the 23rd of October 1996 by Detective Garda Michael O'Malley. She recalled going with her parents and boyfriend to the Town & Country and meeting a number of people in the pub. She stayed in the pool-room all night and she recalled that she was not drinking because she was pregnant at the time. She also thought that she left with Jimmy Deery at between 00.30 and 00.45 hours. She also appears to have been asked about the type of clothing which Mark McConnell was wearing, to which she replied that she could not remember.²⁷⁷ On the 21st of October 1996, her boyfriend, Jimmy Deery, was interviewed by Garda Michael Herraghty. He had little to add, as he had consumed a large amount of alcohol that evening.
- 3.314. Shane Dolan went out for a drink on the Sunday evening at 19.30 hours. He went to the Central Hotel and at about 20.00 hours Richard Barron entered the hotel and was drinking on his own. He was joined by his girlfriend Andrea McCobb who arrived in at approximately 21.00 hours. He then went to Friel's bar at about 22.30 hours and then at 23.00 hours proceeded to the Town & Country. They joined his family in the pool-room. He left with his girlfriend at about 01.00 hours leaving behind his mother and father, Laura Dolan and Jimmy Deery in the pool-room. He was not sure if there was anybody else left. He then went over to the chip van in the Diamond and saw an ambulance going up the road. He was told by Angela McNulty that Mr. Barron had been knocked down and that she thought he was dead but he had no recollection of meeting Mark McConnell or seeing him. He made a statement to Sergeant Joseph Hannigan on the 19th of October 1996.²⁷⁸ His girlfriend, Andrea McCobb, also made a statement to Sergeant Hannigan on the same date. She confirmed that they had left the Town & Country at about 01.00 hours. Apparently, she was also asked by Sergeant Hannigan about Mark McConnell, his movements and clothing, for she said:

I don't remember seeing Mark McConnell in the bar but I remember him coming into the pool-room. He was standing on his own drinking. He was wearing tracksuit bottoms, I think they were grey. He was wearing a black top with white stripes on it. A wee lock of stripes somewhere. I saw no arguments in the pub.

- 3.315. She confirmed that after the Town & Country they went to the chip van at the Diamond and saw the ambulance going up the road between McGranaghan's and the pub.²⁷⁹
- 3.316. Ms. McCobb made an additional statement on the 19th of October 1996, again to Sergeant Hannigan. Although she gave an account of the movements of others, apart from Mark McConnell, she seems again to have been asked about

²⁷⁷ Tribunal Documents, pages 2509-2510.

²⁷⁸ Tribunal Documents, pages 1412-1413 and pages 2504-2507.

²⁷⁹ Tribunal Documents, pages 1414-1415.

whether he had left the pool-room while she was in it because she was “ eighty per cent sure he stayed in” . She then added that she thought everybody had left when they left. When she was going out through the bar there was nobody there:

As far as I can remember Mark McConnell and his wife were gone before us. I didn't have much to drink that night.²⁸⁰

- 3.317. If this couple left the Town & Country at 01.00 hours and the McConnells were gone, the conclusion might be drawn that the McConnells' account was incorrect. However, the couple saw the ambulance and Ms. McCobb saw it travel up Irish Row when they arrived at the chip shop in The Diamond which is perhaps a couple of minutes walk from the Town & Country. The Gardai knew that the ambulance arrived at the scene of the incident at 01.20 to 01.25 hours. Therefore, it is likely that this couple left the Town & Country after 01.00 hours and that Ms. McCobb in turn was not accurate in the time which she gave. It is possible, and perhaps likely, that they left the Town & Country up to fifteen minutes later than that. The movement of the ambulance was one of the few accurately discernable facts in the case. When viewed in that light, the couple's statements should have been taken as broadly supporting the McConnells account. They were not a contra-indicator.

Statement of Declan McCullagh

- 3.318. Declan McCullagh, the barman of the Suile Tavern, who had seen the Late Mr. Barron off the premises and was one of the last people to see him alive, left the pub, having completed his work, at 01.00 hours. He was sure about the time because he checked the clock in the pub. He drove out to Convoy and then returned to D.J.'s chip shop at 01.15 hours. He said he got a take-away and got back into the car. He said that while he was in the chip shop he saw Mark and Róisín McConnell “ going up the street from the Diamond direction. They went into Frankie's nightclub.” He then returned to the Diamond and met Stephen McCullagh and Liam Sweeney who stopped him and told him that the Late Mr. Barron had been knocked down. They got into his car and they went up to the scene. The ambulance was immediately ahead of him as they drove up.²⁸¹ **This account offers straightforward support for the McConnell account.**

²⁸⁰ Tribunal Documents, page 1418 – she confirmed this account to Sergeant Sarah Hargadon on the 12th of November 1997 and again on the 8th of December 1997 when she made a statement in respect of an interview which she had with a private investigator on the 3rd of May 1997, pages 1416-7 and pages, 1419-20. Apparently the couple then went to a flat above D.J.'s café.

²⁸¹ Tribunal Documents, pages 1604-5. He was more precise about the sighting in a statement made to Detective Garda T. Kilcoyne on the 18th of January 1998 with reference to the time on the clock on his dashboard as 01.13 hours when he said, “as I walked towards D.J.'s, I saw Mark McConnell and his wife Róisín walk on the opposite side of the street towards Frankie's nightclub that would have been near the corner of the Tudor Lounge.”

Raymond Page and Damien McCarron

3.319. On the 21st of October 1996, Raymond Page, in a statement made to Detective Garda Cafferkey, said that he went out at 12.30 hours on Sunday the 13th and spent the day drinking. Up to 21.00 hours that evening he had consumed eight or nine pints of beer. He went home and then went out again about an hour later, and for the balance of the evening consumed a further five or six pints and a whiskey. In the course of that evening he went to the Town & Country bar at about 22.15 hours. He said he left the Town & Country at about 00.15 hours with Damien McCarron and walked to Frankie's nightclub. Mark McConnell was in Mark Quinn's when he left. He had more drinks at the nightclub and then went across to the café for some food.²⁸² He was also interviewed by a private investigator in 1997 and he indicated to him that he had left Frankie's nightclub at 00.30 hours approximately. Both these statements refer to the fact that Mark McConnell was still in the Town & Country at the time at which Mr. Page left. He and Damien McCarron arrived at Frankie's nightclub at about 00.45 hours.²⁸³ These timings, if correct, would have put the McConnells in the Town & Country at approximately 00.15 to 00.30 hours.

3.320. However, Ramond Page's companion, Damien McCarron, also made a number of statements to the Garda Síochána. On the 23rd of October 1996, he made a statement to Detective Garda Michael Carroll. In it he describes how he too had a lot to drink that evening. He said that he left the left the Town & Country at 00.45 hours and that Mark McConnell was on the premises when he left. He then went to the nightclub. Having entered the nightclub after ten to fifteen minutes he met Frank McBrearty Junior and spoke to him about football and left the disco at 02.20 hours. At this stage he said:

I didn't see Mark McConnell or his wife after the words with Richie Barron in Quinns. To correct the above sentence I wish to state that I didn't see Mark McConnell or his wife after I left Quinns pub.²⁸⁴

This placed Mark McConnell in the Town and Country at precisely the time that the Late Mr. Barron was killed, and rendered it impossible for Mr. McConnell to have any involvement in it.

3.321. On the 21st of November 1996, Detective Garda Carroll had a further interview with Mr. McCarron and made a memo of same. He seems specifically to have been asked how much drink he had consumed. Having traced his movements through the various pubs for the day, it emerged that he had consumed in the region of seventeen to eighteen pints of beer. In this statement he said that he and Raymond Page walked over to Frankie's at about 00.50 hours. In 1997, he

²⁸² Tribunal Documents, pages 1502-1503.

²⁸³ Tribunal Documents, pages 1504-1505.

²⁸⁴ Tribunal Documents, pages 1518-1519.

gave a statement to a private investigator²⁸⁵ in which he then placed the time of his leaving the Town & Country at 23.50 hours approximately. He added the observation that he had seen Mark and Róisín McConnell when he was leaving Frankie's nightclub and that they were approaching Sarah's café from across the road coming from the direction of the Suíle Tavern at approximately 02.15 to 02.30 hours. On the 6th of January 1998, Mr. McCarron was again interviewed by Detective Garda Frank Feely and corrected the time at which he left the Town & Country from 00.45 hours to 00.15 hours. He must have been asked about his statement to the investigators and its apparent contradiction to what was said in his first statement about his not seeing the McConnells. He said the following:

In the last line of my earlier statements (which are quoted above) I mentioned a correction. What I meant to say there was I didn't see Mark McConnell from the time of a row in Quinns with Richie or Róisín from the time I left Quinns until I was leaving the nightclub.²⁸⁶

- 3.322. The initial statement made by Mr. McCarron tended to support the proposition that Róisín and Mark McConnell were in fact in the Town & Country up to about 00.45 hours. In contrast, Mr. Page suggested that he and Mr. McCarron had left the Town & Country at 00.15 hours. Both are in agreement that Mark McConnell was in the Town & Country at the time at which they left. In October/November 1996 that was the information in the possession of the Garda Síochána. Undoubtedly, both men had a shocking amount to drink that night. The second statement taken from Mr. McCarron attempted to quantify that amount. The proposition is advanced by Mr. McConnell that this was an attempt by the Garda Síochána investigating the death of Mr. Barron to discredit a witness in his favour, in that Mr. McCarron was saying that he was in the Town & Country at 00.45 hours. This was after the time at which Carmel Connolly and Philomena Laird had placed him in the chip shop thereby, as a bare but very unlikely possibility, giving him opportunity to be involved in the death of the Late Mr. Barron. The Tribunal, on this point, believes that it was reasonable on the part of the Garda Síochána to question the accuracy of the recollection of the two men in the light of the very large amounts of alcohol which they had consumed. Mr. McCarron, it should be noted, when questioned in January 1998 about this matter, changed the time which he had given in his original statement from 00.45 to 00.15 hours. Mr. Page was never questioned as to whether he might have been mistaken as to the time. **This may show an unequal approach by the investigators. Mr. Page was as likely to be wrong as Mr. McCarron. It was reasonable to conclude, all things being equal, that the two witnesses could only be relied upon for the proposition that Mark McConnell was at the Town and Country at the time at which they left. However, it may also be the case that the Garda**

²⁸⁵ Tribunal Documents, page 1520.

²⁸⁶ Tribunal Documents, page 1523.

Síochána reached a conclusion in favour of the earlier time in 1996 because they were more disposed and determined to pursue Mr. McConnell and Mr. Frank McBrearty Junior as the main culprits for the killing of the Late Mr. Barron than to re-question Mr. Page. They focussed, at that time, on questioning the statement of Mr. McCarron which was favourable to Mr. McConnell.

Statements of Martin Quinn and Paul Barron

- 3.323. A number of statements were taken by members of the investigation team before the 4th of December 1996 which tended not to support the times given by Mark and Róisín McConnell at which they left the Town & Country pub and made their way to Frankie's nightclub which was some time between 01.20 and 01.30 hours on the morning of the 14th of October.
- 3.324. Martin Quinn, who entered the Town & Country with Kevin McNulty, left the pub with a Paul O'Brien at 00.00 hours. He said he looked at the clock when they were leaving. They walked together to D.J.'s café and he went in and got something to eat. He was outside the café at 00.15 hours when he was picked up by Paul Barron (a son of the Late Richard Barron) in his car in which he drove up and down the street a couple of times. At this stage, Paul Barron wanted to go for something to eat and he parked the car. Martin Quinn, in a statement made on the 22nd of October 1996 to Garda Philip Collins, stated that:

We pulled up beside 'Sam's' clothes shop and parked. We both went into 'Sarah's' café. Paul got his bite to eat. We came out then and sat in the car for about ten minutes. While we were sitting in the car I saw Mark McConnell and a girl with black hair. I think it was his wife going into Sarah's café. I think Mark McConnell had a white top on him and a pair of tracksuit bottoms. We pulled off then and we drove up and down the street. While we were driving passed at one time I saw Richie Barron staggering and leaning against the wall of Duffy's home beside the butchers. We were going in the Convoy direction. We were up and down the street a couple of times and I didn't see Richie Barron again. I didn't see Mark McConnell again after this.

- 3.325. It is to be noted that, once again, a description was clearly sought of the clothing that Mark McConnell was wearing that evening.²⁸⁷
- 3.326. Paul Barron also made a statement on the 19th of October 1996 to Detective Garda Brendan Regan. He also stated that he picked up Martin Quinn outside D.J.'s café and that they drove off straight away. He said:

²⁸⁷ Tribunal Documents, pages 1526-8.

I drove up the main street and I noticed my uncle Richie Barron walking past Duffy's butchers shop heading towards McGranaghans corner. I would say then the time was between 12.20 am and 12.30 am. Richie was on his own and he was walking towards the corner. I continued on around the Diamond down by the banks and up past the chemist and I parked my car in at Sarah's café. Martin and I got out and made our order in Sarah's. We waited for our order and returned to the car about ten minutes later. Just as I was getting in my car I saw Mark McConnell walking on the far side of the street passing the Suíle Tavern and he was heading for the Parting Glass direction. I am sure it was Mark McConnell because I know him. He has a fat face and a goatee beard on him. I have no idea what McConnell was wearing. I ate the food in my car. I did not watch McConnell to see where he went.²⁸⁸

- 3.327. In a statement made on the 21st of October 1996 to Garda John Harkin, Paul O'Brien stated that he left the Town & Country with Martin Quinn about twenty minutes after the incident between McConnell and the Late Mr. Barron which he thought was at 00.15 hours approximately. He stated that Mark McConnell and his wife were still in the premises at that time.²⁸⁹
- 3.328. If these statements are correct, it would have placed Mark and Róisín McConnell as moving towards Frankie's nightclub at approximately 00.40 hours, according to Paul Barron. Whilst this differs from the time given by Mark and Róisín McConnell, it is difficult to conceive how Mark McConnell could have, within the remaining minutes available, concerned himself in the death of the Late Mr. Richie Barron who probably met his death between that time and at the latest 00.55 hours. Like the statement, as to time, of Mark Bogle, already referenced, it seems unlikely that these times were reliable in the light of other statements available.

Andrea McCobb

- 3.329. As already noted in her statement on the 19th of October 1996 to Sergeant Hannigan, Ms. McCobb indicated that she had thought Mark McConnell and his wife left before her and her then boyfriend, Shane Dolan, and both of them believed that they left the Town & Country at approximately 01.00 hours; though Ms. McCobb does not give a specific time for which she believes the McConnells left the Town & Country. It may also be the case that her time is unreliable, in the light of the known times of other incidents described by her especially the sighting of the ambulance.

²⁸⁸ Tribunal Documents, pages 1667-8.

²⁸⁹ Tribunal Documents, pages 1500-1501.

Statements of Carmel Connolly, Philomena Laird and Wilma Laird

- 3.330. The statements which appear to have given the investigating Gardaí most cause for concern in respect of the times given by Mark and Róisín McConnell are those furnished by Carmel Connolly and Philomena Laird. Róisín McConnell in her statement to Detective Garda O'Malley said that, having left the Town & Country pub at 01.15 and 01.20 hours, they walked over towards Frankie's nightclub. At the Suíle Tavern they met with Stephen McCullagh and his wife. They then crossed over to Sarah's café and ordered curry from Philomena Laird. They told her they would collect it after the disco in Frankie's nightclub. They then left the café and crossed over to Frankie's nightclub.
- 3.331. Brenda Laird ran Sarah's café at the time. She was working until 23.00 hours on the evening of the 13th and returned to the café at 01.45 hours on the 14th of October 1996. She confirmed that at 02.30 hours Mark McConnell came into the restaurant and she saw him standing at the counter. His wife Róisín was in the toilet area and he collected a chicken curry that he had ordered earlier. It was their usual order on a Sunday. She helped Carmel Connolly put up the order. She also seems to have been asked what Mark McConnell was wearing and what his disposition was. She stated that she was not talking to him; that she had not a clue what he was wearing; and, that she would not describe him as drunk.²⁹⁰
- 3.332. Carmel Connolly and Philomena Laird were working in the café during the time that Brenda Laird was absent. Sergeant Hannigan took a statement from Philomena Laird on the 19th of October 1996. She commenced work at midnight on the 13th and said that:

Between half twelve and twenty-five to one on the 14th October 1996 Mark McConnell and his wife Róisín came into the chip shop and Róisín ordered a chicken curry and rice for after the disco. I am sure of the time. You would know they had drink taken but they weren't really drunk. Mark was wearing tracksuit bottoms. I think they were black. I don't know what kind of top he had. I was here when they came back for the order. It was between half two and three o'clock when they (the McConnells) came in first the other customers were Manny Hegarty and Annie Caulfield. Manny and Annie were very drunk. There were two other men there but they were strangers. I don't know them.²⁹¹

- 3.333. Carmel Connolly also made a statement to Sergeant Hannigan on the 21st of October 1996. She relieved Brenda Laird at 23.00 hours on the 13th of October. She said:

²⁹⁰ Statement to Sergeant J Hannigan on the 21st of October 1996 – Tribunal Documents, pages 2553-4.

²⁹¹ Tribunal Documents, page 2532.

At around twenty past twelve Mark McConnell came into the restaurant and ordered a chicken curry to be collected after the Parting Glass. I can't be sure if his wife was with him. I think that a fellow was with him. I took his order. I'd say he was sober. I can't be sure of what he was wearing. I know the time because it was just after the pubs. I didn't look at the clock but it was early. He said he was going to the Parting Glass to the disco and that he would collect the curry afterwards. I was there when he came back. I had it ready for him. It was just shortly after the disco was over he came in with his wife Róisín. When Mark McConnell came in first, Manny Hegarty and Annie Caulfield came in after them²⁹²

- 3.334. Subsequently, Philomena Laird changed her account as to the time Mark and Róisín McConnell entered the café. On the 30th of April 1997, Ms. Laird gave a statement to the private investigator, Mr. William Flynn. She said:

I remember Mark and Róisín coming into the café. I honestly do not remember what time they came in at. I do remember that Wilma Laird was there at the time. I do not know Eugene Gamble so I cannot say if he was in. I can't remember if Aidan Mulrine was in that night. I remember Róisín ordering a chicken curry. I do not remember Mark going to the toilet but he could have done as I was getting orders. They were in the café a couple of minutes, I heard them say that they were going to the disco. I saw them later on. They came to collect their order. They were seen by Brenda Laird to the best of my knowledge. Sean Duffy told us about Richie Barron's death. Sean Duffy came into the café some time after 1.00am. Wilma Laird came in after Sean Duffy. ... I do not remember any fights in the street that night. I left the café that night at about 1.30.²⁹³

- 3.335. The Tribunal notes that Mrs. Róisín McConnell, following her arrest on the 4th of December 1996, in the course of an interview with Sergeant John White and Detective Garda John Dooley, is recorded as having informed them at an early stage of the interview that she entered Sarah's café at about 01.25 hours or so and that she met Wilma Barnett and spoke to her for two or three minutes. She gave a description of her family background, her former address in Raphoe and that she was now living in Castlederg. This appears to have given rise in May 1997 to the Job No. 285 which arose supposedly from a memo of this interview.²⁹⁴
- 3.336. In May of 1997, Job No. 285 was made out arising from "Memo Róisín McConnell" in which it was noted:

²⁹² Tribunal Documents, page 2531.

²⁹³ Tribunal Documents, page 2533.

²⁹⁴ Memo of Interview with Róisín McConnell on the 4th of December 1996 with Sergeant John White and Detective Garda John Dooley – the authenticity of this document remains to be determined in the Arrest and Detention Module.

Róisín McConnell alleges she spoke with Wilma Barnett in "Sarah's" café on the morning of 14/10/96

Verify and obtain statements include time, identify other customers, what was Mark wearing etc.

Sgt. John White.

- 3.337. This job was apparently assigned to Sergeant John White and the note in respect of this job is that statements were taken. There is also a memo of telephone interview with Wilma Laird (nee Barnett) dated 13th of September 1997 and timed at 23.10 hours. The note reads as follows:

Memo of telephone interview with Wilma Laird (nee Barnett).

Was Mark McConnell and his wife in the chip shop when you were there?

Yes they were in to order (takeout?)

Who else was in the chipper?

I cannot remember.

What time was it when you were there?

It was 1.20am.

How do you remember the time?

I remember I left Duffy's at 1.15am and went straight to Raphoe.

Who served you in the chip shop?

A Carmel McBride served me.

End of telephone conversation.

- 3.338. Following this interview on the 22nd of September 1997 Detective Garda Joseph Foley interviewed Philomena Laird who stated as follows:

I wish to state that at the time of making my original statement to Sergeant Hannigan, a few weeks after making the statement, I realised that I was not correct in stating that Róisín and Mark McConnell called in to the café where I work, that is Sarah's café at 12.30am or 12.35am on the 14th of October 1996. I now realise that the correct time of these people calling was approx. 1.20am. I did not realise this until I spoke to Wilma Laird a few weeks later, I told this to Wilma and she stated she came to the café at about 1.10am so then I realised the correct time to be approx. 1.20am on 14/10/96. At about 1.00am Sean Duffy told me Richie

Barron was killed in a hit-and-run accident. I did not contact Sergeant Hannigan about the time difference in my statement, I realise I should have spoken to the Sergeant and mentioned it to him, but never bothered.²⁹⁵

- 3.339. On the 24th of September 1997, Ms. Wilma Laird made a statement in which she said that she had been out with her husband, Adrian, on the night of the 13th of October 1996 and travelled with him to Raphoe. She said:

We came directly to Raphoe. We stopped in Raphoe and went into Sarah's café for a take-away meal. It was about 1.20am when I went into the café, my husband stayed in the car. Philomena Laird and Carmel Connolly were working in the café. While I was there at the counter Mark McConnell and Róisín McConnell came in soon after I went in. I saw Mark going to the toilet. I said hello to Róisín. She ordered food and she stated that they would get the food after the disco. Before I got my order Mark was back from the toilet. After I got my order I left the café. Mark and Róisín left the café before I left. I am unable to remember if there were any other people in the café at that time. I went to the car and my husband and I drove up to the scene. There were a lot of cars up at the scene so we turned around and parked in the town ... There was nothing unusual about the McConnells while they were in the café. I do not remember Mark McConnell having to ask for a key while in the café to open the toilet.²⁹⁶

- 3.340. Wilma Laird had also been interviewed by a private investigator on the 27th of April 1997.²⁹⁷ In this interview she had also stated that she had been out with her husband and had left a licensed premises, Duffy's pub, at 01.10 hours and given her sister-in-law Brona a lift up to Frankie's nightclub. She said:

We arrived there about 1.20. Brona got out and my husband sat in it while I went to Sarah's café. I went in there at around 1.25. Mark and Róisín McConnell came in almost behind me. I spoke to Róisín while Mark went into the toilet. To the best of my knowledge the only other people there at the time were Philomena Laird and Carmel Connolly. Róisín and Mark left and I left after them. That would have been about 1.30. When I was in the café either Philomena or Carmel told me about Richie Barron. I told this to my husband when I went back to the car.

- 3.341. She then gave an account of how they travelled to the accident scene and saw the ambulance coming down. They saw three or four cars at the scene but did not recognise anybody. They drove back to Raphoe and after a while drove home. She then added:

²⁹⁵ Tribunal Documents, page 2534 – witnessed by Detective Garda Alphie McHale.

²⁹⁶ Tribunal Documents, pages 2536-7.

²⁹⁷ Tribunal Documents, page 2538.

The Gardaí contacted me about a fortnight later. They had heard we were at the scene. They asked me if I had seen Mark and what time. I told them exactly what I have stated above.

- 3.342. The Tribunal has been unable to uncover any note or statement of any member of An Garda Síochána, nor has its attention been drawn to any such note or statement, indicating that Ms. Laird was approached by two members of An Garda Síochána within two weeks of the death of the Late Mr. Barron and that she gave them the account set out above.
- 3.343. Support for Ms. Wilma Laird's statement in this regard is to be found in the statement of Angela McNulty made on the 26th of October 1996.²⁹⁸ In her statement, made to Sergeant Tom McMenamin, she said that she left Frankie's nightclub at 01.10 hours and went across to Sarah's restaurant where she met Philomena Laird and Carmel McBride. She remained there until 01.30 hours. She said Wilma Laird (originally Barnett) who lived near Castlefin was also in the restaurant. It should be noted that Martin Quinn and Paul Barron both confirm another aspect of Angela McNulty's statement, in that she informed them at 01.40 hours approximately of the occurrence of the accident involving the Late Mr. Barron. In addition, though she was at Sarah's café at 01.30 hours and met a number of other young people with whom she moved towards the Diamond and there spoke with Stephen McCullagh, his wife and Declan McCullagh, she did not see Mark and Róisín McConnell, nor was she asked whether she had seen them at that time at, or near, Sarah's café or coming across the Diamond in Raphoe. She might have been asked this question, having regard to the fact that Stephen and Ann McCullagh, on their accounts and at about this time, had spoken with Mark and Róisín McConnell.
- 3.344. In evidence to the Tribunal, Carmel Connolly stated that she recalled when Mark McConnell came into Sarah's café and ordered a chicken curry. He said he was going to the disco and would come back later to collect it. He placed this order some time after 00.00 hours; though she said 00.20 hours in her statement she was not now sure of the time. She was aware of the time because:

*I always look at the clock to see because I always start closing down the dining part of the café at twelve o'clock.*²⁹⁹

- 3.345. She recalled how Mark and Róisín McConnell returned to the café, having attended Frankie's nightclub, in order to collect the order. She could not recall whether Mr. McConnell used the toilet. The time was some time after 02.00 hours.³⁰⁰ Though she acknowledged that the time 00.20 hours appeared in her

²⁹⁸ Tribunal Documents, page 1935.

²⁹⁹ Transcript, Day 52, Q.4-14.

³⁰⁰ Transcript, Day 52, Q.14-26.

statement as the time at which the order was placed by Mark McConnell, she could not remember giving this time to Sergeant Hannigan and could only fix the time as some time after 00.00 hours for the reasons already given.³⁰¹ The order was placed just after Philomena Laird came in to work and she came to work at midnight.³⁰²

3.346. Philomena Laird, in her evidence to the Tribunal, stated that she recalled that Mark McConnell first came into the café on the 13th/14th October at 01.20 hours on the 14th. She stated that he was with his wife Róisín who ordered a chicken curry. She had no recollection of his going to the toilet in the café and she noticed nothing about their demeanour or conduct at that time. She said they would return after the disco. She confirmed that she had originally placed the time of the first attendance of the McConnells at the café at 00.30 to 00.35 hours but she said that that was just a mistake. She said Wilma Laird also came into the premises and that it was after she left that Mr. and Mrs. McConnell arrived. She said that a few weeks after she had made her first statement to Sergeant Hannigan on the 19th of October 1996 she had been speaking to Wilma Laird. She had come in at 01.10 hours and when she left, Mark and Róisín McConnell came in at 01.20 hours. She had realised her mistake, following her conversation with Wilma Laird.³⁰³ She did not go back to Sergeant Hannigan to correct the time at that stage. It was not until September 1997 that she made a second statement to Detective Garda Foley and formally corrected the position. This arose during some sort of follow-up investigation but she had not asked the Gardai to attend in order to correct the statement.³⁰⁴

3.347. On the 30th of April 1997, it will be recalled that Philomena Laird told a private investigator that she did not remember the time the McConnells entered the café for the first time but she did remember that Wilma Laird was there. She was asked why if she knew from her previous conversation with Wilma Laird that Wilma Laird had actually come in at about 01.10 hours, she had not told the private investigator this when she spoke to him in April 1997. She said she had just forgotten.³⁰⁵ On the 27th of January 1998, Detective Garda Foley returned to see her because he was investigating the suggestion that she and Carmel Connolly were incorrect in their timings concerning the first attendance of the McConnells that evening. She fixed the second attendance of the McConnells to collect the meal on the basis of Brenda Laird's return to the café following her break, which had occurred between 23.00 and 02.00 hours.³⁰⁶ Ms. Laird confirmed, in cross-examination, that Sergeant Hannigan when he originally interviewed her in relation to this matter was "trying to fix where Mark McConnell was at a particular time."

³⁰¹ Transcript, Day 52, Q.43-68.

³⁰² Transcript, Day 52, Q.92.

³⁰³ Transcript, Day 52, Q.96-135.

³⁰⁴ Transcript, Day 52, Q.138-142.

³⁰⁵ Transcript, Day 52, Q.142-146.

³⁰⁶ Transcript, Day 52, Q.147-163.

- 3.348. She stated that, notwithstanding the doubts that she had following the making of her statement to Sergeant Hannigan, she never discussed the time at which Mark McConnell attended for the first time with Carmel Connolly. It was suggested to Ms. Laird that the private investigator had interviewed Wilma Laird three days prior to his interviewing her about the attendance of Mark McConnell. She had told the private investigator she did not know at what time Mark McConnell had attended but she had timed his presence by reference to the attendance of Ms. Laird on the premises. It was suggested by counsel for the Commissioner that “somebody may well think that the private investigator, rather than just get you to refer to a time, or change of time, would get you to change it by reference to somebody else and the time they were giving, who had been interviewed three days beforehand.” She denied that that ever happened.³⁰⁷ She also said that though Sergeant Hannigan asked her questions about the matter, he never suggested anything to her.³⁰⁸
- 3.349. Philomena Laird was questioned at length by the Tribunal Chairman as to how the conversation with Wilma Laird arose and as to what she did or thought as a result of receiving the information from Wilma Laird that she had come into the café at around 01.20 hours. She was unable to give any, or any satisfactory, answer to this; nor was she able to explain why she did not give a more definite time when interviewed subsequently by the private investigator on the 30th of April 1997.³⁰⁹
- 3.350. Wilma Laird, in evidence to the Tribunal, confirmed her movements on the evening of the 13th/14th October 1996 as outlined in the statements already set out. She also confirmed that she went to Sarah’s café at between 01.20 and 01.25 hours. She ordered some food, shortly after which Mark and Róisín McConnell entered the café. She described the event:
- Róisín ordered the food, Mark went to the toilet and Róisín spoke to me while Mark came out again and they said – Róisín said she’d got her food whenever ... they’d come back for the food after the disco was over. They came out, they left, that is it.*³¹⁰
- 3.351. She waited for her food and returned to her husband in the car. She also heard in the café about the accident from one of the girls but could not recall if Mr. Barron’s name was mentioned. In this regard, Angela McNulty also indicates and she heard about the accident from Philomena Laird when she went to the café at around 01.30 hours, at which time she met Mrs. Laird.³¹¹

³⁰⁷ Transcript, Day 52, Q.188-281.

³⁰⁸ Transcript, Day 52, Q.287-289.

³⁰⁹ Transcript, Day 52, Q. 294-349.

³¹⁰ Transcript Day, 284, Q.18-32.

³¹¹ Tribunal Documents, page 1936.

- 3.352. Mrs. Laird also told the Tribunal that she was visited by a detective a couple of weeks following the death of the Late Mr. Barron, to whom she gave a statement. The detective came to her house and asked questions about where she was on the night and the times at which she had been in Raphoe. She was happy to speak to him and answered all his questions and told him the story which is set out above. He took notes. She presumed he was a member of An Garda Síochána. She thought that she had signed a statement at that time. She was living in Castlederg at the time and the Garda had come across the border to talk to her. She confirmed also that she had made a statement to a private detective on the 27th of April 1997 and had attended, upon request, at Letterkenny Garda Station where she made a further statement on the 24th of September 1997. However, Mrs. Laird was adamant that she had never had any conversation with Mrs. Philomena Laird at any time after the death of the Late Mr. Barron concerning the time at which she had attended at Sarah's café on the night of the 13th of October. She confirmed to the Chairman that he could be absolutely satisfied that such a conversation never took place. If that is so, she could not have been the trigger causing Mrs. Philomena Laird to change her story in respect of the times. Her change of story may well have come about as a result of being approached by the private investigator, rather than a conversation with Wilma Laird.
- 3.353. In cross-examination by counsel for the Commissioner, Wilma Laird could not explain why she had stated in her statement to the private detective that, "Gardai" (plural) had called to her on the first occasion rather than a Detective Garda as she stated in evidence to the Tribunal. She could not describe the Detective Garda. She could not explain why she had not mentioned the making of a formal statement to this Garda on a previous occasion but merely said to the private detective that she had told her story to the Gardai who had called.³¹²
- 3.354. The Tribunal is satisfied that the account given by Mrs. Wilma Laird is truthful. Some of the detail of her encounter with a member of An Garda Síochána has been challenged by the Commissioner but she continued to maintain that she told her story to a member of An Garda Síochána in the weeks following the death of the Late Mr. Barron. The Commissioner submits that nothing was done officially or came into the system by way of a formal statement. Clearly, no such record exists, but that is not surprising in this case. The Tribunal is satisfied of the likelihood that whatever was told to the Garda attending with Ms. Laird was suppressed by him, acting on his own or with others, probably because it confirmed a material particular in the account given by Mark and Róisín McConnell of their movements.

³¹² Transcript Day 284, Q.36-39.

3.355. Undoubtedly, the statements initially made by Carmel Connolly and Philomena Laird in October 1996 were contradictory to those made by Mark and Róisín McConnell and other witnesses in respect of the time at which the McConnells left the Town & Country bar, attended at Sarah's café and entered Frankie's nightclub. It was reasonable for members of An Garda Síochána if they were legitimately investigating the movements of Mark McConnell vis-à-vis the death of the Late Mr. Barron, to investigate this inconsistency and determine whether it could be resolved or not. It was legitimate to regard these initial statements as statements upon which a degree of reliance could be placed because these two young people were sober on the night in question and appeared to be independent in that they did not seem to have any affiliation or relationship with the Barron or the McBrearty families. The statements were significant in that they tended to contradict and undermine the McConnells' account, which rendered it impossible for Mark McConnell to have been involved in the death of the Late Mr. Barron. In this context, Chief Superintendent Keane gave evidence that when conflicts arise in statements made by various witnesses they should be ventilated and discussed at the next investigation conference. A job should be given out to re-interview a witness or witnesses in the light of what other witnesses have said, in order to see whether there is any explanation available from that person in respect of the conflict. The first decision to be made at the conference is to make out a job of that kind, i.e. to carry out a further inquiry. He said:

You'll certainly be going back to that individual on more than one occasion if you are not happy ... you might send a different team back there.

3.356. He went on to say that:

I know, as a Superintendent, that if I had a difficulty with, we'll say, a conflict like that, that I would maybe bring in the people that dealt with the inquiry and sit down and have a chat and see what is the problem, or is this individual stonewalling them, or is there another reason behind it. As I said, you might go back several times to that individual, send different people, even, back in case there is a conflict of personality or something.³¹³

3.357. In the context of any conflicts thought to have arisen in respect of the statements discussed above, no member of An Garda Síochána returned to Mark and Róisín McConnell prior to their arrests on the 4th of December 1996, in order to clarify any aspect of their statements or

³¹³ Transcript, Day 217, Chairman's questions, Q.134-154.

resolve any perceived conflicts or contradictions with other witnesses. On the other side, no member of An Garda Síochána appears to have returned to Carmel Connolly or Philomena Laird in respect of this matter prior to the arrests. In addition, if one accepts the official records of the investigation, no member of An Garda Síochána approached Angela McNulty or Wilma Laird, named by Angela McNulty as present at 01.30 hours at the café, in order to determine whether either of these witnesses saw the McConnells at Sarah's café at 01.30 hours.

- 3.358. Matters take a more sinister turn when one considers the evidence of Wilma Laird that she was indeed approached by a member of An Garda Síochána and in fact told him that she had seen the McConnells at Sarah's café at about 01.30 hours. In the circumstances, either this matter was not investigated properly in the assignment of appropriate jobs in an attempt to resolve this conflict, or at least one job was given, that of interviewing Wilma Laird, the results of which were ignored or suppressed. The Tribunal is satisfied that the results were in fact suppressed because they supported the McConnells' story which was deemed to be inconvenient to the Garda theory of Mark McConnell's involvement in the death of the Late Mr. Barron.
- 3.359. It should also be noted that there was a divergence between the evidence of Philomena Laird, which was to the effect that Mark and Róisín McConnell only came into the café after Wilma Laird had left, and the statement of Wilma Laird, which was to the effect that they came in while she was in the café and that she actually spoke to Róisín McConnell. However, this was a conflict which, if important, the Garda Síochána never put themselves in a position to resolve by the application of proper investigative techniques in the initial stages of the investigation. Indeed, in the later interviews with Wilma Laird and Philomena Laird in which the initial time given had been "corrected" this was not a matter pursued by the Garda investigators.

The Lennon Report – Cross-Checking and Analysis

- 3.360. The contacts made by the Gardaí with Wilma Laird had occurred in the second half of 1997 and were part of the inquiries carried out by members of the Lennon team.³¹⁴ In the Lennon report, submitted in March 1998 to the Director of Public Prosecutions the accounts given by Carmel Connolly and Philomena Laird are highlighted, and described by Superintendent Lennon as reliable accounts. There is no reference to the fact that the times furnished by these two witnesses could be unreliable, or to the further evidence of Wilma Laird. She is not mentioned at all in the report. In respect of the McConnells, the report states:

³¹⁴ Tribunal Documents, pages 8621-2, 8679-80, 8821-2, 8942-3, 8954-5 and 9070-1 respectively, Jobs No. 2, 31, 102, 163, 168 and 226 of the Lennon Jobs Book.

It seemed that Mark McConnell with the aid of his wife Róisín was intent on establishing an alibi for him so as to include the time of Richard Barron's death ...³¹⁵

- 3.361. Indeed, the conclusion was reached in the report that “Mark and Róisín McConnell could not possibly have been in the ‘Town & Country’ public house between 1.10 am and 1.20 am as they both claim”, which conclusion purports to be based upon an analysis of the various statements already reviewed in this part of the Tribunal's report. This flawed analysis could be the result of negligence or a wilful disregard of conclusions favourable to the McConnells. Such conclusions could or should have been drawn on the basis of material produced by the first investigators and then the further material which emerged as a result of the Lennon inquiries. Superintendent Lennon raised questions in relation to the lawfulness of the arrests of various parties in his report and questions why no analysis was made of the alleged statement of admission made by Frank McBrearty Junior on the 4th of December 1996 and cast serious doubt on the reliability of that alleged confession as taken by members of the National Bureau of Criminal Investigation from Dublin. However, he is entirely supportive of the first investigation's analysis of the movements of Frank McBrearty Junior and Mark McConnell. This is either as a result of negligence on the part of Superintendent Lennon and Sergeant White in the cross-checking and analysis of the materials available, or a wilful disregard of what became obvious from such a cross-checking and analysis.
- 3.362. Superintendent Lennon furnished a debriefing document to the Chief Superintendent, Letterkenny on the 6th of March 1998, in which he criticised the initial investigation into the death of the Late Mr. Barron. He also criticised the fact that statements which came into the incident room in the course of the first investigation were not evaluated, which resulted in a further 254 jobs being undertaken by the second team over a year after the incident. “It is clear that there was an apparent lack of knowledge as to the contents of the statements.” He said he was of the belief, “that the majority of statements that were accepted into the incident room were not cross-checked on their entry to the system, resulting in confusion.” He criticised the absence of any effort made to corroborate the statements of Robert Noel McBride and the fact that the “coordinator of the incident room was making inquiries, arresting and interrogating persons etc., without paying due attention to the proper coordination of the incident room.”³¹⁶ In order to make this criticism, Superintendent Lennon and his team must have understood the basis for same. If that is so, his conclusions in relation to the various statements

³¹⁵ Tribunal Documents, pages 98-125.

³¹⁶ Tribunal Documents, pages 779-785.

concerning the movements of Frank McBrearty Junior and Mark McConnell contained in the report furnished to the Director of Public Prosecutions were deliberate, unwarranted and unexplained. The question arises as to whether this was motivated by a decision to deflect criticism from the Donegal Division and its handling of the first phase of the investigation and other controversies concerning William Doherty and Garda John O'Dowd (because of Superintendent Lennon's association with same), or whether it was simply a continuing negligence on the part of the second investigation team. The Tribunal suspects that it was a combination of all three.

Statements of Eugene Gamble

- 3.363. Following a statement made by Eugene Gamble, concerning the movements of the Late Mr. Barron, on the 15th of October 1996, he made a statement on the 25th of September 1997 to Detective Garda Martin Anderson indicating that he went into Sarah's café at 12.40 hours and that at about 12.50 hours Mark and Róisín McConnell came into the café. He said that when he left the café at 01.00 hours Mark and Róisín McConnell were still there.³¹⁷ Subsequently, on the 30th November 1997, he made a further statement to Detective Sergeant John White. He elaborated on this description but now said that he went to Sarah's café with Liam Sweeney and that while there, three people, whom he named as Mark McConnell, Michael Peoples and Charlotte Peoples, came into the café together with another woman who may have been Mark McConnell's wife. He put the time of their entry into the café at between 12.50 and 12.55 hours. He left the café at 01.00 hours approximately, with Liam Sweeney and then went down to the Suile Tavern where he met Ann and Stephen McCullagh and Declan McCullagh and left to go up to the scene where the Late Richard Barron had been knocked down, at about 01.20 hours.³¹⁸ He also complained in this statement that he had been approached by a representative of Mr. McBrearty with a view to changing the times given to the Garda Síochána in his second statement and that, ultimately he was assaulted by Frank McBrearty Junior on the 20th of April 1997 in respect of this matter. The Tribunal has heard the evidence of Eugene Gamble in this regard and totally rejects it. There was no mention of Mr. McConnell in the first statement made by Mr. Gamble, though he was aware that there were rumours circulating about the involvement of Mr. McConnell and Mr. McBrearty Junior in the death of the Late Mr. Barron.³¹⁹
- 3.364. He told the Tribunal that on the 20th of April 1997 there had been an incident with Frank McBrearty Junior and that there had been a number of incidents over time when he had been put out of the nightclub. Matters had been taken to court in respect of his behaviour. The effort to place Mr. McConnell in the café at

³¹⁷ Tribunal Documents, page 1610.

³¹⁸ Tribunal Documents, pages 1611-1614.

³¹⁹ Transcript, Day 203, Q.557-562.

that time, as opposed to the time given by Mr. McConnell, was calculated to undermine Mr. McConnell's credibility, and to implicate Michael Peoples by association with Mr. McConnell on that evening at a time which the Gardaí would have considered important. Mr. Gamble's friend, Liam Sweeney, initially made a statement saying that he left the Suíle Tavern with Mr. Gamble at about 01.00 hours and that he did not see Mark McConnell that night though he had gone to the café with Mr. Gamble.³²⁰ He then changed his statement to Detective Sergeant White on the 17th of December 1997, when he said that he recalled that "the area of his [Mark McConnell's] pants and on the back of his legs of his pants was wet" a fact which caused him to remember the presence of the Mark McConnell in the café. He recalled that Mr. McConnell was wearing tracksuit bottoms. Given the history of discord between Mr. Gamble and Mr. McBrearty, and the flat contradictions in Mr. Sweeney's statements, there was no basis upon which to take the 1997 statements seriously as evidence implicating Frank McBrearty Junior, Mark McConnell or Michael Peoples.

Conclusion

- 3.365. For the Gardaí, it is said that a conflict existed between the clear statements of the McConnells, the Quinns, Richard McBrearty and the McCullaghs which, if accepted, demonstrated that Mark McConnell was not anywhere near Frankie's nightclub between 00.30 and 01.00 hours and therefore could not have teamed up with Frank McBrearty Junior, and the statements of Carmel Connolly and Philomena Laird which, if accepted, afforded him a possible opportunity to do so. This was a very bare possibility given the timeframe proposed. There was nothing in the statements, or in the available evidence, to suggest that the Quinns, the McCullaghs or Richard McBrearty were anywhere near so intoxicated that they could not have given accurate accounts of their movements and observations. Equally, Carmel Connolly and Philomena Laird were regarded as sober witnesses. The only distinguishing feature, therefore, between these persons is that Carmel Connolly and Philomena Laird were not considered to be related to the McConnells, as Stephen McCullagh, Paul Quinn and Richard McBrearty were. If that is the only real distinction between them, it only has relevance if a conclusion is drawn that the Quinns and the McCullaghs and Richard McBrearty lied in order to facilitate the creation of an alibi for Mark McConnell. That proposition was never canvassed with them nor were they ever considered as candidates for arrest as accessories after the fact to murder, as others were. Indeed, as already noted, aspects of their respective statements as

³²⁰ Tribunal Documents, page 1643.

to the time and location of various events that evening had been substantiated by the Gardaí. It is more than difficult, therefore, to understand why their accounts were rejected by the Gardaí. No consideration seems to have been given to the possibility that the two young ladies in the café could have been mistaken as to the times which they gave for the first attendance of the McConnells at the café. The statements of Angela McNulty and her sighting of Wilma Laird were not followed up. But that is not the full story. The Tribunal is satisfied that the existence of Mrs. Wilma Laird was known to elements of the first investigation team. She was interviewed early in the investigation. The results of that interview were suppressed because her story supported that of Mr. McConnell by giving him an alibi. The investigation was compromised in this way because of the focus of the inquiry upon the guilt of Frank McBrearty Junior and Mark McConnell.

- 3.366. In addition, accounts given by the McConnells and others of the events later in the morning of the 14th of October 1996 seem also to have influenced the Garda investigation and the Tribunal now turns to examine these.

The McConnells Leave Frankie's Nightclub

- 3.367. No statements or information was received by the investigating Gardaí to the effect that Mark McConnell was in the company of, or spoke to, Frank McBrearty Junior when entering Frankie's nightclub or during the time he was there. As pointed out earlier, there was no evidence of Mark McConnell using a telephone in Quinn's pub or of his cousin answering it over in Frankie's nightclub. A great deal of energy was spent by the investigating members, tracing the movements of the McConnells after they left Frankie's nightclub. Primarily, the team sought to establish the time at which they left. Thereafter, it concentrated on where the McConnells spent the night. The investigating team discerned inconsistencies between the accounts given by the McConnells and their friends and relations, and other witnesses concerning their whereabouts from the time they left Frankie's nightclub until approximately midday on the 14th of October. The Gardaí concluded that suggested sightings of the McConnells by these other witnesses meant that the McConnell's were not telling the truth about their whereabouts for that period. The deduction drawn from this seems to have been that the McConnells were lying and had something to hide in relation to the death of the Late Mr. Barron. Further, the conclusion was also drawn that their friends and relations were assisting them in lying and assisting them in hiding facts relating to the death of Mr. Barron.
- 3.368. The validity and extent of these conclusions requires careful examination,

particularly in the light of best police practice and, investigatory technique. Also of importance is the legal significance of a lie in criminal proceedings. However, it should not be forgotten that Mr. Barron was, at this time, dead in Letterkenny Hospital. It should also be borne in mind that, as Chief Superintendent Keane explained, people are often mistaken or untruthful in relation to their own affairs. This does not make them murderers.

- 3.369. It will be recalled that Róisín McConnell told the Gardaí on the 16th of October 1996 that she and Mark McConnell were in Frankie's nightclub for about fifteen minutes. While she was there she learned that Richard Barron had been knocked down. Edel Quinn told her that he had been killed. On the way out the door of Frankie's nightclub at or about the same time she asked Frank McBrearty Senior if he had heard about Richard Barron being knocked down and he said, "He'd been knocked down but he wasn't dead." She then went to Eunan Brolly's, after obtaining a carryout from Sarah's café. Mr. McConnell gave a similar account. They left Frankie's nightclub at approximately 01.45 hours. He said that he learned about the death of Richard Barron at about the same time as he and his wife left Frankie's nightclub with Edel Quinn and Ebby Walsh. They went out with this couple to collect "stuff to stay the night with Eunan and Katrina Brolly."
- 3.370. It is important to remember that these statements were made in relation to their movements, primarily concerning the time of Mr. Barron's death. The focus of the statements made centres on the evening of the 13th of October into the early hours of the 14th of October. They were not asked for any further details than those furnished in the statement, either by the interviewing members or any other member of An Garda Síochána prior to their arrests.

Statements of Garreth Friel and Annette Keys

- 3.371. Garreth Friel and Annette Keys travelled to Raphoe on the morning of the 14th of October 1996 in a jeep. They drove up past McBrearty's and turned in front of the vocational school. They then parked alongside the hairdressers which was opposite Reynold's electrical shop. As already noted, they say that they saw an incident some time between 01.00 and 01.05 hours involving two Gardaí and a number of young men, which appears to be the incident involving the boys from Aghyaran. Garreth Friel drove down the Diamond and around Guesthouse End Street and returned some time after 01.20 hours and parked in front of Reynold's electrical shop facing the town on the opposite side of the road from where he had previously parked. He said:

I was just parked up when I saw Róisín McConnell and Edel Quinn on the opposite side of the road outside "Frankies" Bookies. They were walking

on the roadway side of the parked cars. The next thing I saw was Mark McConnell coming behind with a fellow I now know as Edel Quinn's boyfriend. I noticed that Róisín and Edel seemed to be keeping their distance from Mark and Edel's boyfriend in that whenever Mark and Edel's boyfriend quickened their pace the girls in front also increased theirs. What I noticed about Mark was that he was crying. I saw this because Mark was standing across from my van for 3/4 minutes and Edel's boyfriend was patting him on the back and even looking up into his face. The two women seemed to disappear. I didn't see them after this. The spot where Mark and Edel's boyfriend were standing would be approx the end house of those row of houses up from Frankie's nightclub and across from Reynold's. From the first time I saw Róisín & Edel and Mark McConnell and his friend to the last time I saw Mark McConnell and his friend would have been approx 10 minutes. At this stage there the car in front of me a White Peugeot 205 91 DL3050 suddenly took off. It was driven by Damien Gamble. ...I remember looking at the clock on the dash of the jeep. It was reading 1.30 a.m. I pulled out from Reynold's at this time and that was the last I saw of Mark McConnell and Edel Quinn's boyfriend. The clock on the jeep is accurate. I recall Mark McConnell was wearing a pair of runners, a grey tracksuit bottom and I am nearly sure the top was grey with a navy transfer embossed on it.³²¹

- 3.372. Annette Keys made a statement on the 23rd of October 1996 to Garda Phillip Collins. She also describes arriving with Garreth Friel, " the digital clock [was] turning to 1 a.m." in Raphoe and they parked at the hairdressers across the road from D.J.'s café that is on the opposite side of the road to Reynold's electrical. She describes driving off and returning and parking in a position beside Reynold's shop on the same side of the road as Reynold's shop at about 01.30 hours. She said:

We were sitting there and then I seen Róisín & Edel Quinn at the corner of "Frankie's Tudor Lounge". I don't know whether they came out of Frankie's or up the street. They walked on past and were passing the hairdressers on the opposite side of the street. Twice she Róisín turned around and waved back her hand as if indicating to people behind her to go away. I then saw two men walking behind the girls. I don't know if they came up the street or came out of Frankies. I didn't know any of these fellows. Garreth remarked to me that Róisín had fallen out with one of the girls. One of the fellows was a heavy fellow and Garreth said his name was Mark McConnell and that he went to school with him. The fellow that was along with Mark McConnell I did not know but I presumed it was Edel's

³²¹ Tribunal Documents, pages 2459-60. The Statement was made to Garda John O'Dowd.

boyfriend. I know both Róisín & Edel Quinn very well as the two of them work with me. Edel Quinn actually works beside me and I know she has been going out with a fellow for a long time. The fellow that was with Mark McConnell had his arm around him. Mark McConnell looked to be crying and upset. The two girls walked on out of sight and the two fellows stopped before they got to the end of the houses. The fellow with Mark McConnell seemed to be consoling Mark McConnell. He was tapping him on the shoulder. Mark McConnell was still upset and crying at this stage. They stood for a couple of minutes and then they walked on up the road out of sight. To look at the people walking up it seemed that one of the girls (Róisín) and one of the fellows, Mark McConnell, were after having an argument.³²²

- 3.373. A specific time of 01.30 hours was given by Garreth Friel for the incident which he saw involving the McConnells. He referenced it to the time which he noted on the clock on his dashboard and the fact that he then drove away, following Damien Gamble in his car. Ms. Keys differs from this timing in that she stated that they sat in the jeep beside Reynold's electrical shop until 02.20 hours. Mr. Friel accounts for the interval between 01.30 and 02.15 hours by saying that he and Ms. Keys drove around the town for that period, waiting for the "crowd to come out of the Parting Glass". Both are agreed that they went to Al O'Donnell's chip shop at about 02.30 hours. In the half-hour period described by him, Garreth Friel made no mention of seeing Geoffrey Dolan. Damien Gamble described how Geoffrey Dolan drove his car, out of the McBrearty car park and parked behind him. In contrast, Garreth Friel describes Damien Gamble's car as being directly in front of his at Reynold's electrical shop. He did not see the fight which followed, following the expulsion of the boys from Aghyaran from the nightclub. He did not see the supposed intervention made by two Gardaí, as described by Damien Gamble. He did not describe the return of Damien Gamble's car to a parking spot outside Reynold's electrical. He did not describe the encounter which Geoffrey Dolan then had with Charlotte Peoples as described by Damien Gamble, Geoffrey Dolan and the Peoples and which has been extensively referred to in this section already. Ms. Keys made no reference to these matters either. **Having regard to this and to other statements made in relation to the movements of the Peoples and the McConnells that evening, there was a real possibility and a probability that the statements made by Garreth Friel and Annette Keys were, at least in respect of time, entirely inaccurate. In any event, no effort was made on the part of the Garda Síochána to return to these two witnesses, Damien Gamble or Geoffrey Dolan in order to address the clear conflicts which arose on the face of their statements.**

³²² Tribunal Documents, pages 2462-2464.

Statements of Edel Quinn and Edmund ‘Ebby’ Walsh

3.374. Edel Quinn and Edmund ‘Ebby’ Walsh also made statements about their attendance at Frankie’s nightclub. As already noted, Ms. Quinn had indicated in her statement to Detective Garda Michael O’Malley on the 19th of October 1996, that at about 00.30 to 00.35 hours Frank McBrearty Senior had come over to her and Mr. Walsh inviting them up to the disco without charge and that they were escorted up by Frank McBrearty Junior. Ms. Quinn described how Charlotte and Michael Peoples and Geoffrey Dolan arrived into the disco and sat at a table next to them at 00.45 to 01.00 hours. She said:

At around 1.30 a.m. my sister Róisín and Mark McConnell came into the disco. They came over and sat down at our table. At about 2.00 a.m. Róisín and Mark, Ebby and me left the disco. The four of us walked up to Ebby’s car. It was parked beside the wall in front of the tech [Technical School]. Róisín asked Ebby if he would drive out to her house as she wanted to collect nappies and things for the baby. Ebby drove out to Róisín’s house, she collected the stuff and we returned to Raphoe again. Ebby stopped the car at Sarah’s café and both him and Mark went into the café for a take-away. After getting the food we left Róisín and Mark down to Brolly’s house, Guesthouse End Street, Raphoe. We returned to my home 330 St. Eunan’s Terrace, Raphoe. I remember that after Róisín and Mark McConnell had joined our company in the disco, Carol McBrearty, Meadowhill, Raphoe came over to us. She told us that Richie Barron had been knocked down and killed and that it was Avril McBride that had told her.³²³

3.375. On the same date Edel Quinn’s boyfriend, Edmund ‘Ebby’ Walsh, made the first of a number of statements to Detective Garda Michael O’Malley. He also described being in the Tudor Lounge and going to the disco at 00.30 hours. He confirmed that they were joined at their table by the Peoples, Geoffrey Dolan and a Paula Ayton. He said:

Mark McConnell and his wife, Róisín, came into the disco and joined our company at approx 12.45 a.m./1 a.m.³²⁴ We left the disco before it was over, that was Edel, Róisín, Mark and me. We went up to my car which was parked in front of the school. Róisín McConnell wanted to get a bag for the wane and she asked me if I would drive out to their house as they were staying in Brolly’s house for the night. I drove out to the house, Edel and Róisín went in, they returned to the car again. I drove back to Raphoe and Mark and I went into Sarah’s café. The two girls stayed in the car and when we got the take-away food, I drove down to Brolly’s house. Róisín and Mark McConnell got out of the car and we returned to Edel’s house.³²⁵

³²³ Tribunal Documents, pages 3296-3297.

³²⁴ This time is probably incorrect – but even if acted upon by the investigators it afforded Mr. McConnell an alibi. Given that they did not so view it, the Tribunal concludes that the investigators did not regard this time as accurate.

³²⁵ Tribunal Documents, pages 2540-2541.

- 3.376. Detective Garda O'Malley returned to Mr. Walsh on the 14th of January 1997 and obtained a further statement in which he gave the following details:

Some time after this Mark and Róisín McConnell came into the disco and they also joined our company. I recall talking to Mark McConnell about football, both of us are Spurs supporters. The rave disco music was being played when we decided to go, Edel had said, "come on we're going now". Edel and Róisín were talking to one another and they got up to leave. Edel said to me before we left the disco, "Take Róisín and Mark out to their house as they have to get clothes for the child as he is down in Katrina's". Edel and Róisín were walking together out of the disco and Mark and I were walking a short distance after them. Edel told me that Mark had a row with somebody and seemingly he is knocked down and is dead. As we left the disco and were walking down towards the main road, Mark overheard Edel and Róisín talking to one another about somebody being dead. He asked them, who is dead. Róisín said nobody is dead. He asked her again who is dead and she told him what had happened to Richie Barron. Mark appeared upset and I tried to console him. Mark remarked something to the effect, "Trust me to have words with somebody and something like this to happen to him". He wasn't crying but appeared upset. Róisín wanted him to come on as we were standing at the entrance to McBreartys. I told her to go on up to the car and that I would take Mark up after them. Róisín and Edel walked on ahead up to the car and Mark and myself walked some distance after them. The four of us got into the car and I drove out to McConnells. Edel and Róisín went into the house to get a bag of clothes for the child. They returned shortly afterwards and I returned again to Raphoe. As I was driving passed St. Eunan's Terrace in traffic Mark got out to go to Sarah's take-away. I got a parking place in the same area as my car had been parked while we were in the disco, that is, outside the school. I parked the car and got out and followed Mark down to Sarah's. The two of us went into the café together. We were approx five minutes in the chip shop and left after getting our take-away food. We walked back up to the car. I drove down through St. Eunan's Terrace to Brolly's house as Mark and Róisín were staying there. Róisín asked Edel and myself if we were going into Brolly's and Edel said no as I was working in the morning. I drove back up to Edel's house and parked outside it. I remember Mark McConnell was wearing a grey/blue striped hooded track suit top and track suit bottoms dark in colour.³²⁶

Testimony of Róisín McConnell

3.377. In evidence to the Tribunal, Mrs. McConnell confirmed that prior to their leaving Frankie's nightclub at about 00.55 hours she heard from Edel Quinn that Richard Barron had been knocked down and killed. Ms. Quinn apparently had heard this from Ms. Carol McBrearty. This put a dampener on the evening. Róisín McConnell was shocked. She told Edel Quinn not to say anything to Mark McConnell. She knew he would be very upset in the light of the argument which he had with Mr. Barron earlier in the evening and so she did not tell him. She asked Edel Quinn to ask Edmund Walsh whether he would take her out to the house to get some clothes and nappies for the child. She told Mark McConnell that she wanted to go home. On leaving the premises, Frank McBrearty Senior was standing at the door and Mr. McConnell, Edel Quinn and Mr. Walsh were leaving the premises in front of her. She stopped to talk to Mr. Frank McBrearty Senior and asked him whether he heard that the Late Mr. Barron had been knocked down and killed. He replied that he had indeed heard this but that Mr. Barron was not dead. On emerging from Frankie's nightclub, Mark McConnell kept asking her what she was talking to Mr. McBrearty about. "He knew by the look on my face I was shocked. So he kept on and on asking me so then I told him what I had heard". She was reluctant to tell him but eventually did. He was getting more annoyed with her because he wanted to know what the conversation had been about. He was shocked when he was told of the death of Mr. Barron. They were both upset. "He just said I think it was something like: "Trust me to have words and now a man gets knocked down."

3.378. She stated that she and Edel Quinn walked on a bit and Mr. Walsh and Mr. McConnell came behind them. She did not accept that this was because Mr. Walsh said that they should walk on and he would talk to Mr. McConnell. On the journey in the car to get the equipment for the baby he repeated words to the effect: "Trust me to have a row with him." He was still upset. She then described how the two women went into the house to collect the materials for the baby and how they then proceeded to the Brolly's house via Sarah's café.³²⁷

Testimony of Mark McConnell

3.379. Mark McConnell told the Tribunal that when he was leaving Frankie's nightclub he noted that his wife stopped to talk to Frank McBrearty Senior and he overheard the word "death" or something like that in the conversation. He heard them saying somebody had died. He was a number of steps ahead of her and he was curious to see what they were talking about. At this stage he had not heard anything about the accident to Mr. Barron. He asked his wife what was wrong when she caught up with him and she said, "nothing". She was reluctant to tell

³²⁷ Transcript, Day 57, Q.319-430.

him what it was about. He became a bit agitated and pursued it with her. He kept asking what was wrong, then she told him. She was upset. She told him that she had heard that the Late Mr. Barron had died in a hit-and-run and that Mr. McBrearty Senior had since told her that he was not dead when she had been talking to him at the door. He was a bit shocked about this and the fact that he had had words with Mr. Barron earlier in the evening and was sorry to hear about it. He said something to the effect: "Trust me to have an argument with him and now the man is lying up the road." He was upset that the last time he had seen the man he had words with him. He said that he was quiet from time to time on the journey from the club to Tullyvinney. He had to stand for a minute when told this news by his wife for about twenty to thirty seconds. He probably said the same words to Mr. Walsh as he said to his wife. Mr. Walsh was probably trying to comfort him in relation to his upset. He appeared to accept the fact that Mr. Walsh tried to ease his mind in relation to the matter. He thought drink may have affected his attitude more than if he had been sober.³²⁸

- 3.380. Ms. Edel Quinn confirmed to the Tribunal, in evidence, that she had informed her sister Róisín McConnell at about 01.45 hours about the news imparted to her by Carol McBrearty at Frankie's nightclub to the effect that Mr. Barron had been knocked down in a hit-and-run and died. Carol McBrearty had been told by a Ms. Avril McBride. Róisín McConnell was upset because of the argument which had occurred between Mark McConnell and the Late Mr. Barron earlier in the evening. She confirmed that she was asked not to say anything to Mark McConnell about it in the disco. They decided to leave and to take Mark McConnell outside. She recounted the conversation with Frank McBrearty Senior. When he heard the news Mark McConnell was upset. He was quiet. She walked ahead with Róisín McConnell and left Mr. Walsh and Mark McConnell walking behind towards the car. She confirmed that he said words to the effect: "Trust him to have an argument with the man."³²⁹

The Drive to and from Tullyvinney

- 3.381. Having driven to the McConnell house at Tullyvinney, the party of four then drove back to Raphoe and stopped outside Sarah's café in order to collect the carryout repast which had been previously ordered. Ebby Walsh and Edel Quinn were in the front of the car and the McConnells in the back. The McConnells and Edel Quinn described how, at Tullyvinney, the two women got out of the car to get the clothes and things for the child. No change of clothes was obtained for the McConnells. Mark McConnell and Ebby Walsh went into Sarah's café at approximately 02.00 to 02.15 hours. Mark McConnell could not recall meeting anyone. Mr. Walsh also put in an order. Having obtained the take-away meals

³²⁸ Transcript, Day 62, Q.1-96, Transcript, Day 59, Q.1427-1480.

³²⁹ Transcript, Day 53, Q.402-463.

they returned to the car and drove the McConnells to the Brolly house which was a few minutes drive away.³³⁰

- 3.382. Philomena Laird and Carmel Connolly both believed that Mr. and Mrs. McConnell returned together in order to collect the meal after the disco some time between 02.30 and 03.00 hours.

Sightings of Mark McConnell At or Near Sarah's Café

- 3.383. Three other persons say they saw Mark McConnell at around this time in the vicinity of D.J.'s take-away and Sarah's restaurant. Lisa and Nicola Harkin had been in Frankie's nightclub and left the disco at approximately 02.10 hours. Nicola Harkin said that she saw him walking past D.J.'s alone at that time. Lisa Harkin stated that having left the disco she:

Went across the road to look for Nicola, whom I had lost for a couple of minutes. I was outside Sarah's at approximately 2.20 a.m. and I met Mark McConnell who gave me a big hug in the middle of the street. I noticed he was alone and carrying a bag of chips, a brown bag. He headed off towards D.J.'s passing it walking towards St. Eunan's Terrace.³³¹

- 3.384. Mark McConnell thought he could have hugged her but he had no memory of it, though it was in keeping, broadly, with the time at which he attended the chip shop with Ebby Walsh, whom the girl may not have known. There was also a large number of people about.³³²

- 3.385. There was also a statement made by a Caroline Lynch, who said that she saw Mark McConnell at 02.20 to 02.25 hours. She said, in a statement made on the 7th of November 1996:

After getting burgers we went up to the wall leading down to St. Eunan's Terrace, directly across from the Vocational School. This was about 2.20 a.m. - 2.25 a.m. I remember seeing Mark McConnell coming passed where we were sitting on the north side of the street at approximately 2.25 a.m. I do not know if he came from the Eunan's Terrace direction or directly down the street. Mark McConnell said hello Caroline. ... He was wearing a black sports jacket with brightish colour t-shirt. He was wearing black jeans, denim type, a pair of black shoes. He appeared sober and normal appearance. I think Mark McConnell went on towards the Diamond. I'm sure he went passed the nightclub. He was on the same side of the street as Reynold's shop when he passed the nightclub. I and my friend left the wall at 2.30 a.m.³³³

³³⁰ Transcript, Day 53, Q.382-393; Day 57, Q.399-422; Day 59, Q.1477-1497 and Day 62, Q.97-144.

³³¹ Tribunal Documents, pages 2095-6.

³³² Transcript, Day 62, Q.248-256.

³³³ Tribunal Documents, page 2086.

- 3.386. In addition, Caroline Lynch said that the taxi which took her home at 02.30 hours on the 14th of October was driven by a Daniel Bonnar. When Mr. Bonnar was interviewed on the 13th December 1997, he denied this.³³⁴
- 3.387. This description is at variance in a number of respects with the statements and the evidence of other witnesses. The description of his clothing was not what other witnesses say he was wearing. Other testimony puts Mr. McConnell in the company of Mr. Walsh and/or his wife in the café or outside it in the car at or about this time after which they immediately drove to the Brolly's house. Mark McConnell also says he could not have said: "hello Caroline", since he did not know this girl. It also put him in a position where he was walking down Meetinghouse Street passing by these girls at or near a wall opposite the vocational school at St. Eunan's Terrace. The accuracy of this statement must be assessed having regard to the evidence of the ladies in the café, the evidence of Róisín McConnell and Edel Quinn and the statements of Edmund 'Ebby' Walsh.³³⁵
- 3.388. However, Ms. Lynch's friend, a Ms. Sabrina Kelly, also made a statement suggesting they did encounter a man in the circumstances outlined by Ms. Lynch but she was not able to identify the person. In addition, neither seems to have focussed on what would have been the conspicuous state and size of Mr. McConnell at the time.³³⁶ The possible significance of this sighting is that it suggests that Mr. McConnell had, at this stage, disengaged from his party at 02.25 hours at a time prior to the car journey that should have taken him to the Brolly's house. The real possibility of honest mistake on the part of Ms. Lynch does not appear to have been considered.

The McConnells Stay at the Brollys

- 3.389. The other accounts furnished say that when Mark and Róisín McConnell arrived at the Brolly house they were dropped off by Edmund 'Ebby' Walsh and Edel Quinn. Using a key left in the porch they entered the house. Róisín McConnell told the Tribunal that she went into the kitchen and then to Katrina's bedroom.³³⁷ She went to her sister and informed her that they brought home a curry and invited her up to the kitchen to have some of it. They went to the kitchen. She told Katrina Brolly what she had heard about the Late Mr. Barron. Mark McConnell was in the kitchen. Eunan Brolly remained in bed. They consumed the curry. They told Katrina Brolly what they had heard about the Late Mr. Barron.

³³⁴ Tribunal Documents, page 1766 (though when re-interviewed Ms. Lynch was happy to confirm that he did leave her home and said that she saw Mark McConnell at 2.30 a.m. and was collected around that time in the taxi but she did not see him in the Diamond in Raphoe when moments later they drove through the Diamond in Mr. Bonnar's taxi – Memo of Interview with Caroline Lynch 16th September 1999).

³³⁵ Transcript, Day 62, Q.258-296.

³³⁶ Tribunal Documents, page 2083 – both these statements were taken on the 7th of November 1996 by Sergeant Tom McMenamin.

³³⁷ Transcript, Day 57, Q.430-433, 480-483.

Mark McConnell Telephones Letterkenny Hospital

- 3.390. Róisín McConnell suggested to her husband that he telephone Letterkenny Hospital to see if the Late Mr. Barron was alright. She did not think that there was any harm in this. Though initially unwilling, he did eventually telephone the hospital at a time which the Tribunal was satisfied was 02.49.01 hours³³⁸ and the call lasted one minute and sixteen seconds. She was not initially aware that he had phoned the hospital. He said he was going to the bathroom. When he came back to the kitchen he told them that he had telephoned the hospital but they did not believe him. She felt that he was only telling her this to make her feel better. She earlier indicated that she had been “ more upset for Mark having the words with Richard Barron more than Mark probably would have been upset ” .³³⁹ He told them that he had been asked his name when he called. He gave a name and was told that the family did not know anybody of that name, so he put down the phone.³⁴⁰ There was no attempt to get this information by telephoning anybody else.³⁴¹
- 3.391. Mark McConnell also described arriving at the Brolly's house at approximately 02.30 hours on the morning of the 14th of October 1996. They ate the take-away meal over a period of approximately twenty minutes. He described the conversation which ensued about the Late Mr. Barron. He confirmed that he made the telephone call. He told his wife and Katrina Brolly that he had done so. They did not believe him. He did not feel annoyed about being asked to phone the hospital or the fact that they did not believe him when he came back.³⁴²
- 3.392. Katrina Brolly told the Tribunal that she recalled Mr. and Mrs. McConnell coming into the house at approximately 02.35 to 02.40 hours. She confirmed much of the evidence given by Mr. and Mrs. McConnell. Róisín McConnell told her what she had heard about the Late Mr. Barron. She described Róisín McConnell:
- She was just a bit upset ... about hearing about him being knocked down. ... I suppose she was upset because with Mark having the words with him, you know.*
- She knew she was upset from her voice.*³⁴³
- 3.393. She got up and joined the McConnells in the kitchen and they sat and ate the curry. She recalled that Róisín McConnell said to Mark that he should ring the hospital to find out how Mr. Barron was. Mark McConnell refused and Róisín McConnell replied: “ Why did you have to argue with him anyhow ” . He did not

³³⁸ Transcript, Day 57, Q.497-520, Q.983-998, and Q.1236-1285.

³³⁹ Transcript, Day 57, Q.504-513, 522-527.

³⁴⁰ Transcript, Day, 57, Q.518.

³⁴¹ Transcript, Day 57, Q.519-521.

³⁴² Transcript, Day 62, Q.300-348.

³⁴³ Transcript, Day 57, Q.1207-1232.

reply or react to this. Neither of them was sober but neither of them was drunk. When the issue of telephoning the hospital came up and he refused to telephone the hospital, Katrina Brolly agreed with him. She did not think it was appropriate. She confirmed that he later returned to the room saying that he had phoned the hospital but neither of them believed him.

Party at the Dolan's

- 3.394. It is clear from the testimony of Mrs. McConnell and Mrs. Brolly that the subject changed rapidly from the topic of the Late Mr. Barron to the fact that there was a party at the Dolan's³⁴⁴. Róisín McConnell telephoned the home of Frank and Irene Dolan from the Brolly's house at 03.14.01 hours on the morning of the 14th of October 1996. The call lasted for ten minutes and eighteen seconds. Katrina Brolly said there was no other phone call made that she could recall other than the phone call to the Dolans. She heard Laura's name mentioned when Mrs. McConnell was speaking on the phone. She heard her asking whether Gerard and Kay Quinn were there. After the phone call Róisín McConnell came back into the kitchen and they sat down and had a cigarette. She thought Mark McConnell was near her at the phone but "got fed up listening to her chatting so he went on to bed."³⁴⁵ At this stage, Róisín McConnell's son came up from the bedroom and she attended to him, at which point Mrs. Brolly went to bed. She left Róisín McConnell in the kitchen attending to Dean. This was some time after 03.00 hours approximately.
- 3.395. The following morning Mrs. Brolly got up at approximately 08.55 hours. She was in a rush and late for work. She got the children ready and left them over to the school and then went to work in Strabane. She did not see either of the McConnells before she left for work and her husband was still in bed at the time. She did not think anyone could have left the house and returned to the house in the meantime³⁴⁶. If Mrs. McConnell was up at her house at Tullyvinney the following morning at 08.00 hours she had no means of getting there since she did not drive. In addition, Mrs. Brolly felt that had they left the house during the course of the night she would have heard them going out. Further, they would have had to leave their infant behind on his own.³⁴⁷

The Phone Call to the Dolan House

- 3.396. The account given by Mrs. McConnell of the reason for, and the content of, the telephone call to the Dolan house differs from that provided by members of the Dolan family. The original investigation team focussed upon this issue, apparently, in January 1997. As an issue, it did not and could not have been considered as a

³⁴⁴ Transcript, Day 57, Q.1242-1284.

³⁴⁵ Transcript, Day 57, Q.1321-1339.

³⁴⁶ Transcript, Day 57, Q.1341-1374.

³⁴⁷ Transcript, Day 57, Q.1371-1397.

basis upon which to form any suspicion as to the involvement of Mrs. McConnell in the death of the Late Mr. Barron. Job 277 which emanated from the office and is dated the 10th of January 1997 states:

Subject

Interview 1 Frank Dolan, Townparks, Raphoe re: suspicious death of Richie Barron

For attention of Sergeant J. White.³⁴⁸

- 3.397. In the conference notes for the 17th of January 1997, Job 277 is referred to in the following way:

F. Dolan – 1014 seconds Irene came back to Joe. McElvey to do. Laura answered the phone.

Róisín looking for Mark ...

Job S. Henry – Laura.

- 3.398. The entry in respect of work done was:

Interviewed J. Doherty

1 call received - cannot remember.

The job was then marked "leave open".³⁴⁹

- 3.399. Three days later, on the 20th of January 1997, the conference notes contain a reference to jobs "Irene Dolan" and "Laura and Irene Dolan. Phone calls." On the 20th of March 1997, item 11 of the conference notes reads:

Laura Dolan Irene to be interviewed.³⁵⁰

- 3.400. A job issued from Sergeant John White on the 24th of March 1997 (Job 282) which stated:

Item 3 Interview – Irene Dolan re: phone call – Laura denies any conversation says she handed phone to her mother

For attention of Sergeant in Charge, Raphoe.

There is nothing to indicate what was done about this job in Raphoe.³⁵¹

- 3.401. On the 12th of March 1997, at 23.30 hours, Detective Garda Michael Carroll and Detective Garda Anderson called to the residence of Ms. Laura Dolan and asked

³⁴⁸ Tribunal Documents, page 7555.

³⁴⁹ Tribunal Documents, page 7556.

³⁵⁰ Tribunal Documents, page 6024 (notes of the 17th of January 1997), page 6023 (notes of the 20th of January 1997), page 6020 (notes of the 20th of March 1997).

³⁵¹ Tribunal Documents, page 7565-6.

her if she had received a phone call from Ms. Róisín McConnell on the 14th of October 1996 at approximately 03.00 hours. In reply to a number of questions she confirmed that she had received such a call. She said she answered the phone and waited until her mother came to the phone. She spoke to Mrs. McConnell for a few minutes and she seemed normal enough. Róisín McConnell wished her a happy birthday, which was the reason she was at home at the time. She was not asked whether she knew where Mr. Mark McConnell was. She did not want to make a statement concerning this call because:

I don't want to get Róisín into any sort of trouble.

3.402. When asked what she meant by that, she simply said that she would rather not make a statement. She stated that the reason Róisín McConnell had phoned the house was that she wanted to talk to her mother, Irene Dolan.³⁵²

3.403. On the 1st of December 1997, Laura Dolan made a further statement to Detective Sergeant John White. In this statement she states substantially what was noted by the two Gardai as replies to the questions which they posed on the 12th of March 1997. She also said:

Later my mother told me that Róisín was looking for her husband Mark.³⁵³

3.404. On the 16th of January 1997, Sergeant J. Hannigan interviewed Mrs. Irene Dolan and asked her if she had any contact with the McBreartys or the McConnells on the night of the death of Richie Barron on the 14th of October 1996. In his memo of that interview he says as follows:

She stated that Róisín McConnell rang her home some time after they returned from the pub. She wasn't sure of the time as they had drink taken. My daughter, Laura, answered the phone. Róisín McConnell was on the phone and she inquired if her husband Mark McConnell was there, that she didn't know where he was. She asked Irene Dolan did she hear about Richie Barron being killed in the hit-and-run and that she was worried about Mark because he had been in an argument with Richie Barron earlier that night. She stated that she did not recall anything further about their conversation. Mrs. Dolan stated that Róisín McConnell did not request or suggest that she or her family create alibis for any of the parties involved.³⁵⁴

3.405. Sergeant Hannigan says he was asked about his means of knowledge by Mrs. Dolan as to how he knew there had been contact, to which he replied that he had information to that effect.³⁵⁵

³⁵² Tribunal Documents, pages 2511-2516.

³⁵³ Tribunal Documents, page 2518.

³⁵⁴ Tribunal Documents, page 2557.

³⁵⁵ Tribunal Documents, page 2564.

- 3.406. Mrs. Dolan was also interviewed by a private investigator and Detective Sergeant John White (twice) on the 20th and 27th of November 1997.
- 3.407. Some time in mid-1997, Mrs. Dolan had been visited by Mr. Tom Coffey and Mr. Mark McConnell. She confirmed that she had told Sergeant Hannigan of the call from Róisín McConnell, and that she told him she thought that Róisín McConnell was looking for Mark McConnell.³⁵⁶
- 3.408. In her statement to Detective Sergeant White on the 20th of November 1997, Mrs. Dolan stated that:

Laura called me to the telephone in the hallway at some stage that morning. I don't know what time. Róisín McConnell was on the phone. She asked me was her husband Mark at my house. I told that he was not here. She seemed to be very worried about Mark. She said that Richard Barron had been knocked down in a hit-and-run accident and that she was worried about Mark, her husband, as he had been involved with Richie earlier in the night. Róisín seemed worried and I took it that she was worried that Mark may have been hurt with him as well. I don't know how long I was talking to her. We had more conversation but I cannot remember it. ... I don't know where she was that night she telephoned me. I took it for granted that she was in her own house.

- 3.409. She said when the private investigator, Mr. Coffey, asked her about the telephone call from Mrs. McConnell she told him that she was looking for Mark McConnell. Mark McConnell was present at the interview and she said that he said:

I don't know why she was looking for me, I was upstairs in bed.³⁵⁷

- 3.410. Once again, nobody returned to Róisín McConnell to ask her whether, in fact, she had phoned the Dolan's house from the Brollys' in the early hours of the morning of the 14th of October, before her arrest on the 4th of December 1996. This may be because the phone record in respect of that telephone call was not then available. However, according to a memo of interview on the 4th of December between Mrs. McConnell and Sergeant John White and Detective Garda John Dooley, neither she nor her husband made any phone calls from the Brolly's house that night or morning and she is recorded as emphatically denying this.³⁵⁸
- 3.411. On the same date, Katrina Brolly is recorded as having made a statement to Garda Tina Fowley and Detective Garda Noel Jones that Róisín McConnell had asked Mark McConnell to telephone Letterkenny General Hospital in the early hours of the 14th of October 1996.³⁵⁹

³⁵⁶ Tribunal Documents, pages 2558-9.

³⁵⁷ Tribunal Documents, pages 2560-1 and see also the further statement made to Detective Sergeant White, pages 2562-3.

³⁵⁸ Arrest & Detention of Róisín McConnell documents, pages 411-412.

³⁵⁹ Tribunal Documents, page 4234.

3.412. A short time later, on the evening of the 4th of December 1996, Katrina Brolly was arrested and in an interview during her detention she is recorded as having been asked whether anyone made a telephone call from her house that morning. She replied:

Not that I know about.³⁶⁰

3.413. She was specifically then asked about a telephone call from her home to the hospital, about which she did not know anything. When asked about the call to the Dolan's, she recalled that Róisín might have made a call to Irene Dolan but she did not know what it was about.³⁶¹

3.414. Subsequently, on the 17th of November 1999, Mark and Róisín McConnell gave a more detailed account of their movements to members of the Carty team. In this account, Mrs. McConnell accepted that she phoned Dolan's house and stated that her purpose was to see if her brother Gerard Quinn was there. She spoke to Darren Dolan and she stated that she never spoke to Mrs. Irene Dolan. She never asked about Mark, her husband, because he was in Brolly's with her.³⁶²

3.415. Laura Dolan gave evidence to the Tribunal and said that during the party at the family home in the early hours of the morning she answered the phone to Róisín McConnell. She wished to speak to her mother and probably wished her a happy birthday but she did not recall any reference to her pregnancy at the time. She got her mother to come to the phone. Later, her mother, perhaps the next day, may have told her that Róisín McConnell was looking for Mark McConnell and that Mark McConnell and Richard Barron had had an argument the previous night in the pub. She did not accept that she had ever refused to make a statement. She said she did not have much to drink that night and she remembered what happened. She disagreed with the proposition that her brother, Darren Dolan, had answered the phone initially to Mrs. McConnell but he could have had a conversation with her on the phone after she had left the phone.³⁶³

3.416. Mrs. Irene Dolan also gave evidence to the Tribunal. She recalled that Laura answered the phone and called her out to the hall, telling her that Rosin McConnell wanted to speak to her. She said:

*I thought it was odd why Róisín was phoning me like, but she just asked was Mark there. She thought he might have been down because it was Laura's birthday. She said she was worried because he had an argument in the pub with Richie that night, and that she heard that Richie had been in a hit-and-run, and we hadn't seen Mark.*³⁶⁴

³⁶⁰ Arrest & Detention, page 202.

³⁶¹ Arrest & Detention of Katrina Brolly, page 202. Mrs. Brolly subsequently made a statement to a private investigator in relation to this matter, pages 153-160.

³⁶² Arrest & Detention of Róisín McConnell document.

³⁶³ Transcript, Day 209, Q.35-101.

³⁶⁴ Transcript, Day 209, Q218-220.

- 3.417. She appeared to be worried. She was asked by the Chairman whether she could recall any further conversation in respect of this matter and said:

*She seemed worried with the fact they had words.*³⁶⁵

- 3.418. She was asked about including the sentence, “Róisín seemed worried and I took it that she was worried that Mark may have been hurt with him as well” in her statement of the 20th of November 1997 to Detective Sergeant White. She said, “I don’t know I would say that” and had earlier denied saying ‘hurt with him’, I didn’t say that. ‘Hurt with him’, no, I didn’t say that.”³⁶⁶

- 3.419. Notwithstanding the denial of Mrs. Róisín McConnell, Mrs. Dolan said that she had spoken to Mrs. McConnell. She accepted there was no reason that Laura Dolan could not have given her the information that her husband was not there, since they grew up together.³⁶⁷

- 3.420. Róisín McConnell, in her evidence on this issue, said that she phoned the Dolans’ to see if Gerard (her brother) and Kay Quinn had gone down to the Dolans because she was aware that it was Laura’s birthday and they would have been having a party. She wanted to go down and have a drink if Gerard and Kay Quinn had been there but was reluctant to do so if they were not. She knew Mark McConnell did not wish to go out again and she would have gone on her own had Gerard and Kay Quinn been there.³⁶⁸

- 3.421. She spoke initially to Darren Dolan and asked him if the Quinns were there. He said that they were not. She then told him about the Late Mr. Barron’s accident and death. He asked whether she would like to speak to his sister, Laura Dolan. She did so and spoke to her about her pregnancy and her birthday.³⁶⁹ Darren Dolan was interviewed on the 17th of October 1996 but not about this phone call. He subsequently made a statement to the private investigator saying that he was absolutely drunk and did not remember the phone call from Róisín McConnell.³⁷⁰

- 3.422. Various extracts of Irene Dolan’s memos of interviews and statements concerning this matter were put to Mrs. McConnell. She denied that she had any conversation by telephone with Irene Dolan that night. She denied that Mark McConnell had left her company and had gone off on his own for a period that night and said:

If Mark McConnell left that house that night I would sit here and I would tell you he left that house that night. But Mark McConnell

³⁶⁵ Transcript, Day 209, Q.261.

³⁶⁶ Transcript, Day 209, Q.270 and Q274-278.

³⁶⁷ Transcript, Day 209, Q.311-320.

³⁶⁸ Transcript, Day 57, Q.525-535, Q.548-565.

³⁶⁹ Transcript, Day 57, Q.542-548.

³⁷⁰ Tribunal Documents, pages 1536.

*didn't leave the Brollys' house that night at any stage. I could make it simple and lie to you that yes I was looking for him, but that would be a total lie. I was not looking for Mark McConnell I was looking for Gerard and Kay Quinn.*³⁷¹

- 3.423. She said that if she phoned looking for Mark McConnell and Laura Dolan had answered the phone, she would simply have asked Laura Dolan where Mark McConnell was. She did not have to ask for Mrs. Dolan to ask that question.³⁷²
- 3.424. It was Róisín McConnell's understanding that the issue of the telephone call to the Dolans' first arose at the time of her arrest. She had reason to believe her husband told the Garda Síochána about the phone call whilst he was in custody. Nobody had come to her to ask her about the phone call before that, and had they done so she would not have had any difficulty about telling them about the phone call. At the time of their first statements, Superintendent McGinley, Garda Collins and Garda O'Malley told them before they left their house that if they could help them in any way they were welcome to come back. They never returned.³⁷³
- 3.425. Mrs. McConnell used the phone in the Brolly's a number of times in the early hours of the morning of the 14th. The records indicate that there was an initial telephone call at 02.49.01 hours on the 14th of October 1996 to Letterkenny General Hospital (apparently made by Mr. Mark McConnell). There was a second phone call at 02.57.01 hours which appears to be a failed attempt to contact the Dolan household and was accepted as such by Mrs. McConnell. There then appears to be an attempt to telephone a number at 02.58.01 hours, which the Tribunal is satisfied is an attempt to phone the Town & Country public house. The last two digits of that number represent the last two digits of the Town & Country pub number in reverse order. However, Mrs. McConnell denies any attempt to contact the Town & Country pub. At 03.00 hours there was a call to Gerard and Kay Quinn's number. This was then followed with a successful phone call to the Dolan household at 03.14 hours. The Tribunal finds it difficult to understand why attempts were made, in the Tribunal's view, to contact the Town & Country pub without good reason because calling that number at that hour of the morning might well disturb Mr. and Mrs. Quinn and the newborn infant, when Mrs. Quinn had just come out of hospital. In addition, it is difficult to understand why Gerard and Kay Quinn would be telephoned without good reason, since they had two young children who might also be disturbed by such a call in the early hours of the morning.

³⁷¹ Transcript, Day 57, Q.593.

³⁷² Transcript, Day 57, Q.594.

³⁷³ Transcript, Day 57, Q.948-965.

Summary

- 3.426. It was suggested that elements of the statements made by Irene Dolan may have been planted in her mind by Detective Sergeant White, or may have arisen from some other sources such as rumours around the town. No plausible reason as to why Mrs. Irene Dolan would say Róisín McConnell had spoken to her in the course of the telephone call on the morning of the 14th of October 1996 if she had not done so, has been offered to the Tribunal. If she was looking for her husband on the phone at that hour of the morning it has to be because he was not at the Brolly house. That proposition is supported by the attempt to contact the home of Kay and Gerard Quinn. It is supported to a lesser extent by the attempt to call the Town & Country bar. Even if this conclusion is wrong, there was sufficient material in existence to justify a suspicion on the part of members of An Garda Síochána in relation to that phone call that Mrs. McConnell was indeed looking for her husband who was not with her at the Brollys' at a time which she, her husband, and others maintained he was. However, that suspicion could only have arisen after the first interview with Mrs. Dolan on 16th of January 1997. It may be that Mr. McConnell left the Brolly house some time between 2.49.01 hours and the making of the call to the Dolan house by Mrs. McConnell. The alternative conclusion is that he never came to the Brolly house and that he is not the person who telephoned Letterkenny Hospital, but this seems unlikely. Other evidence suggests that he was in the Brolly house later on that morning. Though not seen by Mrs. Brolly when she left for work and got the children out, at approximately 09.00 hours. He was seen by Mr. Brolly when he got up and went to work, at approximately 10.30 hours. It may be that he was there and had never left and that Mrs. Dolan is honestly mistaken in her recollection of the conversation.
- 3.427. There is nothing to suggest any connection between any absence of Mark McConnell during this period and the death of the Late Mr. Barron. If he was absent the scenario is suggestive of a domestic upset of an ordinary kind. Since no change of clothing was ever sought by Mark McConnell when he had a chance to get one from his own house, and since he could not have been at the scene of Mr. Barron's death, the entire matter is not relevant to any suspicion of murder.

The Following Morning at the Brolly House

- 3.428. When Katrina Brolly left the Brolly house that morning, those remaining were Mark and Róisín McConnell, their infant son and Eunan Brolly. Eunan Brolly told

the Tribunal that having left the Town & Country at about midnight, he walked home with his wife. Within a few minutes he reached the house and after a short while went to bed and to sleep from which he did not awake until some time around 10.00 hours the following morning when the phone rang. The call was from his employer, Mr. Liam O'Donnell. He had an arrangement with his employer to carry out a painting job for him if, Mr. O'Donnell obtained a paint sprayer for the day. The call was to inform him whether he had obtained the paint sprayer. If he had Mr. Brolly had a day's work to go to. After the phone call, Mr. Brolly went to the kitchen, where he was joined by Róisín McConnell and her son. Twenty to twenty-five minutes later he was joined by Mark McConnell. He told Mark McConnell that he was off to work and he asked him for a lift to enable him to get his car. Mr. Brolly was in a hurry out. There was no discussion about the death of Mr. Barron. He left Mark McConnell to his car at Sheep's Lane, near the Hardware & Grain Company, and went to work.³⁷⁴

- 3.429. Having retrieved his car, Mark McConnell drove back to the Brolly house. In the meantime, a phone call was made by Róisín McConnell at 11.12 hours to the Town & Country looking for Kay Quinn who worked there. When Mark McConnell returned to the Brolly house, he collected Róisín McConnell and the baby and went to the Peoples' house nearby.

Breakfast at the Peoples House

- 3.430. The McConnells were not expected at the Peoples' house but when they arrived the Peoples were in the course of preparing a cooked breakfast. They spoke to the Peoples about the death of the Late Mr. Barron. They remained there for over an hour and Mark McConnell then took Róisín McConnell to the Town & Country to see Kay Quinn to see where she was the night before. There was nothing unusual about their unannounced arrival at the Peoples' house as they frequently called unexpectedly to each other's houses as good friends.³⁷⁵
- 3.431. Mrs. McConnell's evidence, on this matter, agrees with that of her husband. She had a conversation with Kay Quinn about where Ms. Quinn had been the night before because she thought that Kay Quinn might have been down in the Dolans'. She simply told her that she and Gerard Quinn had gone home. She could not recall discussing her attempt to phone Kay and Gerard Quinn at home with Kay Quinn and being unable to do so.³⁷⁶
- 3.432. The Peoples recalled that the McConnells arrived at their home at between 11.00 and 12.00 hours and had a cooked breakfast. They spoke about the Late Richard Barron. Michael Peoples thought that they had arrived around 10.00 hours. His wife told him that it was later. From what he heard over the years, he assumed

³⁷⁴ Transcript, Day 57, Q.1056-1118.

³⁷⁵ Transcript, Day 62, Q.623-654, 720-726.

³⁷⁶ Transcript, Day 57, Q.757-834.

they were coming from the Brollys' but he did not know this from his own knowledge. He just knew that they arrived to the house. He had no memory of the McConnells arriving for breakfast in this manner on any previous occasion. He did not see anything strange about them arriving, because they were very good friends and you could come into his house at any time. On reflection, he thought it must have happened before, because it was not a great surprise to him that they arrived.³⁷⁷

Alleged Sighting of Róisín McConnell on the 14th of October 1996

3.433. A further difficulty was said to have arisen for the investigation team arising out of an apparent conflict between statements taken from Colette McGlinchey, Michael McNulty and Gary McCullagh concerning the movements of Róisín McConnell. As is apparent from the various statements concerning the movements of Róisín McConnell and others, Mrs. McConnell maintained that she remained at the Brollys' house from the time of her arrival some time around 02.00 hours on the morning of the 14th of October until collected, together with her son, by Mr. McConnell in his motorcar which he had collected in Raphoe. She was then brought to the Peoples' house. However, in a statement made by Colette McGlinchey on the 23rd of October 1996 to Garda John O'Dowd, Ms. McGlinchey gives an account of seeing Mrs. McConnell walking on the road about 100 yards from her own house towards Raphoe some time shortly after 08.30 hours. Ms. McGlinchey was adamant that this sighting was on Monday, the 14th of October, because it stuck in her mind as she was aware that the Fruit of the Loom (in which Mrs. McConnell worked) was closed on Mondays. She had also heard on that morning that there had been a hit-and-run accident in Raphoe the previous night in which a man had been killed.³⁷⁸

3.434. At the time of the sighting, Ms. McGlinchey was being driven by a Michael McNulty, in the company of a Gary McCullagh, to their place of work, McMenamin Engineering, at Killygordon. Mr. McNulty in a statement made on the 23rd of October 1996, at or about the same time as Ms. McGlinchey, to Garda Philip Collins gave a similar statement. He said that he passed a comment to Ms. McGlinchey that:

Mark and her must have had a bit of a tiff or something like that. I never seen Róisín McConnell on the road before this at this hour of the morning. She looked as if she was very upset looking ... Going past the house I saw Mark McConnell's car there. I am sure of this. It was a white Corolla. When I seen Róisín McConnell she was very distressed looking. She didn't seem to be rushing.

³⁷⁷ Transcript, Day 59, Q.552-673.

³⁷⁸ Tribunal Documents, pages 2578-9.

- 3.435. He later heard about the death of Mr. Barron, after work.³⁷⁹ There was some confusion in Mr. McNulty's mind as to whether this incident had occurred on Monday the 14th or Tuesday the 15th of October 1996. In a further statement, made on the 5th of December 1997 to Detective Garda John O'Toole and Detective Garda Carroll, he said that he had believed from speaking to Colette McGlinchey that the incident occurred on Tuesday morning but acknowledged that it could have been Monday morning and stuck to his original statement.³⁸⁰ Then in a further statement on the 9th December 1997 made to Detective Garda Thomas Kilcoyne he said that when he had made his original statement to Garda Collins he immediately went down stairs and spoke to Ms. McGlinchey and told her that he was unsure whether it was the Monday morning. He had known that the Fruit of the Loom factory was on a three-day week and that nobody would be working in the factory on a Monday morning. That was the only reason he believed that he had seen Mrs. McConnell on a Tuesday morning. He went on to say that he had seen her on either the Monday or Tuesday morning.³⁸¹
- 3.436. He made a further statement, to Detective Garda O'Toole, on the 10th of December 1997, in which he said that he wished to clear up the confusion regarding the sighting of Mrs. McConnell and now stated that he believed it was Tuesday morning the 15th of October 1996 and not the Monday morning. However, as of the 23rd of October 1996 his statement to Garda Collins was to the effect that his sighting had been on the Monday morning.
- 3.437. Mr. McNulty subsequently swore an affidavit and submitted it to the Tribunal on the 21st of May 2003. In the course of this statement, he said that the statements made by him were made under some duress. At the time of the first statement on the 23rd of October 1996, he said he was under considerable pressure at work and recalled Garda Philip Collins calling to his workplace. He was asked a number of specific questions by Garda Collins as to whether he had met Mrs. McConnell on the road, whether he had seen her on the road before, whether she looked upset, whether there was a car in the McConnells driveway, and whether the car in McConnells driveway was Mark McConnell's. He stressed that he did not volunteer any of the information to Garda Collins, other than to reply 'Yes' to specific questions that were asked of him. When the statement was read over to him by Garda Collins, he said that he felt under some pressure and obligation to sign this statement as he had had no encounters with the Gardaí at any time prior to this. He also said that he was under quite an amount of pressure at work and signed the statement to get rid of Garda Collins. He now regrets signing this statement. He now asserts and is satisfied that he met Mrs. McConnell on Tuesday, the 15th of October 1996. He also complained that he was placed under considerable pressure to sign one of the statements

³⁷⁹ Tribunal Documents, pages 2582-3.

³⁸⁰ Tribunal Documents, page 2584.

³⁸¹ Tribunal Documents, page 2585.

subsequently made by him on either the 5th, 9th or 10th of December 1997 (he is not sure which).³⁸²

- 3.438. On the 24th of October 1996, Gary McCullagh also made a statement to Garda John O’Dowd confirming that he had got a lift from Mr. McNulty on the 14th of October 1996 to their place of work. They discussed the fact that a man had been knocked down in Raphoe on the way to work. He also said that as they drove on they met Róisín McConnell walking towards Raphoe on her left side of the roadway. He did, however, say he did not know what day of the week this was. He also said that she was just 100 yards from her house and that as he passed the house he could not say whether there was a car parked in front of the house or not.³⁸³
- 3.439. Colette McGlinchey reaffirmed, in evidence to the Tribunal, that she had seen Mrs. Róisín McConnell walking on the road near her home on the morning of the 14th and that she made the comment in the car that Róisín must have slept in for work or something. She was walking in the direction of Raphoe and Ms. McGlinchey presumed she was walking towards her place of work. She also thought the factory was closed that day.³⁸⁴ She described how the Gardaí had taken a statement off her at work and she told them that Mr. McNulty and Mr. McCullagh were both in the vehicle at the time. They went and got statements off the two men who were in the workplace at the same time. She recalled that Mr. McNulty later came to the office and remarked that she, Ms. McGlinchey, had told the Gardaí that she had seen Róisín McConnell on a Monday and that he said he could not remember whether it was a Monday or a Tuesday.³⁸⁵ She accepted that she had told Detective Garda Kilcoyne on the 21st of December 1997 that she had no doubt that the sighting had been on a Monday but she knew that Mrs. McConnell was on a three-day-a week and had remarked to herself that Mrs. McConnell would not be going to work on a Monday morning. She had never seen her walking or in the car any other morning.³⁸⁶
- 3.440. Counsel on behalf of Mr. and Mrs. McConnell cross-examined Ms. McGlinchey on the basis that Mrs. McConnell was indeed on the road not on the 14th of October, but on the 15th of October 1996. It was suggested that her position was that on the Tuesday, the 15th of October 1996, when Mrs. McConnell got up for work, if their child had been awake, Mr. McConnell would have left her into work, but if the child had been asleep, Mrs. McConnell would have left for work and stood outside her house. She would be guaranteed a lift because people would be passing on the way to the Fruit of the Loom and very occasionally, if she had a bit of time to spare, she might walk down the road and

³⁸² Tribunal Documents, pages 3892-93.

³⁸³ Tribunal Documents, page 2587.

³⁸⁴ Transcript, Day 53, Q.27-44.

³⁸⁵ Transcript, Day 53, Q.47-51.

³⁸⁶ Transcript Day, 53, Q.63-78.

wait for somebody else to come along. Further, Mrs. McConnell stated that their car was not in the driveway on Monday, the 14th of October 1996 but was there on Tuesday, the 15th of October. Mrs. McConnell believed that she got her lift on the Tuesday from Liam and Helen Casey. Ms. McGlinchey was also asked in cross-examination whether she was a distant relation of the Barron family and she stated that she was not a relation but that her uncle was married to Richard Barron's daughter. She also confirmed that Garda John O'Dowd had asked her whether she had seen Róisín McConnell on the morning after the death of Mr. Barron. She denied that she was under any pressure from Garda John O'Dowd at the time her statement was taken.³⁸⁷ She was asked whether she thought Mrs. McConnell was waiting for a lift and she replied that Mrs. McConnell was walking so maybe she had missed her lift or was walking towards her work.³⁸⁸ Ms. McGlinchey noticed Mrs. McConnell getting lifts after this incident.

- 3.441. Michael McNulty, when giving evidence before the Tribunal, confirmed what he had said in his affidavit, regarding the manner in which the statement came about and that Garda Philip Collins had been the originator of the information in the statement. He believed that the statement was not taken correctly and did not represent his words. He believed it was being fabricated from statements Garda Collins had previously taken from information that he already knew, perhaps from Ms. McGlinchey. He was more or less intent on getting Mr. McNulty to say the same thing. He also stated that on the 23rd of October 1996 he told Garda Philip Collins that he was 95 percent sure that the event had occurred on a Tuesday not a Monday. Garda Collins replied well it could have been Monday to which he replied that there was a 5 percent chance. Garda Collins wrote down Monday because Ms. McGlinchey had said it and, the witness supposed, because Mr. McNulty had said that there was a small chance. He told Garda Collins he was not happy about the insertion of Monday in his statement before this statement was signed. Garda Collins replied that Ms. McGlinchey was very sure that it was the Monday; Mr. McNulty reaffirmed that there was 5 percent chance that it could have been and that is how Monday came to be in the statement. He said he signed it because he had never made a statement before in his life and he thought it was ok.

I respected him because he had a uniform on. I never had to make a statement in my life before and I didn't understand the seriousness of what I had signed.

- 3.442. His later statements to Gardaí did not clear up the matter. He explained this saying:

My fear was that the fact that I had already signed the earlier statements ... that I was actually going against them.

³⁸⁷ Transcript, Day 53, Q.107-163.

³⁸⁸ Transcript, Day 53, Q.169-170 – Chairman's questions.

3.443. He was then summoned to the Tribunal, went to a solicitor and knew then that he was totally wrong. He then realised the seriousness of what he had signed. He was afraid to change the statements because he knew he would be contradicting himself. He agreed he should have corrected them much earlier. He was sure it was Tuesday because when he went home from work on the Monday evening he learnt about the incident for the first time. He also recalled discussing it with Gary McCullagh having heard about it and that was on the Tuesday morning.³⁸⁹

3.444. The third person in the car at the time of the sighting of Mrs. McConnell was Gary McCullagh who confirmed such an incident had occurred. He could not recall the day of the week upon which he had seen Mrs. McConnell on the road. He would not have been in a position to tell the Garda Síochána the date of the occurrence. The statement given to Garda O'Dowd commenced by reference to the fact that the incident occurred on Monday, the 14th of October 1996 but concluded with a reference which the witness said he inserted which reads:

I want to say I don't know what day of the week this was.

3.445. He could not recall how the date and day came to be inserted in his statement. He was not happy with it and that is why he inserted this sentence.³⁹⁰

3.446. Liam and Helen Casey (referred to in cross-examination by counsel for the McConnells) both made statements in respect of this matter on the 6th and 12th of November 1997 respectively. Mr. Liam Casey, in his statement, stated that his wife worked in the Fruit of the Loom for five years every morning of which he drove her to work through Tullyvinney. He recalled giving Róisín McConnell a lift to the factory. He picked her up as she walked along the road around the time that Richie Barron was found dead. This had only happened on one occasion. He said:

We said it is unusual to see you walking and she said the baby was sleeping or sick and she did not want to wake it and take it out. If we had not lifted her she would have been late for work. I dropped them off in at the car park and drove home after work. He estimated the time at which he picked Mrs. McConnell up as 08.20 hours.

3.447. Mrs. Helen Casey in her statement confirmed what her husband had said.³⁹¹

3.448. The Tribunal notes that Mr. Casey stated that he was a former employee of Mr. Frank McBrearty Senior and that he had been approached by a private investigator in relation to this matter but did not offer this information because he had no identification and he did not know him. He confirmed to him that he had not been interviewed by the Garda Síochána. Curiously, the name Liam

³⁸⁹ Transcript, Day 204, Q.306-426.

³⁹⁰ Transcript, Day 204, Q.427-454.

³⁹¹ Tribunal Documents, pages 2574-2578.

Casey appears in the conference notes of the investigation team for Tuesday, the 22nd of October 1996.³⁹²

Alleged Sighting of Mark McConnell on the 14th of October 1996

3.449. In contradiction to the account given by Mark and Róisín McConnell that they had spent the night at the Brollys' and that Mr. McConnell left the Brollys' house at approximately 10.30 hours on the morning of the 14th of October 1996, is the account given by Martin Laird of a sighting of Mark McConnell. Mr Laird says that Mark McConnell came out of the front door of the Town & Country pub at 08.20 hours on the morning of the 14th of October 1996. This alleged sighting caused considerable scepticism on the part of the Garda Síochána in relation to the account furnished by the McConnells in the early stages of the investigation. Martin Laird was a neighbour of Mark McConnell and knew him for a number of years. He made a statement to Garda John O'Dowd on the 27th of October 1996. That morning he left for work between 07.00 and 07.15 hours. He seems to have been asked about whether there was a car parked at Mark McConnell's house because he said:

I left my house and headed down the back lane. I would have passed by the rear of Mark McConnell's house but I didn't notice any vehicle there. I am saying I don't know whether there was a car there or not.

3.450. He was FÁS supervisor in Raphoe and he went over to open up the yard from which he was working at 08.00 hours. His co-worker Billy Strain was present at the time. Mr. Patrick Quinn who was supposed to have been there also did not turn up that day. He was a brother of Mrs. Róisín McConnell. He and Mr. Strain then headed up the town. They were cleaning the streets. Then, from Ms. Sheila McBride, they got news that the Late Richard Barron had been killed in a hit-and-run. At Sheep Lane (where Mr. McConnell's car had been parked the previous evening) Mr. Laird picked up a wheel trim, this was at or about 08.10 to 08.15 hours. He said:

A few minutes after that which would put it at 8.20 a.m. I saw the door of Quinn's pub open, that is the red door under the Town & Country sign. I actually painted the sign myself. This red door leads into the bar. When the door opened Mark McConnell stepped out. He pulled the door behind him. I saw no-one else at the door. When he came out he walked around by the Marathon Hall and up The Close. I am trying to think but I cannot say what Mark was wearing. When I saw Mark he appeared to be walking normal. I didn't notice any sign that he had drink taken. When I saw Mark I was standing at the first window of the Hardware and Grain as one walks

³⁹² Tribunal Documents, page 5988.

from Sheep Lane. He didn't speak or I didn't speak either. I can't recall what vehicles were around Quinn's pub at the time. Billy Strain was on ahead of me past Quinn's pub when Mark McConnell walked out, so he wouldn't have seen him.³⁹³

3.451. In a statement made to Detective Garda Joseph Foley on the 2nd of December 1997, Mr. Laird said that he had not mentioned anything about the sighting of Mr. McConnell to anyone until Garda Dan Curran, together with Garda John O'Dowd, came to take a statement from him on the 27th of October 1996. He said it stayed in his mind because Patrick Quinn (Mark McConnell's brother-in-law) did not turn up for work that morning and he assumed that there had been an all-night drinking session to celebrate the birth of Mark Quinn's baby.³⁹⁴ In this regard, it may be noted that the FÁS worksheet for the week commencing the 14th of October 1996 for which Mr. Laird was responsible contains a reference to P. Quinn for that Monday. Initially, it was indicated that he had been working from 8.00 a.m. to 4.30 p.m. on that day. Subsequently, this has been erased and the word "absent" has been written beneath the erased time. For the balance of the week Mr. Quinn was entered as sick and at the bottom of the sheet the words "Patrick absent on Monday, 14th" are entered.³⁹⁵ Later, Mr. Laird was to tell the Tribunal that this occurrence stayed in his mind because he had been to his girlfriend's house that weekend.³⁹⁶

3.452. The first statement taken from Mr. Martin Laird appears to have emanated from Job No. 232 some time around 24th of October 1996 which reads:

Martin Laird to be interviewed – statement required in relation to McConnell leaving or not at 8.20 a.m.³⁹⁷

3.453. In evidence to the Tribunal, Martin Laird confirmed his sighting of Mr. McConnell leaving the Town & Country pub. He and Mr. Strain were cleaning the streets and had a cart with them. They were never very far away from each other. When they arrived at Sheep Lane, it was their intention to proceed on up William Street, turning by a side road to Sheep Lane. He found a wheel trim which he later gave to Sergeant Hannigan. He went across to the Hardware & Grain shop on the corner. He stood at a window there and looked up at the sign which he had painted above the Town & Country bar. The door which leads into the bar opened and he saw Mark McConnell emerge in the direction of The Close and disappear out of his sight. He said:

Mr. Strain was on ahead when I was here, at the gable of Quinn's pub there is a bin there, he went on ahead there .. to the side of the building right-hand side.

³⁹³ Tribunal Documents, pages 2571-2.

³⁹⁴ Tribunal Documents, page 2573.

³⁹⁵ Tribunal Documents, page 8065.

³⁹⁶ Tribunal Documents, page 9808 and Transcript, Day 321 Q. 232-246.

³⁹⁷ Tribunal Documents, page 7459 – the source of this information is not clear.

- 3.454. Mr. Strain had to walk across the street by the window and the door, and down the gable end of Quinns bar to collect the bin. He was asked whether he thought Mr. Strain was in a position to see Mr. McConnell walking in the direction described. He said:

Well he would have to walk that direction to get to where the bin is, but he was in that location when I was standing there and saw the door of the bar ... he was in the corner where the bin was. He was gone into the corner.

- 3.455. Apparently, in the time it took Mr. Strain to walk down to the bin and walk back with the bin, Mr. McConnell had gone out and up The Close. When they joined up together he did not mention the matter at all to Mr. Strain. He said that he did not mention it to anybody before he made a statement to members of An Garda Síochána, including members of his family. He gave the wheel trim to Sergeant Hannigan but did not mention Mark McConnell to Sergeant Hannigan at that time. He presumed the Gardai called because they knew he worked in the town and was out early at that time every morning. He also found a bag, including a pair of gloves, red jeans and black shoes in an alleyway which he handed into the Gardai at 15.00 hours on the afternoon of the 14th of October. He said that though he knew Mark McConnell's vehicle well, he did not see it in Sheep's Lane near the Town & Country that morning. The reason he saw him that morning was because he stopped to admire the sign which he had painted over the Town & Country bar. It was suggested to Mr. Laird that he was making his account up. In particular, it was pointed out to him that when he said that Mark McConnell pulled the door after him that the door to the pub opened out and would be pushed closed and not pulled closed. He said his use of the phrase 'pulled the door after him' was a local expression. It was not meant to connote any particular mechanics by which Mr. McConnell was observed to close the door. Mr. Laird denied that he was confusing the sighting of Mr. McConnell at 08.20 hours with a sighting which could have taken place at around noon when Mr. McConnell claimed to have been in Mr. Quinn's pub on the 14th of October. It was suggested that he had been visited a number of times before making his statement on the 27th of October by the Garda Síochána who arrived in a car driven by a Garda Scanlon. This apparently occurred more than a week after the death of Mr. Barron. He denied this. He denied being a busybody or a man who liked to be the centre of attention. It was suggested to Mr. Laird that Patrick Quinn was not on duty at all that week and that he attended the wake of the Late Mr. Barron all day on Tuesday the 15th of October. He attended the funeral on the Wednesday. He was not rostered for duty for that week. Mr. Laird insisted that he was due to come into work but did not turn up. It was suggested to Mr.

Laird by counsel for the McConnells that he made up the story in an effort to ingratiate himself with members of An Garda Síochána and perhaps others who wanted at the time to link Mark McConnell with the death of Mr. Barron. He denied this. At the conclusion of his evidence, Mr. Laird was again asked where Mr. Strain had gone when Mr. McConnell came out of the Town & Country. He said Mr. Strain lifted the bag from the inside of the bin in the corner at the gable end of the Town & Country and was around the corner from the doorway out of which Mr. McConnell came. When asked whether Mr. McConnell had come out of the doorway and was gone by the time Mr. Strain came back, he said: "He was on ahead there." After he had done the work with the bin, "he would carry on over to William Street which was straight ahead."³⁹⁸

- 3.456. Martin Laird's workmate, Billy Strain, made a statement on the 7th of November 1996 to Detective Garda Keating, in which he outlined his movements on the 13th of October 1996 and had only the following to say about his work the following morning:

I worked the following morning brushing the whole town. I cannot recall seeing anything unusual that morning.³⁹⁹

- 3.457. There are serious difficulties with Mr. Laird's evidence. Firstly, the Tribunal is aware that information about his supposed sighting came to the Garda Síochána via third parties on two occasions, namely to Detective Garda Patrick Flynn who received it from Darcy Connolly, and to Garda John O'Dowd who received it from the Late Tommy Doherty. Mr. Laird told the Tribunal and Gardaí in previous statements that he told nobody about the sighting until interviewed by Gardaí O'Dowd and Curran.⁴⁰⁰ Secondly, Ms. Donna Quinn resided in the Town & Country and gave evidence that she had been up during the night with her newborn baby and got up the following morning at approximately 07.00 hours with the two children. She was then downstairs looking after the children and was clear in her recollection that Mark McConnell was not on the premises.⁴⁰¹ Thirdly, there was also a statement from a Ms. Sheila McBride to the effect that she did not think she could have been in Raphoe at the time suggested by Mr. Laird and she had no clear recollection of the 14th of October.⁴⁰² Fourthly, Mr. Laird said at first that he recalled the date by reference to the absence of Mr. Patrick Quinn from work; he then added to that the suggestion that he recalled the day by reference to a visit to his girlfriend's family.⁴⁰³ The Tribunal is, therefore, concerned that though Mr. Laird is an honest man, he may be mistaken in his evidence.

³⁹⁸ Transcript, Day 51, Q.364-1153.

³⁹⁹ Tribunal Documents, page 1442.

⁴⁰⁰ Transcript, Day 321, Q.38-98 and various references.

⁴⁰¹ Transcript, Day 319, Q.108-135.

⁴⁰² Tribunal Documents, page 9810.

⁴⁰³ Tribunal Documents, page 9808, Day 321, Q. 232-246

Summary

- 3.458. The Tribunal is satisfied that the statements available from various witnesses up to the date of the arrests on the 4th of December 1996, in respect of the movements of the McConnells between 08.00 and 08.20 hours tended to support the proposition that they were not at the Brolly house at that time. In respect of Mrs. McConnell, the evidence suggests that she was seen walking at Tullyvinney. In respect of Mr. McConnell, he was seen to emerge from the Town & Country pub. In the light of subsequent developments, however, the Tribunal must regard the taking of the earlier statements, related to these sightings by Gardaí John O'Dowd and Philip Collins, with deep suspicion. The Tribunal is especially disturbed by the evidence furnished in this regard by Mr. Michael McNulty. Whilst Colette McGlinchey and others who gave evidence and made statements in respect of the sighting of Mrs. McConnell must be regarded as credible witnesses who were honestly trying to do their best, there remains a large scope for doubt as to whether the sighting of Mrs. McConnell outside her home at Tullyvinney took place on Monday, the 14th of October rather than Tuesday, the 15th of October. The Tribunal found Ms. McGlinchey to be honest and clear in her evidence. Mr. McNulty had contradicted himself a number of times in his statements, but having regard to the history of Garda Philip Collins's involvement in the taking of his statements, and subsequent information and evidence concerning Garda Collins's behaviour in the course of this investigation, much of what Mr. McNulty complained about, in respect of the manner of the taking of his statement by Garda Collins, is credible and accepted. There is also some sense in the proposition that if Mrs. McConnell was obliged to seek a lift on a workday, i.e. Tuesday, the 15th of October, she could do this on the road outside her home. Ms. McGlinchey acknowledged that she had noticed her doing this on occasions after this incident. Mr. and Mrs. Casey made statements recalling that they had given her such a lift at or about the time of the Late Mr. Barron's death.
- 3.459. However, Colette McGlinchey's evidence might have gained support when considered in the light of the evidence of Mr. Martin Laird and the subsequent evidence which emerged in 1997 in respect of the phone call to the Dolan house, which offered a rationale for Mrs. McConnell not being at the Brolly house on the morning of the 14th, i.e. she was looking for her husband up at Tullyvinney. However, the Tribunal is not satisfied that the evidence of Martin Laird is reliable in respect of the sighting of Mark McConnell emerging from the Town & Country bar at 08.20 hours

on the morning of the 14th of October 1996. Though he is an honest man he may be mistaken. Further, the Tribunal is satisfied that the particular discrepancies raised in the statements made by Colette McGlinchey, Michael McNulty, Gary McCullagh and Martin Laird were not of such a nature as would give rise to suspicion that Mark McConnell had been involved in the murder of the Late Mr. Barron. That was so as of the date of the arrest of the suspects, the 4th of December 1996, and remains so now.

- 3.460. The Tribunal is not satisfied that the discrepancies which were believed to be relevant by the Garda Síochána were properly investigated. Follow-up, by way of further interviews of the McConnells and these witnesses in respect of their timings, was required. It may be that the full story of their movements was never told by the McConnells because they were embarrassed by some personal difficulty that arose between them on the evening. Whatever the reason, if there was a lie, it was one which could not be related to the material time of the killing. It does not appear from any of the evidence available that the motive for such a lie was an understanding or realisation by Mark McConnell of his guilt in respect of any potential charge of unlawful killing. This lie, if a lie it was, did not provide him with an alibi. The motive for telling such a lie is difficult to understand in relation to the death of the Late Mr. Barron in that it does nothing to advance Mr. McConnell's position or avoid the glare of suspicion. In fact, in that regard, it would have been a wholly silly and ineffective lie.
- 3.461. It was submitted by Garda witnesses that arising out of these perceived discrepancies, the focus of suspicion came to centre, upon, not only Mark McConnell, but his wife Róisín and various other people with whom they had dealings that night, including Michael Peoples, Charlotte Peoples, Eunan Brolly, Katrina Brolly, Mark Quinn and Edel Quinn, who were all subsequently arrested on suspicion that they were accessories after the fact to murder because of their involvement with the McConnells that evening, and a perception amongst the investigators that they were trying to assist the McConnells in creating an untrue story as to their movements. The Tribunal is satisfied that such a conclusion (which was wrong) was an un-thought-out reaction to these discrepancies. It is in marked contrast to the failure of the Garda Síochána to apply a similarly stringent approach to those who actually provided an alibi for Mark McConnell that evening, namely Paul and Sue Quinn, Richard McBrearty and Stephen and Anne McCullagh.

- 3.462. As already noted, if there was a real scepticism about the stories told by Mark and Róisín McConnell and a real belief that persons were helping them to evade justice by manufacturing alibis for them, it is remarkable that more rigorous attention was not paid to the Quinns, the McCullaghs and Richard McBrearty. The fact that those providing the real alibi were ignored, may be because much of what they said had been substantiated. The failure to concentrate on 'breaking' this alibi may have been because the attempt to do so had failed and it was not convenient to the continuing assumption of guilt in respect of Frank McBrearty Junior and Mark McConnell. Anyone putting forward a convenient timescale for the supposed murder was accepted. Anyone else was just ignored and, in some cases, then arrested. It is impossible to see how the evidence then available on this issue could have led to a reasonable suspicion that those arrested were guilty of being accessories after the fact to the murder of the Late Mr. Barron.

