



# 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

Solicitor to the Tribunal: Hugh Dockry  
Registrar to the Tribunal: Brendan O'Donnell

REPORT INTO ALLEGATIONS OF HARASSMENT OF THE McBREARTY FAMILY OF RAPHOE, COUNTY DONEGAL AND OF RELATIVES, ASSOCIATED AND AGENTS OF THAT FAMILY BY MEMBERS OF THE GARDA SÍOCHÁNA SUBSEQUENT TO THE DEATH OF MR. BARRON INCLUDING THE ISSUE AND PROSECUTION OF SUMMONSES RELATING TO OFFENCES ALLEGED TO HAVE OCCURRED BETWEEN 28<sup>TH</sup> OCTOBER, 1996 AND 28<sup>TH</sup> SEPTEMBER, 1998

Term of Reference (c)

REPORT INTO THE EFFECTIVENESS OF THE GARDA SÍOCHÁNA COMPLAINTS INQUIRY PROCESS VIS-A-VIS THE COMPLAINTS MADE BY FRANK McBREARTY SNR. AND HIS FAMILY BETWEEN 1997 AND 2001

Term of Reference (j)





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BETWEEN 28<sup>TH</sup> OCTOBER, 1996 AND 28<sup>TH</sup> SEPTEMBER, 1998

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AND HIS FAMILY BETWEEN 1997 AND 2001

Term of Reference (j)

Solicitor to the Tribunal: Hugh Dockry

Registrar to the Tribunal: Brendan O'Donnell

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**Mr. Justice Frederick Morris**

HAR/REP003-08/FM/NT  
GCB/REP003-09/FM/NT

7<sup>th</sup> July 2008

**RE: Tribunal of Inquiry set up pursuant to the Tribunal of Inquiry (Evidence) Act 1921-2002 into complaints concerning certain Gardaí in the Donegal Division**

Dear Minister,

I enclose herewith my Report in respect Terms of Reference (c) and (j). This is in respect of:

- (c) Allegations of harassment of the McBrearty family of Raphoe, County Donegal and of relatives, associates and agents of that family by members of the Garda Síochána subsequent to the death of Mr. Barron including the issue and prosecution of summonses relating to offences alleged to have occurred between 28th October, 1996 and 28th September, 1998.**
- (j) The effectiveness of the Garda Síochána Complaints Inquiry process viz-a-viz the complaints made by Frank McBrearty Snr. and his family between 1997 and 2001.**

During the course of the Tribunal's work it was determined that both of these Terms of Reference could conveniently be taken together as many of the complaints of harassment made by the McBrearty family were also the subject of complaints made to the Garda Complaints Board. As you will see this, the seventh report of the Tribunal, is divided into two parts the first dealing with Term of Reference (c) and the second dealing with Term of Reference (j).

As you are aware, 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 direction relating to the publication. With this section in mind the following observations may be of assistance.

On the 21<sup>st</sup> January 2008 the Tribunal wrote two letters to Inspector Declan Downey, the Garda Liaison Officer to the Tribunal, in order to ascertain whether there was a reasonable likelihood of criminal proceedings being brought concerning the subject matter of Terms of Reference (c) and (j) respectively. By letter dated the 4<sup>th</sup> of March 2008 Chief Superintendent Terry McGinn advised the Tribunal that the Garda Síochána were not conducting any investigations in relation to matters the subject of Terms of Reference (c)

and (j) respectively and that consequently no files related to any such matters are presently with the Office of the Director of Public Prosecutions for consideration. I enclose a copy of this correspondence. Accordingly, it is my view that the publication of the report will not prejudice any criminal proceedings.

Yours faithfully,

  
**Frederick Morris**

Dermot Ahern, Esq., TD  
Minister for Justice, Equality and Law Reform  
Department of Justice Equality and Law Reform  
94, St. Stephen's Green  
Dublin 2

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*Please quote the following Ref. Numbers:*

**DO11.2/08.**

**PRIVATE & CONFIDENTIAL**

**MR HUGH DOCKRY,  
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.  
HARASSMENT MODULE - TERM OF REFERENCE (C).  
GARDA COMPLAINTS - TERM OF REFERENCE(J).  
ACTUAL OR POTENTIAL CRIMINAL PROCEEDINGS.**

A chara,

I refer to your correspondence dated the 21st January 2008 in the above.

Following consultation with the Garda Commissioner, I am to advise that An Garda Síochána are not conducting any investigations subject of the Tribunal Hearings listed in your letter of the 21st ult.

Consequently, there are no files related to these matters contained presently with the Office of the Director of Public Prosecutions for consideration.

Is mise le meas,

**TERRY MCGINN  
CHIEF SUPERINTENDENT.**



**4<sup>TH</sup> MARCH 2008.**

**CC Ms. M. CUMMINS, SOLICITOR FOR THE GARDA COMMISSIONER.**

**Mission Statement:**

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

**Is é Misean an Gharda Síochána:**

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



# 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/HD/JM** Our Ref:

If telephoning please ask for:-

## **PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE**

Monday, 21 January 2008

### **PRIVATE AND CONFIDENTIAL STRICTLY ADDRESSEE ONLY**

Inspector Declan Downey  
Garda Liaison Office  
C/o Morris Tribunal  
Belfield Office Park, Beaver Row  
Clonskeagh, Dublin 4

**RE: Harassment Module – Term of Reference (c)  
Garda Complaints – Term of Reference (j)  
Actual or Potential Criminal Proceedings**

Dear Inspector Downey,

We refer to the following paragraphs of the Tribunal Terms of Reference:

- (c) Allegations of harassment of the McBrearty family of Raphoe, County Donegal and of relatives, associates and agents of that family by members of the Garda Síochána subsequent to the death of Mr. Barron including the issue and prosecution of summonses relating to offences alleged to have occurred between 28th October, 1996 and 28th September, 1998;**
- (j) The effectiveness of the Garda Síochána Complaints inquiry process viz-a-viz the complaints made by Frank McBrearty Snr. and his family between 1997 and 2001.**

As you are aware, this Tribunal is governed by the Tribunal of Inquiry (Evidence) Acts 1921 to 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 number of weeks, it is important that it should be informed as to the reasonable likelihood of criminal proceedings being brought concerning the subject matter of paragraphs (c) and (j) as set out above.

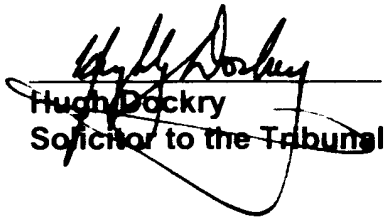
You are in a unique position, having attended most of the public sittings of the Tribunal and having acted in a most helpful way as Liaison Officer between An Garda Síochána and the Tribunal, to assist us in this regard. We would, therefore, ask you to make inquiries as to whether it is reasonably likely or reasonably probable that criminal proceedings might be brought at this juncture arising out of the circumstances that are the subject matter of these modules.

We would therefore be obliged to receive your considered reply in relation to our query as soon as possible.

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,

  
Hugh Dockry  
Solicitor to the Tribunal

**PARAGRAPH (c) AND (j) of the  
TERMS of REFERENCE**

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

(c) and (j)

- (c) Allegations of harassment of the McBrearty Family of Raphoe, County Donegal and of relatives, associated and agents of that family by members of the Garda Síochána subsequent to the death of Mr. Barron including the issue and prosecution of summonses relating to offences alleged to have occurred between 28th October, 1996 and 28th September, 1998;
- (j) The effectiveness of the Garda Síochána Complaints inquiry process vis-a-vis the complaints made by Frank McBrearty Snr. and his family between 1997 and 2001.

## 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 and grammatical errors have not been corrected.
3. Particularly important conclusions of the Tribunal are printed in a different colour.
4. Transcript quotes may have been slightly corrected as to punctuation.
5. In the Report, members of An Garda Síochána are referred to by the rank that they held when giving evidence where their testimony is quoted or referred to, and by the rank that they held at the time of events referred to.



## CHAPTER 1 GENERAL INTRODUCTION

### General Introduction to the Seventh Report

- 1.01. This is the seventh report of the Tribunal of Inquiry into complaints concerning some Gardaí in the Donegal Division. This report deals with two distinct matters. Part one of the report deals with the Tribunal's inquiry into Term of Reference (c), which concerned an allegation that there was harassment of members of the McBrearty family and their agents and associates by the Gardaí. Part two of this report deals with the Tribunal's inquiry into Term of Reference (j), which concerned the effectiveness of the Garda Síochána inquiry process vis-à-vis complaints made by Frank McBrearty Senior and his family between 1997 and 2001. Although these matters are dealt with in the same report, they were in fact two completely separate areas of inquiry for the Tribunal.
- 1.02. Where there are references in the footnotes in this report to a page in the Tribunal documents, this refers in part one to the Book of Evidence that was compiled and circulated for the Harassment sub-module. In part two of the report, the reference to Tribunal documents refers to the Book of Evidence that was compiled and circulated for the Garda Complaints sub-module.

### Judicial Approach

- 1.03. In the Tribunal's first report, I set out the approach that I have adopted to the evidence in this inquiry.<sup>1</sup> For the sake of clarity and consistency I think it would be no harm to restate the approach that I have taken to the evidence heard in the course of this sub-module:

1.26. When a jury retires, having been addressed by counsel and having been instructed as to the legal principles by the trial judge, they are at large as to the approach they take to the evidence. The case law enjoins them to approach the evidence with shrewdness and commonsense.

1.27. Every case has its building blocks. This inquiry is no exception to that. In a criminal case, when a jury has heard the evidence of an accomplice, they will receive a warning from the trial judge as to the dangers of relying thereon. A case may be built upon a confession. This requires an admonition by the trial judge to look to the presence or absence of corroboration in relation to that confession. Items of corroboration are pieces of evidence that can be seen as linking the accused to the commission of the crime, without necessarily proving

<sup>1</sup> First Report of the Tribunal, pages 12-13.

the crime in themselves. A jury may also have heard items of circumstantial evidence which, taken together, or in conjunction with direct evidence, may satisfy them as to the guilt of the accused person. In the context of the matters which here come under discussion, circumstantial evidence assumes a high importance. Nothing of what has been found as a fact that follows in this report has been without the direct evidence of a witness, or of witnesses, claiming to have experienced an event at first hand. Every witness is, however, subject to infirmity. It would be folly to divorce a witness's testimony from the physical facts available on the ground in respect of any particular incident and from the accumulation of facts which together can make up circumstantial evidence.

- 1.28. Circumstantial evidence can allow an inference to be drawn through the accumulation of various pieces of evidence all pointing to a conclusion in a particular direction. Perhaps the best statement of the law, one recently approved by the Court of Criminal Appeal in *The People (DPP) v Catherine Nevin*,<sup>2</sup> is to be found in Robert Sands' book *Criminal Law and Procedure in the Republic of Ireland*,<sup>3</sup> which states as follows:

The testimony of a witness who actually saw the accused person kill the deceased is direct evidence, but if the prisoner has died of poisoning the pecuniary embarrassment of the prisoner, his buying poison and attempting to avoid an inquest and other such facts would be relevant as circumstantial or indirect evidence. See *R v Palmer (1856)*, Stephen's *History of the Criminal Law*, P389. Circumstantial evidence is very often the best evidence that the nature of the case permits of. It is evidence of surrounding circumstances which by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial; *R v Taylor* 21CAR21. A jury may convict on purely circumstantial evidence, but to do this they must be satisfied, not only that the circumstances were consistent with the prisoner having committed the act, but also that the facts were such as to be inconsistent with any other rational conclusion than that he was the guilty person; *AG v O'Brien* CCA11-7-32; *R v Hodge*, 2 Lew 227; *Halsbury*, First Edition, Volume IX, Article 1190, page 588.

- 1.04. In addition to that, three other principles emerge. Firstly, a lie told for the purpose of evading responsibility in respect of a wrongful act can be corroboration if (i) it

<sup>2</sup> Unreported, Court of Criminal Appeal [14 March 2003].

<sup>3</sup> Third edition [1951] page 177.



is a deliberate falsehood; (ii) it relates to a material issue; (iii) the lie is attributable to a consciousness of, and an attempt to, conceal guilt; and (iv) where the issue is the credibility of an accomplice, the statement at issue is clearly shown to be a lie by evidence independent of the accomplice to be corroborated.<sup>4</sup>

1.05. The second principle relates to the rule against self-corroboration. This rule is no more than an extension of the usual rule that evidence to be corroborated must be supported from a source outside that in respect of which the law requires corroboration. The fact that a person says that he did not do something on a particular day is not corroborated by the fact that, on any number of occasions prior to giving testimony, he asserted to a number of different individuals that he had not in fact done that thing. An exception to that rule can arise. Where an allegation is made against a witness that he has recently fabricated a story, that witness may be called to show that prior to giving testimony he had given a similar account of the events in question to them. While the Tribunal is not bound by the rules of evidence, it has tried to abide by the sense inherent in the formulation of those rules in both receiving and analysing evidence.

1.06. The third principle relates to the burden and standard of proof before a Tribunal of Inquiry. Counsel appearing on behalf of the Tribunal are not tasked with proving anything. The inquiry is not a criminal trial. Its purpose is to uncover the truth, wherever the truth may lie, by sifting through evidence while attempting to allow people a fair opportunity to challenge such evidence as seems to raise an inference against them, or directly alleges wrongdoing by them. The Tribunal is entitled to conclude a matter by giving its opinion as a probability.

### **The Work of a Tribunal**

1.07. When delivering the 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. It seems to me that these are worth reproducing here as they provide the basic template upon which the work of this Tribunal was built. I therefore quote:

Hamilton C. J. in delivering the judgement in *Haughey v Moriarty* [1999] 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.

<sup>4</sup> R –v Lucas [1981] Q.B. 720 at 723; [1981] 2 All E.R. 1008 at 1010 (per Lord Lane C.J.) cited in McGrath, 'Evidence' (Dublin, 2005) at pages 150-152.

- (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 that 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 inquiry. 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 that 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 a 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 both make the work of the Tribunal 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.<sup>5</sup>

<sup>5</sup> This ruling is available on the Tribunal website: [www.morristribunal.ie](http://www.morristribunal.ie) under the 'Opening Statement' link.

- 1.08. The burdens placed upon a Tribunal of Inquiry by the relevant interpretation of the constitution in case law are extremely onerous. By far the strongest reason for the length of time that has been necessary to pursue the matters mentioned in this report has been the requirement of due process. Another, and only slightly less important reason, has been the extent to which parties before the Tribunal, and witnesses, have adopted lying stratagems which have needed to be painstakingly broken down through many hours of cross-examination by counsel for the Tribunal. Any judge, in any case, is entitled to accept or reject the evidence of a witness and, in doing so, may simply comment that the evidence of a particular witness was not believed or that the judge's view was that the person giving evidence before him or her was deliberately lying. That power exists, presumably for the greater benefit of the public good in the administration of justice, notwithstanding the fact that a particular witness is not represented. The purpose of a Tribunal of Inquiry, however, is to give the opinion of the Tribunal as to facts that are in dispute. This carries no civil or criminal consequences but it does affect the good name of a citizen, which is guaranteed under Article 40.3 of the Constitution. A Tribunal is entitled to characterise the evidence of any witness as untruthful without affording representation to that person. However, a Tribunal is not entitled to find as a fact that a citizen engaged in discreditable conduct without allowing that person representation.
- 1.09. Since the seminal ruling of the Supreme Court in *re Haughey*,<sup>6</sup> the minimum rights which a citizen is entitled to expect, where he or she is in peril in terms of their reputation, include the right to be represented; the right to cross-examine relevant witnesses; and the right to make submissions in relation to matters of fact which potentially affect them. From the point of view of a Tribunal of Inquiry, the Tribunal is obliged to explain its Terms of Reference, to gather together, through a process of voluntary discovery and co-operation, or by using its powers pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 2004, all relevant documents. Where these affect a party, as aforesaid, that party has a right to see these documents. In modern terms, this means the gathering together and distribution to many disparate parties of a large collection of different documents. There is both a duty on a Tribunal to gather in documents which are material to the inquiry, and to distribute same to parties who are represented. The Tribunal is also obliged to consider all relevant evidence in a fair and balanced manner. This I have done and I am now in a position to report as a result of my consideration of the evidence given on this sub-module.

### **A Lack of Co-operation**

- 1.10. Before proceeding to outline the results of my inquiry under this Term of

<sup>6</sup> [1971] I.R.217.

Reference, it is necessary first to say something about a matter which significantly impeded me in the carrying out of my inquiry under this heading. Unfortunately during the course of this sub-module I was met with a distinct lack of co-operation from certain members of the McBrearty family. It would be wrong for the reader to think that this lack of co-operation extended to all members of that family. That was not the case. The Tribunal received great assistance from the following members of the extended McBrearty and Quinn families, who gave evidence before the Tribunal: Róisín McConnell, Mark McConnell, Michael McConnell, Charlotte Peoples, Donna Quinn, Paul Quinn and Susan Quinn. The Tribunal was also assisted by the evidence given by a number of employees and former employees of the McBrearty family including; William Logan, Paddy Lynch, Liam O'Donnell, John Mitchell and Kathleen O'Donnell. The Tribunal was also assisted in its work by the evidence given by Mr. William Flynn, Mrs. Eileen Flynn and Ms. Claire Flynn. All of these members of the public complied with their civic and legal obligations by making themselves available to the Tribunal for examination and cross-examination. By so doing they enabled me to gain a better understanding of this diffuse and difficult sub-module. I am grateful for their assistance and co-operation.

### **Frank McBrearty Senior**

- 1.11. Frank McBrearty Senior gave evidence in chief in the Harassment sub-module on the 9th, 10th and 11th of July 2007. On the morning of the following day, he was unable to continue giving his evidence for two reasons. Firstly, he had taken ill during the night and was feeling unwell. He felt that he was unfit to continue giving evidence. He was also somewhat concerned by an application that had been made on behalf of the Defendants in a civil action that he had brought against Ireland, and the Attorney General and others. The Defendants' legal representatives had applied, or were about to apply in the High Court for an adjournment of this civil action. This caused him great distress. In the events that transpired that application was not acceded to by the High Court. Nevertheless, it caused Mr. McBrearty Senior some distress. As a result of the evidence given in the Arrest and Detention module, the Tribunal was aware that Mr. McBrearty Senior had certain ongoing health difficulties. It was also mindful of the fact that he had the added stress of appearing before the Tribunal without any legal representation. In these circumstances, the Tribunal acceded to his request that he should be given a break from giving evidence until he had recovered. He returned home on the 12th of July 2007.
- 1.12. On the 19th of July 2007 the Tribunal heard evidence from Mr. McBrearty's doctor, Dr. Ciarán Kelly. He indicated to the Tribunal that Mr. McBrearty would

not be fit to resume giving his evidence for a further period of at least two weeks. Even then, Dr. Kelly was of the opinion that Mr. McBrearty should only be required to give evidence for half a day and that he should be given breaks during the giving of his evidence as and when required. It seemed to me that these were reasonable requirements and I indicated that when Mr. McBrearty resumed his evidence it would be along the lines advised by his doctor.

- 1.13.** It was not possible to resume the evidence from Mr. McBrearty Senior prior to the summer recess. He was informed by letter that the taking of his evidence would be resumed on Monday the 17th of September 2007. With this in mind, Mr. McBrearty Senior attended for a consultation with Mr. Paul McDermott S.C. and Mr. Anthony Barr S.C. at the Tribunal's offices on the 10th of September 2007. The purpose of this consultation was to give him some assistance in marshalling his thoughts and presenting his evidence to the Tribunal. Mr. McBrearty Senior left that consultation assuring counsel that he would attend to resume the giving of his evidence on the following Monday. However, late on the afternoon of Friday the 14th of September 2007, a letter was received from Mr. David Walley, of David Walley & Co., solicitors. Mr. Walley did not represent Mr. McBrearty before the Tribunal, but he did act for him in the civil actions that he was bringing against the State and the Garda Commissioner. In that letter Mr. Walley stated that Mr. McBrearty Senior would be unable to resume giving his evidence to the Tribunal on the following Monday. He stated that preparing for the Tribunal had caused Mr. McBrearty Senior enormous difficulty, stress and strain. He requested that the taking of his evidence be re-scheduled to a date after the conclusion of his High Court cases which were listed for hearing in Castlebar during the month of October 2007. The Tribunal had no choice but to accede to this request.
- 1.14.** The taking of Mr. McBrearty Senior's evidence was then re-scheduled to the 5th of November 2007. However, on the 24th of October 2007, Mr. McBrearty Senior indicated to the Tribunal that it was unsuitable for him to give evidence on the date which had been set; this was again by reference to his High Court proceedings. Following the conclusion of those High Court actions, Mr. McBrearty's evidence was re-scheduled for the 13th of November 2007. He was scheduled to give evidence during the mornings only and with whatever breaks he may require. This time it looked as if Mr. McBrearty Senior would in fact resume his evidence. On the 12th of November 2007, Mr. McBrearty Senior, along with his wife, Rosalind McBrearty, and his sister Mrs. Hannah McConnell, attended at the Tribunal offices. Mr. McBrearty Senior had a consultation with Mr. Paul McDermott S.C., Mr. Shane Dwyer B.L. and Mr. Hugh Dockry, solicitor to the Tribunal. This consultation lasted from approximately 12.00 hours until 18.00 hours. On that same day, former Detective Sergeant, Mr. John White was in the

witness box being questioned by Tribunal counsel Mr. Anthony Barr S.C. Shortly before the luncheon adjournment, Mr. White expressed a point of view that was highly critical of Mr. McBrearty Senior. It is not necessary to the narrative that those comments be repeated here. Suffice to say that during the course of the afternoon, Mr. McBrearty Senior became aware that the comments made by Mr. White in the witness box had been relayed by the radio media in Donegal. He received a large number of calls on his mobile phone informing him of what had been said on Highland Radio. The comments and their wide publication in Donegal caused him great distress.

- 1.15. In the course of his evidence that day, Mr. White denied that he had made those comments with a view to provoking Mr. McBrearty Senior not to return to the witness box. Unfortunately, it would appear that that was the precise effect that the comments had because on the following morning a telephone call was placed by Mr. McBrearty Senior to the Tribunal offices informing them that he no longer wished to attend at the Tribunal and that he was finished with the Tribunal. In the course of the telephone conversation he also indicated that his wife Mrs. Rosalind McBrearty and his sister Mrs. Hannah McConnell would likewise not give evidence to the Tribunal. Some days later Mr. McBrearty Senior gave an interview to a newspaper reporter wherein he indicated in no uncertain terms that he was finished with the Tribunal.<sup>7</sup>
- 1.16. This was not the first time that a member of the McBrearty family had refused to continue giving evidence before the Tribunal. On this occasion, the refusal by Mr. McBrearty Senior to resume giving his evidence placed the Tribunal in quite a dilemma. On the one hand, the Tribunal was acutely aware from previous modules that a grievous wrong had been done to Mr. McBrearty Senior and to members of his extended family by the Gardaí. On the other hand, I was also aware that Gardaí against whom allegations of harassment were made were maintaining a strong line of defence in this sub-module. I was very aware that it was important that they should be given a fair opportunity not only to present their own evidence but also to challenge the evidence and the allegations that were being made by Frank McBrearty Senior. This they could not do if he did not return to the witness box. It was for this reason that I did not take any immediate action in the matter. Instead, I decided to proceed with the rest of the evidence relevant to this sub-module before deciding what action, if any, should be taken against Mr. McBrearty Senior.

### **Options Open to the Tribunal**

- 1.17. The powers given to the Tribunal are provided by section 1(2) of the Tribunals of Inquiry (Evidence) Act, 1921 as amended and by section 4 of the Tribunals of

<sup>7</sup> Irish Mail on Sunday, 18th of November 2007.

Inquiry Evidence (Amendment) Act, 1997. In summary, the Tribunal is empowered by these sections to refer the matter to the Director of Public Prosecutions and enable him to review the conduct of the person concerned. The Director can, if so minded, prosecute the offender for his conduct and, if convicted, the offender will be punished. This provision does not advance the Tribunal's business. The other procedure enables the Tribunal to refer the matter to the High Court to seek an Order that the witness be directed to return to the witness box and to answer appropriate questions or otherwise co-operate with the Tribunal. Such procedures are cumbersome and time consuming and in fact require that the Tribunal bring its hearings to a halt while they are being dealt with. **Given that the Tribunal had started its work as far back as the 29th of May 2002 and in view of the fact that it was almost at the end of its inquiries, I came to the view that it would be time consuming and of no practical benefit to the Tribunal to pursue Mr. McBrearty Senior through either of the remedies outlined above.**

- 1.18. The remainder of the witnesses agreed that they would give their evidence to the Tribunal, notwithstanding the fact that Mr. McBrearty had refused to continue giving his evidence, or to undergo cross-examination. Initially it was agreed that neither Mr. White, nor Mr. O'Dowd would be asked about matters of conflict where the only person who could give evidence on the matter was the person making the allegation, being Mr. McBrearty Senior. It was felt that it would be unfair for them to have to deal with such matters when they did not have the opportunity to cross-examine him in relation to the allegation itself. However, as time went on, both Mr. White and Mr. O'Dowd indicated that they would give evidence on any matters of relevance to the sub-module, even where the matter in issue rested solely on the untested allegation of Mr. McBrearty Senior. In short, they were prepared to give their evidence on this sub-module notwithstanding the fact that they did not have the opportunity to cross-examine Mr. McBrearty Senior on any of the allegations made by him in the first three days of his evidence to the Tribunal. **In these circumstances, I came to the conclusion that even without the remainder of Mr. McBrearty's evidence, I would receive enough admissible evidence to enable me to give a balanced and fair report in relation to the matters under inquiry in this sub-module. Accordingly, I decided that it was better to press on and conclude my inquiry rather than delay matters by referring the papers to the Director of Public Prosecutions, or to bring an application before the High Court.**

#### **Effect of Non-Co-Operation by Mr. McBrearty Senior**

- 1.19. The fact that Mr. McBrearty Senior would not continue giving his evidence and



would not allow himself to be cross-examined had one very significant effect on the findings that I am able to make in this report. Due to the fact that the persons against whom allegations were made did not have the opportunity to cross-examine Mr. McBrearty Senior, it would be in breach of their constitutional rights were I to make a finding against them based solely on the evidence of Mr. McBrearty Senior in his untested evidence in chief. Accordingly, where the only conflict of evidence was between Mr. McBrearty Senior and a Garda, the Tribunal cannot make a finding against any Garda in respect of those issues or incidents. However, given the wide nature of the matters under review in the Harassment sub-module, there are only a very small number of discrete issues in which this problem arises. The reader will be alerted to these particular issues and incidents as the narrative unfolds.

- 1.20. It is also appropriate for me to make one other comment in relation to an assertion that was made by Mr. McBrearty Senior. He is reported in the newspaper article already referred to as having stated that when Mr. White made the comments that he did in the witness box, neither I nor Tribunal counsel intervened to protect Mr. McBrearty's good name. After careful review of the transcript, I am satisfied that this is not the case. The comments that were made by Mr. White were made without any lead up and were immediately challenged by counsel for the Tribunal. I reject Mr. McBrearty Senior's criticism of the Tribunal in this regard.
- 1.21. When Mr. White made the comments just before lunchtime on the 12th of November 2007, Tribunal counsel asked him whether he had made those comments with a view to provoking Mr. McBrearty Senior into leaving the Tribunal. This was denied by Mr. White. I am satisfied that the comments, while intemperate and unfortunate, were not intentionally made by Mr. White with a view to provoking a walk out by Mr. McBrearty Senior. The comments were made in the course of an intense period of questioning by Tribunal counsel on a matter involving Mr. William Logan. The comments were made somewhat in the heat of the moment and came out of the blue. I do not think that they were made as part of any deliberate plan on the part of Mr. White to avoid or prevent Mr. McBrearty Senior resuming his evidence. In fact, given the concessions that had previously been made in the evidence given by Mr. McBrearty Senior and Mr. John Mitchell, and given the content of various documentary records, there was much ammunition which counsel for Mr. White could have put to Mr. McBrearty Senior in cross-examination. I do not think that it would have been to their benefit for him not to return to the witness box. **I am satisfied that the comments were not made with the intention that Mr. McBrearty Senior, on hearing them, would not return to the witness box.**

## **Andrew McBrearty**

- 1.22. Mr. Andrew McBrearty, a son of Mr. Frank McBrearty Senior, had a senior managerial role in his father's business and was in a position to provide important evidence to the Tribunal, particularly in respect of events that occurred from the 2nd of May 1997 onwards. The Tribunal was led to believe that Mr. McBrearty had emigrated to the United States by reason of this alleged harassment and now resided in Chicago. By letter dated the 18th of April 2007 the Tribunal invited Mr. Andrew McBrearty to provide a statement to the Tribunal or to make himself available for interview by Tribunal investigators prior to the Tribunal's hearings. He was informed that the Tribunal would be happy to make arrangements for his attendance as a witness during the course of the Tribunal's hearings and make any reasonable arrangements by way of travel and accommodation in order to assist his returning to Dublin for that purpose. An undated reply to this letter was received on the 15th of May 2007, which stated:

Dear Sirs,

I have decided that I have left the issues of Donegal which occurred many years ago behind me. I left Donegal because of those very issues, and you will understand, it is hardly surprising, that I have no wish to revisit those issues again.

If I was to return to Ireland, it would compromise my wife, family and business. I have a sick child, and I need to dedicate myself to my family at this time.

I have been forced out of my country by the very people who should have protected me against harassment, intimidation and abuse. I now have no wish to pay a further price for having been embroiled against my wishes, in these events.

I must accordingly decline your invitation to make a statement to the Tribunal.

Yours sincerely,

Andrew McBrearty

- 1.23. By further letter dated the 12th of July 2007 the Tribunal sought confirmation of Andrew McBrearty's position. His letter, received at the Tribunal's office on the 15th of May 2007, came by way of facsimile and did not contain a return address. It was an unusually framed letter and consequently the Tribunal sought verification of the position stated in the letter.

- 1.24. In the meantime, Mr. Frank McBrearty Senior had commenced his testimony to the Tribunal and gave evidence over three full days on the 9th, 10th and 11th of July 2007. Unbeknownst to the Tribunal an application was made to the High Court to adjourn his civil actions by counsel on behalf of the Defendants in his High Court proceedings on or about the 11th or 12th of July 2007. On the morning of the 12th of July 2007 Mr. Frank McBrearty Senior attended at the Tribunal but indicated, that this application, together with his attendance at the Tribunal, had caused him to feel ill. He had self monitored his blood pressure and did not feel in a position to continue his evidence.
- 1.25. On the 31st of August 2007 a ruling was made by me in respect of an application brought on behalf of Mr. John White regarding discovery of documents against Mr. Frank McBrearty Senior and his solicitor, Mr. David Walley. In a letter dated the 5th of September 2007, Mr. Walley wrote to the Tribunal complaining about certain aspects of that ruling which, for the most part, had been wholly favourable to Mr. McBrearty. In the body of that letter it was stated:

As you know Andy McBrearty was forced to emigrate from Ireland by the actions of An Garda Síochána and although he had wished to put the events of this period behind him to achieve closure on a distressful period of his life, he has now agreed, at the request of his father, to return to Ireland to give evidence at the Tribunal.

He requests that his evidence be heard at the recommencement of this module and has asked that I indicate this to the Tribunal. He is self-employed in the US and will have to make arrangements at short notice in relation to work commitments already made and accordingly a prompt response would be appreciated.

- 1.26. That letter, having been received on Friday the 7th of September, was replied to by letters dated Monday, the 10th of September 2007 to Mr. Walley and to Mr. Andrew McBrearty. It should be noted that it was clear to all parties at that stage that the Tribunal was to recommence its business on the 17th of September 2007, on which date it was intended to recommence with the testimony of Mr. Frank McBrearty Senior. Mr. Walley was now offering Mr. Andrew McBrearty as a witness at short notice to give his evidence at the recommencement of Tribunal's business on the 17th of September 2007. It will become clear from events concerning Mr. Frank McBrearty Senior, that notwithstanding a meeting with counsel for the Tribunal on the 10th of September 2007 and the phone calls with Tribunal counsel during the course of that week, notice was given on Friday afternoon the 14th of September 2007, after the close of business, that Mr. McBrearty Senior would not be attending the Tribunal on the morning of the 17th of September 2007. These events are not unrelated.

- 1.27. All of the documentation and other material required by law to be furnished to a witness who might be criticised in the course of the Tribunal's report were furnished immediately to Mr. Andrew McBrearty in accordance with arrangements made with him and with Mr. David Walley, solicitor. It was felt that Mr. Andrew McBrearty would require some time to consider the documentation furnished, and on Friday the 5th of September 2007, he agreed to attend at the Tribunal to give evidence on the 2nd of October 2007 and agreed that the Tribunal would specially fix that date for his attendance. He said he would be willing to attend at the Tribunal for the entire week if necessary to give all of his evidence, and further documentation was to be supplied. He was also advised that he had been granted legal representation by the Tribunal, but that if he chose not to exercise that right, counsel for the Tribunal would meet with him in advance of the taking of his evidence. He was also asked to submit a statement to the Tribunal. In order to assist him in dealing with the documentation, what the Tribunal regarded as the relevant core documentation in respect of his evidence was prepared and furnished to him.
- 1.28. Mr. Andrew McBrearty then raised difficulties in respect of the discharge of his loss of earnings and business expenses should he attend the Tribunal. It was explained to him on the 28th of September 2007 that the Tribunal would be responsible for his reasonable expenses to cover travel expenses, and the viaticum available to all witnesses, and that any further matters would have to be vouched and dealt with by the Registrar to the Tribunal in the normal way. On or about the 28th of September 2007, Mr. McBrearty contacted the Tribunal and indicated that by reason of business difficulties and commitments he could not attend to give evidence on the 2nd of October 2007. Subsequently, it became clear the following week that in fact he had come to Ireland and attended at the High Court in Castlebar where he gave evidence in the case brought on behalf of his father's business seeking compensation. He did not contact the Tribunal whilst in Castlebar. The Tribunal made an effort to contact him with a view to serving a summons upon him to attend at the Tribunal but Mr. McBrearty expressed displeasure at this.
- 1.29. Once again, contact was made with Mr. Andrew McBrearty with a view to specially fixing his attendance as a witness before the Tribunal on the 22nd of October 2007. Once again, Mr. McBrearty agreed to attend on that date and Tribunal counsel offered to meet him in advance of his testimony if he so wished. By letter dated the 15th of October 2007 the Tribunal informed Mr. McBrearty as follows:

The Tribunal has reordered its business in order to facilitate your attendance on this date and will probably be obliged to schedule the attendance of further witnesses in the light of your testimony. It is important that the Tribunal be assured, therefore, of your attendance on the 22nd of October so that it can proceed in a businesslike and orderly fashion in fairness to the other witnesses who remain to be called in respect of this module. It is all the more important having regard to the fact that the Tribunal's public hearings on this matter are likely to conclude in November 2007. It is important that you understand the Tribunal's intended schedule of witnesses and that you attend on the agreed and appointed day. Failure to do so is likely to result in the Tribunal proceeding with its business without hearing your evidence. Having said that, the Tribunal warmly welcomes your decision to attend at the Tribunal ....

Once again, the decks were cleared to hear Andrew McBrearty's evidence on his undertaking to attend.

- 1.30. On Wednesday, the 17th of October 2007 the solicitor to the Tribunal contacted Mr. Andrew McBrearty by telephone. Mr. McBrearty informed Mr. Dockry that for family reasons he would not be in a position to attend the Tribunal on 22nd of October 2007. He said that for various reasons, including his attendance at the High Court in Castlebar, his business was not in order. He said that it would cost him €4,500 to attend at the Tribunal. It was pointed out to him that the Tribunal would be paying for his transport and accommodation and whatever incidental expenses were found reasonable. It was indicated that the sum indicated by him as a loss of earnings, if vouched, might not be regarded as unreasonable. Considerable money had been spent in facilitating the attendance of other members of the extended McBrearty family as witnesses before the Tribunal.
- 1.31. Mr. Andrew McBrearty then asserted that he wished to be legally represented by the family's chosen counsel and solicitor and to have their costs guaranteed by the Tribunal. He was informed, as had other witnesses and members of the McBrearty family, that the Tribunal could not in law guarantee costs in advance. Mr. McBrearty then informed Mr. Dockry that he could not attend the Tribunal because of family difficulties, including the illness of a child. Mr. Andrew McBrearty later notified Mr. Dockry that he would not be attending on the 22nd of October 2007, and he did not attend as a witness at all. However, he was present in Ireland and gave evidence in the High Court action brought on behalf of his father's business.
- 1.32. **It should be noted that the calling of a witness and the importance of Mr. Andrew McBrearty in the course of the module concerning allegations of**

harassment required a great deal of preparation on the part of Tribunal staff and counsel for the Tribunal, which resulted in a great deal of wasted effort. From a position where Mr. Andrew McBrearty declined to assist the Tribunal, he progressed to the position where he was willing to come and assist the Tribunal and then reneged on that commitment. He dishonoured each undertaking given to the Tribunal. His attendance was proffered by his solicitor on his instructions. Thereafter, he raised every conceivable obstacle to facilitate his reneging upon his undertaking to the Tribunal. The Tribunal was treated with complete disrespect and rather than assist the Tribunal, Mr. Andrew McBrearty chose to obstruct and hinder this inquiry into the allegations that he had made on paper. Quite clearly he could come to Ireland to give evidence when it suited him. It is difficult to understand why he went out of his way to waste the time of the Tribunal and treat it with such disrespect. His engagement with the Tribunal was entirely contrived and mischievous. The Tribunal was at all times entirely dependent on his returning from the United States voluntarily to give evidence to the Tribunal. He is yet another member of the McBrearty family who declined to face cross-examination in relation to their allegations. Given that he was resident outside this jurisdiction, there was nothing that I could do but proceed on with my investigation without his evidence.

### **Frank McBrearty Junior**

- 1.33. In the course of the Arrest and Detention module, Frank McBrearty Junior had walked out of the witness box prior to the completion of his evidence and prior to his cross-examination by some of the parties against whom he had made allegations. He indicated to the Tribunal in no uncertain terms that he did not intend to have any further interaction with the Tribunal. In preparation for the hearing of this sub-module, a letter was sent by the Tribunal's solicitor on the 29th of June 2007 to Mr. McBrearty Junior concerning any complaints which he had in respect of alleged Garda harassment to himself, his immediate family and/or his father's business. No reply was received to this letter. Given the findings already reached by me in the previous modules and in light of his declared intention not to return to the Tribunal, I decided that the best course to adopt was not to pursue Mr. McBrearty Junior any further to see if he had any allegations of harassment to make against the Gardaí.

### **Co-operation from Garda Witnesses**

- 1.34. It is only proper that I should note at this stage that all the serving and former Gardaí who were called to give evidence before the Tribunal did so at the times

requested. They made themselves available for examination by Tribunal counsel over whatever period was necessary and were available for cross-examination by any interested parties. In particular, it is only right that I should note that Mr. Kevin Lennon, Mr. John White and Mr. John O’Dowd, who were the principal parties against whom allegations of harassment were made by Mr. McBrearty Senior, and to a lesser extent by his bar manager Mr. John Mitchell, attended at the Tribunal whenever they were required. Each of them underwent detailed and protracted questioning by counsel on behalf of the Tribunal. They provided answers to the questions that were put to them and they made themselves available for cross-examination by anyone who wished to challenge them on any particular issue. In particular, Mr. White and Mr. O’ Dowd were informed by me that due to the fact that Mr. McBrearty Senior had failed to complete his evidence and make himself available for cross-examination, they were not obliged to give evidence regarding any of those issues in respect of which Mr. McBrearty Senior was the sole person making allegations against them. However, they did not elect to stand on their rights in this regard. They freely gave evidence in respect of all issues, irrespective of whether or not they had had the opportunity to cross-examine Mr. McBrearty Senior in respect of same. I am grateful for their co-operation in this regard.

- 1.35. Notwithstanding the lack of co-operation from certain witnesses as outlined above, I was able to hear a large amount of evidence relevant to the issues raised in this sub-module. In addition, there was a large volume of documentary evidence which was pertinent to the issues raised. I am satisfied that I have received enough evidence to enable me to reach a fair and balanced opinion on the issues raised in the harassment sub-module.





## PART I

### CHAPTER 2

#### THE HARASSMENT SUB-MODULE

##### Introduction to the Harassment Sub-Module

- 2.01. Under Term of Reference (c) of the Tribunal's Terms of Reference, I was required to urgently enquire into and report upon the following matter:

Allegations of harassment of the McBrearty family of Raphoe, County Donegal and of relatives, associates and agents of that family by members of An Garda Síochána subsequent to the death of Mr. Barron including the issue and prosecution of summonses relating to offences alleged to have occurred between 28th October 1996 and 28th September 1998.<sup>8</sup>

- 2.02. At a sitting of the Tribunal on the 15th of July 2002, I gave the following definition of the term 'Harassment', together with an explanation of the relevant Term of Reference:

*Under this heading it would appear that members of the McBrearty family of Raphoe, County Donegal have complained that certain Gardaí in the Donegal area have singled them and their business out for special attention by conduct which could broadly be described as over-zealous performance of their duties, including the issue of numerous summonses alleging breaches of the licensing law in a licensed premises and surveillance of the premises in what is alleged to have been an oppressive manner.*

*The Tribunal will interpret the word 'Harassment' as meaning a persistent or repeated improper use of power calculated to cause trouble, embarrassment, harm, torment or distress which may be effected and/or continued by acts or omissions on the part of an appropriate person to act when he should have acted.*

*With regard to this paragraph, the Tribunal will interpret the term 'The McBrearty family of Raphoe, County Donegal' in such a manner as to encompass persons who are members of the extended McBrearty family who consider that they have been subjected to harassment by members of An Garda Síochána because they have been identified as members of that family.*

*The Tribunal will interpret the words 'associates and agents' in the broader sense and will include in this group persons or bodies who*

<sup>8</sup> Tribunal's Terms of Reference, Term of Reference (c).

*appear to have been identified by members of An Garda Síochána as being associates or friends or agents of the family.*

*In relation to this paragraph, the Tribunal will:*

- (i) establish the nature of the complaints of harassment made by the McBrearty family and the persons referred to in the Terms of Reference;*
- (ii) attempt to establish the basic facts in relation to each complaint;*
- (iii) establish the number and nature of summonses relating to offences alleged to have occurred between the 28th of October 1996 and the 28th of September 1998, issued by members of An Garda Síochána or other prosecuting authorities;*
- (iv) ascertain what is the standard Garda practice and procedure in relation to the issuing and management of summons cases;*
- (v) ascertain whether there was a departure from the Garda practice and procedure in the making of the complaints leading to the issue of the summonses;*
- (vi) enquire into the alleged basis, evidential or otherwise, upon which the members of An Garda Síochána applied for the issue of the summonses or recommended a prosecution or pursued a prosecution in respect of the said offences alleged in such summonses;*
- (vii) enquire into the course of the investigations made by members of An Garda Síochána in respect of each summons issued or applied for and enquire into the origin and basis of the member's suspicion and/or conclusions as to whether an offence or offences had been committed;*
- (viii) attempt to identify the members of An Garda Síochána, if any, implicated in the complaint of harassment;*
- (ix) enquire into and determine whether the alleged harassment, the subject matter of the Terms of Reference, by members of An Garda Síochána, took place;*

- (x) *if harassment did take place as alleged, identify (if possible) the reasons or motives for such conduct on the part of the person or persons responsible and why such conduct continued;*
- (xi) *enquire as to the extent and/or level of knowledge within An Garda Síochána in respect of the facts relevant to the allegations of harassment and steps, if any, taken in the light of such knowledge;*
- (xii) *enquire into the role, if any, of the Director of Public Prosecutions in relation to the prosecution of the summonses or any other fact relevant to this Term of Reference;*
- (xiii) *enquire into the connection, if any, between this Term of Reference and any other Term of Reference;*
- (xiv) *consider the use of informants in relation to the conduct of which complaint is made. In this regard, the same approach outlined in Term of Reference(b)(3) will be applied;*
- (xv) *consider whether standard Garda practice and procedure with regard to the initiation and management of prosecutions by summons contains adequate safeguards.<sup>9</sup>*

### **Harassment – An Overview**

2.03. In essence, the case made by Mr. Frank McBrearty Senior and to a lesser extent by certain other witnesses such as Mr. Mitchell, Mr. and Mrs. McConnell, Mr. Logan and Mr. O'Donnell, was that certain Gardaí carried out a campaign of harassment against them, due to the perception that Frank McBrearty Junior and Mark McConnell had been responsible for the death of the Late Richard Barron and due to the belief held by the Gardaí that other members of the family were engaged in a conspiracy to cover up their wrongdoing. Mr. McBrearty Senior made the case that his public house and nightclub premises were singled out for particular attention. He said that the Garda attention paid to his premises was far more than the attention that any other nightclub premises in Donegal was receiving from the Gardaí at that time. He alleged that this campaign of harassment was mounted against him from the time of the Late Mr. Barron's death on the 14th of October 1996 onwards. In particular, he alleged that it came into very sharp focus in 1997 with the arrival of Sergeant John White in Raphoe. He maintained that subsequent to this time his pub and nightclub premises were

<sup>9</sup> Transcript, 15th July 2002, pages 18-23.

subjected to an unprecedented level of Garda inspections. He stated that arising out of these inspections, prosecutions were brought which were unwarranted and unfair.

- 2.04. Other persons, who were either members of the extended McBrearty or Quinn families, or were agents or employees of the McBrearty family, also had allegations of harassment to make against certain Gardaí. Their allegations will be dealt with as part of the general narrative where it is appropriate to do so. If not falling as part of the general narrative, they will be dealt with in chapters 7 and 8. The narrative begins with a general description of the situation that had pertained in Raphoe in relation to policing and observance of the liquor licensing laws in the years prior to 1996. In subsequent chapters attention is focused on the events that took place during 1997; in particular in the period that Sergeant John White was stationed as sergeant in Raphoe between January 1997 and August 1997. It is during this period that most of the incidents giving rise to the summonses which were ultimately part heard in the District Court between 1998 and 2000, arose. The remaining chapters will focus on the events that occurred subsequent to the departure of Sergeant White from Raphoe in August 1997. We will also examine the prosecution of the cases before the District Court in Letterkenny in the period 1998 to 2000.
- 2.05. Stripped to its bare minimum, Mr. McBrearty Senior maintains that there was a campaign of harassment against him and his family due to a perception on the part of the Gardaí that members of his family had been involved in the death of the Late Mr. Barron and that he and other members of the family were involved in a conspiracy to cover this up. In response to this, Mr. White makes the case that his actions in Raphoe were undertaken pursuant to a general direction, which had been issued by his superior officers to the effect that he should tighten up on the liquor licensing laws and deal with public order problems in Raphoe. He further states that the actions, which he took, were fair, balanced and proportionate having regard to the extent to which Mr. McBrearty Senior and his staff were flouting the liquor licensing laws at the relevant time. He stood over each and every one of the summonses that were issued in his name.

### **Background to Events in Raphoe**

- 2.06. On the 7th of November 1976, Mr. McBrearty Senior purchased a bar known as the Corner House Bar in Raphoe. He extended the premises in 1978 by building a lounge portion at the rear of the bar. He expanded the premises again in 1980. By 1995 the premises had been further extended to include a disco or dance area. The public house portion was known as the 'Tudor Lounge' and the nightclub portion was known as 'Frankie's'. By this time Mr. McBrearty Senior was the

holder of an ordinary seven day on licence. He also had a dancehall licence and a restaurant certificate. At some point in the mid 1990s a change occurred in the licensing regime whereby the annual liquor licence was renewed by the revenue authorities rather than at the annual licensing court. It is possible that for some period the license lapsed due to a delay in finalising certain tax matters. However, no case was made to the Tribunal that Mr. McBrearty Senior did not have the requisite licences as outlined above.

- 2.07.** Functions were held in the nightclub portion of the premises on weekend nights. On a Friday night there was a discotheque, which was catering to a younger crowd in the 18 to 22 years age bracket. Saturday night was the dance night, which featured bands, and in particular country and western bands. This catered for a clientele who would range in age from 30 to 60 years. On Sunday night there was a disco, which catered for a slightly older age group, being 25 years and above.<sup>10</sup> Immediately adjacent to the bar and nightclub premises, Mr. McBrearty Senior had a large car park which had the capacity to accommodate up to 400 cars.<sup>11</sup>
- 2.08.** In terms of the number of staff employed on the premises, this varied depending on the night of the week and the band that was playing on any given night. If there was a very popular band or D.J. in the nightclub on a particular night, then there would be more staff required than on other nights. Mr. McBrearty Senior indicated that he had a car park attendant looking after matters outside the premises. There were two stewards at the front door, together with a man collecting tickets in the ticket box. There was a steward on duty in the vicinity of the toilets. There were also a number of stewards patrolling the dance floor area. Mr. McBrearty Senior stated that on very busy nights he could have up to ten stewards patrolling the interior of the premises. In addition, there were also members of staff serving behind the bars, together with a number of people employed to give out drinks and collect empty glasses.
- 2.09.** In terms of his relationship with the Gardaí, Mr. McBrearty Senior stated that prior to October 1996, he had had a very good relationship with the Gardaí. He stated that he and his stewards would assist the Gardaí who were on duty in Raphoe if there was any trouble on the streets. However, he stated that there was very little trouble coming from any customers who had attended at his premises. He stated that he was strongly anti-drugs. He stated that in or about 1995, he had co-operated with Sergeant Brendan Roache, who had been co-ordinating a drugs operation in Raphoe. To this end, he had allowed Gardaí to enter onto his premises undercover in the guise of being stewards. He stated that he had done all in his power to assist the Gardaí in detecting those who were responsible for

<sup>10</sup> Transcript, Day 621, pages 28-34.

<sup>11</sup> Transcript, Day 621, page 37.

the supply of drugs in the area. However, it appears that that operation came to an end due to the fact that Mr. McBrearty Senior became annoyed that the Gardaí who had gone in undercover had proceeded to insist on searching the stewards. Nevertheless, the evidence from the Garda witnesses called before the Tribunal was to the effect that they were satisfied that Mr. McBrearty Senior was definitely anti-drugs. In particular, Sergeant Joseph Hannigan, who had been the Sergeant in Raphoe from October 1991 until June 1998, stated to the Tribunal that Mr. McBrearty Senior was definitely against the sale and distribution of drugs. He was satisfied that Mr. McBrearty Senior would have nothing to do with drugs whatsoever.<sup>12</sup> It appears that the particular drugs problem arose in the mid-nineties when 'Rave' type discos were held in Frankie's. It appears that these discos only lasted for approximately a year. Sergeant Hannigan was satisfied that in promoting these discos, Mr. McBrearty Senior was purely motivated by financial gain rather than endorsing the sale and distribution of drugs. These discos had ceased prior to October 1996.

- 2.10. One of the points made very forcibly by Mr. McBrearty Senior was to the effect that his record prior to October 1996 did not reveal him to be a publican who was breaking the law on a frequent basis. He pointed out that in the twenty odd years prior to 1996, he had only acquired five previous convictions for liquor licensing offences. He was convicted of permitting intoxicating liquor to be consumed on his premises at 23.35 hours on the 14th of July 1985, for which he received a fine of £10.00. He had a conviction for permitting persons to be on the premises at 15.10 hours on a Sunday afternoon on the 15th of October 1989, for which he was fined £100.00. He had a conviction for permitting intoxicating liquor to be consumed on the premises at 01.15 hours on the 26th of May 1990, for which he was fined £100.00. A fourth conviction was in respect of permitting persons to be on the premises at 01.35 hours on the 23rd of February 1991, for which he was fined £100.00. The final conviction was for permitting intoxicating liquor to be consumed on the premises at 12.35 hours on the 26th of December 1993, for which he was fined £200.00.<sup>13</sup>
- 2.11. Mr. McBrearty Senior also stated that he had a good relationship with the Gardaí down through the years. He stated that he had assisted them in two ways. Firstly, he had provided assistance to individual members of the force who were on duty outside his premises if there was any trouble out on the streets. Secondly, he stated that he had given information to the Gardaí, which had assisted them in solving crime in the area. In his evidence, Sergeant Hannigan stated that as with any nightclub premises there were occasions when patrons exiting from the premises onto the street were boisterous and caused trouble. He acknowledged that on a number of occasions Mr. McBrearty Senior and his staff had assisted

<sup>12</sup> Transcript, Day 632, pages 53-55, and Transcript, Day 633, page 56.

<sup>13</sup> Tribunal Documents, page 1,307.

him in controlling these patrons outside the premises. He stated that he was very grateful for the help that had been afforded to him at that time.<sup>14</sup>

2.12. While a relatively small number of convictions incurred by Mr. McBrearty Senior as licensee of the premises in the years prior to 1996 may on one view indicate a reasonably compliant publican, it is possible that there is another view that can be taken of these statistics. This is due to the fact that in an affidavit, which Mr. McBrearty Senior swore for the purpose of obtaining an injunction before the High Court in 1997, he averred that a particular sergeant had been appointed to Raphoe in the 1980s. He alleged that this sergeant approached him looking for “loans” on various occasions. He stated that after some time the sergeant returned to him with greater frequency looking for ever increasing amounts of money. The clear implication was that if such amounts were not forthcoming, Mr. McBrearty Senior as licensee of the premises would encounter certain difficulties in the form of restrictions being imposed on the operation of his premises arising out of the road traffic legislation and the licensing laws. According to Mr. McBrearty Senior he instituted a formal complaint within An Garda Síochána, as a result of which disciplinary proceedings were apparently commenced against the sergeant concerned. It appears that at some later time Mr. McBrearty Senior’s complaint may have been withdrawn but that there were other complaints, which ultimately led to the particular sergeant taking early retirement from the force.

2.13. The particular Garda did not give evidence before the Tribunal. Accordingly, no opinion is given as to whether or not the particular Garda had engaged in the activities alleged by Mr. McBrearty Senior. However, one cannot discount the theory that his small number of convictions prior to the early 1990s could be due to the fact that he was providing these monetary inducements to the local sergeant, rather than due to any particular compliance on his part with the requirements of the liquor licensing legislation. Another possible reason for the lack of prosecutions being brought against the premises could be explained by the lack of Garda manpower in Raphoe at the relevant time. It is to this area that we must now turn our attention.

### **Policing in Raphoe**

2.14. As already noted, Sergeant Joseph Hannigan was the sergeant in Raphoe from October 1991 until June 1998, at which time he transferred to become a unit sergeant in the divisional headquarters in Letterkenny. He was able to give the Tribunal a most helpful background picture of policing in Raphoe prior to the events of October 1996. At that time there were only four Gardai in the station party in Raphoe. He was the sergeant in charge of the station. He was assisted

<sup>14</sup> Transcript, Day 632, pages 41-43.

by Gardaí John O’Dowd, Pádraig Mulligan and Philip Collins. However, Garda John O’Dowd had been off work for a prolonged period due to an injury sustained in the course of his duty. Garda Philip Collins had also been sick for a prolonged period. Sergeant Hannigan described policing of Raphoe at that time as being “patchy and reactive”. He described it in more detail in the following way:

*I suppose the word, Mr. Chairman, I used in relation to policing of the area was it was patchy and reactive. Given that the station party was so small, some weekends you would have one member working dependent on assistance from neighbouring towns, some weekends you would have nobody working, and it would fall to Gardaí in Lifford primarily to attend to any reports or calls that had to be done in the Raphoe area. With the result that there wouldn’t have been I suppose an even and continuous enforcement of either the licensing laws or monitoring or prevention of public order incidents. I suppose it would be the effect of the small numbers and the lack of resources really.<sup>15</sup>*

- 2.15. The lack of manpower available to the Gardaí in Raphoe was a serious problem. It presented in an acute form on the night of the 14th/15th of July 1996. On that occasion it appears that a large number of patrons had come across from Northern Ireland to attend the nightclub premises in Raphoe. This was due to the fact that most nightclubs in Derry and Tyrone were closed due to rioting in those areas. At the end of the evening’s entertainment, a large crowd, numbering some 800 persons, assembled on the street. Garda John O’Dowd was on duty on his own that night. He told the Tribunal that as he approached the crowd, they started to throw plastic beakers and other items at him. He had no option but to get back into his patrol car and leave the area. In the wake of that incident, Sergeant Hannigan sent a report to the superintendent in Letterkenny informing him that a high profile Garda presence would have to be maintained in Raphoe each weekend from 22.00 hours to 04.00 hours. He requested that the policing of Raphoe be urgently reviewed.<sup>16</sup>
- 2.16. Indeed, in the period from the 10th of January 1994 to the 5th of January 1997, Sergeant Hannigan sent up no less than six detailed written reports to the district officer, requesting additional manpower for Raphoe. His first report was dated the 10th of January 1994. In it he outlined the difficulties that were faced by the Gardaí and the workload that they had to endure. He requested that two members of Garda rank should be allocated to supplement the strength of the station party. He received a response three days later from the district officer,

<sup>15</sup> Transcript, Day 632, page 39.

<sup>16</sup> Tribunal Documents, page .3,855.



Superintendent John Fitzgerald. In relation to the request for manpower Superintendent Fitzgerald stated that the call on manpower was great at that time, and accordingly he directed Sergeant Hannigan to liaise with surrounding stations to get help whenever he needed it. In 1996 he sent up three further reports in addition to the report in relation to the events concerning Garda John O'Dowd on the 14th/15th of July 1996. In all of these he requested that additional manpower be allocated to the Raphoe sub-district. On the 5th of January 1997 Sergeant Hannigan sent up a further report to the superintendent at Letterkenny. In the course of that report he outlined how the town of Raphoe was a busy commercial town with three banks, a post office and a credit union, all open on a daily basis. There were two national schools and two secondary schools in the town, with about 1,200 pupils attending the secondary schools alone. There were two county council housing developments in the town and he stated that these presented the usual problems associated with local authority developments. Raphoe town had one of the largest entertainment complexes in the division: Frankie's nightclub. The nightclub alone would bring around 1,500 people into the town at weekends. Functions were also held in Friel's Hotel, The Idle Hour and Duffy's of Drumoghill on weekend nights. Sergeant Hannigan made the case that the Gardaí working in Raphoe had an inequitable workload in comparison to Gardaí working in other stations elsewhere in the division. He stated that due to the large workload and the small number of Gardaí in Raphoe they were operating a type of "fire brigade policing"; by this he meant that Gardaí were literally going from one emergency to the next while preparing files and also attending court in between. He ended the report by requesting that the matter of manpower at Raphoe receive urgent consideration. He suggested that a station strength of one sergeant and eight Gardaí should be considered.<sup>17</sup> We will see in due course that shortly after receipt of that report, policing in Raphoe did in fact change dramatically with the arrival of Sergeant John White. We will come to that aspect presently.

- 2.17. Sergeant Hannigan also asked Frank McBrearty Senior to make whatever representations he could to the authorities to see if they could get more Gardaí in Raphoe. To assist Sergeant Hannigan, Mr. McBrearty Senior approached Mr. Paddy Harte T.D. and asked him to write a letter to the chief superintendent in Letterkenny seeking the allocation of additional manpower to Raphoe Garda Station. Deputy Harte wrote the following letter to Chief Superintendent Denis Fitzpatrick on the 26th of July 1996:

Dear Superintendent [sic]

I write to you at the request of Frank McBrearty, Frankie's Nightclub,

<sup>17</sup> Tribunal Documents, pages .3,849-3,857.

Raphoe who tells me that he is having a lot of trouble with local people who threaten his property and that he has reported the matter to the Garda Síochána. Mr. McBrearty has requested to have a greater Garda presence in the town particularly on the nights that he has dances and quite apart from Mr. McBrearty's request I think that there is a need to have a greater Garda presence on occasions such as mentioned by Mr. McBrearty. I am constantly being approached by very annoyed people who live in the vicinity complaining about the noise of people in the street, which I experience also.

I am sure you are fully familiar with what happens in Raphoe on Friday, Saturday and Sunday nights without further comment from me and I leave the matter in your good hands.

Many thanks for your attention.

Paddy Hart, T.D., M.C.C.<sup>18</sup>

- 2.18. In addition to the public order problems, which arose from time to time when crowds congregated on the street, an additional problem, which according to Sergeant Hannigan appeared to be somewhat confined to County Donegal, was the problem caused by what were known as 'lappers'. These were young men who owned what were described by Sergeant Hannigan as souped-up or modified cars. They would spend the entire evening driving around Raphoe and the adjoining area. He described it as being a curious pastime in that a number of these young men would drive and meet together at a particular point, for example, near the technical school. There they would park and, leaving the car windows open, would talk to each other from one vehicle to the other. In other parts of the country these young men are known as 'boy racers'. He said that the main problem with these men was that they were inclined to drive very fast around the area, thereby causing a danger to other road users and to pedestrians.<sup>19</sup>
- 2.19. In addition to the workload that they had in relation to public order and other issues, the station party also had to deal with ordinary crime in the area and other police business. This took up quite an amount of their time and attention.
- 2.20. Garda Eamonn Earley had joined An Garda Síochána in July 1982. He had served in a number of stations prior to being posted on temporary transfer to Raphoe from February 1995 to the beginning of February 1996 and again from the 29th of November 1996 until the 6th of October 1997. He gave a very succinct account of how he found policing in Raphoe at that time:

<sup>18</sup> Tribunal Documents, page 3,115.

<sup>19</sup> Transcript, Day 632, page 63.