Lies as Corroboration

- 3.463. In the course of a criminal trial, if an accused is shown to have lied out of court, for example, when questioned, before a charge was laid against him in relation to significant facts, the fact of the lie can be treated as corroboration of the allegations made against him, if strict conditions are met. Evidence intended as corroboration must be independent testimony which affects the accused by connecting him, or tending to connect him with the crime. The evidence does not need to prove that the accused committed the crime. It must show that, apart from the evidence needing corroboration, the accused is connected to the commission of the crime. For example, a fingerprint at a burglary scene where there is no evidence the accused was in the house before; or fibres connecting the accused's jumper to a robbery victim's clothing; or, in a rape case, where the dominant issue is consent, abduction bruising on a girl's inner thighs.
- 3.464. The Judge in the course of a criminal trial will determine whether evidence is capable of being corroborative. He or she will point that evidence out to the jury. If they accept that evidence, they may find it is corroboration. The question as to whether, in fact, it does amount to a connection to the crime is a question to be determined by a jury.
- 3.465. In order for evidence of a lie to be deemed in law to be capable of corroboration, the lie must be (i) deliberate; (ii) related to a material issue; (iii) the motive for the lie must be the understanding or realisation by the accused of his guilt in respect of the charge. In such an instance, the statement previously made by the accused must be shown by other evidence to be a lie. Caution must be exercised in

criminal trials in respect of such evidence because it may be that a deliberate and material lie told by an accused person may not always be corroborative; it may have been told for a reason other than avoidance of guilt such as a domestic lie to cover up discreditable, or simply private, conduct. For this reason, it was decided in *R. v Lucas* that:

The jury should in appropriate cases be reminded that people some times lie ... in an attempt to bolster up a just cause or out of shame or out of a wish to conceal disgraceful behaviour from their family.⁴⁰⁴

- 3.466. However, a jury is entitled to infer that lies were told because the accused appreciated his guilt, and then treat such lies as corroborative in the absence of any plausible alternative. Equally, a jury would have to be instructed in such a case that it must consider any alternative explanation which is suggested by the facts of the case or which had been given by the accused and further, that the prosecution must exclude any reasonable possibility consistent with such an explanation, or the innocence of the accused, beyond all reasonable doubt. It is clear, therefore, given the serious ramifications that may accrue from any supposed lie told by a person who is a suspect in the course of any criminal investigation, that the investigation of the supposed lie must be thorough. At the very least it would be advisable in most, if not in all, such cases that persons who were originally interviewed as witnesses to events should be given an opportunity to comment on any perceived inconsistencies between their statements and the statements of others especially, as in this case, where the perceived discrepancies may propel them into the limelight as a suspect for murder or as an accomplice to murder.⁴⁰⁵ This was not done.

C. The movements of Michael Peoples

- 3.467. On the 4th of December 1996, Michael Peoples was arrested on suspicion of the murder of the Late Richard Barron on the 14th of October 1996. It is difficult to understand, from the statements collected in the course of the investigation up to the 4th of December 1996, how Michael Peoples came to be the focus of attention as a possible culprit in respect of the death of the Late Mr. Barron. It may have been because of the reference to two or three persons who were supposedly seen by John Patton coming from the car-park of Frankie's nightclub which information was, it was suggested, reported to the investigation conference on the 22nd of October 1996 by Detective Garda Tague. It is to be noted that Mr. Peoples was not involved in any altercation with the Late Mr. Barron and did not appear to have known him or have had anything to do with him. No evidence offered to the Tribunal suggests to the contrary. Insofar as any attempt was made to implicate him in the death of the Late Mr. Barron it was

⁴⁰⁴ [1981] Q.B. 720-724.

⁴⁰⁵ *People (Attorney General) v Williams* [1940] I.R. 195; *People (Attorney General) v Trayers* [1956] I.R. 110.

important that his movements on that night be examined, so that a determination could be made as to whether he was investigated in a fair or unfair manner by the Garda Síochána. The Tribunal is satisfied that he was unfairly and wrongly the focus of suspicion.

- 3.468. Michael Peoples made a witness statement to Garda Philip Collins on the 19th of October 1996, in which he described his movements on the 13th/14th of October 1996 in detail. He stated that at approximately 21.00 hours he and his wife, Charlotte Peoples, left their home at 264 St. Eunan's Terrace and walked to the Town & Country pub at William Street. He said:

When we went into the bar Charlotte sat down talking to somebody and I went to the bar and I got a drink. Charlotte then went upstairs to see Donna [Quinn]. The highlights of the Grand Prix came on the T.V. at 10.00 p.m. I went over to watch it. When the race was over I was talking to Paul Duffy. The time at this stage would be about a quarter to eleven. I was talking to Paul Duffy for a minute. I was sitting on a stool across from the bar. At about 11.15 p.m. Geoffrey Dolan came in and he joined me. Charlotte was sitting down talking to Eunan Brolly & Katrina and some others about 15 or 20 minutes after Geoffrey came in. Charlotte was up talking to me. It was then I noticed a man at the corner of the bar, I did not know his name, but I found out later, his name was Richie Barron. He and Mark McConnell were arguing. They were shouting across at one another. There were other people standing in between them. Mark Bogle had his arm around this man Richie Barron. I did not really hear what they said to one another. Mark Quinn then came up and put his hand on Mark McConnell. Mark McConnell then left in the direction of the pool-room. After that I just stayed where I was talking to Geoffrey Dolan. I don't know if this man who was arguing with Mark McConnell left before we did or not. At around 12 o'clock me and Geoffrey left the bar and went to the Ulster bank to get money out of the banklink as we had decided to go to the Parting Glass. We went back up to the bar again and lifted Charlotte and went to the Parting Glass in Geoffrey's car. The bar was still well full when we left. We went up and into Frankies. There were the usual bouncers at the door. I think I spoke to Frank McBrearty Senior at the door. When we were leaving the Parting Glass, some girl coming in told us that the man who had been arguing with Mark McConnell had been killed. We left the Parting Glass at about 1.30 a.m.⁴⁰⁶

- 3.469. Charlotte Peoples also made a statement to Garda Philip Collins on the 18th of October 1996, outlining her recollection of the evening. She stated:

⁴⁰⁶ Tribunal Documents, pages 3287-3288.

On Sunday the 13th of October 1996 at approx. 9.30 p.m. myself and my husband Michael Peoples left our home at 264 St. Eunan's Terrace, Raphoe and went to Mark Quinn's pub at William Street, Raphoe. There was a good wee crowd in it when we went in. We went into the bar. I went up the stairs to see Donna Quinn, Mark's wife, who had a baby a few days previous. I stayed up with Donna for about 15 minutes. Róisín McConnell was there while I was there. Myself and Róisín came down together to the bar and we sat down at the table. Mark & Mary Bogle were there as were Eunan Brolly & Katrina, Paul Quinn & his wife Sue were there and Mark McConnell, Róisín's husband was there. Gerard and Kay Quinn were there as well. We were all in a group. Paul Quinn & Mark McConnell & Gerard Quinn were back & forward to the pool-room. Michael my husband was watching the Grand Prix and after it was over I went up to the bar to talk to him. He was along with Geoffrey Dolan. While we were at the bar Michael suddenly said, ... Mark was in a row. Or maybe I said this I'm not sure. This comment was passed anyway. I looked but I couldn't hear what they were saying as far as I was concerned I wasn't interested, it seemed like nothing. Róisín she was standing with Mark McConnell. I think it was Mark Bogle standing with Richie. Mark McConnell then just walked away. We were up the other end of the bar and I didn't hear anything that was said between them. I went over to where everybody was sitting then. Somebody I don't know who said that Richie Barron had been taunting Mark all night, pulling and tugging at him. About 15 minutes later I went to go to the toilets at the back of the pool-room. As I was going I noticed Richie Barron get up, but I do not know whether he left or not. As I was going through the pool-room, I saw Mark McConnell there. I might have said "how are you now" or something like that to him. On the way back from the toilets I spoke with Mark McConnell and I asked him how are you now and he said something like "sure he was taunting me all night and sure it's only drink." I continued on and I joined the company in the bar again. I can't remember seeing Mark McConnell again after this, but he may have been there. I just did not take any notice. At about 12.10 a.m., I looked at the clock in Mark Quinn's that is how I'm sure of the time. My husband Michael said he was going to the house to get his banklink. Michael left with Geoffrey Dolan and about 10 minutes later they came back up again. Immediately after they came back the three of us, that is me, Michael & Geoffrey left and went to Frankie's Nite Club in Geoffrey's car. I think we were the first in the company to leave Mark Quinn's pub. When we left Eunan Brolly & Katrina, Mark & Mary Bogle, Paul & Sue Quinn, Kay Quinn and Róisín McConnell were still there. Gerard Quinn and

Mark McConnell and I think Paul Quinn as well were in the pool-room. When we got to Frankie's we drove straight up into the car park. I did not notice any car park attendant there. The time at this stage would be between twenty past and half past twelve. The three of us went in together and Michael paid for the three of us. I'm nearly sure it was Sean Crossan in the pay box and Willie Logan was at the door. I did not notice any of the McBrearty's there at the time. We left the McBreartys at 1.30 p.m. On our way out we met Michelle Scott from Convoy and she told us that Richie Barron had been killed going home, when we got in the car we took a spin up the road towards Muntooey and we met a few people and they told us again about Richie Barron. While we were travelling from Mark Quinn's to Frankie's I did not see Richie Barron on the street. When we were leaving McBrearty's, Willie Logan was there, as were Frank McBrearty Senior and Junior. This was at the door.⁴⁰⁷

Suggested Sighting of Michael Peoples Jumping Over the 'Tech' Wall

- 3.470. In the course of the investigation on the 15th of May 1997, information came in from Garda John O'Dowd (Job No. 327) which is noted as:

Interview John Crawford saw Michael Peoples jumping over the "tech" wall in Raphoe at 1.00 a.m.

Garda John O'Dowd.

- 3.471. This job which was assigned to Garda O'Dowd is recorded as having been completed by him in that the interview requested was 'in'. No date is given as to when the interview took place nor is the result of this interview referred to in the note. No document purporting to be an interview with John Crawford has been furnished to the Tribunal. If it was taken and submitted, it is missing. If it was never submitted, the job should never have been designated as completed. There is now a statement from John Crawford, taken by Mr. Finn and Mr. Cummins of the Tribunal.
- 3.472. Prior to the 15th of May 1997, an entry was made, apparently on the 12th of April 1997, in a 'Rhino' notebook which was the property of Garda John O'Dowd, which said:

John Crawford – Grangemore saw Michael Peoples jumping over wall at Tech School.

- 3.473. No interview was included in the Lennon report furnished to the Director of Public Prosecutions, and no comment was made in that report in relation to any such information. As a job which remained uncompleted, it should have been referred to at each conference until it was completed. It is difficult to understand

⁴⁰⁷ Tribunal Documents, pages 3281-3.

how such information, which must, in the circumstances, have been regarded as important, could have been ignored and not followed to completion. However, in the light of the alleged statement of Frank McBrearty Junior made on the 4th December 1996, to add a third person to the group involved in an attack on the Late Mr. Barron would have created huge difficulties with the investigation. It would have cast an enormous question mark over the veracity of the alleged statement of Frank McBrearty Junior, who allegedly nominated himself and Mark McConnell as the attacking duo. To date the Tribunal has not been able to advance this matter any further.⁴⁰⁸

- 3.474. There was no statement taken in the course of the investigation from any other person, which suggested that Michael Peoples was in the car park or was jumping over any of the walls of the technical school taken before or after his arrest on the 4th of December 1996.
- 3.475. Detective Sergeant Sylvie Henry, in a statement made on the 1st of April 1998 to Chief Superintendent John Carey and Superintendent Pat Forde, noted that Garda O'Dowd had mentioned about Michael Peoples jumping over a wall or a ditch at the vocational school which is next door to Frankie's nightclub licensed premises and he put that in the context of the information reported to conference by Garda John O'Dowd a couple of days after the 22nd of October 1996, which suggested that he had information from a source stating that Frank McBrearty Junior and Mark McConnell had entered the top of Frankie's nightclub car park at 01.00 hours on the 14th of October 1996. He stated:

The information was that the guy who saw these people was in the car park to break into the vocational school and that he walked down the car park in front of them, crossed the road to the chip shop and saw Frank McBrearty Junior and Mark McConnell enter the Tudor Lounge which is part of the Parting Glass licensed premises. Garda O'Dowd also mentioned about Michael Peoples ... jumping over a wall or a ditch at the vocational school which is next door to the Parting Glass licensed premises.

- 3.476. When questioned about this before the Tribunal, he recalled that it was mentioned and he remembered that when he found the 'Rhino' notebook in William Doherty's house he looked through it and saw the reference to Michael Peoples jumping over the wall at the time, " he remembered that it had been said at a conference in Letterkenny." He was not sure at what conference it was mentioned. He could not say whether it was around the 22nd of October 1996. He said, " I cannot say when that was. But I know when I saw it in the book, when I saw it in the notebook, I distinctly remembered having heard it before at a conference in Letterkenny" . It would appear that it was the information brought

⁴⁰⁸ Tribunal Documents, page 6669.

to conference which Detective Sergeant Henry remembered when he found the notebook on searching William Doherty's house on 20th of September 1997.⁴⁰⁹

Statements and Evidence of Mary McGranaghan

- 3.477. In or about June 1997, information was received from Mary McGranaghan which became the subject of Job No. 292. The note in respect of the job states:

Says she was closing her shop on 13/10/96 at around 11.00-11.50 p.m. Saw Mark McConnell and another man [Eamon Meehan] on the street in Raphoe. However, she later met this man in her shop delivering "bread" and now believes him to be Michael Peoples. Can we establish "time" more accurately where they were etc.

Sergeant Tom McMenamin.

- 3.478. As a result of this message, Sergeant McMenamin interviewed Ms. McGranaghan. The reference to her sighting of Mark McConnell and Eamon Meehan in the street in Raphoe refers back to a statement which she had previously made to Sergeant Tom McMenamin on the 8th of November 1996.⁴¹⁰

- 3.479. In that statement, she reported that at some time between 23.00 and 23.50 hours she was at the door of her shop facing the Diamond:

When Mark McConnell and Eamon Meehan passed by coming from the direction of the town clock and proceeded to go up the street towards Meetinghouse Street. I said to the two boys as they passed, "hello boys" and they replied. I am not sure what they said. Eamon Meehan was wearing a light beige or fawn sweater and light coloured trousers. Mark McConnell was wearing a black or dark jacket and open neck T Shirt striped on the neck and mostly dark in colour. He appeared to be wearing either tracksuit bottoms or trousers also dark or black in colour. I'm not sure whether he was wearing shoes or runners. Both appeared to have had a few drinks taken and were talking to each other. Eamon Meehan lives on the Raphoe side of Convoy past Witherows Farm on the same side of the road.

- 3.480. In a subsequent statement on the 15th of January 1997, again made to Sergeant Tom McMenamin, she repeated that she had seen the two men in the circumstances outlined in her previous statement. She noted that she had nominated Eamon Meehan as the second man. She said:

⁴⁰⁹ Transcript, Day 229, Q.297-309.

⁴¹⁰ Tribunal Documents, page 2447.

Since that I have met this man on the street and he has come into our shop and was served by me. I now know this man to be Michael Peoples who drives a bread van for Irish Pride. This man was wearing the same clothes when he visited our shop recently as he was wearing on the night of the 13/10/96 when he was in the company of Mark McConnell. I am now sure that the person I saw with Mark McConnell on the night of 13/10/96 was Michael Peoples and not Eamon Meehan as previously stated by me in my statement of 8/11/96. Peoples was wearing a light beige or fawn sweater and light coloured trousers. McConnell was wearing a black or dark jacket and an open neck T Shirt striped on the neck and mostly dark in colour. He appeared to be wearing either track suit bottoms or trousers also dark or black in colour.⁴¹¹

- 3.481. She was again interviewed by Sergeant McMenamin on the 8th of September 1997. She repeated her descriptions and added:

I am sure that these men were both Michael Peoples and Mark McConnell. I have seen Michael Peoples in our shop and I have served him myself. He had come into my shop shortly after I made my statement to the Gardaí and he was wearing the same clothes as he was wearing on the night of 13th/14th October 1996 when I saw him walking past our shop in the company of Mark McConnell.

- 3.482. This reported sighting of Michael Peoples by Mrs. McGranaghan did not emerge until the 15th of January 1997. It is the only account furnished in any statement by any witness which purports to place Michael Peoples in the company of Mark McConnell, in conversation walking somewhere with him, on the night of the 13th of October 1996. Other witnesses suggested that Mark McConnell only left the Town & Country to move his car, at approximately 22.30 hours. In addition, a number of witnesses put Mark McConnell and Michael Peoples in the Town & Country pub until 00.30 hours. The incident which supposedly occurred between Mr. McConnell and the Late Richard Barron took place some time between 23.00 and 23.30 hours. All of these factors make it unlikely that Mrs. McGranaghan is correct in her recollection and identification of whomsoever she saw on the night of the 13th. Her purported identification of Michael Peoples in lieu of Eamon Meehan also suggests that she was entirely unreliable as an identification witness.
- 3.483. The Tribunal was, however, concerned to ascertain why this lady changed her identification of the second man from Eamon Meehan to Michael Peoples. Eamon Meehan was interviewed by Garda Philip Collins on the 7th of November 1996 (the day before the statement was taken from Mrs. McGranaghan). He

⁴¹¹ Tribunal Documents, pages 2449-50.

gave an account in which he said he had been in Raphoe on Sunday evening on the 13th of October and had remained in Mark Quinn's pub until 21.00 hours when he went by taxi to Convoy. This was confirmed by two other witnesses. Consequently, he could not have been in Raphoe at the time Mrs. McGranaghan said she saw him.⁴¹²

- 3.484. In evidence to the Tribunal, Mrs. McGranaghan stated that she had changed her identification in the following circumstances:

Some time in January I was in the shop working and a gentleman walked in to purchase something and there was a few people present and I said, who is that lad, and they said that is Michael Peoples who is married locally or who got married recently. It was then and there that I realised that this was the man I had seen with Mark McConnell.⁴¹³

- 3.485. She thought she must have made contact with Sergeant McMenamin, even though Sergeant McMenamin said that his reason for calling was that he was either contacted by the Incident Room in respect of Mr. Barron's death or that she may have contacted Newtowncunningham Garda Station directly in order to clarify the identification. She said she did not remember.⁴¹⁴

- 3.486. The Tribunal notes that Mrs. McGranaghan also appears as a relevant witness in what is known as the 'Silver Bullet' module covering the events relevant to Terms of Reference (d) in which Bernard Conlon alleged that Mark McConnell and Michael Peoples tried to intimidate him out of giving evidence in one of the McBrearty licensing prosecutions. These allegations ultimately led to the arrests of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999. Bernard Conlon alleged that Sergeant John White was the instigator of these allegations against the two men, which is denied by Sergeant White.

- 3.487. The Tribunal notes that in January 2005, Sergeant White was acquitted by the trial judge telling the jury on these charges to find him not guilty. The trial judge did not allow the matter to go to the jury. The Tribunal makes no comment on this. Bernard Conlon, from time to time, stayed with the McGranaghans when in Raphoe as a bed and breakfast guest. Mrs. McGranaghan supposedly visited Bernard Conlon at a relevant time, perhaps with a view to influencing him to withdraw his allegations against Sergeant White (which is denied by her). It was also suggested that the McGranaghan premises was also used on at least one occasion by Sergeant John White to carry out observation of the Raphoe Diamond in relation to the McBreartys. There is evidence to suggest a degree of

⁴¹² Tribunal Documents, page 1750.

⁴¹³ Transcript, Day 48, page 155.

⁴¹⁴ Transcript, Day 48, page 157.

contact or familiarity between the McGranaghans and Sergeant John White but the Tribunal, at this stage, cannot put this matter any further.

3.488. When a witness changes a statement in this fashion, it is important that the records indicate why this change is made and how it came to be made. The vehicle for the change was Sergeant Tom McMenamin who took the statements from Mrs. McGranaghan. In evidence to the Tribunal, Sergeant McMenamin said that Frank McBrearty Junior, Mark McConnell and Michael Peoples were names which had been talked about in Raphoe as being responsible for the death of the Late Mr. Barron.⁴¹⁵ He acknowledged that the sightings of these three men from the period after midnight was of interest to the Garda Síochána. When Mrs. McGranaghan made her first statement, Sergeant McMenamin said that he believed that he would have been contacted by Mrs. McGranaghan and that this was the reason he went back on the second occasion (in respect of the statement made by her on the 15th of January 1997). However, his evidence on this matter is somewhat confused. He appeared to concede that he may have gone back as a result of it being brought to his attention that Eamon Meehan, the person first identified by Mrs. McGranaghan as being in the company of Mark McConnell in her first statement, was not in Raphoe at the time of the alleged sighting. He acknowledged to the Chairman that he did go to Mrs. McGranaghan and inform her that she was mistaken. However, he did not take a statement from her on that occasion. He said that her response was that she would see who was there but that there were definitely two people there. There was a gap, according to Sergeant McMenamin, between the occasion upon which he informed her she was mistaken about the sighting of Mr. Meehan and the call which led to his returning to her on the 15th of January 1997. This was a gap of a number of weeks. In the phone call to Sergeant McMenamin she identified the second person as Michael Peoples as a result of which he went to see her on the 15th. A third statement was then taken by him, arising out of a job sheet which directed him to ascertain whether the Gardaí “can ... establish ‘time’ more accurately ...”. The sighting of Mr. Peoples and Mr. McConnell between 23.00 and 23.50 hours was regarded as significant because he recalled from the incident room that Michael Peoples was mentioned from a stage in late November or early November 1996. He denied any suggestion that he had put the name of Michael Peoples forward to Mrs. McGranaghan as the second person. Mrs. McGranaghan herself also indicated that he had not done so.⁴¹⁶

3.489. **The saga of Mrs. McGranaghan’s evidence suggests that she was a most unreliable witness. Initially, as a witness to identification she was demonstrably unreliable in that Mr. Meehan was never in Raphoe and could not have been seen by her at all. It is difficult to understand how the**

⁴¹⁵ Transcript, Day 205, Q.984-1001.

⁴¹⁶ Transcript, Day 208, Q.1-144.

course of events by which such an important change in identification, from a nomination of Eamon Meehan to a nomination of Michael Peoples in the investigation of a murder inquiry in which Michael Peoples became a suspect, was not chronicled by those investigating the matter. The Tribunal finds much of the evidence given by Mrs. McGranaghan to be incomplete. It is not satisfied that she is telling the full truth as to how, or, at whose suggestion, prompting, or under whose direct or indirect influence, she nominated Michael Peoples in lieu of Eamon Meehan. The Tribunal is of the view that some person had a malign persuasive influence on Mrs. McGranaghan which resulted in her changing her identification from Meehan to Peoples. Mrs. McGranaghan's explanation as to how she changed this identification is difficult to accept.

Michael and Charlotte Peoples at Frankie's Nightclub and Afterwards

3.490. In their statements, Michael and Charlotte Peoples stated they went over to Frankie's nightclub with Geoffrey Dolan. Charlotte Peoples placed the time at 00.20 hours. They travelled in Geoffrey Dolan's car which he parked in the car park of the nightclub. They entered the nightclub at between 00.20 and 00.30 hours. Michael Peoples states that he spoke to Frank McBrearty Senior at the door. Geoffrey Dolan states that Michael Peoples paid the entrance fee for the three. Charlotte Peoples recalled that Sean Crossan was on the pay box and William Logan was on the door but did not recall the presence of any other member of the McBrearty family.

3.491. Geoffrey Dolan left Frankie's nightclub and had an encounter which was described elsewhere in this Chapter with Mark McConnell at about 01.15 – 01.20 hours as he and Róisín McConnell were entering Frankie's nightclub. The Peoples remained on in the premises until 01.30 hours. Charlotte Peoples states that they were informed by Michelle Scott that the Late Mr. Barron had been killed on his way home. She said:

When we got in the car we took a spin up the road towards Mongorry and we met a few people and they told us again about Richie Barron.

3.492. She also said when they were leaving McBrearty's, William Logan and Frank McBrearty Senior and Junior were at the door. Michael Peoples does not mention the car journey up to the scene of the accident in his statement of the 19th of October 1996. Geoffrey Dolan simply states that having spoken to Mark McConnell he left Frankie's nightclub area.

I went to Michael Peoples for tea and got home at about 2.20 a.m. (14/10/1996).

- 3.493. Damien Gamble, a friend of Geoffrey Dolan's, made a statement on the 25th of October 1996 which has previously been set out above. In that statement he gave an account of how he was joined by Geoffrey Dolan who had driven out of Frankie's car park, travelled up to the vocational school and returned and parked his BMW behind Mr. Gamble's car. Apparently, he then got in with Mr. Gamble and at 00.20 to 00.25 hours Geoffrey Dolan pointed out, "a girl coming out of the disco and he said that he was with her and some fellow." This girl had her hand on her mouth and was crying. Mr. Dolan got out of the car. She said something to Geoffrey Dolan and he put her into his own car and drove off down the town with her. He returned back up the town some four minutes later. This time he had a male passenger in the rear seat of the car. This person was not in the car when they first went down the street.⁴¹⁷
- 3.494. Subsequently, Geoffrey Dolan in his statement to Garda John O'Dowd on the 4th of November 1996, said:

After we parked up I seen Charlotte and Michael Peoples coming out of the Parting Glass. I got out of Damien's car and then got into my own white BMW. Charlotte and Michael got in beside me with Charlotte in the front and Michael in the back. Charlotte said to me some Michelle girl was speaking to her in the Parting Glass and told her that Richie Barron was knocked down. I drove down towards the Diamond with my two passengers; turned left up passed the cinema. We arrived at the scene and pulled up to where there was a lot of people standing. Charlotte asked one of them was there an accident up here tonight and was there someone knocked down. He said, "Aye, Richie Barron." ... Charlotte didn't speak with anyone else. Michael didn't speak with anyone. As soon as the man told Charlotte Peoples that it was Richie Barron we turned and went down home to Michael Peoples and Charlotte Peoples for tea. It was some time between 1.50 a.m. – 2.00 a.m.

- 3.495. The return journey would have taken them passed Damien Gamble's car and he would have seen all three in the car.
- 3.496. There is no documentary material available to the Tribunal in the way of statements or otherwise which suggests that this episode could give rise to a suspicion that Michael Peoples was involved in the death of Richard Barron. However, in an extraordinary piece of evidence to the Tribunal, Superintendent Fitzgerald said this episode was one of a number which were "highly suspicious". He said:

Michael Peoples left the Parting Glass, or left the disco on his own and it came up at conference that Mrs. Peoples was taken up to

⁴¹⁷ Tribunal Documents, pages 2465-2467.

*the scene by Geoffrey Dolan, but that both of them came back in his car from the scene.*⁴¹⁸

- 3.497. It is clear that Garda O'Dowd returned to Geoffrey Dolan and obtained a further statement on the 4th of November 1996. He gave a further statement to a private investigator, in which he substantially repeated the account which he had already given to the Garda Síochána. In a subsequent statement made to Detective Garda Thomas Kilcoyne, Geoffrey Dolan disagreed with the time set out in the statement made to the private investigator and indicated that he had never stated any definite times because he could not recall them after five months had elapsed. He could only go by the times he had given to Detective Garda Flynn two days after the events. In that statement he also said in addition:

I have now remembered that when Charlotte Peoples came across the road from the Parting Glass I saw her walking across the road and I got out of the passenger seat of Damien Gamble's car and spoke to her. She was crying and said did you hear about your man Richie Barron and she told me that he was knocked down. We got into my car and she got into the front passenger seat as I drove off towards the Diamond. Michael Peoples, her husband, was walking down about Coyle's shop at the Diamond, Raphoe. I think he was heading for Mark Quinn's pub for more beer. He got into the back seat as we drove up past the old cinema, "Irish Street". I saw a few people standing on the road. I drove past them and turned on the right-hand side of the road and drove back to where the people were standing. Charlotte asked was there an accident up here tonight and somebody said Aye, Richie Barron. There was no ambulance or no Gardaí there at the time. I drove away straightaway and went to Peoples for tea. I don't know for sure what time I was at the scene but I think it was between 1.50 a.m. – 2.00 a.m.⁴¹⁹

- 3.498. Following their arrest on the 4th of December 1996, Michael and Charlotte Peoples are recorded as having given accounts of this incident to a number of interviewers. Michael Peoples described having an argument with his wife about not wanting to leave the premises and a further argument at the door over a coat which had been left in Geoffrey Dolan's car. He recalled that his wife was crying. He said Geoffrey Dolan had left with them and got caught up in the crowd and got ahead of them. He returned to phone Geoffrey Dolan to get his coat as his keys were in it. He had a falling out with Charlotte and he told her he was going down the street to Quinn's pub (the Town & Country) for a pint. Apparently, as he did so Geoffrey Dolan pulled up in the car with Charlotte. He then drove them up to Mongorry Road to see where the Late Mr. Barron had been killed.⁴²⁰ He

⁴¹⁸ Transcript, Day 234, Q.114.

⁴¹⁹ Statement to private investigator, the 26th of March 1997, Tribunal Documents, page 1493 and statement to Detective Garda Kilcoyne on the 22nd of September 1997, pages 1494-5.

⁴²⁰ Interview with Garda Collins and Detective Sergeant Keane on the 4th of December 1996 and interview with Garda Vincent Burke and Detective Garda Flynn on the 4th of December 1996.

confirmed that Mr. Dolan had picked up his wife Charlotte before driving down and giving him a lift.

3.499. Charlotte Peoples was also interviewed, and in what is presented as a record of these interviews she gave an account of the incident. She said that prior to leaving Frankie's nightclub she had words with her husband about the amount he was drinking. She described how Geoffrey Dolan left while her husband was in the toilet. She then realised their jackets were in Geoffrey Dolan's car and they tried to get a hold of him on his mobile phone from the payphone in the hallway in Frankies. She was present when Michelle Scott informed Frank McBrearty Senior and, she says, Frank McBrearty Junior, who were both standing at the front door, about the rumours that the Late Mr. Barron had been killed up the road in a hit-and-run. She did not accept that she was crying. She met Geoffrey Dolan outside Frankie's nightclub. Her husband had gone off looking for a van which he had not brought with him. He seems to have been drunk. At this stage Geoffrey Dolan got out of the car in which he was seated and put her into his own car. He drove Mrs. Peoples to the Diamond, and near Duffy's butchers he stopped and put Michael Peoples into the back of the car. She then spoke about the accident and how they drove up the Mongorry Road to the scene of the accident and returned afterwards to the Peoples' house for tea.⁴²¹ This was an expanded account of what she had already told Garda Collins.

3.500. These accounts broadly explain the circumstances in which the Peoples came to be separated as they emerged from Frankie's nightclub. There is no reason to believe the accounts which Michael and Charlotte Peoples gave to the Garda Síochána in custody could not have been obtained in the same way that a further account was obtained from Geoffrey Dolan. However, neither Michael nor Charlotte Peoples were approached by members of An Garda Síochána and asked to address any issue whatsoever in relation to their movements prior to their arrest on the 4th of December 1996. In this regard, the Jobs Book indicates at Job 46 dated the 17th of October 1996 in respect of Charlotte Peoples and Job 64 directed in or around the same time, that Charlotte Peoples and Michael Peoples were in the Town & Country on the night in question. From an examination of the Jobs Book it would appear that they become the focus of interest because they were present in the Town & Country. If that focus shifted as a result of their activities afterwards, they should have been given the opportunity to focus their attention on whatever further issue concerned the Garda Síochána in respect of their movements. On a review of Charlottes Peoples statement, the only job which appears to have emanated from it was Job 118 which really only amounts to a note which states that they did not see Frank McBrearty Junior at the door of Frankie's nightclub when they arrived at the nightclub between 00.20 and 00.30 hours. No action appears to have been

⁴²¹ Interview with Charlotte Peoples with Detective Garda Michael Jennings and Detective Garda Michael Carroll on the 4th of December 1996, further interview with Detective Garda Michael Carroll and Detective Garda Michael Jennings on the 4th of December 1996.

taken in relation to that, other than the fact was simply noted. However, Job number 234 was assigned to Garda John O'Dowd and directed the re-interview of Geoffrey Dolan in relation to picking up Charlotte Peoples "and another individual" which appears to arise directly out of Damien Gamble's statement.⁴²² It is difficult to understand why the Peoples were never asked to expand on their witness statements to deal with this matter. The Tribunal has been told by Chief Superintendent Keane that this is regarded within the Gardaí as best practice.

Peoples return Home: Phone Call to Letterkenny Hospital

- 3.501. In the early hours of the morning of the 14th of October 1996 two calls were received at Letterkenny Hospital enquiring about the condition of the Late Mr. Barron. At 02.20 hours a person called stating that he was a John McCarron, son-in-law of the Late Mr. Barron. An inquiry from Mrs. Barron ascertained that she had no son-in-law of that name and the caller was so informed at which the caller hung up. One half-hour later, approximately, Ms. Kelly received another call from a female who stated that she was his aunt from Derry. This person gave a first name but she could not recall it at that time. Ms. Kelly informed Stephen Barron who said he did not know her and the call was put into the Casualty Department.⁴²³ The first call was the one from Mark McConnell.
- 3.502. Ms. Catherine 'Dolly' Eaton made a statement to Detective Garda Thomas Kilcoyne on the 22nd of September 1997, in which she acknowledged that she had made a phone call to the hospital at Letterkenny and asked to be put through to Casualty. She asked the nurse who answered the phone about the condition of the Late Mr. Barron. When asked who she was, she said that she was Mr. Barron's aunt. This was inaccurate: she was a cousin of the Late Mr. Barron. She was told by the nurse that Mr. Barron had died.
- 3.503. In evidence to the Tribunal, Mrs. Eaton said that she had been childminding for the Peoples that evening from about 21.00 hours. She recalled that Mr. Peoples had returned about midnight with Geoffrey Dolan for his 'banklink' card and had indicated they were going to Frankie's nightclub.⁴²⁴ She had actually gone to bed by the time they returned to the house. The phone call was made approximately half-an-hour later to the hospital. Rodney Bogle had come over to the house, having made a joke phone call after Geoffrey Dolan had left. She did not think there was anything wrong in making the phone call which she made. She was very upset about the news that Mr. Barron had been involved in an accident. He was her second cousin and he was a friend and she did not see any problem about it.⁴²⁵

⁴²² Tribunal Documents, pages 7463-4 – the job was assigned between the 24th and 30th of October 1996.

⁴²³ Tribunal Documents, pages 1041-1042.

⁴²⁴ Transcript, Day 59, Q.9-15.

⁴²⁵ Transcript, Day 59, Q.54 and Mrs. Eaton's statement of the 22nd of September 1997.

- 3.504. Michael Peoples, when detained on the 4th of December 1996, is recorded as having been asked whether he knew there was a telephone call made to Letterkenny General Hospital in the early hours of the morning of the 14th of October 1996. He replied that that was the first he had heard of it, that he would find out when he got out of custody who made the call, and he would come back and tell the Garda Síochána. He said he did not know who it was but that he had his suspicions.⁴²⁶
- 3.505. Initially, when interviewed on the 4th of December 1996, Charlotte Peoples is recorded as having denied that anybody made a call from their house after they returned home in the early hours of the 14th of October.⁴²⁷ At the end of that statement she said:
- I wish to add that I lied about the phone call, I didn't mean any harm just protecting my mother.
- 3.506. Apparently, she is also previously recorded as having denied the making of any calls from the house that night, apart from one to Rodney Bogle, in an interview with Detective Garda Michael Jennings and Detective Garda Michael Carroll on the 4th of December 1996.
- 3.507. The Garda inquiries in relation to the two phone calls to Letterkenny Hospital commenced as a result of Job No. 32 emanating from the Incident Room, noting the fact that the two calls had been made and directing that an attempt be made to establish with Telecom Éireann the source of the call, and the identity of the caller and/or callers from the staff at the hospital.⁴²⁸
- 3.508. Staff Nurse Grace Kelly was interviewed on the 22nd of October 1996 by Detective Garda Anderson, in the course of which she gave the Gardaí information about the calls. Following further inquiries by the Tribunal to the North Western Health Board it was confirmed that there was no system in operation at Letterkenny General Hospital for the recording of incoming calls to the hospital. The Tribunal was authorised to carry out a search of all incoming calls for the morning of the 14th of October 1996.⁴²⁹
- 3.509. An application was made by Detective Sergeant Henry to Crime & Security to Garda Headquarters, requesting details of incoming telephone calls to the Letterkenny General Hospital for the 14th of October 1996 on 21st of October 1996. A request was then made by the Detective Chief Superintendent of Crime & Security to the Criminal Investigation branch of the GPO concerning this

⁴²⁶ Memo of Interview with Detective Garda Patrick Flynn and Garda Vincent Burke on the 4th of December 1996. In this regard it should be recalled that Mrs. Eaton states that Michael Peoples went to bed shortly after arriving home on the morning of the 14th of October.

⁴²⁷ Interview with Detective Sergeant Sylvester Henry and Garda D. Kyne on the 4th of December 1996, page 92, Tribunal Documents, Arrest and Detention of Charlotte Peoples.

⁴²⁸ The job was entrusted to Detective Sergeant Henry.

⁴²⁹ Tribunal Documents, page 3744.

request on the 22nd of October 1996. Detective Sergeant Henry's letter suggests that the callers to the hospital may well have been the culprits checking to see how Richard Barron was. Equally, the possibility was acknowledged that it may have been simply a nosey person(s) making a call. However, it was regarded as essential that the caller be identified to the investigation team. Crime & Security's records indicate that they received a reply in January 1997 to this request which was furnished on the 16th of January 1997 to the applicant. Further documentation in respect of this response is unavailable.⁴³⁰ Therefore, this information was formally obtained after the date of the arrest of the Peoples.

- 3.510. On the 4th of December 1996, Detective Sergeant Henry arrested Charlotte Peoples as an accessory after the fact to the murder of the Late Richard Barron and gave as grounds for that arrest the fact that:

A phone call was made to Letterkenny Hospital enquiring about the deceased Richard Barron. This person who was a female, gave a false name to the hospital authorities and it was my belief that this call was made from the home of Charlotte Peoples and that she was in possession of vital information relating to the murder of Richard Barron.⁴³¹

- 3.511. The Tribunal is satisfied that the information obtained from Crime & Security must have been by way of informal enquiry. It was of a type which should have been the subject of further investigation, in the form of interviews with Charlotte and Michael Peoples, when obtained. This was one of the outstanding jobs which remained to be done at the time the decision was taken to carry out arrests. If it had been completed and had the matter been investigated to the fullest extent, information obtained from the Peoples and Mrs. Eaton in relation to this call may well have been obtained. The call could have been revealed by that process as the "nosey" call which it was and which Detective Sergeant Henry in his letter to Crime & Security thought it might have been.

- 3.512. It should also be noted that Detective Sergeant Michael Keane gave the making of this call from the Peoples home enquiring about the condition of Richard Barron as a ground of arrest of Michael Peoples. It seems to the Tribunal likely that such information could have been obtained earlier without exercising a power of arrest by returning to re-interview the Peoples.

Michael Peoples and the ATM Machine

- 3.513. As can be seen from the statements made by Michael and Charlotte Peoples, the only occasion upon which it is recorded that Michael Peoples left the Town &

⁴³⁰ Tribunal Documents, pages 6987-6990.

⁴³¹ Statement Detective Sergeant Henry re: arrest of Charlotte Peoples.

Country pub on the evening of the 13th was to obtain money from a 'pass' or ATM machine in the nearby Ulster Bank. In order to do this he had to return home to his house at St. Eunan's Terrace to obtain his bankcard, return to the machine, obtain the money and then return to the Town & Country. He did so at approximately 00.00 hours, according to the statements. This is corroborated substantially by Geoffrey Dolan, his friend. The statement which he made on the 16th of October 1996 to Detective Garda Patrick Flynn states that at 23.45 hours he left the bar with Michael Peoples and went to his house at St. Eunan's Terrace where he got his banklink card and they returned to the Town & Country. Michael Peoples then went in to collect Charlotte Peoples. The three then went up to Frankie's nightclub.⁴³² The question of the withdrawal from the ATM machine seems to have been pursued in Job No. 247 dated the 14th of November 1996. This job sheet indicates that it came through the office and states:

Michael Peoples and Geoffrey Dolan state that they left Quinn's at around 11 p.m. and went home to get banklink card to get money. Check with all banks in Raphoe who have an ATM in Raphoe to see if he withdrew money that night.

This was noted as having been "done" on the 21st of November 1996. Michael Peoples withdrew IRE80 from the ATM machine in the Diamond at 12.19 a.m. on the 14th of October 1996.

- 3.514. It should be noted that the note suggesting that they had left at 23.00 hours is incorrect. In fact, the time given by Geoffrey Dolan was 23.45 hours and the time given by Michael Peoples was more accurate. He said they left "at around 12 o'clock". His wife Charlotte Peoples thought, by reference to the clock in the Town & Country, that they had left at 00.10 hours and returned some ten minutes later. Their home at St. Eunan's Terrace was only a few minutes walk from the Town & Country.
- 3.515. Insofar as any suspicion may have been created, by reason of a discrepancy between the noted time in the Jobs Book, at Job 247 and the time at which the money was recorded as having been taken from the ATM machine, this was entirely due to the error which recorded the incorrect time of 23.00 hours in the Jobs Book. Any suspicion that, therefore, came to focus upon Mr. Peoples as a result of any such perceived discrepancy was entirely due to an error on the part of the Garda Síochána.

Statements of Eugene Gamble and Liam Sweeney

- 3.516. Reference has been made earlier in this section to the attempt by Eugene Gamble and Liam Sweeney to implicate Michael Peoples by association with Mark

⁴³² Tribunal Documents, page 1490.

McConnell in statements made in 1997. These statements are regarded as wholly unreliable by the Tribunal and could not provide any platform upon which to construct a suspicion against Michael Peoples. They could not have been used to found a suspicion for his arrest as they had not then been made. No reasonable person could have relied on them from the time they were made.

The Extortion Phone Calls

3.517. Events concerning the alleged extortion phone calls made to the Peoples house by William Doherty from his father's house and the home of Garda John O'Dowd occurred on the 9th of November 1996 and are considered separately. The Tribunal is satisfied that this matter was not treated seriously and was used quite wrongfully to ground his arrest. Chapter 6 discusses the details of this matter.

Summary

3.518. The Tribunal is satisfied that Michael and Charlotte Peoples were shockingly treated in the course of this investigation. Their movements on the evening of the 13th/14th of October 1996 were uncontroversial. Most of the efforts made to implicate Mr. Peoples in the story of the death of the Late Mr. Barron appeared to the Tribunal to be strange and contrived. It may or may not be significant that these attempts occurred under the shadow of the reported observation by John Patton that he had seen "two or three men" in the vicinity of the McBrearty car park. The Tribunal considers that the Garda investigation team at times appeared to strain itself to implicate Mr. Peoples. For example, Mrs. McGranaghan never appears to have been treated as an unreliable witness when she changed her identification from one of Mr. Meehan to one of Mr. Peoples as the person whom she had seen in the company of Mr. McConnell on the evening of the 13th. Detective Sergeant Henry thought it a possibility that the two phone calls to the Letterkenny Hospital, one of which emanated from the Peoples household, may have been of a nosey variety. However, this concept never appears to have occurred to any other Garda. The matter could have been resolved by re-interviewing the Peoples. A relatively simple mistake made by the Garda Síochána, in terms of the time at which Mr. Peoples went to the ATM machine, became a further focus of suspicion. Whatever deductions were made in respect of Damien Gamble's statement in respect of the movements of the Peoples that night with Geoffrey Dolan, were entirely and negligently overblown. Any difficulties that arose out of his statement could easily have been addressed by approaching the Peoples in a straightforward and direct manner, in accordance with best practice. A supposed sighting of Michael

Peoples coming over the technical school wall is a further example of somebody making an effort to keep alive the suspicion against Michael Peoples. However, it is impossible to consider how the Peoples were treated in this investigation without considering the issue of the extortion phone calls affair, in the course of which they were treated disgracefully. This bizarre episode is the subject of Chapter 6. The Tribunal notes that at times in 1996 and 1997, any little thing which was calculated to implicate Michael Peoples was treated as a straw at which it was worth grasping by some members of the investigation team in the emotional wind on which they blew it.

Phone Calls from the Brollys' and the Peoples' Homes

- 3.519. Sergeant John O'Toole gave evidence to the Tribunal that he applied informally to his brother-in-law, Inspector Patrick Nyhan at Crime & Security, to ascertain whether the applications for phone records which had been submitted in the course of the Barron investigation in October/November 1996 could be accelerated. There were two applications submitted in this regard. One was that of Detective Sergeant Henry dated the 21st of October 1996⁴³³ in respect of incoming calls to Letterkenny Hospital, and the second was that of Inspector John McGinley on the 21st of November 1996⁴³⁴ which sought records of phone calls, including those of incoming and outgoing calls to and from the Peoples phone and the Brollys phone. Inspector McGinley, had, according to Sergeant O'Toole expressed concern at a conference held in late October or November 1996 that the data requested was not coming through quickly enough and that if members had any contacts through whom the obtaining of this information could be accelerated, they should use them. Following this general request, Sergeant O'Toole contacted Inspector Nyhan. Within a week of contacting Inspector Nyhan, information was obtained by facsimile by Sergeant O'Toole which he furnished to the Incident Room. Jobs were assigned on the basis of this information including, he believed, the interviewing of the Dolans in 1997.⁴³⁵
- 3.520. For his part, Inspector Nyhan made contact with the GPO investigation section. He could not recall the identity of the individual whom he contacted. A person sent him a letter, perhaps a week later giving the details of outgoing calls and identifying the numbers to which they were made. Details were included in a letter delivered by hand to Crime & Security. He then faxed the information to Sergeant O'Toole. He could not name the person he contacted.⁴³⁶
- 3.521. No written record remains of this transaction. Sergeant O'Toole destroyed the

⁴³³ Tribunal Documents, page 871, Peoples' Module.

⁴³⁴ Tribunal Documents, pages 6987-6990.

⁴³⁵ Transcript, Day 223, Q.455-485.

⁴³⁶ Tribunal Documents, pages 6848-6852.

facsimile which he received following discussions about the matter with Sergeant Moylan in the Incident Room.⁴³⁷

3.522. The Tribunal is concerned about a number of aspects of this evidence. Firstly, the proper procedure for obtaining the information was bypassed because the investigation team wanted to speed up the inquiries. The clandestine nature of this exercise led to a situation where documentary evidence obtained as a result was ultimately destroyed. The Tribunal's view is that this was done in order to erase the fact that the information had been obtained outside normal channels. This had an effect on how Sergeant O'Toole dealt with later inquiries. He did not disclose how this information had been obtained until just before he gave evidence to the Tribunal, most likely for fear of revealing what he had done and perhaps embarrassing his brother-in-law. It is to be deprecated that senior officers like Inspector McGinley and Inspector Nyhan and Sergeant O'Toole should be less than fully frank in their dealings with this Tribunal from the earliest stages. A system which was slow in processing these applications was short-circuited (perhaps for a worthy motive), but in circumstances which encouraged secretive and selective preferential dealings between members of An Garda Síochána and, ultimately, the falsification of the trail of inquiry by the destruction of its record. Relevant information was obtained, but exactly what or when or from whom the Tribunal is not now told, as the only record is destroyed. It is imperative that the system by which information is obtained in respect of telephone records and the like is clear and that the trail by which it was obtained is transparent, documented, efficient and reliable. It is also imperative that there should not be a system within An Garda Síochána which affords preferential treatment to one investigator over another, in terms of the access which is afforded in the course of the investigation of crime to vital information. It is imperative that procedures and systems be put in place which ensure that this kind of thing does not happen again. It may be in this regard that an amendment to the relevant legislation should also be considered. A recommendation will follow at the end of this report.

3.523. It may be that the records which were made available to the investigation team, as a result of this transaction, became available prior to the 4th of December 1996. It is by no means clear. However, one may be able to infer this from the fact that questions were asked of Katrina Brolly, Michael Peoples, Charlotte Peoples and Róisín McConnell about calls made from the Peoples and Brollys homes on the 14th of October 1996.

⁴³⁷ Transcript, Day 223, Q.455-485.

PART IV

Introduction

3.524. There were four persons who clearly emerged from the papers and evidence heard by the Tribunal who could have been considered as suspects by those investigating the death of the Late Richard Barron namely:

- a. Garda John O'Dowd
- b. Paul 'Gazza' Gallagher
- c. John 'Manny' Hegarty
- d. William Ayton

The first investigation team operated on the basis that Mr. Frank McBrearty Junior and Mr. Mark McConnell were guilty in respect of the death of the Late Mr. Barron. Garda O'Dowd's possible involvement has already been considered. Paul 'Gazza' Gallagher was investigated by Detective Sergeant Henry, but the suspicion in respect of Mr. Gallagher was not treated seriously by those directing the inquiry and others. Mr. John 'Manny' Hegarty was dismissed as a suspect because of his physical size and, perhaps, the amount of drink which he had consumed. However, though he drove his car that evening he was not seriously treated as a suspect in the road-traffic accident involving the deceased. William Ayton and Amanda Sloyan were driving in the area that evening. Their story was never unearthed by the investigators. It was only after Mr. William Flynn interviewed William Ayton and Amanda Sloyan and submitted the results to the Garda Síochána that their movements were considered. Even then, Superintendent Lennon's team concluded that the material furnished was unimportant. The Carty team further investigated their movements, which led to the arrest of William Ayton on suspicion of dangerous driving causing the death of the Late Mr. Barron. These people should have been regarded as suspects and rigorously, or more rigorously, investigated from the beginning. This did not happen because the investigators were blinded by the assumption of guilt in respect of Frank McBrearty Junior and Mark McConnell. The blame for this lies with both Superintendent Fitzgerald and Superintendent Lennon, the officers in charge of the inquiry. The following is an account of the movements of Paul 'Gazza' Gallagher, John 'Manny' Hegarty and William Ayton and Amanda Sloyan and related matters heard by the Tribunal.

The whereabouts of Paul 'Gazza' Gallagher on the 13th/14th October 1996

3.525. Paul 'Gazza' Gallagher of Dr. McGinley Road, Letterkenny became a suspect in relation to the death of Mr. Barron and was the subject of extensive inquiries by

Detective Sergeant Sylvester Henry. He was the young man, a petty criminal, who was expelled from Frankie's nightclub at approximately 00.45 hours on the 14th of October 1996. Various accounts were given by young people in the vicinity of the Diamond stating that they had seen him driving down Irish Row at approximately 01.00 hours, after his expulsion. Later at approximately 03.40 hours his brother Patrick Gallagher called, in an inebriated state, to Raphoe Garda Station, coinciding with the return to Raphoe of the three Gardaí from Letterkenny Hospital. He was looking for a cigarette and a lift to Letterkenny. He spoke about the accident and remarked that his brother Paul had been in Raphoe, very drunk and was driving about in a Renault car. This did not raise any suspicions or interest on the part of the three Gardaí who did nothing with this information. However, Detective Sergeant Henry, who was investigating other matters, as a result of these inquiries, came to suspect him of involvement in what he then regarded as the fatal 'hit-and-run' in which the Late Mr. Barron had been killed. The following account of Mr. Paul Gallagher's movements is in large measure a result of Detective Sergeant Henry's inquiries. It is an extraordinary story involving the commission by him of a number of burglaries, his encounter with a former girlfriend and expulsion from Frankie's nightclub, following his former girlfriend to her home and creating a nuisance of himself and other odd occurrences. The importance of this story in the investigation of the death of the Late Mr. Barron is that, firstly, Mr. Gallagher was viewed as a suspect by Detective Sergeant Henry for the death of the Late Mr. Barron and, secondly, Paul Gallagher sought, by telling a number of lies to Detective Sergeant Henry, to implicate Frank McBrearty Junior in the death of the Late Mr. Barron for reasons which he refused to disclose to the Tribunal.

A car rolls into Mr. Doherty's fence

3.526. Paul Gallagher was the owner of a green coloured Renault, registration number 880 IH for a couple of days around the 13th/14th of October 1996. At that time he lived at home with his sister and mother at Dr. McGinley Road, Letterkenny. That weekend his brother, Patrick, was on temporary release from Shanganagh Prison. On the evening of Sunday, 13th of October, Mr. John Doherty, a neighbour of the Gallaghers, saw a Renault car as it rolled down the back lane at the rear of his residence and collided with a wooden fence in his back garden and then his garage which was some three metres into his garden. The engine of the car was not running at the time. A half an hour later, Mr. Doherty noticed Paul and Patrick Gallagher, together with their father, arrive in his back garden and push the car out of the garden. He went out and assisted them. They blamed small boys for doing this. Paul Gallagher told the Tribunal that a young man he knew, and with whom he had fallen out, had entered his car and released the

handbrake thereby causing this incident.⁴³⁸ The Gallagher boys told Mr. Doherty that they were going to a disco. They pushed the car and got it started. The left-hand headlight and bumper were damaged as a result of the impact. They drove off.⁴³⁹

Burglary at Mr. Stewart's

3.527. Between 19.05 hours and 21.40 hours on the evening of the 13th of October, Mr. Hugh Stewart of Kilmacrennan, an elderly gentleman, was the victim of a burglary whilst he was attending a church service at Letter church. He had left the key in the back door of the house. Paul and Patrick Gallagher committed this burglary. They stole a chainsaw and a billhook. Paul Gallagher also admitted to stealing a small sum of money. Mr. Stewart reported the matter to the Gardaí at Kilmacrennan and told them that only a chainsaw was missing. Because nothing else was reported to be missing, it was presumed by the Gardaí that a neighbour called and borrowed the chainsaw. It was not until 1999, when Paul and Patrick Gallagher admitted to committing a burglary at Mr. Stewart's premises, that Mr. Stewart was interviewed and made a statement on the 2nd of June 1999. In this statement, he confirmed that he had noticed a billhook was missing shortly after the event.⁴⁴⁰ Paul Gallagher told the Tribunal that he sold the chainsaw to people in Milford that evening who gave him IRE40 to IRE60 for it. On the way back from Milford with his brother he threw the billhook over a hedge.⁴⁴¹

The Gallaghers in Raphoe

3.528. The brothers then drove to Raphoe in the Renault car and went to Frankie's nightclub. Patrick Gallagher has described how the car was parked on a hill because it would not start without a push. It was parked out of the way because Paul Gallagher had no tax, insurance or licence. It was unlocked because it was not possible to lock it. There was no ignition key. In Frankie's nightclub he became separated from his brother. He remained in the club until approximately 02.30 hours when he left with Ms. Glenda Muldoon, Paul Gallagher's former girlfriend. He met another girl, whom he knew as 'Sonic the Hedgehog', outside the club but was then accosted by her boyfriend. A fight ensued; others joined in; Patrick Gallagher escaped and made his way out the road of the town. When he was passing the Garda station, the Garda car arrived from Letterkenny. He asked for a cigarette and a lift. They declined because they were investigating the accident.

⁴³⁸ Transcript, Day 197, Q.256-258.

⁴³⁹ Tribunal Documents, page 2318, statement of John Doherty.

⁴⁴⁰ Tribunal Documents, pages 2371-2375 – Memo of Interview with Paul Gallagher on the 31st of May 1999, pages 2391-2392. Memo of Interview with Patrick Gallagher on the 1st of June 1999 and Tribunal Documents, pages 3751-3754: handwritten report of the 14th of October 1996 to Garda Healy by Hugh Stewart and statement of Hugh Stewart made on the 2nd of June 1999.

⁴⁴¹ Transcript, Day 306-333; see also Tribunal Documents, Vol. 7, pages 2391-2392 (Memo of Interview with Patrick Gallagher).

He told them about his brother in the town. He walked home.

- 3.529. The expulsion of Paul Gallagher from Frankie's nightclub has already been described, and was described by him to the Tribunal.⁴⁴² As noted he was expelled from Frankie's nightclub at between 00.40 and 01.00 hours on the morning of the 14th of October 1996.

Paul Gallagher leaves Raphoe

- 3.530. Paul Gallagher made his way across The Diamond having been ejected from Frankie's nightclub and returned to his car at The Close. He was unable to start the car and sought assistance by knocking at the Ayton household. Mrs. Kathleen Ayton thought that this had occurred between 00.30 and 01.00 hours. Derek Ayton thought that it happened before 01.00 hours. Paul Ayton believed that his brother Derek had come in before 01.00 hours. He described how his brother assisted Paul Gallagher: he thought it strange that they were pushing the car up the hill in order to start it. His brother returned to the house at about 01.00 hours.⁴⁴³
- 3.531. Paul Gallagher told the Tribunal that he had returned to his car which had not been moved from the place in which he parked it. He freewheeled it down the hill upon which it was parked, but it would not start and then he called for Mr. Ayton's assistance. The car was started. Initially, he drove through the Close down towards William Street but saw a marked Garda car parked near the hardware store. He then reversed his car back up into the Close and drove back down Irish Row into the Diamond area in the knowledge that he would avoid the Garda car. He turned right into the Diamond and drove up towards McBreartys'. He drove beyond McBreartys' for a short while up Meetinghouse Road and then turned his vehicle and drove back down to the Diamond. He then drove out the Ballindrait Road in order to get petrol at an all night service station near Derry city.⁴⁴⁴
- 3.532. It was established in subsequent inquiries by Detective Sergeant Henry that Paul Gallagher had, in fact, stopped at Desmond's garage in Derry for petrol and was recorded by a forecourt video security camera at 01.56 hours that morning. It was also established by Detective Sergeant Henry that Paul Gallagher had driven to Castleberg to his former girlfriend's house at Castleberg at 02.25 hours and threw stones at the windows trying to break them. A member of the RUC saw him driving his Renault car while performing a checkpoint at Main Street, Castleberg at 02.30 hours, shortly after which the Border Inn alarm was activated as a result of a break-in. He was seen later at 05.00 hours by Gardaí Dan Curran

⁴⁴² Transcript, Day 197, Q.351-387.

⁴⁴³ Tribunal Documents, pages 2302-2303.

⁴⁴⁴ Transcript, Day 197, Q.392-449.

and John Rouse in Letterkenny but there were no sightings of his car for the remainder of that day.⁴⁴⁵

- 3.533. Paul Gallagher told the Tribunal that he drove to Glenda Muldoon's house to try to break windows, because she was responsible for having him ejected from the nightclub earlier on. He then drove to the Border Inn. He broke into the premises and stole two tills. He smashed them and took whatever was in them. He said this was between 02.00 and 03.00 hours but he had no clear recollection as to time. He then returned to Castlederg and drove on a number of back roads to find an isolated spot in which to break open the tills and dump them. He then returned to Letterkenny at approximately 04.00 to 05.00 hours. He spoke to his sister. He asked where his brother Patrick was. She did not know and he drove back to Raphoe down the Mongorry Road to see whether he could find his brother. At approximately 04.20 hours he drove down past the scene of the accident on the Mongorry Road. There was nobody to be seen. He checked around the streets of Raphoe for his brother but could not find him. Ironically, he then offered a lift to a young man who had been involved in a fight. Apparently, it transpired that this young man was one of the party who had attacked his brother earlier in the evening, though he was not aware of that at the time. His car then ran out of petrol and he and his passenger walked to Castlederg. His brother Patrick had a caravan rented nearby but was not in it. He remained in this caravan for the remainder of the night.
- 3.534. Later in the morning of the 14th of October, he managed to get a taxi and obtained a drum of petrol at Castlederg for his car and went home. When he arrived home his mother told him about the death of the Late Mr. Barron. She asked him whether he had anything to do with the accident. This surprised him but he told her it had nothing to do with him.⁴⁴⁶
- 3.535. Later on the evening of the 14th of October 1996, Paul Gallagher broke into another premises, Dunnion's Café in Ballybofey. Mrs. Angela Dunnion had closed her restaurant for the day at 19.30 hours on the 14th of October and returned to find it had been burgled at 09.10 hours on the morning of the 15th of October 1996. A total of IR£1,000 was stolen, all in coin except for one IR£5.00 note and the coins were IR£1, 50p, 20p and 10p coins.⁴⁴⁷
- 3.536. Paul Gallagher told the Tribunal that he had robbed Dunnion's at 22.00 hours approximately on the night of the 14th of October 1996. He then said that he went to Raphoe after he committed the burglary "to see if I was barred ... for good". He said he went into the McBrearty premises and obtained a drink, paid for it and had a couple of drinks there. He then recounted how he met Frank

⁴⁴⁵ Tribunal Documents, pages 2329-2330.

⁴⁴⁶ Transcript, Day 197, Q.446-512 and Q.552-556 – a fact told to Sergeant Henry on the morning of the 15th of October 1996 by his mother – Tribunal Documents, page 2335.

⁴⁴⁷ Tribunal Documents, pages 2413-1 – 2413-36.

McBrearty Junior and had a discussion with him. Paul Gallagher said that Frank McBrearty Junior had told him that all the Gardaí in the country were looking for him because of a suspicion that he had knocked down the Late Mr. Barron. He denied it and laughed it off. There was some discussion about Garda checkpoints which he had avoided in making his way to Raphoe. He then asked Mr. McBrearty Junior if he would give him a lift home as he didn't want to drive if there were Garda checkpoints about. Mr. McBrearty Junior refused because he didn't want to be seen with him in his car. Paul Gallagher thought: "he was joking it off like".⁴⁴⁸ There was further conversation after the closing of the pub, he had bought a number of drinks with 50p coins. In respect of his barring, Mr. Gallagher said that he was told to leave it for a few weeks by Mr. Frank McBrearty Junior. He was still driving the Renault 9 at this stage.

- 3.537. In a statement said to have been made on the 18th of October 1996 by Frank McBrearty Junior he describes the return visit by Gallagher to the McBrearty pub in Raphoe:

On Wednesday night last Gallagher came back into our pub in Raphoe. I was working in the bar. It was about 10.40 pm when he came in he had 4 or 5 bottles of Budweiser at £1.90 each. Each time he paid with 50p pieces for each drink. I asked him what he was driving he said that he was driving an Escort. He was telling me about all these clothes he had bought. He told me the price of everything that he had on him. He also said that Buddy Orr was out buying clothes along with him. By Buddy Orr I take him to mean the young boy of the Orr's the thin fellow. He said that he bought the trainers in McCormacks.⁴⁴⁹

That Wednesday was the 16th of October 1996.

- 3.538. Three young men from Milford made statements to Detective Sergeant Henry and Detective Garda Keating on the 23rd/24th of October 1996. They had substantially the same story to tell concerning Paul Gallagher and his Renault car. On Sunday, 13th of October Paul and Patrick Gallagher called to Patrick McGinley at Milford at between 08.00 and 09.00 hours in his Renault car. No damage was noticed to the car. Then in the early hours of Tuesday, 15th of October Patrick McGinley, Francis McGinley and John Harvey called to the Gallagher house at Glencar at between 01.00 and 02.00 hours looking for Paul Gallagher. They met him at approximately 02.00 hours. Patrick McGinley described what happened:

Paul came out right away out of the house. He got into the back of the car. We went up the road a run. He asked us would we buy the car and asked a tenner for it. We were afraid to touch the car and said we

⁴⁴⁸ Transcript, Day 197, Q.526-552.

⁴⁴⁹ Tribunal Documents, pages 3279-3280.

wouldn't buy it. He said that he would get rid of it. We came back to Glencar and drove around the back of John McElhinney's house. The Renault car belonging to Paul Gallagher was in the back garden, it had been driven in. The three of us, me, Francie and John Harvey pushed the car out. Paul Gallagher sat in the car and steered it. At one time John Harvey remarked that the windscreen was broken. We pushed the car out. Paul Gallagher started it and drove off towards the Forestry. We followed in Francie McGinley's car. The car was going well. We kept following him until he stopped up at the Forestry. When he stopped I took a glance at the windscreen of the car to see if it was broken. There was a break on the windscreen, a couple of cracks, they were on the drivers side. There were four or five cracks in it. I feel these cracks started below the visor line, somewhere in the region and continued downwards. John, I think it was asked Gazza "What happened here" and he replied that somebody let her go and it went through the fence. I did not see any other damage to the car. Gazza said that this happened up at his house.⁴⁵⁰

- 3.539. The wheels were then removed from the car and Paul Gallagher smashed the car windows. They rolled the car over and it landed on its wheels. Paul Gallagher burnt the car. Francis McGinley retained the two front wheels. He also said that he would not buy the car:

I wouldn't take it because I was feared that there was something wrong with the car in connection with the boy in Raphoe. I wouldn't take the car.⁴⁵¹

- 3.540. On Wednesday, the 16th of October the same trio were in Milford with Paul Gallagher when he bought a Buy & Sell magazine in which he saw a car for sale in Ballybofey. They went with him to Ballybofey where Paul Gallagher purchased a black Escort. He paid for the car in 50p pieces and paid Mr. McGinley IRE10 in 50p pieces for bringing him to Ballybofey. He told Francie McGinley that he "... did a machine shop or arcade in Ballybofey and got £600 or £700 in it."⁴⁵² It seems likely, therefore, that if Mr. McBrearty Junior made a statement concerning Mr. Gallagher's purchase of an Escort, it was made some time after the purchase on the 16th. It seems likely, therefore, that Mr. Gallagher was in the Tudor Lounge on the evening of the Wednesday, 16th October and not on the Monday or Tuesday.

The Garda Inquiry into Paul 'Gazza' Gallagher

- 3.541. When the Renault, registration number 880 IH, crashed into Mr. Doherty's fence and garage on the night of the 13th of October 1996, Garda Dan Curran had

⁴⁵⁰ Tribunal Documents, pages 2312-2313.

⁴⁵¹ Tribunal Documents, pages 2313-2317, and pages 2319-2320.

⁴⁵² Tribunal Documents, pages 2316 and page 2330.

been called to the scene at approximately 22.25 hours and observed it crashed against a fence and that the headlight of the car was broken. He could not recall if there were any cracks on the windscreen of the car when he examined it.⁴⁵³

- 3.542. On the 15th of October 1996, Detective Garda Michael Jennings found a burnt-out car with number plates missing at Soccar, Letterkenny, Co. Donegal. He ran a computer check on the chassis number of the car and found that it matched the Renault car registration number 880 IH. He found the front and rear registration plates of the vehicle in a subsequent search of the land in the vicinity of the car on the 18th of October 1996. The car was then forensically examined by Detective Garda Jennings and Garda Niall Coady on the 21st of October 1996. They were handed over to Mr. Liam Fleury of the Forensic Science Department on the 25th of October 1996, together with two wheels which were retrieved from Francis McGinley and had been taken from the car. Nothing was found to forensically link the car to the death of the Late Mr. Barron but the examination had been carried out in the context of that investigation.⁴⁵⁴
- 3.543. On the 14th of October 1996, Detective Sergeant Henry was carrying out inquiries in Raphoe when he called to Frank McBrearty Senior's premises and asked him whether any person had been put out of his premises on the evening of the 13th/14th of October. He was able to tell him that a man called Gallagher had been expelled but could not provide any additional details or full name(s) and therefore he offered to bring Detective Sergeant Henry and Inspector Gallagher to see Frank McBrearty Junior, who was building a new house at the time and was working on the night, because he might be able to assist them. All three travelled to the site of Mr. McBrearty's house. Frank McBrearty Junior told the Gardaí that Paul Gallagher had been expelled from the public house at between 00.20 and 00.30 hours. Detective Sergeant Henry knew of Paul Gallagher and his previous convictions. They then brought Frank McBrearty Senior back to his place of work at approximately 14.45 to 16.00 hours. They then returned to Letterkenny at 18.00 hours in time for a meeting in respect of the death of Late Mr. Barron.
- 3.544. In this context, Inspector McGinley has made an entry in his notes covering the meetings at 18.00 hours on 14th of October 1996 and the 15th of October 1996 indicating that the Gardaí should seek to interview Paul Gallagher, seek an account of his movements, and examine his car.⁴⁵⁵
- 3.545. Detective Sergeant Henry told the Tribunal that on the 15th of October 1996 an enquiry was received from the RUC, concerning Paul Gallagher's activities on the Sunday night arising out of his attendance at the home of Glenda Muldoon, his

⁴⁵³ Tribunal Documents, pages 2332-2333.

⁴⁵⁴ Tribunal Documents, pages 1104-5 and pages 1379-1384.

⁴⁵⁵ Tribunal Documents, page 6895.

former girlfriend, at approximately 02.30 hours earlier that morning. He was also sighted by an RUC officer driving in the main street in Castlederg at this time. On the 14th of October, Detective Sergeant Henry had discovered that the Border Inn – a pub 100 yards inside the Donegal border – had been broken into. This burglary had been committed at 02.20 hours, just before the sighting at Castlederg. Some time after 09.10 hours on the morning of Tuesday, 15th of October, he became aware that Dunnion's café at Ballybofey had been burgled also. He immediately suspected Paul Gallagher of involvement in both these offences as they coincided with his modus operandi in a crime for which he was suspected a year previously. The details of Paul Gallagher's car were circulated because of his suspicion about his involvement in the two burglaries primarily but also arising out of the death of the Late Mr. Barron. Detective Garda Jennings discovered a burnt-out Renault 9 some time in the late afternoon of Tuesday while walking in Mogheran forest, just outside Letterkenny, leading to the examinations already outlined. By late Tuesday evening Detective Sergeant Henry also had information that Paul Gallagher had been seen driving speedily up Irish Row onto the Diamond. As matters developed he developed an increasing suspicion that Paul Gallagher and his vehicle were involved in the death of the Late Mr. Barron.

- 3.546. On the 16th of October 1996, Detective Sergeant Henry attended a conference at Letterkenny Garda Station in respect of the death of the Late Mr. Barron. He continued to pursue his line of inquiry in respect of Paul Gallagher over the 17th and 18th of October. He visited the site of the burnt-out vehicle and sought to establish the transport Paul Gallagher then acquired. He obtained a warrant to search Paul Gallagher's home on the 18th of October 1996.⁴⁵⁶ Paul Gallagher was arrested at his home at 08.50 hours on the morning of the 18th of October 1996 at common law for suspicion of burglary of Dunnion's café and the Border Inn, by Detective Sergeant Henry and was taken to Letterkenny Garda Station where he was interviewed and detained until his release at 20.45 hours on the 18th of October 1996.⁴⁵⁷
- 3.547. During the course of his detention, Paul Gallagher denied that he burnt his car and insisted that he had nothing to do with it. He denied the removal of the wheels. He gave what Detective Sergeant Henry regarded as unsatisfactory answers in relation to his whereabouts and the suspicious death of the Late Mr. Barron. When released he was re-arrested on foot of a number of bench warrants and was taken before the District Court, following which he was detained in custody.
- 3.548. In the course of his inquiries, Detective Sergeant Henry learnt that Patrick McGinley, Francie McGinley and John Harvey, Milford had been in the company

⁴⁵⁶ Tribunal Documents, pages 2413-36.

⁴⁵⁷ Tribunal Documents, pages 2413-1 to pages 2413-35 – the custody record.

of Paul Gallagher in the early hours of Tuesday morning, 15th of October 1996 and were present with him when he burnt his car and that one of them took the wheels of the car as already described. He also discovered that the car had hit a fence post at the rear of Mr. Doherty's house and learnt about the cracks in the windscreen of Mr. Gallagher's car. Statements were taken from these witnesses on the 23rd/24th of October 1996. A scene of crime examination was then carried out by Detective Garda Jennings at the rear of 36 Dr. McGinley Road where Garda Jennings took possession of timber posts and paint lifts in respect of the incident with Gallagher's car on the 13th of October 1996. Information of this incident was then received from Garda Curran, as already detailed.

- 3.549. On the 29th of October 1996, when Paul Gallagher appeared at Letterkenny District Court, Detective Sergeant Henry spoke to him in the cells at Letterkenny Garda Station. He wanted bail and finally told him that:

He had found this billhook in his car after he returned to it on Sunday night/Monday morning after being thrown out of Frankie's nightclub. He said he found the clips for the spare wheel hanging down (from his car), the spare wheel missing and the billhook in the boot of the car ... He said he wanted to show me where he had thrown the hook. Accompanied by the prison escort and Sgt. M. Moylan we went to Milford. We were directed by Paul Gallagher to the link road between the Carrigart Road and the Kerrykeel Road. Midway along this road Paul Gallagher stated he had thrown away this hook. This scene was pointed out to Sgt. Moylan ... the hook was found there by Garda Wray the next day during a search of the area. It was found after five minutes of searching ... I had a search carried out of the area around where this car was parked looking for the spare wheel and a spoon used to start the car. This search was over a wide area but nothing was found.⁴⁵⁸

- 3.550. The billhook was retrieved on the 31st of October 1996. The area was being preserved by Garda Wray. Garda Coady retrieved the billhook and placed it in an evidence bag and sealed it in the ordinary way. He also removed earth from the field digging a portion of grass on which the billhook had rested because if it was the murder weapon or if there was blood on the billhook and rain had fallen, anything on the billhook may have fallen into the grass and been washed away. The sod of earth was also taken for forensic examination. The items were furnished to the Forensic Science Laboratory. The items were photographed before being lifted.⁴⁵⁹ Dr. Brid McBride examined the billhook and did not find any blood staining upon it. There was nothing to connect it, or the area of earth, to the death of the Late Mr. Barron.

⁴⁵⁸ Statement of Sergeant Henry, page 2335.

⁴⁵⁹ Transcript, Day 206, Q.370-396.

- 3.551. In addition to telling Detective Sergeant Henry about the billhook which he had found in the boot of his car, he also told him that a spoon which he used to start the car was missing from it. He went on to say that on Monday, the 14th of October 1996 he had returned to the Tudor Lounge in Raphoe and on that occasion was told by Frank McBrearty Junior to burn the car. He told Detective Sergeant Henry that it was his belief that his car had perhaps been involved in the death of the Late Mr. Barron.⁴⁶⁰ Detective Sergeant Henry also told the Tribunal that Gallagher was interested in getting bail at the time he was told these things.
- 3.552. On the 19th of November 1996, Detective Sergeant Henry visited Paul Gallagher at Mountjoy Prison, Dublin where he declined to make any formal statement. He wished to make a deal about getting out on bail. No promises were made to him. Detective Sergeant Henry recorded:

After some time he stated to me the following, he said he was put out of Frankie's nightclub by a bouncer accompanied by young Frank and at 1.10 am he spoke to old Frank regarding why he was put out. He then walked to Irish Street up to The Close and down to Ayton's house. He said when he got there he found the car turned and a spoon which he used to start the car missing from the dash where he had left it. He stated that he got into the car and tried it in reverse, it wouldn't start so he went to the rear of Ayton's house and got help. He then discovered that the brackets which held up the rear wheel under the boot at the rear of the car was hanging down and the spare wheel missing. He said that one of the Ayton's came out with him and pushed the car and started it. He said he drove up The Close and over to Irish Street down to the main street, turned right and went to the Parting Glass and turned again and went to Derry. He mentioned he got £8 worth of petrol in Desmond's in Strand Street and later drove to Castlederg to see Glenda Muldoon. He also stated that he got £500 in the toilet from young Frank at 11.30 pm on 13/10/96 prior to being put out. He stated he was told to come back the next night at 9.00 pm. He said that he returned to the Tudor Lounge in Frankie's on Monday night and that he was told by McBrearty Junior to burn the car and that he drove to Milford. He went to Milford to get the McGinleys, Francie and Pat to burn his car, he couldn't get them so he threw away the hook and drove back to Letterkenny and then to Castlederg. He said he knew there was a hook in the boot so on the back road from Milford he stopped and threw out the hook.⁴⁶¹

⁴⁶⁰ Tribunal Documents, pages 2336 and Transcript, Day 229, Q.324-349 – Detective Sergeant Henry originally said that he was told by Gallagher that Frank McBrearty Junior had told him to burn the car in interviews on the 18th of October 1996 but in evidence corrected this to the exchange between them on the 29th of October 1996.

⁴⁶¹ Tribunal Documents, pages 2333-2334.

- 3.553. In evidence Detective Sergeant Henry explained his growing suspicion about Paul Gallagher:

I was getting more suspicious of his involvement in the matter and I went to the prison to speak to him because I felt that he wasn't telling the truth. It was then I think that he said about Frankie McBrearty having given him the £500 in the toilet the night before, and when I asked him then what the denominations were in he said ... I forget now exactly the words he used but that some of them were 50p pieces. I told him straight up, I said you're lying to me because I said nobody had the 50p pieces only yourself from the burglary at Dunnion's. Because at that stage I possibly would have had the proof as well, the fingerprint proof that he had actually done it. But even if I hadn't I was still convinced in my own mind he was the culprit for Dunnion's.⁴⁶²

- 3.554. In addition, if Paul Gallagher was trying to allege that Frank McBrearty Junior had paid him to get rid of evidence he had received the payment in advance of the commission of the crime since he was supposedly paid at 23.30 hours on the 13th of October. Though he did not put much weight on the story told to him, he had to have the billhook examined. He was satisfied after the meeting on the 19th of November 1996 that the story told to him by Paul Gallagher concerning Frank McBrearty Junior was a complete fabrication.⁴⁶³ He believed his motivation was to gain Detective Sergeant Henry's assistance in getting bail and getting out of prison. He was also still Detective Sergeant Henry's prime suspect for the death of the Late Mr. Barron and there was a possibility that this was an effort to deflect suspicion away from himself and his vehicle.⁴⁶⁴

- 3.555. Detective Sergeant Henry conveyed all this information to the conference into the death of the Late Mr. Barron on the 21st of November 1996. The main thrust of the investigation at that time was directed against Mark McConnell and Frank McBrearty Junior. Detective Sergeant Henry told the Tribunal:

While I was flogging my side of it, I feel that I wasn't being listened to as much as I should have been, if that's the right way to put it, ... at the actual conferences, I don't think there was anybody that stood up and gave me support, let's put it that way. I was so convinced of my situation that at every opportunity I was giving it in and I was putting in my reports, as it were, in relation to it but, while, and I don't want this to come across the wrong way, while I was being listened to, they didn't hear me ... up to the point that

⁴⁶² Transcript, Day 229, Q.350-353.

⁴⁶³ Transcript, Day 229, Q.362-365.

⁴⁶⁴ Transcript, Day 229, Q.365-366.

*I felt that he was still a suspect when the arrest was being organised.*⁴⁶⁵

Having said that, Detective Sergeant Henry was satisfied that he was allowed to complete every job which he wished to do in relation to his inquiry.

- 3.556. As to the manner in which this information was conveyed to the conference, Detective Sergeant Henry told the Tribunal: "I put it in as I found it." Garda Tina Fowley made a note of the information as it was furnished by Detective Sergeant Henry to conference on the 21st of November 1996⁴⁶⁶. Garda Fowley gave her impressions to the Tribunal of how Detective Sergeant Henry's inquiries were viewed by the officers and others:

*He became almost the subject of ridicule in relation to the investigation. He was nicknamed 'Captain Hook' after the discovery of the billhook, and his pursuance of that aspect was almost a source of derision during the investigation ... At a conference, if something came up in relation to Paul Gallagher, there'd almost be a sigh or a, not quite a laugh, almost a snigger, in relation to it. I personally did not approve of the Captain Hook label that was attached to Detective Sergeant Henry and his aspect of the investigation ... The investigation into Paul Gallagher was not being taken as seriously by the management of the investigation as it was by Detective Sergeant Henry. The pursuit of Paul Gallagher, the investigation into him, was thorough as a result of Detective Sergeant Henry's impetus into that aspect of the investigation.*⁴⁶⁷

- 3.557. The focus was on Mark McConnell and Frank McBrearty Junior and some of their relations and friends.
- 3.558. Garda Fowley agreed, under cross-examination, that it was made clear by Detective Superintendent Shelly that he was not interested in Detective Sergeant Henry's investigation into Paul Gallagher and that he in fact wanted to hear no more about it on the 21st of November 1996. The information was noted and scant regard was paid to it thereafter. He presented his evidence on the basis of what he had been told.⁴⁶⁸
- 3.559. The Tribunal is satisfied that Detective Sergeant Henry simply reported to conference the progress made in his investigation of Paul Gallagher and what he had been told and did not seek to support the allegations made by Paul Gallagher

⁴⁶⁵ Transcript, Day 229, Q.367-378.

⁴⁶⁶ Tribunal Documents, page 6006.

⁴⁶⁷ Transcript, Day 219, Q.26-33.

⁴⁶⁸ Transcript, Day 220, Q.123-130.

which he believed to be lies. On the other hand, there is no suggestion that he reported to conference that he believed the allegations to be untrue. Sergeant Hannigan when asked about the reaction to Detective Sergeant Henry's attempts to investigate Paul Gallagher, said:

Detective Sergeant Henry pursued Mr. Gallagher ... it wasn't ranked as important, at that stage, from an early stage, the two main suspects and the thrust of the inquiry was focussed on Frank McBrearty Junior and Mark McConnell ... I recall at some meeting that Detective Sergeant Henry made an intervention in relation to Mr. Gallagher and that some joke was passed. I didn't get the joke, but I know that the conference room laughed, including myself, whatever was said in relation to his offering about Mr. Gallagher and he was told that we were not going down the Gallagher road. I don't have a date for that but I know that some joke was told. It appeared that maybe Detective Sergeant Henry wasn't the object of the joke but it was to do with his intervention in relation to Mr. Gallagher ... I remember that there were collective moans alright and as I said in my evidence the last day there was a joke told and the whole incident room laughed and I laughed ... He was a lone voice in that regard.⁴⁶⁹

3.560. Paul Gallagher alleged that:

From the start, the first day I was arrested I was put under pressure. Sure they called me a murdering bastard for something like twelve hours. There must have been twenty Guards come in, different Guards every five minutes. Henry came into me and he says it's like this, Gallagher. He says it was either you who goes up the road or McBrearty goes up the road. I don't give a ... who goes up it. I'll leave you here for twenty minutes to think about it ... for the whole day it was me that knocked him down and then in the evening time it started to change to Frank McBrearty then.⁴⁷⁰

3.561. He also said in evidence that he lied about Frank McBrearty Junior giving him £500 at 23.30 hours on the 13th of October 1996:

Because at the end of it he [Frank McBrearty Junior] was blaming me, the Guards were telling me it, he was blaming me for knocking him down and they came in with statements of Frank McBrearty saying things that only he knew like and he says McBrearty is trying to blame you ... Sylvie Henry ... they kept

⁴⁶⁹ Transcript, Day 220, Q.489-492 and Transcript, Day 222, Q.82-90.

⁴⁷⁰ Transcript, Day 197, Q.718-722.

*saying well, he says the trousers were hanging off you with £1 coins and 50 pence pieces, and then that's it, I just started thinking he's saying something like ... he was blaming me for knocking your man down ... I was just thinking someone is trying to blame me for knocking somebody down.*⁴⁷¹

3.562. However, Detective Sergeant Henry's visit to Mountjoy Prison was at Paul Gallagher's request. He could not remember whether he requested the visit in order to spin Detective Sergeant Henry a better story about Frank McBrearty Junior.⁴⁷² In addition, he initiated the contact on the 29th of October 1996 that led to the telling of the lies of that date to Detective Sergeant Henry. He denied that this was for the purpose of gaining Detective Sergeant Henry's assistance in seeking bail.⁴⁷³ Paul Gallagher was asked to explain to the Tribunal how it was that the billhook assumed such an importance in the lies he told to the Gardaí. He knew the billhook had been stolen from Mr. Stewart. He did not tell the Gardaí this. He said he did not know the importance of the billhook. He did not have a clue why it was important for them to understand about the billhook. He could not remember whether it was suggested that the billhook was used on Mr. Barron or something like that.⁴⁷⁴

3.563. The Tribunal is satisfied that Paul Gallagher lied to the Tribunal when he said that he could not remember the purpose for which he told lies to Detective Sergeant Henry about the billhook, and all of the other matters which he admitted were lies to the Tribunal. He also told lies when he said he could not remember how he knew to tell lies which might fit in with the facts surrounding the Late Mr. Barron's death so as to implicate Frank McBrearty Junior in an unlawfully killing. In telling the various lies he obviously concluded, for reasons which he refused to disclose, that his possession of a billhook and his disposal of it could be made to fit a scenario in which Frank McBrearty Junior could be implicated in the killing of the Late Mr. Barron using the billhook as a weapon which he then told Gallagher to dispose of. Detective Sergeant Henry could not have known of the billhook until told of it by Paul Gallagher. Indeed, the Gardaí did not become aware that the billhook had been stolen until inquiries made by the Carty team. I, therefore, conclude that Paul Gallagher made up this story either because he believed Frank McBrearty Junior had said something to his detriment to the Garda Síochána or because he felt under suspicion himself and wished to deflect that suspicion onto Frank McBrearty Junior. He probably heard something of the rumours implicating Frank McBrearty Junior in the death of the Late Mr. Barron

⁴⁷¹ Transcript, Day 197, Q.739-757.

⁴⁷² Transcript, Day 197, Q.756-758.

⁴⁷³ Transcript, Day 197, Q.781-799.

⁴⁷⁴ Transcript, Day 197, Q.800-814.

and concocted a suitable story on that basis. It does not appear that Paul Gallagher was closely associated with other civilians, such as Darcy Connolly, or was so closely attached by friendship to the Barron family that he invented his stories against Frank McBrearty Junior as some sort of misguided support for the Barron family. It is more probable that Paul Gallagher lied for personal self-serving reasons of deflecting suspicion from himself and onto Frank McBrearty Junior whom he may have regarded as being responsible for assisting the Gardaí in their investigations into the Dunnion's café burglary and had been concerned in his removal from the nightclub on the Sunday night. Mr. McBrearty Junior had also given a short account of that expulsion, which gave rise to a suspicion on the part of Detective Sergeant Henry that Gallagher's vehicle may have been involved in the death of the Late Mr. Barron.

3.564. Paul Gallagher lied to and obstructed the Tribunal in the manner in which he gave his evidence.⁴⁷⁵ He never explained to the Tribunal why, when he was being interviewed in respect of the death of the Late Mr. Barron arising out of a road-traffic accident, he thought to introduce the concept of a weapon being used upon the deceased in the form of the billhook or how he thought the stories which he told implicating Frank McBrearty Junior in the disposal of the billhook, the paying of the bribe, and the use of his car whilst he was in the nightclub, could be regarded as plausible by the Gardaí investigating the Late Mr. Barron's death.

3.565. Paul Gallagher told similar lies when interviewed on the 16th of January 1998, with the exception of the alleged bribe of £500 paid at 23.30 hours on the 13th of October 1996 by Frank McBrearty Junior to him which he acknowledged to be a lie on that occasion.⁴⁷⁶ He also acknowledged this bribe to be a lie to Detective Sergeant Henry, when arrested by him in respect of other matters on the 11th of February 1998.⁴⁷⁷ He acknowledged many of the lies that he had told to Detective Sergeant Kyne and Detective Sergeant Barker on the 31st of May 1999 when interviewed at Wheatfield Prison. Indeed he also acknowledged many of these lies to the Tribunal in evidence. It was noted in the memo of interview of Detective Sergeants Kyne and Barker that:

When questioned as to his reasons for alleging in his statements that Frank McBrearty Junior had asked him to get rid of the item in the boot of his car, he states that he had heard rumours that the McBreartys were alleging that he had been involved in the death of Richard Barron. He made the statement including the allegations in relation to the billhook in order to put the blame back on them.⁴⁷⁸

⁴⁷⁵ Transcript, Days 197, 198, 199 – various references.

⁴⁷⁶ Tribunal Documents, pages 2363-2368.

⁴⁷⁷ Tribunal Documents, pages 2336-2337.

⁴⁷⁸ Tribunal Documents, pages 2371-2375.

- 3.566. Detective Sergeant Henry, in cross-examination by counsel for Mr. Gallagher, denied all of the allegations made by Mr. Gallagher. He refuted the suggestions that he had put pressure on Mr. Gallagher to implicate Frank McBrearty Junior or that he produced any statement to him said to have been made by Mr. McBrearty. It was also suggested to him that the timeframe afforded Mr. Gallagher between the time of his expulsion from the nightclub and the finding of the body of the Late Mr. Barron was very limited for him to have committed the offence. In addition, there were witnesses who gave evidence of driving up to the area in which the body was found and others who saw Mr. Gallagher's vehicle being driven by him into Raphoe at times which rendered it very difficult for Mr. Gallagher to have committed the offence and returned down Irish Row into the Diamond without being observed by Mr. Lee Parker, in particular, driving away from the scene if he had been there. The latter observation is perhaps more by way of submission. It has to be acknowledged that Mr. Gallagher was a suspect in the mind of Detective Sergeant Henry and it is not the function of the Tribunal to reach any conclusion in relation to Mr. Gallagher's involvement in this accident. **The Tribunal cannot take the matter any further. However, in respect of any conflict of fact concerning meetings and interviews between Detective Sergeant Henry and Paul Gallagher, the Tribunal accepts the evidence of Detective Sergeant Henry.**

Statement of Frank McBrearty Junior on the 18th of October 1996

- 3.567. Mr. Frank McBrearty Junior takes issue with a number of matters in respect of this evidence. Firstly, he and his father contend that they were not visited on Monday, 14th of October 1996 by Inspector Gallagher and Detective Sergeant Henry, but that he was visited instead by Inspector McGinley and Inspector Gallagher on Wednesday, 16th of October 1996 who were accompanied by Mr. McBrearty Senior. He then told them that Gallagher had been expelled from the nightclub between 00.30 and 00.45 hours. He also claimed that the statement, which is purported to be signed by him on the 18th of October 1996, was in fact made to Detective Garda Carroll on Thursday, 17th of October 1996. He suggested to Detective Garda Carroll that he should call out on the Thursday and it was on that occasion that he informed Detective Garda Carroll that Gallagher had attended the McBrearty premises. He told him that a Garda Peter 'Shankey' Smith had come into the pub and that there were only two people there, and that Gallagher bought bottles of Budweiser with 50p pieces. He also contended that he told the Carty team this fact when he and his wife met with them in the Mount Errigal Hotel.
- 3.568. Mr. McBrearty supports his submission as to the date of his statement being the 17th of October 1996 because on the morning of the 18th of October 1996 the

Member in charge of Letterkenny Garda Station at the time of Paul Gallagher's arrest records that part of the information he received justifying the arrest and detention of Paul Gallagher was to the effect that Paul Gallagher had purchased drinks in the bar with 50p pieces.

- 3.569. Mr. Frank McBrearty Junior submitted to the Tribunal that this was proof that Detective Garda Carroll had taken a statement from him on the 17th of October 1996, destroyed that statement, and substituted for it a statement which was forged by Detective Garda Carroll upon which he had forged Mr. McBrearty Junior's signature. He then contended that Detective Garda Carroll had forged his signature on the alleged confession of the 4th of December 1996. He further contended that the purpose of both forgeries was to put the Garda Síochána in the position that if the alleged confession of the 4th of December 1996 were to be submitted for expert handwriting analysis, his forged signature of the 18th of October 1996 could be produced as a sample to the expert, who would unwittingly rely upon it and come to the conclusion that both signatures were the same and, therefore, that the signature on the alleged statement was that of Frank McBrearty Junior.
- 3.570. There appears to be some conflict between the proposition advanced by Mr. McBrearty Junior and his statement to the Tribunal investigators concerning this statement in which he appeared to have acknowledged signing the statement of the 18th of October 1996⁴⁷⁹. He also seemed to do so in evidence to the Tribunal.⁴⁸⁰ Garda Carroll gave evidence to the Tribunal in which he outlined the circumstances in which the statement was taken. **The Tribunal does not accept the allegations made against Garda Carroll in respect of the concoction of this statement and the forgery of Mr. McBrearty's signature upon it.**
- 3.571. The issue of whether the signature on the alleged confession of Mr. Frank McBrearty Junior supposedly made on the 4th of December 1996 is that of Mr. Frank McBrearty Junior will be determined in a later module of the inquiry.

Conclusions in respect of Paul Gallagher

- 3.572. **Paul Gallagher remained a suspect for the death of the Late Richard Barron. In criminal investigations, suspects may be eliminated as the investigation progresses. He was not formally eliminated as a suspect. Detective Sergeant Henry properly pursued the issue. He was discouraged in his efforts by the investigation team which had no interest in any alternative suspects to Michael Peoples, Frank McBrearty Junior and Mark McConnell.**
- 3.573. **Paul Gallagher never explained to the Tribunal how he came to make up his lies against Frank McBrearty Junior and more especially how, in doing**

⁴⁷⁹ Tribunal Documents, page 4016.

⁴⁸⁰ Transcript, Day 56, page 170, Q.944 – see also Transcript, Day 231, Q.904-963.

so, he constructed a story suggesting that Frank McBrearty Junior had used his car, and a billhook in the killing of the Late Mr. Barron. He told a story which fitted the scenario of a manslaughter or murder, rather than a road-traffic accident. The Tribunal concludes that he did so for self serving reasons to deflect suspicion from himself. He was most likely aware of the rumours concerning Frank McBrearty Junior's involvement in the Late Mr. Barron's death. He also believed him to be responsible for pointing the Gardaí in his direction in respect of the burglaries. It was a retaliatory lie most likely of his own concoction. It was not prompted by Detective Sergeant Henry. The Tribunal does not believe that there was any Garda involvement in its creation.

John 'Manny' Hegarty

3.574. The encounter between John 'Manny' Hegarty and the deceased is set out earlier in Part 1 of this chapter. Mr. Hegarty seems briefly to have become a suspect in relation to a supposed assault on the late Mr. Barron leading to his death. It must be emphasised that there is absolutely no evidence to support that proposition. He might also, because he may have been driving in the area that evening, have become a suspect in relation to the road-traffic accident aspect of the incident. He was interviewed on the 14th October, 1996 by Sergeant Joseph Hannigan in which he described the altercation which he had with the late Mr. Barron:

Last night the 13th October, 1996 I went for a drink. I was at it all day. I left McBrearty's pub at around 9:30 p.m ... I had a good drop of drink. I went down to the Suile Tavern. I went out to the gents toilet, when I came back Richie Barron was in. I don't remember the time but it could be well on into the night. We had a couple of drinks together. He made a shape at me and me at him and we became entangled. He punched me and I punched him. There was no cuts on Richie. Eugene Gamble the barman separated us. He put Richie out. Richie came back in again and fell asleep at the counter. I just mind him leaving and said goodnight to him and he said goodnight. It was only a minor thing between us.⁴⁸¹

3.575. In a later statement to Detective Garda McHale taken on the 16th November 1997, he could not remember what the row was about. He recalled that the late Mr. Barron had scraped him with his nail under the eye and his left cheek but it was not a serious scrape and did not require medical attention. He also said that he owned a car which he parked outside the Suile Tavern on the 13th October. He and Ms. Annie Caulfield stayed at Mr. Hugh Caulfield's at St. Eunan's Terrace and the following morning his car was outside that address but he had no recollection of driving it there.⁴⁸² There was, therefore, an issue to pursue in respect of the use of a vehicle on the night.

⁴⁸¹ Tribunal Documents, page 1627.

⁴⁸² Tribunal Documents, page 1628.

3.576. The Lennon report viewed the material in respect of Mr. Hegarty and acknowledged that he was never eliminated formally from Garda inquiries but that there were a number of factors which made him an unlikely suspect in respect of any 'attack' on the late Mr. Barron. These factors were:

- (1) He was extremely intoxicated at the time and would have had great difficulty in travelling to and from the scene without being observed.
- (2) He does not reside in the vicinity of the scene and would have had to travel up to the scene and return down the same road in order to reach his residence.
- (3) According to the barman of the Suile Tavern, Declan McCullagh it was between 12:45 a.m. and 1 a.m. when he left the premises in which case he would have had very little time in which to carry out the attack.
- (4) Manny Hegarty was observed in Sarah's Café between 12:20 a.m. and 12:35 a.m. purchasing a take away according to two members of the Café staff, namely Carmel Connolly and Philomena Laird.
- (5) Both Manny Hegarty and Annie Caulfield were observed by Ann McCullagh sitting in Manny Hegarty's car which was parked outside the Suile Tavern presumably eating their food at 1 a.m.
- (6) The particular type of argument involving the deceased and Manny Hegarty on this night had occurred on previous occasions and was forgotten about as soon as they met on the next occasion.
- (7) The intoxicated state in which Manny Hegarty was in makes it an unlikely possibility that he would have been capable of carrying out an attack of such ferocity.⁴⁸³

3.577. Declan McCullagh, a barman who witnessed the incident, in his statement on the 17th October, 1996 to Detective Garda Flynn described it:

Manny Hegarty starting annoying Richie about money he maintained Richie owned him from way back. This was to do with the deal they both were in for a horse. Richie was waving his hand at Manny to stop annoying him. I went out working in the lounge and I was called back to the bar by one of the girls because Manny and Richie were fighting. At this stage, Richie Gamble had got in between them but I had to give a hand to hold Richie back because he is very strong. I did not see any blow struck but Manny had a cut on his head which I did not see earlier on him.

⁴⁸³ Tribunal Documents, pages 77-78.

- 3.578. It is clear from the account given by Mr. McCullagh that this incident was far more serious than that between Mark McConnell and the Late Mr. Barron, which, occurred in the Town and Country earlier on.
- 3.579. Though Mr. Hegarty was regarded as a suspect for the assault, the Tribunal concludes, notwithstanding a number of jobs carried out in respect of his movements in the first and second investigation, his tenure as a suspect was, properly, short lived. More attention might have been paid to his driving that night. In addition, it cannot but be noted that a number of the features which caused him to be discounted as a suspect equally applied to Mr. Frank McBrearty Junior and Mr. Mark McConnell. These include the short time which they had to carry out the attack, the fact that he was observed in Sarah's Café between 00:20 and 00:35 hours which the Lennon Report was willing to consider as an alibi (a dispensation the investigation declined to give Mr. McConnell) and that the nature of the argument with the deceased was of a somewhat minor nature.

William Ayton & Amanda Sloyan

- 3.580. In the course of later inquiries into the death of the late Mr. Barron carried out by the Carty team, William Ayton and Amanda Sloyan came to the fore. William Ayton became a suspect to the extent that he was arrested on suspicion of dangerous driving causing the death of the late Mr. Barron on the 13th/14th October, 1996, on the 27th January, 2002. He was the only person ever arrested for this offence.
- 3.581. William Ayton and Amanda Sloyan went to see a late film in Letterkenny on the evening of the 13th October. They were never interviewed by the first investigation team, but were interviewed initially by William Flynn, a private investigator in April, 1997. The film ran from 23:00 hours to 00:30 hours approximately. Afterwards they went and got something to eat and returned to Raphoe at 01:20 to 01:30 hours approximately, via Convoy. Mr. Ayton was driving his mother's car, a red Vauxhall Cavalier Registration Number 85-DL-2086. On the way into Raphoe they ran out of petrol at Frank McMonagle's house and started to walk. They got as far as the national school and a Paul Kilpatrick gave them a lift to near Mrs. Ayton's house at the Close, Raphoe. His mother, Kathleen Ayton, has already been referred to in respect of the starting of Paul Gallagher's car earlier in this section. Derek and Paul Ayton also resided with her and are referred to in earlier parts of this Report in respect of the movements of the Late Richard Barron and Paul Gallagher. William Ayton told Mr. Flynn that when he went to his mother's house a Conor McGranaghan had told her that the late Mr.

Barron had been knocked down. He then said that he got the loan of another car and towed his mother's car home⁴⁸⁴. None of the other residents of the house mentioned any of this in their various statements made to the first investigation team.

3.582. The Lennon team when reviewing the notes made by William Flynn in respect of William Ayton, noted that William Ayton had not previously been interviewed. However, they were interested, not in his whereabouts, but on his sighting of a White Peugeot 205 Registration Number 89 DL or 90 DL. This car had driven ahead of William Ayton's car on his way home from the cinema but turned off left ahead of him down towards Mongorry into Raphoe⁴⁸⁵. He was then interviewed by Detective Garda McHale on the 24th November, 1997. He substantially repeated the account he had given to Mr. Flynn, including the fact that he had seen Frank McBrearty Senior standing at the top of St. Eunan's Terrace at roughly 01:45 to 01:50 hours and added that he had borrowed his mother's boyfriend's car (Josie McMenamin) in order to recover his mother's vehicle which had run out of petrol⁴⁸⁶. Amanda Sloyan told Mr. Flynn that she had no memory of seeing any of the McBreartys. This statement was recorded in the Job's Book as "not having any bearing on the investigation". This was to change.

3.583. On the 23rd July, 2001, in a telephone conversation with Sergeant D. Flannery, Mr. Ayton was asked to give an account of his movements on the night of the 13th/14th October, 1996. He repeated much of what he had told Mr. Flynn and Detective Garda McHale about going to Letterkenny with Ms. Sloyan, returning, seeing a White Peugeot turning off down towards Mongorry, running out of petrol, being picked up by Paul Kilpatrick, returning to his mother's house at the Close and picking up Mr. McMenamin's car in order to retrieve his mother's car, and seeing Mr. McBrearty Senior in St. Eunan's Terrace. He then described what he did:

He turned Josie's car at Frank McMonagle's house. He attached the rope to his mother's car, a red Vauxhall Cavalier and to Josie's car. He drove Josie's car as the gear box was rattling in it. Amanda steered his mother's car. They drove into town taking a right turn at the Terrace ... there were patrol cars all round Frankie's. We look a right at the Glen/Guest House and took a left up William Crawford's house, came out the back road at Mrs. Coyle's shop, came up and into Ma's house. When he got back, he pushed his mother's car into the yard or pushed Josie's car into the yard, he doesn't know which. Amanda and I went into the house and left Josie's keys back. When he got in, Derek was there as was Connor McGranaghan. Josie McMenamin and his mother were still in the bedroom. Paul was in his bedroom.⁴⁸⁷

⁴⁸⁴ Tribunal Documents, pages 2415-2417.

⁴⁸⁵ Tribunal Documents, pages 8778 – 9, Job 81 of the Lennon inquiry.

⁴⁸⁶ Tribunal Documents, page 2415.

⁴⁸⁷ Tribunal Documents, pages 5893-4

Interview with Kathleen Ayton

- 3.584. On the 19th July, 2001, Sergeant Flannery and Detective Garda Flynn spoke to Kathleen Ayton. She acknowledged that she may have given her son William a loan of her car on Sunday, 13th October, 1996. He never told her that it had run out of petrol. When asked to comment on William Ayton's statement of the 24th November, 1997, she said that keys of Josie McMenamin's car would have been in her handbag that night which was in a drawer downstairs. She would not have given him the keys of Mr. McMenamin's car. Mr. McMenamin was in bed where he had gone after they had returned home. She could not understand why her son drove to Convoy, as if he had come down over the mountains, he would have saved a few miles and if he had no insurance it made no sense for him to go into Convoy as he might encounter the Gardaí. She was asked "Do you remember William and Amanda being in your home the morning of the 14th October, 1996?" and replied, "I cannot recall them being in the house at all that night"⁴⁸⁸.
- 3.585. In her statement of the 25th October, 1996, she said that she had parked Mr. McMenamin's car at 20:00 hours approximately and it was not moved until the following morning.⁴⁸⁹

Josie McMenamin

- 3.586. In a statement made to Sergeant Hannigan on the 10th November, 1996, Mr. McMenamin confirmed that his car was parked by Kathleen Ayton at the Close, at approximately 20.00 hours on the 13th October, 1996 and remained there overnight.⁴⁹⁰ He stayed at the Aytons' overnight. He was awoken some time between 01.00 hours and 02.00 hours and told about the accident which occurred to the Late Mr. Barron. He was up at approximately 03.00 hours when Conor McGranaghan came into the house and told him about the death of the Late Mr. Barron. Mr. McGranaghan confirmed that he went to the Aytons' house at some time after 03.30 hours and chatted with the Aytons' for some time and then fell asleep in a chair at about 05.00 hours.⁴⁹¹
- 3.587. Mr. McMenamin was subsequently interviewed by Sergeant Fergus Treanor and Detective Garda Richard Caplice on the 19th July, 2001, and was asked to comment on William Ayton's story. He said:

That is the first I heard of my car being used to tow any car that night. Tonight is the first I heard of it. If William had the car away, she is responsible. She had the keys, she was responsible for it. If the car was out the road, she is responsible for that ... I have no memory of hearing that the car ever ran out of petrol and had to be towed. I would have expected

⁴⁸⁸ Tribunal Documents, pages 5864-5

⁴⁸⁹ Tribunal Documents, pages 2287-8

⁴⁹⁰ Tribunal Documents, pages 2122

⁴⁹¹ Tribunal Documents, pages 1777-8

Kathleen to tell me if she gave William my car or keys to tow in her car and she did not tell me that. Kathleen did not tell me my car was moved. If she knew, I think she would have told me. I would have gone to bed with a bottle of brandy on me anyway. I will put it to you that way...I cannot say it definitely wasn't used to tow her car that night. I was in bed drunk. She should know if she gave my keys to someone or gave my car to someone ...To be honest about it, I don't think she would give her car to William. I can't say I ever remember her giving him the car. That night or the next day I don't remember any discussion about her car running out of petrol or having to be towed. I wouldn't think there was ever a rope lying in the boot of my car. If William wanted my car to tow her car in, I don't know if he would ask me for it and it is doubtful if I would have given it to him. I wouldn't give it to him if he had any drink or anyway he wouldn't be insured. I never heard one word of this about my car having been moved until this night. I gave no permission to anybody to move or in any way use or drive my car for any purpose.⁴⁹²

- 3.588. In a further statement to Detective Garda Foley on the 27th January, 2002, Mr. McMenamain changed aspects of his account. He then said:

The very first time that I heard William Ayton had used my car was the following morning when Kathleen Ayton told me that she had given the car to William because she said his car had run out of petrol. I do not remember if I had a towing rope in the car or not. The car was in good condition and there was no noise coming from its gear box.⁴⁹³

- 3.589. In that statement he also indicated that he had more drinks in the early hours of the morning after Mr. McGranaghan arrived. It may be that the amount of drink consumed by Mr. McMenamain that night poses some difficulty for him in recollecting the course of events.

Paul Kilpatrick

- 3.590. In his initial statement made on the 9th November, 1996, Paul Kilpatrick said that he went with his friend George Harkin from Convoy to the Parting Glass arriving there about midnight.⁴⁹⁴ His friend George Harkin confirmed this account⁴⁹⁵. They remained there until the nightclub ended and left for home at 03:00 hours approximately. He was subsequently interviewed by members of the Carty team on two occasions. He was asked whether he had given a lift to William Ayton and Amanda Sloyan on the 13th October, 1996 when their car had run out of petrol

⁴⁹² Tribunal Documents, pages 5138-5140.

⁴⁹³ Tribunal Documents, pages, 5141-42.

⁴⁹⁴ Tribunal Documents, pages 1978-9.

⁴⁹⁵ Tribunal Documents, pages 2251-2.

and he denied it.⁴⁹⁶ He also denied it to the Tribunal in evidence.⁴⁹⁷ The Tribunal is satisfied that he did not pick up William Ayton or Amanda Sloyan that night.

Amanda Sloyan

- 3.591. Ms. Sloyan, who lived in St. Eunan's Terrace, Raphoe, largely supported Mr. Ayton's account of the evening in her interview with Mr. William Flynn.⁴⁹⁸
- 3.592. The Carty team made contact with Ms. Sloyan by phone in London and she told Sergeant Flannery that on the way back to Raphoe they drove out as far as Convoy and saw a Silver coloured Peugeot 205 turning left towards Mongorry at approximately 00:30 hours and that on the way back from Convoy to Raphoe the car ran out of petrol at St. Bridget's Well at Tullyvinney. He said, " Paul Kilpatrick came along and gave us a lift as far as William's house in the Close ... I know him well, he was at school with me" . She also said that they retrieved the car when Josie McMenamain drove them out as far as the car which had to be towed back. She thought Josie McMenamain steered Mrs. Ayton's car on the way back.⁴⁹⁹
- 3.593. Members of the Carty team travelled to England and took a statement from Ms. Sloyan on the 10th July, 2001. She substantially repeated the account given to Sergeant Flannery and changed some aspects of it. She said that she had no idea why they went to Convoy but she thought it was to avoid the Gardaí as William Ayton had no insurance. She repeated that Paul Kilpatrick came along in his car heading into Raphoe and that she knew him well. They were dropped at Ayton's or in the Diamond. They went into Mrs. Ayton's house in the Close where she informed them Richard Barron had been killed. She was not sure whether this was before or after the car was towed home. Though she was definite that Mrs. McMenamain's car was used in the towing, she was not sure if Mr. McMenamain had been present or not.⁵⁰⁰
- 3.594. A further interview was conducted with Ms. Sloyan by Detective Superintendent Foley and Sergeant Bell accompanied by a member of the Croydon Police on the 27th January, 2002. She said as follows:

She went to the cinema in Letterkenny with William for the 10:30 p.m. to 11:00 p.m. film. She remembers coming home from Letterkenny out the Ballybofey Road and turning left for Convoy. William Ayton was driving his mother's car and was not insured. She is adamant that she was not driving at all that night but did drive cars with William Ayton uninsured occasionally at that time. Amanda Sloyan can remember reaching the

⁴⁹⁶ Tribunal Documents, pages 5877-5880 dated 29th June, 2001 and 30th July, 2001 respectively.

⁴⁹⁷ Transcript, Day 208, Q. 613.

⁴⁹⁸ Tribunal Documents, page 2416 and page 4172.

⁴⁹⁹ Tribunal Documents, pages 5881-4.

⁵⁰⁰ Tribunal Documents, pages 5885-9 – Statement made to Detective Garda T. Flynn and Sergeant Dermot Flannery.

junction of the Mongorry Hill/Convoy Road and seeing a silver or white Peugeot car going towards Raphoe. She can't put a time on this. It was shortly after the late film finished that Sunday night. Amanda Sloyan accepted that this was the logical way for William Ayton to go home, especially if he had no insurance or was avoiding the Guards. Amanda Sloyan cannot say why William Ayton drove to Convoy that night and out of Tullyvinney Road where they ran out of petrol.

- 3.595. She then described how they were picked up by Paul Kilpatrick, but giving the passage of time she could not remember for certain if it was him. They returned to Mrs. Ayton's house where she was sitting up and crying about the death of the Late Mr. Barron. A note of this interview continues:

Amanda Sloyan cannot say for definite how they got back out to collect William Ayton's mothers car. She thinks it was in Josie McMenamin's car and she is vague about who drove, saying at one stage that it could have been Josie McMenamin and then stating it was likely to have been William Ayton. She cannot say if she was driving behind William Ayton as he towed his mother's car back to Raphoe that morning. She accepted that it was possible but again could not remember for certain. She recalls that they travelled on a back road around Raphoe Village which came out at Dr. Quinn's house. She can only recall that she was home at about 2:30 a.m. on the 14th October, 1996. She is adamant that she and William Ayton were not involved in any accident that night. She stated that she had nothing to hide and that if she had anything to hide, she would tell the truth. She is claiming at this stage that her recollection is vague due to the passing of time.⁵⁰¹

- 3.596. On the same date as Ms. Sloyan was interviewed in London, on the 27th January, 2002, William Ayton was arrested on suspicion of dangerous driving causing the death of the Late Richard Barron by Sergeant Dermot Flannery. He was detained and interviewed at Letterkenny Garda Station. In the course of these interviews, Mr. Ayton was questioned extensively about his movements with Ms. Sloyan on the night of the 13th/14th October, 1996 and various contradictions which were perceived to have arisen between accounts given by those interviewed in the course of the Carty inquiry already referred to and Mr. Ayton's accounts to date. Essentially, Mr. Ayton repeated his story and that of Ms. Sloyan's which has already been set out. He gave the following account of events at his mothers house after they had been given a lift by Paul Kilpatrick to Raphoe:

I went into my mother's bedroom which was downstairs, Amanda was with me, my mother was sitting on the side of the bed crying. Josie

⁵⁰¹ Tribunal Documents, pages 5890-1.

McMenamin was either sitting or lying on the bed, he was awake. He spoke to me and Amanda. My mother was crying on the bed. I asked her what was wrong, she then told me that Richie Barron was killed, she asked me where was her car and if I came down the Mongorry Road. My mother was anxious to know where I was and where the car was. I told her that the car had run out of petrol at Frank McMonagle's. I asked my mother for Josie's keys to tow in her car. Josie McMenamin was aware that I was taking his car to tow in my mother's car, he didn't mind. Conor McGranaghan and Derek were sitting at the kitchen table when me and Amanda came in the door. My brother Paul was coming down the stairs. I took the keys of Josie's car and Amanda and I drove out to get my mother's car, I drove Josie's car, the time was around 2 a.m. to 2:30 a.m. Amanda and I drove Josie's car, a Peugeot a dark cream in colour out by the Parting Glass, I don't know what way I left the house. When I was driving out St. Eunan's Terrace, I saw old Frank standing at the top of the Terrace beside the Dispensary. Before I left the Close, I asked Josie McMenamin if he had a rope and he said there would be one in the boot of his car. I had checked Josie's boot before going out to McMonagle's.⁵⁰²

3.597. He then described what he did in order to retrieve his mother's car:

When Amanda and I got out to McMonagle's, I turned Josie's car and tied a rope that I had found in Josie's car. I drove Josie's car back to Raphoe and Amanda steered my mother's car. The rope for towing was short, only about four foot. We came back on to the main Convoy/Raphoe Road and turned right for Raphoe. At the Terrace, I saw two or three patrol cars down at the Parting Glass. I wasn't covered to drive Josie's car so I decided to go down the Terrace.⁵⁰³

He then described the journey which he took back to his mother's house where he drove Mr. McMenamin's car past the front door and untied the rope and pushed his mother's car back into the Ayton yard. Then he turned the McMenamin car and parked it in front of the Ayton house and they both went into the house. He remained in the house with Amanda Sloyan for approximately half an hour and then walked her home.

3.598. Mr. Ayton was asked for an explanation as to why he had not called to Letterkenny Station as he had promised to do, in a telephone conversation to make a statement concerning his movements on the night of the 13th/14th October, 1996. He did not have an answer for this. He denied creating an alibi story with Amanda Sloyan to cover his movements that night⁵⁰⁴. He could not explain why Paul Kilpatrick denied giving them a lift as stated. He said that if

⁵⁰² Tribunal Documents, pages 5899-5900.

⁵⁰³ Tribunal Documents, page 5900.

⁵⁰⁴ Tribunal Documents, page 5903.

Amanda Sloyan said that Josie McMenamain was driving the car when it was being towed, she was a liar. He could not explain contradictions between Mrs. Ayton and Josie McMenamain's statements and his statements. The question was posed to him:

Q. Did you come down Mongorry, hit Richie Barron and lie low for a few hours and when you came into the house for the first time at nearly 4 a.m. and your mother was distressed because you were missing with her car and Richie Barron had been killed a few hundred yards from your house?

A. That's wrong. I didn't hit Richie Barron or I didn't come down that road...I know which way I came home, I didn't come by Mongorry.⁵⁰⁵

3.599. His mother was brought into the room in the course of an interview on the 27th January, 2002 and a conversation occurred, which was noted:

Kathleen Ayton: You can't make a liar out of me now. I never knew Josie's car was taken that night.

William Ayton: I asked you for the keys.

Kathleen Ayton: I don't mind that. I felt the car was never moved. He only admitted taking Josie's car to me last year over the phone. Whatever I tell you is the truth, he can say what he likes.

William Ayton: Was your car out of petrol that night. Did you get petrol for your car over that period?

Kathleen Ayton: No, I don't mind getting any petrol for it.

William Ayton: I told you the truth five times...you won't believe me.⁵⁰⁶

3.600. **There remain a number of suspicious elements to the stories told by William Ayton and Amanda Sloyan and the various people in the Ayton Household on the 13th/14th October, 1996:**

- (1) Paul Kilpatrick denied giving the two a lift.
- (2) Both, William Ayton and Amanda Sloyan had said they had been to a party earlier in the day. No witnesses could be found, by members of the Carty team, who saw them there together though after five years and the fact that drink was consumed that might be understandable.

⁵⁰⁵ Tribunal Documents, page 5908.

⁵⁰⁶ Tribunal Documents, pages 5919-5922.

- (3) Kathleen Ayton denies that she knew anything about William Ayton “borrowing” the McMenamin car until the Carty inquiry.
- (4) Josie McMenamin gave conflicting accounts of his recollection of events on the night, the reasons for which are not clear, but may be drink-related or related to the fact that he does not wish to admit allowing his car to be driven by an uninsured person.
- (5) There was no reason for William Ayton and Amanda Sloyan to drive to Raphoe via a route that brought them to Convoy when low on petrol. The excuse given is that William Ayton desired to avoid a possible Garda checkpoint on the Mongorry Road into Raphoe because he was uninsured. However, Kathleen Ayton thought that there was a real danger of being detected by Gardaí in Convoy by taking that route. In addition, he stated that he later drove out to the abandoned car by driving past the McBreartys’.
- (6) Amanda Sloyan said that John McMenamin drove the towed vehicle back to Raphoe but then changed this story and accepted that she may have done so. Josie McMenamin and William Ayton are adamant that he did not.
- (7) Kathleen Ayton was obviously agitated and upset when William Ayton and Amanda Sloyan returned home that night and was worried that William Ayton might have been involved in the death of the Late Mr. Barron and questioned him about it.
- (8) The Carty team stated that they conducted a practical experiment of towing a car with a five foot rope and that the reaction time was such that it was virtually impossible to travel any distance without colliding with the towing vehicle. It would have been more difficult for the then 17-year-old Amanda Sloyan to control the vehicle on a difficult route.
- (9) There was no report by any person suggesting a sighting of a towed vehicle as described.
- (10) A check was made of records to try to identify a Peugeot 205 registration number 89 DL or 90 DL as described or supposedly seen by William Ayton and Amanda Sloyan turning down towards Mongorry but this was unsuccessful.
- (11) There were no Garda patrol cars in Raphoe as stated by William Ayton at the time he supposedly towed his mother’s car home.

The Evidence of Amanda Sloyan

- 3.601. Ms. Sloyan gave evidence to the Tribunal and denied any involvement whether, as a passenger or a driver, in the incident that led to the death of the Late Mr. Barron. She described the route taken. William Ayton was going to drive her home to St. Eunan's Terrace. In doing so, he wished to avoid any possible Garda checkpoints at the Mart or near Frankie's nightclub in Raphoe. She thought this was the reason that he drove to Convoy. She rejected the suggestion that had they simply turned and come down towards Mongorry, down Irish Row into Raphoe, they would have travelled along a road that rarely, if ever, had a Garda checkpoint. She could have been dropped off in the town and walked home. He could have driven up into the Close.
- 3.602. The point at which the car ran out of petrol was in fact 0.5 miles from the chapel in Raphoe. It would have taken ten minutes to walk. They decided to walk home. The car was left at the side of the road. They walked for a couple of minutes before they were picked up in a white car by Paul Kilpatrick. She had no memory of any discussion with Mr. Kilpatrick or whether they were dropped in Raphoe or outside the Ayton house. She could not give any details of the car or of any conversation with Mr. Ayton about the route chosen or the fact that he was uninsured or what she was wearing. She had great difficulty in giving any surrounding detail of the incident. She could not remember whether she went into the Ayton house, even though there were graphic descriptions given by William Ayton and others of the scene within the Ayton house, that Mrs. Ayton was crying and there was a lot of drinking. She said she did remember Mrs. Ayton crying. She had no recollection of the towing of the vehicle back to the Ayton house. She was happy however to acknowledge that Josie McMenamin was not steering the car; she only had a vague recollection of doing so. After towing the car back she could not recollect whether she returned to the Ayton house.⁵⁰⁷
- 3.603. The only significant detail which William Ayton and Amanda Sloyan were both able to give in statements was in relation to the white or silver Peugeot 205 which turned left down the Mongorry Road towards Raphoe ahead of them. This might be interpreted as an attempt to deflect attention from themselves by suggesting another vehicle which had the opportunity of being involved in an accident with the Late Richard Barron. Mrs. Kathleen Ayton, in evidence to the Tribunal, stated that her son William told her that he took the more circuitous route home via Convoy because of that car. She said:

The last time we were talking about it, it was not that long ago, he was saying that there was a car in front of him and the man was swerving and he thought he might be drunk and he came over the

⁵⁰⁷ Transcript, Day 211 Q. 1460.

*hill road, the car in front of him, so that is why he drove from the other road. He told me that the reason he went the Convoy Road was because of a drunken driver who was going ahead of him on the Mongorry Road towards Raphoe.*⁵⁰⁸

This was the first occasion upon which the Tribunal was told this.

- 3.604. Until Mrs. Ayton said this in evidence, it had never been put forward as a reason for going to Convoy by William Ayton or Amanda Sloyan. When asked about this, Ms. Sloyan said that maybe that was his reason.⁵⁰⁹
- 3.605. It was also strange that though Mr. Ayton said that he wanted to avoid the Gardaí by coming a circuitous route home, he drove Mr. McMenamin's car directly to the scene of the abandoned vehicle past Frankie's nightclub. He said that he saw Mr. Frank McBrearty Senior at St. Eunan's Terrace en route. He was thereby running a risk of coming across a Garda checkpoint near Frankie's nightclub which he had earlier sought to avoid. Further, the Gardaí were satisfied that Frank McBrearty Senior was not to be seen at that point at that time.
- 3.606. Mrs. Ayton, in addition, was unable to give any details of any instructions given by William Ayton or of anything she did in relation to the towing of the vehicle or the prevailing conditions, i.e. whether it was raining or not.

The Evidence of Dermot Kilpatrick

- 3.607. Dermot Kilpatrick is a brother of Paul Kilpatrick. On the 5th April, 2005, he made a statement to the Tribunal investigators outlining his movements on the night of the 13th/14th October, 1996. On that evening, he left his ex-girlfriends house in Convoy as he usually did every Sunday night and went home. He said that he picked up William Ayton and Amanda Sloyan on the road to Convoy. He was driving a white Toyota Corolla and thought that he picked them up between 23.00 hours and midnight. The driver who had given William Ayton a lift was described by Mr. Ayton as a person whose girlfriend's father was a mechanic. Mr. Kilpatrick was able to confirm that this was so, as were the Tribunal investigators. His brother, who had given evidence to the Tribunal had the statements furnished to him by the Tribunal at home. His brother was reading through the statements and he also read some of them, and came across paragraphs which he believed were referable to him. He also read some of the transcripts of Amanda Sloyan's evidence. By reason of the description given of the person who picked them up, he was able to conclude that he had done so. He had never given them a lift on any previous occasion. He lived in St. Eunan's Terrace also and knew Amanda Sloyan. He could not, however, recall any broken-down car.⁵¹⁰

⁵⁰⁸ Transcript, Day 210 Q. 507-514

⁵⁰⁹ Transcript, Day 211 Q. 474

⁵¹⁰ Transcript, Day 320 Q. 2972-1041

William Ayton and the Tribunal

3.608. Mr. Ayton remains a suspect in relation to the death of the late Mr. Barron. Efforts were made to obtain the attendance of Mr. Ayton at the Tribunal as a witness, in order to give evidence in relation to his movements on the 13th/14th October, 1996 and clear up any suspicions which may be thought to exist in relation to his actions that evening. Though he gave an interview to Tribunal investigators on the 19th of July 2003, in which he denied any involvement in the death of the Late Richard Barron,⁵¹¹ Mr. Ayton was unwilling to attend the Tribunal and it was left without his evidence. He was not compellable as a witness as he lived outside the jurisdiction. Questions which have been raised in the course of the investigation into the movements of William Ayton and Amanda Sloyan, as set out above, still remain. One, at least, may have been resolved by the Tribunal investigators in that it would appear that Dermot Kilpatrick was the driver who gave the pair a lift on the road near Raphoe. As already noted, it is not part of the Tribunal's function to determine who killed the Late Richard Barron. The Tribunal, on the basis of the foregoing evidence, is not in a position to take the matter any further.

Subsequent Developments

3.609. When the offence was detected the investigating member should have submitted a report within a short period of its commission known as a C1 form to his district office. When the culprits were identified and the crime solved a further form C2 should have been submitted containing relevant details. A copy of what is said to be the C1 in this case was supplied to the Tribunal. It is dated the 13th of January 1997 and signed by Sergeant John White. It describes the crime committed as manslaughter and gives 00.45 hours as the time of its commission. The motive for the crime is said to be revenge and the weapon is described as a blunt instrument. The culprits are said to have left the scene on foot. The particulars of the crime are described thus:

The injured party was walking from the town of Raphoe where he had been drinking and appeared to have a lot of drink taken. He was set upon half a mile from the main street by his two attackers and beaten to death with the use of a blunt instrument. The incident appears to have occurred resulting from a verbal row earlier in a pub between the deceased and one of his attackers.⁵¹²

This document should have been prepared in October of 1996 by Garda Mulligan or Sergeant Hannigan in Raphoe station within a day or two of the occurrence.

⁵¹¹ Tribunal Documents, page 4705.

⁵¹² Tribunal Documents, page 6994

- 3.610. What was referred to as a form C2 was submitted on the same date detailing how the offence had been solved. This document is not available. The Tribunal is told that the details upon it were transferred to the “Pulse System” – a computerised record system – in or about 1999. The computer printout of the transferred record was made available. It outlines the bare details of the offence.⁵¹³
- 3.611. Sergeant White’s position was that all of the details furnished by way of C1 and C2 were completed by him as directed by Superintendent Fitzgerald who provided him with those details in January of 1997. Superintendent Fitzgerald denies this.⁵¹⁴
- 3.612. The Tribunal was informed by Counsel for the Commissioner that the information nominating Mr. McConnell and Mr. McBrearty Junior as culprits for manslaughter was withdrawn from the “Pulse System”. On a request made by both men through me to the Commissioner, a letter was requested by them to verify this position. Such a letter was furnished to both men on the 19th of November 2004.

Mr. Frank McBrearty (Junior),
C/o, The Morris Tribunal of Inquiry.

Dear Mr. McBrearty,

With regard to your request made at the Morris Tribunal on 21st October, 2004, this is to confirm the following:

The Death of Richard Barron:

The information contained in Document 829, Volume 22, reported on 13th January 1997 was transferred to the PULSE system in 1999. On 13th February, 2002, that information was superseded by the re-designation of the offence as “Dangerous Driving Causing Death” in respect of which you are NOT listed as a suspect.

A user of the system doing a search against your name will not be brought to the Richard Barron Case.

The Edward Moss Incident:

This record shows that you were found “not guilty” by the Court on 6th May, 1999.

Yours sincerely,

Noel Conroy

Commissioner of An Garda Síochána

19th November, 2004.

⁵¹³ Tribunal Documents, pp 6763-4. These forms are explained in a letter dated 4th December 2003 to the Tribunal, pp 6991-2. It may be that what is referred to in evidence as Form C2 was in fact an interim form C1(a) or C1(b), but the Tribunal adopts the nomenclature of the witnesses.

⁵¹⁴ Transcript, Day 234, Q.625-664

A letter in similar terms was furnished to other persons arrested as suspects in the first investigation at that time.

- 3.613. As is clear from the letter, the crime had been re-designated as a “ Dangerous Driving Causing Death” on the 13th of February 2002. This was before this Tribunal was set up. The Tribunal was not made aware of this re-designation. There is no evidence to suggest that the Minister for Justice, Equality and Law Reform and the Houses of the Oireachtas were so informed prior to setting up the Tribunal. It was a matter of importance that the persons who were treated as suspects for murder/manslaughter and/or accessories after the fact to the killing were left under this cloud of suspicion when these matters were publicly debated. This was wrong. Indeed it was not only a matter of great importance to the suspects and their families, but to members of the Barron family, the public at large, especially the people of Donegal and the Raphoe area.
- 3.614. On the 16th day of April 1999, the Director of Public Prosecutions directed that no prosecution be brought against John ‘Manny’ Hegarty, Paul ‘Gazza’ Gallagher, Frank McBrearty Junior and Mark McConnell having considered the report of Superintendent Lennon.

PART V

General Conclusions

- 3.615. On the basis of the detailed analysis already conducted, the Tribunal feels able to go on to consider the events which led to the arrests of the suspects on the 4th of December 1996, through to the Peoples’ phone calls on the 9th of November 1996, to the re-gathering of the evidence against the suspects as and from January 1997, and to generally address the Garda investigation into the death of the Late Richard Barron. The conclusions of the Tribunal based on this chapter are as follows:
1. The response by Letterkenny Communications Centre to the call from Hilary McBride, indicating an extremely serious accident to the Late Richard Barron, was handled badly by Letterkenny Communications Centre. The main fault, therein, lies in failing to record a return number for Mrs. McBride. Two subsequent communications, one by her and another by two other concerned citizens, were not recorded at all. This, however, amounts to carelessness. Garda Boyce’s attempts to get a response from the Lifford section of An Garda Síochána were met with what the Tribunal is satisfied was obstruction and laziness. The Tribunal has listened to the evidence available from that source and is not

satisfied to accept any of it. The scenario which resulted, whereby the medical services were able to respond with alacrity, but that the Gardaí did not come to the scene of the crime until well after Mr. Barron had been brought to hospital, is profoundly disturbing. It is indicative of the general undermining of morale within An Garda Síochána. It is something that needs to be urgently addressed. The people of Ireland are entitled to a service from their police force. If the catalogue of errors concerning the calling out of assistance to Mr. Barron, as he was either dead or dying by the roadside in Raphoe, is demonstrative, then the Garda Síochána have reached a very sorry state.

2. Garda Pádraig Mulligan was absent from his post in Raphoe at the crucial time of the call for assistance. He was in a pub in Lifford. He failed to account for his movements over a number of years, until after this Tribunal was established. It is ridiculous that Gardaí are not immediately obliged to account for their duties. It is cowardice to hide behind a distortion of 'fair procedures' in obstructing the proper running of our Nation's police force.
3. The Gardaí attending the scene decided not to preserve it, notwithstanding the clear crime scene procedures that ought to be followed.
4. The same Gardaí failed to preserve the body and clothing of the Late Richard Barron at the hospital in Letterkenny.
5. The same Gardaí failed to carry out any inquiries locally immediately after the accident.
6. The initial Garda response to this tragic event was hopelessly inadequate and negligent.
7. The response of Superintendent Fitzgerald and Chief Superintendent Fitzpatrick to these appalling lapses was shockingly inadequate and dilatory. They took no disciplinary action against any of those responsible for the manner in which this emergency was dealt with when they knew it was warranted. The matter was swept under the carpet. This is shocking and unsatisfactory.
8. Garda Pádraig Mulligan and Garda John O'Dowd failed to co-operate with the Garda authorities by answering the simple question as to where they were at the time of the accident. They

were supported in this by their Garda Representative Association representative Garda Martin Leonard. They should have had no difficulty in accounting for their whereabouts. There was no justification for refusing to answer this lawful question honestly.

9. The Tribunal has been dismayed and shocked by the manner in which the statutory disciplinary procedure can be used to frustrate legitimate inquiries by senior officers of the junior ranks. The system generates a mutual lack of trust and a highly-charged antagonism between the members and the officers. The adversarial nature of this procedure did nothing to assist the eliciting of truth in this case. The system must be reformed.
10. There was no evidence to suggest, on any fair appraisal of the available statements as of the 4th of December 1996, that Frank McBrearty Junior had anything other than a tiny window of opportunity, amounting perhaps to fifteen minutes, when he could have left his premises and, by an unfortunate coincidence coinciding with his intention, have met with and beaten to death the Late Richard Barron.
11. All of the evidence tending to suggest that Mark McConnell must have been innocent of any assault on the Late Richard Barron, because of his presence in Quinn's public house until a time after the deceased had been killed, was discounted by the Garda investigation. Instead, a supposition in favour of guilt was followed through on and radically pursued. Relevant witnesses were not interviewed, or were ignored. Witnesses who gave evidence on the basis of truth as to facts within their own knowledge, were dismissed. This process can best be seen in the light of the Garda investigation which is separately analysed in a later chapter of this report.
12. There was gross negligence on the part of senior officers and other members involved in the investigation in their assessment and analysis of the statements obtained in the course of this investigation. This was fuelled by the unwarranted conviction that Frank McBrearty Junior and Mark McConnell were guilty of involvement in the death of the Late Mr. Barron. There was a total failure of objectivity.

13. There is no rational basis on which to exclude domestic considerations as a cause of the possible movements of Mark McConnell, and the possible inquiries of his wife Róisín McConnell, as of 02.00 hours on the 14th of October 1996. It should be borne in mind that, by this stage, the Late Richard Barron had already been certified as dead in Letterkenny General Hospital. Instead of applying the precept identified by Chief Superintendent Keane, in his very helpful evidence on behalf of the Garda Síochána, less than best practice was applied. A presumption of guilt was put in place against those two suspects.
14. There was no basis to support the targeting of Michael and Charlotte Peoples for the murder of Richard Barron or for being an accessory after the fact in assisting the escape of his “murderer(s)”. There was uncontroversial evidence showing as reasonable an account of the movements of Michael Peoples as could be expected on the basis of plucking a random night out of his life, and that of his wife. His evidence was dismissed and treated with suspicion. Her evidence was treated with contempt. Those supporting an account of their movements consistent with his innocence were regarded as mendacious. This process, can best be seen in the light of the Garda investigation, which is separately analysed in Chapters 5 and 6 of this report.
15. A similar situation arises as regards the other persons arrested. These arrests, the Tribunal is satisfied, were on the basis that the accounts being given by the persons targeted were unsatisfactory in the light of the scenario the Gardaí wished to pursue. This process can best be seen in the light of the Garda investigation which is separately analysed in Chapter 5 of this report.
16. Other avenues should have been pursued more rigorously in this investigation. There were a number of other possible culprits whose movements on the night should have been the subject of close, or closer, examination. This was not done because of the emotionally driven focus upon Michael Peoples, Frank McBrearty Junior and Mark McConnell.
17. The movements of Paul ‘Gazza’ Gallagher have been referred to extensively in this chapter. He was a possible suspect, by reason of his erratic personality and his erratic driving, for having caused the death of the Late Richard Barron. His involvement in the matter

came into focus in October/November 1996. He made a statement alleging that Frank McBrearty Junior had a hand in causing him to dispose of a billhook which he had, in fact, stolen from the home of the Late Mr. Hugh Stewart in Kilmacrennan. One of the weapons which could possibly have caused a slicing action to the skull of a victim, but not in this case to the Late Mr. Barron, could have been a sword or, as a billhook is in fact a curved blade, a billhook. This makes it look as if a situation had emerged whereby some persons had inveigled Mr. Gallagher into making statements which implicated Mr. Frank McBrearty Junior. The Tribunal, having heard the evidence of Mr. Paul Gallagher, notes his denial of this matter. However, it treats Mr. Gallagher as a witness who could not possibly be relied on as a witness of truth. It seems more likely that Mr. Gallagher had an independent animus against Frank McBrearty Junior, possibly fuelled by his expulsion from Frankie's nightclub on the night that Mr. Barron met his death or that he had fingered him in respect of a burglary. In consequence, he told a series of lies against Frank McBrearty Junior implicating him in the death of the Late Mr. Barron.

18. The manner in which senior officers treated the legitimate inquiries pursued by Detective Sergeant Henry was wrong. He is a fine officer. He was ridiculed and given no encouragement. This underlines the narrowness of the focus of the inquiry. It was not open minded.
19. William Ayton remains a suspect in respect of the death by dangerous driving of the Late Mr. Barron and the only person to have been arrested for it. He has refused to give evidence to the Tribunal and is now living in the United Kingdom. Amanda Sloyan gave evidence to the Tribunal. Serious matters still remain to be clarified and explained in relation to this story. The matter was investigated by the Carty team. If the original investigation had been open minded these issues might have been investigated years earlier and perhaps resolved.
20. The Tribunal is not empowered to, nor does it, draw any conclusion as to who was responsible for the incident which led to the death of the Late Mr. Barron. If social interactions were conducted on the basis of truth, and if evidence were given on the basis of truth, then these issues could easily be resolved. The sad facts in relation

to the death of the Late Richard Barron involve the conclusion that he was killed by being hit very forcefully by some portion of a vehicle travelling at speed; that the person or persons involved then chose to conceal this fact, notwithstanding the peril in which their criminal conduct and lies placed the Barron family and the suspects. The evidence as to how the Late Mr. Barron died is set out in Chapter 4, which follows.

CHAPTER 4 THE MEDICAL EVIDENCE

Introduction

4.01. This chapter analyses the medical evidence surrounding the death of the Late Richard Barron. Unfortunately, this is not limited to a mere reference to the findings of a forensic pathologist. That would normally be the case in any ordinary murder investigation. Indeed, the Tribunal comments that no case has ever been presented, within its memory, as a murder charge in court without a definitive forensic pathologist's opinion stating the cause of death. In addition, it is normal to obtain a view as to whether a suspect murder weapon could have inflicted the injuries that are in question at the trial. Here, there was no murder weapon identified. Even still, the idea that the piece of timber supposedly mentioned in the confession statement of Frank McBrearty Junior on the 4th of December 1996 could have inflicted the injuries to Mr. Barron could have been considered. It seems logical to give a brief chronology of events related to this unfortunate aspect of the entire saga in order to orient the reader as to what occurred when.

A Brief Chronology

4.02. As we know, Richard Barron of Townparks, Raphoe, Co. Donegal died at around 00.45 hours on the 14th of October 1996. His body was brought by ambulance to Letterkenny General Hospital where Dr. Hamad Mohamad Zuhari received him. He arrived at 01.53 hours and was pronounced dead at 02.10 hours after attempts at resuscitation, including cardiac massage and assisted breathing, were deemed futile.⁵¹⁵ At 15.00 hours Dr. David Barry, consultant pathologist at Letterkenny General Hospital, carried out a general autopsy. His view was that death was due to head injuries. Dr. Barry was not a forensic pathologist and claims no specialisation or experience in this field. A written report was probably available the next day. Some contact then took place between Dr. Barry and Superintendent John Fitzgerald, the Garda leading the investigation. He also communicated with Professor John Harbison, then the State Pathologist, on Wednesday morning, the 16th of October 1996. The nature of this contact, what its purpose was, and what was said, is a matter of considerable dispute. A requiem Mass was taking place at 11.00 hours and at the time when Superintendent Fitzgerald appears to have been speaking to Professor Harbison, the High Court was either in session, or about to go into session, because Professor Harbison was waiting at the Four Courts in Dublin in order to give evidence. High Court cases normally commence at around 10.30 or 11.00 hours. Funeral services generally take about an hour, followed by some conversation

⁵¹⁵ Transcript, Day 46, Pages 36-42

with the family outside the church, and so it is probable that Richard Barron was buried in Raphoe cemetery at some time after midday on that Wednesday.

4.03. No further consideration was given to the manner in which Richard Barron met his death until the 30th of September 1997. A meeting then occurred at Letterkenny General Hospital between Dr. David Barry and Superintendent Kevin Lennon, who was accompanied by Garda Hugh Dillon. In February of 1997, Superintendent Lennon took over from Superintendent Fitzgerald as the district officer, and by extension as the officer in charge of this investigation. At this meeting, probably for the first time, Dr. Barry was told that Garda James McDwyer was now claiming that he had seen a piece of flesh attached to the roadway on attending at the accident scene some short time after the removal of Mr. Barron's body by ambulance. On the 3rd of October 1997, Superintendent Kevin Lennon visited Professor Harbison in his office in Trinity College, Dublin. A wide-ranging discussion seems to have taken place as to the possible interpretation of the deceased's wounds, and the possible instruments of infliction. It seems probable that the complex views expressed by Professor Harbison were honestly, though not accurately, recorded. On the 9th of October 1997, Superintendent Lennon, having obtained the consent of the North Donegal coroner, applied to the Department of Justice, Equality and Law Reform that they should issue an order exhuming Mr. Barron's body for forensic examination. The order was prepared in draft. However, on the 16th of October 1997 a note was appended to the file which indicated: "Superintendent Lennon rang Seamus Hanrahan today 16/10/97 and asked that this Order be put on hold until further notice". Nothing further happened for two and a half years.

4.04. When the Carty investigation team was set up, Inspector Hugh Coll and Detective Garda Edward Whelan met Professor Harbison and discussed the usefulness of an exhumation. Professor Harbison issued a report dated the 24th of March 2000 on that issue. Another meeting took place on the 26th of April 2000 when Dr. Barry and Professor Harbison met with Detective Chief Superintendent Austin McNally, Detective Superintendent Joseph McGarty, Detective Inspector Tadgh Foley and Detective Inspector Thomas O'Loughlin. The discussion at the meeting revolved around the issue of the wisdom and effectiveness of exhuming the body of the Late Mr. Barron. It was decided that unless they went ahead, they would discover little else to show how Mr. Barron died. The exhumation was eventually carried out on the morning of the 6th of July 2001 at Raphoe at 08.06 hours and a report was finally prepared by Dr. Harbison. His report on the exhumation was dated the 2nd of October 2001. The most significant finding was that the signs remaining on the body indicated a severe contact with the roadway. With a view to obtaining a definitive view on these injuries, some partial remains of the Late Mr. Barron were kept above ground in the custody of Professor Harbison.

4.05. At the request of the Carty investigation team, Dr. Marie Cassidy examined the partial remains and the photographs taken at the initial post-mortem, and on the exhumation under the direction of Professor Harbison. She signed a report dated the 12th of April 2002, which definitively excluded any real possibility that the injuries to Mr. Barron had resulted from an assault with a weapon. With a view to ensuring that every possible reasonable expert view was brought to bear on this central issue, the Tribunal identified Professor Helen Whitwell at the University of Sheffield Department of Forensic Pathology as being an expert who might offer a valuable opinion. On the 15th of May 2003 the Tribunal received a joint opinion from her and Dr. P.D. Lumb, a lecturer in forensic pathology at the University and, like Professor Whitwell, a consultant pathologist to the Home Office of Great Britain. This, again, regarded the possibility of a violent attack as "highly unlikely".⁵¹⁶ The hearing of the evidence on this issue took place in June, July and September of 2003. The Tribunal then had to finish a module related to the explosives finds in Donegal, which required it to look at an approximately ten-year period of time in detail, before returning to the remainder of the evidence which is analysed in this report. After the hearings on the medical evidence, the Tribunal was able to indicate to the Coroner that it did not need to have Mr. Barron's partial remains examined further. Those remains were then re-interred. The medical section of this testimony had been heard early, in order to allow this to happen as soon as possible.

The Initial Post-Mortem

4.06. It is important to quote extensively from the initial post-mortem report of Dr. D.P. Barry. Dr. Barry is a consultant pathologist attached to Letterkenny General Hospital. He has a special interest in histopathology. He is a fellow of the Royal College of Pathologists since 1992. His role within the hospital is in diagnosing diseases on the basis of specimens from living patients. In terms of post-mortem examinations, his evidence was that he conducted approximately fifty a year. Most of these would be from patients who had died in the hospital from natural causes. However, over the course of the three years prior to his giving evidence in June of 2003, he had examined up to thirty patients who had died as a result of road-traffic accidents. In addition, he examined suicide victims and farm, and other, accident victims.⁵¹⁷ Dr. Barry indicated that in order to become a forensic pathologist he would need to attach himself to a special unit specialising in that area and to pursue a course of study accompanied by practical work and follow that by an examination before being recognised as a forensic pathologist.

⁵¹⁶ Tribunal Documents, page 3786

⁵¹⁷ Transcript, Day 46, pages 43-48.

Q. You don't make any claim on the basis of experience to be a forensic pathologist?

A. No, Chairman.

Q. In order to become a forensic pathologist it is necessary to have training in that regard?

A. That's correct.

Q. You did not ever have that training?

A. No.

Q. But as regards being a pathologist concerned in histology and a pathologist concerned with matters covering the coroner's jurisdiction you are clearly a person of very, very wide experience and in terms of your own expertise a strong expertise, is that correct?

A. That's correct, Chairman.

Q. Can I ask you this, Doctor, if you wanted to become a forensic pathologist what course of study would you need to follow, even with your level of experience?

A. You would you need to attach yourself to a special unit specialising in that area and pursue a course of study accompanied by practical work and follow that by an examination before being recognised as a forensic pathologist.⁵¹⁸

Dr. Barry's Report

4.07. On the morning of the 14th of October 1996, Dr. Barry was told that he was required to do a post-mortem examination. He was given to understand that the cause of death was regarded as being from a road-traffic accident. He was told that the deceased had been last seen alive shortly after midnight and that he had been drinking, that he walked towards his home, that he was found collapsed on his back on the road at 00.55 hours and had been pronounced dead in the Accident & Emergency Department at 02.10 hours on that day. The blood-alcohol tests showed a level of 283 milligrams per cent, while the urinary alcohol level was 308 milligrams per cent: around three to four times the legal limit allowed for driving. Dr. Barry would have expected that the deceased would have been staggering in attempting to get himself home with this level of alcohol

⁵¹⁸ Transcript, Day 46, page 48.

present in his body. Dr. Barry's opinion was that this could have had a bearing on Mr. Barron being hit in an unusual way, or by an unusual portion of the car, when walking home. Put simply, because he was drunk he could either have been walking, crouching, falling, crawling or lying on the road. Here is the relevant portion of Dr. Barry's original post-mortem report.

The subject was a male of about the stated age, height six foot. Average build normal nutritional status. Rigidity and lividity were present. Ambient temp. 22.0. Rectal temp. 28.0. A 'Y' shaped laceration with crushed edges and open end inferior was found extending in midline of forehead to behind the hairline. This measured 10cm max. length arms max 4cm. This wound gaped and measured 3cm max across. Fractured skull bone visible beneath. Bleeding from left ear. Dermal bruising both sides of gaping wound in forehead. Abrasions on left side of this wound in an area 4cm, coming to 4cm of wound. Scattered abrasions back of right hand and wrist and right index finger. Abrasions knuckles of left hand. Left little finger showed laceration of tip region with partial avulsion of pulp and skin from below the distal phalanx. A straight clean edged laceration 3.5cm was found lying in rostral caudal line left posterior parietal area. Limited bruising of skin inner angle right eye.

Internal Examination:

Neck spaces and mediastinum; unremarkable. Pleural cavities, dry. No petechiae noted.

Pericardium; unremarkable.

Peritoneum; smooth and glistening. Scattered adhesions between right colon and abdominal wall,

Respiratory System; larynx, trachea, main bronchi and their branches; the airways contained abundant thick bloody fluid. Lungs; right lung 685 grams. Left lung 620 grams. The lungs were moderately overweight. C.S. right lung zone of haemorrhage central in upper lobe. Quite extensive haemorrhage in substance of right lower lobe more prominent in posterior portion. C.S. left lung limited haemorrhage posterior zone upper lobe with extensive haemorrhage substance of left lower lobe.

C.V.S.: heart 365 grams. The heart was normal in size and regular in configuration. No evidence of ventricular hypertrophy. Right coronary artery showed moderate disease with moderate narrowing. Anterior descending branch of left showed moderate disease with mild narrowing.

Circumflex branch of left showed mild disease with no significant narrowing. Myocardium, valves and endocardium unremarkable. Aorta moderate disease thoracic part and marked disease abdominal part.

G.I.T.: pharynx contained traces of blood. An upper denture had been displaced and fractured into three parts, one was lodged in hypopharynx. Aesophagus contained moderate volumes of blood. Stomach contained a small collection of blood stained fluid. Small and large intestine no special features. Liver normal in size and consistency and paler than usual. Pancreas unremarkable.

R.E.S.: spleen unremarkable.

G.U.: kidneys normal in size with a surface that was virtually smooth. Bladder contained clear urine.

Endocrine System; thyroid gland appeared normal.

Integument; extensive bruising of scalp on left side.

M.S. anterior fractures of fourth ribs, and fifth on right were noted. These had no associated haemorrhage and the impression was that they were post-mortem injuries. Bones of skull showed extensive fresh fractures. Inspection of base of skull from within showed extensive comminuted fractures anterior middle and posterior fossae on left with extensive associated fractures of left squamous temporal, and occipital bone on left. In addition a midline fracture in frontal bone extended up and curved through anterior parietal to reach squamous, temporal area on left.

C.N.S.: inspection of brain and its coverings showed extensive staining of cerebral convexities with blood clot. In addition areas of traumatic subarachnoid extravasation were noted on the convexities. An area of superficial laceration was noted left temporal pole and inferior surface of left temporal lobe showed extensive contusion. Transects of brain stem showed a number of tiny haemorrhagic foci in pons. Cerebellum showed no special features. Transects of cerebral hemispheres showed tiny punctate haemorrhages in basal ganglia, extensive contusion central base of brain and undersurface temporal lobe on left. Specimens of plucked and cut head hair, and blood were made available to the Gardaí.⁵¹⁹

- 4.08. A toxicology report was included. On the covering sheet of the document Dr. Barry simply expresses this view: "Death was due in my opinion to head injuries".⁵²⁰ A number of matters need to be noted in relation to the foregoing report. It goes without saying that it is a competent examination conducted by a

⁵¹⁹ The Document is quoted directly from Tribunal Documents, pages 1049-1054.

⁵²⁰ Tribunal Documents, page 1049.

non-specialist. A forensic pathology report invariably includes the cause of death as related to some aspect of human violence. For example, death by strangulation; death as a result of multiple blows to the head; or death due to gunshot wounds. The injuries are interpreted. For example, a fractured hyoid bone in the neck, usually accompanied by external bruising allows a forensic pathologist to indicate that the subject was strangled. Here, the Gardaí must have been aware from experience that no view as to the manner in which Mr. Barron met his death was being expressed by Dr. Barry. Furthermore, no attempt is made to describe or suggest an instrument as being that which dealt death to the unfortunate man.

- 4.09. There were two basic injuries. There was a large gaping v-shaped scalp wound with associated underlying fracture to the front of the forehead in or around the hairline and, secondly, an area of crushing of the scalp accompanied by massive and extensive underlying fractures over an area centred on the point about three inches above the left ear. The skull bones were exposed during the post-mortem examination and there was direct examination of the neck by palpitation. A forensic pathologist, investigating homicide, might have dissected down deep into the base of the skull or into the neck where the spinal column joins with the skull. But, as this was a hospital pathology examination in relation to a supposed road- traffic victim the approach to the examination was different.

The Murder Hypothesis

- 4.10. Dr. Barry regarded the post-mortem examination as being that of a hit and run victim, at least at the commencement of his work.⁵²¹ Had there been a suspicion of foul play he would have declined to conduct the post-mortem examination and given advice that the State Pathologist should be contacted.⁵²² During cross-examination of Dr. Barry by the Late Eamonn Leahy S.C., lead counsel on behalf of the Garda Commissioner, the following exchange occurred:

Q. Can you recall the approximate duration of the post-mortem examination?

A. I have no record of that, Chairman. It would have been of the order of one and a half to two hours, I would imagine.

Q. I think it was as a result of your post-mortem examination and the comments on your findings that you made to the Gardaí that the issue of murder arose?

⁵²¹ Transcript, Day 46, page 95.

⁵²² Transcript, Day 46, page 95.

A. *That's correct, Chairman.*

Q. *I think you pointed out to the Gardaí that the findings would be unusual for involvement in a road-traffic accident and a blow from a blunt instrument appeared more likely?*

A. *That's correct, Chairman.*

Q. *To be entirely fair to you, that was on the basis of information, which you had at the time from the examination of the deceased's body?*

A. *That's correct.*

Chairman. *When was that, Dr. was that immediately after the time of your post-mortem examination?*

A. *Correct.*

Chairman. *Who did you make that comment to?*

A. *I have no definite recollection of who I made it to but I would expect it was the senior officer present.*

Mr. Leahy. *So it was the case of what had started out as a relatively regular post-mortem examination into the death of a person who had died in a road traffic accident, or incident, turned into a post-mortem where the possibility or probability of assault being involved arose as a result of the post-mortem?*

A. *That's correct.*

Q. *Again this possibility or probability, however it may have been phrased, came from you to the Gardaí?*

A. *Correct, Chairman.*

Q. *It was effectively you that put the issue of murder as a result of the findings and your observations; you put the issue of murder on their agenda?*

A. *That's true.⁵²³*

4.11. It is to be noted that in the foregoing report of Dr. Barry, there is no reference to the manner in which various factors causing death, interconnecting with each

⁵²³ Transcript, Day 46, pages 96-97

other, can be interpreted. Nor were scraping marks on the interior portion of the skull noted or interpreted. This is hardly surprising as these finds, which loomed large on Professor Harbison's examination of the body on exhumation, had not occurred ever in his previous, and extremely extensive, experience. Present at this post-mortem examination were Inspector John McGinley, Garda Coady, Detective Garda Jennings, Garda Kevin O'Malley and Garda Padraig Mulligan. Unfortunately, no adequate post-mortem photographs were taken. This was not due to any malice, but to a lack of training. In the result, there is no photograph of the entire body of Richard Barron. It became impossible to say, when photographs were later shown to other pathologists of that post-mortem examination, whether Mr. Barron had been hit on the knees or shins by a car; the usual method whereby a road-traffic victim is brought to the ground. However, he may already have been on the roadway, crawling or lying, when a vehicle struck him. The general balance of opinion among the pathologists who gave evidence was that it is for the pathologist to direct photographs of matters that are of particular interest to him or her. However, pathologists have a great deal to think about when conducting a post-mortem examination and better training of the Gardai involved as to the signs that should appropriately be recorded on film is clearly called for. A further problem was that the body had not been completely washed. Therefore superficial blood staining and clotting obscured the underlying nature of some of Mr. Barron's injuries or, indeed, whether they existed or not and where they might be situated.

Dr. Harbison's attendance

- 4.12. When the Carty investigation team was set up, Inspector Hugh Coll and Detective Garda Edward Whelan met Professor Harbison and discussed the usefulness of an exhumation. Professor Harbison issued a report dated the 24th of March 2000 on that issue. Another meeting took place on the 26th of April 2000 when Dr. Barry and Professor Harbison met with Detective Chief Superintendent Austin McNally, Detective Superintendent Joseph McGarty, Detective Inspector Tadgh Foley and Detective Inspector Thomas O'Loughlin. The discussion at the meeting revolved around the issue of the wisdom and effectiveness of exhuming the body of the Late Mr. Barron. It was decided that unless they went ahead, they would discover little else to show how Mr. Barron died. The exhumation was eventually carried out on the morning of the 6th of July 2001 at Raphoe at 08.06 hours and a report was finally prepared by Dr. Harbison. His report on the exhumation was dated the 2nd of October 2001. The most significant finding was that the signs remaining on the body indicated a severe contact with the roadway. With a view to obtaining a definitive view on these injuries, some partial remains of the Late Mr. Barron were kept above ground in the custody of Professor Harbison.

- 4.13. Professor Harbison has given evidence to the effect that he has no recollection whatsoever of any conversation with Superintendent Fitzgerald in the matter. He had no note of such a conversation, nor did he have any file opened in the matter until a number of years later when the deceased's body was exhumed for the purpose of a post-mortem examination. However, Professor Harbison has stated that he viewed his contract with the State in his position as the State Pathologist, as requiring him to perform a post-mortem examination whenever requested to do so by the Gardaí. He could not recall any occasion, throughout a long career as the State Pathologist, when he had refused to carry out a post-mortem examination when so requested by the Gardaí. No evidence has been presented that he ever previously shirked his duty, as was alleged in this instance.
- 4.14. The lack of a forensic post-mortem examination was one of the most fundamental errors in the investigation of the circumstances surrounding the death of Mr. Richard Barron. As has been stated, the lack of a proper forensic post-mortem examination meant that the Gardaí did not have a definitive opinion as to the causation of the head injuries which led to the death of Mr. Barron. Had such an examination been carried out, it would have been established that Mr. Barron's injuries and resultant death, were caused as a result of a vehicle impact, rather than by an assault with a blunt instrument. Had that been known, as it should have been, a long and costly murder investigation, with all the traumatic consequences which have flowed from that, would not have been undertaken. In these circumstances, the background to this issue must be examined with some care.

The Evidence of Superintendent Fitzgerald

- 4.15. One of the Gardaí present at Dr. Barry's initial examination was Inspector John McGinley. Superintendent Fitzgerald stated that after the post-mortem examination Inspector McGinley told him that Dr. Barry could not say that the head injuries which had led to the deceased's death were caused as a result of a road traffic accident. However, Superintendent Fitzgerald believed that it was a road-traffic accident at that stage.⁵²⁴ The deceased's body was released to the family at 19.00 hours that evening. Superintendent Fitzgerald stated that if Dr. Barry had come across anything during the post-mortem examination to suggest that the deceased's death had been caused by something other than a road-traffic accident, the deceased's body would not have been released to the family. He stated that if murder had been put on the agenda at the post-mortem examination, that that would have prevented the release of the body. If that had been done, Inspector McGinley would have requested the services of Professor Harbison at that stage.⁵²⁵

⁵²⁴ Transcript, Day 64, page 96.

⁵²⁵ Transcript, Day 63, pages 75-75.

- 4.16. Superintendent Fitzgerald stated that on the morning of Tuesday the 15th of October 1996 he visited the scene in Raphoe. He then attended to some court business. Later in the morning he spoke to Inspector McGinley. The Inspector told him that Dr. Barry could not say that Mr. Barron had died as a result of a road-traffic accident. Superintendent Fitzgerald described what Inspector McGinley had told him in the following way:

*He mentioned the gaping wound on the forehead; he mentioned the injuries to the back of his head or the left back of his head; that he was bleeding from the ear and that the injuries were from a blunt instrument. ... And that Dr. Barry could not say that the injuries that caused his death were caused by a road-traffic accident.*⁵²⁶

- 4.17. Superintendent Fitzgerald stated his interpretation of this information:

*Well, it meant that as regards how he died was in limbo. Regards how he died, we don't know how he died at that stage. But I felt that it was still a road-traffic accident that he died from because of natural things. It was on a public road; it was that time of night. That's how I came to... That's how I felt at the time. That's how I thought at the time.*⁵²⁷

- 4.18. Superintendent Fitzgerald stated that he was left with a question on the medical front as to what had caused the deceased's death. He stated that he did not think of calling in Professor Harbison at that stage.⁵²⁸ As a result of this conversation, and in the light of the fact that information had come in that morning concerning an altercation between Mark McConnell and Richard Barron earlier on the evening of Sunday the 13th of October 1996, Superintendent Fitzgerald stated that he decided to contact Dr. Barry to discuss the matter further. He stated that his main reason for telephoning Dr. Barry, was that he wanted to know what caused the injury which killed Mr. Barron. The "blunt instrument" referred to by Inspector McGinley could have been a weapon, or a vehicle. In this conversation, Dr. Barry said that it was his opinion that Mr. Barron was hit by or with a blunt instrument. What it might be, he did not say. Dr. Barry couldn't say if the blunt instrument was a vehicle or something else.⁵²⁹ Therefore, there was no evidence of murder. Superintendent Fitzgerald stated that he got the impression that Dr. Barry was leaning towards the opinion that the blunt instrument was used in the context of an assault. He described his impression as follows:

⁵²⁶ Transcript, Day 63, page 99.

⁵²⁷ Transcript, Day 63, page 81

⁵²⁸ Transcript, Day 63, page 82.

⁵²⁹ Transcript, Day 63, page 86.

Yes, it was after my talk with Dr. Barry that I felt that he was tilting, shall we say, somewhat towards a blunt instrument being used, as in an assault ... We had a fairly long chat on the phone, a discussion ... Yes. He told me that, his emphasis was on the main injury to his forehead. The impression I got from that was that that was the main injury and that other injuries would have followed. He spoke on the injuries to the back of his head, or the left back of his head, that he was bleeding from the ear and he then dwelt or he spoke, sorry, he spoke on the injury to his finger and the injury to the back of both his hands. ... Yes. Yes, but they could have been - they could have been defence. Yes, or otherwise.. But I probed as to what his opinion might be and he came down on the side that he was hit by a blunt instrument, but he wasn't sure ... Well, he was tilting, I felt, slightly towards a blunt instrument, assault instrument ... I went away with the impression, just with the impression, that his opinion might be tilted in that way. But at that stage I still believed that it was a hit and run accident that was my state of mind.⁵³⁰

The Chief Superintendent's Message

- 4.19. As we will see, later in this chapter, the injury to the forehead came after the multiple fractures to the back of the skull. On the night of Tuesday the 15th of October 1996, Superintendent Fitzgerald stated that he received a short and bizarre message from Chief Superintendent Denis Fitzpatrick. While initially he thought that the 'information' had been conveyed to him on the morning of Wednesday the 16th of October 1996, he later accepted that it was more likely to have been given to him on the evening of Tuesday the 15th of October 1996. It would appear that somewhat late in the evening, Superintendent Fitzgerald was informed by Chief Superintendent Fitzpatrick, probably by telephone, that Mr. Barron's death was murder and that Mark McConnell and Frank McBrearty Junior had committed the crime. Superintendent Fitzgerald stated that he replied to this that he would take the information on board, but that he would keep an open mind as regards the investigation. At 23.00 hours on Tuesday the 15th of October 1996, the scene where the deceased's body had been found was preserved for a second time. Superintendent Fitzgerald accepted that, in all probability, it had been he who had issued that order. He further accepted that he probably did that as a result of receiving the message from Chief Superintendent Fitzpatrick.
- 4.20. Superintendent Fitzgerald did not have any recollection of the telephone call itself. However, he did clearly recall receiving the same piece of information from

⁵³⁰ Transcript, Day 63, pages 105-107.

Chief Superintendent Fitzpatrick on the following morning. On that morning, Wednesday the 16th of October 1996, a conference was held at 08.00 hours to discuss the progress of the investigation. Superintendent Fitzgerald stated that he was only in the conference for a very brief period. He had a clear recollection of being called over to Chief Superintendent Fitzpatrick's office, where the Chief Superintendent made the comment to him again. There was no further discussion between them as to the source of this information, or as to the evidence which could be called to back it up.

- 4.21. Superintendent Fitzgerald stated that it was as a result of receiving this 'information' that he decided that it would be necessary to call in the services of the State Pathologist.⁵³¹ However, his view was still that it was a hit and run accident.⁵³²
- 4.22. Superintendent Fitzgerald stated that without relaying to Inspector McGinley what the Chief Superintendent had said to him, he told the Inspector that they would have to set about seeking the services of Professor Harbison. To that end, he stated that they went to an office to phone Professor Harbison's office. They got through to his office at about 09.30 hours, but were told that he was in the Four Courts for a case. Superintendent Fitzgerald stated that he had not taken any steps to alert the Barron family at that stage that it might be necessary to postpone the burial of Mr. Richard Barron, due to the fact that the State Pathologist was being called in. He stated that he was going to contact Professor Harbison first and then deal with the family.⁵³³ There is a way of contacting the State Pathologist to request his services. This was outlined to the Tribunal in the evidence of Chief Superintendent William Keane. The witness followed that procedure in forty murder cases. If you want a forensic pathologist, as Superintendent, you ring Garda Headquarters. Outside office hours, a service, described by Chief Superintendent Keane as being helpful, is available at Harcourt Square Garda Station. That is what is done in accordance with the Garda Manual. It was not done here and should have been followed without deviation. It was not the fault of Garda Headquarters that it was not done. They knew nothing about this case, at that stage.
- 4.23. Superintendent Fitzgerald stated that he telephoned Dr. Barry to tell him that they were contacting the State Pathologist. They also phoned the Coroner to inform him that they had a suspicious death on their hands and that they were going to call in Professor Harbison. The Coroner agreed to this.

The Call to Professor Harbison

- 4.24. After some time, Superintendent Fitzgerald managed to make contact with

⁵³¹ Transcript, Day 63, pages 118 and 126.

⁵³² Transcript, Day 63, page 119.

⁵³³ Transcript, Day 63, page 131.

Professor Harbison on the telephone. He described the content of the conversation in the following way:

He came to the phone and I told him who I was. I told him that we had a suspicious death on our hands. I just want to recollect for a moment. We had a suspicious death on our hands and then I told him what happened, that a man called Richard Barron, aged fifty-four years of Townspark, Raphoe... Sorry, from Raphoe, was found on the roadway at Townspark, Raphoe on Monday morning, Sunday night! Monday morning. That he was found lying on his back with severe head injuries. I described the injuries. I told him that Dr. Barry ... Sorry, that he was taken to Letterkenny General Hospital, that it was reported as a hit and run accident and that Dr. Barry carried out a post-mortem and there were photographs also taken. I asked him if he would come down to examine the body. I explained that I had spoken to Dr. Barry and that he had no problem with that, in fact he would welcome him to come down. So he said, I am in court, I am in court and he said John Barry is very ... Now, I can't say the exact word, but eminent pathologist. I know John Barry, he's a friend of mine, he's an eminent pathologist. He said I will not be going down ... He said I will not be going down ... Yes. I said you are a forensic pathologist and the conversation went on in that way, in that I knew that Dr. Barry was a very thorough pathologist and everybody respects that and I am sure that Professor Harbison respects that. Which I know he does. He said, fax up Dr. Barry's report. He said I will have a look at it I will contact John Barry and he said I will come back to you. So, I said, now, there is an urgency about this because the body is due for burial, there is an urgency about it. The hospital was contacted I believe it was John McGinley that would have done that, he was there with me. As far as I am concerned, the report was sent up and as far as I am concerned, there was a call between Professor Harbison and Dr. Barry. Professor Harbison rang me.

Now I am not a hundred per cent positive whether I rang Professor Harbison or he rang me but I believe that he rang me back. He said well, I can't say the exact words but I have it on my statements under recollection, but he said that Dr. Barry has carried out a very thorough examination and that I have discussed the matter, I have seen his report, I have discussed it with him and by me going down it would be duplication. So I asked would you not consider coming

down and he said my advice, he said, is to bury the body. So I said, well you know that you are a forensic pathologist and in the course of the conversation, it wasn't a formal conversation like the way I am giving my evidence, he said that the only thing could be the "striation" of the bone ... Well I understood, the only time I ever heard the word striation would be in relation to glass. Striation of glass... Well, what it would convey to me is direction of a fracture or something like that. Striation or something like that ... Yes. I said that well, you know that we realise to this effect, yes.. that we realise that you are a forensic pathologist. So he said well the only thing might be striation of bone. In a remark then that, I don't mean a flippant remark or anything like that, he mentioned the word exhumation at that stage ... To the best of my recollection it was that maybe there would be an exhumation some day. They are not the exact words but that's the closest I can come to it. That there could be an exhumation at that stage. He said my advice is to bury the body. Now I didn't know at that stage what striation or whatever, I took his advice. I contacted the coroner and the coroner said to go ahead I explained to the Coroner, I told the Coroner that the Professor said to go ahead and bury the body.⁵³⁴

- 4.25. Superintendent Fitzgerald described his reaction to this telephone conversation in the following way:

I wasn't happy, for the simple reason that I wanted an answer, but my state of mind was still that it was a hit and run accident at that stage, that it was a traffic accident that was my state of mind at the time. But it was a suspicious death. There was nothing to show that it was a traffic accident ... Yes, but this is a fatal traffic accident in my mind at that time.⁵³⁵

- 4.26. Superintendent Fitzgerald stated that he did not use the word 'murder' in the telephone call to Professor Harbison, because he believed it to have been a hit and run accident. He believed that there was nothing to show that it was murder.⁵³⁶ Of course, the Superintendent had been instructed by Chief Superintendent Fitzpatrick that the death was a murder.
- 4.27. In the course of his evidence, Superintendent Fitzgerald accepted that the attendance of Professor Harbison was not a matter for debate by the State Pathologist. If the State Pathologist was required by the Gardaí, he was obliged

⁵³⁴ Transcript, Day 64, pages 28-32.

⁵³⁵ Transcript, Day 64, pages 38 and 44.

⁵³⁶ Transcript, Day 64, pages 49-50.

to make himself available. He also accepted that he did not make any complaint about what he alleged was a refusal by Professor Harbison to go to Donegal when requested. He stated that he respected Professor Harbison's decision. He stated that he was satisfied with the answer from the Professor, because he believed that it had been a hit-and-run accident and that the Gardaí would continue to investigate the matter.⁵³⁷ He stated that, as a result of the conversation, he would await a full investigation of the matter and if something came out of that one way or the other at a later stage, they would deal with it when it arose. The Tribunal finds it hard to imagine what this means.

4.28. Following the conversation with Professor Harbison, Superintendent Fitzgerald stated that he informed the Coroner that the Professor had advised that the burial could go ahead. The Superintendent stated that the funeral Mass had started before he had concluded his business with Professor Harbison. However, he had finished his discussions with the professor, before the funeral had concluded.

4.29. There were a number of contemporaneous written documents which were drawn up by Superintendent Fitzgerald at that time. The first was his journal entry for Wednesday the 16th of October 1996, which Superintendent Fitzgerald stated had been written up on that day, or on the following day. It reads:

Wednesday 16/10/1996. 8 a.m. Death of Richie Barron, conference 9.30 a.m.

I contacted Professor Harbison, I contacted the hospital, obtained Dr. Barry's (local pathologist) report, faxed it to Professor Harbison who read same and contacted me. He said it would be duplication for him to come down as a very detailed P.M. had been carried out by Dr. Barry. So also were good photographs taken. Professor Harbison's considered opinion was to bury the body. I contacted the coroner who directed burial. Professor Harbison indicated that he would consult with Dr. Barry when photographs would be available and they would go through the matter. If as a result of that a further check must be made then examination could take place. I would ring Dr. Barry after lunch as he was in bed sick in the early afternoon. Full investigation. I briefed the Chief and forwarded preliminary report. I briefed Inspector Martin Lee on court files for tomorrow. Finished 12 MN.⁵³⁸

4.30. On the same day Superintendent Fitzgerald also wrote a brief report on the progress of the investigation at that time. It contains the following reference to Professor Harbison:

⁵³⁷ Transcript, Day 64, page 58.

⁵³⁸ Tribunal Documents, page 787.

Information in the course of Garda enquiries came to hand that deceased was involved in a heated verbal altercation some short time before the discovery of his body. This altercation took place in a local pub. Having this information in hand, Dr. Harbison was contacted by Superintendent Fitzgerald. A copy of the post-mortem report was arranged to be forwarded to Professor Harbison and he having examined the detailed report, saw little need for the duplication as the post-mortem was in great detail. The coroner was updated and the decision taken to allow the burial.

In the meantime a full investigation is ongoing, results of the post-mortem test and the photographs are being sought. The pathologists will consult with each other and with Gardaí

This is a most unusual case and is being pursued with an open mind, all avenues are being explored and the full investigation is in place.⁵³⁹

The Evidence of Professor Harbison

- 4.31. Professor Harbison stated that he had no recollection of speaking to Superintendent Fitzgerald at any time in the days after Monday the 14th of October 1996. He had no recollection of speaking to the Superintendent from a telephone in the Bridewell Garda Station.⁵⁴⁰ He could not recall receiving a faxed copy of Dr. Barry's report on Wednesday the 16th of October 1996.
- 4.32. Professor Harbison stated that in his view, as State Pathologist, he was under a contractual obligation to go to a scene whenever a request was made by a Garda officer.⁵⁴¹ He was of the view that it would have been unlikely that he would have refused to have gone to Donegal, as he had never before refused to go somewhere when he had been asked by the Gardaí to go in the past. He stated that it was a Garda decision whether the State Pathologist should be called in. He stated that if he was called in, he was obliged to go. He could not recall ever refusing to go when requested by a Garda Superintendent.⁵⁴²
- 4.33. Professor Harbison did state that as a post-mortem examination had been done by a competent pathologist, he might have debated whether it was necessary for him to go to Donegal in these circumstances. A second post-mortem examination might not be productive of new information.⁵⁴³ Professor Harbison stated that Dr. Barry's report did not discuss the pattern of injury, or give the likely cause of same. That is the essence of a forensic pathology report. In these circumstances, he felt that it was unlikely that he would have told Superintendent Fitzgerald that the report was sufficient for his needs. He stated that it would have been unlikely for him to have said that it would be duplication for him to go to Donegal.⁵⁴⁴

⁵³⁹ Tribunal Documents, page 4900.

⁵⁴⁰ Transcript, Day 66, page 51.

⁵⁴¹ Transcript, Day 66, pages 52-55.

⁵⁴² Transcript, Day 66, pages 63-65.

⁵⁴³ Transcript, Day 66, pages 68-70.

⁵⁴⁴ Transcript, Day 66, pages 75-76.

- 4.34. In relation to his alleged comment about "striation of the bone", Professor Harbison stated that he could not think of any application of the word 'striation' to bone. He stated that it was a word used solely to describe voluntary and involuntary movements of muscle tissue. He would not have told Superintendent Fitzgerald that "the only thing he could possibly point out would have been striation of the bone" as alleged by Superintendent Fitzgerald. He stated that he would not have used the term 'striation' to a Garda, as it was an anatomical or microscopical phrase.⁵⁴⁵
- 4.35. The Professor also stated that the scuff marks on the bone of the skull, were unique in his experience. He had not seen them before, or since, this case. Therefore, it would have been highly unlikely, if not impossible, that he would have referred in the course of the alleged telephone conversation that he had with Superintendent Fitzgerald on the 16th of October 1996, to the possibility of finding such marks on the skull bone.⁵⁴⁶
- 4.36. In relation to his alleged comment concerning a possible future exhumation of the body, he stated that exhumations were very rare. Out of a total of over two thousand post-mortem examinations, he had only done two such examinations as a result of an exhumation. He stated that it would be going against his scientific training to suggest that there could be an exhumation. His reaction would be to make quite sure that the body was not interred and that the body was subject to a thorough post-mortem examination while it was still above ground. It was put to Professor Harbison that he had suggested that an exhumation of Mr. Barron's body could be carried out at some future time if the need arose:
- Well, it's an improbable scenario, either there is to be an exhumation and one takes place, but to anticipate it while a body is still above ground, would be extraordinary. ... Again that seems a contradiction, why not look at it now before it is buried rather than allow it to decompose and try to make a useful observation out of a decomposed body.*⁵⁴⁷
- 4.37. Under cross-examination by Mr. Marrinan, S.C. on behalf of Superintendent Fitzgerald, Professor Harbison accepted that in road-traffic accident cases a post-mortem examination was usually done by the local pathologist. He also accepted that where a post-mortem examination had already been done, which initially suggested that the cause of death was a road-traffic accident, and where Dr. Barry's report was unclear or silent as to the cause of death, he would be likely to contact Dr. Barry for more information. He accepted that it was likely that he did consult with Dr. Barry to get his views on the cause of death.⁵⁴⁸

⁵⁴⁵ Transcript, Day 66, pages 77-78.

⁵⁴⁶ Transcript, Day 66, page 79.

⁵⁴⁷ Transcript, Day 66, page 81.

⁵⁴⁸ Transcript, Day 66, page 140.

- 4.38. Professor Harbison also accepted that he may well have said to Superintendent Fitzgerald that it would have been duplication for him to travel to do another post-mortem examination.⁵⁴⁹
- 4.39. However, under cross-examination by his own counsel, Ms. Egan B.L., Professor Harbison stated that in the scenario as put by Superintendent Fitzgerald, it would have been "rather unlikely" that he would have refused to go to Donegal in such circumstances.
- 4.40. Professor Harbison outlined the usual procedure for calling in the State Pathologist. Usually the request is made by a telephone call from someone in the Technical Bureau in Garda Headquarters. This accords with Chief Superintendent Keane's evidence. This would come about as a result of a request initiated to Garda Headquarters by a local Superintendent. This is followed up by a request in writing. However, given that usually it would be too slow to await the written request to come through, Professor Harbison stated that requests for him to attend at a scene or to do a post-mortem examination were usually pretty informal and done over the telephone initially.

Other Relevant Evidence

- 4.41. John O'Dowd gave evidence that he was very shocked to learn that Mr. Barron had been buried when he returned to Raphoe around lunchtime on the 16th of October 1996. Eamonn McNulty was a mortuary technician at the time. He gave evidence of faxing a report, probably Dr. Barry's report, to Dr. Harbison's office through the secretary to the Pathology Department.
- 4.42. Superintendent John McGinley gave evidence as to the steps taken to ensure that a report was faxed through to Professor Harbison. He stated that Superintendent Fitzgerald made him aware that Dr. Harbison had discussed the matter with Dr. Barry and that he had also considered Dr. Barry's notes and report and that Professor Harbison was of the view that it was a pretty thorough post-mortem and whatever he might do would be duplication. None of this evidence adds anything to the matters to be resolved.

Conclusions on the Harbison Issue

- 4.43. Having regard to the evidence of Chief Superintendent Keane, Superintendent Fitzgerald, Detective Superintendent John McGinley and the evidence of Mr. Eamonn McNulty, the Tribunal is satisfied that there was contact between Superintendent Fitzgerald and Professor Harbison on the morning of Wednesday the 16th of October 1996. The Tribunal is also satisfied that a copy of Dr. Barry's post-mortem report was faxed to the Bridewell Garda Station for perusal by Professor Harbison that morning.

⁵⁴⁹ Transcript, Day 66, page 142.

- 4.44. Arising out of this finding, the question arises as to the nature of the conversations between Superintendent Fitzgerald and Professor Harbison on the morning of the 16th of October 1996. There are two possible scenarios in this regard. Firstly, that there was a definite request by Superintendent Fitzgerald made to Professor Harbison for his services, which was refused or alternatively, there was a discussion as to the necessity for Professor Harbison to attend in Donegal, given the theory and belief at that time that Mr. Barron met his death as a result of a hit and run accident. In effect, that Dr. Barry's report was being run by Professor Harbison for a quick and informal second opinion.
- 4.45. The Tribunal is of opinion that the second of these scenarios is the more likely. It has reached this conclusion for the following reasons:
1. The Tribunal accepts the evidence of Professor Harbison that he felt contractually and morally bound to attend at a scene or to perform a post-mortem examination, whenever requested by the Gardaí so to do.
 2. The Tribunal accepts the evidence of Professor Harbison that in his long career, he has never refused to attend at a scene, or to carry out a post-mortem examination, when requested to do so by the Gardaí.
 3. The Tribunal notes that even after the receipt of the 'information' from Chief Superintendent Fitzpatrick, Superintendent Fitzgerald still held the belief that it was a hit and run accident which had caused Mr. Barron's death. He did not mention the word "murder" to the Professor.
 4. The Tribunal is of the view that if Superintendent Fitzgerald had made a clear decision to call in the State Pathologist, he would have had to have taken some steps to prevent the burial of Mr. Barron on the morning of the 16th of October 1996, due to the fact that if Professor Harbison had left Dublin the very instant that he was telephoned by Superintendent Fitzgerald, the post-mortem examination could only have been carried out on the evening of the 16th of October 1996 at the very earliest. The Tribunal notes that no such steps were taken to alert the Barron family of this eventuality. No steps were taken to prevent or postpone the burial of Mr. Barron. This indicates that the call to Professor Harbison was an inquiry as to whether it was necessary for him to travel to Donegal, rather than a summons by Superintendent Fitzgerald that he should do so.
 5. The Tribunal notes that there is no reference, in the

contemporaneous documents drawn up by Superintendent Fitzgerald on the 16th of October 1996, to any alleged refusal by the State Pathologist to travel to Donegal. The Tribunal notes that the first mention of any such refusal is contained in Superintendent Fitzgerald's statement to the Tribunal in January of 2003.

6. The Tribunal does not accept that Professor Harbison stated in a telephone call that the only thing that he could possibly point out as a result of his carrying out a post-mortem examination, would be striation of the bone. The Tribunal accepts that the term 'striation' would not be used by Professor Harbison in relation to bone. A medical person can reasonably be expected to use medical terms correctly. This term is not referable to bony structures in medical parlance. It is further accepted that Professor Harbison had not encountered such scuff marks to the skull bone before, and there being no mention of same in Dr. Barry's report, the Tribunal finds that it would have been highly unlikely that he would have mentioned such matters in his conversation with Superintendent Fitzgerald. The Tribunal is of the opinion that Professor Harbison did not mention striation of the bone in such a conversation.
7. The Tribunal believes that Superintendent Fitzgerald was wrong in his evidence that Professor Harbison said words to the effect that they could always have the deceased's body exhumed at a later time if needs be. This would be against Professor Harbison's training as a scientist. The Tribunal accepts that Professor Harbison would not have advised burial if there was any question which could be resolved by a post-mortem examination while the body was still above ground.
8. For a State Pathologist to refuse a request by a Garda Superintendent for his/her services, is a very serious matter. The Tribunal notes that no complaint whatsoever was made by Superintendent Fitzgerald in this regard at the time. Indeed, no complaint was ever made against Professor Harbison. As has been noted, the question of a refusal by the Professor was only mentioned for the first time by Superintendent Fitzgerald in 2003.
9. The approach by Superintendent Fitzgerald to Professor Harbison was a confusing resort to him as a source of guidance. As a result, what might, if he had wanted it, which he did not, have been a clear message requiring the attendance of the pathologist became garbled.

10. Accordingly, the Tribunal is of the view that Superintendent Fitzgerald was merely seeking a second opinion from Professor Harbison as to the adequacy of Dr. Barry's report in the context of a road traffic accident, rather than making a formal request for his services. For this reason, Superintendent Fitzgerald was satisfied with the advice received from Professor Harbison at the time. The Tribunal finds that there was no request by Superintendent Fitzgerald made of Professor Harbison to travel to Donegal, nor was there any refusal by him so to do.

4.46. Even if the Tribunal could be thought of as wrong in its view of the content of the conversation between Superintendent Fitzgerald and Professor Harbison on the morning of the 16th of October 1996, that does not end the matter. Superintendent Fitzgerald, as the senior officer having charge of the investigation, could have taken steps to secure the attendance of Professor Harbison if he thought that it was necessary. If Professor Harbison had refused to travel to Donegal for the purpose of carrying out a second post-mortem examination, as alleged, Superintendent Fitzgerald could have immediately reported the matter to Garda Headquarters and had the necessary steps taken to ensure that Professor Harbison, or a replacement, complied with his request in this regard. The fact that no such steps were taken rests entirely on the shoulders of Superintendent Fitzgerald. **In short, if Superintendent Fitzgerald wanted Professor Harbison to travel to Donegal, he could have taken the necessary steps to ensure that this was done.**

4.47. Superintendent Fitzgerald could also have contacted Chief Superintendent Fitzpatrick and asked for his assistance. It was he who regarded the death as murder. As divisional commander the responsibility to ensure that the basic step of ensuring a death was intentional, and not accidental, before a murder hunt was launched, rested on his shoulders. Yet, with no opinion from an expert as to cause of death and no expert view on a likely weapon, the Chief Superintendent allowed a 'murder hunt' to be launched.

The Postponement of the Exhumation

4.48. The procedure by which an exhumation is authorised is set out in section 47 of the Coroner's Act, 1962. Section 47 reads as follows:

(1) Where a coroner is informed by a member of the Garda Síochána not below the rank of inspector that, in his opinion, the death of any person whose body has been buried in the coroners district may have occurred in a violent or unnatural manner, the coroner may request the Minister to order the exhumation of the body by the Garda Síochána.

- (2) On being requested under this section to authorise by order the exhumation of any body, the Minister may, as he thinks proper, either make or refuse to make the order.
- (3) Every order made under this section for the exhumation of a body shall operate to authorise the exhumation in accordance with the terms of the order.
- (4) Where the body of a deceased person is exhumed in pursuance of an order made under this section, the coroner concerned shall have the like powers and duties as if the body had not been buried.

4.49. A request to exhume the body of Mr. Barron was received by the Department of Justice from Dr. Fred Kee, the Coroner for Co. Donegal, in a letter dated the 8th of October 1997.⁵⁵⁰ This letter read as follows:

Dear Sir,

Re - Suspicious Death of Richard Barron, 51 years, The Common, Raphoe, Co. Donegal on 14/10/1996 at Townparks, Raphoe, Co. Donegal.

I beg to refer you to section 47 of the Coroner's Act, 1962 in the matter of the suspicious death of Mr. Richard Barron, a 51 year old farmer who, at the time of death was discovered along a roadside in the townland of Townparks, Raphoe, Co. Donegal. The said deceased had, on medical examination, severe head injuries together with abrasions to his hands. He was pronounced dead at Letterkenny General Hospital on the morning of the 14th October, 1996 at about the hour of 2.20 a.m.

A Post Mortem examination of the body was carried out at Letterkenny General Hospital by Dr. Barry, pathologist, at that centre of 14/10/1996. At the time of conducting the Post Mortem examination, the investigating Gardaí were of the belief and opinion that the deceased had met his death by way of a Hit and Run roadtraffic accident. Toxicology examinations revealed a blood alcohol reading of 283 ml of alcohol per 100ml of blood and 308 urine.

The body of the deceased was later interred in St. Eunan's Graveyard adjacent to St. Eunan's Catholic Church, Raphoe, Co. Donegal.

A protracted Garda investigation subsequently concluded that the deceased may have met his death by violent means other than the initial theory of Hit and Run accident.

I have been informed on this date by Superintendent Kevin Lennon of an

⁵⁵⁰ Tribunal Documents, pages 1063-1064.

Garda, Letterkenny, Co. Donegal, that it is his opinion that the death of Mr. Richard Barron occurred in a violent and unnatural manner and that he is further of the opinion that Richard Barron was murdered.

In all the circumstances of the present case, I now request the Minister to order the exhumation of the body of the said Richard Barron, by an Garda Síochána under the direction of Superintendent Kevin Lennon of Letterkenny Garda District.

I say and believe that the State Pathologist, Dr. John F.A. Harbison will be in a position to carry out a further Post Mortem examination of the body of the deceased person, Richard Barron, if the Minister thinks it proper to do so.

Yours faithfully,

Doctor Fred Kee,

Coroner.

- 4.50. In a letter of the same date,⁵⁵¹ Superintendent Kevin Lennon wrote to Mr. John Haskins, Principal Officer in the Department of Justice in relation to the same matter in the following terms:

... I attach herewith a request of Dr. Fred Kee ... What I seek to establish here is how the deceased Richard Barron met his death. The initial P.M. report suggests "head injuries" which is in my opinion inconclusive in establishing the exact cause of death.

It is my considered opinion that the deceased met his death by means other than a road traffic, hit and run accident. I am satisfied from consultations with Professor John Harbison that he may be in a position to establish through further examination of the remains, the means whereby the deceased met his death.

It is my view that the desired process in achieving comprehensive, conclusive and factual results is by way of exhumation...

Superintendent Lennon's Case

- 4.51. In questions put to witnesses at the Tribunal, Kevin Lennon gave the following account of the lead-up to the exhumation request:

During the course of my examination of the papers in this matter, I read the local pathologist's report, Dr. Barry's, and as a result I contacted Dr. Barry and I spoke with him, and I further had a

⁵⁵¹ Tribunal Documents, page 1065.

meeting with Professor Harbison at his offices in Dublin, accompanied by a ballistics Detective Sergeant from headquarters and scenes of crime officer. On the basis of that, Professor Harbison made the suggestion to me when I brought serious matters to his notice, such as the broken ribs of Mr. Barron's body, the injuries to his fingers which were unaccounted for and certain items in relation to serious head injuries on two particular points of injury. Dr. Harbison was of the view that an exhumation was the best course to take, and he agreed at that meeting that he would do the forensic post-mortem, and that I would pick him up in Dublin and bring him down ... and I arranged with the pathologist at Letterkenny ... for the use of the morgue and in any event, I had also consulted with the coroner.⁵⁵²

4.52. In evidence, Kevin Lennon indicated that he became interested in exhumation, as a means of furthering the Barron investigation, from September of 1997.⁵⁵³ He met Dr. Barry on the 13th of September and outlined the investigation that he was pursuing into the death of the Late Mr. Barron. Garda Hugh Dillon took notes. Dr. Barry's view, as recorded from that interview by Superintendent Lennon, was that the injuries to Mr. Barron were not at all consistent with a normal road-traffic type of accident and that they could have been sustained only in the most exceptional circumstances. He mentioned that if the deceased had been sitting or lying on the road and received a severe glancing blow from the bumper of an advancing vehicle that the injuries might then be consistent.⁵⁵⁴ The presence or absence of other injuries seems to have been the determining factor which led to Superintendent Lennon going to Dr. Harbison shortly after. This interview, on the 3rd of October, was, as previously mentioned, deeply speculative in nature and ranged over a wide range of possibilities. While perhaps only marginal clarification was expected of Dr. Harbison, at that point, there is no doubt, on Superintendent Lennon's account, which tallies with that of Dr. Harbison in this respect, that the State Pathologist was more than willing to carry out any further forensic tests with which he could assist.⁵⁵⁵

4.53. On the 14th of October 1997, Ms. Orla Kenny, who was then an Executive Officer in the Department of Justice, prepared a memorandum⁵⁵⁶ to the effect that the requirements under the Coroner's Act had been met. She then forwarded this memorandum, accompanied by copies of the request from the Coroner and Superintendent Lennon's letter and a draft exhumation order to her superior officer in the Department of Justice

⁵⁵² Transcript, Day 226, pages 71-72.

⁵⁵³ Transcript, Day 302, page 145.

⁵⁵⁴ Transcript, Day 302, pages 145-146.

⁵⁵⁵ Transcript, Day 302, pages 149-153.

⁵⁵⁶ Tribunal Documents, page 1066.

- 4.54. On the 16th of October 1997, Mr. Seamus Hanrahan, who was at that time acting as Assistant Principal in the Secretariat Division of the Department of Justice, with responsibility in respect of coroner matters, received a phone call from Superintendent Kevin Lennon in respect of the Coroner's request for an exhumation. Mr. Hanrahan had no particular recollection of this phone call, but he does remember contacting somebody within the coroners division subsequent to the phone call and saying that if the request was in the system, it should be put on hold "as the Garda side had requested that the matter be put on hold".⁵⁵⁷ Ms. Nora Ni Dhomhnaill, who was a Staff Officer in the Department of Justice division dealing with exhumation orders at that time, filed a note on that date to the following effect:

Superintendent Lennon rang Seamus Hanrahan today 16/10/1997 and asked that this order be put on hold until further notice.⁵⁵⁸

- 4.55. Kevin Lennon in his cross-examination of Seamus Hanrahan indicated his position on the matter in the following form:

... [O]n the 15th October, Chief Superintendent Fitzpatrick came to my office and directed me to ring your office and cancel the order, and I refused to do it on that day. Bearing in mind that it was an Act of the Oireachtas, and I told him I couldn't do it because of an Act of Oireachtas and a request from a Coroner, yet he directed me, and the following day at 4.50 p.m. he asked me had I done it and I told him I didn't and he directed me to ring your department and to cancel the order. And I having the mindset of the Act of Parliament had the set position that I wasn't prepared to cancel it on the basis that he might change his mind ... I telephoned the secretary of the coroner's section who wasn't available and it was as a result of his unavailability I spoke to you. And I did request you to put it on hold and I didn't give you the reason ... because I believed that, down the road, Chief Superintendent Fitzpatrick would change his mind because he was frustrating my investigation into the facts.⁵⁵⁹

Denis Fitzpatrick's Case

- 4.56. Denis Fitzpatrick gave evidence to the effect that he acted in good faith. He claims, in evidence, that he had not stopped the exhumation but merely delayed it. He asserted that while he was going in the car one day to Sligo with Superintendent Lennon, he heard for the first time that an exhumation was going to take place. He claims to have asked Superintendent Lennon: "Where is this

⁵⁵⁷ Transcript, Day 226, pages 55-56.

⁵⁵⁸ Tribunal Documents, page 1071.

⁵⁵⁹ Transcript, Day 269, pages 140-150.

going to take you?"⁵⁶⁰ He didn't see it as "a very good idea ... at the moment".
The following exchange occurred with the Tribunal Chairman:

Chairman: Who were you going to discuss it with?

A. Assistant Commissioner Crummy.

Chairman: The AIC, sorry?

A. Yeah. I says, I dunno was it a very good idea. This is the conversation on the way down. There is a lot of things to do, we have to sort out who is telling lies and who is not. I remember, I says what's in the ground is not going to change, that it can always be done again or at a later stage. And, I says, I think the aspect that you should be concentrating on is to deal with the people that are making statements and where there is contradictions and sort that out first.

Chairman: What lies have you in mind there?

A. ... Who was telling the truth and who wasn't.

Chairman: In what respect?

A. In relation to statements. There was a lot of statements changing and being changed. I didn't have the details of it but I knew there was a lot of statements - maybe not "lies" was the right word to use, but that there was differences in statements.

Chairman: Are you talking about who was in Raphoe on the night and who wasn't?

A. Yes. I said that should be all sorted out first, and the family, that should all be sorted out before you even go considering doing exhumations. Try and get that sorted out first. And the family would have to be, the family would have to be, told. I was down in Sligo that day. He was going to one meeting, I was going to another one. I discussed it with the AIC, gave my views to him. He says, yeah, I think that's the proper course. We came back and it was discussed much in the same terms as when we came back in the car, and I says I think it's the correct time to call it off, not to have the

*order go through. On the way back we stopped in Donegal town and he went into the station and rang, before 5 o'clock, the Department had to put a stop to it. And that's what happened.*⁵⁶¹

4.57. The evidence of Mr. Fitzpatrick was bizarre. Every person of the age of reason knows that bodies decay. What is in the ground is going to change and ultimately turn to dust. His passing off the responsibility onto Assistant Commissioner Crummy was ridiculous. Finally, the notion that he had a profound interest in sorting out who was telling the truth and who was telling lies in Raphoe could have resulted in swift action when it came to his attention that one of the Gardaí under his command, namely Garda John O'Dowd, was involved in making violently malicious extortion telephone calls to the citizens he was supposedly protecting. The Tribunal rejects the explanation proffered by Mr. Fitzpatrick. What his true motivation was could normally only be guessed at, save that his answers were so muddled that he may have had none at all.

4.58. A further twist to this matter arose in the preparation of briefing papers for parliamentary questions in 2001, subsequent to the actual exhumation that was conducted by the Carty team in July of that year. In a briefing document headed "Exhumation Orders, Bullet points for Minister's information,"⁵⁶² having outlined the legislative procedure in relation to making of exhumation orders and the background to the specific request, including the details of the Superintendent's request for the order to be put on hold, the following paragraph was written:

In the circumstances, the Deputy will appreciate that it was considered that it would have been inappropriate for the Department of Justice, Equality and Law Reform to take any further action in relation to the Exhumation Order request. No further action was taken in relation to the request for the Exhumation Order until a further request for an Exhumation Order was received from the Coroner for Donegal South East (associated with a fresh request from the Gardaí on 27 June 2001. The Exhumation Order issued on the 3rd July, 2001.

*(further action might have jeopardised any investigation being carried out by the Gardaí in relation to the death).

4.59. The same paragraph appeared in bullet points prepared for the Taoiseach in response to a question asked by Mr. Michael Noonan T.D. during the Order of Business in Dail Eireann on the 7th of November 2001.⁵⁶³ It also appeared in a response to a question put by Mr. Jim Higgins, T.D. to the Minister for Justice on the 13th of November 2001.⁵⁶⁴ The Tribunal can shed no light on this matter.

⁵⁶¹ Transcript, Day 269, pages 143-144.

⁵⁶² Tribunal Documents, page 1059.

⁵⁶³ Tribunal Documents, page 1060.

⁵⁶⁴ Tribunal Documents, page 1062.

- 4.60. The Tribunal accepts the evidence of Superintendent Lennon, as to his request for the explanation having been blocked by Chief Superintendent Denis Fitzpatrick. In the course of evidence, Mr. Lennon stated:

Well, when I met the Chief, when the Chief Superintendent came to my office on the 13th of the month, I think that was October, he told me to cancel the exhumation ... and I told him I couldn't cancel it because it was an order of the coroner. It was a matter under the Coroner's Act, and Act of the Oireachtas. I was the person who, within the Act, was entitled to make this application, and I told him that the truth would lie in the ground in Raphoe Cemetery. And he directed me to cancel it. The next day we went to a meeting in Sligo, myself and Superintendent Shelley and himself, and on the way back from the meeting, outside of Donegal town, he asked me did I cancel the exhumation? And I told him that I didn't. So, he pulled in the car at Donegal Garda Station and he directed me to go in and cancel the exhumation order. Superintendent Shelley agreed that was the proper process ... he didn't give me any reason. I heard it was the reason here now, that the Barron family hadn't been told ... matters above ground, sorting out the matters above ground that were not going to advance anything because they could be sorted out after the exhumation took place. They were simple matters to sort out, those above ground. And the Barron family would have been told and there was no question that they would not have been told. I didn't want to have a situation that I had a media circus around the grave of their dead father and I was going to tell them at the last - the day before, or evening before, and run it on that basis. I had all the things arranged to do that. But, in any event, I rang the Department ... I looked for the Coroner's Section. I looked to speak to the Secretary of the Coroner's Section; he wasn't available. This was 10 to 5, roughly, in the afternoon and I then spoke to the Assistant Secretary, the gentleman who gave evidence here. I asked him was the application signed and he said it wasn't at that stage, but it was ready. And I asked him to put it on hold. That was the extent of the conversation. I did that on the basis of the facts that, under the law of the Act, I couldn't cancel it. And I put it on hold in the belief that some day the Chief might change his mind that's my position on it.⁵⁶⁵

⁵⁶⁵ Transcript, Day 303, pages 5-20.

The Refusal

- 4.61. No explanation, rational or otherwise, has been provided to the Tribunal as to how the granting of an exhumation order could possibly have jeopardised the investigation into the death of Mr. Barron. As mentioned elsewhere in this report, the investigating officers should have arranged for a post mortem by a forensic pathologist prior to the interment of Mr. Barron's remains in October of 1996. Having missed that opportunity, it was imperative for the investigators to seek to have the body exhumed at the earliest opportunity as soon as the focus of the investigation turned it into a murder investigation. Whatever sequence of events precipitated the eventual decision to seek an exhumation order in October of 1997, the conduct of the officers involved in effectively cancelling the order was a further sorry indictment of the manner in which the investigation into the death of Mr. Barron was being conducted. **The Tribunal accepts the evidence of Kevin Lennon in this regard. It rejects as implausible and confused the evidence of Denis Fitzpatrick. The Tribunal is of the view that the relationship between Superintendent Lennon and Chief Superintendent Fitzpatrick had gone sour at this stage. The Tribunal is of the view that Chief Superintendent Fitzpatrick exercised his power to issue Superintendent Lennon an order, not for the purpose of advancing the cause of detecting crime in Donegal, but simply from the point of view of what he would have seen it as: putting Superintendent Lennon back in his place. Once again, personal relationships between higher officers in An Garda Síohána intruded upon, and in this case wrecked, the possibility of finding definitive solutions to serious problems of policing in County Donegal.**
- 4.62. The failure to obtain a definitive report from a forensic pathologist at that time not only prevented the completion of a satisfactory investigation file, but it also postponed justice for both the family of the Late Mr. Barron and those parties who were accused of his murder. The further disintegration of relations between these parties in the following years can be attributed, at least in part, to this bungled exhumation request.
- 4.63. **The Tribunal is satisfied that the members of the Department of Justice staff, who dealt with this matter, acted in good faith. There is no reason to believe that any of the staff were aware of the behind the scenes intrigues in the Donegal Garda Division's mismanagement of the Barron investigation, that led to the request for the exhumation order being put on hold indefinitely. It is nonetheless unacceptable that the procedure whereby exhumation orders are obtained could be compromised in the manner as outlined in the evidence before the Tribunal. As the request**

issues from the coroner, any correspondence with the person or persons processing the request should issue from him/her. The Garda officer investigating the matter does not have a role in dictating when or if the request is to be processed. Those procedures must be changed.

What the Eventual Exhumation Revealed

4.64. The necessity for an exhumation existed from the very moment that Mr. Barron was buried. There was no basis to proceed to court on any kind of a homicide charge for the obvious reason that there was no evidence of homicide. Instead of exhuming the body, the Gardaí proceeded to attempt to discuss the material that was to hand in order to seek clarification. On the 30th of September 1997 Superintendent Lennon and Garda Dillon went to Letterkenny General Hospital where a wide-ranging discussion took place. One of the matters reported as having been said by Dr. Barry was that the injuries of the deceased were not at all consistent with a road traffic accident and could only be obtained if, for example, the deceased had been lying on the road or sitting on the road when struck by a vehicle. He is also supposed to have expressed the view, but "off the record", that the dead man was held down to receive blows; most likely by something like an iron bar. The Tribunal queried these comments with Dr. Barry in a letter dated the 17th of July 2002. On the 3rd of September 2002 he replied as follows:

At that time, two possible causes for the injuries were being considered. On general principles I would have selected the less sensational of the possibilities for the brief 'off the record' because they were speculative. In effect I would have been saying: "if it is given that the injuries resulted from an assault, then it is likely that they were sustained in the following way". By the same token, I recall speculating at the later meeting (26/4/2000), on the possibility of a vehicle impact producing crush injury in a head 'fixed' against a stone wall (I was told that the character of the roadside at the scene out ruled anything like this).⁵⁶⁶

4.65. In the same letter, Dr. Barry indicates that he did not recall being told about a piece of flesh on the roadway when it was first examined by the Gardaí, but regarded that as a matter of interest

4.66. At 14.00 hours on the 26th of April 2000 a further meeting took place at the Pathology Department of Letterkenny General Hospital between Dr. Barry and Professor Harbison and members of the Carty investigation team. A wide range of views was expressed at this meeting. Professor Harbison's fundamental view

⁵⁶⁶ Tribunal Documents, pages 1056-1057

was that an exhumation, at that late juncture, would be very likely to reveal only information that remained as signs on the bones of the skull. Detective Inspector Thomas O'Loughlin, who made a note of the meeting, thought that the conclusion of the Gardai present was that the exhumation of Mr. Barron was not warranted on the basis of all the evidence available at the moment.⁵⁶⁷ However, a year later, the Carty investigation team, having completed extensive enquiries, again met with Professor Harbison, on the 13th of June 2001. The eventual consensus at the meeting was that the only potential way to resolve any of the outstanding issues as to cause of death was to proceed with an exhumation.

- 4.67. The exhumation occurred on the 6th of July 2001 at Raphoe. The examination of the remains of Mr. Barron was conducted by Professor Harbison in a graveyard at Raphoe. As previously indicated, some bones of the skull and spine were kept above ground and these were later reconstructed for the purpose of examination and photography. They were seen by Dr. Marie Cassidy, Professor Helen Whitwell and Dr. P.D. Lumb.

Professor Harbison's Post-Exhumation Report

- 4.68. In his report dated the 2nd of October 2001, Professor Harbison noted the following:

Left side of the skull injuries

By far the greatest area of bone damage was on the left side, where there was severe fragmentation of the bone, extending back from the left temple to the midline at the occiput ... opening for the spinal chord. Over twenty bone fragments could be counted.

There can be no doubt that this left-sided fragmentation was the result of very considerable force though the absence of frictional lines on the outer surface would suggest that this was due to one massive impact such as the left side of the back of the head striking the ground though vehicular impact at that point cannot be totally excluded. This left-sided fracture with its severe fragmentation must have been the result of a severe inward depression of the left side of the head and adjacent base of the skull. Nowhere on these fragments could I find any external frictional injury.

Right-frontal injuries

Quite different is the area on the right side of the forehead or right frontal impact, which corresponded with a large laceration or wound on the right side of the forehead. Here the main feature is a major

⁵⁶⁷ Tribunal Documents, page 1082.

crack fracture with neither fragmentation of bone nor depression of the skull. The skull is stronger in the frontal area as is recognised by the fact that footballers are advised to head the ball with the front of their heads.

The fracture can be traced from the upper margin of the uppermost bone fragment on the left side of the head, thence diagonally forward and to the right, across the front of the vault of the skull to a point almost two inches above the centre of the right eyebrow. From there the fracture runs downwards into the right orbit, down along its medial or inner wall, into the right nasal bone, thence inward into the right side of the hard palate where it terminated.

A fine crack extended vertically upwards and backwards into the vault of the skull, for 1¾ in. where it petered out.

Scuff Marks

The most striking feature of this right-sided forehead fracture and its difference from the "fragmentation" the fracture on the left side, is the presence of some nine or ten gently curving, parallel scuff marks on the bone surface. These are up to 1¾ in. long and curve from below right, upwards and towards the left. They begin 1¼ in. above the brow and curve upwards and towards the midline, to a point 2½ in. above the bridge of the nose. The principle fracture extends along virtually the same curving pathway, backwards and to the left as the scuff marks, but goes much further, so that it reaches the "crazy paving" appearance of the left sided "fragmentation" fractures. I have not found any scuff marks on this fragmented area, implying that its impact was not either a glancing one nor perhaps sustained at as fast a pace as that on the forehead.

The point of impact of the force causing this fracture was one inch above the most prominent part of the right orbital prominence or brow. I state this because the scuff marks are deepest there. I have searched the bone fragments from the shattered left side of the skull and cannot find any scuff marks on any of the bone fragments. These bone marks would not have been seen easily at the time of the original injury because of the overlying soft tissue.

Summary and Conclusions

1. The cause of the Late Mr. Barron's death, remains as before, i.e. laceration of his brain and fractures of his skull.

2. I am of the opinion that the primary impact to Mr. Barron's skull was from a moving object, against Mr. Barron's forehead on its right side, most likely a motor vehicle. Movement of the inflicting force relative to the deceased is indicated by the nature of the bone injury, namely abrasion or scuffing of the surface of the bone, at the site of impact on the forehead.
3. The movement was from below, upwards, backwards and to the deceased's left. The upward component is indicated by the gradual decrease in the depth of the grooves upwards, because the scraping force on the bone was greatest at the deeper, lower ends of the scuff marks. These scuff marks took the form of a series of some ten gently curving, parallel grooves.
4. The bone fragments beneath the more extensive head injuries at the back of Mr. Barron's head, on its left side does not show any scuff marks. Therefore those bone injuries lack the high velocity grazing component seen on the forehead, even though they were more extensive. The skull is also somewhat thinner and therefore weaker in the temporo-parietal area.
5. Had Mr. Barron's impact with the ground been on his face, I would have expected widespread abrasions there. Instead the skin laceration on the right side of his forehead was accompanied by the minimum of abrasion and there was no other facial injury.
6. While I can understand the wishes of the family to have these partial remains of Mr. Barron re-interred, I wish to express my view in this most unusual case, that these said partial skeletal remains be retained above ground, until it is known whether a prosecution is going to take place and if it is to take place, that an expert for the defence should have access to them. I state this because another forensic pathologist might not agree with my interpretation. I shall retain the skull, lower jaw and vertebrae, in the meantime.

4.69. These findings were repeated by Professor Harbison in evidence. The only substantial change was that he deferred to the later opinion of Professor Helen Whitwell as to the order in which the injuries were inflicted. Her view was that there was an impact firstly to the back of Mr. Barron's head, followed by his forehead being thrust into the ground, hence the scuffing marks on the skull.⁵⁶⁸ The fractures from the front of the skull ran into and ended at the fractures on the back of the skull. This indicated that the fractures to the back of the skull

⁵⁶⁸ Transcript, Day58, page 12.

were there first. Such fractures cannot run through already fractured bone but will end at a fissure that runs across the line of the shock which they represent. This is called the Puppés rule.⁵⁶⁹

Dr. Cassidy's Evidence

- 4.70. Apart from her helpful report, Dr. Marie Cassidy also gave evidence to the Tribunal. One of the points of controversy was as to whether any marks to Mr. Barron's upper limbs could be interpreted as defensive injuries. If they were, it gave rise to the possibility that Mr. Barron had been assaulted, at least within a number of hours prior to his death. Dr. Cassidy's view was that the marks on Mr. Barron's hands were falling type injuries, as opposed to defensive injuries. She said:

It comes down to the definition of a defensive-type injury. Basically speaking, most people think of defensive injuries as if anybody has injuries on their arms or hands they are defensive injuries. Defensive injuries are injuries which occur when somebody is under attack and makes an attempt to defend themselves. As you correctly illustrated, most commonly someone brings their hands or their arms up in an attempt to protect areas of the body. Typically, a lot of assaults will be to the head area and, therefore, the hands or arms will be brought up towards the head to try to ward off blows. Another type of assault, for example in stabbings, it may be that the person is going for the chest area so the arms would be brought across the chest. So, typically, under these circumstances, injuries can be caused either on the back of the hands, on the forearms, down the ulnar border or the small finger side of the arm, if the hand is brought up in this manner, with the thumb towards the face, even the palm of the hands. So injuries in any of these areas, potentially, can be a defensive injury. However, again you have to come back to the type of assault, whether you are dealing with fists, feet, a weapon, a blunt weapon or a sharp weapon, then look at the injuries you have and say. Do they fit with the other injuries elsewhere, particularly the injuries which are responsible for the person's death? In this instance, there were injuries to the hands and they are quite clearly shown in the photographs, and there were small abrasions over the knuckle area and on the back of the left wrist. So, the position is where you would expect the defensive injuries to be. But also particularly with the injuries on the knuckle; that is where you would expect

⁵⁶⁹ Transcript, Day 66, pages 3-162.

offensive injuries to be. If somebody is striking out with their fist, then again the type of area that you would be looking for injuries, typically, is over the knuckle area. So, from a point of view of where the injuries are, yes, they could possibly be defensive injuries, described as defensive injuries. But the actual injuries themselves: these are grazes; they are not bruises they are grazes; the surface of the skin has been taken off. Now, that either implies movement of the hand over a rough surface or a rough surface moving across the hand. The type of injuries seen on this man's hands are the type that I see very commonly on someone who has collapsed to the ground or who has been on the ground and the hand is rubbing against the surface. It's also a type of injury you see if somebody strikes out a hand and it hits against a wall and, again, the prominent parts of the hands, the skin will be lifted off these: you will get scraping or grazing off the knuckles.

Q. If you wanted to reduce that to very simple terms, all of us will remember, as children, falling and grazing our knees; is that the kind of injuries?

A. That's the kind of injury; exactly the kind of injury.

Q. It simply implies movement of the skin against a rough surface.

A. If these were defensive injuries then the injury would have to be caused either by something rough moving across the man's hands or his hand moving across something rough.⁵⁷⁰

4.71. Given that the order of the injuries inflicted on the Late Mr. Barron had changed as a result of Professor Harbison receiving the report from Professor Whitwell and Dr. Lumb, an immediate question for the Tribunal was to how, in ordinary common sense, the back of Mr. Barron's head could have been struck by a vehicle. One possibility is a protruding portion of a vehicle, such as a wing mirror at head height, should Mr. Barron have been standing. Another real possibility, which arises from the descriptions of Mr. Barron, detailed in the third chapter of this report, staggering home and falling, and holding himself up by clutching onto walls, is that he was already on the ground. A series of injuries, whereby the back of his head had been struck by a vehicle then impacting the front of his head, causing scuff marks, against the road reasonably arises on the evidence which the Tribunal has heard. An elucidation of this was provided by Dr. Cassidy when she said:

⁵⁷⁰ Transcript, Day 48, pages 26-28.

In a road-traffic incident or accident, most commonly when a pedestrian is injured, the pedestrian is upright. And by far the majority of cases, and probably you are talking about seventy per cent of cases or thereabouts, depending on some of the research that has been done, the person has been upright and then either knocked to the ground over the vehicle, or whatever happened to them. In a small percentage, the person will be at the side of the road and therefore not struck immediately in the upright position. And then there is the small percentage, and it's probably between, some will say about three per cent, where the person has actually been either kneeling on the road, sitting on the road or lying on the road. These, in fact, from the pathologist's point of view are the most difficult to interpret. But, certainly, the common fact in these types of cases is that there usually is some reason for them being on the road and the most common is that they have a high blood-alcohol level. And, for whatever reason, a lot of people end up lying on the road and are then struck by a vehicle in that position.⁵⁷¹

- 4.72. Similarly, the crushing injury to the Late Mr. Barron's little finger seemed to her to be consistent with the contact and crushing with the wheel of a vehicle. The Tribunal now turns to the report of Professor Whitwell and Dr. Lumb.⁵⁷²

The Whitwell-Lumb Opinion

- 4.73. This report is worth quoting extensively:

HISTORY (extracted from autopsy reports and from Professor Harbison).

This male was last seen alive shortly after midnight on 13/14 October 1996 after he had been drinking. He was found collapsed lying on his back on a road at 12.55 a.m. A 'Y' shaped laceration with crushed edges, which was flapped inferiorly, was present in the midline of the forehead from just above the bridge of the nose and extended just into the hairline. This injury measures 10 cm in maximum length and up to 4 cm wide. In the left posterior parietal scalp was a laceration, measuring 3.5 cm in length. There were also scattered abrasions on the back of the right hand and wrist and right index finger. The left little finger showed a laceration of the tip with partial avulsion of the pulp and skin from below the distal phalanx. The upper denture had been displaced and had broken into three parts and was lodged in the hypopharynx. The stomach contained a small collection of blood-stained fluid. There were also fractures of the 4th and 5th ribs on

⁵⁷¹ Transcript, Day 48, pages 28-29.

⁵⁷² The Tribunal received this on the 15th of May 2003.

an anterior aspect of the chest with no associated haemorrhage. There was no history of resuscitative effort at the scene.

EXAMINATION OF PHOTOGRAPHS

The photographs of the first autopsy are generally poor quality and not scaled. Of most significance were injuries to this male's head. A large vertically orientated laceration was present in the centre of the forehead. A skin flap had formed just above the bridge of the nose. Over the scalp, presumably the left side, and covered with hair, is a small laceration. The exhumation photographs show marked decomposition of the body, and no further relevant information can be elicited from them.

EXAMINATION OF THE SKULL

1. Extending from a point close to the insertion of the 1st and 2nd premolars in the right maxilla was a linear fracture. This crossed the inferior part of the maxilla to reach the edge of the nasal cavity where the fracture continued across obliquely towards the medial aspect of the right orbit. This fracture continued across the lacrimal bone and across the medial wall of the orbit and curved anteriorly. At this point it extended upon the right frontal bone just medial to the supraorbital foramen and extended vertically superiorly into the mid forehead where it began to curve across the midline to the left. It curved posteriorly towards the mid point of the left frontal suture. It crossed this suture through into the anterior portion of the parietal bone where it terminated at 900 into a further fracture line (see 2 below). Within the forehead two smaller fractures extended from the main fracture line described with one extending close to the frontal suture just to the right of the midline and the other terminating a short distance into the frontal bone. Both these fractures were orientated in a sagittal plane and extended posteriorly. In close association with the origins of these two fractures from the main fracture line was an area of linear scratches, measuring 4 x 2 cm, which extended superiorly and obliquely travelling from right to left in a 2 o'clock to 7 o'clock orientation. The main fracture extended internally across the base of the skull extending across the right orbital roof through the cribriform plate. The fracture then re-appeared on the left side of the base of the skull and crossed the medial part of the sphenoid bone. It then curved back around the anterior aspect of the foramen magnum and terminated on the right side of the foramen magnum.

2. An extensive fracture complex was present within the left lower half of the parietal bone, left occiput, left squamous temporal bone and lesser wing of sphenoid. Fragments of bone that were free were reconstructed and glued back into place. The fracture complex seemed to be centred upon the posterior aspect of the skull within the left parietal and left occipital bone with fractures extending from this area. One of the extensions crossed the lower half of the left parietal bone and extended into the latero-inferior aspect of the left frontal bone just prior to crossing the frontal suture line. The above described fracture (1) terminated in this fracture. No definite pattern, such as that produced by a hammer or other blunt instrument, was identified. This region of fracturing extended into the base of the skull with an extension into the petrous temporal bone, terminating in the region of the anterior part of the foramen magnum. A further extension was present extending from the left occipital bone across the floor of the skull into the posterior aspect of the left side of the foramen magnum.
3. The left zygomatic arch was absent.
4. The atlas and axis were intact. The 3rd cervical vertebrae showed a fracture of the right superior articulating facet. The neck structures also showed evidence of osteoarthritic change.

CONCLUSIONS

1. Using a Puppes rule, it is possible to ascertain the sequence in which the fracturing occurred. I note that the main fracture extending from the frontal bone extends around into the area of complex fracturing on the left side of the skull. This frontal fracture terminates within one of the fractures from the complex. This indicates that the fracture complex was present prior to the development of the fracture involving the frontal bone and face.
2. The nature of the complex area of fracturing suggests a broad area of impact rather than an impact with a small object such as a hammer. I note the presence of only a small 3.5 cm laceration on the scalp in this region, which again is consistent with that side of the scalp being forcefully impacted with a broad surface. There was no information as to whether this male was wearing a hat at the time of the incident. This was then followed by the development of the other fracture crossing the frontal bone.
3. The frontal bone fracture and its associated laceration indicate blunt force trauma to that area. The nature of the laceration suggests that

blunt force trauma was projected downwards with the formation of a flap of skin in the same direction as the force was applied. The scratch marks upon the surface of the skull are also suggestive of this.

4. In my opinion, I think the most likely cause of these injuries was a broad impact at the back of this male's head followed by a forced thrust of the forehead by this blow into the ground. It is not possible to ascertain whether this male was stood upright or crawling at the time of the first impact. I note the alcohol level was 283 mg per decilitre and it is possible that this male was in fact stumbling around on the floor. The most likely causes of the initial impact to the back of the head are either a bumper of a car or an extended wing mirror of a vehicle such as a lorry. Both these have broad flat surfaces capable of inflicting such an injury when the vehicle is travelling at speed. Following this initial impact, this male has been projected forwards and downwards and has most likely had an accelerated fall with his forehead into the ground such as road or pavement. This would account for the Y-shaped laceration on the front of the scalp and the scratch marks seen on the skull. This impact would have been accelerated and would have caused the extensive fracturing to the front of the face.
5. The neck injuries described are consistent with a rotational force applied to the skull such as that which may have been produced by the initial impact at the back of the head.
6. There were injuries noted to the hands in this male. It is not possible to determine whether these are defensive type injuries which occurred just prior to impact or a result of the accelerated fall caused by the original impact.
7. It is also important to consider the possibility of an assault upon this male. I would consider it extremely difficult for an assailant to cause the injury to the back of the skull by a blow with an object and to be able to force this male into an accelerated fall on to the floor. One might expect other injuries with an assault such as other facial lacerations and bruises. However, these were not noted. However, it is not entirely possible to entirely exclude a violent attack, although I think this is highly unlikely.
8. One should also consider the possibility that this could be a simple fall. There was no evidence that this male had fallen from a height such as from a building (although I have not visited the scene). Occasionally

falls in those individuals who are intoxicated can produce fractures. However they are usually not as extensive as those seen in this case. When falls in those intoxicated do produce fractures, there is usually unconsciousness and no second fracture is identified. I would consider the possibility that his is a simple fall as extremely unlikely.⁵⁷³

What Struck Mr. Barron?

- 4.74. On a number of occasions, during the course of their evidence, the forensic pathologists were asked as to whether there was any possibility that the injuries to Mr. Barron could have resulted from an assault. It is appropriate that the Tribunal quotes from their opinions. Dr. Marie Cassidy gave her view as follows:

It is much less likely that the forehead injury can be caused by a blunt object, which would have to have an irregular surface, striking the head, as there would be expected to be more extensive fracture of the skull in relation to this type of impact. This type of injury, in other words the lacerations and the grooving of the skull, is also described in persons sitting in the front seat of a vehicle which is involved in a collision, their heads contacting with the jagged or irregular surround of the broken windscreen. The only other injuries of note to the body were to the only other unclothed areas, that is the hands. This is consistent with the injuries being caused by moving contact with a rough surface, for example the road. There was no evidence of typical bumper injuries. If an adult male had been struck by a saloon-type car there would be injuries around the knee area. The absence of bumper injuries, therefore, could indicate that if he was struck by a vehicle while he was walking along the road, this was a glancing blow or a side swipe by something projecting from the vehicle; possibly a side mirror or some other object projecting from the back or top of the vehicle at a height of about five to six feet above the ground, which could have struck the left side of his head. Thereafter, he could have been propelled to the ground causing the frontal injuries. However, the direction of the grooves in the skull suggest the movement across the ground was as if his head was being drawn downwards across the ground which is less likely from being merely knocked to the ground after being struck on the left side of the head. Or, it could possibly be explained if his clothing had been caught on a vehicle and he was dragged along the road a short distance, his head and hands impacting with the

⁵⁷³ Tribunal Documents 3781-3786.

ground during that period. It is unlikely that he was lying on the ground when struck by a vehicle. There would be more extensive crushing type injuries to the head and these would be expected to have surface injuries or grazing over the other projecting areas of the face, in particular the nose and chin. There were no specific injuries which would be suggestive of him being involved in an assault. In summary, the examination of the post-mortem report, the photographs and the skull confirmed that death was due to head injuries. There were two points of impact to the head, one to the left side at the back and one to the front, occurring in that order. In the absence of any other significant injuries, it is by far most likely that these injuries occurred as a result of a road-traffic accident; the initial injuries to the left side of the back of the head due to a side swipe from a projecting object from a vehicle, his body thereafter dragged a short distance causing the injuries to the forehead and the hands. In my opinion, it is highly unlikely that these injuries would result from an assault. In particular, the injuries to the right side of the forehead would be extremely unusual, given that an object would have to strike the head with considerable force to produce grooves in the bone. And, if so, there would be expected to be much more extensive fracturing at that site. There was also a lack of injuries which would be described as defensive-type injuries. Although there were injuries described to the hands, these were localised to the area which were unclothed. My conclusion was that the death was due to a head injury and that would be consistent with having occurred due to a motor-vehicle collision. ... Basically, my opinion is based on the pattern that we have here. You have a large area of injury behind the left ear. Now, that's a fairly non-specific type of blunt-force injury. All it tells me is that there has been a heavy impact to that site. Now, the range of possibilities if you take one injury in isolation are - run into hundreds. Yes, he could have been struck by something large and broad. Yes, he could have fallen heavily and hit the back of his head. Yes, he could have been involved - there are a number of different explanations for that one injury. However, he doesn't have one injury. He has a number of injuries. It's the overall pattern which is the crucial part of this. The one injury which doesn't fit with the general pattern of a blow to the head and injuries to his hands is this one to the forehead and that's the key injury in this particular incident - this odd injury to the

front of his head. Now, if you come back to how this injury could have been caused, if it was in relation to a road-traffic accident, then it's - all I can say is that there's been a heavy blow to this part of his head, it could be something from - if he was upright, if we assume he was upright, and we don't know, but if you assumed he was upright it could be something projecting at a height which I recognise is at about five feetish. But if he was on the ground, yes it could easily have been something else. But if he wasn't - as I say, unfortunately the post-mortem examination and the lack of full body photographs means that we have to assume there were no obvious injuries to the leg area to suggest that he had been in a normal road accident - or what we would call a normal road-traffic accident. But, he is struck by a vehicle and struck on the legs and then hit on the head. We don't have that. The unfortunate thing again is that very often the primary bumper injuries are not obvious from the outside and you have to look under the skin for any bruising. But we don't have that evidence so we just have to accept that the pathologist said there was no injuries and we have to accept that.⁵⁷⁴

- 4.75. Dr. Cassidy was also asked as to whether there was any instrument, that could be wielded by a person, which could have caused the overall pattern of injury upon which she based her opinion. She referred to the cases on which she had offered opinions during her career. The only weapon which might have caused an injury similar to that on Mr. Barron's forehead was a sword. However, that possible opinion had to take this injury in isolation from the other injuries to the back of his head and to his hands.⁵⁷⁵ If there were a piece of flesh on the roadway, this was indicative of a road-traffic accident:

That's the key injury to this pattern; this large grazing injury. As I say, the other injuries you could come up with a number of explanations individually but it's the presence of this one, which we know had to have happened during the same incident, and therefore the only way it could have happened was contact with the road which means that he was moving across the road He didn't fall onto the road. He had to be moving across the road at some speed. Therefore, even if he was hit on the back of the head with a weapon, that couldn't produce enough force to move his head across the ground with such force as to tear out a piece of skin and put this grooving on his skull.⁵⁷⁶

⁵⁷⁴ Transcript, Day 48, pages 40-52.

⁵⁷⁵ Transcript, Day 48, page 53.

⁵⁷⁶ Transcript, Day 48, Page 54.

4.76. The following exchange occurred between counsel for the Tribunal and Dr. Lumb:

Q. Would you like to give the conclusions ... in relation to this matter you having described and reconstructed the skull ... ?

A. What I think, the way I've sort of reconstructed things is that something with a broad flat surface has impacted the back of the skull in this area. Now I say that because if it was a smaller object I would expect a lot of tearing, lots of lacerations. But we've only got a short laceration of 3.5 centimetres. So, I think it's a broad flat surface which has caused this extensive injury to the back of the skull. I think after that has been delivered the neck is rotated and there has been a fracture to this C3 facet joint [in the neck portion of the spine], and the skull has then come into contact with the ground. As the individual has been falling, he is being accelerated at great speed towards the ground and going forward slightly. This explains the laceration on the front of the forehead and also the scuff marks; these scratches on the surface of the skull. Also, this second impact has caused this second fracture to the front of the face. ... I could not identify specifically what has caused his acceleration to the ground I wonder whether it possibly could be part of a vehicle, such as a bumper or a wing mirror causing this great acceleration. It's not common to see that great an acceleration when somebody has been hit with something such as a baseball bat, although I can't entirely exclude that. I think it was more likely, possibly a vehicle.

Q. That's your view on the matter. Now, a number of possibilities have been put in relation to this matter and in particular the first pathologist, who is not a forensic pathologist ... continued to express the view that it was possibly an assault. You are saying again that you can't exclude that fully. But what degree of likelihood is there in relation to such a thing occurring and causing the injuries which you have described: not just in the abstract?

A. I think it is very difficult to put light on this. I feel it's highly unlikely just because the pattern of injuries fit quite well from my point of view of being impacted by a vehicle. I can't tell you whether that was obviously an assault or not in itself

I just felt that the acceleration required to put the skull, for the second blow, on the floor was very powerful: more in keeping with a vehicle than something like a baseball bat. I've seen these sort of injuries possibly in vehicle accidents before. This sort of severe amount of damage.

Q. But have you ever come across them in relation to an assault before?

A. Not this severe personally. Perhaps Professor Whitwell may have seen other assaults. I've not seen one this severe with a baseball bat.

Q. There are two other factors that I want to draw to your attention. The first is this: that the original pathologist was not told that Gardaí coming onto the scene had discovered a piece of skin with hair attached, we don't know how large, but which seems to fit a pattern of coming from the Y-shaped laceration to the front [of the forehead] which extends up into the hairline. That was apparently on the roadway and close to the main area of blood indicating the point at which the Late Mr. Barron expired. Is that a finding which is of interest to a forensic pathologist?

A. Obviously, it would always be useful to examine such a piece of skin in case there were any marks that were identifiable as an object. I can't exclude that. So it would always be of use to see all the tissue that's available.

Q. Dr. Cassidy's view was that was indicative of a road-traffic accident, because it shows the scraping off a portion of scalp by virtue of the accelerated movement across the ground and fits in with the scuffing injury. Do you have any comment in relation to that?

A. I would agree with those thoughts.

Q. Then the other matter that I wanted to turn to was [the marks on the hands]?

A. Yes, well, when you consider injuries to the back of hands you have always have got to think of possibly defensive injuries as someone tries to fend off blows. However, it's not uncommon to see them in falls and road-traffic accidents as

well. So it's not really possible to comment on these injuries particularly ... You can see these sort of injuries in defensive-type situations, you can see them in offensive-type situations where somebody punches an object. You can also see them, and I've seen them quite commonly, in simple falls and other scenarios as well. So they are what I would call non-specific. They don't really help you with a cause for those injuries. If he had been hit by a vehicle they could have been caused by just falling to the ground. If he tried to fend off an object they possibly could have been caused by that as well. I can't tell the difference.

- 4.77. It is important to quote, finally, the exchange which follows between counsel for the Tribunal and Professor Helen Whitwell. Her status as one of the leading forensic pathologists in Great Britain is undoubted, as is her reputation in neuropathology:

Q. You see, one of the problems, if you like, with the accident scenario is this: that if you take it that the back of my hand is the back of Mr. Barron's head, that Mr. Barron's head was hit, that Mr. Barron was perhaps flipped up in the air and flipped forward and then landed on the front of his forehead at considerable speed, causing a second massive fracture and-causing also the Y-shaped laceration and the scuffing underneath, the problem with that scenario is ... imagining how that could have occurred. How the injuries to the head [at the rear] followed by another injury to the head [at the forehead] occurred, instead of being an injury to the head followed by an injury, say, to the entire face. I'm wondering can you help us on that? In other words it seems unlikely that it's first of all the back of the skull and then the front of the face in one particular portion, the landing portion only, that is very badly damaged and not the entire face?

A. Well, in fact, the area of laceration to the forehead is quite large and that scenario is entirely possible.

One of the issues when one examines, looks at, road traffic accidents generally is the spectrum or otherwise of injuries and the difficulty in reconstructing the injury patterns. So, I don't have a problem with that at all.

- Q. *You don't have a problem with the body moving in an unexpected way through the air after being hit by the head and then landing on the head?*
- A. *No, I don't, no.*
- Q. *Could that even include Mr. Barron being tossed over backwards with rotational and sheering forces to the head causing the injury to the top vertebrae?*
- A. *I think, in my opinion, the injury to the vertebrae probably arose with the initial impact to the back left of the head in association with that impact.*
- Q. *Can I ask you then about a body flying through the air? I don't intend to stay on this. But, some of the questions put [by other parties] would seem to indicate a belief on the part of the questioner that the body always moves through the centre of gravity; in other words, the body always moves as if the force propelling it comes at the point of the hips. If, in fact, Mr. Barron was struck very, very hard and the propelling force was against the head alone as, opposed to the head and the body, is it possible for the body to move in an arc where the force that is moving it is moving through the head and not through the rest of the body. In other words, where the centre of gravity is shifted, by the impact, from the hip area up into the head area and the body is flying head first by reason of being hit on the head at force?*
- A. *Well, that's exactly what would happen if the head was the sole point of impact. Yes. That force is through the head. Reconstructing accidents is difficult, if not impossible.*
- Q. *So again ... if the impact is to the back of the head, the body will fly because the point of energy is the head, head first in whatever direction it is pushed. Or, if it's a glancing blow, it may fly unpredictably to one side or to the other side, depending upon the degree of angle at which the head meets the oncoming object?*
- A. *Exactly. It's a bit like if you hit a ball, it depends on the angle at which you hit it as to which way it is going to go. If you hit it straight on then it potentially goes straight ahead but,*

glancing blows, you know, it's difficult, if not impossible, to predict which way the head will go.

Q. If you take a person as being like a doll with a similar centre of gravity, if a doll is struck very forcibly on the head ... ?

A. ... It's the head that would move.

Q. Hence, the scenario of the blow to the head followed by the impact with the head as being the foremost object of the arc, the body following it?

A. Yes.

Q. Surely that's difficult to contemplate in the context of a saloon car, unless you take it Mr. Barron was either falling towards the car or was crawling on the road or was sitting on the road?

A. The problem that we've got is we don't know where he was in relation to any vehicle at the time of the first impact and what position he was in. And that is an unknown.

Q. Professor, if you take my having gone through that scenario with you; if you take the flesh on the roadway; the Y-shaped laceration; the scuffing of the skull; the T junction [in the fractures at the front of the head meeting the fractures at the back of the head] indicating that the back of the skull injury came first; the massive nature of the rear fractures, their compound character; the massive nature of the front fracture. If you take all of these in combination, is there any combination of [assault with] weapons that you can think of that you have come across in practice, or that you can see in a textbook, which could possibly fit this scenario?

A. I haven't come across any, no.

Q. Whereas you say it's a possibility; what level does that possibility rest at?

A. Well, I have never seen that scenario with this pattern of injury.⁵⁷⁷

4.78. A number of possible weapons which might, in the most extreme circumstances, account for one or other of these injuries was put by counsel for the Tribunal to

⁵⁷⁷ Transcript, Day 58, pages 102-106.

Professor Whitwell. These included a blow with a cricket bat, a baseball bat, a camán, a roughened stone (such as large piece of roadway wielded by a very strong man or a number of men) a sword or a hatchet. All of these were ruled out by Professor Whitwell. The following exchange occurred:

Q. So, practically, you are excluding a weapon for the injuries to the back of the skull and for the injury to the front of the skull. Could you see, have you seen in your practice, a weapon causing such an injury? I know there are other components such as the missing flesh and the scuff marks?

A. I mean, that is, contact with a roughened surface; taken into this case as a whole it has the appearances of a ground impact. If one had to look at that injury alone, it would have to be a roughened object and I think, as I've explained before, I'm not happy with the pattern of skull fracturing for that.

Q. So you seem to be entirely excluding the possibility of an assault except as a very remote academic possibility in unexplained circumstances?

A. That's correct.⁵⁷⁸

Conclusion

4.79. Had there been a post-mortem examination conducted by a forensic pathologist in the days immediately after the Late Mr. Barron's death, no murder investigation would have been launched. Instead a hunt would have been initiated to try to secure evidence against some party, or parties, of dangerous driving. At the very least, this was confusion. The failure to call in a forensic pathologist is completely inexplicable in the light of the burden of proof which a criminal case carries. Foundationally, the prosecution must prove that the violent death of the deceased was due to intentional human intervention. Instead of eliminating murder as a cause, it was pursued in a way which applied a presumption of guilt to Mark McConnell, Frank McBrearty, Michael Peoples and their relations.

4.80. Dr. Barry is not to be criticised for offering an opinion. Counsel for the Tribunal extensively cross-examined him on this issue. If a pathologist is asked for an opinion, he or she is entitled to give it. That was Dr. Marie Cassidy's view in evidence and the Tribunal agrees with it. If his or her opinion is, as Dr. Barry's was, that the injuries were atypical for a road-

⁵⁷⁸ Transcript, Day 58, page 110.

traffic accident and that possibly, or probably, foul play could not be ruled out, then it is the duty of the Gardaí to secure the attendance of a competent expert prior to the burial of the body.

- 4.81. The Garda photographer taking the photographs was insufficiently trained to know what to look for. Had this genuinely been treated as a serious murder case from its first few days, instead of developing into an unrealistic exercise designed to pursue the assumed guilt of certain parties, then a Technical Bureau squad would, and should, have been called in to do the job properly. It is deeply to be regretted that that expertise was not available in Donegal. That, however, is merely a technical fault. The notion that a murder case could ever be brought based upon the original report of Dr. Barry is indicative of the most unbelievable incompetence on the part of senior officers in the Donegal division.
- 4.82. There is no possibility that the Late Richard Barron met his death in any other way than by collision with the roadway caused as a result of impact with some kind of a vehicle. While his injuries appear to be atypical, bruising to his shins or knees cannot be excluded. While much about this case is atypical, the reality is that the Late Richard Barron was attempting to find his way home while staggering as a result of alcohol consumption and attempting to hold himself up by clutching on to walls. He could have been in any position on the roadway, crawling, lying or falling, when the collision which killed him occurred.

CHAPTER 5

THE GARDA 'MURDER' HUNT

5.01. This chapter is concerned with the Garda investigation into the death of the Late Richard Barron. A separate chapter follows that concerns the Garda investigation into the Peoples extortion calls. Of necessity, these will be mentioned in passing in this chapter.

Introduction

5.02. This chapter should be considered against the background laid down in Chapter 2 as to how a major Garda investigation ought to be conducted. It is important to note that the criticisms levelled at the investigation team, and in particular at the senior officers running that investigation, are squarely based upon the standards laid down in the Garda Manual and elucidated in evidence by expert Garda witnesses. It is important for the reader to remember that the standard applied is the Garda standard. It has been somewhat expanded upon by Chief Superintendent Garvie, of the Royal Canadian Mounted Police, but not in any way that changes the fundamental thrust of the necessity to apply objectivity, proper standards of investigation, intelligence and energy in the pursuit of criminals. It is important also to note, at this stage, that there was nothing in the structure of the police force in Donegal, as opposed to anywhere else in the country, which would in any way account for the extraordinary events which it is now the Tribunal's grim duty to catalogue. There is no evidence of shortage of manpower, lack of training or lack of equipment that would have diverted this investigation away from its proper course. Instead, there is evidence of wilful blunders, gross negligence, laziness, emotionally wrong-headed rushes to judge people as guilty and a determination by some parties to ensure, that even if there was no evidence, that the suspicions formulated were going to stick, and stick permanently.

Self-inflicted Difficulties

5.03. In charting the course of the Garda investigation into the death of the Late Mr. Barron, the Tribunal is mindful of a number of difficulties that were placed in the path of An Garda Síochána. All of these were self-inflicted. These are detailed in the previous chapters of this report. In following through on the manner in which the investigation developed, sight should not be lost of:

1. The fact that the scene of the death of Mr. Barron was not preserved;
2. The fact that the State Pathologist, Dr. John Harbison, was not called to conduct a proper forensic post-mortem examination;

3. The fact that the Gardaí were prepared to receive and rely on the apparent word of an informer, namely Mr. William Doherty, without any assessment having been properly conducted as to his background or motivation; and
4. The fact that senior members of An Garda Síochána, who were supposed to have a vast experience of conducting investigations and of the workings of criminal enterprises, were prepared to accept a mere rumour as a basis upon which a murder investigation was launched.