*Well policing in Raphoe at that time was ... when I arrived in Raphoe I took a shock to the system basically because I had been engaged in border policing all of my service up to that time and I couldn't believe the level of work that was in Raphoe, it was an extremely busy station. I suppose you could nearly say policing was done in a fire brigade type way, you just reacted to events as they came about, you know, it was a very busy station. There was a great deal of public order, criminal damage and general run of the mill offences as well but in very great numbers in proportion to the amount of people that were stationed there ... well I would say the common strand in the greatest number of offences that were occurring was alcohol. There was a huge amount of alcohol involved in virtually every offence that came to our attention, be it domestic violence, public order, criminal damage, you could relate every one of them to alcohol, you know.*

*There was considerable public order situations on a regular basis. Well principally assaults, criminal damage type stuff around the town, around the Diamond area and domestic violence situations. [The public order problem was particularly bad] well it was insofar as the Guards were stretched very thin on the ground. It created a huge workload. Alcohol consumption would have been the common strand in virtually all of it.<sup>20</sup>*

### **Enforcement of the Liquor Licensing Laws**

- 2.21. Prior to 1997, it appears that the liquor licensing laws were enforced in a fairly lax manner in Raphoe. Sergeant Hannigan stated that he carried out periodic inspections of all the public house premises including Mr. McBrearty's premises. On some occasions when he observed breaches of the liquor licensing laws, he expressed his displeasure and told the bar owner to close up the bar. He also checked for age cards in relation to young patrons attending the premises. He said that he used his discretionary powers quite a bit. He was asked as to whether the use of these discretionary powers was related to the lack of manpower available to him:

*It would have been related to my manpower and I suppose to my own manner of policing I suppose. Certainly given the small numbers I had there and not to be overrating or blowing my own trumpet, the place was fairly busy. We were engaged quite a bit of the time on investigative matters not alone administrative matters and the licensing laws wouldn't have been regularly enforced,*

<sup>20</sup> Transcript, Day 638, pages 53-54 and page 93.

*although I certainly would have had on Sunday afternoons checked during the Holy Hour, checked some weekends, not all weekends. Generally I suppose it mightn't be great practice when you'd go in and put people out of pubs, like there would be those that would maintain that that's the publican's job, it's not the Guards job. I suppose that's the way I operated and enforced things.<sup>21</sup>*

Sergeant Hannigan stated that given the manpower difficulties in Raphoe at the time, he was not able to give the attention that he might otherwise have done to the enforcement of the liquor licensing laws. He said that while today high visibility policing was seen as a very important feature in relation to dealing with public order issues, at that time due to the lack of manpower they were engaged in policing of a very different type. It was low profile policing. They simply did not have the numbers to carry out high visibility work and enforcement in Raphoe in the way that they might have liked to have done. He said that enforcement was not as rigorous, or as robust as it possibly should have been.

2.22. A similar picture was drawn by Mr. John O'Dowd. He had been a Garda who had been stationed in Raphoe since December of 1994. He stated that at that time inspections of public house premises and nightclub premises were just routine matters. It was a question of driving around and checking that they were not open too late. It was not a high priority for the station party at that time.<sup>22</sup> Mr. O'Dowd stated that at that time the Gardaí had a fair idea that there was quite an amount of trading after hours going on. He said there was a type of 'live and let live' policy operated. In other words, if the opening of the bar or nightclub premises beyond the legal hours did not cause undue difficulties, the Gardaí would not interfere. Mr. O'Dowd stated that this was primarily due to the fact that they simply did not have the manpower to enforce the law in any sort of rigorous manner. He said that they were happy enough to let things proceed in the way that they had done with a fairly lax enforcement of the liquor licensing laws. He said that he was never very tough on pubs in the sub-district.

2.23. Mr. O'Dowd recounted how on one occasion in September 1995, when he inspected Mr. McBrearty's premises at approximately 01.30 hours, he found that the shutters on the bar were up and trading was continuing. He said that when he brought this to the attention of Mr. McBrearty Senior, who was sitting at the pay box, he flatly denied that trading was going on and said that the bar was closed. Mr. O'Dowd stated that he then returned to the bar area to check for himself that the bars were still open; he saw that they were open. He again brought this to the attention of Mr. McBrearty Senior, who again stated that the

<sup>21</sup> Transcript, Day 632, page 47.

<sup>22</sup> Transcript, Day 664, page 5.

bars were closed. On this occasion Mr. O'Dowd said that he fully intended to prepare a file and bring the matter on for prosecution. However, some hours later that evening he was involved in a serious car accident and was out of work for approximately six to eight weeks. For this reason no prosecution ensued arising out of this inspection.

2.24. Mr. Pádraig Mulligan had also served as a Garda in Raphoe since 1994. He stated that there was quite a considerable public order problem in Raphoe. This was due to the fact that it was a busy town on weekends, with many people travelling from other areas into the town to attend pubs and in particular the nightclub premises run by Mr. McBrearty Senior. He said that the main problem was that people were coming into the area, attending the nightclub, drinking too much alcohol and then coming out onto the street and causing difficulties. He was aware that Sergeant Hannigan had made a number of requests seeking extra manpower for Raphoe Garda Station. He said that the liquor licensing laws were not strictly enforced at that time, primarily due to the fact that due to the small size of the station party, they did not have time to carry out regular pub and nightclub inspections and enforce the law in a rigorous manner. He said that they were snowed under with routine police work and the paperwork connected therewith.<sup>23</sup>

2.25. I accept the evidence given by Sergeant Hannigan, Mr. O'Dowd and Mr. Mulligan in relation to the state of policing in Raphoe prior to October 1996. I think it can fairly be summarised in the following way: the station party in Raphoe Garda Station was under strength both in terms of manpower and in terms of the use of a vehicle. This placed great demands on the Gardaí who were working in that station. I accept that they had a lot to deal with at the time in terms of ordinary police work and as a result attention to the liquor licensing laws was patchy at best. It appears that this lack of manpower led to a situation whereby there was not an adequate police presence on the streets in Raphoe when crowds would come out of the nightclub premises at the end of the night. This matter had been raised by Sergeant Hannigan in his reports to the superintendent. It had also been raised by Mr. McBrearty Senior with his local representative, Mr. Paddy Harte T.D. Representations had been made to Garda management in Letterkenny seeking additional assistance for Raphoe. I also accept that there was a public order problem in Raphoe during the months leading up to October 1996. However, it does not appear that this was of such a magnitude that the authorities in Letterkenny deemed it necessary to increase the size of the station party at that time. One will note that at the time of the Late Mr. Barron's death

<sup>23</sup> Transcript, Day 637, pages 11-13.

on the night of the 13th/14th of October 1996, there was only one Garda, Garda Pádraig Mulligan rostered to perform duty in Raphoe that evening. Indeed, he even left the area for some time to accompany an off duty colleague to a pub in Lifford. In these circumstances, it cannot be said that either management or the Gardaí on the ground were giving the supposed public order problems the attention they deserved at that time. We will see that events towards the latter end of 1996, seem to have caused a change of heart on the part of Garda management and precipitated the transfer of Sergeant White to Raphoe in January 1997.

### **Significant Events in Raphoe**

- 2.26. A number of significant events occurred in Raphoe towards the end of 1996. The first of these was the death of the Late Richard Barron on the night of the 13th/14th of October 1996. As the reader will be aware, Mr. Barron met his death shortly before 01.00 hours on the 14th of October 1996, while he was proceeding up the Mongorry Road heading in the direction of his home. For reasons that have been fully explained in the second report of the Tribunal, the Gardaí came to the view that Mr. Barron had been assaulted by Mr. Frank McBrearty Junior and Mr. Mark McConnell while he was proceeding on his way home. It was believed that as a result of this assault Mr. Barron received injuries, which led to his death. The Gardaí also believed that members of the extended McBrearty and Quinn families had entered into an elaborate conspiracy to enable the main suspects to avoid detection by the Gardaí. This entire theory was completely wrong. It had no basis in fact whatsoever. Nevertheless, it is important to understand that the Gardaí did hold that theory at the time. It is only when one understands the belief that the Gardaí held in relation to the McBrearty, McConnell and Quinn families that one can understand the perception that they had of Frank McBrearty Senior and his extended family at that time.
- 2.27. The next incident, while not serious in itself, was significant insofar as it would have caused a hardening of attitudes between Mr. McBrearty Senior and the Gardaí on the ground in Raphoe. It occurred on the night of the 27th/28th of October 1996. Mr. O'Dowd told the Tribunal that on that occasion he was sitting in the patrol car accompanied by Garda Dan Curran. Mr. McBrearty Senior approached the car and asked him did he sleep well at night. When he said that he had no problem sleeping at night, Mr. McBrearty Senior apparently said, "Well you should have because I will never forgive you until the day you leave Raphoe". Mr. O'Dowd stated that at that point he wound up the window on the car, thereby terminating the conversation. Some short time later, when Mr. O'Dowd was elsewhere in the town, he said that Mr. McBrearty Senior again approached

him and said that he was a blackguard and that he would get him sorted out. Mr. McBrearty Senior said that money meant nothing to him. He then walked away. A few minutes later, Mr. O'Dowd said that Michael McConnell, a nephew of Frank McBrearty Senior, came over to him shouting abuse. In his report of the incident, Mr. O'Dowd stated that he felt threatened and intimidated by Mr. McBrearty Senior's actions. A file was prepared and summonses were issued against Mr. McBrearty Senior and Mr. McConnell for offences under the public order legislation.<sup>24</sup> Mr. McBrearty Senior stated that he had indeed been very annoyed with Garda O'Dowd due to the reception that one of his stewards, Mr. Michael McGahern, had received at Raphoe Garda Station when Mr. McBrearty Senior had sent him down there to make a statement to assist the Barron investigation. He stated that he did have words with Garda O'Dowd on the night in question, but denied that he had ever threatened the Garda in any way.<sup>25</sup> It is not necessary for me to decide where the truth lies in relation to this incident. The significance of the event lies in the fact that it was an occasion where there was a clear rift between Mr. McBrearty Senior and the local Gardaí on the ground. We will see that as a result of subsequent events, these attitudes were to harden on both sides.

- 2.28. The second significant event, which would have led to a hardening of attitudes between the parties, occurred on the 22nd of November 1996. On that date Detective Superintendent Shelly and Inspector McGinley visited Frank McBrearty Senior at his public house premises. Unknown to him they covertly taped the conversation that they had with him. The purpose of the conversation was to put to him that he was intimidating witnesses and that he should not interfere with the Garda investigation into the death of the Late Mr. Barron, which was then ongoing. Mr. McBrearty Senior denied vehemently that he had intimidated anyone. He told the officers forcefully that he would not desist from taking an interest in the investigation, due to the fact that he felt that the Gardaí were on the wrong track and that they were attempting to frame his son and his nephew for a crime that they did not commit. This undoubtedly would have had the effect of annoying Garda management and the investigation team in particular. I am satisfied that this acrimonious meeting led to a hardening of attitudes on the part of the Gardaí towards Mr. Frank McBrearty Senior. Indeed, the attitude held by some Gardaí in the investigation team towards him was manifest by the fact that a photograph of Mr. McBrearty Senior sitting in a chair was apparently stuck onto the wall of the incident room at Letterkenny Garda Station. Below the photograph were written the words "The Don", implying that he was the head of a mafia family or organisation. Mr. Kevin Lennon gave evidence that when he arrived in Letterkenny as superintendent and saw this photograph he took it

<sup>24</sup> Transcript, Day 664, page 17.

<sup>25</sup> Transcript, Day 621, page 92.

down as he thought that it was inappropriate. I am satisfied that the Gardaí had a very poor opinion of Mr. Frank McBrearty Senior towards the end of 1996.

2.29. On the 4th of December 1996, and on subsequent days, a large number of arrests were made in relation to the Barron investigation. This had all been made possible by the statement of Robert Noel McBride, made on the 29th of November 1996. The Tribunal has already concluded that that statement was a forced statement and that Gardaí were complicit in extracting it from Mr. McBride. On this basis, all the arrests have been deemed to have been unlawful. The conduct of some of the Garda personnel, who were involved in interrogating prisoners in Letterkenny Garda Station and other Garda stations, was quite simply appalling. Prisoners were physically and psychologically abused, lies were told to prisoners, a bogus statement was presented to Mr. Mark McConnell and, at the end of the day; a false confession was obtained from Mr. Frank McBrearty Junior. These events have been set out in great detail in the Tribunal's sixth report. By the middle of December 1996, the Gardaí in Letterkenny were of the view that their suspicion in relation to Frank McBrearty Junior and Mark McConnell had been correct. Their view had been copper-fastened by the false confession obtained from Frank McBrearty Junior. It is against this mindset that one must judge the actions that were subsequently taken against Mr. McBrearty Senior's public house and nightclub premises in 1997.

2.30. The next significant event occurred on the night of the 29th/30th of December 1996. Mr. Edmond Moss attended at the McBrearty nightclub premises with his girlfriend and some friends. In the course of the night he suffered significant injuries. He alleged that he had been assaulted by Frank McBrearty Junior and a number of stewards employed on the premises. He required treatment in hospital for his injuries. On the following day he attended at Raphoe Garda Station and made a detailed statement of complaint to Garda John O'Dowd. In subsequent days, further detailed statements were also obtained from the people who had accompanied Mr. Moss to the nightclub. The Moss incident was investigated by the Gardaí and subsequently a prosecution was brought against Mr. McBrearty Junior and two of the stewards before the Circuit Criminal Court sitting in Letterkenny in 1999. All three of the accused were acquitted of the charges against them. The significance of this event lies in the fact that it would have copper-fastened the Garda view at that time of the extended McBrearty family. I am quite satisfied that that view was to the effect that the McBreartys were a violent and unruly family, who were prepared to take whatever action was necessary to protect their interests.

2.31. The final event which appears to have had some bearing on the steps that were



taken in the following year concerned an assault on a taxi driver, Mr. Daniel Bonner. It appears that Mr. Bonner was set upon by a number of young men who were resident in Northern Ireland and who had gone to Raphoe for the purpose of attending Frankie's nightclub. From the accounts available to the Tribunal, it appears that when they left the nightclub, for some unknown reason, they carried out a serious assault on Mr. Bonner. As a result of the assault, he had to be placed on a life support machine in Letterkenny General Hospital for a protracted period. It was not alleged that any of the McBrearty family or employees had any part to play in this assault. However, it was alleged that staff employed by Mr. McBrearty Senior had stood by and watched while the assault was carried out. It was alleged that they did not intervene to assist Mr. Bonner. I do not know if this is correct. However, its significance is that it further caused the Gardaí to have an adverse opinion of Mr. McBrearty Senior and his staff.

- 2.32. I am satisfied that there were some public order problems in Raphoe in 1996. These problems were caused by young persons coming into the town and drinking large amounts of alcohol. Due to the inadequate level of manpower in Raphoe Garda Station, the Gardaí were not able to adequately deal with the public order problems that arose. However, it does not appear that, until the events at the end of 1996, the Gardaí at senior management level in Letterkenny were going to take any steps to alleviate the problem. The significant events recounted above caused the Gardaí in Letterkenny to develop a very adverse opinion of Frank McBrearty Senior and his extended family. I am satisfied that it was against this background that they took the decisions that they did in January 1997, which led to a significant change in the method of policing in Raphoe in the following year.

### **The Licensing Regime**

- 2.33. Before continuing with the narrative, it is appropriate at this juncture to set out a brief synopsis of the licensing laws that were applicable at the relevant time. For our purposes it is not necessary to set out all of the statutory provisions, which regulated the serving of alcoholic drinks in pubs and nightclubs at that time. It is only necessary to set out the effects of the general provisions and how they were interpreted on the ground. In this regard the Tribunal was given most helpful assistance by Chief Superintendent John Kelly of An Garda Síochána. He has vast experience as a member of the Gardaí and is an expert in all aspects of liquor licensing law. He confined his evidence to the legal regime that was in place in 1997.
- 2.34. At that time a nightclub operator would normally have held a seven day on excise

licence together with a full dance licence under the Public Dance Halls Act; in addition a large number of nightclubs would have held a full restaurant certificate. It is worth noting that Mr. McBrearty Senior had both types of licence and a restaurant certificate. Chief Superintendent Kelly outlined how the ordinary seven day licence would entitle the publican to sell alcohol during the normal licensing hours in operation at that time. Essentially this allowed him to serve alcohol up to closing time, which was 23.00 hours in winter and 23.30 hours in summertime. On a Sunday the normal closing time was 23.00 hours. There was also then a further period of thirty minutes allowed as 'drinking up' time. If the publican also had a dance licence, this would mean that he could hold a public dance and patrons could attend at the premises up to the period specified in the licence, usually 02.00 hours. If he wanted to serve alcohol beyond the normal pub hours, then he would have to apply for a Special Exemption Order. This was issued by the District Court. It was available if one was holding a 'house supper dance', which meant that there was a dance ongoing and was in conjunction with the provision of a substantial meal. It was possible to apply for a number of these orders covering weekend nights for an eight week period. It was then necessary to go back into the court and renew the application for a further two month period.

- 2.35. Sundays presented a particular problem for the publican, due to the fact that it was not possible to obtain any Special Exemption Order applicable to any time on a Sunday. As Chief Superintendent Kelly said "Sundays were sacred in 1995". This had two effects for the nightclub operator. Firstly, it meant that on the Saturday night/Sunday morning, if he had a Special Exemption Order in place for the Saturday night, this would entitle him to serve alcohol up to midnight. However, he was then left in the unusual position that the patrons could remain on the premises for the purpose of the dance until 02.00 hours on the Sunday morning, but the nightclub owner was not entitled to serve any alcohol during the last two hours of the dance. The second problematic area arose in respect of the Sunday evening. The publican could serve alcohol until 23.00 hours, after which there was a drinking up period of thirty minutes. However, he was not entitled to serve any alcohol between 23.00 hours and midnight. Assuming that he had a Special Exemption Order in place for the Monday morning, he would then be entitled to recommence serving alcohol at a minute past midnight until the time specified in the Special Exemption Order, which was usually 01.00 hours. Many of the legal provisions that were applicable in 1997 have since been amended. In particular, the opening hours of pubs and nightclubs have been liberalised dramatically.

## **Enforcement of the Liquor Licensing Laws**

2.36. Chief Superintendent Kelly stated that enforcement of the liquor licensing code was somewhat unusual, in that if a Garda detected a breach of the liquor licensing laws when carrying out an inspection, he was not obliged to automatically issue a summons against the publican. He always had a discretion to deal with it by way of a caution. This seems a very sensible approach to adopt in relation to the implementation of a law, which is designed to ensure law and order in the community. Chief Superintendent Kelly put it in the following way:

*So if you made the detection, you would take the proceedings. Likewise you needn't take the proceedings, you could caution him, warn him that, you know, if I visit you and I find you there ... you don't have to take proceedings, I could advise you, look, this is not acceptable, I don't want to see it again and caution him for the visit. But you could equally take proceedings for trading after hours. Then when you did go to Court and give your evidence, you would have to walk through the six steps of the summons itself....<sup>26</sup>*

2.37. One of the essential differences between the licence attaching to a public house premises and that attaching to a dance hall was that in the public house premises there was a specific offence of being found on the premises after hours. Essentially this was meant for people found on the premises after the normal drinking up time. In a dancehall there was no such offence where persons were on the premises after closing time. They were entitled to be on the premises as long as they were attending the dance. The only stipulation was that the number of patrons on the premises could not exceed that stipulated in the licence itself.<sup>27</sup>

2.38. Chief Superintendent Kelly outlined that there were a number of options open to the Gardaí where breaches of the law were detected in the course of an inspection. As already noted they could exercise their discretion to caution the nightclub owner. If that did not work, they could proceed to issue the standard six count summons and bring the matter before the District Court. They also had the option of objecting to the issuance of any further Special Exemption Orders. These could be applied for by the publican en bloc, such as every weekend for the following eight weeks. This would mean that the publican would have to renew his application every eight weeks. If there were persistent breaches of the law by the publican, an option open to the Gardaí was to put in an objection on the next occasion that the publican applied for any Special Exemption Orders. Chief Superintendent Kelly stated that there were a large number of grounds on which the issuance of such orders could be objected to. Often Residents Associations would register an objection to late night bars due to the issue of

<sup>26</sup> Transcript, Day 659, page 12.

<sup>27</sup> Transcript, Day 659, page 13.

public order, or noise pollution, or on the issue of traffic leaving the area late at night or due to the fact that litter was being left on the streets after the operation of the nightclub. The Gardaí could object to the issuance of such orders on a wide number of grounds, including the serving of minors, public order outside the premises and not adhering to the conditions of previous Special Exemption Orders.

- 2.39. A further option open to the Gardaí was to object to the annual renewal of the liquor licence. Prior to 1996 this had taken place at the annual licensing court. In that year a change was put in place whereby licences were actually renewed directly by the Revenue Commissioners. However, there was a provision in the District Court rules whereby the Garda superintendent could serve a notice on the publican and on the District Court clerk that he intended to object to the renewal of the publican's licence. The matter would then come before the court for determination. Chief Superintendent Kelly stated that this was a somewhat drastic step to take, as it would have profound implications for the publican's ability to earn a livelihood.<sup>28</sup>
- 2.40. When a conviction was obtained before the District Court, the District Court Judge also had the option of endorsing the licence. Subsequent to 1996, this was always a matter within the discretion of the District Court Judge. There was no mandatory endorsement in the event of a particular conviction, or after a particular number of convictions. Chief Superintendent Kelly outlined that a number of factors would bear upon the decision as to whether or not the Judge would decide to endorse the licence. He would consider the conduct of the publican on that occasion, the character of the publican generally, whether or not there were any previous convictions against the licence, and the nature of the evidence presented to the court in respect of that particular prosecution. A large number of factors would come into play as to how the judicial discretion would be exercised. If it was a first offence, it was very unlikely that there would be an endorsement. If it were a repeat conviction, then the question of endorsement may come into play. However, it was always a discretionary judicial function.
- 2.41. In 1997 it was a condition of the grant of a Special Exemption Order that a meal should be provided to the patrons attending the function. At that time the food which was provided had to be to a value of not less than £2.00. That requirement has now been done away with, in that it is now possible to obtain a Special Exemption Order without the necessity to provide food to patrons.
- 2.42. Chief Superintendent Kelly also dealt with a number of ancillary matters that became of relevance to the matters that I was considering in relation to Raphoe in 1997. Personally, he did not think that long inspections, whereby the Gardaí

<sup>28</sup> Transcript, Day 659, pages 18-20.

would stay for long periods on a licensed premises, were a good idea. He stated that in his opinion an inspection should be of short duration. If the Gardaí find a breach occurring, then they should take whatever course of action they deem appropriate. They should not stay on the premises, as it is not their job to maintain order on the premises. It is the duty of the publican to make sure that his premises are properly run and are in accordance with the legal provisions. When it was put to him that the presence of the Gardaí might actually prevent a publican breaching the law and serving alcohol when he should not, he stated that that was not the function of the Gardaí at all:

*But we're not there in a prevention strategy, we're not staff of the licensee, we're not there to clear his house unless there is a request from the licensee. It's a quick run strategy, you go in and do something and you leave. I don't see any reason, unless you're refereeing public order issues or addressing a citizen's complaint, or addressing some other matter. I don't see hanging around there as any reason to be there at all.<sup>29</sup>*

- 2.43. In relation to multiple visits on a particular establishment during the same evening, Chief Superintendent Kelly did not think that this was a good idea. He stated that there had to be a reason for generating the second inspection. If one saw the lights being turned off and then being turned back on again, or people entering a premises at a time that they were not supposed to be on the premises, then that would justify a second inspection. However, he did not agree that it was a good practice for Gardaí simply to adopt a general policy of multiple inspections of the same premises during a given night.<sup>30</sup>
- 2.44. Chief Superintendent Kelly was also asked as to whether he had ever encountered a publican using a C.C.T.V. system as a means of warning the bar staff of the imminent arrival of the Gardaí and thereby frustrating the attempt by the Gardaí to carry out a legitimate inspection of the premises. The chief superintendent stated that he had on one occasion come across such a device being used. He treated it as a very serious matter because it was a cunning device used to thwart the efforts of the Gardaí. He had his suspicions that the publican in question had an early warning system in place. Subsequently rumours in the town confirmed this for him. To counteract the situation he mounted an undercover operation whereby he sent student Gardaí onto the premises as patrons. He had informed the student Gardaí as to the time at which he was going to carry out an inspection of the premises. They were able to give evidence that a bell rang behind the bar and the shutters came down just prior to his arrival onto the premises. He discovered that there was a hidden warning light

<sup>29</sup> Transcript, Day 659, page 32.

<sup>30</sup> Transcript, Day 659, page 33.

behind an exit sign on the premises. Chief Superintendent Kelly took issue with the publican. He also brought the matter to the attention of the fire officer because the device in question was interfering with an exit route. The fire officer carried out his own search and instituted a prosecution. Chief Superintendent Kelly also brought a prosecution against the publican. He said that the bringing of the prosecution ended the matter.

- 2.45. Finally, Chief Superintendent Kelly outlined the course of action that could be taken by the Gardaí where there was a publican who had refused to heed any warnings or cautions administered and continued to flout the law in a defiant manner:

*Well as I said earlier on in my evidence, if I have a first intervention and depending on what I encountered, I could give advice, a warning or a caution. If it persisted, I have no problem instigating proceedings, and if it persisted, I have no problem objecting at the annual licence court. The licensee undertook in getting his licence to observe the Liquor Licensing Laws and the Garda Síochána are to enforce it. So, as I say, if that was the attitude, and I don't know, I have never been to Raphoe in my life, if that was the attitude of the licensee and he is quite cavalier about it, well then if the advisement and the warnings didn't work and proceedings were taken, then it's up to a judicial authority to make a decision on the evidence I have given them.<sup>31</sup>*

- 2.46. Having looked at the background to policing in Raphoe in the years prior to 1996, and having examined the significant events, which occurred towards the end of that year, we turn in the following chapters to look at the events, which occurred in 1997. It was primarily in respect of these events that the complaints of harassment were made by Frank McBrearty Senior and others.

<sup>31</sup> Transcript, Day 659, pages 77-78.

## CHAPTER 3 THE EARLY DAYS

### THE EARLY MONTHS OF 1997

#### **Introduction**

- 3.01. We now come to examine the critical period, which begins in January 1997. This commences with the introduction by Superintendent John Fitzgerald of an Operational Order in respect of the policing of the Letterkenny area. It is followed by the transfer of Sergeant John White to Raphoe. He introduced a very strict liquor licensing regime to Raphoe. Mr. McBrearty Senior alleges that the sending of Sergeant White to Raphoe and the implementation of this strict new regime was done in furtherance of the Barron investigation and was done because the Gardaí wanted to crush him and put him out of business. As already noted, Mr. White disputes that version of events. He stated that he was sent out to Raphoe with a clear mandate from his superior officers to clean up the public order problem that existed there. To that end, he determined that it was necessary to strictly enforce the liquor licensing laws. He stated that he implemented a strict regime with the full knowledge and agreement of his superior officers. He stated that in so doing he acted in an even and proportionate manner towards Mr. McBrearty Senior. He stated that it was necessary to use a number of different tactics to detect breaches of the liquor licensing laws due to the fact that Mr. McBrearty Senior had implemented a number of stratagems designed to defeat the Gardaí in this regard. He stated that the actions that he took were fair, balanced and proportionate given the conduct on the part of the licensee, Mr. McBrearty Senior.
- 3.02. This chapter of the report examines the lead up to the transfer of Sergeant White to Raphoe. It also sets out the inspections and other interactions that occurred between the Gardaí and members of the extended McBrearty family in the months of January and February 1997. The reader will have to bear in mind the perception that each had of the other at the time that the relationship began. I am satisfied that the Gardaí perceived Mr. McBrearty Senior as a violent and unruly person, who was protecting his son and nephew, who they believed had been responsible for the death of the Late Mr. Barron. They also believed that Mr. McBrearty Junior and two of the stewards employed on the premises had been responsible for the serious assault carried out on Mr. Edmond Moss on the night of the 29th/30th of December 1996. Mr. McBrearty Senior's perception of the Gardaí was also far from favourable. He thought that they were attempting to frame his son and nephew for a crime that they did not commit. He believed that the Gardaí were attempting to bring pressure to bear on his business in an unfair

and vindictive fashion. He felt that they were trying to force him out of business. It is against this background, when one understands the perception that each held of the other, that one can understand how things escalated in the way that they did in the months that followed in 1997.

### **The Operational Order**

- 3.03. Superintendent John Fitzgerald carried out an inspection of Raphoe Garda Station on the morning of the 6th of January 1997. In his report on that inspection, he noted that it was a busy sub-district. There had been fifty crimes recorded for 1996, which was a drop of three on the previous year. He noted that there were quite a lot of public order incidents throughout the year, due to the number of people coming to the local disco, which was a big attraction for patrons from both sides of the border. He noted that the inquiry into the suspicious death of the Late Mr. Barron was ongoing and that a lot of effort and painstaking investigation had gone into the tragedy. He noted that despite difficulties because of intimidation of many witnesses, good progress had been made. He concluded his comments on the inspection in the following way:

It is a sub-district that requires intense policing especially at night and at the weekends. A serious assault occurred on New Year's night when Daniel Bonner had his skull cracked, but the matter is receiving adequate investigation. An increase in strength is desirable at Raphoe and this has been already addressed and vacancies advertised.<sup>32</sup>

- 3.04. Mr. Fitzgerald stated that Sergeant Hannigan had been regularly requesting more manpower for Raphoe for a considerable period. He also stated that there were public order problems in Raphoe and that public order generally had come into the public arena. It had received attention in the media. Sergeant Hannigan also recalled that in 1996 and 1997 public order had become quite a large issue with the media, particularly in relation to the Letterkenny area. He had sent in a report on the 5th of January 1997 requesting a significant increase in the size of the station party at Raphoe to one sergeant and eight Gardaí. He raised the problem of inadequate manpower and lack of adequate transport for the Raphoe station party at district conferences.<sup>33</sup> Mr. Denis Fitzpatrick had been the divisional officer in Letterkenny at that time. He stated that public order was very definitely on the agenda on a nationwide basis. He stated that at Commissioner's conferences which he attended at the time, he recalled that public order issues were a major problem around the country. There was considerable debate in the media on the topic. This had resulted in public order legislation being introduced during that year. He stated that public order was a big concern in Donegal. There had been public meetings in Letterkenny to deal with the issue.

<sup>32</sup> Tribunal Documents, page 4,252.

<sup>33</sup> Transcript, Day 632, page 76.



- 3.05. Mr. Fitzpatrick stated that arising out of these concerns he sent a message down to the district officers that they were to tighten up on public order issues. He said that he issued those instructions to the superintendents verbally when he met them at various conferences. He thought that it was as a result of this general change in the climate and his verbal instructions that the operational order came to be drawn up by Superintendent Fitzgerald for use in the Letterkenny district.
- 3.06. On the 10th of January 1997, Superintendent Fitzgerald issued a document entitled “Operational Order for the Policing of the Letterkenny urban area at weekends with specific reference to public order issues”. Attached to that document as appendices were the Conditions Attached to Public Dance Licences and a copy of the Criminal Justice (Public Order) Act, 1994. The purpose of the document was to set out a policy to deal with public order offences, offences against the person, liquor licensing laws, public dancing laws and road traffic legislation. It is not necessary to quote the entire content of this document. However, the following sections appear relevant to the matters under consideration:

(3) Duties of sergeants:-

Sergeants will: .....

- (e) Inspect or cause to be inspected licensed premises where it is known or suspected that blatant breaches of the Liquor Licensing Laws are occurring.
- (f) Inspect or cause to be inspected Discos and other venues licensed for Public Dancing and availing of an Exemption under the provisions of the Intoxicating Liquor Acts, (For conditions attached to Dance licences, see Appendix A) .....
- (i) Be responsible for the enforcement of Public Order legislation.<sup>34</sup>

- 3.07. Mr. Fitzgerald stated that he did not view the operational order as being an inflexible document. He hoped that it would be applied with reasonableness and discretion. Unfortunately, for reasons that remain unclear, a quite different interpretation was placed upon the order when it was sent out by the sergeant in charge of Letterkenny Garda Station to other sergeants in the district. Sergeant John Costello sent the order out with an accompanying letter dated the 17th of January 1997. That letter gives a quite different interpretation of the operational order as to what was expected from the Gardaí when implementing same. Sergeant Costello’s letter was in the following terms:

<sup>34</sup> Tribunal Documents, pages 3,873-3,892.

Re: Operational Order.

The Policing of Letterkenny Urban Area at Weekends.

The above Operational Order comes into immediate effect from the 17th of January, 1997.

I understand that in conjunction with this order, similar orders are in operation for Ballybofey and Raphoe areas.

The conditions of the order will be strictly adhered to by all members and members of a supervisory rank have a special responsibility to see that the terms of the order are carried out to the letter.

Public order issues are of primary concern, followed by Offences Against the Person Act, 1861, Liquor Licensing Laws and Public Dancing, Road Traffic Legislation.

Public order offenders will be dealt with by way of Charge Sheet where there has been an arrest.

The licensing laws will be strictly enforced in respect of all licensed premises and discos will receive particular attention in respect of the licensing and public dancing. The conditions attached to each dance licence is attached at Appendix "A".

This is a simple "get tough" policy and no nonsense should be taken from anybody either on the public street or involved in the licensing trade. Further instructions will issue at a later date by way of briefing of members.

John F. Costello

Sergt. 15607H.<sup>35</sup>

Mr. Fitzgerald stated that while he would not have used some of the terminology that was used by Sergeant Costello in his letter, he certainly hoped that the order would be adhered to by the various stations to which it was addressed.

- 3.08.** The significance of the Operational Order is that Sergeant White relied upon it as the reason why the strict enforcement of the Intoxicating Liquor and Public Order legislation was introduced into Raphoe. This aspect is discussed as part of the transfer issue in the next section.

### **The Transfer of Sergeant White**

- 3.09.** Sergeant White was transferred to Raphoe Garda Station in January 1997. Like

<sup>35</sup> Tribunal Documents, page 3,893.

so many other matters before this Tribunal, even this simple issue became shrouded in controversy. Mr. Fitzpatrick, who was the chief superintendent at the time, stated that he discussed the matter with Superintendent Fitzgerald. He stated that after some discussion they decided that Sergeant White would be the man most suitable to send to Raphoe. Mr. Fitzpatrick stated that it was intended that this would be a permanent transfer, but that Sergeant White would be transferred on a temporary basis at first and when a suitable posting had been found for Sergeant Hannigan, he would be transferred out of Raphoe, at which stage Sergeant White's transfer would then have become permanent.

3.10. Mr. Fitzgerald denied that any such discussion ever took place with Chief Superintendent Fitzpatrick concerning the transfer of Sergeant White. He agreed that he had asked the chief superintendent for extra manpower for Raphoe. He told the Tribunal that he had no objection to the transfer of Sergeant White to Raphoe, but he denied that he was ever a party to any discussion with Chief Superintendent Fitzpatrick about Sergeant White's transfer prior to the time that it was effected.

3.11. Support for Mr. Fitzgerald's position is to be found in an entry which he made in his journal for the morning of the 9th of January 1997. That was three days after he had carried out an official inspection of Raphoe Garda Station on the 6th of January 1997. He had also attended at the divisional conference held on the following day. According to the entry in Superintendent Fitzgerald's journal, it appears that he did talk to the chief superintendent about matters in Raphoe that morning. However, there was no mention of Sergeant White, or of his transfer to Raphoe recorded by Superintendent Fitzgerald. This is what he recorded in his journal:

*9am. Post, files. Met Chief on various issues, one being law and order pertaining to Raphoe. Crime returns excellent for year and can improve this year again. Raphoe and Ballybofey could improve.<sup>36</sup>*

3.12. The Tribunal is satisfied that if there had been any discussion between Chief Superintendent Fitzpatrick and Superintendent Fitzgerald that morning about the possibility or desirability of sending Sergeant White to Raphoe, it is highly likely that this portion of the conversation would have been recorded by Superintendent Fitzgerald in his journal. The Tribunal is satisfied that Sergeant White was not mentioned in the course of that discussion at 09.00 hours. What discussions or inquiries the chief superintendent may have held or made during the course of the day is not clear. What is clear is that at approximately 16.00 hours, Sergeant White

<sup>36</sup> Transcript, Day 655, page 90.

received a telephone call from Sergeant Finan, who was the chief superintendent's clerk, informing him that the chief superintendent wanted him to transfer to Raphoe. The Tribunal is satisfied that Superintendent Fitzgerald was not consulted by Chief Superintendent Fitzpatrick prior to the time that this transfer was put in place.

- 3.13. Mr. Fitzpatrick told the Tribunal that Sergeant White's transfer to Raphoe was made on the basis that he was the most suitable man to go on transfer. It was intended that he would replace Sergeant Hannigan, who at that time was seeking a transfer out of Raphoe.
- 3.14. **The Tribunal does not accept that this is so. It is satisfied that Sergeant White's transfer to Raphoe was never intended to be anything other than a temporary transfer.** Had this been a permanent transfer then the normal procedural steps appropriate to a permanent transfer would have had to be undertaken. No such steps were taken. Sergeant White was never told that his transfer from Carrick to Raphoe was a permanent transfer. He has told the Tribunal, and I accept, that had he been told that his transfer to Raphoe was permanent, he would under no circumstances have accepted it. At that time his ambition and intention was to become a detective sergeant. For him to have accepted a permanent transfer to Raphoe would effectively have put an end to this intention and ambition and on that basis he would have declined it. In as much as it was intended by Chief Superintendent Fitzpatrick that Sergeant White was to be a replacement for Sergeant Hannigan this cannot have been the case as Sergeant Hannigan remained in Raphoe for a further period of approximately eighteen months.
- 3.15. Mr. White stated that on the 9th of January 1997 he had been in Letterkenny Garda Station attending a course. Nobody had said anything to him at that time about a possible transfer to Raphoe. Later in the afternoon, at some time after 16.00 hours, he received a telephone call from Sergeant Finan, who was the chief superintendent's clerk. When asked whether he would be prepared to go on a temporary transfer to Raphoe, Sergeant White answered in the affirmative. He stated that if he wanted to get on within a division, it was necessary to comply with requests that were made by the chief superintendent as and when they arose. He said that it came as a complete surprise to him when he was asked to take on this temporary transfer by Sergeant Finan. As far as he could recall the sergeant said to him that there was a public order problem in Raphoe and that the chief superintendent wanted him to go to that station. He was assured that the transfer was only of a temporary nature. In his evidence, Mr. Fitzgerald stated that when he learnt that the transfer had been effected, he assumed that it was a temporary transfer. **I accept the evidence given by Mr. White as to the**

circumstances in which he was transferred to Raphoe. I am satisfied that it was only ever intended to be a temporary transfer.

- 3.16. An issue has developed between Mr. White and Mr. Fitzgerald as to an alleged conversation, which Sergeant White says, took place between them in Letterkenny Garda Station at that time. Mr. White has told the Tribunal that at the direction of Chief Superintendent Fitzpatrick he called on Superintendent Fitzgerald, effectively for the purpose of obtaining instructions prior to taking up his transfer to Raphoe. Mr. White said that at this meeting with Superintendent Fitzgerald, he was shown the operational order which was then in operation for Letterkenny. He was directed to use it as a template for the way in which he would conduct operations in Raphoe. As we have seen, there was in fact an operational order dated the 10th of January 1997 in existence referable to Letterkenny. Mr. White has told the Tribunal that in the course of the discussion, which he had with Superintendent Fitzgerald, it was made clear to him that he was to conduct his operations in Raphoe in accordance with the template given in that operational order. In Sergeant Costello's letter, dated the 17th of January 1997, reference is made to similar orders being in operation for Ballybofey and Raphoe.
- 3.17. Mr. Fitzgerald was adamant that no such briefing ever took place. He had no recollection of any such meeting. He denied that he ever briefed Sergeant White or instructed him as to how he was to carry out his duties in Raphoe. He accepted that he may have met Sergeant White during the time that he was in Letterkenny Garda Station attending the course. He had no note of any such briefing in his journal.
- 3.18. I am satisfied that no such meeting ever took place. Sergeant White, in referring to the operational order relevant to Letterkenny, was merely seeking to find a basis, which would justify and validate the strict regime, which he introduced on arrival into Raphoe.
- 3.19. It appears that Sergeant White immediately set about complying with the chief superintendent's request. On the evening of the 9th of January 1997, he transferred some of his belongings from Carrick Garda Station to Raphoe Garda Station. The following day he returned to Letterkenny Garda Station to attend the course which he had been pursuing.
- 3.20. Mr. White told the Tribunal that he met Chief Superintendent Denis Fitzpatrick in one of the corridors in Letterkenny Garda Station, at which time the chief superintendent told him that he had an unenviable job out in Raphoe, but that hopefully within a short period of time, it would be brought under control. Mr.

Fitzpatrick denied that any such meeting occurred. I find it unnecessary to resolve this issue, as I accept that it was Chief Superintendent Fitzpatrick's intention at all times when sending Sergeant White to Raphoe that there should be imposed upon the town a strict regime of discipline. This is why he chose Sergeant White, a man known to be a strict disciplinarian. It was unnecessary for him to spell out what he expected Sergeant White to do on arrival in Raphoe.

### **Conclusions on the Transfer Issue**

- 3.21. The Tribunal is satisfied that by 1997 Garda management perceived the McBrearty family as dangerous criminals. They thought that Mr. McBrearty Senior's son and nephew had been responsible for the unlawful killing of the Late Mr. Barron. They thought that the rest of the family were engaged in a conspiracy to protect the two main suspects. They felt that Mr. McBrearty Senior was interfering with the Garda investigation and intimidating witnesses. It was against that backdrop that they dispatched Sergeant White to Raphoe to deal with McBrearty Senior and to bring him under control.
- 3.22. I am satisfied that the decision to send Sergeant White to Raphoe was made by Chief Superintendent Fitzpatrick, without consultation with Superintendent Fitzgerald. This may have been due to the fact that the superintendent would shortly transfer out of the division to a new posting in Manorhamilton. I am satisfied that he was 'left out of the loop' in relation to the effecting of this transfer.
- 3.23. I am satisfied that the transfer of Sergeant White was always intended to be a temporary transfer. It was never intended that he would be stationed permanently in Raphoe as a replacement for the existing sergeant, Sergeant Hannigan.
- 3.24. The reality of the position was that Chief Superintendent Fitzpatrick was transferring a strict disciplinarian on a temporary basis to the town of Raphoe where Mr. McBrearty Senior operated a nightclub, over which there had been virtually no Garda control for a significant period of time. The chief superintendent knew that Mr. McBrearty Senior would be resentful of being dictated to on how he should run his business, even to the extent of observing the licensing laws. Inevitably, two strong headed men, Sergeant White and Mr. Frank McBrearty Senior, would come into conflict with one another. This was a recipe for disaster unless the project was adequately supervised and properly directed. Chief Superintendent Fitzpatrick took no proper steps to avoid the conflict between Sergeant White and Mr. McBrearty Senior that inevitably followed.

### **Sergeant White arrives in Raphoe**

3.25. Prior to the arrival of Sergeant White in Raphoe on the 11th of January 1997, Frank McBrearty Senior had already received a number of summonses. He had received a summons alleging an offence under section 6 of the Criminal Justice (Public Order) Act, 1994 arising out of the incident with Garda John O'Dowd on the 28th of October 1996. He received a standard five count liquor licensing summons for having his public house premises open for business at 22.30 hours on the 25th of December 1996. Garda Pádraig Mulligan was the prosecuting Garda in respect of that offence. Mr. McBrearty Senior pleaded guilty to the offences outlined in that summons at the subsequent hearings in the District Court. On the 6th of January 1997, Garda John O'Dowd attended at Mr. McBrearty Senior's nightclub premises. He had gone there not to inspect the premises, but to carry out further inquiries in relation to the complaint made by Mr. Edmond Moss that he had been assaulted on the premises some days earlier. On asking Mr. McBrearty Senior about the alleged assault, he simply denied that this had happened at all. Mr. O'Dowd stated that he did not say any more about it and somewhat 'off the cuff' he decided to carry out an inspection of the nightclub portion of the premises. It was then 01.15 hours. He stated that he saw that the shutters on the bar were down except for one shutter which had been left up and that the staff were behind the bar serving drink to the customers. He said that there were approximately five hundred people on the premises. When he brought this to the attention of Mr. McBrearty Senior, he simply stated that the bars had closed at 01.00 hours. Mr. O'Dowd said that when he repeated to him that the bar was actually open, Mr. McBrearty Senior flatly denied that that was the case. Mr. O'Dowd said that he left the premises at 01.25 hours. He prepared a report on the incident and subsequently a summons alleging breaches of the liquor licensing legislation was prepared and served on Mr. McBrearty Senior.<sup>37</sup>

3.26. On Saturday the 11th of January 1997, Sergeant White arrived to take up his new position as a sergeant in Raphoe Garda Station. He said that on that evening he met the other Gardaí of the station party. He told them that he had been sent out to Raphoe to carry out a strict enforcement policy in relation to the pubs and nightclub in the village. He said that this received a kind of a laugh from the other Gardaí present.<sup>38</sup> He said that there was some discussion then as to how things had been up to that time. He was told that there could be thousands on the street after a busy night in the nightclub and that these persons could create mayhem on the street. He said the Guards' attitude was that due to lack of numbers, they were forced to let the protagonists fight away and then they tried to pick up the pieces afterwards. Sergeant White told the Gardaí that he would

<sup>37</sup> Transcript, Day 664, pages 23-24.

<sup>38</sup> Transcript, Day 671, page 61.

be going on patrol on each of the weekend nights and that one of the Gardaí would be accompanying him on this duty. There was going to be a high visibility presence on the street each evening from 21.00 hours onwards, so that people going into the nightclub would be aware that the Gardaí were around. He was also anxious that people would see them when they were coming out of the nightclub so that they would know that they would have to behave. Sergeant White also took the opportunity to introduce a document or record known as the Inspection Book to the station party. This was a book into which details of all inspections of licensed premises were to be entered. The purpose of the Inspection Book was twofold: firstly, it was a record which would show that the licensed premises in the area were receiving frequent Garda attention; and secondly, it would provide a means of establishing that among the various pubs in the area, each was getting the same attention as the other.

- 3.27. There were now two sergeants stationed in Raphoe. It was decided between them that Sergeant Hannigan would continue as sergeant in charge of the station. This meant that he would be primarily based in the station and would look after all the administrative and day to day aspects of the station. Sergeant White was going to be a unit or operational sergeant, which meant that he would be out on the ground investigating crime and looking after liquor licensing and public order issues.

### **Meeting Frank McBrearty Senior**

- 3.28. On the night of the 11th/12th of January 1997, Sergeant White started his tour of the licensed premises. He said that he went down along William Street and introduced himself to the publicans. He told them that there was going to be a new enforcement policy in place and he asked them to comply with it. Some of them reacted with disbelief to his statement that closing time would be strictly enforced. Most of them indicated that they would do their best to clear the premises promptly. He said that he was treated with respect by most of the publicans. Unfortunately, Sergeant White's first encounter with Mr. McBrearty Senior was not a happy one. It may well be that this had something to do with the fact that it was Sergeant White who had taken part in the questioning of Róisín McConnell and Katrina Brolly in December 1996. Mr. McBrearty Senior would have known that it was Sergeant White who had abused these women at that time in a horrifying manner. In the circumstances it is understandable that he would have reacted in an antagonistic manner to the arrival of Sergeant White onto his premises that evening.
- 3.29. Mr. White stated that on walking into the entrance foyer to the nightclub premises, he encountered Mr. McBrearty Senior just past the pay box area. He



said that Mr. McBrearty Senior tried to block his path and to engage him in conversation so that he could not proceed on to inspect the nightclub portion. This was at approximately 01.15 hours. However, Sergeant White and Garda O'Dowd entered the nightclub area and found that the bars were open and they were openly trading at that time. There were five or six bar staff behind the counters on the ground floor serving customers. He did not check the bars on the upper floors. He returned to Mr. McBrearty Senior and asked him could he speak somewhere privately because there were a number of people in the foyer at that time. Mr. McBrearty Senior refused to move anywhere else to carry on the conversation. Sergeant White introduced himself and told him that there was going to be a new regime in Raphoe in respect of enforcement of the liquor licensing laws. Mr. McBrearty Senior folded his arms across his chest and in an aggressive manner told Sergeant White that the bar was closed. Mr. White said that Mr. McBrearty Senior then looked away very defiantly. He said his attitude was one of total defiance. He was trying to belittle the sergeant in front of the people that were then in the foyer. Mr. McBrearty Senior then moved slightly over towards the pay box and told an employee, Mr. Seán Crossan, to write down Sergeant White's name. Sergeant White told him that he would be coming back to inspect the premises again and that he was going to be prosecuted for his breach of the licensing laws on this occasion. Mr. White stated that he took the decision to prosecute because of Mr. McBrearty Senior's defiance and the lie which he had told him to the effect that the bar was closed. He said that Mr. McBrearty Senior went on to tell him that he was not welcome as the Sergeant in Raphoe.<sup>39</sup>

- 3.30. Mr. McBrearty Senior gave a similar account of that first meeting in the document known as the Mitchell diary. The following is the entry for the 11th of January 1997:

At approx. 1.10 am two Garda entered the premises and went to the main bar which was closed. They returned to the front door and asked to speak to the Boss. Garda O'Dowd, whom I knew, was one of the two Guards. He pointed myself out as the Boss and the other Guard then introduced himself as John White, the new Sergeant in town. He asked if there was a room that they could speak in privately and I said there was none; that he would have to speak to me here where I was as I was busy. He said that the bar had been open when he went in. This I denied and told him he had seen the bar staff taking in empty glasses.

He said that there would be two Sergeants in town from now on and that this was the way things were going to be from now on. They left then and set up road checks about 20 yards down the street and stopped every car that came out of our car park.<sup>40</sup>

<sup>39</sup> Transcript, Day 671, pages 64-72.

<sup>40</sup> Tribunal Documents, page 1,343.

3.31. Mr. McBrearty Senior alleged that on that first occasion, Sergeant White informed him that he was going to destroy his business:

*Q. On this occasion did he challenge you and say that you must in future act in accordance with the liquor licensing laws?*

*A. I don't know what he said. He probably did say it because he went over so much what he was going to do when he came into Raphoe. He said I was the man, he said it took you twenty years to build your place, and that was a fact, he said it took you twenty years to build it, he says, I'll have it knocked down in six weeks, I'll have it gone. That's the first meeting that's what he said. He said that, yes. ...As I told you, I knew he was coming. I knew what was going to happen. ...The meeting wasn't very good because I can tell you with the carry on that O'Dowd was at and the carry on or the rumours that was about me and my family. We had the Guards put out then along with the criminals they used when they brought in Robert Noel McBride for the false statement, and it was not Robert Noel McBride made the statement, the Guards made that statement and Robert Noel McBride signed it.<sup>41</sup>*

3.32. Mr. McBrearty Senior denied that the account given by Sergeant White of that first meeting was accurate. In his statement, Sergeant White had alleged that Mr. McBrearty Senior had informed him that the public order problems on the street were not any of his business and that he would keep his premises open as long as the other premises in the county continued to do so. Mr. McBrearty Senior denied that he said any of those things to the sergeant. He alleged that Sergeant White had made up that portion of his statement.<sup>42</sup>

3.33. Mr. White stated that some time later on the same morning he had occasion to talk to some people from Derry who were stopped in their car in Raphoe. He said that he had a friendly chat with them and that they thought that the whole thing was hilarious because the bars in the nightclub had re-opened immediately after the Gardaí had left the premises. Mr. White said that he found that hard to believe given that he had only been in the premises at 01.15 hours and they had had the bars closed at that time. Clearly this was something which was of some annoyance to the sergeant. The entry in the Inspection Book for that night in relation to Frankie's nightclub read as follows:

<sup>41</sup> Transcript, Day 621, pages 130-131.

<sup>42</sup> Transcript, Day 621, page 127.

Frankie's Nightclub, 1.15 a.m., Sergeant White, Gardaí O'Dowd and Mulligan. Approx. 500-600 persons drinking. Bar open but shutter pulled down on arrival of Gardaí. Spoke to Mr. McBrearty Senior. He denied that the bar was open. Apparently bar man recommenced serving drink on our departure under the hatch. File to Supt.<sup>43</sup>

- 3.34. Mr. White stated that he was annoyed by the conduct of Mr. McBrearty Senior on that occasion. The man had called him a liar in front of other people: customers and staff. He felt that in the circumstances it was proper to have a summons issued. He sent a file to the superintendent in Letterkenny containing a report on the incident together with statements from him and Garda John O'Dowd. That report was sent up on the 27th of January 1997. Superintendent Gallagher directed that a summons should issue. A standard five count liquor licensing summons was issued on the 10th of April 1997.<sup>44</sup> This encounter marked the beginning of an acrimonious relationship between Sergeant White and Frank McBrearty Senior.

### **The 'Mitchell Diary'**

- 3.35. The entry recorded in the Inspection Book was not the only record of the events of that evening. Mr. McBrearty Senior had also commenced keeping a diary of events that involved the Gardaí at his nightclub. This document became known during the hearings of the Tribunal as the 'Mitchell Diary', being named after the bar manager Mr. John Mitchell, who was responsible for many of the entries therein. This diary records events, which occurred at the very outset of Sergeant White's time in Raphoe. This can only mean that from the outset the persons responsible for the keeping of the diary anticipated that there was trouble ahead. Probably the same might be said of the person responsible for initiating the Inspection Book at Raphoe Garda Station, who was Sergeant White. It would seem that from the outset each side foresaw the need for corroboration of the story that they would later be required to tell.
- 3.36. It is important to note that the Mitchell Diary contains a number of matters, which are greatly in dispute between the parties. In addition, while it contains some contemporaneous recording of events as they occurred, there are also a number of other insertions which were put in on the direction of Mr. McBrearty Senior, or by other authors, at a later stage. It was also candidly admitted by Mr. Mitchell that the diary contains lies insofar as it records that the Gardaí were on occasion told that the shutters had not been re-opened after their departure, when this was not in fact the case. **In the circumstances the Tribunal is not disposed to accept the content of the Mitchell Diary without question.**

<sup>43</sup> Tribunal Documents, page 1,766.

<sup>44</sup> Tribunal Documents, pages 463-469.

However it will be referred to from time to time as a reasonably accurate account of events. This is particularly so given that a number of the events recorded therein were not actually put in dispute between the parties. In relation to the Inspection Book that was maintained at Raphoe Garda Station, the Tribunal is satisfied that for the most part the entries contained therein are an accurate and true reflection of the times and dates on which inspections were carried out and what was found by the Gardaí in the course of those inspections.

- 3.37. According to the Inspection Book, on the night of the 11th/12th of January 1997 Sergeant White, accompanied by Gardaí O'Dowd and Mulligan, visited five licensed premises in Raphoe: The Town & Country Bar, McGranaghan's Bar, The Suíle Tavern, Frankie's Nightclub and The Central Hotel. The McBrearty premises was the fourth in the line of inspections that night. One might have thought that when a new sergeant arrived in the town and introduced himself to the local publicans that he would exercise a degree of leniency in respect of his inspections on that first night. One might have expected that in these circumstances the sergeant would introduce himself and set out the new licensing regime that would be operated by him in the area. He might tell the publicans that they would have to keep their premises in order, or else appropriate summonses would issue if detections were made in the future. However, this was not the approach adopted by Sergeant White. According to the Inspection Book, arising out of his visits on that first evening in Raphoe, he sent files in respect of three different premises, including the McBrearty premises, to the superintendent for consideration as to whether summonses would issue. As we have seen arising out of the inspection that was carried out at 01.15 hours in Frankie's nightclub, a summons was directed and was duly issued. From that first night, Sergeant White was laying down a very strict marker indeed.
- 3.38. Later on the evening of the 12th of January 1997, which was a Sunday evening, Sergeant White returned to Frankie's nightclub at 23.37 hours. This was the thirty minute period after 'drinking up' time had ended on a Sunday night and before the Special Exemption Order would commence at a minute past midnight on the Monday morning. In the Inspection Book it was noted that seven persons were serving inside the main bar and that the bar upstairs was also open. A file was sent to the superintendent in respect of this inspection. However, it is not clear what became of this file. The Tribunal was not furnished with any copy of that file. Certainly no summons issued in respect of that inspection. However the fact of the inspection is significant. It shows that twice during the first twenty-four hour period within which Sergeant White had an interaction with Mr. McBrearty Senior, he sent up two files to the superintendent.

- 3.39.** It was put to Mr. White in the course of examination before the Tribunal that this was a very harsh application of the law. It was noted that for the period between 23.00 hours on the Sunday night and 00.00 hours it was not possible for the publican to obtain any extension to his licence. However, due to the fact that he had an extension in place in respect of the Monday morning, he was entitled to recommence serving alcohol at 00.01 hours on the Monday morning. In these circumstances it was put to Sergeant White that it was a particularly harsh interpretation of the law for him to re-attend at Mr. McBrearty Senior's premises to see if he could catch him in breach of the law during this period. Sergeant White did not accept that as being the case. He stated that while the two visits occurred during the same twenty-four hour period, it was in fact two different licensing days, so to speak. He stated that if Mr. McBrearty Senior was going to be openly defiant of the law, then there was no point in making one law for one set of pubs and another for Mr. McBrearty; he felt that he had to administer the law as it was, even if that may seem harsh.<sup>45</sup> Mr. White did not accept that by visiting the premises twice in the first twenty-four hour period and sending up files to the superintendent in respect of each of these inspections, he was being unreasonable.
- 3.40.** In respect of the night of the 12th of January 1997, the Inspection Book reveals the following times of inspections carried out by Sergeant White: Frankie's Nightclub (23.37 hours), The Tir Connell Bar (23.55 hours), The Town & Country Bar (00.01 hours), McGranaghan's Bar (00.05 hours), The Suile Tavern (00.10 hours), Friel's Hotel (00.12 hours), Frankie's Bar (00.15 hours), Frankie's nightclub (01.03 hours). The second visit to Frankie's nightclub by Sergeant White and Garda O'Dowd is significant for another reason. It marks the start of a practice whereby the Gardaí stayed on the licensed premises for a protracted period. On this occasion, Sergeant White and Garda O'Dowd entered the premises at 01.03 hours and remained in the disco until 02.10 hours. Mr. McBrearty Senior complained bitterly about these long visits. He stated that he had never seen anything like it before in his life. For his part, Mr. White in evidence stated that this was a practice which the Gardaí were obliged to adopt due to the fact that he had learned very early on from his discussion with the motorist that Mr. McBrearty Senior was re-opening his bars as soon as the Gardaí left the premises after a normal inspection. He said that it was for this reason that he was obliged to remain on the premises for a protracted period. He stated that this was something that he had done quite openly and he had not hidden this fact from his superior officers. The length of time that they remained on the premises had been recorded in the Inspection Book.<sup>46</sup>
- 3.41.** Thus, at the end of his first weekend on duty, Sergeant White had inspected all

<sup>45</sup> Transcript, Day 671, pages 78-81.

<sup>46</sup> Tribunal Documents, page 1,767.

the licensed premises a number of times and had sent up four files to the superintendent, two of which related to Frank McBrearty Senior. In addition he had learned that the publican in question was openly defiant of him in two ways: firstly, he had denied that the bar was open and serving alcohol when the sergeant had seen this with his own eyes; and secondly, the sergeant learnt that the publican had re-opened the bars on the departure of the Gardaí from the premises. To counteract this Sergeant White had left a static Garda presence in the nightclub for just over an hour from the time that the bar was supposed to close on the Monday morning at 01.00 hours until the end of the dance.

### **Inspections in January 1997**

3.42. We have already looked at the first series of inspections carried out by Sergeant White on his arrival in Raphoe on the weekend of the 11th/12th of January 1997. On the following weekend Sergeant White again worked nights and carried out a number of inspections. On the Friday night, the 17th of January 1997, he inspected the Suíle Tavern, McGranaghan's, Friel's Hotel, The Town & Country Bar, The Tir Connell Bar and the Central Hotel. There was no inspection of Frankie's Nightclub that night. This may be accounted for by the fact that the Friday night discos may not have been in operation at that time. The only entry in the Inspection Book for Saturday night the 18th of January 1997 recorded an inspection of Frankie's Nightclub at 00.35 hours, when Sergeant White accompanied by Gardaí O'Dowd and Harkin visited the premises. They apparently found two shutters up on the main bar and drink being served by six persons behind the bar. The four Gardaí remained on the premises for a period of approximately one hour and forty minutes until 02.15 hours. Arising out of this inspection, Sergeant White sent up a report, and a statement, together with a statement from Garda O'Dowd. Superintendent James Gallagher directed that the usual five count summons should issue. It was duly issued on the 11th of April 1997.<sup>47</sup> On the following night, Sunday the 19th of January 1997, Sergeant White returned to Frankie's Nightclub, accompanied by Gardaí O'Dowd, Curran and Moran. They arrived on the premises at 23.07 hours and remained there until 00.00 hours. This would have coincided with the hour during which the publican was not entitled to serve alcohol on a Sunday evening after normal closing hours and prior to the start of his Special Exemption Order on the Monday morning. On leaving the McBrearty premises, the Gardaí then inspected the Suíle Tavern, Friel's Hotel, McGranaghan's Bar, The Tudor Lounge, The Town & Country Bar, McCarron's Bar and the Central Hotel. According to the Inspection Book, a file was forwarded to the superintendent in respect of the inspection carried out on the Suíle Tavern at 00.05 hours.

<sup>47</sup> Tribunal Documents, page 209.

3.43. It appears that these visits to his premises by Sergeant White caused Mr. McBrearty Senior considerable annoyance. Mr. John Fitzgerald gave evidence that at about that time, Mr. McBrearty Senior telephoned him in a state of some agitation. Superintendent Fitzgerald told him to come over to his house and tell him what was of concern to him. He said that Mr. McBrearty Senior called over to the house and complained that “Sergeant White has my place haunted”. He complained that Sergeant White was not giving the other pubs in the town the same amount of attention. He was worried that if that practice continued, he would go out of business. Superintendent Fitzgerald told him that the sergeant was only trying to carry out his duty as best he could. They had a long chat and it ended with Superintendent Fitzgerald saying that he would make inquiries with Sergeant White to see what was happening on the ground. Some short time later, Superintendent Fitzgerald had the opportunity to bring the matter up with Sergeant White. On the 20th of January 1997, Sergeant White happened to be in Letterkenny Garda Station. He called in to see the superintendent in his office. Mr. Fitzgerald stated that he told Sergeant White that Frank McBrearty Senior had complained to him that his premises had been singled out by Sergeant White for special attention. Sergeant White interjected and said that he had called around to all the pubs, hotels and nightclubs. He assured the superintendent that he was treating everybody the same. The superintendent stated that he had some words of advice for Sergeant White in the following terms:

*... So I said to him, look whatever, treat Frankie... treat him right, you know, treat him properly, give him his dignity. Because I have known Frank you see. Words to that effect. Now, I've already given the words and given the evidence and I'm sure they are the same. ... I probably said, look it, just take it easy like. In other words, slow down a bit and don't, you know, don't come the heavy. That is the advice that I gave him. But at the same time, I would be quite aware that a person has to do their duty, you know, that duty has to be done. I am sure there would be breaches and all the rest. But the manner of doing it, he was under no illusion as to my attitude.<sup>48</sup>*

3.44. Mr. White vehemently denied that any such advice or direction was given to him at that time by Superintendent Fitzgerald. He stated that he may well have been in Letterkenny Garda Station around the 20th of January 1997 and may well have spoken to the superintendent either in his office or in the corridor at some time during his visit to the station. However, he was adamant that at no time did the superintendent instruct him to treat Mr. McBrearty Senior in any way differently to any of the other publicans in the village. He stated that had he been given such

<sup>48</sup> Transcript, Day 655, page 52.

a direction, he would immediately have requested a transfer out of Raphoe. He stated that he could not have carried on as a sergeant unless he was to treat all the publicans in a strict but equal manner. He said that it was quite the opposite with Superintendent Fitzgerald; he was very much in favour of a strict enforcement policy in relation to the liquor licensing laws.<sup>49</sup>

3.45. While the superintendent may have asked Sergeant White what was happening in Raphoe in the light of the complaint that had been made by Frank McBrearty Senior, it is more than likely that the superintendent was satisfied when Sergeant White told him that Mr. McBrearty Senior's premises was receiving the same amount of attention as all the other premises in the village. The Tribunal accepts the evidence given by Mr. Fitzgerald that he made a comment to the effect that Sergeant White should take it easy in respect of the enforcement of the liquor licensing laws and leave Mr. McBrearty Senior his dignity. The Tribunal is equally satisfied that Sergeant White had no intention of modifying the regime that he had put in place due to the fact that this regime was condoned by the chief superintendent and due to the fact that Superintendent Fitzgerald was somewhat 'out of the loop' in relation to what was going on in the division at that time, and indeed was on his way out of the division in the very near future.

3.46. The next entry in the Inspection Book is for the night of the 25th/26th of January 1997. It records that at 00.10 hours, Sergeant White and Garda O'Dowd entered Frankie's Nightclub. There were five hundred patrons on the premises. The bar was closed on the ground floor but the upstairs bar was open. It closed at 00.15 hours. It records that there was a complaint from Mr. Edward McBrearty that he had been able to obtain three beers in Letterkenny after the time that Sergeant White had ensured that the McBrearty premises was closed. Again this would appear to be an example of the strict enforcement of the liquor licensing law on the part of Sergeant White; in particular, his ensuring that no alcohol would be served in the two hour period from midnight on the Saturday night until the conclusion of the dance at 02.00 hours on the Sunday morning. The Tribunal heard evidence from Mr. Michael McConnell, who had driven Mr. Edward McBrearty into Letterkenny that evening. He stated that he recalled driving around Letterkenny to three different nightclubs and that Mr. Edward McBrearty went into the three premises and was able to obtain a bottle of beer without any difficulty. He had receipts to prove the purchase of the drink in each location. This was an important event because one of the cornerstones of Mr. McBrearty Senior's complaint about the Garda attention that he was receiving was the fact that according to him, it was not happening elsewhere in the county. In other

<sup>49</sup> Transcript, Day 671, pages 97-99.



words, the liquor licensing law was being enforced strictly against his premises, while other nightclub owners could serve until approximately 01.30 hours on a Sunday morning.

- 3.47. Mr. McConnell recalled that when they came back from Letterkenny, Edward McBrearty told Sergeant White that he had been able to purchase the beers in Letterkenny subsequent to the time that Sergeant White had ensured that their bars were closed. Apparently Sergeant White had stated that he would take the matter up with the officers in Letterkenny. Mr. White recalled the incident and had noted it in the Inspection Book. He stated that Mr. Edward McBrearty was unwilling to hand over the receipts that he had obtained on that occasion. He could not recall specifically bringing the matter to the attention of the superintendent, but he did recall that whenever he spoke to either Superintendent Fitzgerald or Superintendent Lennon, they assured him that the Gardaí were inspecting the nightclubs in Letterkenny on a regular basis at that time. He had no doubt that when he spoke to the superintendent he was assured at all times that similar inspections were being carried out in Letterkenny and Ballybofey.<sup>50</sup> Mr. White made the case that he was not responsible for what happened outside his own sub-district. He said that within his own area, being the sub-district of Raphoe, the law was rigidly and evenly applied. Some support for this is shown by the fact that on the same night an inspection was carried out at the Suile Tavern at 01.12 hours, when four persons were found on the premises. Sergeant White sent a file to the superintendent arising out of that inspection.
- 3.48. On the night of the 26th/27th of January 1997, Sergeant White carried out inspections of seven licensed premises in Raphoe. The first of these was inspected at 00.04 hours and resulted in a file being sent to the superintendent. The next pub was inspected at 00.09 hours. A file was also sent to the superintendent in respect of that public house. Frankie's nightclub was the last of the premises to be inspected that evening. It was inspected by Sergeant White and Garda O'Dowd at 01.05 hours. They stayed on the premises until 02.00 hours. The Inspection Book notes that they spoke to Frank McBrearty Senior, who was "complaining and whinging".<sup>51</sup>
- 3.49. The last of the inspections for that month was carried out on Friday the 31st of January 1997. These inspections appear to have been carried out by Gardaí Mulligan and Conroy. They inspected eight premises between 00.05 hours and 00.28 hours. There were no files forwarded as a result of these inspections.

<sup>50</sup> Transcript, Day 671, pages 119-122.

<sup>51</sup> Tribunal Documents, page 1,772.

## Vehicle Checkpoints

- 3.50. Among the complaints that Mr. McBrearty Senior has made was one regarding the mounting of vehicle checkpoints in the town of Raphoe. He believed that this was a further step taken to interfere with his business and potentially prevent customers from attending at his premises. For his part Sergeant White, and the other Gardaí who manned these checkpoints, denied that this was their intention. They said that they did it purely for the purpose of controlling traffic and also for the purpose of checking on the drivers of the vehicles to ensure that they were not driving under the influence of alcohol or drugs. In the Mitchell diary it was recorded that on almost every occasion on which the Gardaí had ceased inspecting the McBrearty premises in January 1997, they proceeded to set up vehicle checkpoints in the Diamond in Raphoe, which was quite close to the McBrearty nightclub premises.
- 3.51. According to the Garda witnesses, vehicle checkpoints were used for two purposes. The first was to check on the drivers of the vehicles to ensure that they were not driving under the influence of alcohol or drugs. Secondly, it was believed that it was necessary to mount roadblocks in order to divert traffic away from a bottleneck outside Mr. McBrearty Senior's premises and to create a circular traffic flow system. The evidence before the Tribunal given by various members of An Garda Síochána was that the combination of patrons exiting from Mr. McBrearty Senior's premises, congregating near a fast food outlet in the vicinity, and the two way traffic flow, created a potential hazard. In order to remedy this, roadblocks were mounted in the Diamond in Raphoe and traffic was directed through St. Eunan's Terrace. This effectively set up a one-way traffic system around the town. This enabled the traffic to enter Mr. McBrearty Senior's car park and when leaving to travel back down into the town of Raphoe. This one-way traffic system was intended to avoid danger to pedestrians. Part of this thinking was to prevent buses from approaching Mr. McBrearty Senior's premises and requiring them to park at the Diamond and to take on their passengers there.
- 3.52. Mr. McBrearty Senior and various witnesses have criticised the system not only because it denied patrons direct access to Mr. McBrearty Senior's premises, but also because it required them to go in a circle through St. Eunan's Terrace. In addition, they say that this resulted in traffic going through a residential area, which in itself created a further hazard. Moreover, they say that by requiring patrons to walk down to the Diamond to get the bus home, they opened the door to further hooliganism as they passed down the street. Whereas, if the buses were allowed up to Mr. McBrearty Senior's premises the patrons would have been taken on board immediately.

- 3.53. The issue therefore arises whether this was a bona fide, though unsatisfactory, attempt at traffic control put in place by the Gardaí in a genuine effort to remedy what they saw as a potential danger and traffic hazard, or in the alternative, was an attempt to obstruct Mr. McBrearty Senior in his attempts to carry on his nightclub business.
- 3.54. It is correct to say that after a very short time it became apparent that this attempt to create a traffic flow caused more problems than it solved, and it was discontinued. I am satisfied that the roadblocks were erected, not for the purpose of discommoding Mr. McBrearty Senior, or attempting to damage his business, but that they were a *bona fide* attempt to solve what was perceived by the Gardaí to be a traffic hazard. I make this finding based, among other things, upon the fact that when it was discovered that the attempts at traffic control were not achieving their objective, they were discontinued.
- 3.55. Apart from the roadblocks created to control traffic, other roadblocks were established at various points at some distance out of Raphoe town. It has been suggested by Mr. McBrearty Senior that this check on drivers leaving his premises was another attempt to drive people away from his disco. I simply do not accept that. There is no evidence to support this complaint.
- 3.56. In summary, therefore, I am not satisfied that either the vehicle checkpoints which were set up within the village itself, or the traffic management system which was put in place on busy nights, were set up with the intention of causing damage to the nightclub business operated by Mr. McBrearty Senior.

### **The Situation At the End of January 1997**

- 3.57. The Tribunal is satisfied that the month of January 1997 marked a significant change in policing in Raphoe. Sergeant White had been sent there with a clear mandate to apply a strict enforcement of the liquor licensing laws and thereby curb what were perceived as serious public order difficulties in that village. He set about his task with vigour and determination. Frank McBrearty Senior had enjoyed a somewhat lax policing regime in respect of his licensed premises for a long number of years. This may have been due to the presence of a particular sergeant who had formerly served in Raphoe and may also have been due to the manpower difficulties that were experienced by that man's successor, Sergeant Joseph Hannigan. It is probably fair to say that there was also a fairly lax implementation of the liquor licensing laws throughout the

county prior to 1997. It is clear that Sergeant White and Mr. McBrearty Senior started very badly as a result of the inspection that was held on the 11th of January 1997. Sergeant White responded to this by sending up a file to the superintendent. It was in this way that two determined men started onto a collision course with each other, which was to lead to a dramatic escalation of matters over the following months.

- 3.58. Before coming to the matters which transpired in the following months, it is worthwhile noting that during the month of January 1997 there were significant developments on other fronts. Firstly, the reader of previous reports will be aware that on the 14th of January 1997 Frank McBrearty Senior entered into a settlement with Mr. Edmond Moss in respect of the alleged assault that had occurred to him on the nightclub premises on the 29th/30th of December 1996. This settlement involved the payment of a substantial sum of money to Mr. Moss. However, the criminal aspects of that matter continued to be investigated by the Gardaí. The month of January also saw the making of the statement by Roderick Donnelly. The background to the making of that statement is a long drawn out affair that has been recounted fully in the second report of the Tribunal. Suffice to say that he was persuaded by elements who were antagonistic to the McBreartys to make a statement that tended to suggest that Mark McConnell may have been responsible for the death of the Late Mr. Barron. This statement was false. Lastly, on the 30th of January 1997 Derrick “Darcy” Connolly made a statement to Garda John O’Dowd alleging that Frank McBrearty Junior had dangerously driven his vehicle towards Mr. Connolly’s vehicle in an effort to intimidate him on two occasions on the 25th and 29th of January 1997. Two summonses were issued against Frank McBrearty Junior as a result of this statement of complaint by Mr. Connolly. Mr. Connolly’s role as one of the ‘vigilantes’ has already been described in detail in the second report of the Tribunal. The significance of these events is that pressure was being applied to various members of the McBrearty family from a number of different sources at the same time.

### **The Provision of Meals**

- 3.59. Among the complaints which Mr. McBrearty Senior makes against Sergeant White was one that he over-zealously pursued inquiries as to whether Mr. McBrearty Senior was providing meals for customers, as he was required to as a condition of the Special Exemption Orders that he had obtained. The reader of the report will see that Sergeant White went to unusual lengths to pursue this inquiry and this in itself was a cause of friction between the parties. This was seen as further harassment.

- 3.60. The question of the provision of meals enters into the picture for the first time on the night of Saturday the 1st of February 1997. The entry in the Mitchell diary recorded that, having been in the hall, Sergeant White went to the front door where he informed John Mitchell that he had not seen any sign of suppers being served. The sergeant stated that because they had a bar extension, suppers had to be served to everyone. The sergeant was told that Mrs. McBrearty had been up and had served suppers from 22.00 hours until midnight. Mr. White said that he remembered this event clearly. He maintained that he had been lied to on that occasion. He said that there was no sign of any food having been served on the premises. There were no dirty plates or cutlery left lying around the premises. He said that there was absolutely no sign that any suppers had been served. He was in no doubt that he had been told a blatant lie that evening. Mr. White stated that he was not just being a stickler for the law in seeking to ensure that a meal was served to the patrons. He said that if they got a meal this would tend to soak up some of the alcohol consumed, resulting in the patrons being less drunk at the end of the evening. Furthermore, he said that because no meal was served many of the patrons used to cross the street to D.J.'s chipper to obtain food. This led to public order problems on the street outside the chipper. He felt that if they were to get a meal inside the premises, it would be much more preferable. In terms of other premises serving meals at that time, he stated that he had been in the Golden Grill in Letterkenny and had received a meal. While he could not be sure, he thought that patrons also received a meal in Heaneys and in Jacksons in Ballybofey.
- 3.61. During an inspection carried out on the evening of the 14th/15th of February 1997 by Sergeant White and Garda Keaveney, it was recorded that that inspection had been carried out to see if suppers were being served. An entry was made in the Inspection Book as follows: "Not adequate. No sign of customers eating, except for six".
- 3.62. The Mitchell diary goes on to record that on the following evening Sergeant White attended at the premises and went into the kitchen to examine the chip pans. He stated that they did not have much to cook and was told that the food was only cooked as it was needed as management did not believe in wasting food. Sergeant White then went to the freezer and looked in all the boxes of chips and burgers. He then went looking through the rubbish bins, asking whether that was all the rubbish that had been accumulated during the night. Sergeant White then went into the hall and began questioning customers as to whether they had got a supper, or had been given a supper ticket at the door. He then proceeded to the main door and asked the girl who was in the pay box what colour the supper tickets were that evening.<sup>52</sup>

<sup>52</sup> Tribunal Documents, page 1,356.

- 3.63. Mr. White did not accept that the account given in the Mitchell diary was correct. He stated that at that time he felt that Mr. McBrearty Senior and Mr. Mitchell were playing games with him. On the one hand they were telling him that meals had been served and to that end were showing him tickets in a glass in the kitchen which were supposedly handed in when the meals were being obtained by the patrons. However, he said that from an examination of the tickets it was clear that these had not been used due to the fact that they were in sequential order and were not crumpled.
- 3.64. He suspected that management of the premises were simply tearing off a number of tickets from the book and placing them directly into the glass without providing any meals. He also suspected this to be the case due to the fact that when he walked around the premises there were no plates, no serviettes, and no plastic knives or forks anywhere to be seen. There was nobody queuing at the kitchen counter and he said that in the beginning there was nobody getting any meals. Later on it did improve and some people got suppers on the premises. However, he maintained that it was a very small number of people. They cooked the food as it was requested by the patrons, which he did not think was a proper way of doing it.<sup>53</sup> Mr. White stated that there was no question of him looking through the rubbish bins. He said that he would not have done that without gloves, which he did not have on the occasion of that inspection. He said that he might have asked Mr. Mitchell or a member of staff to lift the top off the bin and to show him the evidence that meals had been served that evening. He said that it was merely a visual inspection of the rubbish bin. He said that there was no evidence of any meals having been served, or any rubbish from such meals in the bin itself. While the event may seem somewhat trivial in itself, it shows the degree to which Sergeant White was prepared to go to ensure that the condition relating to the provision of a substantial meal, which attached to the special exemption order, was complied with. Mr. McBrearty Senior, however, viewed this attention to the question of the provision of meals as being merely another example of harassment being brought to bear on him and his premises by Sergeant White.<sup>54</sup>
- 3.65. It appears that after a somewhat fraught encounter between Sergeant White, Garda O'Dowd and Mr. McBrearty Senior on the morning of the 23rd of February 1997, to which we will come presently, there was a further encounter concerning meals between these Gardai and Mr. Mitchell later on the evening of the same day. While this encounter was not of a fraught nature, it may be seen as being somewhat bizarre. In the Mitchell diary for the 23rd of February 1997 it was recorded that at 23.40 hours, in the course of an inspection of the premises, Sergeant White had an in-depth discussion with the cook Mr. Aidan Gallagher in

<sup>53</sup> Transcript, Day 672, pages 52-54.

<sup>54</sup> Transcript, Day 621, page 171.

relation to the length of time it would take to cook a sausage. It appears that they did a trial cooking of the item, which was recorded as giving a result of five minutes.<sup>55</sup> However, after some consultation as to when exactly the item was put into the oil, this was later reduced by agreement between Sergeant White and the cook to give a cooking time of four and a half minutes. Mr. White accepted that this experiment had been carried out on the evening in question. He did not think that this was a somewhat unusual action to be taken by a Garda Sergeant:

*Q. I mean it seems perhaps an unusual thing for a Sergeant in the Guards to be bothered about timing the length of time it takes to cook a sausage?*

*A. But it doesn't, Mr. Barr, when you take it in the overall context, that they are playing games with me in relation to the food. All I wanted was very simple, that McBrearty's nightclub would supply meals to customers and that they would be ready when they looked for them. Rather than playing this game of cooking two sausages when we see Sergeant White coming, this type of thing.*

*Q. Yes, but what I don't understand ... I appreciate that point. What I don't understand is why it would be relevant, or of interest to the Guards, that it would take four and a half minutes to cook a sausage rather than, I don't know, three minutes to reheat a quiche, or whatever they might be serving at the time?*

*A. I can certainly guarantee you, Mr. Barr, there would be no quiche in Mr. McBrearty's nightclub.<sup>56</sup>*

3.66. Mr. White elaborated as to why it was necessary to time the cooking of a sausage. He stated that if the nightclub owner was genuinely providing a meal to the patrons, then the kitchen should be ready to produce the meals more or less on demand. This would mean that the cooker would need to be hot and that the food would have to be ready to be served out to patrons as required, rather than expecting the patrons to request a meal and then to have to wait for the oil to heat up and the sausage, or whatever, to be cooked. In his evidence to the Tribunal in respect of a different incident at the car park, which had occurred earlier on the same day, Mr. O'Dowd stated that there was an element which seemed to creep into their encounters that the Gardaí were not willing to be "bested" on any occasion by Mr. McBrearty and similarly he was not willing to be "bested" on any occasion by the Gardaí. Mr. O'Dowd stated that it seemed

<sup>55</sup> Tribunal Documents, page 1362.

<sup>56</sup> Transcript, Day 672, pages 91-92.

to him that there was an element that one would not back down from the other.<sup>57</sup> The Tribunal is satisfied that there was an element of neither party wishing to be beaten by the other in what had become a game of cat and mouse.

- 3.67. The entry in the Inspection Book for the 28th of February 1997 noted that Sergeant White had questioned nine patrons as to whether they had received meal tickets, but that only three had done so. According to the Mitchell Diary for the same date, Mr. Mitchell had pointed out to Sergeant White that there were chips lying around the hall. It was noted that Sergeant White had gone into the kitchen and was satisfied that the chip pans were still hot and that suppers had been served. He also examined the supper tickets that were there.
- 3.68. The Inspection Book recorded that the kitchen was inspected during an inspection carried out on the 2nd of March 1997 by Sergeant White and Garda Moran at 23.58 hours. It was recorded that twenty eight tickets were in the pint glass in the kitchen. There were three sausages in a deep fat fryer. In the course of a further inspection held at 01.02 hours it was noted that there were three persons waiting at the kitchen counter for meals consisting of chicken nuggets and chips.
- 3.69. While Mr. McBrearty Senior had made the case that Sergeant White's attention to the provision of a meal to patrons attending the nightclub was merely another means by which the Sergeant could cause him difficulty in carrying out his lawful business, Mr. White rejected that allegation. He stated that at the time, the District Court Judge for the area was very strong on the fact that where Special Exemption Orders had been granted, meals of a substantial nature would have to be provided to the patrons.
- 3.70. Mr. O'Dowd stated that prior to the arrival of Sergeant White in January 1997, the question of the provision of meals had never been an issue for the Gardaí in Raphoe. However, he had a recollection that the local Judge had a concern in relation to the provision of meals. He thought that the Judge had issued an instruction that meals should be supplied in accordance with the conditions attaching to the Special Exemption Order.<sup>58</sup> As with many of the issues arising in Raphoe, it is difficult to get a neutral or an independent view in relation to matters. However, in this regard, the Tribunal was fortunate to receive evidence from Garda Eamonn Earley. The Tribunal was impressed by his evidence. He gave his evidence in a clear and forthright manner. The Tribunal is satisfied that he did his best to tell the truth. In relation to the provision of meals in nightclubs, he said that he had no particular view on the matter. He accepted that in a lot of premises at that time, no food was provided. He said that that did not trouble him at all. He had never inspected kitchens prior to 1997. He gave the following

<sup>57</sup> Transcript, Day 664, page 101.

<sup>58</sup> Transcript, Day 664, page 112.



view as to the change in enforcement that occurred on this aspect in 1997:

*I think it was taking the enforcement to the absolute letter of the law. I couldn't see much point in it personally, it was ... I really don't know what was behind it all. [Coming down hard on the McBrearty's] all that I suppose would be what was happening indeed yeah, but no-one ... I can't say that anybody said to us to come down hard on the McBreartys. I think it may have, it most likely occurred as a result of the McBreartys' resistance to the general enforcement of the licensing laws. That would be how I expect it came about.*

*While it is my own view. I really don't know. No. No there was never any comment made on it. You would go on patrol, you would inspect occasionally the premises or whatever and whatever situation, different situations presented themselves on different occasions. I think Mr. McBrearty ... well the McBreartys reacted very ... they resisted the Guards inspecting the premises, they resented the Guards inspecting the premises and they weren't at all happy that the Guards were inspecting their premises on any occasion.<sup>59</sup>*

3.71. In the course of cross-examination, Garda Earley did concede that around Christmas of 1996 and going into 1997, the local District Court Judge did issue a list of instructions in relation to matters that he wanted enforced as part of the liquor licensing law. One of these instructions was that meals were to be provided. The Judge also issued instructions concerning cameras and other matters on the premises.<sup>60</sup>

3.72. On the 16th of March 1997 Sergeant White seemed to get a lucky break. He was approached on Meeting House Street by a man called Robert Jason Porter. He had worked on a few nights as a Chef in Frankie's Nightclub. According to Sergeant White, Mr. Porter told him that he had been served a drink after hours in the nightclub. He went on then to tell the Sergeant some interesting details about the serving of meals in the nightclub. Mr. White described their meeting and how Mr. Porter went on to agree to make a statement to him in the following way:

*First of all he told me about it and then I asked him would he make a statement about this. He was a bit reluctant, but he agreed and I suppose I was very adamant that he would make the statement and he did. I think we went back to the station to make that*

<sup>59</sup> Transcript, Day 638, pages 69-70.

<sup>60</sup> Transcript, Day 638, page 105.

*statement because the writing is fairly good, my writing at least, and it was in the proper statement form.*

*I suppose maybe I was persuasive, Mr. Barr. I wanted some evidence of some kind that this was happening. So I would have cajoled him I presume to come back to the station and make this statement. I didn't pressurise him as in threaten him or anything, but I would have been very determined to get him to come back to the station with me. He does say very interesting things in it, from memory I can see it, yes.<sup>61</sup>*

- 3.73. In his statement, Mr. Porter outlined how he had been retained by Mr. McBrearty Senior to work in the nightclub on the night of the 14th of February 1997. He stated that there were seven bags of chips and fifty sausages. He was instructed to give a portion of two sausages and a portion of chips to each customer. He said that he was told to charge £1.60 for each portion, but to give them out free if the Gardaí should come onto the premises. He said that in the course of the night he served about six portions to customers. On the following night he served two portions of sausage and chips. He alleged that Mr. McBrearty Senior had got a loan of the food from the owner of the chip shop across the road.<sup>62</sup>
- 3.74. As Mr. Porter was not called before the Tribunal to give evidence, I do not propose to make any finding whatsoever as to the allegations contained in his statement. I do not know if there was any row or ill feeling between Mr. Porter and Frank McBrearty Senior. In the absence of such reason, it is difficult to imagine what motivation Mr. Porter may have had for accompanying the Sergeant to the Garda station for the purpose of making two voluntary statements about Frank McBrearty Senior. From the point of view of the Tribunal's inquiry, it demonstrates the lengths to which Sergeant White was prepared to go to obtain evidence that he thought might be useful against Frank McBrearty Senior.
- 3.75. Later, on the 20th of March 1997, there were four separate inspections of Frankie's Nightclub. It was noted in the Inspection Book that the inspection at 23.42 hours revealed that there were eleven meal tickets in respect of meals allegedly served, but that the cooking oil in the kitchen was cold.
- 3.76. Sergeant White returned from holidays and took up duty again on Friday, the 13th of June 1997. The Mitchell Diary records that during his second inspection of the nightclub that evening, Sergeant White counted the supper tickets and then went over and felt the chip pans to see if they were hot. He apparently indicated to Mr. Mitchell that there were only eighty one supper tickets for that

<sup>61</sup> Transcript, Day 672, pages 120-121.

<sup>62</sup> Tribunal Documents, page 1,879-1880.

evening. Mr. Mitchell said that the number of tickets collected depended on how hungry the patrons were. He said that he could not make people eat if they did not want to.<sup>63</sup>

3.77. On Sunday the 20th of July, going into Monday the 21st of July 1997, Mr. Mitchell recorded an extraordinary incident. He recorded that at 01.05 hours, in the course of an inspection, Sergeant White went to the kitchen to look at the supper tickets. He asked the cook, Mr. Aidan Gallagher, if the rubbish in the bin was that night's rubbish, to which Mr. Gallagher replied that it was. Sergeant White then started to go through the rubbish with his two hands. Mr. Mitchell told him to take the rubbish with him if he needed it for evidence. Sergeant White said that that would not be necessary. He then started to count the supper tickets and he said that there were fifty-five supper tickets, but that there were only six dirty supper plates in the rubbish. He said that that meant that the other forty-nine dirty plates were out around the hall somewhere. Mr. Mitchell informed him that some of the rubbish had already been put out into the skip and that if the sergeant wanted he would ensure that the relevant black sacks were retrieved from the skip on the following morning and deposited at the Garda station. Sergeant White declined his offer. There was a further discussion between Sergeant White and Andrew McBrearty in relation to viewing the book of supper tickets. After some delay, this was obtained and produced to Sergeant White.<sup>64</sup>

3.78. Mr. White vehemently denied that he had ever searched in a rubbish bin for plates. He said that Mr. Mitchell's notes in this regard were a complete fabrication. The most that he might have done was carry out a visual inspection. If the supper tickets which had been taken in at the kitchen indicated a certain number of meals, he might have carried out a visual inspection of the rubbish bin to see if there were any dirty plates or cutlery in there which could substantiate the assertion that a certain number of meals had been provided to the patrons. He said that there was never any discussion about taking a black bag out of the skip and bringing it to the Garda station. He said that this was a lie inserted by Mr. Mitchell in the hope that it would be of some assistance to him and to Mr. McBrearty Senior in the future.<sup>65</sup>

3.79. The Tribunal is not disposed to make any finding of fact as to whether Sergeant White did or did not have his hands in the rubbish looking for dirty plates on the night of the 20th/21st of July 1997. If a Garda sergeant had started rooting around in the rubbish looking for dirty plates, that would not be consistent with balanced policing, but would indicate a somewhat obsessive approach to the task. On the other hand, if it was merely a visual inspection of the rubbish, that

<sup>63</sup> Tribunal Documents, page 1,416.

<sup>64</sup> Tribunal Documents, pages 1,432-1,433.

<sup>65</sup> Transcript, Day 674, page 35.

would appear to be a reasonable step to take in the course of an inspection to ascertain whether or not meals had in fact been served to the patrons.

### **Conclusions on the Meals Issue**

- 3.80. The Tribunal accepts the evidence that the condition in relation to the provision of a meal as part of the terms on which the Special Exemption Order was granted was probably more honoured in the breach than in the observance prior to Christmas 1996. The Tribunal accepts the evidence given by Mr. O'Dowd and Garda Earley to the effect that at that time the local District Court Judge decided to tighten up on this aspect. To this end, he issued instructions that on any occasion where Special Exemption Orders were granted, a substantial meal should be provided by the nightclub owner. When Sergeant White attempted to implement this condition, it was seen by Mr. McBrearty Senior as being a further brand of harassment against him and his business. Again it comes back to a problem of perception.
- 3.81. The Tribunal is satisfied that Sergeant White saw the management of the McBrearty premises as being reluctant to comply with their lawful obligations concerning the provision of a meal. He thought that they were playing games with him in relation to the meal tickets that they produced and in relation to what they told him concerning the provision of meals. He became embroiled in a tit for tat campaign in an effort to expose what he thought was really going on in this regard. Rather than enter into that kind of a campaign, the more preferable course would have been for Sergeant White to have objected on the next occasion that Mr. McBrearty Senior had sought a block of Special Exemption Orders, on the ground that he had not complied with the condition attaching to the previous set of orders, namely the provision of a meal. This would have forced Mr. McBrearty Senior to go before the court and give evidence that he was in fact supplying meals to the patrons. He would have become aware that this was a matter on which the local Judge had directed, rather than an idea dreamt up by Sergeant White to harass his business. Unfortunately, no explanation was forthcoming to the Tribunal as to why this course of action was not adopted.
- 3.82. In considering this issue, I take into account the fact that the District Court Judge was concerned that meals should be served and had so stated in his court. I also take into account the fact that Sergeant White, when pursuing his inquiries, was afforded minimal, if any, co-operation by the staff or management in the nightclub. I accept his evidence that when he

enquired as to the ticketing system which was alleged to have been in operation, whereby a customer would present a ticket in exchange for a meal, he found that the tickets alleged to have been surrendered by customers were in pristine condition and put in numerical sequence into a pint glass on the serving counter. In addition, the lack of any dirty cutlery or plates or any discarded napkins led him to form the opinion that no meals were in fact being provided by Mr. McBrearty Senior.

- 3.83. On this issue, it is my view that the way in which Sergeant White pursued his inquiries was precisely the way in which he carried out all his duties, namely in an uncompromisingly exact fashion. The lack of co-operation afforded to him gave rise to the almost farcical inquiries, which he made of the staff. These inquiries were made bona fide by Sergeant White, but in making these inquiries, as in all his activities, he was undoubtedly over zealous. This matter should never have escalated to the height that it did and would not have done so if there had been reasonable co-operation from the nightclub owner.

#### **Events in February 1997**

- 3.84. On the 4th of February 1997, Frank McBrearty Junior was arrested by Garda John O'Dowd on suspicion of having assaulted Mr. Edmond Moss. He was questioned at Letterkenny Garda Station by Sergeant White and Garda O'Dowd. During the course of that day, he made the false allegation that he had been assaulted by Garda O'Dowd in the interview room. An account of that arrest and detention is to be found in the sixth report of the Tribunal.
- 3.85. Sergeant White supplied to the Tribunal a videotape that he had made of the arrest and a portion of the questioning of Mr. McBrearty Junior that day. A section of that tape reveals a disturbing period of questioning where Sergeant White informed Mr. McBrearty Junior that he and his family would see Sergeant White for a considerable period into the future:

... what about poor Eddie Moss? What caused you to go over the top so much in relation to physical violence? You can talk to me, there is nobody else here, look around and see. Just the two of us. It's just that I am fed up talking to you. I'll not go away. Will I? Sure I won't, Frank, I will see you and your family for an awful lot longer, ok. Try to make sure that you don't break the law and you are very used to doing that. You gave an awful beating to Eddie Moss ... and that, Frank, is what's going to get you in the long run. But you know that, don't you? I think it would suit you because your father paid over the money that the whole thing is forgotten about. Would that be right Mr. McBrearty?...<sup>66</sup>

<sup>66</sup> Extract from video of interview with Frank McBrearty Junior by Sergeant White on the 4th of February 1997.

- 3.86. Mr. White was asked as to whether these events led to a further deterioration in his relationship with the McBreartys. He thought that the relationship was already so bad that it could not get much worse:

*It probably did but I mean relationships were so bad anyway that it's hard to see, I don't see it really as a watershed, if you like, in relation to it, but it was very difficult to deal with Frank McBrearty Junior, very very difficult. [His relations with Mr. McBrearty Senior] oh they weren't good, I mean the man totally ignored me when I went onto the premises, if I spoke to him he told me the bar was closed. There was no meaningful dialogue going on between us. I found him to be an aggressive bully and I have no problem saying that. I felt that he would cow me into leaving the premises and going away. I mean clearly it wasn't just a problem with Sergeant White. If you go back over the years he was bribing another sergeant up until '91, prior to Sergeant Hannigan going there. Then in approximately '94, you had the situation where Sergeant Hannigan and Garda Michael Herraghty, who are two evenly minded men, they went in to carry out an inspection and he came back up to the station and threatened him with the politicians and the press if they prosecuted him and called horrible names to Garda Herraghty. That isn't the picture of a man that's easy to get on with, particularly when they were giving him such an easy time. So when a man came in to rigidly enforce the law, really there was no chance that it could be done I think.<sup>67</sup>*

- 3.87. The McBrearty premises were not the only premises receiving attention from Sergeant White. The Inspection Book revealed that on Saturday the 1st of February 1997 Sergeant White carried out an inspection of the Idle Hour pub at 02.54 hours. A file was sent to the superintendent in respect of that inspection. On the following night the Idle Hour was again inspected, this time by Gardaí Mulligan and Davenport at 01.00 hours on the morning of the 3rd of February 1997. The Inspection Book notes: "file to follow" in respect of that inspection. It appears that the Idle Hour also received a further visit, this time from Sergeant White accompanied by Gardaí Davenport and Mulligan, later on the same morning.<sup>68</sup>

### **A Solicitor's Letter**

- 3.88. Mr. McBrearty Senior instructed his solicitors to write a letter of complaint to the superintendent at Letterkenny Garda Station concerning the abuse, which he maintained that he was receiving at the hands of the Gardaí. On the 5th of

<sup>67</sup> Transcript, Day 671, pages 140-141.

<sup>68</sup> Tribunal Documents, page 1,775.

February 1997, Messrs. V.P. McMullin & Son, solicitors sent the following letter to the superintendent at Letterkenny Garda Station:

Re: Frank McBrearty

Dear Superintendent,

We refer to the above named client and to previous correspondence in regard to same. We have been instructed to write to you in relation to the current activity of members of An Garda Síochána. Our client is the owner of a licensed premises known as "The Parting Glass", Raphoe. We understand that some [portion illegible] for questioning pursuant to Section 4 of the Criminal Justice Act, 1984, in connection with the unlawful killing of a Mr. Richard Barrons [sic]. Our client was subsequently arrested pursuant to Section 30 of the Offences Against the State Act for questioning in relation to some offence under the Conspiracy and Protection of Property Act, 1875.

Prior to his arrest our client had voluntarily gone to the Gardaí to assist in their inquiries and had arranged for members of his staff to do likewise. Notwithstanding this our client was arrested and detained in Letterkenny Garda Station and in hospitals in Letterkenny and in Dublin for fourteen days, during which period he was harassed and threatened by Gardaí. Our client was later released without charge.

Subsequent to his release, our client instructs us that members of An Garda Síochána have entered his licensed premises with unprecedented regularity and have been continually present around his premises. The level of Garda activity in and around our client's premises has vastly increased in comparison to the time before his detention. Our client has pointed out to members of An Garda Síochána and to yourself that the continuing Garda presence in and around his premises was causing great difficulty to himself and his family and was having a serious and detrimental effect on his business. Given this extraordinary level of Garda activity and in particular the frequent entry of Gardaí onto the premises, it is clear that the Garda presence is not related to the carrying out of their functions in relation to the licensing acts and is therefore unlawful. Furthermore, the continued presence of Gardaí is calculated to and does create the impression in the minds of his family, patrons and townspeople, that our client is a bona fide suspect by An Garda Síochána of a serious criminal offence and the presence of Gardaí is proof of their continuing investigation into our client. In the circumstances the purpose of the Garda activity appears to be to

lower our client's reputation in the eyes of the community and to irrevocably damage his business interests and amounts to a concerted campaign of harassment and intimidation of our client.

Our client has so far tolerated as best he could the interference by the Gardaí with his business affairs. However, we are instructed that the damage to his business is substantial and may at this stage be irrevocable. We therefore call upon you to undertake to discontinue the activities complained of. We confirm that we are in possession of draft proceedings and in the absence of such an undertaking being given we are instructed to issue same. In the circumstances you might confirm that it is in order to serve any proceedings on the Chief State Solicitor.

Yours faithfully,

V.P. McMullin & Son

cc Commissioner An Garda Síochána.<sup>69</sup>

- 3.89.** Mr. White stated that that letter was never brought to his attention by anyone at management level in Letterkenny Garda Station. He said that no officer ever came to him and asked whether they were doing the right thing, nor did they suggest that the tactics implemented in Raphoe were not working, or that there should be a change in these tactics. Mr. White said that he made no apology for the course that he adopted. He said that if he met the same kind of resistance from a publican he would do the same again. He denied that his actions had any connection whatsoever to the ongoing investigation into the death of the Late Mr. Richard Barron.<sup>70</sup> That letter arrived at Letterkenny Garda Station just when Superintendent Fitzgerald was handing over as District Officer to Superintendent Lennon. It fell to be dealt with by Superintendent Lennon. The steps that he took are considered later in this chapter.
- 3.90.** The weekend of the 8th/9th of February 1997 was an eventful weekend. The Inspection Book records that Sergeant White and Garda Moran inspected Frankie's nightclub at 00.05 hours. They then proceeded to carry out inspections of the Suíle Tavern, the Town and Country Bar and the Tir Connell Bar. There is then an untimed entry for Frankie's nightclub together with entries suggesting that Duffy's and the Idle Hour were also inspected. A file was sent up to the superintendent arising out of the inspection carried out at the Suíle Tavern. It was also the evening on which Mr. Paul Quinn was detained for the purpose of a search pursuant to the misuse of drugs legislation. He was detained in the foyer of Frankie's nightclub and was brought to Raphoe Garda Station for the purpose of the search, which was carried out by Sergeant White and Garda Moran. This

<sup>69</sup> Tribunal Documents, pages 1,302-1,303.

<sup>70</sup> Transcript, Day 671, pages 142-143.



event is significant because Mr. Quinn has alleged that the drugs which were found in his jacket pocket were placed there by one or other of the two Gardaí who had searched him. This matter is dealt with in detail in Chapter 7 of this report.

- 3.91. On the evening of the 14th/15th of February 1997 Sergeant White and Garda Keaveney commenced their inspections of licensed premises at 00.05 hours. They inspected Frankie's nightclub at 00.15 hours. A file was forwarded to the superintendent in respect of the inspection carried out at 01.44 hours at the Idle Hour. It appears that on the following night, when Sergeant White inspected the McBrearty premises, due to an oversight no special exemption order had been obtained. However, it appears that Sergeant White did not press the matter and allowed them to continue serving until midnight. This is recorded in the Mitchell diary for the relevant night. In so doing, it has to be accepted that the sergeant was acting reasonably on the night, in question. The entry in the Mitchell diary for the following night the 16th/17th of February 1997, recorded that a bus which was bringing patrons to Frankie's nightclub from Strabane had been stopped near the Garda Station in Raphoe, whereupon the persons travelling in the bus had all been searched for drugs. The Gardaí accepted that this search took place, but said that it was part of a routine drugs operation that had been put in place for that weekend.

#### **Four Summonses**

- 3.92. Four summonses came to be issued in respect of events which occurred on the 23rd of February 1997. Arising out of events which occurred in the early hours of that morning, two public order summonses were issued against Frank McBrearty Senior, together with a liquor licensing summons. There was also a liquor licensing summons issued against the bar manager Mr. John Mitchell. Certain of the events of that night are hotly at issue between the parties. However, it is important to note that in respect of Mr. Frank McBrearty Senior's account, he did not remain in the witness box to afford counsel acting on behalf of Mr. White the opportunity to cross-examine him in relation to same. This has consequences in relation to the findings that I could make concerning that incident.
- 3.93. According to Sergeant White, he and Garda O'Dowd inspected Frankie's Nightclub at 00.01 hours, at which time there were 650 persons on the premises. Sergeant White said that he had a conversation with the bar manager, Mr. Mitchell, who informed him that the bars would not be reopened for the purpose of the sale of intoxicating liquor. The Gardaí left the premises at 00.06 hours. At 00.35 hours the two Gardaí again inspected the premises and found that there

was clear evidence of fresh drink having been served to the customers, as several persons had full pints of beer, lager and Guinness in their possession and were consuming same. The Gardaí inspected the first floor bar and found one of the bar staff actually handing a pint of Smithwicks onto the bar at 00.36 hours. A patron admitted that the pint was his and that it was part of a round of drinks that he had just ordered and had not yet paid for. When the Gardaí questioned the barman behind the bar, he denied that the drink had been served from his bar. According to Sergeant White's report, Mr. Mitchell was aggressive and unco-operative at that time.

**3.94.** Some hours later, at 03.05 hours, an incident occurred at the entrance to the car park beside the nightclub premises. According to Sergeant White's report, he and Garda O'Dowd were driving into the car park when Mr. McBrearty Senior deliberately drove his car out of the exit and stopped his car some very short distance in front of the patrol car. While revving the engine loudly he shouted at the two Gardaí to get out of his car park. Sergeant White got out of the car and attempted to speak to Mr. McBrearty Senior. However, Mr. McBrearty was in a rage and would not listen to what was being said. The two Gardaí withdrew their car from the entrance by reversing it back onto an area adjacent to the public street. When Garda O'Dowd had parked the car, Mr. McBrearty Senior approached the patrol car and again roared at the Gardaí to move the patrol car and stated that it was parked on his property.

**3.95.** According to Sergeant White, Mr. McBrearty Senior continued to roar at the Gardaí, during which time he verbally abused and threatened Sergeant White and Garda O'Dowd. Sergeant White stated that he advised him that he was committing offences under the Criminal Justice (Public Order) Act, 1994. He said that Mr. McBrearty Senior continued to threaten the Gardaí and only left the area when Sergeant White informed him that he would be arrested for breaches of that Act. Sergeant White submitted a report in which he recommended that Frank McBrearty Senior be prosecuted for breaches of the liquor licensing laws arising out of the inspection that was carried out at 00.35 hours and that Mr. Mitchell should be prosecuted for aiding and abetting the commission of that offence. He also recommended that Frank McBrearty Senior should be prosecuted for breaches of sections 5 and 6 of the Criminal Justice (Public Order) Act, 1994 in relation to the incident at the entrance to the car park and on the main street.<sup>71</sup> On the 18th of August 1997 Superintendent Kevin Lennon gave the following somewhat curious direction on the file:

Re: breaches of the Liquor Licensing Laws at Frankie's Nightclub, Meeting House Street, Raphoe, Co. Donegal and subsequent breaches of the

<sup>71</sup> Tribunal Documents, pages 492-494.

Criminal Justice (Public Order) Act 1994 at Meeting House Street, Raphoe.

I do not believe that you will be able to sustain a charge of selling during prohibited hours.

Nevertheless issue summons, witness evidence herein is hearsay and as you are aware of no evidential volume [sic] except for disclosure of facts.

Kevin Lennon, Superintendent.<sup>72</sup>

As already noted, the public order summonses and a summons alleging breaches of the liquor licensing laws were issued against Frank McBrearty Senior and a summons for aiding and abetting was issued against John Mitchell.<sup>73</sup>

- 3.96. Mr. John O'Dowd stated that he did not have any great recollection of the inspection which had been carried out that evening. However, he was happy that his statement, which was similar to the content of Sergeant White's report, was an accurate account of what had transpired that evening. In relation to the car park incident he did have a recollection of what occurred. He gave the following account of the incident:

*I remember this incident now. I was driving into the car park, I was with Sergeant White, I was driving the patrol car and just I suppose going in the gate Frankie pulls out his car from the alcove on the side and I stop and he just drives straight up to the car, revving it, revving his own car. And he was shouting and roaring, get out of me fucking car park and all this stuff. Roaring and shouting, roaring and shouting. So Sergeant White gets out to him and speaks to him, to calm down. He's roaring and shouting, roaring and shouting. Get out of me effing car park, get out of me effing car park. So I reversed out anyhow and I reversed out around the corner and parked where the public would have access there in front of the hairdressers, where the old bookies there, you know. Yes, before that he said get off me effing property and that so then I reversed back and all that. Sergeant White got out then and spoke with him and cautioned him under section 8 I think it was. So it was more effing and blinding. He said to Sergeant White then, he says you're nothing but fucking trouble here since you came. I think that's it, yeah. I'll have you out of here before too long. Sergeant White cautioned him that he would have to arrest him if he continued this carry on. So we drove the car down to the front, stopped it and he came over, I think he did come over*

<sup>72</sup> Tribunal Documents, page 491.

<sup>73</sup> Tribunal Documents, pages 501-504.

*shouting and get off me, this is my property or something like that. He went away shortly after that. He pulled out to let traffic in and I think that was the end of that.*<sup>74</sup>

- 3.97. Mr. McBrearty Senior gave a different account of the incident that occurred that night. In a statement, which he made for the benefit of his lawyers, and which was furnished to the Tribunal, he gave the following description of what occurred that evening:

One incident which highlighted this was on 23rd of February, 1997. On this night I decided to call up to the night club at the end of the night at around 2am. I checked the hall and spoke to John Mitchell and the head steward, Liam O'Donnell. John informed me that he had been told we would be prosecuted for selling drink after hours and that he was being prosecuted for after hours aiding and abetting. This had upset him as he knew the bars were closed. John also informed me of an incident with a lady who claimed she had been short changed. He had given her the money. Sgt. White and Garda O'Dowd had come into the premises with her. John Mitchell had no right to give her money until after the tills were done, but for such a small amount of money and to save a scene being caused, he had done the correct thing. John White had no right getting involved in this, it was part of the harassment.

Later when I got into my car to go home I was pulling out of the car park, there were 3 cars behind me. I was almost at the entrance to the hall when the patrol car came around the corner to the entrance to the car park. Sergeant White and Garda O'Dowd were in the car. They brought their car up close to mine and expected me to reverse back. I was unable to reverse as there were cars behind me. Sgt. White got out of his car and approached mine, I asked him to reverse back as with the cars behind me, I could not. They then left the car park and parked in front of my house at Meetinghouse Street, Raphoe. I got out of my car and told them they were still parked on my private property and it was their duty to reverse and let myself and members of the public out of the car park. I have since been summonsed for public order offences on this date.<sup>75</sup>

- 3.98. In his evidence, Mr. McBrearty Senior was adamant that the Garda version was incorrect. He denied that he had roared and shouted at the Gardaí. He stated that they abused him. He stated that at the time he was afraid to go into Raphoe due to the harassment. He said that he were merely trying to get on with his business:

*Any harassment or bawling and shouting that was done was done by the Guards. We were trying to get on with our business. There*

<sup>74</sup> Transcript, Day 664, pages 92-93.

<sup>75</sup> Tribunal Documents, page 3,330.

*were twenty or thirty or forty of them out on the street and there were four inside my premises and they were in and out of my car park steady, from it open until it closed. I had ... there was enough room, there was, you mentioned some sort of a thing there ... an alcove, where is the alcove, could he tell me, in my car park?*<sup>76</sup>

### **Conclusion on the Car Park Incident**

3.99. The Tribunal could not make any finding against Mr. White or Mr. O'Dowd in relation to this incident. This is due to the fact that while Mr. McBrearty Senior gave his account of the incident in his direct evidence, he did not make himself available for cross-examination in relation to this incident and there is no other witness who gave evidence on the matter. However, even if it could do so, the Tribunal does not feel that it would make any finding against the Gardaí on this occasion. There was clearly some unpleasant incident at the entrance to the car park premises that evening. It was not a serious incident. It was merely another occasion on which neither party was prepared to back down until Garda O'Dowd sensibly reversed his vehicle out of the entrance to the car park.

3.100. There was a further development later that night. At some time after the dance had ended, a Garda Dermot Ward, who had been attending at Frankie's nightclub in a social capacity, informed Sergeant White that the bars had reopened in the nightclub once the Gardaí had left the premises after both the first and second inspections of the premises. This now confirmed for Sergeant White what he already suspected through seeing fresh drink during his inspections and from the conversation that he had had with the female motorists the previous month. It was for this reason that Sergeant White adopted a change of tactic during the month of February 1997. He said that he had had to abandon the practice of long inspections or mounting a static presence within the premises, due to the fact that it took up too much of the available manpower. Instead, he had decided that there would be multiple short inspections in an attempt to detect breaches of the law by the licence holder.

### **The C.C.T.V. System**

3.101. Unknown to Sergeant White at that time, he was to be thwarted in his efforts due to the fact that Mr. McBrearty Senior had installed an early warning system on his premises. It is now admitted that approximately one month after the arrival of Sergeant White in Raphoe, Mr. McBrearty Senior engaged his electrician, Mr. Seán Crossan, to carry out an alteration to the existing C.C.T.V. system. That system had been in place for some time. It had cameras mounted at various

<sup>76</sup> Transcript, Day 622, page 28.

points outside the premises, which relayed images back to a number of screens located in the pay box area. Mr. Crossan was instructed to install a system whereby a button could be pressed in the pay box area which would cause lighting to flash in the bar area, thereby warning the bar staff of the imminent arrival of the Gardaí onto the premises. It was by means of the use of this system that Mr. McBrearty Senior and his bar staff were able to ensure that the shutters on the premises would be closed at the time that the Gardaí actually got to enter the bar portion of the premises.

3.102. I am satisfied that when the matter was first raised with Mr. McBrearty Senior in his evidence in chief, he attempted to bluff the Tribunal in an effort to avoid telling the truth. Each time counsel attempted to raise the matter with him, he would go off on a tangent talking at length about cameras outside the premises and the impossibility of having a camera functioning properly within the disco part of the premises itself.<sup>77</sup> When asked about flashing lights, he said that on one occasion in the District Court Sergeant White had said that on entering the premises he thought that John Mitchell's eyes were flashing when he came in. He said that this caused great hilarity during the hearings in the District Court. However, counsel for the Tribunal was not deterred by these answers. He persisted in asking Mr. McBrearty Senior whether the flashing of the lights had been used as a means of warning the bar staff of the imminent arrival of the Gardaí. Mr. McBrearty Senior remained evasive in his answers. The following extract demonstrates this evasiveness:

Q. *Was it possible for Mr. Crossan to communicate with the bar staff?*

A. *Not to my knowledge.*

Q. *You'd be the only one with knowledge, Mr. McBrearty?*

A. *You couldn't, you couldn't communicate with the bar staff because there was no speakers.*

Q. *Forget about speakers, through flashing light?*

A. *That's what Sergeant White said to John Mitchell one time he mentioned about flashing lights, he thought his eyes was flashing when he came in. Can you mind that Sergeant White at the District Court, about the flashy lights and everyone up-roared, laughed in the court about*

<sup>77</sup> Transcript, Day 622, page 130.

*you saying John Mitchell had some kind of lighting system in his head.*

Q. *Was the man behind the box able to activate a system of flashing lights visible to staff at the three bars on the premises?*

A. *Not to my knowledge. I have lights at the back of the bars, but the staff used to switch them on and off themselves.*

Q. *Was there a control panel in the pay box area?*

A. *Not to my knowledge. I mean what do you want me to say?*

Q. *No, no, if not to ... [interjection].*

A. *What sort of flashing lights are you chatting about? Are you chatting about disco lights or what are you chatting about?*

Q. *Mr. McBrearty, I think we know what we are talking about. Is there a system by which you could, if you wanted to, alert or warn it or use it as a warning device to somebody in the bars, in the three bars, to say there was somebody coming in the door?*

A. *The only thing we have is an electric switch if there was fire, for the staff. If there was a fire that people had to get out there was a flashing light. Do you know what I mean?*

Q. *Chairman: Who could flash them?*

A. *Well, it would be the ... it could be the pay box, the lights would be flashed.*

Q. *Chairman: Well then, the answer is yes; is it?*

A. *Yes, aye ... this was for to, if we had a fire or a bomb scare.*

Q. *Mr. McDermott: And could it be used for any other purpose?*

A. *Well it possibly could.*

Q. *Was it?*

A. *You have to ask the people that used it. I never used it.*<sup>78</sup>

3.103. Having given these answers, Mr. McBrearty Senior reflected on the matter overnight. On the following day, when he returned to the Tribunal, he informed it that he wished to rectify certain parts of his evidence from the previous day:

A. *I have something to rectify that I said yesterday. There were so many questions coming at me that I actually didn't explain to the Chairman the right thing. I was thinking about it last night. I had quite a restless night. There was a flasher in the function bar and the balcony bar. I have also checked it out and I was wrong in what I said, Chairman, I want to apologise for that.*

Q. *Chairman: What is the story now, Mr. McBrearty?*

A. *Well the story is around about a month after Sergeant White came there were two flashers put in, one in each bar. We got that big a torture. I don't know whether it was a month or six weeks after he arrived on the premises.*

Q. *Chairman: What was the purpose of those?*

A. *Well because he came in so boisterous. We never had them before till he came. You see, the thing that I don't think I explained to you, yourself, in nightclubs and in dancehalls in Ireland, bands don't come on stage until 12 o'clock. The music doesn't finish until 2 o'clock in the morning. That's nationwide that happens. It also happens in Northern Ireland as well, and in England and Scotland.*

Q. *Chairman: Could I ask you the direct question? Were they put there in order to provide some sort of a signal when the guards were coming?*

A. *Yes.*

<sup>78</sup> Transcript, Day 622, pages 132-133.



- Q. Chairman: *They were?*
- A. *Yes. I want to get that straight.*
- Q. Chairman: *And the man in the box then ... [interjection].*
- A. *He would press ... [interjection].*
- Q. Chairman: *How did they work then?*
- A. *They worked with a pressed button. I got mixed up yesterday when all the questions were thrown at me.*
- Q. Chairman: *Who was ... [interjection].*
- A. *Well it could have been several people.*
- Q. Chairman: *Why were they put there?*
- A. *Because of the carry on that was happening with Sergeant White. We never had that in all the years I was there, twenty years previous to that.*
- Q. Chairman: *All right can I ask you the direct question again?*
- A. *Yeah.*
- Q. Chairman: *Was this the position: that you would be serving drink, but you didn't want the guards to know so when you saw the guards approaching, they would flash the light and put the shutters up. Is that the story?*
- A. *No, put the shutters down.*
- Q. Chairman: *Put the shutters down, sorry. Is that it?*
- A. *That's it.*
- Q. Chairman: *So the guards wouldn't see the drink being served?*
- A. *That's right.<sup>79</sup>*

3.104. In the circumstances, I am satisfied that it was only somewhat reluctantly that Mr. McBrearty Senior came to tell the truth to the Tribunal about the C.C.T.V. system and its use in conjunction with the lighting system as an

<sup>79</sup> Transcript, Day 632, pages 3-5.

early warning system, to warn the bar staff of the imminent arrival of the Gardaí. While credit must be given for the fact that he did tell the truth to the Tribunal, one has to recognise that it was only after considerable pushing and prompting that this position was achieved. Unfortunately, it is indicative of a reluctance on the part of Mr. McBrearty Senior to give full co-operation to the Tribunal in its inquiry.

- 3.105. In the course of the hearings before the Tribunal, Mr. Mitchell also made significant concessions in relation to what was going on in the nightclub premises. Mr Mitchell very candidly accepted that prior to January 1997 they would keep the bars open on weekend nights, being Friday, Saturday and Sunday nights, until 01.30 hours approximately.<sup>80</sup> He stated that after January of 1997 they continued as they had done prior to that time. By use of the C.C.T.V. system they were able to ensure that the shutters were closed when the Gardaí arrived on the premises for their inspection. When the inspection was concluded, the shutters would re-open and they would continue to serve as had been done prior to that time.<sup>81</sup> He said that Mr. McBrearty Senior condoned this practice. When asked as to why he and Mr. McBrearty Senior elected not to obey the law, he said that this was due to the fact that none of the other pubs and nightclubs in Donegal were adhering to the liquor licensing laws.
- 3.106. Mr. McBrearty Senior did not agree with the evidence given by Mr. Mitchell. He stated that to the best of his recollection they did keep to the terms of the Special Exemption Order in respect of the Friday and Sunday nights. It was only in relation to the Saturday nights that they breached the terms of the order and continued serving into the Sunday morning. Mr. McBrearty Senior said that he went to see Superintendent Lennon and asked him about the matter. He alleged that Superintendent Lennon told him that he was “Alright for an hour”. Later in his evidence he stated that he thought that Superintendent Fitzgerald knew that he was opening late on a Saturday night and into the Sunday morning. In his evidence, Mr. Lennon denied that he had ever given any such permission to Frank McBrearty Senior.
- 3.107. The Tribunal accepts the evidence given by Mr. John Mitchell. He gave his evidence in a straightforward manner. The Tribunal is satisfied that he has told the truth in relation to the events which occurred at that time. Accordingly, the Tribunal finds that Frank McBrearty Senior and on his instructions the bar manager, Mr. Mitchell, kept the bar open in breach of the law until approximately 01.30 hours on each of the three weekend nights. I am further satisfied that at some time in February 1997, Mr. McBrearty Senior had alterations carried out to the C.C.T.V. system so that

<sup>80</sup> Transcript, Day 627, page 16.

<sup>81</sup> Transcript, Day 627, pages 22-23.

he would be in a position to alert the bar staff of the imminent arrival of the Gardaí. This was done so as to enable him to continue to flout the law as he wished. The Tribunal does not accept that Mr. McBrearty Senior was given any permission to keep his bar open late in breach of the law by either Superintendent Fitzgerald or Superintendent Lennon.

- 3.108. The last entry in the Inspection Book for the month records that on Friday the 28th of February 1997, Sergeants White and Hannigan, together with Garda Harkin, inspected Frankie's nightclub, at which stage the bar was closed. Mr. Mitchell recorded that he put it to Sergeant Hannigan that the Gardaí were "very sore on us". To which Sergeant Hannigan was supposed to have replied that they had already cleared out Duffy's pub in Drumoghal and they were trying to be fair to everyone but that it was not an easy task pleasing everyone, as it was a very thankless job. The Inspection Book for that evening confirms that seven other licensed premises were inspected apart from Frankie's nightclub and that a file was sent up to the superintendent in respect of one of the other premises inspected that evening.

### **The Superintendent's Direction**

- 3.109. In his diary for the period, Superintendent Kevin Lennon made the following entry for Friday the 21st of February 1997:

Sgt. Hennigan [sic] re: Zimmerman and Co. – McBreartys Raphoe. Told him not to stay in premises.<sup>82</sup>

Mr. Lennon explained that he had taken up the position of superintendent in Letterkenny on the 10th of February 1997. On his arrival in Letterkenny Garda Station he had been met with an amount of correspondence recording complaints on behalf of Frank McBrearty Senior. He recalled that there was the letter from V.P. McMullin and Son which had been sent on the 5th of February 1997. There was also an amount of correspondence from the private investigator who had been retained by Mr. Frank McBrearty Senior, Mr. William Flynn. He recalled that in some of this correspondence an allegation had been made that the Gardaí were staying on the nightclub premises for prolonged periods of time. Mr. Lennon stated that he sent out a number of questions to Sergeant Hannigan in Raphoe. When the responses were received back to these questions, he then telephoned Sergeant Hannigan and instructed him that the Gardaí were not to stay for prolonged periods on the McBrearty premises. He understood that the Gardaí had been staying on the premises for protracted periods and that this was objectionable to the licensee. He said that he was never in favour of Gardaí staying in nightclubs or licensed premises for prolonged periods. It was for this

<sup>82</sup> Tribunal Documents, page 3,022.

reason that he issued the direction to Sergeant Hannigan.<sup>83</sup> Mr. Lennon also stated that he had a recollection of Mr. Flynn complaining that the Gardaí were going into the premises three or four times a night. Mr. Lennon stated that he was not in favour of multiple visits either. He thought that these sentiments would be captured in the direction that he had given.

3.110. Sergeant Hannigan recalled that there had been an amount of correspondence received from Mr. Flynn at Raphoe Garda Station. Some of this came in by fax. He stated that he forwarded it to Superintendent Lennon. He thought that that correspondence concerned the fact that the Gardaí were staying on the premises for prolonged periods. When he checked the Inspection Book he saw that there had been three visits in excess of one hour by that time. He recalled that Superintendent Lennon said that there should not be visits of that duration.<sup>84</sup>

3.111. The Tribunal is satisfied that the direction which was given by Superintendent Lennon to Sergeant Hannigan was to the effect that when carrying out inspections of the McBrearty premises, Gardaí should not stay on the premises for a protracted period. This was the full extent of the direction given. The Tribunal does not accept the evidence given by Mr. Lennon to the effect that his direction also encompassed a direction against multiple visits of the premises in the one night. This evidence by Mr. Lennon is rejected. It is an example of where he has tried to distance himself from the events on the ground by reference to entries that he made at the time in his diary. The entry does not support the interpretation placed upon it by Mr. Lennon in his evidence.

3.112. The Tribunal is also satisfied that at the time the direction was given by Superintendent Lennon to Sergeant Hannigan, the tactic of leaving Gardaí on the premises for a prolonged period had in fact ceased. Mr. White has stated in evidence that at all times he kept Superintendent Lennon informed of what was going on in Raphoe. The Tribunal accepts his evidence. Indeed, the Tribunal notes that in Mr. Lennon's diary for the same date there is an entry recording that between 11.30 hours and 12.45 hours there was a meeting held with members of the Barron family in relation to the Barron investigation which was attended by the detective superintendent, the detective inspector and by Sergeant White. It is inconceivable that in these circumstances Superintendent Lennon would not have been informed by Sergeant White of the ongoing difficulties that he was having in enforcing the liquor licensing laws in respect of Frankie's nightclub. The Tribunal is satisfied that at that time Superintendent Lennon knew of the tactic of using multiple visits and approved of same.