The Rumour

- 5.04. It is on the last point that we must start. It will be recalled that the body of Richard Barron had been returned to his family on Tuesday, the 15th of October 1996. A traditional wake was arranged for that evening. This involved his friends and relatives coming to pay their respects to the body and accepting the hospitality of the bereaved family in their home at Townparks, Raphoe, Co. Donegal. The wound to the front of Mr. Barron's face was a cause of some speculation, particularly by Derrick 'Darcy' Connolly. It was felt by him that a wound of this kind was not consistent with a road-traffic accident, especially as there were no further features of injury that were visible on the deceased's face. It seems that various parties, who were naturally upset by the death of Mr. Barron, began to put facts together and to reach misinterpreted conclusions. Because there had been a dispute – again the Tribunal must emphasise that row is far too strong a word – between the deceased and Mark McConnell, it was felt that he might in some way be involved. The more serious dispute with 'Manny' Hegarty was ignored. **However, the crucial factor was not any dispute between Mr. Barron and any other party, which could have coincidentally happened on any night and with no consequences, but the firm conclusion that was reached by a group of the deceased's friends that he had been murdered.**
- 5.05. **There was no basis for this conclusion.** In the aftermath of a sudden death, a suspicion of foul play often comes into the mind of those who are grief stricken. It is probably for that reason that the Coroner's Act 1967 provides for the medical examination of those who have suffered a suspicious death; then a public inquest determines who has died, at what time, where and as a result of what cause. This death was in a category beyond that detailed in the Coroner's Act. It was certainly a suspicious death, but it was more. If Richard Barron had suffered a heart attack on the way home and had died in the place where he was found, a coroner's inquest would have been required; equally, if he had died in Garda or in prison custody. No matter what view one took of the scene of Mr. Barron's death, it was obvious that he had died violently by a hand other than his own. Given that he was stretched on the side of the road with massive fractures to his skull, there

could be only two possibilities. These were either that he had died as a result of a vehicle collision, where the driver had fled, or that he had been assaulted. Given the natural human tendency to suspect foul play in unexplained circumstances, the Garda force should have realised that it was all the more likely that those who grieved for the deceased might worry themselves terribly that someone who had a grudge against him had attacked and murdered him. **The task of a police force is to bring objectivity to play in circumstances where peoples' emotions have submerged their reasoning in consequence of their loss. Regrettably, the Garda Síochána did not react in this way.**

- 5.06. William Doherty was present at the wake house. He probably heard a speculation to the effect that Richard Barron had been murdered. Because Mark McConnell's encounter with him was also likely to have been exaggerated in the emotional circumstances involving the commemoration of his life, it was probably also speculated that he had been one of the guilty parties. His connection with his first cousin, Frank McBrearty Junior, and their friendship was also likely to have been the subject of emotionally-charged supposition piled on the uncertain foundation of bereavement. The Tribunal must emphasise that it is unable to say precisely who said what during the course of the commemoration of Mr. Barron at his wake. This is because those who were most centrally involved, namely Mr. William Doherty and Mr. Derrick Connolly, have given accounts which the Tribunal regards as being either inaccurate or self-serving. One thing, however, is apparent. In a proper police investigation rumours can be looked at. **As to whether there is any foundation for a rumour will become apparent on it being tested. A rumour is not a basis for supposing that a crime of a particular kind, in this instance murder, has been perpetrated. Even less is it a basis for believing that the objects of the rumour are guilty of the crime. Regrettably, if one follows through on the course of this Garda investigation, it is inescapable that it was founded on the uncertain premise of a rumour that was taken to be true from the moment of its reception.**

The Rumour Spreads

- 5.07. Garda John O'Dowd had a professional relationship with William Doherty that stretched back to the previous year. William Doherty, in his evidence, claimed that he had previously been convicted of two minor crimes for which he had received suspended sentences.⁵⁷⁹ By the time, however, he was arrested by Garda O'Dowd in 1996 these sentences had been served in the community. William Doherty claimed that he was first stopped driving his father's lorry from Raphoe where it was discovered that he had no tax, insurance or driver's licence. Then, the records

⁵⁷⁹ Transcript, Day 184, page 59.

indicate, that in July 1996, William Doherty was arrested and questioned in respect of the kidnapping of a man called Owen Deegan. William Doherty put the matter as follows:

*He stopped me in the lorry and he said that he knew I had no tax and insurance and I had no driver's licence, which was correct. He more or less put it to me that if I wouldn't co-operate with him, that I would be prosecuted ... He said he was going to do me. He said that he was going to prosecute me for driving through every townland that I had drove through and he said it was a serious offence ... Then I think it was about one week after it that he came and arrested me for the kidnapping ...*⁵⁸⁰

5.08. Mr. Doherty claimed that, between Garda Philip Collins and Garda John O'Dowd, they had him terrified that charges in respect of these minor motoring offences or, it was hinted, some aspect of evidence to do with the kidnapping which was not fully explained, would result in him ending up in jail. In consequence of this, he decided to co-operate and become a police informer. Garda John O'Dowd's version of this matter was that he had gotten information that Mr. Doherty had been involved in kidnapping a man called Owen Deegan. He was ordered to arrest Doherty, but nothing came of the interrogation. Some weeks later, in consequence of a phone call, he discovered him driving an uninsured lorry. Doherty then followed up on this contact by offering him "important information". This was supposed to be about how Sinn Féin wanted him to join their organisation and to go over to England to do "jobs", meaning terrorism, for them.⁵⁸¹ In evidence, Mr. O'Dowd claimed that he went to Chief Superintendent Fitzpatrick who ordered him to "meet this guy regularly". After some time reporting, in this manner, Superintendent Lennon was assigned to work with him. The scene had now been set, or so the Tribunal was asked to believe, for the receipt of important information from the rookie Sinn Féin recruit.

5.09. It is difficult to believe either the version of John O'Dowd or William Doherty. The demeanour of William Doherty in the witness box was that of a deeply mischievous individual who would be prepared to lie in order to turn any situation to his advantage. While representing himself, he showed considerable intelligence in the manner in which he put his questions, until the point came where his own interests were challenged, in which instance, he would simply switch from whatever aspect of the story he had already sworn to into one that was more convenient. **It seems more than likely to the Tribunal that Garda John O'Dowd and William Doherty developed a relationship based more on the use that each party felt the other could be made of to their own**

⁵⁸⁰ Transcript, Day 184, pages 55-58.

⁵⁸¹ Transcript, Day 282, pages 119-120.

benefit, rather than anything to do with the exchange of information in good faith. The Tribunal, however, is convinced that no rational individual could believe that someone who had just been recruited into Sinn Féin could, within a matter of months, be supplying high-grade information on a vast array of criminal activities, as John O'Dowd and Kevin Lennon purported to tell the Tribunal that they believed William Doherty was able to provide.

William Doherty

- 5.10. Even on the most casual encounter, William Doherty comes across as a person whom it is more than difficult to trust. While he is both polite and respectful to authority figures, it is impossible to accept that his astonishing mendacity could have failed to have been noticed by either Garda John O'Dowd, in his many encounters with him, by Garda Philip Collins, who interviewed him over the kidnapping incident, or by Superintendent Kevin Lennon who made a formal assessment of him in the weeks coming up to Christmas of 1996. On that occasion, Chief Superintendent Denis Fitzpatrick reported Superintendent Lennon as regarding the usefulness of William Doherty as an informer as "promising". It is to be noted now that William Doherty lied on that encounter to Superintendent Lennon concerning his prior convictions, a fact discovered in February of the following year. Shortly after that, Superintendent Lennon claimed, in his statements to the Tribunal, that he would have no regard for Mr. Doherty as an informant of truth. This is extraordinary, as a few weeks afterwards in March of 1997, the major Garda operation concerning the Gallagher farm was set up. As will emerge later in these pages, Mr. Doherty's testimony on this, and Superintendent Lennon's response, has a bearing on the credibility of those parties and on that of Garda John O'Dowd.
- 5.11. Doherty describes the situation in the wake house as follows:

... It was a V mark on [the deceased man's] head. The talk then, Richard Barron's brother Vincent showed me further, look at the deceased's hands which had his fingers, three of his fingers were black, and they were sort of squeezed in. They were talking about that he wasn't a victim of hit-and-run, that somebody had hit him with an implement. We said, he must have put his hand up to save himself and that's how he got the marks on his hand, and on his head. That's what was being said ... There were all sorts of rumours going about in the wake house as well. Rumours about a fight that had occurred in a pub in Raphoe and people were

putting one and one together and coming up with three ... People were looking at the wounds and saying it couldn't be a car that hit him, and they said that with his hand, the bruising on his hand was he tried to save himself, and they came up to the conclusion then that there was a fight in the pub earlier on that night and they came up with – there were people seen following him up the road and they came up then that it was Mr. McBrearty Junior and Mr. McConnell that was involved in it ... Because of the argument that Mr. McConnell had with Mr. Barron in the pub ... There was a history between the two families: That's what made it worse.⁵⁸²

The 'Information'

- 5.12. In addition, Mr. McBrearty Senior had attended the wake to pay his respects to the deceased. This was natural as a gesture of solidarity with a grief-stricken family. It was a sign of his innate decency. However, the Tribunal has noted in its various encounters with Mr. McBrearty, that he is an emotional man. He is described as having gone in and out of the room where the open coffin was laid out on a number of occasions. *The Tribunal has no doubt that, if this happened, that Mr. McBrearty did it out of a sense of genuine upset over the loss of Mr. Barron, with whom he was well-acquainted, though not friendly. This, however, was adding to the ever-increasing helter skelter of speculation. It was interpreted as a sign of the guilt of his family. These speculations were, and continue to be, utter nonsense.*
- 5.13. Mr. Doherty claims that as a result of being a witness to these emotional scenes, and the speculation that resulted from them, he was now in receipt of information. He claims to have telephoned Letterkenny Garda Station and to have spoken to Sergeant Joseph Hannigan. *The information that William Doherty passed on was, he claimed in evidence, not that detailed above but rather a separate piece of information that a man called John McArt had been driving badly, and with no tax and insurance, around the town on the evening in question.⁵⁸³ The Tribunal rejects this evidence.* It is undoubtedly the case that the 'information' burning in the mind of William Doherty was about murder. Hit-and-run, as a cause of Mr. Barron's death, was not topmost in the minds of those few people in the wake house speculating as to what had killed him. *The Tribunal has no doubt that, on that Tuesday evening, William Doherty phoned Garda John O'Dowd and expressly passed on word that there was a rumour in the wake house that the deceased had been murdered and that Mark McConnell and Frank McBrearty Junior were responsible. The Tribunal does not believe that Garda John O'Dowd invented this rumour himself.*

⁵⁸² Transcript, Day 184, pages 70-73.

⁵⁸³ Transcript, Day 184, page 69.

The Effect of the 'Information'

- 5.14. On the evening of Tuesday the 15th of October, the preservation of the crime scene was reinstated. John O'Dowd's account of this has always been that William Doherty rang him and told him of the talk that Richard Barron had been murdered and that Mr. McConnell and Mr. McBrearty were responsible. John O'Dowd, in his evidence to the Tribunal, followed through on his previous statements on the matter by indicating that the content of the telephone call was to pass on information. In evidence, John O'Dowd said:

So, the Tuesday night, this William Doherty rang me up about half nine or so, and he told me about the rumour up in the wake house. I tried to contact John Fitzgerald. I couldn't contact him. I tried twice. I rang the Chief because I had his mobile number. I had that in relation to the subversive issue. So, I told the Chief what Doherty told me. He told me to be in the next morning. I was in the next morning. I met John McGinley. I told John McGinley the story. He wrote it down ... I was never in a situation like this before – I remember hearing it and I remember jumping out of the seat, right enough. I was sitting in the room of my house that night at half nine. It was more than odd; it was startling information to get, you know.⁵⁸⁴

- 5.15. The effect of the information, according to John O'Dowd, was to merely repeat what William Doherty had told him, to the effect that there was a rumour circulating in the wake house that the death of Mr. Barron was foul play and that Mr. McConnell and Mr. McBrearty Junior were responsible. It was only some eight or nine days later that William Doherty, it is said, purported to reveal that there was an actual witness tending to support these events, that is to say 'Mr. X', who was later revealed to be Robert Noel McBride.
- 5.16. On that same evening of Tuesday the 15th of October 1996, Chief Superintendent Denis Fitzpatrick was telephoned by Garda John O'Dowd. **The Tribunal believes that Garda John O'Dowd exaggerated the nature of what had been told to him by William Doherty.** The rumour, now in the form of 'information', about the supposed murder and the so-called culprits was passed on to the Chief Superintendent. This resulted in an order being passed to Superintendent John Fitzgerald, the district officer, in consequence of which the scene was re-preserved. Superintendent John Fitzgerald gave evidence that on the evening of Tuesday the 15th, and on the morning of Wednesday the 16th, he received word from Chief Superintendent Denis Fitzpatrick that Richard Barron had been murdered and that the culprits were Frank McBrearty Junior and Mark

⁵⁸⁴ Transcript, Day 282, pages 115-119.

McConnell. There is doubt in Superintendent Fitzgerald's mind, on this as about so much else, as to whether he was contacted at all on that Tuesday evening. It is more than likely that he was, since the decision to reinstate the scene had to have come from him.

5.17. On the Wednesday morning, to use Superintendent Fitzgerald own words, Chief Superintendent Fitzpatrick "attracted me across to his office".⁵⁸⁵ Their conversation there was extremely brief. For reasons which are unclear, Chief Superintendent Fitzpatrick had a very close working relationship with Garda John O'Dowd. In the normal course of events, communications between two such widely divergent ranks would go between intermediate officers. In this instance, however, John O'Dowd had telephoned Chief Superintendent Denis Fitzpatrick and told him of the rumour in the wake house. In evidence, Chief Superintendent Fitzpatrick purported to believe that what he was receiving was more than a rumour and was, indeed, information from an informer of Garda John O'Dowd's who actually knew something to suggest that this 'information' was true. **In the space, therefore, of possibly no more than an hour, the speculation of people in the wake house had been exaggerated between communications from William Doherty to Garda O'Dowd and to Chief Superintendent Fitzpatrick, and hence on to Superintendent Fitzgerald that translated rumour into fact. Chief Superintendent Denis Fitzpatrick told Superintendent Fitzgerald: "Mark my words, it is a murder and Mark McConnell and Frank McBrearty Junior did it". That was it.**

5.18. The Superintendent did not ask the Chief Superintendent what he was talking about, what the source of his information was or what particular line of enquiry they should pursue. Superintendent Fitzgerald merely claims to have said: "we will bear that in mind but I intend to keep an open mind in this investigation". What there was to keep an open mind about is to be speculated on, as no hard fact had been exchanged from one party to the other. As two policemen operating in the context of the most serious crime known to the criminal code this exchange is astonishing. It's bizarre nature was brought out in the course of cross examination by Tribunal counsel of Superintendent Fitzgerald:

Q. The way it seems, perhaps, is that Garda O'Dowd and Inspector Lennon, on your assumption, appear to be people who have sufficient clout with Chief Superintendent Fitzpatrick to convince him of the basis of some information, or other, that causes him to drop it on your lap and you then to change direction which you have already decided upon?

A. I have changed direction in regards to Professor Harbison

⁵⁸⁵ Transcript, Day 63, page 142.

but I – what I will say is that I am a very – I was at that time and am a very experienced police officer. I said earlier I had been involved in many, many murders and you don't jump quickly to conclusions. There are times when things have to be done, such as contacting Professor Harbison.

Q. But Chief Superintendent Fitzpatrick seems to have leapt to this conclusion?

A. Sorry.

Q. Chief Superintendent Fitzpatrick seems to have leapt to a conclusion: "Mark my words, it's murder"?

A. Yes.

Q. If you don't jump to conclusions without hard evidence, if that is the position, well, surely the next obvious question is: What is the hard evidence; what is behind all this?

A. I didn't jump to a conclusion, but what came into my mind was, in view of that and in view that there was an altercation in the pub, that the services of Professor Harbison were required now.

Q. I am interested in what may be, it may appear to some people to be, regarded as two senior officers of the Gardaí dancing around one another and not getting to grips with the issue with which they are faced. You are the Superintendent in charge of an investigation. You are faced with information, and given with authority judging from the body language, that this is a murder inquiry you ought to be about, because "It's murder, mark my words" is what is being said to you. Why didn't you explore that a little further?

A. Well, he passed on what was in his mind to me and I took it from there ...

Q. It's very difficult, perhaps, to understand how it is that you, having charge of the investigation, are left to wonder and to speculate what is in your superior officer's mind, Chief Superintendent Fitzpatrick's mind, that leads him to say "Mark my words, it's murder." Is it not strange that you are

left in that position and he doesn't tell you what he is talking about?

A. *It is strange.*

Q. *Alleging murder against two citizens of the State?*

A. *Yes, unless he was preserving his source. I cannot talk for him.*

Q. *Did you ever ask him was he preserving his source?*

A. *No, I didn't. But I knew he was.*

Q. *But you didn't know anything of the kind. You didn't know anything?*

A. *Well, I presumed that it was information that he got, and I presumed it came from one of these two people that I mentioned, that is Garda John O'Dowd or Superintendent Kevin Lennon.*

Q. *Did you go to them?*

A. *No, I did not.*

Q. *Why not?*

A. *I waited. I made the decision that I would wait for this information to come through conference because there were a lot of things that needed to be done. When I say a lot of things, there were investigations to take place.⁵⁸⁶*

Comment on the 'Information'

5.19. It needs to be emphasised that there was no basis for this supposition. It was a bizarre practice for a superior officer to tell a Superintendent that he had made up his mind both that the crime of murder had been committed and that the culprits were two named individuals, without revealing to him what his source was. It was only slightly less astonishing that Superintendent Fitzgerald did not go and check with the persons he suspected to be the authors of this so-called information, namely Superintendent Kevin Lennon and Garda John O'Dowd, as to what they knew and how they knew it.

5.20. The Tribunal has scoured the evidence in order to avoid a damning conclusion that all of the events which followed, stemmed from this

⁵⁸⁶ Transcript, Day 63, pages 142-147.

conversation. Regrettably, while the Tribunal would have liked to conclude that there was some sense of objectivity or independent-minded investigation going on in the context of the unfortunate death of Mr. Barron, there is no evidence to support this. Rather, all of the documents that are available to the Tribunal, apart from those deliberately destroyed by Detective Superintendent Joseph Shelly, Chief Superintendent Denis Fitzpatrick and Detective Superintendent John McGinley, indicate that rumour had hardened into supposition from the earliest possible stage. It should be recalled that Chief Superintendent William Keane, in his very helpful evidence to the Tribunal, had indicated that information is power in the context of an investigation.

- 5.21. Hiding cards is utterly inappropriate. However it might be justified, or however it might be attempted to be justified, in the context of Gardai who are doing investigations on a door-to-door level, it could never be justified in the context of keeping the Superintendent actually running the investigation in the dark. Chief Superintendent Fitzpatrick both disempowered and misled Superintendent Fitzgerald.

The Basic Scenario

- 5.22. When Róisín McConnell was arrested on the 4th of December 1996, she was questioned by a number of teams of detectives. This will be the subject of a separate report. However, Inspector John McGinley put the basic scenario to her in the form of a question. Since it perfectly encapsulates the Garda thinking on this matter that question should now be quoted:

I would say you are a good person and I am going to tell you what happened that night and you tell me if I am telling a lie. Your husband Mark McConnell had a row with Richie Barron in the pub. There were no blows struck, but he insulted the McBreartys and he insulted your husband. He did not like it. He left the pub with you and you ordered your food after walking over and meeting the McCullaghs. You went into Frankie's on your own. Mark met Frankie McBrearty and told him what happened. They decided to teach Richie Barron a lesson. They walked up through the car park and met Richie Barron staggering home as he always did. He got one wallop and that was it. As far as they were concerned Richie was down. He got a wallop as he often did before, it was no big deal. They were not to know the man would die. They left him and went back down, walked down in fact and went into the Parting Glass. Now, tell me, did I tell you a lie?⁵⁸⁷

- 5.23. Róisín McConnell answered: " Yes it's all lies" .

⁵⁸⁷ Tribunal Documents, page 3354.

The Garda Belief

5.24. The Garda belief that an assault had killed the Late Mr. Barron arose from the post-mortem investigation conducted on the afternoon of Tuesday the 15th of October by Dr. David Barry. The reality of this matter should not be lost sight of. From the end of the post-mortem up to the date in July 2001, when Professor John Harbison exhumed the body, nothing changed. Either the Gardaí believed in the aftermath of the post-mortem investigation that there was evidence to suggest a murder or they did not. **The preponderance of evidence suggests that Dr. Barry had told the senior officer present, who was Inspector John McGinley that it was possible or probable that an assault was involved.** This section of the cross-examination is quoted in Chapter 4 on the medical evidence.⁵⁸⁸ John McGinley, on the other hand, would not accept this. He said:

*We discussed it for a long time and at the end of it all he could say was that it was head injuries. This was the first injury. This was the second injury and that this injury followed this, that the shape of the wound was consistent with a blunt impact injury.*⁵⁸⁹

5.25. The conclusion that murder was squarely in the frame as and from the Monday evening, at the end of the post-mortem, is borne out by a letter written on the 16th of October by Superintendent Fitzgerald to Chief Superintendent Denis Fitzpatrick at Letterkenny. In part, the letter reads:

The post-mortem revealed heavy injuries to the skull with multiple fractures which was the cause of death. Regarding the actual cause of injuries there were various scenarios such as the head rolled over by a car, a heavy blunt instrument.⁵⁹⁰

5.26. The following exchange occurred between Detective Superintendent McGinley and Tribunal counsel:

Q. What did you understand him to mean by a blunt instrument? In other words, was it something wielded by somebody, or did you understand him to refer to a car when he was referring to a blunt instrument?

A. I understood him, what I understood him to refer to was the contact between the skin and whatever struck it. Now, whether that fell out of the sky or hit him on the road or something else, you know, that it was just a contact part he was talking about. That whatever struck his forehead – in other words, the resulting shape of the wound need bear no

⁵⁸⁸ Transcript, Day 46, pages 96-97.

⁵⁸⁹ Transcript, Day 239, page 117.

⁵⁹⁰ Transcript, Day 239, page 117.

resemblance to whatever struck it.

Q. Ok. We'll accept that as a given. Did you come out of the post-mortem and the discussion after the post-mortem thinking I now suspect homicide?

A. No, I didn't.

Q. What did you come out thinking?

A. I thought given all that had occurred it was a traffic accident. There was a possibility that it was something else, perhaps.

Q. Right?

A. We couldn't be sure.

Q. Well, what was the other thing?

A. He died of head injuries.

Q. What was the other thing it could have been?

A. It could have been, it could have been an assault.

Q. Right?

A. It could have been something else but we have nothing to suggest that at that time.

Q. Most likely a road-traffic accident but it could be an assault. What else could it have been?

A. Well, essentially some type of a traffic accident or some type of an assault would be the two scenarios I would imagine.

Q. Prior to the post-mortem you are thinking some type of traffic accident. After the post-mortem you are thinking traffic accident or some type of assault. Is that wrong?

A. That would be fair enough, I'd imagine, yes.⁵⁹¹

5.27. Superintendent Fitzgerald was more forthcoming in his evidence. He indicated that, in the aftermath of the post-mortem examination, he had a conversation with Inspector McGinley. His recollection of that exchange ties in with the clear evidence given by Dr. Barry as to what conclusions he put before the senior Garda present at the post-mortem examination. Superintendent Fitzgerald said the following as to what was reported to him:

⁵⁹¹ Transcript, Day 239, pages 117-120.

Well, what I can say is that I was aware on the Monday night that he had – that Dr. Barry, yes, I admitted that unintentionally, that Dr. Barry, in carrying out his post-mortem, said that he was hit with a blunt instrument, but that he was inconclusive ... That was during my conversation with Inspector McGinley...Yes, but medically, medically he wasn't able to say it. ... That he wasn't in a position to – that he wasn't able to say that these injuries – he died from his head injuries but that they weren't consistent with a traffic accident ... Yes they weren't the actual words but that is the message I got [from Inspector McGinley]. I am positive.⁵⁹²

The Murder Hunt Begins

5.28. In the aftermath of the discovery of the body, Detective Garda Patrick Flynn was only slightly involved in the investigation. He has impressed the Tribunal as an honest witness and his careful notes as to these events have been of considerable assistance. He initially noted a call from Sergeant Hannigan requiring his assistance to investigate a fatal hit-and-run at Townparks in Raphoe. His direction was to take witness statements. However, within a matter of days, he noted this in his diary: "Information re. Richie Barron death. Now looks like foul play"⁵⁹³ At the same time as this, within a week of the death, Inspector McGinley and Superintendent John Fitzgerald were taking preliminary notes. These were not part of the documents destroyed by Detective Superintendent McGinley. They were uncovered in January 2003 in the locker of Detective Sergeant John White in Letterkenny Garda Station. They include the following entry:

Search of area from scene through fields to back of McBrearty's pub.⁵⁹⁴

5.29. On that Wednesday, searches took place as indicated in Inspector McGinley's note. When you leave Raphoe through Irish Row you can either go straight ahead on a road that leads to some dwellings or you can turn left towards Glenmaquin. Mr. Barron chose the latter route and he died in the vicinity of the McBride farm some three hundred and fifty metres from the turning off the Diamond and onto Irish Row. These searches concentrated on the left-hand side of the road as one looks up the hill towards Glenmaquin. The Tribunal is satisfied that whatever searches were conducted on the right-hand side of the road had nothing whatever to do with the recovery of a possible murder weapon. They were concerned with road-traffic type evidence that might be left behind in the aftermath of an accident, such as portions of glass, bumper, hubcaps or tyre marks. Some hedgerows were, on the evidence of Detective Superintendent McGinley, cut back or looked under.

⁵⁹² Transcript, Day 63, pages 65-67.

⁵⁹³ Tribunal Documents, page 5642.

⁵⁹⁴ Tribunal Documents, page 6907.

- 5.30. However, there was a very obvious Garda presence searching from the lane beside McBride's downwards along the stream, which is partially covered at that point, and fully covered when it meets the Glenmaquin road, down towards the car park at McBrearty's, which it skirts. **There is no rational possibility that these searches were conducted in the context of anything other than the potential recovery of a murder weapon. An item from a car could not have flown over McBride's house and into a stream at a distance of seventy to three hundred and fifty metres. The reality is that the Gardai searched that entire area, with particular reference to what they thought was the likely path that the culprits, whom they suspected to be Frank McBrearty Junior and Mark McConnell, would have taken on leaving the murder scene in order to go back to their place of refuge, which was suspected to be Frankie's nightclub/the Tudor Lounge pub.**
- 5.31. No similar searches were conducted on the right-hand side of the roadway looking up towards Glenmaquin. No senior members of the investigation team, including Chief Superintendent Denis Fitzpatrick and Superintendent John Fitzgerald, believed that anyone other than Frank McBrearty Junior, Mark McConnell and Michael Peoples were involved in this murder. **The reality is, as Detective Superintendent John McGinley admitted: "Once you believed it was murder these were the only suspects".**⁵⁹⁵
- 5.32. This is borne out by the document, again written within a matter of days of the death of Mr. Barron, by Inspector McGinley which has this entry:

Mark McConnell Lying. Do homework first. ⁵⁹⁶

- 5.33. On Wednesday the 16th of October 1996, Inspector Gallagher, who was then acting district officer in Letterkenny, noted the following in his journal:

Conference in Letterkenny at 9.30 a.m. re. suspicious death of Richard Barron. Rumours were circulating in Raphoe that he had been beaten to death. Thirty members at conference. Questionnaire handed out, scene been extended in search for weapon used. Paul Gallagher, Dr. McGinley Road, was suspect as he was put out of the Parting Glass nightclub at 12.30 a.m. and had an uninsured car parked near the scene. Two other suspects as well as deceased had been seen in a row with earlier on in the night. ⁵⁹⁷

⁵⁹⁵ Transcript, Day 239, page 142.

⁵⁹⁶ Tribunal Documents, page 6897.

⁵⁹⁷ Tribunal Documents, page 8263.

- 5.34. In the correspondence book, of Wednesday the 16th of October 1996, this entry occurs:

Suspects
Mark McConnell
Lying.
Allegations that he has altercation with the deceased on Sunday night.
Background on subject and movements over period in question. Wife –
Róisín.⁵⁹⁸

- 5.35. In the conference notes of the 17th of October, Mark McConnell is noted together with queries about his dress. Frank McBrearty Junior is noted cryptically. Both the names of Frank McBrearty Junior and Mark McConnell appear with question marks after their name.⁵⁹⁹ A reference is made to the issue as to where Mark McConnell spent the night. This is dealt with extensively in Chapter 3.
- 5.36. By the 17th of October, it is clear that Mark and Róisín McConnell, and Frank McBrearty Junior are the subject of considerable suspicion. They are the objects of both jobs in the jobs book and comments in the conference notes, apart from what has already been recorded above.
- 5.37. On Thursday the 17th of October 1996, Inspector Gallagher noted the following in his diary:

Conference on suspicious death at 9.30 a.m. to 11.30 a.m. Inspector McGinley doing book. Went through the evidence and handed out jobs. Two suspects have emerged but there is no evidence that they were at the scene.⁶⁰⁰

- 5.38. On the 18th of October, the jobs book records that Ms. Toye, of Roosky, Convoy, was in a car with her boyfriend, Eamon Strain of Burnfoot, which was seen near Glenmaquin and that she knew about the accident. This was clearly information of considerable importance. Strangely, however, the job of dealing with it was given to Garda John O'Dowd. It appears that he simply put up his hand in the conference and announced that he had encountered these individuals and that he would take a statement from them. No-one queried whether it was appropriate for him to do this job. As events later emerged, a controversy arose as to whether he was in a position to encounter these people in the back roads beyond Townparks, Raphoe at a time which might indicate his involvement in the collision which killed Mr. Barron, or whether it was approximately an hour later on. The latter time would tend to be neutral in terms of his involvement.

⁵⁹⁸ Tribunal Documents, page 7054.

⁵⁹⁹ Tribunal Documents, page 5978.

⁶⁰⁰ Tribunal Documents, page 8263.

5.39. On the same day, Garda John O'Dowd visited Paul 'Gazza' Gallagher in custody, for ten minutes. It was to be some time before Mr. Gallagher made any statements but when he did, these bore a resemblance to the later statements from Robert Noel McBride that accused the McBrearty's of bribery in attempts to cover up evidence of their involvement in the death of Mr. Barron. The Tribunal makes no finding that Garda O'Dowd was culpable in this respect. The Tribunal has found that there was no Garda involvement in Paul 'Gazza' Gallagher's accusations. He acted out of personal spite. The detail of this is in Chapter 3.

5.40. Also on that date, in his journal, Inspector Gallagher noted the involvement of Detective Inspector McGinley as follows:

Conference in Letterkenny at 9.30 a.m. Discussed all matters related to suspicious death, Raphoe. Superintendent Fitzgerald chaired the conference. Detective Inspector McGinley went through the jobs book.⁶⁰¹

5.41. While a number of entries in the jobs book and the conference notes indicate that motor cars that might be relevant in terms of the collision theory, leading to the death of Mr. Barron, were checked, it is also obvious that the focus of inquiries within the first week was sharpening on the murder theory. Descriptions were sought of Mark McConnell's clothing; queries were asked as to where he stayed that night; information was sought on the movements of Andy McBrearty in and out of the Parting Glass; and attention was paid to what was thought to be the crucial period when Mark McConnell was supposed to have left Quinn's pub between 00.30 and 01.15 hours and whether he returned.⁶⁰² The obvious thrust of this tendency is clarified by an entry in the jobs book for Sunday, the 20th of October 1996, six days after the death of Mr. Barron, which reads as follows:

Allegations that Richard Barron was beaten up by Frank McBrearty and Mark McConnell a month ago. Establish if this is true.⁶⁰³

The Template

5.42. This job was marked to be given to Sergeant Joe Hannigan, and it was also marked that it should be looked at again. On that same day an extraordinary piece of information was entered in the correspondence book and made the subject of job number 131. The document should be quoted:

Information received:

Winston Laird's daughter was in Frankie's car park with boyfriend – Saw Frankie McBrearty [Junior] coming down McBrearty's car park – on Sunday night, Monday morning – he was covered in dirt and he was wet.

Interview her and her boyfriend.⁶⁰⁴

⁶⁰¹ Tribunal Documents, page 8264.

⁶⁰² Tribunal Documents, pages 7199, 7213, 7217, 7225, 7233 and 7235.

⁶⁰³ Tribunal Documents, page 7235.

⁶⁰⁴ Tribunal Documents, page 7257.

- 5.43. A number of comments need to be made in relation to this document. Firstly, it establishes a template. It is to be noted that the basic facts cited, the suspects coming down the car park at the relevant time wet or dirty, reappears in information allegedly received from John Patton on the 22nd of October. It also reappears in the statement allegedly taken from Robert Noel McBride on the 29th of November, and finally a version of it appears in the new year of 1997, in statements taken from Kieran Roulston and Roderick Donnelly under the influence of Derrick 'Darcy' Connolly and Paul Roulston. Detective Sergeant Sylvester Henry claims that Garda John O'Dowd brought information to conference as early as the 24th of October 1996, to the effect that he was working on a witness (later identified as Robert Noel McBride but at that time identified as 'Mr. X') who might say something similar.⁶⁰⁵ Secondly, it is imperative to ask what the Gardaí did about this information. Regrettably, the answer is very little.
- 5.44. It should not be lost sight of that the statement of Robert Noel McBride of the 29th of November was the piece of information without which no-one would have been arrested. It has been variously described in the evidence as having caused satisfaction that finally there was available to the Gardaí a piece of information which placed the suspects apparently coming from the scene at the relevant time. No-one, following the Robert Noel McBride statement, seems to have asked what possible innocent explanation might be available. Mr. McBrearty was, after all, the manager of Frankie's nightclub and was therefore walking through his own car park. Mr. McConnell was, after all, his cousin. The crucial element seems to be the wetness of their clothing, or hair, or their dirty and dishevelled appearance as if they had either waited in the rain, waded through the stream that lies between them and the scene or were looking angry, 'rise' in Donegal parlance, as a result of an attack, it was supposed, on the deceased. If Detective Superintendent John McGinley is to be believed in his evidence, this information had very little impact on conference. Given that the later information of the 29th of November from Robert Noel McBride caused a stir to the extent of justifying the arrest of a dozen people, it has been most difficult for the Tribunal to understand the attitude of conference.
- 5.45. One possible inference is that the most senior officers, namely Superintendent Fitzgerald and Detective Superintendent Shelly, were happy to accept evidence against the suspects but were not prepared to accept the responsibility of checking out false information when it came through. It was not until November of 1997 that Hilary Laird made a statement. When she did, it was in the following form:

⁶⁰⁵ Transcript, Day 229, pages 48-50.

I live at home with my parents Winston and June Laird. I remember the 13th of October 1996, the night that Richie Barron died. That night I was with my sister Tanya who lives here at that time. At some time that night we walked from the house to D.J.'s chip shop. I can't say for sure what time we went up the street but we definitely did not go into the car park at the Parting Glass or into the disco at the Parting Glass. We would have walked back home again. Neither myself or my sister Tanya had a boyfriend at that time and we did not have any car. I did not know Richie Barron to put a name on his face and I can't remember who we were talking to at D.J.'s takeaway.⁶⁰⁶

- 5.46. To this can be added a note in the jobs book, which could not be strictly considered to be a job at all. It indicates that Andy McBrearty may have returned to the Parting Glass at 01.20 hours in a wet condition and that Mark McConnell also entered the Parting Glass at the same time. In the original note the words "may have" qualified the sighting, but these words were crossed off.⁶⁰⁷

Dealing with False Information

- 5.47. According to Detective Superintendent McGinley's evidence, this matter was checked and discounted fairly immediately. No more was thought about it.⁶⁰⁸
- 5.48. This was not simply an indication that someone in a particular location might know something. It was clear and definite information of a detailed kind that had to have been either witnessed by a source, or invented by another source.
- 5.49. The Tribunal is prepared to accept that it is a normal occurrence for information to be presented to the incident room which subsequently turns out to be incorrect. This need not normally be a reason for suspicions to be aroused. The Tribunal is, however, satisfied that there is a special significance to be attached to this information. Notwithstanding the fact that it was established that the information was incorrect, subsequently information came into the incident room allegedly from another source, Mr. Patton, which reflected and repeated many of the essential ingredients of this information. The Patton information was, in itself, demonstrated to be suspect in a number of ways not least in that Mr. Patton declined to make a statement supporting it. Finally, after what appeared to have been two 'false starts' the Incident Room was presented with the McBride information which again essentially reflects many of the essential elements which would have been contained in the Laird information and the Patton information, if they had lived up to expectation.
- 5.50. Given that the shadow of suspicion hung over the two 'false starts', the Tribunal believes that because of the willingness of the members of the incident room to

⁶⁰⁶ Tribunal Documents, page 1834.

⁶⁰⁷ Tribunal Documents, page 7217.

⁶⁰⁸ Transcript, Day 241, pages 138-140.

accept the McBride information, which amounted almost to enthusiasm, they were emotionally prepared to be set up and manipulated. If the ordinary mentality of a good detective had applied at this stage, the relevant questions would have put them on notice that either someone within their organisation or people outside it were intent on framing the suspects. As it turned out, both were. The attitude of the conference team left themselves open to this manipulation.

Further Inquiries

- 5.51. On the 18th of October, Chief Superintendent Denis Fitzpatrick walked the scene with Superintendent Fitzgerald.⁶⁰⁹
- 5.52. On the following Monday, the 21st of October 1996 the Gardaí were attempting to trace telephone calls to and from Quinn's pub and Frankie's nightclub.⁶¹⁰ The purpose of this was to pursue a theory that when Mark McConnell became annoyed, over the words exchanged between himself and the Late Mr. Barron, he had contacted his first cousin in Frankie's nightclub to set up the murder. Yet, it should be remembered, that there was literally no-one in either public house that ever noticed Mark McConnell or Frank McBrearty Junior making a telephone call at any stage during the night. This fact was completely ignored by the Gardaí.
- 5.53. By Tuesday the 22nd of October 1996, the alleged information from John Patton had been brought to conference. In a conference on the 22nd of October 1996, it was noted at point 2: " 1 a.m. - Frank McBrearty + 1 other came through car park. Trousers wet" . Point 3 is simply " discuss McBrearty" . Point 4 is a reference to Gavin Gillen and Angelo Gillen. Point 6 notes that there is a discrepancy as to who put 'Gazza' Gallagher out of McBrearty's. Point 7 notes that the Gardaí should check who was put out of McBrearty's and at what time. Point 8 suggests that there should be further searches " especially McBrearty's car park" .⁶¹¹ In job 181, of the same date, it is noted: " Culprit may have come down by the dirt track to the technical school. Search." ⁶¹² According to Superintendent Joseph Shelly, further searches were, indeed, conducted on that day. Job 179 of the same date notes: " A full profile on Róisín McConnell, Mark McConnell + Frankie McBrearty, Jnr" .⁶¹³ **The Tribunal is satisfied that the profiles were required in order to interrogate them, which could only practically happen when they were arrested.**

⁶⁰⁹ Tribunal Documents, page 4452.

⁶¹⁰ Tribunal Documents, page 7305. On this see the evidence of Superintendent John McGinley at Transcript, Day 242, pages 6-9.

⁶¹¹ Tribunal Documents, page 6002.

⁶¹² Tribunal Documents, page 7359.

⁶¹³ Tribunal Documents, page 7355.

John Patton

- 5.54. Given the importance of the Patton information and how it, in common with that of Robert Noel McBride, Hilary Laird and Roderick Donnelly, later proved to be false, it is important to quote the context. Superintendent John McGinley explained it to the Tribunal as follows:

Well, the context in which it came in, Chairman, was that Pat Teague put it before conference on the 22nd of October, that he had received information that this witness, Mr. Patton, had information to this effect. He was asked to develop that information and he went out to Mr. Patton on that evening and Mr. Patton again told him – he came in on the 23rd, the following day, and he again outlined that he had been to Mr. Patton, that he didn't want to have anything to do with the Guards, he didn't want to have to have anything to do with the McBreartys. Yes, he was there on that date and at that time and this is what he saw ... At the end of the conference he came to me – this was discussed at conference. At the end of the conference he came to me and he said that the only way he could – that this man wasn't prepared to make a statement and he didn't want anything more to do with this, because he was asked at conference could it be progressed any further. He suggested that the only means of progressing it was that he had a cousin in the Guards, in Castlefin, whom he might talk to and he asked my view on it and I said – I told him that if this relationship between the cousin and the Guard was such that they could talk, by all means go and see if he could put it any further. I told him if he couldn't, to report on it and give it in to me. So he arrived back on the 24th, which was the following day. He arrived back to conference. He stated that he had put the matter as far as he could and he handed me the note which you've just read out. Now, to answer your question, I suppose, Chairman, we've been twenty-five years interviewing witnesses in various forms or other, particularly along the border, and sometimes it's very difficult, and very often people don't want to get involved and they don't want to make written statements and you have to respect that. In this instance, Detective Garda Teague got the information from a person. He visited the man himself. His cousin visited this person and all three of them, as a result of all three – the information which was put before conference and which is synopsised in that note, was the final product. Detective Garda

Teague was known to me since I went up there in 1986. He was a man who in my experience could talk to the people and the farming community and that, these people, and he often got information and he often could obtain information from people in that set up. I believe that he was genuine, doing a genuine day's work and that the man who gave it to him was telling him what he believed. And I had no doubts whatsoever that – no reason whatsoever to have any doubts about the information and I believed him. And I believed that Superintendent Fitzgerald at conference did also.⁶¹⁴

- 5.55. It is important to note, at this juncture, what John Patton told the Tribunal that he had actually witnessed on that night. His evidence indicated the following:

When I was walking into the Parting Glass, I seen Frank McBrearty Junior and another man just walking five or six yards from the entrance to the doors of the disco ... I do not know who he was. Just five or six yards from the door of the disco when I was walking in ... About five to one. I looked at my watch when I parked the car ... I walked into the disco then he just ... [He] seemed to be walking normal. ... A normal pace.⁶¹⁵

- 5.56. Mr. Patton also added that there was nothing abnormal about these men that would cause him to pass a remark that they were wet, or annoyed, or anything else. He was certain that there were two men, and not three. The significance of the third man is that this seems to be the first occasion on which the notion that a third individual might have been involved in the murder emerged. That individual for some unknown reason was suspected to be Michael Peoples. It is to be noted that he was later arrested for murder on the 4th of December 1996. The Tribunal is satisfied that this was the reason for the arrest, despite the fact that Superintendent John Fitzgerald and Detective Superintendent John McGinley have both given evidence that they had supposed that he was being arrested as an accessory after the fact to murder.

- 5.57. It is important to quote the note prepared by Detective Garda Patrick Teague to Inspector John McGinley. In reviewing this note one notes the similarity with the Hilary Laird, Robert Noel McBride and Donnelly/Roulston information. The information was passed to Inspector McGinley in written form on the 24th of October. He dated the envelope in which he placed it as the 22nd. The form of the note reflects what was stated to conference orally on that earlier date. The note reads:

⁶¹⁴ Transcript, Day 242, pages 42-45.

⁶¹⁵ Transcript, Day 53, pages 120-124.

Note to Inspector John McGinley

12.55 a.m. to 1 a.m. on 14/10/1996, as this witness was going into the Parting Glass from the Main Street direction. He saw two or three men running down the car park towards the Parting Glass entrance. The first man was young Frank McBrearty, no idea of who the others were. No idea if witness went into the disco but these men did not come in. He is absolutely sure of his times and of his identification of Frank McBrearty Junior. He describes young Frank McBrearty as being 'rise' looking and he thought he was like someone who had given someone a beating. When he heard of Richie Barron's death, he came to the conclusion that McBrearty may have been involved. He is absolutely terrified of McBrearty and is already under the impression that McBrearty was watching him in the Parting Glass last Sunday night. He wants no more contact with the Gardaí. This is an honest, decent hard-working young man. Patrick Teague.⁶¹⁶

- 5.58. In his evidence to the Tribunal, Detective Garda Teague confirmed writing that memo as a result of his recollection of his conversation with John Patton. He personally did not place any significance on the fact that Frank McBrearty Junior might have looked annoyed. He said:

When John Patton described young Frank McBrearty as being 'rise' I told him that I didn't put a lot of significance on that, that he could be rise for any number of reasons ... We had a conversation on the road for possibly twenty minutes. But I was very interested in the description, if I could get a description of the other persons. Like, I was satisfied with his time and who he saw, but ... I wanted a description of the other person. As I pursued that description, John Patton became more and more hesitant and got to a stage where he looked down at the ground and he was kicking the chips at the side of the road and he says, "I want no more dealings with McBreartys", and that is all he would say. I believed, at that stage, that possibly he could help me with a better description of who the other person, or persons, were. Like, I was unable to establish from John Patton was it one or two [other] people.⁶¹⁷

- 5.59. A statement was not taken from John Patton until the 28th of August 1997. When eventually taken, the relevant part of the statement read as follows:

... When I was about five or six yards from the entrance to the Parting Glass I looked to my left and I saw Frank McBrearty Junior and another

⁶¹⁶ Tribunal Documents, page 4151.

⁶¹⁷ Transcript, Day 54, pages 126-127.

man coming from the direction of the car park. They were approaching the corner of the building when I first noticed them. Frank McBrearty Junior was on the inside. I did not know the man who was with him. He was walking alongside Frank McBrearty. I think Frank McBrearty was wearing a black jacket. I did not notice anything else he was wearing. The man who was with him was wearing a white sweatshirt. I did not notice anything else. I would describe him as about the same height as Frank McBrearty Junior but not as well built. I passed no further remarks on them and I walked into the disco. Both these men were walking towards me at a normal pace. I paid into the disco. I did not know who was at the door or who took the money. Frank McBrearty and another man did not come into the disco after me and I did not see them again that night.⁶¹⁸

- 5.60. No statement was taken from John Patton until much later. The reason for waiting until August of 1997 before taking a statement from John Patton was explained by Detective Superintendent John McGinley in his testimony. He said that an individual had approached Garda John O'Toole and had informed him that John Patton may have some information relevant to the investigation.
- 5.61. This was hardly news. Up to this stage, John Patton's identity had been kept from the other members of the incident room and, in consequence, Garda O'Toole was unaware of any sensitivity surrounding him as a witness. In consequence, Detective Inspector McGinley was then prepared to approach John Patton who was, by that stage, and for unexplained reasons, prepared to make a statement.⁶¹⁹

Comment on the Patton Issue

- 5.62. Certain comments need to be made by the Tribunal in relation to this matter. Firstly, while it may be difficult to accept Detective Superintendent John McGinley's explanation for the delay in getting a formal statement from John Patton, the witness's evidence was presented to him as being sensitive. He regarded that sensitivity as having been breached by John Patton and he had independently spoken to Garda John O'Toole through an intermediary. When the statement was taken, many important details have disappeared. Frank McBrearty Junior is not described as being annoyed. Neither party is described as being wet. The number of men accompanying Frank McBrearty Junior is definitely described as one other, as opposed to possibly two others. When John McGinley had brought this statement back to the conference other steps needed to have been taken.
- 5.63. The reference to the person accompanying Frank McBrearty Junior as being not as well built as him should have set alarm bells ringing. Mark McConnell, at that

⁶¹⁸ Tribunal Documents, pages 2690-2692.

⁶¹⁹ Transcript, Day 242, pages 50-54.

stage, weighed well in excess of twenty stone. He was a person of moderate height. He also wore a distinctive beard, like a goat's. It was impossible for him to have fitted the description given by John Patton. In the direction of the investigation, as and from February by Superintendent Lennon, there was no excuse for not noting these features. The delay in approaching John Patton is not excused. The failure of Superintendent Lennon to react to the discrepancies between the two statements and, in particular, to rule out Mark McConnell as a suspect as and from that time is astonishing.

- 5.64. The Tribunal can only conclude that, at the very least, the senior officers were emotionally caught up in the notion of proving the guilt of Mark McConnell, no matter what circumstances were presented. Furthermore, the Tribunal needs to make the comment that the manner in which this Patton evidence was dealt with was unsatisfactory. Mr. Patton's viewpoint, as reported to Inspector McGinley, was kept secret. There was no reason to do this. John Patton was not interviewed notwithstanding the importance of his testimony. Similar sensitivities surrounded the potential testimony of Robert Noel McBride. He was interviewed six times in rapid succession. The Tribunal is satisfied that an outline of what Mr. McBride might say had been presented to conference as early as the 24th of October 1996. In this regard, the Tribunal accepts the evidence of Detective Sergeant Sylvester Henry and rejects all contrary evidence. There is no reason why a statement could not have been taken from John Patton.
- 5.65. The delay involved is inexcusable. It leads to a potential inference of corruption. However, because of lack of evidence, the Tribunal is not satisfied to make that inference. The initial report to Inspector McGinley as to what John Patton might say is redolent of the suspicion which was accepted by, and partially generated by, Detective Superintendent Shelly and Superintendent Fitzgerald. It was accepted at face value, because it fitted the relevant suspicion. It is difficult not to draw the inference that this is the reason why it was not checked through. When eventually the form of the statement came out as nothing like what had initially been reported, an inquiry should have been initiated as to how the earlier form of statement had been taken. This was not done. That was unsatisfactory on the part of those leading the investigation. If that had been done, the potential existed to show why both the Hilary Laird reported statement and the John Patton reported statement were detailed and specific but completely inaccurate.
- 5.66. Note should also be taken of the testimony given by Detective Garda Patrick Tague to the Tribunal. It regards that evidence as honest. Of the information which he received from John Patton, he had the following to say:

Well, I honestly didn't put a lot of weight on the description of young Frank McBrearty outside his premises, rise- looking. To me that was a normal sort of a statement. My concentration with John Patton was the description of the other persons. I concentrated on that , and to that end I got Seamus Patton to speak to him with the sole intention of getting a description of the other persons. I could not get John Patton in any way to make any effort at describing the one or two other persons that were there. I was coming from the point of view of creating an association, or eliminating an association between Mark McConnell and Frank McBrearty ... I did point out in that report that I was of the opinion that John Patton was making an association between seeing Frank McBrearty and the death of Richie Barron, and I was of the opinion that that was a wrong association; that he was jumping the gun.⁶²⁰

5.67. Later on, in his evidence, the following exchange occurred between Tribunal counsel and Detective Garda Tague:

Q. You will note afterwards to Inspector McGinley, that this is after a conversation with Garda Seamus Patton, which says: "When he heard of Richie Barron's death he came to the conclusion that McBrearty may have been involved"?

A. That was my summing up of all that happened there, I came to that (INTERJECTION).

Q. They are not the words of Mr. Patton then?

A. Definitely not.

Q. Definitely not?

A. No, they are my words, I was summing up what I thought was going on in that man's head.

Q. So that's your interpretation?

A. Yes, he came to that (INTERJECTION).

Q. You don't qualify it as such?

A. I appreciate that.

Q. Because what you say in that report, which you make, is as he was describing it in fact: "McBrearty being rise-looking and he thought he was like someone who had given

⁶²⁰ Transcript, Day 54, pages 132-133.

someone a beating. When he heard of Richie Barron's death, he came to the conclusion McBrearty may have been involved". Not a new paragraph, it's ascribing this, I would have thought, reading it, maybe I'm wrong, to Mr. John Patton?

A. *That is my note, my handwriting. The only – I may have put his words in inverted commas, but he never said to me that he came to the conclusion, definitely not. I came to that conclusion from his demeanour and his approach.*

Q. *So it wasn't Mr. Patton's conclusion. It wasn't him because he did not say to you: "I came to the conclusion when I heard of Richie Barron's death that McBrearty may have been involved"?*

A. *No, he never said that, never. But I took that from my interview with him that this man was terrified for this reason, which is the reason he came up with.*

Q. *Why didn't you say: My view is that he reached this conclusion when he heard about the death?*

A. *Yes, I know that that would have been more clear.*

Q. *"He is absolutely terrified of McBrearty": He didn't say that?*

A. *No, definitely he didn't say that, but he kept emphasising: "I want nothing to do with McBrearty". He kept saying that. The more I pushed him about a description of the other person the more he said it, until he got to the stage where he put his head down and he was kicking the gravel. I knew that I was (INTERJECTION).*

Q. *Sorry, just to be sure about this, because I want to be clear about what this note means. There are bits of it which cannot be ascribed to Mr. Patton at all, they are your conclusions?*

A. *That is my note written by me ... that was my opinion of his view.*

Q. *That he never expresses?*

A. *Yes, I was putting that down for him being so afraid that he had to come to conclusions like this.*

Q. *"He is absolutely terrified of the McBreartys", he didn't say that?*

A. *No.*

Q. *"He is already under the impression that McBrearty was watching him at the Parting Glass last Sunday night", did he say that to you?*

A. *No, he didn't tell me that, that is coming from Seamus.*

Q. *That's not from you?*

A. *That's not from me. When Seamus Patton went out to see him and came back to me, that's what Seamus told me.*

Q. *This report is not a summary at all of your conversation, only some of it is?*

A. *It's a combination of the inquiries made with John Patton by myself and Garda Seamus Patton.⁶²¹*

5.68. On Detective Inspector McGinley reporting back John Patton's statement to conference as of September of 1997, it was incumbent on Superintendent Lennon to check through whatever suspicions existed against Mark McConnell and to reassess them in the light of the fact that he could not possibly have been present in the car park with Frank McBrearty Junior at what was regarded as the crucial moment. This was not done. The application to this inquiry of the possibility of innocence should also have taken into account the fact that if, as John Patton was initially reported as saying, Frank McBrearty Junior looked annoyed, this could have been for any number of reasons; the most obvious of which was that he had been doing his job expelling belligerents from the nightclub, a nightly and repetitive task. The entire scenario echoes the conduct of the Donegal Gardaí over the taking of a statement from Robert Noel McBride. Again, that statement was taken and was not checked. When discrepancies and problems began to appear it took an outsider from the incident room, namely Detective Sergeant Hugh Smith, to notice the problems and to follow through on them. It would appear that those leading the investigation were not at all interested in anything that might tend to show the innocence of either Mr. McBrearty or Mr. McConnell. That would be unwelcome news, as far as they were concerned.

⁶²¹ Transcript, Day 54, pages 143-146.

The Focus Intensifies

5.69. Through the conferences during the rest of October, a clear focus on the potential guilt of Frank McBrearty Junior and Mark McConnell emerges. There would be nothing wrong with this, if it had been looked at objectively and if proper inquiries had been made in relation to pieces of information that came in, such as the Patton information and the Laird information. There was interest in the movements of Róisín McConnell, interest as to whether Mr. McConnell was upset and, the Tribunal is also satisfied, interest in Michael Peoples. Detective Sergeant Sylvester Henry has told the Tribunal that Garda John O'Dowd made the first mention of Michael Peoples as a potential suspect shortly after the conference of Thursday the 24th of October 1996. This is not noted in the Garda documents.

5.70. However, the conference notes are sloppy and notes between the 24th of October and the 5th of November are entirely missing. During this time Garda Pat Flynn noted, as a result of information coming from Darcy Connolly, the following:

Mark McConnell drank on Monday afternoon and evening at Mark Quinn's. Quinn was very snappy with Mark, Róisín and child. Unusual for McConnell to drink so much. Quinn snapped at Róisín over the child running about. This was seen. McConnell is "a vicious bastard" unlike his brothers, Eamon and Francie. This refers to a row some years ago. McConnell seen kicking viciously at a man on the ground. McBrearty's temper is well known. There were no footprints around McBride's sheds near the crime scene. They must have come up the new road Frank made near Willie Logan's. May have waited in a gap in the hedge. Informant stated he checked around the sheds the morning after very early.⁶²²

5.71. This hardening of attitudes is also reflected in the note made by Inspector Gallagher on Wednesday, the 23rd of October 1996 when he was acting district officer in Letterkenny. He noted that a conference was held on that day that was chaired by Superintendent Fitzgerald. He wrote:

D/Sergeant Henry has found wheels of car driven by Paul Gallagher and found burned out near Letterkenny. Wheels are to be sent to forensic laboratory to Mr. Fleury for testing. Investigations are moving away from a hit-and-run accident and concentrating on a physical assault with a bar or a baseball bat. There are two suspects but no one can place them near the scene of the crime as yet. Leads are being checked but there appears to be a lot of intimidation and a piece of glass, invisible to the naked eye, has been found in the pocket of the deceased and this is being checked out by Garda Niall Coady, scenes of crime examiner.⁶²³

⁶²² Tribunal Documents, pages 5644-5.

⁶²³ Tribunal Documents, page 8266.

- 5.72. It seems to the Tribunal that the Gardaí, taking this passage as correct, were scouring for a witness who might put the culprits, as Superintendent Gallagher puts it: "near the scene of a crime". In the conference of Thursday night, the 24th of October, it was noted that Frankie McBrearty Junior had a baton and that it might be searched for in his car. The following also occurs: "Searches for weapons. Arrests – when are we ready?"⁶²⁴ The Tribunal does not attach fault to Superintendent Gallagher, who was only involved for a few days in the case.
- 5.73. Even though there is no note of it, the Tribunal is satisfied, from the evidence of Superintendent Shelly and Detective Superintendent McGinley, that on the 29th of October they went to the forensic science laboratory and spoke to Liam Fleury. His evidence to the Tribunal was that there was nothing in terms of torn clothing or particles of glass and/or paint that might indicate that Mr. Barron had met his death in a road-traffic accident. Mr. Fleury stated:

*There was no paint or there was no glass on the clothing, or there was no smears of paint or smears of oil. But I would have to qualify that ... In saying that, in my personal experience myself, I have come across a small number of cases, and my colleagues in the laboratory have also experienced it in their examination of cases, where we have known that cars have actually gone over people and nothing has been found. So the absence of paint or absence of trace evidence linking, suggesting, a vehicle, doesn't exclude the possibility of it having happened.*⁶²⁵

- 5.74. Many collisions have atypical features and the Tribunal is satisfied that Mr. Fleury did not tell Detective Superintendent Shelly and Inspector McGinley that the deceased had not died in a road-traffic accident. Rather, he explained that the features were not typical. The result of this visit to the forensic science laboratory was, according to Detective Superintendent McGinley and Superintendent Shelly, a refocusing of their suspicions on the assault/murder theory. Since there was nothing to suggest involvement in a road-traffic collision, the alternative theory, they felt, had to be correct. The Tribunal, however, is satisfied from the documents that it has previously quoted, and from the evidence, that the 29th of October visit to the forensic science laboratory was merely another step along the path of determinedly proving the guilt of Mr. McConnell and Mr. McBrearty Junior that had already been embarked on.

End of October

- 5.75. The ordinary inferences to be drawn from the analysis by the Tribunal of

⁶²⁴ Tribunal Documents, page 5996.

⁶²⁵ Transcript, Day 52, page 187.

the documents and evidence before it is that, as of the end of October, the Garda suspicions in relation to Mark McConnell and Frank McBrearty Junior had hardened. Again, the Tribunal emphasises this would be in accordance with best police practice if it were based in logic and founded on a proper investigation. It was not. In the conference of Thursday night, the 24th of October 1996, a discussion was noted in relation to searches for weapons. The document also contains the following entry:

Arrests – when – are we ready?

- 5.76. Two days earlier, at the conference of the 22nd of October 1996, a reference is clarified as being focussed on the McBrearty car park.⁶²⁶ At that same conference, a full profile was required in relation to Róisín McConnell, Mark McConnell and Frank McBrearty Junior.⁶²⁷ The Tribunal is satisfied, from the evidence that it has received, that arrests and searches tend to be conducted together as part of an operation aimed at securing the detention of a suspect person for questioning. In that specific context, a file is drawn up to assist those questioning arrested prisoners. The file has been referred to in evidence as a ‘mini file’. It would contain the main elements of the case against a person.
- 5.77. When an investigation is proceeding on an objective basis, this procedure is both proper, from a legal point of view, and sound from the point of view of police techniques. It is necessary to use the limited opportunity offered by the detention of a suspect to put to him or her all of the main points that might be seen as indicative of their involvement in a crime. Hence, witness statements that tend to implicate any suspect, relevant photographs, forensic reports, telephone traffic reports and mast site analysis, in respect of mobile phone movements, usefully fit within the ambit of the preparation of a file on a suspect prior to detention.
- 5.78. One of the most important aspects, however, the Tribunal is satisfied, is that which concerns the questioners in attempting to uncover a motive, or personality dynamic, that might explain why the prisoner could have committed the crime. If, for instance, the accused were married to the deceased and were, in consequence of a life insurance policy, to receive a large sum of money, or a considerable inheritance of a joint business, then the material supporting greed as a potential motivation would need to be noted. If there were animosity between the deceased and the prisoner, the features of their unhappiness with each other and the various incidents whereby it came to wider attention would need to be noted. More generally, the prisoner’s background, previous convictions, family antecedents and relationship to the crime victim would need to be known to interrogate her. Hence, it is good Garda practice to draw up a profile of those who are to be arrested.

⁶²⁶ Tribunal Documents, pages 5996 and 6002.

⁶²⁷ Tribunal Documents, page 7355.

- 5.79. On the evidence presented to the Tribunal, there is no other reason for drawing up such a full profile, as is noted in the documents above, except for the purpose of arrest. It therefore follows that as of the 22nd of October 1996, the Gardaí were determined to arrest Mark and Róisín McConnell and Frank McBrearty Junior. The reference to searches for weapons and the reference as to when arrests were to take place enforces this conclusion. The lack of objectivity, which gives rise to the concept of an emotionally charged incident room elucidated in this chapter, is fully set out in Chapter 3 of this report.

The Peoples' Telephone Calls

- 5.80. On the 9th of November 1996, five telephone calls were received at the home of Michael and Charlotte Peoples on St. Eunan's Terrace, Raphoe. William Doherty made at least one of the calls in collaboration with Garda John O'Dowd. **The purpose of the calls was to entrap Michael Peoples into admitting that he had some part to play in the death of Richard Barron.** Michael Peoples was a completely innocent party. He and his wife handled the telephone calls in a way that a responsible and law-abiding citizen might have been expected to deal with them. He called the Gardai, he made a statement on the following day, he engaged the unpleasant caller in conversation in the expectation that the calls might be traced and went to a rendezvous suggested by the caller. He saw no-one else there whom he knew that was in any way connected with the case. However, Garda John O'Dowd, according to himself, also attended the rendezvous but did not see Michael Peoples. That was a lie.
- 5.81. In a separate chapter, Chapter 6, the Tribunal has concluded that four of the telephone calls were made from the home of William Doherty, while the fifth was made from that of Garda John O'Dowd. From the point of that fifth telephone call, at least, Garda O'Dowd collaborated with William Doherty for the purpose of establishing sufficient grounds to ultimately arrest Michael Peoples on the 4th of December. When the unpleasant nature of the telephone calls was complained about and the possibility arose, due to billing records, that they might be traced back to Garda John O'Dowd, he acted in collaboration with others to cover up the trail. For full details the reader is referred to Chapter 6.

The Investigation in November

- 5.82. At the conference on Thursday night, the 24th of October 1996, it had been mentioned that Mark McConnell had been sighted in the vicinity of the scene of the death of the Late Mr. Barron. The note reads:

John O'Dowd – Jene Coyle said McConnell was at scene at 7.10 a.m. on Monday. ⁶²⁸

⁶²⁸ Tribunal Documents, page 5996.

- 5.83. At the conference of the 6th of November 1996, this is again mentioned. Then, it was recorded in the following laconic format:

Rumour that – McConnell – was seen at scene.⁶²⁹

- 5.84. Curiously, no job was ever sent out in relation to this sighting. The purport of it would have been apparent proof that the criminal had returned to the scene of the crime for some purpose. This might reasonably be inferred to be the concealment of a weapon or to search for some personal item, such as a button, that he might have dropped during the attack on Mr. Barron. The Tribunal is satisfied that this did not happen. During the course of questioning by counsel on behalf of Garda O'Dowd, it was alleged that he had checked this matter out and discovered that there was no foundation in it. If that is so, the Tribunal must ask the question as to why he, and no senior officer to whom he was reporting, asked how a definite time and a definite place had been received and how was information of this kind coming into the system. This 'fact' was a further piece of invention that indicated that either he, his informant, or someone else, was feeding false information into the investigation for the purpose of bolstering up the case against the suspects.

- 5.85. **The Tribunal emphasises that the Gardaí are entitled to follow potential sources of information and to check out rumours. To fail to do so would be a breach of the proper standards. However, where explicit information giving particular details comes to the attention of an investigation then there are two main possibilities: firstly, that the information is correct and comes from a definite source that witnessed it; or secondly, that the information has been invented or embroidered. If the first possibility does not check out, the Gardaí have to be mindful of the potential for manipulation and mis-statement. In those circumstances they have to ask themselves the question as to whether this is happening and as to who may be behind it and for what purpose.**

- 5.86. The Tribunal does not intend to dwell on this matter. The reality is that this information fits in with the information purporting to come from Hilary Laird about the men coming down the car park, the garbled information in relation to John Patton, the Robert Noel McBride information, to which we will come shortly, the information coming from a vigilante group about Mark McConnell having wet hair, the changing of the information coming from Mary McGranaghan detailed in Chapter 3, the information about Michael Peoples jumping over a wall, and the information that the culprits went back to Mark Quinn's pub and changed their clothes. These items will appear in due order. A failure to check any of these matters, by asking where such definite information was coming from,

⁶²⁹ Tribunal Documents, page 5998.

and for what purpose, was an astonishing oversight on the part of senior officers amounting to unbelievable negligence.

- 5.87. In addition to this, another piece of information surfaced; again, the subject of dark creativity on the part of someone. This, again, was ignored as an indication that the investigation had gone badly wrong. On the 25th of August 1997, Garda John O'Dowd reported to Detective Garda O'Toole in the following terms:

I spoke with Stephen McGinley who allegedly got sick in "Frankie's" the night of the murder of Richard Barron when he was supposed to have overheard a conversation between Frank, Junior and others, where Frank, Junior was allegedly describing how he committed this crime. In relation to this interview, Stephen McGinley denies having been in "Frankie's" any time at all around the time of the murder of Richard Barron. The nearest time to this incident he states he was in "Frankie's" was "Boxing Night". He denies having heard any conversation between "Frank, Junior" and others. Forwarded for your information please.⁶³⁰

- 5.88. On him being interviewed by Mr. Michael Finn, Mr. McGinley said that Garda John O'Dowd had approached him and said to him that he was in the nightclub on the night in question and that someone had seen him there.⁶³¹ The Tribunal does not rely on this statement. It simply records that the same statement could have been taken from this witness at that time.
- 5.89. On the 18th of November 2004, our investigator Michael Finn interviewed Jene Coyle. The Tribunal is satisfied that she had come home at around 03.00 hours on the 14th of October 1996 to her home in Raphoe and that she was not out at 07.00 hours on that day in order to witness what was reported of her.⁶³²
- 5.90. On the 13th of November 1996, Michael Peoples is mentioned again in the conference notes. This is hardly surprising as the extortion calls to his house had taken place on the 9th of November and this appeared to be the next conference. The report of the Peoples' phone calls bore no relationship to what had happened. The note appears as follows:

Wed night. Phone calls – McBrearty came down car park
72 hours £10,000
Local accent⁶³³

- 5.91. While the figure demanded by the extortion caller might excusably have been put down incorrectly, there is no mention in the phone call of McBrearty having come down the car park. This is indicative of a dam of emotion that was pressing in a

⁶³⁰ Tribunal Documents, pages 6766-1.

⁶³¹ Tribunal Documents, pages 8428-8434.

⁶³² Tribunal Documents, page 8405.

⁶³³ Tribunal Documents, page 5999.

particular direction. This is borne out by the reference to the necessity for preparing for interviews at this stage. A note is made that statements were to be stripped out for "Quinns and interviews". A job was placed for checking the 'banklink' for Michael Peoples. The note "NB" was placed beside this. A reference was made to checking phone calls from Quinn's, McBrearty's and the Peoples' house. The Tribunal is satisfied that this was not in the context of investigating a crime committed against the Peoples, but was with a view to establishing whether he was linked into the crime of murder. The document then notes "searches – to be left 'til near arrests".⁶³⁴

- 5.92. The Tribunal comments, in Chapter 6, that it was astonishing to suppose that a person who had received a phone call demanding money from him on the basis that he knew something about a crime, and who was advised by the Gardaí to play along, should then be arrested for murder, which Michael Peoples was, on the basis that he had made an arrangement to meet somebody to pay money so that this person would not go to the Gardaí with information concerning his guilt.
- 5.93. **The case has been continually made at the Tribunal that the sole catalyst for the arrest of all twelve suspects was a statement made on the 29th of November by Robert Noel McBride. The Tribunal cannot accept this. It is obvious from reading the conference documents, insofar as they exist, that a determination to arrest certain people, and to search their premises, had been made well in advance of any statement by Robert Noel McBride. All of the arrests, however, were based on this statement. These arrests were bad as being founded on a fraud.**
- 5.94. At a conference in November 1996, the movements of Michael Peoples and Geoffrey Dolan are made the subject of jobs with a view to checking whether they had reliably stated that they had left Quinn's pub at around 00.00 hours in order to get money from a 'banklink' machine. The collateral checking of the statements of any witness is, as Chief Superintendent Keane, the Tribunal's expert and most helpful witness from An Garda Síochána and Chief Superintendent Garvie of the RCMP have told the Tribunal, part of a basic task of investigating the credibility of any witness. The Gardaí cannot therefore be faulted in respect of their focus, in this regard, on Michael Peoples. If this checking was with a view to establishing facts, it was logical to do so. If it was done without bias towards him, the net result could have been to confirm what he was saying or undermine his credibility. However, the job sheet referred to the time as 23.00 hours causing further confusion.
- 5.95. In the jobs book of the 15th of November, it is reported that Garrett Friel and Annette Keys had seen Mark McConnell crying and upset and that he had had

⁶³⁴ Tribunal Documents, page 5999.

wet, or tossed, hair. Both of these potential witnesses live across the border and have not cooperated with the Tribunal on a voluntary basis.⁶³⁵ In the jobs book of the 17th of November, it is mentioned that Damien McCarron had also seen Frank McBrearty Junior. He was to be questioned in relation to the “condition of his clothes etc.”⁶³⁶ In his statements to the original investigation, Damien McCarron described drinking in Quinn’s bar and noticing “an exchange of words between Richie Barron and Mark McConnell”. He then described leaving Quinn’s pub at a quarter to one and Mark McConnell being in the bar talking to his cousins. He walked over to Frankie’s nightclub at a quarter to one and was inside “for ten or fifteen minutes” when he met Frank McBrearty Junior and spoke to him on football matters.⁶³⁷ The return on the job notes that he had been asked about the condition of Frank McBrearty Junior. It states:

Asked about this. Took no notice of his clothes or Mick Carroll. Asked him about condition – nothing. Friendly with Frank, Junior.⁶³⁸

- 5.96. The second statement of Damien McCarron, essentially, covers the same ground. As noted previously in Chapter 3, on the movements of people around Raphoe, his witnessing of Frank McBrearty Junior would have narrowed considerably the time available for the latter to have committed the murder. In his second statement, dated the 21st of November 1996,⁶³⁹ the time is pushed back by five minutes, which is not significant. He said:

I wouldn’t have taken any notice of Frank’s shoes on that night. I didn’t even notice what he was wearing. I only spoke with him for about five or ten minutes I think.⁶⁴⁰

- 5.97. It is right to be sceptical in relation to witnesses who claim a lack of knowledge of things they must have seen or heard. However, this statement is of a pattern with a prevailing mood of gathering evidence, or supposing evidence to exist, against Mr. Peoples, Mr. McBrearty Junior and Mr. McConnell, while ignoring all contrary indications.
- 5.98. The build-up to the arrest of ‘Mr. X’ is evidenced by the conference notes of the 21st of November 1996. At the conference of the 21st of November 1996, the complicating factor of the alleged intimidation of witnesses by Frank McBrearty Senior was mentioned in the context of Inspector McGinley and Detective Superintendent Shelly having spoken to him. The Tribunal makes no judgement on the issue as to whether Mr. McBrearty Senior was or was not behaving appropriately at this time. However Mr. McBrearty may have been behaving, his actions, even taken at their worst,

⁶³⁵ Tribunal Documents, page 7501.

⁶³⁶ Tribunal Documents, pages 7507-7508.

⁶³⁷ Tribunal Documents, pages 1518-1523.

⁶³⁸ Job No. 254. Tribunal Documents, pages 7507-7508.

⁶³⁹ Tribunal Documents, page 1521.

⁶⁴⁰ Tribunal Documents, page 1521.

could not have justified the arrest of the twelve suspects. The Tribunal is satisfied, in any event, that the determination to arrest, as this analysis has shown, was independently formed and at a much earlier date.

The Arrest Strategy

5.99. Garda Tina Fowley took the conference notes of the 21st of November 1996. As a result of her clear notes, the Tribunal has more information as to what occurred at this conference than in respect of others at which she was not the note-taker. Under a heading of "miscellaneous", it is noted that John O'Dowd was "working on something". Beside that it is noted: "enforce direction more strongly". The notes indicate that four possible lines have been developed and these are ascribed to four named members of the Gardaí, including Garda John O'Dowd. The hypothesis has been advanced that, at a crucial stage in this investigation, it was decided that because there was some petty crime remaining unsolved around Raphoe, a break should be taken from the investigations and that various suspects ought to be arrested. The Tribunal rejects this proposition as ludicrous. The Tribunal accepts the evidence of Garda Tina Fowley as to what occurred. In evidence she stated:

There was a conference, maybe the middle to late ... November possibly, of '96, where there was a full conference in relation to the progress of the investigation and it was suggested that a number of local criminals out around Raphoe should be arrested to see, during the course of the interview, could they assist in the Barron investigation ... Maybe they may have some knowledge in relation to it. It was just a tactic that was to be deployed to interview local criminals to see had they any information ... I am sure that they were to be brought in, questioned on whatever crimes they had been involved in around Raphoe at that time and then to see had they any information in relation to the death of Richie Barron.⁶⁴¹

5.100. The persons noted for arrest were Sidney Vance, Kevin McNulty, Gary Gillen, Sean Crawford, Derek Crawford and Eugene Toner. Derek Crawford was arrested for burglary. In fact, he was in and about Raphoe on the night in question and had been mentioned in a number of statements. He was mentioned in the crucial statement supposedly taken the same day from Robert Noel McBride. Eugene Toner was arrested on a charge of criminal damage. Even though he was at home, it had been alleged that he had walked up Irish Row in or around the appropriate time. Gary Anthony Gillen was arrested. This was probably a mistake as Gavin Gillen and Lee Gillen were noted to have been in or around Irish Row at

⁶⁴¹ Transcript, Day 218, pages 77-78.

a time proximate to the death of Mr. Barron. Their earlier statements did not mention that their purpose was in going to view an uninsured car. Sidney Vance was arrested on a charge of criminal damage. He was certainly one of the last people to see the Late Mr. Barron alive. He was noted in statements to have relieved himself off Irish Row. Finally, Robert Noel McBride was arrested on a charge of larceny. All of these were arrested on the 29th of November at various times, McBride being the last, and all were brought to Letterkenny Garda Station.

- 5.101. As has previously been noted, at the end of October 1996 a full profile had been required of the investigation team on Róisín McConnell, Mark McConnell and Frank McBrearty Junior.⁶⁴² On the 22nd of November the jobs book notes: "Background on Michael Peoples is required for the incident room".⁶⁴³ The Tribunal is satisfied that this was the last component that was put in place for the purpose of forthcoming arrests. It is to be noted that this was done well in advance of the 29th of November when Robert Noel McBride, the 'Mr. X' about whom so much had been promised, was arrested together with other persons who might have information with a view to advancing the hypothesis of guilt against the suspects.

Robert Noel McBride

- 5.102. The person described in this case as 'Mr. X', namely Robert Noel McBride, was arrested by Garda John O'Dowd, accompanied by Garda Philip Collins, on the 29th of November 1996 at 18.55 at the home of his girlfriend, in Killygordon. The suspicion, in relation to his arrest, was that he had stolen an aerial from the technical school in Raphoe in June of 1996. **There is no doubt, however, that the real reason for arresting Robert Noel McBride was in order to question him concerning what he was supposed to have known about the death of the Late Mr. Barron.**

The McBride Statement

- 5.103. **Robert Noel McBride's statement was the linchpin around which the entire of the subsequent investigation revolved and, it is fair to say, that all of the prior investigation moves towards that point.** It is important now to quote a substantial portion of what purports to be his statement:

I remember Sunday, the 13th of October 1996. I left my home in Figart, Raphoe shortly after 9 p.m. I walked into Raphoe via Tullyvinney. I didn't meet any people on the road while travelling to Raphoe. Only one car passed me out at Friel's Hotel and on down to Barry Connolly's chip shop where I got a burger. I would have been down at Barry Connolly at 9.45

⁶⁴² Job No. 179. See Tribunal Documents, page 7355.

⁶⁴³ Tribunal Documents, page 7519.

p.m. or so. I stood there and ate my burger. I didn't speak to anybody. I then walked back to D.J.'s chip shop and I stood around there for over two hours. At about 10.30 p.m. I saw Martin Neillis going into Frankie's Night Club. Shortly before 11 p.m. I spoke with Derek and Sean Crawford outside D.J.'s for a minute or so. They then went on into Frankie's at this time. I saw Andy McBrearty going from the Tudor Lounge up to the disco. He did this twice. He was alone on both occasions. Andy spoke to me and I said, hello. I also saw Damien Murphy going into the disco at 11 p.m. The reason I know it was 11 p.m. was because I heard the chimes of the town clock. I remained outside the chipper from 11 p.m. until shortly before 1 a.m. except for three times I walked down as far as McGranaghan's to keep myself warm and back up again. During the period I was outside D.J.'s the thought struck me to go up and break into the Technical School. On one occasion while I was down the street I heard shouting and roaring coming from Frankie's. When I returned to D.J.'s I decided I would go on up through Frankie's car park, on up through the rough ground at the rear of the car park and in through an entrance in the hedge which leads into the technical grounds. As I walked up from D.J.'s and as I approached the entrance to Frankie's I saw one bouncer on the door. I would describe him as big and broad, skinhead type haircut, black in colour. I walked on up past this entrance. I noticed none of Frankie's staff in the car park. I know Sean Crossan and he wasn't in the car park. I walked on up through the car park through the driveway where the cars coming and going would normally use. Just as I was in the middle of the car park I heard the chime of the town clock. It struck once for 1 o'clock. Just before I came to the top of the car park I noticed a courting couple in a red, Opel Ascona, old type with the square boot type. There was good lighting in the area. This lighting shone well up into the top car park. As I walked up the embankment to the top car park, I saw two men approaching me. They would have been about twenty yards away at this stage. The spot where I first saw them, there are a pile of rusty barrels. As these two men approached me I immediately recognised them. The first one coming was Mark McConnell. I knew him from school, he was a few years ahead of me and he now lives less than one mile from me at home. I would describe him as heavy stocky build, with black fairly long hair and goatee type beard. I don't know what he was wearing as I paid no attention to it. Coming behind McConnell and a wee bit to this side was young Frank McBrearty from Raphoe. I know him from going to the disco in Frankie's nightclub. He served me drink on a couple of occasions and I have seen him doing bouncer as well. I would describe Frank McBrearty Junior as

stocky build, short black hair. I don't know what he was wearing as I took no notice. As soon as I seen them I turned on my heels as I was afraid in my own mind someone might be aware I intended breaking into the Technical School. I should have said earlier that when I first saw the two of them they were walking at an average pace. I turned and walked straight down the embankment, down through the car park, past the entrance to Frankie's and down and stood outside D.J.'s. As I walked down through the car park I never looked behind me as I was afraid they might see me. As soon as I got to D.J.'s I turned and faced Frankie's entrance. I saw Frank McBrearty Junior and Mark McConnell speak to the same bouncer I saw earlier on i.e., the fellow who is big and broad with skin head type hair cut, black in colour. They spent about two minutes talking together, that is the three of them just outside Frankie's entrance on the tarmac. When they had finished young Frank McBrearty and Mark McConnell walked down to the Tudor Lounge entrance and the skinhead bouncer went back into Frankie's. Frank McBrearty Junior knocked on the window on the disco entrance side of the Tudor Lounge entrance. After knocking three times the door opened and Frank McBrearty Junior and Mark McConnell went into the Tudor Lounge. I couldn't see who opened the door. I meant to say earlier that as Frank McBrearty and Mark McConnell came down from the main entrance to the disco to the Tudor Lounge entrance, I said hello to them and both of them said how is it going. I stayed about for ten to fifteen minutes outside D.J.'s and then I walked home to Figart. I got home about 1.45 a.m. as I remember looking at the clock when I went in. I have been shown a photograph of Raphoe town by Sergeant Marty Moylan and I recognise the Diamond, the Cathedral and various other landmarks in Raphoe. I recognise Frankie's disco car park. I have on the photograph drawn a red line to a point marked 'A'. 'A' is where I was standing on the embankment when I saw the two men named as Frank McBrearty and Mark McConnell. I have marked the point where I saw them walking down as 'B'. I have also marked a point outside D.J.'s chip shop where I was standing as 'C'. This is where I was standing when I saw them walking down from the disco entrance around the corner and Frank McBrearty Junior knocking on the Tudor Lounge window and going into the Tudor Lounge. I have signed the back of this photograph. About the third Sunday after this I was at home in my bed at Figart. The time would be 1 a.m. on Monday morning the phone rang and I answered it. The caller then said "Can I speak to Noel McBride" and I replied "speaking here". The caller then said "I seen you up in the car park in Frankie's one Sunday night, don't go to the guards or else". I immediately hung up. I was shocked and

scared by this phone call and I had difficulty sleeping that night. About twice after this there were two further calls to the house around 10.30 p.m. at night looking for me. My sister, Derina, 13 years spoke with them but the person left no name or message. Since these " phone calls" I have not been living at home as much, as I am afraid. I spend most of my time in my girlfriend's house in Killygordon. I have not visited Raphoe since that date except to collect my dole which I collect once a month. My fear in going to Raphoe is that I might meet some of the McBrearty crowd. This statement has been read over to me and it is correct.

Signed Noel McBride

Witnessed John O'Dowd Garda 21727A

Witnessed Martin Moylan Sergeant 20115D

Witnessed Phil Collins Garda 2191C

Other McBride Statements

- 5.104. By the time the Tribunal commenced, it had sixteen separate statements from, or ascribed to, Robert Noel McBride. Six of these were taken up to September of 1997. It is pointless going into exhaustive detail describing, or quoting, them. The Tribunal is convinced that all of them blaming people for the 'murder' in Raphoe were fraudulent.
- 5.105. A brief outline will suffice. The statement above quoted was followed by a statement on the 4th of December, taken by Garda John O'Dowd, claiming that Frank McBrearty Senior had given him £500 in order to be quiet: " Take that there and say nothing" , he is supposed to have said.⁶⁴⁴ On a date which is uncertain, either December of 1996 or perhaps as late as February of 1997, another ridiculous event took place. Garda O'Dowd and William Doherty brought out Robert Noel McBride in a Garda surveillance van. Ostensibly, this was to identify the 'bouncer' to whom the suspects spoke, on coming down the car park. They drove in to the Parting Glass car park and the person on duty as a bouncer was not the person who fitted the description. So, William Doherty, in conjunction with Garda O'Dowd, decided that the bouncer referred to in the statement had to be Martin McCallion. This was reported to the incident room as a positive identification! On the 18th of March, there was another statement taken by Garda John O'Dowd which describes how Mr. McBride was telephoned by Frank McBrearty Junior, threatening " I'm going to get you, you touting bastard" . A red Primera motor car then trailed him. There was a confrontation with Mr. McBrearty who suggested that he sign himself in to a local mental hospital. This, according to the statement, became too much for Mr. McBride who shouted at

⁶⁴⁴ Tribunal Documents, page 2741.

him: "Go and blame someone else, you big fat bastard".⁶⁴⁵ On the 4th of May, Detective Inspector McGinley and Garda John O'Dowd took a memo of interview at Garda O'Dowd's home from Robert Noel McBride. The statement notes: "He was accompanied by friend William Doherty, Doorable. Attended school together, knew since four years old." This statement describes a meeting with Mr. McBrearty Junior and Senior. They threaten to "do him in very shortly". Apparently this was because: "We have our reasons". Money is then handed over and then Mr. McBrearty Senior arrives with a bicycle, as a present, in the boot of his car. He says: "If you stick with us we will keep you right." Then, despite the fact that both Detective Inspector McGinley and Garda John O'Dowd knew that William Doherty was an informer, and knew the law in relation to protecting sources, he signed the interview memorandum, as a witness.⁶⁴⁶ On the 7th of July, Robert Noel McBride came to Letterkenny Garda Station at about 21.00 hours. There a statement was taken from him by Detective Sergeant Hugh Smith who, up to this point, had nothing at all to do with the case. The Tribunal is satisfied that this was arranged by Sergeant John White. The details of this are given later. Mr. McBrearty Senior was supposed to have met McBride in the bar and asked to speak to him in private: "I'll make it worth your while". They then went to an upstairs office where he was asked if he knew "anything about the Richie Barron murder". Robert Noel McBride is supposed to have told him that it was none of his business. He was then offered £5,000 in cash to withdraw all of his statements. The excuse was to be that Garda John O'Dowd paid him to make the existing statement in relation to the murder. On the way out, he meets Frank McBrearty Junior who uses foul language and threatens to kill him.⁶⁴⁷ On the 13th of September, Detective Inspector McGinley and Detective Sergeant Smith went to Robert Noel McBride at his home at Figart, Raphoe and took the final incriminating statement from him. This reiterated everything that had been said to date.

- 5.106. Then, on the 16th of September 1997, in a statement to Detective Sergeant Smith, Detective Sergeant Henry and Detective Garda McHale, Robert Noel McBride withdrew all of his previous statements and blamed the fact that he had made them on William Doherty.⁶⁴⁸ The real issue for the Tribunal is how did this come about?

Robert Noel McBride's Account

- 5.107. Robert Noel McBride was, to put it mildly, a laconic and reluctant witness. It was virtually impossible to squeeze answers out of him. He does not appear either an intelligent or calculating individual. **However, the Tribunal is satisfied, from listening to Mr. McBride, that he was giving his evidence in accordance**

⁶⁴⁵ Tribunal Documents, page 2742-2743.

⁶⁴⁶ Tribunal Documents, pages 2744-2749.

⁶⁴⁷ Tribunal Documents, pages 2750-2752.

⁶⁴⁸ Tribunal Documents, pages 2755-2758.

with precisely the impression that he wished to put across. If that bore any relationship to the truth it was entirely accidental. The Tribunal rejects his counsel's description of him as being "a gormless auld divil". This is an overstatement of his intellectual limitations. It does accept that Robert Noel McBride is a man of limited intelligence.

- 5.108. Mr. McBride took the witness box, determined to exonerate William Doherty and to put the blame on the three interviewing Gardaí, namely Garda John O'Dowd, Garda Philip Collins and Sergeant Martin Moylan. He mentioned that Inspector John McGinley came in to the interview room for a short period of time and asked a couple of questions. Mr. McBride was determined to claim that, with the exception of the very last part of the statement, he simply sat in the interview room and gave monosyllabic answers back to the interviewing Gardaí, agreeing with every proposition that they put to him and every detail of the statement that they wished to have included above his signature. This is a typical section of his evidence, dealing at first with the time of his alleged sighting of the suspects:

Q. How did it come into your head?

A. I don't know, it just came in.

Q. You realise that you are now giving a third version to explain the content of this critical first statement. Your first version was that you were all put up to it, and schooled in it, and coached in it, and rehearsed with it, by William Doherty and that it is lies: isn't it?

A. It's lies.

Q. Your second version, ... made on two occasions when you were arrested in 1999, and in 2003 to the Tribunal investigators, was that the Gardaí put questions to you and you just agreed. That they were giving you the information and you were just agreeing, agreeing, agreeing as you went along.

A. That's right.

Q. And you are now giving a third version. You are saying it came into your head – a critical time?

A. I can nae mind.

Q. Unprompted. So which version is it?

- A. *I don't know, it's that long ago. I can nae mind.*
- Q. *No, but you have given three explanations for why this statement came to be made. We know you weren't there. But there is a lot of detail in it, a lot of precise details, important precise details and the Chairman wants to know how they came to be there and how you have given three different reasons?*
- Q. *Chairman: Don't tell me it just came into your head?*
- A. *I don't really remember, it's that long ago.*
- Q. *So were you telling lies on the 26th of June 2003 when you told Mr. Garvie and Mr. Finn that all the details went into the statement because the Gardaí suggested them to you and you agreed?*
- A. *[INAUDIBLE]*
- Q. *Chairman: What did you say?*
- A. *No, they weren't lies.*
- Q. *They weren't lies?*
- A. *No.*
- Q. *Would you like to tell the Chairman then, this is another opportunity that we are giving you to tell the truth, how did those details get into that statement?*
- A. *The Guards could have suggested it, because I can nae mind.*
- Q. *You had to get the details from somewhere; you weren't there [in Raphoe, that night]?*
- A. *That's right.*
- Q. *Somebody had to give you the details, or it's the third explanation that you miraculously got the precise details precisely right and the chances of that happening are extremely remote. So, it's more probable that it's one or other of the two previous explanations: that it's either Mr. Doherty who gave you all the necessary information and sent you in to make the statement; or the Gardaí in the form of*

asking you questions gave you the details. And you agreed?

A. *Well.*

Q. *Which is it?*

A. *It wasn't Mr. Doherty anyway.*

Q. *So you now say that it's the way the questions were asked by the Gardaí, you just agreed and they wrote down the answers?*

A. *That's right.*

Q. *Do you want to say that? Is that how the details came to be in the statement?*

A. *That's right.*

Q. *"As these two men approached me, I immediately recognised them". Did you say that?*

A. *I don't remember. I can nae mind.⁶⁴⁹*

5.109. The Tribunal is satisfied that on the evening when Robert Noel McBride describes himself as being in Raphoe and witnessing the town clock striking one, the men walking down the car park, and identifying the people seen in the town on that night, that he was not there but at a christening in Killygordon, then at a nightclub in Ballybofey. He then cadged a bed from his girlfriend's brother in a mobile home outside their property in Killygordon.

5.110. Robert Noel McBride had sufficient intelligence to tell the truth if he had wanted to. He was determined not to tell the full truth to the Tribunal because he feared a prejudice from other people, whom the Tribunal infer are within the Garda Síochána, or hoped to advantage himself by exonerating William Doherty. He is therefore neither timid nor stupid, though he may well be intellectually challenged, in a schoolbook sense.

William Doherty

5.111. William Doherty is a person of considerable intellectual ability. The Tribunal noted that during his time in defending his reputation before the Tribunal that he was polite, to the point in his questions, and generally shrewd in the direction in which he hoped to steer the evidence. This did not mean that he did not end up contradicting himself from the position that he had taken in evidence already in the witness box and in his prior statements. He did – when it suited him.

⁶⁴⁹ Transcript, Day 190, pages 59-62.

- 5.112. William Doherty placed the blame for the Robert Noel McBride debacle squarely on the shoulders of Garda John O'Dowd. The early portion of the relationship between the two need not be repeated here. It suffices to give a flavour of the account presented by William Doherty in the witness box. After the funeral of Mr. Barron he said that he was in Raphoe and:

I met Garda O'Dowd and Garda O'Dowd said he wanted to talk to me. And, I sort of listened to him, what he was going to say, because I knew that he could still prosecute me for no tax and insurance ... Just the year before. ... I think it was about a week after the funeral. [He said come up and see me in the Garda station] ... There was nobody in the Garda station, only himself ... The door was locked. It's one of those doors that is locked; the Gardaí have to open it to let somebody in ... He asked me was I working away and how was I keeping, general talk to start off with. He then asked me about, did I hear any rumours about Richard Barron being murdered and I told him that I did. I did hear rumours that was going about. He said to me "Did you know that Frank McBrearty murdered Richard Barron" and I said that I didn't. He put it to me that I was lying to him, and that I should do as he said, and I think it was at that point he asked me would I do a job for him, which I refused. Can I explain to you what he asked me? He asked me to pass, would I go as a witness against Mr. McBrearty, and would I say what he wanted me to say in a statement, and I said that I wouldn't. And, he was looking for somebody to put the final piece of the jigsaw, that's what was put to me, that he wanted somebody to put the final piece of the jigsaw; and I didn't agree to it. But I told him that Noel McBride had committed the offence of stealing an aerial from the roof of the technical school in Raphoe, and he wondered would McBride be willing to do it for him. My words to him was: "Well he is the only person stupid enough around here to do it". ... The final piece of the jigsaw was to see the two people coming away from the murder scene, as he said, that he wanted to place Frank McBrearty Junior and Mark McConnell at the scene of the crime ... It was up Irish Row. It was behind – there's a laneway that takes you down behind McBrearty's premises, down a car park, you can go that way to get to the road ... I was supposed to say that I seen them coming down through the car park. That's what he wanted me to say, but I wasn't going to say it because I was in the house that night ... He

said that I saw the two people coming down the car park. They were both out of breath and they were wet and they looked nervous and I just didn't – I wouldn't do it so. ... I'm not inventing it. I'm a hundred per cent sure of it. ... Well, as far as I could see, one of the reasons would be promotion. ... And the other reason would be that they didn't, himself and other members of the Gardaí, didn't do their job on that night that they should have been done, and it was understandable from what he was saying to me that they wanted to get a result ... I think these are good enough reasons.⁶⁵⁰

- 5.113. Mr. Doherty also said that once he had nominated Robert Noel McBride that his involvement ended.⁶⁵¹ The Tribunal regards this as a blatant lie. The Tribunal is certain that after the nomination was made by William Doherty that he followed up on it by attempting to implant in Robert Noel McBride's mind the script appropriate to the task for which he had been chosen by the two of them to reflect. In his evidence, Mr. McBride stated that the first time he met Garda O'Dowd was on the 29th of November. The Tribunal has no idea whether this is true or not. In any event, given that Garda O'Dowd was acting through a proxy, it matters little.

Lies

- 5.114. The Tribunal is convinced that both William Doherty and John O'Dowd have refused to tell the truth in relation to the genesis of Robert Noel McBride as a witness. Nor is the Tribunal convinced that Robert Noel McBride told the entire truth. John O'Dowd's account was that about seven or eight days after the death of Mr. Barron, William Doherty told him that there was a witness who had seen suspects coming down from the scene of the murder. William Doherty gave information to Garda O'Dowd, as he put it, "bit-by-bit, by bit, by bit". He was asked to work on the matter in order to uncover the name of the witness. 'Mr. X', was supposed to be a reluctant witness because of his fear of the McBreartys. According to John O'Dowd, he had nothing to do with setting up Mr. McBride as a witness or with having him coached.⁶⁵²

The Reality

- 5.115. The Tribunal is convinced that the truth of this matter lies somewhere between the account given by William Doherty, in apparently convincing detail, and the denials of Garda John O'Dowd. It is highly probable that the relationship between them was one of mutual deception. The

⁶⁵⁰ Transcript, Day 184, pages 81-88.

⁶⁵¹ Transcript, Day 184, page 95.

⁶⁵² Transcript Day 282, pages 124-129.

Tribunal considers that it is likely that in the course of conversation between them, Garda O'Dowd mentioned to William Doherty that the investigation would be advanced by the appearance of a witness who might give evidence of the men who had supposedly been seen coming from the scene of the crime. This dishonest suggestion was taken up, as Garda O'Dowd suspected that it might have been, by William Doherty enthusiastically jumping on board and pretending that Robert Noel McBride would be a suitable candidate for the role of witness. Thereafter, the mutual deception, amounting to corruption, gained pace and eventually led to the arrest of Robert Noel McBride. No matter how much coaching William Doherty had attempted to do on him, he was reluctant to fulfil the role assigned to him by the Garda and his informant.

Garda Philip Collins

- 5.116. The case of Garda Philip Collins has been made in a number of statements.⁶⁵³ The Tribunal, however, prefers not to act on these. Philip Collins, after much reluctance in terms of attending the Tribunal or giving evidence, eventually testified. He accepted that he was present when the statement from Robert Noel McBride was taken on the 29th of November 1996. He claimed to have known nothing about him, being off on sick leave from the week beforehand. He got a telephone call from Garda John O'Dowd. For no reason that he could explain, he was inspired to leave his sick bed and come in to perform a duty about which, according to himself, he knew absolutely nothing. This was part of a plan to take in a number of people so that the arrest of Robert Noel McBride would be camouflaged, so he said. The purpose of arresting him, on a charge of stealing an aerial, was to talk to him about what he knew, as Philip Collins put it, "about the information that Garda John O'Dowd had".
- 5.117. After an initial disagreement as to whether McBride was at a christening, or was in Raphoe that night, Mrs. Roper, who ran the Lantern Inn in Killygordan, was telephoned. There was a mix-up between the dates when Robert Noel McBride may have been attending a christening. His reluctance as a witness can be seen from the fact that he did not tell the Gardaí that he had attended two christenings on two successive weekends, a fact that would ordinarily stick in a person's mind. This also shows his reluctance to co-operate with the oppression the Gardaí were bringing to bear on him. Garda Collins gave this account of the interview:

We sat in the interview room. At some stage Sergeant Marty Moylan was in there. Right. As far as I am aware, he was there when Noel McBride admitted what happened because Martin,

⁶⁵³ Tribunal Documents, (Peoples), pages 195-207, 2633-3634, 2714-2721, 5022-5075.

well, Marty I call him, Marty Moylan drew out a sketch of the area around Frankie's niteclub, around the car park. I sat there with him and we ate what he had ordered in. At some stage, he started talking about, you know, being in Raphoe. I was walking out of the front door. I met Garda John O'Dowd coming in the front door and I said something to John O'Dowd about he has told us he was in there, and John O'Dowd was all delighted and he stuck out his hand and he said, "fair play to you", or something ... when we went through the whole thing with him, right, he – I remember at one stage there was a photograph produced of the area. I remember leaving the room to get a red pen. They wanted a red pen to mark it out. When I came back, I was sitting in a chair and I said for John O'Dowd, for him to take the statement, right. He sat down and he started taking the statement. I was there, Marty Moylan was there and John McGinley was there. Inspector McGinley was there. The four of us was present. He rhymed off the statement ... and they took down his statement...he had gone through it, what he saw and what he didn't see, or what he saw, right ... what I didn't know [he wasn't in Raphoe] at the time. At that given time he said he was in Raphoe ... before that he said he was at a christening ... the details of his statement, I don't know ... I don't know the exact details of his statement ... I need to see the statement like, you know ..., it was taken in a fashion where the facts – where what he was saying, we went through it with him, right, what he saw and what he didn't see and then he came along and we said, right, we'll take it down in writing and it was just taken down in writing. It wasn't a statement where he just rhymed it off, right.⁶⁵⁴

The Tribunal rejects the account of Philip Collins as being completely deceitful.

Sergeant Moylan

- 5.118. Sergeant Martin Moylan was a key member of the investigation team into the death of the Late Mr. Barron. He had set up the incident room and, with Sergeant Brendan Roche, and Garda Tina Fowley, was responsible for its day-to-day running. At a later stage, Sergeant John O'Toole took over part of that responsibility.
- 5.119. In evidence, Sergeant Moylan claimed that he thought that Robert Noel McBride was a reliable person, when he saw him for interview on the evening of the 29th

⁶⁵⁴ Transcript, Day 284, pages 72-77.

of November. The interview proceeded by disposing of the aerial theft issue, first of all. Robert Noel McBride admitted to the aerial theft and then the questioning went on to the issue as to what he knew concerning the death of Mr. Barron. *By this time, the six hours of detention allowed for under Section 4 of the Criminal Justice Act 1984 had expired. It was claimed by the Gardaí that they then told the detainee that he could leave the premises at any stage. Whether they did or not, the Tribunal is satisfied that Robert Noel McBride was overawed by his circumstances and was not prepared to cause himself trouble by making enemies of the several Gardaí and walking out of the Garda station.*⁶⁵⁵

5.120. Some questions were asked of Mr. McBride, according to Sergeant Moylan, but words were certainly not put in his mouth; this was not a question of putting on record all of the suspicions of the Gardaí, filling it in with detail, and getting Mr. McBride to agree with it. According to Sergeant Moylan, Mr. McBride was happy to co-operate. The crucial section of the interview was described by Sergeant Moylan as follows:

Q. Did you think he had any difficulties in terms of being slow or anything like that?

A. No, at that time, no, no, I didn't. That didn't cross my mind at that time.

Q. How did matters proceed then?

A. The next thing [Garda] Martin Leonard left then, and then [Garda] John O'Dowd proceeded to ask him questions about being in Raphoe that night. And, initially, he denied it, that he was out on that night, and I remember also asking him questions about his dole money and that, because he had quite a bit – I remember he had quite a bit of money with him – it was around £100 at that time. Then I asked him about the dole. He said something about he got double dole, or something. He had bought shoes, or something, sticks in my mind. He continued to – Garda John O'Dowd then asked him about being in Raphoe, and he continued to deny it for a good while, while at some stage then John O'Dowd said something like, "I was in Raphoe myself and I saw you", or, "Sure I saw you there myself".

Q. Garda O'Dowd said that?

⁶⁵⁵ For an account see Transcript, Day 209, page 145.

- A. *Yes Sir.*
- Q. *Is that true?*
- A. *That's correct. Yes.*
- Q. *No, was it true that he had been in Raphoe that night and had seen him?*
- A. *Well, he was working in Raphoe the night Richie Barron was killed, yes.*
- Q. *But had he seen Mr. McBride?*
- A. *Well, that's what he said.*
- Q. *Of course if Mr. McBride wasn't there, he hadn't ... [INTERJECTION].*
- A. *Well, he wasn't there, no, no, but at the time I believed that [McBride was].*
- Q. *What was the consequence of him saying that; or was there a consequence?*
- A. *Well, a couple of minutes afterwards, then, he said he was in Raphoe.*
- Q. *That's, Mr. McBride said that?*
- A. *Mr. McBride said that, yeah. Then he related how he walked into town and he stood outside D.J.'s chip shop. It was around 10 o'clock he came into town and stood outside D.J.'s chip shop. He walked up and down a few times. I remember asking him: You know, it was a cold night? And, he said he walked up and down the town a few times to keep himself warm. Then, he went on to describe that he was going up by the car park to do some job at the technical school ... And as he went up the car park he saw it was something about an embankment, he saw two men approaching him, and it was Garda O'Dowd that was asking him these questions. He saw two men approaching him, and he recognised them as Mark McConnell and Frank McBrearty Junior coming down the embankment near some barrels, I think. I think he turned then because he didn't want to be recognised. He walked back down to D.J.'s chip shop again, and he saw them*

coming down, then, and that they knocked on the bar, the Tudor Lounge door, and they were let in. Some time later, then, he went home. Oh, and he heard the clock striking one [o'clock] as well as he was either going down or coming up, I forget which.

Q. Was this a dictated statement; in the sense that all of it came from Noel McBride?

A. No. John O'Dowd was asking him questions, like you know, what happened next?, and what happened next?

Q. Yes, but they weren't leading questions, they weren't suggesting the answers to him?

A. No, they weren't: no.

Q. They weren't furnishing detail to him?

A. No, they weren't, My Lord, no.⁶⁵⁶

John McGinley

5.121. Detective Superintendent John McGinley made the case that at one stage, during the taking of the statement, he came into the room where Garda O'Dowd, Sergeant Moylan and Garda Collins were questioning Robert Noel McBride and asked a few questions; basically to get an idea as to what was happening. He then waited around the station in order to receive, and review, the statement when it was completed. **Detective Superintendent McGinley claimed that he had no idea that Robert Noel McBride was going to be arrested on this evening. That is not the truth. This excuse the Tribunal does not believe, given the importance attached to 'Mr. X' and his statement and the direction to make same available to the incident room.**

5.122. It also is not believed in the light of the fact that even though Garda John O'Dowd and Inspector McGinley did not have a friendly, as well as a professional, relationship that Garda John O'Dowd and he spoke on the 26th of November on the telephone. Garda O'Dowd claims that the purpose of the telephone call was to tell him the strategy that was being pursued in relation to Robert Noel McBride; that the arrest was being set up for a particular day and in order to gain the knowledge that it was believed that Mr. McBride had. **The Tribunal has considered this matter and accepts that Inspector McGinley knew, and approved of, the strategy of arresting Mr. McBride in order to question**

⁶⁵⁶ Transcript, Day 209, pages 147-149.

him about the Barron matter. Inspector McGinley was not involved, however, in the attempt to use Mr. McBride as a vehicle for falsehood.

- 5.123. During the course of cross-examination of Detective Superintendent McGinley, it was put by counsel for John O'Dowd and Philip Collins that the main questioner in the interview that night was him. Neither Robert Noel McBride, nor Sergeant Moylan agreed with this proposition. The allegation was an attempt to involve Detective Superintendent McGinley in the strategy to effect the taking of a fraudulent statement from Robert Noel McBride. This is rejected as lies.

Garda John O'Dowd

- 5.124. Garda John O'Dowd's case was fully made in a statement dated the 25th of November 2004 to the Tribunal. In it, he said that on the 23rd of October 1996, William Doherty had told him that there was a witness who had seen Mark McConnell and Frank McBrearty Junior coming down the car park of Frankie's nightclub. This information was brought to conference, with the comment that the witness was terrified of the McBreartys. Superintendent Fitzgerald, he claimed, told him to find out as much as he could. He then met Mr. Doherty and got the time of 01.00 hours for this sighting because, as Mr. Doherty had said to him, the town clock had struck that hour then. Mr. Doherty named the witness, as Robert Noel McBride from Figart, but Garda O'Dowd claimed not to then know him. He then claims that he told Sergeant Moylan and, then later, Inspector McGinley. Prior to the 26th of November, the date of the phone call, he claims he discussed arresting Mr. McBride with Inspector McGinley and was directed to interview him. Sergeant Moylan, he claims, directed that Mr. McBride should be arrested for the crime of stealing the aerial, and that other youths from the area should also be nominated for crime, so that a swoop of arrests would appear to be taking place; thereby giving Mr. McBride cover, as he put it. His statement proceeds:

On 26.11.96 I phoned Inspector McGinley at home and discussed the best time to arrest McBride. These arrests were scheduled for the 29th November 1996. It was agreed to take McBride in after dark. I would not be ringing John McGinley for anything other than discussing McBride at this time. I rarely rang him, and when I did it was always work related. Shortly after 6 p.m. on the 29.11.96 Garda Collins and I called to Alexander's in Killygordon. I was told Noel McBride wasn't there and would be back soon. Garda Collins and I went down to the Lantern Inn where we had a cup of tea. Garda Collins conversed with Mrs. Roper whom he knew. At 6.15 p.m. on the 29th November 1996 I arrested Noel

McBride for larceny ... he was detained by the member in charge Garda Curran. At 7.10 p.m. Garda Collins took him to the interview room. I joined him after 7.15 p.m. We interviewed him about the aerial initially, which he denied. After a short period he admitted stealing the aerial off the technical school roof. Garda Early was despatched to Raphoe to collect this aerial which was at McBride's residence in Figart, Raphoe. In the meantime, Garda Collins and I asked McBride about his whereabouts on the 13/14th October 1996 the night Richie Barron died. He told us he was at a christening in Roper's, Killygordon, of his sister Stephanie's baby. I put it to him I had information he was in Raphoe on that night, the 13th/14th October. He denied being in Raphoe. Garda Collins then left the interview room to phone Mrs. Roper. After a short while he came back and the phone rang in the interview room. He wrote down 6th October on a piece of paper meaning the christening was for Stephanie's baby. This was put to Noel McBride that he maintained he was at his sister's christening on the 13th. I left the interview room at 8.20 p.m. to go for a meal break. I spoke with Sergeant Moylan to let him know what was happening. I then went for a meal break. While in my house, I phoned Inspector John McGinley at his home to let him know what was happening, that McBride was denying being in Raphoe on the 13th/14th October and requested him to call down to the station to see what he made out of it. He agreed to come down. I returned to the station and spoke with Garda Collins outside the station. He [Garda Collins] told me that McBride had told him and Sergeant Moylan he was in Raphoe on the night Richie Barron died and that he met Mark McConnell and Frank McBrearty Junior coming down the top car park at 1 a.m. when he was going to break into the technical school. It is totally incorrect for Sergeant Moylan to state that I said to McBride during the interview with him "Sure I saw you there myself". The fact is that Sergeant Moylan was not present when Garda Collins and I were interviewing McBride between 7.10 p.m. and 8.20 p.m. When I left the interview room at 8.20 p.m. McBride was denying he was in Raphoe. Sergeant Moylan entered after I left. I went for my meal break, phoning through. D/I McGinley to come down to the station and updating him. When I returned to the station that was when I first learned from Garda Collins, McBride was saying he was in Raphoe on the 13th/14th October '96. I spoke with Sergeant Moylan in the corridor. He told me McBride saw Mark McConnell and Frank McBrearty Junior coming down the car park at 1 a.m. and that he got it all out of him. Inspector McGinley told Garda Collins and I to sort out the aerial issue first. We did that and Garda Collins took down a written statement after caution. At 8.20 p.m.

Garda Leonard released Mr. McBride from custody. After this, Inspector McGinley, Sergeant Moylan, Garda Collins and I were in the interview room with McBride. Sergeant Moylan was the main person to ask the questions. He was assisted in this by Inspector McGinley. I also asked a number of questions as indicated in my previous statements. Garda Collins was going to take down the statement but he said to me " You take this one, I took the last one, I'm a bad old writer" . I proceeded to take down the statement while McBride was questioned by Sergeant Moylan and Inspector McGinley. During the taking of this statement McBride was answering as he was asked. There was no pressure put on him. There was no banging of tables during this interview. The taking of this statement took about two hours and Garda Collins left McBride home afterwards. There was a general air of satisfaction after the taking of this statement as it was believed it was a big break through.⁶⁵⁷

- 5.125. In evidence, John O'Dowd did not materially add to this account: He gave evidence to the Tribunal as follows:

Well, when we were taking the statement off him that night, he was answering what he was asked. And most of what was coming out was quite voluntarily, actually voluntarily. He seemed a bit, probably a bit, nervous. But I thought that was to do with the fear thing, you know. That's the only thing I can think about ... well he was saying it as he was saying it. And, I put it together in the best way he was saying it, to make it sound sensible. Do you know what I mean? ... He went over what he seen and did. When I was away from my meal break, he told them that he was in Raphoe and he had seen what he had seen on the night of the 13th/14th and that had developed when I was away. But when we went into the interview room, that would be after 10.20 like, he went over the story that he met these boys coming down the car park and the clock was ringing for one o'clock and how he met – how he seen these other people. He went over all that like. Then, we decided to take the statement and Sergeant Moylan and [Inspector] McGinley was asking the questions and I think I asked questions. And that would be just to put it properly together, like. That's the way it was done. It seemed to be completely voluntary for him. For sure.⁶⁵⁸

The Tribunal rejects this account as being deceitful and self-serving.

⁶⁵⁷ Tribunal Documents, pages 8072-8074.

⁶⁵⁸ Tribunal, Day 288, pages 18-19.

What Happened in the Interview

- 5.126. The Tribunal is satisfied that the driving force in this interview was Garda John O'Dowd. Garda Philip Collins was his willing and able accomplice. Sergeant Martin Moylan ought to have had enough experience and intelligence not to involve himself in this sorry business. However, he was swept along by the other two. It is also to be regretted that he did not give a truthful account of the interview to the Tribunal. The Tribunal is convinced that the statement followed the dubious precedent available in the incident room from the witness John Patton. That precedent was also mirrored in the false information ascribed wrongly to Hilary Laird. Whatever Robert Noel McBride was saying that night, it was doctored by the Gardaí so that it told the story that the other witnesses were not prepared to tell.
- 5.127. Inspector John McGinley came to the Garda Station because he regarded this as a potential breakthrough in the investigation. He was in the interview room on two or three occasions, but simply to check out the condition of McBride and progress of the interview. He did not condone the use of the prisoner as a vehicle for the creation of a statement which suited the corrupt purposes of the Garda Síochána.
- 5.128. Robert Noel McBride tried to persuade the Gardaí that he was not in Raphoe on that night. They would not listen. If they had listened he could easily have told them that he had been at christenings on two successive weekends. Their demeanour towards him was so threatening and oppressive that he could not speak rationally in defence of his own interests. He was overborne and agreed to say what they wanted him to say.
- 5.129. On the face of the statement, Robert Noel McBride recounts the people that he says he saw on that night. These were people who were, in fact, in and around Raphoe that night. The only people who were in a good position to recount that fact were the Gardaí interviewing him. The Tribunal is satisfied beyond doubt that this was not an invention by Robert Noel McBride, based on his previous experiences of what you might be most likely to see in Raphoe on a Sunday night. Nor, the Tribunal believes, were the details supplied by William Doherty. The circumstances of who was in or around Raphoe on that night were definitively known to members of the investigation team. This knowledge was exploited in order to create a fraudulent statement. The contents of the statement, which have just been quoted extensively above, came from the Gardaí.

- 5.130. The responsibility for this gross misconduct rests with Garda John O'Dowd and Garda Philip Collins. Sergeant Martin Moylan is also responsible for not controlling this misbehaviour and for allowing himself to be dragged into this sorry incident. All three participated in varying degrees. The Tribunal is satisfied, however, that the decision to engage in this falsehood was that of the three interviewing Gardaí. The Tribunal is satisfied that Garda Collins was brought in on the incident, and brought from his sick bed at that, in order to enhance the threat against McBride so that he could be persuaded to make the statement demanded of him.

The Custody Officer

- 5.131. Garda Martin Leonard is a person who has impressed the Tribunal by his consistent ability to be deceitful in relation to every matter of importance for which he is asked to account. He was, at that time, a prominent member of the Garda Representative Association in Donegal. He regarded his function, in that regard, as mischief-maker. The Tribunal is satisfied that he is incorrigible and unbidable.
- 5.132. The task entrusted to him by the people of Ireland, on that night, was to ensure that the prisoner was properly treated. The Tribunal is convinced that he went along with the strategy of Garda O'Dowd, Garda Collins and Sergeant Moylan. He did nothing to fulfil his function as custodian of the rights of the prisoner. He was fully aware of everything that was happening in the interview room and acquiesced in the activities. Among the functions, which he fulfilled that night, was a sham release of the prisoner after he had confessed to stealing the aerial. The Tribunal is convinced that Garda Martin Leonard did nothing to intervene on behalf of the prisoner but instead, ensured that the prisoner was left in a state where it was made perfectly clear to him that if he moved out of the Garda Station there would be trouble.

Responsibility in Relation to the Statement

- 5.133. On the night that the statement was taken from Robert Noel McBride, the district officer, Superintendent John Fitzgerald, confided the following pertinent observation to his diary:

Statement obtained putting McBrearty and McConnell in car park. Needs crosschecking.⁶⁵⁹

- 5.134. This is what did not happen. Mentioned in the initial statement of the 29th of November of 'Mr. X', Robert Noel McBride, were the following people: Martin

⁶⁵⁹ Tribunal Documents, page 794.

Neillis, Derek Crawford, Sean Crawford, Damien Murphy, Andy McBrearty and Sean Crossan. He mentions them, while none of them mention ever seeing him. It would have been a simple matter to go and check through their original statements, made before Robert Noel McBride's arrest, and to ask the question as to why the key witness, as he was described, putting Frank McBrearty Junior and Mark McConnell in a position to have murdered Richard Barron was an invisible feature of the landscape in Raphoe on that evening. For two hours he had stood outside D.J.'s chip shop, according to himself, and viewed the entrance to the nightclub. He barely moved, except on a number of occasions to walk up and down to McGranaghan's shop on the Diamond, for the purpose of stretching his legs or warming himself up. It is incredible that this cross-checking was not done. Indeed Job No. 128 which issued on the 20th/21st of October 1996, stated:

Gary or Noel McBride, Figart, driving a white Novo 89 DL ... with the following Gareth Goudie – Gavin Kelly sitting outside Frankies'. What did they see?

Gary McBride is Robert Noel McBride's brother. In a statement made on the 23rd of October 1996 to Sergeant Joseph Hannigan, he stated that he was in a car with the two others named in the job sheet. They drove into Raphoe at 00.30 hours and parked at the hairdressers on Meetinghouse Street, facing down in the direction of Frankie's. This was quite close to the entrance. He saw people going into McBreartys' but he did not know any of them. His brother, who was supposedly loitering in the area, was not mentioned. Later, on the 18th of September 1997, he confirmed to Detective Sergeants Henry and Smith that he did not see his brother in Raphoe that evening. This information was available to the Garda Síochána from the time Gary McBride made his statement. It was a statement against which the statement of Robert Noel McBride should have been crosschecked. It was a matter which could easily have been followed up, as it was in 1997. The alternative explanation for the failure in this regard is that the investigation team already knew that there were no sightings of their star witness in Raphoe or near Frankies nightclub that evening, even by his own brother.⁶⁶⁰

- 5.135. The person in charge of the investigation, from October through to February, was Superintendent John Fitzgerald. His account of the matter in testimony was to excuse his inaction on the basis that if the witness had made a statement admitting to one intended crime, that he was likely to be telling the truth about the participation of others in a completely separate crime. Therefore, the statement did not need to be crosschecked. This is a section of his testimony:

When Noel McBride, 'Mr. X', made his statement, this witness that

⁶⁶⁰ Tribunal Documents, pages 7521-2, pages 985-6, page 987 and pages 5989, 6002. See also statement of Garvan Kelly, page 1846.

saw what he saw in the car park, we made up our minds at that stage that we were willing to move this on now and we were going to arrest these people. So, we cannot divorce that. We cannot divorce that, and we cannot divorce the other information of the people in the car park from the various discrepancies ... At that time, I was satisfied, at that time I was satisfied that, number one, that he was there for a genuine purpose, which was a wrongful purpose, it was a genuine purpose, breaking into a technical school; and number two ... [he names people in the statement that] ... were in Raphoe, those people. They were in Raphoe. The other point is that after that I sent out jobs to be done ... And I was conscious that they would be done ... As far as we were concerned, we felt and believed that the best way forward at the time that we made the arrests was to make those arrests, at the time, to make those arrests. Perhaps – because we believed that people were telling lies and going to sort out this situation and to move it forward, perhaps going back to these people might have created more lies. That might be – and we felt that that was the way forward, at the time, naturally, when McBride's statement did come in. That's not to say that these statements weren't looked at, at the time.⁶⁶¹

- 5.136. As will shortly become apparent, when even the slightest challenge was mounted to the veracity of Robert Noel McBride's statement, he crumbled and admitted that he was telling lies. It is beyond belief that it did not occur to Superintendent John Fitzgerald that checking with persons who were in Raphoe that night as to whether they had seen Robert Noel McBride was appropriate. The reality is that he noted that it ought to have been done in his own notebook. A further point arises. No-one in Raphoe that night, who made a statement to the Gardaí, mentioned seeing Robert Noel McBride; despite his presence outside the chip shop for two hours. Even the application of basic intelligence, and basic Garda procedures as comprehensively outlined by Chief Superintendent Keane, would have caused a halt to be made to the arrests. The Tribunal is entitled to suspect, at this point, that either a determination to frame Mr. McConnell and Mr. McBrearty Junior with a crime that they did not commit was afoot or that the emotion among the dominant section of the incident room team had reached a fevered pitch. Some support for the latter proposition is to be found in the evidence of Garda Tina Fowley.
- 5.137. The testimony given by Garda Tina Fowley was that the statement of Robert Noel McBride was what the dominant group within the incident room team were

⁶⁶¹ Transcript, Day 234, pages 36-42.

waiting for and that, once it arrived, arrests should take place immediately. Her testimony is supported by the passages in the jobs book, correspondence book and conference notes, insofar as they exist, which indicate that arrests and searches had been contemplated from October and that profiles for the purpose of interrogating the three main supposed suspects had also been put in hand. Garda Fowley said in evidence that after the statement had come in there was a conference. The focus of the conference was in relation to arrests. She said:

I made the point at the meeting that all statements that should have been taken should have been in and cross-referenced before the arrests were made ... I addressed those in charge of the conference on that point ... Superintendent Shelly and Superintendent Fitzgerald. ... I recall Superintendent Shelly saying "We know well the F-ers that did it, the two F-ers that did it, it's only a matter of proving it." ... That was the response, they were moving on with the arrests, that is what I gathered ... It was beginning to move on too fast I thought. 'Gazza' Gallagher, for example, he was a suspect in that case. He was still in the frame. He wasn't eliminated. There is no elimination done on any of the suspects or the suspects weren't scrutinised.⁶⁶²

- 5.138. Concerning the attitude taken to the statement of Robert Noel McBride, Garda Fowley said:

Inspector McGinley said that the statement was in from 'Mr. X', and it was a hundred per cent. He had seen McConnell and McBrearty coming down the car park. He had been in the car park ... I knew it was 'Mr. X' at that stage. I had no particular concern in knowing his actual identity. I had received the assurance and heard the assurance that it was a hundred per cent, and at that time I accepted that.⁶⁶³

- 5.139. In addition, the following exchange occurred between Garda Fowley and the Tribunal Chairman:

Q. Chairman: How did Sergeant Moylan deal with the statement when he was giving his summary of the case against each of the witnesses?

A. He referred to it as 'Mr. X'.

Q. Chairman: What did he say about it?

⁶⁶² Transcript, Day 217, pages 155-156.

⁶⁶³ Transcript, Day 219, pages 76-78.

A. *'Mr. X' has confirmed, and 'Mr. X' is saying, that Mark McConnell, Frank McBrearty came down the car park. There was never any mention of 'Mr. X's, actual name.*

Q. *Chairman: So Sergeant Moylan would have known all about it because he was able to speak about it?*

A. *Yes. He seemed to be.*

Q. *Chairman: He was a party to whatever secrecy there was about this statement?*

A. *He certainly seemed to be, yes.⁶⁶⁴*

5.140. The Tribunal is satisfied that it was not until the New Year that it became generally known that Robert Noel McBride had made a statement. The original was not distributed. However, such of the Gardaí as had taken the trouble to get a copy of the statement, would have realised that the statement had been photocopied to exclude the usual name and address of the witness at the top and his signature at the bottom. The careful reader will have noted, however, something that the photocopying Garda, and senior officers, in pursuit of secrecy, overlooked. Robert Noel McBride mentions himself in the body of the statement as being the subject of a threatening phone call in the last portion of the statement. This is indicative of inefficiency at a very high level and to a very high degree. Apparently, the reason for secrecy was a fear, expressed by Superintendent Fitzgerald, that there was a 'leak' within the incident room back to Mr. McConnell and Mr. McBrearty.

5.141. Sergeant Hannigan supported Garda Fowley in relation to the question as to who was the dominant personality within the incident room. The following exchange occurred between him and the Tribunal Chairman:

Q. *Chairman: Right. We also heard from Sergeant Roche and Garda Fowley that at a certain stage, when Sergeant Roche suggested that, they should perhaps hasten a little more slowly, that Superintendent Shelly said words to the effect – we know the F-ers who did it, all we have to do is prove it – words to that effect. Do you recollect that being said?*

A. *I don't recollect that exact remark but I know that Superintendent Shelly was very upfront in his belief that the investigation was going the right way when it was being centred on Frank McBrearty Junior.*

⁶⁶⁴ Transcript, Day 219, pages 78-79.

Q. Chairman: You don't remember that remark?

A. No, I don't specifically.

Q. Chairman: When you say he was very upfront in the belief, what do you mean by that?

A. He was there at a lot of the conferences, and as I say, the thrust of it was that the two gentlemen, Mr. McConnell and Mr. McBrearty, were the two suspects; to more or less the exclusion of all else. Superintendent Shelley is a forthright man, an imposing man, but I certainly know that Detective Sergeant Henry's theories weren't run with or weren't accredited.

Q. Chairman: Do you remember Sergeant Roche making that remark that they should slow down ...?

A. I don't recall the remark. I recall him voicing reservations about the jobs being done and about Róisín McConnell's arrest, but not that specific remark.

Q. Chairman: The last thing I want to ask you is this: I mean no offence to ... Mr. McBride ... but would you have known [him]?

A. I did indeed, Mr. Chairman.

Q. Chairman: And I know that the Gardaí can't choose their witnesses, but given the type of people that they are, did you have any reservations about the quality of the information that they might be giving you?

A. If, at the time, I had known their identities, I didn't know Mr. McBride's identity until later on, I would have had reservations in relation to Mr. McBride's capabilities. His, what would you say, his level of intelligence.

Q. Chairman: Did you become aware of his identity before the arrests?

A. I did, Chairman.

Q. Chairman: You did?

A. Yes.

Q. Chairman: The day of the arrests or the day before that?

A. I think possibly the day before it, shortly before the arrests.

Q. Chairman: Did it seem to you to be appropriate to make any comment in relation to the type of person he might have been?

A. No, I didn't make any comment.

Q. Chairman: As to his reliability?

A. I didn't make any comment, Mr. Chairman.

Q. Chairman: Why was that?

A. I went, maybe, to use the phrase, went with the flow. I didn't know him as well as I'd know him now and I didn't learn as much as I now know. My opinion of Mr. McBride may have built further over the years. I wouldn't have known him well at that time. I knew his family, all right, but I didn't have any direct dealings with him myself other than knowing him and knowing some of his past history.⁶⁶⁵

5.142. Detective Superintendent McGinley's evidence on this matter was to indicate that it was regrettable that cross-checking was not done in relation to Mr. McBride's statement.⁶⁶⁶ The Tribunal has reviewed his evidence in detail and has concluded that he may have become emotionally caught up in the investigation. When he acted, in defence of an objective investigation, it was far too late. However, the reality is that as Detective Inspector, he materially assisted in sorting out the problem concerning the evidence of Robert Noel McBride and acted appropriately in arresting William Doherty. While Detective Inspector in Donegal he had a roving brief over the entire county and so this was not his entire concern.

5.143. The directing minds of the Barron investigation were Superintendent Shelly, Superintendent Fitzgerald, Inspector McGinley and, from February in 1997, Superintendent Lennon. The main bulk of the responsibility for this extraordinary conduct must therefore rest on their shoulders. They did nothing to attempt to sort out the genesis of Mr. McBride's statements or to do any basic check which ordinary police procedure would have

⁶⁶⁵ Transcript, Day 222, pages 34-36.

⁶⁶⁶ Transcript, Day 243, question 415.

required as to the correspondence of his account with that of other people.⁶⁶⁷

Stephen McGinley

- 5.144. In addition to the foregoing, the incident room team believed that Frank McBrearty Junior had boasted, in gruesome terms, about killing Mr. Barron. The origin of this belief appears to be a note from Garda John O’Dowd that is contained in job number 308, dated the 15th of May 1997. The text reads as follows:

Youth – overheard a conversation in “Frankie’s” bar/disco – with Frank, Junior and another person – indicating that Frank, Junior was describing the injuries to R.B.’s head (graphically).

Garda John O’Dowd ⁶⁶⁸

- 5.145. This was a reference to Stephen McGinley. It was obviously an extremely important piece of evidence. To boast that you had killed somebody is an admission. To tell one’s friends in some detail about the bloody event indicates a warped personality. This was an urgent piece of evidence. It would be three months before this matter was checked through. A report was not returned in respect of the Stephen McGinley ‘information’ until August of 1997. When Stephen McGinley was spoken to, the report was found to be untrue. Why such a report was made, no one was asked. This is yet another example of how, if the ‘information’ had been checked through, it would have become apparent to senior officers that manipulation of the entire investigation was taking place.

John O’Dowd and ‘Mr. X’

- 5.146. A scene of almost indescribable chaos emerges on an examination of the Garda documents that concern the relationship between Robert Noel McBride and Garda John O’Dowd. Throughout the hearings, the senior officers, namely Superintendent Fitzgerald, Detective Superintendent Shelly and Superintendent Lennon, purported to place some reliance on these documents as evidence that checking was done, or at least designated to have been done, on the statement of Robert Noel McBride of the 29th of November 1996, with a view to verifying its contents. As a proposition this is utterly unsupportable. The Tribunal needs to quote a number of documents in chronological sequence to give a flavour of the incompetence that characterised this investigation.
- 5.147. At a conference on the 3rd of January 1997, a job was assigned to Garda John O’Dowd in the following terms:

⁶⁶⁷ Transcript, Day 243, pages 120-140.

⁶⁶⁸ Tribunal Documents, page 7617.

John O'Dowd to get 'Mr. X' to identify which bouncer he saw.⁶⁶⁹

The job read:

Re. ID by 'Mr. X' of bouncer.

'Mr. X' was to make an informal ID of the bouncer he saw at the disco door talking to Frank, Junior and Mark McConnell.

Garda John O'Dowd⁶⁷⁰

5.148. At a conference of the 17th of January 1997, the following cryptic note appears from same:

Strengthen Mr. 'X'.

Independent witnesses

J. O'Dowd Job⁶⁷¹

The duty was assigned on job sheet number 279 dated the 20th of January 1997 in the following terms:

1. Locate independent witnesses who corroborate 'Mr. X's statement: in particular what happened at the side entrance to 'Frankie's' and at the 'Tudor Lounge'.

2. Obtain statement from Jo Jo Kelly re. intimidation.

For attention of Garda J. O'Dowd⁶⁷²

to which the reply was:

John O'Dowd

'Mr. X' cannot remember anyone there.⁶⁷³

5.149. In a report to Detective Garda John O'Toole by Garda John O'Dowd dated the 25th of August 1997, the following terse entry ultimately appears:

There are no independent witnesses who observed 'Mr. X's movements on the night in question⁶⁷⁴

Any attempt made to check anything to do with 'Mr. X' Robert Noel McBride was less than half-hearted. By the time that it had emerged that no one in Raphoe had seen 'Mr. X' alarm bells should have been ringing.

⁶⁶⁹ Tribunal Documents, page 6014.

⁶⁷⁰ Tribunal Documents, page 7543 dated the 3rd of January 1997.

⁶⁷¹ Tribunal Documents, page 6024.

⁶⁷² Tribunal Documents, page 7559.

⁶⁷³ Tribunal Documents, page 7560.

⁶⁷⁴ Tribunal Documents, page 6766.

The checking of who saw ‘Mr. X’ should have taken a few days. It took nine months. No-one bothered to follow it up. Even with the ultimate correspondence from Garda John O’Dowd of the 25th of August 1997, no-one in authority was troubled by the proposition that their main witness had stood in an invisible state in the town of Raphoe for two hours. In contrast, when it came to interviewing witnesses apart from Robert Noel McBride, such as Martin Neilis and Kevin McNulty, who had previously given statements, explicit directions were sent out in job sheets to re-interview them as to what they had seen and who they ought to have seen from the position and time they put themselves in and around Raphoe on the night in question.⁶⁷⁵ This is shocking.

‘Mr. X’ – Subsequent Events

- 5.150. On the 2nd of February 1997, a conference was held in Letterkenny concerning the Barron case. This was two days prior to Superintendent Fitzgerald leaving the district to go to a position in Leitrim and Superintendent Lennon replacing him as district officer for the Letterkenny district. The Tribunal is satisfied that thereafter Superintendent Lennon very quickly brought himself into command of the facts of the case.⁶⁷⁶ He was therefore the officer commanding from that time up to the point where a file was eventually delivered to the Office of the Director of Public Prosecutions on the 2nd of March 1998, thirteen months after he took over, and seventeen months after the death of Mr. Barron. The Tribunal does not regard it as credible that Superintendent Lennon only took over the case in September of 1997. The reality is he was the commanding officer and, under the Garda Code, the officer charged with progressing the case. Unless a very serious reason had been advanced to the Tribunal as to how all his time was taken up on other matters, which it was not, his attempts to distance himself from the investigation are unacceptable. Further, the Superintendent, in evidence, and in the manner in which he phrased his questions, sought to put forward the proposition that he had been convinced from an early stage that the alleged statement taken in Garda custody from Frank McBrearty Junior on the 4th of December was not credible. Superintendent Lennon presented himself as the person who, in some way, had felt all along, that Mark McConnell and Frank McBrearty Junior were innocent and who therefore set about an objective reappraisal of the evidence.
- 5.151. The Tribunal rejects this as being contrary to the facts. The reality is that the scenario that the Late Mr. Barron had been the subject of a road traffic collision was not revived following the alleged confession of Frank McBrearty Junior. As regards an assault, there were no other suspects in

⁶⁷⁵ See Job 312, Tribunal Documents, page 7625 and Job 128, Tribunal Documents, page 7251.

⁶⁷⁶ Tribunal Documents, page 6019.

the frame apart from Mark McConnell, Frank McBrearty Junior and Michael Peoples. No alternative scenario has been put forward in evidence by Superintendent Lennon as to how the death of Mr. Barron occurred, absent an assault on him, and who might be the suspects involved.

- 5.152. In a letter to the Secretary of the Department of Justice dated the 9th of October 1997, in the context of seeking an exhumation order, Superintendent Lennon wrote:

It is my considered opinion that the deceased met his death by means other than a road traffic, hit-and-run accident. I am satisfied from consultations with Professor John Harbison that he may be in a position to establish through further examination of the remains, the means whereby the deceased met his death. It is my view that the desire to process in achieving comprehensive, conclusive and factual results is by way of exhumation.⁶⁷⁷

- 5.153. Dr. Fred Kee, the coroner for North Donegal, also wrote to the Department of Justice, reporting on his consultations with Superintendent Lennon, in the following terms:

I have been informed on this date by Superintendent Kevin Lennon of An Garda Síochána, Letterkenny, Co. Donegal, that it is his opinion that the death of Mr. Richard Barron occurred in a violent and unnatural manner and that he is further of the opinion that Richard Barron was murdered.⁶⁷⁸

- 5.154. Furthermore, the correspondence book of the 12th of July 1997 contains a piece of confidential information, of which the channel was Superintendent Lennon, to the effect that the "suspects cleaned up in Mark Quinn's after [the] incident."⁶⁷⁹ This is referable to the suspects already arrested on the 4th of December 1996.

- 5.155. On Friday, the 26th September, 1997, well after Robert Noel McBride had withdrawn all of his statements claiming the culpability of Mr. McConnell, Mr. McBrearty Junior and Mr. McBrearty Senior, and after the arrest of William Doherty and his interrogation in Milford Garda Station, Superintendent Kevin Lennon met with the State Solicitor for County Donegal, Mr. Ciarán MacLochlainn. The Tribunal has received complete co-operation from the State Solicitor. In a memo dated Friday the 26th September, 1997, Mr. MacLochlainn records that Superintendent Lennon had told him that he was unhappy, having been appointed by Chief Superintendent Fitzpatrick to take over the investigation of, as it was put, this "murder case". The unhappiness focussed on a number of points. These included, the involvement of Detective Superintendent Shelly,

⁶⁷⁷ Tribunal Documents, page 1065.

⁶⁷⁸ Tribunal Documents, page 1063.

⁶⁷⁹ Tribunal Documents, page 747

because of “ his background” , as it was put, in the ‘Kerry Babies’ case; the failure to have the body examined by Professor Harbison prior to burial; the statement taken from Frank McBrearty Junior; internal wranglings where Detective Superintendent Shelly and Detective Inspector McGinley were supposed to have tried to side-line him; suspicions which arose against him in consequence of the Milford interrogation of William Doherty; and the suspicion that his colleagues were attempting to get him to put his fingerprints on the incriminating Rhino notebook, belonging to Garda O’Dowd, and found in William Doherty’s bedroom.⁶⁸⁰

- 5.156. The Tribunal regards it as possible that Superintendent Kevin Lennon did have genuine concerns in relation to these matters. It is, of course, also possible that the meeting with the State Solicitor and with the DPP’s representative Niall Lombard, whom he met shortly thereafter, was set up in order to provide himself with a false template of innocence. In the absence of proof, the Tribunal does not regard it as proper to make that inference. The situation in County Donegal was characterised by an almost indescribable breakdown in morale of senior officers who were at each others throats. Superintendent Lennon may have turned to the State Solicitor as a sounding board, or to get advice, against a background of genuine concerns. The Tribunal is prepared to accept that this was his motivation. The Tribunal is not prepared to infer that he was the officer behind Garda O’Dowd, or the party responsible for setting up the interrogation and oppression of Robert Noel McBride.

The ‘Confession Statement’

- 5.157. On leaving his duties, in or around the 4th of February 1997, Superintendent John Fitzgerald did a most curious thing. The Tribunal is satisfied, from the expert evidence proffered to it by Chief Superintendent William Keane, that a confession statement, when made, is to be treated in the same way, broadly, as a witness statement. It should be checked into the incident room, assigned a number and filed. Obviously, because it will be an exhibit in the case, it will also come under the custody of the exhibits officer as it has the potential to be a document examined in court. When the purported statement of Frank McBrearty Junior emerged on the 4th of December 1996, this was not done. Instead, Superintendent Fitzgerald purported to have a strange conversation with Kevin Lennon, his successor as Superintendent which he described as follows:

I said, “Kevin, this is the statement here. Do you want it?”, or words to that effect. And he said “sure I know where it is if I want

⁶⁸⁰ Tribunal Documents, page 9732; see also the memorandum of Niall Lombard dated the 3rd of September 1997 at Tribunal Documents, page 9734-9736. Murder is retained as the basis of the investigation in progress reports of Superintendent Lennon up to the 16th of December, 1997, pages 4757-4806, 8077-8115.

it". Words to that effect. There was no problem with it. In fact, I think that somebody, somewhere down the road, made contact with me and said, "Have you that statement?" and I said, "Yes I have". Somebody, that could be months later ... Oh, it was in a sealed envelope. I didn't show him the statement, no. I had that envelope sealed. That envelope was sealed. I probably didn't mention that. Then, when I photocopied that, I put that into the envelope and I sealed that envelope. When I say that, the two statements, I put them in a sealed envelope, so he would have seen the – when I say I sealed, I sealed it with sellotape. I kept that in my possession until I handed it over to Chief Superintendent McNally against receipt, I was so careful of it I said, "No problem, but it would be against your receipt". And I maintained that statement in my safe in Manorhamilton. ... It could very well be that he didn't see it because I had it in a sealed envelope. Now ... somebody down along the line did ring me and ask me have I still got that statement and I said, I certainly have.⁶⁸¹

- 5.158. In a debriefing document prepared by Superintendent Lennon, commenting on the investigation, he claimed that the investigation team was still unaware as to whether the statement or alleged admission had been made on a single sheet of paper or on two sheets. He complained that "this all important statement is not in the possession of the investigation team and has not been viewed by them".⁶⁸²
- 5.159. The Tribunal regards the controversy between Superintendent Lennon and Superintendent Fitzgerald on this issue as being very significant. The Tribunal has earnestly considered which version of events might reasonably be regarded as true. The fact that Superintendent Fitzgerald undoubtedly took the statement away with him from Letterkenny to Manorhamilton and locked it in a safe, provided a degree of support for his testimony. In addition to that, the phrase used by him that he would only hand it over "against a receipt" has rung true. This was not a normal way for a superintendent in An Garda Síochána to speak or to behave. He was entitled, subject to management checking, to trust those with whom he was working, and those who were reporting to him. He clearly did not.
- 5.160. The Tribunal has noted, with dismay, the patchy nature of the conference notes and how they disappeared virtually to nothing in the new year of 1997. The Tribunal is concerned that other documents may have been in existence but have now been destroyed. The Tribunal also notes with dismay the destruction by senior officers of their notes that are pertinent to this examination. The Tribunal

⁶⁸¹ Transcript, Day 232, pages 103-104.

⁶⁸² Tribunal Documents, page 782.

cannot help but cast its mind back to the appalling situation in the explosives module where files on important criminal occurrences were not commenced, and where documents were deliberately concealed. **The Tribunal does not extend this criticism to Garda Headquarters, the personnel of which, the Tribunal is satisfied, have given to the Tribunal, and its counsel, the fullest possible co-operation by way of complete discovery through Superintendent Terry McGinn.**

- 5.161. Mindful of these observations, the Tribunal is convinced that Chief Superintendent Fitzgerald had a suspicion, be it right or wrong, that there was some concern in relation to this alleged statement and was suspicious, at least, by the time he left Letterkenny in February of 1997 that it would disappear. He kept it with him to ensure that this would not happen. He locked it in a safe for the same reason. He then took the step of allowing it out of his possession only against a receipt to further protect himself. All of this was done so as to ensure that if his suspicion, which the Tribunal is satisfied that he held, that the statement, might disappear, came to pass that he was not going to be blamed.

Discovering the Truth

- 5.162. Detective Inspector McGinley had doubts in relation to the veracity of Robert Noel McBride's account of what he had seen on the night of the 13th/14th of October 1996, from the time when the March statement came to his attention. This was because in that statement, and in a subsequent statement, Robert Noel McBride describes himself in a way that was out of character in standing up to Frank McBrearty Junior. Other events were occurring which cumulatively undercut the artificial nature of the conviction in the minds of the dominant section of the investigation team that there was a case of guilt to be made against Mark McConnell and Frank McBrearty Junior. The Tribunal proposes to go through these events in sequence.

The Gallagher Search

- 5.163. The search of the farm of Alfie Gallagher at Ardagh, St. Johnston, has been dealt with in the previous report of this Tribunal. The Tribunal has no intention of rehashing the facts set out in that previous report. The Tribunal had decided that, in the event of "the Lofty Gallagher search", as it had become known, becoming an issue in respect of this report, that it would approach the matter with a completely open mind. This, it has done, leaving aside all prior conclusions. Further, on the last occasion on which evidence was heard on this matter, it did not have the benefit of the evidence of William Doherty.

- 5.164. **The Tribunal is convinced that the search of the Gallagher farm was completely fraudulent.** The Tribunal has examined secret documents in Garda Headquarters and is convinced, in conjunction with the evidence heard in public, that while it is possible that William Doherty was mischievous enough to attempt to lead Superintendent Lennon and Garda O'Dowd astray by pointing the finger at the Gallagher family, that this is not a sufficient explanation. The Tribunal has listened carefully to the evidence of Detective Superintendent McGinley on this subject and to that of other officers.
- 5.165. Superintendent Lennon and Garda O'Dowd have told too many differing stories in justification of this operation. The reality is that Superintendent Lennon reported, first of all, on an operation to bring a bomb across the border on a trailer where, he claimed, the information from his informant, through Garda John O'Dowd, was to the effect that a border crossing was going to be made in the first weekend in March. The Tribunal notes that the Idle Hour public house was staked out, at the appropriate time, on the basis that the information suggested that activity connected with the transportation of the terrorist bomb would occur near that locality. The Tribunal notes the complete absence of any mention of the Idle Hour public house locality from any of the documents in Garda Headquarters. The Tribunal notes that Superintendent Lennon did not question the veracity of this information when nothing was uncovered on foot of it. Instead, he blamed the detectives involved in the undercover operation for having, as he put it, "blown it".
- 5.166. The goalposts then shifted. A large bomb on a trailer was supposed to have been placed in a shed at the Gallagher farm to await transportation. A search warrant was obtained and nothing was found. The Tribunal is completely satisfied that nothing could have been found, as the relevant shed had grain sprouts growing across it, in an undisturbed condition, indicating that no vehicle had been brought in and out for a period of weeks at least.
- 5.167. The goalposts then shifted again. Following a further conference, Superintendent Lennon and Garda O'Dowd reported that the self-styled 'Provisional IRA', in the course of their criminal terrorist activities, had questioned their informant and had put a gun in his mouth. In this regard, the Tribunal accepts the evidence of Detective Garda James Frain and Detective Garda P.J. Keating.⁶⁸³ Notwithstanding this, he survived. This was unlikely given the vicious and utterly inhuman nature of that organisation, which they claimed to believe that this individual served.
- 5.168. With courage that, if it were true, would be commendable if it were not incredible, the informer then accompanied Superintendent Lennon and Garda O'Dowd to the supposed site of an underground arms bunker on the mountain

⁶⁸³ Transcript, Day 312, page 111 and Day 317, page 22.

behind the Gallagher farm. This was the third story that had been spun within a week concerning the terrorist group. While it is conceivable that Superintendent Lennon and Garda O'Dowd might have believed, and in this respect the Tribunal gives them the benefit of the doubt, the first story from their informer, they were less likely to have believed the second; and the Tribunal finds the third story to be in the realms of fantasy.

- 5.169. Superintendent Lennon then directed the search to a portion of the hill. A helicopter was brought in to view the area from above, where soil disturbance could more easily be seen. He claims to have walked up the hill, together with his informer, and planted a stick in the ground at the spot where he claims the informer said the bunker was to be found. Nothing was found. At the conference the next morning, Superintendent Lennon was adamant that there was something to be found up the hill. Why was that?
- 5.170. William Doherty gave credible evidence in which he described meeting Superintendent Lennon and Garda O'Dowd at the top of the Letterkenny to Strabane road the night before the initial search. He then went on:

I was told I had to perform a task for Mr. O'Dowd and Mr. Lennon. They had dark clothes on them and they had hats. Mr. Lennon was carrying a gun, which he loaded before we walked up to the hill. We went down to an outbuilding and they showed me a bag, a clear plastic bag, that's further on down the road, that I was supposed to put in this hole in the Gallagher's farm. I didn't put it in. I went up – Mr. O'Dowd had a trowel and bar and he showed me the spot where I was to put this bag. I think it was then that the conversation, when that was done, that I was told to do this task. But I never done it but I told them that I did do it and there was – we were stopped that night in the van and I didn't see who it was in the van or in the car that stopped us, but I was told that it was Sergeant Conaty from Carrigans Garda Station but I didn't see them ... It was like a white substance. It wasn't like powder, I can't really say what it was. It was in a clear bag and it was in the shed but I didn't put my hand on it at any time ... It was not as white as a shirt.⁶⁸⁴

- 5.171. William Doherty then went on to describe how he had telephoned Garda O'Dowd and lied to him that the material was put in place. The Tribunal believes this. It is supported by the attitude of Superintendent Lennon in the aftermath of a very expensive and destructive search that there was still material to be found on the hill. Whereas William Doherty may have led them astray initially, this seems unlikely.

⁶⁸⁴ Transcript, Day 186, pages 50-52.

- 5.172. It is highly probable that Superintendent Lennon and Garda O'Dowd brought William Doherty to the vicinity of the hill behind Gallagher's farm near which they had bomb-making equipment concealed. The description of the substance to be planted fits with that of ground fertilizer and sugar – a substance with which the Tribunal has become depressingly familiar. On an extended search, this bag would have been found, had William Doherty obeyed his instructions. His 'handlers', Superintendent Lennon and Garda O'Dowd, were certain that he had, hence their conviction that there was something to be found on the hill.⁶⁸⁵

The Chief Superintendent and the Informer

- 5.173. What the Tribunal cannot understand is the attitude of Chief Superintendent Denis Fitzpatrick to this matter. He was convinced, so he says, that Superintendent Lennon had introduced William Doherty as an informer as far back as late 1995 or early 1996. He indicated in evidence that no matter how badly an informer had led the Gardaí astray that he should always be classified as "promising" because the prospect was still there that an informer might come up with something useful. **This would mean that every demented citizen who wishes to lead the Gardaí astray could never be given their marching orders because, at some stage, they might emerge with something useful.** Curiously, reviewing, at the request of Chief Superintendent Fitzpatrick, William Doherty as an informer, Superintendent Kevin Lennon had described him as "promising". In February of 1997, Superintendent Lennon had met with him and discovered that he had lied about his previous convictions. In March, he had led the Gardaí on the debacle of the search of the Gallagher farm. By this stage, the Tribunal is of the opinion that most of the detective branch in Donegal were aware that William Doherty was the informer behind the Gallagher search.
- 5.174. Chief Superintendent Fitzpatrick had information that he was also the person behind "persuading" Noel McBride to give evidence. Chief Superintendent Fitzpatrick then suggested, for no good reason, to Detective Inspector McGinley that he should take over William Doherty as an informer from Superintendent Lennon. This led to an emotional reaction and a scene between Superintendent Lennon, Chief Superintendent Fitzpatrick and Detective Inspector McGinley. The Chief Superintendent then called off the meeting and mothballed the suggestion. **In evidence, Mr. Fitzpatrick claimed that he made it clear to Detective Inspector McGinley that he still wanted him to "have a look" at William Doherty but the Tribunal rejects this evidence as deceitful.**

⁶⁸⁵ See the evidence of Denis Fitzpatrick, Day 268, page 78.

Further Developments

- 5.175. On the 4th of May 1997, Detective Inspector McGinley was invited to a meeting with Robert Noel McBride by Garda John O'Dowd. As the précis of the subsequent statements of Robert Noel McBride indicates, he was introduced to William Doherty. Unfortunately, the Detective Inspector simply sat on his suspicions. At the end of that meeting he describes himself as being suspicious. In breach of best international police practice, the interview was conducted in John O'Dowd's private residence and the supposed informer, William Doherty, witnessed the note of the interview.
- 5.176. The next appearance of William Doherty has been extremely significant in assessing the credibility of the parties to this sorry affair and in allowing inferences to be drawn as to who was manipulating Robert Noel McBride through the agency of William Doherty.

The 7th of July 1997 Statement

- 5.177. The Tribunal is satisfied that on the evening of the 7th of July 1997, Detective Sergeant Hugh Smith was working in Letterkenny Garda Station when Sergeant John White approached him. Sergeant White indicated to him that he was not in a position to take a statement from Robert Noel McBride, who was coming into the station with a view to assisting the Gardaí concerning the Barron case. Sergeant White then departed. At 21.00 hours, Robert Noel McBride appeared in a car that was probably driven by William Doherty. The Tribunal finds as a fact that Detective Sergeant Smith went out into the car park to meet Robert Noel McBride to discover that he was accompanied not only by William Doherty but by Sergeant White. This puzzled Detective Sergeant Smith greatly, as it was clear that Sergeant White was available to take this statement, a simple task in itself. Detective Sergeant Smith set about taking the statement from Robert Noel McBride in a professional manner.
- 5.178. This involved ensuring that William Doherty was not present. Detective Inspector McGinley joined him to listen to the interview and witness it. When the interview was completed, Detective Sergeant Smith and Detective Inspector McGinley processed it in the orthodox way. The suspicions of Detective Sergeant Smith were growing. In evidence he stated:

It didn't cross my mind until I saw [Sergeant White] at the car chatting to William Doherty. I thought to myself, "well, why am I being asked to take the statement given the fact that you are still here?" I was thinking of that, but I didn't ask him directly, or he didn't offer any explanation as to why he wasn't taking the

*statement himself. And it has surprised me somewhat since that just to read reports where he said that he only happened to be in the station when William Doherty and McBride walked in and that there was no pre-arrangement. I don't understand that.*⁶⁸⁶

- 5.179. The Tribunal is satisfied that at all material times up to the hearings, Detective Sergeant John White has made the case that he had encountered William Doherty and Robert Noel McBride at around 21.00 hours by accident. The Tribunal has examined the overtime records filed by the Sergeant for that night. These indicate that Sergeant White claimed overtime into the early hours of the morning, on the basis that he was involved in taking a statement from Robert Noel McBride.
- 5.180. Detective Sergeant White's evidence on this issue was in complete contradiction of his earlier statements. He purported to tell the Tribunal that his recollection of that night was of standing in the corridor when a uniformed Garda called him into the public office. There he found William Doherty standing outside the counter at the glass partition saying that Mr. McBrearty had been antagonising Robert Noel McBride again, and that Robert Noel McBride would not come into the station because he was too nervous or afraid. He then claims to have exited the public office, spoken to Detective Sergeant Smith, and then followed William Doherty outside. He claims to have walked over to the blue Fiesta and witnessed William Doherty asking Robert Noel McBride to come into the Garda station. Detective Sergeant Hugh Smith then followed him out and took over by approaching McBride and asking him "to come in quite nicely"⁶⁸⁷. He claims that William Doherty began acting up, claiming if McBride went into a Garda station he would be hit. Detective Sergeant White continued his evidence to the Tribunal as follows:

So, I asked Doherty would he sit back into the car. He got back into the driver's seat. I got into the passenger's seat. After a minute or two, I began thinking, at the time that there was no hedging in front of Letterkenny station. We were parked at the front wall where a person, a pedestrian walking by or a person in a car, would be close to the Fiesta. So I said, "why don't you drive over to the far side of the car park and face in towards [the Garda station]", which he did. Because, I knew he was giving information to John O'Dowd at the time. He didn't know that I knew he was giving subversive information, but he didn't know that I was aware that he was giving criminal information, that type of thing. So we drove over, sat in the car and then he began talking to me and

⁶⁸⁶ Transcript, Day 224, page 159.

⁶⁸⁷ Transcript, Day 296, page 101

said, "Look, I could help you out, I could give you information if you call out to the house that night or tomorrow night", or something like that, you know. And I said, "Look, you are dealing with John O'Dowd. Let's leave it at that". He said, "That's ok".⁶⁸⁸

- 5.181. This account is to be contrasted with the considered view that he gave to the Tribunal investigators, Mr. Patrick Cummins and Mr. Michael Finn, in an interview of the 14th of June 2004. In that, he said:

On one occasion after that I was in Letterkenny Station when William Doherty and Noel McBride came into the Station and Detective Sergeant Smith asked me to keep William Doherty downstairs in the car park away from the room where McBride was making his statement because they felt he was interfering with Mr. McBride in the taking of the statement and I did that. I walked up to the car with Hugh Smith and we spoke to Noel McBride at the door of the car or at least Hugh Smith spoke to Noel McBride and asked him to come into the station and I sat into the car and talked to William Doherty.⁶⁸⁹

- 5.182. In evidence, Detective Sergeant White attempted to iron out the differences between himself and Detective Sergeant Hugh Smith. The Tribunal is satisfied that Detective Sergeant Hugh Smith was telling the truth. The Tribunal believes that Detective Sergeant White brought William Doherty in for the purpose of taking a statement from Robert Noel McBride. He had no business in getting another sergeant in Letterkenny to take the statement. The Tribunal finds that he has twisted and turned his explanation of how it all happened in order to suit his own purposes. It is also highly suspect that he sat in William Doherty's car with him outside in the car park of the Garda Station if he was merely involved in this as a coincidence.

- 5.183. The Tribunal considers that Detective Sergeant John White knew that William Doherty was the person responsible for having Robert Noel McBride come in and make these statements. If Detective Sergeant White had told the Tribunal the truth, and not twisted and turned the facts in order to contradict himself and suit his own purposes, then it would have been perfectly reasonable to say that the Sergeant was only doing his duty by bringing in the person who wanted to make a statement and arranging for this to be taken by a detective. However, the stark fact is that Detective Sergeant White has told numerous lies to the Tribunal. It leads the Tribunal to the conclusion that he was involved in something sinister, and that he knew it. The Tribunal feels that the only reasonable view is that at the time when Sergeant White arranged for William

⁶⁸⁸ Transcript, Day 296, Pages 101-102

⁶⁸⁹ Tribunal Documents, Page 6825. See also Tribunal Documents Page 3115.

Doherty to shepherd Robert Noel McBride in to make the statement, he must have known that his initial statement, blaming Mr. McConnell and Mr. McBrearty Junior, was false. There can be no other reason as to why he would lie or attempt to cover up his involvement in this matter. In effect, Detective Sergeant Hugh Smith was involved so as to be seen as shouldering the blame in respect of the suspect witness and the Garda informant who was handling him.

- 5.184. The Tribunal has also noted the number of visits by Detective Sergeant White to the Doherty household in his capacity as a sergeant in Raphoe. The visit of the 13th of June 1997 was made in good faith. There is a documented incident in respect of this matter, whereby there is a claim that men, or a man, wearing disguise were seen on the premises and that Sergeant White went to investigate. It would not be reasonable to draw any conclusion adverse to Sergeant White for doing his duty. His other visits were, however, very suspicious. It is absurd that he would have visited the house of an informer, and a member of the self-styled 'Provisional I.R.A.', purely for the purpose, as he claimed, of visiting Patrick Doherty, the father of William Doherty, who is since deceased and who was then a very sick man. The Tribunal simply does not accept that story. It could be that there was a very close relationship between William Doherty and Detective Sergeant John White. The Tribunal is satisfied that there was a degree of intimacy between William Doherty and Detective Sergeant John White that was far greater than that which he was prepared to admit in evidence to the Tribunal. He was guilty of failure to share his suspicions in relation to the falseness of McBride and Doherty with the incident room. He was negligent in failing to share those suspicions. He followed up on this by deceiving the Tribunal in relation to this important incident of the 7th of July 1997 statement by Robert Noel McBride.
- 5.185. In addition to the foregoing, Assistant Commissioner Kevin Carty has given evidence of a meeting on the 7th of October 1999 with Detective Sergeant White. He claims that, on that occasion, Detective Sergeant White told him that on the day after the death of Mr. Barron that he was telephoned, and later visited, by Gardaí O'Dowd and Mulligan in order to seek his advice because, as it was put, they were in trouble over drinking in a pub on the night that Mr. Barron died. Detective Sergeant White denies that this matter was discussed at his meeting with Assistant Commissioner Carty, but instead claims that it was a lengthy discourse that revolved around four points of interest to him. **The Tribunal accepts the evidence of Assistant Commissioner Carty, in that regard in preference to that of Detective Sergeant White.**
- 5.186. **The evidence does not, however, establish that Sergeant White was**

involved in deception, apart from the 7th of July 1997 statement. It has been argued to the Tribunal on behalf of Detective Sergeant White that it would have been very unlikely for this alleged telephone call, or this visit by Gardaí O'Dowd and Mulligan, to have taken place because Garda O'Dowd and Detective Sergeant White did not know each other. The reality is that they had served in Lifford, an extremely small town, and the Tribunal regards it as likely that while they may not have been on duty together, that they must have known each other. This, however, does not bring any question as to the involvement of Sergeant White in active corruption, as opposed to actively deceiving the Tribunal, any further.

The 11th of September Conference

- 5.187. On the 11th of September 1997 a conference in the Barron investigation was held under the chairmanship of Superintendent Lennon. The Tribunal has listened to the various diverging accounts of this matter and is convinced that the new investigation team, and some members of the old investigation team, under Superintendent Lennon, were meeting for the purpose of finishing the file. Superintendent Lennon, concerning the investigation at that point, made no complaints. One task remained. The statements alleging bribery against Frank McBrearty Senior and Frank McBrearty Junior, taken from Robert Noel McBride, had yet to be put to either of them so that they could respond to them.
- 5.188. At the conference, Superintendent Lennon suggested directly to Detective Sergeant Smith that he should go and ask them about the allegations made against them. The evidence of Detective Sergeant Smith on this issue has the ring of truth about it. He was aware of the character, for better or worse, of Messrs. McBrearty, father and son. He was also a professional policeman. He indicated that he did not wish to put unsubstantiated allegations to them without first having cross-referenced them. He told the conference that he needed to cross-reference and check the statement before it was put to anyone. Nobody demurred from this proposed course of action. The Tribunal is also convinced that Superintendent Lennon did not give anyone the task, much less Detective Sergeant Smith, of checking and cross-referencing the statements.
- 5.189. The reality is that no cross-referencing of any statement by Robert Noel McBride had occurred up to this point. It was by reason of the appearance of Detective Sergeant Smith as a new face in the investigation, with a fresh, professional and objective approach, that this step was considered at all. In cross-examination, Kevin Lennon has sought to take credit for the developments that subsequently occurred. In evidence, Kevin Lennon claimed

that in March of 1997, while allegedly not in charge of the Barron investigation, he ordered a review of the activities of Robert Noel McBride. Following on that, he claims to have told Detective Inspector McGinley, possibly in the presence of Detective Sergeant Hugh Smith, that the bicycle, the watch and the jewellery should be followed up on. They deny this.⁶⁹⁰

5.190. His account of the 11th of September conference was that it was his idea that some collateral checking needed to be done of the McBride statements prior to Mr. McBrearty Senior being approached. The Tribunal prefers the evidence of Detective Sergeant Smith, in this respect.

5.191. Detective Sergeant Smith told the Tribunal:

Well, at that conference, from my recollection, Detective Sergeant White was present, Sergeant Moylan, Detective Sergeant Henry, Detective Inspector McGinley, Detective Superintendent Shelly and Detective Superintendent Lennon ... The purpose of the conference was, I think they were going to wrap up the investigation file and get the file completed [for the purpose of] submission. ... And Detective Superintendent Shelly, if they weren't important jobs, would say, they're either relevant or they're not, if they were important they would have to be done and this statement came into being, it was read out at conference or gone through. ... All I know is Sergeant Moylan had the jobs book in front of him, going through the jobs book, but as far as I know, there was no note taker, as such, but I thought it would have had some reference to the conference of what was discussed ... Well, I was asked at that conference to put the allegation as made by Noel McBride to Frank McBrearty Senior ... I was asked to go and put the allegation to Frankie, all the different allegations that McBride had made in the various statements ... And I said I wouldn't put unsubstantiated allegations to Frankie because he'd go off his head. I suppose, in hindsight, rightly so. But it had to be backed up with something and [Superintendent Lennon] asked me how do you back them up and I mentioned the bicycle, and Detective Superintendent Shelly asked me why didn't I include the bicycle in the statement of the 7th of July. I asked him, had no statement been taken from McBride in relation to the bicycle. I was informed that there hadn't been a statement that had been [on threat] taken even though it was being bandied about since February or March of that year. Nobody had seen this bike or

⁶⁹⁰ Transcript, Day 301, page 58.

checked it out. So I was given the task of following up on the bicycle, which was allegedly bought in O'Neill's bicycle shop in Strabane ... It was certainly slack not to have the statements checked out and fully checked ... Negligent I suppose. But McBride, I don't know how many, McBride had quite a few statements in the system ... Well, he had four other statements in the system that hadn't been checked out ... It's very unusual for any investigation, not alone a Letterkenny investigation, and given the fact that McBride was going to be a potential important witness in the murder file, it couldn't – it shouldn't have been allowed to go to five statements ... That would be the proper way of doing it, I suppose, to check them first.⁶⁹¹

Garda O'Dowd Tapes McBride

5.192. In April of 1997, for reasons that were not properly explained to the Tribunal, Garda John O'Dowd rang Robert Noel McBride and taped their telephone call. This tape, together with a transcript, has been made available to the Tribunal. It is an extraordinary document. In it, on at least five occasions, and possibly as many as seven, Garda O'Dowd asks Robert Noel McBride to repeat the core allegation of his statements: that he had seen Frank McBrearty Junior and Mark McConnell coming from the scene of the death of Mr. Barron on that morning at 01.00 hours. The Tribunal has paid careful regard to the content of that tape and the demeanour of John O'Dowd when questioned about it. The Tribunal is convinced it provides yet further evidence that Garda O'Dowd always knew that the central allegation made by Robert Noel McBride was false. His purpose in ringing him up was to provide verification that McBride was indeed saying this. At that stage, the multiple statements of Robert Noel McBride were becoming increasingly florid and the entire story was becoming increasingly unbelievable. Garda O'Dowd had sufficient sense to realise that the senior officers in this investigations would soon see this; McBride's statements were unreliable. The house of cards would soon collapse.⁶⁹²

McBride Backs Off

5.193. It having been agreed that Detective Sergeant Smith would seek some cross-referencing and verification in relation to the statements made by Robert Noel McBride, he went about that task by revisiting the witness. It is best to give the account of what occurred through the testimony of Detective Sergeant Smith. He first visited him on Friday, the 12th of September 1997 together with Sergeant Martin Moylan and Garda John O'Dowd:

⁶⁹¹ Transcript, Day 224, pages 198-202.

⁶⁹² For the Transcript of the taped conversation see Tribunal Documents Page 2846

He wasn't at home. And Garda John O'Dowd suggested he might be at the home of his girlfriend and we drove to the home of his girlfriend ... Noel McBride came out of the house and he said what do you want to do now. I informed him that we were here to have a look at this nice bicycle he got from Frankie McBrearty Senior. He said he couldn't show it to us at that time, that it was at home in the garage and that he was going out for the night. So I told him I'd call first thing the following morning, which was Saturday morning, and see him. And the following morning, myself and Detective Inspector McGinley went to the home of McBride at ten o'clock in the morning. ... [Garda] John O'Dowd, as I recall it, wasn't available the following morning. And, the reason why we brought him out the first night was basically that he knew the area. He knew McBride's house and he knew where the girlfriend was living. Once we found out that, I don't want to say – I was going to say I had no further use for John O'Dowd, but I don't want it to sound like that. We only brought him the first night just to point out the location [Detective Inspector McGinley] ... Initially intended to come out on the Friday night, but he wasn't available either, but he was available on Saturday morning ... We went to his house and his father put him out of bed and he came out and I asked him to show us this fine bicycle he got. He said he couldn't show it to us because his cousin arrived at 9 a.m. that morning and it was taken away ... We asked him where the cousin had gone and he said he didn't know. We asked him to sit into the car and we were going to drive in to the Castlefinn or Ballybofey station. Driving over the road, he said he didn't want to go near any station, so we pulled in to a lay-by and spoke to him in the car. When we were finished speaking with him, he asked to be left up to his girlfriend's house which we did ... Detective Inspector McGinley went through the statement, or the memo, that he had taken in John O'Dowd's house and put him back over that again and put it in the form of a statement, I think ... Also, he took a statement off him – I'm not sure whether I wrote the statement or John McGinley wrote the statement but he changed the amount of money that Frankie allegedly gave him from £500 to £300 ... As a matter of fact we reminded him of the declaration that was put in front of the statements there whereby he declared the statement as true. We informed him of his obligation to tell the truth. I told him that whether he liked it or not, he was smack bang in the

middle of a murder investigation, and that he was the chief witness, and that if he was found to be telling lies, he would be in difficulty. But, nevertheless, he stuck to his ... guns. The only thing is he said Frankie gave him £300 and not £500. He said he gave him £500 but that he counted out £200 and gave it back to Frankie. And the idea that McBride would return £200 to Frankie was laughable, to say the least: if he had been given £500 at all. He said he bought jewellery. We asked him how he spent the money. He said he bought a new watch for £85. When we asked him to produce the watch, he said he had damaged it at work. We asked him to produce the broken pieces of watch, he said he had thrown it in the bin, it was that badly damaged. He said he bought jewellery for his girlfriend, and clothes. I asked him did he ever show the money to anybody. He said he showed it to William Doherty. One day they were out drinking in Strabane and he counted it out. Basically, he stuck to his guns. We knew that his number was up, that he was telling lies ... It didn't take brilliant police work to suss McBride out. I mean he was there for anybody to suss out. It was no brilliant piece of detective work. It was ordinary, every day, run-of-the-mill, checking that you do on a statement ... It was embarrassing for everybody concerned that such a witness remained in the system for so long.⁶⁹³

- 5.194. **The Tribunal agrees with the evidence of Detective Sergeant Smyth.** The next day Robert Noel McBride retracted all of his statements blaming Mr. McConnell and the McBrearty father and son. At this stage, the investigators really did not know whether the retraction, in itself, was infirm. So, they did what any good police officer would do: a bit of checking. The Tribunal now quotes the account of the next day after the retraction, as taken from the testimony of Detective Sergeant Henry, who accompanied Detective Sergeant Smith and Detective Garda McHale:

The following day then we went back out to Killygordon again, because he was saying that there was a child christened in the church in Sessagonahil ... and when we went there we discovered that wasn't right. So then we thought, well, is he still lying to us? So we came back to Letterkenny and I think it was then that we had a conversation with Superintendents Shelly and McGinley. But at that stage, we were in limbo land ... So we had to go back out again. And when we went out a second time we spoke to ... Sharon Alexander, and she says, "I know that's wrong", she says,

⁶⁹³ Transcript, Day 224, pages 202-208. See also the account of Detective Sergeant Henry, Day 229, pages 131-133, which tallies.

*there were two christenings. I think it was her sister's child was christened one Sunday and his sister's child was christened the other Sunday, and the only thing that was different was the churches, as far as I remember. But both parties were held in Roper's pub in Killygordon. Noel McBride, he was totally adamant that he was not in Raphoe the night that Richie Barron was killed and that he was at the christening and that he didn't go home to Figart, that he stayed with the Alexanders until the following night, about ten o'clock, and he got a lift home with somebody. And we were able to prove that, by the various statements that we took and the various people that had been interviewed ...*⁶⁹⁴

- 5.195. Two things are notable from the above quotations. Firstly, it was particularly easy to induce Robert Noel McBride to tell the truth. He was neither a convincing nor a hardened liar; though the Tribunal is strongly of the impression that he would tell whatever story in the witness box he felt might suit his best interests. Secondly, this section of the investigation team was reporting back to Detective Superintendent Shelly and to Detective Inspector McGinley. **Superintendent Lennon, in the opinion of the Tribunal, was deliberately bypassed. In this respect, the Tribunal accepts the evidence of Detective Superintendent McGinley. The Tribunal is of the view that a core number of Gardaí within the Donegal division had, by this stage, rumbled the fact that there was an apparent connection between William Doherty, Noel McBride, Detective Sergeant John White and Garda John O'Dowd. They were concerned that this connection was sinister.**

The Arrest of William Doherty

- 5.196. The decision to arrest William Doherty was taken despite the tardiness and negligence that had characterised the investigation up to mid-September. At the time, the divisional officer Chief Superintendent Denis Fitzpatrick was away attending to other matters. Detective Superintendent McGinley described the issues which necessitated the arrest of William Doherty as follows:

There was really five or six issues going to Milford. There was the phone calls to Mr. Peoples, the phone calls to the McBreartys, the information Doherty supplied via Noel McBride, his motivation for all of these issues and then there was the Lofty Gallagher issue in the background also ... Obviously, on the 16th of September, when Noel McBride had made a statement retracting all the statements which he had already made and he went on to say that the reason he made all these statements, over the period of eight months,

⁶⁹⁴ Transcript, Day 229, pages 133-135.

*from the 29th of November 1996 to the 7th of July 1997, that all these statements, and all the false information contained in them, was all at the behest of William Doherty. ... The reason why William Doherty wasn't arrested ... between June and September ... was because, in the information that was supplied originally by Billy Flynn, he suggested that four of the phone calls were made from William Doherty's telephone number and one was made from Garda O'Dowd's house. Now, subsequently, when we got confirmation from Patrick Doherty, it corroborated in every detail what Mr. Flynn had said and the obvious knock-on effect of that was that he was probably right in respect of Garda O'Dowd's number as well.*⁶⁹⁵

- 5.197. Three people, at least, from within An Garda Síochána were kept at a distance from this arrest. They were Superintendent Lennon, Detective Sergeant White and Garda O'Dowd. The reasoning in relation to Garda O'Dowd being kept away from the arrest and interrogation was that the information in relation to the search of the Gallagher lands had come through him and it was felt that there was a bigger picture in relation to it. The reasoning was that if false information was being supplied in March, and if Garda John O'Dowd's telephone was being used for the purpose of conducting extortion calls, that it was better to distance any probe into the investigation from him.⁶⁹⁶
- 5.198. The reason for excluding Superintendent Lennon was explained in the following way by Detective Superintendent McGinley:

Mr. Doherty was supplying information, we believed, to the Gardaí. He was being handled by, we believe that the information in relation to Lofty Gallagher had come in through Garda John O'Dowd, and Superintendent Lennon. And it seemed to us that if he was supplying information in relation to subversive matters, which was being processed through these two members, that it followed that they also had to be aware of the other information which he was processing ... And it left us in the position that we suspected this. But John O'Dowd and Kevin Lennon obviously knew this, and we felt that they should have come to us. When the telephone calls – when the origin of the telephone calls to Michael Peoples became known in June, to everybody, and they knew the background to William Doherty, because they had been working with him and they knew that he had supplied false information in relation to the ... Gallagher family in March, we felt that if that

⁶⁹⁵ Transcript, Day 246, pages 1-6.

⁶⁹⁶ Transcript, Day 246, page 6.

*was the case, that they should have come to us and put their cards on the table.*⁶⁹⁷

5.199. As regards the exclusion of Detective Sergeant White, the following exchange occurred in the cross-examination of Detective Superintendent McGinley by counsel for the Tribunal:

Q. Who did you suspect was involved in manipulating the investigation?

A. Well, Garda John O'Dowd was the man who was working with him.

Q. So you suspected him?

A. Yes. And in relation to the Lofty Gallagher's thing, we thought John O'Dowd and Kevin Lennon were involved in the background there.

Q. And the strange circumstance of the taking of the statement in July [from Robert Noel McBride] vis-a-vis Sergeant White?

A. Yes.

Q. Did you suspect Sergeant White?

A. We didn't know how far to put Sergeant White into the mix. But he was there somewhere in the background. That he – in the statement of the 7th July, obviously he had made these arrangements with William Doherty and Noel McBride and he was working on the file at that time, and he was working with Garda John O'Dowd, having worked with him in Raphoe fairly closely.

Q. Did you suspect Chief Superintendent Denis Fitzpatrick?

A. No. I didn't.

Q. He had been the one, together with Superintendent Lennon, to ask you to take over Doherty, after the disastrous Lofty Gallagher search?

A. Yes.

Q. Why didn't you suspect him?

A. Well at that time I didn't know that the Chief Superintendent was working with John O'Dowd, or there

⁶⁹⁷ Transcript, Day 246, page 8.

was linkages there in relation to William Doherty, I didn't know that at that time.

Q. Was the decision, therefore, to take Doherty to Milford Garda Station, made to keep him out of the way of Superintendent Lennon, Detective Sergeant White and Garda O'Dowd?

A. Yes.

Q. It was?

A. Yes.

Q. And it was nothing to do with a whole load of nonsense [that has been fed to the Tribunal by Garda witnesses] about Milford being a bit closer, or people perhaps already being in Letterkenny, or the availability of restaurants, or anything like that?

A. No.

Q. That was it?

A. Yes.

Q. Straightforward, down the line, you were bringing him up there because you wanted to bring him away from these three?

A. Yes.

Q. What were you hoping to discover?

A. Well, we were hoping that Mr. Doherty would come clean with us and tell us what he was doing, why he did it and what his motivation was, and what was as regards his motivation for making the extortion telephone calls to Michael Peoples; for making the calls, a series of calls to Mr. McBrearty and his family; for all the false information which McBride alleged came through him and all the information that came in in relation to the Barron investigation, which was false, and all subsequent statements in relation to Mr. McBrearty in relation to bribing him, and so on. We hoped to get to the bottom of the Lofty Gallagher affair and we hoped to find out why he was doing these things and what his motivation for it was.

Q. How do you think you did in relation to that vis-a-vis interviewing Mr. Doherty, which I know is not an easy task?

A. Well, it's a very difficult task, Chairman, but I think we gleaned very, very little. We gleaned absolutely nothing, I might say, in relation to the issues which I have described. It threw up other issues and tangents.⁶⁹⁸

5.200. When William Doherty was arrested, a 'Rhino brand' notebook was discovered in his room. This belonged to Garda John O'Dowd. It had his handwriting in it together with what appeared to be the handwriting of another individual. Because it was alleged, during the course of hearings, that this handwriting could be that of Superintendent Lennon, the Tribunal engaged the services of Kim Harry Hughes, a forensic document analyst. There is nothing in his examination of the notebook which suggested that Superintendent Lennon had written anything in it. Some of the entries from the notebook have already been quoted here, in particular, the explicit reference in April to information coming in about Michael Peoples jumping over the technical school wall at a time proximate to the supposed appearance of the other men in the car park close to the supposed murder scene. The last section of the notebook is interesting, however, for a different reason. It tends to echo the latter statements of Robert Noel McBride. Hence, the suspicion arises of coaching.

5.201. The decision to arrest William Doherty had become known prior to the date of the arrest. In testimony, William Doherty alleged that, in consequence of this information, he had spoken to Superintendent Lennon in Garda O'Dowd's house. According to Mr. Doherty, Superintendent Lennon gave him the benefit of his expertise on dealing with interrogation. In particular, Superintendent Lennon told Mr. Doherty that he should say nothing about the issues, of which he was very well aware, and that, in particular, he should not say that he knew him or Garda O'Dowd or Sergeant White. Kevin Lennon's response to this allegation, in testimony, was to deny that he had said any such thing. Given the mendacious character of William Doherty, it would be unfair to prefer his evidence over that of Kevin Lennon. In some instances, the Tribunal has done this, but only where the surrounding circumstances clearly point to the truth of William Doherty's account. This is not such an occasion, and the Tribunal therefore cannot accept this account. The Tribunal realises that if this account were correct, that it would tend to establish the existence of a conspiracy, in relation to the Barron investigation, as opposed to the Peoples' phone calls, involving Detective Sergeant John White, Garda John O'Dowd and Superintendent Kevin Lennon. The Tribunal finds that there is no sufficient and credible evidence to support such an allegation.

⁶⁹⁸ Transcript, Day 246, pages 60-62.

- 5.202. In the aftermath of the interrogation, the notebook found in William Doherty's bedroom was brought in to Superintendent Lennon so that he could inspect it. The Tribunal is satisfied that a blazing row occurred between himself and Detective Inspector McGinley. When Superintendent Lennon read the notes of interview he discovered that questions were being asked about him. In reality, the questions asked were innocuous, unless one either suspected that there was a plot afoot to frame the person mentioned, or unless the person about whom the questions were asked had a strong sense of guilt which he wished to conceal. Detective Inspector McGinley put it to Superintendent Lennon that his handwriting was in the notebook. This, as we are aware, was incorrect. The Tribunal is satisfied, however, that the question was put in good faith and that, in any event, if Superintendent Lennon's handwriting had been there it was not necessarily indicative of underhand conduct. Detective Inspector McGinley handed the notebook to Superintendent Lennon. The Tribunal is satisfied that Superintendent Lennon refused to touch it on the basis, as he claimed, that there was a plot afoot to get him to place his fingerprints over the notebook in order to frame him. This assertion is, and was at the time, ridiculous.
- 5.203. When Chief Superintendent Fitzpatrick returned to the command of the division, he was furious with Detective Inspector McGinley, in particular, and with Detective Superintendent Shelly, to a lesser extent. **The Tribunal can only infer that Superintendent Lennon had engaged in lying and emotional manipulation of the Chief Superintendent, in order to ensure that the line of inquiry which had been initiated was not followed through. The person who tells his story first often has an advantage in human affairs. Of piece with this, are the remarks attributed to personnel in Garda Headquarters who wondered what Detective Inspector McGinley was "up to" in Donegal. This again is to be attributed to Superintendent Lennon's skill in getting to parties first and telling what appears to be a plausible story.**
- 5.204. Detective Superintendent Shelly was reluctant to describe his meeting with Chief Superintendent Fitzpatrick. It took place in the presence of Superintendent Lennon. Detective Superintendent Shelly said:

The Chief Superintendent said to me, words to the effect, he should have kept the Superintendent up to speed with what is happening, or up to date ... Both people were there when I went in, Chairman, and it was about the operation in Milford and I explained to him what had happened and I knew Superintendent Lennon wasn't happy about not being informed and, basically, what the Chief Superintendent said to me was that he would have

expected Superintendent Lennon to have been kept informed, or words to that effect. That's all. And I had explained to him that we wanted to bring him out there for to get a chance to talk to him, to keep him away from people that he had been dealing with, and that was basically it, Chairman ... Well, I knew, Chairman, at that stage, that Superintendent Lennon had taken over the finishing, or he had taken over on a full time basis, the continuation of the investigation. I knew that had happened ... [neither I nor Detective Inspector McGinley] – we didn't have any real input into it.⁶⁹⁹

Comment

- 5.205. It is clear from the testimony of Superintendent Shelly that Superintendent Lennon had complained that he had been kept in the dark. This was not the case. Superintendent Lennon had been informed of the necessity to arrest Doherty. The arrest had taken place, however, in circumstances where it was completely proper that any members of An Garda Síochána suspected of involvement in framing Mr. McConnell, Mr. Peoples and Mr. McBrearty would have no involvement in investigating that corruption. Chief Superintendent Denis Fitzpatrick behaved as if Superintendent Lennon were in charge of the division. He abrogated all responsibility to him. He left himself open to emotional and factual manipulation, simply because he did not have sufficient interest in following through the facts of this matter to a conclusion. He was completely in derogation of his duty as a leader and might as well have not headed up the division at all.
- 5.206. *The reality of the matter was that an extraordinarily serious situation had been uncovered. Manipulation had been taking place in three major investigations. The investigation in relation to the supposed bomb at the Gallagher farmstead, the supposed murder of the Late Mr. Barron and the extortion telephone calls to the Peoples household had been sidetracked by lies, string pulling and the cunning abuse of the weaknesses of senior personnel.*
- 5.207. It is inescapable, however, that this kind of conduct would have been discovered had there not, at the same time, been a virtually complete loss of objectivity on the part of those in the investigation team; with the exception of Detective Sergeant Hugh Smith, Detective Sergeant Sylvester Henry and other Gardaí who simply carried out duties assigned to them. The senior officers believed that Mr. McConnell, Mr. Peoples and Mr. McBrearty Junior were guilty. They believed that a murder had taken place. There was no objective foundation for this. It was entirely based on some kind of a rush of blood to the head. Those who were intimately acquainted with the personalities of those involved were able to

⁶⁹⁹ Transcript, Day 259, page 135-136.

manipulate an informer and, through him the supposed main witness in the case, and thus to set up scenarios for pointing guilt at the suspects which were grounded in fantasy and not in fact.

- 5.208. In addition to the foregoing, it is impossible not to see that negligence of the most astonishing kind, amounting to recklessness of the highest degree, characterised this investigation. Anyone who had anything good to say about the suspects was either treated with scepticism or checked thoroughly. Mr. McBride was treated like a sacred totem. His statement was not checked. No questions were asked about it. Any questions that might have been asked about it were assigned to Garda O'Dowd, a person of dubious character and a very junior member of the investigation team with no detective experience. When he came back having drawn blanks in relation to anyone else having seen Mr. McBride, this was regarded as completely acceptable to the investigation team. This happened because they wanted to believe that. This is shocking.
- 5.209. When false trails were laid in relation to Jene Coyle, Hilary Laid, John Crawford and Stephen McGinley, these were simply brushed aside when the results were found to be negative. No-one asked the obvious question as to what was going on and, if that question was asked, the follow-up question, as to who was manipulating whom and for what purpose. This was due to a combination of incompetence and a determination to follow through a tendentious investigation to prove an emotionally generated prejudice.

The New Year 1997

- 5.210. The new year 1997 saw Mary McGranaghan changing her statement to involve Michael Peoples with Mark McConnell at a time coming up to midnight on the 13th of October 1996. In addition, an unpleasant group of vigilantes, led by Derek 'Darcy' Connolly caused further false evidence to be available against Mark McConnell. This matter is of considerable importance and it is dealt with separately in Chapter 7.

The Effect on Citizens

- 5.211. The Tribunal could not but have been impressed by the dignity of Nora Barron in interacting with the Tribunal and in dealing with her loss. She showed enormous strength in keeping her emotions in check in the face of an extraordinarily confusing situation. Stephen Barron, however, was caught up on a wave of emotion generated in consequence of the death of his father and the corrupt and negligent Garda investigation. This is understandable. It was a human reaction to an appallingly difficult situation. It would not have occurred had the Garda

investigation taken a course similar to that outlined by Chief Superintendent William Keane. Stephen Barron's other problem was in associating with a vigilante group whom he believed, in good faith, had more information in relation to the death of his father than was, in fact, the case. The Tribunal is satisfied that the Barron family have grievously suffered as a result of this situation. They were entitled to expect an objective and competent Garda investigation. Instead the investigation into the death of their husband and father was pursued with unbelievable corruption, sloth and lack of objectivity.

- 5.212. The Peoples family suffered unnecessarily through being targeted for arrest when there was no circumstance to suggest that either Mr. or Mrs. Peoples could rationally be regarded as a suspect. They were at the receiving end of deeply unpleasant telephone calls. They acted as responsible and commonsense-minded citizens in the manner in which they approached this. Instead of thanks, the Donegal Gardaí met them with the barrage of prejudice and supposition that characterised the investigation. This is detailed in Chapter 6. They interacted with the Tribunal on the basis of co-operation.
- 5.213. Mark McConnell was associated with a campaign of hate slogans, malicious telephone calls, finger pointing and blasphemy that was directed against him and the McBrearty family. He reacted with dignity and calm and struck the Tribunal as being a man of good sense.
- 5.214. Frank McBrearty Junior regards himself as being the victim of an appalling set of circumstances. In this, he is correct. It must have been a truly dreadful experience for him to work in Raphoe during the period of the investigation and in the aftermath when he was regarded, the Tribunal is satisfied, by a section of the town as being someone who had gotten away with murder.

Arrest and Detention

5.215. The following table outlines the various arrests that took place in the course of the Barron investigation.⁷⁰⁰

Arrestee	Arresting Member	Date and time of arrest	Offence
Frank McBrearty Jnr.	Sergeant Joseph Hannigan	04/12/1996 at 9.20 a.m.	Murder
Mark McConnell	Garda John O’Dowd	04/12/1996 at 8.22 a.m.	Murder
Michael Peoples	Detective Sergeant Michael Keane	04/12/1996 at 8.00 a.m.	Murder
Róisín McConnell John White	Detective Sergeant	04/12/1996 at 8.18 a.m.	Murder – Accessory after the fact
Charlotte Peoples	Detective Sergeant Sylvester Henry	04/12/1996 at 9.00 a.m.	Murder – Accessory after the fact
Kaitriona Brolly	Detective Garda Patrick Tague	04/12/1996 at 8.25 p.m.	Murder – Accessory after the fact
Edel Quinn	Detective Garda Patrick Tague	04/12/1996 at 8.35 a.m.	Murder – Accessory after the fact
Mark Quinn	Detective Garda P.J. Keating	04/12/1996 at 5.05.p.m.	Murder – Accessory after the fact
Frank McBrearty Snr.	Detective Sergeant Paul Heffernan	05/12/1996 at 7.55 p.m.	Section 7 , Conspiracy and Protection of Property Act, 1875
Martin McCallion	Garda John O’Toole	08/12/1996 at 9.50 p.m.	Murder – Accessory after the fact
Sean Crossan	Detective Sergeant Sylvester Henry	11/12/1996 at 11.10 a.m.	Murder – Accessory after the fact
Damien McDaid	Sergeant Martin Moylan	17/12/1996 at 9.10 a.m.	Murder – Accessory after the fact
Mark McConnell – 2nd Arrest	Garda John Nicholson	25/06/1997 at 9.06 a.m.	Murder

⁷⁰⁰ It should be noted that a second arrest of Frank McBrearty Junior. took place on the 4th February 1997 in connection with an alleged assault on Mr. Edward Moss in December 1996. Paragraph (f) of the Tribunal’s Terms of Reference mandate it to inquire into the circumstances surrounding this arrest and the manner in which it was investigated. However, the Tribunal feels that the issues surrounding this arrest are so intrinsically linked to the issues raised in the ‘Arrest and Detention’ module that the appropriate course for it to adopt would be to merge the issues outlined in paragraph (f) into the ‘Arrest and Detention’ module. As the Tribunal has not yet heard any evidence in relation to the grounds for this arrest of the 4th of February, 1997, it is not detailed here, and the matter will be dealt with when the remainder of the Arrest and Detention module is inquired into.

Reasons for the Arrests

5.216. Mr. Frank McBrearty Junior was arrested for murder at 9.20 a.m. on the 4th December 1996 by Sergeant Joseph Hannigan. In an undated statement, Sergeant Hannigan recounts that:

At 9.30 a.m. [on the 4th December 1996] at Thorn Road, Letterkenny, I arrested Frank McBrearty Jnr. of 67 Elmwood Downs, Letterkenny at Common Law for the murder of Richie Barron on the 14th October 1996. I informed Frank McBrearty Jnr. of his arrest and the reason for it...Frank McBrearty Jnr. was conveyed to Letterkenny Garda Station arriving there at 9.30 a.m. Garda Martin Leonard was the member in charge. I informed Garda Leonard of the reasons for and the circumstances of McBrearty's arrest. I explained to Garda Leonard of the previous history of disagreements and rows between the McBrearty and Barron family. I also referred to the fact that Frank McBrearty Jnr. and Mark McConnell had been seen by a witness coming from the murder scene on the night of the 14th October 1996. I requested of Garda Leonard that Frank McBrearty Jnr. be detained under the provisions of Section 4 of the Criminal Justice Act 1984.⁷⁰¹

In evidence to the Tribunal, this was not materially expanded on.

Mark McConnell was arrested at 8.22 a.m. on the 4th of December 1996 under common law for the murder of Richard Barron on the 14th of October 1996. The arresting member was Garda John O'Dowd. In his evidence to the Tribunal, Garda O'Dowd proffered the following reasons for the arrest of Mark McConnell on that date

*[T]he suspicions were – you see, it was the basis of McBride's statement at the time, which was believed to be correct and there was some difficulty with his movements the following morning. I think there was a problem with – no, that's basically the reasons that were there.*⁷⁰²

The Tribunal has concluded that this evidence was a deceit. Notwithstanding the Tribunal's determination that the ultimate responsibility for the arrests lies with the senior officers directing the investigation, whose suspicions in respect of Mr. McConnell were unreasonable, it is undoubtedly the case that the arresting officer in this instance, Garda O'Dowd, was directly responsible for manufacturing the evidence on which his reasons for arresting Mr. McConnell were based. He was centrally involved in the forced statement of Robert Noel McBride on the 29th of November 1996. His actions in this regard were also mala

⁷⁰¹ Tribunal documents, page 9636.

⁷⁰² Transcript, Day 294, page 161.

fide. No lawful arrest can occur where the agency effecting the arrest is responsible for manufacturing the evidence on which the grounding suspicion was allegedly based. This basic proposition applies to all of the arrests that occurred as a result of the McBride statement. There is therefore no need to traverse all of the arrests in detail. A few comments are, however, called for.

The Tribunal is not yet in a position to report upon the legality or otherwise of the second arrest of Mark McConnell on the 25th of June 1997, as that arrest would appear to have been based upon suspicions arising out of a statement allegedly taken from Frank McBrearty Junior in the course of his detention on the 4th of December 1996. The reader will be aware that the authenticity of the latter statement is in dispute, and evidence in relation thereto will be heard in the forthcoming arrest and detention module.

Michael Peoples was arrested at 8 a.m. on the 4th of December 1996 under common law for the murder of Mr. Richard Barron on the 14th of October 1996. The arresting member was Detective Sergeant Michael Keane. In evidence to the Tribunal, Detective Inspector Keane stated that he arrested Michael Peoples "under common law for the murder of Richard Barron, being an accessory after the fact."⁷⁰³ He went on to say that he had no evidence to suggest that Mr. Peoples actually committed the murder.⁷⁰⁴ This evidence contrasts with an earlier undated statement⁷⁰⁵ of his and the custody record⁷⁰⁶ for this arrest which indicate that Mr. Peoples was arrested as a principal to murder.

Superintendent John Fitzgerald gave evidence about his role in extending the period of detention for Michael Peoples on this date. His evidence indicates that he believed at the time that Mr. Peoples had been arrested as an accessory after the fact to murder. He stated:

Well, if he were arrested for murder, I can assure you that at all times that he was arrested, in my mind, at all times he was arrested for as an accessory after the fact ... I'm quite sure that I would have extended him, I would have done whatever duties and that that's what was in my mind.

Bearing in mind the fact the fact that Superintendent Fitzgerald was at that time leading the investigation into the death of Mr. Barron, his evidence, and that of Detective Inspector Keane, serve to illustrate the chaotic nature of the management of the investigation. The fact that both the arresting officer and the senior officer who ultimately extended the period of detention of the prisoner, ultimately claim to have arrested him for a separate offence to the one for which he was, in fact, arrested amounts to a complete disregard for the most basic

⁷⁰³ Transcript, Day 312, question 52.

⁷⁰⁴ Transcript, Day 312, question 53.

⁷⁰⁵ Tribunal documents, page 9655

⁷⁰⁶ Arrest and Detention of Michael Peoples Tribunal Document , page 45.

principles of law. Having observed the demeanour of Superintendent Fitzgerald and Detective Inspector Keane in the witness box, and taken on board the evidence of other members who were asked in passing about the reasons for arresting Michael Peoples, the Tribunal has come to the conclusion that nobody is sure why and for what offence Mr. Peoples was arrested. His arrest can be seen as a crude attempt on the part of the investigation team to put pressure on the chief suspects. This is a clear abuse of the power of arrest.

In an undated statement, Detective Inspector Michael Keane, who was a detective sergeant at the time of the arrest, outlined three grounds for arresting Michael Peoples on the 4th of December 1996. These grounds were:

(1) telephone calls made from Mr. Peoples's home in the middle of the night of the 14th of October 1996 to the Letterkenny General hospital enquiring about the condition of Richard Barron when the caller refused to state their identity; (2) Mr. Peoples own admission in a statement to Garda Philip Collins that he offered an anonymous telephone caller to his home the sum of £1000.00p and later the sum of £500.00p on condition that the caller does not contact the Gardaí in relation to evidence he may have linking Mr. Peoples to the murder of Richard Barron; (3) confidential information received by Gardaí that three men were seen coming through the car park of the Parting Glass from the direction of the murder.⁷⁰⁷

As has already been detailed in Chapter 3 of this report, the phone call to the hospital was, in fact, made by Mr. Peoples' mother-in-law, Mrs. Catherine Eaton, who was staying at the Peoples' house on the night in question and was merely making the enquiry out of neighbourly concern for Mr. Barron, who was a relative of hers. Detective Superintendent Joseph Shelly gave evidence to the Tribunal indicating that this phone call was seen as being "significant at the time".⁷⁰⁸ The Tribunal acknowledges that the existence of the phone call to the hospital merited investigation, but that there is nothing particularly sinister about an individual attempting to make discreet enquiries as to the well-being of a person injured in an accident in the manner as outlined. As has been outlined in Chapter 6 on the Peoples' phone calls, it is absurd to suggest that the manner in which Mr. Peoples dealt with the extortion phone calls to his home could have been used to ground a reasonable suspicion against him. In relation to the third ground as outlined by Detective Inspector Keane, that would appear on its face to be a reference to some version of the information provided by Mr. John Patton. However, when this proposition was put to Detective Inspector Keane in evidence, he rejected it, suggesting instead that there was other information in the incident room concerning three individuals coming down the car park, one

⁷⁰⁷ Tribunal documents, 9657.

⁷⁰⁸ Transcript, Day 257, question 181. Superintendent John Fitzgerald gave evidence to the same effect at Transcript, Day 233, page 188.

of whom was Mr. Peoples. There is certainly no reference to this theory throughout the entire documentation of the investigation nor did any other member whose views were canvassed as to the reasons for arresting Mr. Peoples mention it. What is apparent, however, is that there were a series of theories floating about the incident room as to the supposed involvement of Mr Peoples in the death of the Late Mr. Barron. The Tribunal cannot but feel that some individual, or group of individuals in the incident room were manipulating this situation.

Further Issues

- 5.217. The Tribunal, having brought its investigation into the Barron 'murder' hunt to the furthest possible point that it can, would like it to be known that it would wish to complete its inquiries with the co-operation of all of those involved. It may be that some of the matters relating to the detention of suspects could cast some light on how others were treated. Frank McBrearty Junior is alleged to have made a confession of murder statement to Detective Sergeant John Melody and Detective Garda John Fitzpatrick. Given the analysis of the medical evidence that has been conducted by the Tribunal, it is important to see how Frank McBrearty Junior could have made such a statement. The Tribunal is mindful of the fact that there may well be a multitude of explanations for it. The Tribunal would wish to know what they are. But the Tribunal wants the truth. In the light of the detention of the twelve individuals over December, and re-detention of Mark McConnell and Frank McBrearty Junior in 1997, the Tribunal would wish to analyse whether any facts are common to any of these detentions and to suggest whether recommendations might be appropriate.
- 5.218. For the sake of exactitude, the Tribunal wishes to draw to the reader's attention the disputed statement that Frank McBrearty Junior is alleged to have made. It was in the following form:

Listen I'll tell you what happened on the 14.10.96. I heard that Richie Barron was up to his old tricks again, mouthing about the McBrearty's, Mark McConnell, he's my first cousin told me this. He had a row with him in Quinn's pub that evening. His wife, Róisín was also there. Mark was very annoyed over the row and what Richie Barron said to him. When he came over to the club, that is Mark McConnell he told me that he had seen Richie Barron heading towards home and that he was drunk. We decided that we would head him off at the top of the road. We went up the back way across the car park and got onto the main road. We waited for Richie Barron there. We intended having a word with him. We saw Richie coming. He was on his own. I picked up a bit of timber. When we stopped

him he lashed out at us but he missed. I hit him a slap on the head and he fell back. We then ran. I dropped the timber I had on the way back. We got into the club and it wasn't until later that I heard that Richie had been knocked down by a hit-and-run. Michelle Scott told me. My father found out about what happened and he said he would look after it for us. My father never intimidated anyone. He never offered to my knowledge money to anyone to not give evidence against me. This statement has been read over to me and it is correct.

Frank McBrearty Junior

John Melody, Detective Sergeant 8.25 p.m.

John Fitzpatrick, D/Garda

04/12/1996⁷⁰⁹

- 5.219. The Tribunal believes that it is in the public interest to resolve the issues surrounding this statement. It appeals to all the parties for their support in its work.

⁷⁰⁹ Tribunal Documents (Detention – Frank McBrearty Junior), page 469.

CHAPTER 6

THE TELEPHONE CALLS TO THE PEOPLES

- 6.01. On the evening of the 9th of November 1996, Michael and Charlotte Peoples were relaxing at home in their comfortable dwelling on St. Eunan's Terrace, Raphoe, Co. Donegal. Both were watching television. Upstairs, Michael Peoples was watching a sports programme while, downstairs, Charlotte Peoples was viewing the comedy programme Blind Date. They were completely unsuspecting as to what was to occur next. They were about to receive a series of extraordinary telephone calls that caused them, ultimately, to be witnesses before this Tribunal. **The Tribunal is completely satisfied with the truthfulness of the evidence of Michael and Charlotte Peoples and therefore will quote it extensively, or refer to it, in the account which follows.**
- 6.02. What should have been a relaxing evening was blitzed by the malicious intervention of a series of calls on the telephone. No-one would have expected this to occur. At first, the caller appeared to be simply verifying that he had the right number. Then, having brought Charlotte Peoples to the phone, he asked her to put her husband on the line. The first that Mrs. Peoples knew of an underhand purpose to the phone calls was when she heard her husband shout out: "you say that I killed Richie Barron!".
- 6.03. Mrs. Peoples called Michael Peoples down from upstairs at around 20.00 hours. We now quote his account:

I came over and took the phone and he says to me "You're Michael Peoples", and I says, "That's right". "You drive a bread van". I thought it was a friend of mine joking at the very start, now, to be honest. And he says, "You are the only bread man in Raphoe that carries a baton in your van." I think I might have asked him how did he know that, but I'm not a hundred per cent sure. I did [carry a baton in my van]. A few months previous to that there was a few bread men robbed, so that was for protection. He stated in the call that he said he seen me kill Richie Barron and seen me running down the field. He says, "I seen you killing Richie Barron. You hit him with the baton", I think that's what he said. He says, "I seen you running down the field". I don't know what, but I think – I can't even remember what I says to him. Like I disagreed with him, I probably asked him who he was. I think what I did do is that I says to him, "F off" and I hung up the phone, or something to that effect. I think I phoned the Gardaí then and reported the call. He was very calm on the phone. ... It was a male caller with a local accent.⁷¹⁰

⁷¹⁰ Transcript, Day 59, pages 99-101.

- 6.04. As might be expected from the kind of upright citizens that the Tribunal is satisfied Michael and Charlotte Peoples are, the Gardaí were immediately contacted. Michael Peoples talked to Detective Garda Pat Flynn. As was explained to the Tribunal, and from the phone records available, at around 20.00 hours, a series of calls were received by the Peoples in their home. It is probable that the first call was answered by Charlotte Peoples and that, replying to a question as to whether that was the Peoples' house, she replied in the affirmative. The second call gave some details. There were further calls. The Gardaí were actually on their way in the gate while a fourth call was in progress. Her husband tried to keep the caller talking, possibly thinking about tracing or voice identification should the Gardaí be able to intervene. But by the time that Detective Garda Flynn entered the house, the caller had terminated. It seems probable, though there is some confusion, that by this stage the caller had set up a meeting place and demanded that money should be exchanged. The purport of the telephone calls had eventually emerged as this: the caller was accusing Michael Peoples of murdering Richie Barron, presumably with a baton from his bread van and possibly in conjunction with others, and was demanding that a substantial sum of money should be paid over to prevent the caller from offering assistance to An Garda Síochána.⁷¹¹ The sum demanded was initially £5,000, which was then pared down to £1,000. The location for handing over the money was identified to Michael Peoples as the White Cross Inn, a public house which was less than ten minutes drive from Raphoe.
- 6.05. **The Tribunal is satisfied that neither Charlotte nor Michael Peoples reacted hysterically. In fact, their reaction to the extortion demands was to call the caller "a gobshite". They were absolutely correct.**
- 6.06. On that night, the only member of the Detective Branch working in Raphoe was Detective Garda Pat Flynn. He was about to go off duty. He stayed between ten and fifteen minutes. He saw it as his task to attempt to reassure the Peoples. He referred to there being an unbelievable number of crank calls being made in the Raphoe area at that time and indicated that he was going to leave a note for Garda Phil Collins, who was about to come on duty the following morning. He indicated that if there were any further telephone calls that the Peoples ought to play along. Detective Garda Flynn's appraisal of the situation was that the Peoples had become over- excited by something which, to him, was a routine occurrence, namely a mischievous phone call made by a malicious person. He did not seriously dispute the evidence from Mr. and Mrs. Peoples that he suggested that they should play along with the calls but he claimed that he advised them not to go to the White Cross Inn. A flavour of this comes from his evidence:

⁷¹¹ Transcript, Day 59, pages 40-51.

I haven't made any notes of what advice I would have given him, but I certainly would have given him advice not to become alarmed by them, that we were going to monitor them and my whole presence in the house seemed to be geared towards calming him. He was very, very aggressive. He was very hyped. He is a tall man, a very tall man, and at one stage he stepped straight across the sofa in a sort of a fit of rage. When he was explaining to me what was going to happen, and what was going to happen to these guys once he got these people who were making these phone calls, I felt it my duty as much to calm him down there and then asked to start to monitor his phone calls and find out who was making the calls and where they were coming from. I certainly would not have advised him to do anything other than take a note of when the calls came in. ... He told me that they wanted him to bring money to the White Cross public house ... And I spent time there dissuading him from going to the public house. I told him not to go under any circumstances, as I felt sure that this was a crank call.⁷¹²

- 6.07. Garda Flynn then departed. The Tribunal is satisfied that he left a note for his colleague Garda Philip Collins. In good faith, he took the view that what was happening to the Peoples was simply the action of the kind of person who enjoys the upset of other people. Such people are, unfortunately, not rare even in the best neighbourhoods. He probably felt that the calls could be traced, ultimately, through an application to Eircom. He also probably felt that in the event that a public telephone box was revealed to be the origin of the calls, that nothing would be gained. The Tribunal is satisfied that Detective Garda Flynn genuinely believed that no wider conspiracy was afoot of which the telephone calls was a part. He was also completely convinced from the demeanour of Mr. and Mrs. Peoples that they were angry that a false accusation had been put to them. This point is important. If the Gardaí eventually arresting Michael Peoples on the 4th of December 1996 had asked Detective Garda Pat Flynn as to his impression of the reaction of Mr. and Mrs. Peoples, the Tribunal is satisfied that he would have said that it was obvious that they were innocent and furious at being accused in the wrong. In the result, this valuable piece of information was not checked by the senior officers who were determined to include him in the pot of arrested persons on an accusation of murder.
- 6.08. The apparent logic for arresting Michael Peoples and Charlotte Peoples for the offences, respectively, of murder and accessory after the fact to murder, should be elucidated here. Almost everything else that happens in relation to him

⁷¹² Transcript, Day 196, pages 124-126.

becomes clear when this is borne in mind. Their logic was that he had offered money to a person who had information to offer the Gardaí as to his involvement in the death of the Late Mr. Barron. This therefore showed that Michael Peoples was implicated in the murder of Mr. Barron and that his wife, in assisting, or advising, the suborning of a material witness, was an accessory after the fact. This reasoning defies logic. It is complete nonsense. From nowhere, the Tribunal is satisfied, a completely innocent man was accused of murder. The Tribunal is satisfied that Detective Garda Flynn probably advised him to play along and to take notes concerning the time at which the calls arrived. While it was probably Michael Peoples's own decision to ultimately attend the White Cross Inn, everything that he did, and every support offered to him by his wife Charlotte, was capable of being interpreted only on the basis that they were the innocent victims of malice and not participants in, or accessories to, murder.

The White Cross Inn

- 6.09. Michael Peoples next rang his father, Mr. Terence Peoples. From him he obtained a hand dictaphone. When another telephone call arrived shortly after 22.00 hours he was in a position to tape this call. Through no fault of his, the quality did not allow for voice identification even by someone who conversed with the caller on a daily basis. The purport of this final call was to set up the meeting-place and confirm the amount of money to be passed over. Shortly after the call ended, Michael Peoples, accompanied by his father-in-law, Charlie Ayton, went to the White Cross Inn in an attempt to see whether he might recognise anyone on the public road outside that establishment, the place where the caller had offered to meet him.
- 6.10. The Tribunal is satisfied that Michael Peoples went to the White Cross Inn and looked around for persons who might be known to him. The Tribunal is also satisfied that Mrs. Peoples telephoned Letterkenny Garda Station to inform them that this is what her husband was doing. Raphoe Garda Station was, by that stage, shut for the night to public calls. Both his and her actions were taken in good faith.

John O'Dowd's Account

- 6.11. John O'Dowd claimed that, in the aftermath of the telephone call from his home, he found it wise to check with Raphoe Garda Station as to whether any report of extortion had been made. He claims to have gone to Raphoe Garda Station that night but the Tribunal is uncertain as to whether to accept this evidence. It may be that he simply telephoned and spoke to Garda Philip Collins. At some stage, it came to his attention that the station diary had been altered. According to John

O'Dowd's evidence, he was very busy on that evening because the next thing that he did was that he went to the White Cross Inn. If this is true, it would make it unlikely that he had also gone to Raphoe Garda Station from Letterkenny and then out to the White Cross Inn. It is equally possible that he was anticipating that Michael Peoples would arrive at the White Cross Inn at the appointed time of 23.00. In evidence, Garda John O'Dowd said the following:

I met William Doherty that evening at about 9.30, and he was a bit excited that he had the murder solved, and all this sort of stuff, and he had this story that he was to meet Michael Peoples that night, and that Michael Peoples was giving him money because Doherty was bluffing him, basically, that he had seen him up at the scene. That's what he was talking to me about when he got into my car. I didn't expect this at all. I was expecting to be talking about subversive issues because there was some stuff coming to light there the day beforehand. So he said he had to phone this guy. And I said, phone it from my house. And that is as simple as it was. And I regret having let that happen, right enough. But, I brought him to the house. And he went to use the phone, and I went up the stairs to change my gear, change my clothes, and he phoned him, and as I was coming down the stairs I heard him talking about this 500 quid ... and something else, I think it was about he wasn't a hard man to deal with, I think. So, it didn't sound right. But, I had always [thought] that he was saying – this is William Doherty – I wanted to have – I'm meeting you. I didn't know it was an anonymous thing. But, anyway, that happened that night and I left him home after that and I checked in the station that there was something in the book about an extortion call, alright, and I drove down then to, what do you call it, the White Cross Inn and I seen Charlie Ayton getting out of his blue, I think it was, an Allegro, or something, he had at that time. So I went home and this was bad looking, like, you know.⁷¹³

- 6.12. The advantage of this quotation is to show the case made in evidence by Garda John O'Dowd. This can be contrasted with the previous accounts which he gave to the Garda investigation, to the Carty investigation and to the Tribunal investigators when they emerge in the later pages of this Report. The question which immediately arises, is as to whether Garda John O'Dowd was telling the truth when he said that he went down to the White Cross Inn and that he saw Mr. Ayton emerging from a vehicle.

⁷¹³ Transcript, Day 282, pages 165-166.

- 6.13. The Tribunal has attended at the various locations in Donegal that are of importance from the point of view of this report. The White Cross Inn is a small, but inviting, establishment that is situated on a junction in the countryside outside Raphoe. It does not have a car park, though a few cars can park immediately outside the premises. Other cars would have to park up and down the roadway. It is very hard to see how a person could go along to the White Cross Inn and not notice anyone else who was parked in the vicinity. Michael Peoples went there at, or around, 23.00 hours and noticed no-one whom he knew. The Tribunal is satisfied that had he seen anyone who was known to him that he would have immediately reported this to the Gardaí and included it in the statement which he made on the following morning to Garda Philip Collins. This is Michael Peoples's evidence on this point:

Well, everything was set in place. I went down to the White Cross on my own. I went down to the White Cross, I think it was around 11 o'clock, and I went up the bar and I think I ordered a drink. I think the arrangement was now that I had to meet this fellow in the toilet. I went into the toilet, and stood there a few minutes. I left the White Cross and stood outside across the road in front of the car and waited for somebody to come out, to see a reaction, but nothing happened ... I hadn't [brought any money with me].⁷¹⁴

- 6.14. He then met someone with whom he was acquainted, who was nothing whatever to do with the case or the telephone calls, chatted for a few minutes and returned home. The Tribunal is convinced that Garda John O'Dowd did not go to the White Cross Inn on that occasion. If he had gone there he would have been seen by Michael Peoples. That roadway is not a place where you could miss people. We are not talking about the busy car park of a factory-like public house and disco premises. It is a rural road with little space for parking. Further, where the Tribunal found the evidence of Garda O'Dowd unconvincing on this point, it is unlikely that he would have exposed himself to the risk of detection, even tangentially, by attending at a location that had been designated by William Doherty as the location for handing over a ransom demand.

The Case Against Michael Peoples

- 6.15. In discussing the case against Michael Peoples, it should be borne in mind that any allegation against him translated, in the minds of the Gardaí, into an automatic allegation that his wife was an accessory after the fact to whatever he was supposed to have done. In fact, sections of the Gardaí believed that he had been one of the persons who had murdered Richard Barron. The alleged information of John Patton, as reported to Detective Inspector McGinley, was to

⁷¹⁴ Transcript, Day 59, pages 142-3.

the effect that Frank McBrearty Junior had come down the car park, wet and looking annoyed, in the company of one or two other individuals. As has previously been mentioned in Chapter 3, Sean Crossan, one of the staff of Frankie's nightclub, had mentioned an incident where three men, who he claimed were unknown to him, had come down the car park. The times reportedly given by both John Patton and Sean Crossan could be seen as broadly coinciding with the killing of Mr. Barron. As analysed in Chapter 3, it is clear that Sean Crossan was, in good faith, attempting to describe an actual incident which had occurred, namely the unconnected walk down the car park of three young men in their twenties. The information supplied by John Patton was also distorted. As a result of a lack of objectivity, amounting to an emotionally charged determination to prove guilt against those suspected on the flimsiest of grounds, the Gardaí believed that three persons had been involved. Added to these considerations was probably the notion that the damage to Mr. Barron's skull was more likely the result of a gang attack of a number of assailants.

- 6.16. As already mentioned, the Tribunal is satisfied that at an early stage, and probably towards the end of October, a report was made by Garda John O'Dowd to conference that Michael Peoples may have been involved in the murder of Mr. Barron and that he had been seen jumping over the wall from the technical school, adjacent to the car park, at the relevant time. As we move into January 1997, this evidence hardens. Michael Peoples was further involved with the notion that he was one of a trio of people who had murdered Richard Barron as a result of the statements of Mrs. Mary McGranaghan. The detail of this matter emerges in Chapter 3 and the reader is referred to that chapter for further reference. In brief, however, it is worth repeating here that this lady had claimed to have spotted Mark McConnell and Eamon Meehan walking past her shop on the Diamond at Raphoe at approximately 23.00 hours on the 13th of October 1996. The Tribunal concludes that there is no possibility of mixing up Eamon Meehan with Michael Peoples. This, however, is what Mary McGranaghan purported to do when she changed her statement, by including Michael Peoples as the person who was walking with Mark McConnell at that time. The Tribunal has concluded that the reasons which she has given in evidence for changing her statement were not credible. The Tribunal has further concluded that this change in her purported recollection of what happened that night was not inspired by personal malicious motives against Michael Peoples, but was done under the influence of a person, or persons, unknown either within the Garda Síochána or who were civilians. As is detailed elsewhere in this report, a

number of people in Raphoe had a grudge against the extended McBrearty family and acted in order to ensure that evidence of the most dubious kind was available to be proffered against them either for the purpose of justifying the arrests that had already taken place or to establish motive and opportunity should, as they hoped, a murder charge be taken.

John O’Dowd’s Notebook

6.17. On the 20th of September 1997, William Doherty was arrested. As will be recalled, there were justifiable grounds for his arrest in that he had clearly led the Garda Síochána on a not very merry dance, while using Robert Noel McBride as his semi-willing puppet. At the same time, Mr. McBride was being used by members of An Garda Síochána in their attempts to frame Mark McConnell and Frank McBrearty Junior. In William Doherty’s bedroom, a ‘Rhino’ notebook was found. The Tribunal is satisfied that if it had not been found there that it would have been destroyed by John O’Dowd, either of his own initiative or on the initiative of those who were acting with him in the plan to frame the suspects. The Tribunal therefore had the rare benefit of reading a genuine note made at the time by one of the main participants in this sorry affair. In a note under a heading which indicated it was written on the 12th of April 1997, John O’Dowd writes:

John Crawford Creaghadoos [St. Johnston] saw Michael Peoples jumping over wall at tech school.⁷¹⁵

6.18. Regard should also be had to the jobs book of the 15th of May 1997, which records a similar piece of information to the diary entry of Garda O’Dowd. It is to be noted that in the return to job number 307 of the 15th of May 1997 Garda John O’Dowd is noted as having taken such a statement. Either that was a lie or the statement has now disappeared as a result of deliberate and corrupt interference.

6.19. Even more interesting is job number 307 dated the 15th of May 1997. This reads:

Interview John Crawford. Saw Michael Peoples jumping over the tech wall in Raphoe at 1 a.m.

Garda John O’Dowd.⁷¹⁶

6.20. On the rear of that document the completion of the job is to be noted. The reverse simply reads: “Garda John O’Dowd. In.”

6.21. In August 1997, Garda John O’Dowd purported to make a report, dated the 25th

⁷¹⁵ Tribunal Documents, page 6669.

⁷¹⁶ Tribunal Documents, page 7615.

of August 1997, on an interview with John Crawford. Despite the fact that Garda John O'Dowd reported the statement of John Crawford as already being in the system, as of three months earlier, the Tribunal is satisfied that no such statement was ever received. If it had been, and if it was inconvenient to the version of events which the core conspirators within the Gardaí wished to put forward, the Tribunal is equally satisfied it would have been destroyed. The Tribunal has searched for any statement from John Crawford and is satisfied that none now exists. Instead, in the report to Detective Garda O'Toole dated the 25th of August 1997, Garda John O'Dowd reported as follows:

John Crawford denies he saw Michael Peoples crossing the technical school wall at 1 a.m. on the 14th of October 1996. He first of all denied he was driving in the area at 1 a.m. at all, stating he left the town at 11.30 p.m. However, he later relented and did say he was in the town at 1 a.m. but that he was nowhere near the technical school wall, and denied seeing Michael Peoples.⁷¹⁷

- 6.22. The importance of this should not be overlooked. In common with other elements of this case, namely the Hilary Laird information, the John Patton information, the Robert Noel McBride information, the Roderick Donnelly information and the Mary McGranaghan information, this was false. Again, the Tribunal must emphasise that this was not merely a report indicating that if the Gardaí questioned a particular person that he might have information on an aspect of an investigation. It was clear and definite information.
- 6.23. **Someone had to have thought it through. Given that it was directed against particular people, and for a particular purpose, the Tribunal cannot but regard it as part of the conspiracy to frame the suspects in this case, and particularly Michael Peoples.** Interestingly, John Crawford had answered a questionnaire designed to elucidate from motorists what they might have known concerning the death of the Late Mr. Barron. In answer to the question as to where he had been between 00.30 and 01.30 hours on the 13th/14th of October, he had indicated he was in St. Eunan's Terrace.⁷¹⁸ On being interviewed by the Tribunal investigators Mr. Michael Finn, Mr. Crawford confirmed that he was never the author of the information ascribed to him. He had spent that evening visiting a friend in St. Eunan's Terrace. On examining the layout of Raphoe, it is apparent that the main entrance to The Terrace is opposite the technical school wall. However, Mr. Crawford explained to Mr. Finn, that the way in which he entered St. Eunan's Terrace was off a different road, which led indirectly to the house, and that therefore he could never have been in a position to observe Michael Peoples jumping over the technical school wall. **For the**

⁷¹⁷ Tribunal Documents, page 6766.

⁷¹⁸ Tribunal Documents, page 7747

avoidance of doubt, the Tribunal is absolutely satisfied that Michael Peoples did not jump over the technical school wall and was nowhere near the car park of Frankie's nightclub on the occasion in question. The detail of the Tribunal's conclusion, and the reasons therefore, are set out at length in Chapter 3. The information from the vehicle questionnaire assisted in the creation of a false story against Michael Peoples as a suspect and, by implication, against his wife.

John O'Dowd's Case

- 6.24. At the Tribunal hearings, the case made by Garda John O'Dowd was that he had received the information, as detailed in his notebook, and in the note to Detective Garda O'Toole of the 25th of August 1997, from William Doherty. **The Tribunal is satisfied that this is not true. The Tribunal is satisfied that, even if it were true, even a minimal attempt by Garda John O'Dowd to check out the information would have revealed that John Crawford had no intention of saying any such thing.** While John Crawford knows William Doherty, their acquaintanceship cuts across generations and is on a basis of the occasional exchange of a casual word with someone who comes from the same village. He would not therefore have been an informant of William Doherty. Again, this was a fact which could easily have been checked out. This information is similar in kind to the information ascribed to Jean Coyle that she had seen Mark McConnell at the scene of the crime the morning after it was committed; the information ascribed to Hilary Laird that she had seen Frank McBrearty Junior and; to a lesser extent, the John Patton information.
- 6.25. **Minimal standards are to be expected from any police force. Pursuing a task with some degree of energy and intelligence is the least the people of Ireland can expect members of the Garda Síochána. The fault for this matter cannot be solely laid on the shoulders of John O'Dowd or those who were in conspiracy with him. It has to be laid on the entire organisation of the incident room; its lack of objectivity, its chaotic nature and its hysterical determination to prove the culpability of the suspects. A check of the Hilary Laird, Jean Coyle and John Crawford information would have revealed more than its lack of substance. Because it was detailed and precise, it indicated that persons were setting about framing the suspects. It was not checked at all. Further checking would have uncovered a conspiracy. Minimal checking would have led to the creation of a caveat in the minds of those Gardaí who were honest and honourable whereby the nastiness of this conspiracy, its dimensions and its direction would have emerged.**

Who Made the Phone Calls?

- 6.26. During the course of the Tribunal hearings in October 2004, a question was asked by counsel for the Tribunal which enquired as to whether the telephone calls to the Peoples' home were engineered within An Garda Síochána for the purpose of justifying the arrest of Michael Peoples. At the time, this question seemed to the Tribunal to be barely within the realms of what might reasonably be asked, based upon the evidence and the inferences that might be drawn from same. However, it was a proper question. On the 20th of September of this year, applications were made for costs by various parties in the explosives module. Many of these were refused because of the ruling which the Tribunal made that a party who did not co-operate with the Tribunal by telling the truth could not be regarded as being entitled to costs at public expense.⁷¹⁹ Up to mid-October 2004, Garda John O'Dowd had always made the case that he had no hand, act or part in telephone calls made to the home of Michael Peoples. The Garda investigation had proceeded on the basis that the matter would be adequately investigated through a trace on the records of the call being requested from Eircom, then Telecom Éireann. A request for a trace on the incoming calls on the 9th of November to the telephone line of Michael Peoples was made by Crime & Security Branch of Garda Headquarters to Eircom on the 12th of December 1996. To put it mildly, the response from Eircom was both tardy and, ultimately, unsatisfactory. The Garda investigation proceeded on the basis that this information would be eventually forthcoming.
- 6.27. The private investigator on behalf of the McBrearty family was making inquiries in Raphoe from February 1997 on. One of the matters on which he, quite legitimately, focussed was the issue as to who had made the various telephone calls to the home of Michael and Charlotte Peoples on the night of the 9th of November. As his suspicion focussed upon William Doherty, also known as the handler of 'Mr. X', he made inquiries at his home and, in particular, of his father, the Late Patrick Doherty. The Tribunal ascribes no fault to Mr. Flynn, in this respect, but, as might be expected, Mr. Patrick Doherty found these inquiries wearying. Therefore, on the 27th of May 1997, he attended at Raphoe Garda Station in order to seek advice. It was felt that the only way to quash any rumour that a member of his family might have been involved in these extortion demands was to obtain his relevant telephone bills from Eircom. This is what he was advised by the Gardai to do, and this is what he did. On the 10th of June 1997, Michael and Charlotte Peoples wrote to Chief Superintendent Denis Fitzpatrick complaining in the following terms:

We are somewhat amazed and astonished that you have failed and neglected to trace these phone calls during the past six months since

⁷¹⁹ The ruling is reproduced on the Tribunal website at www.morristribunal.ie.

Telecom Éireann have a central computer which would have disclosed the subscriber's number of these calls had you performed your statutory duty and we are surprised that having retained William Flynn yesterday, that he has been able to establish the identity of the subscriber within twenty-four hours, and I have instructed Mr. Flynn to make a report to the incoming Minister for Justice on this matter, and I understand from Mr. Flynn that a member of your force has acted in cohort with the person responsible for these calls which would explain why the Gardaí done nothing about our complaint. We are proceeding to instruct solicitors to issue civil and criminal proceedings against the parties involved, which includes a member of the Garda force, should you have any queries, you have my full authority to deal with Mr. Flynn as you would deal with us personally.⁷²⁰

- 6.28. At the same time, Mr. Flynn sent a letter to the Minister for Justice indicating to her that he had established the identity of the person making the extortion telephone calls and that he was an acting member of An Garda Síochána, together with an accomplice. He requested that these people should be arrested and charged. He further alleged that Letterkenny Gardaí had been aware of the identity of the persons involved in the blackmail telephone calls to the home of the Peoples.⁷²¹

Setting Up Michael Peoples

- 6.29. On the 16th of June 1997, Patrick Doherty handed over to the Raphoe Gardaí the billing details in respect of his phone line. These showed that four telephone calls were made, at the material time, from his home to that of Michael and Charlotte Peoples. There was no reason why anyone within his home would have been speaking, for social or business reasons, with anyone in the Peoples' household. On the 21st of June, Mr. Flynn arranged to meet Sergeant John White, who by this time was based in Raphoe Garda Station. He made an express allegation that one of the telephone calls to the home of Michael and Charlotte Peoples, had been made from the telephone in the home of Garda John O'Dowd. While speaking to Mr. Flynn, Detective Sergeant White covertly tape-recorded the telephone conversation. Subsequently, he was given an envelope which contained a handwritten note with some telephone records.
- 6.30. On the 10th of July, William Flynn sent to Chief Superintendent Noel O'Sullivan, in Garda Headquarters, a typed abstract from the outgoing telephone calls of Garda John O'Dowd from the 11th of October to the 18th of November 1996. These showed that on the 9th of November 1996 a telephone call was made at 22.06 hours from the home of Garda John O'Dowd to the home of Michael Peoples lasting thirty five seconds. This was the call which set up the meeting at

⁷²⁰ Tribunal Documents, page 8474.

⁷²¹ Tribunal Documents, page 8475.

the White Cross Inn.⁷²² The phone record also indicated a startling number of calls to Superintendent Kevin Lennon and a few calls to the home of William Doherty. The accuracy of this record was later confirmed in January 1998, when John O'Dowd eventually produced his own telephone bill for the relevant period.⁷²³ The relevant telephone calls to Michael and Charlotte Peoples are hereunder set out for the 9th of November 1996.

Doherty to Peoples	20.08	4 seconds
Doherty to Peoples	20.09	2 minutes 59 seconds
Doherty to Peoples	20.14	1 minute 50 seconds
Doherty to Peoples	20.23	3 minutes 36 seconds
O'Dowd to Peoples	22.06	35 seconds ⁷²⁴

6.31. It would appear that the initial requests for the incoming calls to Michael Peoples's phone were misdirected. On the 11th of July 1997 Detective Sergeant Sylvester Henry reapplied to Eircom for the incoming calls of Michael Peoples. A return eventually indicated that no calls had been made to the number for the relevant time. It would appear that it was then indicated to Eircom that this record was incorrect. Eircom had difficulties at that stage in recreating the records for incoming calls at the time because of a changeover in their recording system which meant that records for the Letterkenny district were incomplete from the period September to December 1996. This is outlined in a statement received by the Tribunal from Mr. Jim Cleary.

6.32. **What is shocking in this investigation is the manner in which the Garda authorities in Donegal failed to pursue the telephone records of Garda John O'Dowd during the period from June 1997, from when they first realised that there was an indication that the final call may have come from his house, to when he eventually voluntarily handed over his records in January 1998. While an application was made to Eircom for the telephone records of Mr. Patrick Doherty at this time, no such application was ever made for the outgoing telephone records of Garda John O'Dowd until the Carty investigation in the year 2000.**

The Appropriate Response

6.33. Once it had emerged that there was a possibility that a member of An Garda Síochána had been involved in making a criminal extortion demand to the home of a citizen, questions should have been instantly asked. There were grounds for immediately arresting Garda John O'Dowd. This was not done at the time but was eventually done by the Carty investigation, after they were able to make no progress in other forms of investigation, in June of 1999.

⁷²² Tribunal Documents, pages 841-850.

⁷²³ Tribunal Documents, page 8484.

⁷²⁴ Tribunal Documents, pages 853-855.

- 6.34. The Tribunal has come to the reluctant conclusion, based upon the evidence, which it has heard, and all of the documents put before it, that the reason why the Donegal Garda division did not properly investigate the extortion telephone calls to the home of Michael and Charlotte Peoples on the 9th of November was because senior officers, including Superintendent Kevin Lennon and Chief Superintendent Denis Fitzpatrick were determined to cover up the trail which led to Garda John O’Dowd. The reasons for this were to ensure that no light was shone on the unhealthy relationship between William Doherty and the Garda force in Donegal which had, among other things, contaminated the investigation into the death of the Late Richard Barron. In addition, the Tribunal has also reluctantly concluded that these officers condoned of the tactic, if not in advance, then certainly afterwards, of allowing a police informant to make these kind of bizarre telephone calls to the home of Michael Peoples for the purpose of illegitimately entrapping him and setting him up for arrest.

The Response of Garda O’Dowd

- 6.35. Eventually, after an absolutely astonishing delay, on the 8th of April 1998, Garda John O’Dowd was interviewed by Detective Inspector McGinley and Detective Sergeant Henry. They asked him, in accordance with their duty, a number of intelligent and pertinent questions. To every single question he parroted back the nonsensical statement: “I will reply to all questions in the form of a statement.”
- 6.36. The reality of this matter should be borne in mind. There was evidence to suggest that a member of An Garda Síochána had been involved in a criminal offence while handling a police informer and in the course of his duties. This was not investigated. The responsibility for this lies with Chief Superintendent Denis Fitzpatrick and Superintendent Kevin Lennon. When, eventually, questions came to be asked, an inexcusable delay had occurred. The Commissioner of An Garda Síochána was entitled to know what his officers were doing in the course of their duties. It is utterly astonishing that in a modern European democracy a member of the police force, such as Garda John O’Dowd, is entitled, apparently, by virtue of the chaotic state of the discipline regulations and the failure of the Department of Justice to impose order and discipline on the force, to answer his superiors about a matter of vital interest to the Commissioner in an evasive, cunning and treacherous way.
- 6.37. In May of 1998, Garda John O’Dowd, while within the pay of the State, went to a word processor and apparently typed out, or entered on a disc, an official statement that is literally seething with lies. He said:

In my statement I am replying to an interview I had with Detective Inspector McGinley and Detective Sergeant Henry on the 9.4.98 when he informed me that they were performing a criminal investigation into extortion calls made to Michael Peoples on the 9.11.96 which is contrary to Section 17, Criminal Justice (Public Order) Act 1994. I will now address this issue. It is alleged my phone was used to make such a call at 22.06.48 on the 9.11.96. I wish to refer to my previous statement of the 21.1.98. I did not know until the 24th June 1997 that my phone line was used in such a fashion. I did not make this phone call which is acknowledged by Michael Peoples in the document he handed to me on the 24th June and I don't know who made it. I cannot recall this date it is so long ago and I can only rely on station records which indicate I terminated duty at Raphoe on that date at 10.30 p.m. and therefore could not have been in my house until 10.50 p.m. at the earliest. Station records state I commenced duty in Raphoe on that date at 2 p.m. At that time my telephone account was forwarded directly to my credit union and paid by them every two months. Telecom Éireann did not send me a list of calls made on my phone line as it was not their policy so I was never aware what calls were made on my phone line and I did not notice any increase in the amount of payment on my phone bill. Consequently, I never considered the necessity to query my account as I didn't envisage that there could be problems. It is almost a year and a half since this incident took place. I made every effort to assist the Gardaí who were investigating this incident. I approached Detective Inspector McGinley in August 1997 to have this matter sorted out. He showed me a printout of phone calls made from my telephone number. I offered to have the matter sorted out then and there but was informed he couldn't do this ... I didn't give anyone permission to have access to my telephone accounts.⁷²⁵

The Station Diary

- 6.38. Because of the attention drawn to the station diary, certain documents were examined in Garda Headquarters by their forensic experts. **The Tribunal has been consistently impressed by the quality of the forensic expertise available within An Garda Síochána. In every field, from ballistics to document analysis, integrity and competence on a high level is obvious.** The documents examined were the station diary and the overtime sheet. The latter document does not have to be filled in immediately upon concluding a tour of duty and could be filled in, for example, a day or a week later for the purpose of claiming reimbursement for extra hours worked. The station diary, on the other hand, should be filled in immediately upon the conclusion of a tour of duty.

⁷²⁵ Tribunal Documents, pages 1299-1200.

The Tribunal is absolutely satisfied, having listened to the evidence of Detective Garda Raymond Jackman, that the station diary was forged by another member of An Garda Síochána acting at the behest of, and in conspiracy with, Garda John O'Dowd. It is stunning that official records within the police force can be falsified and destroyed virtually at will. It is even more startling that some of those who have sworn to uphold the law respond with complete alacrity to deceit for the purpose of removing any trail of evidence to which they might be linked. Detective Garda Jackman told the Tribunal:

I found that the entry, this is an enlarged entry from the question lying in the diary from line 8 of the Raphoe station diary for the date 9/11/1996. It goes back to where a member finished duty regular at 10.30 p.m. It's my opinion that this entry, and this is the same entry, I have just pointed to it – it's examined under microscopic examination and I printed an enlarged copy of what I would examine, and I would believe that the 'three' in the 10.30, it was originally down for 10 o'clock and it was altered to read 10.30 p.m. ...The direction and flow of the handwriting is measured by what they call 'striation marks'. Here you see striation marks. They go from the inside of that line to outside in the direction of flow. These striation marks, in this case, are anti-clockwise. It would be quite difficult to write a three – you'd have to draw a circle first on the bottom anti clockwise and the half circle on the top would be clockwise. ... There is a pen lift here. You can see probably an extra deposit of ink where the first zero was written and then it started here again to come back to do the 'three'. This is not the way I would expect someone to write a 'three'. The scale also looks ... out of scale when compared to the other entry.⁷²⁶

- 6.39. There were two basic possibilities as to how the diary entry, and the overtime sheet, had been changed. If Garda John O'Dowd had stayed at home and then, as appears probable, delivered William Doherty back to where he wanted to go, and then gone to the White Cross Inn, while it is possible that he would have had time to go back to Raphoe Garda Station and change the station diary immediately, this is less likely than the second possibility. This is that John O'Dowd telephoned Garda Philip Collins, his colleague who was on duty, and requested him, as a matter of urgency, to change the station diary. **Whatever possibility is adopted, it is highly probable that Garda Philip Collins knew of the fraudulent alteration, as it was a tour of duty on which he and Garda John O'Dowd were present.**

⁷²⁶ Transcript, Day 222, pages 162-163.

- 6.40. In the event of any searching questions being asked on this matter, which they eventually were only by the Carty investigation team, it was likely that Garda Collins would have had to account for both his tour of duty, and that of his colleague Garda John O'Dowd. Finally, it is possible, as John O'Dowd testified, that he ignored the diary entry for that night and only thought about changing the written record for his duty a few days afterwards. The allegation that Garda O'Dowd rang up Garda Collins and asked him to change the station diary was made by William Doherty. The Tribunal is not prepared to accept this evidence as being true. Garda Collins was questioned as to whether this was correct. He said:

No, I didn't change the diary...no, I had nothing to do with it. I took myself off at 10.00 p.m. and on the next entry, it was to be Garda O'Dowd, and I used my own name as well and that was changed by somebody else's. It was tippexed over ... and it wasn't changed before the end of the roster ... because I would have noticed it, you know.⁷²⁷

- 6.41. The Tribunal has carefully considered the evidence on this matter and has concluded that Garda Philip Collins and Garda John O'Dowd entered into a conspiracy to ensure that the record was falsified. While the actual falsification of the record may have been done by Garda John O'Dowd, Garda Philip Collins knew about it and was not prepared to tell the truth to the Tribunal. In fact, the entire demeanour of his testimony was geared towards the giving of minimal information and towards telling whatever lies he felt suited his purpose, and that of his colleague, Garda O'Dowd.⁷²⁸

John O'Dowd's Second Story

- 6.42. Garda John O'Dowd was eventually arrested by the Carty investigation team on the 10th of June 1999. His responses to legitimate questions were belligerent. His attitude seemed to be that no-one had the right to ask him questions. In any event, whatever his attitude was, his answers were lies. He said:

I did not make any call from my house. I don't know who made it. I was at work until 10.30 p.m. that night. Check the records ... I made no f...ing call, I have done nothing wrong. Tommy Doherty is the most likely person who could have made the call – but he is dead now. Tommy Doherty was often in my house. ... I was often in his house.⁷²⁹

- 6.43. In addition to the foregoing, Garda John O'Dowd had a number of meetings with the Tribunal investigators. His deceitful line in relation to the telephone call was maintained at all times.

⁷²⁷ Transcript, Day 285, pages 112-113.

⁷²⁸ For Garda O'Dowd's evidence on the station diary see Transcript, Day 282, pages 166-167.

⁷²⁹ Tribunal Documents, pages 1214-1220.

John O’Dowd’s New Approach

6.44. On the 18th of October 2004, John O’Dowd completed a fresh statement, in relation to the Peoples’ phone calls and the Barron investigation, to his solicitor Mr. Thomas Murphy. This was furnished immediately by Mr. Murphy to the Tribunal. It was read out in public session because of its importance. It needs to be quoted here because it re-focused the inquiries of the Tribunal in a different direction. For the purpose of understanding this chapter it needs to be contrasted with the line previously taken:

On the night of the 9th November 1996, at approximately 9.30 p.m., I met William Doherty. I picked him up at the top of his road about half a mile from his home at the junction of the Letterkenny/Lifford Road.

When I met Doherty he was a bit excited and he told me he thought he had solved the murder. He told me he had been in contact with Michael Peoples by telephone. Doherty told me he had told Peoples that he [Doherty] was doing a robbery and that he had seen Michael Peoples at the scene at the time Richie Barron was killed. Doherty said that Michael Peoples had taken the bait and had offered him £2,000.00 to keep quiet. Doherty told me he had arranged to meet Michael Peoples at the White Cross Inn at 11.00 p.m. He said that he wanted to go to a public telephone to ring Peoples. I understood that Doherty wanted to telephone Peoples to confirm that he was going to meet him. I told Doherty he could use the telephone in my house and I drove to my home.

William Doherty tried to telephone Michael Peoples on a number of occasions and he did not get through. I went upstairs to change and when I came down Doherty was on the phone in the living room and I heard him say that he was not a hard man to deal with and mention of £500. Doherty said that the meeting was on, that is to say, that Peoples was coming to meet him at 11.00 p.m. at the White Cross Inn. I then left Doherty home because I became concerned about the whole business. All these matters happened very quickly and I began to realise that what Doherty was doing could be construed as an attempt at extorting money from Michael Peoples and I had allowed myself to be caught up in it. I was worried about this and I went to the Garda station at Raphoe to see if there was any reports of the calls. There was no-one in the station at the time but there was an entry in the occurrence book about it.

I then went to the White Cross myself to see if there was anything happening there. I saw Charlie Eaton, who is the father-in-law of Michael Peoples getting out of a car. I was in a panic at that stage and I went home from White’s Cross.

I cannot remember what I did the next day but I was in Dublin on the 11th and 12th of November for the Crimeline programme.

I was concerned about the telephone call because it was reported as an extortion call. I telephoned Kevin Lennon within a few days and told him about the call. I told him that I knew about the extortion telephone calls and that one of them had been made from my house. I told Kevin Lennon that Doherty had said that he was winding Peoples up by saying that he [Michael Peoples] had been seen at the scene at the time that Richie Barron met his death and that Peoples was going to give Doherty money to shut him up.

When I told Kevin Lennon about the telephone call he said that he would sort it out and to leave it with him. I understood that he would explain the position into which I had got myself with those in authority and that in some way it would be sorted out. I asked Kevin Lennon about it on a number of occasions subsequently and eventually he said that he had sorted it out with Superintendent Joe Shelly. I expected that Superintendent Shelly would speak to me about it but he never did.

Kevin Lennon called to my house, on either the last, or second last day, of the roster. The roster ended on the 1st December 1996. We discussed Doherty's position as an informant. I recall him telling me that it was always vital to protect the identity of an informant. He asked me what duty I was doing on the 9th November, the night of the phone calls to the Peoples house and I told him 2.00 p.m. to 10.00 p.m. He told me to change the entry in the diary to 10.30 p.m. saying that to do so would keep things right. I immediately went to the station and changed the entry and I also changed the entry for Garda Philip Collins. I did this to keep the two entries the same as he had come on duty at the same time as me. I also changed the A85's [overtime sheets]. The purpose of changing the diary was to keep me out of the house while the telephone call was being made. I hoped that this would be the end of the matter.

I did not know that when requests were made for information on the telephone calls that the record of the telephone call from my house had not been disclosed. When I was asked for my records I applied for them and disclosed all the details which I handed to Inspector John McGinley on the 14th January 1998.

On the 24th June 1997 I spoke to Chief Superintendent Denis Fitzpatrick about the telephone call. I told him that the call had been made from my

house and that I had told Kevin Lennon about it and that Kevin Lennon had it sorted out with Joe Shelly. This was on the day that I got a document from Michael Peoples showing the telephone call from my house. Chief Superintendent Fitzpatrick told me to maintain silence about Doherty my informant until Inspector John McGinley came to me. Inspector McGinley never came to me about it.

On the advice of Kevin Lennon I asked to be interviewed by John McGinley regarding the Peoples phone calls. I approached him on four occasions namely August 1997, 3rd, 5th and 9th November 1997. The purpose of seeking to be interviewed was to get copies of the questions that they sought to be answered. John McGinley would not interview me without official records of the phone calls. Accordingly when I received my own records from Telecom Éireann, I gave them to John McGinley on 14/1/98. Superintendent Kevin Lennon told me that I ought to make a formal statement in the matter denying all knowledge of the phone calls. I prepared a typed statement and I showed it to Kevin Lennon. This is the statement dated 21/1/98 and it is exhibited at page 1197 of the Book of Evidence. Kevin Lennon suggested that I amend the statement to include the line "I wish to state that nobody other than myself had a key to my house" and also "I lost faith in the confidentiality of my phone line and consulted a solicitor with a view to establishing who had access to my telephone accounts" .

I was to be interviewed by D/I McGinley and D/S Henry. Before attending the interview I was speaking to Supt. Kevin Lennon and I was advised by him to answer each question with the response "I will reply to your question in the form of a statement" or words to that effect. He also told me that I should go in with my G.R.A. representative Gda. Garret Horkan but they refused to interview me with him present. An arrangement was subsequently made that I would present myself for interview on 9th April 1998. When I went to this interview I followed the advice of Supt. Kevin Lennon in the manner in which I answered the questions.

After this interview I prepared a statement and I showed it to Kevin Lennon. This is my statement of 12th May 1998. He advised that I continue to deny these phone calls and I felt I had to go along with this advice because it had become very serious and I felt that I was going to be scapegoated for the collapse of the Barron investigation. I showed the statement to Kevin Lennon and he approved it with some minor amendments including the two conclusions at the end of the statement. I specifically remember changing the word "folly" as inserted by Kevin

Lennon to the word “stupidity” on the 7th line from the end of this statement. This statement is contained in the Book of Evidence at page 1199.