<sup>83</sup> Transcript, Day 645, pages 170-171.

<sup>84</sup> Transcript, Day 632, pages 146-147.

- 3.113. The Tribunal is supported in this finding by virtue of the fact that the written report sent up by Sergeant White on the 23rd of February 1997 makes it clear, inter alia, that the Gardaí in Raphoe were carrying out multiple inspections of Frankie's nightclub during a single night. The report also informed the superintendent that the Gardaí knew, as a result of a conversation with Garda Ward, that the bars were being re-opened upon the departure of the Gardaí from the premises. The Tribunal is satisfied that Mr. Lennon did not object to the use of multiple inspections as a tactic designed to counteract this breach of the law by the publican.<sup>85</sup>

### **Conclusions on the initial Period**

- 3.114. The Tribunal is satisfied that Sergeant White was sent to Raphoe with a mandate, to curb public order problems in Raphoe with particular reference to the problems emanating from the premises owned by Mr. Frank McBrearty Senior. He was to achieve this goal by strict implementation of the liquor licensing laws.
- 3.115. Sergeant White set about his task with vigour and determination. However, he was met with an equally defiant obstacle in the form of Mr. McBrearty Senior. I am satisfied that Mr. McBrearty Senior decided that he would continue to operate illegal trading as he had done prior to 1997. To this end, he instructed his staff to keep the bars open beyond the legal period set out in their licence and in the special exemption orders. He also instructed the staff to re-open the bars as soon as the Gardaí had left the premises. In order to avoid detection in this regard he engaged Mr. Crossan to install a system whereby the lights could be flashed in the bar area as soon as the Gardaí were seen approaching the premises on the C.C.T.V. system. Sergeant White became aware that the bars were being re-opened as soon as the Gardaí left the premises. He was told this early on by a motorist who was stopped at a vehicle checkpoint. He also suspected this as a result of what he observed on carrying out subsequent inspections and seeing freshly poured alcohol in glasses on the tables and on the bar counters. This was subsequently confirmed to him when he met Garda Dermot Ward in the early hours of the 23rd of February 1997.
- 3.116. By that time relations between Sergeant White and Frank McBrearty Senior had deteriorated considerably, as is evidenced by the incident that occurred at the entrance to the car park earlier that morning. In an effort to implement the law, Sergeant White initially used the tactic of imposing a prolonged static Garda presence in the nightclub. However, this was discontinued for manpower reasons towards the beginning of February

<sup>85</sup> Tribunal Documents, page 4,723.

1997. Thereafter, Sergeant White utilised the tactic of multiple inspections in an attempt to detect ongoing breaches of the law. Sergeant White also began an offensive on another front by seeking to ensure that the conditions of the special exemption order were complied with, and in particular that meals were provided. Even in this area there was to be considerable conflict between the parties. The Tribunal accepts the evidence given by Mr O’Dowd that by that stage attitudes had hardened and one was not going to be “bested” by the other.

- 3.117. Mr. McBrearty has justified his actions on the basis that his premises alone of all the nightclubs in Donegal was singled out for this strict treatment by Gardaí. He argues that if he observed strictly the licensing laws, he would lose his trade to other discos. As this case was made at the very outset, and indeed contemporaneously with the events as they occurred and as members of Mr. McBrearty Senior’s extended family offered Gardaí factual evidence that they had purchased alcohol in other disco premises outside of the authorised hours, the Tribunal accepts that this was certainly one and probably the principal reason why Mr. McBrearty Senior down-faced the authority of the law. Mr. McBrearty Senior genuinely appeared to me to believe that he was justified in continuing to trade on this basis. I also believe that the forthright attitude adopted by Sergeant White in his efforts to enforce the law was an aggravating factor.

#### **Mr. O’Dowd Makes a Concession**

- 3.118. Garda John O’Dowd had accompanied Sergeant White on many of the inspections carried out by the sergeant during the eight-month period that he was stationed in Raphoe. In the course of his evidence to the Tribunal, he asked me if he could make a short statement setting out his position in relation to the inspections that had been carried out by Sergeant White and him of Frank McBrearty Senior’s nightclub premises. I allowed him to do this. In the course of his address he made significant concessions in relation to the level of policing that had been carried out in Raphoe at that time:

*I have been thinking about my evidence over the lunch, Sir, and I would like to clarify my position regarding the inspections. Number one,, we were in there too often. You asked me before lunch had I any criticism of Sergeant White, that’s a criticism in relation to that duty. Number two, the length of time we spent on the premises was excessive. Number three, I don’t believe the regime we enforced was necessary to enforce the liquor licensing laws properly. Number four, there was a focus on Frank*

*McBrearty's premises and it doesn't appear he was treated the same as other nightclubs in Donegal. Number five, there was a focus on the food requirement which I had not observed before and that might have been another way of putting pressure on Mr. McBrearty. I just hope that clarifies my position, Chairman.<sup>86</sup>*

3.119. Later in the course of his evidence, Mr. O'Dowd conceded that while he had not agreed with the long inspections that were carried out of the nightclub premises, he had never brought this to the attention of Sergeant White or any other superior officer.<sup>87</sup>

3.120. In relation to the multiple inspections, he stated that he did not agree with the amount of inspections that were being carried out, particularly when there was more than one inspection of a premises on the same night. He said that he had never done that before and he had not done it since Sergeant White left Raphoe. He did not think that it was necessarily wrong to carry out multiple inspections but he stated that it was a type of law enforcement that he would not be in favour of utilising in a rural area. He accepted that he never objected when Sergeant White told him to carry out multiple inspections of the nightclub premises. He also thought that Frank McBrearty Senior was largely to blame for the situation that escalated in the way that it did. He described that in the following way:

A. *Well my honest opinion was that any licensed premises that was approached and asked will you sort out your premises there for a while, we're under pressure here, there's a lot of fore [sic] around the place, they'd always comply. Now this man got oceans and oceans of chances, he was told at the very beginning that this district-wide policy was being enforced by the local sergeant and instead of complying for a while, he upped the ante. Off he goes to the High Court shortly after that, without making any effort to meet the Guards half way. I suppose I'd have to say it was a case of putting manners on him at that stage, you know, when you think about it. You know, he made no effort to put his house in order, we'll say. I honestly believe that what started out was only intended to last a short while, because, as I said yesterday, when a major incident occurs wherever, they'll stick in a blitz for a couple of weeks, six weeks and then the thing settles down you move onto something else, that type of thing.*

<sup>86</sup> Transcript, Day 665, pages 90-91.

<sup>87</sup> Transcript, Day 664, page 37.

*Q. Did putting manners on them extend back and have origin in the experience that the Gardaí had had with Mr. McBrearty and his family since October of 1996, through December?*

*A. It had nothing to do with it. It was strictly only ... we were only dealing with the licensing laws as I saw it, or as I saw it.<sup>88</sup>*

3.121. While the concessions made by Mr. O'Dowd in his evidence cannot be determinative of the issue as to whether there was harassment of the McBrearty premises during the relevant period, I accept that that evidence constitutes his honest appraisal of the actions, which he took as one of the Gardaí in the frontline in Raphoe during the relevant period.

3.122. We will see that in the next period, Mr McBrearty Senior brought the battle onto another plane when he instituted civil proceedings before the High Court seeking an injunction to restrain the Gardaí from carrying on what he saw as being a campaign of harassment against him.

<sup>88</sup> Transcript, Day 665, pages 83-84.



## CHAPTER 4 THE MIDDLE PERIOD

### **Introduction**

4.01. This chapter will focus on the three-month period of March, April and May of 1997. It is during this period that the conflict between Frank McBrearty Senior and the Gardaí was brought onto a new plane by virtue of the institution of civil proceedings against the State seeking an injunction to restrain the actions of the Gardaí in Raphoe. That action was countered vigorously by replying affidavits submitted on behalf of the Gardaí. During this period there was also a new tactic adopted by Sergeant White in relation to securing detections against the McBrearty licensed premises. To that end, he sent in an undercover operative with a camcorder to secure evidence that the bars were being re-opened upon the departure of the Gardaí from the premises. Also during this period there was a significant incident, which occurred in Frankie's nightclub involving Garda O'Dowd and Mr. Mark McConnell, which gave rise to the issuance of a public order summons against Mr. McConnell. Finally, it is during this period that the first of a number of hoax bomb calls were placed in relation to Frankie's nightclub.

### **Inspections during March 1997**

4.02. On the night of the 1st/2nd of March 1997 Sergeant White and Garda Moran inspected eight premises in Raphoe. Frankie's nightclub was inspected at 00.02 hours, at which time it was noted in the Inspection Book that both bars were closing. No food was being served. The kitchen was not open. Mr. Mitchell was advised to keep his bar closed. This he agreed to do. The Gardaí left the premises at 00.10 hours. They returned to the nightclub at 00.30 hours. It was recorded that while the shutters on the bar were closed, fresh drink had obviously been served. Garda Moran observed a man drinking a pint of lager. Garda Moran had spoken to the same man as he entered the premises at 00.12 hours. The Gardaí left the premises at 00.55 hours. On the following night, Sunday the 2nd of March 1997, Frankie's nightclub was again inspected by Sergeant White and Garda Moran at 23.58 hours. The Gardaí left the premises ten minutes later. Sergeant White returned at 01.02 hours, at which stage there were one hundred and fifty persons on the premises and the bar was just closing.

4.03. An inspection was also carried out on the following Friday, the 7th of March 1997. A file was sent to the superintendent in respect of one of the other pubs in Raphoe on that occasion. On the following night Sergeant White inspected Frankie's nightclub at 00.07 hours accompanied by Gardaí Harkin, Moran and

Rouse. There were six hundred and seventy one people on the premises. The Gardaí remained on the premises until 00.52 hours. They returned at 01.15 hours and left again at 01.21 hours. There were no meals on offer. It was noted in the Inspection Book that the Gardaí checked the kitchen and that the cooker had not been used that night. It was also noted that an unlicensed section was in full operation. Mr. Mitchell apparently refused to answer any questions in relation either to meals or the unlicensed section of the nightclub premises.<sup>89</sup>

**4.04.** In evidence, Mr. White stated that on inspecting the premises, he discovered that there was a new portion which had been recently built adjacent to the main bar and dance area. He said that it was added on to the premises and that it had tables and chairs in it for patrons to sit at. He said that he was not greatly concerned about this extension to the premises. However, when he mentioned it to Superintendent Lennon the superintendent became very interested. He told Sergeant White that the area should not be used at all, as it was effectively an unauthorised and unlicensed extension to the premises. Sergeant White stated that it was on the directions of Superintendent Lennon that he brought this matter to the attention of the management of the premises.<sup>90</sup> Mr. White stated that when he brought this to the attention of Mr. Mitchell he always said that this was a matter which was being looked after by Mr. McBrearty Senior.

**4.05.** In early March 1997, Sergeant White received further correspondence from Mr. William Flynn. Mr. Flynn sent the sergeant a copy of a letter that he had forwarded to the Garda Complaints Board. Mr. White stated that on the 9th of March 1997 he received a telephone call at his home from Mr. William Flynn. He found this annoying. Some days later, on the 15th of March 1997, Sergeant White returned home to find his wife in a distressed condition due to the fact that Mr. Flynn had telephoned the house looking for him a number of times that day. Mr. White stated that he received further telephone calls from Mr. Flynn that evening, at 19.00 hours and again at 22.05 hours. He said that in the course of these telephone calls, Mr. Flynn verbally abused him. Some days later he was doing the night shift. He terminated duty at 04.45 hours, arriving at his home shortly after 05.00 hours. As he unlocked the door of the house, he could hear the telephone ringing. When he answered it, a voice said to him, "You're home, you fucker, remember you can't mind your kids if you are in Raphoe". With that the caller hung up. Mr. White stated that he did not recognise the voice, however, he was satisfied that it was not the voice of Mr. William Flynn. He found that telephone call particularly upsetting and menacing in nature. He thought that he may have been followed to his home because he remembered looking out the window and he could see the tail lights of a car pulling off from Dreenan Bridge, which was approximately two hundred yards from his house. He suspected that

<sup>89</sup> Tribunal Documents, page 1,790.

<sup>90</sup> Transcript, Day 672, pages 106-109.

the person in the car had used a mobile phone to make the call. Mr. White said that he found the telephone call very frightening because it brought his family into the whole conflict. He was not happy about that.<sup>91</sup>

- 4.06. Notwithstanding any telephone calls received, Sergeant White continued to carry out the inspections of Frankie's nightclub. He inspected the premises on Friday, the 14th of March 1997 with Garda Keaveney. He inspected Frankie's nightclub with Garda O'Dowd at 00.01 hours on the 16th of March 1997. He noted that both bars were open and that the kitchen was locked. No meals were being served that night. Mr. Mitchell apparently refused to answer any questions that were put to him by Sergeant White. They left the premises at 00.10 hours. According to the Inspection Book Sergeant White and Garda O'Dowd returned to Frankie's nightclub at 00.28 hours, at which time they observed fresh pints of Guinness at the bar on the ground floor. There were six persons behind the bar. Sergeant White noted in the Inspection Book that he was later informed by a customer that he had been served a pint of Guinness at 00.25 hours from the space between the shutters on the ground floor bar. In the Inspection Book it was noted that having been seen by the doormen conversing with Sergeant White, the man was subsequently questioned by them and threatened with physical violence by one of the bouncers if he gave information to the Gardaí. Sergeant White and Garda O'Dowd returned to Frankie's nightclub at 01.52 hours, at which time they recorded seeing several bottles of beer on the ground floor bar, which had not been there at 00.47 hours. There were still five persons behind the counter.<sup>92</sup>

#### **Incident on the 16th/17th of March 1997**

- 4.07. On the 16th of March 1997, Róisín McConnell was enjoying one of her first nights out following her release from hospital. She had been detained in hospital until early February 1997. Thereafter she had recuperated at home. She and her husband Mark McConnell were socialising that night with their friends in Raphoe. They went to Frankie's nightclub. Mark McConnell stated that in the course of the evening he and his brother Michael McConnell left the group to go to the toilet. As he went down the corridor leading to the Gents' toilet, he saw Sergeant White and Garda Mulligan standing in the foyer. Mark McConnell said that Sergeant White lifted his hand and made a hitting gesture as if hitting someone with an imaginary implement. He took this as Sergeant White trying to imply that he had had something to do with the death of the Late Mr. Barron. Mr. McConnell stated that when Sergeant White moved away, he approached Garda Mulligan and asked him had he seen what Sergeant White had done. He said that Garda Mulligan merely replied that they should pay no attention to

<sup>91</sup> Transcript, Day 672, pages 113-116.

<sup>92</sup> Tribunal Documents, pages 1,792-1,793.

Sergeant White.<sup>93</sup> Michael McConnell gave evidence along the same lines in respect of this incident.<sup>94</sup>

4.08. Sergeant White denied that he had made any gesture of the sort described by Mr. McConnell. He stated that he remembered the evening well because he had been seriously assaulted earlier in the night by a man down in the Diamond. At approximately 21.00 hours someone had reported that there were youths causing damage to cars parked in the Diamond in Raphoe. On going to the scene, Sergeant White saw a number of youths and in trying to apprehend one he was seriously assaulted. He had to draw his baton in order to defend himself. He said that he had been injured and was badly cut in the course of effecting that arrest. For that reason, he was not wearing his tunic at the time of the inspection of Frankie's nightclub. He was adamant that he did not engage in any such gestures in the foyer of the nightclub that evening.<sup>95</sup> Mr. Pádraig Mulligan was adamant that no such gesture was made by Sergeant White on the night in question. He said that the incident as described by Mr. McConnell simply never happened. He denied that any complaint was made to him of any gestures by Sergeant White.<sup>96</sup>

4.09. This incident has to be seen in the context of an incident later that night, in respect of which Mr. McConnell also makes a complaint. He described the latter incident in the following way:

*I can remember John O'Dowd coming up first and shortly followed by John White. They stood near the bar area of the nightclub. We just continued on, standing about talking. Some of the girls, there was four or five girls in the group, some of the girls might have been up dancing to music. I was standing I think beside Michael, talking to him. The next thing I remember is the Guards coming through the middle of the group and Sergeant White pushing by me, the words he used was "get out of the fucking road". I said is there any law against dancing. He walked on and Garda O'Dowd was immediately behind him and pulled out his notebook and started writing in his notebook. As he was walking by me, I heard part of a caution. That's what really was the gist of the incident.<sup>97</sup>*

Mr. McConnell could not explain why it was Garda O'Dowd who took out his notebook, when the only interaction that he had had was with Sergeant White. He said simply that it was another case of harassment and that the Gardaí were always out to harass him whenever he was out in Raphoe.

<sup>93</sup> Transcript, Day 648, pages 6-7.

<sup>94</sup> Transcript, Day 657, pages 25-28.

<sup>95</sup> Transcript, Day 672, pages 126-128.

<sup>96</sup> Transcript, Day 637, pages 68-72.

<sup>97</sup> Transcript, Day 648, page 9.

- 4.10. Mrs. Róisín McConnell had a recollection of two distinct incidents. She recalled Sergeant White staring down at her group while they were sitting at their table. Sergeant White was standing at the end of the bar at that time. She could not say whether this occurred before or after they had been up dancing. She also had a recollection of Sergeant White and Garda O’Dowd barging through the area where their group was dancing. Sergeant White said something to her husband Mark and he said something back to the sergeant. She could not say what was said due to the loud music that was playing. She said that with that Garda O’Dowd took out his notebook. She could not remember Garda O’Dowd saying anything. As he was walking away he was writing in his notebook. This was her first night out socialising. She found it to be an upsetting encounter.<sup>98</sup> In cross-examination by counsel acting on behalf of Mr. White, Mrs. McConnell agreed that Sergeant White did not have any row or dispute with any of their group on the balcony that evening. She said that he just pushed through their group while he was moving through the balcony area. She agreed that he did not engage with anyone from their group. She thought that some comment was passed between her husband and Sergeant White, but she accepted that Sergeant White did not stop to engage in any conversation with her husband. She denied the version of events which was put forward by Garda John O’Dowd.
- 4.11. Accompanying Mrs. McConnell that evening was her cousin Mrs. Charlotte Peoples. She said that Sergeant White and Garda O’Dowd made two visits to the balcony area while she and her companions were there. On the first occasion they were dancing in a circle on the balcony when Sergeant White and Garda O’Dowd came up the stairs and walked through the circle of people. Sergeant White and Mark McConnell had words at that time. However, it does not appear to have been a serious encounter because the others continued dancing. The Gardaí then left the balcony area. Mrs. Peoples stated that when they were sitting at their table on the balcony the two Gardaí returned to the balcony area. Sergeant White was standing over at the bar. He kept looking over towards where they were sitting. There was no conversation between them and the Gardaí on this second occasion. She did recall Garda O’Dowd writing in his notebook at some stage. She did not accept that there was any interaction of the type described by Garda O’Dowd between Mark McConnell and him.<sup>99</sup>
- 4.12. Michael McConnell was also part of the group that evening. He recalled Sergeant White and Garda O’Dowd coming up to the balcony area and standing near the bar. When leaving the balcony, they pushed through the group that was dancing. Mark McConnell exchanged words with Sergeant White. However, Michael McConnell did not hear what passed between them. Garda O’Dowd was almost directly behind Sergeant White. He took out his notebook and started writing in

<sup>98</sup> Transcript, Day 648, pages 150-154.

<sup>99</sup> Transcript, Day 645, pages 141-147.

it. He said that Mark McConnell was not talking to Garda O'Dowd, he was chatting to Sergeant White. Michael McConnell denied that Mark McConnell had approached Garda O'Dowd and abused him or had any words with him at all. He said that Garda O'Dowd's account was a lying account.<sup>100</sup> Michael McConnell accepted that on Mark McConnell's account there was no reason for Garda O'Dowd to write in his notebook because according to Mark McConnell there was only a fleeting exchange of words with Sergeant White and no conversation whatsoever between him and Garda O'Dowd. Michael McConnell stated that in his opinion the Gardaí did not need a reason to write in the notebook, as at that time they were writing summonses for the fun of it as far as he could see. He thought that the Gardaí were out to get Mark McConnell and his wife.

- 4.13. Mr. White had no real recollection of the incident. He did recall being up on the balcony bar at some time and of moving from that area back towards the main portion of the dance floor. He said that he was slightly ahead of Garda John O'Dowd when they were leaving the balcony area. He did not witness any verbal or other altercation between Mr. McConnell and Garda O'Dowd on that occasion.
- 4.14. Mr. O'Dowd's version of events was quite different. He gave the following account in his evidence to the Tribunal:

*While I just remember the events around this public order incident. We were up at the top bar, now this would be the balcony bar, and we have our backs to the bar there and we are just looking forward and all of a sudden John White moves off. He moved down to, there was a crowd of them people there, some friends of Mark McConnell. Now I didn't feel like following through them, I don't know why but I didn't. All of a sudden then Mark McConnell comes over and he starts looking up into my face like this like you know and he had a half pint glass in his hand at the time, he was staring up into my face. Now I move back from him because I was afraid of this glass in his hand and he followed me when I moved back. He said to me your nothing but a big fucking bastard and we will get you done. I immediately whipped out my notebook and I cautioned him. I really thought that was threatening like, you know. So I started writing down in front of him and I hadn't it completed because some of his friends went to grab him, take him away. I think Michael his brother was one of them. So I moved off then and I was still writing. I wrote it down in the notebook as he was saying it in front of him. I hadn't it completed. I completed the rest of it when I got outside the dance hall.<sup>101</sup>*

<sup>100</sup> Transcript, Day 657, pages 28-30.

<sup>101</sup> Transcript, Day 664, pages 103-104.

It was put to Garda O'Dowd that the version of events as given by Mark McConnell, and to an extent supported by the others in the group, was radically different to his version. He was adamant that he was telling the truth in relation to what had occurred that night. He said that the entry which he had made in his notebook that night was a true account of what had happened. He produced the original of his notebook to the Tribunal.<sup>102</sup> He explained that due to the fraught nature of the encounter, he had only been able to take the first few lines of the note while he was in the nightclub. The remaining portion had been written outside the nightclub.

- 4.15. Later that same night, Garda O'Dowd drew up a report of the incident and submitted it to the sergeant in charge, Sergeant Hannigan. In that report Garda O'Dowd recommended that Mark McConnell should be prosecuted for a breach of section 6 of the Criminal Justice (Public Order) Act, 1994. Sergeant Hannigan on the basis of that report agreed with the recommendation. On the 27th of March 1997 Superintendent Kevin Lennon directed that proceedings should issue by way of a summons against Mr. Mark McConnell. That summons was issued on the 14th of April 1997.<sup>103</sup> It will be seen that the service of this summons on Mr. and Mrs. McConnell gave rise to another complaint by them in relation to the time and method by which the document was served on them.

### **Conclusion on the Incident**

- 4.16. It is clear from the evidence received that emotions were running high that night between Mr. and Mrs. McConnell and the two Gardaí who were present in the nightclub premises. It is now known that Sergeant White was responsible for much of the appalling treatment to which Mrs. McConnell was subjected during her detention at Letterkenny Garda Station on the 4th of December 1996. Garda John O'Dowd was the Garda who had arrested Mr. Mark McConnell on the same day. He had been arrested for a crime that he did not commit. During his detention he too had been subjected to abuse and improper behaviour at the hands of the Gardaí. It was little wonder that when he and his wife went out for their first night's entertainment following his wife's release from the psychiatric hospital, they should be upset by the presence of these two particular Gardaí in the very area where they were trying to enjoy themselves with their friends.
- 4.17. In relation to the 'gestures' allegation against Sergeant White, which apparently occurred at the entrance foyer, the Tribunal is not satisfied that there was a deliberate and conscious movement of the arms by Sergeant White in the way described by Mr. McConnell. The Tribunal is of the view

<sup>102</sup> Tribunal Documents, page 3,990.

<sup>103</sup> Tribunal Documents, pages 507-512.

that this was probably an occasion where any gesture by Sergeant White was liable to be misinterpreted by Mr. McConnell given his legitimately held feelings of antipathy towards the sergeant. The Tribunal accepts that Mr. McConnell may genuinely have thought that the gestures were done in a particular way on that occasion but this does not mean that as a matter of fact he was correct in reaching this interpretation of these events.

- 4.18. In relation to the latter allegation concerning the alleged barging through the group and the exchange of words followed by the writing by Garda O'Dowd in his notebook, the Tribunal prefers the evidence of Mr. O'Dowd in this regard. His version is supported by the contemporaneous note which was written in his notebook. He further followed up on this version of events by submitting a report and proceeding to issue a summons in the usual way following the direction from his superintendent. The Tribunal does not accept the allegation that the entire event was a concoction of lies on the part of Garda O'Dowd. It was rightly pointed out that if this was an invention and an attempt to 'frame' Mr. McConnell, then it would have been likely that Sergeant White would have been persuaded to have been part of the plot. As was pointed out, Sergeant White was not supportive of this allegation against Mark McConnell. He did not make any statement supporting the version given by Garda John O'Dowd. As to whether Mr. McConnell's actions on the night in question actually amounted to an assault on Garda O'Dowd is quite another question. It is likely that there was an exchange of words between them but the Tribunal is of the view that this was probably no more than a statement of the views which Mr. McConnell strongly held in relation to Garda O'Dowd at that time, rather than an assault on the Garda.

### **The Emergency Doors**

- 4.19. Later on that same evening, during an inspection of the nightclub at 01.23 hours, Sergeant White was apparently approached by a person who reported that the exit doors opposite the kitchen would not open. Sergeant White checked the doors and found that they could not open. He brought this to the attention of the manager, Mr. Mitchell. In the Inspection Book Sergeant White recorded that Mr. Mitchell attempted to open the door by kicking it. He had to do this seventeen times before the door eventually opened. He apparently offered the excuse that the timber must have swollen over a period of time. Sergeant White requested Mr. Mitchell to have the matter rectified before the next function in the



premises. He agreed to do that.<sup>104</sup> According to the Inspection Book, Sergeant White again checked the emergency exit doors when he inspected the premises at 01.15 hours on the following evening. Mr. Mitchell was only able to open the door after a number of attempts. He stated that he had not been able to get a workman to fix the door due to the public holiday. He agreed to attend to the matter.

4.20. Also in the course of that visit Sergeant White alleged that while he and Garda O'Dowd were in the dance hall portion of the premises, a group of people began dancing around them in an aggressive fashion. Sergeant White was elbowed and poked several times by the group. This incident was recorded in the Inspection Book. Mr. White made the case that while it could be argued that raising issues in relation to the non-functioning of the emergency doors could be seen as being petty or another avenue of causing difficulty to the McBreartys, that was not the case. He stated that once a complaint had been made to him by a patron concerning the emergency exits, he was obliged to look into it. He said that he had worked for some short period on the investigation into the tragic events at the Stardust nightclub premises in Dublin. In the course of that investigation he had learnt the importance of maintaining properly functioning emergency exit doors. He also pointed out that he thought that his approach to Mr. Mitchell was reasonable in that he did not take any action in the matter, other than to require Mr. Mitchell to carry out remedial works to the doors.

4.21. **The proper functioning of emergency exits is an important matter. In taking the actions that he did, Sergeant White was doing no more than what he was required to do in the circumstances as a member of An Garda Síochána. The Tribunal is of the opinion that by bringing the matter to the attention of the bar manager, Sergeant White dealt with the issue in a reasonable manner.**

4.22. During the remainder of the month of March 1997, Frankie's nightclub continued to receive regular visits. There were inspections of the kitchen facilities. The question of whether meals were provided on the premises remained an issue of some contention between Sergeant White and management at the premises. The Tribunal accepts Sergeant White's evidence that he was mocked by the crowd while carrying out his duties at the premises. This, in the Tribunal's view, was entirely unacceptable.

4.23. Towards the latter part of the month of March 1997, there were a number of incidents where Sergeant White alleged that he was assaulted while carrying out his duties in Frankie's nightclub. He alleged that he was assaulted on four separate occasions by a particular man while carrying out his inspections on the

<sup>104</sup> Tribunal Documents, pages 1,794-1,795.

23rd of March 1997. He alleged that when this man was arrested in relation to these assaults, he had approximately £300.00 in crisp new notes as well as £35.00 in crumpled notes on his person. According to Sergeant White, the man could not account for where he had obtained the fresh new notes. Sergeant White was of the view that given that the assailant was a single unemployed person at the time, he probably received the money from members of the McBrearty family. This was strongly denied by the man at the time. In a subsequent statement, Sergeant White stated that it was his belief that the man was paid by Mr. McBrearty to obstruct and assault him in carrying out his duty on the 23rd of March 1997.<sup>105</sup>

4.24. In the course of his evidence, Mr. McBrearty Senior vehemently denied that he had ever asked or encouraged the man to assault Sergeant White. He denied ever paying him money, or discharging any of his legal expenses arising out of the incident. The bar manager, Mr. John Mitchell, gave a diametrically different account to that given by Mr. White. He stated that the man had bumped into Sergeant White on one occasion only. He denied that there were any assaults on Sergeant White on that occasion. He strongly denied that anybody had put the man up to assaulting or interfering with Sergeant White in the performance of his duties in the nightclub.<sup>106</sup> The particular man is deceased and so the Tribunal did not have the benefit of his testimony. **The Tribunal is not prepared to make a finding either that the man did assault Sergeant White in the manner alleged, or that he was put up to doing so by any members of the McBrearty family. The incident is significant in that it shows the further deterioration of relations between Sergeant White and the management of the nightclub.**

4.25. The last inspections from March occurred on the 29th, 30th and 31st of March 1997. In the Inspection Book it is recorded that, while he was carrying out his inspections of the nightclub, Sergeant White was threatened and abused by Mr. Damien McDaid, an electrician who had done work for the McBreartys in the past. Mr. McDaid had also been arrested in connection with the Barron investigation on the 17th of December 1996. It was alleged that Mr. McDaid had threatened Sergeant White by making references to kneecapping and also to “looking down the barrels of a shotgun”. Sergeant White apparently brought this to the attention of Mr. Mitchell who replied that if Sergeant White was not there, this conduct would not be happening. According to the entry in the Inspection Book there was also considerable verbal abuse given to Sergeant White by Mr. McDaid.<sup>107</sup> While these events were recorded in the Inspection Book, they did not give rise to the issuance of any summonses. The Inspection Book also records that on Saturday the 30th of March 1997, there were four

<sup>105</sup> Tribunal Documents, page 1,738.

<sup>106</sup> Transcript, Day 627, pages 110-111.

<sup>107</sup> Tribunal Documents, pages 1,802-1,804.

separate inspections of Frankie's nightclub, but only one inspection of each of the other pubs in the town. It was also recorded that Sergeant White issued cautions to four of the other public house premises when he visited them.<sup>108</sup>

- 4.26. It is interesting to note that with the exception of the public order summonses which were issued by Garda John O'Dowd against Mr. Mark McConnell arising out of the incident on the 16th/17th of March 1997, there were no other summonses issued during the month of March 1997. Thus, in the first three months of 1997, Sergeant White had issued liquor licensing summonses against Frank McBrearty Senior arising out of the inspections carried out on the 12th of January 1997, the 19th of January 1997, and the 23rd of February 1997. On this latter date there were also two public order summonses issued against Frank McBrearty Senior and a summons for aiding and abetting in respect of the liquor licensing offences against Mr. Mitchell. Sergeant White had caused a total of six summonses to be issued in the first three months of 1997.

### **The High Court Application**

- 4.27. Frank McBrearty Senior was to bring the ongoing dispute that he had with the Gardai in Raphoe onto a new plane in April 1997. He did this by instituting civil proceedings before the High Court.
- 4.28. In the course of those proceedings he issued a Notice of Motion grounded on an affidavit seeking an injunction to prevent the Gardai from carrying out their duties in such a way as to harass him. That application was grounded on a substantial affidavit sworn by Mr. McBrearty Senior on the 3rd of April 1997. In the course of that affidavit he set out the background to his business in Raphoe. He said that he had at all times kept an orderly premises. He said that he also had a good working relationship with the Gardai. He went on to outline difficulties that he had encountered with the previous sergeant who had worked in Raphoe. He alleged that as a result of a complaint that he had lodged to the Garda authorities concerning this sergeant, the sergeant had taken early retirement from the Gardai. He alleged that this was done to preclude the necessity of any further investigation of his complaints against the sergeant. He alleged that Sergeant White was sent to Raphoe due to the fact that the Gardai had a desire to destroy his business and his good name in the locality. He alleged that that purpose was to be carried out by the unreasonable enforcement of the law against him by Sergeant White. He went on to state that his son had been arrested in connection with the death of the Late Mr. Richard Barron. He also stated that he had been arrested under section 30 of the Offences Against the State Act. He alleged that the Gardai had paid special attention to his premises in the course of that investigation as a means of causing him maximum embarrassment in the locality.

<sup>108</sup> Tribunal Documents, page 1,805.

- 4.29. Mr. McBrearty Senior went on in the affidavit to complain that since Christmas of 1996, the Gardaí were attending his premises three and four times a night and were also staying on the premises for upwards of 1.5 hours. He alleged that the Garda conduct both in relation to his premises and in relation to the investigation into the death of the Late Mr. Barron was based on the fact that he had complained about the former Garda sergeant who had been based in Raphoe. He also complained that the Gardaí had effectively manned a permanent vehicle checkpoint close to his premises. He alleged that the conduct on the part of the Gardaí was oppressive and totally unjustified. He stated that it was causing him enormous financial loss and was likely to put him out of business if it was not curtailed. He indicated that he had sent a solicitor's letter to the Gardaí on the 5th of February 1997, but had received no response thereto. He requested that the court should issue an order restraining the Gardaí from harassing his premises.<sup>109</sup>

### **The Garda Response**

- 4.30. The Gardaí intended to mount a vigorous response to the application for an injunction instituted by Frank McBrearty Senior. To that end, Superintendent Lennon and Sergeant White had a meeting on the 18th of April 1997. The purpose of that meeting was to draw up a background report which was to be furnished to the Chief Superintendent in Letterkenny and the Assistant Commissioner in B Branch at Garda Headquarters for the purpose of enabling a replying affidavit to be sworn on behalf of the Gardaí. The document drawn up by Superintendent Lennon constituted a point by point rebuttal of each of the matters raised in the grounding affidavit sworn by Mr. Frank McBrearty Senior.
- 4.31. The summary began with a general introduction, which outlined the circumstances surrounding the death of the Late Mr. Barron on the 14th of October 1996. It went on to take issue with the number of patrons that Mr. McBrearty stated attended his premises. It alleged that Mr. McBrearty Senior had overstated the numbers. It went on to deal with the question of his good working relationship with the Gardaí. It accepted that he had been helpful to the Gardaí in relation to the enforcement of the Misuse of Drugs Acts. It also accepted that he had provided low level intelligence to the Gardaí in previous times. However, it stated that subsequent to the death of the Late Mr. Barron his co-operation with the Gardaí had ceased. The report went on to outline a number of serious assaults that had occurred in and around the nightclub premises. The document went on to deny any desire on the part of the Gardaí to destroy Mr. McBrearty's business or his good name. It outlined how certain arrests had been made as part of the investigation into the suspicious death of the Late Mr. Barron. It noted that while in custody, Frank McBrearty Junior made a statement of admission in

<sup>109</sup> Tribunal Documents, pages 1,295-1,300.

writing outlining his involvement in the death of the Late Mr. Barron. That statement was set out in Appendix 4 to the document. The document went on to deny that the Gardaí were harassing the premises. It alleged that Mr. McBrearty Senior and his staff were less than co-operative in relation to the investigation of serious assaults that had occurred within the premises. It stated that Sergeant White's opinion was that the premises were run very poorly. The document went on to deal with a number of other matters, including the Paul Quinn incident on the 10th of February 1997.<sup>110</sup> It is not necessary to go into the content of this document in any further detail, save to note that the Gardaí were at that time prepared to mount a vigorous defence to the allegations made by Frank McBrearty Senior.

4.32. The holding of this meeting is also significant for two other reasons. Firstly, it was an occasion when Superintendent Lennon and Sergeant White sat down to deal on a meticulous and point by point basis with the allegations made by Frank McBrearty Senior. **In these circumstances, the Tribunal is entirely satisfied that Sergeant White briefed Superintendent Lennon fully on all aspects touching on the enforcement of the liquor licence and public order legislation in Raphoe. The Tribunal is quite satisfied that Superintendent Lennon was aware of what was going on on the ground and fully approved of the actions that had been taken by Sergeant White up to that time.** The second significant feature is that Sergeant White alleges that Superintendent Lennon instructed him not to issue any further summonses while the High Court application was pending. Sergeant White says that it was for this reason that a large block of summonses were subsequently applied for on the 12th of September 1997. The Tribunal is of the view that given Sergeant White's attention to detail, his explanation for the delay in issuing the remainder of the summonses, is likely to be correct. **The Tribunal accepts that the decision was made at that time not to issue any further summonses for fear that it would paint the Gardaí in a bad light and assist Mr. McBrearty in mounting his application for injunctive relief before the High Court.**

4.33. Superintendent Lennon's background report, which was drawn up on the 18th of April 1997 became the foundation of the replying affidavit, which was sworn by Chief Superintendent Denis Fitzpatrick on the 21st of April 1997. The affidavit was sworn by the chief superintendent apparently due to the fact that it obviated the need for two separate affidavits being sworn by each of the relevant district officers, being Superintendent Fitzgerald and Superintendent Lennon. The two statements made by Frank McBrearty Junior during the course of his detention at Letterkenny Garda Station on the 4th of December 1996 were exhibited as part of the replying affidavit sworn by Chief Superintendent Fitzpatrick. This was the

<sup>110</sup> Tribunal Documents, pages 4,379-4383.

first time that the two statements had been put into the public arena. In the affidavit, Frank McBrearty Junior and Mark McConnell were variously described as being the “chief suspects” and “major suspects” concerning the unlawful killing of the Late Richard Barron. It was also stated that a file was being prepared for the Director of Public Prosecutions concerning the Plaintiff’s intimidation of witnesses in the Barron investigation.

- 4.34. As part of the preparation of the background report, Sergeant White had drawn up a summary in relation to the inspections and detections, which had been made at the McBrearty premises in the period from the 25th of December 1996 to the 16th of March 1997. He forwarded the report together with copies of all the summonses that had been issued up to that time to Superintendent Lennon in Letterkenny.<sup>111</sup>

### **Withdrawal of the Injunction Proceedings**

- 4.35. On the 30th of May 1997, Frank McBrearty Senior filed a supplemental affidavit in response to the replying affidavit that had been filed by Chief Superintendent Fitzpatrick.<sup>112</sup> On the 23rd of June 1997, Sergeant John White swore a replying affidavit in his capacity as the First Named Defendant in the proceedings brought by Mr. Frank McBrearty Senior. This was a lengthy affidavit running to some twenty-five paragraphs. In essence, it outlined how he came to be transferred to Raphoe: it gave an outline of his reception by the other publicans in the town and went on to detail how he had had difficulty in all his dealings with Frank McBrearty Senior and the management and staff at his premises. It denied that there was any unfair treatment of Mr. McBrearty Senior. It stated that the laws were applied fairly and even-handedly to all publicans and all businesses in the Raphoe area, including Mr. McBrearty’s business. It alleged that the complaints made by Mr. McBrearty Senior were wholly unjustified. It went on to state that his actions in Raphoe were totally unconnected to the investigation into the death of the Late Mr. Barron. He stated that on a number of occasions he had had to tell Mr. McBrearty Senior and others that he was not prepared to discuss the ongoing investigation. He defended the use of vehicle checkpoints in the town. The affidavit alleged that Mr. McBrearty Senior was using a C.C.T.V. system to defeat the lawful aims of the Gardaí. It also alleged that there was an unlicensed extension to the premises. The affidavit also gave an account of the incident involving Mr. Edmond Moss and detailed other incidents involving patrons at the premises. It stated that Sergeant White had been assaulted on occasions at the premises and on one occasion he believed that the assailant had been put up to doing this by Mr. McBrearty Senior. Attached to the affidavit were a number of exhibits including copies of letters and newspaper articles relevant to the matters at issue.<sup>113</sup>

<sup>111</sup> Tribunal Documents, pages 4,721-4,722.

<sup>112</sup> Tribunal Documents, page 1,304.

<sup>113</sup> Tribunal Documents, pages 1,669-1,684.

- 4.36. Chief Superintendent Fitzpatrick, Superintendent Lennon and Sergeant White attended at the Four Courts in Dublin on the 14th of July 1997. Mr. McBrearty Senior's motion seeking an injunction against the Gardaí was due for hearing before the High Court that morning. In the events that transpired the application was not proceeded with before the court. Mr. Fitzpatrick, Mr. Lennon and Mr. White all said that it was their understanding that the application was simply withdrawn. They strenuously denied that there was any agreement whatsoever whereby the Gardaí would ease off in their attention to the McBrearty premises or otherwise pull back from the rigorous enforcement of the liquor licensing law that had existed prior to that time, in return for the withdrawal of the injunction.
- 4.37. Mr. Kenneth Smyth was the solicitor who had acted for Frank McBrearty Senior in that litigation. He admitted that his recollection of that day was somewhat hazy. Due to other business, he had not been able to be present in the High Court for the hearing of the motion. He had some recollection that the junior counsel then acting for the Plaintiff, phoned him at some stage to inform him that an agreement had been reached whereby the application would be withdrawn. He thought that the motion was struck out with liberty to re-enter. As far as he could recall, it was a term of the agreement that the Garda checkpoints and harassment of the McBrearty premises would cease. However, he could not say whether that agreement had been reached directly between Mr. McBrearty Senior and senior Gardaí or between counsel acting for the respective parties.<sup>114</sup>
- 4.38. In an affidavit sworn by Mr. McBrearty Senior on the 5th of November 2001 in the course of separate proceedings, he alleged that the injunction proceedings had been compromised in July 1997, on the basis that roadblocks outside his premises, which had become a virtually permanent feature, would be removed.<sup>115</sup> In a long statement which he had drawn up for the use of his solicitor, he had stated that by the end of July 1997, he had heard through the grapevine that Sergeant White was being transferred to Letterkenny and that things would ease off a bit. His solicitors had been in contact with Superintendent Lennon from Letterkenny and Chief Superintendent Noel O'Sullivan from Garda Headquarters, Phoenix Park. They reached an understanding that the High Court action would be withdrawn with liberty to re-enter and that the continuous Garda harassment would cease. He stated that this technical retreat was made on his behalf by his solicitors and William Flynn, the Private Investigator.<sup>116</sup> In his evidence, Mr. McBrearty Senior was very unclear as to the basis on which his injunction application had been withdrawn.<sup>117</sup>
- 4.39. Ms. Suzanne O'Kennedy was the solicitor employed in the office of the Chief

<sup>114</sup> Transcript, Day 625, pages 22-24.

<sup>115</sup> Tribunal Documents, page 1,453.

<sup>116</sup> Tribunal Documents, page 3,336.

<sup>117</sup> Transcript, Day 622, pages 111-114.

State Solicitor who was dealing with this application to the High Court. Her memory was that on the morning on which the application was due before the court, they attended at the Four Courts and were advised that the injunction application was to be withdrawn and that it would be struck out. The only question between the parties was in relation to costs. She said that there were no terms to the withdrawal of this application. There was no agreement that the Gardaí would do anything or refrain from doing anything in return for the withdrawal of the application. She said that if there had been any such proposition in those terms put to her, she would have had to return to both the Attorney General's Office and the Department of Justice to seek instructions before agreeing to any such terms. She was adamant that there was no agreement accompanying the withdrawal of the application on behalf of the Plaintiff. She said that her attendance note on the day in question did refer to "settlement terms" but that that only related to the question of costs: it had been agreed that they would be reserved to the trial of the action.<sup>118</sup> Subsequently, by letter dated the 23rd of July 1997, she wrote to Ms. Maeve Hogan in the Department of Justice informing her, what had happened in the court. She stated that the court was advised that the Plaintiff was not proceeding with the motion and that it should be struck out with costs reserved. There was no other mention of settlement terms in that letter.<sup>119</sup>

4.40. There is considerable conflict here between the various witnesses. On the one hand Ms. O'Kennedy, supported by Mr. Fitzpatrick, Mr. Lennon and Mr. White was adamant that there was no agreement leading to the withdrawal of the injunction. On the other hand, Mr. Smyth had a vague recollection of some agreement being formed although he could not say between whom such agreement had been finalised. Mr. McBrearty Senior had very little recollection of the circumstances leading to the withdrawal of the injunction, notwithstanding the averments made by him in his subsequent affidavit and in his subsequent statement. In the circumstances the Tribunal is not disposed to making a finding that there was any definite agreement leading to the withdrawal of the injunction application. The events which occurred immediately after that date do not indicate that there was any such agreement entered into on the part of the Gardaí. It will be seen that on the 20th of July 1997, a total of eight separate summonses were issued in respect of one evening. While it does seem that some form of agreement or *modus vivendi* was reached towards the end of the month, the Tribunal is of the view that that was probably brought about by the somewhat dramatic events of the 20th of July 1997 rather than having a basis in any agreement prior to the 14th of July 1997.

<sup>118</sup> Transcript, Day 677, pages 68-72.

<sup>119</sup> Tribunal Documents, page 5,551.



### **Events in April 1997**

- 4.41. The first two weeks in April 1997 were a somewhat calm period. During that time Frankie's nightclub only received one visit on each of the weekend nights. From a perusal of both the Inspection Book and the Mitchell Diary, it does not appear that any of these inspections gave rise to any particular difficulty. This period coincides with a time when Sergeant White was out of the locality investigating crime in another area of the county. The Tribunal is of the view that the station party took the opportunity presented by the absence of Sergeant White, to ease back on the rigorous enforcement of the liquor licensing law that had been in place up to that time.
- 4.42. Sergeant White returned to duty on the weekend of the 12/13th of April 1997. On that night he and Garda O'Dowd inspected Frankie's nightclub on three occasions: at 00.06 hours, at 00.52 hours and at 01.16 hours. On the following night he also inspected Mr. McBrearty's premises along with Garda O'Dowd at 01.50 hours. A file was sent to the superintendent arising out of this inspection.<sup>120</sup> In these circumstances, the Tribunal cannot but come to the conclusion that within the Raphoe station party, it was Sergeant White who was the driving force behind the rigorous enforcement of the liquor licensing laws. It was Sergeant White who had caused two liquor licensing summonses to issue as a result of the inspection carried out on the early hours of the 14th of April 1997.<sup>121</sup>

### **Undercover Operations**

- 4.43. Over three successive Saturday nights commencing on the 20th of April 1997, Sergeant White put in place an undercover operation at Frankie's nightclub. To that end, a Sergeant Noeleen Griffin had been sent into Frankie's nightclub under the guise of being a patron on the 20th of April 1997, the 27th of April 1997, and the 4th of May 1997. She had been provided with a camcorder by Sergeant White so that she could record what was happening both before and after the Gardaí had inspected the premises. On each occasion she witnessed the serving of alcohol after hours. The lights in the bar were flashed prior to the arrival of the Gardaí. The shutters were closed once the lights were flashed. As soon as the Gardaí had left the premises the shutters were opened and the bar staff recommenced serving alcoholic drink to the patrons. She made detailed statements in relation to each of the three occasions on which she had visited the premises. She gave evidence as to what she had seen at the time of the prosecutions in the District Court. She also gave evidence before the Tribunal. The evidence that she gave to the Tribunal was not challenged. I am entirely satisfied that Sergeant Griffin has given a truthful account of what she saw and heard on

<sup>120</sup> Tribunal Documents, pages 1,813-1,815.

<sup>121</sup> Tribunal Documents, page 522.

the three occasions that she was present in the nightclub. Liquor licensing summonses were issued against Frank McBrearty Senior and Mr. Mitchell arising out of the events on the 20th of April 1997 and the 27th of April 1997. For some unknown reason no summons issued in respect of the night of the 4th of May 1997. Sergeant Griffin could give no explanation for this. The only thing she could say was that on that occasion due to a very large crowd in the premises she did not get a very good picture with the camcorder.

- 4.44. The Tribunal is satisfied that given the persistent breach of the law engaged in by the owner and management at the nightclub premises, it was reasonable for Sergeant White to send Sergeant Griffin onto the premises undercover. This was a sensible and reasonable way to deal with the problem with which he was presented.
- 4.45. Mr. Lennon in his evidence to the Tribunal put forward the proposition, firstly, that he did not know that Sergeant Griffin had been sent onto the premises until he was presented with the files at the time of the District Court prosecutions. Secondly, he maintained that he did not approve of the use of undercover agents in this way.
- 4.46. The Tribunal does not accept this evidence. It is noted that on the 28th of April 1997, Sergeant White forwarded a report to Superintendent Lennon in relation to the operation that had been mounted at Frankie's nightclub on the 20th of April 1997. That report clearly informed the superintendent that the Gardaí had made multiple inspections of the premises, but had been unable to detect breaches due to the fact that the shutters were closed immediately prior to the arrival of the Gardaí. It also informed the superintendent that this practice, together with the serving of alcohol after hours, was detected due to the use of an undercover agent. Accompanying the report were statements of evidence furnished by Sergeants White and Griffin and Garda O'Dowd. A copy of the camcorder tape was also furnished.<sup>122</sup>
- 4.47. In the circumstances, the Tribunal is satisfied that Superintendent Lennon was informed of the use of the undercover agent on the night of the 20th of April 1997. He did not object to the use of this tactic as a means of securing detections against the nightclub owner. Mr. Lennon stated that prior to that time he had already refused the use of Garda John Dooley or Garda Dermot Ward as undercover agents. The Tribunal is satisfied that the reasons why Superintendent Lennon was against the use of these persons as undercover agents were operational, rather than any objection that he had at that time to the mounting of the undercover operation itself.

<sup>122</sup> Tribunal Documents, pages 4,718-4,720.

### **Late Service of Summons**

**4.48.** The summons which arose out of the incident involving Mark McConnell and Garda John O’Dowd on the night of the 16th/17th of March 1997 came to be served on Mr. McConnell at his home on the night of the 15th of April 1997. Mr. McConnell made a complaint in relation to the service of this summons. Firstly, he stated that it was served very late at night. He stated that it was served on him at his house by Sergeant White at 23.45 hours. He also complained about comments that were allegedly made by Sergeant White at the time that he was serving the summons. According to Mr. McConnell he asked Sergeant White whether he realised that his wife had been in hospital and that Sergeant White was one of the reasons why that was so. According to Mr. McConnell, Sergeant White replied to the effect that his wife was in hospital for one reason and one reason only and that was guilt over the murder of Mr. Richard Barron. The conversation then developed into a type of argument. Mr. McConnell said that he explained that he had no involvement in the death of the Late Mr. Barron, to which Sergeant White replied, “Yes you did and I’ll tell you what, if you prove me wrong I’ll shake your hand, but I don’t think that I will be shaking your hand.” After some further comments, Sergeant White then proceeded back towards the car. Mr. McConnell stated that Garda O’Dowd was driving the car and he asked Mark McConnell whether he remembered him and said, “Remember, I’m the man that arrested you”. He said the Gardaí were treating this as somewhat of a joke and that they left the property laughing loudly. Mr. McConnell said that by that time his wife was standing in the hall with their young child. She was crying. She was absolutely terrified of Sergeant White. As a result of that incident, they did not spend the night in their house but went to stay with Mark McConnell’s mother.

**4.49.** While they were making their way over to her house, it appears that Mark McConnell spotted Garda John O’Dowd on the forecourt of Raphoe Garda Station. He pulled over and there was a heated exchange of words at that time. It appears that Mr. Frank McBrearty Senior came on the scene and brought Mark McConnell away. Mrs. Róisín McConnell gave an account of this incident in largely similar terms to that given by her husband.<sup>123</sup> She stated that they had retired for the night and that there were no lights on in the house, except possibly for the bedroom light. She was sure that this event occurred at approximately 23.45 hours. She said that she was standing on the landing when her husband had the conversation with Sergeant White at the doorstep. She heard the same comments as those recounted by Mark McConnell. She confirmed that she was very upset by the incident and was not prepared to stay in the house that night. She also confirmed that there was a further verbal altercation between her

<sup>123</sup> Transcript, Day 648, pages 158-162.

husband and Garda John O’Dowd on the forecourt of Raphoe Garda Station while they were on their way to her mother-in-law’s house.

- 4.50. Mr. White and Mr. O’Dowd both agreed that the summons had been served on Mark McConnell that night. However, they strongly disagreed that it had occurred at the time alleged by Mr. McConnell. They stated that it had occurred one hour earlier at approximately 22.45 hours. In support of this contention they pointed to the fact that at the time of the latter incident, on the forecourt of Raphoe Garda Station, Garda O’Dowd had noted the time of its occurrence in his notebook as 23.35 hours. Given that the Gardaí, having served the summons had returned to the station and tidied up some paperwork that was remaining, and that Sergeant White had then proceeded off duty, they argued that if the time in Garda O’Dowd’s notebook was accurate, this meant that the time at which the summons was served must have been at least thirty or forty-five minutes earlier, and it was on that account that they put the time at 22.45 hours.
- 4.51. Mr. White stated that on approaching the house, he was satisfied that Mark McConnell was present due to the fact that his car was parked in the driveway. He was further satisfied that the occupants of the house had not retired for the night. This was due to the fact that the lights were on and he could hear the noise of the television playing. In addition, he stated that Mark McConnell was a member of a band and as such he was somewhat of a ‘night owl’. He stated that it would be much more likely that Mr. McConnell would be up and about late at night, rather than early in the morning.
- 4.52. As to the conversation that he had at the door with Mr. McConnell, Mr. White said that he had no recollection of being told by Mr. McConnell that he was the reason why his wife had been detained in hospital, to which he was supposed to have replied that she was in hospital for one reason and one reason only and that was guilt over the murder of the Late Mr. Barron. When asked as to whether he might have made that comment, he replied:

*At this stage, Chairman, I just don’t know. It could have been said, I don’t know. I’m totally at sea with it, I can’t remember the incident other than the general going to the door. I don’t remember, I don’t remember hassle or confrontation and I think I would remember it if it did happen, if there was confrontation and that’s really as far as I can put it without making anything up or saying anything that I would like you to hear.<sup>124</sup>*

Mr. White said that he did not recall saying to Mark McConnell that if he could prove that he had nothing to do with the death of the Late Mr. Barron, then he

<sup>124</sup> Transcript, Day 672, page 157.

would shake his hand. However, he conceded that it was possibly something that he could have said. He said that if Mr. McConnell had made that comment to him he would probably have replied in something like those terms.<sup>125</sup> Mr. White denied that he ended the conversation when Mark McConnell put it to him that it would be better if he stopped hassling people in Raphoe and headed away instead to Letterkenny, by replying, “Tell me this, when was the last time there was a murder in Letterkenny?” Mr. White had no recollection of Garda O’Dowd making any comment whatsoever to Mr. McConnell. He said that he did not leave the property laughing; he knew that if he had done so, there would be a complaint made to the Garda authorities on the following day.

- 4.53. Mr. O’Dowd recalled that when Sergeant White went up to the front door, somebody peeped out of the window and then Mark McConnell opened the door. There was a brief conversation between the two of them. Nothing unusual happened. Sergeant White then returned to the car and they drove off the property.<sup>126</sup> He did not hear any of the conversation that passed between Sergeant White and Mr. McConnell. He stated that he did not get out of the car at any stage. He denied making any comment whatsoever to Mr. McConnell during the time that he was on the property. Mr. O’Dowd was adamant that the summons was served at approximately 22.45 hours. He accepted that looking back on it now, that might have been a bit late for serving a summons. However, he had seen other summonses served up to the same time at night. He was not able to recollect as to whether or not there were any lights on in the house, or as to whether the television was playing at the time that they arrived on the property. He stated that there had been a subsequent exchange of words between him and Mark McConnell on the forecourt of Raphoe Garda Station. This had occurred at 23.35 hours. He had noted it in his notebook at the time.<sup>127</sup>

### **Conclusions on the Summons Issue**

- 4.54. There are two issues concerning the service of the summons on Mr. Mark McConnell on this occasion. Firstly, in relation to the time at which the summons was actually served, the Tribunal prefers the evidence of Mr. White and Mr. O’Dowd on this aspect. Given the timing of the subsequent entry in Mr. O’Dowd’s notebook, the Tribunal is of the opinion that the summons was in fact served on Mr. McConnell at approximately 22.45 hours. However, that does not end the matter. The Tribunal is satisfied that it was too late to serve a summons on Mr. McConnell. It is accepted that on occasion various types of summonses, such as witness summonses, may be served up to that time at night. However, given the nature of the summons and given the circumstances that existed in Raphoe, in particular

<sup>125</sup> Transcript Day 672, pages 157-158.

<sup>126</sup> Transcript, Day 664, pages 123-124

<sup>127</sup> Tribunal Documents, page 4,005.

having regard to the interaction which Sergeant White and Garda O'Dowd had had with the McConnell family, it was inappropriate for them to serve the summons at that hour at night.

- 4.55. As to the comments which passed between Sergeant White and Mr. McConnell at the front door of his house, the Tribunal accepts that the conversation along the lines outlined by Mr. McConnell did take place. While these comments were undoubtedly hurtful to Mr. McConnell, given the true state of facts at that time, they cannot be seen as being part of any campaign of harassment against him or his wife. The Tribunal is satisfied that having regard to what Mrs. McConnell had gone through at the hands of Sergeant White in December 1996, this event caused her further upset and distress. However, the Tribunal is not prepared to make a finding that the conduct of the Gardaí was intended to have this effect on her. In the course of his evidence to the Tribunal, Mr. White gave an interesting, though somewhat chilling, answer to the question of whether he had had any vendetta towards Mrs. McConnell in 1997. He denied that that was so:

*...I suppose the impression is being given that I had some kind of vendetta against Róisín McConnell and that isn't the case. What happened in Letterkenny Garda Station was because of the job I had in hand at the time we were carrying out a murder investigation and I don't want to go through it again, but I did that from a professional point of view, that was it, in relation to questioning Róisín McConnell and showing her photographs, etc. That was done from a professional point of view. It wasn't done because I didn't like the woman. Simple as that. I certainly wouldn't go to her house to cause her further aggravation intentionally. ...<sup>128</sup>*

While the Tribunal was shocked at the content of that answer, it accepts it as a truthful account of Sergeant White's attitude towards Mrs. McConnell at that time.

### **Events in May 1997**

- 4.56. The first of a number of hoax bomb calls was made in respect of a device allegedly planted at Frankie's Nightclub on the 4th of May 1997. On that occasion, management at the premises, acting on the directions of Mr. McBrearty Senior, refused to clear the premises. The whole issue of bomb scares is dealt with under a separate heading in the chapter dealing with subsequent events.
- 4.57. On that same evening, Sergeant White had mounted an undercover operation by

<sup>128</sup> Transcript, Day 672, page 154.

placing Sergeant Noeleen Griffin onto the premises with a camcorder. She made a statement on the 5th of May 1997 showing clearly that the bars had been reopened after the Gardaí had completed their inspection of the premises. She operated the video camcorder that she had with her on that occasion. However due to the large number of patrons on the premises the picture quality was apparently very poor. Sergeant White also made a statement in relation to his inspections that evening. He said that during the course of the inspection at 01.46 hours he spoke to a customer whom he had previously stopped at a vehicle checkpoint at 00.06 hours. At the time that Sergeant White spoke to him, he had a full pint of lager in his hand. The customer stated that he had purchased it at the ground floor bar at approximately 01.15 hours. When this was put to the bar manager, Mr. Mitchell, he denied that any alcohol had been served on the premises since midnight. Sergeant White gave the following account of what transpired in his report on the matter:

I informed him that I will be recommending that both himself and Mr. McBrearty Senior be prosecuted for breaches of the liquor licensing laws on that morning. He replied, "What fucking proof have you, come back when you have proof. You did not see any drink being served". Frank McBrearty Junior was standing beside us at this stage. He was very aggressive. He spat at me narrowly missing my shoes, saying, "Don't sign anything boys, he has no proof. He can go fuck himself". This scene was witnessed by at least three members of the public who were standing outside the club. I informed Mr. McBrearty Junior that he was committing an offence under Section 6 of the Criminal Justice (Public Order) Act 1994 and that I was requesting him under Section 8 of that Act to desist from acting in this insulting and threatening manner. Mr. Mitchell then put his hand on Mr. McBrearty's arm and requested that he go inside. He did so grudgingly but came back outside seconds later and again spat onto my shoes. I cautioned him that I would not accept this type of behaviour and that I would be recommending that he be prosecuted under the Public Order Act for his actions. He pointed his finger at me in a very aggressive gesture and replied, "You can go fuck yourself sergeant, you're pushing it". Mr. Mitchell and the doorman pulled Mr. McBrearty back into the premises. Garda Moran and myself then left the area and I returned to Raphoe Garda Station where I met Sergeant Griffin who handed me a camcorder tape. Both Sergeant Griffin and myself signed this tape and dated it. I have read this statement over and it is correct.<sup>129</sup>

According to the Inspection Book, a file was sent to the superintendent in respect of the inspections carried out that evening. However, it does not appear that any summonses issued in respect of that particular night.

<sup>129</sup> Tribunal Documents, page 1,905.

- 4.58. On the following weekend, on the night of 9th/10th of May 1997, the Gardaí inspected a large number of premises in Raphoe, commencing with the Tir Connell Bar after 00.32 hours. The seventh premises to be visited by Sergeant White and Garda O'Dowd was Mr. McBrearty Senior's pub, the Tudor Lounge. According to the Inspection Book, Sergeant White requested Mr. Mitchell to open the premises for the purpose of an inspection at 00.48 hours. Mr. Mitchell refused to open up the premises. Subsequently, the son of the licensee, Mr. Andrew McBrearty, opened the premises. The Gardaí inspected same and found that it was empty. At 01.16 hours on the same night, the same two Gardaí inspected Frankie's nightclub.