I was advised by Supt. Kevin Lennon that if I was to be arrested by the Carty team that I was to have the member in charge write into the custody record the entry that appears there concerning the call from my house and the station diary etc. On 10th June 1999 I was arrested for questioning in relation to the Peoples’ phone calls by the Carty investigation and I had the recital written on a piece of paper in my top pocket so that I would be able to remember it.

After William Doherty was arrested and taken to Milford Garda Station Kevin Lennon told me that my notebook had been found in Doherty’s house. I made it my business to find out what was going on and I spoke to Doherty. Doherty told me that they were asking questions about Kevin Lennon, John White and me. Doherty was adamant that the notebook had been planted by D/Sgt. Henry. Immediately afterwards I called to Kevin Lennon at his house and told him what Doherty had told me. Kevin was very annoyed about this. Both Kevin Lennon and John White believed that the diary had been planted.

On the 27th May 1999 Sergeant John White called to my house and he had a statement prepared for me to take into the Carty team whom I was to meet that day. This statement was handwritten and I typed it out myself. The statement I typed was an exact copy of the handwritten one given to me by John White. Detective Sergeant White told me to destroy the handwritten version and I did this by burning it. I do not know why I took the statement from him, or gave it to the Carty team. I know that it seems ridiculous but I was totally stressed out at this time. I was in great fear of the Carty team and any help I got was appreciated and I believed John White had my best interests at heart. He assured me that it was the right thing to do; to hand in that statement. He gave me great support at this time and I was very grateful to him. The statement I refer to is my statement of 27th May 1999 as contained in the Book of Evidence at page 1203.

The statement says that I received legal advice prior to making it. I did not receive any legal advice prior to making this statement. The statement states that Detective Sergeant Henry and Detective Inspector McGinley were trying to frame me. I believed that allegation at the time, although I now realise that this belief was completely and utterly wrong.⁷³⁰

Issues

- 6.45. There are a number of vital issues raised by this statement. They tend to impact upon the entire of the Tribunal's investigation into both the Peoples' telephone calls and the investigation into the death of the Late Mr. Barron. The main issues are the following:
1. What knowledge did Garda John O'Dowd have of William Doherty's plot to telephone Michael Peoples with a view to drawing him into making an admission of or drawing him into acting as if he had been involved in, the murder of the Late Mr. Richard Barron? On a subsidiary level, the Tribunal wished to make findings as to whether other persons could conceivably be found to have knowledge of this plot, apart from William Doherty and Garda John O'Dowd.
 2. What happened at the White Cross Inn? Whether Garda John O'Dowd went there, as has been asserted in this statement?
 3. Did Garda John O'Dowd tell Superintendent Kevin Lennon of his "difficulties", arising out of the use of his phone line for the purpose of committing a criminal offence while, at the same time, appearing to engage himself with William Doherty in solving a 'murder case'? If so, when? Was Superintendent Joseph Shelly brought into this plot, either as an actor in engaging in a cover-up, or by being told and doing nothing about it?
 4. Was there any interference by servants or agents of Telecom Eireann, now Eircom, with telephone records for the purpose of stymieing inquiries?
 5. Was the diary change done by Garda John O'Dowd, or Garda Phillips Collins, acting on their own, or was it done with the advice or encouragement of Superintendent Kevin Lennon?
 6. What did Chief Superintendent Denis Fitzpatrick know of the true nature of the extortion phone calls? Was he aware that they had been made by a police informer, one of them coming from the home of a Garda officer and did he ask himself the question as to whether any of these activities were designed as an unfair means of entrapment?
 7. Is John O'Dowd correct in asserting that Superintendent Lennon advised him to make certain alterations in statements he was making to the Carty investigation team? What involvement did Sergeant John White have, if any, in making a statement on behalf of Garda John O'Dowd and then proffering it to them so that it could be submitted to the Carty investigation team? What motivation, if any, could Superintendent Lennon or Detective Sergeant White have, in that regard?
 8. The Tribunal wishes to pay particular attention to a statement made on the 27th of May 1999, by Garda John O'Dowd to the Carty investigation team. This is the statement allegedly drafted by Detective Sergeant White on behalf of Garda John O'Dowd. Where, if anywhere, would this have diverted the Carty investigation team, and to whose benefit?

9. How was the Peoples' phone calls investigation file disposed of and reported to the Director of Public Prosecutions?

Prior Knowledge of the Peoples' Extortion Calls

- 6.46. The case made by William Doherty in relation to the Peoples' phone calls is that Robert Noel McBride was at his home when, as he put it, "he used the public telephone" to begin making a series of calls to Michael and Charlotte Peoples. By arrangement both of them then met with Garda John O'Dowd and went to his home. There, Robert Noel McBride requested permission to use the phone. Without either Garda John O'Dowd or William Doherty knowing what he was about to do, he then telephoned Michael and Charlotte Peoples.⁷³¹
- 6.47. William Doherty denied, in evidence, that he was part of any conspiracy to try and set up anybody. He therefore had no prior knowledge which would make him culpable of any involvement in abusing the process of justice. He claimed that in the aftermath of the telephone call from Garda O'Dowd's house to the Peoples' home that a joke was made by Robert Noel McBride. What was funny about the phone calls, or what could have been regarded as a joke about them, is a mystery to the Tribunal. Mr. Doherty's view on this was that the entire matter was, as he put it, "a wind-up". Whereas William Doherty claimed to have been worried about the possibility that phone calls could be traced to his home, notwithstanding that four were made in sequence and, as he later claimed, this only occurred to him after the fifth phone call from the home of Garda John O'Dowd, he claimed that Garda John O'Dowd was not in any way worried by the bizarre behaviour in his house.⁷³²
- 6.48. The account by William Doherty is self-contradictory and utterly implausible. It borders on the ridiculous. **The Tribunal is convinced that Robert Noel McBride was not, on that occasion, either in William Doherty's home or that of Garda John O'Dowd. It accepts his evidence, that he had no involvement whatsoever in the phone calls.**
- 6.49. In evidence, the case made by John O'Dowd was that the phone calls between William Doherty and Michael and Charlotte Peoples were a spontaneous occurrence of which he had no prior knowledge. John O'Dowd claimed that as a result of their previous contacts in relation to the 'murder case', he had met William Doherty on the 9th of November at about 21.30 hours at a pre-arranged location. Whereas Garda John O'Dowd expected that Doherty was going to start talking about "subversive issues", as he put it, instead, immediately on Doherty entering the car, the conversation turned to Michael and Charlotte Peoples. Michael Peoples was supposed to be giving him money that night because Doherty had played a bluff on him that he had been spotted up at the scene of

⁷³¹ Transcript, Day 105, pages 16-23.

⁷³² Transcript, Day 185, pages 20-32.

the crime. Whereas Garda O’Dowd claimed that he thought that the phone calls had been made in the ordinary way, by William Doherty revealing his name to Michael Peoples, the Tribunal does not accept either that Doherty told him this or that Garda O’Dowd was telling the truth in this, or in any respect, about these telephone calls.

- 6.50. If, as is asserted, Garda O’Dowd and William Doherty met at 21.30 hours, the reality is that they had a drive of some ten to fifteen minutes before they reached Garda O’Dowd’s home in Letterkenny. Then, they had a further twenty to twenty five minutes in which to discuss what had already happened. The relevant phone call was made at 22.06. Garda O’Dowd was extensively cross examined on this point. Having listened to this cross-examination, and having had close regard to the demeanour of John O’Dowd, the Tribunal is convinced that his account of this matter is both self-serving and deceitful. This was not a case of John O’Dowd allowing himself “to be caught up in it”, as he put it.
- 6.51. The truth emerges, to a degree, from John O’Dowd’s statement of the 18th of October, 2004 to the Tribunal. Michael Peoples was, according to that statement, in the words of William Doherty, supposed to have “taken the bait”.⁷³³ The wider context of the relationship between William Doherty and Garda O’Dowd was that of extensive sharing of information and mutual support going beyond the ordinary relationship of Garda and informer. It was not a case of Garda O’Dowd falling into what has been described, in the Tribunal’s previous report, as the “informer trap”. Garda O’Dowd was intent on mischief against those whom he suspected of the plot, as he saw it, to murder Richard Barron and those whom he suspected of being involved in what he regarded as a ‘cover-up’.
- 6.52. As to whether the plot to telephone Michael Peoples was directly inspired by Garda O’Dowd, the Tribunal cannot say. The reality is that on the previous evening there was a phone call lasting some fourteen minutes and twelve seconds between Garda O’Dowd and William Doherty. It is highly likely that the plot, as executed on the next evening, was discussed on that occasion. As to whether Garda O’Dowd inspired William Doherty, or the other way around, it is impossible to say. In reality, both were deeply involved in this particularly nasty work of mischief. As to whether Garda O’Dowd was himself inspired by other members of An Garda Síochána, the Tribunal can only suspect. In the absence of proof, it would be unfair to make any finding beyond the observation that it would be unlikely for Garda O’Dowd to embark on this course without advice and guidance. The Tribunal can put the matter no further.

⁷³³ Tribunal Documents, page 6753.

- 6.53. The Tribunal is of the view that the telephone calls to Michael Peoples were made with the full knowledge and co-operation of Garda John O'Dowd. This course of action was pursued for the purpose of setting up Michael Peoples for an arrest in the hope and expectation that he would confess his involvement in the plot to murder Richard Barron, which plot never existed, while in Garda custody.⁷³⁴

Garda O'Dowd at the White Cross Inn

- 6.54. For the reasons already set out in this report, the Tribunal is convinced that Garda John O'Dowd never went to the White Cross Inn in order to observe, or meet, Michael Peoples or anyone associated with him. The Tribunal is convinced that this is but an example of the manner in which John O'Dowd tailored his evidence to make it fit what he regarded as a likely and potentially acceptable scenario as the testimony developed over the Tribunal's hearings.

Knowledge of Kevin Lennon

- 6.55. Apart from the statement, already quoted, John O'Dowd gave evidence of having contacted Superintendent Kevin Lennon, in early course, about the telephone calls to Michael Peoples, and in particular the one which came from his home. He said:

So, I was up in Dublin then on the 11th or 12th [of November] and I came back and I contacted Superintendent Lennon and I told him the story. I was on the phone to him a couple of times. He says, he'll get it sorted out. I was on to him every day: "Have you sorted it out?". It was sorted out, every day it was sorted out. So, I wanted to know how it was sorted out. He told me Joe Shelly had sorted it out. He had sorted it out with Joe Shelly. This is probably after a week of ringing him. So I left it at that. So, then he called to my house a couple of days around that, but it was around the end of the roster anyhow and we talked about this phone call issue, and basically both of us were of the belief that it was a silly thing to do at the time. And it was more or less Doherty acting the so-and-so. But, it was still there and it was – if it raised its head – it was going to be a problem at some stage. I knew that. But, he told me then, he asked me was I working, so I says I was working 2.00 to 10.00 that day. So, he says go on in and change that. Change it to 10.30. That'll keep things right and I did that. I know it's a silly thing to do now, but I did that. So, basically, the phone calls then became

⁷³⁴ Transcript, Day 185, page 35.

an issue. Say, when Billy Flynn ... started to get involved in this investigation and I got a letter one day from Michael Peoples. Michael landed at the door of the station. It was around 12.00 o'clock in the day. It was on the 24th of June 1997, so Michael gave me this letter and he more or less said – read that – and walked out the door. So I could see that the thing was looking bad. So, Kevin was out of the country, Superintendent Lennon was out of the country, at the time. I went in straight, I rang the Chief, Chief Superintendent Fitzpatrick, and I went into him and I told Denis Fitzpatrick what I had already told Kevin Lennon. Now, I know he denies it, but I did tell him. I was in his office and I actually taped that conversation, but I can't find that tape.⁷³⁵

- 6.56. Superintendent Lennon denied any knowledge of the true origin of the Peoples's phone calls. He claimed that on the 27th May 1997 he received a letter from a solicitor making the allegation that the telephone call to Michael Peoples's house had come from the home of a Garda, and was utterly surprised. Then, instead of directly questioning Garda John O'Dowd about the matter, he appointed Detective Sergeant Henry and Detective Inspector McGinley to take charge of an investigation. The question that he put to Garda O'Dowd was "about a key of his house".⁷³⁶ In evidence, Mr. Lennon said:

I asked Garda O'Dowd about it in July of 1997. He was denying he knew anything about it and I asked him who had a key of his house and he said nobody other than himself. I told him to go to Inspector McGinley and to tell him his story. That's where it took off from there ... I didn't know anything about [it] and nobody told me anything about it until I investigated that in May of 1997.⁷³⁷

- 6.57. The statement of John O'Dowd of October, 2004 came, if Kevin Lennon is to be believed, as a complete shock to him. The Tribunal does not accept this.
- 6.58. John O'Dowd's case is that he had received advice at the earliest possible stage from Superintendent Lennon and from Chief Superintendent Fitzpatrick. The Tribunal is convinced that advice from Superintendent Lennon was forthcoming at an early stage. It is obvious from the record of telephone contact between Superintendent Lennon and Garda John O'Dowd that they were confidants with each other. The Tribunal is convinced that they had the kind of close relationship where matters of particular moment to

⁷³⁵ Transcript, Day 282, pages 166-168.

⁷³⁶ Transcript, Day 305, page 45.

⁷³⁷ Transcript, Day 305, page 46.

each of the them were discussed the one with the other. This is manifestly demonstrated by the series of phone calls between them at this time.⁷³⁸

6.59. When, on the 19th of May 1998, Garda John O’Dowd wrote to Mr. Eugene Quinn, the Data Protection Officer of Telecom Eireann, he used language which was, in the opinion of the Tribunal, beyond his ability to invent. Only a Garda of exceptional diligence and intelligence would know that an application could be made under the Data Protection Act of 1988 to destroy data in the form of telephone records. Kevin Lennon had this knowledge as he was, by all accounts, a person well versed in the law and skillful in its use. The language of that letter is, notwithstanding the denial of both John O’Dowd and Kevin Lennon, that which is typical of the then Superintendent Lennon. This letter was sent against a backdrop of prosecutions brought against Mr. Frank McBrearty Senior, as proprietor of Frankie’s niteclub/the Tudor Lounge, for alleged breaches of the licensing laws. When an attempt was made to widen the scope of the evidence in order to make a defence allegation of the misuse of Garda power, Superintendent Lennon objected to the use of telephone records on constitutional grounds.

6.60. While an argument to that effect might well reasonably have been made, the Tribunal is certain that Kevin Lennon became worried about the effect of the telephone records as a means of building pressure to uncover the scandals that had been perpetrated in Donegal and had decided to use legal argument in Court, and legal methods outside Court, to get Garda O’Dowd to erase his telephone records. This would have the result in getting them both into calmer waters. Finally, from the time that it had been revealed by Michael Peoples, in June 1997, that Garda O’Dowd had made a telephone call to his home, the investigation, under the then district officer, Superintendent Lennon, assumed a blundering inconsequential character which was utterly at odds with the efficiency which this officer was capable of showing in other circumstances.

Detective Superintendent Joseph Shelly

6.61. The Tribunal had the benefit of hearing the evidence of Detective Superintendent Joseph Shelly on this issue. Detective Superintendent Shelly denied that any approach had ever been made to him by Superintendent Kevin Lennon with a view to ensuring that telephone records were altered, or that the matter of telephone calls to the home of Michael and Charlotte Peoples was corruptly investigated or hushed up. The Tribunal has carefully considered the demeanour of Detective Superintendent Shelly in answering probing

⁷³⁸ Telephone records indicate that twelve calls were made from the home of Garda John O’Dowd to the home of Superintendent Kevin Lennon between the 2nd of November and the 17th of November 1996. See Tribunal Documents (Peoples), page 822.

questions from counsel for the Tribunal and accepts his denial. It should also be noted, in this regard, that there is some support for the denial of Detective Superintendent Shelly in the surrounding circumstances. When, eventually, the billing records of Garda John O'Dowd were produced by him in January of 1998, this was at a time when Detective Superintendent Shelly was transferring out of the division to Mullingar, Co. Westmeath. The responsibility for investigating the matter, and completing the investigation, therefore rested solely with Superintendent Kevin Lennon, in conjunction with the divisional officer, Chief Superintendent Denis Fitzpatrick. Unless Detective Superintendent Joseph Shelly had also been involved in "hatching the scheme", paraphrasing the words of Garda John O'Dowd, to make Michael Peoples take the bait, there would be no advantage to him in engaging in a corrupt exercise. The Tribunal is satisfied that he did not.

Eircom Interference

- 6.62. On the 21st November 1996, Detective Inspector John McGinley sent an application to the Chief Superintendent of the Donegal Division,⁷³⁹ which in turn was passed on to the relevant Chief Superintendent in Garda Headquarters, requesting a listing of all incoming and outgoing calls made on eight separate numbers. Some of these are related to the investigation into the death of Mr. Barron. They therefore specify particular periods around the time that he died. Included in such an inquiry is the telephone of Michael and Charlotte Peoples. This indicates that, from an early stage, Michael and Charlotte Peoples were the object of suspicion in the incident room. This backs up the assertion by Detective Sergeant Henry that a mention had been made, by Garda John O'Dowd at a conference before the arrests, that Michael Peoples had been seen jumping over the tech wall at a time when other people, namely Mark McConnell and Frank McBrearty Junior were coming down the car park from the scene of the alleged murder.
- 6.63. One of the requests made by Detective Inspector McGinley related to the 9th November and covered incoming and outgoing calls to the home of Michael and Charlotte Peoples.⁷⁴⁰ The request was further processed by means of a letter from Crime and Security Branch in Garda Headquarters to the Investigation Branch in An Post, who also covered Telecom Eireann at that stage, on the 12th December 1996.⁷⁴¹ At that time an utterly appalling miasma of delay stymied legitimate investigations by An Garda Síochána. This was due to the inefficiency and neglect of Telecom Éireann to apply sufficient and adequate resources to their public obligation to assist in Garda inquiries. No-one within Telecom Eireann has attempted to stand over the deeply

⁷³⁹ Tribunal Documents (Peoples), page 871.

⁷⁴⁰ Tribunal Documents, page 871.

⁷⁴¹ Tribunal Documents, page 6462.

regrettable sense of inefficiency and lack of regard for public duty which existed at that time. The fact that such a shocking situation could block the investigation of crime has been rectified by Eircom.

- 6.64. The situation, however, serves as a warning as to what can occur, and is likely to occur, within the liberalised telecommunications market and is therefore the subject of a specific recommendation in Chapter 9 of this Report. On the 4th of July 1997 Mr. Thomas Corbett, the Head of the Investigation Branch, sent an internal reminder seeking a result on this request.⁷⁴² At more or less the same time, a reminder from Garda Headquarters was sent on the 22nd July 1997.⁷⁴³ Mr. Corbett, whom the Tribunal accepts was both honest and forthright in his evidence on behalf of Eircom, believes that it is probable that, at around this time, he received a request for expedition from Garda Headquarters which inspired his internal memo. On the 7th August 1997, a return was made to the initial Garda request of December 1996. This was a full eight months later, an utterly unacceptable and scandalous time-gap. It indicated that no calls had been made to, or from, the home of Michael and Charlotte Peoples on the evening in question.⁷⁴⁴
- 6.65. When the errors involved in this matter became known, the possibility was raised that a fraud within Telecom Éireann had been perpetrated. The Tribunal therefore caused counsel to travel to Britain to engage the services of Peter Uglow BSc CFE, an expert in telephone analysis. Mr. Uglow has given evidence in a number of cases both in this country and in the United Kingdom. Counsel made a presentation and sought the expertise of Focus Forensic Telecommunications Limited, for whom he works. Personnel from this company travelled to Ireland and were received on a number of occasions in both Dublin and Portlaoise by the staff of Eircom. Full access was also afforded to physical machinery, site inspections, personnel interviews and data records by Eircom to the Tribunal investigators.
- 6.66. The Tribunal is satisfied that the telephone data in relation to Michael and Charlotte Peoples was lost because of a changeover from tape-based methods of storing data to a mainframe, and more efficient, substitute. This occurred in the northwest of Ireland from August of 1996 and coincided with the relevant investigation. Since Telecom Éireann was then gearing itself into being a private, and profitable, company prior to its shares being sold on the public market, the emphasis was on the re-grading of services and the commercial viability of same. Records were therefore regarded primarily

⁷⁴² Tribunal Documents, page 6466.

⁷⁴³ Tribunal Documents, page 6471.

⁷⁴⁴ Tribunal Documents, pages 6491-6492. See also the statement of Joseph Butler, Network Manager, Portlaoise, Tribunal Documents, pages 6487-6488; James Mason, Technician conducting the search, Tribunal Documents, page 6504 ; and statement of James Cleary, Tribunal Document, pages 6856-6859.

as a means of generating revenue. The public benefit of telephone traffic as a means of investigating crime was sidelined. This was not due to any deliberate policy, but occurred due to a lack of oversight in this important area. When the relevant data had been retrieved and billing records had been sent out, the local staff in Donegal had basically no further use for the relevant data. Therefore, in downloading from tape onto mainframe, they, in a number of instances, skipped over relevant tapes in order, it would appear, to save time and effort. Among the tapes not downloaded from tape to mainframe, on the changeover of computer systems, was the data relevant to that date.

6.67. In a report to the Tribunal, Peter Uglow comments as follows:

Therefore, from the information provided, there is a sound engineering explanation as to why, between 30th July and 7th August 1997, when a search was carried out on the MCB to identify the source of the calls to Michael Peoples' phone on the 9th November 1996, no such calls would have been found. It is because of the method of upgrade of Telecom Eireann call trafficking system, that they didn't physically exist in the historic data records being searched. It would not be possible to replicate the search process today because none of the original mainframe hardware or data storage tapes exist.⁷⁴⁵

6.68. Peter Uglow provided the following summary of the relevant evidence:

- 3.1. From a technical prospective staff at Telecom Eireann have provided, on the most part, information that gives a justifiable explanation for the apparent lack of service in providing the Gardaí with information from their telephone data processing and billing system.
- 3.2. It is known that the old mainframe system provided particular difficulties in being able to provide timely results to Garda requests. The records pertinent to this Tribunal were made during a period when Telecom Eireann was in the process of performing a substantial hardware upgrade.
- 3.3. These calls were also made during a time when a new data retrieval system was being implemented. There was only local best practice that provided any form of audit.
- 3.4. It is questioned as to whether any collusion occurred in an attempt to hide the existence of any telephone records.
- 3.5. There is no evidence of, and it would be virtually impossible for, an individual to alter or completely delete selected original records held in the Telecom Eireann system.

⁷⁴⁵ Tribunal Documents, page 8588.

3.6. It is not possible to discount from a technical perspective, whether any human interaction attempted to prevent certain records being released.

3.7. From the analysis of documentation and from interviewing staff, on the balance of probabilities, it is believed unlikely that any attempt at suppressing information occurred within Telecom Éireann. It is believed much more likely that they were victims of a marked increase in workload as a result of Garda requests for information, and the lack of any proper systems to process or deal with them.

3.8. However, it is apparent that information was obtained through unauthorised channels. There is no evidence to suggest that responsibility for this lies with staff at either [call centre], since it could have been obtained from any number of [billing computer] terminals located in company premises throughout [Ireland].⁷⁴⁶

- 6.69. The Tribunal accepts the expert evidence of Mr. Uglow. It acknowledges the co-operation of current Eircom staff. It also acknowledges their efforts to re-jig their systems in order to provide an efficient service to An Garda Síochána. That does not excuse, however, the appalling inefficiency and neglect which characterised their response to relevant Garda requests at this time.
- 6.70. The case has been made, both in cross-examination and submission, that had Telecom Éireann responded in a timely manner, then the disasters which unfolded in Donegal would never have occurred. The Tribunal does not accept this. On the presentation to the Gardaí by Patrick Doherty, the deceased father of William Doherty, of his home telephone bill at the end of May 1997, alarm bells should have rung within the Letterkenny Division of An Garda Síochána. They did not. The Tribunal believes that Superintendent Lennon deliberately suppressed an investigation. The Tribunal believes that both he and Garda John O'Dowd lied to Detective Inspector McGinley as to the true origin of the relevant telephone calls. When, eventually, in January of 1998, Garda John O'Dowd was finally induced to produce his own home telephone bill, nothing happened to forward the investigation.
- 6.71. A series of lies, which have already been catalogued in this report, ensured that the investigation moved nowhere. That is the reality of how the Garda investigation system dealt with this matter in 1997, 1998 and 1999. Serious efforts were made by Assistant Commissioner Carty to get to the truth in this matter, but he was, again, lied to by Superintendent Lennon and by Garda John

⁷⁴⁶ Tribunal Documents, page 8592.

O'Dowd. No fair-minded person could conclude that the reception of the relevant telephone records within a reasonable period of time, of say seventy-two hours, could have made any difference to this situation.

Station Diary

- 6.72. The Tribunal has previously commented on the alterations to the station diary and the culpability, in that regard, of Garda John O'Dowd and Garda Philip Collins. The Tribunal notes the allegation of Garda John O'Dowd that the diary was altered by Garda John O'Dowd on the advice of Superintendent Kevin Lennon. The Tribunal accepts this evidence.

Chief Superintendent Denis Fitzpatrick

- 6.73. It is important to understand the case of Chief Superintendent Denis Fitzpatrick. His case, in relation to the telephone calls and his knowledge of them, was made in response to the explicit allegation by Garda O'Dowd that he, as head of the Donegal division, had involved himself in a cover-up. In evidence, Denis Fitzpatrick said the following:

In June, then, the investigation came about the phone calls. This is in June and I wanted them investigated and I spoke to Superintendent Lennon on that and I got a commitment from him in June that the whole lot would be ... completed in two weeks ... We had the information, not from Telecom Éireann, but from William Flynn, that some of the calls, the call originated on the 9th November from John O'Dowd's house to Peoples'. Now the explanation. I did discuss this with Kevin Lennon and I was assured that John O'Dowd knew nothing about that and that it wasn't John O'Dowd. And, the most likely person that did that was William Doherty because other phone calls had come from Doherty's home, as well, and the most likely man was William Doherty. And I pressed him to look at it, to get these things sorted out, to get the details, get them investigated and get a file on that. And I got assurances in June on that. I know there was a problem with getting information from Headquarters on the telephone. There was a delay on that. We worked on that. And I can tell you, Chairman, any time, once that started, any time I met any of the officers in Crime & Security I always reminded them: "Look at: we're still waiting for that. Will you ever expedite it?" And it was never suspected, I never suspected, and Kevin Lennon assured me, that he never suspected, that John O'Dowd was in any way

*involved in it; making these phone calls or being a witness to it as he has said now. It was always clearly said: Your man was, or Doherty is a fellow that would go into the house and do these things, and we worked, I worked, that was my belief. ... I was assured that William Doherty had been in the house, and I don't think he was a regular visitor, but he had been in John O'Dowd's house. Not on that – but that he was in and out of O'Dowd's house, John O'Dowd's house, and that more than likely he was the suspect for making that call. And that was the belief and that was what I was assured of and that's what I understood, and John O'Dowd was in no way suspected of being involved, in any way, in wrongdoing in that.*⁷⁴⁷

- 6.74. In answer to an explicit question, from counsel for the Tribunal, that he had been told at the time of the investigation, specifically in June 1997, by Garda John O'Dowd that his informer had made these extortion demands from his home, Denis Fitzpatrick denied it. He also denied that he had advised Garda John O'Dowd to stay silent on the matter.⁷⁴⁸ In answer to the Tribunal, Denis Fitzpatrick said that when he learned about an extortion telephone call having been made from the home of a Garda, he was determined not to investigate it personally. This was the job of Superintendent Lennon. **Neither Superintendent Lennon, nor any other officer, investigated the telephone calls with the knowledge that is now available to the Tribunal, according to Denis Fitzpatrick. In the case of Superintendent Lennon and in the case of Chief Superintendent Fitzpatrick, the Tribunal has reluctantly concluded that this was because of their dishonesty.** The following exchange occurred in the cross-examination of Denis Fitzpatrick:

Q. Chairman: Wait now, what was your state of knowledge at the time about the phone calls? What did you know about the phone calls?

A. Yeah. I knew the phone call had been made on 9th November.

Q. Chairman: What did you know about it? Oh, you, mean you knew the hoax?

A. Yeah, no, sorry, the extortion.

Q. Chairman: The extortion call?

A. Had been made from John O'Dowd's number to the

⁷⁴⁷ Transcript, Day 269, pages 67-69.

⁷⁴⁸ Transcript, Day 269, page 70.

Peoples'. I knew where they applied for it and I knew the only information that had come in on it came from Billy Flynn, the private investigator, and that information came down, I think it came via headquarters and that was the information I had at that stage.

Q. Chairman: So, the state of your knowledge, correct me please if I am wrong, the state of your knowledge at the time was that Billy Flynn was alleging that the extortion phone call that was received by the Peoples had its origin in Garda O'Dowd's house?

A. Yes.

Q. Chairman: Am I right?

A. That's correct, one of the phone calls and the other was from the Doherty's house.

Q. Chairman: Am I summarising the state of your knowledge or did you know more about it than that?

A. That's all I knew.

Q. Chairman: Right, how did you know that?

A. I knew that from correspondence from Billy Flynn.

Q. Chairman: Billy Flynn?

A. Yes.

Q. Chairman: What about any conversation you might have had with Superintendent Lennon about it? I understood you to say that you were aware of this through Superintendent Lennon, am I wrong?

A. Aware of the phone calls.

Q. Chairman: Yes.

A. No – well, I got it from headquarters. It came from headquarters. It came down from headquarters as far as I can remember.

Q. Chairman: That's all right, yes. I'm asking you, had you had any discussion with Superintendent Lennon about these phone calls?

A. Certainly, I had, yes.

Q. Chairman: You had. What had he told you about them?

A. He told me there's no way that John O'Dowd would have made any of them phone calls. That was his view of it, and that it was more than likely that William Doherty made it from John O'Dowd's house.

Q. Chairman: Very good.

A. And the suggestion was, I said, look at, this William Doherty guy seems to be a problem, if all them phone calls ...

Q. Chairman: Would you pause there. Am I correct in saying the state of your knowledge was as follows: You knew that extortion phone calls had been made to the Peoples?

A. Yes.

Q. Chairman: You knew that William Flynn was alleging they came from Garda O'Dowd house?

A. Exactly, yes.

Q. Chairman: You knew that Superintendent Lennon had advised you that it was unlikely that it was Garda O'Dowd who made the phone calls and had advised you that it was probably Doherty who made the phone calls?

A. Yes.

Q. Chairman: Is that right?

A. That is correct, yes.

Q. Chairman: All right. Am I summarising the full extent of your knowledge?

A. That's correct, yes

Another Revelation

- 6.75. Another startling revelation was made by John O’Dowd in the course of the Tribunal hearings, this time in November 2004. John O’Dowd claimed that on the 29th of June 1997, he had walked into Chief Superintendent Denis Fitzpatrick’s office and covertly taped a telephone conversation between them. The Tribunal has both listened to the tape and carefully examined the transcript of this meeting. Denis Fitzpatrick does not deny that he is one of the parties talking on the tape. His impression of this event was that a message had come to him concerning William Doherty, as a result of which he had rung Garda O’Dowd. The Tribunal is of the view that the tape quality indicates, in certain portions, that the meeting is taking place face to face and not over the telephone. Garda O’Dowd places this meeting as having occurred on the 29th of June.
- 6.76. No real explanation was proffered by John O’Dowd as to why he would go and covertly tape his own Chief Superintendent. He claims that because the Barron investigation was beginning to go wrong, which at that stage (prior to the withdrawal of McBride’s statements) it was not, that he might be blamed for all the errors, according to his perception, on which it had been based. The Tribunal rejects this explanation as nonsensical.
- 6.77. The real reason had to be more underhand, given the sinister behaviour of Garda O’Dowd. **The Tribunal has decided that Garda O’Dowd and Superintendent Lennon had revealed to Chief Superintendent Fitzpatrick that this series of extortion telephone calls to Michael Peoples had taken place through the use of a Garda informant and the use of the private telephone line of a Garda. They wanted proof that Chief Superintendent Denis Fitzpatrick was aware of this and, in order to forestall any discipline charges that might arise in the future, were determined that they would be able to show that the cover-up had been authorised at the highest level in Donegal. If Garda O’Dowd is to be believed on this, and the Tribunal finds it very difficult to believe him about anything, he claims that this was the second time that he had taped the Chief Superintendent, the first being on the 24th of June. On that date, the relevant tape was stated by Garda O’Dowd to have revealed conclusive admissions by the Chief Superintendent that he was involved in the cover-up of the crime committed against Michael and Charlotte Peoples, and the deliberate diversion of the investigating officers into blind alleys. The tape, if it ever existed, no longer exists.**
- 6.78. However, the tape of the 29th of June provides confirmation of the culpability of the Chief Superintendent and the manner in which he left

Detective Sergeant Sylvester Henry to produce an incomplete investigation that could not possibly lead anywhere.

The Tape of the 29th of June 1997

6.79. The conversation between Chief Superintendent Fitzpatrick and Garda O'Dowd probably took place in the Chief Superintendent's office. It is obvious that they were on familiar terms. The Chief Superintendent is not addressed as "Sir", or in any other formal way. The conversation begins out of nowhere, and without any preliminaries. Garda John O'Dowd 'reveals' that his informer William Doherty had been taken in by the 'Provisional IRA' and tortured. They were supposed to have knocked out two of his teeth. Bizarrely enough, they chose molars rather than front teeth which would be considerably easier to extract through violence. They also tortured him by applying a naked flame to his genitals. This is part of the transcript:

Garda O'Dowd:	I had only a sort of brief conversation with him. He is to ring me later this evening some time. He said they gave him a bad going over anyhow. He said they burned part of him. He didn't say what part but I suppose it was his private parts by the sound of it. You know what I mean.
Chief Superintendent Fitzpatrick:	Yeah.
Garda O'Dowd:	He said they took out two teeth so [INTERRUPTION].
Chief Superintendent Fitzpatrick:	The fuckers.
John O'Dowd:	Hah.
Chief Superintendent Fitzpatrick:	They burned him in the genitals.
Garda O'Dowd:	Yeah. They stuck it in very deep.
Chief Superintendent Fitzpatrick:	Yeah.
Garda O'Dowd:	They stuck it in very deep, you know.
Chief Superintendent Fitzpatrick:	Did he tell them anything?
Garda O'Dowd:	No, he said he told them nothing but I have a funny feeling that the reason

they really did it now is because McBrearty had stopped paying them the money. They said it to him before you see. They had a chat with him before, you see. They half suspect him about this Ardagh job and they said, you know.⁷⁴⁹

- 6.80. Garda John O’Dowd goes on to explain that he believed that the McBrearty family were paying protection money to the ‘Provisional IRA’ but that they had recently stopped. In the result, William Doherty was being pressurised because, as it was described by Garda O’Dowd, he was supporting the main prosecution witness in “the Barron murder” case, namely Robert Noel McBride. The fear was expressed by Garda O’Dowd that, with Doherty under pressure, the main plank of their case against the McBreartys might fall away. In some way, which is not clear from the transcript, the McBreartys were being blamed for this.
- 6.81. The Tribunal believes that, by this stage, Garda John O’Dowd, and those supporting him within the Garda Síochána, whom the Tribunal cannot completely identify, had got word of the fact that the statements made by Robert Noel McBride were coming increasingly under suspicion. The Chief Superintendent was therefore being prepared for the possible collapse of the investigation. This later happened with the withdrawal by Robert Noel McBride of all his statements, under questioning by Detective Sergeant Hugh Smith, in September of 1997.
- 6.82. One other matter is apparent from the tape. The Chief Superintendent, by this stage, knew well that the telephone calls to the Peoples constituted a key element in the fraudulent nature of the steps taken against Michael and Charlotte Peoples. He was determined that this should not be investigated. The Tribunal has judged the demeanour of Denis Fitzpatrick in the witness box carefully and has come to the conclusion that his evidence is not to be believed. Further support for this conclusion is offered by the following portion of the transcript:

Garda O’Dowd: If I get an opportunity to see him I will take a statement off him.

Chief Superintendent Fitzpatrick: If he will make a statement as well.

Garda O’Dowd: He would make it to me but there will be no names on it, you know what I mean.

Chief Superintendent Fitzpatrick: Give me a ring shortly afterwards ...

⁷⁴⁹ Tribunal Documents, pages 8232-8233.

Garda O'Dowd: Oh Jesus Christ, oh I'm handling it pretty bad.

Chief Superintendent Fitzpatrick: It's really bad now.

Garda O'Dowd: Very bad ... Very bad and with these phone calls, it's the problem.

Chief Superintendent Fitzpatrick: It's the same crack with the [INAUDIBLE].

Garda O'Dowd: Yeah, I suspected they had, you know, you see with these phone calls. That's the problem you know.

Chief Superintendent Fitzpatrick: You better put that on a C.77.

Garda O'Dowd: Yeah. Have to.

Chief Superintendent Fitzpatrick: Especially with the confirmation, you know what I mean. Will you get him to go to the doctor?

Garda O'Dowd: Oh I will, yeah. It would be very dodgy now me meeting him any more anyhow.

Chief Superintendent Fitzpatrick: We will have to deal with [INAUDIBLE] as well, you know. Deal by phone at the moment. They're an awful shower of bastards.

Garda O'Dowd: Oh Jesus.

Chief Superintendent Fitzpatrick: Sure that's not new.

Garda O'Dowd: Sure they did it, they did it to this fellow [REDACTED] from Strabane, and they pulled the fingernails off him.

Chief Superintendent Fitzpatrick: Yeah. It's to ensure their discipline.

Garda O'Dowd: He never reported that I am sure now you see but he didn't come back to work.

Chief Superintendent Fitzpatrick: Ah they are [INAUDIBLE].

Garda O'Dowd: They are animals, like you know, but, as the man says, if they do not get the money from McBrearty, like you know, like they, the last time you see they brought him in before and you see they know.

Chief Superintendent Fitzpatrick: If McBrearty, if he is not in the IRA they will turn on him eventually won't they?

Garda O'Dowd: They probably would. But I'd say, like you

see, what he hopes to gain out of this, yeah see if the Provos are putting pressure on this fellow now to have [INAUDIBLE]. He is very good friends with McBride and he is keeping McBride right that seemed what happened.

Chief Superintendent Fitzpatrick: Yes.

Garda O'Dowd: Because McBride will fall away like that. He is keeping him right and only for he is

Chief Superintendent Fitzpatrick: Doherty is keeping [UNAUDIBLE].

Garda O'Dowd: Doherty is keeping McBride right. McBrearty doesn't want – he wants McBride to fecking disappear more or less like you know.

Chief Superintendent Fitzpatrick: Right.

Garda O'Dowd: He doesn't want the statement. He believes that is the one major thing against him and he knows that.

Chief Superintendent Fitzpatrick: Right.

Garda O'Dowd: If he had that out of the way he may be able to make some headway some other direction, you know. The only way he can get out of the way is to get Doherty out of the way and to put some pressure on Doherty.

Chief Superintendent Fitzpatrick: Surely.

Garda O'Dowd: Now, obviously, he stopped paying his money so that the Provos would react.

Garda O'Dowd: He has already gone to them to ask them to have Doherty stop McBride from making a statement. That's really what's going on.⁷⁵⁰

Kevin Lennon and the Tribunal

6.83. John O'Dowd alleges that Kevin Lennon had a continuing influence over his failure to tell the truth. He goes so far as to ascribe to Superintendent Kevin Lennon the initial decision to cover up the fact that Doherty had made telephone calls from his home to that of Michael and Charlotte Peoples. The Tribunal is convinced that this is yet another example of John O'Dowd failing to accept responsibility for his own actions and seeking to blame others. The reality is that

⁷⁵⁰ Tribunal Documents, pages 8235-7.

John O’Dowd lied persistently to members of the Carty investigation team, to the Tribunal investigators, Michael Finn, Brian Steel Garvie and Patrick Cummins in their interviews with him and in the case put to the various witnesses on his behalf.

- 6.84. The Tribunal regards it as highly probable that Kevin Lennon and John O’Dowd reached a decision as to the appropriate way in which to stymie the criminal investigation, the Carty investigation and the work of this Tribunal. It is utterly wrong, however, for John O’Dowd to blame Kevin Lennon for all of this. While the initial decision was made by them, and was probably reinforced in consultation with others, the reality remains that, at any stage, Garda O’Dowd had the autonomy to tell the truth. He only did so, to a limited extent, when put under pressure by the Tribunal’s costs ruling in relation to the previous module and, even then, in a tardy fashion by making his statement only in October, 2004.
- 6.85. John O’Dowd alleges that his statement dated the 21st January 1998 is, in part, the work of Superintendent Kevin Lennon. The Tribunal accepts this. The statement is written in language that is uncharacteristic of Garda John O’Dowd. The Tribunal quotes this document now:

I am a member of An Garda Síochána stationed at Raphoe, County Donegal. On the 24th June, 1997 Michael Peoples called to Raphoe Garda Station and handed me a document, a copy of which is attached. This document was written by a Mr. William Flynn and addressed to a Ms. Helen Cullen at the Office of the DPP. In it there were allegations that my phone was used to phone Michael Peoples on the 9-11.97. I wish to state I did not make any telephone calls from my home to Mr. Peoples and neither am I aware who did this. From memory I cannot recall this date specifically and I was not aware till then, i.e. when Michael Peoples handed me the document that my phone could have been possibly used like this. I have checked Station records of the 9-11.96 and I know I was in Raphoe until 10.30 p.m. that evening. I wish to state nobody other than myself has a key to my house. Shortly after being threatened by Frank McBrearty Senior on the 28.10.96 that he would get me sorted out I noted interference on my phone line. There was also clicking noises but nothing ever said. I reported this matter to Communications Centre at the time as I believed my phone was being interfered with. In April 1997 I cancelled my account with Telecom Éireann due to persistent calling by Mr. William Flynn and this despite several requests not to be calling me at home. I reported some of these calls to Communications Centre at the time. I lost

faith in the confidentiality of my phone line and contacted a solicitor with a view to establishing who had access to my telephone accounts and also to establish whether or not it is possible to gain illegal access to my line from outside my house. Since then my girlfriend's parents have received numerous silent phone calls in the middle of the night. My parents in Sligo have received a call from a man I believed to be Mr. William Flynn after Christmas even though their number is ex-directory. Since then my elderly parents have received a number of silent phone calls. In November 1997 a document was addressed to the Secretary of Raphoe Mart which is attached along with correspondence from C/Sup. Sullivan which stated I was the subject of investigation. To date I have received no notification from anybody why this is so. I have on numerous occasions since I received the document from Michael Peoples offered myself for interview to sort this matter out as I feel I am being unfairly left in Limbo and have to suffer derogatory remarks from persons who are presently under investigation in relation to the murder of Richard Barron. I find this whole situation very disturbing. This statement is correct.⁷⁵¹

- 6.86. Far from being correct, this statement is nothing but lies. John O'Dowd never contacted a solicitor in relation to his telephone accounts. The Tribunal doubts that there were ever clicking noises on his telephone line. The Tribunal is certain that the entire statement was made up between himself and Superintendent Kevin Lennon with a view to diverting the Garda investigation. This statement has a basic characteristic. It seeks to avoid answering any question truthfully vis-à-vis the authorship of the Peoples' phone calls. Instead, its purpose is to divert Garda resources into investigating Garda O'Dowd's parents, their phone line, William Flynn, Telecom Éireann, Raphoe Mart, and leaks within An Garda Síochána. It is a disgraceful piece of work.
- 6.87. Garda O'Dowd also alleges that, during the course of the Tribunal hearings, he was buoyed up by the advice of Detective Sergeant White and Superintendent Lennon into maintaining what might reasonably be regarded as 'the party line'. On one occasion, he described a conversation with Kevin Lennon concerning likely points in cross-examination and a "dry run" at same. He claimed that Detective Sergeant John White was not present for this. The Tribunal regards it as highly likely that the relevant story was rehearsed many times, with a view to ensuring that untruth was accepted by the Tribunal. Who the parties to this were, the Tribunal is unable to say.

⁷⁵¹ Tribunal Documents 1197-1198.

The Statement of the 27th of May 1999

- 6.88. By the 27th May 1999, the Carty investigation team had already moved in to investigate the Donegal Garda Division. There was Garda pressure increasingly coming on John O’Dowd and Superintendent Kevin Lennon. A response to the issue of the phone calls needed to be made. A meeting was scheduled with members of the Carty investigation team on the 27th of May 1999 for Garda John O’Dowd. He claims that Detective Sergeant John White prepared a statement for him in handwriting. He claims to have typed it out exactly on his computer, in order to disguise its provenance, and to have delivered it to the Carty investigators. The statement reads as follows:

After receiving legal advice I wish to state the following. I am quite certain that the notebook found in William Doherty's bedroom was in fact stolen from me and planted in his bedroom. I believe that it was stolen from my jacket which I had left in the conference room at Letterkenny Garda Station during a tea break. I remember asking someone in the conference room about it afterwards, it might have been Sergeant Brendan Roche or Garda Tina Fowley, I 'm not sure. I have become aware that false memos of interview were made in the kitchen of Milford Garda Station while the prisoner William Doherty was not present and not in the interview room on the 20th September 1997. I was nervous of the last investigation into extortion phone calls made to Michael Peoples' house and I suspected Detective Inspector McGinley and Det/Sylvester Henry were trying to frame me for something which I did not have anything to do with. I was also aware that a false statement had been taken from Mrs. Roper, Crossroads, Killgordan in 1997 about Garda Collins and myself. I will only discuss my informant with a Chief Superintendent. This statement is correct.⁷⁵²

- 6.89. The main lies in this statement are that Garda John O’Dowd had consulted a lawyer; that it would be worthwhile speaking to Sergeant Brendan Roche and Garda Tina Fowley; that it would be worthwhile investigating false memos made in the kitchen of Milford Garda Station in relation to an interview with William Doherty as a prisoner; that Detective Inspector McGinley and Detective Sergeant Henry were trying to frame him; that he had nothing to do with the extortion phone calls to Michael and Charlotte Peoples; that a false statement had been taken from Mrs. Roper; and that he was conscientiously dealing with an informant.
- 6.90. Detective Sergeant White's defence to this matter is to deny it. He noted in evidence that the form of the language and the abbreviation used in relation to Brendan Roache were not his. The only evidence that this is not the language of,

⁷⁵² Tribunal Documents, page 1203.

or the form of abbreviation of, Detective Sergeant White is his own evidence. He can say this if it suits him. Any judgement on this matter cannot be taken in isolation. It is obvious that Detective Sergeant White would not simply appear out of nowhere, and for no motivation, and suddenly proffer a statement to Garda John O'Dowd in order to stymie the investigations that were ably conducted by Inspector Hugh Coll. The Tribunal notes that Sergeant Brendan Roache and Garda Tina Fowley were the persons who alleged that Detective Inspector John McGinley was seen practising, by way of some sort of a joke, as they rationalised it, the signature of Frank McBrearty Junior while he was in custody and purportedly made a voluntary statement. The purpose of the statement is therefore to draw attention to these Gardaí, and to cause statements to be taken from them.

- 6.91. On first being spoken to by Inspector Coll, Garda Tina Fowley mentioned this issue. It is possible to conclude that this was either an honest way of drawing attention to what she, and Sergeant Brendan Roache had to say, or that it was yet another elaborate conspiracy. The Tribunal is unable to make a finding on that. It notes, however, that the purpose of the statement is, like Garda John O'Dowd's statement previously quoted in January 1998, to divert attention away from the truth and to cause a myriad of investigations down blind alleys.
- 6.92. As to the involvement of Sergeant White, the Tribunal notes that, in the first instance, it was William Flynn, a private investigator, who first produced to Sergeant White handwritten records purporting to show, as they indeed correctly did, the origin of the phone calls to the Peoples' house as coming from the home of William Doherty, a Garda informer, and Garda John O'Dowd, a serving member in Donegal. This was on the 24th June 1997. Two weeks later, on the 7th of July, Sergeant White brought William Doherty and Noel McBride to Letterkenny Garda Station in order that Mr. McBride should make a further statement on the Barron/McBrearty/McConnell/Peoples affair. This cannot but be seen as an attempt to divert the course of that investigation.
- 6.93. As has been noted in a previous chapter, Detective Sergeant White has changed his account, in relation to this matter of the 7th of July 1997, on many occasions. The final version which he gave to the Tribunal was one which he felt would conform to the evidence already given. The Tribunal does not accept its truthfulness and has rejected it in favour of the account given by Detective Sergeant Hugh Smith. There is no doubt about the fact that Sergeant White became a regular visitor to the Doherty household from at least the latter part of 1997. It may be that he started visiting that household earlier. It seems inconceivable that a conscientious

Member of An Garda Síochána would visit the home of someone who was, at that time, purporting to be an IRA informer, thereby drawing attention to them and an ordinary police informer for the same reason. No satisfactory explanation has been given for these visits.

- 6.94. Following the arrest of William Doherty, and his interrogation at Milford Garda Station, Detective Sergeant White became keenly interested as to what questions may have been asked concerning his involvement in the Barron investigation.
- 6.95. Finally, in this regard, the Tribunal noted in Chapter 5 the evidence of Assistant Commissioner Kevin Carty. He told the Tribunal that on the 7th October 1999 he met Detective Sergeant White, as a result of an arrangement made through a third party, at an hotel in County Monaghan. The contest in credibility between the two men was so extreme that even the circumstances of the meeting and why it had been arranged were contested issues. Detective Sergeant White, it was claimed by Assistant Commissioner Carty, told him that on the morning after Mr. Barron's death, which could either mean the 14th October or the 15th October 1996, he was telephoned by Garda O'Dowd and Garda Mulligan. His advice was sought as to their presence in a public house at a time when Garda Mulligan ought to have been conducting duties relevant to the crime which was committed against Mr. Barron.⁷⁵³ For the purpose of avoiding any doubt, the Tribunal has previously found that this crime was capable of being regarded as dangerous driving causing death. Gardaí Mulligan and O'Dowd then came to Sergeant White's home. He advised them to tell the truth. They indicated that, instead, they were proposing to consult a solicitor. This conversation is denied by Detective Sergeant White. **The Tribunal has carefully observed the demeanour of both Assistant Commissioner Carty and Detective Sergeant White. It has concluded that Assistant Commissioner Carty is to be believed in relation to his account.**
- 6.96. **The Tribunal notes the lies which it has been told by Detective Sergeant White. It also concludes that these lies do not determine this issue. Having regard to all of the above facts, the statement of the 27th of May 1999 cannot be seen in isolation from its broader context. It appears probable to the Tribunal that John O'Dowd also lied to the Tribunal in relation to the alleged drafting by Sergeant John White of this statement.**

Superintendent Lennon

- 6.97. The Tribunal is satisfied that there were additional conversations, on the Peoples phone calls issue, between Superintendent Lennon and Chief Superintendent Fitzpatrick. The telephone traffic between Garda John O'Dowd and

⁷⁵³ Transcript, Day 319, pages 3-107.

Superintendent Kevin Lennon, then stationed in Buncrana, during October and November, while the Barron investigation was in its formative stage, was disproportionate to any rational explanation based upon social acquaintance. It is also difficult to reconcile it with Superintendent Kevin Lennon's explanation to the Tribunal that he was attempting to follow through on Chief Superintendent Denis Fitzpatrick's instructions to make some kind of an assessment of William Doherty on an urgent basis. That assessment did not take place, insofar as it took place at all on the footing of an assessment, until a date approaching Christmas of 1996, according to Superintendent Lennon. **In this regard, the Tribunal accepts the evidence of Denis Fitzpatrick that even while Kevin Lennon was a Detective Inspector in Letterkenny, and before moving to Buncrana as a Superintendent, he had some contact with William Doherty and, in this context, with John O'Dowd.**

- 6.98. After whatever telephone conversations, or face-to-face meetings, took place between Superintendent Kevin Lennon and Chief Superintendent Fitzpatrick, it is reasonable to infer that Superintendent Kevin Lennon was determined not to be seen as someone who was engaged in actively investigating the Peoples' phone calls. His diary entry of the 2nd of July 1997 bears this out. In it, he laconically notes that he was asking Detective Inspector John McGinley to complete the investigation file. **The Tribunal is satisfied that Superintendent Kevin Lennon's purpose, apart from distancing himself from the cover-up, was to ensure that if anyone got into trouble it was going to be another officer, and preferably one who knew nothing about what was going on. The Tribunal accepts that Superintendent John McGinley knew nothing about the cover-up of the truth in relation to the telephone calls to the Peoples. In a similar way, after the search of the Gallagher farm in early March of 1997, Kevin Lennon persuaded Chief Superintendent Fitzpatrick that it was a good idea, on what basis it is completely unclear, for Superintendent Kevin Lennon to cease handling William Doherty but that the responsibility should be placed upon the shoulders of Detective Inspector McGinley.**
- 6.99. Finally, the Tribunal considers that the startling events of the 7th of July when Sergeant John White, who had no other business on his hands, inveigled Detective Sergeant Hugh Smith into taking a statement from Robert Noel McBride, was motivated by similar considerations of distancing himself from any connection to Mr. McBride and Mr. Doherty.

The Investigation

- 6.100. The investigation into the extortion demands made to Michael Peoples was a

shambles. The Tribunal is satisfied that Garda John O’Dowd was aware that some such strategy, as eventually engaged in on November the 9th 1996 by William Doherty, was likely to have been pursued by him. While he may not have envisaged the bizarre series of extortion demands made by William Doherty to Michael Peoples, William Doherty was the kind of maverick individual who might do anything. **There is no other explanation for the terminology at the beginning of Garda John O’Dowd’s statement whereby he explains how William Doherty came to him and told him that, to paraphrase, Michael Peoples was on the hook, or had taken the bait. This implies in a definite way, foreknowledge by Garda John O’Dowd that some underhand plan was afoot to trap the alleged third man involved in the murder scenario into admitting his guilt. The Tribunal is satisfied that Kevin Lennon became aware of this very shortly afterwards. It was probably not until June of 1997 that Chief Superintendent Fitzpatrick became aware.**

- 6.101. In mitigation of the Tribunal’s findings against Chief Superintendent Fitzpatrick, it must be said that it is highly probable that Kevin Lennon presented the scenario which had occurred to Chief Superintendent Fitzpatrick in a way that convinced him it was important from the point of view of the reputation of An Garda Síochána in Co. Donegal that the matter should not be revealed. It probably was. That, however, does not make this either right or honest.

The Official Report

- 6.102. Detective Sergeant Sylvester Henry was given the thankless task of completing the Garda investigation into the Peoples’ phone calls. Thankless, because he was being fed lies by his colleagues and superiors. In his report, commenting on the work of Detective Sergeant Henry, of the 3rd of Mach 1998, Superintendent Lennon had the following comments to make to the Director of Public Prosecutions on the Barron investigation insofar as it touched on the Peoples’ telephone calls:

It has been established that this fifth call was made from subscriber number [redacted] which is the telephone number of Garda John O’Dowd’s private home in Letterkenny. This fact was stated in correspondence received from the private investigator Billy Flynn and the member, on becoming aware of this correspondence, undertook to volunteer a copy of his private telephone printout to the members investigating this particular complaint. This printout was supplied by the member in the recent past and it confirmed that this fifth telephone call was indeed made from Garda John O’Dowd’s private home. Michael Peoples, who knows Garda John O’Dowd well, has stated that it was

definitely not Garda O'Dowd's voice on the telephone during the course of this last telephone call. It has now been established that William Doherty supplied Garda John O'Dowd with information on an ongoing basis and as a result would have been in Garda O'Dowd's private home for this purpose. It is thereby possible that William Doherty made this telephone call while he was in the member's home. The investigation file into this particular complaint is expected to be completed in the near future and the file will be forwarded on completion.⁷⁵⁴

- 6.103. It is inconceivable that Superintendent Lennon would have written this passage without first of all discussing the matter with Garda O'Dowd. It is to be noted that William Doherty is nominated as the party making the call from Garda O'Dowd's home, whereas Garda O'Dowd later decided to nominate a dead person as the party making the call.
- 6.104. It is very difficult to see Detective Sergeant Henry, in furnishing this report of the 3rd of June 1998, taking issue with the view proffered by his own Superintendent. He said:

However, it is my firm belief that Garda J. O'Dowd was totally unaware of the elaborate conspiracy which was going on between William Doherty and Noel McBride, as is evident in the statements made by Noel McBride to D/Sergeants Henry and Smith on the 16th of September 1997. The question remains about the call from Garda O'Dowd's private home to Michael and Charlotte Peoples at 10.06p.m. on 9/11/96. Both the Peoples have said to D/Sergeant Henry that it was not Garda J. O'Dowd's voice on the phone as he has a much deeper voice. Garda O'Dowd has stated that nobody lives in this house only himself and that he did not make this call nor does he know who did.⁷⁵⁵

However, Detective Sergeant Henry went as far as he could to spell out the very serious issues, which ought to have been pursued by the officers to whom his report was submitted. In the course of his investigation, he established that Garda O'Dowd had accessed his mini-call service from his home number at 21.48.07 hours, shortly before the call at 22.06 hours to Michael Peoples. In order to access the mini-call service, he had to key in his personal access number. It is likely, therefore, that he was at home and not out on Garda business at that time. This called for an explanation which was never given because it tends to conflict with Garda O'Dowd's story that he lived alone in the house and that he did not know who made the call to the Peoples. Clearly, there was ample basis for further action and inquiry perhaps leading to disciplinary proceedings against Garda O'Dowd rooted in Detective Sergeant Henry's report. The officers took no action at the time.

⁷⁵⁴ Tribunal Documents, pages 7-8.

⁷⁵⁵ Tribunal Documents, pages 42-46.

- 6.105. An elaborate letter, dated the 29th of July 1998, accompanied that report when Superintendent Lennon sent it to Chief Superintendent Fitzpatrick on the 29th of July 1998. In it, Superintendent Lennon refers to the proposition that the mere fact that a telephone is in someone's home does not prove that a person had possession of it. This tends to exonerate Garda O'Dowd. What he does not state is that there was ample evidence suggesting that two individuals agreed on a course of criminal conduct. Such conduct, in plain terms, is an indictable conspiracy carrying an unlimited penalty. In writing to the State Solicitor for Co. Donegal in November of 1998 Superintendent Lennon makes the same points.⁷⁵⁶

Letters to Eircom

- 6.106. By way of a footnote to this matter, the Tribunal draws attention to the fact that support for its conclusion is also provided from the discovery which has been made available to it as a result of the full co-operation of Eircom. John O'Dowd's January 1998 statement emphasises that he had been on duty in Raphoe at the relevant time. In fact, the documents supporting this were a forgery. The Tribunal links this activity with two letters be sent to Éircell and to Telecom Éireann. **The Tribunal considers that this letter was, in all probability, drafted in quorum with more intelligent and knowledgeable individuals, certainly Kevin Lennon.** The letter is addressed to the Data Protection Officer and reads:

I wish to make application under the Data Protection Act 1988 to have details of my phone records erased. I cancelled my contract with Telecom Éireann in mid-1997 due to abusive telephone calls I was receiving ... I now have knowledge my telephone records were distributed without my permission during the course of this investigation, to persons who were not entitled to have them. In order to protect whatever little privacy I have left, I now want my telephone records erased and removed from computer records forthwith, in respect of telephone number [redacted] in accordance with the Data Protection Act 1998. I have also made a similar application to Éircell and I attach a copy of my correspondence to Mr. Alfie Brown for your perusal. Please acknowledge when this matter has been attended to.⁷⁵⁷

Conclusions

- 6.107. The Tribunal has reached the following conclusions:
1. It cannot be proved that either Garda John O'Dowd or Superintendent Kevin Lennon planned specifically that William Doherty would make an extortion telephone demand to Michael Peoples with a view to entrapping him into revealing evidence as to this supposed involvement in the murder of Richard Barron.

⁷⁵⁶ Tribunal Documents, pages 12-21.

⁷⁵⁷ Tribunal Documents, page 8486 (letter to Telecom Éireann), page 8487 (letter to Éircell).

2. However, Garda John O’Dowd must have been aware that William Doherty was manipulating evidence through various means that meant that he would be unable to control him as to the methodology which he chose to adopt.
3. The telephone calls attempting to extort money from Michael Peoples were approved by Garda John O’Dowd, including the one made from his home on the 9th of November 1996. He supported this conduct as a strategy to entrap Michael Peoples. It was later more widely approved of, within the conspiracy to frame Mr. Peoples, Mr. McBrearty Junior and Mr. McConnell, as a legitimate tactic to ensure the creation of evidence against parties believed to be guilty of the crime, in conspiracy with Garda Philip Collins.
4. When Garda John O’Dowd realised that the telephone call could be traced he, first of all, caused internal Garda documents to be fraudulently altered in conspiracy with Garda Philip Collins.
5. Garda John O’Dowd then consulted with Superintendent Kevin Lennon who advised him on a strategy of stonewalling and lying.
6. This strategy would have led to the investigation going nowhere but for the ability of private investigators to illegally obtain telephone records. The efficiency of the State system of investigating telephone communications had been left by Eircom in an appalling state.
7. When, in June 1997, it became apparent that William Doherty and Garda John O’Dowd were involved in these telephone calls, Superintendent Kevin Lennon advised Garda John O’Dowd on a strategy of refusal to answer questions.
8. At this time, from June through to the end of 1997, the catastrophic collapse of the evidence of Robert Noel McBride was occupying the time and thought of Detective Inspector John McGinley. Probably for that reason, and definitely for reasons which required that he be disconnected from any responsibility in investigating the matter, Superintendent Kevin Lennon required him to complete the investigation file into the Peoples’ phone calls. The idea was to push another burden on top of Detective Inspector McGinley and thus to distance Superintendent Lennon from the matter.
9. In June 1997, Garda John O’Dowd and Superintendent Lennon revealed to Chief Superintendent Fitzpatrick that an extortion call

had been made from the home of a Garda. For reasons probably connected with the good name of the Gardaí in Donegal, Chief Superintendent Fitzpatrick authorised a cover-up.

10. When, eventually, in January 1998, Garda John O’Dowd produced the billing records for his home phone, it confirmed that a call had been made from his home to the home of Michael Peoples, attempting to extort money. John O’Dowd then knew that he was going to be faced with questioning by his superior officers. Superintendent Kevin Lennon then advised him to deal with the interview by stonewalling every question. The chaotic state of the Garda discipline regulations, and of Garda management, allowed this. This shocking situation continues as of the time of this report.
11. The ultimate conclusions in the investigation file, prepared by Detective Sergeant Henry, were manipulated by Superintendent Kevin Lennon. Detective Sergeant Henry bears no blame for this and attempted to investigate the matter as conscientiously as he could without the support of his superior officers. Equally, Superintendent John McGinley bears no blame for his failure to get to the bottom of the Peoples’ phone calls. He and Detective Sergeant Henry were lied to.
12. Three different versions of how the Peoples’ phone calls occurred have been given by John O’Dowd. One version, given through the report of Superintendent Kevin Lennon, suggests that William Doherty made the telephone calls. A version to the Carty team in 1999 suggested a dead person as having been responsible for making the phone calls. Finally, after a number of his colleagues had been refused costs, for their non-cooperation and deceit, in the explosives module before this Tribunal, John O’Dowd produced a written statement which the Tribunal is satisfied is largely correct. The Tribunal does not agree, however, that Detective Superintendent Shelly had any part to play in these extraordinary events. The allegations made by John O’Dowd against Detective Sergeant White are unproven. The Tribunal is mindful of the infirmity of the evidence of John O’Dowd, notwithstanding the lies which it has been undoubtedly told on other issues by Detective Sergeant White.

CHAPTER 7 THE VIGILANTES

Introduction

- 7.01. In this Chapter, the Tribunal deals with events which occurred on various dates after mid October 1996. Detective Garda Patrick Flynn of Lifford Garda Station gave evidence to the Tribunal of being approached by Derek “Darcy” Connolly and being told by him that there was a witness who had seen Mark McConnell in Raphoe at about 01.30 hours on the 14th of October 1996 and that he was crying. This information was repeated, with variations, on the 3rd of January and on the 8th of January 1997. The name of the witness was given as Roderick Donnelly. Garda Flynn was told that he had been sitting in a car in Raphoe when he observed Mr. McConnell and his demeanour was such as to be broadly consistent with someone who had been engaged in an assault on Mr. Barron and some parts of this story coincided with the story that had been told by the false witness Robert Noel McBride.
- 7.02. Arrangements were made for Roderick Donnelly to give a statement to Garda Flynn and this statement was duly forwarded to the incident room.
- 7.03. This statement was entirely false. Roderick Donnelly had not seen Mr. McConnell at the place or at the time which he alleged. It is unlikely that he was sitting in the car as he alleged and probably was not in Raphoe that night at all.
- 7.04. Not only was there a false statement from Roderick Donnelly, but others alleged that they were with Roderick Donnelly at the time and represented that they were in a position to corroborate in part his story. They alleged that they had made statements to this effect.
- 7.05. Not content with attempting to manufacture false evidence against Mr. McConnell and indirectly against Mr. McBrearty, this group distributed fliers and business cards alleging that the McBreartys were guilty of murder. They painted slogans on the road carrying the same message and they set about vilifying the extended McBrearty family by a variety of means such as crossing themselves on the street when they passed the McBreartys.
- 7.06. It is appropriate that in this introduction the name of Paul Roulston, one of that group, should be mentioned. Having participated in this enterprise, Paul Roulston made a clean breast of his actions when questioned by the Carty Investigation in 1999/2000. He has continued to do so throughout the Tribunal hearing. The Tribunal found his evidence refreshing and different in that it believes much of what it was told by him. It contrasts this evidence with the continued lies and

deceit which were offered by way of evidence to the Tribunal by the remainder of the group.

- 7.07. The Tribunal was deeply concerned that there may have been a Garda involvement behind this group's activities. In particular, it appeared to the Tribunal that there was some evidence to indicate that the changes in the story given by Roderick Donnelly occurred from time to time so as to make it conform to the false statement given by Robert Noel McBride. The Tribunal is of the view that Roderick Donnelly did tailor his statement and that in so doing made it conform to the statement of Robert Noel McBride to a greater extent than it had done up to that point. However, the Tribunal is unable to say that there was any Garda hand guiding these changes. Knowledge of the contents of the McBride statement might well have come to Roderick Donnelly or his handlers otherwise than from Garda sources. Accordingly, the Tribunal is not prepared to make any finding that there was a Garda involvement in this aspect of the matter.
- 7.08. The Tribunal can only speculate as to why this group behaved as they did. It identifies the fact that many of the members of this group are friendly with the Barron family and were friendly with the Late Mr. Barron. It has no doubt that the evidence against Mr. McConnell, which was created by these false statements came into existence after Mr. McBrearty had made his alleged confession on the 4th of December 1996 and at a time when up to then there was no evidence against Mr. McConnell. It is probable that persons sympathetic to the Barron family saw it as a possibility that the persons whom they wrongfully perceived as being guilty of the death of Mr. Barron were escaping punishment.
- 7.09. It is relevant to point out that all of these activities relate to a time after all of the suspects had already been arrested (the 4th of December 1996) but prior to Mr. McConnell's second arrest (the 11th June 1997).

Statement of Roderick Donnelly, the 20th of January 1997

- 7.10. It is common case that Roderick Donnelly made a statement to Detective Garda Patrick Flynn at Lifford Garda Station on the 20th of January 1997. The statement was written down by Detective Garda Flynn and signed by Roderick Donnelly. It states as follows:

I live at home with my parents and one brother. On Sunday, October 13th 1996 I came into town with Kieran Roulston, Carnshannagh, Raphoe in Kieran's car, a red Vauxhall Nova. We came into town (Raphoe) at about 10.30 p.m. We drove about for a while and then drove to the technical school gates above the Parting Glass and at the top of St. Eunan's Terrace. We parked there and sat for a good while. That was after 11.00 p.m.

Kieran went to sleep a while later and woke up at about 12.45 a.m. (14/10/1996). He drove the car down to Brollys Hairdressers and crossed to Reynolds shop and parked. Kieran went off to sleep shortly after he parked. Between 1 a.m. and 1.10 a.m. I was still sitting in Kieran's car and he was still asleep. I saw Mark McConnell and two women walking up the street from the Diamond direction. They were on the same side of the street as the Parting Glass. Mark looked very scared looking and his hair was wet and tossed. His clothes looked to be wet as well. He was staring straight ahead of him. I don't know the two women with him and cannot describe them either because I paid no attention to them. They were definitely with Mark because there was one each side of him. The three walked by the Parting Glass and I could see they were going towards Mark's car, a white Toyota Corolla. This was parked near a pole in a small car park opposite Reynolds near the technical school gates. I didn't see them get in the car as I looked round to my front again. We sat in the car in the same place until about 2 a.m. I never noticed Mark McConnell or the women go past. I didn't see his car either. When Kieran woke up about 1.30 a.m. I told Kieran about Mark McConnell and how he looked scared and shook up like he had been fighting. We drove about a while after 2 a.m. and then went home. I saw nothing more that was unusual that night. I didn't hear about Richie Barron being killed until the next day. I never saw Richie at all that Sunday night. This statement has been read over to me and is correct. I do not wish to change it.⁷⁵⁸

Evidence of Roderick Donnelly

- 7.11. In his evidence-in-chief, Roderick Donnelly stated that on the evening of the 13th of October 1996 he had gone into Raphoe with his friend, Kieran Roulston, in Mr. Roulston's car. After some time driving around the Diamond in Raphoe, they parked across the road from Frank McBrearty's nightclub. Kieran Roulston put the driver's seat back and went to sleep. Mr. Donnelly stated that at some stage he saw Mark McConnell walking up the street with two females. He was not sure of the time, except that it was after 01.00 hours. They proceeded past his car in the direction of the technical school.⁷⁵⁹
- 7.12. He went on to say that Mark McConnell's hair looked wet. However, he also told the Tribunal that when he saw Mark McConnell on subsequent occasions his hair always looked wet, or gelled. The only other thing he noticed was that Mark McConnell was looking straight ahead of him. He had the appearance of having consumed quite an amount of alcohol. He stated that the only reason he mentioned this sighting to Kieran Roulston was due to the fact that Mark

⁷⁵⁸ Tribunal Documents, pages 3141-3142.

⁷⁵⁹ Transcript, Day 192, page 12.

McConnell had been with two females and he knew that Mark McConnell was a married man.⁷⁶⁰

7.13. Roderick Donnelly stated that at first he hadn't intended going to the Gardai to make a statement. However, when he had told Kieran Roulston what he had seen, he was subsequently approached by Derek 'Darcy' Connolly (hereinafter referred to as "Darcy Connolly") and Paul Roulston with a view to getting him to make a statement to the Gardai.⁷⁶¹ He stated that he was also visited at his home by Stephen Barron, but he was not at home on that occasion. He stated that he discussed what he had seen with Darcy Connolly and Paul Roulston. They told him about Mark McConnell's fight with Richie Barron in the pub earlier on the night of the 13th of October 1996. They also told him about the rumours which were going around the town to the effect that Frank McBrearty Junior and Mark McConnell had killed Mr. Barron. He stated that they asked him did Mark McConnell look like a boy who had been fighting, to which he replied that he could have been.⁷⁶² He stated that he said this to Darcy Connolly and Paul Roulston because he thought that Mark McConnell appeared a bit shaken when he saw him. Roderick Donnelly stated that he remained reluctant to make any statement to the Gardai until it was indicated to him by Paul Roulston, that he might be able to get something done about a pending prosecution for drunken driving, if he made a statement to the Gardai.⁷⁶³ He stated that this changed his mind. He decided that he would make the necessary statement.

7.14. Roderick Donnelly agreed with counsel for the Tribunal that what was in his statement went considerably further than what he had actually seen. In relation to the reference to the clothes being wet, he stated that that was a presumption which he made due to the fact that he had thought that Mr. McConnell's hair always looked wet. He stated that when he made the statement to Detective Garda Flynn, Paul Roulston had been in the office with him. He alleged that there had been a general discussion between him, Paul Roulston and Detective Garda Flynn, during which time the Garda was writing down what was being said so that the statement was an amalgam of what each of them were saying. He described the taking of the statement in the following way:

I went to make a statement, so I did, and I said I had seen yer man McConnell going up. To be quite honest, I think there were that many ones talking I think he was taking a bit of every story I think, do you know what I mean? ... They were talking, aye. It was this and, aye, no it was that ... They were saying this, that and the other, you know he was still writing and I was talking and everybody was talking.⁷⁶⁴

⁷⁶⁰ Transcript, Day 192, page 62.

⁷⁶¹ Transcript, Day 192, pages 44-45.

⁷⁶² Transcript, Day 192, page 48.

⁷⁶³ Transcript, Day 192, pages 41-43.

⁷⁶⁴ Transcript, Day 192, pages 53-54.

7.15. In particular, in relation to the crucial portion of the statement where it was stated that Mark McConnell looked scared and shook up, like he had been fighting, a number of different alternatives were suggested by Mr. Donnelly as to how this particular reference made its way into his statement. There was a suggestion in his evidence that it had come from discussions which he had had prior to the 20th of January 1997 with Darcy Connolly, Paul Roulston and Kieran Roulston. The suggestion was that in discussing the rumours which were circulating in the town, they somehow managed to persuade Roderick Donnelly that he had seen more than he had in fact done. Later in his evidence, he alleged that in the “general chitchat” before his statement was taken, it had been Paul Roulston who had said that Mark McConnell looked like a boy who had been fighting and that Detective Garda Flynn wrongly included that in his statement.⁷⁶⁵ Finally, he seemed to opt for a third explanation which was that Detective Garda Flynn had asked him whether Mark McConnell looked like a boy who had been fighting, to which Roderick Donnelly alleged that he replied that he had heard that Mark McConnell had been fighting earlier in the night. He stated that this reply was written down wrongly in the form that appears in his statement.

7.16. However, later in his evidence he appeared to accept that he may have formed that opinion of Mark McConnell's appearance due to what he had heard in the town:

*Well, when you hear things around the town and you see a man with wet hair, you are thinking, well, maybe he was fighting or something like that there ... It was around the whole thing, maybe that's just the way it looked just.*⁷⁶⁶

7.17. Elsewhere in his evidence, he alleged that the extra bits in his statement were as a result of prompting by both Paul Roulston and Kieran Roulston:

*[We] went up to Lifford to meet Detective Garda Flynn to make a statement, right. And Paul Roulston was up with me and I think Kieran was there as well. Right. And I was saying I seen him come up the street and they were saying, was he fighting and I says, I heard he was fighting. He had some kind of handling down the street or something but I never seen no handling, so I did. It kind of worked on from there on in just. ... They were saying, was he this was he that and I says, I heard, just that. They blew a wee thing up to a big thing more or less. That's the best I can explain to you.*⁷⁶⁷

7.18. Roderick Donnelly also denied that the statement was accurate when it said that he mentioned these things to Kieran Roulston when he woke up. He alleged that

⁷⁶⁵ Transcript, Day 192, page 56.

⁷⁶⁶ Transcript, Day 192, page 60.

⁷⁶⁷ Transcript, Day 192, page 134.

his comment to Kieran Roulston had, in fact, been made some time later and not on the evening in question.

- 7.19. Roderick Donnelly accepted that the statement was signed by him after it had been read over by Detective Garda Flynn. However, he alleged that it had been read over to him very quickly. He said that he was not listening to half of it. That was his explanation as to why he did not correct what he alleged were the errors in the narrative at that time.
- 7.20. In relation to the pending drink-driving charges, Roderick Donnelly stated that when the statement was completed, he asked Detective Garda Flynn about them, to which he alleged that Detective Garda Flynn replied that if he had come in earlier, he might have been able to do something, but that he could do nothing at that stage.
- 7.21. Roderick Donnelly had been asked about this statement on other occasions. He was visited by Detective Garda Joseph Foley on the 12th of November 1997. Detective Garda Foley was trying to confirm Roderick Donnelly's previous statement. On that date, Roderick Donnelly told him that having seen Mark McConnell on subsequent occasions, he realised that Mark McConnell's hair always looked wet due to the fact that he wore cosmetic hair gel in it. He went on to tell Detective Garda Foley that if the Gardai wanted to know more, they should go and speak to Darcy Connolly.⁷⁶⁸ Roderick Donnelly accepted that that encounter with Detective Garda Foley took place. He said that he had referred the Garda to Darcy Connolly because he thought that Mr. Connolly was pushing the Gardai onto him to get him to make further statements.

Allegation of Concoction

- 7.22. Roderick Donnelly denied in evidence that his statement on the 20th of January 1997 was a concoction thought up by him, Paul Roulston, Darcy Connolly and Kieran Roulston. However, in previous statements to the Carty team he had stated otherwise. In a statement made on the 9th of March 2000 to Detective Garda Hugh Maloney, he stated that he now wanted to give a true and proper account of what he had seen that night. He stated that he would tell the Gardai later on how the incorrect material got into his first statement and the reasons why it was said. He gave the following account as to what he had seen:

Around half one [1.30 a.m.] I was sitting in the passenger seat of Kieran Roulston's car with Kieran asleep and I saw Mark McConnell walking from the direction of the entrance to Frankie's car park. He was on the street directly beside the entrance to the car park of Frankie's nightclub. He looked as if he walked down from the entrance to the car park/nightclub.

⁷⁶⁸ Transcript, Day 200, pages 101-103.

I had full view of the entrance to the car park but not a view of the entry door to the nightclub. There were two women with him, one on each side of him. I don't know either of them. I knew Mark McConnell as both of us worked on different Fás schemes at the same time. I didn't know him well but I knew him to see. Mark and the two women walked towards the tech, St. Eunan's Terrace direction. What caught my eye was the two women with Mark, one on each side of him. I knew he was married and the only thing that drew my attention was the two women with him. Mark McConnell looked like a boy that had a good drop of drink taken. That's about the height of it.

- 7.23. He went on to state that he told Paul Roulston what he had seen in Raphoe. He stated that he said that he did not think what he had seen was very important. Paul Roulston told him that if he made a statement to Detective Garda Pat Flynn, that Pat Flynn would get him off his drunken-driving charge. He then continued in the same statement:

Darcy Connolly wanted me to make a statement to the guards and he got Paul Roulston to convince me to make one. I wasn't very friendly with Darcy Connolly but I would have been in his company with him several times. He asked me a few times to make a statement. I knew Darcy Connolly was friendly with some of the guards in Raphoe. Darcy Connolly told me that he had heard from the guard in Raphoe that young Frank McBrearty and Mark McConnell were supposed to have gone up through the nightclub car park and gave Richie a hammering or something. Darcy said Richie had a handling with one of the boys, I don't know which, down in one of the pubs earlier. Darcy Connolly told me he was in the Diamond in Raphoe that night Richie died and that he made a statement to the guards. Darcy reckoned that it was McConnell that killed Richie and he asked me to say to the guards that I seen Mark McConnell on the street that night and that he looked like a fellow that had been fighting. ... Before I made my statement to Pat Flynn, myself and Paul and Kieran Roulston discussed it about the statement I was to make. ... While I was being questioned by Detective Garda Pat Flynn about detail in the statement Paul Roulston was putting words in my mouth to strengthen up the statement against Mark McConnell. Paul was saying things like "Didn't you say this to me?" or "Didn't you tell me this or that?". I am saying now that the statement I made to Pat Flynn that night is not accurate but I was walked into it by Darcy Connolly and Paul Roulston.⁷⁶⁹

- 7.24. Roderick Donnelly made a similar statement after caution on the following day, the 10th of March 2000.

⁷⁶⁹ Tribunal Documents, page 3144 onwards.

- 7.25. In evidence to the Tribunal, he attempted to disown the statements made to the Carty team on the basis that he had been questioned by them for hours sitting in the back of a car. He alleged that they had twisted what he had said to suit their own purposes.⁷⁷⁰ He alleged that his statements to the Carty team were lies.

White Cross Inn

- 7.26. Before leaving the evidence of Roderick Donnelly, it is necessary to refer to a meeting which was alleged to have taken place adjacent to the White Cross Inn prior to the 20th of January 1997. It was alleged by Paul Roulston that on that occasion he drove up with Darcy Connolly in his van and parked. Roderick Donnelly then came up to them, by arrangement. He spoke to Paul Roulston through the passenger window. It is alleged that Detective Garda Flynn drove up in his car and had a conversation from his vehicle with Darcy Connolly through the driver's window. It was a short meeting for the purpose of arranging a time for Roderick Donnelly to make his statement. At first, Roderick Donnelly denied being present at any such meeting, but later when asked whether people would be incorrect if they gave evidence that he was at such a meeting, he replied that he could have been there but he wasn't sure, however he didn't think that he had been present at the meeting.⁷⁷¹
- 7.27. Roderick Donnelly denied in his evidence that he had ever said to anyone that he had seen Frank McBrearty Junior on the night in question.

Evidence of Paul Roulston

- 7.28. Paul Roulston stated that the rumour in the town, as he put it, was that Mr. Barron's death had been murder. He stated that William Doherty emerged onto the scene and appeared to be very concerned for a person who had not been in their crowd; by which he meant those, like the Late Mr. Barron, involved with horses prior to that time. He described how very soon there was a vendetta among certain elements in the town against the McBreartys. He stated that he just got rolled into the whole campaign against them. He stated that the Gardaí and ,in particular, Garda John O'Dowd seemed to be on their side against the McBreartys. He also stated that Garda O'Dowd seemed to become quite friendly with Darcy Connolly.⁷⁷²
- 7.29. Paul Roulston gave evidence that when Frank McBrearty Junior and Mark McConnell were released from custody without charge in December 1996, there was anger among their group in Raphoe. He stated that a campaign was started which was designed to get the McBreartys into bother with the Gardaí.
- 7.30. He stated that some time after Mr. Barron's death, he had asked Roderick

⁷⁷⁰ Transcript, Day 192, page 86 onwards.

⁷⁷¹ Transcript, Day 192, page 119.

⁷⁷² Transcript, Day 193, pages 122-123.

Donnelly what he had seen that night. Roderick Donnelly told him that he had seen Frank McBrearty Junior, Mark McConnell and Róisín McConnell walk up the street. Frank McBrearty Junior went in the nightclub doors and that Mark McConnell and Róisín McConnell had walked up to their car at the technical school. He stated that Roderick Donnelly told him that Mark McConnell had wet clothes and hair.⁷⁷³ In answer to subsequent questioning, Paul Roulston stated that Roderick Donnelly also mentioned that Mark McConnell looked scared.⁷⁷⁴

- 7.31. Paul Roulston went on to say that when he told Darcy Connolly what Roderick Donnelly had seen, Mr. Connolly wanted Roderick Donnelly and Kieran Roulston to make statements to the Gardaí. However, Kieran Roulston and Roderick Donnelly did not want to get involved. Paul Roulston said that Darcy Connolly told him that if he got the two men to make statements to the Gardaí, that the drink-driving charges would be dropped against Roderick Donnelly. There was also a promise by Darcy Connolly that the dangerous-driving charges which were then pending against Paul Roulston, would also be dropped, or reduced to minor changes. Paul Roulston said that he never spoke to Detective Garda Flynn about his charges. He just expected that something would be done for him; perhaps one of the Gardaí would speak up for him at the trial. However, that never happened. He stated that when Roderick Donnelly heard that there was something in it for him, he was prepared to make a statement.

Meeting Detective Garda Flynn

- 7.32. Paul Roulston described how the meeting at the White Cross Inn came about. He said that he was told by Darcy Connolly that he was to get Kieran Roulston and Roderick Donnelly to meet at that location, so as to make an arrangement for Detective Garda Flynn to take their statements. He described the meeting as very short, lasting only a number of minutes. He stated that Detective Garda Flynn pulled into the car park, spoke to Darcy Connolly through the window of the van and then drove off. He said that Detective Garda Flynn did not speak to him or to Roderick Donnelly or Kieran Roulston.⁷⁷⁵
- 7.33. Paul Roulston also gave evidence about a meeting at Detective Garda Flynn's house. He stated that he had been put up to making a statement by Darcy Connolly and Stephen Barron to the effect that he had been in the car with Roderick Donnelly and Kieran Roulston on the night of the 13th/14th of October 1996. It was arranged by Darcy Connolly that they would go to Detective Garda Flynn's house. He said that he went there with Mr. Connolly and Stephen Barron. He said that the purpose of their visit was for him to make a statement which would provide more evidence against Mark McConnell. He alleged that it was Darcy Connolly who had told him the time to put into his statement. He alleged

⁷⁷³ Transcript, Day 193, pages 146, 165.

⁷⁷⁴ Transcript, Day 193, page 183.

⁷⁷⁵ Transcript, Day 193, page 188 onwards.

that Darcy Connolly had told him to say that he was in the car that night and that he had seen three people, being Frank McBrearty Junior, Mark McConnell and Róisín McConnell, all of which were lies.⁷⁷⁶

7.34. Paul Roulston stated that on entering Detective Garda Flynn's house, he proceeded to the kitchen where Detective Garda Flynn took down a statement from him at the breakfast bar. He stated that the statement was made on headed paper with lines on it and some sort of caption or writing at the top. He was adamant in his evidence-in-chief that he had made the statement that night in Detective Garda Flynn's house. However, he could not recall if he had signed the statement.⁷⁷⁷

7.35. Counsel on behalf of Detective Garda Flynn indicated that Detective Garda Flynn would deny ever taking a statement from Paul Roulston in his house, or elsewhere. Under cross-examination Mr. Roulston said that possibly he did not make a statement on that occasion. He said that he did not know one way or the other whether he had made a statement. When it was put to him that Detective Garda Flynn would say that he was never aware that anyone alleged that there was other than Kieran Roulston and Roderick Donnelly in the car on the night in question, Paul Roulston replied: "I don't know". When asked if it was possible that he had talked about making a statement, but never actually did so, he replied: "I honestly don't know".⁷⁷⁸

7.36. In his evidence, in, chief, Paul Roulston stated that he told Garda Flynn the following in the course of his statement allegedly made in Detective Garda Flynn's house:

*I think I gave in and around the statement that Roderick did, that he came up from wherever, the street, and Frank McBrearty had walked up into the house and what do you call his girlfriend, I can't remember Mark McConnell's girlfriend's name, was along with him, and he was wet and scared looking and went up and got into the white Corolla in front of the technical school.*⁷⁷⁹

7.37. In relation to the statement made by Roderick Donnelly on the 20th of January 1997, Paul Roulston stated that prior to making that statement, Roderick Donnelly was unable to put a time on the alleged sighting. He said that Darcy Connolly was keen to put a time on this sighting. It was discussed before the statement. He stated that Roderick Donnelly was saying one time and Darcy Connolly was saying no, it was a different time. Roderick Donnelly had outlined what he was going to say, but it was not a full rehearsal of the statement. He

⁷⁷⁶ Transcript, Day 194, pages 15-16.

⁷⁷⁷ Transcript, Day 194, pages 12-13, 43.

⁷⁷⁸ Transcript, Day 194, pages 153-154.

⁷⁷⁹ Transcript, Day 194, page 13.

stated that he, Darcy Connolly and Roderick Donnelly were present for this meeting. He thought it took place after the brief meeting at the White Cross Inn. He stated that Detective Garda Flynn was not present at this meeting.⁷⁸⁰ He stated that he knew the time was critical; it put Mark McConnell coming back from the area of the scene of crime at a critical time.

- 7.38. Paul Roulston went on to describe the taking of the statement from Roderick Donnelly by Detective Garda Flynn on the 20th of January 1997 in the following way:

When we got to the Garda station, we went up the stairs and went into the office and there was a conversation. It wasn't just a ten-minute or fifteen-minute conversation, it was just a brief chat and Roderick Donnelly told Garda Flynn what he had seen and Garda Flynn wrote it down and read it over to him and he signed it and that was the end of the whole thing. ... I don't know if he was asked any questions or if he wasn't. I can't say to you like aye, he was or aye, he wasn't because it just ... I don't remember like. ... No, as I said earlier, they had a conversation and then when Roderick told him what he had seen, Garda Flynn asked him was it alright that he put down to paper and he put it on paper for Roderick. There was no – Garda Flynn didn't stop him and say, is this right, is that right, he made the statement and read it over to him.⁷⁸¹

- 7.39. Paul Roulston denied that there was any prompting either by him or by Detective Garda Flynn during the taking of Roderick Donnelly's statement. He was asked whether he intervened in any way when he heard Roderick Donnelly saying something different to what he had apparently told Detective Garda Flynn some time previously in his alleged statement. He said that he did not intervene during the making of Roderick Donnelly's statement in any way. He accepted that Roderick Donnelly's statement was a fiasco, as far as he was concerned, because Roderick Donnelly had not put him in the car. He could not explain why he had said nothing during the taking of that statement.⁷⁸² This was all the more inexplicable because, according to Mr. Roulston, he had told his brother Kieran and Roderick Donnelly that he was going to say that he was in the back of the car with them.⁷⁸³
- 7.40. Paul Roulston said that while Kieran Roulston had been in the office briefly at the beginning, to the best of his recollection he had then left the office and remained outside while Roderick Donnelly's statement was being taken.

⁷⁸⁰ Transcript, Day 193, pages 194-197.

⁷⁸¹ Transcript, Day 194, pages 50-71.

⁷⁸² Transcript, Day 194, pages 47-50.

⁷⁸³ Transcript, Day 194, page 46.

- 7.41. Paul Roulston made a number of statements to the Carty team where he set out what Roderick Donnelly had allegedly told him and also dealt with the making of a false statement by him to Detective Garda Flynn at the request of Darcy Connolly:

I asked them [Kieran Roulston and Mark Roulston] if they saw young Frank McBrearty and Mark McConnell that night and they said they did not. While I was asking my brothers about this Roderick Donnelly was present and he said he was on the street in Raphoe that night and he saw Mark McConnell and his wife and young Frank McBrearty walking up the street from McGranaghan's corner. Roderick said Mark McConnell's wife was crying and the two boys were soaking wet. Roderick said he saw Mark and his wife getting into Mark's white car near the tech and drive away and young Frank went up to the nightclub. I went and told Darcy Connolly this and he asked me would I get the two boys, Kieran and Roderick Donnelly to make statements to Pat Flynn. They went and made statements to Pat Flynn. At a later stage after this Darcy Connolly contacted me and asked me to make a statement to Pat Flynn saying that I was in Raphoe the night Richie died and to say that I had seen Mark McConnell, his wife and young Frank McBrearty come up the street from McGranaghan's corner at a certain time and to say McConnell and McBrearty were soaking wet and McConnell's wife was crying. I was to say that Frankie went up to the nightclub and Mark and the wife went to the car near the tech and drove away. Darcy Connolly told me that if I told this story to Pat Flynn and to make a statement that he, Darcy, could get the charges dropped or lightened or whatever you call it. ... When we went into the Flynn house Darcy asked me to tell Garda Pat Flynn what I had seen in Raphoe that night Richie died. At the very start I told Pat Flynn that I was not in the car in Raphoe that night but after a while I told him I was in Raphoe and I told Pat Flynn what Darcy Connolly asked me to tell him. I made a written statement to Pat Flynn that night in his house saying what Darcy and myself had rehearsed. ... I would like to say that Roderick Donnelly was with Darcy that night and the three of us met at the pub, the White Cross Inn and Darcy told myself and Roderick what to say to Pat Flynn about Mark McConnell and his wife and Frank McBrearty coming up the street the night Richie died. It was just me and Darcy that went to Pat Flynn's house and I definitely made a written statement to Pat Flynn saying what Darcy told me to say. I know that Darcy Connolly made a statement at some stage at Lifford Garda Station to Pat Flynn telling the same story that Darcy Connolly rehearsed with me and Roderick at the White Cross Inn. ...

Darcy Connolly had asked me to say that I was in the back seat of Kieran's car with Kieran and Roderick in the front, on the night Richie was killed. That story and the statement I made to Pat Flynn is lies. I was not there. And I believe that Kieran and my brother Roderick Donnelly were not at the spot they said they were in their statements but were somewhere else in the town of Raphoe. I do not know where they were but they were not at the spot they said and they did not see anything. The reason Roderick Donnelly went along with these false stories was that he had been caught for drunken driving and was told by Darcy Connolly that if Roderick made a statement to the Gardaí about seeing Mark McConnell and Frank McBrearty that Darcy could get the charges against Roderick lightened.⁷⁸⁴

- 7.42. In evidence, Paul Roulston did not try to retract any of the statements which he had made to the Carty team.

Evidence of Kieran Roulston

- 7.43. Kieran Roulston stated that it was his usual practice to socialise in Raphoe on Friday and Sunday nights. He stated that on Saturday nights he would go to Letterkenny. On this particular night, he stated that he drove into town with his friend Roderick Donnelly. They drove around the Diamond a number of times for about forty minutes. During this time, he stated that they did not see anybody that they knew. They did not speak to anyone. He stated that after driving around, he parked the car outside Reynolds electrical shop on the opposite side of the street from Frank McBrearty's nightclub. The car was facing towards the Diamond. Kieran Roulston stated that he let down the driver's seat and went to sleep.⁷⁸⁵
- 7.44. Mr. Roulston stated that after some time he woke up. He stated that they then did four or five laps around the Diamond. They did not see anyone they knew during this time. He stated that they did not go into the 'chipper' at any time. They then went home. He said that there was nothing especially remarkable about the night.
- 7.45. Kieran Roulston stated that at some time during the following week he was stopped at a Garda vehicle checkpoint. He was asked if he had been in Raphoe on the previous Sunday night, to which he replied that he and Roderick Donnelly had been in town that night. He stated that no Gardaí came to him to take a statement at that time. By this time he was aware of the rumours circulating around the town to the effect that Mr. Barron was supposed to have been murdered and that Frank McBrearty Junior and Mark McConnell were supposed to have been involved.⁷⁸⁶

⁷⁸⁴ Tribunal Documents, page 3166 onwards.

⁷⁸⁵ Transcript, Day 192, page 188 onwards.

⁷⁸⁶ Transcript, Day 192, pages 205-206.

- 7.46. Kieran Roulston stated that a few weeks after being stopped at the Garda checkpoint, he had a discussion with Roderick Donnelly who told him what he had seen:

Well, he says, that night that we were parked up, that he had seen Mark McConnell heading in the direction of the vocational school or up that direction, his hair was wet and he was scared looking. ... He said that he saw Mark McConnell coming up the street, I can't remember exactly whether he says that there was women with him or not at the time but he said that Mark McConnell was coming back up the street, heading towards the tech and his hair was wet and he was scared looking.⁷⁸⁷

- 7.47. Kieran Roulston stated that he told Roderick Donnelly to go to the Gardai to make a statement, but that Roderick Donnelly was reluctant to do so. He stated that subsequent to that his brother Paul and Darcy Connolly asked Roderick Donnelly to make a statement. Roderick Donnelly refused to do so until a promise was made that something would be done about his drunk-driving charges if he should make a statement. Kieran Roulston stated that Paul Roulston and Darcy Connolly had a discussion with Roderick Donnelly about what he had seen.⁷⁸⁸

- 7.48. In relation to the meeting at the White Cross Inn, Kieran Roulston stated that it was not an arranged meeting, but more of a coincidence. He described how at some time between 19.00 hours and 22.00 hours, he and Roderick Donnelly walked up from Kieran Roulston's house to the car park of the public house. He stated that Roderick Donnelly crossed the road and spoke through the passenger window to Paul Roulston who was in Darcy Connolly's van. Kieran Roulston stated that he remained at the far side of the road. He said that Detective Garda Flynn then drove up and spoke briefly to Darcy Connolly through the driver's window, without alighting from his car. It was a very brief meeting, less than five minutes. After the meeting, Roderick Donnelly returned to him on the other side of the road. He stated that they walked back to his house. He admitted that the purpose of their meeting was to see if Roderick Donnelly would make a statement and that he knew this before he left the house. He said that on the way back, Roderick Donnelly said that he was going to make a statement to the Gardai.⁷⁸⁹

- 7.49. Kieran Roulston's account of the taking of the statement from Roderick Donnelly on the 20th of January 1997 was that Paul Roulston, Roderick Donnelly and he travelled to Lifford in his car. He stated that they went into the office with Detective Garda Flynn where there was a brief general conversation. He stated that he could not recall what was said. He stated that Detective Garda Flynn was

⁷⁸⁷ Transcript, Day 193, pages 10-11, 15.

⁷⁸⁸ Transcript, Day 193, page 20.

⁷⁸⁹ Transcript, Day 193, pages 20-28.

not writing at that stage. He stated that Detective Garda Flynn then said: “ I’ll take your statement now” , and then started writing. He said that, on occasion, Roderick Donnelly would pause and details were obtained from him, by means of questions and answers between Roderick Donnelly and the Garda.

- 7.50. He was not able to explain how Roderick Donnelly came to give such a precise time for his sighting. Roderick Donnelly had just said to him that he had seen something while he had been dozing; he had never given a precise time before.⁷⁹⁰ He denied that there had been any coaching of Roderick Donnelly as to time. He could not explain how Roderick Donnelly could be so precise in his timing when making his statement.
- 7.51. He could not explain the reference to wet clothing in the statement. He stated that that had never been mentioned before.
- 7.52. In relation to the time when Roderick Donnelly was supposed to have made his comment to Kieran Roulston, in the statement it said:

When Kieran woke up about 1.30 a.m. I told Kieran about Mark McConnell and how he looked scared and shook up like he had been fighting.⁷⁹¹

- 7.53. Kieran Roulston said that, in fact, Roderick Donnelly had not said anything to him until a week or so after they had been stopped at the Garda checkpoint. He said that he did not react when Roderick Donnelly said this in his statement, because he was not really paying any attention.
- 7.54. It was pointed out to Kieran Roulston that in his statements to the Carty team he had said:

I woke up some time around 1.00 a.m. as far as I can remember. Roderick Donnelly said he saw Mark McConnell walking from the town towards the technical school on the opposite side to where we were parked. Roderick Donnelly said he looked to be wet and he might have said something like that Mark McConnell looked scared.

- 7.55. In a later statement made on the 14th of May 1999 he said:

When I woke up Roderick Donnelly made a comment about Mark McConnell. He says he looked scared and his hair was wet. He also says he saw him walk past on the other side of the street and going in the direction of the technical school.⁷⁹²

- 7.56. It was also pointed out that he had confirmed these two statements, without correction, on the 7th of September 1999. Kieran Roulston stated that the words

⁷⁹⁰ Transcript, Day 193, page 32.

⁷⁹¹ Tribunal Documents, page 3142.

⁷⁹² Tribunal Documents, pages 3158, 3160.

“as far as I can remember” in the first statement meant that the comment could have been made weeks later. He stated that he subsequently changed his account as to when he had been told of the sighting when he was questioned closely by the Gardaí on the issue in the year 2000. At that time, his mother said that it had been some time later that Roderick Donnelly had said what he had seen. It was for this reason that he had changed his statement to the Carty team when he made a subsequent statement on the 7th of March 2000. He denied that he had been lying in his earlier statements so as to support Roderick Donnelly's statement.

- 7.57. In relation to the reference to Mark McConnell looking like he had been fighting, which was something new or additional to what he had been told by Roderick Donnelly, he said that he did not think about that aspect. He was asked about the exchange which was alleged by Roderick Donnelly to have led to this reference to fighting being made in his statement. He could not remember any such exchange.

The Chat Excuse

- 7.58. In his statement to the Carty team made on the 7th of March 2000, Kieran Roulston had said that prior to going to Lifford he and Roderick Donnelly had had, what he called, a “wee chat”. When asked about the content of that chat, he stated that it was probably about what Roderick Donnelly had seen. He denied that they were concocting a story to tell to the Gardaí. He stated that he had merely told Roderick Donnelly to tell the Garda what he had seen; that he had seen Mark McConnell and his hair was wet and he was scared looking.⁷⁹³
- 7.59. Kieran Roulston had told the Carty team that he had made a statement to Detective Garda Flynn. This was strenuously denied by the Detective Garda. There is no evidence of such a statement in the papers furnished to the Tribunal. When questioned about when he made this statement, Kieran Roulston could not recall if he made it on the same day as Roderick Donnelly or not, nor could he recall whether the statement had been taken before or after Roderick Donnelly's statement. He could not recall if it was a long or a short statement. He could not recall what it was written on. He was unable to say whether it was dictated by him, or made in answer to questions, he thought that it was probably a bit of both. He could not recall what he had said in the statement.⁷⁹⁴ When asked had he made a statement or not he replied:

*I don't think I made one, that's what I am saying to you. I can't remember. I'm unsure. I don't know. I'm not definite. Is that clear enough for ye?*⁷⁹⁵

⁷⁹³ Transcript, Day 193, pages 59-61.

⁷⁹⁴ Transcript, Day 193, page 66 onwards.

⁷⁹⁵ Transcript, Day 193, page 66.

- 7.60. In the course of cross-examination it was put to Kieran Roulston that Paul Roulston had said that Roderick Donnelly had originally told him that he had seen Frank McBrearty Junior, Mark McConnell and Róisín McConnell coming up the street and that the two men were soaking wet and scared looking. The following statement made by Mrs. Marian Roulston, was also put to the witness:

Some time later Roderick Donnelly was in our house, there was a lot of rumour going around Raphoe, at this stage it was known that Richie Barron had been murdered. Different people were being blamed every day, Mark McConnell and young Frank McBrearty were the main suspects. On one such visit to our house we were talking about the murder, Roderick mentioned that he had seen Mark McConnell and his wife and young Frank McBrearty walking on the street in Raphoe, I don't know which direction they were meant to be going.⁷⁹⁶

- 7.61. Kieran Roulston was adamant that he had never heard Roderick Donnelly mention seeing Frank McBrearty Junior at all. He stated that Roderick Donnelly only ever mentioned seeing Mark McConnell.

Evidence of Darcy Connolly

- 7.62. At the outset it should be noted that Mr. Connolly stressed that due to epilepsy, his memory had been adversely affected. On a large number of occasions during his examination, when he was asked questions, he simply answered that he could not recall certain events or whether he had said or done certain things.
- 7.63. Darcy Connolly stated that he had been a friend of the Barron family for some time prior to Mr. Barron's death in 1996. He said that the talk in the wake house and around the town was that Mr. Barron's death was not a hit-and-run accident, but an assault and that Mark McConnell and Frank McBrearty Junior were involved in that assault. Mr. Barron was supposed to have been hit over the head with a bar. He stated that people were saying how could a car hit a man and leave no marks on his clothes and only injuries to his head and hands. He could not recall exactly when Frank McBrearty Junior came into the picture in the rumours.⁷⁹⁷
- 7.64. Darcy Connolly stated that Stephen Barron was convinced that it was Frank McBrearty Junior and Mark McConnell who had been responsible for his father's death. He said that he was also convinced that they had been involved.
- 7.65. He stated that Paul Roulston told him about what Roderick Donnelly had seen. He stated that he spoke to Roderick Donnelly who told him what he had seen:

He just said he saw Mark McConnell coming up the street that

⁷⁹⁶ Tribunal Documents, page 3187.

⁷⁹⁷ Transcript, Day 195, page 17 onwards.

night and his hair all wet and there was one girl or two girls or something with him. [Donnelly mentioned Mark McConnell's hair being wet.] I didn't speak to him about his hair being wet. He was asked to make a statement to the Gardaí. It was entirely up to himself what he wanted to do.

- 7.66. He stated that Roderick Donnelly did not mention anything about wet clothes, nor did he say that Mark McConnell looked scared.
- 7.67. Darcy Connolly also gave evidence that Paul Roulston had told him, initially, that he had been in the car that night with Kieran Roulston and Roderick Donnelly and that he had seen Mark McConnell walking up the town. Darcy Connolly said he told this to Stephen Barron, who went to speak to Paul Roulston. Later, Stephen Barron visited Roderick Donnelly to ascertain what he had seen. Darcy Connolly went on to say that subsequently Paul Roulston reported to him that Roderick Donnelly was unwilling to make any statement, his excuse being that he “owed fines” to the Gardaí. He said that it was then that Paul Roulston told him that he had not been in the car at all.⁷⁹⁸ When asked as to why he thought Paul Roulston would tell such a lie, he stated that Paul Roulston would always tell the odd lie and that it was just a bit of mischief on Paul Roulston's part.⁷⁹⁹
- 7.68. Darcy Connolly stated a number of times in his evidence that a sighting of Frank McBrearty Junior was never mentioned by Paul Roulston or Roderick Donnelly. He could only recall Roderick Donnelly mentioning Mark McConnell. However, he later changed this evidence. When Paul Roulston's statement to the Carty team to the effect that Roderick Donnelly had told him that he had seen Frank McBrearty Junior and Mark McConnell, who were soaking wet and that Róisín McConnell had been crying, and that he relayed that information on to Darcy Connolly, was put to him, Mr. Connolly replied: “Yes, Paul Roulston did tell me that.”⁸⁰⁰
- 7.69. Later in his evidence, he said that Roderick Donnelly had told him that he had seen Frank McBrearty coming up the street with Mark McConnell.⁸⁰¹
- 7.70. Darcy Connolly denied that he had asked Paul Roulston to tell any story to the Gardaí, as alleged by Paul Roulston in his statement to the Carty team. When it was put to him that people such as Paul Roulston seemed to be reporting to him, he stated that Paul Roulston was friendly with him at the time. He denied that he had rehearsed any false statement with Paul Roulston. He did accept that he had said to Paul Roulston, Kieran Roulston and Roderick Donnelly that witnesses were needed.

⁷⁹⁸ Transcript, Day 195, page 57.

⁷⁹⁹ Transcript, Day 195, page 59.

⁸⁰⁰ Transcript, Day 195, page 95.

⁸⁰¹ Transcript, Day 195, page 175.

- 7.71. He stated that he had no knowledge as to how Roderick Donnelly came to give such a precise time in his statement. He denied that he had anything to do with the inclusion of that time in his statement. He denied that Paul Roulston's assertion made to the Carty team, that it was Darcy Connolly who had been responsible for the time being put into the statement, was correct.⁸⁰²
- 7.72. In relation to the meeting at the White Cross Inn, he had no recollection of ever being at that location. He could not give any evidence about the alleged meeting.
- 7.73. During the course of his examination-in-chief by Tribunal counsel, it was put to Darcy Connolly that he had furnished a large amount of information to Detective Garda Pat Flynn in relation to the Barron investigation, which information was recorded by Detective Garda Flynn in his notebook.⁸⁰³ These entries will be dealt with in greater detail during the review of Detective Garda Flynn's evidence. Darcy Connolly stated that he had no recollection of providing these pieces of information to Detective Garda Flynn. He accepted that the information might have come from him. He was not in a position to deny that it did; he just did not recall giving the information. He accepted that the notes reflected what he was thinking at the time.⁸⁰⁴ He denied that he was responsible for the changes in time between what had been written in Detective Garda Flynn's notes in early January 1997 and what was subsequently said by Roderick Donnelly in his statement on the 20th of January 1997.
- 7.74. Darcy Connolly stated that he drove Paul Roulston to Detective Garda Flynn's house. He stated that the purpose of this was to enable Paul Roulston to tell Detective Garda Flynn what Roderick Donnelly had seen and to make arrangements for Detective Garda Flynn to take statements from Roderick Donnelly and Kieran Roulston. It was put to Mr. Connolly that he had told the Carty team that Paul Roulston, Roderick Donnelly and Kieran Roulston had told him that they saw nothing. The following portion of his statement made to the Carty team on the 17th of May 2000, was put to him:

Later Paul Roulston who worked with me, told me that he and Roderick Donnelly and Kieran Roulston were sitting in a car outside the Parting Glass the night that Richie died but they saw nothing. I found that hard to believe that they were sitting outside and saw nothing. I discussed this with Stephen Barron. I met Pat Flynn who is a detective in Lifford but lives in Raphoe and I told him what Paul Roulston had said and I told him that they should have seen something. Pat Flynn said that he would be interested in talking to them. Stephen Barron and myself got Paul Roulston to go to Pat Flynn's house. Paul did not want to go to the Garda station and that's why I brought him to Pat Flynn's house. Stephen Barron, Paul

⁸⁰² Transcript, Day 195, page 169.

⁸⁰³ Tribunal Documents, page 5642 onwards.

⁸⁰⁴ Transcript, Day 195, pages 76-80.

Roulston and myself went to Pat Flynn's house and Pat Flynn had a talk with Paul and I think Paul made a statement to him there but I am not sure. After that Stephen Barron and I went to Roderick Donnelly's house and had a chat with him because we were convinced that he should have seen something. I met him again with Stephen in the White Cross pub. I asked him what he saw that night and he said that he saw nothing but I was convinced that he had seen something. I told him that he had better go and see the Gardaí. He asked us in the pub was it supposed to have happened. I told him that the word was around the town and that it was Mark McConnell and Frank McBrearty Junior that killed Richie Barron. He said that he would go and speak with the guards.⁸⁰⁵

- 7.75. In reply, he said that he could not recall what he had said to the Carty team. He alleged that the Carty team had put words into his mouth. He repeated over and over that he could not remember the material recited in that portion of his statement.⁸⁰⁶
- 7.76. Darcy Connolly alleged that the members of the Carty team who had interviewed him had come into his home and would not leave, despite being repeatedly asked to do so. However, in cross-examination he accepted that the interview had been by appointment and that it had been put back a number of times during that day at his request, so as to enable him to conclude some business matters. He accepted that when he met the Gardaí at his house, he had asked could they talk to him elsewhere as he had family in the house; for that reason they drove out to the edge of a nearby forest where the interview was conducted. He accepted that they only returned to his house for the purpose of retrieving his diary.⁸⁰⁷

Evidence of Stephen Barron

- 7.77. In evidence, Mr. Stephen Barron, son of the Late Richard Barron, described a number of incidents which had occurred between members of the Barron family and members of the McBrearty family. He stated that in 1987 at a pub in Killygordon, there had been a fight between a number of people. As a result of this fight, he stated that Frank McBrearty Junior, William Ayton, Martin Ayton, himself and Darcy Connolly were brought to court. He could not recall if they received convictions or were given the Probation Act. He stated that in 1994 there was an altercation about a broken headlamp on a car outside the McBrearty premises. He stated that some days later Andy McBrearty and two others called up to the house looking for him, but he was not there. They had an altercation with his father. He stated that he also had words with Michael McConnell in the Súile Tavern in 1995. Blows had been exchanged between

⁸⁰⁵ Tribunal Documents, pages 3220-3221.

⁸⁰⁶ Transcript, Day 195, page 175 onwards.

⁸⁰⁷ Transcript, Day 195, page 42.

them. He stated that there was a follow-on attack on the following week when he and his father found a group of people waiting outside the pub and he stated that he was assaulted by these people. He said that it would be fair to say that relations were not good between the Barron and McBrearty families in 1996.⁸⁰⁸

7.78. He stated that he did not hear any particular rumours at the wake house. However, over the following days and weeks, he stated that things began to suggest to him that perhaps his deceased father had been murdered. He stated that he would have considered that it was murder at a later stage but not at the very early stage in the wake house. He said that as things developed, it seemed to him that it had been murder and that Frank McBrearty Junior and Mark McConnell were involved. He said he got that idea from the fact that the Gardaí had been searching in the waste-ground area between the scene of the accident and McBrearty's car park. He presumed that they were searching for a weapon. The idea was reinforced when the arrests were effected in December 1996. He also stated that the activities of Frank McBrearty Senior, in looking for statements from various members of his staff and other people, seemed to him to be a very suspicious thing to do. He stated that he thought that when the arrests were made in December 1996, that they would get to the bottom of things. As far as he was concerned, the Gardaí had got their men. This also confirmed his suspicions as to who was involved. He stated that he was disappointed when the suspects were released without charge.⁸⁰⁹

7.79. Stephen Barron denied that there were two camps, as such, in the town of Raphoe. However, when the following evidence which had been given by Mr. William Doherty on Day 184 was put to him, he accepted it to an extent:

*On the one side there was the Barron family, the Connollys, myself and all the friends of the Barron family. On the other side was the McBrearty family, McConnell family, the Peoples, the Brollys, the Quinns. The town was divided into two halves.*⁸¹⁰

7.80. He stated that while certain people may have had their own views, he would not necessarily go so far as to say that there were two camps. He agreed that certain people may have had the same view as him and his family.

7.81. He stated that he had been friendly with Darcy Connolly, who was also friendly with his father and had worked with horses. He stated that they did not decide to do anything after the arrests, but if they heard anything, they would pass it on to the Gardaí. He stated that he did call to see Roderick Donnelly on one occasion. Paul Roulston had told him that Roderick Donnelly had seen something. He stated that Paul Roulston told him the following:

⁸⁰⁸ Transcript, Day 214, pages 7-11.

⁸⁰⁹ Transcript, Day 214, page 40.

⁸¹⁰ Transcript, Day 184, page 77.

He said himself and Roderick Donnelly and his brother were sitting in a car outside the Parting Glass and they had seen Mark McConnell walking up at a certain time or something. ... Paul Roulston told me he was in the car. He never said anything to me that he wasn't in the car. He told me he was in the car along with his brother and Roderick Donnelly.⁸¹¹

7.82. Stephen Barron stated that there was no mention of any sighting of Frank McBrearty Junior.

7.83. He stated that he and Darcy Connolly took Paul Roulston out to see Detective Garda Pat Flynn. He stated that Detective Garda Flynn took Paul Roulston into the kitchen. He did not know what took place in the kitchen, but he presumes that Paul Roulston told the Garda what he had seen. He stated that he and Darcy Connolly stayed in the sitting room. He did not know if Paul Roulston made a statement on that occasion. He stated that Paul Roulston did not tell him after he came out of the kitchen as to whether or not he had made a statement to Detective Garda Flynn. The following exchange constitutes his evidence as to what transpired after that meeting:

Chairman: Mr. Barron surely you knew what had happened?

A. He told me as ... to my recollection what happened, but I didn't ask him to make a statement or anything like that.

Chairman: I understand that; but it doesn't make any sense to me that you go to the trouble of accompanying him to the Garda, that you drive away and that you don't have a notion of what happened there. Do you understand what I am saying to you? Tell us what you believe happened there.

A. What I believe happened, I probably asked him did he tell Mr. Flynn what happened and he probably said he did, but I can't remember if I asked him if he made a statement or not like.

Chairman: Did you ask him and he said what so far as you recollect?

A. As far as I recollect he probably told me he told Mr. Flynn what happened, yea.

⁸¹¹ Transcript, Day 214, pages 46, 58.

Chairman: Wasn't that the whole reason for going up there?

A. That was definitely the whole reason for going up there yes.

Chairman: Wouldn't it have been an act of gross stupidity to come home and not know what happened?

A. He told me what happened.

Chairman: Up to now you have given me to understand that you didn't know what happened?

A. I didn't know if he took a statement or not. All I know is he told him what he had seen.

Chairman: Have you some reluctance to tell us?

A. I have no reluctance at all.⁸¹²

7.84. It was put to Mr. Barron that Mr. Paul Roulston had said in evidence that he was put up to making a statement to the effect that he had been in the car and that he had been put up this by Stephen Barron and Darcy Connolly. Stephen Barron denied that he put Paul Roulston up to making a statement. He said that Paul Roulston had told him that he was in the car. It was put to Mr. Barron that Detective Garda Flynn denied that any of the three men ever left the living room on the occasion of the visit to his house, or that he took Paul Roulston into the kitchen, or that he took a statement from Paul Roulston on that occasion, or on any occasion. Mr. Barron stated that it was his recollection that Paul Roulston was taken out of the living room by Detective Garda Flynn and taken to another room in the house. He then stated:

That's what I'm saying, I can't remember. As far as I remember I think he took him somewhere else and he came out and we left then. ... Well, I can't say if there was a statement taken ... As far as I remember he took him to speak to him on his own anyway.⁸¹³

7.85. Mr. Barron was asked as to whether he was surprised by the content of the statement made by Roderick Donnelly on the 20th of January 1997, having regard to the prior indication which had been given to Detective Garda Flynn as to what Roderick Donnelly had seen. Stephen Barron stated that he was not surprised by the statement because he was not aware of its content. He stated that he did not talk to Paul Roulston after that about what Roderick Donnelly had said. Nobody told him what Roderick Donnelly said on the 20th of January 1997. Nobody told him that it was radically different to what had been indicated to

⁸¹² Transcript, Day 214, pages 51-52.

⁸¹³ Transcript, Day 214, pages 55-57.

Detective Garda Flynn on the 3rd and the 8th of January 1997. When it was put to the witness that Roderick Donnelly had stated that he and Darcy Connolly were using Paul Roulston to put pressure on him to make a statement, he replied:

*We didn't put pressure on him, we just asked Paul to ask him to go and make a statement. He was a wee bit reluctant to make one.*⁸¹⁴

- 7.86. Stephen Barron went on to give evidence about a number of other related matters, which will be dealt with below. He was asked also about an occasion when he went with William Doherty's father, now deceased, to collect William Doherty from Milford Garda Station at 04.15 hours on the 21st of September 1997. This was the time of a crucial arrest of William Doherty, which had occurred in the wake of the retraction of statements by Robert Noel McBride four days earlier on the 16th of September 1997, and was also concerned with the extortion telephone calls made to Michael and Charlotte Peoples on the 9th of November 1996. Mr. Barron stated that he had merely received a telephone call from William Doherty's father, at approximately 02.00 hours asking him would he accompany him to Milford Garda Station for the purpose of collecting his son. He stated that Mr. Doherty Senior probably just wanted company for the journey. He indicated that there was nothing more to this than merely obliging a friend's father. He denied that there was anything more to that encounter. He denied that there had been any special reason or purpose in his going at that hour of the morning to Milford Garda Station to collect William Doherty.⁸¹⁵

Evidence of Detective Garda Pat Flynn

- 7.87. Detective Garda Flynn testified to the Tribunal that he was stationed at Lifford Garda Station, but lived near Raphoe. He had been involved in the investigation from the first day. During the early part of the investigation, information came to him that the Late Mr. Barron had been hit by one of the McBrearty's in an assault near the Súile Tavern some six to eight weeks prior to the date of his death. As a result of this assault Mr. Barron was supposed to have received a cut over the eye. Detective Garda Flynn stated that he approached Darcy Connolly, knowing that Mr. Connolly was a friend of the deceased, to see if he could confirm the accuracy of the information which he had received. Mr. Connolly told him that that information was wrong, that, in fact, the Late Mr. Barron had sustained a cut over the eye when he fell out of bed and struck his head against the bedside locker.
- 7.88. Detective Garda Flynn went on to say that on that occasion Darcy Connolly gave him sixteen pieces of information concerning the ongoing Barron investigation. Detective Garda Flynn wrote the information which he received into his notebook:

⁸¹⁴ Transcript, Day 214, page 60.

⁸¹⁵ Transcript, Day 214, pages 70-74.

Info. from D.C.

1. Above info. at (1) incorrect. Richie fell out of bed at home and hit his head on a bedside locker.
2. No horsey involvement in the attack. Richie was not in any bother that way. Didn't owe any money. [Name redacted] incident was different. [Name redacted] was a jockey pulling horses for cash. It was known he was going to be got.
3. Not a mugging. Richie didn't have much money on him that day.
4. Martin Laird and possibly Kevin McNulty – road sweeper saw Mark McConnell leaving Mark Quinn's 7.30 a.m. – 8 a.m. Monday morning.
5. Paul Barron saw Mark McConnell on the street in Raphoe on the 14/10 circa. 12.25 a.m.
6. Mark McConnell was seen at the top of the terrace crying at 1.30 a.m. (14/10). Róisín was walking away ... very angry.
7. Pat Doherty whom Frank McBrearty has not spoken to for years; Frank was very friendly with him in Raphoe on Mon./Tues. Doherty was surprised.
8. Pat's daughter, Olivia, says a friend saw Róisín early on Monday morning – very red eyes and upset. Pat was at the mart today ... was going to ask around. Pat was a great friend of Richie's ... they went back years in Scotland.
9. James O'Brien, Mountain Park and Raymond Torrens, Liscooley (Red Hi-ace 87 – DL) may have been about and seen something.
10. Mark McConnell drank on Monday afternoon and evening in Mark Quinn's. Quinn was very snappy with Mark, Róisín and child. Unusual for McConnell to drink so much. Quinn snapped at Róisín over the child running about. This was seen.
11. Frank Senior was supposed to take Frank, Junior away that night after the incident. – Wrong –
12. Mark Quinn was all chat to Simon McBride, Darcy Connolly and mates on Monday circa. 3 p.m. when they were in the pub. As soon as Mark McConnell came in he stopped speaking to them.
13. Simon McBride and Willie Hewitt cleared the road of blood etc. on

Mon. morning. Kids going to school the reason.