### **Incident at a Vehicle Checkpoint**

- 4.59. On the following night, the 10th/11th of May 1997, Sergeant White and Garda O'Dowd inspected the pub portion of the premises at 00.16 hours. They found seven persons in the bar, three of whom were drinking. Sergeant White issued a caution in respect of his detection on that occasion. Four minutes later, at 00.20 hours Sergeant White and Garda O'Dowd inspected the nightclub portion of the premises. They noted that the bar was closed but that there were queues at each corner. There were four bar staff behind the ground floor bar. Sergeant White cautioned Mr. Mitchell that he was not to reopen the bar. Mr. Mitchell would not confirm whether he was in charge of the premises. He stated that he was not allowed to speak to either Sergeant White or Garda O'Dowd on the strict instructions of the licensee. The two Gardaí then proceeded to inspect a number of other premises in the village. They returned to inspect Frankie's nightclub at 01.42 hours. At this time they observed one of the barmen serving two pints of Smithwicks to a customer. When approached on the matter the barman was most unhelpful. He was then told by the bar manager, Mr. Mitchell, not to answer any of the sergeant's questions. Mr. Mitchell likewise refused to answer any further questions on the matter. Sergeant White submitted a report on the matter and a direction was given by Inspector Thomas V. O'Brien to proceed with a prosecution against Mr. McBrearty Senior under the usual five count summons for breaches of the liquor licensing laws, together with a summons against Mr. Mitchell for aiding and abetting the commission of those offences.<sup>130</sup>
- 4.60. Later that same evening there was an incident at a vehicle checkpoint in Raphoe manned by Sergeant White and Garda O'Dowd. It appears that at approximately 01.00 hours Mr. McBrearty Senior was in his car in Raphoe. Also in the car was his young daughter, who was approximately twelve years of age at the time. Mr. McBrearty Senior said that she had been at a piano lesson. He said that he proceeded to drive up and down the town a number of times just to see how

<sup>130</sup> Tribunal Documents, pages 560-567.



many people were about. He said that he was then going to take his daughter home. He was stopped at a checkpoint mounted on the Diamond by Sergeant White. Mr. McBrearty Senior said that when the car was stopped Sergeant White leant down and tried to take the keys out of the ignition. He also said that the best thing that Mr. McBrearty Senior could do was to get his son to go down to the Garda station on the following morning and make a statement admitting to the murder of the Late Mr. Barron. Mr. McBrearty Senior said that when Sergeant White said that his daughter Maria went into hysterics. He said with that he drove to Letterkenny Garda Station to make a complaint about Sergeant White.<sup>131</sup>

- 4.61. As Mr. McBrearty Senior did not allow himself to be cross-examined in respect of his evidence concerning this issue, Mr. White was not obliged to give evidence in relation to it. However, he said that he was prepared to give his evidence in relation to this incident. He said that he had some conversation with Frank McBrearty Senior while he was carrying out an inspection of the pub portion of the premises. There was some dispute or delay in getting keys, but they were soon found and the premises were inspected. There was nobody on the premises. The inspection was quite short. Mr. White stated that having completed the inspection he and Garda O'Dowd went down onto the Diamond and started to mount a vehicle checkpoint. While they were on their way to the Diamond, Mr. McBrearty Senior passed them in his car. Mr. White presumed that they were heading home for the evening. Some short time later Mr. McBrearty Senior returned in his car and drove through the checkpoint. On this occasion he was going down the side of the road where Garda O'Dowd was standing. He just waved him through the checkpoint. Mr. White said that Mr. McBrearty Senior then turned his car and came back down the road towards Sergeant White. He thought that Mr. McBrearty Senior was looking for trouble. He did not want any trouble with him, so he waved him on. He said that Mr. McBrearty Senior went down the street some distance and then did another u-turn and came back to the checkpoint. Having gone through the checkpoint he then went down the street and did a further u-turn, coming back towards Sergeant White. On this occasion, he stopped beside Sergeant White. Mr. White said that he did not signal Mr. McBrearty Senior to stop his vehicle. He said that he knew that Mr. McBrearty Senior did not drink alcohol and also knew that his car would be properly taxed and insured, so there was no reason to stop him. He gave the following account of what transpired at that time:

*He was obviously on for aggravation. He began, to the best of my recollection, talking about the Richie Barron affair and how they were hard done by and what went wrong, what the Guards did and that kind of way. I just told him to drive on. Then he began*

<sup>131</sup> Transcript, Day 622, pages 152-154.

*shouting abuse at me. And he was very angry, but what struck me I suppose as chilling was that he told me that Richie Barron won't be the last man to die in Raphoe. This is the way he said it, Richie Barron won't be the last man to die in Raphoe, Sergeant. To me that was a chilling remark.*<sup>132</sup>

- 4.62. Mr. White also stated that he found it strange that Mr. McBrearty Senior would make such a comment with his young daughter in the car. He said that Mr. McBrearty Senior by this stage had built himself up into an uncontrollable rage. He said that he started to rev the car, but the handbrake was on and he was revving the engine furiously. He said the car was shaking forwards and backwards with the movement. At that stage, Sergeant White said that he was going to prosecute Mr. McBrearty Senior under the Public Order Act. He took out his notebook and began writing. Mr. McBrearty Senior went to take off. Sergeant White indicated to him that he should hold on and put his hand onto the side of the window. With that, Mr. McBrearty Senior took off down the road. Mr. White strenuously denied that he had ever said to Frank McBrearty Senior that his son should go down to the Garda station on the following day and make a statement admitting to his part in the murder of Mr. Barron. He stated that that was in fact the last thing that he would have wanted because it would have been seen to be totally interfering with a very large murder investigation. That would not be appreciated by the officers leading that investigation. Mr. White denied that he would make a comment like that for the purpose of annoying Mr. McBrearty Senior or anybody else, particularly when he had his young daughter in the car.
- 4.63. Mr. White denied that there was any attempt by him to remove the keys from the ignition of Mr. McBrearty Senior's car. He stated that he may have put his hand onto the car door where the front side window was, but that was as far as he put his hand into the vehicle. Mr. White said that he did not see the incident as being a serious one and for that reason he did not send up any file to the superintendent in relation to it.<sup>133</sup>
- 4.64. Mr. John O'Dowd was in the same position as Mr. White: he was not obliged to give evidence about this incident due to the fact that Mr. McBrearty Senior had not made himself available for cross-examination. However, Mr. O'Dowd had no objection to giving evidence on the matter. He recalled the night in question and recalled setting up a vehicle checkpoint with Sergeant White in the Diamond in Raphoe. He recalled Mr. McBrearty Senior driving through the checkpoint a number of times. He stated that at some point in the night he was chatting to a man that he knew, who was sitting in his car parked at the other side of the street. He heard shouting and a revving of a car engine coming from the other

<sup>132</sup> Transcript, Day 678, page 53.

<sup>133</sup> Transcript, Day 678, page 58.

side of the street. He did not hear Sergeant White making any comment about Frank McBrearty Junior and the making of a statement of admission on the following day. He felt that such a comment would not make sense due to the fact that by that time the Barron case was regarded as largely concluded, due to the fact that the Gardaí were in possession of a statement of admission from Frank McBrearty Junior. He stated that he did hear shouting coming from Mr. McBrearty Senior's vehicle. He was shouting that they were not murdering bastards. Mr. O'Dowd crossed the street to see what was going on. He heard Mr. McBrearty Senior making comments to Sergeant White to the effect that he would get him. He also said that he would not be the last man to die in Raphoe, and other comments like that. Mr. McBrearty Senior was making a lot of noise. Mr. O'Dowd said that suddenly Mr. McBrearty Senior drove off towards Letterkenny.<sup>134</sup> He recalled that Mr. McBrearty Senior had his young daughter with him on that occasion. He accepted that she must have been frightened by the loud and aggressive nature of the altercation.

- 4.65. Mr. O'Dowd had made a note of this encounter in his notebook some time later in the morning, which he timed at 01.07 hours:

Frank McBrearty Senior pulled up with young daughter on board at checkpoint having been waved on four times previously. During one of these times I was speaking to Tommy Doherty who was pulled in at Al's chipper. Walked over to where Sergeant White was, Frank McBrearty was stopped. Very abusive and shouting. Revving the engine shouting we're not murdering bastards. Sergeant White said he never interviewed his son about the murder of Richie Barron and that this was not the time to be shouting about it, in the middle of the street and to take his daughter home. Frank McBrearty then said I'll tell you, White, I'll get you if it's the last thing I do, Richie Barron won't be the last man to fucking die in Raphoe. He then said I'm going straight to Letterkenny. Sergeant White then produced his notebook. Mr. McBrearty was very agitated. He was pulling on and off the handbrake and revving the engine loudly. His daughter was crying in the car beside him.<sup>135</sup>

- 4.66. The man with whom Mr. O'Dowd was speaking at the time, has since died. Another person who could have given evidence to the Tribunal was Mr. McBrearty's daughter, Maria. The Tribunal did not call her to give evidence. This was due to the fact that the Tribunal had adopted a practice whereby it would not call persons to give evidence in relation to matters which occurred while they were minors.
- 4.67. The Tribunal also heard evidence from Mr. Jim McGranaghan, who owns a shop

<sup>134</sup> Transcript, Day 665, page 22.

<sup>135</sup> Tribunal Documents, page 4,018.

and public house premises on the Diamond in Raphoe. He lived on the Diamond. He stated that there was a problem for the residents of the Diamond caused by persons coming out of the nightclub after the Friday and Sunday night discos. He said that at the time when the raves were being run things were particularly bad. He said that there were at least five bus loads of “thugs” coming into the town at weekend nights at that time. A cause of particular concern to the residents was the lack of Garda manpower in the village at that time.<sup>136</sup> He and other residents in the area used to ring Letterkenny Garda Station complaining about the lack of a Garda presence on the streets during weekend nights. At that time there was a lot of damage being done to premises on the Diamond. A number of shop windows were broken. One of his windows was broken at that time. He recalled one occasion on which he and the local County Councillor, Mr. Paddy Harte T.D., had a meeting with Superintendent John Fitzgerald. The purpose of the meeting was to discuss the problems that arose due to the fact that there were no Gardaí in the town to supervise the crowds coming out of the nightclub. He said that he made it clear to the superintendent that they were not against the nightclub as such: they just wanted sufficient Gardaí present to manage the crowds. He said that while the superintendent gave them a sympathetic hearing and said that he would see what he could do about their concerns, nothing was done at the time. This was some time prior to October of 1996.<sup>137</sup>

- 4.68. Mr. McGranaghan recalled the incident at the vehicle checkpoint on the night of the 10th/11th of May 1997. He stated that he was working, doing up the cash on the cash register, which was situated beside the window of his shop looking out onto the Diamond. He saw Mr. McBrearty Senior driving through the checkpoint a number of times. He was waved on by the Gardaí on those occasions. Eventually, he stopped his car at the checkpoint. This is what Mr. McGranaghan saw:

*And when I looked out I saw Mr. McBrearty was revving the car. The lights were on and he was revving and loud voices, shouting and what not, you know. Yeah he was in the car and shouting out, noise, blaring. He seemed to be giving out very strongly. That's all I saw. [The Gardaí] they didn't seem to be doing anything untoward. They were just standing there, I think they were trying to wave him on again, you know.<sup>138</sup>*

### **Conclusions on the Checkpoint Incident**

- 4.69. The Tribunal approached the evidence given by Mr. McGranaghan with some caution. This was due to the fact that from evidence given in previous modules, the Tribunal was aware that Sergeant White and the

<sup>136</sup> Transcript, Day 677, pages 88-89.

<sup>137</sup> Transcript, Day 677, page 94.

<sup>138</sup> Transcript, Day 677, page 112.

McGranaghans were on friendly terms. It was in McGranaghan's bed and breakfast accommodation that Mr. Bernard Conlon used to stay when he made his trips to Raphoe. On one occasion, Sergeant White also mounted a video camcorder from the upstairs window in the McGranaghan's premises in an attempt to record an altercation which was thought likely to take place on the Diamond between Frank McBrearty Junior and William Doherty. On the day that Mark McConnell was arrested in relation to the Silver Bullet affair, Bernard Conlon, who had identified Mr. McConnell on the street in Letterkenny and who was required to wait in the vicinity of Letterkenny in case there was to be a formal identity parade, made a trip out to Raphoe to visit Mrs. McGranaghan. Some time later, after the arrest of Mr. Conlon by the Carty team, it was Mrs. McGranaghan who paid a visit to him to see how he was getting on. In June 1997, a letter was written by Mr. McGranaghan thanking the Gardaí for the increased presence in Raphoe. As a result of this close connection with Sergeant White, the Tribunal had to approach his evidence with caution. However, the Tribunal is prepared to accept his evidence as an honest account of what he saw on the night of the 10th/11th of May 1997.

- 4.70. The Tribunal is not in a position to make any finding against either Mr. White or Mr. O'Dowd in respect of this incident, due to the fact that they did not have the opportunity to cross-examine Frank McBrearty Senior in relation to this allegation. However, the Tribunal is in a position to make a finding in relation to this incident. This is due to the fact that the Tribunal does not feel that the evidence presented to it warrants any finding being made against Mr. White or Mr. O'Dowd in respect of this incident. The Tribunal accepts that Mr. McBrearty Senior drove through the checkpoint a number of times. To have done so at 01.00 hours with his young daughter in the car seems a somewhat bizarre thing to do. The Tribunal is satisfied that Mr. McBrearty Senior was probably in an agitated frame of mind at that time. He had good reason to be agitated about the progress of the Barron investigation in relation to his son and nephew. However, the Tribunal is not satisfied that it was anything said or done by Sergeant White or Garda O'Dowd which led to the verbal altercation with Frank McBrearty Senior that night. Mr. McBrearty Senior was simply looking for trouble on this occasion. The Gardaí cannot be faulted for the incident that occurred.

### **Telephone Calls**

- 4.71. Sergeant White and Garda O'Dowd returned to the Garda station at

approximately 01.30 hours. Shortly after entering the station the telephone rang three times, but there was nobody on the other end of the line. At approximately 01.40 hours, Garda O'Dowd again answered the telephone. This time Mrs. Rosaleen White was on the other end of the line. According to Sergeant White she was upset and was crying. She had received telephone calls from Mr. Flynn some ten minutes earlier. Sergeant White then telephoned Mr. Flynn. They had an acrimonious conversation. Sergeant White then received a telephone call from Superintendent Lennon who had also received a phone call from Mr. Flynn complaining about the incident at the checkpoint with Mr. McBrearty Senior. At 01.57 hours Sergeant White again telephoned Mr. Flynn and further words were exchanged between them. It is not necessary to go through the contents of these telephone calls. The Tribunal is not going into this matter for two reasons. Firstly, neither Tribunal counsel nor counsel acting on behalf of Mr. White, challenged Mr. Flynn when he gave evidence in relation to the nature of the telephone calls. In these circumstances, it would be unfair to Mr. Flynn to make any findings in relation to the calls. All that is necessary for the purpose of this inquiry is to note that there had been a heated exchange of words between Sergeant White and Mr. Flynn on the night of the 10th/11th of May 1997. It would appear that as a result of these calls and the incident at the vehicle checkpoint earlier in the evening, relations had further deteriorated between Sergeant White and Frank McBrearty Senior.

- 4.72. Before passing from the issue of the telephone calls, it is necessary to note that a number of further calls were said by Mrs. Rosaleen White to have been received by her from William Flynn on the 18th of May 1997. In a statement she said that she found these to be distressing. She made a complaint in respect of same to the Gardaí. As a result of her complaint, a prosecution was taken against Mr. Flynn in the District Court. This resulted in a conviction against him. Mr. Flynn has admitted that he did make telephone contact with Mrs. White on the day in question, but denied that he threatened or abused her in any way whatsoever. It was made clear to the Tribunal that while a conviction had arisen as a result of a plea of guilty being entered on his behalf by his counsel, Mr. Flynn wished to make the case that there had been a breakdown in communication and that no such instruction to plead guilty to the offence had been given by him. He wished to challenge the validity of the conviction obtained against him in the District Court. At that point in the proceedings, I indicated to Mr. Flynn that the Tribunal was not prepared to examine the validity of any conviction lawfully entered on the court record. He was informed that he would have to take whatever other legal proceedings were open to him if he wished to challenge that matter in another forum. As already noted, the question of these phone calls was not

raised with Mr. Flynn by counsel acting on behalf of Mr. White. The Tribunal notes that a conviction was obtained and that Mr. Flynn wishes to challenge that conviction. In the circumstances, the Tribunal feels that it is not necessary to make any finding in relation to the nature of the telephone calls placed by Mr. Flynn to Mrs. Rosaleen White on that occasion.

### **The Superintendent's Direction**

4.73. According to Superintendent Lennon's diary, he travelled to Dublin on Sunday the 11th of May 1997 for the purposes of a meeting to be held at the Four Courts on the following day. This meeting was to discuss the civil action which had been instituted by Frank McBrearty Senior against the State. At that time, the motion seeking the interlocutory injunction had not yet come on for hearing. It had been adjourned from time to time. After the consultation, Superintendent Lennon returned to Donegal. On the following day, Tuesday the 13th of May 1997, Frank McBrearty Senior complained in colourful terms to the superintendent that he and his family were being persecuted by the Gardaí. He apparently said that Our Lord was crucified on the cross and that Mr. McBrearty Senior and his family were being crucified by the Gardaí. He said that Sergeant White had made his life hell and seemed to be getting the go ahead from Superintendent Lennon. He enquired as to whether the superintendent had any grip on the sergeant. He said that he had to take his wife to the doctor that morning. It appears that Superintendent Lennon did discuss the matter with Sergeant White. The following entry also occurs in his diary for the same date:

Sgt. White – re policing Raphoe – discussed policy advised him not to get into conflict with McBreartys. <sup>139</sup>
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4.74. Mr. Lennon explained the entry in his diary by saying that he made contact with Sergeant White and made it clear to him that he wanted no comments made in the course of inspections. He said that Frank McBrearty Senior had alleged that Sergeant White was making comments to him and his staff during the course of inspections. Superintendent Lennon wanted that cut out if it was happening. He was not saying that it actually happened. Indeed, he recalled that Sergeant White denied that there were any such comments being made in the course of the inspections. Mr. Lennon described the conversation in the following way:

*I told him, I obviously told him, I did tell him that I wanted nothing ... no rows with the McBreartys or no bickering with them or anything like that. That I wanted no abuse of them or perceptions of abuse. He undertook ... I mean, he denied that there was any abuse of them. He said that there was no abuse of them and that*

<sup>139</sup> Tribunal Documents, page 3,024.

*he never made any comments about them and that it was wrong for them to say that they did.*

*I think it was in the context of visiting the premises. You see he was at that stage then that ... I will try and fix this in my mind in time. He [Frank McBrearty Senior] wanted policing in Raphoe and he didn't care how many Guards were in Raphoe, so long as they weren't in or near his premises. That was the context of the policing requirement that he required. He wanted Guards from Castlefin only to deal with Raphoe, not from Carrigans, Lifford or anywhere else. He wanted select Guards from Castlefin, which was probably ten miles away, to come and deal with all these problems in Raphoe. Now I couldn't have that and it's not realistic.<sup>140</sup>*

4.75. In his evidence, Mr. Lennon went on to say that he also told Sergeant White at some stage that there were to be no multiple inspections of the premises. He thought that it was probably at that stage that he had given that direction to Sergeant White. He said that his policy was one inspection per night in relation to every pub. He was certain that he told Sergeant White not to have multiple inspections of the premises.<sup>141</sup> Mr. White could not recall the specific meeting with Superintendent Lennon. However, he was positive that in the wake of the events of the night of the 10th/11th of May 1997, there had been a number of meetings between him and Superintendent Lennon to discuss ongoing policy in Raphoe. When the matter of conflict with the McBreartys was raised by the superintendent, he recalled assuring him that he had not got into conflict with them during the inspections. He recalled that the superintendent said that if there was any roaring or shouting by the McBreartys, the Gardaí were simply to do their duty: go into the premises and carry out their inspection, obtain evidence if possible; but not to engage in any conflict with them. Mr. White entirely agreed with that advice.

4.76. Mr. White was adamant that Superintendent Lennon never indicated to him that there should not be multiple inspections of the McBrearty premises, or any premises, on any given night. He said that it was simply untrue to say that that direction had been given. He said that such a construction was not supported by the entry in Superintendent Lennon's diary.<sup>142</sup> Mr. White pointed out that this meeting took place right in the middle of the ongoing High Court civil action. He said that if such a direction had been given and if he had not complied with it, then he would have been in very deep trouble with his superior officers. He said that they were well aware that he was carrying out multiple inspections. Nobody at management level told him that it was wrong, or gave him any instruction to

<sup>140</sup> Transcript, Day 646, pages 122-123.

<sup>141</sup> Transcript, Day 646, pages 125-127.

<sup>142</sup> Transcript, Day 673, pages 27-28.



stop carrying out multiple inspections. Mr. White went on to venture the opinion that it was only due to subsequent events, and the perceptions that had been created by Mr. McBrearty Senior in the media in relation to the harassment issue, that the senior officers were denying their level of knowledge or that they had condoned the actions that were taken by Sergeant White at the time. In effect, they were trying to isolate him and put him out as a scapegoat in relation to the policing strategy that was adopted in Raphoe in 1997. He felt that this was a misleading version of events and was grossly unfair to him.<sup>143</sup>

4.77. Mr. White also had a recollection of a conversation that he had during the month of May 1997 with Chief Superintendent Fitzpatrick. He said that due to the phone calls and other matters he had considerable concern about the safety of his family. He recalled discussing this on a number of occasions with the chief superintendent whenever he met him in the Garda station in Letterkenny. He recalled telling the chief superintendent that his wife was finding it very hard and that this was causing difficulty for him at home. The chief superintendent advised him just to stick with it and Mr. McBrearty would comply. He recalled that the words used were something along the lines of “keep up the pressure”, which he took to mean keep up the inspections of the nightclub and that with time Mr. McBrearty Senior would comply with the provisions of the law.<sup>144</sup> Mr. White was asked as to whether the chief superintendent had been supportive of his work in Raphoe at the time:

*Q. Do you recall though that Chief Superintendent Fitzpatrick was supportive of your work in Raphoe at that time?*

*A. Very very very much. At all times. Throughout my time in Raphoe he was totally supportive and I felt the support went further than Chief Superintendent Fitzpatrick because he was so confident in his manner in it, that it had to be coming from higher up. I really do believe that.<sup>145</sup>*

Mr. White was adamant that both Chief Superintendent Fitzpatrick and Superintendent Lennon were at all times well aware of what he was doing in Raphoe. This was due to the fact that Sergeant White briefed them on an informal but regular basis whenever he was in Letterkenny Garda Station.

4.78. **The Tribunal accepts the evidence of Mr. White to the effect that he kept the senior officers in Letterkenny fully informed of what was going on in Raphoe. The Tribunal does not accept the evidence given by Mr. Lennon to the effect that he gave a direction to Sergeant White not to engage in multiple inspections in May 1997. The Tribunal is satisfied that no such**

<sup>143</sup> Transcript, Day 673, pages 29-30.

<sup>144</sup> Transcript, Day 673, page 31.

<sup>145</sup> Transcript, Day 673, page 32.

direction was given by the superintendent at that time. He has attempted to use the entry in his diary as a means of proving that he gave such a direction at that time. The wording of the entry does not support the interpretation placed upon it. In addition, the Tribunal is satisfied that had such a direction been given to Sergeant White, then having regard to the fact that they were embroiled in civil litigation with Mr. McBrearty Senior, the sergeant would have complied with the direction. This is a clear attempt by Mr. Lennon to distance himself from what went on in Raphoe in 1997. The Tribunal is supported in its finding in this regard by virtue of the direction that was given to the station party of Raphoe by Superintendent Lennon just prior to Sergeant White's going on holidays at the end of the month.

### **Sergeant White Goes on Holidays**

4.79. At some time prior to the 23rd of May 1997, possibly on the 22nd of May 1997, Superintendent Lennon had a brief meeting in Letterkenny Garda Station with members of the Raphoe station party. Mr. O'Dowd stated that he recalled that he was instructed by Superintendent Lennon to assemble the members of the Raphoe station party in his office for a meeting. Mr. O'Dowd informed Sergeant Hannigan, who relayed the message to the rest of the station party. At the meeting, Superintendent Lennon told them that while Sergeant White was away on holidays, he wanted the level of inspections kept up. Mr. O'Dowd gave the following interpretation of what the superintendent's instruction was:

*He said you are to keep up the inspections as normal. Now, what normal was at the time was going in a couple of times a night and inspecting it, reporting, keeping the logs in the station and all that type of stuff. So we are not to deviate from what was going on. We are to keep up the inspections. In actual fact, I think I took a break from it for a couple of weeks myself while Sergeant White was away. In actual fact ... it didn't have any affect on me, in actual fact, I suppose I was ... I had no one to tell me what to do at that stage, I had no sergeant on my unit, so I took it a bit easy.<sup>146</sup>*

4.80. Garda Earley had a similar account of that meeting. He said that it was of very brief duration. The superintendent did not make specific mention of the McBrearty premises. He merely stated that they were to keep up attention to enforcement of the licensing laws. He recalled that the meeting was attended by Sergeant Hannigan, Garda O'Dowd, Garda Mulligan and himself.<sup>147</sup>

4.81. Sergeant White was away on holidays from the 23rd of May 1997 to the 13th of

<sup>146</sup> Transcript, Day 665, page 72.

<sup>147</sup> Transcript, Day 638, pages 66-67.

June 1997. A perusal of the Inspection Book for this period reveals that the Gardaí in Raphoe did continue to inspect the various licensed premises in Raphoe on a regular basis. Indeed, on some occasions there were multiple visits to the McBrearty premises. There were no summonses issued in respect of any inspections carried out during this period. On reading the Inspection Book and in particular the Mitchell diary for the period, one gets the impression that while the McBrearty premises was receiving an amount of attention, the atmosphere was a good deal less antagonistic than it had been under Sergeant White's regime.

- 4.82. The Tribunal accepts the evidence that there was such a meeting, at which Superintendent Lennon gave directions to the station party in Raphoe to keep up the inspections of the McBrearty nightclub premises. This constitutes further evidence that Superintendent Lennon was fully aware of what was happening in Raphoe at that time. By giving this direction he was indirectly giving further encouragement to Sergeant White to carry out his duties in the manner that he had done prior to that time.
- 4.83. The Mitchell diary had very short entries for Friday the 23rd of May 1997 and Saturday the 24th of May 1997; it merely recorded that there were visits to the premises by Sergeant Hannigan and Garda Mulligan on that occasion. On Sunday the 25th of May 1997 it recorded that there were further visits from Sergeant Hannigan and Garda Mulligan. It noted that Andrew McBrearty and Liam O'Donnell assisted Sergeant Hannigan in finding a man that he was looking for on the premises. It noted that on their way out of the hall, Sergeant Hannigan thanked Frank McBrearty Senior for his co-operation that evening. While other entries in the Mitchell diary record that there were multiple inspections over the following weekend nights, they do not appear to have given rise to any conflict with management at the premises.
- 4.84. If this period represented a time of relative calm, it was soon to change. The return of Sergeant White from holidays saw a further deterioration in the relationship between the Gardaí and Frank McBrearty Senior. This final three-month period is the subject of the next chapter.



## CHAPTER 5 THE FINAL PERIOD

### Introduction

- 5.01. This chapter deals with the final three-month period during which Sergeant White was stationed in Raphoe. It will be seen that on his return from holidays on the 13th of June 1997, inspections resumed at a vigorous pace. Summonses were to follow. There was also an escalation of the situation by virtue of the fact that during the month of June 1997, management of the McBrearty premises instituted a marketing promotion at the premises. The promotion was known as the 'Pound-a-Pint Club' due to the fact that all drinks were being sold for £1.00. In addition, entry to the nightclub had been reduced from the normal entry fee of £5.00 to £1.00. This had a dramatic effect on the numbers attending the premises, with consequent public order problems ensuing as a result of the large amounts of alcohol being consumed by the patrons. It caused great difficulty for policing in Raphoe.
- 5.02. At that time in Donegal there were a number of inspectors who had been brought into the county to carry out BSE duties. Superintendent Lennon sent them out to Raphoe to get an independent view as to what was going on in the village. The report submitted by Inspector Philip Lyons painted a graphic picture of considerable public disorder in the village on the night that he attended. By the following month some form of agreement had been reached between Superintendent Lennon and Frank McBrearty Senior. The High Court application for an injunction was withdrawn and Superintendent Lennon issued a direction that from then on there was only to be one inspection per night. In the following month, Sergeant White was transferred to Letterkenny Garda Station. He had applied for and was appointed to the position of Detective Sergeant, which was based at the divisional headquarters. This seemed to bring to an end the period of intense conflict between Frank McBrearty Senior and the Gardaí in Raphoe. However, he continued to make complaints of harassment beyond that time.

### Events in June 1997

- 5.03. Sergeant White returned to duty on Friday the 13th of June 1997. The Inspection Book records that he and Garda O'Dowd inspected Frankie's nightclub at 01.17 hours and again at 01.46 hours. The Inspection Book records that during a third inspection at 01.25 hours, Frank McBrearty Junior insulted and abused Sergeant White on two occasions when he was directing traffic at the entrance to the nightclub. It was noted that Mr. McBrearty Junior threatened Sergeant White that he would get him on his own.<sup>148</sup> A summons alleging a breach of section 6 of the

<sup>148</sup> Tribunal Documents, page 1,854.

Criminal Justice (Public Order) Act, 1994, was issued against Frank McBrearty Junior arising out of this altercation.<sup>149</sup>

- 5.04. On the 18th of June 1997, Sarah Hargadon was promoted to the rank of sergeant and was transferred to Raphoe. She stated that when she arrived in the station, Sergeant White suggested to her that she might do some undercover surveillance work in Frankie's nightclub. This she refused to do. Mr. White stated that he could not ever recall making such a suggestion to her. If he had made such a suggestion, it was purely by way of a jocular comment. He said that given that Sergeant Hargadon would be seen around the village in full uniform, there was no reality to putting her into the premises as part of an undercover operation. The significance of this comment will be seen later on in relation to a direction Mr. Lennon stated that he gave to Sergeant Hargadon on the 4th of July 1997, to the effect that there were to be no undercover operations in Frankie's nightclub.

### **Support for the Gardaí**

- 5.05. It appears that on or about the 19th of June 1997, a letter was sent on behalf of the Raphoe Diamond Traders Association to Letterkenny Garda Station complimenting them on the increased Garda presence in Raphoe. That letter was in the following terms:

RAPHOE DIAMOND TRADERS ASSOCIATION

Our Ref: JH/GM

19th June, 1997

Superintendent Lennon,  
Garda Station,  
Letterkenny,  
Co. Donegal.

Dear Superintendent,

The residents of the Diamond and the traders are delighted at the presence of the Gardaí in town, especially at weekends.

We look forward to your continued presence in the town and thank you for the help of the local station.

Yours faithfully

JIM MCGRANAGHAN<sup>150</sup>

<sup>149</sup> Tribunal Documents, page 257.

<sup>150</sup> Tribunal Documents, page 1,687.

- 5.06. Mr. McGranaghan stated to the Tribunal that that letter was only a copy of a letter that had in fact been sent by Mr. Paddy Harte, T.D. to the superintendent at Letterkenny at that time. Apparently that letter had become lost in Letterkenny Garda Station. At some later date, which Mr. McGranaghan was not able to fix accurately, Sergeant White approached him and asked could he produce a copy of the letter. It is likely that this approach by Sergeant White was made at some time prior to the 23rd of June 1997, because on that date Sergeant White swore an affidavit for the purpose of the civil proceedings being brought by Frank McBrearty Senior. In that affidavit he exhibited a copy of this letter. Mr. McGranaghan stated that in an effort to provide Sergeant White with a copy of the letter, he approached Mr. Harte. According to Mr. McGranaghan, Mr. Harte then typed out a fresh version of the letter that he had sent to the superintendent. Mr. McGranaghan could not explain why Mr. Harte typed his name as the person sending the letter, when it was Mr. Harte who had sent the original letter on behalf of the Raphoe Diamond Traders Association. Mr. McGranaghan stated that the association was just a loose grouping of business people in the village of Raphoe. He said that they had been most concerned at the deterioration in public order that had occurred in Raphoe over the years. They were happy that at last something had been done to curb the problem. It was for this reason that they wrote the letter to the Garda authorities in Letterkenny.

### **The ‘Pound-a-Pint Club’**

- 5.07. The following weekend saw the introduction of the promotion known as the ‘Pound-a-Pint Club’. All drinks were sold for the price of £1.00 each. Entry into the nightclub had also been reduced to the same price. When the premises were inspected on the 21st of June 1997, Sergeant White found a very large crowd numbering approximately nine hundred and eighty-seven people on the premises. In a report submitted by Sergeant White in relation to that evening, he stated that, “most of the patrons were roaming the hall and appeared to be in a drunken stupor. The majority had beer bottles in their hands and showed hostility to my presence on the premises”. He went on to outline how he came across a male youth lying on the floor in an almost unconscious state with his head under a table. Sergeant White stated that he cleared the area with difficulty and tried to revive the youth. While he was doing this he was kicked twice on the leg. There was a doorman standing nearby, but he offered no assistance. He said that in the course of the inspection he was shouted at and verbally abused by over a hundred drunken customers. He eventually got the young man to the toilet area, where he was revived. Having given his name and address, the youth stated that he had consumed ten or eleven pints of beer. Mr. Mitchell, the bar manager, was aggressive while this conversation was taking place between Sergeant White and

the youth. He accused the sergeant of interfering with the running of the premises. A crowd of patrons in the entrance hall then began to verbally abuse Sergeant White and shout obscenities at him.

- 5.08. On the way out Sergeant White encountered Mr. Andrew McBrearty. He apparently said that if the sergeant did not cease inspecting the premises, he would stop the country and western bands on Saturday nights and would arrange transport for people from Derry, Strabane, Castlederg and Omagh and would serve them drinks at £1.00 each. He told the sergeant that they would have crowds of one thousand, five hundred on the premises and that the Gardaí would suffer the consequences on the street afterwards.
- 5.09. The Tribunal is satisfied that the 'Pound-a-Pint Club' was introduced not solely as a promotion to increase business at the premises, but also as a form of reprisal against the Gardaí for what management saw as an unwarranted interference in the business. This is evident from the comment made by Mr. Andrew McBrearty on that occasion.
- 5.10. Sergeant White reported that there was a large crowd of over one thousand drunken youths on the street when the disco ended at 02.15 hours. Traffic came to a standstill for over one hour thereafter. Drunken youths roamed the streets still consuming pints of beer. They urinated openly on the street and against business premises. Sergeant White recommended that prosecutions should be brought against Mr. Frank McBrearty Senior and Mr. Mitchell for breaches of the liquor licensing laws.<sup>151</sup> A summons duly issued against Frank McBrearty Senior alleging that he permitted drunkenness to take place on the premises on the date in question. A summons also issued against Mr. Mitchell alleging that he aided and abetted the commission of that offence.<sup>152</sup>
- 5.11. The promotion run by the McBreartys in the nightclub premises at this time caused severe difficulty for the Gardaí. Sergeant White drew up an operational order specifically in relation to the following Friday night, the 27th of June 1997.<sup>153</sup> As part of the plan, additional manpower was allocated to Raphoe. In addition, Sergeant White put in place a detailed traffic management system with a view to easing traffic congestion caused by the large number of persons attending at the nightclub premises. Management of the premises was not happy with the traffic management system because buses and taxis were not allowed to park on Meetinghouse Street as they had done prior to that time. In a report subsequent to the event, Sergeant White noted that he and Sergeant Hannigan had had a discussion with Mr. Andrew McBrearty resulting from which it was agreed that all buses and taxis would be allowed into the car park of the club up until 02.00 hours on the following Saturday morning. It was hoped that as a

<sup>151</sup> Tribunal Documents, pages 599-602.

<sup>152</sup> Tribunal Documents, pages 609-610.

<sup>153</sup> Tribunal Documents, page 1,704.



result of that, most of the crowd would remain in and around the car park or on Meetinghouse Street and would not be roaming the Diamond or other areas of the town in a drunken state.

5.12. In the report submitted by Sergeant White, he noted that on the morning of Saturday the 28th of June 1997, a large crowd of approximately one thousand, one hundred persons entered onto Meetinghouse Street. Most of these people were intoxicated, some of them having to be dragged out by their friends to waiting vehicles. At approximately 02.30 hours several fights broke out on Meetinghouse Street and at the entrance to the nightclub simultaneously. The Gardaí on duty succeeded to a certain degree in controlling the crowd. Three arrests were made. However, as preparations were made to have the prisoners taken from the scene, the mood of the crowd deteriorated. Sergeants Hannigan and White decided that the prisoners would be released and dealt with by way of summons as the transportation of the prisoners would result in a further depletion of Garda manpower on the street. Reinforcements were requested by Sergeant Hannigan and these arrived within thirty minutes. Sergeant White stated in his report that Friday night the 27th and Saturday the 28th of June were without doubt the most troublesome in Raphoe that year for a number of reasons: the size of the crowd attending the nightclub, the large amount of patrons from outside the jurisdiction attending the nightclub, the drunken state of the patrons due to the availability of cheap alcohol and the fact that the management of the nightclub were continually within the hearing of the crowd criticising the Gardaí in relation to their handling of the situation and blaming the Gardaí for the escalating trouble. Sergeant White observed that management at the club did not assist the Gardaí. They seemed to revel in the fact that the Gardaí were having difficulty in controlling the crowd on the night in question. In the report Sergeant White noted the comment made by Mr. Andrew McBrearty that if the Gardaí did not lay off inspecting his premises, he would cancel the country and western nights and continue the promotion on that night also.<sup>154</sup>

5.13. Detective Sergeant Hugh Smith was one of the reinforcements that had arrived in response to a call from Sergeant Hannigan that evening. He stated that on his arrival, the situation was "still quite volatile". There was a large crowd of approximately six hundred young people on the street between the exit to Frankie's nightclub and the Diamond. This crowd was blocking traffic from going up or down the street. He observed Mr. Frank McBrearty Senior standing in the street talking to Mr. Tom Coffey, an employee of Mr. William Flynn. Mr. McBrearty Senior was pointing out to Mr. Coffey the high Garda presence in the village, which he appeared to be suggesting was preventing his patrons from exiting his premises and was not allowing transport up to collect them. The crowd began to

<sup>154</sup> Tribunal Documents, pages 1,700-1,703.

thin out at approximately 03.00 hours. Detective Sergeant Smith drove up the street and had a conversation with Garda John O'Dowd.

- 5.14. Some time later Frank McBrearty Senior and his son Andrew McBrearty approached Detective Sergeant Smith. They complained generally about the level of Garda activity in the vicinity of their premises. They blamed the Gardaí for the disturbance that had been created that evening. They stated that by diverting the traffic, the Gardaí had prevented the patrons from leaving the premises and that that had led to a deterioration in the situation. They alleged that this was part of an overall plan to put him out of business. Detective Sergeant Smith told them that if they had a complaint about the Garda handling of the situation that night, they should bring their concerns to the attention of a superintendent. Detective Sergeant Smith stated that he did not alight from his vehicle that evening, due to the fact that he was in plainclothes and was armed at the time. In such circumstances it would not have been appropriate for him to get involved in any public order issues.<sup>155</sup>

### **The Solicitor's Letter**

- 5.15. The events on the 28th of June 1997 produced a reaction from Frank McBrearty Senior. By letter dated the 1st of July 1997, his solicitor, Mr. Kenneth Smyth, of Binchys Solicitors, Dublin, wrote a letter of complaint to Chief Superintendent Denis Fitzpatrick. Mr. Smyth stated that his client had contacted him in a distressed state after the weekend. He alleged that the level of Garda activity on the previous Saturday morning was "totally inexplicable". The road was completely blocked by the Gardaí who would not allow traffic onto Meetinghouse Street. There were fourteen Gardaí, including Sergeants White and Hannigan. There were four patrol cars, an unmarked car and a van for prisoners, and he was instructed that there was also an army vehicle in the village that night. The letter went on to state that due to the traffic management system put in place by the Gardaí that night, Mr. McBrearty Senior's customers were not able to access their means of transport home. As a result they became nervous, angry and agitated due to the huge Garda presence in the village. Mr. Smyth stated that Mr. McBrearty Senior had been like "an informal police force" in Raphoe and that he and his stewards had always maintained excellent crowd control and had co-operated with the Gardaí to control crowds which on many occasions had been larger than on the previous Saturday night. It was alleged that when Mr. McBrearty Senior calmly asked Sergeant White to explain what was going on, he simply told him that he was following the chief superintendent's orders and that any query should be taken up with the chief superintendent. This reinforced his client's view that there was a concerted Garda

<sup>155</sup> Tribunal Documents, pages 2,315-2,316.

attempt to put him out of business because of a mistaken belief that one of his family was involved in the murder of the Late Richard Barron.

- 5.16. The letter alleged that Sergeant White had told Mr. McBrearty Senior that he anticipated that the “dynasty” which Mr. McBrearty Senior had built up over twenty years would crumble in a matter of weeks. The letter continued that Mr. McBrearty Senior had no information to give in relation to the circumstances surrounding the death of the Late Richard Barron. The letter ended by asking the chief superintendent to reply explaining the nature of the Garda operation which had been mounted in Raphoe on the previous Saturday night. The letter was copied to Ms. Suzanne O’Kennedy, the solicitor in the office of the Chief State Solicitor representing the State in the civil action.<sup>156</sup>

### **Events in July 1997**

- 5.17. The month of July 1997 brings the narrative towards its conclusion. The month began with scenes of appalling public disorder following the ‘Pound-a-Pint’ promotion at Frankie’s Nightclub. In the middle of that month the High Court Application brought by Frank McBrearty Senior was withdrawn. Towards the end of the month Superintendent Lennon issued a new direction to Sergeant Hannigan, to the effect that there was to be only one inspection of Frankie’s Nightclub on each of the weekend nights. In the following month Sergeant White was transferred to Letterkenny Garda Station to take up a new posting as a detective sergeant.

### **The Inspector’s Report**

- 5.18. As a result of the introduction of the ‘Pound-a-Pint’ promotion and the subsequent disturbances on the streets of Raphoe, Superintendent Lennon decided that it was necessary for him to obtain an independent view as to what was going on. To that end, he asked Inspector Philip Lyons, who had been seconded to work in County Donegal during the BSE crisis, to go out to Raphoe on the night of Friday the 4th of July 1997, for the purpose of providing the superintendent with a report as to what the situation was like on the ground in Raphoe. **Having heard evidence from Superintendent Lyons, the Tribunal is satisfied that he is a diligent and competent police officer. I am entirely satisfied that his account of what occurred that night is a fair and accurate account of what transpired on the streets of Raphoe on the weekend of the 4th/5th of July 1997. It gives an independent view of matters as they existed on the ground at that time.**
- 5.19. The report drawn up by Inspector Philip Lyons demonstrates in stark terms the state of lawlessness that existed on the streets of Raphoe at that time. In that

<sup>156</sup> Tribunal Documents, pages 3061-3063.

report Inspector Lyons recommended that an application should be made to the District Court to object to the renewal of Mr. McBrearty's liquor licence. This was a sensible recommendation and ought to have been taken given the serious state of affairs that existed at that time. It was a gross dereliction of duty on the part of Superintendent Lennon that he did not do so. The report also demonstrates the arrogant disregard, which Mr. McBrearty Senior had for the Gardaí and indeed for the public good and for the people of Raphoe in mounting this type of promotion. It is appropriate to quote the report prepared by Inspector Lyons in full:

Superintendent  
Letterkenny

Re: Public Order Policing – Raphoe on the nights of Friday 4th and  
Saturday 5th July 1997

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As per your directions I attended on duty at the town of Raphoe on the nights of Friday 4th and Saturday 5th July, 1997 to assess and monitor ongoing public order problems and the required policing measures to combat same. I now set out hereunder for your information my report on this matter:-

FRIDAY 4th JULY, 1997

At 11.30p.m. on Friday 4th July, 1997 I briefed the Garda party of two Sergeants and eleven Gardaí at Raphoe Garda Station. Briefing set out how a large crowd were attending at a local night club named "Frankies" and how on recent Friday nights considerable public order problems were encountered.

The licensed premises of the town were all inspected and found to be in order at 12.15a.m. In all respects the town was as any other town of its size until 2a.m.

At 2a.m. between 800-900 people exited on to Meetinghouse Street from Frankies night club. In a matter of minutes the atmosphere and overall situation changed. The vast majority of the crowd was drunk. Many of them could not walk unsupported. The ages estimated to range between 15 years and 20 years. I observed many who were obviously under age, getting sick or attempting to get sick on the public street. I saw several boys and girls being carried by friends, semi conscious out of the night club. I estimated their ages to be 16-18 years old.

The crowd congregated on the roadway outside the club and completely blocked same. Traffic diversions had to be put in place and all traffic diverted until 3.15a.m. Almost immediately after 2a.m. fights broke out among the youths. It became a near riot situation. The Garda party moved in to break up these serious assaults and with great difficulty arrested overall five (5) persons. These arrests were resisted by others in the crowd and the Gardaí were in grave danger of being overpowered. Indeed many who were engaged in vicious and prolonged assaults could not be arrested due to the riotous behaviour of the mob. I observed two young lads being led away with blood streaming from their faces. Young girls who were obviously very drunk and were viciously hitting and tearing at each other. Two sets of two young girls were rolling on the ground fighting with each other.

At one stage at approximately 2.30a.m. I with six other members moved in to rescue a youth who was covered in blood, from a mob. We were then set upon by the mob who tried to prevent us in this duty. I was forced to call in further assistance from the nearby traffic division. We were forced to withdraw to the perimeter of the mob.

As previously outlined, five persons were arrested and placed in the Garda personnel carrier. Once locked inside the van these then attempted to kick out the side door of the van and some of the mob outside were likewise trying to force open these doors and free the prisoners. When it became clear that the doors of the van were damaged and in imminent danger of breaking open, I ordered that the personnel carrier return to Letterkenny with the five prisoners. These five are named as follows: [names redacted].

At one stage it was brought to my notice that a group of youths were in the chip shop, opposite the night club and unable to leave due to a gang of youths waiting outside to attack them. We then moved in and with some difficulty cleared a passage for these youths to depart.

The situation remained hostile until well after 3a.m. The drunken youths took no heed of repeated Garda warnings to clear the street and disperse. Drunken teenagers staggering and urinating on the street and against houses and behaving obscenely was common place. By 3.30a.m. most had departed by bus and taxi.

For the duration of this incident, i.e. from 2a.m. until 3.30a.m. I observed Mr. Frank McBrearty Snr. the owner of the night club, his manager, Mr. John Mitchell and several of their staff stand outside the premises,

apparently unconcerned and chatting among themselves. No assistance whatsoever was given to the Gardaí nor did they take any action to prevent the disorder.

A further three incidents of serious assaults on Friday have since come to the notice of the Gardaí:

- (a) Mr. [name redacted] has made a written statement outlining how on Friday 4th July, 1997 he was attending at Frankies night club when a bottle was stuck into his face occasioning him serious injuries. He told staff members that he was going out to report the matter to the Gardaí outside. He left the premises but was escorted back in by Mr. Liam O'Donnell a doorman and was only allowed to leave at 3.30a.m. in Mr. Frank McBrearty's company, who then drove him to Letterkenny General Hospital where he received nine (9) stitches in his lip area. He further states that Mr. McBrearty asked him not to report the matter to the Gardaí as he had enough hassle at present.
- (b) A 16 year old girl, [name redacted] was assaulted at the Diamond, Raphoe having attended the night club. She received four (4) stitches and was detained in hospital for two nights. She had been drinking Brandy in Frankies night club.
- (c) A man [name redacted] had made a written statement alleging that he, while attending Frankies Night club, [was] struck five times in the right eye by a bouncer named [name redacted]. His face is badly marked and he is attending a doctor.

I believe that the major contributory factor to such wholesale drunkenness and savagery on the night was the fact that entry to the premises was only £1.00 and all drinks were only £1.00 each and that obviously drunken youths were served drink and then turned out on to the street to cause mayhem.

A special exemption until 1a.m. was in force in McBrearty's night club on this night.

#### SATURDAY 5th JULY, 1997

At 11.30p.m. on Saturday 5th July, 1997 I briefed the Garda party of two Sergeants and six Gardaí at Raphoe Garda Station.

The licensed premises of the town were all inspected and found to be in order. The streets were quiet with no public order problems.

At 1.05a.m. accompanied by Sergeant John White I inspected the licensed premises known as “Frankies” Nite club. No special or other exemption was in force. A dance was in progress and over 800 persons were present. I saw that most patrons were drinking with all tables laden with drink. This included pints of stout, ale and lager and also spirits. The shutters were pulled down on the bar counter. I saw that each of the three bars still had staff inside. The tills were being operated. I saw what appeared to me to be freshly pulled pints of stout on the counter top. One man was tendering a £10.00 note through the shutter. He asked Sergeant White and I to leave as “I won’t get a pint as long as ye’re here”.

At this stage I was approached by Mr. John Mitchell, the manager of the premises and later by Mr. Andy McBrearty, son of the licensee. I pointed out to Mr. Mitchell that I had seen evidence that drink was being served at 1.05a.m. and that hundreds were still openly consuming drink. He shrugged his shoulders and said “sure aren’t they doing it in Letterkenny”. I told him to put his premises in order.

Before leaving I also brought to Mr. Mitchell’s attention the happenings of the previous night and asked him did he realise the seriousness of what transpired. He laughed and asked me where I had been all my life and intimated that what went on was nothing to worry about. He asked me to ensure that the Gardaí would leave them to run their business and not be harassing them. I left the premises at 1.20a.m.

There was no public disorder in Raphoe on this night and the age profile was much higher. Also the entry fee was £8.00 all drinks full price.

#### CONCLUSIONS/RECOMMENDATIONS

Without exaggeration the scene at Raphoe between 2a.m. and 3.30a.m. on Friday night/Saturday morning was the most serious I have ever witnessed in relation to a licensed premises. It cannot be denied that all of the trouble emanated from the abuse of the Special Exemption granted to Frankies Nite Club.

Two of the five persons arrested were aged 15 and 16 years. [Name redacted] the girl who was injured was only 16 years. All were drunk from drink supplied on the premises. From my observations drunkenness of an extreme nature was permitted on the premises.

Of the three persons seriously injured, one was assaulted by a staff member, one was denied medical and Garda assistance and spirited away

taken to hospital and the third was a 16 year old girl supplied with brandy at £1.00 a time.

As regards Saturday night, Mr. Mitchell made no effort to deny that he ignored the licensing laws and was brazen in his attitude.

Overall, I feel that the situation in Raphoe on a Friday night needs urgent and high profile attention. If it develops further then anything including serious injury and death is possible.

I recommend that consideration be given to the following remedies:

- (a) object to renewal of Mr. McBrearty's liquor licence
- (b) object to any special exemptions for a Friday night
- (c) carry out an inspection on a Friday night for underage admittance etc. (this would pose problems and require major manpower).

I further recommend that consideration be given to prosecuting Mr. F. McBrearty for the offences as disclosed in this report in respect of Friday and Saturday nights.

Finally, I wish to state that Mr. McBrearty spoke with me on Sunday morning the 6th of July last and agreed that what transpired outside his premises on the previous Friday would not be tolerated. He said that from next Friday onwards the admission and drinks would return to normal prices and that buses from certain areas that carry troublemakers would be cancelled.

For your information.

Inspector Philip A. Lyons.<sup>157</sup>

- 5.20. In his evidence to the Tribunal, Mr. McBrearty Senior did not accept the content of Inspector Lyons' report. He stated that he had had a discussion with Inspector Lyons and it was not at all along these lines. He accused the inspector of being "a blatant liar like the rest of them". He said that the inspector was lying when he said that he had never seen the like of it before because such behaviour was happening all over Ireland. He said that he had never denied that his pub was open during the hours mentioned on the Saturday night/Sunday morning. He said that the same thing was happening in Letterkenny where drinks were being served until 03.00 and 04.00 hours.<sup>158</sup> **The Tribunal rejects the criticism made by Mr. McBrearty Senior against Superintendent Lyons. Such criticism is totally unfounded. The Tribunal prefers the evidence of Superintendent Lyons as to the events that occurred in Raphoe that weekend.**

<sup>157</sup> Tribunal Documents, pages 2,116-2,121.

<sup>158</sup> Transcript, Day 623, pages 105, 111 and 118.



## The Superintendent's Response

- 5.21. On receipt of Inspector Lyons' report, Superintendent Lennon, by letter dated the 9th of July 1997, wrote to Chief Superintendent Fitzpatrick informing him that as part of an overall review of strategy in the Raphoe area, he had directed that an inspector take charge of Garda operations in the town on weekend nights. That strategy had commenced on Friday the 4th of July 1997. Superintendent Lennon attached a copy of Inspector Lyons' report with his letter. He informed the chief superintendent that it was his intention to object at the annual licensing court in September to the renewal of Mr. McBrearty Senior's liquor licence, together with his dance licence attached to the premises.<sup>159</sup> Mr. Lennon stated that it was his intention at the time that he wrote that letter to object to the renewal of Mr. McBrearty Senior's liquor licence. He said that Chief Superintendent Fitzpatrick was agreeable to that course being taken. However, things happened later in the month of July 1997, which led him to have a change of heart. In particular, he referred to a meeting that he had with Frank McBrearty Senior on the 25th of July 1997, to which we will come presently.
- 5.22. The Tribunal accepts the evidence given by Superintendent Lyons and that his description of what he observed in Raphoe on 4th/5th of July 1997 is a correct description. In those circumstances, the correct course for Superintendent Lennon to have taken at that time was to object to the renewal of the intoxicating liquor licence in Frankie's disco. Given the extent of the public order problems in Raphoe, which in the Tribunal's opinion had their origin in the nightclub, the matter had reached beyond the stage of negotiation with the licensee and was clearly a matter to be considered by a court of law. In failing to take these steps, the Tribunal is of the opinion that Superintendent Lennon was in grave dereliction of his duty.
- 5.23. An entry was made in Superintendent Lennon's Diary for the 4th of July 1997 to the effect that he had spoken with Sergeant Sarah Hargadon and told her that no plainclothes Gardaí were to be put into Frankie's nightclub. However, the note continued that it was to be expected that public order was to be addressed. An inspector would be on duty in Raphoe that night and on the following night. Sergeant Hargadon was to tell all concerned of that direction. In his evidence, Mr. Lennon attempted to portray this entry as proof that he was against undercover operations in Frankie's nightclub. Sergeant Hargadon had no recollection of any such direction being given to her. Through her counsel, it was put to Mr. Lennon that if such direction was given on the 4th of July 1997, it was only given in the context of her telling the superintendent that Sergeant White had suggested to her that she might go into Frankie's nightclub as an undercover operative. She

<sup>159</sup> Tribunal Documents, page 2,997.

was not inclined to adopt that suggestion. Her counsel suggested that given that Inspector Lyons was directed to attend at Raphoe to carry out an independent assessment, it was in that context that Superintendent Lennon did not want any undercover operation put in place at that time.

- 5.24. The Tribunal is of the view that Sergeant Hargadon's construction is probably the correct one to place on that entry. The Tribunal does not accept that Superintendent Lennon was against undercover operations in Frankie's nightclub simpliciter. His direction arose simply from the fact that that he did not want such an operation in being when he had sent out an inspector to monitor what was happening in Raphoe. This was yet another attempt by Mr. Lennon to distance himself from the actions of Sergeant White. It seems to the Tribunal that the use of undercover operatives was a perfectly sensible and reasonable thing to do when faced with the fact that the publican was able to avoid detection as a result of normal inspections due to the use of a C.C.T.V. system.

### **An Unpleasant Encounter**

- 5.25. Mark McConnell made a complaint against Sergeant White arising out of an incident which he alleged occurred on the street when he and his wife had come out of Frankie's nightclub on the 7th of July 1997. He stated that when they left the premises, Sergeant White was standing on the street. He was staring directly at them. He then came down the street and walked up to Mark McConnell and accused him of threatening his wife and children. Mark McConnell told Sergeant White that that was complete rubbish. Sergeant White cautioned him at that time. He also made a threat that he would arrest Róisín McConnell who was standing close by. He said if you do not move on you will be arrested. He also said, "it is not the first time I arrested you", or words to that effect. He said that Willie Logan then came down and joined the group. He and his wife Róisín just walked away.<sup>160</sup>
- 5.26. Róisín McConnell in her evidence stated that they were coming out of the nightclub when Sergeant White walked down close to her husband and whispered something to him. Mark replied by asking him what was he on about or something to that effect. She said that Sergeant White then took out his notebook and began writing. She asked him what was he writing. The Garda, who was beside Sergeant White, told her that the sergeant did not have to tell her what he was writing in his notebook. She replied, "No you're right, he doesn't", with that Sergeant White said something to her - "would you like to be arrested, Mrs. McConnell?" She said that she just said to her husband that they should go home and they left the area.<sup>161</sup> Mr. Logan recalled that there was

<sup>160</sup> Transcript, Day 648, pages 27-31.

<sup>161</sup> Transcript, Day 648, pages 164-165.

some kind of an altercation between Mr. McConnell and Sergeant White, which led to an exchange of words between them. Mr. Logan stated that he was just standing in the vicinity. Sergeant White accused him of staring at him and asked him did he want a go in the van known as “the paddy wagon”. With that Mr. Logan returned to the nightclub premises with Liam O’Donnell and Paddy Lynch.<sup>162</sup>

- 5.27. Mr. White stated that the accounts given in evidence by Mark and Róisín McConnell and by William Logan were very far from the truth. His account had been recorded in the Occurrence Book maintained at Raphoe Garda Station. The entry had been made on the night in question. It read as follows:

2.31 a.m. - Mark McConnell and wife Róisín came out of club and Mark threatened Sergeant White he would have to sort him out very soon for his wife’s illness. Sergeant White ignored these verbal threats for some minutes but then instructed Mr McConnell to leave the area under the Public Order Act as his behaviour was, he felt, intended to cause a breach of the peace. Both McConnells were excited and shouting abuse. They had to be dragged away by John Mitchell and Andy McBrearty.

2.37 a.m. – both McConnells returned in an angry mood and confronted Sergeant White, who moved away approximately thirty feet to avoid a confrontation. Mark McConnell followed. Again Sergeant White took notes and asked him on six occasions to move away from the area. He was dragged away by John Mitchell and Liam O’Donnell.

2.47 a.m. – William Logan stood ten feet from Sergeant White and began abusing him for seizing his van. He was informed by Sergeant White that he did not have anything to do with the seizure. He then got excited, began cursing and ordered Sergeant White off that area of the street and that he was very angry. Sergeant White requested that he calm down, keep his voice down or move away. Andy McBrearty then claimed that he owned that part of Meetinghouse Street. Sergeant White pointed out to him that this was a public place and Sergeant White informed Mr. Logan that he would be arrested and taken to Letterkenny station. Mr. Logan was then dragged away from the area by Liam O’Donnell and Mr. Mitchell.<sup>163</sup>

- 5.28. In his evidence, Sergeant White denied that he had tried to intimidate or harass any of the persons on the street that night. He pointed out that this event was occurring just as the motion in the civil action brought by Frank McBrearty Senior was due to come before the court. He said that he would have been very stupid indeed to have tried to provoke any sort of confrontation with any of the

<sup>162</sup> Transcript, Day 657, pages 103-104.

<sup>163</sup> Tribunal Documents, pages 4,662-4,664.

McBrearty side just as the matter was due to be heard before the court. Furthermore, he stated that Frank McBrearty Senior had cameras mounted on the side of his premises giving a clear view of Meetinghouse Street. If Sergeant White had in fact approached Mark McConnell or William Logan in the manner described, it would have been very easy for the complainants to obtain a copy of the C.C.T.V. tape to prove their point. This was never done. Sergeant White was of the view that the complaints which were subsequently made in respect of this incident to the Garda Complaints Board were instituted solely because Mr. McConnell feared that he was going to be prosecuted under the Public Order Act for his behaviour that night. Sergeant White also stated that Mr. McConnell presented as a very different person in Raphoe than he did in the witness box before the Tribunal. He stated that at that time in 1997, Mr. McConnell used to make faces and shake as if in mock terror whenever he came close to Sergeant White on the street. He saw this as provocative conduct on the part of Mark McConnell.

- 5.29. It is impossible at this remove to determine which of the parties are correct in relation to their version of events as to what happened on the street over ten years ago. The Tribunal notes that this was shortly after the time that Mark McConnell had been arrested for a second time in connection with the death of the Late Mr. Richard Barron. This was an event with which he had no connection. It would have been entirely reasonable for him to have been both offended and upset by that second arrest. The Tribunal cannot make a finding on the balance of probability that the allegations made by Mr. and Mrs. McConnell and Mr. Logan are sustained on this occasion. The incident involving Mr. Logan is described in more detail in Chapter 8. It is yet another example of the fact that relations had deteriorated considerably between Sergeant White and members of the extended McBrearty and McConnell families at that time.

### **The Events of the 20th of July 1997**

- 5.30. We come now to deal with a night on which there was a particularly intense interaction between Sergeant White and members of the McBrearty family. In the course of that night there were three inspections of the McBrearty nightclub premises in quick succession. Three public order summonses were issued against Frank McBrearty Junior arising out of the first inspection. The events giving rise to these summonses occurred over a nine-minute period. Two summonses alleging offences under the Public Order Act were issued against Frank McBrearty Senior arising out of an incident in the car park some time later that evening. The events giving rise to those summonses occurred over a four-minute period. The

issue for determination was as to whether Sergeant White, in issuing this number of public order summonses, was acting reasonably having regard to the circumstances which pertained that night, or as was argued by Frank McBrearty Senior, this was merely another example of an overly rigid application of the law which was utilised by the Sergeant as a means of harassing him. Mr. White vehemently denied that that was so. Given the level of disagreement between the parties it is necessary to set out an account of the events that night in some detail.