14. McConnell is a “vicious bastard” unlike his brothers Eamon and Francis. This refers to a row some years ago. Mark McConnell was seen kicking viciously at a man on the ground. McBrearty's temper is well known.

15. Sydney Vance may have seen something.

16. There were no footprints around McBride's sheds near the crime scene. They must have come up the new road Frank made near Willie Logan's. May have waited in a gap in the hedge. Informant stated he checked around the sheds the morning after, very early.

Info reported to Inc. Room.⁸¹⁶

7.89. Detective Garda Flynn stated that he could not put an exact date as to when Darcy Connolly gave him these pieces of information. However, from looking at his diary he was able to place it at some time between the 14th of October 1996 and the 27th of October 1996.

7.90. The next significant encounter occurred on Friday, the 3rd of January 1997, when he received information from Darcy Connolly, which he noted in his notebook:

Friday Jan. 3rd. 1997

Following info. received re. Richie Barron's death.

1. Kieran Roulston and Roderick Donnelly were sitting in Roulston's car at Francis McBrearty's hairdressers. They saw Frank McBrearty Junior and Mark McConnell go up together from the Parting Glass towards the car park approx. 12.30 a.m. – time unsure. Donnelly is afraid of the McBrearty's big time. Roulston does not like guards. This info. came to my source from Paul Roulston.⁸¹⁷

7.91. On the 8th of January 1997, the information outlined above was confirmed by Paul Roulston, who had called to Pat Flynn's house with Darcy Connolly and Stephen Barron. Detective Garda Flynn made the following entry in this notebook:

Wed. Jan 8th, 1997

Spoke with Paul Roulston who confirmed info at (1) on 3/1/97. To set up meeting with R. Donnelly.⁸¹⁸

⁸¹⁶ Tribunal Documents, page 5642-5645.

⁸¹⁷ Tribunal Documents, page 5651.

⁸¹⁸ Tribunal Documents, page 5651.

- 7.92. Detective Garda Flynn said that Paul Roulston undertook at that meeting to get Roderick Donnelly and Kieran Roulston to go to Lifford Garda Station to make a statement to him. Detective Garda Flynn was adamant that he did not take any statement from Paul Roulston on that occasion, or on any other occasion. He stated that his wife, since deceased, did not approve of him conducting Garda business at his home. For that reason, he would never have taken a statement from anyone at his home. Furthermore, he stated that any statement that he took was always submitted to his authorities in the proper manner. He said the meeting at his home was very brief. He said that when the three men knocked on the front door, he brought them into the sitting room. They did not sit down. He said that Stephen Barron remained at the sitting room door. He gave the following account of what transpired on that occasion:

Yes. Initially my information came from Mr. Connolly, who told me that Mr. Paul Roulston had told him that information we've just talked about. At some stage, Mr. Roulston, Paul Roulston, Mr. Connolly and Stephen Barron came to my home and discussed this information again. At that point in time, either Mr. Connolly or Mr. Roulston suggested, after the information was given me, that Mr. Roderick Donnelly had drink-driving charges, which he suggested to me could something be done about, or one of them suggested, I think it was Mr. Connolly.

I told him that I would need to see Mr. Donnelly and Mr. Roulston; I told him that there was absolutely nothing I could do with drunk-driving charges, that I never did know there was anything that could be done about drunk driving charges. I never told them they came too late, as they said. I told them that I couldn't do anything about it. But Mr. Connolly suggested ... or Mr. Roulston, or maybe Mr. Donnelly suggested that Roderick was nervous and that he didn't want any handling or any hassle with the McBrearty's and that he didn't want to go to Raphoe station and as I don't take statements in my home, I suggested we go to Lifford Garda Station, which is in the opposite direction and that nobody would see him coming or going there.

Mr. Roulston undertook then to go back and have Kieran Roulston and Roderick Donnelly come to Lifford Garda Station at a date to be decided between us. A date when I would be actually working.⁸¹⁹

- 7.93. Detective Garda Flynn stated in evidence that it was never indicated to him that

⁸¹⁹ Transcript, Day 196, pages 149-150.

Paul Roulston, or anybody else, had been in the car other than Roderick Donnelly and Kieran Roulston. Detective Garda Flynn went on to say that he subsequently met with Paul Roulston in the street and he thought that it was then that they arranged to take the statement from Roderick Donnelly on the 20th of January 1997. He stated that he had no recollection of any brief meeting near the White Cross Inn, but accepted that generally, he might stop and talk to Darcy Connolly, if he saw him on the road in his van. He said he definitely did not speak to Roderick Donnelly prior to the 20th of January 1997.

- 7.94. As regards the taking of the statement from Roderick Donnelly on the 20th of January 1997, Detective Garda Flynn gave the following account as to what happened when Roderick Donnelly, Kieran Roulston and Paul Roulston arrived at Lifford Garda Station:

I was introduced to Roderick Donnelly, whom I had never met before. I took them to the Detective Branch office in Lifford. I believe Kieran Roulston left shortly after we went into the actual room and went out to his car, or went some place. Mr. Roulston, Paul Roulston, on the behest of Mr. Donnelly stayed in the room with us and I discussed with Mr. Donnelly, I put him over what he had actually seen. I asked him some questions about what he had actually seen on the night. He explained to me what he had seen. I asked him would he be interested in making a statement in writing being that. He stated that he would and I sat down and started to make out a statement from him.

At regular intervals, maybe every couple of sentences or three, I would have read the pieces back to him of what he said and I said: "Now, what happened then?" and when the statement was over, it was not a very long statement, I read it to him. He agreed that what I had actually wrote down was what he had told me and he signed the statement.

Mr. Paul Roulston never took any active part at all in the room and I asked him to go out for Kieran Roulston to the car. Kieran Roulston came into the station, came up to my office and I put him over what he had seen on the night. He told me that he had seen nothing. That he had been asleep. I deemed that not worth recording and as it was of no benefit I thanked Mr. Donnelly for giving me the statement and they left.

There was a suggestion about drink and driving charges and I told

*him that I was not in a position to do anything about that. That was the end of it, as far as I was concerned.*⁸²⁰

- 7.95. Detective Garda Flynn denied that there was any three-way discussion about what Roderick Donnelly had seen, or that he had prompted Roderick Donnelly in any way during his statement. He said that such questions as he had asked were not leading questions in any way, but were purely for the purpose of clarifying details or establishing detail in a statement. He was adamant that the statement was accurately written down by him in all respects. He confirmed that no statement had been taken by him from Mr. Kieran Roulston, due to the fact that Mr. Roulston had stated, that he was asleep during the entire of the relevant period. On this basis, Detective Garda Flynn stated that he formed the opinion that it was not worth taking any statement from Mr. Roulston.
- 7.96. He stated that he gave the statement, which had been made by Roderick Donnelly, to Detective Inspector John McGinley, who happened to be in Lifford station a day or two later. He said that the Detective Inspector stated that he would bring the statement into the incident room in Letterkenny.
- 7.97. Detective Garda Flynn stated that he did not inform the incident room that the information which had at first been presented by Darcy Connolly and Paul Roulston on the 3rd and the 8th of January 1997, as to what Roderick Donnelly had seen, was materially different to the statement given by Roderick Donnelly on the 20th of January 1997. He explained this by stating that, in his experience, he had on occasion found that when third parties reported what another party had seen, when he actually went to the witness concerned, he often found that the witness had not seen those things which had been indicated to him previously by the third parties. For that reason, he was not that surprised that Roderick Donnelly's version differed from the earlier accounts given by Darcy Connolly and Paul Roulston. He stated that he did not question Roderick Donnelly about the difference between what had been represented to him previously and what Mr. Donnelly was actually stating in his statement on the 20th of January 1997. He stated that he did not interrupt or cross-examine Roderick Donnelly at any stage during the taking of his statement.
- 7.98. It will be noted that there was a significant change in the detail as to what Roderick Donnelly had allegedly seen, between the time that the information was initially indicated to Detective Garda Flynn on the 3rd and 8th January 1997 and the content of the statement as taken on the 20th January 1997. The sighting changes in three significant respects: in terms of personnel, location and time. The Tribunal is forced to ask whether there was any Garda involvement in this important shift in detail. Three days prior to the taking of the statement from

⁸²⁰ Transcript, Day 196, pages 161-162.

Roderick Donnelly, Superintendent Fitzgerald wrote a progress report on the investigation. This report was sent to Chief Superintendent Fitzpatrick and to the Assistant Commissioner, Crime Branch at Garda Headquarters. In the report Superintendent Fitzgerald stated that information was “coming to hand” which further implicated Mark McConnell in the commission of the crime:

Re: Suspicious Death of Richard Barron, Raphoe, County Donegal on the 14th October, 1996. Crime No. 2/97-Raphoe

With reference to the above matter and as an update to my previous reports of the 5th and 20th December, 1996, I now wish to report as follows:

As a result of arrests, interrogations and investigations to date, it now appears that there were two persons involved in this crime. The present position is that those two persons have been arrested and interrogated. An admission of involvement has been made by one of those persons, during the course of which he has named his accomplice. That accomplice being the person already suspected by the Gardaí. The second accomplice has vehemently denied his involvement throughout interview. Since his release, fresh evidence is coming to hand which indicates further his involvement.

The present position is that these matters are being pursued and exhausted so that all available evidence may be obtained against him with a view to re-arresting this accomplice under Section 10 of the Criminal Justice Act, 1984.

Forwarded for your information, please.

John Fitzgerald, Superintendent⁸²¹

- 7.99. When asked about his report to Headquarters in evidence, Superintendent Fitzgerald stated that the “fresh evidence” was the confession of Frank McBrearty Junior which had been made on the 4th December 1996, but completed at a time after Mark McConnell had been released from custody. As this evidence had been in existence for approximately five weeks at the time of his progress report of 17th January 1997, the Tribunal does not accept that this was the fresh evidence which was “coming to hand” as referred to in his report.
- 7.100. When pressed on the matter, Superintendent Fitzgerald relented somewhat to the following extent:

Q. Do you think it would be unfair of somebody to look at that

⁸²¹ Tribunal Documents, page 6762.

letter and connect it in any way with the statement made by Roderick Donnelly?

A. *No.*

Q. *That in some way the Superintendent has written a letter indicating that there is evidence coming to hand which indicates Mark McConnell's involvement, indicates further his involvement, and then suddenly, within six days of what is the date on that letter, exactly such a statement comes into being?*

A. *No, I wouldn't blame anybody that would take a view of that. I wouldn't. But I cannot put it any further with that letter.*⁸²²

7.101. The Tribunal is of the view that when he wrote his progress report, Superintendent Fitzgerald must have been aware that something was 'in the air', or was about to arrive, which would further implicate Mark McConnell in the killing of Mr. Barron. The Tribunal does not know what exact knowledge he had at the time as to the emergence of "fresh evidence" in the form of the statement from Roderick Donnelly. There is no evidence that he was aware that a concerted effort was being made at the time by Darcy Connolly and Paul Roulston to have Roderick Donnelly make a statement, which he ultimately did on the 20th January 1997. The Tribunal is of the opinion that somebody must have been feeding information to Darcy Connolly and others which caused the shift in detail between the 3rd and the 8th January 1997 and the 20th January 1997. The Tribunal does not know who this person was. It would be wrong of the Tribunal to speculate as to the identity of such person without evidence in that regard.

Roderick Donnelly and the Barron Investigation

7.102. There are very few references to Roderick Donnelly's statement in the investigation documents before the Tribunal. There was some evidence to suggest that the statement was regarded with some suspicion. In or about June/July 1997, Sergeant Martin Moylan compiled some notes in respect of jobs and other matters which needed to be attended to prior to writing the final report on the Barron investigation. At item 61 of those notes, he wrote as follows:

S.485 Roderick Donnelly saw Mark McConnell and two women going to tech gates with two women at 1-10 a.m. (this is wrong) to Mark's
--

⁸²² Transcript, Day 232, page 90.

car (not Mark's car). Mark looked scared and looked like he was fighting.⁸²³

- 7.103. It would appear that the statement was also treated with some suspicion by Superintendent Kevin Lennon, who wrote the following in his progress report dated the 29th of September 1997.

Roderick Donnelly, states that he observed Mark McConnell walking up from the Diamond with two women, between 1.00 a.m. and 1.10 a.m. He describes Mark McConnell as being "very scared looking, with wet hair and wet clothing". This statement was volunteered on the 20th of January 1997 and its veracity is being re-examined.⁸²⁴

- 7.104. The statement from Roderick Donnelly was not mentioned in the subsequent progress reports issued by Superintendent Lennon in 1997. However, the statement was mentioned in the final report from Superintendent Lennon which was issued on the 3rd of March 1998.

Between 1.00 a.m. and 1.10 a.m. Mark McConnell was observed walking from the Diamond past "Frankie's nightclub" with two women. Witness, who was sober and seated in a parked car with his friend Kieran Roulston (S.134) who was asleep at the time. Witness stated that Mark McConnell "looked very scared looking and his hair was wet and tossed. His clothes looked to be wet as well. He was staring straight ahead of him." Witness did not pay attention to the two women but stated that they were definitely with Mark McConnell as they were walking on either side of him. The three walked by where he was parked and went towards Mark McConnell's white Toyota Corolla car which was parked near the gates of the technical school. He did not see where they went. When his friend Kieran Roulston awakened he told him about how seeing Mark McConnell "and how he looked scared and shook up like he had been fighting". Per Roderick Donnelly (S.135, a).⁸²⁵

- 7.105. There is a further reference to Roderick Donnelly's statement later on in that report, at item (6):

Roderick Donnelly describes both Mark McConnell's hair and clothes as being wet and also stated that he "looked scared" between 1.00 a.m. and 1.10 a.m.⁸²⁶

- 7.106. Somewhat curiously, there is no mention in the final report of the subsequent encounter between the witness Roderick Donnelly, and Detective Garda Joe Foley

⁸²³ Tribunal Documents, page 5813.

⁸²⁴ Tribunal Documents, page 8086.

⁸²⁵ Tribunal Documents, page 106.

⁸²⁶ Tribunal Documents, page 323.

in November 1997, when Roderick Donnelly told the Detective Garda that Mark McConnell's hair always looked wet due to the fact that he wore gel in it, nor to the fact that he directed the Detective Garda to Darcy Connolly if he wished to know any more about the matter.

- 7.107. It would not appear that Roderick Donnelly's statement was specifically put to Mark McConnell at the time of his re-arrest on the 25th of June 1997. He was asked about a sighting of him crying on the night in question, but it does not appear that the contents of Mr. Donnelly's statement was specifically put to him in any detail.
- 7.108. Thus, it would appear that while Mr. Donnelly's statement did form part of the final report issued in the Barron investigation, it was not of any critical significance in the conduct of that investigation.

Related Matters

Vexatious Complaints

- 7.109. Paul Roulston, in his evidence to the Tribunal, outlined how there had been a campaign waged against the McBreartys which was designed to get them into trouble with the Gardaí. He said that the people involved in this campaign were Darcy Connolly, William Doherty and himself. One aspect of this campaign was the making of false complaints concerning alleged harassment or intimidation on the part of the McBreartys against them. He described how Darcy Connolly and he would be out driving in their van and if they saw one of the McBrearty family driving on the road, or walking on the street, they would note this down in Darcy Connolly's diary. This would give them a factual time and place upon which to base their story. They would then go to the Gardaí and make a complaint that the person concerned had made gestures at them, or shouted at them, or drove their vehicle in a dangerous manner. Paul Roulston described this in his evidence:

Q. What were you at? Were you out just to get a rise out of the McBreartys, or what?

A. We wouldn't have just been out to get a rise out of the McBreartys, like, but if they had done something to us, you would have just kind of egged them on a wee bit, like, and then went on to the guards about it.

Q. You would egg them on?

A. You would egg Hugo on. It wasn't too hard to egg Hugo on, all you had to do was look across the street

at him and he started. It wouldn't matter, just look at him and he was at you.

Q. And then you'd beef that up and go on to the police and make a complaint?

A. Mm-hmm. [Meaning yes].

Q. Which was an untrue complaint?

A. Mm-hmm. [Meaning yes].

Q. Did you make statements then, about that incident? Did you make a statement?

A. On the street I think I made one about Hugo in the street, yea. I made one about him outside the courts in Letterkenny as far as ... I made one about Mark McConnell at the petrol pumps. I made another one about Hugo down at [place named] where we were emptying manure out of the stables and that's all I recall.

Q. For all of these ... [INTERJECTION]

Chairman: Why were you doing this?

A. I don't know, just got rolled into it and just.

Chairman: Was it in some way you felt they were responsible for the death of the Late Mr. Barron?

A. In one way it would have been, yea. In another way it was kind of being drummed into me that they were responsible for it like.

Chairman: Don't let me put words in your mouth. Tell me why you were doing it, if you would please?

A. I was being egged on to do it.

Chairman: By?

A. Darcy.⁸²⁷

Aggressive Driving

7.110. Paul Roulston also alleged that he had made a false statement ,at the behest of Darcy Connolly, to Garda John O'Dowd about a dangerous-driving incident at the

⁸²⁷ Transcript, Day 193, pages 129-131.

roundabout in Letterkenny on the 29th of January 1997. Darcy Connolly had already made a statement to Garda John O'Dowd, alleging two episodes of dangerous driving on the part of Frank McBrearty Junior directed against Darcy Connolly at William Street in Raphoe on the 25th of January 1997, and again at the roundabout at Letterkenny on the 29th of January 1997. Mr. Roulston stated that he had been in the vehicle with Mr. Connolly on the 25th of January 1997, but that there had been no episode of dangerous driving on the part of Frank McBrearty Junior on that occasion. He went on to state that, at the courthouse in Letterkenny, Darcy Connolly asked whether he would make a statement about dangerous driving at the roundabout at Letterkenny on the 29th of January 1997, even though he had not been in the van on that occasion. He thought that this was due to the fact that the person who had been in the van, one Michael Brown, was not prepared to give evidence or make a statement alleging dangerous driving against Frank McBrearty Junior. Paul Roulston alleged that he did make a statement to Garda John O'Dowd by substituting himself as having been in the van on the 29th of January 1997 in place of Michael Brown.⁸²⁸ However, Mr. Roulston's understanding that he was, in effect, substituting himself for Michael Brown in relation to the alleged incident on the 29th of January 1997, is probably incorrect, because Darcy Connolly had made a statement to Garda John O'Dowd on the 30th of January 1997. In this statement he alleged that Michael Brown had been in his van at the time of the earlier incident on the 25th of January 1997, rather than at the time of the later incident on the 29th of January 1997.

- 7.111. While Michael Brown did not give evidence before the Tribunal, he did make a statement to the Carty investigation team on the 15th of March 2000 in which he stated:

I do not recall any incident involving Frank McBrearty swerving his car at Darcy's van at a roundabout in Letterkenny. I would remember this if it ever happened. I remember one day I was with Darcy Connolly in the black Peugeot van, we were driving at William Street, Raphoe at a bend beside the Tír Conaill bar, we met a car being driven by Frank McBrearty Junior going in the opposite direction. After Frank passed, Darcy made a remark that did I see him trying to hit us. I didn't see anything out of the ordinary. Darcy did not have to swerve suddenly or anything like that to avoid McBrearty's car. I would remember it if it was a near miss or anything like that. Darcy Connolly did not say that he was going to report it to the guards or anything like that. Some time after that my mother told me that Garda John O'Dowd from Raphoe Garda Station had called to our house looking for me. Garda O'Dowd called to my house several times looking

⁸²⁸ Transcript, Day 194, page 92 onwards.

for me. During this time Darcy Connolly told me that the guards were looking for me to make a statement about meeting Frank McBrearty Junior at William Street, Raphoe. I didn't let him know one way or the other what I was going to do. ... My mother decided to bring me to the guards in Raphoe to see what they wanted to talk to me about. I went in and spoke to a guard in Raphoe station, I don't know his name. I told him who I was and he understood why I was there. ... He asked me to make a statement about it. I had no reason to make a statement because there was nothing to make a statement about.⁸²⁹

- 7.112. Paul Roulston was unsure as to whether he had actually made a statement to Garda John O'Dowd, as requested by Darcy Connolly. He could recall speaking to Garda O'Dowd in the foyer of the courthouse in Letterkenny, but he was unsure as to whether he actually made a statement or was shown a statement at that time.
- 7.113. Garda O'Dowd's version of what took place at the courthouse was put to Paul Roulston. It was to the effect that Garda O'Dowd had been told by Darcy Connolly that as regards the alleged dangerous-driving incident at the Letterkenny roundabout, that Darcy Connolly had forgotten to tell him that Paul Roulston was in the van that day. It was put to the witness that Garda O'Dowd would say in evidence that he then approached Paul Roulston and asked him whether he had been in the van on the 29th of January 1997 at Letterkenny roundabout, to which Paul Roulston had apparently replied "yes". However, Garda O'Dowd would say that no statement was taken from Paul Roulston on that occasion. Paul Roulston replied that he didn't know as he wasn't in the van. When asked as to whether that was a true reflection of the extent of their conversation, he said that it possibly could have been. He could not remember whether any written statement was ever given by him to Garda O'Dowd in relation to that alleged dangerous-driving incident.⁸³⁰
- 7.114. Paul Roulston stated to the Carty team that he had made, in total, ten or eleven statements to the Gardaí in Raphoe against the McBreartys, all of which were false.⁸³¹ In answer to Tribunal counsel, he said that he had made such complaints against the McBreartys on "a right many times".
- 7.115. When these matters were put to Darcy Connolly, he stated that there had been a number of incidents between him and the McBrearty family. He stated that these were incidents of verbal abuse, intimidation or dangerous driving which occurred. He denied that the complaints were a "load of rubbish". He stated that

⁸²⁹ Tribunal Documents, pages 3226-3227.

⁸³⁰ Transcript, Day 194, pages 110-111.

⁸³¹ Tribunal Documents, page 3171.

he was there when Frank McBrearty Junior did the two reported driving incidents on the 25th of January 1997 and the 29th of January 1997.⁸³²

Darcy Connolly's Diary

7.116. Mr. Connolly was asked about an entry in his diary which read:

Hugo gave fingers at Ballindrait at 5.35.

7.117. Darcy Connolly explained that entry by saying that Hugo was always shouting and roaring at him, every time he met him. He could not say why Hugo was giving him the fingers. Darcy Connolly accepted that he had been keeping a diary of these events and that Paul Roulston's writing was in the diary. The following entry was put to him:

We were down emptying a load of dung. We were up on top of the trailer grappling the dung off and Hugo McBrearty stopped at the junction of the road. He called or beckoned or something us out to the road to fight with them. He shouted "Come out Connolly and Roulston you bastards". He said to us, what were we doing down there giving evidence against the McBreartys. He said to us if we went down again we would end up in brown boxes and told us we were next on the list. He kept on calling us to the road. He stood for about ten minutes, got fed up and went down the road.⁸³³

7.118. Darcy Connolly stated that that incident did happen. He did not accept that it was somewhat unlikely for one man to call down two men onto the road for the purpose of having a fight with them. He did not agree that that was unlikely conduct for a single person to do and that person would be likely to get injured as a result of acting in that way. He denied that the reference to Hugo McBrearty allegedly saying that they would end up in brown boxes and that they were next on the list, was meant to indicate to the Gardaí that the McBreartys had a list of murders or attacks which they intended to carry out and that the brown boxes was a reference to coffins. He denied that it was a false complaint. He stated that the complaints were genuine and that he had invited members of the Carty team to travel in his van with him to witness the alleged intimidation being perpetrated against him and his vehicle by members of the McBrearty family. However, they refused to accompany him in his van.

7.119. It was put to Darcy Connolly that in the course of an interview held with the Carty team on the 24th of March 2000, they had asked him as to whether the statement which he made to Garda John O'Dowd, concerning the dangerous-driving incidents on the 25th of January 1997 and the 29th of January 1997, was

⁸³² Transcript, Day 195, page 128.

⁸³³ Transcript, Day 195, page 130.

correct. He had stated that the statement was correct. He was then asked if he was prepared to stand over the statement, to which he replied:

Well I'm not prepared to go to court. If I say it's not true John O'Dowd will get into bother.⁸³⁴

7.120. His response to that was as follows:

Well, I think they were going on before about putting words in my mouth at the Circuit Court Letterkenny ... That must have been why I refused to sign it ... Yea, I refused to sign the statement in Manorhamilton one time ... They were asking me questions, and they were forcing me to ... They were kind of putting words in my mouth in that statement ... What would John O'Dowd get into bother for if I made the two statements? [Asked as to whether he actually made that comment to the Carty team] No, I didn't.⁸³⁵

Business Cards

7.121. Paul Roulston also gave evidence that when attending the District Court prosecutions against the McBreartys in Letterkenny on one occasion, he went to have some lunch at a café in the Courtyard shopping centre in Letterkenny. There he saw William Doherty making small business cards on a printing machine in the shopping centre. He stated that these cards were saying something about the McBreartys and offering in the place where the avocation of the card-holder is described, "murdering services" or something like that. He said that some of the cards were then thrown around Letterkenny by William Doherty. He said that he subsequently saw the same cards in Darcy Connolly's van. They were in the compartment in the door of the van. He did not see them after that.⁸³⁶

7.122. Darcy Connolly stated that it was Paul Roulston who had told him that William Doherty was supposed to have printed the business cards when they were down having their lunch at the Courtyard restaurant at the shopping centre in Letterkenny. He stated that he might have been told by Paul Roulston what was printed on the cards but he could not recall what he had been told. He could not remember any further conversation about the business cards. He stated that he had never seen them. He could not recall any further conversation about the business cards. He could not recall if he asked what they were to be used for.⁸³⁷

7.123. He accepted that the cards could have been in his van, but stated that he had never seen them in the van. He could not say how they got into the van.⁸³⁸

⁸³⁴ Tribunal Documents, page 3196.

⁸³⁵ Transcript, Day 195, pages 142-144.

⁸³⁶ Transcript, Day 194, page 100 onwards.

⁸³⁷ Transcript, Day 195, pages 114-115.

⁸³⁸ Transcript, Day 195, page 172.

- 7.124. Kieran Roulston stated in evidence that he saw William Doherty with a handful of business cards in Letterkenny. He said that they stated something to the effect, contact the McBrearty's for all your murdering needs, or something like that. He described seeing William Doherty with the cards:

*I seen them, I don't know whether it was just after being made or whether they had made them previous to that but William Doherty had them one day in the Courtyard shopping centre in Letterkenny.*⁸³⁹

- 7.125. William Doherty in his evidence denied that he printed the defamatory business cards. He stated that he did not know who had made them. He said that there were a lot of people who did not like the McBrearty family. He was asked as to who had been involved in the campaign of hate against the McBreartys:

*There was myself, Derek Connolly, Roderick Donnelly, the Roulstons, the McBrides, there was a lot of people didn't like the McBreartys.*⁸⁴⁰

Libellous Leaflets

- 7.126. In March 1997, defamatory leaflets had also been circulated around Raphoe and adjoining areas. These were highly defamatory of the McBrearty family. They stated:

The murdering McBreartys. See them live. Father and son at Frankie's nightclub on 8th March 1997 with Joe Dolan.

Daddy I think they are on to us. Don't worry, son, I've got more witnesses paid off. I got away with murder in Scotland. You got away with it here. Just keep your mouth shut like the rest of us in the club. As Billy Flynn says when money speaks, the truth keeps silent. Russian proverb.⁸⁴¹

- 7.127. There was also a similar version, advertising an event on the 15th of March 1997 when a certain Eamonn McCann would be appearing at the McBrearty premises.⁸⁴²

- 7.128. William Doherty stated to the Carty team that he had distributed defamatory leaflets at the behest of Sergeant John White. He stated that he had been asked to put the leaflets among newspapers which would be left outside a newsagents in the town. He stated that he did not do this, on account of the presence of a CCTV camera on a nearby building. He stated that he just threw them around the town instead. He stated:

⁸³⁹ Transcript, Day 193, page 69.

⁸⁴⁰ Transcript, Day 185, page 120.

⁸⁴¹ Tribunal Documents, page 822.

⁸⁴² Tribunal Documents, page 823.

About March 1997 I think roughly I was asked by John White would I do a job. I said what, he said distribute these leaflets around Raphoe. He handed me a bundle of leaflets and told me not to leave my prints on them, this was at my house at Doorable. The leaflets read The murdering McBreartys, see them live on stage with Joe Dolan at 12 m.n. Father and Son, oh Daddy I killed a man, don't worry son I did too, keep your mouth shut and say nothing. I will look after it, where money talks the truth stay silent old Russian proverb Billy Flynn's (book) or words like that. I distributed them that night around the streets of Raphoe. I had a hat on me as there's a camera on the P.O. It was around 3 a.m. I spread them all over town and the people got them next morning. Frankie went mad. It was the talk of the town next day. I can't say who printed them only they were given to me by John White and he gave me £100 the night he handed them to me to put around.⁸⁴³

- 7.129. In his evidence-in-chief, Detective Sergeant White strenuously denied the allegation which had been made by William Doherty to the Carty team:

Yes. I mean, it's a rubbish allegation. I'm a very experienced policeman, Mr. Charleton, and I am not going to go to Donegal, pick up a petty criminal, go out to his house and put my career on the line in the hope this petty criminal would stay quiet about a criminal act. There would be no reason I would give them to William Doherty to put out and implicate myself in this serious crime. It is preposterous that I would do it. I didn't do it.

I'll give you the reasons I didn't do it. March 97 I wasn't with John O'Dowd ever. I wouldn't know his house if I called out with John O'Dowd. Mrs. Ann Doherty can vouch for that.⁸⁴⁴

- 7.130. In evidence, William Doherty stated that he had nothing to do with the production or distribution of the leaflets. He stated that he merely saw them on the street. He stated that he only named John White because members of the Carty team were putting pressure on him to name Detective Sergeant White. He alleged that the Carty team were of the impression that Detective Sergeant White was corrupt. He alleged that they wanted him to make a statement against Detective Sergeant White. He alleged that the Gardaí had threatened him with service of outstanding warrants if he didn't co-operate.⁸⁴⁵ In the course of his evidence, William Doherty withdrew all the allegations that he had previously made against Detective Sergeant White.

⁸⁴³ Tribunal Documents, page 3031.

⁸⁴⁴ Transcript, Day 259, page 160.

⁸⁴⁵ Transcript, Day 185, pages 96-99.

Vicious Posters and Slogans

- 7.131. Paul Roulston made a statement to the Carty team in which he indicated that when they had gone for lunch at the Courtyard restaurant in Letterkenny on the day that William Doherty had allegedly made up the business cards, that he had heard William Doherty boasting about having written defamatory slogans on the road close to where Frank McBrearty Junior and Mark McConnell lived.
- 7.132. In evidence, William Doherty denied that he had anything to do with the painting of the slogans on the road. He said that he did see the slogans. He stated that they said as follows:

*House for sale, house for sale, owners moving to Mountjoy, contact Frank McBrearty.*⁸⁴⁶

- 7.133. William Doherty stated that he thought that the slogans were quite humorous. He stated that their purpose was to drive the McBreartys out of the town. There was nothing funny about them at all.
- 7.134. It should also be noted that there were defamatory posters placed on lampposts close to the McBrearty and McConnell residences. As yet, no evidence has been heard by the Tribunal as to who was responsible for creating or distributing same.

Crank Calls

- 7.135. Paul Roulston also stated in evidence that William Doherty had boasted about making abusive telephone calls to Frank McBrearty Senior.⁸⁴⁷
- 7.136. William Doherty admitted in evidence that he had made abusive calls to Frank McBrearty Senior, calling him a “fat murdering bastard”. He said that he did this to wind up Frank McBrearty Senior. He said that Mr. McBrearty Senior went mad. This was not surprising as a reaction from any person. He said that he did not care what effect the calls had on Mr. McBrearty Senior, as they did not get on.⁸⁴⁸
- 7.137. In a memo of the interview held between William Doherty and the Carty team on the 21st of October 1999, Mr. Doherty apparently told the Carty team that he had been asked by Gardaí to make the abusive calls to Frank McBrearty Senior.

After a few month after Richie's death, McBrearty's home number ex-directory. O'Dowd and White gave it to me and told me to pass it on to people who didn't like him to ring him up and drive him crazy (fat murdering bastard).⁸⁴⁹

⁸⁴⁶ Transcript, Day 185, page 96.

⁸⁴⁷ Transcript, Day 193, pages 158-159.

⁸⁴⁸ Transcript, Day 185, pages 84-85.

⁸⁴⁹ Tribunal Documents, pages 3038-3039.

Allegations Changed

7.138. In his evidence, William Doherty withdrew all his allegations against Detective Sergeant White. The question of Garda involvement in the harassment of the McBrearty family will be considered in a later module.

Bomb Hoaxes

7.139. It should also be noted that there were a number of hoax bomb calls made to the McBrearty business premises. As yet, the Tribunal has not had any evidence as to the origin of same.

Overall

7.140. Overall, the lives of the McConnell and McBrearty extended family were made a misery by these crazy actions, by a group of ill-guided individuals. The accumulative effect of the actions should not be overlooked. These gestures were accompanied by the blasphemous abuse of the sign of the cross, on the part of a number of people where any of the family were seen.

Conclusions

- 7.141.
1. The Tribunal was impressed by the manner in which Detective Garda Flynn gave his evidence. Unlike many of his colleagues who have given evidence before the Tribunal, he answered all questions in a forthright and comprehensive manner. The Tribunal is satisfied that Detective Garda Pat Flynn gave a truthful and accurate account of his dealings with Darcy Connolly, Stephen Barron, Paul Roulston, Kieran Roulston and Roderick Donnelly.
 2. The notes made by Detective Garda Flynn were a model of clarity. They provided great assistance to the Tribunal in its attempt to unravel this complex aspect of its work.
 3. Insofar as there has been a conflict of evidence between that of Detective Garda Flynn and the evidence of Paul Roulston, Kieran Roulston and Roderick Donnelly, the Tribunal has no hesitation in preferring the evidence of Detective Garda Flynn.
 4. The Tribunal is satisfied that Paul Roulston has told the truth on many aspects. However, his evidence in relation to the making of a statement to Detective Garda Flynn in the kitchen of his house, was hesitant and doubtful and it is not accepted. In this regard, the Tribunal prefers the account of that visit given by Detective Garda Flynn. Accordingly, the Tribunal finds that Paul Roulston did not make

any statement to Detective Garda Pat Flynn, either in his house or elsewhere.

5. It is difficult to understand why Paul Roulston would tell lies about the making of such a statement, as he has candidly admitted that the statement was a completely false statement, relating to an alleged sighting by him of Frank McBrearty Junior and Mark McConnell, when Mr. Roulston accepts that he was not in the car on the night in question and therefore never saw these people.
6. Given that Mr. Roulston's evidence on other matters has been accepted by the Tribunal, it is prepared to find that Mr. Roulston was mistaken in his statement to the Carty team and in his evidence before the Tribunal about the making of this statement to Detective Garda Pat Flynn. It may be that because he had made so many statements and complaints to the Gardaí concerning the McBreartys, he could not recall that he had never, in fact, made any statement to Detective Garda Flynn, although he may have intended to do so. Alternatively, he could have mistaken the confirming of what Roderick Donnelly had seen, as recorded in Detective Garda Flynn's notes for the 8th of January 1997, as the making of a statement. Mr. Roulston did his best to be an honest witness. If others had followed his example, the Tribunal would have concluded its work by now.
7. The Tribunal was otherwise impressed by the evidence given by Mr. Paul Roulston. It is noted that he did not attempt to draw back from any of the statements that he had made to the Carty team. The Tribunal is satisfied that he has attempted to give evidence in a frank and forthright manner, notwithstanding that this meant admitting to conduct involving himself in this disgraceful campaign.
8. The Tribunal was completely unimpressed by the manner in which Darcy Connolly, Kieran Roulston, Roderick Donnelly and William Doherty gave their evidence. The Tribunal is of the view that these witnesses have told lies and have deliberately withheld giving information to the Tribunal, in an attempt to minimise their role in the vicious campaign which was mounted against the extended McBrearty family, including Mark McConnell. The Tribunal is also satisfied that they could have given a much more detailed and coherent account of what went on in Raphoe in the period in question. The Tribunal is satisfied that for their own reasons these witnesses chose to withhold information from the Tribunal.

9. Having considered the evidence carefully, the Tribunal is satisfied that in the aftermath of the arrests of Frank McBrearty Junior and Mark McConnell in December 1996, Darcy Connolly, Paul Roulston and William Doherty set about bringing pressure to bear on the McBrearty family and on Mark McConnell. To this end, a number of things were done. Firstly, Roderick Donnelly was prevailed upon to give a false statement. The first thing that should be said about this statement is that the Tribunal finds the account of that evening, as given in evidence by Kieran Roulston and Roderick Donnelly, to be implausible. The Tribunal cannot accept that two young people, who habitually socialised in Raphoe, could drive around the Diamond for forty minutes without seeing anyone they knew. That Kieran Roulston would then go to sleep for a considerable period, during which time Roderick Donnelly did not see, or speak to, anyone he knew; that they did not go to the chip shop either for food, or to see if there was anyone there that they knew; and that at the end of the evening they did four further laps of the Diamond without seeing anyone they knew, is simply not credible, even by the standards of behaviour in Raphoe.
10. The Tribunal also notes that they did not see any of the fights or arguments which were going on in the vicinity of their car. These events have been dealt with in detail elsewhere in the report.
11. In these circumstances the Tribunal has doubts as to whether Kieran Roulston's car was either in Raphoe at all, or was in the place that he said it was on the night in question. However, in the absence of any firm evidence to the contrary, the Tribunal is unable to make a definite finding that the car was not where they say it was.
12. The Tribunal accepts the evidence of Detective Garda Flynn in relation to the manner in which the statement was taken from Roderick Donnelly on the 20th of January 1997. It is satisfied that the statement constitutes an accurate record of what Mr. Donnelly said at Lifford Garda Station that evening.
13. The Tribunal finds that Mr. Donnelly was not prompted in any way, either by Paul Roulston, or by Detective Garda Flynn, during the making of his statement.
14. The Tribunal does not accept the various explanations put forward by Mr. Donnelly for the extra details which he says were wrongly inserted

into his statement. The Tribunal is satisfied that the statement was a false statement that was told entirely and deliberately by Roderick Donnelly to Detective Garda Flynn.

15. The Tribunal cannot reconcile the various accounts given as to what Roderick Donnelly said he had seen. He stated that he only ever mentioned seeing Mark McConnell in the company of two females; that Mr. McConnell had wet hair and seemed to have drink taken. He is supported in this account to some extent by Kieran Roulston. However, other witnesses, notably Paul Roulston, have stated that Roderick Donnelly said he saw Frank McBrearty Junior with Mark McConnell and that their clothes were wet. On some accounts, Mr. Donnelly is supposed to have reported that the men were looking scared and there is some evidence that he may have said that Róisín McConnell was crying.
16. The Tribunal notes that this account changed substantially when he came to give his statement to Detective Garda Flynn on the 20th of January 1997. The Tribunal notes that there was also a substantial shifting in the time of the alleged sighting from 00.30 hours to between 01.00 and 01.10 hours.
17. Roderick Donnelly, in evidence, could only say that it was some time after 01.00 hours when he made his sighting. The Tribunal is forced to the conclusion that these changes came about because those directing the campaign, being Darcy Connolly and Paul Roulston, knew or became aware at some time after the 8th of January 1997, but before the 20th of January 1997, that the timing of a sighting of both Mark McConnell and Frank McBrearty Junior together on the street at 00.30 hours, would not fit with evidence already gathered by the police. This must raise the question as to whether some member of An Garda Síochána was directing Darcy Connolly as to the content of Roderick Donnelly's statement. In the absence of evidence in this regard, the Tribunal cannot make a finding of complicity on the part of any particular member of An Garda Síochána. It is possible that the direction causing the shift in content as to what Roderick Donnelly had apparently seen, could have come from others in the group and not necessarily from the Gardaí.
18. The Tribunal is satisfied that Paul Roulston did not react to the version told by Roderick Donnelly to Detective Garda Flynn on the 20th of January 1997, because he was aware that Roderick Donnelly had not

told the truth, either in the earlier versions as reported on the 3rd and the 8th of January 1997, or in the version which he was giving to Detective Garda Flynn on that date.

19. The Tribunal is satisfied that initially Roderick Donnelly was coached as to what he should say by Darcy Connolly and Paul Roulston prior to going to make the statement to Detective Garda Flynn. The purpose of so doing was to secure extra evidence against Mark McConnell. The Tribunal is satisfied that Kieran Roulston has deliberately endeavoured to distance himself from any involvement in the false statement of Roderick Donnelly. He has done this by maintaining that he was asleep at the time of the alleged sighting, by staying on the far side of the road at the time of the meeting at the White Cross Inn, and by leaving the office, when Roderick Donnelly's statement was being taken.
20. The Tribunal rejects the evidence of Kieran Roulston to the effect that he made any statement to Detective Garda Flynn.
21. Looking to the wider picture, the Tribunal accepts the evidence of Paul Roulston, which in some respects is supported by the evidence of William Doherty, that there was a campaign mounted by Darcy Connolly, William Doherty, Paul Roulston and others to use a variety of tactics to cause the McBrearty family and Mark McConnell as many problems with the Gardaí as they could. This campaign was also designed to cause the McBreartys considerable difficulty in their home town and ultimately its goal was to drive them out of the town altogether. Probably also, in the warped thinking that gripped a certain section of the town at the time, it was hoped they would break down and confess to 'the murder'.
22. The Tribunal accepts the evidence of Paul Roulston in relation to the business cards. The Tribunal is satisfied that the business cards were created by William Doherty at the shopping centre in Letterkenny. It is also satisfied that the business cards were later in Darcy Connolly's van. The Tribunal rejects the evidence of Darcy Connolly to the effect that he was not aware of the presence of the cards in his van. The Tribunal is satisfied that Mr. Connolly had full knowledge of these cards and by carrying them in his van was consenting to the use of this tactic against the McBreartys.
23. The Tribunal is also satisfied that the production and distribution of

defamatory leaflets and the making of abusive calls to Frank McBrearty Senior was part of the campaign directed against the McBreartys and was carried out by William Doherty. It is conceivable that a member of the Garda was involved in this. In the absence of proof, the Tribunal can make no finding. The evidence of Mr. Doherty is unreliable in the absence of clear support.

24. The Tribunal is satisfied that the false complaints which were made to the Gardaí about members of the McBrearty family, as detailed in evidence by Paul Roulston, also constituted part of the campaign against the McBreartys. This aspect of the campaign was directed and put in place by Darcy Connolly, with the assistance of Paul Roulston.
25. To what extent, if any, there was Garda involvement in this campaign, will be examined in the harassment module.
26. The extent to which the issuance of summonses against the McBrearty's licensed premises and against members of the McBrearty family, could have constituted harassment of the McBrearty family and formed part of the campaign, will also be examined in the Harassment Module.

CHAPTER 8

REPORTS TO HEADQUARTERS AND THE DEPARTMENT OF JUSTICE, EQUALITY & LAW REFORM

Introduction

- 8.01. The text of paragraph (b) of the Terms of Reference setting up this Tribunal required that I should report on the investigation, progress, management and effectiveness of Garda inquiries into the death of the Late Mr. Barron with “particular reference to the management of informants”. This requirement posed a severe difficulty for the Tribunal, both in relation to this module of its inquiries and in relation to the report that was issued on ‘explosives finds’. Once a person gives confidential information to a member of An Garda Síochána he attracts personal privilege which is of long standing in law. The Tribunal approached the task of looking at the role of informers under this module by seeking that those who so acted should be given the opportunity of taking independent advice and then considering whether or not to waive their privilege in that regard. As the reader will note, the person mentioned in this chapter, namely William Doherty, has co-operated with the Tribunal in that respect and decided to debate his involvement, and the way in which he was managed by those who handled him in public. Crucial to the possibility of presenting a meaningful report on this issue was the ability of the Tribunal to look into the informer system, as it operated in 1996/1997 and, in particular, the relationship between the Crime & Security Branch of Garda Headquarters and the Garda Districts and Divisions. In that respect, the Tribunal is happy to report that it received full co-operation from Garda Headquarters through liaison with their counsel at the Tribunal.
- 8.02. This Report would not be meaningful unless some comment were made on the manner in which William Doherty was handled both by those in Donegal and by Garda Headquarters. It is therefore necessary to look at this matter both from an evidential and a structural point of view.
- 8.03. C.77 forms are secret reports compiled by a Garda when he or she has obtained information from an informant. The forms come in a batch of four: an original and three copies. Two of these are sent by the Garda to Crime & Security Branch at Garda Headquarters, one copy goes to the Chief Superintendent at the Divisional Office and the Garda may retain a copy himself. There has been evidence that a large number of C.77s were sent up by Garda O’Dowd containing information allegedly from William Doherty. The reader may wonder why it is necessary to consider this aspect at all in this report, given that it is concerned with the Garda investigation into the circumstances surrounding the

death of the Late Mr. Barron. The reason why such an examination is necessary is that it would be impossible to fully understand the nature of the relationship that existed between William Doherty, Garda John O'Dowd and Superintendent Kevin Lennon in 1996 and 1997, without looking briefly at the C.77s which were submitted by Garda John O'Dowd from William Doherty during that period.

- 8.04. As will become evident in the course of this chapter, Superintendent Lennon and Garda O'Dowd used William Doherty as a means of forwarding bogus information on subversive matters to Crime & Security Branch. They did this to enhance their careers within An Garda Síochána. As such, this was a self-contained scheme, quite unconnected to the Barron investigation. The crossover, or link, between the two areas is established through William Doherty and his connection to Garda O'Dowd. It was a complex relationship, with each having his own motivation for acting in the way that he did. In the Barron investigation it started with the telephone call from William Doherty to Garda O'Dowd on the evening of the 15th of October 1996. Thereafter, due to the closeness of the relationship between the two men, it was possible for the emergence of the crucial witness, Robert Noel McBride, to be orchestrated. Without looking at the relationship between Garda O'Dowd and William Doherty on the subversive front, one cannot truly understand the interaction between them in the course of the Barron investigation and the extortion calls issues.
- 8.05. It is not possible to set out the content of the C.77 forms in this chapter. This is due to the fact that where a person provides information to the Gardaí, they will become a 'Garda informer' or 'informant'. As such, they will be entitled to certain protections designed to ensure that their identity and status as an informer would not be revealed to the general public. The Gardaí keep secret the identity of their informers with great care. An individual Garda, who has an informer, is not obliged to identify his source to anyone, save in very limited and well-defined circumstances.
- 8.06. The information which a Garda receives from his or her informer can be transmitted to Crime & Security Branch at Garda Headquarters by means of a C.77 form. On this form the Garda is identified by his own personal identification number. The source of the information is not identified at all. In the body of the form, the Garda gives the bare bones of the information which he has received. He is permitted to leave out details, if it is possible that by giving them the informer may be identified.
- 8.07. The Gardaí are permitted to claim privilege against production of documents which come from information supplied by their informer or which concern the informers. The Garda authorities will always claim privilege in respect of the

production of any C.77 forms. In this case, the Garda Commissioner was prepared to allow limited access to the C.77 forms which had been submitted by Garda John O'Dowd, apparently as a result of information supplied by William Doherty. This was due to the fact that William Doherty had signed a waiver of any privilege or protection that he may have had as an informer. He denied that he was ever an informer or informant of Garda John O'Dowd.

- 8.08. An agreement was entered into between counsel acting on behalf of the Tribunal and counsel acting on behalf of the Garda Commissioner, which provided for the reception in evidence before the Tribunal of privileged documents. The production of C.77s before the Tribunal was agreed, subject to certain conditions. This agreement was incorporated into a document known as the Privileged Documents' Protocol dated 5th of March 2003. This document governed the use which could be made of the C.77 forms and other documentation which was furnished by Crime & Security Branch at Garda Headquarters. All of the parties to whom the documents were shown have had to sign an undertaking to the effect that they would be bound by the terms of the agreement. It is not necessary to set out all the terms of the protocol; it suffices to state that the Tribunal is bound by its terms, as well as the parties who appeared before the Tribunal. Clauses 4 and 5 of Part 1 of the protocol are of relevance to this report:

4. The Tribunal Chairman will use in his Report only such information gleaned from C.77s as has been debated in open session.
5. If any C.77 is to make its way into the Report, the Chairman will furnish a draft copy of the relevant passage to counsel on behalf of the Gardaí, in order to allow a claim of privilege to be made, even at that late stage, or to allow for a suggestion by way of amendment in order to protect a witness.⁸⁵⁰

- 8.09. The narrative which follows in this chapter will be confined only to evidence given in open session of the Tribunal, or to evidence given in private session which does not concern the content of any C.77 form. The reader of this portion of the report is being presented with the conclusions which the Tribunal has reached and which are set out at the end of this portion of the report. They are based on a consideration of all the evidence that has been heard, both in open session and closed session of the Tribunal.

The Regime

- 8.10. When Garda O'Dowd indicated to Chief Superintendent Fitzpatrick that William Doherty was prepared to become a Garda informant on subversive matters, Chief

⁸⁵⁰ Privileged Documents' Protocol, Dated the 5th of March, 2003: There is a typographical error in clause 4 which has been corrected in the portion quoted.

Superintendent Fitzpatrick was pleased. As Garda O’Dowd did not have extensive experience in handling informants, he put Superintendent Kevin Lennon in as the supervisor of the agent handler.⁸⁵¹ He also asked Superintendent Lennon to assess William Doherty as an informant. He directed that all confidential information received from William Doherty should be channelled through Superintendent Lennon. This was somewhat of a departure from normal practice, in that it excluded the Border Superintendent, Detective Superintendent Shelly, who was in charge of subversive matters throughout the entire Division. He also had an important liaison role with his RUC counterparts in relation to subversive matters. He was being kept out of the loop as far as William Doherty’s information was concerned.

- 8.11. In evidence, Detective Superintendent Shelly stated that on his arrival, it was made clear to him that all intelligence matters in the division were being handled by Superintendent Lennon. He stated that he did not see any C.77s. He described the situation in the following way:

Well, if I go back to the beginning, and I didn’t probably get it across very well, when I spoke to Chief Superintendent Fitzpatrick initially when I took up my post there in October of that year, 1996, he told me that issues of intelligence would be channelled through Superintendent Lennon, and he made that very clear to me. I suppose that is one of the reasons, why, when I look back on it now, that none of this intelligence came to my side of the house, to my office or to our people ... I accept that, but, nevertheless, it was unusual to say the least, that my office wouldn’t at least have been kept informed as to what intelligence was going through the system. We weren’t told about it and that’s a fact.⁸⁵²

- 8.12. Mr. Denis Fitzpatrick did not agree with that evidence. While he accepted that Detective Superintendent Shelly would not receive a copy of the C.77s as a matter of course, he stated that the Detective Superintendent could have gone into the Chief Superintendent’s office and inspected the file of C.77s, if he wanted to keep himself abreast of developments on the subversive front.⁸⁵³

- 8.13. The Tribunal does not accept his latter assertion. The Tribunal is of the view that through the careful planning of Superintendent Lennon and Garda O’Dowd and the manipulation of Chief Superintendent Fitzpatrick, a situation had been brought about which ensured that within the Donegal Division, they were the only ones with access to William Doherty’s information. This would prove vital, having regard to the

⁸⁵¹ Superintendent Lennon served in the Buncrana District until the 5th of February, 1997 when he transferred to the Letterkenny District.

⁸⁵² Transcript, Day 255, Page 55-56

⁸⁵³ Transcript, Day 268, Pages 89-95

quality of the information which would subsequently be forwarded to Garda Headquarters; not all of which made its way onto the Divisional Office file at Letterkenny.

The Flow of C.77s

- 8.14. It is alleged that William Doherty offered to become an informant on subversive matters in or about the month of July 1996. Mr. O'Dowd alleged that Mr. Doherty made this offer because he had been stopped driving a vehicle without tax or insurance. It was not until November of 1996 that the C.77s started to flow. In the following nine months there was quite a flow. A careful reader of this report will note that there is controversy between Denis Fitzpatrick and Kevin Lennon, as to whether Superintendent Lennon may have had contact with William Doherty prior to that time.
- 8.15. In the period of the 8th of November 1996 to 17th of July 1997 there were a total of forty-three C.77s (of which two were marked "not sent"), together with one hand-written report. Thirty-one of them were submitted in the first three months of 1997; nine in January; eleven in February; and eleven in March.
- 8.16. An unusual feature of the C.77s was that they tended to come in batches together. For example, the first two C.77s were submitted on a day in November 1996, with one being sent up on the following day. There were no C.77s in December of 1996. Nine C.77s were submitted all on the same date in January of 1997. A similar pattern was repeated subsequently. In February, five were submitted on one day and two were despatched on another day. In March, three C.77s were sent up on each of three separate days. There were also three C.77s sent up on a date in April of 1997, and three on one day in June of 1997. Two C.77s were sent up on a single day of July of 1997. The remainder were individual ones which were sent in on various dates.
- 8.17. When asked about this flow of C.77s, Mr. O'Dowd stated that the reason why there was such a big batch sent in on the same day in January of 1997 was that he was waiting for a batch of Buncrana forms from Superintendent Lennon. He had decided on the use of these forms so as to preserve the secrecy of his informant. He stated that if he was seen to submit C.77s using forms allocated to his own district, the Letterkenny District, that other Gardaí would not be long in ascertaining who his informant was. It was for this reason that he decided to use forms issued to another district, the Buncrana District. He also cited the length of the queue at the post office and the cost of registered postage as being reasons why he would hold onto forms and post them in a block to Garda Headquarters.

So there was a lot of stuff coming in, so obviously I put them all, three or four of them in, whatever, the one day, because, I mean, to register stuff to Dublin was costing me a couple of quid every time and you would have to queue up in post office, like for twenty, half an hour, like you know. I'd have to come in out of Raphoe whenever I had to post a letter or whatever. That was part of the reason for sure, you know ... I know, but I was paying for it as well, you know. ... I'm not saying that, like, you know, but I wasn't claiming for it, it was costing me money.⁸⁵⁴

- 8.18. The Tribunal does not accept any of the reasons proffered by John O'Dowd as genuine. In relation to the question of preservation of secrecy, the Tribunal notes that Garda O'Dowd actually signed a significant number of the C.77 forms submitted by him. Garda Andy O'Rourke, who was the Chief Superintendent's clerk with responsibility for C.77s for many years, stated in evidence that it was most unusual for a Garda from one District to use C.77 forms allocated to another District. Furthermore, the idea that urgent, confidential information could be delayed due to the length of the queue in the post office, or the cost of sending registered letters individually, rather than as they came in, is not credible. When one looks at the enormous flow of C.77s which were submitted in the period January, February and March of 1997, together with the diversity of its content, one is forced to the conclusion that this can only be explained by a deliberate attempt to impress those in Crime & Security at Garda Headquarters at the relevant time.

The Missing C.77s

- 8.19. It appears that other than the two C.77s which were marked "not sent", all the other C.77s made their way to Crime & Security Branch at Garda Headquarters. However, they did not all make their way onto the file for C.77s held by the Chief Superintendent in Letterkenny. On an analysis of the documents made available to the Tribunal, it appears that twelve C.77s were kept off the Divisional file. No explanation has been forthcoming as to why this should be.
- 8.20. The Chief Superintendent's clerk, Garda Andy O'Rourke, impressed the Tribunal as a conscientious worker and truthful witness. He stated that any C.77 that came into the station at Letterkenny would be placed on the Chief Superintendent's desk. When the Chief Superintendent had read the document, it would be kept under lock and key in the office. There would be a file kept for each calendar year. He could not explain why there should be any C.77s missing from the Divisional office file.⁸⁵⁵

⁸⁵⁴ Transcript, Day 289, Page 18

⁸⁵⁵ Transcript, Day 314, Page 13-15

8.21. A curious discovery was made on the 19th of December 2002. On that day, a thorough search was made of all presses and cupboards in Letterkenny Garda Station, to see if there were any other documents which might be of relevance to the work of the Tribunal. In a press in room 207, a large volume of documents purportedly belonging to Superintendent Lennon were found. These included photographs of Adrienne McGlinchey's flat, photographs of her family, photographs of fertiliser and firearms, and various documents concerning the Barron investigation. Among the documents discovered were five of the missing C.77s submitted in February and March of 1997 by Garda John O'Dowd. This press became known in the Tribunal hearings as the "Lennon locker". Mr. Lennon had the following to say about the discovery of the C.77s in that press:

Q. So in terms of C.77s being retained by you, could they have been retained by you?

A. Well, if they were in my locker they must have been.

Q. You are happy that's the position?

A. Yeah.

Q. Is there any reason?

A. I would think so, but I think there was a load of C.77s in that locker which were never shown to me, which didn't belong to me at all.

Q. The case would be, just to get this straight then, if they were in your locker one presumes you had them therefore you read them, so you had them in your possession?

A. Yes.

Q. You were aware they were going up?

A. Oh yes.

Q. Were you a bit embarrassed about that, that this kind of material would be going up because it was rubbish?

A. Well, I couldn't stop people sending up materials of that nature.⁸⁵⁶

8.22. A further curious feature emerged in the course of the hearings. Kevin Lennon admitted that he had deliberately withheld a number of C.77s which Garda O'Dowd had given him. He kept them in a drawer in his desk. They remained

there until Chief Superintendent Fitzpatrick came to him to ask him if he knew anything about such documents, because Chief Superintendent Jennings from Crime & Security Branch had been asking questions of the Chief Superintendent concerning certain C.77s which had been submitted by Garda O'Dowd. Kevin Lennon said that he then handed them to the Chief Superintendent. He explained his actions in the following way:

No, Sir, but I want to be upfront with the Tribunal, there was a couple of them, and I don't know which ones they were, and they came in and they were in my office on one occasion, and I just can't pinpoint the ones, Sir, but the Chief Superintendent Jennings rang Chief Superintendent Fitzpatrick about some of these C.77s and Chief Superintendent Fitzpatrick came over to me. He hadn't these three or four ones, and I hadn't given them in to him. So I handed them to him personally and I told him that I didn't believe them, that's why I didn't send them in to his office. That's the only occasion that there ever was anything about that.⁸⁵⁷

- 8.23. Denis Fitzpatrick denied that he had been told by Superintendent Lennon that the reason that he had not forwarded these C.77s to him was because Superintendent Lennon did not believe them.
- 8.24. The Tribunal is of the opinion that in order to properly understand the significance of C.77s being missing from the Divisional file, one has to understand the relationship which existed between Crime & Security Branch in Dublin and the various Divisional offices throughout the country at that time. The C.77s were sent up to Crime & Security Branch, with a copy going to the Divisional Officer. The purpose of this was to ensure that the highest ranking officer in the Division was aware of all intelligence coming in from informants who were being handled by Gardaí within his division. The majority of this information related to things happening, or about to happen, within the division. Some of the information would be of a wider national and even international dimension. The role of Crime & Security, at the time, was to take in all the information and disseminate it to the relevant units within the national and international framework. Sometimes they would ask the Divisional Officer for a background report on people named in the C.77, or for more detail on an event mentioned in the C.77.
- 8.25. It is important to appreciate that Crime & Security Branch did not have any operational role as such. What measures were to be put in place, having regard to the information received, was entirely an operational decision taken by the Divisional officer in conjunction with his senior officers. Thus, if C.77s did not find

their way on to the Divisional file, but were sent up to Crime & Security, this would mean that those responsible for submitting the reports would get credit for sending in the information, but nothing would actually be done to investigate the information at the operational level because the C.77 forms were not on the Divisional file.

- 8.26. Not only was there a problem with C.77s not making their way on to the Divisional file, it also transpired that many of those which were on that file were not initialled by the Chief Superintendent. The significance of this was that in evidence Denis Fitzpatrick stated many times, that it was his invariable practice to sign his initials to all C.77s which would pass over his desk.⁸⁵⁸ His evidence in this regard was supported by that of his clerk, Garda Andy O'Rourke, who confirmed that such was indeed the Chief Superintendent's practice. He estimated that at least eight out of ten C.77s seen by the Chief Superintendent would be initialled by him.⁸⁵⁹
- 8.27. Of the thirty-three C.77s which made their way on to the Divisional office file, only eight were initialled by Chief Superintendent Fitzpatrick. In evidence, he maintained that a sinister inference should be drawn from this state of affairs, to the effect that somebody had deliberately planted C.77s onto the file, either behind his back while he was Chief Superintendent in Donegal, or subsequent to his departure from that office in August 2000. He put his suspicions in the following way:

No, all I can do is speculate what might have happened. ... That someone made them out, sent them off to Crime & Security and didn't send in a copy to the Divisional office. ... OK. The other one would be, right, that they were left into the Divisional office at a later stage, much later stage, and found there. That's the only explanation I can make. Now, if it was one or two or a very small amount, I'd say, yes, I could miss them, there is a chance you could miss, but there's no way I would miss all that or anything near it. If there was one or two that was not signed by me or initialled by me, I'd say, yeah, there's a fair chance I did miss them ... I know there was communication between Kevin Lennon and Crime & Security. The extent of it, I don't think I realised. ... I know it now from – well, there must have been. ... Well, I think he was a regular visitor to Crime & Security, and if I wasn't in the loop, I wasn't in the loop for it and ... yeah ... I am taken aback by all these C.77s.⁸⁶⁰

⁸⁵⁸ Transcript, Day 272, Page 93

⁸⁵⁹ Transcript, Day 314, Page 23

⁸⁶⁰ Transcript, Day 272, Pages 122-127

- 8.28. Later in his evidence, he blamed Kevin Lennon for this state of affairs:

The only other people that were dealing with these was Garda John O'Dowd, the author, and Kevin Lennon. I don't think John O'Dowd – I have never seen him in the Divisional office. Maybe he was but I've never seen him in that area. And the only person who could have done it, in my view, could be Kevin Lennon ... because he'd know the run of the office, he'd be – he knows the running of the office. He wouldn't be – he would have access to that office ... He's not the only one, no. The Border Super and the – he was the District Officer. ... Because he was the one who is dealing with the C.77s with John O'Dowd. He is the only one that was dealing with them C.77s with John O'Dowd. ... I have no evidence to back it up, Chairman, I am only asked what is my opinion⁸⁶¹

- 8.29. When asked by counsel for the Tribunal as to whether such a scheme, if it existed, would be very short-sighted because it would be found out as soon as he was contacted with a query from Crime & Security arising out of any of the C.77s which had been submitted to them, he replied that that was not so because he would have gone to speak with Superintendent Lennon, who might have had further information in relation to the query. Indeed, as stated previously, on one occasion, in response to just such a query Superintendent Lennon produced a number of C.77s from his desk drawer.

- 8.30. In relation to the missing C.77s, Kevin Lennon said that this was a devious smoke screen put up by the Chief Superintendent to disguise the inefficient manner in which he ran his office. In the course of his cross-examination of the former Chief Superintendent, Kevin Lennon stated:

We'll get to them, don't you worry, we'll get to them. But for you to come in here and tell the Chairman and create an inference that I planted C.77s on your file when your office was clearly inefficient in relation to this matter is a lie and it's untrue.⁸⁶²

- 8.31. As support for this proposition, Kevin Lennon was able to show that on one occasion Chief Superintendent Fitzpatrick had asked Garda John O'Dowd to submit a C.77 in relation to the content of the taped discussion between him and Garda O'Dowd, wherein Garda O'Dowd had reported the alleged torture of William Doherty by the 'Provisional IRA'. According to Denis Fitzpatrick, no such C.77 was immediately forthcoming from John O'Dowd. Nevertheless, he had a discussion with Assistant Commissioner Jennings about the same topic. Denis Fitzpatrick stated that it was only many months later that he came across the

⁸⁶¹ Transcript, Day 273, Pages 10-11.

⁸⁶² Transcript, Day 275, Page 34

C.77 in a different file known as the “pending file” in Letterkenny Station. He described this discovery in the following way:

And I was going through the files and I came across this single sheet, and it was actually folded and I just pulled it out and saw, oh, I recall that I had been looking for that and never got it. And ah, I said, just put it on the file and that was as far as I – that was as much as I did with it. What prompted that was, I had information from John O’Dowd when Dermot Jennings ... John O’Dowd told me that this man had lost his teeth, had lost two teeth, and had been interrogated. That was my memory. Dermot Jennings rang me telling me that he had a report, a C.77 on it. ... I knew the contents and he said he was worried about it. So I was concerned about it. And I told him that as far as I was concerned it was all lies, that there was no problem with William Doherty, or words to that effect. And I looked for the C.77 from John O’Dowd and I obviously never got it until here I discovered [it] months later, in among files in the Divisional office.⁸⁶³

- 8.32. A curious feature of this is that while Mr. Fitzpatrick vividly recalled finding that C.77 and reading it and having it placed on to the correct file, he accepted he did not initial it. He was not able to give an explanation as to why he had not done so.
- 8.33. Another curious feature of the un-initialled C.77s on the Divisional file, is that in respect of the nine C.77s which came in on the same day in January of 1997, none of which were initialled, it would appear that there was verbal communication between Crime & Security Branch and Chief Superintendent Fitzpatrick on 23rd of January 1997 and 30th of January 1997 in respect of the matters reported on those C.77s. The Tribunal does not understand how Chief Superintendent Fitzpatrick could have had a coherent conversation with Crime & Security on the relevant C.77s without having sight of them or at the very least knowledge of their content.
- 8.34. The Tribunal has come to the conclusion that the fact that many of the C.77s do not bear the initials of Chief Superintendent Fitzpatrick is not as significant as he would like the Tribunal to believe. It can only come to the conclusion that the system for the reception of C.77 forms in Letterkenny Station was somewhat chaotic. The fact that a C.77 could be found months after it was due, without any inquiry in the interim from the Chief Superintendent to the agent handler, Garda O’Dowd; the fact that when it was found to have been misfiled, no action was taken on that; and the

fact that a Superintendent could simply hand over a number of C.77s from his desk drawer without further comment by the Chief Superintendent, is indicative of the fact that the Chief Superintendent treated the reception of intelligence in a completely negligent fashion.

William Doherty

- 8.35. William Doherty denied that he either mischievously or deliberately gave information to Garda John O'Dowd on subversive matters. He said that he couldn't inform on the 'Provisional IRA' because he was never a member of that organisation, nor was he connected to that organisation in any way. His denial was in the following emphatic terms:

I can guarantee one thing, that I was never giving information about the I.R.A. or anything like it because I wouldn't have known that. I would also like to state that it would have been aware to members of the Gardaí that the I.R.A. didn't like me. Because I was a petty criminal. I received threats from the I.R.A. that they were going to shoot me. I was a petty criminal, I was selling counterfeit goods at markets around the country and I was told by a person from Lifford that if I didn't stop my activities that I would be dealt with and I took that to mean that I would be shot.⁸⁶⁴

- 8.36. No compelling evidence was presented to the Tribunal to suggest that William Doherty was either a member of the self-styled 'Provisional IRA', or connected to that organisation, or to any other terrorist organisation. While it was alleged that he mentioned the names of people who were known sympathisers of the 'Provisional IRA', even if this did happen, experienced Gardaí could not have believed that William Doherty was by any stretch of the imagination "well got" within that organisation. Such information as was produced by William Doherty, was entirely false and without any basis in reality. **The Tribunal is entirely satisfied that William Doherty was never a genuine informant on the activities of the 'Provisional IRA'.**

Content of the C.77s

- 8.37. The reader may think that the Tribunal is being unduly harsh on Denis Fitzpatrick concerning what may be regarded as administrative matters relating to the processing of the C.77s. This is not the case. These concerns have only been highlighted because it is necessary for the reader to understand how the C.77 forms were being processed.
- 8.38. The more disquieting feature concerns the content of the C.77s themselves,

⁸⁶⁴ Transcript, Day 187, Page 6

coupled with the complete lack of action, or analysis, that was taken as a result of them.

- 8.39. As already stated in Chapter 1 of this report, much of the information submitted, which allegedly came from William Doherty, was both false and dramatic. It is not possible to set out in this report the details of the information submitted; suffice to say that on its face it was information of the highest quality. If thought to be reliable, it demanded that immediate steps be taken at an operational level. This was never done. None of the intended victims were ever notified. Nobody was ever arrested. Nothing was ever found.
- 8.40. Even worse, such of the information as was checked out, was quickly and easily discovered to be absolutely without substance. Yet, despite any rational explanation, the information continued to be accepted and continued to be forwarded to Crime & Security Branch at Garda Headquarters.
- 8.41. In the course of his evidence, John O'Dowd conceded that nothing positive ever came from the C.77s which he submitted:

Q. Can I ask you some preliminary questions first of all? Was there ever a successful search conducted on foot of information given by Mr. Doherty?

A. Well, the only search that I was aware of was one conducted on, was the Lofty Gallagher, so that wasn't successful.

Q. Was there ever anyone arrested on foot of information given by Mr. Doherty?

A. In relation to the C.77?

Q. Yes.

A. I don't think so. I just can't think of anyone now off the top of my head.

Q. Was there anyone in respect of whose property any item of a subversive nature was found as a result of information given by Mr. Doherty?

A. I was never told of any, no.⁸⁶⁵

- 8.42. John O'Dowd blamed his superiors and Crime & Security Branch for this state of affairs. He said that he was told that the information was "great stuff". He said that he was never told that any of it was false. It was not for him, he maintained, to make further enquiry of his superiors as to what had become of the earlier items of information.

- 8.43. Denis Fitzpatrick stated that he was only shown the C.77s which he had initialled. He had no adequate explanation for the lack of action at Divisional level in respect of some of the significant information of which he had admitted that he did have knowledge.
- 8.44. Kevin Lennon maintained that following his first meeting with William Doherty prior to Christmas 1996, he had checked out William Doherty's previous convictions and discovered that he had been told lies by William Doherty. He stated that following on a further meeting with William Doherty in Garda O'Dowd's house in February of 1997 he came to the conclusion that William Doherty was no use as an informant. He said that he told Garda O'Dowd not to send in any more C.77s from William Doherty, but he was aware that Garda O'Dowd did so. He accepted that he took no steps to prevent the transmission of further C.77s by Garda O'Dowd.
- 8.45. The witnesses from Crime & Security Branch maintained that it was not their job to act on the information received, nor could they act as they were an information-gathering and analysis unit. The Tribunal accepts that they did not have an operational role. In relation to the C.77s submitted by Garda O'Dowd, they merely received the information and raised queries or sought further reports from the Chief Superintendent on the matter submitted. They stated that it was up to the Chief Superintendent to investigate the information and to take such steps as were necessary to deal with any threat posed, or in relation to any crime already committed, within his Division.

The Ivomec Scam and the Cousins

- 8.46. There are two items of information to which reference can be made, due to the fact that these have been dealt with through documents and in evidence heard in open session of the Tribunal. While they are not serious events in themselves, and are certainly much less serious than the other material submitted to Crime & Security, they give a flavour of the type of activity going on between William Doherty, Garda O'Dowd and Superintendent Lennon, and the lack of response thereto by others within the force.
- 8.47. The first is the so-called Ivomec scam. In his interviews with the Tribunal's investigators, John O'Dowd described this operation in the following terms:

Yes, he was paid £250.00 in relation to ... there was supposed to be an Ivomec scam going on with the Provos where they were selling cheap Ivomec. This is a drench for cattle. Farmers use it, big farmers that have maybe a couple of hundred cattle, and its quite expensive a dose and they were supposed to be selling it cheaper. It was to find out where this was

coming from. Well, initially, Doherty told me that he was to meet these boys in Dublin. I brought this information to the attention of the Chief. Now I couldn't go to Dublin so I presumed that it was being dealt with. He [William Doherty] went up to Dublin and he told me he met these fellows in, what's the name of the place Beaumont Hotel he said it was, Beaumont House and that they gave him the stuff. Now I wanted to see it but he only showed me one vial. He said he had given the rest of it to a farmer [portion redacted]. Now the farmer's name he told me was, I still don't know is it [redacted] or [redacted] but he is a big farmer up there in [redacted] and he would be identifiable because he is a big, big farmer now and is one of the two names. They are quite similar. That's why I am confused.

Q. Who gave you the £250?

A. Chief Superintendent Fitzpatrick handed it to me.

Q. And you, in turn, gave it to William Doherty?

A. I did, Sir.

Q. And William Doherty was not accompanied to Dublin when he made the trip?

A. No, not by me anyhow. I understood that there was something. I passed on the information when he was going and all that. I don't know what happened after that.

Q. And he was to purchase this Ivomec?

A. Yes.

Q. And he returned as you have stated with one vial.

A. He showed me one vial and he told me he sold the rest of it to this farmer, I can't remember is it [redacted], but there's only one big farmer by that name. I know that.

Q. Did you take the one vial from him?

A. I didn't. No.

Q. So for all intents and purposes you had no evidence either.

A. I hadn't.

Q. With all due respect, do you feel that that is an appropriate way to conduct an investigation?

A. It was a mistake.⁸⁶⁶

- 8.48. In consequence of this information, no realistic steps were taken to track down the persons involved in the alleged scam operation. Denis Fitzpatrick explained this by stating that the operation was outside his Division. No explanation was forthcoming as to why an informant would be allowed re-sell the counterfeit product. Denis Fitzpatrick said that he was not told about this aspect. He stated that he was just told by Garda O'Dowd that he could not take the matter any further:

The report came in, and it was from John O'Dowd, that there was some kind of a scam going on with Ivomec, an animal medicine, and that he was to buy it somewhere in Dublin and he wanted money. And I actually gave the money to John O'Dowd or authorised him to get that money. Now, nothing ever occurred from that, as far as I know ... I don't think – I cannot recall any prosecution or anything of that nature. ... No, I don't think I ever got anything. I don't think I got anything at all on it. ... Well, I know that I didn't follow it up. It is only now I realise that it was much later I realised there was nothing ever caught. I didn't actually chase it up. ... Look at, there's times you do things like this and you take risks and nothing occurs from it, and that's what I put that down to. ... My understanding of where he got the money was he had to buy the material, come back from where he brought it from, with the information, the natural thing that came back with the product and get it analysed to see was it real or what was it, and that never happened. ... I don't think he told me anything about it. I don't think I ever heard anything about it until I heard that again on – read that again on the statement. I made no inquiry on it, and if I didn't make an inquiry, it's my fault. I probably overlooked it, busy at other things. I didn't do it.⁸⁶⁷

- 8.49. In his evidence, William Doherty denied any knowledge of or participation in the so-called Ivomec scam.
- 8.50. The Tribunal suspects that there was never any such operation in existence and that William Doherty simply pocketed the money. Garda John O'Dowd was not at a loss because he had been reimbursed the money by the Chief Superintendent from the Secret Service Fund. Just who was being manipulated on this occasion, is difficult to pinpoint.
- 8.51. William Doherty told the Carty team about another occasion when he managed to extract money from Garda O'Dowd. This time it was for the purpose of a trip to see some relations in Scotland. He described the escapade as follows:

⁸⁶⁷ Transcript, Day 270, Page 21-24

I have been working with John O'Dowd for about five years supplying him with information on petty crime and some of this information was a wind up. I told him on one occasion that I would travel to Scotland to check out the Provo scene in Glasgow. He gave me £400 or £500 to go over and when I returned I gave him information about my two cousins [name redacted] at [redacted]. I told him they were running the Glasgow outfit of the PIRA. He agreed later that this was good information, even though I just gave him the names of my two cousins who have nothing to do with anything, one is a carpenter, the other is a digger driver. I gave him information on local crime.⁸⁶⁸

- 8.52. In his evidence, William Doherty changed his stance and denied that he had ever given any information to Garda O'Dowd concerning any of his cousins living in Scotland.
- 8.53. While the above instances may appear to the reader to be nothing more than humorous accounts of times when an informant managed to extract some money from his Garda handler, the Tribunal is anxious to point out that other material on the C.77s was potentially on its face of a most serious kind. That the information was proved to be wrong and the fact that it was not acted upon by those to whom it was given, demonstrates to the Tribunal that those receiving it on the ground did not believe it to be genuine information.

Ongoing Assessment of William Doherty

- 8.54. A C.77 form provides for an evaluation by the Garda handler of both the informant and of the piece of information being submitted on the C.77 form. Notwithstanding the fact that a significant amount of William Doherty's information was shown to be wrong at an early stage; notwithstanding the large scale negative search carried out on the Gallagher's farm in early March of 1997 and notwithstanding that there was never any positive result from any of his information; he retained his favourable assessment rating in each of the C.77s submitted.
- 8.55. It is perhaps worth noting that a statement was made to the Carty team by a man called Gerard Foley, who had worked with William Doherty in the Adria factory in Strabane. He gave a far different assessment of William Doherty. As this man was not called to give evidence before the Tribunal, the Tribunal neither accepts nor rejects his assessment of William Doherty but notes that it was given. He made his statement to the Carty team in response to an allegation which had been made by William Doherty to those investigators to the effect that he had supplied Garda uniforms to Mr. Foley while he was working in the Adria factory.

In the course of his statement, Mr. Foley emphatically denied that he had ever received any such items from William Doherty. He went on to give the following assessment of Mr. Doherty:

William Doherty was known around the factory at that time as Psycho and that is how I found him. He was a bit of a header. The lift did not go to the top floor. I can categorically say that I had no dealings with William Doherty outside working along side him in Adria.⁸⁶⁹

The End of the Informant

8.56. The flow of C.77s ended in July of 1997. Just prior to that, a communication had been sent up to Crime & Security Branch stating that under no circumstances was any action to be taken on the C.77s already submitted, as the life of the informant was in danger. The Tribunal is satisfied that this was an attempt by those controlling and manipulating the situation to effectively shut down William Doherty as an informant and at the same time ensure that no investigation was done into the previous C.77s. The timing of this is significant, having regard to the time when the allegations concerning the extortion calls to Michael and Charlotte Peoples became public, through William Flynn and through correspondence, from Messrs Binchys Solicitors in June and July of 1997. Those involved were intent on deceiving Garda Headquarters.

8.57. Denis Fitzpatrick stated that after the alleged torturing of William Doherty by the 'Provisional IRA', as reported to him by Garda John O'Dowd in the taped conversation, that nothing more of consequence came in from William Doherty. He stated that he just fizzled away.⁸⁷⁰ When asked as to whether the Gardaí in the Donegal Division recognised that they had been sold bogus information at that time, he stated:

I think we acknowledged ourselves. It's my understanding that we acknowledge that ourselves and that we had been sold a pup in this fellow, as Mr. Barr has said, but there's no written report on that and I didn't write any report on it. I think we all understood, from my recollection of it, that we were led up the garden path or woods or whatever way you want to describe it.⁸⁷¹

8.58. Denis Fitzpatrick went on to say that at about that time he was told by Superintendent Lennon that the story which William Doherty had allegedly told Garda O'Dowd about being tortured by the 'Provisional IRA' and having his teeth extracted and his genitals burned, was all lies. Denis Fitzpatrick stated that at around that time he also had a conversation with Crime & Security Branch and informed them that Doherty was not a good informant.

⁸⁶⁹ Tribunal Documents, Page 3016

⁸⁷⁰ Transcript, Day 273, Page 112

⁸⁷¹ Transcript, Day 273, Page 83

- 8.59. Kevin Lennon stated that he directed that the informant relationship be terminated at the end of February of 1997, but he was aware that Garda O’Dowd continued to send in C.77s from William Doherty. He accepted that he did nothing to prevent Garda O’Dowd from doing so. He did not send up any report notifying Crime & Security that William Doherty’s services had been terminated. On any reasonable analysis, it must have been subsequent to this that he retained the three or four C.77s in his desk drawer.
- 8.60. John O’Dowd said that his relationship with William Doherty ceased not on the instruction of Superintendent Lennon, but due to the resumption of the ‘Provisional IRA. ceasefire in or around August of 1997. He stated that he had no business with William Doherty after that. He stated that he did not tell William Doherty to stop sending in information: simply, nothing new came in from him. There was nothing happening at that time. He also felt that the information could have dried up, due to the fact that William Doherty believed that his life was in danger.⁸⁷²
- 8.61. Assistant Commissioner Jennings, on behalf of Crime & Security, stated that the information from William Doherty seemed to dry up after July of 1997. He wasn’t aware of any reason why that happened. Crime & Security did not make any specific inquiry as to why it had happened. He said it was likely that they would have discussed the matter with Chief Superintendent Fitzpatrick, but he had nothing on file to indicate that that had happened.

Superintendent Lennon’s Report – August 1999

- 8.62. On the 27th of August 1999, Superintendent Lennon provided a report to Chief Superintendent Fitzpatrick concerning his dealings with William Doherty. In the body of that report he stated as follows:

I say that towards the latter part of 1996, I received a telephone call at my office in Buncrana from Chief Superintendent Fitzpatrick who advised me that Garda John O’Dowd had been developing and working on information on the subversive field and that it looked promising. However, due to time constraints as a result of the capture of PIRA persons at Malin Head and the subsequent search operations, I was unable to attend to this matter as so directed. The capture of the suspected drugs’ importation boat off Malin Head at this time further eroded time available to attend to the assessment to this individual William Doherty.

I later received a second telephone call from Chief Superintendent Fitzpatrick again directing that I meet Mr. Doherty.

(i) The initial meeting with William Doherty took place close to Christmas of 1996 and was merely an assessment meeting, on the directions of Chief Superintendent Fitzpatrick.

(ii) The reason for the meeting was assessment only.

(iii) The overtone of the meeting was, that as Doherty suggested that he had knowledge of subversive activities, and knew people such as [redacted] and [redacted], I decided that he might be in a position to obtain intelligence for the Gardaí which would or could assist in the protection of life and property. He said he was not a member of Sinn Féin but was willing to join. I said it was a matter for himself and that the Gardaí would not influence him. I asked him if he had any criminal convictions and he stated he had one for assault and an assault pending. This meeting took place at the home of Garda John O'Dowd who was present throughout but made no comment. The meeting was arranged by Garda O'Dowd and I had no knowledge of the subject William Doherty previously nor was I advised that he was an informant as distinct from an informer.

(iv) Action Taken

Decided to run him as an informer.

(v) No information exchanged – I did not and never exchanged information with William Doherty or any other person. I sought to elicit information but didn't succeed at that meeting. It was agreed to meet again.

In January of 1997, I went to Templemore to participate in Module 11 Superintendents Development Course. While there I was transferred to Letterkenny and took up duty there on 10th of February 1997.

(vi) Towards the end of February of 1997, I again met William Doherty with Garda O'Dowd at Garda O'Dowd's private house. Only the three of us took part in this meeting. I had in the meantime checked his background on computer and found that he had lied to me concerning his convictions, a matter I brought to his attention at this meeting. Garda O'Dowd set up that meeting on my request.

(vii) I asked him to verify the information he had been supplying to Garda O'Dowd by facts and to give some actual concrete verifiable physical evidence that the information that he had supplied to Garda O'Dowd (recorded on C.77) was true and accurate. He was unable to do so. He

spoke about a [redacted] family from [redacted] who had a son in England involved in the PIRA. I was doubtful about this as I had never heard of such a person before or of that family. I didn't believe him.

(viii) Because of his demeanour, i.e. looking into the ground during conversation, I was suspicious of him and coupled with his earlier lies to me concerning his previous record, I had no further interest in his information or in him.

(ix) No actions were taken on the basis of any information supplied by him up to this point in time relating to subversive matter. I had no further formal meetings with him.⁸⁷³

- 8.63. Denis Fitzpatrick stated very clearly in evidence that he was never told by Superintendent Lennon in February of 1997, or afterwards, that he had formed an adverse opinion of William Doherty. He pointed out that in the early days of March 1997, it was Superintendent Lennon who was very much the driving force behind the search of the Gallagher farm. This was based on information supplied by William Doherty. He stated that Superintendent Lennon never mentioned any reservations about William Doherty during or after the search operation. He also stated that the only time that he was told by Superintendent Lennon that William Doherty had been lying, was when he had asked Superintendent Lennon about what Garda O'Dowd told him concerning William Doherty being tortured by the PIRA. He stated that Superintendent Lennon told him some days later that William Doherty had been lying to Garda O'Dowd about that incident. This would have been much later circa July of 1997.
- 8.64. In evidence, John O'Dowd stated that he was never told by Superintendent Lennon that he had formed an unfavourable impression of William Doherty as an informant. He denied that he was instructed by Superintendent Lennon not to send in any more C.77s after February of 1997.
- 8.65. The Tribunal does not accept the evidence of Kevin Lennon that he had formed the opinion stated in or around February of 1997. The Tribunal is of the view that the report written by Superintendent Lennon in 1999, was written with a view to minimise his involvement with William Doherty, both in terms of content and in terms of the duration of their involvement. Accordingly, the Tribunal does not accept that report as being an accurate account of Mr. Lennon's dealings with William Doherty.

Conclusions on the C.77s

8.66. Having considered all the evidence given by the various witnesses in both private and public sessions before the Tribunal, and having carefully considered each of the C.77s and other documents submitted, the Tribunal has formed the following conclusions in relation to this aspect:

1. The Tribunal accepts the evidence of John O'Dowd that William Doherty offered to give information on subversive matters if he was let off any charges which might arise out of his being stopped driving a vehicle without valid tax or insurance in the summer of 1996.
2. The Tribunal is satisfied that there was a close relationship between William Doherty and John O'Dowd. This is evidenced by the fact that Garda O'Dowd procured a bleeper for use by Mr. Doherty so as to facilitate communications between them. William Doherty accepted in evidence that he had received a bleeper from Garda O'Dowd in February of 1997. He stated that its purpose was so that he could let Garda O'Dowd know when he had information which would be of interest to Garda O'Dowd.
3. The Tribunal suspects but does not explicitly find that in the early stages William Doherty hoped to manipulate the situation to his advantage by furnishing information to the Gardaí and thereby keep himself on their right side. This would have been advantageous to him, having regard to the admitted nature of the criminal activities undertaken by him.
4. The Tribunal is satisfied that shortly after the arrival of Superintendent Lennon onto the scene, William Doherty quickly came to be regarded by both Superintendent Lennon and Garda O'Dowd as an opportunity that could be utilised by them to suit their own ends; namely, as a means to generate reports to Crime & Security Branch at Garda Headquarters, which would significantly enhance their career prospects.
5. The information allegedly furnished by William Doherty was so diverse and so sensitive that it would have been apparent to the handler and to the supervisor that he was either extremely well placed within the terrorist organisation, or was simply telling lies to ingratiate himself with the Gardaí. Superintendent Lennon and Garda O'Dowd must have realised very soon that the information was false. That it continued to be sent up without any reservation, or change in

assessment status, demonstrates their complicity in forwarding the false information.

6. Much of the information was capable of easy verification. Insofar as it was checked out, it was all found to be without substance. Even still, the flow of information continued unabated. William Doherty's assessment status remained the same throughout. Moreover, the fact that nothing was done on an operational level in respect of information which demanded an operational response, shows that those receiving the information within the Garda Divisions of Donegal either knew it to be false, or did not believe it to be true.
7. Having watched the interaction between John O'Dowd, Kevin Lennon and Denis Fitzpatrick, the Tribunal is satisfied that Superintendent Lennon effectively had a free hand in respect of intelligence management within the Donegal Division, certainly as far as William Doherty was concerned. This is demonstrated by the fact that he could retain a number of C.77s in his desk drawer, only to subsequently hand them over to the Chief Superintendent when asked for them, and yet had no fear of any serious reprimand, or change in the system, as a result of such conduct.
8. The Tribunal finds that Superintendent Lennon was indeed controlling the flow of C.77s onto the Divisional file; thereby ensuring that only certain portions of the information were open for inspection at Divisional level.
9. The Tribunal is satisfied that this type of activity could only be undertaken by Superintendent Lennon and Garda O'Dowd without fear of detection at the Divisional level, because they knew that Chief Superintendent Fitzpatrick was grossly negligent in the way that he treated intelligence and the handling of informants within his Division. There is simply no excuse for his not knowing what C.77s were on the file from Garda O'Dowd through William Doherty; for not reviewing those documents; for not discovering that they contained false information and taking the necessary action to shut him down as an informant immediately. The Tribunal can only conclude that these things were not done, due to gross negligence on his part.
10. The Tribunal does not accept the content of the report furnished by Superintendent Lennon concerning his dealings with William Doherty

which was written in August of 1999. The Tribunal is of the view that that report was written with a view to minimising the extent of his involvement with the informant, both in terms of the degree of contact and knowledge and also in terms of the duration of his involvement with him. The Tribunal does not accept that Superintendent Lennon decided in February of 1997 that he had no further interest in William Doherty as an informant. The Tribunal finds that no such opinion was held by Superintendent Lennon at that time, as is evidenced by his participation in the search of the Gallagher farm in early March of 1997. The Tribunal accepts the evidence of Denis Fitzpatrick and John O'Dowd that no such opinion was made known to them in February of 1997, or subsequently. The Tribunal notes that no such report was ever sent up to Crime & Security by Superintendent Lennon at that time or subsequently until the arrival of the Carty team and his report of August of 1999.

11. The Tribunal is of the view that the use of William Doherty as 'an informant' was effectively terminated as a result of the emergence of the extortion calls issue onto the public agenda in June and July of 1997. After the collapse of the Robert Noel McBride statements in September of 1997, his position became completely untenable as a credible informant. It was for this reason that he was never again utilised as 'an informant' by Superintendent Lennon or Garda O'Dowd.
12. According to the evidence of Assistant Commissioner Jennings, Crime & Security were not aware that the C.77s submitted by Garda John O'Dowd all came from the same source. This was due to the fact that the informant was not identified in any way on the C.77 forms used at that time. This means that short of requiring the submitting Garda to identify which of his C.77s came from a particular source, there was no way for Crime & Security to do any review of the information being fed into the system from a single source. This was a serious failing in the system. The Tribunal understands that measures have been put in place to ensure that the same situation could not arise in respect of current intelligence reports.
13. The fact that Crime & Security was not in a position to carry out any meaningful review of the individual informant, because they were unaware that the relevant C.77s came from only one informant, coupled with the fact that Crime & Security did not have the role of

being concerned that this seemingly dramatic information failed to produce any tangible results, enabled Superintendent Lennon and Garda O’Dowd to operate without any fear of being detected by the authorities in Garda Headquarters.

14. The Tribunal finds that Crime & Security Branch, despite not having an operational role, ought to have done far more to find out whether any of the dramatic information submitted had produced any positive results. Crime & Security Branch, even under the system prevailing at the time, was negligent in failing to make the necessary inquiries.
15. The Tribunal has heard evidence that Senior Officers in Crime & Security had doubts about the veracity of the material which was being submitted. The Tribunal is of the view that once these doubts arose then there was a duty cast upon the officers concerned to make such inquiries as they considered appropriate to address this situation. The Tribunal has no doubt that had they done so, then many of the facts which are contained in this report would have come to light. That failure enabled the perpetrators to carry on their fraudulent activities. It is perhaps ironic that those manipulating the situation, being Superintendent Lennon and Garda O’Dowd, could rely on the negligence of those in charge of the Donegal Division and the failure of the personnel in Crime & Security Branch to appropriately react to their doubts, to be able to achieve their desired goal of submitting bogus information to enhance their careers.

Main Conclusion on the C.77s

- 8.67. The Tribunal is satisfied that Superintendent Lennon and Garda O’Dowd used William Doherty as a means whereby they could send up bogus information on subversive matters to Crime & Security Branch in Garda Headquarters. They did this as a means of enhancing their careers within An Garda Síochána. They were confident that their scheme would not be discovered, due to the fact that they controlled the intelligence at the operational level in Donegal and because they knew that Crime & Security Branch would not enquire too deeply into the information submitted to them. It was the emergence of totally unconnected issues, which ultimately led to the uncovering of their cunning plan.
- 8.68. Essentially, the foregoing is a study of manipulation. Each party was manipulating the other, in the hope of obtaining various benefits. The manipulation of William Doherty by his handler, Garda O’Dowd, and also

by Superintendent Lennon, only ceased because it became impossible for them to continue with him. The reader will be aware that manipulation and deception are recurring themes throughout this report.

Complaints Made to the Department of Justice, Equality and Law Reform

Introduction

- 8.69. It should be clearly understood that the Tribunal has not been specifically directed by the Oireachtas to inquire into the adequacy of the response of the Government, the Attorney General, the Minister for Finance or the Department of Justice Equality & Law Reform to the concern raised by, or on behalf of, the McBrearty family concerning the Garda investigation into the death of the Late Mr. Barron and related matters. On occasion, when officials of the Department became involved in events relating to the inquiry, as when the exhumation order in respect of the remains of the Late Mr. Barron was sought, their involvement has been examined. In addition, as part of its general inquiry into the present module, the Tribunal did receive comprehensive statements from the Department of Justice, Equality and Law Reform⁸⁷⁴ and also heard evidence from the current Secretary General of the Department, Mr. Sean Aylward, in relation to the role which the Department plays vis-à-vis the Garda Síochána and its role in receiving and processing complaints into what may conveniently be termed ‘the Donegal issues’.
- 8.70. The Tribunal is of the opinion that it should set out the account given on behalf of the Department of Justice, Equality and Law Reform as to its response to the Donegal issues because the public should know what response was made by its representative and by the relevant department in government, to the serious concerns raised by and on behalf of citizens of the State.

The Department of Justice, Equality and Law Reform

- 8.71. Mr. Aylward began his evidence by outlining both the historical and the present relationship between the Department of Justice, Equality and Law Reform and the Gardaí. He described it in the following terms:

Well, under the Ministers and the Secretaries Act, the Department of Justice is charged with the responsibility for dealing with the policing of the State, among many other tasks. The Garda Síochána, which has its own statutory base, has an effective operational discretion and autonomy in managing police issues, in investigating crime, and in enforcing the law and in maintaining the peace in the State.

⁸⁷⁴ Tribunal Documents, Page 3787 onwards, 9790 onwards.

There is a long-evolving relationship between the Department of Justice and the Garda Síochána, over the last eight decades or more, since the State's foundation. It has, I suppose, fair to say, moved from a period when there was very direct micro-management, you might say, of what was a relatively small force, in a small country with very low crime figures, through periods when there was very direct hands-on management by the leadership of the Department, for over almost a thirty-year period, the Commissioners actually came from the ranks of the officials in the Department. Moving in the modern era towards a more modern relationship between a police force with visible leadership, where accountability related more to general policy than to the management of individual incidences or events. So it has been an evolving relationship. And over the years, the people dealing with the increasingly complex relationship were those set out in Figure 1.

The relationship was managed in terms of policy areas, rather than giving specific and explicit directions to the Garda Síochána. So that has been the way it evolved. It's also fair to say that the Department was perhaps, in a modern era, more in response mode, responding to events, parliamentary questions and correspondence, rather than having what I might call a 'policy emphasis' and setting out general policy, which the Government and the Oireachtas would wish to see the Garda Síochána doing.

Now there, of course, would have been exceptions over the period, where the Department would have emphasised, for example, in the 1960s, intervention with juveniles, an initiative, the Juvenile Liaison Scheme, an initiative that came out of a response, a policy response by the Department, and the Garda Síochána very well responded to that type of policy initiative.

Also, you can see there, the security in Northern Ireland Section, that was very much driven by events in Northern Ireland, the Troubles and their impact in the South and the need for the Minister and the Government of the day to be up with the play in what could often be a very rapidly unfolding situation. ... The killing of Veronica Guerin was, I suppose, a watershed for the Department of Justice, both in terms of the resources available to it and the pressure upon it. There was a sense that there needed

to be a strategy to deal with crime and the threat to the State represented by organised crime. So it served as a very big wake-up call for the Minister and the Department of Justice right across the board, from the prison area where I actually worked at the time. It particularly impacted on the role of the Minister and the Department vis-à-vis the Gardaí and policing.

I think it's fair to say that the focus of SMI [Strategic Management Initiative] in relation to the Gardaí was on the way in which the force was structured and its effectiveness as an organisation. I believe that there was also a very strong emphasis on giving the Gardaí the tools to do the job to pursue organised crime. So things flowed from that, like the legislation for the CAB.

There was also an emphasis on the Garda Síochána working to a plan and bringing in modern management methods. The Department was very supportive of that approach and endeavoured, largely successfully, to secure the resources for the Garda Síochána to be deployed more effectively and to concentrate very heavily, in co-operation with other State services, like, for example, the Revenue Commissioners, the Department of Social Welfare and Customs and Excise, in focusing on major organised crime in the State and a threat to our democracy.

There was emphasis in the documentation, as referred to there in the papers, on there being effective democratic accountability to the Dáil for the force.⁸⁷⁵

Emergence of the Donegal Issues

- 8.72. Mr. Aylward stated that the Donegal issues first emerged onto the scene in the Department of Justice, Equality and Law Reform when representations were made by letter dated the 27th of February 1997 from Senator Sean Moloney to the then Minister for Justice, Ms. Nora Owen T.D. In that letter he informed the Minister that Mr. Frank McBrearty Senior had complained to him of excessive Garda attention at his bar and nightclub premises. Mr. Aylward said that it was not unusual to receive representations from public representatives complaining of either too much Garda attention, or too little Garda attention to their constituents. He stated that the complaints from the McBreartys began in a relatively minor key. However, they quickly became somewhat more serious and diverse in character. There was also a somewhat unusual development, being the arrival onto the scene of a private investigator hired by the aggrieved family. However, at this early stage the complaints were not registering greatly within the

Department. He explained the position as follows:

Well, I am not certain that the Department at a very senior level would have been taking this in or been that conscious of it. I think that was what was happening although certainly in hindsight it certainly was broadening and deepening as an issue. But, in fact, it was being processed as a piece of correspondence, among thousands of pieces of correspondence about the activity of the Gardaí and relatively junior people were forwarding it in a kind of post-box fashion to the Garda Commissioner's office to be looked at.

I don't want to extrapolate too much from the narrative but I would be aware of the ranks and status of the people who were processing the correspondence at that time and I would be aware that they would be processing that with shoals of other correspondence, which they would be referring onwards in the same fashion.

Now eventually, as the report says at P.523, eventually this correspondence reached monumental scale, in excess of 1200 pages from Mr. Flynn.⁸⁷⁶

- 8.73. By spring/summer of 1997, the complaints on behalf of the McBrearty family had developed substantially. From the initial complaint of Garda harassment, Mr. Flynn had gone on to allege that the Garda investigation into the death of Mr. Barron was hopelessly inept and flawed; civil proceedings had been commenced seeking interlocutory injunctive relief to prevent the Gardaí harassing the McBreartys and their business; when the 'confession' allegedly made by Frank McBrearty Junior on the 4th of December 1996 had been exhibited in a replying affidavit sworn by Chief Superintendent Fitzpatrick on behalf of the defendants in the injunction application, Mr. William Flynn by letter, dated 23rd of June 1997, sent to Ms. Helen Cullen of the DPP's office and copied to officials in the Department of Justice, had denied that his client had made any such confession. Mr. Flynn had written:

You will note that in Mr. Fitzpatrick's affidavit he refers to an exhibit of an alleged confession by Frank McBrearty, Jr. allegedly implicating himself and Mark McConnell in the alleged murder of Richard Barron. I can assure you this alleged confession is untrue and neither Frank McBrearty, Jr. or Mark McConnell had anything to do of any nature with the death of Richard Barron, who died on 14th of October 1996. ... Mr. McBrearty, Jr.

never had any knowledge of this alleged confession until it was exhibited and vigorously denies signing it. You will note that on page 2, where it is allegedly signed by Frank McBrearty, Jnr., the sentence only compliments his father and page 1 in which he allegedly murders Richie Barron, is unsigned. As my investigation discloses, even if Mr. McBrearty, Jnr. wanted to murder Richard Barron he just could not have done. In short, the confession is a forgery and as stated in my statement, his alleged accomplice, Mark McConnell, was drinking in another pub in the presence of a number of witnesses at the time in question.⁸⁷⁷

- 8.74. In the course of his evidence, Mr. Aylward was asked by counsel for the Tribunal as to whether that particular letter from Mr. Flynn had triggered any alarm bells within the Department of Justice, Equality and Law Reform concerning the Donegal issues. He gave a very interesting and possibly significant answer, as follows:

*It was a very slow realisation that we had something terrible here, and I don't think our narrative suggests that that particular letter triggered the alarm bells. I don't believe our narrative would show that.*⁸⁷⁸

- 8.75. Mr. Aylward admitted that in 1997 the Department may not have fully realised the extent of the issues raised in the Donegal Division. He suggested that that may have been due to what they had been told at the time by the Gardaí:

Well, I would say first of all, that once civil action starts, against any Department or an agency of a Department, events move onto a much more serious plain. It is not just letters and envelopes, it's court appearances. The possibility of serious findings being made arises. So, I would have said that, yes, it would have been beginning to be dealt with at a more senior level, but also the mixing up in the case of references to a murder inquiry might well lead people to believe that the civil claim was a distraction, an attempt by somebody who was under suspicion to throw dust in people's eyes.

I don't want to extrapolate or assume too much here. But it wouldn't be totally unusual if the Gardaí advised at a very, very senior level, that this was coming from somebody who was under suspicion for a major crime. The Department, I think, would have a disposition to take that on trust from the Garda at that level. ... It seems to me from our records of the period and the statement

⁸⁷⁷ Tribunal Documents, Page 8481

⁸⁷⁸ Transcript, Day 309, Page 19

that we have given to the Tribunal, that there wasn't a full awareness in the Department of the extent to which this thing was snowballing on the ground up in Donegal.

I think it is usually the case that if there is extensive correspondence going and extremely serious Gardaí are saying this is vexatious, it is all tied up with an awkward, long-running murder investigation, they would tend, by virtue of decades of interaction with the Gardaí, there would tend to be an assumption by the officials concerned that it was being handled appropriately by the Gardaí, that there was oversight by senior management, and that the complaints would be processed properly.

Yes. As I understand it, and it would be very much in keeping with our practice in the Department, the matters were, the correspondence was being referred to the Garda Síochána at the highest level. It was being passed onto people at Chief Superintendent level in the organisation who were dealing with these matters. So I don't think that the moment of truth had arrived at the point in the narrative which you are on at the moment.⁸⁷⁹

A Change in Attitude in the Department of Justice

- 8.76. On 10th of July 1997, Mr. Ken Smyth, then of Binchy's Solicitors, wrote directly to the Minister for Justice, Equality and Law Reform on behalf of his clients, Michael and Charlotte Peoples. In that letter, he copied the Minister with two letters which he had sent to Chief Superintendent Denis Fitzpatrick dated the 1st and the 10th of July 1997, informing the Chief Superintendent that he had information that the first four of the extortion calls made to his clients on the 9th of November 1996, were from the home of a private citizen, whose identity had been made known to the Chief Superintendent, and that the last call was made from the house of a serving Garda, whose identify had also been made known to the Chief Superintendent.⁸⁸⁰
- 8.77. The letter from Mr. Smyth did seem to create a stir in the Department of Justice, Equality and Law Reform. On 7th of August 1997, Ms. Pauline Rossiter of the Crime Division in the Department of Justice, Equality and Law Reform wrote to the Garda Commissioner, attaching a copy of the letter from Mr. Smyth, and asked the Commissioner to look into it as a "matter of urgency".⁸⁸¹ That letter produced some action, because a letter requiring a comprehensive report was sent on behalf of the Assistant Commissioner to the Chief Superintendent in

⁸⁷⁹ Transcript, Day 309, Pages 16-17, 21-22.

⁸⁸⁰ Tribunal Documents, Page 8169

⁸⁸¹ Tribunal Documents, Page 8167

Donegal. That was forwarded by Superintendent Kevin Lennon, who was acting Chief Superintendent at the time, to the Detective Superintendent for his attention. On the 16th of September 1997 the Detective Sergeant in charge of the investigation into the extortion calls, Detective Sergeant Sylvie Henry, forwarded a progress report to the Superintendent in Letterkenny.⁸⁸² On the 5th of November 1997, Detective Superintendent Shelly sent on his report to the Chief Superintendent.⁸⁸³

- 8.78. A similar letter had been written by Mr. William Flynn concerning the extortion calls. On the 6th of August 1997, Ms. Rossiter wrote to the Garda Commissioner seeking to be updated in relation to the investigation into the extortion calls.
- 8.79. Mr. Aylward stated that by the latter part of 1997, the matter was being treated with considerable seriousness in the Department, as was evidenced by the involvement of a senior official in the Department. That official had been informed that a number of investigations were underway within the Garda Síochána in relation to the Barron investigation. He said that it was clear to the Department at that time that there were a number of internal investigations underway and that the matter was being taken with a certain level of seriousness by the Gardaí. He continued:

So, in other words, whatever impression we might have had in earlier stages of the narrative that this was vexatious activity by people who were prime suspects in the killing, it was now moving to the stage where they were being told by the Gardaí that the matter was being investigated internally. There may have been other earlier signals, but I just fasten on that part of it because I think it is one of the things that would have gone to reassure the officials in the Department that this was being taken seriously, and that whatever impressions they might have formed earlier as to the validity of the complaints, they were now being engaged with actively by the Garda Síochána and that people independent of the people at the scene in Donegal were involved in checking it out.

So, in other words, it was gone from being a post office exercise from the Department to the Commissioner to the local police in Donegal. There was now a message there that this message was, a special Superintendent had been asked to investigate. So, I think that would represent a development.

But it still doesn't mean that we would be – the alarm bells would

⁸⁸² Tribunal Documents, Page 8159

⁸⁸³ Tribunal Documents, Page 8164

*be ringing hugely, because many, many such investigations happen because it is felt that there is enough of a prima facie case to be investigated, to borrow a phrase. It doesn't mean there is an assumption that something terrible has happened, but there is sufficient merits in the case to merit independent investigation from outside the division.*⁸⁸⁴

- 8.80. Mr. Aylward also pointed out that by that time, the complaints were being investigated on a number of fronts: within the Gardaí itself, by the Garda Complaints Board, and by virtue by the civil actions which had been commenced.

Developments in 1998

- 8.81. Mr. Aylward stated that he found it surprising that having regard to the extent of correspondence in the matter which had passed between the Department and the Garda Commissioner, that the Department of Justice, Equality and Law Reform were not informed that a file had been sent to the DPP in the Barron investigation in March of 1998. Nor did it appear to him that the Department had been made aware of Superintendent Lennon's concerns regarding the confession allegedly taken from Frank McBrearty Junior on the 4th of December 1996. Furthermore, he stated that because there was no reference to the meeting between Superintendent Lennon and Mr. Niall Lombard of the DPP's office, in the statement furnished to the Tribunal on behalf of the Department of Justice, Equality and Law Reform, he assumed that they had not been informed of any such meeting.

- 8.82. In the statement submitted on behalf of the Department of Justice, Equality and Law Reform, it was stated that on the 3rd June 1998, the Garda authorities forwarded a copy of a detailed Garda file in respect of Mark McConnell, Frank McBrearty Senior and Frank McBrearty Junior to the Department; the file contested the allegations which had been made against the Gardaí, but showed that one confidential source was regarded as discredited. Mr. Aylward was unable to say who the confidential source was that was referred to in that file; he could not say whether it was Robert Noel McBride or William Doherty. He did state that the significant thing was that it showed that at that time the Garda authorities were still holding their end up and contesting the allegations. He stated that the Department would have tended to take such a statement on trust.

A Significant Turning Point in 1999

- 8.83. Mr. Aylward indicated that two events occurred which could be taken together as marking a significant turning point in relation to the perception of the Department of Justice, Equality and Law Reform to the Donegal issues. The first

⁸⁸⁴ Transcript, Day 309, Page 29-30

event was the emergence of allegations by Ms. Sheenagh McMahon in relation to hoax explosives finds in the Donegal Division. The second event was a parliamentary question put down by Deputy Jim Higgins in April of 1999. Mr. Aylward described the effect of these events as follows:

That was a new allegation, but it was unrelated to the correspondence with which the Department had been dealing, so it was a new issue. It was actually brought to the attention of the officer, a very senior officer in charge of security in the Northern Ireland Division who wouldn't, I think, have touched on the issue about McBreartys or other litigants at all up to that point.

This is a new piece of information, security-type information which was properly advised, I think it was Mr. Cole was the official Assistant Secretary at the time, from recollection. As you will note from our narrative, he properly advised the Secretary General of the Department at the time, Mr. Dalton, and then the then Minister, who I think would have been John O'Donoghue, yes.

Yes, and I would like to say, Chairman, that in my view that was a very significant turning point in the history of this whole matter as far as the Department was concerned. I would go on from the point where Deputy Higgins put down his parliamentary question, it was a priority question which meant that the Minister would be on the spot – supplementary questions could be asked. I think the critical moment reviewing our material and our collated statement, looking at it with the experience that I have of being in the Department of Justice, to me one of the most significant moments would have been the Commissioner's office fax of Friday, 30th of April 1999 where the Department was advised, I think for the first time, that the Commissioner had appointed an Assistant Commissioner to investigate all aspects of the complaints with a view to establishing if the criminal law or the Garda Disciplinary Code had been breached. That's a big development. And it's also quite clear that at that juncture, it had in your word, snowballed.

It was at that time that for the first time a detailed submission on the Donegal issue was made to senior management and the Minister. At that juncture, in fairness to everybody though, it is quite clear that the Minister and the Department felt that there were serious allegations but serious allegations were being taken seriously, that they were being investigated by the Gardaí at a very

high level. There was also a logging of the fact that the Complaints Board was investigating some aspects of the matter.

There was a sense that further action by the Minister or the Department would have been inappropriate, until these investigations had progressed further. The Department was also, and the Minister was also in a position to be aware that six persons had initiated civil actions arising from their questions by the Gardaí but they hadn't been processed with very far.

My own sense, as someone who dealt with civil actions against the Department in an earlier period, would have been that due process was underway and a determination would ultimately be made. You know, in a court of law, one way or the other, as to the validity of these accusations that were being made, but that also independently the Gardaí were investigating it in an internal way, at a very high level.⁸⁸⁵

8.84. In April of 1999, the DPP issued his directions as to whether any prosecutions should be taken arising out of Superintendent Lennon's report on the Barron investigation. However, according to Mr. Aylward, neither the senior Department Official in Garda 01 Section in the Department of Justice, Equality and Law Reform, or Crime 1 Division within the Department, were aware of that particular correspondence at that time. It was not until July of 1999 that the Gardaí forwarded to the Department documentation concerning the Barron investigation, which included the directions of the DPP. This documentation had been submitted to the Department for the purpose of onward transmission to the Chief State Solicitor's office in connection with the civil actions being taken by members of the McBrearty and McConnell families and others.

8.85. In September of 1999, the Department received a further written report from the Garda authorities in relation to the ongoing investigations that were underway. Mr. Aylward indicated that from that time onwards one could see that the matter was being taken very seriously at the highest level within the Department. He stated as follows:

Yes, and I do think that this is worth flagging, that from the moment when the Parliamentary question was put down by the then Deputy Jim Higgins, now MEP Mr. Higgins, at that juncture you can see that was followed by advice by the Garda Commissioner that an Assistant Commissioner was investigating the matters.

At this stage, things had taken on a more serious tinge, I think, in the minds of the officials. You can see much more senior people in the Department engaged with advising the Minister as to the response to events. You had Mr. Cole, the Assistant Secretary in the Security Division, you had Mr. Folan, now reporting directly to the Minister, and the Secretary about it, and with updates, oral updates about the progress of the Garda investigation, to the two senior people, the Minister and the Secretary of the Department.

Maybe I shouldn't move on, but moving on from that the pace of parliamentary questions and adjournment debates was also going up.⁸⁸⁶

2000 and Beyond

- 8.86. During 2000, a number of other allegations came to the fore. There were allegations made concerning the planting of an explosive device at a telecommunications mast at Ardara, Co. Donegal. There were also allegations made by Garda Tina Fowley that she had been victimised and harassed following her own allegations of having witnessed an officer practicing Frank McBrearty Junior's signature while Mr. McBrearty Junior was detained in custody.
- 8.87. In June 2000, Deputies Jim Higgins and Brendan Howlin met the Minister for Justice concerning a document and information received by them concerning allegations against senior members of the Gardaí. This anonymous document was passed to the Garda Commissioner for investigation. He appointed an Assistant Commissioner to investigate the matter.
- 8.88. Mr. Aylward went on to describe the taking of a somewhat dramatic step by the Garda Commissioner on the 26th of July 2000:

Yes, but I think if I may, with respect, I would just like to also flag that in the preceding month, on 26th of July, there was a very unusual development in the public announcement by the Commissioner that five members of the force, including a Chief Superintendent, were being transferred and that the file was being submitted to the DPP and that up to six Gardaí and three civilians could face prosecution. That was a fairly dramatic development which preceded the receipt of the report in the Department.

The situation is, as you say, that we were advised that our best approach was to await the decision of the DPP and to say or do nothing that would prejudice any possible criminal proceedings.⁸⁸⁷

⁸⁸⁶ Transcript, Day 309, Pages 40-41

⁸⁸⁷ Transcript, Day 309, Page 43

- 8.89. By 2001 there were a number of internal Garda investigations in being: the Carty investigation and an investigation under Assistant Commissioner Conroy, together with complaints lodged for adjudication with the Garda Complaints Board, as well as civil proceedings which were in being, and there was also the question of criminal proceedings which were being considered by the DPP. However, the Department became concerned about the fact that these issues had remained unresolved for a protracted period. Mr. Aylward described the Department's concerns and response as follows:

I think it's fair to say that the Department would, as had been its course, have tended to put its trust in the existing mechanisms that the State had in place. Both the independent courts system, the Complaints Board we had set up as a half-way house to deal with complaints that could be resolved without going to law, and with the internal Garda investigatory powers and disciplinary proceedings.

I suppose the effluxion of time and the unresolved nature of things, the fact that time had passed, the level of public concern had risen, and there was a sense that we weren't getting anywhere, that it was being too dragged out and that something would have to be done to cut through the fog about this Donegal situation

So I believe that the statement we forwarded, fairly reflects that sense, the general sense of concern that there would have been in the Department. And also explains why on the 22nd of May 2001, the Minister wrote to the then Attorney General, Mr. McDowell, and gave his sense that he wanted to be advised by the Attorney at that juncture whether we should proceed by way of a sworn inquiry otherwise, even while all these other horses were still running, the civil and criminal proceedings. That the point had been reached that public concern was so great that this should be contemplated.⁸⁸⁸

- 8.90. Subsequent to this, the papers were sent to Mr. Shane Murphy SC, for his consideration and advice as to how best to proceed. He came to the conclusion that the only way to get to the bottom of the matter was to have a sworn inquiry. This led ultimately to the setting up of the present Tribunal, which was formally established following resolutions passed in both Houses of the Oireachtas, by Statutory Instrument dated the 24th of April 2002. The Tribunal was able to commence its work at the beginning of June of 2002.

- 8.91. One of the matters dealt with by Mr. Aylward in his evidence was the provision in the Garda Síochána Bill 2004 for a Garda Inspectorate. This is provided for in Part V of the Bill. It provides that the Garda Síochána Inspectorate should consist of three members to be appointed by the Government. In Section 109 of the Bill the objective of the Inspectorate is set out as follows:

The objective of the Garda Síochána Inspectorate is to ensure that the resources available to the Garda Síochána are used so as to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration as measured by reference to the best standards of comparable police standards.

- 8.92. In the Bill, the functions of the Inspectorate are defined as follows:

(2) The functions of the Inspectorate are-

(a) In furtherance of its objective to carry out, at the request and with the consent of the Minister, inspections or inquiries in relation to any particular aspects of the operation and administration of the Garda Síochána,

(b) To submit to the Minister-

(i) A report on those inspections or inquiries, and

(ii) If required by the Minister, a report on the operation and administration of the Garda Síochána during a specified period and on any significant developments in that regard during that period, and

(iii) To provide advice to the Minister with regard to best policing practice.⁸⁸⁹

- 8.93. Mr. Aylward described the way in which it was envisaged that the new Inspectorate would operate:

This section of the legislation is very much a response to the findings of this Tribunal about the state of knowledge and awareness in the Department, that would have to be addressed. This is a mechanism which is now being put forward for Oireachtas approval to put the Department in a stronger position in the future and the Minister in a stronger position in the future in terms of giving policy direction and democratic oversight to policing in this State. So it responds to one of the big gaps which emerged from the Tribunal's work ... I have spoken to some of the

⁸⁸⁹ Garda Síochána Bill, 2004, S.109

people who are involved in its English equivalent and there really is an inherent implicit power of initiative there to take up the cudgels in relation to an issue. This emerging dialogue really. But I think we need to distinguish between the independent commission to look into individual complaints and this totally new structure and instrument to enhance the policy side and the policy role of the Minister for Justice. It's a new instrument and it's intended to bring in what I would call professional policing perspective on the policy side of the equation.

So it's not intended to be a kind of freelance Tribunal, as such. It's intended to be a new instrument to address, in the most professional way possible, the knowledge deficit which this Tribunal has drawn attention to. ... It's primarily an instrument for the Minister, yes, and it responds to the criticism that the Department did not have an effective mechanism to have knowledge of what was going on.⁸⁹⁰

- 8.94. It is reasonably clear from the foregoing narrative that the Department of Justice, Equality & Law Reform did not have an adequate mechanism in place to enable it to take a proactive role in inquiring into the multiplicity of issues raised in the whole Donegal saga. The Tribunal has been informed that the Department hopes that the provisions relating to the Garda Inspectorate contained in the Garda Síochána Bill 2004 will rectify this lacuna.
- 8.95. The Tribunal does not see it as its function to comment on the adequacy of any Bill currently passing through the Oireachtas. It is for this reason that the Tribunal has merely set out the provisions relating to the proposed Garda Inspectorate and the explanation thereof, as given in evidence by Mr. Aylward. It is for others to debate the adequacy of these provisions. **The Tribunal is certain, however, that until the infighting between officers, the failure of Gardaí to account immediately and truthfully for their duties and the consequent effect on good morale are all fully addressed, there will be no possibility of progress for An Garda Síochána. There must be strong, independent, effective and timely oversight. There must exist an authority which is empowered to react. Disasters such as that in Donegal should not, if they recur there or elsewhere, be allowed to fester over such a long period without intervention.**

⁸⁹⁰ Transcript, Day 309, Pages 54-55

CHAPTER 9

RECOMMENDATIONS

Introduction

- 9.01. The purpose of this chapter is to make those recommendations that, in the opinion of the Tribunal, arise from the evidence that has been heard and the documents which have been studied. As an Appendix to the Report, the Tribunal publishes the text of Chapter 13 of its first Report. It does this as those recommendations remain relevant to the situation described herein.
- 9.02. The Tribunal makes the following recommendations as to the structure and management of An Garda Síochána, and its obligation to account to the Government of Ireland and, through it, to the people.