- 5.31. A total of eight summonses were issued arising out of incidents that night. Six of these concerned incidents between Sergeant White and Frank McBrearty Junior and Frank McBrearty Senior. Three summonses arising out of a nine-minute period were issued against Frank McBrearty Junior alleging offences contrary to the Criminal Justice (Public Order) Act, 1994. The offences were said to have been committed at 00.34 hours, 00.38 hours and 00.43 hours. A further two summonses were issued in respect of public order offences allegedly committed by Frank McBrearty Senior over a four-minute period: at 01.36 hours and 01.40 hours. There was also a liquor licensing summons issued against Frank McBrearty Senior in respect of that night. A summons was also issued against a customer on the McBrearty premises for being 'found on'. There was also a public order summons issued on the direction of the inspector against Mr. John Mitchell. It was a night on which there were three separate inspections of Mr. McBrearty Senior's nightclub, together with an altercation in the car park.
- 5.32. The evening began with an inspection of the McBrearty premises carried out by Sergeant White and Garda Keaveney at 00.33 hours. According to Sergeant White he observed four bar staff behind the counter. One of these was operating the till. He observed a customer leaning against the counter beside an opening in the shutters. He had a pint glass of what appeared to be beer in front of him. Approximately ten seconds after he arrived at the bar, Sergeant White saw Frank McBrearty Junior pushing his way through the crowds coming towards him. He used his elbow to push Garda Keaveney to one side. He was very aggressive. He pushed his finger against Sergeant White's side and demanded, "Have you arrested Garda O'Dowd yet". Sergeant White informed him that he was carrying out an inspection of the premises and asked him to stop shouting at him and to move away from the area of the bar. Mr. McBrearty Junior leant close to Sergeant White and said, "You assaulted my wife". Sergeant White again asked him to move away. Mr. McBrearty Junior put his head close to Sergeant White and said, "I'll get your fucking wife and it won't be a phone call this time. We'll get even with you, you bastard, you have our family ruined." Sergeant White said that he informed Mr. McBrearty Junior that he was committing offences under the

Criminal Justice (Public Order) Act, 1994, to which Mr. McBrearty Junior allegedly replied, “Fuck you and the Public Order Act, get off this premises now”. Sergeant White took some notes and then moved away from the area.

- 5.33. Some short time later he informed Mr. Mitchell that he had been threatened and verbally abused by Frank McBrearty Junior. Sergeant White then continued with his inspection of the first floor bar. While he was inspecting this area, the door was suddenly pulled open by Frank McBrearty Junior. He was in a violent rage. He roared at Sergeant White, “Get out of this place you bastard”. In his report on the matter Sergeant White said that he was stunned by his violent demeanour. When informed that he was carrying out an inspection of the premises, Frank McBrearty Junior is alleged to have shouted again, “Get out of here before you get hurt”. With that Andrew McBrearty arrived and tried to restore some order. Frank McBrearty Junior again roared, “Get off my father’s premises now or I’ll kick you around the bar”. Frank McBrearty Junior was in a violent rage. Sergeant White said that he stepped backwards as he feared that he was going to be assaulted. Andrew McBrearty and John Mitchell stepped in front of Mr. McBrearty Junior to prevent any assault occurring. Sergeant White said that he moved further back from the door and began taking notes in his notebook. Frank McBrearty Junior continued to roar at him and made two lunges at him but was stopped by Andrew McBrearty and John Mitchell. He said that he would have been seriously injured were it not for the presence of these two men. Some short time later, as they were approaching the entrance foyer on the way out of the premises, they encountered Frank McBrearty Junior who was sitting on a stool. He began shouting abuse at Sergeant White, calling him a “crook”. Sergeant White said that he stopped and proceeded to make a note in his notebook. After some further altercation, Andrew McBrearty arrived and ordered Mr. Logan and another doorman to take Frank McBrearty Junior from the premises. Andrew McBrearty apologised for his brother’s violent behaviour.<sup>164</sup>
- 5.34. According to Sergeant White’s report, having left the McBrearty premises he then proceeded to inspect the Central Hotel further down the street. As they were leaving the hotel, Frank McBrearty Senior got out of his car accompanied by his son Andrew. Sergeant White said that both men were excited and Mr. McBrearty Senior stated that Sergeant White would soon be out of Raphoe. Sergeant White informed him that Frank McBrearty Junior’s behaviour was totally unacceptable. Frank McBrearty Senior stated that he was not welcome on the premises and that he was travelling to Garda Headquarters on the following Monday to ensure that he was moved out of Raphoe.
- 5.35. Three summonses were issued against Frank McBrearty Junior alleging offences contrary to the Criminal Justice (Public Order) Act, 1994 arising out of the

<sup>164</sup> Tribunal Documents, pages 585-588.

incidents which had occurred during the first inspection of the nightclub premises. When asked as to why it was necessary to issue three separate summonses arising out of incidents occurring in a nine-minute period, Mr. White stated that as the incidents had occurred in three different areas of the same premises, he felt that it was necessary to issue three separate summonses in respect of each separate occasion. He denied that this was oppressive conduct on his part. He pointed out that he had sent up a report setting out the events in great detail, together with statements from him, Garda Keaveney and Garda Barrett. Having been fully apprised of all the relevant circumstances, Inspector T.V. O'Brien had directed that the summonses should issue.

- 5.36. Sergeant White and Garda Keaveney returned for a second inspection of the nightclub premises at 01.14 hours. They went to the bar on the first floor area where they observed several persons grouped around the bar with fresh pints of beer and lager in evidence. He observed a man at a corner of the bar pouring a bottle of coca cola into a glass. Sergeant White approached him and asked him had he purchased the drink, to which he replied that he had purchased it just a few minutes ago. He stated that he had been served through the gap beside the shutter which was in a closed position. The bar manager, Mr. Mitchell, denied that the customer had been served in the way that he said. Sergeant White and Garda Keaveney left the premises at 01.19 hours. On leaving they met Mr. McBrearty Senior at the exit. When he was informed that one of his bars had been open for business, he replied, "You're a liar Sergeant".
- 5.37. Eleven minutes later at 01.30 hours Sergeant White and Garda Barrett returned to carry out a further inspection of the premises. This time there were several pints of beer and lager on the counter. Customers at the bar, at tables and standing around, had fresh pints of beer in their hands and were consuming same. Sergeant White encountered a named customer who had a half pint of beer and four full bottles of beer in front of him. When asked as to when he had bought the drinks he stated that he had purchased them prior to midnight. When informed that Sergeant White had inspected the premises at 00.33 hours and that he did not have the four bottles of beer at that time, he said, "Look do whatever you have to do, I'm saying no more". Sergeant White and Garda Barrett left the premises at 01.36 hours.
- 5.38. When they had left the premises, Sergeant White and Garda Barrett saw Mr. Frank McBrearty Senior talking to the customer to whom Sergeant White had earlier spoken about the purchase of the coca cola. The customer appeared to be distressed looking. Sergeant White attempted to speak to him. Mr. McBrearty Senior then pushed between Sergeant White and the customer saying, "Go

away, he's my witness". Sergeant White stated that he asked the customer to walk up into the car park in order to have a conversation. Mr. McBrearty Senior followed them and was in a very excited mood. According to Sergeant White, Mr. McBrearty Senior then proceeded to shout at Sergeant White, telling him to stay away from the customer. The customer became distressed. Sergeant White warned Mr. McBrearty Senior that he was committing an offence under the Public Order Act. He was requested to leave the area. This he refused to do. Mr. McBrearty Senior continued to shout at Sergeant White, "Go on arrest me now, arrest me". Sergeant White moved further away from Mr. McBrearty Senior into the car park. Mr. McBrearty Senior shouted to his son, Andrew McBrearty, to go after them and see what they were saying. Mr. McBrearty Senior continued to shout at Sergeant White, stating that the Gardaí were standing on his property and that they did not have the power to tell him to move or to threaten to arrest him. Sergeant White and Garda Barrett then left the car park to avoid further confrontation with Mr. McBrearty Senior.

- 5.39. Arising out of these incidents in the car park, two summonses were issued against Mr. McBrearty Senior alleging breaches of the Criminal Justice (Public Order) Act, 1994 at 01.36 hours and 01.40 hours. Again, the issuance of these summonses had been directed by Inspector T.V. O'Brien. In addition, he directed that the second customer found on the premises should be prosecuted for consuming alcohol during prohibited hours. He also directed that Mr. Mitchell should be prosecuted for breach of section 5 of the 1994 act for insulting and abusive behaviour.<sup>165</sup> Sergeant White had not made any recommendation in his report that Mr. Mitchell be prosecuted for any offence.
- 5.40. Later that same night there was to be yet another unexpected twist in this ongoing saga. According to Sergeant White, he was approached at 02.28 hours by Mr. Bernard Conlon, who complained that he had not been provided with a meal while attending a function in Frankie's nightclub. The careful reader will note that Mr. Conlon was to loom large in events concerning the McBreartys later that year arising out of an inspection carried out on the 31st of August 1997. He was also to play a major part in the prosecutions brought against Mr. McBrearty Senior arising out of that inspection. He was to go on to make a completely false allegation leading to the arrest of Mr. Mark McConnell and Mr. Michael Peoples. This was known as the 'Silver Bullet' affair and has been detailed in the third report of the Tribunal.
- 5.41. At 02.34 hours, accompanied by Garda Barrett, Sergeant White returned to the nightclub premises and spoke with Mr. Andrew McBrearty. He informed him that a complaint had been made by a customer from Sligo that he had not been given

<sup>165</sup> Tribunal Documents, page 580.



a meal. Mr. Andrew McBrearty demanded to be given the name and address of the complainant. Sergeant White refused to give it to him. Sergeant White noted that while speaking to Mr. Andrew McBrearty, he observed approximately one hundred persons consuming intoxicating liquor on the premises. When he asked Mr. Andrew McBrearty whether he had an explanation for this breach of the liquor licensing laws he replied, “Ah, come on John they should be allowed to finish their drinks in peace”. Sergeant White and Garda Barrett left the premises at 02.38 hours.

### **Mr. Mitchell’s Version**

- 5.42. Garda Keaveney and Garda Barrett each made statements supporting the version of the events given by Sergeant White in his report and in his statement.<sup>166</sup>
- 5.43. Mr. Mitchell made an extensive entry in the Mitchell diary concerning this particular night. He admitted in evidence that some portions of it were based on his own observation, but that others, such as the account of the incident in the car park, were based upon what Frank McBrearty Senior had told him. He took up the story shortly after the first incident between Sergeant White and Frank McBrearty Junior. According to Mr. Mitchell, Sergeant White told him that Frank McBrearty Junior had just threatened to kill his wife. Mr. Mitchell told him that he doubted very much that that had happened. He went to telephone Frank McBrearty Senior. He also told Frank McBrearty Junior what the sergeant had said. Frank McBrearty Junior then went to the balcony bar to confront Sergeant White about this allegation. He categorically denied ever threatening the sergeant’s wife. According to Mr. Mitchell, Sergeant White and Frank McBrearty Junior then got involved in “a very heated dispute” for about five minutes. Mr. Mitchell said that during the dispute Sergeant White kept making false accusations against Frank McBrearty Junior in an effort to provoke him to assault the sergeant, so that he could re-arrest him for a third time. Frank McBrearty Junior then decided to go home as he felt that his presence in the nightclub “was causing Sergeant White discomfort”.<sup>167</sup> Clearly this account is considerably different to that given by Sergeant White and Garda Keaveney. As noted earlier in this report, the Tribunal did not have the benefit of hearing the evidence of Frank McBrearty Junior in this module. Without hearing his side of the story, the Tribunal is not disposed to make a finding one way or the other in relation to these alleged incidents involving Sergeant White and Frank McBrearty Junior.
- 5.44. **What the Tribunal is prepared to note is that the issuance of the three summonses in respect of events occurring in slightly different places within the same building over a nine-minute period, was inappropriate.** In defence of his actions on the night, Mr. White stated that because the events

<sup>166</sup> Tribunal Documents, pages 592-596.

<sup>167</sup> Tribunal Documents, page 1,434.

complained of had occurred in three slightly different areas of the same premises and at slightly different times, it was therefore necessary for him to issue three separate summonses. He said that this course of action had been sanctioned by the inspector who gave directions on the file. However, while he had specified the different times as separate incidents in the body of his report, the actual instruction received from Inspector T. V. O'Brien was in the following terms:

Prosecute Frank McBrearty Junior for breach of Section 6 Criminal Justice (Public Order) Act, 1994. Outline in your evidence the various times it occurred.<sup>168</sup>

- 5.45. In his evidence to the Tribunal, Superintendent O'Brien stated that it was not unusual to receive a file recommending prosecutions in respect of a number of incidents occurring within a short period of each other. He gave the example of a dangerous driving case which could proceed over fifteen or twenty miles during a car chase. In such circumstances, it was not uncommon for a Garda to recommend twenty dangerous driving charges, even though it was one continuous event. Superintendent O'Brien stated that in those circumstances, he would just direct one or possibly two charges for dangerous driving. On this occasion, in respect of the various detections for breaches of the liquor licensing laws, he had just directed the issuance of one summons in respect of the inspection at 01.30 hours. He thought that this was the incident in respect of which they had the best chance of obtaining a conviction.<sup>169</sup> In addition, it was Inspector O'Brien who had directed that a prosecution be brought against the bar manager, Mr. Mitchell. This had not been sought by Sergeant White in his report. **Notwithstanding the views of Superintendent O'Brien on the matter, the Tribunal remains of the view that the issuance of three summonses over a nine-minute period seemed to lack the proportionality that one would expect from a police force doing its job in a balanced and fair manner.**
- 5.46. In a statement made on the 26th of August 1998 to Inspector Greg Sullivan on behalf of the Garda Complaints Board, Mr. Mitchell alleged that at some time on that same night, Sergeant White had indicated that the High Court proceedings brought by Mr. Frank McBrearty Senior was only a "bluff job". He apparently said that the High Court was like a second home to him. He allegedly said to Frank McBrearty Senior, "You would need to up your money like the Dublin criminals, £500.00 isn't enough, you would need to up it to £1,000.00". Mr. White denied that he had ever made such a comment to or about Frank McBrearty Senior.
- 5.47. In relation to the incident in the car park, Mr. McBrearty Senior stated that he was concerned when he saw Sergeant White bringing the two elderly customers up into that area. He felt that Sergeant White was trying to harass and intimidate his

<sup>168</sup> Tribunal Documents, page 580.

<sup>169</sup> Transcript, Day 670, pages 108-109.

customers. He said that he approached Sergeant White in a calm manner solely out of concern for the plight of his customers. This is how he described their encounter:

*Well I approached in a very very calm way and I didn't follow any customers to the car park to intimidate them, because there was nothing to intimidate. It was him that was doing the intimidating. All I done was try to protect my customers. By telling him to leave them alone. Leave the people alone and let them go home. They were going to their car.<sup>170</sup>*

- 5.48. While the customer and his wife did not give evidence before the Tribunal, they had made statements to Inspector Greg Sullivan. In his statement the man described purchasing the soft drink through a small opening in the shutters. He then recounted the conversation that he had had with Sergeant White within the premises. His name and address were taken at that time. He described leaving the premises in the following way:

The Guard didn't approach my wife at this time or indeed at any other time. When Ann saw the Guard taking my name she got upset and insisted that we leave. On the way out she complained to Frank McBrearty about my name being taken when I don't even drink. There was then an argument between the McBreartys, the bouncers and the Guards. One of Frank McBrearty's sons was very loud. We went up into the car park, got into our car and came home. Nobody escorted us up to our car. Before I left, I think Mr. McBrearty asked me for my name. I think I gave it to him. I don't know this Guard that approached me, or if he is a sergeant. As far as I was concerned I had or have no complaint about the activities of the Guard. He was just doing his job.<sup>171</sup>

The customer's wife also made a statement to Inspector Sullivan. She recounted how she had become upset when she saw the Garda talking to her husband at the bar. She stated that she found that embarrassing. She said that nobody accompanied them to their car in the car park. The Garda was not bad mannered or discourteous to her in any way. She accepted that he was only doing his job. She did not have any conversation with Mr. McBrearty Senior that night. She was not approached by any Gardaí. She did not hear any conversation between Mr. McBrearty and any of the Gardaí that night.<sup>172</sup>

### Conclusions on these Incidents

- 5.49. **It is clear that this was an evening on which emotions ran very high. There had been a significant altercation between Sergeant White and Frank**

<sup>170</sup> Transcript, Day 623, page 161.

<sup>171</sup> Tribunal Documents, page 1,526.

<sup>172</sup> Tribunal Documents, page 1,527.

McBrearty Junior inside the premises. There was an allegation that Frank McBrearty Junior had threatened the sergeant's wife. As a result, there were three heated exchanges between them. Frank McBrearty Senior then arrived on the scene. He and Andrew McBrearty appeared to have had an exchange of words with Sergeant White outside the Central Hotel. It does not appear that this was overly heated or abusive, although I am sure that it constituted a forthright exchange of views. The subsequent inspections, and in particular the interaction that Sergeant White had with the customer who had just bought a soft drink at the bar, seems to have been regarded by Frank McBrearty Senior as acts of harassment.

- 5.50. Two summonses issued against Frank McBrearty Senior; they were under different sections of the 1994 Act. The first summons alleged that at 01.36 hours at the car park of Frankie's nightclub in Raphoe, Frank McBrearty Senior engaged in offensive conduct, in that he "continuously shouted" at Sergeant White and Garda Barrett while they were performing their duties, contrary to section 5 of the Criminal Justice (Public Order) Act, 1994. The second summons alleged that at 01.40 hours at the same location, Mr. McBrearty Senior committed an offence contrary to section 8 of the 1994 Act, by failing to comply with a lawful direction given by the Gardaí that he should desist from the conduct complained of in the earlier summons. While it may be difficult to find fault with each individual summons on a case by case basis, one has to look at the totality of the picture at that time. When one looks at the level of inspections and the number of summonses issued in respect of the preceding seven months, the issuance of these summonses must be regarded as excessive in all the circumstances.
- 5.51. The Tribunal recommends that a clear set of instructions should be given to all Gardaí as to how they should approach the question of issuing summonses where there are a series of events which could give rise to offences under the Public Order legislation. In particular, they should be given clear guidance as to when one summons should be issued to cover what could be seen as separate incidents, but which occur very close to one another. They should also be instructed as to the circumstances in which it is necessary to issue multiple summonses due to the fact that the events giving rise to the complaint have to be seen as individual separate offences. In addition, the Tribunal recommends that when reports are sent up by the relevant officers on the ground, the superintendent or inspector who is directing what summonses should issue should take care to give clear and precise directions in relation to all summonses that should issue arising out of a particular investigation file submitted to him.

## A Change of Tactics

- 5.52. According to Superintendent Lennon’s diary, he received a telephone call from Mr. William Flynn at 16.55 hours on Friday the 25th of July 1997. Mr. Flynn was complaining about the activities of Sergeant White in Raphoe. In particular, he complained about the number of inspections that had been carried out on the previous weekend. He alleged that Sergeant White had asked patrons where they got their last drink and was annoying patrons. He also alleged that Sergeant White was encouraging people to take civil actions against Mr. McBrearty Senior. Mr. Flynn alleged that Sergeant White wanted to enter into conflict with the McBreartys. He indicated that unless something was done with Sergeant White at the weekends, the High Court proceedings would be immediately reactivated. Less than half an hour later, at 17.20 hours, Superintendent Lennon had a brief telephone conversation with Frank McBrearty Senior, wherein they agreed to have a meeting on the following Tuesday, the 29th of July 1997. Mr. Lennon stated that Mr. McBrearty Senior was very annoyed in the course of that conversation. He wanted to meet with Mr. McBrearty Senior to see if they could reach some compromise on the position.
- 5.53. Prior to the holding of that meeting, Superintendent Lennon issued a direction to the sergeant in charge of Raphoe, Sergeant Hannigan. That direction was given over the telephone and was subsequently put in written format for the information of the station party by Sergeant Hannigan. It marked a significant change in the Garda tactics which had been practiced up to that time. The direction was in the following terms:

Station Party,  
Raphoe

Re: Inspections of Frankies Night Club:

I have received instructions from Supt. Lennon on this date that the premises of Frank McBrearty are to be inspected once each night for the next few weeks. Multiple visits are not to be made. Inspections should be carried out at a time when it is likely that offences are being committed. Members on visits should note whether food is being served etc. The District Officer states that he is not “going soft” on McBrearty but that members should concentrate for the moment on public order. Sergeants or in their absence the local member should continue to write up a comprehensive report in the Occurrence Book of each nights events. (Friday, Saturday & Sunday nights).

For your information and compliance please.

Joseph Hannigan Sgt. 22561D<sup>173</sup>

<sup>173</sup> Tribunal Documents, page 2,301.

- 5.54. Mr. Lennon stated that his reason for issuing that direction was the fact that events in Raphoe were taking up far too much of his time. Raphoe was also taking up a large amount of his available resources. He wanted to bring some compromise to the position to see if Mr. McBrearty Senior was willing to meet him half way. He said that he sent the instruction to Sergeant Hannigan to do it that way for the time being and to see how things progressed from there. He described it as “a genuine attempt to resolve the battleground”.<sup>174</sup>
- 5.55. Mr. Lennon indicated that at the meeting held on the 29th of July 1997, he was able to inform Mr. McBrearty that he had already issued a direction that there should only be one inspection per night. This was one area that was of major concern to Mr. McBrearty Senior and so this was obviously a welcome development. Mr. McBrearty Senior also raised issues in relation to the mounting of vehicle checkpoints in Raphoe and in particular close to his premises. He felt that this was clear harassment of him. Mr. Lennon stated that he had spoken to Sergeant White about this and that the sergeant had denied that there was any abuse or harassment of the McBrearty premises. Superintendent Lennon brought this to the attention of Mr. McBrearty Senior at that meeting. He stated that the Gardaí were entitled to mount checkpoints and to impose traffic management diversions as and where necessary to ensure the safe passage of traffic along the highway. He said that Mr. McBrearty Senior seemed to accept this. His complaints were not only about vehicle checkpoints close to his premises but also checkpoints at the mart, on the Lifford Road and at Bridgend. Mr. Lennon denied that there was any agreement that there would be a scaling back of the checkpoints. The only tangible development had been the imposition of the one inspection per night rule by the Superintendent. However, things seem to have improved dramatically as a result of that meeting. It should also be noted that the ‘Pound-a-Pint’ promotion had only lasted for approximately one month. It had ended at around the same time as the direction was issued by Superintendent Lennon. The ending of that promotion undoubtedly brought benefits from a public order point of view for the village and for the Gardaí stationed there.
- 5.56. An entry in the Mitchell diary for the 25th/26th of July 1997 records a conversation that apparently took place between Sergeants White and Hannigan and Andrew McBrearty. It is alleged that Sergeant White said to Mr. McBrearty that he and Sergeant Hannigan had agreed between them that from then on they would let the bars in the nightclub stay open until 01.15 hours on a Saturday night. He said that he did not want any more scenes like the ones from the previous Saturday and that they wanted the McBreartys to co-operate with the Gardaí from then on. He said that in relation to any summonses that were to be issued for Saturdays previous, the slate would be wiped clean.<sup>175</sup> This entry in the

<sup>174</sup> Transcript, Day 647, page 22.

<sup>175</sup> Tribunal Documents, page 1,437.

Mitchell diary was hotly contested by both Mr. White and Sergeant Hannigan. They denied that at any time they had given Mr. Andrew McBrearty or anyone else the impression that they had a licence to break the law in relation to the opening time of the bars. Mr. Andrew McBrearty did not give evidence before the Tribunal. **The Tribunal does not accept this entry in the Mitchell diary as being an accurate reflection of what was said on the night.**

### **Events in August 1997**

- 5.57. Matters calmed down considerably in Raphoe subsequent to the issuance of the direction by Superintendent Lennon to Sergeant Hannigan. The Gardaí complied with the direction. Generally speaking there was only one inspection per night. It appears that a type of modus vivendi was reached whereby the Gardaí would inspect the premises, at which time of course the shutters were down. This was due to the fact that staff at the premises were still using the C.C.T.V. system to alert the bar staff of the imminent arrival of the Gardaí. As soon as the Gardaí left the shutters were put up again and serving recommenced. Mr. Mitchell conceded that after July 1997, they reverted to serving until 01.15 hours in the morning, although he maintained that this was done with the knowledge of the Gardaí.<sup>176</sup>
- 5.58. The only support for this appears to lie in the fact that on a perusal of the Inspection Book for August 1997, one sees that most of the Garda inspections carried out in Frankie's nightclub occurred subsequent to 01.15 hours. However, the Gardaí all denied that there was any agreement that the bars could stay open until that time.
- 5.59. On the 8th of August 1997 Sergeant White left Raphoe, having been assigned to the position of detective sergeant, which was based in Letterkenny Garda Station. He had applied for that vacancy in March or April of that year. He had been interviewed by the Selection Board. He learnt unofficially approximately three weeks prior to the 8th of August 1997 that he had been successful in his application. There was then a period during which some formalities were put in place prior to his eventual departure from Raphoe. He said that not only was he happy to be appointed to the new position, he was also very thankful to be leaving Raphoe.
- 5.60. There was one further significant event in August 1997. That occurred as a result of an inspection of Frankie's nightclub carried out in the early hours of the 31st of August 1997. An inspection was carried out by Gardaí Barrett and Keaveney. In the course of that inspection they came across Mr. Bernard Conlon with what they alleged were fresh pints in front of him. Mr. Conlon subsequently made a

<sup>176</sup> Transcript, Day 628, pages 128-130.

statement in the matter and became a prosecution witness in the ensuing prosecution against Frank McBrearty Senior in the District Court. Curiously that inspection seems to have been undertaken in direct contravention of the direction that had issued by Superintendent Lennon in the previous month; the inspection giving rise to the detection of Mr. Conlon on the premises was a second inspection that evening. Mr. Conlon gave evidence in the District Court. He subsequently alleged that he had been put up to going to the premises that night for the purpose of being ‘found on’, by Detective Sergeant White. He outlined a complex series of events by which he alleged that he had received a message from Detective Sergeant White in relation to that night. Indeed, he alleged that he had even met Detective Sergeant White earlier in the evening at a school car park in Raphoe. This account was vehemently denied by Mr. White.

5.61. I have already reported on this aspect in great detail in Chapter 2 of the Tribunal’s third report. Having heard a large body of evidence and having examined the accompanying documentation, I was entirely satisfied that Mr. Bernard Conlon had been put up to being ‘found on’ in Mr. McBrearty’s nightclub premises on the night in question by Detective Sergeant White. The grounds for reaching that finding are fully set out in the Tribunal’s previous report. It will suffice for the purpose of this narrative merely to repeat the conclusions contained in that report:

1. Bernard Conlon was retained as an agent by Detective Sergeant John White, through Garda John Nicholson, to attend Frankie’s nightclub in Raphoe on the evening of the 30th of August 1997 and the early morning of the next day. He was to be ‘found on’ the premises by Gardaí who would inspect the premises after licensing hours. He was directed by Detective Sergeant White to be in possession of as many alcoholic drinks as possible and to cooperate with the inspecting Gardaí. This was part of a plan whereby he would ultimately make a statement as to how he purchased and consumed drinks at Frankie’s nightclub after hours, which would form the basis of a prosecution against Frank McBrearty Senior, the licensee of the premises, and members of his staff. Bernard Conlon was promised that he would be (and was) rewarded financially for doing this.
2. At 02.55 hours on the 31st of August 1997, Gardaí Shaun Barrett and Noel Keaveney entered Frankie’s nightclub, at the prompting of Garda John O’Dowd, for the purposes of an inspection. They found Mr. Conlon ostentatiously straddling the bar with a number of alcoholic drinks in front of him. They took his name and address. Garda Barrett



and Garda Keaveney were unaware that Bernard Conlon had been planted in the premises as a witness.

3. Later, on the 8th of September 1997, in pursuance of this plan, which was conceived by Detective Garda White, Bernard Conlon attended by arrangement with Garda John Nicholson at Sligo Garda Station and made a statement in respect of the events of the 30th/31st of August 1997. It was planned to use this statement as part of a prosecution against Mr. McBrearty and two members of his staff and that is what happened. Garda John Nicholson cooperated in taking that witness statement in the knowledge that Bernard Conlon had been planted as a witness.
4. Bernard Conlon was summonsed to give evidence at the District Court, sitting in Letterkenny and Donegal town on several occasions in the course of the resulting licensing prosecution. For this he was paid witness expenses and travel allowances to which he was not entitled. These claims were submitted by Detective Sergeant White. The loss of earnings certificates in respect of Bernard Conlon, which were submitted as part of these claims, were bogus. Garda John Nicholson cooperated with Detective Sergeant White in procuring these forged certificates and lied to the Tribunal in representing that he obtained retrospective approval from Bernard Conlon's employer. Detective Sergeant White and Garda Nicholson arranged for these wrongful payments in fulfilment of Detective Sergeant White's promise to Bernard Conlon that he would be "looked after" for acting as their agent. Garda Nicholson forged parts of these documents. Both of them were fully aware that the claims and the supporting documents submitted were bogus.
5. Insofar as Detective Garda Paul Casey wrote out the body of one of these certificates, he was not culpable of any wrongdoing. He did so to help Garda Nicholson because of his severe arthritis. It was credibly represented to him that Garda Nicholson had a crippling pain in his hand on that day and needed help in a routine matter. Garda Nicholson attempted to use the hearings of the Tribunal to gain advantage from and debase Garda Casey's act of kindness.
6. Bernard Conlon was facilitated to an exceptional degree, far beyond that of any normal witness, in his multiple court attendances in being driven to and from court by the Garda Síochána. This highlighted for the Tribunal the importance that was placed upon him by Detective

Sergeant White and Garda Nicholson as a witness in the prosecution of the licensing charges.

7. The importance with which Bernard Conlon was viewed is evidenced by the fact that Detective Sergeant White and Garda Nicholson were willing to ensure that he was paid expenses in respect of his attendances at the District Court to which they knew he was not entitled.
8. Superintendent Kevin Lennon became aware of the use of Bernard Conlon as an agent in the course of the District Court prosecution in Letterkenny. Following Bernard Conlon's arrest by the Carty investigation team on the 27th of January 2000 and his release thereafter, Superintendent Lennon sought information through Garda John Nicholson as to what Bernard Conlon may have said whilst detained in custody. The Tribunal is satisfied that Superintendent Lennon said words to the effect that Bernard Conlon was "tight" and "would not crack". Sergeant John White also approached Garda Nicholson to try to find out what had been said by Bernard Conlon in custody. Garda Nicholson made an approach to Bernard Conlon to ascertain this information but he was rebuffed. The Tribunal is satisfied that, at that stage, all three knew that Bernard Conlon had been used as an agent in respect of the District Court licensing prosecutions by Detective Sergeant White. Detective Sergeant White and Garda Nicholson knew of their wrongdoing in this regard, and were fearful of it becoming known to their authorities. Superintendent Lennon, by this stage, certainly knew enough to suspect that there had been wrongdoing. He attempted not to use Bernard Conlon as a witness in the licensing case against the McBreartys because he feared that Bernard Conlon would disclose in cross-examination that he had been planted as a witness by Detective Sergeant White and Garda Nicholson. In this, he failed to comply with his obligations as the prosecuting officer to observe fair procedures and in his duty to the court. He was, however, obliged by the District Judge to tender Bernard Conlon for cross-examination on the 11th of December 1998.
9. The Tribunal is satisfied that the core story told by Bernard Conlon in relation to his use as a Garda agent in the licensing prosecution is true. There is a sufficient degree of corroboration of his account to enable the Tribunal to accept his testimony.

10. The Tribunal is satisfied that Detective Sergeant White and Garda Nicholson told lies in their evidence to the Tribunal in respect of this issue. They also deliberately deceived their Garda colleagues as they tried to deal with these matters. The Tribunal is satisfied that Detective Sergeant White manipulated people and events to his own ends both in organising the escapade of the 30th/31st of August 1997 and in trying to conceal his involvement subsequently.
11. Mr. Nicholson lied about his involvement in these events to the Carty team, his colleagues, his deceased colleague's family and to the Tribunal, though given every opportunity to assist in ascertaining the truth.
12. There is no evidence to support the allegation made by Garda John Nicholson that his colleague, the Late Garda John Keogh, was in any way involved in the forging of the certificates of loss of earnings.
13. Arising out of this sorry affair, Garda Nicholson was prosecuted and pleaded guilty to three counts of uttering forged documents following a successful investigation by the Carty team. This case was processed lawfully, promptly and openly at Riverstown District Court on the 26th of July 2000. The Tribunal is satisfied that any suggestion to the contrary is entirely without foundation.<sup>177</sup>

- 5.62. That concludes the narrative of the period during which Sergeant White was stationed in Raphoe. A brief account is given in the next chapter to how policing was carried out in the village after that time.

<sup>177</sup> Third Report of the Tribunal, pages 136-138.



## CHAPTER 6 SUBSEQUENT EVENTS

### Introduction

- 6.01. This chapter deals with the events, that occurred after the departure of Sergeant White from Raphoe in August of 1997. To a very large extent it will be seen that a degree of normality returned to the relationship between Frank McBrearty Senior and the Gardaí in Raphoe. In essence, what appears to have happened is that the Gardaí restricted themselves to one inspection per night as per the direction that had been given by Superintendent Lennon. This yielded little in the form of detections of breaches of the licensing laws. In the Inspection Book there were numerous entries wherein it was recorded that while the shutters were down on the bar at the time that the inspection occurred, there was evidence of freshly poured alcoholic drink on the bar counter and on the tables. Mr. Mitchell conceded that they continued to serve drink outside of the normal opening hours subsequent to the departure of Sergeant White. There were a small number of detections made during the remainder of 1997 and in 1998.
- 6.02. This chapter will also deal with the commencement of the prosecutions against Frank McBrearty Senior and his staff arising out of the detections, that had been made for breaches of the liquor licensing law. These prosecutions were heard in the District Court in Letterkenny on various dates between 1998 and 2000. It will be seen that they took on somewhat of a life of their own, in that the Defendants insisted that the prosecutions could not be looked at in isolation, but had to be seen in the context of a “wider issue” which they alleged involved widespread Garda misconduct and an abuse of process by the Gardaí in mounting the prosecutions. The Judge hearing the cases decided that he would hear evidence in relation to each of the prosecutions but that before coming to any firm conclusion on any single prosecution, he would hear evidence at the end in relation to the so called wider issue. In the events that transpired, the court never got to hear any evidence in relation to this issue, due to the fact that the Director of Public Prosecutions directed that the entire body of summonses should be withdrawn in June 2000. It is at that point that the narrative in relation to alleged harassment concludes.

### Inspections of the McBrearty Premises

- 6.03. Mr. McBrearty Senior did not get to give any evidence to the Tribunal in relation to the events subsequent to the departure of Sergeant White from Raphoe. This was due to the fact that he had only given evidence up to and including the events of the 20th of July 1997 when he concluded his evidence prior to the

summer vacation. In the events that transpired as already detailed in the General Introduction chapter to this report, he never returned to the witness box to conclude his testimony. From various statements that he has made down through the years, it is clear that he regarded the harassment of him and his business as continuing into 1998 and beyond. However, this contention was not supported by the statistical evidence available to the Tribunal, nor was it supported by the evidence of the bar manager, Mr. Mitchell.

**6.04.** Mr. Mitchell stated that after July 1997, the attitude on the part of the Gardaí totally changed. He could not remember whether he had kept any diary of ongoing events. He did not think that he had kept such a diary. He said that there was nothing to report.<sup>178</sup> In the Mitchell diary made available to the Tribunal, there were relatively short entries made for the month of August 1997, culminating with the entry for the night of the 17th/18th of August 1997, when there was no Garda attendance in Frankie's nightclub. It does not appear that there were any entries made for the remainder of that month, nor were there any entries made for the month of September 1997. There was an entry made for the weekend of the 26th/27th of October 1997, but it merely noted that Gardaí O'Dowd and Barrett stood outside the nightclub from 02.00 hours until 03.00 hours. It does not appear that they entered the nightclub that night. The only entry made during the month of November 1997 concerned the attendance of Gardaí Barrett and Keaveney at the premises in the early hours of the 23rd of November 1997 in relation to a hoax bomb scare. This will be dealt with later under the separate heading of hoax bomb calls.<sup>179</sup>

**6.05.** Mr. Mitchell stated that in relation to the level of police inspections subsequent to July of 1997, he was quite happy with the level of Garda attention that was being paid to the premises. In his opinion, it had returned to a manageable level in terms of the policing that was being carried out in Raphoe.<sup>180</sup> Mr. Mitchell had given the same view in a statement that he had made to Superintendent Pat Forde, on behalf of the Garda Complaints Board, on the 4th of February 1998, in which he had stated the following:

I wish to state that there have been no checkpoints set up near our premises since 25th/26th July 1997. The situation has changed drastically with regard to Gardaí visiting our premises since July 1997 to enforce the licensing laws. We are not getting any undue harassment since July 1997.<sup>181</sup>

**6.06.** There were no liquor licensing summonses issued against the McBrearty premises in respect of the months of September, October or November 1997. The only

<sup>178</sup> Transcript, Day 628, pages 130-131.

<sup>179</sup> Tribunal Documents, pages 3,720-3,730.

<sup>180</sup> Transcript, Day 628, pages 137-138.

<sup>181</sup> Tribunal Documents, pages 1,513-1,514.

summonses issued during this period were a group of summonses issued against Mr William Logan arising out of a road traffic incident on the 25th of November 1997. Mr. Logan has alleged that he was harassed by Detective Sergeant John White on that occasion. This matter is dealt with in detail in chapter eight of this report.

- 6.07. While events may have been quiet on the ground in Raphoe, there was still a nasty shock in store for Frank McBrearty Senior. This was due to the fact that on the 12th of September 1997, Detective Sergeant White caused twenty-two summonses to issue against Frank McBrearty Senior and his staff in relation to liquor licensing detections prior to that time. Mr. White said that these files had been deferred as a result of his meeting with Superintendent Lennon on the 18th of April 1997. At that time it was decided to hold off issuing any more summonses while the High Court civil action was pending. Mr. White stated that after his transfer to Letterkenny Garda Station he made an effort to clear up the paperwork. Towards the middle of August 1997 he submitted the files to the superintendent for directions. It took some time to receive the directions back from the superintendent and then to obtain all the original statements that were necessary. He said that all of that work was completed by the 12th of September 1997. It was for that reason that all the summonses were applied for on the same date. They just happened to be part of the one batch.<sup>182</sup> When these summonses were served on Mr. McBrearty Senior, he complained bitterly about that to Superintendent Lennon. The Tribunal can readily understand how Mr. McBrearty Senior must have been shocked and dismayed to be served with twenty-two summonses all at the one time. It would have re-enforced his perception that the Gardaí were mounting a campaign of harassment against him at that time.

### **Student Gardaí Undercover**

- 6.08. Sergeant Sarah Hargadon had taken over the responsibility of directing the inspections of public house premises after the departure of Sergeant White from Raphoe. She had issued a large number of D.27 forms directing that Gardaí should pay attention to the liquor licensing laws. Inspections of the licensed premises in Raphoe continued to be carried out although not with the regularity that there had been prior to August 1997. A perusal of the Inspection Book for this period reveals a number of entries where it was recorded that when the Gardaí attended at the premises the shutters were down, but that there was evidence of freshly poured alcoholic drink being consumed on the premises. This was obviously a matter of some concern to Sergeant Hargadon. She had been called back to Letterkenny Garda Station to assist in the preparation of documentation concerning the investigation into the death of the Late Mr

<sup>182</sup> Transcript, Day 674, pages 80-81.

Richard Barron. That investigation was being directed by Superintendent Lennon with the assistance of Detective Sergeant White. She said that it was during this period that she had a discussion with Detective Sergeant White to the effect that it was not possible to secure evidence of breaches of the liquor licensing laws in the McBrearty premises. She said that it was Detective Sergeant White who suggested that she should use student Gardaí as undercover operatives in the premises. He said that he would arrange for two student Gardaí to go out to Raphoe.

- 6.09. Sergeant Hargadon stated that some time later, towards the beginning of December 1997, when she had returned to her duties in Raphoe, she was informed that two student Gardaí would report to her on the night of the 6th/7th of December 1997 for the purpose of going as undercover operatives into Frankie's nightclub. She said that it was Detective Sergeant White who located the student Gardaí and arranged for their attendance at Raphoe. On the night in question she briefed them as to the times at which she would make an inspection of the premises and asked them to monitor what took place both before and after that inspection. Detective Sergeant White had taken steps to ensure that they were provided with the necessary funds to cover their entrance onto the premises. He subsequently claimed the sum of £20.00 from his authorities.
- 6.10. Student Gardaí Noreen Finnerty and Gerard Lawless duly attended at Frankie's nightclub on the night of Saturday the 6th of December 1997. They subsequently made statements in relation to what they had seen in the nightclub during their period there. They recounted how they observed the shutters on the bar being closed at 01.10 hours just prior to the arrival of the Gardaí. When the Gardaí left the premises, the shutters on the bar were opened and the staff recommenced serving the patrons. Sergeant Hargadon prepared a report in relation to the matter, submitted statements from the two student Gardaí and provided a statement herself. A liquor licensing summons subsequently issued against Frank McBrearty Senior, together with a summons for aiding and abetting against Andrew McBrearty arising out of the events that night.<sup>183</sup> That was the last set of liquor licensing summonses to issue against Frank McBrearty Senior and his staff in 1997. There were two further summonses that year. They were issued by Garda John O'Dowd against Andrew McBrearty alleging offences under the Public Order Act said to have occurred on the 26th of December 1997.

### **Events in 1998**

- 6.11. It appears that matters had calmed considerably by 1998. In the first three months of that year there were a number of inspections of the McBrearty premises, although these were not even on a weekly basis. There were no liquor

<sup>183</sup> Tribunal Documents, pages 664-676.



licensing summonses issued in the first three months of the year. The Mitchell diary had an entry in relation to the 11th/12th of January 1998, but that was in relation to a hoax bomb scare at the premises. There were no further entries for the month of January 1998, there was one entry in respect of the 22nd/23rd of February 1998 and there were three entries in the Mitchell diary for April 1998. None of these were of any great significance. A liquor licensing summons was issued in respect of an inspection carried out by Garda Shaun Barrett at 00.30 hours on the 2nd of April 1998. At that time he found seven persons on the premises, six of whom were consuming what appeared to be alcohol. There was alcohol on display on both the bar and the tables. Mr. Mitchell was not able to give any explanation for what was found on the premises on that occasion. While the Tribunal was not furnished with copies of the summonses, it appears that the normal liquor licensing summons issued against Frank McBrearty Senior, together with an aiding and abetting summons against Mr. John Mitchell arising out of that inspection.

- 6.12. There were no summonses issued during May or June of 1998. At 00.55 hours on the 5th of July 1998, Garda Barrett carried out an inspection accompanied by Garda McCann. He stated that at the time there were approximately five hundred patrons in the nightclub. Most of the patrons were either consuming alcohol, or had alcohol in front of them. There were fresh drinks on the bar and on the tables throughout the nightclub. He observed a number of bar staff serving through openings in the shutters. As a result of this inspection, the standard five count summons issued against Frank McBrearty Senior, together with a summons for aiding and abetting against Andrew McBrearty.<sup>184</sup>
- 6.13. On the 14th of September 1998 Gardaí Keaveney and Barrett entered Frankie's nightclub for the purpose of inspecting whether any meals had been provided, as there was an exemption in force from midnight until 01.00 hours. In the course of the inspection the members came across two brothers who were extremely drunk. As a result of this inspection, Sergeant Hargadon recommended that the licensee should be prosecuted for allowing drunkenness on the premises and that the bar manager, Mr. Mitchell, should be prosecuted for aiding and abetting the commission of that offence. Superintendent Kevin Lennon directed that there should be a prosecution in respect of the offence of permitting drunkenness on the premises. It appears that only one summons issued against Frank McBrearty Senior in this regard. This appears to be the last summons that was issued against the McBrearty premises in 1998. The Tribunal is not aware of any further summonses having being issued during that year.
- 6.14. An analysis giving the number of inspections carried out of each of the licensed

<sup>184</sup> Tribunal Documents, pages 891-892.

premises in Raphoe, together with the number of files flowing from the inspections and the number of cases ultimately brought to court, is set out below:

<b>1997</b>			
LICENSED PREMISES	INSPECTIONS	FILES	COURT
Suíle Tavern	109	10	0
Tir Connell Bar	105	02	2
Town & Country	102	03	3
Frankies	125	15	12 PEN
McGranaghans	91	0	0
Friels Hotel	89	0	1
Central Hotel	73	0	0
Tudor Lounge	52	0	0
Duffys	40	5	4
Idle Hour	37	4	3
White Cross	14	2	1
Rafters	8	0	0
<b>1998</b>			
Tir Connell Bar	86	1	3
Central Hotel	80	0	0
Friels Hotel	80	0	0
Suíle Tavern	78	2	5
Town & Country	78	0	1
McGranahans	76	1	0
Frankies	68	4	7 PEN
Tudor Lounge	55	0	0
Idle Hour	55	2	1
Duffys	48	3	6,4PEN
White Cross	16	1	2
Rafters	5	0	0

- 6.15. Having regard to the evidence of Mr. John Mitchell, which is supported by entries in both the Mitchell diary and the Inspection Book, together with an analysis of the number of inspections and summonses that came to be issued after August of 1997, the Tribunal is satisfied that there was no undue Garda attention to the McBrearty licensed premises in the latter part of 1997, or in 1998.

## Hoax Bomb Calls

- 6.16. Between May 1997 and January 1998, a number of hoax bomb calls were made alleging that bombs had been planted in Mr. McBrearty Senior's nightclub premises. Mr. McBrearty Senior alleged that these calls were not genuine, but were merely a further aspect of the campaign of harassment, that he alleged the Gardaí were waging against him. He alleged that the Gardaí were behind the making of the calls, and further that they were made with a view to causing maximum disruption to his business on busy nights. For their part, the Gardaí stated that once the calls were made to various locations, such as to the local parish priest or to the local hospital or to the local radio station, they were obliged to react to them in the appropriate manner so as to secure the safety of all the persons, both patrons and staff, attending at Mr. McBrearty Senior's nightclub premises. Mr. McBrearty Senior alleged that Gardaí knew that the bomb calls were not genuine, due to the fact that they did not clear adjoining premises, nor did they arrange for any ambulances to be brought to the scene to take away any persons who might be wounded as a result of any explosion. He said that there was no emergency plan put into operation.
- 6.17. The Tribunal does not accept this as a good reason on the part of the nightclub owner for failing to take the reasonable and appropriate steps that were necessary in the circumstances. In order to understand the allegation of harassment that was made by Mr. McBrearty Senior in this regard, it is necessary to set out the history of the various calls that were made in the relevant period.
- 6.18. In the period from the 5th of May 1997 to the 12th of January 1998 there were eleven hoax bomb calls made to various places alleging that there were bombs or other devices on or outside the McBrearty nightclub premises. Detective Sergeant Hugh Smith investigated these calls. He submitted a comprehensive report on the 20th of February 1998.<sup>185</sup> Further progress was made in relation to the origin of these calls as a result of the investigations carried out by the Carty team subsequent to that date.
- 6.19. In order to understand the bomb calls, one has to go back further in time to look at a series of abusive telephone calls that were placed to the home and business premises owned by Frank McBrearty Senior. In his evidence to the Tribunal, Mr. William Doherty admitted that he made these calls to Frank McBrearty Senior. He said that he did this to 'wind up' Mr. McBrearty Senior as he did not like him.<sup>186</sup> The first two abusive telephone calls were placed at 12.00 midnight on the 5th of November 1996 and at 02.30 hours on the following morning. Detective Sergeant Smith was not able to locate the origin of those telephone calls. However, subsequent enquiries by the Carty team revealed that these calls had

<sup>185</sup> Tribunal Documents, pages 1,529-1,537.

<sup>186</sup> Transcript, Day 185, pages 84-85.

been made from Northern Ireland, from the Adria factory in Strabane. Enquiries with the manageress at that factory revealed that Mr William Doherty was employed in the factory at that time. These calls must also be seen in the context of the series of extortion telephone calls that were placed to Mr. Michael Peoples on the 9th of November 1996. These calls were made by Mr. William Doherty.

- 6.20. After receiving the first two abusive telephone calls, Mr. McBrearty Senior changed his home telephone number and went ex-directory. This caused an abatement of the problem. However, on the 24th of February 1997, he received no fewer than seven abusive telephone calls. The first of these was placed at 10.20 hours, with further calls at 10.23 hours, 10.26 hours and 10.30 hours. For some unknown reason there was no record of these telephone calls on the printout of incoming calls, that was received by Detective Sergeant Hugh Smith. He was not able to explain how this discrepancy on the printout occurred. The next set of calls was received at 14.55 hours, 15.10 hours and 15.33 hours. The first two of these calls came from the telephone box on Derryveigh Avenue, Letterkenny. The third call was made from a public telephone box at the Diamond in Raphoe. Detective Sergeant Smith thought that it was likely that the caller was the same person, who had made the first two calls from the public phone box in Letterkenny and had then driven to Raphoe and made a further call from the phone box at the Diamond.
- 6.21. There was some respite following the calls made in February 1997. However, on the 20th of April 1997, Frank McBrearty Senior received an abusive call to his home at 21.02 hours. This call was traced as having been made from the home of Mr. William Doherty. On the following day at 21.48 hours there was a further abusive call placed to Mr. McBrearty's home from the telephone box at the mart in Carndonagh.
- 6.22. A telephone call was made to Canon Deegan in Raphoe at 00.25 hours on the 4th of May 1997, informing him that two devices had been planted in Frankie's nightclub. A similar call was placed to Letterkenny General Hospital at 00.48 hours. At 01.01 hours Sergeant White entered the nightclub and spoke to Mr. Andrew McBrearty. He informed him of the telephone calls and advised him that he should immediately evacuate his premises. Mr. McBrearty stated that he did not intend to evacuate the premises. Sergeant White then spoke to Mr. Mitchell, who telephoned the licence holder, Mr. Frank McBrearty Senior. Mr. Mitchell told Sergeant White that on the instructions of Mr. McBrearty Senior he was not going to evacuate the premises or inform the patrons of the threat.
- 6.23. During the course of that evening, Inspector James Griffin, who was assigned to BSE duty in Donegal at the time, received a call telling him that he was required

by the Gardaí in Raphoe in relation to a bomb warning. He made his way to Frankie's nightclub, where he informed Mr. Andrew McBrearty that he should inform his patrons of the bomb warnings and evacuate the premises. Andrew McBrearty refused to do this. Inspector Griffin reported that no attempt was made to inform the patrons or to clear the premises. In his evidence to the Tribunal, Mr. Frank McBrearty Senior stated that while this was the first bomb warning that he had received, he had received many abusive telephone calls in the preceding months. He felt that the bomb warning was a hoax, particularly due to the fact that the Gardaí did not bother evacuating any of the other premises in the immediate vicinity. He stated that it was for this reason that he had directed his staff not to inform the patrons, nor to evacuate the premises.<sup>187</sup>

6.24. The Tribunal had the benefit of hearing evidence of an expert nature from Chief Superintendent Brendan Cloonan in relation to the appropriate procedure that should be adopted when a bomb warning is received. He outlined how the first priority is for the Gardaí or the person to whom the call is made to attempt to get as clear a description of the device and the location of the device as is possible. He stated that the golden rule is that once a bomb warning has been received, it must be treated as genuine until the Gardaí can definitely state that it is not a genuine call. The call is to be treated seriously and the first priority is to remove civilians from the danger area. To this end, the Gardaí should attend at the relevant locus and inform the owner or management of the situation. With the assistance of the owner and his staff they should ensure that the premises are evacuated in an orderly fashion. Depending on the nature of the device, it may be necessary to evacuate buildings in the vicinity as well as the target building. When all evacuation has been successfully carried out, the Gardaí, possibly with the assistance of one member of staff, should search the relevant area looking for suspect devices. If a suspect device is found, the Gardaí should withdraw and call in the appropriate experts in the form of the army bomb disposal unit. It may also be necessary to put an emergency plan into operation.

6.25. The Tribunal is satisfied that on this occasion there was absolutely no justification for the attitude that was taken by Mr. McBrearty Senior towards his patrons and indeed his staff. Simply because he felt that the call was a hoax, he put the lives of the patrons and staff at considerable risk. It was fortunate that in fact events turned out to prove him right in relation to the nature of the call. However, that does not excuse the actions that were taken by Mr. McBrearty Senior and the management of the premises that night.

6.26. A further nuisance telephone call was made to Mr. McBrearty's pub on the 6th of

<sup>187</sup> Transcript, Day 622, page 151.

June 1997 at 22.32 hours. On the following day, two hoax bomb calls were made to Highland Radio informing them that there was a bomb in Frankie's nightclub. The first call was made at 00.58 hours. It was traced to a public telephone box in St. Eunan's Terrace, Raphoe. At 01.02 hours the caller telephoned Highland Radio again and informed them that the bomb was outside and not inside Frankie's nightclub. This call was traced to a public telephone box at the Diamond in Raphoe. Management refused to clear the premises.

- 6.27.** On the 24th of September 1997 a call was placed at 18.15 hours to Highland Radio stating that there was a bomb in the Parting Glass. It was noted that the caller sounded drunk.
- 6.28.** On the 23rd of November 1997 at 00.51 hours a 999 call was placed to the Telecom Éireann Centre in Sligo. The caller stated that there was a bomb in Frankie's nightclub. The call was subsequently traced as having come from the public telephone box in the Diamond, Raphoe. Inspector John Dunleavy attended the McBrearty Nightclub premises. There, he had a very unpleasant encounter with Frank McBrearty Junior. He was subjected to gross verbal abuse. Management refused to clear the premises. In the course of a detailed written report on the events of that evening, he gave the following conclusion:

I was very fair with these men, but got no reciprocation whatsoever from them; instead they blatantly tried to intimidate me into fulfilling their agenda only, where clearly they had separate duties and responsibilities. They also made it quite clear that they held law enforcement with contempt and there was no disguising their view that on their "patch" they were the law. Clearly, these men are doing nothing for the development of Garda/community relations in Raphoe. On the 23rd of November 1997 they had a very good vested interest for doing what they did.<sup>188</sup>

- 6.29.** On the 27th of December 1997, at 10.43 hours, a call was made to Letterkenny General Hospital. The caller stated that there were two bombs to go off in Frankie's nightclub, one in the car park and one inside. On the following day, a hoax bomb call was made to the Divisional Communications Centre at Letterkenny Garda Station at 00.18 hours. The caller stated that there was a bomb in Frankie's nightclub.
- 6.30.** On the 31st of December 1997, at 10.50 hours, a call was placed to Altnagalvin Hospital in Derry. The caller stated that he was from the LVF and that there was a bomb in Frankie's nightclub due to go off at 12 midnight. He gave a code word "Red Hand Commando". The final call was made on the 12th of January 1998

<sup>188</sup> Tribunal Documents, page 1,540.

at 01.10 hours to Highland Radio. The caller stated that he was in a house in Raphoe and he was being forced to make the call. He stated that there was a bomb in Frankie's nightclub. No code word was given.

- 6.31. At some stage prior to the making of the last of the hoax bomb calls, a form of agreement had been reached between Mr. McBrearty Senior and the Gardaí as to how the risk of a genuine bomb threat could be averted. To that end, it was agreed that prior to any patrons coming onto the premises, the staff would make a thorough search of the premises. Secondly, the patrons and any bags that they were carrying, would be searched by the stewards on entering the hall. While these steps did not mean that any bomb calls could be ignored, it certainly went some way to reducing the risk that such calls were genuine in nature. It also led to a lessening of the tension between management on the premises and the Gardaí.
- 6.32. Mr. William Doherty was arrested by Detective Sergeant Henry and Detective Sergeant Smith at his home on the 20th of September 1997. He was detained at Milford Garda Station. During his detention he was questioned at length in relation to the abusive telephone calls and in particular about the call which had been traced back to his home. At that time, he had denied making any of the calls to Frank McBrearty Senior.
- 6.33. In his evidence to the Tribunal, Mr. Hugh Smith stated that he was quite satisfied all along that William Doherty was the orchestrator of all the calls, even if he did not make each and every call himself.<sup>189</sup> Mr. Smith stated that he could understand that Mr. McBrearty Senior may have had the perception that some of these calls were done at the behest of, or with the connivance of the Gardaí. He might have reached that opinion due to the fact that there was a connection between Mr. Doherty and Mr. O'Dowd in relation to the giving of certain information, allied to the fact that one of the extortion calls which had been placed to Mr. Michael Peoples on the night of the 9th of November 1996 had been made by Mr. Doherty from Mr. O'Dowd's house. In addition, there was a connection between Mr. Doherty and Superintendent Lennon. Also, there was the fact that Mr. O'Dowd's notebook was found in Mr. Doherty's bedroom at the time that he was arrested by Detective Sergeant Henry on the 20th of September 1997.
- 6.34. In an interview that Mr. Doherty had with the Carty team on the 21st of October 1999, Mr. Doherty apparently told the Carty team that he had been asked by the Gardaí to make abusive telephone calls to Frank McBrearty Senior. He stated that Garda O'Dowd and Sergeant White gave him Mr. McBrearty's telephone number and told him to pass it on to people who did not like him so that they could ring

<sup>189</sup> Transcript, Day 638, page 21.

him up and drive him crazy. However, when he subsequently gave evidence to the Tribunal, Mr. Doherty denied that Sergeant White had had any involvement whatsoever in any of the actions that he took. He did not repeat the allegation in evidence against Mr. O'Dowd. In these circumstances, the Tribunal is not prepared to make a finding that any Gardaí were instrumental in procuring Mr. Doherty to make the abusive telephone calls or the hoax bomb calls to Frank McBrearty Senior.

### **Conclusion on the Bomb Scares**

- 6.35. The Tribunal has heard with amazement the reaction of Mr. McBrearty Senior and his staff to the bomb warnings that were delivered in respect of his nightclub premises. In effect, the reaction was not only to ignore the bomb warnings for the most part, but in many cases to actively refuse to co-operate with the Gardaí in their attempts to clear the premises. Many of these bomb warnings had all the hallmarks of having been genuine. The Gardaí reacted appropriately to these warnings and made various attempts to have the premises cleared. In many cases, they got very little co-operation and in some cases, none. The stated reason for the refusal on the part of the staff and management in the disco to ignore the bomb warnings was that they did not believe that they were genuine. The explanation was advanced to the Tribunal that since the Gardaí were taking no steps to clear other premises in the immediate vicinity of the nightclub, this established to their satisfaction that they were not genuine bomb warnings, but were further elements of the campaign of harassment that they felt was being carried out against the McBrearty family.
- 6.36. The Tribunal does not accept this as a genuine reason, or explanation, for refusing to comply with the bomb warnings. The refusal dated from the outset and at a time when it could not have been known whether the Gardaí were clearing other premises or not. Moreover, the size of any given bomb might determine the extent to which an area would be cleared. The Tribunal believes that the refusal to clear the premises was an amalgamation of the refusal of Mr. McBrearty Senior to accept any dictation or authority from the Gardaí, coupled with his wish to continue trading notwithstanding the fact that he might have put the lives of many of his customers in peril.

### **The Prosecutions in the District Court**

- 6.37. We turn now to look at the hearing of the prosecutions, that arose as a result of the various summonses that were issued against Frank McBrearty Senior and



others alleging breaches of the liquor licensing laws and breaches of the public order legislation. Mr. McBrearty Senior has made the case that the inspections of his premises that were carried out in 1997 and 1998 and which gave rise to the summonses, as well as the issuance of the public order summonses against him and members of his extended family, were all part of a campaign of harassment mounted by members of An Garda Síochána against him and his family. He maintained that the prosecutions in the District Court were the second part of that campaign. Furthermore, he made the case that in mounting those prosecutions the Gardaí used a person with a criminal background to give false evidence against them. That person was Bernard Conlon. Mr. McBrearty Senior saw it as part of an overall plan to destroy him and his business.

- 6.38.** The first group of summonses were returnable for hearing before the District Court in April 1997. However, they were adjourned, apparently due to the civil proceedings brought by Mr. McBrearty Senior claiming injunctive relief, which were then pending before the High Court. The hearing of those summonses was adjourned from time to time. As we have already seen, a large group of summonses was issued and served on Mr. McBrearty Senior in September 1997. The summonses eventually came on for hearing before the District Court in Letterkenny on the 13th of February 1998. By that time senior and junior counsel had been retained to act on behalf of Mr. McBrearty Senior. The matter was not in a position to proceed that morning due to an illness in Mr. McBrearty's family. When the cases came on for hearing on the 26th of May 1998, Mr. Martin Giblin S.C. on behalf of Frank McBrearty Senior applied to the Judge for a direction that the prosecution should make available a large number of telephone records. Included in those sought were the details of telephone calls passing between Garda John O'Dowd and William Doherty on the night of the 9th of November 1996, and in particular the calls made from Mr. O'Dowd's house that evening. There was considerable argument in relation to the scope of the records that were sought. The remainder of the day was spent hearing evidence from Sergeant Roache and other witnesses in relation to service of one of the summonses. He also gave evidence in relation to a drugs operation that had been mounted in McBrearty's premises in 1995.
- 6.39.** Evidence in the matter resumed on the 22nd of June 1998. At this time they were discussing the inspection, that had occurred on the 6th of January 1997. According to the notes maintained by Mr. Kenneth Smyth, the solicitor who was acting for Mr. McBrearty Senior at the time, Mr. McBrearty Senior stated in evidence that he had given specific orders against serving alcoholic drink after hours. The reader will note that when he came to give evidence before the Tribunal, Mr. McBrearty Senior stated that his bar had continued to serve drink up

until 01.00 hours on a Sunday morning, but had done so because that was being done by all the nightclubs in the area. The Tribunal does not make any finding in relation to the evidence that was given by Mr. McBrearty Senior in the District Court. This is due to the fact that in relation to the evidence given before the District Court, the Tribunal was working from the notes which were drawn up by Mr. Kenneth Smyth of the evidence given at those hearings. Mr. Smyth very candidly admitted that those notes were far from a verbatim record of what was said in the court. He did his best to take notes during the hearings as they went on each day. Each evening he dictated his notes onto a Dictaphone machine. He then had the notes typed up by his secretary back at his office in Dublin. I accept that the notes are Mr. Smyth's best effort at recording what went on in the court. However, through no fault of his, they cannot be seen as a complete record of what transpired in the court on any given day.