1. The Role of Headquarters

- 9.03 By letter dated the 2nd of July 2004, the first Report of the Tribunal of Inquiry, set up pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002, into Certain Gardaí in the Donegal Division was forwarded to the Minister for Justice, Equality and Law Reform. That report posed the question: Could it ever happen again? As those who have read that report will have noted, the Tribunal reported on the scandalous conduct of certain Gardaí in planting explosives between September of 1993 and July of 1994, for the purpose of later uncovering them to their own false gratification. Of necessity, that report had to deal with events for several years on either side of that timeframe. The Tribunal answered its own question by indicating that if there was a lack of proper management at senior level, corruption at middle level, and a lack of review throughout the force, that a similar situation could occur again. While the Tribunal noted that abuse in the form detailed in that report was unlikely to precisely reoccur, nevertheless, it is clear that abuse of Garda power can take many forms. Those who have come to this chapter, following on a study of the contents of this report, will realise that it has happened again. The combination of gross negligence at senior level, amounting to the criminal negligence standard in law, and the lack of objectivity and corruption at levels lower than that, caused the scandalous situation to arise that has been detailed in this further report.
- 9.04 In common with the situation uncovered in 1993-1994, the situation through 1996 to 1998 shows appalling management coupled with the manipulation of facts and circumstances in order to present to Garda

Headquarters, and to the world at large, an untruthful appearance of honesty and integrity in the Donegal Garda Division. The Tribunal reiterates that it has been lied to repeatedly by former, and serving, Garda officers.

9.05 The Tribunal repeats its recommendations, contained in its first report, concerning the management of the Division. Those with management roles need to direct and control operations. Without knowledge, neither Garda Headquarters, nor its Regional Assistant Commissioners, can offer advice or issue commands. It has been all too easy for the highest structure of An Garda Síochána to be hoodwinked and misled. In setting up inquiries in an attempt to uncover the truth, Garda Headquarters was also obstructed and lied to. It is obvious that where a situation reaches a point where wrongdoing has become hardened into a habit in certain sections of An Garda Síochána, that people are not only unlikely to own up to it, they are positively likely to lie about it.

9.06 The Tribunal reiterates its finding from its first report, that the Department of Justice, Equality and Law Reform is now far too isolated from Garda Headquarters. The Tribunal notes that the Garda Bill 2004 contains draft legislation designed towards ameliorating this situation. The Tribunal also notes the helpful and forward-thinking evidence of Deputy Commissioner T. P. Fitzgerald presented to it on Day 322 of its hearings. It is not for the Tribunal to interfere with legislation in progress. The Tribunal's role must be confined to pointing out areas of difficulty which have led to scandalous situations and suggesting the points that need to be addressed. There may be many ways of addressing deficiencies in management and accountability. It is for the Minister for Justice, Equality and Law Reform, in consultation with interested bodies, to choose the methodology that seems best. At a minimum, however, the Tribunal recommends:

1. There should be an obligation on Superintendents in Districts to review the files of Inspectors, Sergeants and Gardaí by physically taking them up and looking through them on a periodic basis. The Chief Superintendent of a District should interest himself or herself in major cases as they occur, and engage in the same process vis-à-vis them, to a much greater extent than is currently the practice.
2. There should be a periodic review by the Chief Superintendent, in consultation with the Assistant Commissioner of the Region, of the progress of all major cases. Those under their command should be

encouraged to report difficulties, areas of controversy and potential pitfalls in cases under their control. Reviews should be strengthened by the examination of actual paperwork.

3. The recommendations of the Tribunal in Chapter 13 of its first report under the heading “The Role of Headquarters” should be reviewed by the Minister and the Garda Commissioner.
4. The recommendations of the Tribunal in its first report under the heading “Reporting to Headquarters” should be considered by the Minister and the Garda Commissioner. The recommendations therein made are here repeated, as the absence of structures for dealing with the very same problems have been instrumental in the reoccurrence of corruption at a most serious level within a very short timeframe of the explosives scandal.
5. In the Tribunal’s previous report, it was recommended that certain minimum standards should be adopted for reporting serious crime from the Regions to Garda Headquarters. It was also recommended that follow-up communications should be a minimum requirement of interaction between Garda Headquarters, the Regional Commissioners and the Divisions. This needs to be strengthened to ensure continuity of management. While it is certainly the case that all forms of management need to be based on trust, the reality is that trust is much less likely to be misplaced if those to whom power is entrusted are aware that their actions are being reviewed on a periodic basis.
6. The system for reporting major incidents through Garda Headquarters to the Department of Justice, Equality and Law Reform is obviously unsatisfactory. A document should be drawn up indicating the major incidents that need to be reported from Garda Headquarters to the Department of Justice, Equality and Law Reform. Just as Garda Headquarters had been recommended, in the Tribunal’s previous report, and now in this one, to follow up such reports with interest through to the final disposal to the matter, similarly Garda Headquarters should forward to the Department of Justice, Equality and Law Reform communications in major cases on a similar basis. Sporadic reporting should be replaced by a procedure that shows the end, as well as the beginning, of a case.
7. The method of receiving information between Garda Headquarters and the Department of Justice, Equality and Law Reform should be

reviewed internally between the two bodies, so as to achieve a satisfactory flow of information.

8. Headquarters has proposed to set up a body to which, on a confidential basis, difficulties and possible irregularities can be reported. This initiative should be seen as a means of removing corruption. It should be supported and strengthened.
9. The Tribunal is much concerned by the lack of any independent body to receive legitimate concerns about Garda behaviour. The provisions of the Garda Bill need to be reviewed by the Oireachtas, so as to satisfy the legitimate disquiet that arises from the Tribunal's study of the documents in this case. All queries were ultimately forwarded to the Garda Commissioner, who received minimal co-operation to his enquiries from all ranks serving in Co. Donegal. The question kept recurring in the Tribunal's mind: To whom do you turn? Whatever measures are put in place must ensure that there is, indeed, a body to whom people with legitimate concerns are able to turn.

2. A Fresh Approach

- 9.07. The Tribunal was much impressed by the evidence of Deputy Commissioner Fitzgerald of Garda Headquarters. It is clear that he exhibited a determination to take on board the findings of the first report of this Tribunal and to seek out those changes in structure that would make it more difficult for such scandals of corruption to reoccur in the future. There is a plan being implemented to strengthen the Garda Internal Audit Section. It is, however, a matter of worry to the Tribunal that the Garda Internal Audit Section has not been strengthened by the presence, at least, of a number of officers from other police forces.
- 9.08. It is reasonable to argue that those who do not have an intimate working knowledge of An Garda Síochána are unlikely to know where internal problems can arise and where embarrassing details, lies and controversies can best be hidden. The experience of the Tribunal, through its investigators, has been that a combination that works extremely well is that of experienced Garda personnel and those with service at commander level in a foreign police force. What An Garda Síochána needs is a combination of experience, dynamism and honesty. In the Tribunal's view, this is best achieved through allowing a combination of a fresh approach from outside the force and internal experience based on long service to synergise together.

9.09. The Tribunal notes that current legislation allows officers of Superintendent rank to be seconded from the Police Service of Northern Ireland into service within An Garda Síochána. The Tribunal also notes that the transfer of personnel at Garda, Sergeant and Inspector level is impossible. The various treaties of the European Union, starting with the Treaty of Rome, promote the notion of free movement of goods and workers. Clearly, this ideal has to give way to practical problems where knowledge of local languages, local conditions and local problems is required. However, it does not seem right to the Tribunal that a person applying from an equivalent police force, and with appropriate qualifications in language and expertise, from within the European Union, or from friendly countries such as Canada, needs to be inducted into An Garda Síochána at trainee rank and to lose significant salary and pension benefits by virtue of a desire to transfer to Ireland and to serve the people of this country. An Garda Síochána receives fresh infusions of energy and enthusiasm in its young recruits on an almost yearly basis. It would be wrong if too many persons without local knowledge and experience were to be brought in to serve as members of An Garda Síochána. A balance in this, as in many other areas, needs to be maintained. However, it is obvious to the Tribunal that fresh ideas and personnel, as well as fresh approaches to problems through the experience of other police forces could usefully be brought in, to the benefit of An Garda Síochána and to the people whom they serve. The Tribunal therefore recommends:

1. The strengthening of the Garda Internal Audit Section through the induction of officers of experience from Canada, or an equivalent police force.
2. The revision of the Civil Service entry requirements to allow transfer, in appropriate cases, of persons below the rank of Superintendent, and under appropriate conditions of service and re-training, into An Garda Síochána from within the European Union or from friendly countries outside it.

3. Informants

9.10. In its previous report, the Tribunal noted that whatever system in relation to informants was adopted, that it had to be one best suited to Irish conditions. It left this as a matter to be scrutinised by the Minister and the Garda Commissioner. Seventeen recommendations were made. The Tribunal understands that of those seventeen recommendations, sixteen

are in the process of review, implementation or scrutiny by Garda Headquarters.

9.11. In its previous report the Tribunal felt it appropriate to make a comment on the chaotic nature of informer handling as, over approximately seventy paragraphs, it existed in Donegal in the early 1990s. The urgency in reviewing this matter is reinforced by the findings made in the current Report. The Crime & Security section of Garda Headquarters was then an information gathering and analysis body. It still has that role, though its function is being developed in various directions. In this respect, the evidence of Assistant Commissioner Martin Callinan was particularly helpful to the Tribunal. The Tribunal believes that there is the beginning of a willingness to contemplate change and to seek out such changes as are appropriate, in order to rectify the situation which this report had identified. Briefly, statements of the most arrant nonsense were forwarded during 1996 and 1997 to Garda Headquarters, from Donegal, without being commented on adversely or action being taken. On the issue of informers, the Tribunal feels that it should make three recommendations:

1. The recommendations made in the previous report are all reiterated. The importance of implementing those recommendations has been borne out by the experience of the testimony and documents in the current module. The role of Crime & Security branch is currently being reviewed in Garda Headquarters under a committee chaired by an Assistant Commissioner. Serious consideration appears to be now being given to all of the recommendations made in the previous Report save for one. At paragraph 13.92.4 the Tribunal indicated:

There should be an independent outside audit of the present state of the implementation of the new Garda policy on the handling of informants. This should be by some person having appropriate security clearance and experience in police operational matters and who should examine the operation of the system and recommend improvements if thought appropriate.

The Tribunal notes the concerns as to security of Garda Headquarters. It also notes the necessity of maintaining confidentiality in terms of communications coming from other police forces. The Tribunal is convinced, however, that these difficulties can be overcome. The Tribunal recommends that the current process of searching for and implementing an appropriate system for dealing with informers

should involve real consultation, as to the final forum of such system, with an independent expert of genuine standing.

2. The Tribunal recommends the strengthening of the Crime & Security Section of Garda Headquarters to ensure that as a valuable resource in the fight against terror, its personnel have appropriate training and resources.
3. The most clearly-identified problem in the relationship of Garda Headquarters to the alleged information coming to it from Co. Donegal was on the lack of feedback to Garda Headquarters. It is not enough to simply receive information. In terms of modern management theory, interaction with personnel is essential to ensure that the best job is obtained from employees. If, for instance, it is reported that an importation of drugs is to take place through a particular agency, or at a particular time, the Crime & Security Section of Garda Headquarters should have in place structures to ensure that such analysis as they provide, to the benefit of Garda Divisions and Districts, is actually made use of by them. The Tribunal, therefore, recommends that in making a report to Garda Headquarters on the existence of intelligence, and in receiving back such analysis as is appropriate, the Chief Superintendent of a District should be obliged to report to Garda Headquarters, in a satisfactory and adequate manner, on the outcome of any Garda operation mounted as a result of the receipt of intelligence.

4. Analysis

- 9.12. The Tribunal was much impressed by the energy and enthusiasm of Chief Superintendent William Keane. His evidence is, together with that of Chief Superintendent Garvie of the Royal Canadian Mounted Police, the foundation of Chapter 2 of this report. The criticisms that are made in this Report do not simply arise from the independent review of the Tribunal. I have received much help from within An Garda Síochána in identifying the faults that have occurred in the Donegal Division. That analysis has been strengthened by outside police experts, and in particular former Assistant Commissioner Patrick Cummins and Chief Superintendent Brian Garvie of the Royal Canadian Mounted Police. The Tribunal understands that for the last two years a number of specialists in collision analysis have been available in Garda Headquarters. One of the problems in this case was that officers reached assumptions that what was typical in road traffic cases had to be seen to occur in every apparent road-traffic incident.

Otherwise, it was to be reclassified as something else: in this case an assault or a murder.

- 9.13. Good police work involves the application of objectivity in investigation and not the emotional pursuit of prejudice, as scandalously occurred in this case.
- 9.14. According to Chief Superintendent Garvie, the process of the analysis of cases has been much developed in the Royal Canadian Mounted Police. An analyst may be called in, either from Regional Headquarters, or Central Headquarters, to assist in major cases. An analyst is a person of intelligence who has been trained to read, and amass, the facts that are apparent in large quantities of documents. On absorbing that material, the analyst draws up charts. Their role is to independently look at information in significant and difficult cases. They would be able to point out, for example, in this case, that the evidence of Robert Noel McBride was not corroborated or supported by any other testimony; that he had not been seen in the town of Raphoe by any other individual; that he had mentioned several individuals in his statement who had not been spoken to and who had not confirmed, or denied, seeing him; that his own brother was in the town that night outside Frankies' nightclub but had not seen anybody he knew and had not specifically been asked whether he had seen his brother; that Mark McConnell and Frank McBrearty Junior had never been seen together on the evening in question; that Michael Peoples could not possibly have been at the scene of the crime and; that a vast amount of detailed information was being fed into the system but was described to persons who were not the author of the information at all.
- 9.15. In this case, a trained analyst could have had two functions, therefore. Firstly, he or she could have pointed out the need for objectivity and the duty, which the Tribunal is satisfied is a matter of proper procedure in Garda investigations already, to cross check statements. Secondly, an analyst could have pointed out the lack of objectivity in the investigation and the failure to follow those pointers vis-à-vis the information falsely ascribed to such persons as Jane Coyle, John Crawford and Hilary Laird. While it is true that such an analyst may not have been able to prevent the scandalous way in which the statement of the 29th of November 1996 was taken from Robert Noel McBride, they could certainly have pointed to other defects in the system. The benefit of an objective analysis in the case of the Peoples' telephone calls, as well, would have pointed to the

necessity for swiftness in dealing with and seeking answers from Garda O'Dowd concerning telephone traffic coming from his home.

9.16. The Tribunal therefore recommends:

1. That the discipline of crime analysis should be developed and strengthened within An Garda Síochána, perhaps in consultation with a friendly police force, such as the Royal Canadian Mounted Police.
2. The Garda Commissioner, and the Minister for Justice, Equality and Law Reform, should give consideration to the introduction of civilian analysts into An Garda Síochána. They would be university graduates in appropriate disciplines requiring careful analysis of facts and documents. After appropriate training, they could be prepared for use in major cases.
3. Progress towards the development of an ideal computerised model of a major criminal investigation should be researched and encouraged. This would allow the integration of all sources of information in a major investigation.

5. Response to this Report

9.17. The Tribunal notes that it was set up by virtue of a resolution dated the 28th day of March 2002 which was passed by Dáil Éireann and Seanad Éireann. The Tribunal's first full week of work with the assistance of counsel occurred in June of 2002. The first report of the Tribunal was published in July of 2004 and this report is now being finalised in May of 2005. These Reports, collectively, constitute the disposal of the two most difficult, complex and time consuming of the issues identified in the opening statement of counsel for the Tribunal of November 2002. The Tribunal notes that Garda Headquarters welcomed the first report of the Tribunal. It responded to it by an analysis of the issues with a view to considering whether the recommendations made by the Tribunal in its first Report could be implemented and, if so, in what form. This led to the setting up of nine independent committees to examine various issues.

9.18. The Tribunal notes, however, that notwithstanding that its report under the terms of the resolution setting it up, was required "urgently", neither Dáil Éireann and Seanad Éireann have debated its first report. Now that two Reports are available it may be considered reasonable that a debate might be considered.

- 9.19. The Tribunal does not find it appropriate, having regard to the separation of powers, to recommend in any way what ought to be the response of Dáil Éireann or Seanad Éireann to this, or its previous, report. The Tribunal, however, feels it appropriate to draw the attention of the reader of this report to the resolution which required that it should urgently inquire into the matters detailed in these Reports and to report to the Minister for Justice, Equality and Law Reform, making such finding and recommendations as it saw fit, in relation to them. The reasons as stated in the introduction, was that these matters were of “urgent public importance”.

6. Ethnic Diversity

- 9.20. The Tribunal notes that in the statement of evidence prepared under the supervision of Assistant Commissioner T. P. Fitzpatrick, the following comment was made:

An Garda Síochána needs to be in a position where the sight of a member of one of Ireland’s new ethnic and religious communities in a Garda uniform is no more unusual than seeing a nurse or a doctor in our hospital or staff in a local shop or someone working on a construction site.⁸⁹¹

The point is also made in that document that a person newly arrived in Ireland from abroad would be unlikely to have the ability to serve as a police officer. The Tribunal points out that persons who have grown up in Ireland are brought into An Garda Síochána and given a high level of training to equip them as police officers. It is suggested that the mere statement of an aspiration will be empty if no change is effected in the current policy. An Garda Síochána should have more confidence in its ability to train and equip its recruits. It should actively seek an intake from a wider ethnic and religious diversity than is currently the case.

- 9.21. The Tribunal also notes the desire within An Garda Síochána to ensure the diversity of the force in religious and ethnic terms into the future. The Department of Justice, Equality and Law Reform should support these efforts.
- 9.22. In its last Report, the Tribunal mentioned these matters as it was felt the monolithic origin of personnel within An Garda Síochána may have contributed to the situation of obstruction involving as is colloquially said, “a circling of the wagons”. It is precisely this situation that has made the Tribunal’s work in respect of its last report, and the current report, so difficult. The Tribunal therefore re-emphasises the importance of this point and its urgency.

⁸⁹¹ This document is quoted in the Tribunal Transcript, Day 322, page 39.

7. Exhumation Order

- 9.23. Under section 47 of the Coroners Act 1962, the Minister for Justice, Equality and Law Reform may make an order exhuming the body of a deceased person. This can occur where a coroner has been informed by a member of An Garda Síochána, not below the rank of Inspector, that in his or her opinion, the death of such person may have occurred in a violent and unnatural manner. In essence, the procedure contemplates the coroner requesting the Minister to order an exhumation, the Minister considering the request and then making or refusing the order. Clearly, the material forwarded by the coroner will be more than a bald statement of opinion. Instead, it will contain detail as to why it is believed that the deceased has met a violent or unnatural death. In this case, there had been a pathology examination by a hospital pathologist. The necessity for a forensic examination occurred by reason of the suspicion of murder. The Tribunal has already commented on the incompetence of allowing the body of the Late Mr. Barron to be buried without a forensic examination taking place in the first instance if, as was then the case, a theory that he had been murdered was being pursued. It was deeply unfortunate that an appropriate request for the later exhumation of Mr. Barron's remains had been made by the coroner for North Donegal, that it had been forwarded to the Minister and that a draft order had been drawn up but then put on hold indefinitely. There is no provision in the Coroners Act 1962 for a request for an exhumation order to be withdrawn. In what was another example of the failure of follow up which characterises this case, the exhumation order was simply put on hold by Superintendent Lennon, at the command of Chief Superintendent Fitzpatrick "until further notice". This should not have not occurred.
- 9.24. Exhumation orders are unusual. Professor John Harbison, in his evidence, commented that in his experience he had conducted less than half a dozen exhumations over the period of his distinguished tenure of the office of State Pathologist. Procedures should have been put in place within the Department of Justice, Equality and Law Reform for requests for exhumation orders to be the subject of follow up. Although the difficulty in the Barron investigation had already been caused by the factors previously outlined in this Report, an early exhumation of the remains of Mr. Barron could have led to the more timely commencement of inquiries and, perhaps, to the identification of appropriate suspects on the basis of the findings of the eventual exhumation examination that indicated death in a road-traffic collision.

The Tribunal accordingly recommends:

1. That exhumation orders can never be put on hold, or deferred, once an application by a coroner is made to the Minister.
2. That in all respects where a communication is made for a particular form of order, or assistance, from the Department of Justice, Equality and Law Reform, the officials of the Department should follow this up by specific queries as to the reasons for seeking the order or, as might be the case, for no longer seeking that assistance or order, which queries should be directed to those seeking same.

8. Documents

- 9.25. In its previous Report, the Tribunal commented adversely on the scandalous disappearance of important Garda documentation. It noted the loss or destruction of several documents which seemed to the Tribunal to be of importance in assisting in the disposal of its work. The Tribunal regrets to report that, as regards the situations covered by this Report, the loss or destruction of documents is even worse. Chief Superintendent Denis Fitzpatrick indicated that when he left Letterkenny in August of 2000, for duties in Dublin, that he discarded all of his documents, books and diaries which were relevant to both the Explosives Inquiry by the Tribunal, and to the Barron Investigation.⁸⁹² He claims that such notes as he kept in journals and other documents were skeletal. Despite being familiar with the process of criminal and civil discovery, he nonetheless disposed of such materials by destruction. In his evidence in relation to the Barron Investigation, he claimed that he had not made any notes at all in relation to the matter, so, it followed, he had no notes to destroy. He indicated that the notes were generally “one liners” and that he was not “a great note taker”.⁸⁹³
- 9.26. Superintendent Joseph Shelly told the Tribunal that when he left the Donegal Division in 1998 he was of the belief that he would never have any use for such documents as he had gathered concerning the Barron investigation and, in consequence, discarded them. He had never, according to his testimony, kept a note book as a Garda working on inquiries. Such notes as he would have made in journals were, according to his testimony, destroyed as he was moving back to Athlone. He indicated that he had not deliberately gone out of his way to destroy anything that he would consider to be of importance. Nonetheless, in August of 2000, when he had moved from Athlone Garda Station to

⁸⁹² Transcript (Explosives) Day 114, Pages 52-53.

⁸⁹³ Transcript, Day 270, Pages 80-81

Mullingar Garda Station, following a break-in at his office, he destroyed a number of other documents. He excused his action by saying that these documents were destroyed on the basis that “they were damaged”.⁸⁹⁴

- 9.27. Superintendent John McGinley, who was then a Detective Inspector, also destroyed relevant documents. He indicated that in July of 2000, when he was meant to be going fishing, he had gone golfing instead. On the third fairway a messenger from an Assistant Commissioner came and told him that he was being transferred to Galway. He described his emotional state as that of a person who was “extremely disappointed and extremely annoyed”. He then came back to his office and “cleared absolutely everything in it”.⁸⁹⁵
- 9.28. The facts of these cases speak for themselves. The Tribunal has earnestly considered whether there was a conspiracy to destroy notes among three of the most senior officers involved in the Barron investigation. The reality is that as regards the material that is to hand, and which has been extensively quoted, in particular in chapter 5, the Tribunal has attached enormous importance to contemporaneous records of the investigation. The Tribunal holds back from making a finding that these three officers conspired with each other to ensure that the Carty Investigation team, then in operation since March of 1999 in Co. Donegal, was obstructed in its task. The material which was destroyed, however, was the property of the Garda Commissioner. The Tribunal does not regard the excuses given for the destruction of these documents as being adequate. On the face of them, they are patently silly. The Tribunal regards the destruction of this important material as being scandalous.
- 9.29. The Tribunal understands that in Canada that all of the notes and journals of police working on a case are frozen into and become part of the case papers. The Tribunal recommends the following:
1. In accordance with its previous recommendations, that officers of the rank of Inspector and above, should keep journals indicating their duties on a day to day basis, and, that such journals should become part of the case papers.
 2. The Tribunal recommends that relevant entries from Garda diaries should be always kept available for later purposes. The destruction of any Garda documents should be a specific disciplinary offence meriting dismissal.
 3. The Tribunal has been dismayed by the inadequate conference notes

⁸⁹⁴ Transcript, Day 257, Pages 146-164

⁸⁹⁵ Transcript, Day 246, Pages 126-127

which, the Tribunal believes, have been abused by Garda witnesses so as to give several different and varying interpretations in accordance with their sectional and self-interested viewpoint. It therefore recommends that conferences in major cases should have a designated note taker who would keep a clear and reasonable account, in brief form, of the proceedings of case conferences. These, again, would become part of the case papers, like original statements and admissions from suspects.

9. Telephone Assistance

- 9.30. The Tribunal has noted that it was scandalised by the extraordinary delay by Telecom Éireann in replying to a legitimate Garda query concerning telephones in Raphoe that was first made in December of 1996. The Tribunal has also noted the co-operation of Eircom, as it has now become, and what it believes to be the integrity of the testimony which has been furnished to it together with cooperation in the form of relevant documents. The Tribunal is satisfied from the evidence proffered, that Eircom is now in a position where it is answering most queries from An Garda Síochána within a period of forty-eight hours. Historic queries are taking longer. Even here, the Tribunal notes, Eircom is pursuing the installation of the relevant technology that will enable these queries to be dealt with as speedily as those which are on an almost current basis. Very considerable efforts have been made by Eircom with a view to fulfilling their public duties. Nonetheless, from the historical perspective of this case, the fault found by the Tribunal, and admitted honestly by their witness, remains.
- 9.31. Under Section 13 of the Interception of Postal Packets & Telecommunications Messages (Regulation) Act 1993, as amended, a public duty is cast upon licensed operators to cooperate with An Garda Síochána in their inquiries in the detection of crime or the maintenance of public order. This duty is now cast by legislation on all licensed operators. According to the evidence of Mr. Thomas Corbett, there are now approximately twenty licensed operators within the State. Under current legislation, licensed operators are obliged to hold data for a period of three years. In accordance with the ethos of competition, that prevails in our society, it is bound to be the case that some of these companies would be more or less healthy than others. Some may be in active decline, stretched for resources and unable to raise funds for the day-to-day demands of its business. Although economic depression seems, in the

current day, to have been an affliction of an historic kind, the reality is that it could occur again. Even without an economic downturn, some companies may decide to forego their public duty in favour of ensuring that resources are geared toward profit making.

9.32. The Tribunal therefore recommends the following:

1. That the Communications Regulator, now known as ComReg, should make it a condition of all future licenses that a response should be made to Garda queries in relation to fixed and mobile phone communications within a maximum period of five working days. Where a request is classified as urgent, a response should be forthcoming within twenty-four hours. It should be made a condition of the grant of any future licenses in telecommunications that these conditions would be stringently met. Failure should result in forfeiture of the licence. The excellent standard being achieved by Eircom should become the industry norm.
2. Considerations should be given by the Department of Justice, Equality and Law Reform in consultation with ComReg and the Garda Commissioner, for setting up an independent databank to which all licensed operators are obliged by law to subscribe whereby the records of their telephone traffic may be held and accessed by an independent body which would be specifically designated to assist in Garda queries and interpret requests for assistance.

10. Specialist Units

9.33. The Tribunal notes the success of Deputy Commissioner T. P. Fitzgerald when, as Superintendent of Store Street Garda Division, he successfully set up a drug investigation unit under his command. It would appear that there was no provision for immediate funding or training available but, as he put it, permission may not be granted in advance, but much can be forgiven afterwards. The Tribunal has noted with dismay the absence of a specialist surveillance unit in Donegal. The diversion and training of twenty men and women into that task could have resulted in a practical benefit to the war against terrorism. The Tribunal notes that in some areas of the country, as happened in Store Street, problems such as drugs, or sexual crime, may arise on a basis which requires a specialist internal unit within the Division to deal with them.

9.34. The Tribunal also notes that much of the inefficiency and lack of attention to duty that the Tribunal has noted in this Report, may not have arisen

had intervention taken place at an appropriate time. The Tribunal notes the apparent contradiction between, on the one hand, advising a closer liaison, by way of communication and follow up in standard form, between Garda Divisions and Headquarters, and between Headquarters and the Department of Justice, Equality and Law Reform, and, on the other hand, suggesting the possibility of further autonomy for Superintendents and Chief Superintendents. However, it seems to the Tribunal, that it should be possible for a Superintendent to either set up, or readily gain authorisation for the setting up, within the resources available to him or her, of specialist units within their own Division or District. A Superintendent, or Chief Superintendent, should also be mandated to attempt to save the career of valuable Gardai by noting their misconduct at an early stage and suggesting a short period of transfer to a specialist unit or a period of training. It is hoped that, thereby, a reintroduction to the possibilities of police work, as a way of serving the community, may ignite the enthusiasm or sense of vocation of members of An Garda Síochána. The Tribunal notes, with regard to internal reform, the excellent submissions from the Association of Garda Sergeants and Inspectors. The Tribunal feels that these submissions were made in the right spirit of reform and building on tradition. The Tribunal can make no comment beyond the recommendations herein made, save to suggest that these submissions merit study by the Minister and the Commissioner.

9.35. The Tribunal therefore recommends:

1. That Superintendents in their District, in consultation with the Chief Superintendent of the Division, should have sufficient autonomy to consider setting up, on a temporary basis from year to year, a particular specialist unit which they perceive to be needed for the work of policing in their area.
2. That a Superintendent, in consultation with the Chief Superintendent, should be mandated for the good of a member whose conduct is beginning to fail, or for the further development of members who would benefit from the experience, to authorise a transfer of a member to a specialist unit in another area, or to mandate a programme of training at the Garda College or elsewhere for personnel under their command

11. Accounting for Duties

9.36. The Tribunal feels it necessary to reiterate the entire of the section of its

recommendations contained in Chapter 13 of its first Report, under the heading “Duty to Account”. The Tribunal notes that under the current Garda Bill, it will actually be necessary to proceed to make an application to a Circuit Court Judge, presumably by the issuing of a Civil Bill, to require a Garda to account for duties that he or she has performed, and for which pay has been received from the people of Ireland, as their ultimate employer. The Garda Síochána (Discipline) Regulations 1989 do not make it a breach of discipline to fail to account for duties. A statutory compulsion which results in an admission of criminal liability, is ruled out as an involuntary statement in any subsequent criminal proceedings. There can, therefore, be no good reason why a member of An Garda Síochána should not account for his or her duties. The Tribunal also notes that what it has previously characterised as the cumbersome and time consuming nature of Garda discipline inquiries is further enhanced by the extraordinary spectacle of the necessity to apply to a Circuit Court Judge to compel a Garda to account for public duties. This problem is a major source of the industrial relations nightmare that is in the process of destroying morale among Gardaí. The Tribunal has noted with dismay the obvious reserve, amounting almost to hostility with which members of the Gardai that hold the rank of Sergeant and Garda display towards their superior officers.

- 9.37. At first, it was hoped that this attitude was indigenous to the Donegal Division; and perhaps only to a small section of that Division towards specific officers. However, in evidence and when submissions were made on behalf of some bodies representing sections of the Gardaí, it became apparent that this was not the case. Assuming that these submissions represent the attitude of members of the force at those ranks, then it would appear that there does not remain within the force any proper sense of loyalty or support for higher-ranking officers. This manifests itself in a number of ways. By way of example, it has been noted that an order from an officer (which is now referred to as a direction) is regarded by these members as providing them with a shield against any personal responsibility for the actions which they take on foot of it. In the event of difficulties arising in the carrying out of such an order, there is an absence of any willingness to accept any responsibility but, rather, a desire to shelter behind the fact that they were acting on an officer's orders. The phrase “covering your back” has cropped up more than once. This attitude appears to have its origin in the perception held by a substantial number of members that it is they, and not the officers, that are held

responsible and will be disciplined. They point to the fact that there is no recorded incidence of an officer being held accountable for breaches of discipline. I am satisfied that this attitude cannot be beneficial to the force as a whole.

9.38. The Tribunal therefore recommends that the problem now identified be addressed.

9.39. The Tribunal is of the view that it is of fundamental importance that all members of An Garda Síochána, of whatever rank, must be obliged to immediately account truthfully for their duties. The Tribunal is of the view that a failure to answer, or an answer which is less than truthful, should be regarded as a major breach of discipline inviting dismissal. The facts detailed in this Report are an instance of how, what appears to the Tribunal to be, an industrial relations problem between higher management and Garda Sergeant and Inspector ranks have produced a system which has become virtually unworkable. The Tribunal notes, for example, the failure of officers to seek an immediate explanation from Garda John O'Dowd as to the use of his telephone for criminal purposes in November of 1996. The Tribunal notes the failure of senior officers to require production of his telephone bill once it became generally known that his telephone line had been used for that purpose as and from June of 1997. The Tribunal notes, with dismay, the complete lack of action taken in that regard. The Tribunal notes the failure by Gardaí Pádraig Mulligan and John O'Dowd to account for their duties, or in the case of Garda O'Dowd his intervention while not on duty, which amounts to the same thing, on the night on which Mr. Barron died. The Tribunal notes the extraordinary efforts pursued by the Carty Investigation team to get simple answers to straightforward question from these, and other members. This had the result, in 1999, three years after the events in question, in the serving of a legal document which was no different from the Notice for Particular which chancery and common law practitioners in the Four Courts are familiar with. No answers were given. No breach of discipline proceedings, in this regard, was ever taken.

9.40. The Carty Investigation team was repeatedly lied to by members of An Garda Síochána and the Tribunal has also been lied to. The Tribunal believes that were there a duty to account immediately for one's actions, with no exceptions and with no delay, that the scandalous and nonsensical waste of money and resources that subsequently became necessary would have been avoided. Reasonable people should be made aware of the fact

that when lies are allowed to harden over time, it becomes almost impossible to crack them open or to discover the truth. On the other hand, the immediate investigation of a lie can lead to much better results.

- 9.41. The Tribunal is taking the trouble to reprint all of its original recommendations contained in Chapter 13 of its first Report, so that the reasoning behind the recommendations made in this section will become clearer. These are set out in the appendix to the Report but should be considered as part of it.
- 9.42. The Tribunal has also noted the practice whereby members of An Garda Síochána would simply ring their station so that they would sign off duty at a particular time, through a colleague. This practice should be stopped. Instead, a Garda, if unable to return to the station by reason of legitimate duties, should be obliged to indicate truthfully the time he is signing off in respect of a prior duty and to note, truthfully, the time when this occurs.
- 9.43. The Tribunal therefore recommends:
1. The creation of a special offence of failure to account for duty. This should be a dismissal offence and a failure to account truthfully and immediately in respect of duties should result in immediate suspension.
 2. No one apart from an individual Garda should write any document putting himself or herself on duty or taking himself or herself off duty. In the event of a legitimate reason for not returning to the station, the duty should be signed off, in consultation with the station Sergeant, at a later time which should be noted.
 3. Consideration should be given to revising the discipline regulations to make these more streamlined, less cumbersome and swifter.

12. Dismissal

- 9.44. The Tribunal notes that several members of the Gardaí continue to serve, despite being the subject of severe criticism in its first report and, in most cases, as well, having lied to the Tribunal. Deputy Commissioner T. P. Fitzgerald told the Tribunal that his advice was that under the current state of the law, nothing could be done.
- 9.45. The Tribunal therefore recommends:
1. A new means of removing Gardaí from office should be considered.

AFTERWORD

1. The circumstances in the Letterkenny Garda District that led to the extraordinary shambles of the Barron investigation have been identified in this Report. Appalling harm has been done to the Barron family, who were entitled to expect that a rational police force would investigate the death of the Late Richard Barron in an objective fashion, and to those who were targeted as suspects in particular Mark McConnell, Michael Peoples, and Frank McBrearty Junior. The Tribunal notes that a deep sense of bitterness and division pervades considerable sections of the town of Raphoe. It is said that the truth sets people free. However, even if this were a complete solution, it is not enough. It is hoped that this Report may become a focus for considering whether the wrongs done in Raphoe might not be replicated elsewhere unless action is taken. It is hoped also that by attempting to come as close to the truth as the Tribunal has been able, with the assistance of those who have appeared before it, including un-represented parties, that some peace will now be restored.
2. To continue to dwell on the bitter events that have occurred in Co. Donegal over the course of the time span considered by the two Reports of the Tribunal would be counter-productive for those that have suffered at the hands of the Donegal Gardaí. Among those who have suffered most grievously have been the competent members of An Garda Síochána, particularly in Donegal, but elsewhere as well, who have taken pride in their uniform, the traditions and standards of the force and the determination of those who follow the vocation of police work to serve their community. It is hoped that with this reporting of what has occurred, that the poisoning by hatred of sections of the community will begin to be brought to an end.

APPENDIX 1

RECOMMENDATIONS FROM THE FIRST REPORT

Introduction

- 13.01. The purpose of this chapter is to make certain recommendations arising out of the evidence that the Tribunal has heard and the documents which it has studied.
- 13.02. The Tribunal makes the following recommendations as to the structure and management of An Garda Síochána, and its obligation to account for itself to the Government of Ireland and, through it, to the people.

1. The Role of Headquarters

- 13.03. In earlier sections of this report the Tribunal noted that the evidence given by Mr. Noel Conroy, Commissioner of An Garda Síochána, was helpful to its deliberations. It also noted that the meetings which Tribunal counsel had with former Ministers for Justice, the evidence actually received from two former Ministers for Justice and the cooperation afforded to the Tribunal by the Department of Justice, Equality and Law Reform, and by Garda Headquarters assisted it in its task. The Tribunal therefore feels able to make a comment as to the shortfalls noted in the relationship of a particular Garda division, that of Donegal, to Garda Headquarters and, in turn, the management of that division through Headquarters. This also brings into play the role which Headquarters has in informing the Department of Justice, Equality and Law Reform of developments of importance so as to ensure that the Department of Justice, Equality and Law Reform is kept properly informed as to the proper functioning of the national police force.
- 13.04. These comments might be regarded as specific to the Donegal Garda division. It might also be commented that Donegal was, to some extent, an isolated division. It comprises a county which is bordered on the south and east by a different jurisdiction and on the west by the sea. Only a narrow strip of land connects it with the rest of the jurisdiction exercised by the Government of Ireland. However, as has been previously indicated, the combination of corruption and negligence which characterised the relevant period in Co. Donegal could easily occur again under different circumstances but, obviously, in a different way. Equally, the management structures in place for dealing with Co. Donegal were no different to those in respect of other counties, save for the Dublin Metropolitan Area. Whatever differences exist, these make no difference to these

recommendations. The Tribunal regards its recommendations, therefore, as being of as general import as it does its findings of fact.

13.05. In the course of the examination of Minister John O'Donoghue by Tribunal counsel, the following exchange occurred:

Q. Would your officials be expected to keep a hands-on approach with the Garda Síochána or were they dependent solely on reports coming into them?

A. Invariably, they would be dependent on reports coming in from the Garda Síochána. I mean they were really, you know, in much the same position as myself in the sense that they were not investigators, nor was it their role to investigate, nor is it. That was a matter for the Garda Síochána and we were very, very careful always to ensure that the operational matters stayed within the competence of the Garda Síochána. And I, for my part as Minister, was adamant and extremely careful to ensure that at no point did I interfere with that operational independence. I feel it would be adverse to the interests of the State were I to do so, or indeed were any Minister to do so.⁹¹⁴

13.06. This description by the Minister was agreed with by the Garda Commissioner.⁹¹⁵ Only one body controls the Garda Síochána in its operational and day-to-day activities. That body is Garda Headquarters. From 1996 an Assistant Commissioner was appointed to the northern region with the responsibility of overseeing a number of counties, including Donegal. Therefore, the ultimate management role of Headquarters has, to a degree, been decentralised. Other regions, comprising other divisions, are in the same position. It may be that, in the future, the number of Assistant Commissioners might be increased, and the size of the regions might therefore diminish. However, that would not cure the structural problems which the Tribunal's analysis of the Donegal division has uncovered.

13.07. The Department of Justice, Equality and Law Reform is now utterly isolated from Garda Headquarters. Headquarters may receive queries, from time to time, in respect of the information which comes to them and which they pass on to the Minister and his officials. These queries are, however, extremely rare. The Minister expects that his or her officials should be briefed on developments of importance so that he or she will

⁹¹⁴ Transcript, Day 109, Q.58.

⁹¹⁵ Transcript, Day 169, pages 26-27.

be able to answer for them before Dáil Éireann and, in respect of developments which attract publicity, make an informed comment, if that course is chosen, to elements of the national media. The flow of information is in one direction. It goes from Garda Headquarters to the Department of Justice, Equality and Law Reform. The Minister is obliged to take everything on trust. There is nothing to suggest that the trust reposed by the Department of Justice, Equality and Law Reform in Garda Headquarters is misplaced. That is not to say, however, that the management structures are adequate. Whereas an argument can be made that the Department of Justice, in terms of the Garda Síochána Consolidation Act 1925, as amended, should be a receiving body in terms of information and should not interfere with investigations, the same cannot be said for Headquarters. What has been discovered in the Tribunal's analysis of the Donegal division makes it imperative that Headquarters should take a more active role in the management of divisions. There can be no basis upon which Headquarters, or indeed the Assistant Commissioners in the region as representatives of Headquarters, can be entitled to see themselves as merely the receivers of information. They are online managers.

- 13.08. The nature of management requires that the person with responsibility should direct and control operations. It is impossible to offer advice, or to issue a command, in the absence of knowledge. It is all too easy for Garda Headquarters, and its regional Assistant Commissioners, to be hoodwinked and misled if a situation of, even at a minimum, negligence is met by a determined effort on the part of Superintendents and Chief Superintendents not to report. If the situation were worse, as it was in Donegal, then it is impossible to justify any management theory which would allow for those who are in need of direction and command to be the final arbiters of the information that is sent by a division to any section of Garda Headquarters.
- 13.09. Fundamental to the proper pursuit of the role of policing is the concise, accurate and contemporaneous reporting of events of importance. The notion of contemporaneous reporting is something that the Tribunal is satisfied is inculcated into recruits from their earliest days in Templemore. The Garda Síochána, ultimately, have the responsibility of dealing with criminal investigations. If they fail in the most fundamental and important aspect of the preparation of files, that are later turned into disclosed documents and books of evidence, then the entire criminal justice system will break down. It is wrong to have in place a system whereby inspections by senior officers, including the divisional commander and the regional

commander, do not involve the scrutiny of paperwork. Management cannot be adequate where it simply involves a responsibility by a manager to question his or her subordinates as to their work. It is certainly the case that information may be missed and that such information can be valuable.

- 13.10. Every system that involves dealing with people has, however, to take into account the human character. It is unlikely that disasters will be reported in the course of a conversation, by a subordinate to a manager, that is clothed in language that betrays the extent of their failure. Lies, negligence and sloth can also be simply ignored, or actively hidden, if a report is sought in general terms. The Donegal division was left isolated from Headquarters. The situation of the implementation of regional command through Assistant Commissioners has not cured, nor will it cure, that situation. The Tribunal wishes to emphasise that in making this recommendation it is expressly not finding fault with Garda Headquarters. The Garda Commissioner, in his evidence, agreed that in the light of hindsight, matters could have been handled better. He also mentioned that steps were being taken, through the implementation of the PULSE computer system, of which the Tribunal had a helpful demonstration, to ensure that paperwork had to be dealt with by managers. While these ongoing developments are a positive sign, there is actually no substitute for imposing a requirement on a Superintendent to review the files of his Inspectors, Sergeants and Gardaí by physically taking them up and looking through them on a periodic basis. The same obligation has to apply to the Chief Superintendent commanding a division. The Assistant Commissioner, in making periodic inspections, should also be required to physically search for, and to examine, paperwork. If that had been done here by Headquarters, the disasters in Donegal would, it is to be hoped, have been discovered. If they had been discovered then a decision could have been made on dealing with them.
- 13.11. Whereas it may be difficult to define what is, or is not, an important case that therefore merits the attention of a Superintendent, of the Chief Superintendent doing a periodic inspection, or of the Assistant Commissioner reviewing the performance of a division, guidelines should be laid down by Garda Headquarters and these should be followed.
- 13.12. In the course of a written report to the Tribunal, Chief Superintendent Brian Garvie of the Royal Canadian Mounted Police, wrote the following:

There is one other area of supervision I consider relevant and that is the area of managerial review. The Commissioner is responsible for An Garda Síochána as to the general direction and control of the Force which is vested in him. He can delegate responsibility to subordinates, as he did with the division and district officers, but ultimately he remains accountable. In view of this, there is a requirement for periodic management reviews by Headquarters of divisions, divisions of districts, and districts of stations and independent units. To some degree this requirement is satisfied by the inspections that are identified in the Code of An Garda Síochána. However, I have been advised that there is no component of the inspections that requires an inspecting officer to conduct operational or administrative file reviews utilising the principles of modern risk management. The incidents [in question before the Tribunal] were reported to Headquarters as they occurred but there was no consistent standard of detail or required information and there was no apparent expectation from Headquarters that progress reports about the conduct of investigations would be forwarded.⁹¹⁶

- 13.13. It is obvious that in any large organisation, and the Garda Síochána is one of the largest, if not the largest, in the State, there must be devolution of authority. Equally, there must be trust. The Tribunal, however, comments that it is contrary to modern theories of risk management not to also interpose a barrier of distrust and to engage in the process of management assuming that fault, deceit, negligence and cover-up will occur. If there had been a review, for instance, of the file in relation to Rosstown, or Ardchicken, it would have become immediately apparent that the file, as an investigation file, did not exist. In respect of Ardchicken, a Chief Superintendent or Assistant Commissioner reviewing that file would have discovered that the substance being passed off as an explosive being planted by the 'Provisional IRA' was in fact an animal feed that was not capable of explosion at all. It is to be hoped that the important questions that should have been asked, but were not asked by the Superintendent responsible in that instance, would then have been asked. Similarly, when one deals with the shocking circumstances of the search of the 14th of March, a senior officer, reviewing the actual paperwork, might have asked questions as to the divergence between what was reported to Garda Headquarters and what was being presented as the official version, locally, as to the effect of the search. The reality is that a clean-up operation was underway by members of An Garda Síochána and that a senior officer should have discovered it. On reviewing

⁹¹⁶ Tribunal Documents, page 2559. As to the cross-examination of the Garda Commissioner on this issue see Transcript, Day 169, pages 70-75.

the paperwork, the most basic question which a competent reviewing managing officer would have asked would have been: “Why are these women not being prosecuted?”

- 13.14. It was the absence of structural command, coupled with utterly defective local management, that led to the situation in Donegal. It is not for the Tribunal to recommend how management structures need to be put in place to deal with this situation. It is certainly the case, however, that the Tribunal must recommend that a new system of review in respect of important cases must be brought in as a matter of urgency. Ardchicken, if the substance had been an explosive, would have constituted a major find, as would Rossnowlagh, the search of the 14th of March and the drop-off of material at Bridgend roundabout. All of these should have been subject to paper review by Garda Headquarters, or through Garda Headquarters by the Assistant Commissioner. Merely leaving that task, however, to an Assistant Commissioner may not, of itself, be adequate and it is for An Garda Síochána to deal with this matter by way of response to this report.
- 13.15. The Tribunal finally comments that any system of management review that is capable of being dealt with merely by indicating that a computer file has been received and that an investigation has been terminated, without looking into the detail of the reason why, would be utterly inadequate.

2. Reporting to Headquarters

- 13.16. The reader of this report will realise that all of the important ‘finds’ dealt with were the subject of a report to Garda Headquarters. Exceptions were the Bridgend and Strabane incidents. At the time, the method of reporting was by telex. More recently, faxes have been used and it is possible that in the future online computer communication may be substituted. The faults in the system of reporting, and the responses thereto, have already been extensively discussed in the course of this report. The Tribunal wishes to make a number of recommendations.
- 13.17. None of the telexes followed a standard format. The Tribunal’s enquiries led it to the conclusion that there was no document template upon which a report, in whatever format of transmission, could be made. There was no Garda circular, and nothing in the Garda Manual, dealing with the minimum requirements of reporting a major incident to Garda Headquarters. That must be rectified by the implementation of

instructions, coupled with an appropriate form in the way of a template, requiring minimum information on matters that are of importance.

- 13.18. It is for Garda management to set these standards. However, the Tribunal would suggest that a primary standard is that of the truth. It is not acceptable that a Garda division can actively lie to Garda Headquarters. This is what happened in relation to the 14th of March search, and the Oatfield and Covehill finds. All of the telexes to Headquarters were lying communications in the sense that each of them promised “further developments”. There were none.
- 13.19. Times, dates and places should be set forth accurately. The times of arrest, and the descriptions of the persons arrested, should be set forth accurately. An accurate description should be given of all of the elements of a find of contraband material, explosive or munitions. The location of the find should be precisely described. Because of the importance of establishing possession, the position within a premises of a find should also be noted. Where a search has taken place by virtue of a search warrant, the date and time of the issue of same, a note of the relevant power invoked by reference to legislation, and the names of the issuing Judge or Superintendent and the officer receiving same so as to be in charge of the search should be included. These are minimum and commonsense requirements and any other details should be filled in.
- 13.20. The role of Garda Headquarters is not the role of the Department of Justice, Equality and Law Reform. It is not adequate that Headquarters, or the regional commanders, should simply be receiving information without involving themselves in the process of checking on the ongoing course of an investigation. Some of the finds dealt with in this report were the subject of one communication to Garda Headquarters, many were the subject of more than one. What characterises all of them, however, is that they were signed off with some such phrase as “further developments will be reported”. The reality is that no further developments were reported because there were never any developments to report. Investigations were being stymied and stopped in their tracks in an abhorrent combination of corruption and negligence. Garda Headquarters never raised a query as to how an investigation was proceeding. The Tribunal is not finding fault against Garda Headquarters in that respect. On one matter, namely the Ardchicken find, a query was raised but only because of the publicity implications, as opposed to a desire to seek further information. In that respect, Commissioner Conroy is not to be faulted.⁹¹⁷

⁹¹⁷ Transcript, Day 169, pages 43-45.

However, as the Commissioner agreed, a structural problem has been identified. The receipt of information in management is not akin to watching a nightly news broadcast of national and international news. In that instance, items that seem of importance disappear and are never signed off on. A fire may be reported one day as ongoing and threatening a particular city, but on the next it may simply be dropped from the broadcast because a more important event has taken its place.

- 13.21. Garda Headquarters has to respond to major incidents on a countrywide basis by taking an ongoing interest in important events that are reported to it. Each event should be classified and given a number. A follow-up communication should be a minimum requirement. A template must be devised, indicating the status of an investigation, the eventual outcome of a search or the consequences of an interrogation, or indeed any other important step in an investigation. When the matter is disposed of, through the submission of a file to the Director of Public Prosecutions, or through the matter being dropped without the submission of a file, that should be reported to Garda Headquarters. The template proposed should indicate the minimum consequential reporting that is necessary and the minimum information that must be included in such communications.
- 13.22. On such communications being made, they should be passed to the relevant Superintendent, Chief Superintendent or Assistant Commissioner for the purpose of him or her allowing such incidents to be part of the paper file review already recommended.

3. Informants

- 13.23. Perhaps the most important aspect of police work that was touched on during the course of the hearings of the Tribunal was the handling of informers. A brief comment has been made on the context of this work in Chapter 3. It is now proposed to make recommendations as to reform.
- 13.24. The use of police informers has been a tool in the investigation of crime for centuries. There is a substantial body of law governing the privilege which attaches to the Garda Síochána in the protection of the identity of their informers and the information which is supplied by such persons. This body of law is not the subject of investigation by the Tribunal. However, the use of informers by the Garda Síochána is subject to self regulation by the force. Within the period thought to be relevant to the Tribunal's investigations, from 1988 to 1994, the use of informers was

subject only to directions and encouragement set out in circulars. Evidence concerning how informers, and Ms. McGlinchey in particular, were dealt with under this system has been considered elsewhere in this report and the Tribunal's conclusions in respect of issues of fact have been set out. This section of the report considers the extent to which the use of informers was regulated at the time, how the issue was addressed abroad, whether the position in this jurisdiction has changed since the period of 1988 to 1994, and concludes with recommendations which the Tribunal makes in this regard.

- 13.25. The branch of An Garda Síochána which deals with this issue is Crime & Security, which has its offices at Garda Headquarters. It is headed by Assistant Commissioner Joseph Egan and Chief Superintendent Martin Callinan at present, both of whom gave evidence before the Tribunal in public and private session. At the outset, it should be noted that the Tribunal considers that the handling of informers by An Garda Síochána is a legitimate topic for public debate. It accepts that there are elements of the business of An Garda Síochána in respect of the handling of informers which should remain secret. Thus the identity of the informer or any information which identifies, or tends to identify the informer, should not be discussed in public. Consequently, most of the evidence heard in relation to facts concerning the handling of any alleged informer has been heard in private by the Tribunal, subject to a protocol entered into with the Commissioner through his legal representatives.
- 13.26. However, the Tribunal's strong view is that the Commissioner's insistence on the application of this protocol to the document which presently governs the handling of informers within An Garda Síochána is unnecessarily restrictive. Indeed, from the investigations carried out by the Tribunal and the information supplied to it by An Garda Síochána, this document is restricted to higher officers within An Garda Síochána. There is no manual which governs the handling of informers within An Garda Síochána. Ordinary Gardaí, who do vital work on behalf of our community, need to know about informers and how to deal with them. Indeed, when specifically asked by the Tribunal whether they were aware that changes in the handling of informers had been effected in the last three years, the Association of Garda Sergeants and Inspectors and the Garda Representative Association seemed to know nothing of these changes, or to know very little about them.
- 13.27. This reticence to engage in public discussion concerning these important

issues can be contrasted to the approach in other common law jurisdictions. The Tribunal had the benefit of the evidence of Chief Superintendent Brian Garvie of the Royal Canadian Mounted Police in public session on these issues. There has been a full debate in the United Kingdom parliament, which led to the enactment of legislation and the introduction of a code of practice in relation to the handling of informers. However, though the Tribunal was given access to this document in private session, and counsel were furnished with an opportunity to read the document in advance of the hearings, neither of its investigators were given this opportunity. Therefore, the Tribunal was deprived of Chief Superintendent Garvie's comments on the document, and indeed those of ex-Superintendent Michael Finn. However, the Tribunal got on with its work in this area and heard evidence in respect of this document, in private, from Chief Superintendent Callinan and Assistant Commissioner Joseph Egan.

The Handling of Informers 1988 – 1994

- 13.28. Chief Superintendent Callinan gave evidence as to the system which applied to the handling of informers and the processing of information from informers in the period 1988 to 1994.
- 13.29. In order to understand the way in which informers and information were handled in that period one must refer to circulars which were issued in relation to this matter. The first relevant circular was issued on the 3rd of December 1973 from the Office of the Commissioner, Crime Branch at Garda Headquarters to the Deputy Commissioner of the Dublin Metropolitan Area regarding "Garda intelligence". This document exhorted members of An Garda Síochána of all ranks, whether uniformed or not, to engage in the gathering of intelligence and to cooperate with each other at all levels, with a view to the sharing of information. It stated that all ranks should be encouraged to make a determined effort to build up a sound intelligence system:

Information gleaned will through reports to headquarters, be a basis for a national information pool which must lead to greater efficiency within the force. Divisional and district conferences, together with formal inspections and informal visits should be availed of to the full in achieving these objectives. Divisional officers should regard it as an important part of their work to build up an efficient, intelligence service within their respective divisions, to collate and assess the information gathered and to pass on what is important to headquarters.

- 13.30. This was followed on the 11th of July 1974 by a further circular which once again exhorted the members to engage in intelligence gathering. It also announced the setting up of:

A separate unit ... to have responsibility for examining, assessing, and correlating all reports received here. In this way, it is hoped to build a good intelligence network and provide the necessary feedback to divisions as required. In introducing this system which was in preparation before in "C" branch and is the accepted method in other police forces, it has been decided that members receiving information will, in addition to sending reports through the usual channels, indicate to Commissioner "C" the name, address, occupation and general background of the informant in each case. It must be made clear that the latter particulars are for the sole information of Commissioner "C" and should be passed to him either verbally or under sealed cover marked Secret and Personal. They would be retained by him and will not be disclosed to any other person. They need not be sent through the usual channels. On receipt of particulars of an informant, the Commissioner will allocate a letter or a number to him by which he will henceforth be identified.

- 13.31. It was noted in the circular that this change in procedure was indicated to, and discussed by, Inspectors and Sergeants of Detective Branch at a conference at Garda Headquarters on the 11th of June 1974. The separate unit which was referred to in that circular was established and is now known as 'Crime & Security'.
- 13.32. A formal system of reportage was subsequently introduced following a circular of the 1st of October 1974. This required that reports should be submitted on a form C.77 in accordance with the procedure which was set out in the circular.
- 13.33. Three copies of the C.77 were to be forwarded to the Commissioner C3 (which is now Crime & Security) personally, and one to the divisional officer. The divisional officer's copy could be forwarded with the other three to the Commissioner's office for subsequent dispatch to the divisional officer, or could be sent directly under special cover by the reporting member. Circumstances such as urgency would determine which avenue was adopted.
- 13.34. When submitting a first report the member was directed to supply the name, address, age, occupation and all available data in relation to his informer directly to the then Commissioner C3 by personal visit. This data

would be kept in the personal custody of the Commissioner who would allocate a code identity (letter or number) for each informer. Informers would be classified as 'agents' or 'casuals'. The term 'agent' denoted a regular informer while the term 'casual contact' was thought to be self-explanatory.

- 13.35. It was also envisaged that members of An Garda Síochána would be given separate code numbers. In this way it was rendered possible only for the Commissioner C3 to identify any member with a number as he would have personal possession of the code key. The members' code numbers would be distributed under sealed cover individually and receipts for same were to be forwarded directly by the members to the Commissioner C3. The code number was to be quoted in a space provided after the words "member's reference number" on the form C.77. Underneath this were the words "reference number". After these numbers a file number, if available, was to be inserted relating to any reported crime with which the information might be connected. Subsequently, on the 3rd of December 1974, a further circular, issued in relation to information to be supplied by the member, conferred a discretion on the reporting member not to report the identity of his or her informer if he or she had a conscientious or any other valid objection. It said:

Any member who has a conscientious or other valid objection to supplying the name or other identifying details of an informant will not be obliged to do so, but he should give such details as will enable the information to be properly evaluated and processed by the Commissioner C3. Whether or not the names or other identifying detail of an informant is supplied, each informant will be allotted a code number to which information supplied by him will be related in C3 branch.

- 13.36. Originally, it was envisaged that the Commissioner C3 would be the holder of the true identities of all informers. This was subsequently changed by the circular of the 3rd of December 1974. Apparently, it was found that members in certain areas had a difficulty in supplying the identity of their informers. It was not entirely clear to Chief Superintendent Callinan why this change occurred: speaking historically, there was a problem. It became the norm that the identity of the informer was not included on the C.77 submitted by members. The practical consequence of this became clear to the Tribunal counsel when they sought to ascertain whether any C.77s had been submitted in respect of information supplied by Ms. Adrienne McGlinchey.

- 13.37. There was no file and could not have been any file held at Crime & Security in relation to such information. C.77s which were ultimately said by various members of An Garda Síochána to have been based on information supplied by Ms. McGlinchey, had to be obtained from the respective members' files of C.77s. Her reference did not appear on those files, nor did any code number or pseudonym attributable to Ms. McGlinchey, and indeed the informer was not identifiable from these documents. The Tribunal, therefore, had to depend on each member examining the files of C.77s submitted by him to identify those which he believed emanated from Ms. McGlinchey. This had the further practical consequence that Crime & Security itself did not have a file of C.77s submitted in respect of Ms. McGlinchey to which it could have ready access, if it wished to assess the nature, extent and quality of the information which emanated from her at any particular stage.
- 13.38. In addition, there was no method of tracing the history of the handling of Ms. McGlinchey. If she was initially used by one member of the force as an informer and then, subsequently, by others, the Tribunal believes that it was important that Crime & Security should know this and, indeed, that local officers should be fully aware of it. However, other than by word of mouth, there was no way in which this basic information was recorded, let alone monitored or reviewed in an accessible separate file.
- 13.39. A further circular, issued on the 7th of May 1993, dealt with the disclosure of an informer's identity to a member's superior. This issue had been referred to the law officers for consideration around that time. It was noted in that circular that care had to be taken in respect of the confidentiality inherent in the relationship between an informer and the member to whom information was given. A breach of this confidentiality, through carelessness or otherwise, was a serious matter carrying with it potentially grave consequences ranging from a loss of trust by the informer to the possibility of loss of life. It continued:

Even though the identity of an informant must not be disclosed save as required by law, it must be remembered that information in relation to the commission of crime which comes into the possession of a Garda is not his personal property, to be dealt with by him as he will. Consequently, the use of informants and information must never be contrary to legal requirements or the regulations of the force. In the interests of justice, or of good order or discipline within the force, it may become necessary that an informant's identity be disclosed. In such case, with the Commissioner's authority, the disclosure would be to a Chief Superintendent nominated by Assistant Commissioner "C" Branch.

- 13.40. The Tribunal notes that the Garda handbook “Crime Investigation Techniques” does not set out in any useful detail the procedures to be followed in respect of the cultivation and handling of an informer. It refers generally to the importance of people as a source of information, and to the fact that members engaged in outdoor duty should make every effort to cultivate good relationships with persons who might be a source of casual information, such as taxi drivers or postmen, newspaper vendors etc. It also refers to the fact that if an individual possesses detailed knowledge of a crime, and is willing to give such knowledge, he may well have been an active participant in the crime and caution must be exercised in this respect. It then goes on to emphasise the care which must be taken to respect the confidentiality inherent in the relationship between an informer and the member to whom information is given and summarises in effect the circular of the 7th of May 1993.
- 13.41. It was clear, from the evidence from Chief Superintendent Callinan, that, at that time, a specific review of an informer was not carried out by Crime & Security and that a great deal of reliance was placed on the assessment made by the Garda receiving the information. It was also acknowledged by him that there was nothing unusual about a Garda, upon receipt of such information, conveying it to his local Superintendent, despite the absence of provision for formal notification by way of a C.77 through the Superintendent in the circulars to which reference has been made.
- 13.42. The assessment made by the member receiving the information in respect of the informer, and the information received, was to be reflected by a ticking of the relevant boxes included on the C.77 form. This was referred to by Chief Superintendent Callinan as a 4 x 4 assessment as it took the shape of four letters and four numbers. Effectively this was the grading system in terms of assessment of a source and the information. In terms of the informer there were different boxes that could be ticked, such as ‘previously reliable’, ‘reliable’, ‘unknown’ and ‘impossible to say’. In relation to the information the form sought to elicit the level of weight attaching to the information - whether it was known to be good information, or if the Garda knew the information to be correct, or whether it was impossible to say.⁹¹⁸ In this regard, the same information was required upon the first receipt of information from an informer, as on any other. In other words, there was no very detailed assessment or inquiry in relation to the informer or the informer’s background or reliability by the Garda receiving the information, or by Crime & Security. It was clear to anybody using the system that there would be no great

⁹¹⁸ Transcript, Day 154, Q.566-570.

scrutiny or assessment of this relationship by other members of An Garda Síochána, by one's superiors, or by Crime & Security.

Changes to the Old System

- 13.43. The Tribunal was led to believe by the evidence of Assistant Commissioner Joseph Egan that this system had been reviewed, found wanting in certain respects and reformed late in the 1990s. Evidence in relation to this matter was received in closed session and a document was produced to the Tribunal which outlined changes which are said to have been made. The Tribunal also visited the offices of Crime & Security to ascertain the extent to which changes had been effected. The Tribunal notes this document, which has been furnished to it by way of a protocol because the Commissioner of An Garda Síochána claimed privilege over it, on the basis that disclosure would not be in the interests of public policy or national security. Having read the document, the Tribunal is absolutely satisfied that there is nothing in it, which the public should not know about. The Tribunal was astonished to hear that the document was restricted to senior members of An Garda Síochána and that there was very little knowledge of it amongst members of An Garda Síochána below the rank of Inspector. The Tribunal did not get the impression that there was any urgency displayed on the part of senior Garda management in the implementation of the terms of this document. Indeed, it was given the impression on its visit to Garda Headquarters and from the evidence heard from Assistant Commissioner Egan, that there was a great deal of foot dragging by senior officers, whose responsibility it was to implement this document, in doing so diligently and comprehensively. The Tribunal had a sense that implementation is mandatory but that there was very little serious intent to ensure compliance with its terms. The Tribunal is satisfied that there should be a robust review of this document and its implementation. This must be done, preferably by some officer or body outside An Garda Síochána.
- 13.44. The contents of the document in question contain many good proposals which are in line with best police practice, as evidenced by the correspondence of some of its provisions with evidence which has been received from Chief Superintendent Garvie RCMP and developments in the other common law jurisdictions, to which reference is made below. Broadly speaking, the Tribunal recommends that a full review take place of the terms of this document and its implementation, with a view to considering whether the present practice and procedure applicable to the

handling of informers by members of An Garda Síochána, can be improved in line with best police practice, or indeed, whether the regime covering the handling of informers should be the subject of legislation and a statutory code of conduct. The Tribunal is concerned that if the review of the document is not thorough in its nature and implementation in the future, that abuses of the system, possibly worse than those chronicled in this report, will be facilitated. Whatever system is implemented, after a full review, should take account of conditions in Ireland.

- 13.45. The Tribunal considers that Crime & Security have not come to grips with the new system. It has not been effectively launched. There is no adequate publicisation to members of An Garda Síochána of the procedure for the registration of informers. That is only an instance. Further, the Tribunal is of the view that elements of bad practice from the old system still pervade current practice. Enthusiasm is needed to bring in a complete change of practice. The absence of a replacement form in the new document for the old C.77 form is disturbing. In addition, forms are needed for registration, if that is to occur. Any question of a ‘quiet word’ between Headquarters and local Superintendents should have no place in such a system. As commented before, the approach taken to this matter by Garda Headquarters has dampened further meaningful comment. The Tribunal considers that an urgent study of international models, without recommending any particular one, is imperative. The new system seems hurriedly cobbled together and the models which follow are based on wide experience and real thought.
- 13.46. The Tribunal had the benefit of the expert evidence of Chief Superintendent Brian Garvie in respect of the handling and use of informers in the Royal Canadian Mounted Police, and of considering the relevant sections of the report of the Royal Commission into the New South Wales Police Service together with recent legislative changes in the United Kingdom on this topic. A summary of the material considered is set out below. These services will be used as a basis upon which to consider what constitutes best police practice in this area.

The Canadian Experience

- 13.47. In Canada, as the reader will be aware, there are three classifications of persons providing information to the police.

- (i) A casual contact is defined as a person one might meet in the course of one's everyday affairs. He or she might be working in various public places, such as race tracks or nightclubs, and it would be the duty of a police officer to cultivate such persons, especially where they may be in a position to notice things.
- (ii) Informants – these are people who wish to provide the police with information, very often for reasons of their own, who are close to the criminal fraternity and the commission of crime, and who provide information on a confidential basis. Confidentiality of these sources should be protected unless they wish to come forward as witnesses.
- (iii) Directed informants or agents – these are individuals who are doing things at the behest of police officers. These are individuals tasked by investigators to become involved in specific criminal or subversive operations. Such activity might well result in an agent becoming a compellable witness.

Dangers Involved in Handling Informants

13.48. There are a number of dangers in the use of an informer which have been recognised by the Canadian authorities. These include:

- (a) A lack of experience that results in inappropriate relationships or a relationship that lacks appropriate control.
- (b) The possibility that an informant may instigate an offence or act in such a way as to implant in others the intent to commit a criminal offence.
- (c) The motivation of an informant to give information with the intent of eliminating a rival in a criminal enterprise.
- (d) The provision by an informant of worthless information in an attempt to ascertain how much the police know about his or her activities or the activities of his/her associates.
- (e) The provision of false or misleading information by an informant so that suspicion is diverted from his or her criminal activities or those of his/her associates.

These difficulties serve to indicate that there is usually an ulterior motive behind the furnishing of information by an informant to the police.

The Handling of Informants

13.49. Chief Superintendent Garvie, whose assistance and evidence was most helpful on this topic, stated that an informer must be handled with

sensitivity and discretion and receive “ethical direction”. Any police officer who is to handle an informer should receive specific training with respect to handler relationships, the development of informers and the policy of the police force involved. This is crucial in the handling of an agent. Where an agent is directed to do something, they should work “under the authority and direction of experienced handlers.”

- 13.50. As in all jurisdictions, it is accepted in Canada that the identity of an informer must be protected at all times. The only occasion where it should not, is where the interest of justice requires otherwise. In Canada the only situation in which that occurs is where the disclosure of the identity of the informer is necessary “in order to prove the innocence of the accused.” This may be done by revealing certain information in an informer’s statement. But, a judge may have to go further where innocence is shown by ordering the release of an informer’s name. In those circumstances, a judge may order the name of an informer to be divulged, at least in private hearing. In such circumstances, it is necessary to divulge the identity of the informer in order to prove the innocence of an accused and not merely to reveal the identity of the informer in order to pursue some hint or rumour. However, a police officer may not mislead a court in any proceedings in order to protect an informer.
- 13.51. In handling an informer, a handler should not introduce the informer to the members of his/her family. Mr. Garvie noted that during the course of his enquires regarding the explosives module there were a number of occasions upon which informers were interviewed at members’ homes. He found this behaviour to be unacceptable in terms of the standards of dealing with police informers. The Tribunal notes that such behaviour offends the very basic notion that the informer’s identity must be protected at all times and constitutes inappropriate social contact.
- 13.52. In Canada, unless there are exceptional circumstances, the RCMP requires that an alternate handler be assigned to an informer. There are occasions when an informer may indicate that they are unwilling or not in a position to deal with anybody other than a particular police officer, and in exceptional circumstances and with permission such contact may be permitted. However, the general principle is that a second handler is assigned to any informer.
- 13.53. The Canadian authorities have concluded that a lack of supervision of the informer and the informer’s relationship with his handler can result in serious difficulties and, as a result, call into question the credibility of the

handler and those police officers involved in the investigation, or the police agency. Informers, therefore, must be supervised so that, where possible, misleading information is not disseminated that results in inappropriate conduct, inconsequential investigations or the misuse of police time and resources.

- 13.54. For these reasons, certain safeguards are employed in the handling of informers. Chief Superintendent Garvie gave evidence that before an informer or an agent is used by the police service, an extensive background check should be conducted. This should include the previous activity, if any, of that person as an informer. The informer's criminal record, if any, should be looked at. The personal history and apparent motivation of the informer should be assessed, together with their ability to provide information about, or to penetrate, a criminal or subversive organisation. In this regard, it is important that a handler should have a very good sense of the informer's potential. Consideration should also be given to issues that may arise as a result of the provision of information, such as informer/agent's protection or relocation.
- 13.55. In Canada, informers other than those who provide casual information are interviewed on an annual basis. The purpose of the interview is to ascertain that the informer/handler relationships are stable. It gives the opportunity for the informer to discuss any problems and confirmation is also made at that time of any payment that has been made to the informer. The interviews are conducted by experienced police officers other than the handler and it is usually not conducted by the handler's supervisor. It is an entirely independent interview.
- 13.56. Under the Canadian system it is also envisaged that supervisors will supervise the handler and make appropriate comments and give appropriate direction which they should record in respect of the handling of the informer.
- 13.57. When information is provided by an informer, any officer who is responsible for the review of this information or the 'debriefing reports' in respect of an informer, should not be involved in the handling or direct supervision of the source. Similarly, an officer who is responsible for the review of any major investigation involving an informer should not be so involved. This ensures that the officer can be objective with respect to his or her assessment of the information that is being supplied by the informer and any subsequent direction that is given is more likely to be objective.

- 13.58. In summary, Mr. Garvie gave evidence in respect of informers that they should be dealt with subject to stringent safeguards and reviews as outlined above, and also that a supervisor should be appointed to deal with the handler and to review the informer in order to try to ensure that the potential dangers involved in handling an informer are avoided. For the most part, the experienced handler on the ground should be able to manage and control an informer in an appropriate way. There may be circumstances in which this management is directed from headquarters, for example where the investigation is so major that it is appropriate that headquarters be advised on the basis that they need to have knowledge in order to provide appropriate direction in respect of the work in hand.
- 13.59. An important aspect of the handling of an informer is the debriefing procedure that is followed. Intelligence received from a source has to be assessed on its own merits and not on the basis only of what has previously been furnished by that source. The person who was reliable in the past may prove to be unreliable on another occasion and vice versa. The debriefing reports are intended to take the intelligence that has been reported, have it evaluated and appropriately disseminated, and to have a record available of the information that is being provided. These records and the identity of the informer should be protected. There is a commitment to the informer not to reveal his/her identity and under any acceptable policing standard it is not considered appropriate that the informer be identified: other than in the circumstance previously outlined.
- 13.60. A further protection in respect of the handling of informers is provided by periodic review. The purpose of this review is to take into account circumstances in which the continued use of an informer may be detrimental. It may be appropriate to terminate the use of an informer in certain circumstances. For example, termination could occur where there is a social or sexual relationship between the informer and the handler. If the informer is shown to be consistently unreliable or treacherous then the relationship should be terminated. If an informer or an agent on a major file is not following direction then the relationship should be terminated. Mr. Garvie makes various criticisms of the handling of Ms. McGlinchey, which are set out at pages 118 to 120 of Day 95.
- 13.61. This helpful and firsthand account of the workings of the Canadian system of informer handling can also be compared with consideration which has been given in other common law jurisdictions to this issue.

New South Wales, Australia – Report of the Royal Commission into the New South Wales Police Service

- 13.62. In the final report of the Commission (May 1997), the Hon. Justice JRT Woods considered the issue of the management of informers in Chapter 7 of the report, entitled “Integrity Measures – Criminal Investigations”. The report recognises that the existence of inappropriate relationships between police and criminals were the major cause for the emergence of corruption. It also conceded that the police service had tried very hard to introduce best practice guidelines for the management of informers, but this had achieved only limited success. Even though, over a period between 1986 and 1992, procedures in relation to the handling of informers became tighter, the report noted that these changes failed significantly to prevent the misuse of police/informer relationships.
- 13.63. Whilst the nature and breadth of the corruption experienced in New South Wales was worse than the corruption dealt with in this Tribunal’s Terms of Reference, the Tribunal has found it useful and instructive to consider the experience of, and conclusions drawn by, Mr. Justice Woods in relation to the issue of informer management. The issues faced by both Tribunals concern the abuse of the informer/handler relationship and how that can be best addressed. The history of the attempted reform of the New South Wales system of informer management also provides a somewhat salutary lesson.
- 13.64. In March of 1994, an Informer Management Plan was produced by the Independent Commission Against Corruption and the New South Wales Police Service:⁹¹⁹ It is useful to set out the Woods Commission’s assessment of this plan, the paramount principles of which were “control, accountability and evaluation”.

The Informant Management Plan

7.32 The ‘paramount principles’ for an effective informant management system were identified in this plan as ‘control, accountability and evaluation’. It specified that:

- an informant is a Service resource and not the property of any individual officer;
- all police officers who deal with informants must be accountable;
- each step in the informant management process should be supervised and documented;

⁹¹⁹ The New South Wales Police Informants Management Plan, March 1994.

- provision of rewards to informants, whether monetary or otherwise, should be monitored and regulated; and that
 - the relationship with the informant, its management, and the quality and use of information provided should be regularly and objectively assessed.
- 7.33. The Plan provided for the establishment of eight local registers to be maintained by each of the four Region Commanders, and by the Commanders of the State Intelligence Group, the Task Force Group, the Drug Enforcement Agency, and the Special Branch. A central computerised register was required to be maintained by the Commander, State Intelligence Group. Each registrar of a local register was required, at regular intervals, and at least once every three months, to forward by hand to the Commander, State Intelligence Group details of registered informants to be included on the central register.
- 7.34. The Plan provided for a tiered management structure, involving registration of an informant by the controlling officer, known as the 'case officer', and supervision by a nominated and a senior supervisor.
- 7.35. The Plan required a 'pre-registration assessment' including an assessment by the case officer's supervisor of 'the strength of the personality of the case officer against that of the prospective informant'. Following registration, all contact between the informant and case officer was to be regulated by the nominated supervisor.
- 7.36. Under the Plan, all contact (not just physical meetings) with informants was required to be 'reported, documented and subject to supervision'. For this purpose, a Contact Advice Report (CAR) was required, including:
- details of the contact made including any promise made or undertaking given by the case officer;
 - an outline of the intelligence provided by the informant;
 - the case officer's assessment of this intelligence; and
 - any other pertinent comments.
- 7.37 Each CAR was to be reviewed by the supervisor and the senior

supervisor and retained on the Informant Management File (IMF). The case officer and the supervisor were required to determine any appropriate dissemination of the information received.

7.38 The supervisor was required to review the IMF every three months, and every six months the senior supervisor was required to conduct a review of the relationship, and its product and management. They would then decide whether or not the informant should continue to be utilised by the Service.

7.39 All applications for, and grants of, benefits were to be recorded on the IMF, and on the local and central registers. The provision of monetary rewards and commendations was to be considered by the Reward Evaluation Advisory Committee (REAC). Letters of assistance (or letters of comfort) were required to be co-signed by the case officer and the senior supervisor.

7.40 The Plan required an audit by relevant commanders of the local registers at least once every 12 months, followed by a written report to the State Commander.

13.65. It was noted by the Commission that comprehensive safeguards and careful planning had gone into the preparation of this plan but that the evidence before the Commission revealed significant non-compliance with it and the continuing abuse of informer relationships for corrupt purposes. This salutary lesson should be noted in Ireland. The Woods Commission found that:

- (a) There was an astounding lack of knowledge of the plan, with numerous witnesses saying that they had received insufficient training on its operation, thought it too complicated, or did not understand it. Some officers said that they had not even read it;
- (b) Some officers asserted an almost proprietary interest in their informants and in the information they provided, notwithstanding the instruction that informants are the property of the police service and not of any specific officer;
- (c) In many cases the relationship formed was inappropriately close, making it difficult to keep control of an informant;
- (d) Often, corrupt meetings and dealings with informants occurred under the guise of a legitimate informant contact, being in truth occasions for corrupt behaviour;

- (e) Many officers seemed disinterested or unwilling to attempt to understand the plan or, worse still, regarded it as an unworkable interference with their investigative work;
- (f) Many officers did not complete CARs (Contact Advice Reports). Many said they had not thought it necessary to complete reports for contacts by telephone or chance meetings. Some said they noted the contacts in their duty books only. Others said that they were unaware of any need to report contacts with informants registered to other officers;
- (g) It was seen to be relatively easy for an officer to create a false CAR and thus manufacture the details of an informant relationship, if a corrupt relationship with a criminal was called into question;
- (h) Supervision was identified as a particular problem. In many cases, any sensible or reasonable attention to the task of supervision would have identified officers who were failing to comply with the plan. The evidence was strongly suggestive of failure by supervisors to draw attention to the plan and to supply training in relation to it; and
- (i) Discipline for failure to comply with the plan was non-existent, at best leading to 'counselling'.

13.66. The Commission went on to criticise certain deficiencies in case officer compliance which repeatedly emerged in their review of the procedures. These included the fact that information registration forms, pursuant to which informers were registered, lacked important information such as criminal records, photographs of the informer, warrant checks, reliability and motivation assessments, and any clear account of the information received. In some cases, there was duplicate registration of informers and meetings with informers continued to occur without advance notification to the supervisor. Those difficulties in another jurisdiction should provide a salutary lesson here.

13.67. There were also deficiencies in the supervision expected under the plan. It was found that there was a general unwillingness amongst police officers to use co-handlers or to apply conditions of contact to meetings between informers and case officers. The informer/case officer relationship was rarely explained in any depth. The supervisors of the same rank as the case officer simply accepted their assurance that their relationship was normal and proper. There was a general unwillingness to de-register informers, even though there had been loss of contact, or information was available suggesting that the informer was involved in criminal activity.

- 13.68. It was acknowledged by the Commission that the 1994 Informant Management Plan was detailed and gave officers far less discretion in their dealings with informers. It was also accepted by the Commission that the plan was a good one but was never fully implemented:

On paper, it can fairly be said that it represented a best practice plan but failed in its implementation and in its lack of acceptance by working detectives. As such it provided a further example of a service which lacked effective supervision, genuine accountability, a cultured professionalism and an ability to implement reform.

- 13.69. It is this difficulty which the Tribunal considers to be a live danger in the Irish context. The Tribunal is not satisfied that the reforms envisaged by the new policy document produced by An Garda Síochána has widespread application or acceptance in An Garda Síochána. The policy falls well short of full implementation. A determined effort needs to be made by Assistant Commissioner Egan.

- 13.70. A special audit of the local registers in relation to the special agencies in New South Wales was carried out in April of 1996. This found problems with the way in which informer information was managed by the police service. As a result of this it was recommended that procedures which were entirely manual and paper based be replaced by a computer system that would facilitate:

- (a) Standardisation of procedures and systems;
- (b) Central identification and registration of informants;
- (c) Improved evaluation of information provided by informants;
- (d) Improved accountability and audit procedures; and
- (e) The elimination of delays in information updates resulting from manual transfer.

- 13.71. These various reviews in New South Wales resulted in a further revision of procedures in consultation with the Royal Commission and on the 14th of April 1997 a new “Information Management Manual” came into effect. Important features of this manual included:

- (a) An emphasis on compliance, responsibility for which lay with the supervisor. Duties and responsibilities of supervisors were expanded to include a requirement that they personally meet with an informant to assess suitability for registration; and,

- (i) Complete and sign a form detailing the manner in which informant is to be managed;
 - (ii) Assess each Contact Advice Report (CAR) and discuss it with a senior supervisor;
 - (iii) Ensure information is assimilated appropriately;
 - (iv) Review the informant/officer relationship quarterly with each submission of a relevant CAR;
- (b) The manual re-emphasised the fact that informants are not in any way “the property” of an individual officer;
- (c) It became mandatory under the new manual that supervisors personally meet with informants prior to registration, consider the conditions to be imposed on contact prior to registration and select and appoint a suitable co-handler, who is to be present at all arranged contacts;
- (d) It became necessary for case officers to submit a report to their supervisor on a quarterly basis assessing the quality and the reliability of the information given and providing details against specific performance indicators such as arrests, property recovered and the like. The supervisor and senior supervisors were required to constantly re-assess the value of the informant to the service and to decide whether or not the informant/officer relationship should continue;
- (e) The supervisor became responsible not only for assessing the value of information provided but also for ensuring that it was appropriately disseminated; and
- (f) It became the responsibility of supervisors to approve working expenses after the submission of a voucher by the case officer.
- 13.72. The Royal Commission welcomed this initiative in developing the new informant management manual, in the course of which a number of amendments to the manual suggested by the Commission were accepted.
- 13.73. The Royal Commission recommended matters which should be quoted in full:

The Commission recommends:

- (a) All officers who are potentially involved in the management of informants must be trained in the procedures required under the Informant Management Manual, and in the dangers of associations with informants.
- (b) Failure to comply with informant management procedures lead to prompt management action or dismissal where the Commissioner cannot be satisfied that an association with a known criminal is maintained for proper policing reasons.
- (c) The informant management system be carefully monitored and reviewed regularly.
- (d) It be emphasised to supervisors and senior supervisors through training and specific statement in the Manual that its success depends on their reviews and that they are personally responsible and accountable for any failure to carry out this task effectively.
- (e) Provision should be made for regular random audits to determine compliance by officers who have an adequate security clearance and are sufficiently experienced to conduct a qualitative as well as a systems-based review. This could be carried out by the Office of Internal Affairs or the PIC.
- (f) It be emphasised to police that non-compliance or lack of understanding of the Manual will be regarded most unfavourably when assessing their integrity prior to promotion or transfer.
- (g) The Service emphasise and re-emphasise through training and also on the job that:
 - informants are resources of the Services not the individual case officer;
 - particular care must be exercised with pre-registration assessment;
 - every meeting with an informant must be properly recorded in detail;
 - case officers must maintain control in their relationships;
 - case officers must be wary of over-familiarity with informants;

- only active and reliable informants should remain registered;
- informants are not to be led in the belief that their status protects them from prosecution or affords them special privileges;
- care must be taken when using informants of the opposite sex to the case officer, including ensuring that meetings should take place only in the company of a second officer;
- there must be strict accountability for and recording of all rewards and benefits received by the informant and no sharing of such rewards; and
- operational commanders must ensure their staff understand and comply with the informant management procedures.

(h) Assistance from informants should be regarded as an aid to, rather than a substitute for, traditional lines of investigation.

13.74. It was the Royal Commission's view of the Australian experience that a strictly controlled regime was required for the relationship between police and criminal informers because it was fraught with danger. An understanding of the manual in respect of the handling of informers and training of all officers potentially involved in management of informers was essential. It also noted that though ultimate responsibility for compliance with the manual should always remain with the senior supervisor, provision should be made for regular but random audits to determine compliance by officers who have an adequate security clearance and are sufficiently experienced to conduct a qualitative as well as a systems based review. Apart from supervision and review, emphasis was also placed by the Commission on the requirement that contacts with informers be promptly recorded in detail and, where practical, by use of a handheld tape recorder.

13.75. It will be noted that views of best police practice in relation to the handling of informers in Canada and New South Wales seem to a large extent to coincide. In addition, the Canadian and New South Wales authorities appear to be a great deal more open about the structures necessary to effect change in this area than the Garda Síochána. Indeed the authorities in the United Kingdom have extended the debate even further into the public domain by enacting legislation in relation to the matter.

The Approach in the United Kingdom

13.76. In the United Kingdom the use of what were described as “covert human intelligence sources” was regulated by Part II of the Regulation of Investigatory Powers Act, 2000. A person is a “covert human intelligence source” pursuant to Section 26(8) of the Act if:

- (a) He or she establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);
- (b) He or she covertly uses such a relationship to obtain information or to provide access to any information to another person; or
- (c) He or she covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

Under Section 29 of the Act, designated persons have the power to grant authorisation for the conduct or the use of a covert human intelligence source. Such authorisation shall not be granted unless a designated person believes that the authorisation is necessary on grounds falling within Section 29(3) of the Act:

- (a) In the interests of national security;
- (b) For the purpose of preventing or detecting crime or preventing disorder;
- (c) In the interests of the economic well-being of the United Kingdom;
- (d) In the interest of public safety;
- (e) For the purpose of protecting public health;
- (f) For the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
- (g) For any purpose (not falling within paragraphs (a) to (f)) which is specified for the purposes of this sub-section by an order made by the Secretary of State (and the order for which must be laid before the Houses of Parliament).

13.77. In addition to being necessary on the grounds set out at sub-section 3, Section 29(2) requires the authorisation not be given unless the designated person believes:

That the authorised conduct or use is proportionate to what is sought to be achieved by that conduct or use and that arrangements exist for the source's case that satisfy the requirements of Section 29(5) of the Act.

- 13.78. Section 29(5) of the Act sets out the arrangements the existence of which the designated person must be satisfied before authorising the use of the source. These provisions set out, in broad terms, the extent to which the register requires that the handling of the source be regulated and supervised. The designated person must be satisfied that such arrangements are in force as are necessary for ensuring that:
- (a) There will at all times be a person holding an office, rank or position with the relevant investigating authority who have day to day responsibility for dealing with the source on behalf of that authority, and for the source's security and welfare;
 - (b) There will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the source;
 - (c) There will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of the source;
 - (d) The records relating to the source that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Secretary of State; and
 - (e) Records maintained by the relevant investigating authority that disclosed the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.
- 13.79. The persons designated, for the purposes of granting authorisations pursuant to Section 28 of the Act, are individuals holding certain offices, ranks or positions with relevant public authorities set out in a Schedule to the Act, which include various police forces, the intelligence services, the Commissioners of Customs & Excise, Inland Revenue and various other bodies.
- 13.80. Authorisation in respect of a source may be granted orally in any urgent case, or in writing. If it is granted orally then, pursuant to Section 43, the period of its duration is seventy-two hours. The authorisation may be

renewed at any time before the time at which it ceases to have effect by an authorising officer. This officer must be satisfied that a review has been carried out in respect of the use made of this source during the period of authorisation and of the tasks given to the source during that period and the information obtained. If requested to review this authorisation, the authorising officer must then consider this review in deciding whether to renew the authorisation.

13.81. Under Section 71 of the Act the Secretary of State is obliged to issue a code of practice relating to the exercise and performance of powers and duties of those concerned with the implementation of Part II of the Act. The present code in respect of the authorisation and the use or conduct by public authorities of covert human intelligence sources provides the scheme within which these authorisations take place within the United Kingdom legislation. It is interesting to note that the drafting of this legislation and code appears to have taken into account the provisions of Article 8 of the European Convention on Human Rights and Section 6 of the UK Human Rights Act, 1998 together with what might be regarded as the principle of proportionality required in respect of administrative acts which may infringe the rights of third parties.

13.82. In order to determine whether the use of a source is proportionate to what is sought to be achieved by the conduct and use of the source, the authorising officer (an Assistant Commissioner for the most part in the case of UK police forces) must balance the intrusiveness of the use of the source on the target and others who might be affected against the need to use the source in operational terms. Article 2.5 of the code states:

The use of a source will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. The use of a source should be carefully managed to meet the objective in question and sources must not be used in an arbitrary or unfair way.

13.83. The code advises that the authorising officer should also take into account the issue of what is termed “collateral intrusion”. Simply put, this means that measures should be taken, wherever practicable, to avoid unnecessary intrusion into the lives of those not directly connected with the operation. To this end, an application for an authorisation has to include an assessment of the risk of any collateral intrusion. The principle of proportionality must also be applied on this determination.

- 13.84. If the use of a source might give rise to particular sensitivities in a local community in which the source is being used, or may affect similar activities undertaken by other public authorities, a senior officer within the police force area in which the source is to be deployed should be consulted. Any adverse impact on community confidence or safety that may result from the use or conduct of a source or of information obtained from that source should also be considered; Articles 2.6-2.9.
- 13.85. The code also deals with the maintenance of records in respect of a source. Article 2.15 provides that the following records be kept by the relevant authority:
- (a) A copy of the authorisation together with any supplementary documentation and notification of the approval given by the authorising officer;
 - (b) A copy of any renewal of an authorisation together with the supporting documentation submitted when the renewal was requested;
 - (c) The reason why the person renewing an authorisation considered it necessary to do so;
 - (d) Any authorisation which was granted or renewed orally, in an urgent case, and the reason why the case was considered urgent;
 - (e) Any risk assessment made in relation to the source;
 - (f) The circumstances in which tasks were given to the source;
 - (g) The value of the source to the investigating authority;
 - (h) A record of the results of any reviews of the authorisation;
 - (i) The reasons, if any, for not renewing an authorisation;
 - (j) The reasons for cancelling an authorisation;
 - (k) The date and time when any instruction was given by the authorising officer to cease using a source.
- 13.86. Article 2.16 provides that records kept by public authorities should be maintained in such a way as to preserve the confidentiality of the source and the information provided by the source. There must also be a designated person within the relevant public authority who will have responsibility for maintaining a record of the use made of the source.

- 13.87. Each public authority must maintain a centrally retrievable record of all authorisations.
- 13.88. The code provides that a source who acts beyond the limits recognised by law will be at risk from prosecution.
- 13.89. In addition, special safeguards apply to the use or conduct of juvenile sources under the age of eighteen years. There is a specific prohibition on the use or conduct of a source under the age of sixteen years for the purpose of obtaining information against his or her parents or any person who has parental responsibility for him or her. A separate statutory instrument provides for the regulation of authorisations in respect of juveniles; Article 3.14.
- 13.90. Persons who are or who may be in need of community care services by reason of mental or other disability, age or illness, or who are or may be unable to take care of themselves or unable to protect themselves against significant harm or exploitation should only be authorised to act as a source in the most exceptional circumstances.
- 13.91. The Tribunal has set out and considered the evidence of Chief Superintendent Garvie, the findings of the report of Mr. Justice Woods in New South Wales, and the UK statutory provisions in respect of the handling of informers, including an account of the UK code of practice. The Tribunal considers that the Garda Síochána document, together with these materials, form a very good basis upon which to move forward and develop best police standards in the handling of informers in this jurisdiction.

Recommendations

- 13.92. The Tribunal urges that the following recommendations should be urgently looked at. The Tribunal commends a close study of the various systems set out above. As to which system is best suited to Irish conditions, this is a matter to be scrutinised by the Minister. Elements of crucial importance can be identified.
1. An informant handling manual should be produced and circulated to every member of An Garda Síochána which should include a code of conduct for the handling of informers.
 2. A proper level of training should be introduced for members of An Garda Síochána in respect of the handling of informants, and should incorporate instruction on procedures required in, and the dangers associated with, the handling of informers.

3. There should be compulsory in-house refresher lectures from time to time for all members of An Garda Síochána in respect of the handling of informers, with particular emphasis on any changes made to the procedure.
4. There should be an independent outside audit of the present state of the implementation of the new Garda policy on the handling of informants. This should be by some person having appropriate security clearance and experience in police operational matters and who should examine the operation of the system and recommend improvements if thought appropriate.
5. A periodic independent audit of the operation of the informant handling procedure should be carried out. Provision should be made for an outside authority, perhaps the proposed Ombudsman, to be involved. Such a body should be vested in such a person to make such inspections and see such documents as are necessary to carry out the audit, and to attend at Crime & Security, at Garda Headquarters or at any Garda station, at such times as they think appropriate in order to carry out this task. Part of the auditor's remit should be to carefully monitor and review the informer management system.
6. A system of registration of informants should be compulsory and not optional for each member of An Garda Síochána.
7. Prior to registration of a person as an informer, authority should be obtained from Crime & Security on the basis of a full and detailed assessment of the person proposed as an informant, which should include a full and detailed background assessment and, if possible, an interview with that person. Every meeting with an informer should be properly logged, noted and recorded in detail.
8. A separate and complete file containing all records relating to the informer and all dealings with the informer by members of An Garda Síochána should be maintained and kept up to date at Crime & Security.
9. There should be at least two persons involved in the handling of an informer, who should be present together at all meetings with the informer.
10. The relationship with the informer and members of An Garda Síochána should not be overly familiar and, specifically, the informer

should not have social contact with the member and/or members of the member's family or attend at the member's residence.

11. There should be a high level of supervision of the informer's relationship with members of An Garda Síochána by a superior officer. Any assessment or comments made or directions given by the superior officer arising out of such supervision, or any review of the relationship, should be recorded and furnished to Crime & Security for inclusion on the informer's file.
12. There should be a periodic review of the relationship between the informer and the handlers by an officer who is not a supervisor of the handler, but serves in Crime & Security, or has an appropriate level of security clearance.
13. An officer from Crime & Security should maintain close contact with the local supervising officer and the handlers on a regular basis and keep himself/herself fully informed in relation to the activities of the informer.
14. Handlers should receive such communication from Crime & Security as will assist them in understanding the value or lack of value of the information which has been supplied by the informant unless it is thought that this might compromise a Garda operation and the informer or another informer.
15. It is proposed that the implementation of Garda policy in relation to informants should be computerised. It is understood by the Tribunal that this has not happened to date. The process of computerisation should be completed as a matter of urgency. The strengths of computerisation will be the ability to cross-reference data in relation to information supplied by informers and to give those who assess the intelligence a greater access to and a clearer overview of information received.
16. A failure to comply with the informant management procedure should lead to prompt management action. Failure to comply with the procedure or to familiarise oneself with procedure should be regarded unfavourably. It should lead to disciplinary action of some kind. Members should clearly understand that such failure will have an adverse affect on a member's application for promotion. In this context, any foot dragging by officers or members of An Garda Síochána in relation to the implementation of Garda policy in this

area should not be tolerated. The Tribunal feels compelled to make this comment on the basis that it is not satisfied that there is complete commitment to full implementation of this new policy in light of the evidence heard, or submissions made, and the Tribunal's visit to Garda Headquarters.

17. Although no specific submission was made on behalf of Crime & Security or the Commissioner in respect of lack of resources in terms of the funding of Crime & Security, it seems to the Tribunal that the premises in which Crime & Security is housed are cramped. Insofar as the recommendations of the Tribunal involve further work for the personnel engaged at Crime & Security, it is recommended that the appropriate level of additional resources be given to Crime & Security in terms of personnel and infrastructure to enable them to carry out their highly important business in the most modern facilities and environment available.

4. Officer's Journals

- 13.93. One of the few almost reliable ways that the Tribunal has had of approaching the truth has been through contemporaneous documents. People may indeed lie in the correspondence which they send to other people, and in the notes that they keep of an event for their own use. However, any record of what is supposed to have happened in respect of an event of importance is, at the very least, a statement of the facts that can be compared with other versions and with later accounts. This Tribunal has been much delayed by the need to sort out departures from prior statements and by the need to compare testimony with earlier avowals as to the truth. In the absence of any early recording of an event, there is no point of comparison. There is therefore nothing to hinder alterations in memory, embellishments and untruths. Undoubtedly, any investigation is better for having before it the earliest version of an event.
- 13.94. The obligation for all Gardaí of Inspector rank and above to keep an officer's journal has recently been removed. This is disturbing. It is now a matter of personal practice as to what note of a day's duties and events is kept. The format is also open. In these circumstances, something might be recorded on a computer file. This leaves open the possibility of later alteration in a less discoverable way than with records kept in a numbered solid book entered in pen and ink. The Tribunal recommends that the old system should be immediately restored. Further, given the controversy that has been generated over ordinary duties, the Tribunal recommends

that all issues as to arrests and the reasons therefore; warrants and the reasons therefore; investigations and the reasons for commencing same; all other tasks of importance; and reports of importance should be recorded by all personnel of Inspector rank and higher on a strictly daily basis.

- 13.95. Such records should never be destroyed without the permission of a designated Assistant Commissioner in Garda Headquarters. The books should be surrendered on retirement. They should be subject to inspection as and when required. Headquarters must also devise a secure way of note keeping as to dealings with informers and the input that higher ranks have in the supervision of this process.

5. The Role of the Department of Justice, Equality and Law Reform

- 13.96. In respect of the recommendations made in this report, and any subsequent report which issues from this Tribunal, the Department of Justice, Equality and Law Reform has a role in ensuring oversight. The Department must, in consultation with the Garda Commissioner, address the structural defects and deficiencies that have been identified in this report to ensure that it is empowered by knowledge and that adequate steps are being taken to address the problems that have been identified.

6. Duty to Account

- 13.97. In any community, a police force fulfils two distinct duties. The force provides a service to people who need assistance in terms of the duties mandated to them. All of us like to feel that policemen and women are helpful in providing directions, stamping passport application forms and road traffic forms, and otherwise interacting with the community on a voluntary basis. Secondly, however, in contrast to the voluntary nature of the transactions that a police force may provide as a service, the police interact with members of the community who are the victims of crime or who are suspected of having committed criminal offences.
- 13.98. This function of enforcing the criminal law is completely at variance with the powers and responsibilities vested in other public bodies. It involves the potential use of force to arrest, detain and search the person who is reasonably suspected. It also involves the right to require the production of documents and to use force, pursuant to a warrant, to enter a dwelling house or business premises and to remain for a reasonable time to allow the seizure of property that has potential relevance to a criminal investigation. Violence can be authorised to officers of the law. The

various aspects of police work may thus be divided into its work as a service, and its work as a force.

- 13.99. It may be lawful to use violence to restrain a person resisting arrest. Where a person is detained, it is lawful to use imprisonment as an instrument of investigation. Where a person is suspected of hiding explosives or drugs on their premises, then force may legitimately be used to seek to fill the mandate given by a warrant. The potential for real harm to result in these situations is obvious. In the context of Donegal, it is only necessary to refer to the 'Lofty' Gallagher search and its aftermath for an illustration of the importance of police powers, the effect that the exercise of these may have on people's lives and the importance of responsible accounting.
- 13.100. A duty to account for one's actions as an employee is a fundamental aspect of any employer/employee relationship. No employee has the right to act in an independent and unaccountable manner. In any ordinary employment relationship, duties are set down, tasks are allocated and an account is to be made of the fulfilment of these. An employer who sets a task to his or her employee is entitled to know that it was fulfilled. If any difficulty arises in relation to it, for instance a claimed injury potentially resulting in a negligence suit, an employer is entitled to a full account of the actions of the relevant employee. The difference between any ordinary employment relationship, and that of engagement as a member of An Garda Síochána, is that the former are not vested with powers to use force in order to implement the law, whereas the latter are.
- 13.101. Regrettably, the Tribunal has sat through a year of evidence and read thousands of documents and, as a result, has come to the conclusion that An Garda Síochána is losing its character as a disciplined force. This is detrimental to the morale of members who wish to serve within the context of a police force that has a proud record. It is undermining respect for authority both within the force, and in relation to those who have to interact with it, on whatever basis.
- 13.102. Ultimately, the gradual erosion of discipline within An Garda Síochána is a developing situation that will, sooner or later, lead to disaster. It is no more than a statement of commonsense that a member of An Garda Síochána should be immediately obliged to account for anything that he or she has done in the course of a tour of duty or otherwise while using the powers invested in him or her as a member of the force. The employer, in this instance the Garda Commissioner and ultimately the Government,

is entitled to know how the law enforcement powers vested in a member of An Garda Síochána are being, or have been, exercised.

- 13.103. This Tribunal is an instance of the breakdown in clear lines of authority, through the duty to account within An Garda Síochána. As Chairman of the Tribunal, I can record that it took sometimes days of relentless cross-examination by counsel on behalf of the Tribunal to approach anywhere near to the truth of the events relevant to the Terms of Reference.
- 13.104. The Tribunal was set up, in part, because the thorough and detailed examination of the facts carried out by the team assembled by Assistant Commissioner Carty was unable to completely answer all of the questions which surrounded this, and some of the other Terms of Reference. There was a clear failure on the part of various members of An Garda Síochána to account for their actions while on duty when appropriate enquiries were made of them by senior officers. The attitude adopted by these members ranged from an unhelpful lack of candour and detail to an absolute refusal to cooperate other than by blanket rejections of the propositions put to them. It is clear that members of An Garda Síochána adopted a thoroughly uncooperative manner with my investigators. The Tribunal has noted the same attitude in testimony. It is completely at variance with the minimal standards of behaviour to be expected of members of a disciplined force.
- 13.105. The Tribunal notes the evidence of Superintendent Coll that he received appropriate cooperation from all but a few members of the force under investigation in Co. Donegal.⁹²⁰ It also notes the ‘don’t hang your own’ ethic identified by Garda Martin Leonard. It is unsupportable that a minority of members of An Garda Síochána should be entitled to stymie any legitimate investigation carried out by their employer, in this instance the former Commissioner Mr. Patrick Byrne, into any aspect of behaviour of a member of An Garda Síochána. It is also completely unacceptable that any individual member of the Garda Representative Association should see itself as mandated to prevent the uncovering of the truth. In the course of his evidence to the Tribunal, Garda P.J. Stone, who is the Chief Executive Officer of the Garda Representative Association, stated:

We support the concept of the discipline regulations and we try, insofar as we can as an association, to ensure that we don't become involved or embroiled in, if you like, the investigative side of discipline, other than to advise members of the force of their entitlements and otherwise. To that extent, we obviously embrace

⁹²⁰ Transcript, Day 97, page 87.

the notion that the discipline regulations are there to assist the entire force.⁹²¹

- 13.106. When asked as to whether there was a distinction between a service provided by a voluntary company, such as a computer firm selling a product of service, and An Garda Síochána, Garda Stone answered:

No. Well, I see both as providing a service, in the sense that the Garda Síochána is now providing a service to the public. It is more generated in the last number of years towards a service industry and I don't use that word lightly, but it is expected and the people expect it because they are paying our wages and we are subject to the taxpayers' good wishes that we provide a service and that it would be done to the best of our ability. ... We are the unitary police Force of the State and therefore the people expect the Garda Síochána to do the job.⁹²²

- 13.107. The Tribunal rejects this. This evidence expressed a view of the purpose and role of a police force in a modern State that is not in any way tenable. Members of An Garda Síochána cannot be equated with a service industry. In the history of the State, many have been injured or died in the course of heroic efforts to enforce the law. They are vested with enormous powers and are obliged to account for these in a manner that preserves the integrity of the process of interaction through force with the people living in this country.

- 13.108. Garda Stone claimed in evidence that the Garda Representative Association took the attitude that when a member of the force was asked to account for his or her duties, they were encouraged by the Garda Representative Association to give such account. The Tribunal rejects this evidence as contrary to its experience.⁹²³ A fair representation of the attitude which the Carty inquiry team met, and which the Tribunal met as well, is illustrated by the following exchange between Garda Martin Leonard and counsel:

Q. Do you think the Commissioner is entitled to send out a fact-finding mission?

A. The members would be entitled to know, in all fairness, what are the questions being asked.

Q. You heard me opening this [module in an opening statement].

A. No I did not.

⁹²¹ Transcript, Day 165, page 10.

⁹²² Transcript, Day 165, pages 17-18.

⁹²³ Transcript, Day 165, page 23 on.

Q. *I opened this morning on the basis of saying: Donegal isn't an isolated island floating off Ireland, it is part of Ireland and Headquarters are entitled to know and should keep on top of what is happening in Donegal ...*

A. *Yes, of course.*

Q. *... So if the Garda Commissioner came down and said: I'm investigating A, B, C and D would you answer his questions?*

A. *Yes, if he would be asking specific questions. But he was not asking me ...*

Q. *But if the answer to the question could have involved you in some kind of breach of discipline or some kind of breach of the criminal code you would say to the Garda Commissioner: no, I will not answer your questions?*

A. *But he would carry on an investigation ...*

Q. *So he can carry out any investigation apart from asking the actual Garda apparently involved and you are happy with that. But if he asks the Garda apparently involved what were you doing at such-and-such a time in such-and-such a place – no cooperation?*

A. *If it is incriminating.*

Q. *No cooperation?*

A. *He does not have to respond.*

Q. *So the Garda Commissioner isn't entitled to a response?*

A. *Not within twenty-four hours.*

Q. *Ok, twenty-five hours, is he entitled to a response?*

A. *Then he has his response, yes.*

Q. *But if it is incriminating the member is entitled to say: I exercise my right to silence?*

A. *Yes.*

Q. *The ESB man?*

A. *I think it would be the same.*

Q. You think?

A. Yes.

Q. You see no difference in terms of organising a police Force between the two, between organising an electricity supply and organising the supply of policing in a country?

A. I would say the rights of Garda would be paramount, the rights as far as I am concerned, that is what I am there for.⁹²⁴

13.109. The Code of Discipline within An Garda Síochána is dealt with, the Tribunal understands, as respects all ranks, by the Garda Síochána (Discipline) Regulations, 1989.⁹²⁵ Two matters are noticeable from the review and analysis conducted by the Tribunal with the assistance of the evidence of Garda Stone, Garda Leonard, Chief Superintendent John Kelly and Superintendent Coll. Firstly, the schedule to the regulations describes what Regulation 6 deals with as a ‘breach of discipline’. In short order, this includes conduct that is prejudicial to discipline; misconduct involving an assault, insubordination or abusive language; neglecting duty in terms of money, property or lawful orders; acting negligently; disobeying orders; falsehood or prevarication; making unauthorised communications; corrupt or improper practice; abusing authority; neglecting health; untidiness while in uniform; misusing property in the custody of An Garda Síochána; intoxication; criminal conduct; being an accessory to a breach of discipline; and engaging in certain prohibited spare time activities.

13.110. It is notable that it is not a breach of discipline to fail to account for one’s actions. This is where the second notable characteristic of these regulations comes into play. Regulation 39 allows an investigating officer to require an account from a member of An Garda Síochána. In order for it to come into play, however, an investigation has to have been completed. The Director of Public Prosecutions has had to have been consulted and decided that there should be no prosecution and the Commissioner of An Garda Síochána, in the alternative, has had to decide that no breach of discipline has been committed. Further, the power is only brought into play where, in the course of the investigation, a member of An Garda Síochána has refused to answer a question, or to furnish information, or to produce a document or thing that is relevant to the investigation of the breach of discipline alleged. Where that has happened, the Commissioner may get a special report. He can then give a direction to the investigating officer to commence a further investigation. This, the Tribunal understands, has to be commenced under a separate

⁹²⁴ See also Garda Stone, Transcript, Day 165, page 29.

⁹²⁵ S.I. No. 94 of 1989.

investigating officer and is an entirely separate investigation into the failure to account. This separate investigating officer, on the completion of the first investigation, may give a direction to a member of An Garda Síochána that a question is to be answered, or information is to be furnished, or a document or thing is to be produced. Once such a direction is given, and explained in understandable language by the second and separate investigating officer, it is then the duty under Regulation 39(4) of the Discipline Regulations for the member of An Garda Síochána to comply with such a requirement. If he or she does not then it is a breach of discipline. This situation is unjustifiable.

- 13.111. An impression may have been created during the course of the hearings of the Tribunal that this situation is in the course of rectification by virtue of the Garda Síochána Bill 2004. This sets up a new Garda Ombudsman Commission with appropriate administrative backup. An investigation by the Garda Ombudsman can be triggered as a result of certain serious events, such as a death in Garda custody, or by a complaint on behalf of a member of the public or by the Garda Commissioner. As the Tribunal understands it, serious events require an investigation whereas referrals by a member of the public, or by the Garda Commissioner, can result in an investigation at the discretion of the Ombudsman. What is of interest, however, to the Tribunal is the further power contained in Section 88 of the Bill. The Garda Ombudsman Commission may require information, documents or things to be produced. A person can be legally required to attend before the Ombudsman Commission. Such a Garda is obliged to answer, fully and truthfully, any question put and to sign a declaration in that regard. Where a refusal occurs then the Ombudsman Commission may apply to the Circuit Court. If satisfied that the appropriate conditions were applied, the Circuit Court may make an Order requiring cooperation. If there is a further failure a summary fine or term of imprisonment may be imposed.
- 13.112. It is to be noted that this gives no power to officers to require an account from a member of An Garda Síochána of his or her duties. It is cumbersome and time-consuming. It adds to the length and complexity of an already long and legalistic process. It is an attempt to gain access to the truth where other avenues have failed. It is an additional tier of administration beyond those contained already in the Garda Discipline Regulations.
- 13.113. The Tribunal does not wish to make any comment as to whether any

particular piece of legislation is appropriate or inappropriate. The Tribunal simply notes the proposal in question and how it fits in to an already complex and cumbersome administration.

- 13.114. The Tribunal is of the view that every member of An Garda Síochána should be immediately obliged to account for any action taken by him or her as a member of An Garda Síochána or while on a designated duty. Within the context of the powers vested in An Garda Síochána and the need for a disciplined force, any member who does not comply should be suspended. It should be a specific breach of discipline to fail to account in that regard and one which, in the Tribunal's view, merits dismissal.
- 13.115. The Tribunal has already noted the lengthy investigation which took place into the New South Wales Police under the chairmanship of Mr. Justice Woods. This investigation involved considerable obstruction being placed in the way of that Tribunal through concerted lying that resulted from officers gathering together and deciding on an appropriate line of deceit. This Tribunal believes that in several instances it has met with the same problems. At paragraph 4.9 of his report Mr. Justice Woods reported as follows:

The disciplinary system through its dependence on the proof of specific charges in a legalistic, adversarial context, and its punitive nature, has also: usually guaranteed the spirited defence of any charges that might be brought; encouraged the code of silence, and the practice of cover-up noted earlier in this report; discouraged honesty and a willingness to admit mistakes; and been productive of delay and enormous disruption to the careers of the officers involved. Within this environment of a formal and legalistic system, in which the emphasis is on attribution of blame and a punitive outcome it is not surprising that in the past: internal investigations have been affected by bias, leaks of information and collaboration, and by an approach that is very much less thorough and convincing than conventional law enforcement; internal informants have been harassed and discouraged; and investigations have often given the appearance of being conducted with the objective of writing them off as unsustainable as soon as decency permits.⁹²⁶

- 13.116. What is vital is to bring back the concept of truth both to internal and external relations within An Garda Síochána. Where questioning takes place for the purpose of a managerial inquiry, any subject, and any witnesses, should be reminded that any failure to answer, or to answer truthfully, can be reported as a breach of discipline and for consideration

⁹²⁶ Royal Commission into the New South Wales Police Final Report, Volume 2: Commissioner The Honourable Justice J.R.T. Woods: May 1997, page 309, paragraphs 4.9, 4.10.

in relation to the dismissal power. The Tribunal echoes the words of Mr. Justice Woods by regarding this as an important consideration for the exercise of that power.⁹²⁷

- 13.117. Fundamentally, the Tribunal's recommendation is that all members of An Garda Síochána must be obliged to account truthfully for their duties. A failure to answer, or to answer truthfully, should be regarded as a major breach of discipline inviting dismissal. This is not to trespass on the rights of a person suspected of a crime. The Tribunal notes that in the case of *Re. National Irish Bank Limited and the Companies Act 1990*⁹²⁸ the Supreme Court indicated that involuntary statements were inadmissible in criminal proceedings. Whether a statement had resulted from torture, oppression or a duty to account subject to dismissal, does not involve any distinction in principle as noted by the Supreme Court. Where an answer given, or not given, may involve the creation of evidence that can be used in a criminal trial, it is inadmissible where compelled. The issue in that case was Section 18 of the Companies Act 1990, which provided that an answer by a person to a question put to him in exercise of a power conferred by the Act to require an answer to a companies inspector, might be used in evidence against him. Barrington J. indicated, after an analysis of the authorities:

Accordingly, the better interpretation of Section 18 in the light of the Constitution is that it does not authorise the admission of forced or involuntary confessions against an accused person in a criminal trial, and it can be stated, as a general principle, that a confession, to be admissible in a criminal trial, must be voluntary. Whether, however, a confession is voluntary or not must in every case in which the matter is disputed be a question to be decided, in the first instance, by the trial judge.⁹²⁹

- 13.118. Members of An Garda Síochána should be immediately obliged to account for their actions as members of the force and while on any tour of duty. If the result of that obligation is the admission of a criminal offence then the Constitution, according to the NIB case, prohibits its subsequent use in a criminal trial. Any such admission can, however, and should, be used to restore discipline to An Garda Síochána.
- 13.119. As also noted by Mr. Justice Woods, the current system of discipline within An Garda Síochána can take years in completion. The Tribunal recommends that An Garda Síochána should move away from the application of a system involving what are, in effect, internal criminal trials, to one where managers have online responsibility in dealing with

⁹²⁷ Woods 4.54, 4.55.

⁹²⁸ [1999] 1 ILRM 321.

⁹²⁹ [1999] 1 ILRM 321 at 359-360.

the work of their subordinates. That does not seem possible where people are at loggerheads over years in relation to the implementation and disposal of specific charges within an over complex and multi-tiered system.

7. The Effect of Dismissal

- 13.120. Finally, on this issue, the Tribunal notes that early dismissal can lead to the loss of pension. In the majority of instances, this is an unnecessary and unfair consequence. A member of An Garda Síochána may work for years, legitimately building up credits on his or her pension fund, and then require to be dismissed by reason of a single, or a series, of evil actions. It is conceivable that a person who has been commended, even for bravery, might fall to the degree that requires their dismissal. It does not seem logical that the consequence of a short period of bad service should result in the removal of the benefits legitimately gained, perhaps through years of hard work and application.

8. Recruitment and Promotion

- 13.121. The Tribunal notes the unimpressive performance by members of An Garda Síochána of Superintendent and Chief Superintendent rank during the relevant period in Co. Donegal. All of these men were recruited from ranks serving both in Donegal and in other parts of the country. The Tribunal cannot come to the conclusion that the Donegal division is a 'statistical blip'. Whereas Donegal may not have been a representative sample as to serving members of An Garda Síochána of Superintendent rank and above, it is also equally possible that it may have been. The Tribunal has been impressed by much of the evidence that has been garnered, through the assistance of the Garda Commissioner, from specialist units, including Ballistics, the Carty investigation team, and several of the senior officers from outside Donegal who could not but impress in terms of their intelligence and energy. Equally, the Tribunal has been given a most impressive demonstration of the PULSE computer system and it is obvious that enormous energy and thought is being put into the development of this system.
- 13.122. Systems, however, cannot substitute for personnel. The Tribunal is unable to make a recommendation as to how promotions should be looked at in the future. The Tribunal is able to say, however, that the system of promotion, in its experience, too often produces people who do not bring to the task the requisite level of enthusiasm, commitment and ability. This

is a matter which the Department of Justice, Equality and Law Reform should look at in consultation with the Garda Commissioner. Beyond noting a serious situation, the Tribunal can make no specific recommendation as to reform.

- 13.123. When it comes to the issue of recruitment, the Tribunal notes that An Garda Síochána has not yet made any effort to recruit from religious or ethnic minorities. It may be that the conditions of entry make membership of An Garda Síochána a less than attractive career to some minority groups. This is a matter that can be looked at by the Department of Justice, Equality and Law Reform in consultation with the Garda Commissioner. Now, it may reasonably be thought, is the time to make provision for the future of our increasingly multi-ethnic society.⁹³⁰ However, the Tribunal is unable to make any specific recommendation in the light of the evidence and the Terms of Reference.
- 13.124. This matter came to the attention of the Tribunal in the context of the attitude, so often mentioned in this report, of 'don't hang your own'. If a sector of society providing one of the most important functions of a democratic society is monolithic in its makeup then that attitude is reinforced. Beyond that, the Tribunal cannot comment.
- 13.125. The Tribunal notes the documents which have been furnished in reports entitled 'Review of Recruitment Methods in An Garda Síochána' and 'Report of the Garda Promotions Review Group'. It is a matter for the Department of Justice, Equality and Law Reform and the Garda Commissioner as to whether these reports provide sufficient answers. The Tribunal merely notes this situation and can make no specific or general recommendation.

9. Tenure

- 13.126. In the course of his statement made in the context of the Tribunal, dated the 16th of June 2003, Mr. Sean Ginty, formerly Chief Superintendent of the Donegal division, stated the following:

Another area, which I believe to be significant from a management point of view, was the frequent turnover of personnel, especially those in key positions, e.g. Inspector, Superintendents and Chief Superintendents. The average period of tenure was very short. Such changing of key personnel is detrimental to stability and it weakens authority. This was

⁹³⁰ These are governed by the Garda Síochána (Admissions and Appointments) Regulations 1988, SI No. 164 of 1988 and the Garda Síochána (Admissions and Appointments) (Amendment) Regulations 2001, SI No. 498 of 2001.

addressed to some extent during my tenure in Donegal. A number of Sergeants were promoted to Inspector and Inspectors promoted to Superintendent rank and a Superintendent promoted to Chief Superintendent. These newly promoted officers were retained at their new rank in the division. The following is an example of the turnover. From 1986 to date there were ten different border Superintendents and eight different district officers and six different Detective Inspectors based at Letterkenny. Buncrana district had sixteen different Superintendents in charge of that district over the same period. During the period 1965 to date, nineteen Chief Superintendents have served as divisional officer in Donegal and within that same period Chief Superintendent Denis Fitzpatrick and myself served a total of thirteen years as divisional officer between us.⁹³¹

- 13.127. It is obvious that anyone coming into a responsible job needs time to familiarise themselves with their new position, and with the personnel at their disposal. This takes time. An unfortunate feature of the situation in Donegal was the manner in which senior officers came and went at rapid intervals. This was a particularly acute problem in Buncrana. For those intent on promotion, it may be that a vacancy occurring at Inspector, Superintendent or Chief Superintendent rank might be seen as a short-term step on the ladder. It is a good thing, not a bad thing, to seek promotion in order to advance one's skills for the benefit of an organisation. However, anyone being drawn into service at a high level within An Garda Síochána should be given a posting only on condition that they are prepared to give that minimum period of service in any particular position that would be of benefit to their colleagues and the organisation as a whole. The parameters for this are matters to be considered by the Department of Justice, Equality and Law Reform in consultation with the Garda Commissioner.

⁹³¹ Tribunal Documents, page 4842.

APPENDIX 2