- 6.40.** The court then proceeded to hear evidence in relation to the summons arising out of the inspection that had occurred on the night of the 11th/12th of January 1997. This was the night on which Sergeant White had first carried out an inspection of the McBrearty premises. A number of witnesses were called on either side in relation to what the Gardaí saw at the time of that inspection. At the conclusion of the evidence in relation to that summons, the Judge indicated that he would make his decision afterwards in case it should have a bearing on the general issue. He said that he would make a note on the file but defer giving his decision until after he had heard evidence on the so called wider issue.
- 6.41.** The court spent the remainder of that day hearing evidence in relation to the prosecution emanating from the inspection on the 19th of January 1997. On the following day the court heard evidence in relation to the incidents that occurred on the 23rd of February 1997. Mr. Mitchell gave evidence, in the course of which he referred to the notes contained in the Mitchell diary. He was cross-examined at length in relation to these notes. The matter was then adjourned until the 2nd of December 1998. That hearing was taken up almost exclusively with an application on behalf of the defence that the trial Judge should disqualify himself due to the fact that he had carried out his own inspection of the premises without either party being present. Having heard extensive argument in the matter the Judge reserved his decision to the following day. On the following morning, he ruled that he would not disqualify himself from the case due to the fact that he had only driven by the premises and viewed them from the outside. He had not spoken to anybody in the course of the inspection.
- 6.42.** On the 7th of December 1998, the summonses for the 20th and the 27th of April 1997 were due for hearing: these were the summonses involving the evidence

given by Sergeant Noeleen Griffin. The defence were afforded the opportunity to view the videotapes. After some legal argument concerning documents that Mr. William Flynn had apparently sent to Superintendent Lennon, the Judge then heard evidence from Sergeant Noeleen Griffin. She gave evidence as to how she came to perform the undercover duty in the McBrearty premises. She gave evidence as to what she saw on the occasion of her visits to the premises. In the course of cross-examination she was asked as to whether her timings were correct. She stated that she checked with her watch and the clock behind the bar. Evidence was heard from Mr. McBrearty Senior to the effect that the clock behind the bar did not keep the correct time. According to Mr. Smyth's notes, Mr. McBrearty Senior stated that his instructions to the staff were always to close the bar on time.<sup>190</sup>

- 6.43.** On the following day Sergeant Griffin gave evidence in relation to the visit that she had made to the premises on the 27th of April 1997. The Judge also watched both videos in the course of that day. According to Mr. Smyth's notes, Mr. Eamonn McConnell, a barman employed at the premises, was called to give evidence. He stated that the bar had closed maybe ten seconds prior to midnight.<sup>191</sup> He went on to say that Mr. McBrearty Senior laid out the rules each night for the bars to close at 12 midnight. Mr. Mitchell was also called to give evidence. He accepted that Sergeant Griffin was present in the premises but he did not accept her timings. He said that the bars had to close at 12 midnight so they were closed.<sup>192</sup> That concluded the evidence for that day.
- 6.44.** The 8th of December 1998 was also significant for another reason. That was the occasion on which Mr. Bernard Conlon falsely identified Mr. Michael Peoples as being one of the persons who had attended at his house in Sligo on the 20th of July 1998 and threatened him with a silver bullet if he gave evidence against the McBreartys. That false identification was made to the Gardaí by Mr. Conlon in Letterkenny Courthouse. As a result of that false identification, Mr. Peoples was ultimately arrested under section 30 of the Offences Against the State Act, 1939 on the 6th of May 1999. This matter is fully set out in the third report of the Tribunal.
- 6.45.** At the conclusion of the hearing on the 8th of December 1998, Mr. McBrearty Senior had a protracted consultation with his legal team. The Tribunal has not been furnished with the content of those consultations. The relevant portions have been blanked out in the notes that have been made available to the Tribunal. Mr. McBrearty Senior was quite entitled to maintain his claim of privilege over that portion of the notes.

<sup>190</sup> Tribunal Documents, page 986.

<sup>191</sup> Tribunal Documents, page 1,018.

<sup>192</sup> Tribunal Documents, page 1,021.

- 6.46. On the following day, counsel for Mr. McBrearty Senior for the first time raised what has been termed the Claim of Right of defence. He alleged that Superintendent Kevin Lennon had told Frank McBrearty Senior that his bars could stay open until 01.00 hours like every other nightclub. He alleged that Chief Superintendent Fitzpatrick had also said the same thing to Mr. McBrearty Senior. According to the note, this is what Mr. Giblin, S.C. indicated to the trial Judge:

I am setting up a defence of claim of right, that it was conveyed by Superintendent Lennon that they could stay open until 1.00 a.m. and Sergeant White interfered with this. I am setting up a bona fide claim of right.<sup>193</sup>

- 6.47. The trial Judge indicated that he would deal with that aspect of the case as part of the wider issue to be heard at the conclusion of all the individual prosecutions. The rest of the day was spent hearing evidence concerning the summonses arising out of the inspection on the 14th of July 1997. The court then proceeded to deal with the summonses that had issued arising out of the incidents on the 20th of July 1997. Evidence continued on that day and into the following day.
- 6.48. When the summons in respect of the 31st of August 1997 was called, Superintendent Lennon indicated that Mr. Conlon was not going to be called as a prosecution witness. There was considerable legal argument as to whether or not this should be done. Eventually, the trial Judge directed that Mr. Conlon should be made available as a witness for cross-examination by the defence. Further evidence was heard that day; and on the following day, the 11th of December 1998, there was considerable legal argument about the production of certain documents. One of these was an internal Garda document known as a divisional circular, which had been issued on the direction of Chief Superintendent Denis Fitzpatrick. This will be dealt with later in this chapter. There then followed a protracted cross-examination of Mr. Bernard Conlon by the senior counsel retained on behalf of Frank McBrearty Senior. He was cross-examined at length as to how he came to make his initial complaint to Sergeant White about not getting a meal. He was then cross-examined in relation to the occasion when he was found on the premises after hours on the 31st of August 1997. In the course of the cross-examination, it was put to Mr. Conlon that he had told lies in relation to the 'Silver Bullet' allegation. He denied that that was so. It was put to him that Mark McConnell, one of the people who had been arrested in relation to that allegation, had a good alibi for the night in question because he had been seen by one of his lawyers in a public house premises in Letterkenny at a time when he was supposed to be threatening Mr. Conlon in Sligo. Mr. Conlon did not accept that and was adamant that he was telling the

<sup>193</sup> Tribunal Documents, page 1,029.

truth. Some further evidence was heard from other witnesses in relation to the inspection on the 31st of August 1997.

### **A Settlement Meeting**

- 6.49. On the 7th of January 1999, Chief Superintendent Denis Fitzpatrick travelled to Dublin to meet the lawyers representing Frank McBrearty Senior. He did this in an effort to see if some compromise could be reached which would lead to a resolution of the District Court matters. He said that while he had no definite plan fixed in his mind, he hoped that it might be possible to secure agreement whereby the defence would enter a plea to certain summonses and the remainder would then be struck out. Mr. Fitzpatrick stated that he attended this meeting with the knowledge and consent of the Assistant Commissioner of the Northern Region, Assistant Commissioner Kevin Carty. In his evidence to the Tribunal Assistant Commissioner Carty denied that he ever had any knowledge of such a meeting.
- 6.50. At the meeting, it was apparently agreed that Chief Superintendent Fitzpatrick would return to Donegal to examine the files and see if it would be appropriate to accept a plea in respect of certain summonses. It was agreed that the lawyers would take instructions from Mr. McBrearty Senior in this regard. A further meeting was arranged for some short time later. However, it was not possible to reach any concluded agreement. There was a divergence between Mr. Fitzpatrick and Mr. Lennon as to why this was so. Mr. Fitzpatrick stated that having reviewed the files he ascertained that the trial Judge had embarked on a number of cases and that it would be inappropriate to do a deal. Mr. Lennon's recollection was that when the junior counsel representing Frank McBrearty Senior attended at the meeting in Letterkenny, he immediately indicated that Frank McBrearty Senior was not willing to enter a plea to any of the summonses.
- 6.51. Whatever may have been the actual reason, no formal agreement was reached between the prosecution and the defence at that time. At the meeting in Dublin, the defence team had indicated that they had a "bombshell" to drop as part of the wider issue. They would not indicate to Chief Superintendent Fitzpatrick what it was that they had in their possession. While the Tribunal is not aware of the nature of the "bombshell" referred to by the lawyers, it may well have been the detailed statement which had been obtained from Robert Noel McBride by Mr. McBrearty Senior on the 13th of December 1998. This statement outlined in very clear terms how Mr. McBride came to make a number of false statements against Frank McBrearty Senior and Frank McBrearty Junior. It was the first of these statements which had led to the arrest of Mr. McBrearty Junior and Mr. Mark McConnell on the 4th of December 1996. Certainly the content of that statement would have been explosive if opened to the District Court.

### **Conclusion on the Settlement Meeting**

- 6.52. It is difficult to know what exact conclusion should be drawn in relation to the unsuccessful settlement meeting held between Chief Superintendent Fitzpatrick and the legal representatives of Frank McBrearty Senior. It is clear that it was Chief Superintendent Fitzpatrick who had started the ball rolling by means of an approach to the junior counsel representing Frank McBrearty Senior towards the end of 1998. I do not accept that his motivation in so doing was due to the fact that excessive resources were being tied up in the ongoing District Court prosecutions. It was most unusual for a Chief Superintendent to suggest such a meeting in relation to a District Court matter. It was also unusual for the Chief Superintendent to travel from Donegal to Dublin for a meeting with the lawyers representing an accused in a District Court matter. The Tribunal is inclined to the view that at that time, the Chief Superintendent was worried about the so-called “wider issue” which had been referred to in the course of the District Court prosecutions. By that time he would have been aware of a number of important matters: that the McBrearty camp were aware of the origin of the extortion call made at 22.06 hours from the home of Garda John O’Dowd to Michael and Charlotte Peoples on the 9th of November 1996, that they were also aware that Bernard Conlon, a key prosecution witness in the District Court, had an extensive list of previous convictions, and that his allegation against Mark McConnell in relation to the ‘Silver Bullet’ affair was alleged to be false, due to the fact that Mr. McConnell had a good alibi for the night in question. Chief Superintendent Fitzpatrick was not aware of other knowledge the McBrearty representatives had at that time. As already noted, they had in fact obtained a comprehensive statement from Robert Noel McBride in the previous month.
- 6.53. The Tribunal is of the view that in these circumstances, and particularly given the imminent arrival of the investigation team which was to be headed by Assistant Commissioner Carty, the Chief Superintendent took the opportunity to attempt to prevent the emergence of the so-called ‘wider issue’ into the public domain by attempting to settle the District Court prosecutions quickly and quietly. In that attempt he was unsuccessful due to the fact that Frank McBrearty Senior was not willing to enter a plea of guilty to any of the summonses then pending before the District Court.
- 6.54. Further evidence was presented to the District Court on the 8th, 9th, 10th, 11th, and 12th of March 1999. By that time the Carty team had arrived in Letterkenny Garda Station. Their investigation was beginning to reveal a picture of wide

ranging wrongdoing on the part of various Gardaí in the Donegal division. The presence of the Carty team was to have a significant impact on the course of the prosecutions over the following year.

- 6.55. When hearings resumed at a special sitting on the 1st of June 1999, a junior counsel had been retained to take over the prosecution of the cases. This was objected to vehemently by counsel acting on behalf of Mr. McBrearty Senior. Counsel for the prosecution submitted to the trial Judge that he should deal with the individual summonses on a standalone basis. Counsel for the defence stated that this should not be done due to the fact that there was a wider issue to be dealt with at the end of the cases, insofar as the defence were making a case of abuse of process by a small group of Gardaí who were using the summonses as instruments of oppression. The trial Judge ruled that he would continue to hear evidence but not rule on the cases until he had heard all the evidence in relation to the wider issue at the end. Evidence was heard in relation to individual summonses between the 1st and the 4th of June 1999. For the first time, representatives of the Garda Complaints Board had attended at these hearings to ascertain whether any of the evidence being given in those prosecutions could be of relevance to the many complaints then pending before the Garda Complaints Board. They also attended at subsequent hearings before the District Court.
- 6.56. The cases came on again for hearing before the District Court in Letterkenny on the 6th of September 1999. On that occasion, counsel for the defence applied for an adjournment. He indicated that Assistant Commissioner Carty, who was engaged in carrying out a very detailed investigation in Donegal at the time, had contacted his solicitor and indicated that he agreed that there should be an adjournment, and was willing to give evidence before the court to that effect if required. The prosecution opposed this application. Also at that hearing Mr. Paudge Dorrian, solicitor, addressed the court and informed it that he represented Detective Sergeant White and Garda O'Dowd, who were prosecution witnesses, and that for various reasons he would have to advise his clients not to give evidence before the court. The rest of the day was spent in further argument concerning discovery of documents.
- 6.57. On the following day, Mr. Dorrian again informed the Judge that he was objecting to Detective Sergeant White or Garda O'Dowd giving evidence unless they were warned that they did not have to answer any questions that might incriminate them. The trial Judge indicated that he proposed to hear the abuse of process evidence. He directed that the documents as sought should be made available to the defence and to the witnesses. There was a further hearing before Letterkenny District Court before Judge Fitzpatrick on the 13th of September 1999, where the Judge refused to consider any so called wider issue but

adjourned the consideration of the cases before him until the determination of the cases then pending before Judge O'Donnell. On the 23rd of September 1999 certain Garda witnesses were cross-examined in relation to the list of convictions that had been furnished to the defence team in respect of Mr. Bernard Conlon. There had been a difficulty in relation to the list originally furnished in that it was found to have been incomplete. On the 17th of November 1999 evidence was heard in relation to a case involving Mark McConnell and Vincent Barron. Further hearings were held during November and December 1999. These were largely taken up with arguments surrounding the production of documents.

- 6.58. When the matter came back before the court on the 27th of March 2000, counsel for the prosecution stated that the Director of Public Prosecutions had received an interim report from the Carty team, as a result of which it appeared to them that some matters may have come to light which would be of relevance to the defence. He applied for an adjournment in the circumstances. When the matter came back for hearing on the 29th of May 2000, junior counsel for the prosecution asked for a further adjournment on the basis that the Director of Public Prosecutions needed a further four weeks to review the papers that had been received from the Carty investigation team on the 16th of May 2000. The matter was adjourned for mention to the 21st of June 2000. By this time the only remaining matter for consideration by the Judge was the so called wider issue.
- 6.59. When the matter came on before the District Court on the 21st of June 2000, counsel for the prosecution indicated that he had instructions from the Director of Public Prosecutions to withdraw all the summonses against all the defendants. All the summonses then pending before the District Court were withdrawn. Thus ended the saga of the liquor licensing summonses and public order summonses that had been brought against Frank McBrearty Senior and members of his extended family.

### **Conclusions on The District Court Prosecutions**

- 6.60. Having regard to the evidence heard by the Tribunal in respect of the various inspections that gave rise to summonses and having regard to the reports that were furnished in relation to these inspections, the Tribunal is of the view that the Gardaí were entitled to bring the individual prosecutions that were brought against Mr. McBrearty Senior's licensed premises, with the exception of the summonses issued in respect of the 31st of August 1997. Given the concessions that were made in evidence by Mr. McBrearty Senior and Mr. Mitchell, it does not appear that the Gardaí can be criticised for bringing these prosecutions. We now know that the law was being broken at the time that the inspections were carried out. Accordingly, these individual prosecutions were warranted.



- 6.61. In total there were sixty-eight summonses before the Tribunal in respect of the period October 1996 to July 1998. This number was excessive. Had the matter been dealt with by the Gardaí in a balanced and proportionate manner, they would have obtained evidence in respect of the best two or three cases and then brought the matter speedily into court. This would have taken the area of conflict away from the village of Raphoe and brought it before the District Court Judge who was the person best equipped to deal with the matter in accordance with law.

### **The Divisional Circular**

- 6.62. In the course of the District Court prosecutions, a question arose as to whether a particular document had been issued by Garda management in Letterkenny directing Gardaí on the ground to monitor the extended McBrearty family and file reports in relation to their movements. In fact, no such document had ever issued from Letterkenny Garda Station. However, a document had been issued under the direction of Chief Superintendent Denis Fitzpatrick along somewhat similar lines. That document was dated the 27th of February 1998. It was in the following terms:

Confidential

Superintendent,  
Letterkenny.

Re: Campaign to Discredit Gardaí in Donegal Division

I refer to the attempts to discredit Gardaí from this Division and other members involved in the Barron investigation.

There is information to hand to suggest that Frank McBrearty (Senior) from Raphoe is financing a campaign to discredit Members of the Force. The campaign is being operated mostly by Mr. Billy Flynn, and sometimes trading as Zimmermann and Co from Enfield, Co. Meath.

Members of your District Force and Gardaí who assisted in the investigation into the Richard Barron death should be notified of this matter and directed to report any incidents or unusual contact that may occur either with Mr. McBrearty and his extended family or Mr. Flynn and his employees.

This document is for Garda use only and is Confidential.

D.N. Fitzpatrick

Chief Superintendent<sup>194</sup>

<sup>194</sup> Tribunal Documents, page 1,469.

- 6.63. In the course of the District Court prosecution, the existence of this circular was put to a number of Gardaí. However, it was described by counsel acting on behalf of Frank McBrearty Senior as a document targeting the extended McBrearty family. The impression given was that it was a direction to Gardaí to report on the movements of members of the extended McBrearty family and their agents, in much the same way as reports might be submitted to a collator in relation to the movements of known criminals. According to Mr. Kenneth Smyth, the defence legal team had seen a copy of the document because it had been produced to the legal team at a consultation of the 9th of December 1998. However, they did not reveal the fact that they had the document at that time. Various Gardaí from Letterkenny and Raphoe were asked in the course of cross-examination as to whether they had seen the document. When it was described to them, they denied that they had seen it.
- 6.64. After an amount of legal argument, Superintendent Lennon, having at first asserted privilege against its production on the basis that it was a confidential Garda document, subsequently waived the privilege and produced a copy of the divisional circular which had been issued by Chief Superintendent Denis Fitzpatrick. When the document was produced, a further Garda witness, Garda Pádraig Mulligan, admitted that he had seen the document. He thought that he had seen it in Raphoe Garda Station.
- 6.65. I am satisfied that the allegation levelled against the Gardaí concerned to the effect that they committed perjury with regard to whether or not they had seen the document is not well founded. While Mr. Smyth's note is not a complete note by any means, it is fair to say that the description given by counsel for the defence to the Garda witnesses when asking them about this matter did not accurately accord with the content of the divisional circular. In particular, they were asked as to whether there was any document which targeted the extended McBrearty family by instructing them to report on movements or interaction which they had with Mr. McBrearty Senior or his private investigator. The circular which issued from Chief Superintendent Fitzpatrick only required the Gardaí to report "any incidents or unusual contacts" that may occur either with Mr. McBrearty Senior, his extended family or his private investigator. In these circumstances, and in the absence of very clear evidence as to what was said in the District Court, the Tribunal is not prepared to make any finding of perjury against any of the Garda witnesses questioned on this aspect.

### **A Bizarre Incident**

- 6.66. In the early hours of the 30th of October 1998, a somewhat bizarre incident

occurred when Detective Sergeant White followed Mr. McBrearty Senior's vehicle from Ballybofey as far as the village of Convoy. He then radioed the communication centre at Letterkenny Garda Station, where he spoke to Sergeant Joseph Hannigan. He requested him to have the local patrol car intercept Mr. McBrearty Senior's car and attempt to identify the passengers who were travelling with Mr. McBrearty Senior at the time. For his part, Mr. McBrearty Senior went to Raphoe Garda Station to make a complaint about Detective Sergeant White's activities that evening. It was a very bizarre encounter. Its only significance to the narrative is that it demonstrates the complete breakdown of trust that had occurred between Frank McBrearty Senior and Detective Sergeant White.

- 6.67. Mr. White's account was to the effect that on the night in question, he had been sitting in his car parked on the main street in Ballybofey. At that time, he was keeping surveillance on another vehicle which was owned by a relative of a suspected criminal. He hoped that he might be able to apprehend the suspect if he returned to his sister's car in the course of the evening. While he was carrying out this surveillance duty, he noticed Mr. McBrearty Senior's car parked some further distance along the street. According to Mr. White, there were a number of passengers in Mr. McBrearty Senior's car. However, he was not able to see them clearly.
- 6.68. Mr. White stated that Mr. McBrearty Senior and his passengers seemed to be sitting in his vehicle for no apparent reason. At one point, Mr. McBrearty Senior alighted from the vehicle, walked down the street and then crossed over to the far side where Detective Sergeant White was parked. On passing the detective sergeant's vehicle, Frank McBrearty Senior allegedly said words to the effect that, "Ballybofey is a dangerous place, Sergeant". He then proceeded down the footpath and entered a fast food outlet. Some time later he came out of the shop carrying some provisions. He returned to his vehicle.
- 6.69. Mr. White stated that he was very concerned by the comment made by Mr. McBrearty Senior, due to the fact that some ten days previously, an old car of his, which he intended to sell to his brother, had been set on fire in the driveway of his house. He said that he suspected that Mr. McBrearty Senior had been involved in that incident; however, he had no proof that that was so. He stated that it was on this account, when he saw Mr. McBrearty Senior moving away from the kerb in his car, that he decided to follow the vehicle. In evidence, he stated that he suspected that there may have been young men in Mr. McBrearty Senior's car who might have been going out to Detective Sergeant White's house to cause damage to it. It was for this reason that he decided to follow Mr. McBrearty

Senior's car. He followed it as far as Convoy, where he saw Mr. McBrearty Senior bring his vehicle to a halt and proceed towards the entrance to the Garda station. Detective Sergeant White radioed to the communications centre in Letterkenny Garda Station and asked them to have the local patrol car intercept Mr. McBrearty Senior and ascertain who the passengers were in his vehicle.

- 6.70. Mr. McBrearty Senior did not give evidence in relation to this incident. However, he had made a statement of complaint about the matter on that evening when he returned to Raphoe. He went to the Garda station and made a statement to Garda Eamon Doherty. He stated that he, his wife and his sister, Hannah McConnell, had been in Ballybofey that night on "private business". In actual fact it appeared that they had been there for the purpose of consulting with a lady who was a "seer" in relation to matters that were of concern to them. She subsequently made a statement to the Garda Complaints Board, wherein she stated that she had not seen any other car following them that evening. She felt that there was a grudge between Mr. McBrearty Senior and Detective Sergeant White. Mr. McBrearty Senior, in his statement, stated that at one point in the night he had gone to the fast food outlet for the purpose of purchasing refreshments for himself and his passengers. He denied that there had been any interaction between himself and Detective Sergeant White. He stated that when he started to drive out of Ballybofey, that Detective Sergeant White followed them for a considerable distance. It was for this reason that he had stopped at Convoy Garda Station for the purpose of reporting the matter. When he could not get through to the communications centre by means of the 'green man' at the station, he proceeded on to Raphoe, where he reported the matter at Raphoe Garda Station.
- 6.71. I do not propose to make any finding in relation to this matter. It is simply a curious and bizarre incident. Its only significance lies in the fact that it demonstrates that due to the interaction that they had had in Raphoe between January and August of 1997, over a year later both men continued to regard each other with considerable distrust and hostility.
- 6.72. That concludes the narrative of the general events relevant to the harassment module. The following chapters of this report deal with a number of discrete issues that arose in the course of the sub-module. The issue concerning the allegation made by Mr. Paul Quinn to the effect that drugs were planted on him by either Sergeant White or Garda Moran is dealt with in Chapter 7. A number of miscellaneous allegations of harassment are dealt with in Chapter 8. The conclusions that I have reached in respect of this sub-module are set out in Chapter 9.

## CHAPTER 7

### THE ALLEGATIONS OF PAUL QUINN

#### Introduction

- 7.01. Paul Quinn alleged that he was subjected to unlawful and unfair attention from members of An Garda Síochána insofar as:
- He was taken for a drugs search to Raphoe Garda Station, where drugs were planted on him. The members of An Garda Síochána involved in this were Sergeant John White and Garda Phelim Moran.
  - The issue of a Public Service Vehicle licence to him was delayed due to the interference of Sergeant John White.
  - Garda John O’Dowd singled him out for special attention around the issue of a parking ticket.

#### Paul Quinn

- 7.02. Mr. Paul Quinn is from County Donegal. He resided in the U.K. from 1985 to 1996, where he worked as a carpenter. Mr. Quinn returned to Ireland in May 1996 with his wife Susan Quinn and young child. Mrs. Susan Quinn is from County Cork. They bought a house in Convoy, County Donegal and Mr. Quinn intended to resume his career as a carpenter.
- 7.03. Mr. Quinn is a brother of Róisín McConnell, Edel Quinn and Katrina Brolly. It will be recalled that all three sisters were unlawfully arrested and detained on the 4th of December 1996, during the course of the investigation into the death of the Late Mr. Richard Barron, as they were suspected of being accessories after the fact. It will also be recalled that Róisín McConnell is married to Mark McConnell, who was also unlawfully arrested and detained during the course of that investigation as the Gardaí suspected him of murdering the Late Mr. Richard Barron. Members of An Garda Síochána, namely Sergeant John White and Detective Garda John Dooley, subjected both Mrs. McConnell and Mrs. Brolly to appalling treatment during the course of their interrogation at Letterkenny Garda Station.
- 7.04. Mr. Quinn made statements to the Gardaí who were investigating the death of the Late Mr. Richard Barron and the effect of these statements was to provide an alibi for Mark McConnell for the time period in which the Late Mr. Barron met his death.<sup>195</sup>

<sup>195</sup> These statements are considered in detail in Chapter 3 of the Tribunal’s second report the Investigation into the death of Richard Barron and Extortion Calls to Michael & Charlotte Peoples, pages 188-191. See also Tribunal Documents, page 4,517 - statement of Paul Quinn and Tribunal Documents - Barron Investigation - statement of Susan Quinn, page 1,514.

- 7.05. On the night of the death of the Late Mr. Barron, Paul and Susan Quinn attended the Town and Country Bar in Raphoe. On the 19th of October 1996 Paul Quinn made a statement to Detective Sergeant Michael Keane saying that on the 13th of October 1996 at about 21.30 hours himself and his wife Susan Quinn got a lift to Raphoe and went to the Town and Country pub where they remained until 01.05/01.10 hours on the 14th of October 1996. During that time Mr. Quinn was in the company of Mark McConnell. Paul Quinn's wife, Susan Quinn, also made a statement to Detective Garda Brendan Regan on the 19th of October 1996 which also confirmed that herself and Paul Quinn went to the Town and Country pub at approximately 21.45 hours on the relevant night and stayed there until 01.10 or 01.15 hours the following morning. Mrs. Quinn confirmed that Mark and Róisín McConnell were in the pub when they left. This statement was followed by a subsequent statement which will be referred to later in this chapter.

### **The Allegation of Planting**

- 7.06. On the 10th of January 2002 Paul Quinn made a statement to Detective Garda Hugh Moloney and Detective Garda Thomas Flynn in which he alleged that Sergeant John White planted drugs on him in February 1997. Mark Quinn said that he thought the reason that Sergeant White planted the drugs on him was because he provided an alibi for Mark McConnell for the night of the 13th/14th October 1996 - the night of the Late Mr. Barron's death.<sup>196</sup>

### **Complaints of "An Untrue and Malicious Nature"**

- 7.07. On the 21st of February 2005, during the course of the Tribunal's hearings into the Barron investigation, counsel for the Tribunal questioned Detective Sergeant John White about his role in that investigation, post his transfer to Raphoe. Detective Sergeant John White told counsel for the Tribunal that while he had been sent to Raphoe for "public order purposes", he did some jobs on the Barron murder investigation, as it was referred to at that time. In particular, he took a statement from Irene Dolan, he called out to the Doherty's in Tullyowen and he took a statement from Paul and Susan Quinn later on in 1997 in relation to:

*The exact time the taxi called and the circumstances surrounding the taxi calling to Quinn's pub on [the night of the death of the late Mr. Barron].<sup>197</sup>*

This time was significant as it was the phoning for a taxi by Paul Quinn and its subsequent arrival that fixed the time of Mr. Quinn's departure from the licensed premises, and at which time he said the McConnell's were still in the pub. Mr. McConnell's presence at the pub at this time did not of course fit with the Garda theory on the death of the Late Mr. Barron.

<sup>196</sup> Tribunal Documents, pages 3,075 – 3,080.

<sup>197</sup> Transcript, Day 295, page 100.

- 7.08. Counsel for the Tribunal put it to Detective Sergeant White that the Quinns felt harassed and that they were accused of covering up vis-à-vis the times in order that the suspects could be more closely linked into the murder. Detective Sergeant White explained to counsel for the Tribunal that there was no question of unhappiness with their earlier statements but that there had been some:

*Banter between [himself] and Paul Quinn in relation to a complaint that he had made against me between the 9/2/1997 at Raphoe Garda Station ... while I said there was banter between us, there was no aggression ... but we just mentioned the vouchers and he said he was sorry about saying that and that was more or less the way it was left. There was tea made in the house. We had tea and biscuits in the house, and other than that nothing else went on of any kind ...*<sup>198</sup>

- 7.09. Detective Sergeant White said that Mr. Paul Quinn made two complaints on the night of his detention for a drugs search. Firstly that Sergeant White had stolen certificates valued at £10,000 or £11,000 sterling and secondly, that Sergeant White had planted four LSD tablets in his pocket. Detective Sergeant White described these allegations as follows:

*Both of these allegations can now be seen to be totally and completely and utterly untrue and of a most malicious nature, and I can go into that in detail if you so wish. In fact I would like to.*<sup>199</sup>

- 7.10. Detective Sergeant White described the events of the night in more detail as follows:

*[Paul Quinn] was taken in for a drug search one night from Frankie's nightclub myself and Garda Moran walked with him up to the Garda Station and went in. His jacket was taken off, left up on the counter of the Garda Station and I proceeded to ask him to remove his boots and socks, that type of thing. Garda Moran found some silver paper with four LSD tablets, dots on paper that type of thing you know. He made the allegation then that they were planted in his pocket, and I instructed Garda Moran to put that into the custody record write in it his exact allegation into the custody record. He did that.*

*Initially he gave a wrong address. He said he was living in London at the time but I had known from another person he wasn't living in London. He was living in Milltown, Convoy and he was very adamant his London address be written into the custody record.*

<sup>198</sup> Transcript, Day 295, pages 101 and 107.

<sup>199</sup> Transcript, Day 295, page 102.

*He showed me an air ticket for a couple of days previously where he had come back from London. He was back just for a couple of days he said. His wife Sue was at that time working as a caterer, and he was insistent on that.*

*I didn't believe him because I had heard, he had a chequebook in his pocket, contractor's voucher certificates. I photocopied them in the Sergeant's office because his name and address were on them, and when I came out he said now I am making another allegation against you. He said, you have stolen three of those certificates. I said, that's nonsense, Paul, because if you read the dates they were cashed in a maybe three-month sequence predating that, that previous nine months or 12 months, and I explained this to him. He said, he's still making the allegations so I advised Garda Moran to write it into the custody record. I came in on the following morning and he withdrew the allegations about the certificates and five years later he made an allegation that I planted drugs, planted these four things. ... Garda Moran requested that he do the file on the matter and that drug seizure that night because he had never done it before. I said that's fine by me, no bother. I made out a statement, I typed it out and gave it to him. I instructed him to have it done within six months. It was a summary of events.*

*Time slipped by in some way. It was about five months before it came from the lab in Garda Headquarters. Then he was on holidays and six months had elapsed so Mr. Quinn wasn't prosecuted for drugs.<sup>200</sup>*

- 7.11. Detective Sergeant White told the Tribunal that he had tape-recorded the happenings at the Garda station and that the tape would show that the planting allegation was false.<sup>201</sup> Detective Sergeant White maintained that the tape demonstrated that he had never left the station prior to the drugs being found in Mr. Quinn's jacket, which was contrary to Mr. Quinn's assertion contained in his statement to Garda Maloney and Detective Garda Flynn that Sergeant White had asked Mr. Quinn to remove his jacket, then left the station for a short period of time before returning, and shortly afterwards the drugs being discovered in his jacket.
- 7.12. I have listened to an enhanced copy of Detective Sergeant White's audio tape and insofar as anything can be gleaned from same, I am satisfied it indicates the following:

<sup>200</sup> Transcript, Day 295, pages 102-104.

<sup>201</sup> Transcript, Day 295, page 108.



- Mr. Quinn gave a London address to the Gardaí.
- Mr. Quinn was asked to empty his pockets and informed that he was acting suspiciously, insofar as he wanted to go to the toilet.
- Money was counted.
- Garda Moran said he found something in Mr. Quinn's pocket; he was cautioned by Sergeant White; Mr. Quinn's immediate reaction was that he had been set up.
- When challenged by Sergeant White Mr. Quinn admitted that he lived in Convoy.
- Mr. Quinn was informed that the reason he was arrested and his rights were read over to him by Garda Moran.
- Mr. Quinn consented to the Gardaí conducting a search at his house in the presence of Sergeant May.
- Mr. Quinn made two complaints which were recorded by the Gardaí but not signed by him.

I am not satisfied that the audio tape vindicates Mr. White's position in the manner or to the extent which he contends.

### **The Evidence of Paul Quinn**

- 7.13. At the conclusion of Detective Sergeant White's evidence the allegation that drugs had been planted on Mr. Quinn was not pursued by the Tribunal until it commenced its inquiries into its tenth Term of Reference, namely, the allegations of harassment of the extended McBrearty family and their associates. In contrast to Mr. White's earlier insistence that the matter be dealt with, Mr. White, through his counsel, submitted to me that Mr. Quinn's allegation came nowhere near the harassment Term of Reference and therefore should not be further enquired into. I did not accept this submission<sup>202</sup> and Mr. Quinn commenced his testimony on the matter.
- 7.14. Mr. Paul Quinn told the Tribunal that he spent the day of the 9th of February at his house in Convoy. In or around 21.00 hours he took a taxi to Raphoe, where he had up to five pints in a local pub, from where he went to Frankie's nightclub. He described himself as being "in good form" at this time and denied having taken drugs of any sort. He was not in anybody's company going into the nightclub, where he paid his entrance fee and proceeded past reception into the foyer. He said that Mr. Frank Bogle was behind him. He said that as he proceeded

<sup>202</sup> See ruling, Transcript Day 644, pages 1-12

on into the nightclub, he saw two uniformed Gardaí. Out of a sense of curiosity, he approached one of them and enquired as to whether he was Sergeant White. He had heard a lot about Sergeant White and how he had treated his sisters while in custody and wanted to put a face to the name. It so happened that the Garda who Paul Quinn approached was Sergeant White. Paul Quinn described the encounter as follows:

*... I asked are you Sergeant White he went I am and I said thank you and I just looked at him and I wasn't in any way hostile or cheeky in any way. I said thank you and I walked away. He came behind me and said what's your name. I said I don't have to give you my name. He said oh yeah I think you do. He said you look like a boy whose got drugs ... straightaway he said you look like a boy whose got drugs on you. I said I don't. I put my hands up like this and I said search me if you want. He says no I don't think I'll search you here we'll detain you. We'll take you down to the barracks and we are going to detain you. And that's what they done.<sup>203</sup>*

7.15. Paul Quinn was then walked down to the Garda station accompanied by the two Gardaí. He said that there was very little conversation between them on the way down to the Garda station. At one stage an acquaintance of Mr. Quinn's shouted out his name and enquired as to what was going on, whereupon Sergeant White said at least he knew his first name now.<sup>204</sup> Mr. Quinn had no recollection of saying anything to the effect that he supposed he was going to be set up or something was going to be planted on him in the Garda station. He said his only fear or apprehension on his way to the Garda station was that he would "get a hiding" in view of the fact of what happened to his sister Róisín McConnell while in custody being interrogated by Sergeant White.

7.16. Mr. Quinn described arriving at the locked Garda station, it being opened by Sergeant White and proceeding through three doors to a main room. In this room there was a counter; he was brought behind the counter area and remained standing for the duration of his time in the Garda station. Mr. Quinn then described what happened as follows:

A. *As I said I thought I was told to take my jacket off right away but according to the tape I wasn't. [Sergeant White] asked me my address, I gave him my London address which I still owned a house in London and as far as I was concerned that was still my home like because when we come back to Ireland we'd always say we'll give it a year in Ireland and if it doesn't go out we're going to go back to London again.*

<sup>203</sup> Transcript, Day 644, page 20.

<sup>204</sup> Transcript, Day 644, page 21.

*That was still classed as my home address. So I gave him that address because I was quite scared of this man because I knew what he was capable of doing like. I thought I am not going to give him my other address in Convoy because you know I could be hounded, I could be totally harassed. So I thought I'll give him this address in London and that's what I did do ... once I got in I told him my full name yeah.*

Q. *What was the atmosphere like at that time?*

A. *Yeah it was quite calm at that time yeah. Quite calm. White was doing a lot of walking, walking around so he was.*

Q. *Can you recall what Garda Moran was doing?*

A. *More or less just standing there. He wasn't doing very much, from what I remember. No he was quite quiet. White was ... he was the Guard that was doing all the talking, so he was.*

Q. *Right had you removed any articles of clothing at this time?*

A. *No not at this time no.*

Q. *I see. So what happened then?*

A. *I know White definitely went outside and that must have been the time, he would have went outside when I was standing with my jacket and everything on. I heard the car door closing and him coming back in again.<sup>205</sup>*

7.17. Paul Quinn said he saw Sergeant White walking out as follows:

A. *I wouldn't have saw the front door, but I would have saw the middle door and I would have saw him veering outside.*

Q. *So you saw him going through the door of the room you were in?*

A. *Yeah.*

Q. *Go through the middle door?*

A. *Yeah.*

Q. *And head towards the front door?*

A. *Yeah. Go outside.*

<sup>205</sup> Transcript, Day 644, pages 32-33.

*Q. I see. Did you hear anything?*

*A. I heard a car door closing. I don't know if it was his or whatever but I definitely heard the car door closing and him coming back inside.<sup>206</sup>*

7.18. Mr. Quinn said that approximately a minute or so later Sergeant White returned into the Garda station and commenced to question him about his address, what his wife worked at, where Mr. Quinn worked in London and matters of that nature. Mr. Quinn persisted in saying that he had a London address

7.19. Mr. Quinn said Sergeant White then asked him to take his jacket off. He described his jacket as being a leather jacket with three pockets; two outside pockets and one inside pocket. There was some documentation in his inside pocket, which consisted of medical documentation and a booklet, which resembled a chequebook containing sub-contractor's vouchers.

7.20. As there was some controversy about the booklet of sub-contractor's vouchers it is as well to now explain what same consisted of. A booklet of vouchers is issued by the Revenue Commissioners to those who work as sub-contractors for a main contractor. It is similar in appearance to a chequebook. Sub-contractors are paid a gross pay inclusive of tax by the main contractor. Once paid by the main contractor, the sub-contractor completes one voucher from the booklet and hands same to the main contractor. The voucher certifies that he or she has been paid a certain amount of money by a contractor in order that the contractor can claim said amount as an expense in relation to his or her taxable income. Similar information is completed in the stub of the voucher and retained by the sub-contractor. This is used as an aid by the sub-contractor in making returns to the Revenue Commissioner. In the hands of a dishonest person the booklet of vouchers can be used as a method of defrauding the Revenue Commissioners insofar as unallowable expenses may be claimed.<sup>207</sup>

7.21. Mr. Quinn said he removed his jacket, which he either handed to Sergeant White or put on the counter of the Garda station. He also removed his top which was dealt with in a similar fashion. His shoes and socks were also removed. Sergeant White then asked him to empty his pockets and Mr. Quinn took his money out of his pocket and put it on the counter. His money was then counted by both Gardai.

7.22. Mr. Quinn described the procedure in the Garda station as follows:

*A. Well they said take the jacket off, take the jumper off. I think he asked me to take my t-shirt off ... I don't know, the*

<sup>206</sup> Transcript, Day 644, pages 35-36.

<sup>207</sup> Transcript, Day 644, page 56.

*shoes and socks might have been after ... no, the shoes and socks must have been before the drugs were found.*

Q. *So what happened when you'd taken the shoes and socks off?*

A. *Yeah they counted my money. I think it was just after that they counted my money then the drugs were found.*

Q. *Can you describe how that occurred?*

A. *Yeah. It was Garda Moran, he turned around and said you better have a look at this. And then Sergeant White started to say about the drugs and read me my rights straightaway like, about these drugs being found.*

Q. *Do you know where it was that Garda Moran found the article?*

A. *Yeah, the inside pocket of my jacket ...*

Q. *How do you know that was where he found it, did you see him take his hand out?*

A. *I saw him, he was kind of ... he was taking his hand out and he was showing it. I think he made sure that I was looking to see his hands in, I saw his hands coming out, you better have a look at this Sergeant and they are coming from his hand, the inside pocket. I just shook my head and I thought I'm getting set up here.*

Q. *What was it that he produced to show to Sergeant White?*

A. *Well I actually thought it was four smiley faces kind of things, these sticker things. I saw them before, I would have saw them on the news, drugs but they definitely weren't mine. Like I knew it was a drug type but I saw it before on TV.*

Q. *How large were they?*

A. *They were just like small wee squares.*

Q. *Yes ...*

A. *I think they were stuck on to just a kind of piece of paper like, you know a sticky kind of paper at the back. But they*

*were in foil. Because he unfolded the foil ...*

Q. *What did Sergeant White say when Garda Moran said to him you better have a look at this?*

A. *I just think he said right, are these your drugs or something and I said no they are not. He read me my rights then.*

Q. *Yes.*

A. *You don't have to say anything and all this here. After that I just kept saying look you're setting me up. You know I remember saying to Moran how can you live with your conscience, doing something like that. I said, you know on the tape I must have said once every two minutes, you are setting me up I'm being framed here, you know why you are doing it, why you are not going out and getting the real criminals. Like listening to the tape you can hear me saying all of this. Saying you are totally setting me up.*

Q. *Do you have an opinion as to who it was that may have put these things into your pocket?*

A. *I have no doubt it was White. Because Moran didn't say ... I think Moran said about three words until the time the drugs were found, and two of them words was keep looking at it keep looking at it and the other thing he asked me was he asked me where I was from. That is all he ever said. White did all the talking. White did all the talking so he did.*

Q. *When is it that you think he managed to effect the placing of the article into your pocket?*

A. *Look I was never ... I was never in custody before and to me it was the last thing I thought...if I was going in now I would be watching them like a hawk. But I don't know. He could have done it at any time. I was so green towards everything, I never imagined something like that would be done. I knew he was capable of planting drugs I didn't think that he would stoop that low.<sup>208</sup>*

7.23. Paul Quinn said he was in the Garda station approximately ten minutes prior to the time the drugs were found. It was put to Mr. Quinn in strong terms that the account he gave to the Tribunal of what transpired in the Garda station differed

<sup>208</sup> Transcript, Day 644, pages 44-49.

in an important way from his previous accounts. In particular, it was put to him that his case up to the time he gave evidence at the Tribunal was that when he had arrived into the station, Sergeant White asked him to take his jacket off, then Sergeant White left the station for a short period of time and shortly after Sergeant White's return the drugs were discovered in his jacket; whereas when he actually came to give evidence at the Tribunal it was Mr. Quinn's case that Sergeant White had left the Garda station prior to requesting Mr. Quinn to remove his jacket. Counsel for Mr. White commenced his cross-examination as follows:

*Q. Mr. Quinn if we can go back to the transcript of the interview as prepared by the Tribunal. I just want to take you through the transcript ... Do you agree that on the transcript the tape first becomes audible when a question is put to you, which goes: "Well Paul what's your address again?"*

*A. Yeah.*

*Q. At that stage can you tell us how long you were in the Garda station?*

*A. I couldn't really answer that. I really don't know. ...*

*Q. Can you tell us whether it's your case or not that Sergeant White had left the station and gone to his car before that question was put?*

*A. Yeah. For me anyway, in my opinion, yeah, he had gone outside, yeah.*

*Q. At what stage?*

*A. Before them questions were asked.*

*Q. Is that the first time you've said that?*

*A. No I said it earlier. Here in the Tribunal.*

7.24. Prior to giving evidence at the Tribunal, Mr. Paul Quinn had put forward his version of what happened in the Garda station in Raphoe on the following occasions: on the 3rd of June 1997 Mr. Quinn told his solicitor that Sergeant White planted drugs on him; on the 10th of January 2002 Mr. Quinn made a statement to Detective Garda Hugh Moloney stating that Sergeant White had planted drugs on him<sup>209</sup> and on the 25th of February 2005, counsel for Mr. Quinn cross-examined Detective Sergeant White on Mr. Quinn's account of what

<sup>209</sup> Tribunal Documents, page 3,075.

happened in the Garda station on the 10th of February 1997. Furthermore, Mrs. Susan Quinn made a statement to Detective Garda Hugh Moloney on the 17th of January 2002, when she set out what her husband had told her when he returned from Frankie’s nightclub on the night in question. Counsel for Mr. White put it to Mr. Quinn that on all of the above occasions, Mr. Quinn had inextricably connected the finding of the drugs with the assertion that Sergeant White left the station.<sup>210</sup>

- 7.25. Furthermore, it was put to Mr. Quinn that having listened to Mr. White’s tape recording he had sought to “reconcoct a story”<sup>211</sup>, suggesting as he did as follows:

... it is clear that they set me up. For example, when John White told me to take my jacket off, that’s when he could have planted drugs, when the jumper was over my eyes.<sup>212</sup>

- 7.26. Mr. Quinn acknowledged that prior to listening to the tape, he was mistaken as to the sequence of events in the Garda station. He explained this mistake by saying that on the night in question he had consumed five pints and he had been without the benefit of the tape. He also pointed out that there were many instances of his memory of the night being consistent with the tape recording. He added that he did not suspect at that time that he would be set up by the Gardai and if he had so suspected he would have been paying greater attention to their movements.
- 7.27. **In this regard, I accept that Mr. Quinn sought to recollect as best he could what happened in the Garda station that night. I accept his explanation to counsel for Mr. White for this inconsistency in his account.** It is not unusual for an honest witness to have a mistaken or not altogether accurate recollection of events which occurred some time ago. In this regard, I am of the view that the tape cassette of what happened in the Garda station did indeed act as an aide-mémoire for him.
- 7.28. Following the finding of the drugs Mr. Quinn told the Gardai that he actually lived in Convoy. There was a conversation about searching his house and Sergeant White went to copy the sub-contractors vouchers. In order to do so, Sergeant White went to another room and when he returned the booklet to Mr. Quinn, Mr. Quinn accused Sergeant White of stealing three of the vouchers.<sup>213</sup>
- 7.29. Mr. Quinn said that he made two separate complaints in the Garda station on the night of the 10th of February one about the stealing of the sub-contractors

<sup>210</sup> Transcript, Day 644, page 133.

<sup>211</sup> Transcript, Day 645, page 23.

<sup>212</sup> Tribunal Documents, page 4,098.

<sup>213</sup> Transcript, Day 644, page 53.



vouchers and one in respect of the drugs. He described the making of the complaints as follows:

Q. *So you think you made two separate written complaints?*

A. *Yeah.*

Q. *One recorded by Sergeant White?*

A. *Yeah.*

Q. *In respect of the vouchers?*

A. *Yeah.*

Q. *Can you remember what document that was written in?*

A. *I have vague memories of it I think it was kind of that size a bit smaller like that there.*

Q. *Yes?*

A. *So it was. Yeah, it could have been like that copy book or something like that.*

Q. *Did you sign the complaint that had been recorded by Sergeant White in respect of the alleged theft of the vouchers?*

A. *Yeah the drugs.*

Q. *No the vouchers we're talking about?*

A. *The vouchers yeah.*

Q. *And you say that you made a subsequent or another written complaint is recorded concerning the planting of the drugs?*

A. *Yeah.*

Q. *And you think that was recorded by Garda Moran?*

A. *Yeah.*

Q. *Was that written in the same document that the complaint had been recorded by Sergeant White concerning the vouchers?*

A. *Yeah I think it was.*

**Q.** *Did you sign that?*

**A.** *Yeah.*<sup>214</sup>

7.30. Mr. Quinn told the Tribunal that he had no recollection of details such as his name, address and his height, being filled into the custody record. Paul Quinn said that the interview ended in the Garda station when Sergeant Hannigan came into the Garda station, as well as a couple of other Gardaí.

7.31. Mr. Quinn acknowledged that he initially misled the Gardaí on the night in question insofar as the personal details he gave to them were not reflective of reality.<sup>215</sup> He explained this behaviour as follows:

*... I didn't want my address, because I knew what he was capable what he done to my sister and I thought what is he going to do if he gets my real address? Like from what I was told he was capable of anything so he was and at that time it was silly, yeah, I know that now but at that time I thought I was steering him away from my home.*<sup>216</sup>

7.32. I accept Mr. Quinn's explanation for these untruths and note that later on during the course of his detention and, subsequent to the finding of the drugs, he provided his correct address to the Gardaí and also told them he had no difficulty in them searching his home in Convoy, provided Sergeant May, a Garda in whom Mr. Quinn had confidence, was present for such a search.

7.33. Mr. Quinn said that once he was released from Garda custody, he went back up to Frankie's nightclub as he had already paid and there was still another hour or so to go. He also would have got a lift home with one of his friends.<sup>217</sup> He said he told Eamonn and Michael McConnell, who were working behind the bar what had happened in the Garda station. Eamonn McConnell gave him a lift home and he discussed the happenings of the evening with his wife.

7.34. Mr. Eamonn McConnell told the Tribunal that he gave Paul Quinn a lift home from the nightclub on the 10th of February 1997. He said that Mr. Quinn told him that he had been taken down to the Garda station by Sergeant White and drugs had been planted in his pocket.<sup>218</sup>

### **Garda Phelim Moran**

7.35. Garda Phelim Moran joined An Garda Síochána in July 1974. He went to Lifford on border duty in November 1974 and remained there until April of 1979. From

<sup>214</sup> Transcript, Day 644, pages 63-64.

<sup>215</sup> Transcript, Day 644, pages 135-136.

<sup>216</sup> Transcript, Day 644, pages 135-136.

<sup>217</sup> Transcript, Day 644, page 73.

<sup>218</sup> Transcript, Day 658, page 110.

1979 until June of 1981 Garda Moran served in Carrickmacross, Co. Monaghan, at which stage he was transferred to Newtowncunningham, Co. Donegal where he has remained since. As part of his duties in Newtowncunningham, Garda Moran told the Tribunal that he would sometimes carry out duties in Raphoe when manpower was required to supplement the station party there. Such duties usually took place at weekends.

### **Detention of Paul Quinn**

7.36. On the night of the 9th of February, going into the morning of the 10th of February 1997, Garda Moran was on duty in Raphoe and was working with Sergeant White. He told the Tribunal that in or around 00.00 hours that he had been in Frankie's nightclub with Sergeant White. Both of them were in full uniform when a man who is now known to him as Paul Quinn approached Sergeant White and enquired as to whether he was Sergeant White. He did not remember any details of the conversation that then transpired. He told the Tribunal:

*My only recollection then is of a kind of barney between the two of them [Sergeant White and Paul Quinn] or a conversation between the two of them, Sergeant White probably trying to get his name from him and Mr. Quinn being obstinate or being cheeky to use the word. The conversation to my mind seemed to carry on then and it seemed to me, in my recollection of it, that Mr. Quinn was carrying on this conversation or this kind of argument. To me he appeared to be elated, hyper, I thought he seemed to have some drink on him, some alcohol taken but not a lot. The amount of drink that he seemed to have in my mind didn't account for his behaviour, which was fairly, I would say aggressive towards Sergeant White. I remember then, when I heard Paul Quinn's own version of it, that Sergeant White said something to him, have you drugs on you or something like that, that rings true to me and I think that was probably what put it into my mind this man seems to be high on drugs or under the influence of drugs.*

*My recollection in 2001 that following this, that I instigated the detention of Paul Quinn that night and I still ... it seems to me at this stage that in some way I did say to him right, we're going to detain you now. ... It was a constant ... a continuous conversation as I have described between him and John White. I was standing beside him. It may be that Sergeant White also said to him we're detaining you and cautioned him as Sergeant White says he did.*

*One way or another he was told that he was being detained for the purposes of a search under the Misuse of Drugs Act.<sup>219</sup>*

- 7.37. The basis on which Mr. Quinn was detained was somewhat controversial. Section 23(a) of the Misuse of Drugs Act 1977<sup>220</sup> provides that if a member of An Garda Síochána with reasonable cause suspects that a person is in possession of a controlled drug, he may search the person and, if he considers it necessary for that purpose, detain the person for such time as is reasonably necessary for making the search.
- 7.38. Garda Moran told the Tribunal that it was Mr. Quinn's demeanour alone, as described in his testimony, that led him to the suspicion that he had consumed some sort of substances. The basis of Sergeant White's suspicion in relation to Mr. Quinn was somewhat different. In an undated statement Sergeant White explained the circumstances surrounding the detention of Mr. Quinn as follows:

... I was standing in the entrance to Frankie's Night Club...with Garda Phelim Moran. At this time I was in possession of confidential information to the effect that both ecstasy tablets and Lysergide tablets, (more commonly known as LSD Tabs) were available and on sale in Frankie's Night Club on Friday and Sunday nights and more particularly the latter. I was in possession of the names of three individuals who were according to the information available to me involved in the sale of these tablets within the club. At 11.57 p.m. one of these three named persons Paul Quinn...entered the club and as he walked past me I stopped him. I was in full uniform at the time as was Garda Moran. I asked Paul Quinn if he had any controlled drugs in his possession. He denied that he had and attempted to walk past me into the hall. I placed my hand on his shoulder and I informed him that I was detaining him for the purpose of a drug search ...and that I wished him to accompany me to Raphoe Garda Station for the purposes of carrying out that search. He turned away from me and tried to walk into the toilet stating that he wished to go in there for a minute. I informed him that it was not possible at that time...<sup>221</sup>

- 7.38. Detective Sergeant White told the Tribunal that he was given this confidential information by a now deceased person who he described as more of a concerned citizen than an informant. He said this information was to the effect that Mr. Quinn was "not a common type drug dealer that would go in selling drugs to make money out of it" but rather would be a person who was in possession of drugs and would give them to friends of his, not necessarily for reward but so as to look good in their eyes.<sup>222</sup>

<sup>219</sup> Transcript, Day 661, pages 131-132.

<sup>220</sup> Section 23(a) Misuse of Drugs Act, 1977.

<sup>221</sup> Tribunal Documents, page 3,081.

<sup>222</sup> Transcript, Day 299, page 137.

7.39. Mr. Quinn told the Tribunal that he had never dealt or used illicit drugs. He has no criminal convictions. Sergeant Hannigan, the local Sergeant in Raphoe, told the Tribunal that he had never heard Mr. Quinn's name mentioned in relation to drugs.<sup>223</sup> Detective Inspector's Coll's report, compiled as a result of his investigation into the planting allegation, noted that there was no information available at the Collator's office at Letterkenny to indicate that Mr. Quinn was involved in the illicit supply of drugs.<sup>224</sup> Garda Moran told the Tribunal that he was not in possession of any confidential information to the effect that Mr. Quinn was in possession of drugs, nor was he aware of Sergeant White's information to that effect.<sup>225</sup>

7.40. I do not accept that Sergeant White was in possession of confidential information to the effect that Mr. Quinn was supplying drugs to his friends for reward or otherwise. In this regard, I note the evidence of Sergeant Hannigan who had not heard of Mr. Quinn's name being used in connection with drugs, the lack of documentation covering same, and the unblemished record of Mr. Quinn in both this jurisdiction and in the United Kingdom. Furthermore, this "confidential information" was something which was not known to Garda Moran, the person to whom Sergeant White gave the responsibility of preparing the Garda file on the matter.

7.41. Detective Sergeant White conceded in cross-examination that Mr. Quinn made the first approach to the Gardaí on the night in question. He told the Tribunal:

*... I didn't go to arrest Paul Quinn, it was by chance that I saw him walk into the nightclub and he came over and approached the two of us, Garda Moran and myself, he seemed to be - maybe not the word high, but he was hyperactive ... he was challenging us more or less as to what we were doing, that type of thing ... there was no signs of drink on him as such, but he was so hyperactive and so wild eyed looking, that he seemed to be someone that had taken some substance ... I told him that I was going to detain him for a drugs search and then he wanted to go to the toilet, I said that can't happen until we go to the Garda Station.<sup>226</sup>*

7.42. I am of the view that it was the challenge made by Mr. Quinn to Sergeant White, as described by both Detective Sergeant White and Garda Moran, that led Sergeant White to decide to detain Mr. Quinn for a drugs search. I am satisfied that Sergeant White had no genuine suspicion that Mr. Quinn was in possession of drugs and that the confidential information that Mr. White says he had in relation to Mr. Quinn's activities was

<sup>223</sup> Transcript, Day 661, page 68.

<sup>224</sup> Tribunal Documents, page 3,072.

<sup>225</sup> Transcript, Day 661, page 136.

<sup>226</sup> Transcript, Day 295, page 122.

retrospectively invented by Mr. White in order to prop up what he knew to be an unjustified detention. I am satisfied that the reason Sergeant White brought Mr. Quinn to the Garda station was to punish him for challenging the authority of a uniformed sergeant.

7.43. I am also satisfied that Garda Moran, not being a party to the recent history of Sergeant White's dealing with other members of the Quinn family, viewing Mr. Quinn's cheeky behaviour on the night in question together with hearing Sergeant White's suggestion that Mr. Quinn looked liked somebody who had drugs on him, in good faith formed the view that Mr. Quinn may have been in possession of drugs.

7.44. I accept the description of the initial encounter between Mr. Quinn and the Gardaí as provided to the Tribunal by Garda Moran. To some extent it coincides with the description provided to the Tribunal by Mr. Quinn and Sergeant White, insofar, as it describes Mr. Quinn as making the first approach to the Gardaí, and Mr. Quinn behaving in a challenging manner and enquiring as to whether the man he was approaching was Sergeant White.

7.45. I note that Mr. Quinn does not, and did not at that time, have the profile of what one would expect of a drug user. At that time he was a married man, the father of a small child with no prior criminal history. Sergeant Hannigan told the Tribunal that he had never heard Mr. Quinn's name mentioned in relation to drugs. However, more importantly, I do not accept that had Mr. Quinn been in possession of drugs, he would have approached two uniformed members of An Garda Síochána, demanded of one of them his name, and behaved in what was described as a challenging manner. This is even more so, in my view, as Mr. Quinn at this time was of the view that it was Sergeant White who was responsible for the hospitalisation of his sister Mrs. Róisín McConnell.

7.46. Following on the above, I am satisfied that Paul Quinn was not knowingly in possession of drugs at Frankie's nightclub.

### **To the Garda Station**

7.47. Garda Moran said that the three of them proceeded down to the Garda station with one Garda on each side of Mr. Quinn. No consideration was given to handcuffing Mr. Quinn and the distance to the Garda station being approximately a quarter of mile it took them five to ten minutes to get there. Garda Moran said that the conversation or exchange between Paul Quinn and Sergeant White continued most of the way down to the Garda station. He described Paul Quinn as being smart and the two men talking to each other in a

feigned friendly kind of way. He said the tone of the conversation made him recall in some way Paul Quinn making a comment that the Gardaí were going to plant something on him or that they were setting him up in some way. He did not remember what the exact words were but it put him on guard that he should watch Mr. Quinn closely so that he did not have any opportunity to dispose of anything.<sup>227</sup> Garda Moran did not recall anybody shouting Paul Quinn's name on the way to the Garda station. This recollection of Garda Moran's was a relatively recent one.

- 7.48. Prior to giving evidence to the Tribunal, Garda Moran had made five statements concerning the drug search of Mr. Quinn. It was only in the last of these statements, dated the 19th of September 2007, which was an interview of Garda Moran by the investigators for the Tribunal, that Garda Moran recollected Mr. Quinn's alleged comment that he was fearful he would be set up by the Gardaí in the Garda station.
- 7.49. On the 28th of August 2001, Garda Moran forwarded a report to Detective Garda Hugh Moloney in Letterkenny reporting on the search of Paul Quinn. He did not refer to any allegation of Paul Quinn's that the drugs had been planted on him, nor did he refer to any conversation on the way to the Garda station whereby Paul Quinn referred to a worry he had that he may be set up.<sup>228</sup>
- 7.50. On the 7th of September 2001, Garda Moran completed a statement in respect of the search of Mr. Quinn. Again no reference was made to the allegation of Mr. Quinn that the drugs had been planted on him.<sup>229</sup>
- 7.51. On the 18th of January 2002 Garda Moran was interviewed by Detective Inspector Hugh Coll and Detective Inspector Thomas O'Loughlin in respect of Mr. Quinn's allegations, in which he said the following:

I have no recollection of taking up duty as a Member in Charge in the Station Diary in Raphoe or writing out a complaint from Paul Quinn. Neither have I have any recollection of completing the custody record in respect of Paul Quinn that night. In relation to the allegation made by Paul Quinn that John White planted the drugs in the jacket I am not aware of anything that would indicate that to me.<sup>230</sup>

Furthermore, earlier on in the statement Garda Moran said as follows:

I don't recall a specific allegation of drugs being planted on him.<sup>231</sup>

- 7.52. Then, when interviewed by the Tribunal investigators on the 19th of September

<sup>227</sup> Transcript, Day 661, pages 144-145.

<sup>228</sup> Tribunal Documents, page 4,529.

<sup>229</sup> Tribunal Documents, page 4,528.

<sup>230</sup> Tribunal Documents, page 3,086.

<sup>231</sup> Tribunal Documents, page 3,085.

2007, Garda Moran had the following to say about the walk down to the Garda Station:

There was no resistance to him coming to the Garda Station with us and he walked down to the Garda Station with us. On the way I now have a recollection of Mr. Quinn saying something to the effect that “I suppose you’re going to set me up or plant something on me”. That’s all I can remember but on the way to the station there was a constant dialogue between Sergeant White and Mr. Quinn and it was one of them trying to outsmart the other.<sup>232</sup>

7.53. Garda Moran explained this recollection to the Tribunal as follows:

*I suppose with this coming on, my focus on this event --I focused a lot before on it and I have recollected other things, some of them suggested --or my memory triggered by documentation that I have seen in relation to it. I can say that from 1997, from late '97 on I have been engaged in a lot of serious investigation which I was involved in myself, and at the time in 2001, I don't know the recollection that I had then, but I was heavily involved in a number of cases which had gone ... involved very, very serious crimes one has gone to ... or a number of them have gone to the Central Criminal Court. ... These were a much greater focus of my attention during the intervening period. That's all I can say on it. But this recollection is also prompted by a recollection even in the station that I was wary of this man and the tone of the atmosphere from the time we detained him until we got to the station and during the search was to be wary of him, he seemed to be smart. This is a recollection that I have and I can't swear that words I have used are correct but there was something in the spirit of 'you're going to plant something on me' or something like that. That's a recollection that has come to me in the last while. I don't know how long it's in my head now.<sup>233</sup>*

At a later stage he added to this account:

*I was conscious of bringing it up at this stage, you know, seeing that it wasn't already in my accounts given earlier in 2001 – 2002. But it's something that's in my head and that's the truth of it. I had to put it in because it's there it's not something that I made up.<sup>234</sup>*

7.54. When questioned as to why he did not bring it up when he was interviewed by Detective Inspector Hugh Coll he explained as follows:

<sup>232</sup> Tribunal Documents, page 4,571.

<sup>233</sup> Transcript, Day 661, pages 149-150.

<sup>234</sup> Transcript, Day 661, page 151.



*I think the main gist of the thing was that it was Sergeant White was being suspected of planting drugs, I didn't see it probably as anything to do with me, maybe that's it, again I am summarising here I don't remember, I don't remember having a great focus on it, I didn't feel that I was being accused of anything, that's my recollection of it, when I made those statements.*<sup>235</sup>

- 7.55. I do not accept that Mr. Quinn made any such remark on his way to the Garda Station. This information comes over ten years after the events of February 1997. Mr. White has no recollection of any such comment. Mr. Quinn denied that he had made any such remark and said that his apprehension at that time was that Sergeant White would assault him. This perhaps is not surprising considering what Mr. Quinn knew about the detention of his sisters on the 4th of December 1996. Furthermore, on listening to Sergeant White's audiotape of proceedings in the Garda station, I note that there is no reference made by either of the two Gardaí to such a remark. In circumstances where Mr. Quinn accused the Gardaí of setting him up, I would have expected to hear reference to such a comment being passed on the way to the Garda station.
- 7.56. This is a matter that has caused me some difficulty. Such a comment, if it had been made would have been a highly relevant one. Had I accepted that Mr. Quinn had made such a comment it would strongly point in the direction of Mr. Quinn having a guilty mind. It would also go some way towards exonerating Garda Moran. In circumstances where I have concluded that the comment was not made, I have to decide whether it was a deliberate lie by Garda Moran, told to paint Mr. Quinn in a bad light and thus exonerate Garda Moran, or whether same points in the direction of Garda Moran having a guilty mind, or whether Garda Moran simply made a mistake in his recollection, perhaps confusing it with a different occasion.
- 7.57. Having had the benefit of observing Garda Moran give his evidence, I believe that he did the best he could to give it honestly. I do not believe that Garda Moran was deliberately trying to mislead the Tribunal, but rather than this is a case of mistaken recollection on his part.

### **At the Garda Station**

- 7.58. When Garda Moran gave evidence at the Tribunal he did not have a clear recollection as to what happened that evening in the Garda station. He said that he did not actually recall going into the Garda station that night and did not have a clear recollection of where people were once they were in the Garda station. He said as follows:

<sup>235</sup> Transcript, Day 661, page 156.

*From reading the transcripts of the tape and other accounts it seems that Mr. Quinn took off his coat fairly early on and left it down possibly but I can't picture too much of it. I do recall having the coat and searching it but I think before that took place Mr. Quinn was given the opportunity to probably anyway empty his pockets out and empty whatever property he had on him out on a table probably in the station.<sup>236</sup>*

- 7.59. He also said that he recalled a conversation between Sergeant White and Paul Quinn about the sub-contractor's vouchers and the counting of Mr. Quinn's money. He then continued as follows:

*The next thing I can recall is searching Mr. Quinn's coat and my recollection is that I took it over from him and I have a recall in my mind of drawing it close to the window to one of those front windows that we were looking at that I was standing there or thereabouts when I searched it. I can remember when I found the foil or the drugs in his pocket that I was, that my back was to a front window and when I said to him, when I brought his attention to what I had found.<sup>237</sup>*

- 7.60. He described what he found in Mr. Quinn's coat as being four "tabs" wrapped in cigarette foil, four "tabs" being approximately the size of a stamp.<sup>238</sup> Garda Moran said that he was happy that Mr. Quinn's jacket would have been in his sight at all times from when he met Mr. Quinn to when he took it off.<sup>239</sup> Garda Moran said that he had no recollection of anybody leaving the Garda station during the time of Mr. Quinn's detention. He stated as follows:

*It could have happened. I'd be inclined to think it would be unlikely that one of us or that John White would leave the station before we'd completed the search. I would surmise or presume that, because in one way it would defeat the purpose of us ... it might give him an opportunity to dispose of something.*

- 7.61. Sergeant Hannigan was also on duty in Raphoe Garda Station from 20.00 hours on the 9th of February until 06.00 hours on the 10th of February. Sergeant Hannigan told the Tribunal that his usual routine on a night tour was as follows:

*I normally spend say from 20.00 until 20.30 hours in the station and then spend up to meal break time, around 12.00 midnight, 00.30 hours I spend that out and about and then availed of a meal break,*

<sup>236</sup> Transcript, Day 662, page 22.

<sup>237</sup> Transcript, Day 662, pages 23-24.

<sup>238</sup> Transcript, Day 662, page 24.

<sup>239</sup> Transcript, Day 662, page 29.

*and generally it was practice then to be back on the streets may be at 01.30, 02.00 hours.*<sup>240</sup>

- 7.62. On the night of Mr. Quinn's detention in Raphoe Garda Station, it seems that Sergeant Hannigan was present in the Garda station for a short period of time towards the end of Mr. Quinn's detention. In this regard I note the contents of the occurrence book<sup>241</sup> which indicated that Sergeant Hannigan attended at a traffic accident on that night. I also note the tape recording provided to the Tribunal by Mr. White, which records a fourth person having a brief conversation with Sergeant White, Garda Moran and Mr. Quinn shortly before Mr. Quinn's release. Sergeant Hannigan did not have a clear recollection of his dealings with Mr. Quinn on the night in question. He told the Tribunal as follows:

*My only firm recollection, Chairman, of the event, and this is the recollection that I have in my mind, is that I saw Mr. Quinn in the public office of Raphoe Garda Station with Sergeant White and Garda Moran. The firm recollection that I have is that I recall his jacket.*<sup>242</sup>

- 7.63. Garda Moran told the Tribunal that he had a faint recollection of doing something like filling out a custody record but his memory was very vague in respect of same.<sup>243</sup> Garda Moran was the Garda officer with responsibility for processing the investigation file concerning the find of drugs on Mr. Quinn. It is not altogether clear how this came about. Garda Moran said that he presumed that because he was the person who found the drugs he took on the role of preparing the investigation file. Mr. White when he gave evidence told the Tribunal that Garda Moran volunteered to take on the responsibility of preparing the file because he had never before done so and wished to gain some experience. In circumstances where it is agreed that Garda Moran was the person responsible for the processing of the Garda file, it is not necessary for me to make a finding as to how this came about.

### **A Discussion with Susan Quinn**

- 7.64. Mrs. Susan Quinn told the Tribunal that she was working in Letterkenny on the night of the 9th of February 1997. She said that on her way home from work, which was at approximately 01.20 hours on the Sunday morning, she was coming through town when she was stopped by William Bogle who informed her that her husband, Paul Quinn, had been arrested. She continued on to her house where she telephoned the Garda station, at which stage it was approximately 01.45 hours and enquired if her husband was in the Garda station. She was informed that he had been released approximately twenty minutes prior to that.

<sup>240</sup> Transcript, Day 661, pages 67-68.

<sup>241</sup> Transcript, Day 661, page 73.

<sup>242</sup> Transcript, Day 661, page 69.

<sup>243</sup> Transcript, Day 662, page 46.

Mrs. Quinn waited at home for her husband. She continued her evidence as follows:

*[Paul Quinn] said that when he was going into Frankie's nightclub and there was two Guards at the door and he asked who they were. And it was John White, that he asked John White are you John White, because he wanted to know who he was speaking to because he heard John White was responsible for putting his sister in hospital he asked Sergeant White was he Sergeant White because he wanted to put a name to a face. And Sergeant White had said to him who are you and Paul said I don't think I have to give you my name. Sergeant White said that he was very nervous or he looked like a boy that had drugs on him. Paul said well search me if that's what you think. Paul said that he put his arms up and Sergeant White said no, I think we'll get you down to the station. So him and Moran went down to the station and when we got inside the station they asked him to take off his coat. He did and then he asked him to take off his jumper. I can't remember if it was that night that Paul told me about taking off his jumper, maybe this is the past events that's coming in, but he said that Moran put his hand into his inside pocket and took out silver foil with four smiley faces on them. ... I don't know if it was the next morning that he told me about the sub-contractors vouchers because he was more about the drugs that was coming out of his pockets than it was about the [sub – contractor's vouchers], so I wouldn't be 100 per cent on it. I don't know if he actually mentioned it that night or if it was the morning. I don't know. ... Paul had said that he thought that John White had stolen a couple of [sub-contractor's vouchers].<sup>244</sup>*

- 7.65. Mrs. Quinn had previously made a statement to Detective Garda Hugh Moloney on the 17th of January 2002 in which she gave the following account of what her husband had told her on his return from the Garda station and Frankie's nightclub in February 2007:

Paul told me when he got to the barracks the Guards told him to take off his jacket which he did. Paul said John White walked outside the station while the other Guards searched the jacket. Paul told me that night when he came home that when Sergeant White came back into the barracks he handed something to the other Guards. Paul told me this other Guard took something out of his jacket pocket and asked Sergeant White to look

<sup>244</sup> Transcript, Day 661, pages 27-29.

at it. Paul told me he never saw this stuff before that came out of his pocket. It was not his. Paul told me that he told the Guards that the stuff found in his pocket was not his. Paul told me that he told the other Guards that he hoped he could live with himself.<sup>245</sup>

7.66. Susan Quinn told the Tribunal that both she and her husband were worried about the planting of the drugs and described the situation as follows:

*“... we were worried that ... who in all honesty is going to believe us. We weren't long back from London, he went out to have a couple of drinks and next minute he's found with drugs on him. Who was going to believe us? A Guard and a Sergeant.”*<sup>246</sup>

### **Withdrawing the Complaint re the Sub-Contractors Voucher's**

7.67. Mr. Quinn discovered the following morning that he had made a mistake with regard to the allegation that Sergeant White stole sub-contractor's vouchers. He returned to Raphoe Garda Station where he met Sergeant Hannigan. He described his encounter with Sergeant Hannigan as follows:

A. *I says I made statements to say that sub-contractors vouchers were stolen last night and I said I want to withdraw it because I said it's an error on my part and I realise my mistake now. And he says to me, he says there were some things you had on you last night.*

Q. *Yes?*

A. *And I says look they weren't mine, I says they were planted on me. And he says I know to look at you you're a pint man, meaning I drink lager. He says I know to look at you you're a pint man but I'll withdraw that. I think he did say do you want to withdraw the plan[t]ing of drugs, I says no I don't want to withdraw that. That's what he said to me, he says, I know to look at you you're a pint man.”*<sup>247</sup>

7.68. In relation to Mr. Quinn returning to the Garda Station the following day Sergeant Hannigan said as follows:

*My next recollection, Mr. Chairman, is that he returned the following day. My recollection, as I said it's there as well, is that he came to the door in what I believe was evening time I'm basing my recollection to a large extent on my statement to the Carty team, that he withdrew the complaint in relation to the sub-contracting vouchers.”*<sup>248</sup>

<sup>245</sup> Tribunal Documents, pages 4,543-4,544.

<sup>246</sup> Transcript, Day 661, page 30.

<sup>247</sup> Transcript, Day 644, page 79.

<sup>248</sup> Transcript, Day 661, page 79.

- 7.69. Sergeant Hannigan did not have any recollection of any conversation about the drugs that had been found the previous evening. I regard it as highly unlikely that there was no reference to same as they had been found a very short time prior to that and in circumstances where Sergeant Hannigan was aware of same. However, it is not surprising that the details of any such conversation cannot now be recalled by Sergeant Hannigan due to the lapse of time.
- 7.70. Sergeant Hannigan places Paul Quinn's return to the Garda station in the evening time as he did not start work until 15.00 hours on that day. Sergeant Hannigan told the Tribunal that he recorded a small statement from Paul Quinn, which he assumed he passed on to Sergeant White, who was the Garda complained of. However, Sergeant Hannigan does not have a recollection of passing the statement on to him but could say that, having conducted an extensive search, he could not find it.<sup>249</sup> Mr. White, for his part, told the Tribunal that he has no recollection of ever receiving such a statement from Sergeant Hannigan or of ever seeing such a statement.<sup>250</sup> He added that if such a statement had been produced to him he would have retained it or at least retained a photocopy of it.<sup>251</sup> Mr. White, however, had a vague recollection of being informed that Mr. Quinn had withdrawn his complaint in respect of the sub-contractor's vouchers.<sup>252</sup>

#### **A Phone Call to the Citizens' Advice Bureau**

- 7.71. Mr. Quinn told the Tribunal that he phoned the Citizens Advice Bureau the next day and explained what had happened in the Garda station. He described the conversation as follows:

*I just didn't know what to do. I phoned the next morning I phoned up citizens advice and I says I wasn't charged at all and they told me to seek a solicitor and all, and he says and I'll never forget him saying that, they're all one big happy family, they're well known around Letterkenny that they're all one big happy family, the guards were.<sup>253</sup>*

- 7.72. Mr. Quinn did not at that time go to a solicitor. He explained his delay in consulting a solicitor as follows:

*I don't know why I didn't. I thought myself wait till I get charged first. I thought well why go see him now because they never charged me, they let me go. To me at that time I thought it was – no it was just a scare tactic, you know just to let them know I'm here and don't you forget it and you know to me it was a scare*

<sup>249</sup> Transcript, Day 661, page 87.

<sup>250</sup> Transcript, Day 672, page 22.

<sup>251</sup> Transcript, Day 672, page 22.

<sup>252</sup> Transcript, Day 672, page 22.

<sup>253</sup> Transcript, Day 644, pages 77-78.

*tactic and I was an alibi for Mark McConnell on the night. I just didn't know what road he was going to come down with this, with the drugs. But I did seek a solicitor then after that. When they came to my house then I went and seen my solicitor.*<sup>254</sup>

- 7.73. Mrs. Quinn told the Tribunal that she felt that if they were to approach a solicitor they would be regarded as somewhat mad and that generally they could not decide how best to deal with the situation.<sup>255</sup>

### **A Visit from Sergeant White and Garda O'Dowd**

- 7.74. Some months later, on the 19th of May 1997, Sergeant White and Garda O'Dowd called to the Quinn's house and were admitted by Mrs. Susan Quinn. This visit was in furtherance of the job, referred to by Detective Sergeant White during his evidence, which had been assigned to Sergeant White during the course of the investigation into the death of the Late Mr. Barron. In contrast to Detective Sergeant White, Mr. Quinn described the atmosphere in the house on that occasion as tense at times with no tea and biscuits being served.<sup>256</sup>

- 7.75. Mr. Quinn described the conversation on meeting Sergeant White on this occasion as follows:

*I says to him about you planted drugs on me and the reply was in front of my wife and John O'Dowd that your friend was cheeky with me, and I says but there was nobody along with me that night. Then he says well we'll just tidy up a few pieces in the statements and all. So he was in anyway and I thought well this man ... I thought this man can be capable of anything, I could go down the road and he give me parking fines, you know, so I thought play ball with him. I was going to help towards the investigation yeah, like I was going to help him out if there was any other information he needed on that night.*<sup>257</sup>

- 7.76. Thereafter, Mr. Quinn made a statement to Sergeant White which was read over to him in the bedroom of his house where himself and Sergeant White had gone as his wife and Garda O'Dowd were talking.<sup>258</sup>

- 7.77. Mrs. Quinn described the encounter as follows:

*John O'Dowd came to the door and it was me that answered the door and he asked me was it ok for him and his colleague to come in and take a statement. And I let them in. But I didn't know at the time it was John White that was in the car ... John O'Dowd had*

<sup>254</sup> Transcript, Day 644, page 78.

<sup>255</sup> Transcript, Day 661, pages 31-32.

<sup>256</sup> Transcript, Day 661, page 86.

<sup>257</sup> Transcript, Day 644, pages 86-87.

<sup>258</sup> Transcript, Day 644, page 87.

*said to me about making a statement the night of Richard Barron's murder and I said yeah ok and he introduced me to the other guy as John White. I just couldn't believe it. I thought if I had known it was him that was at the door, John O'Dowd could have come in, but I wouldn't certainly have let John White into my house not after what he had done with Paul.*<sup>259</sup>

- 7.78. Ultimately a statement was made by both Susan Quinn and Paul Quinn on that day. Mrs. Quinn stated that there had been a very heated discussion about the attitude of the Gardaí towards Mark McConnell and that thereafter there was a reference to the planting of drugs on Paul Quinn as follows:

*Paul turned around and said to John White didn't you plant drugs on me, and White had turned around and said well hadn't you a friend cheeky with me that night coming into Frankie's and Paul said to him I told you before that I was on my own that night going into Frankie's.*<sup>260</sup>

- 7.79. Mr. O'Dowd told the Tribunal that while he had been aware of the allegation that Mr. Quinn had been found to be in possession of drugs, he did not become aware of Mr. Quinn's allegation that these drugs had been planted on him until the commencement of the Tribunal.<sup>261</sup> In relation to the visit to the Quinn household, Mr. O'Dowd said he was not conscious of any hostility towards Sergeant White and did not recollect any issue being raised by Mr. Quinn to which Sergeant White responded by saying that Mr. Quinn's friend was being cheeky towards him.<sup>262</sup>

- 7.80. I do not accept that the visit to the Quinn household passed by in the way described to me by Garda O'Dowd. In this regard, I note that both Mr. White and the Quinns agree that there was some reference to the drugs search. Furthermore, in view of Mr. Quinn's assertion in the Garda station of being "set up" and his knowledge of how Sergeant White treated his sisters, I do not regard it as likely that what passed between them at this stage was good natured "banter". I am satisfied beyond reasonable doubt that there was a reference by Mr. Quinn to drugs being planted on him in the Garda station.

### **Legal Advice**

- 7.81. Mr. Quinn told the Tribunal that the visit from Sergeant White and Garda O'Dowd prompted him to seek the advice of a solicitor, Mr. Foy from Ballybofey, about the situation in which he found himself.<sup>263</sup>

<sup>259</sup> Transcript, Day 661, page 34.

<sup>260</sup> Transcript, Day 661, page 35.

<sup>261</sup> Transcript, Day 665, page 137.

<sup>262</sup> Transcript, Day 665, page 149.

<sup>263</sup> Transcript, Day 645, page 78.



- 7.82. Mr. Foy's attendance, which is dated the 3rd of June 1997, notes that Mr. Quinn attended at his office by appointment and told him that he had been brought to Raphoe Garda Station on the night of the 10th of February for a drugs search; that drugs had been planted on him; that he had made complaints in the Garda station in relation to the drugs and the stealing of sub-contractor's vouchers and that the complaint in respect of the sub-contractor's voucher was withdrawn the next day. Furthermore, it is recorded that Sergeant White and Garda O'Dowd had called to the Quinn house the previous week in relation to the movements of Mark and Róisín McConnell. The attendance also records some personal details of Mr. Quinn's.<sup>264</sup>
- 7.83. Mr. Foy's advice to Mr. Quinn was to the effect that he should consider the matter carefully before making a formal complaint against the Gardaí. He also advised that if Mr. Quinn was charged with possession of drugs, it would be difficult for him to defend the case in a situation where there was no independent evidence in support of his position, and that furthermore the Court would generally prefer the evidence of the Gardaí to that of an accused.<sup>265</sup>
- 7.85. Mr. Quinn perhaps wisely followed the advice given to him and was not charged with having possession of drugs.
- 7.86. I regard Mr. Quinn's visit to his solicitor at this time as significant. To my mind it helps to establish Mr. Quinn as a credible witness.

### **No Prosecution**

- 7.87. Mr. Quinn was never ultimately prosecuted for possession of illicit drugs. Garda Moran told the Tribunal that he sent the drugs to the Forensic Science Laboratory in order that they be analysed shortly after their discovery. The results of such analysis were not dispatched from the laboratory until the end of June 1997.<sup>266</sup> Garda Moran said he may not have received such results until early July but never ultimately took any further steps in the matter as:

*[I] would possibly have received [the forensic results] later and I would have put it into this drawer that I have where I would have several other jobs and investigations to attend to, depending on what was more pressing, more serious, something you'd say that was already maybe coming up in court, I would be attending court cases or whatever. And I don't know why I didn't process it, it was probably slackness, it was probably a combination of a lot of other work, a lot of other things which needed to be attended to.<sup>267</sup>*

<sup>264</sup> Tribunal Documents, Page 4,614.

<sup>265</sup> Tribunal Documents, page 4,615.

<sup>266</sup> Tribunal Documents, page 3,087.

<sup>267</sup> Transcript, Day 662, page 85.

7.88. Garda Moran gave a similar explanation in respect of the matter in 1997<sup>268</sup> and again in 2002 when interviewed by members of the Carty team.

7.89. When asked whether he ever checked up on the progress of the file Detective Sergeant White explained that he did not. The following exchange took place between counsel for Mr. Quinn and Detective Sergeant White:

A. *He was in a different Garda Station miles away from me. He was there on secondment for a night or two and he took the file away with him and it was my assumption that he would prosecute the matter within the time limit and the Carty inquiry upheld that view.*

Q. *Did you ever ask him about prosecuting that fella Quinn ...*

A. *No, I didn't.*

Q. *... for drugs. Why not?*

A. *Because there was so many things happening, Mr. Goldberg, at the time that it was very difficult to mind every single thing that was on. It was a small matter by any means ... there was so much happening in Raphoe at the time between prosecutions, trouble on the streets, High Court affidavits, murder investigation going on that it was the smallest matter on my mind...<sup>269</sup>*

Thus, it seems to me that Detective Sergeant White gave the impression that the Paul Quinn matter was a small matter and not on his mind at all and, that Garda Moran, the person with responsibility for the file, was in a different Garda station.

7.90. However when one looks at the drugs returns, which is a record of drugs seizures, for the relevant period there were three such seizures in the Raphoe District.<sup>270</sup> Sergeant Hannigan, in his evidence, explained to the Tribunal:

Q. *... I think in relation to the number of drugs seizures in 1997, there weren't that many?*

A. *Drugs at that time ... I certainly didn't make any seizures that I can recall. At that time, Mr. Chairman, or possibly before it, there was sort of, to use a phrase a buckshee drugs unit that used to mount operations in relation to drugs but I don't recall any seizures by myself, I don't recall any during that time, no.*

<sup>268</sup> Tribunal Documents, page 5,030.

<sup>269</sup> Transcript, Day 299, pages 143-145.

<sup>270</sup> Tribunal Documents, page 1,663.

*Q. So that this event would have been one of significance?*

*A. Insofar as it was a drugs seizure.*

*Q. Yes?*

*A. Possibly, but I suppose the quantity wouldn't put it up there with a significant seizure.<sup>271</sup>*

7.91. On an examination of the evidence, it is clear to me that the drugs allegation against Mr. Quinn was not a matter that was so small that Sergeant White forgot about it. It was something which was mentioned in May 1997 when Sergeant White called to the Quinn household. It was also discussed amongst certain Gardai in 1997. This is apparent when one looks at the documentation supplied to the Tribunal.

7.92. Sergeant White and Superintendent Kevin Lennon, in preparation for Mr. McBrearty Senior's High Court proceedings against the Gardaí, wrote to the Commissioner 'B' branch and the Chief Superintendent, Letterkenny setting out the Garda position on the matter.<sup>272</sup> Paragraph 15 of this letter contains the following reference:

It is evident that criminal behaviour does exist in Raphoe. On the 10th of February, 1997 Sergeant White and Garda Moran questioned Paul Quinn, Killoal, Convey in the entrance foyer of Frankie's nightclub and detained him ... A search (sic) of his clothing uncovered 4 LSD tablets (controlled drugs) ...<sup>273</sup>

7.93. Thereafter, this information appeared in paragraph 11 (f) of the affidavit sworn by Chief Superintendent Fitzpatrick on the 21st of April 1997 with the addendum that "investigations in the matter are not yet completed".<sup>274</sup>

7.94. I also note that the drugs allegation against Mr. Quinn was something of which Garda Keaveney was aware. This is apparent from a letter date stamped the 10th of August 1997 and signed by Garda Keaveney which contained the following information:

... I am informed by Sergt White that Paul Quinn has a prosecution pending on a charge of being in possession of a controlled drug. This case is due to come before the court in September.<sup>275</sup>

7.95. Mr. White also created the impression that reminding Garda Moran of the matter was not something he had the opportunity to do. However this is not the case. In 1997, an examination of the pub inspection book revealed that between

<sup>271</sup> Transcript, Day 661, page 76.

<sup>272</sup> Tribunal Documents, pages 4,379-4,383.

<sup>273</sup> Tribunal Documents, page 4,382.

<sup>274</sup> Tribunal Documents, page 1,632.

<sup>275</sup> Tribunal Documents, page 5,024.

February and August 1997 Garda Moran was on duty in Raphoe on nine occasions. Of these nine occasions he worked with Sergeant White on five occasions.<sup>276</sup>

- 7.96. In the above circumstances, I regard the explanation that Sergeant White provided to counsel for Mr. Quinn in answer to his questions about making enquiries of Garda Moran as falling somewhat short of the truth.

### Garda Records

7.97. The following documents were produced to the Tribunal as being the documentation available to the Gardai touching on the detention of Paul Quinn:

- Undated statement of Sergeant John White: Sergeant White told the Tribunal that this would have been written within a week of the incident.<sup>277</sup>
- Mr. White's tape recording of the incident.
- The certificate of analysis from the Forensic Science Laboratory and accompanying letter.
- A copy of the sub-contractor's vouchers retained by Mr. White.

7.98. Section 6(1) of The Criminal Justice Act, 1984 (Treatment of persons in Custody in Garda Síochána Stations) Regulations, 1997 provides as follows:

A record (in these Regulations referred to as the custody record) shall be kept in respect of each person in custody.

7.99. Custody records come in pre-printed format comprising of a number of individual custody records bound together in booklet form, into which are written the individual details of a person's detention. Custody records have been described as "a key element in the regime for the protection of a suspect in police custody..."<sup>278</sup>

7.100. Section 24 of The Criminal Justice Act, 1984 (Treatment of persons in Custody in Garda Síochána Stations) Regulations, 1997 provides that:

Custody records shall be preserved for at least 12 months or, if any proceedings to which a custody record would be relevant are instituted **or any complaint is made in respect of the conduct of a member while a person was in custody**, (emphasis added) until the final determination of the proceedings or complaint, whichever is the later.

7.101. While a bound volume of custody records covering the relevant period in Raphoe Garda Station has been produced to the Tribunal, a custody record in respect of

<sup>276</sup> Tribunal Documents, pages 1,766-1,878.

<sup>277</sup> Transcript, Day 672, page 33.

<sup>278</sup> *Criminal Procedure*; Dermot Walsh; page 260.

Mr. Quinn's detention is not included amongst same. Such a record had the potential of being of assistance to the Tribunal, as firstly, it would act as a contemporaneous record of Mr. Quinn's detention and secondly, it is likely in this particular instance to contain the record of the complaints made by Mr. Quinn on the night in question.

- 7.102. Both Mr. White and Garda Moran maintain that such a record was completed. Sergeant White told the Tribunal that more than one volume of custody records was maintained at Raphoe Garda Station at the particular time. Mr. White made the case that the custody record in respect of Mr. Quinn's detention must be included in another volume of custody records. He told the Tribunal that the fact that a custody record in respect of a named person who had been arrested in Raphoe the previous week, existed only in copy format, proved that there was a second volume of custody records in Raphoe.
- 7.103. I accept that such a regime in respect of custody records was in operation in Raphoe at the time. In this regard, I note the evidence of Garda O'Dowd, who explained as follows in an interview with the Tribunal investigators:

[In the period 1996/1997] I was stationed at Raphoe and there were at least two if not three custody records. We normally held them in a steel drawer at the back wall ... it was a document that we'd seldom use but there was two or three of them in there.<sup>279</sup>

- 7.104. Furthermore, Sergeant Hannigan did not disagree with the proposition that more than one volume of custody records could have been maintained at Raphoe at the time.
- 7.105. **I am satisfied that a custody record was opened and completed in respect of Mr. Quinn's detention.** In this regard, I have listened to the enhanced audiotape of Mr. Quinn's detention and from same it is clear that a record of his detention was completed. It is not in issue between Mr. Quinn, Garda Moran and Mr. White that a record was made of Mr. Quinn's complaints in respect of the planting of the drugs and the stealing of the sub-contractor's vouchers. **I accept that this complaint was entered into the custody record. However, this custody record cannot now be located.**
- 7.106. It is deeply disturbing that the custody record, or any copy of it, cannot now be located.<sup>280</sup> It has not been adequately explained to me how this could have happened. Numerous custody records have been produced to the Tribunal over the years it has been in existence, many of which date further back in time than the one completed in respect of Mr. Quinn's detention. While the failure to locate the custody record in itself may not be something that brings with it sinister

<sup>279</sup> Tribunal Documents, page 4,684.

<sup>280</sup> Tribunal Documents, pages 3,071 and 5,123.

connotations, it is in my view not something which is insignificant when one looks for other contemporaneous records.

- 7.107. I have already referred to Mr. Quinn calling to the Garda station on the day following the drugs search and making a statement to Sergeant Hannigan withdrawing his complaint in respect of the stealing of the sub-contractor's vouchers. This statement cannot be located and no adequate explanation has been supplied to the Tribunal as to how this came about. Again such a statement had the potential of being of assistance to the Tribunal, as it would have been a near contemporaneous record of Mr. Quinn's state of mind after the search in the Garda station.
- 7.108. Mr. White maintains that he would have made entries in his notebook in relation to the search of Mr. Quinn; however, these notebooks are not available to the Tribunal. Mr. White maintained that it was one of the notebooks, that was stolen from his locker at Letterkenny Garda Station in March 2002.<sup>281</sup> Garda Moran told the Tribunal that he did not make notes in his notebook in relation to the search as all relevant matters were recorded in the custody record.<sup>282</sup>
- 7.109. I have already referred to Mr. Quinn's statement made to Detective Garda Hugh Moloney and Detective Garda Thomas Flynn on the 10th of January 2002. Following the taking of this statement, the Gardaí commenced an investigation of Mr. Quinn's allegation. Detective Sergeant White told the Tribunal that he co-operated with this investigation.<sup>283</sup> Counsel for Mr. Quinn challenged this and pointed to the fact that Detective Sergeant White never ultimately made a statement to the Carty investigation team in connection with Mr. Quinn's allegation.
- 7.110. Detective Sergeant White sought a copy of the occurrence book and the inspection book from the Carty investigation team prior to him making any statement on the matter. He explained to the Tribunal that he had got legal advice to the effect that he should be furnished with a copy of same. He explained as follows:
- “The occurrence book and the pub inspection book, which may have included entries in relation to Paul Quinn's detention, to the fact that we met him in the pub, usually an occurrence would be written into the occurrence book”<sup>284</sup>*
- 7.111. Detective Sergeant White explained that the reason he did not submit a statement to the Gardaí was that he got legal advice to the effect that he should

<sup>281</sup> Transcript, Day 672, page 31.

<sup>282</sup> Transcript, Day 662, page 50.

<sup>283</sup> Transcript, Day 295, page 104.

<sup>284</sup> Transcript, Day 299, page 125

have sight of certain documentation, including the occurrence book and a copy of the pub inspection book, for the night of the search of Mr. Quinn prior to furnishing any statement. He also said he wanted clarity on the question of the missing custody record.<sup>285</sup>

- 7.112. When Detective Sergeant White was asked by me why he needed sight of these documents to give his account of what happened, he explained as follows:

*Well I thought I would have put entries into one of those two books that would have helped me. Certainly the custody record would have helped me in relation to his detention, what was written down on it.*<sup>286</sup>

- 7.113. I regard this explanation as somewhat curious in view of the fact that he had possession of a tape that was a recording of the happenings at the Garda station, which he said would show that the planting allegation was false.<sup>287</sup> In these circumstances, I am of the view that the supply of further documentation would not have been of any extra assistance to Sergeant White in the writing out of a statement. This is even more curious in view of Detective Sergeant White's assertion that he had taped proceedings in the Garda station as he was

*[Protecting myself] from a false and malicious complaint and I was dead right to do it because at this moment in time Mr. Goldberg, if I hadn't got that tape Mr. Quinn would be suggesting that I put drugs in his pocket in Raphoe. That tape would prove otherwise and that his statement is false, that he made to Superintendent Hugh Coll is a false statement I asked Mr. Coll to prosecute Mr. Quinn in relation to that but he never came to me. ...I'm putting that very strongly to you if I hadn't got my tape recording I would now be in a position of danger.*<sup>288</sup>

- 7.114. The Tribunal has had sight of both the inspection book and the occurrence book. With regard to the inspection book, there is an allotted page for the night of the Paul Quinn drug search but no entries in respect of Frankies night club on the night were made in same. One explanation for this might be that nothing of note occurred on the particular night; however this position is not borne out when one looks at Mr. Mitchell's notes for the night in question. He records that Sergeant White and another Garda were in Frankie's on two separate occasions followed by a visit to the car park. The relevant extract is as follows:

<sup>285</sup> Transcript, Day 299, pages 124-125.

<sup>286</sup> Transcript, Day 299, page 125.

<sup>287</sup> Transcript, Day 295, page 108.

<sup>288</sup> Transcript, Day 299, pages 139-140.

Sunday, 9th February, 1997.

Sergeant White and a Garda entered the hall at 12.00 and went into the bar which was open as we had a bar exemption. He asked...were there suppers served, and she told him yes. He wanted to know how many suppers was (sic) served, and she told him there had been quite a lot served but that she didn't have an exact amount as she hadn't counted them.

They then went to the front door and asked Liam O'Donnell where the boss was and was told Frank wasn't up but that John Mitchell was in charge. He asked to speak to John and while waiting for him to come up from the front bar, a Paul Quinn was arrested and taken to the barracks. Paul Quinn returned to the hall at 1.00 a.m. and said that the Garda had searched him for drugs.

Sergeant White and the Guard returned at 1.20 a.m. and asked at the door if the bar was closed and was told yes, then went to the bar and checked it for himself before leaving at 1.25 a.m....

At between 2.45 am and 3 am Sergeant White and a Garda entered the Car park looking for Marty McCallion....

At around 3.30 am Sergeant White and the Garda were either booking or cautioning a customer who was talking to people in another car parked outside the bookies office...<sup>289</sup>

No explanation has been forthcoming as to why the inspection book is blank for the night of the 10th of February.

- 7.115. There is no entry in the occurrence book maintained in Raphoe Garda Station in respect of the alleged finding of drugs on Mr. Quinn. This is explained by the Gardaí by saying that this is not a matter which would normally be recorded in the occurrence book, especially when a record exists of same in the form of the custody record. Furthermore, counsel for Mr. White illustrated in his cross-examination of Sergeant Hannigan that the detention of an individual in Raphoe is not something that would generate an entry in the occurrence book. I accept this to be the case.

## Conclusions

- 7.116. As I have already indicated, I am satisfied that Paul Quinn did not knowingly have in his possession drugs when he arrived at Frankie's nightclub on the night of the 9th of February 1997. I am satisfied that

<sup>289</sup> Tribunal Documents, page 1352.



someone in possession of drugs would not draw attention to themselves in the nightclub by approaching a Garda sergeant requiring that he identify himself. He would not have approached the sergeant in this confrontational manner and he would not, when challenged by the sergeant that he was in possession of drugs, have, coupled with a denial of the charge, voluntarily proposed that he be searched there and then. I accept the un-contradicted evidence that I have heard that Paul Quinn had no background whatever of being associated with drugs. Moreover, I consider his conduct in seeking the advice of a representative from the Citizens' Advice Bureau and subsequently as a result of that advice, consulting a solicitor, to be entirely consistent with an innocent party.

- 7.117. I considered the possibility that an unknown person, perhaps by way of a prank, might have placed the drugs in Mr. Quinn's pocket. I consider that the possibility of placing an object such as this in the inner pocket of a jacket so unlikely that it should be discounted.
- 7.118. I accept the evidence that drugs were found in the inner pocket of Mr. Quinn's jacket in the Garda station by Garda Moran.
- 7.119. I am satisfied that the only way in which they could have come there was by having been placed there by either Garda Moran or Sergeant White. I do not believe that Garda Moran had any or any sufficient interest in Raphoe affairs to cause him to be a party to such a project. On the other hand, I believe that Sergeant White was deeply involved with the townspeople of Raphoe and in particular with members of the Quinn family and the extended Quinn family. In an attempt to justify his actions when asked about this search he resorted to lies by representing that he had information that Paul Quinn was involved in drug dealing. He had no such information. Paul Quinn was not involved in drug dealing.
- 7.120. I am satisfied beyond any reasonable doubt that Sergeant White was responsible for the placing of the drugs in Paul Quinn's pocket. I am not satisfied that Garda Moran was a party to the event or participated in it or knew of it.
- 7.121. I do not accept that this behaviour on Mr. White's part was motivated by a desire to put Mr. Quinn under pressure so that he would alter the statement he made about the whereabouts of the McConnells on the night of the death of the Late Mr. Barron. Rather, I find that this behaviour was motivated by a desire to 'put manners' on Mr. Quinn in the face of disrespectful behaviour to a uniformed member of An Garda Síochána.

## The Public Service Vehicle Licence

7.122. Mr. Quinn told the Tribunal that the issue of a public service vehicle licence to him had been delayed due to the interference of Sergeant White. He put the matter as follows:

*I applied for a PSV shortly after that and John White says that they were getting analysed, the drugs were getting analysed...chances I was going to get the PSV were very doubtful...that was in Raphoe Garda Station...He was right, I didn't get [the psv licence] until a year and a half later... I got a phone call about a year later then from a Sergeant Judge, he was Sergeant in Convoy...He had informed me to tell me that you're not going to get this PSV licence because Sergeant White has written on the back of the application form that I was pending on a drugs charge...well a year and a half later I think it was Detective Foley, like I told him what I'm telling you here now, he says leave it in with me and I'll sort it out, which he did do...<sup>290</sup>*

7.123. Mr. White denied that he interfered with Mr. Quinn's application so as to delay the issue of the PSV licence.

7.124. In an effort to resolve the matter, the Tribunal sought and obtained the original Garda file containing the documentation in respect of Mr. Quinn's application for a PSV licence<sup>291</sup> I have also had the benefit of the testimony of Sergeant Hannigan with regard to same.<sup>292</sup> In the following paragraphs I have summarised the documentation, that appeared on the Garda file.

7.125. Having paid the relevant fees to Donegal County Council on the 13th of August 1997, Mr. Quinn submitted an application for a licence to drive a small public service vehicle on the 16th of August 1997.<sup>293</sup> In this application form he supplied his postal address and his previous address in London. He confirmed that he had not been convicted of any traffic offence in the past five years or any crime or offence in the State or outside the State.

7.126. On the same day Sergeant Judge of Convoy Garda Station completed an enquiry and report form addressed to the Superintendent in Letterkenny Garda Station in respect of Mr. Quinn's application.<sup>294</sup> Sergeant Judge confirmed that Mr. Quinn was suitable in every way for the granting of the licence.

7.127. On a date in August 1997 Garda Noel Keaveney forwarded Mr. Quinn's application form for the PSV licence to the sergeant in charge of Raphoe Garda

<sup>290</sup> Transcript, Day 644, pages 96-97.

<sup>291</sup> Tribunal Documents, pages 5,018-5,034.

<sup>292</sup> Transcript, Day 677, pages 3-66.

<sup>293</sup> Tribunal Documents, page 5,020.

<sup>294</sup> Tribunal Documents, page 5,021.

Station. The contents of Garda Keaveney's letter to the sergeant in charge are as follows:

Please find attached, completed application for S.P.S.V from the above named, Paul Quinn 143 Milltown, Convoy.

He has no previous conviction recorded.

However I am informed by Sergeant John White that Paul Quinn has a prosecution pending on a charge of being in possession of a controlled drug. This case is due to come before the court in September.<sup>295</sup>

7.128. By way of correspondence date stamped the 17th of August 1997, Sergeant Hannigan enquired of Garda Keaveney whether Mr. Quinn had any previous convictions recorded in the U.K. He also requested that the matter be passed to Sergeant White for a full report.<sup>296</sup> In his evidence to the Tribunal, Sergeant Hannigan explained that the Garda computer would be checked as a matter of course in order to confirm whether the applicant had any previous convictions recorded in this jurisdiction.<sup>297</sup> Garda Keaveney confirmed in writing that Mr. Quinn had no convictions recorded against him.<sup>298</sup>

7.129. By way of an undated letter Sergeant White forwarded the query to the sergeant in charge at Newtowncunningham Garda Station with a request that Garda Moran give his views in the matter. Garda Moran outlined as follows in an undated reply:

During a search of Paul Quinn under the Misuse of Drugs Act three acid tabs were found in his possession. These were sent for analysis and the results, which confirmed that they were the substance known as acid and prohibited under the act, only came back a short time before the expiry of the six months statutory period. Due to my absence on leave and other more pressing duties file was not processed in the short available time. Therefore there will be no proceedings in this case, unfortunately. For your information please.<sup>299</sup>

7.130. Armed with the preceding information Sergeant Hannigan wrote to the superintendent in Letterkenny not recommending Paul Quinn's application for a PSV licence "given his possession of a controlled substance even though there has been no conviction".<sup>300</sup>

7.131. On the 3rd of November 1997 Inspector Thomas V. O'Brien of Letterkenny Garda

<sup>295</sup> Tribunal Documents, page 5,024.

<sup>296</sup> Tribunal Documents, page 5,023.

<sup>297</sup> Transcript, Day 677, pages 39-40.

<sup>298</sup> Tribunal Documents, page 5,023.

<sup>299</sup> Tribunal Documents, page 5,030.

<sup>300</sup> Tribunal Documents, page 5,026.

Station wrote to the sergeant in charge in Convoy, where Mr. Quinn resided, asking him for his views on the applicant.<sup>301</sup>

- 7.132. Sergeant Judge of Convoy Garda Station replied to the Superintendent in Letterkenny as follows:

Applicant does not come under Garda notice here. I feel that Garda Earley, Traffic Corp might have prosecuted Quinn for obstruction or parking affairs in Raphoe sometime ago and this matter should be checked but I feel that the application should be acceded to.<sup>302</sup>

It would appear that Sergeant Judge's reply was generated in November 1997.<sup>303</sup>

- 7.133. On the 17th of November 1997 Inspector T.V. O'Brien of Letterkenny Garda Station requested a report from Garda Earley.<sup>304</sup> This request seems to have been received by the Traffic Corps Division of the station some months later in April 1998.<sup>305</sup> This delay is unexplained.

- 7.134. Garda Earley replied that he did not prosecute Paul Quinn at any time, which report was forwarded to Convoy Garda Station.<sup>306</sup> In turn Sergeant Judge of Convoy Garda Station wrote to the Superintendent in Letterkenny indicating that Mr. Quinn had re-applied for a PSV licence.

- 7.135. Following a further unexplained delay, a certificate, certifying that Mr. Quinn was a fit person to hold a licence and was not engaged in any occupation which would interfere with his employment as a driver of a small PSV, was signed by Sergeant Judge on the 4th of February 1999 and by Inspector T. V. O'Brien on the 2nd of April 1999.<sup>307</sup> Accompanying this certificate was an undated letter addressed to the Chief Superintendent, Letterkenny Garda Station from Inspector T. V. O'Brien which is outlined as follows:

The enclosed application for a small PSV was made on the 16th/08/97 by Paul Quinn of 143 Milltown, Convoy, some concern was expressed about the character of the applicant when Garda Phelim Moran found the applicant to be in possession of a controlled substance known as acid tabs. It was intended to prosecute him for possession however the results from the bureau were not available on time and there was no prosecution taken.

A background check on the applicant seems to have taken some time the application was delayed in trafficking at Convoy Station where it was

<sup>301</sup> Tribunal Documents, page 5,026

<sup>302</sup> Tribunal Documents, page 5,025.

<sup>303</sup> Tribunal Documents, page 5,025 and Transcript, Day 677, page 10.

<sup>304</sup> Tribunal Documents, page 5,025.

<sup>305</sup> Tribunal Documents, page 5,025.

<sup>306</sup> Tribunal Documents, page 5,028.

<sup>307</sup> Tribunal Documents, page 5,031.

mislaid. Checks were done with CRO and with the British police as the applicant formerly resided in London, and there is no previous convictions recorded.

It is with great reluctance that I recommend the application. However, as there are no previous convictions, I know of no reason why same can be opposed.<sup>308</sup>

- 7.136. From the above it would appear that there were two periods of delay in the issue of the PSV licence: namely November 1997 to May 1998 and May 1998 to February 1999. At this time the responsibility to move matters on did not rest with Detective Sergeant White. For his part, the documentation reveals that Detective Sergeant White dealt with the query addressed to him in an expeditious fashion and did not seek to influence the outcome of events in any way. **In those circumstances, I do not accept Mr. Quinn's allegation that it was Detective Sergeant White who caused the delay in the issue of his PSV licence.**

### **The Parking Ticket**

- 7.137. Mr. Quinn made the following allegation in respect of the issue of a parking ticket to him:

*It was one night I was out and I parked outside Frank McBrearty's pub. There is double yellow lines at that time at the far side. I got a taxi home and then I think a few weeks later I got a phone call from John O'Dowd to say that have you such and such a registration and I wasn't fully sure if it was my registration because I had changed it from a British number plate to the Irish one, so I wasn't ... but he described the car and I said say that sounds like mine and he says it was badly parked and all. I don't remember it badly parked. I apologised to him over the phone and all and a few days later I got a summons.<sup>309</sup>*

- 7.138 Mr. Quinn explained that he was singled out for special attention insofar as Garda O' Dowd went to the trouble of pursuing him to the extent of phoning him and then following up the matter with a summons.

- 7.139. Garda O'Dowd, while acknowledging that he may not have ever summonsed anyone in Raphoe for dangerous parking apart from Mr. Quinn, denied that he had by issuing the summons harassed Mr. Quinn. He explained to the Tribunal that he was of the view that the car was dangerously parked outside the Tudor Lounge and was also acting as an obstruction to other traffic.<sup>310</sup> He explained that because of the particular legislative framework in Raphoe, it was not possible to

<sup>308</sup> Tribunal Documents, page 5,032.

<sup>309</sup> Transcript, Day 644, page 103.

<sup>310</sup> Transcript, Day 665, page 132.

merely issue a parking ticket and if he were to take any action in the matter his only way of so doing was to summons Mr. Quinn.

7.140. In circumstances where Mr. Quinn admits that he had parked and left the car outside the Tudor Lounge, having heard extensive evidence about traffic systems in Raphoe and having heard un-contradicted evidence that it was not open to Garda O'Dowd to issue a parking ticket, I do not accept that it was an act of harassment on Mr. O'Dowd's part to issue a summons to Mr. Quinn in respect of the incident.

7.141. In conclusion, while I have rejected Mr. Quinn's allegations of harassment in relation to the delay in the issuance of the PSV licence and the summons for dangerous parking, I am of the view that these allegations were not made maliciously. I regard it as totally understandable that Mr. Quinn, having had drugs planted on him by a member of An Garda Síochána in February 1997, regarded every dealing of an unexpected nature that he had with the Gardaí thereafter with the greatest of suspicion.

## CHAPTER 8 MISCELLANEOUS ALLEGATIONS

### Introduction

8.01. This chapter deals separately with allegations of Garda harassment made by the following parties:

Mrs. Donna Quinn

Mr. Liam O'Donnell

Mr. William Flynn

Mr. Thomas Coffey

Mr. Paddy Lynch

Mr. William Logan

### Part I Allegations of Donna Quinn

#### Introduction

8.02. Mrs. Donna Quinn is originally from Cheshire in England. She trained in the U.K. in hotel catering and thereafter worked in licensed premises in the U.K. She and her family moved to Raphoe in 1991, having purchased the Central Hotel. Mrs. Quinn described the hotel as a small ten bedroomed hotel with a public bar, a bar downstairs, and a restaurant and bar upstairs. Mrs. Quinn worked in the hotel from 1991 to 1996, at which time she was married to Mark Quinn.<sup>311</sup>

8.03. Mrs. Quinn told the Tribunal that the Town and Country Bar opened under her ownership in July 1996, at which stage the pub was busy.

#### Complaints of Donna Quinn

8.04. Mrs. Quinn said that prior to the death of the Late Richard Barron the Town and Country probably had a few Garda inspections but none of them stood out in her mind.<sup>312</sup> After the death of the Late Mr. Barron, Mrs. Quinn said:

*We felt that the pub was ... the Guards were coming on the premises a lot more. We just felt we were being targeted more as a licensed premises.*<sup>313</sup>

8.05. In her interview with the Tribunal investigators, Mrs. Quinn described the situation as follows:

The inspections of the premises on the [18th of December 1996] was the beginning of the end, I suppose. Yes from that night we just felt our business was being targeted; we just felt we couldn't breathe. Every

<sup>311</sup> Transcript, Day 676, pages 115-116.

<sup>312</sup> Transcript, Day 676, page 118.

<sup>313</sup> Transcript, Day 679, page 119.

weekend there was ... there were Guards on the door. We really only had from July to October ... well December really of good business. Well maybe even October because of speculation and how people were talking. It could have probably from there started to die down, so we really didn't have much of a build up, of anything to build on and our decline then started from that and we were in fear every weekend. We had to get people out of the premises because of the fear of the Guards coming and booking us; a young couple, we didn't want too many black marks beside us. You know, we wanted to keep a good clean business.<sup>314</sup>

8.06. Mrs. Quinn told the Tribunal investigators that she thought that the arrest of her husband, Mr. Mark Quinn, in connection with the investigation into the death of the Late Mr. Richard Barron was the reason why they were targeted. She felt that the inspections were calculated to intimidate herself and her husband, Mr. Quinn, into co-operating with the Gardaí.<sup>315</sup>

8.07. Mrs. Quinn described two particular inspections that stood out in her memory. On the 18th of December 1996, Garda O'Dowd conducted an inspection of the premises. Mrs. Quinn described same as follows:

*My husband and I had taken some friends out for dinner just to thank them for helping us when we had moved in. I think it was the first night I had actually been out since having Oliver. We just went for a Chinese meal. We came back to the pub, I think, just around midnight I think it was, just maybe before and let the girl go that was looking after the bar. We just sat, we had a drink ourselves. There was no money changed hands and then Garda O'Dowd came to the premises then ... Maybe there was a bit of friction between him and my husband, sorry and Garda O'Dowd, this was after Mark's arrest.<sup>316</sup>*

8.08. Mrs. Quinn and her husband were subsequently prosecuted for after hours trading on that night, to which they pleaded guilty and were fined €50.00 in total.<sup>317</sup>

8.09. Mrs. Quinn also told the Tribunal of an inspection some time in February of 1997. Having finished work, herself and her husband were in the bar with the barman and his girlfriend. The Gardaí came to the door and knocked. There was some delay in opening the door, as the keys were not readily available. Sergeant White entered the premises with a young Guard. Sergeant White proceeded to go up the stairs into the private quarters of the property. Mrs. Quinn remained

<sup>314</sup> Tribunal Documents, page 5,155.

<sup>315</sup> Tribunal Documents, page 5,156.

<sup>316</sup> Transcript, Day 676, pages 119-120.

<sup>317</sup> Tribunal Documents, page 5,530 and Transcript, Day 676, page 122.



downstairs while Sergeant White proceeded further upstairs. While Mrs. Quinn told the Tribunal what her husband reported to her as to what transpired after that, I do not propose to make any findings in relation to same, Mr. Quinn not having attended at the Tribunal.

- 8.10. I do not accept that the Town and Country Bar was singled out for special attention by the Gardaí.** From the records available to the Tribunal, i.e. the Inspection Book,<sup>318</sup> it is apparent that the Town and Country Bar was not inspected any more often than the average premises in Raphoe. Furthermore, the inspections of the Town and Country Bar did not occur at a time immediately after closing time, nor was the inspection of the Town and Country Bar first carried out by the Gardaí on a regular basis. It would also seem to be the case that the pub was prosecuted on a total of three occasions, which on the records available to the Tribunal did not exceed the average amount of prosecutions for any particular licensed premises. Indeed, when it was put to Mrs. Quinn by counsel for Mr. White that the records did not disclose that her premises had been singled out for any particular attention she did not disagree with the proposition.<sup>319</sup>

<sup>318</sup> Tribunal Documents, Pages 1,756-1,878

<sup>319</sup> Transcript, Day 676, pages 145-148.

## Part II Allegations of Liam O'Donnell

- 8.11. Mr. Frank McBrearty Senior employed Mr. Liam O'Donnell as a steward for approximately fifteen or sixteen years. He described his duties in the nightclub as being in charge of controlling same, controlling the patrons coming in and out of it and ensuring that any arguments which developed were dealt with by whatever means were necessary.<sup>320</sup>
- 8.12. Mr. O'Donnell was one of the three individuals who was tried for an assault on Mr. Edmond Moss. Mr. O'Donnell was acquitted by direction of the trial Judge. During the course of the investigation into the assault on Mr. Moss, Mr. O'Donnell was arrested on the 4th of February 1997 and detained under the provisions of the Criminal Justice Act, 1984, during which time he was questioned in relation to the alleged assault.
- 8.13. Mr. O'Donnell told the Tribunal that the first time he met Sergeant White was at the end of December 1996 or the beginning of January 1997. He said that Sergeant White came out to his house in the evening time accompanied by Garda John O'Dowd. He described the meeting as follows:

*He came to the door, John O'Dowd introduced who he was and all. I invited him in. When he came into the house, he said, do you mind if we talk alone? My wife and family were there so they left the room. He proceeded to start talking about an alleged assault that happened in the nightclub in the town, involving a certain person, Eddie Moss. He said do you mind if I question you about it. I says, not at all Guard, any questions you have I will be glad to answer them. I answered all the questions he had and he proceeded then to say, well, will you not make a statement about this. I says, I would rather not but if I have to, I will make it through a solicitor, if that's okay. He proceeded to say, well, you had your chance now and you didn't take it, now these words will echo around me for a long, long time, is what that man said that night in my house, and my wife can vouch for it. He says, you might as well sell your house now, because by the time I am finished, he says, I am going to see that your serving five to eight years for your part in Raphoe. And he says, your family, he says who's going to want to know your family, having a father for an ex-con ... [he said] ... that I should sell my house and move away. And nobody else will employ me, being an ex-con. He would see, as I say, before he would leave Raphoe that I would serve five to eight years ... This was in relation to the Eddie Moss incident ... You know he said*

<sup>320</sup> Transcript, Day 669, page 52.

*that night; his closing words were that night, he said there'll be no more broken legs or cracked heads in Raphoe, he said, and you can take that back to your Mafia boss as well. That was his final words as he walked out the door before I asked him to leave.*<sup>321</sup>

### **Kathleen O'Donnell**

8.14. Mrs. Kathleen O'Donnell, the wife of Liam O'Donnell, told the Tribunal that she remembered Garda O'Dowd and Sergeant White calling to her house on a Saturday night at the beginning of January 1997 between approximately 20.30 and 21.00 hours at night.<sup>322</sup> She said that she did not know the identity of the Gardaí. John O'Dowd firstly introduced himself and then introduced Sergeant White as the new Sergeant in Raphoe.<sup>323</sup> Mrs. O'Donnell told the Tribunal that the Gardaí said that they wanted to interview her husband and needed to talk to him alone, whereupon she took her four children up to the bedroom and returned to outside the sitting room where she eavesdropped on the conversation that her husband was having with the Gardaí. She described the conversation as follows:

A. *The next thing I heard was a voice saying, well, if you're not going to make your statement, you've had your chance now, he said, and you didn't take it. So he started on then ranting and raving about you'll not be wanted in the area, you will have to sell your house, that you will be a convict, your family not be wanted. He said you're going down for five to eight years. I said, my God to myself, what's going on. I was tempted to go into the living room to see what was going on. The voices raised at this time. The living room then opened and I was in the hall and my telephone is in the hall. He looked up at the telephone and he says, he is gone now, get on the phone to ring your Mafia boss and tell him, he said that there will be no more cracked heads in Raphoe or broken legs he said, by the time I am finished, he says, it will be like a ghost town.*

Q. *Who is this saying?*

A. *Sergeant White. Sergeant John White down there, I will never forget him.*<sup>324</sup>

### **Denial of Allegations**

8.15. Mr. White's position in relation to Mr. O'Donnell's allegation was that it did not

<sup>321</sup> Transcript, Day 669, pages 65-66.

<sup>322</sup> Transcript, Day 679, page 48.

<sup>323</sup> Transcript, Day 679, page 49.

<sup>324</sup> Transcript, Day 679, page 52.

happen. He had no recollection of ever being at the O'Donnell house. Counsel for Mr. White put it to Mr. O'Donnell that a Garda complaint had never been made in relation to the matter, nor had Mr. McBrearty in his various letters, meetings and affidavits ever referred to the incident as an example of harassment of his staff.<sup>325</sup> Mr. O'Donnell explained that by saying that he did not want any trouble at the time as he had enough trouble and he felt it was going to cause more resentment and more Garda attention if a complaint had been made. Mr. O'Donnell said he mentioned the matter to his solicitor quite a few years ago.<sup>326</sup>

- 8.16. Garda O'Dowd's position on the matter was that he attended the O'Donnell household on two separate dates, namely on the 4th of February 1997 when he called to the house twice in order to effect the arrest of Mr. O'Donnell, and later on in July 1997 when Garda O'Dowd was investigating a separate unrelated incident that occurred in the nightclub.<sup>327</sup>
- 8.17. Mr. O'Donnell, while being cross-examined by Mr. O'Dowd's solicitor, said he had no objection to discovering to the Tribunal any notes that may be in the possession of his solicitor which referred to the complaint made against Sergeant White and Garda O'Dowd.<sup>328</sup>

### High Court Proceedings

- 8.18. Mr. O'Donnell issued proceedings against the State. At paragraphs 3 and 4 in the Statement of Claim dated the 17th September 2003, the following description of a meeting with Sergeant White and Garda O'Dowd took place:

3. [Mr. O'Donnell] was unlawfully arrested on 4th February 1997 and taken to Letterkenny Garda Station, Letterkenny in the County of Donegal and was detained there pursuant to the provisions of Section 4 of the Criminal Justice Act 1984 and questioned on alleged but unfounded suspicion of assault contrary to Section 18 of the Offences Against the Person Act 1861. The said arrest and detention were unlawful, malicious and without lawful grounds and was executed in breach of the Plaintiff's Constitutional rights.
4. The Plaintiff was unlawfully arrested as aforesaid at Liskey, Ballinadrait, County Donegal. The Plaintiff was unlawfully detained and interrogated at Letterkenny Garda Station and was accused of assaulting Edward (sic) Moss. Despite the fact that the Plaintiff had been assaulted and injured by Mr. Moss on the occasion in question, the Plaintiff found himself prosecuted for assault. When the Plaintiff was arrested as aforesaid, he was told by Garda O'Dowd; "You had

<sup>325</sup> Transcript, Day 670, pages 55-56.

<sup>326</sup> Transcript, Day 670, pages 55-56

<sup>327</sup> Transcript, Day 679, page 31.

<sup>328</sup> Transcript, Day 670, page 89.

your chance the last time and you did not take it". The Plaintiff was told by Sergeant White; "There will be no more broken legs or cracked heads in Raphoe. You can go back and tell your Mafia boss that. You might as well sell your house and move away. Nobody will come near you. What'll it be like for your kids to have an ex-con for a father. You'll be getting five years for this". The Plaintiff was further threatened by Sergeant White; "At least you'll get to say goodbye to your wains. Richie Barron didn't".<sup>329</sup>

- 8.19. From the above, Mr. O'Donnell's complaints against Sergeant White and Garda O'Dowd happened in the Garda Station on the occasion of his arrest on the 4th of February 1997, not at his house on an earlier date as he had described to the Tribunal.
- 8.20. Mr. O'Donnell was recalled to the Tribunal in order that he be given an opportunity to explain the discrepancies between his account given to the Tribunal on the 5th of November 2007 and what is contained in his Statement of Claim.

### **A Claim of Privilege**

- 8.21. Prior to Mr. O'Donnell's re-attendance at the Tribunal, the Tribunal received a letter dated the 16th of November 2007 from his solicitor, Mr. Walley, indicating that Mr. O'Donnell did not wish to waive legal privilege in respect of any documentation on foot of which legal privilege may be claimed. Mr. O'Donnell confirmed to the Tribunal that he was happy with this position.<sup>330</sup>
- 8.22. On the occasion of his re-attendance at the Tribunal, Counsel for the Tribunal explained to Mr. O'Donnell:

*Q. The reason the Tribunal might be interested in [the Statement of Claim] is that it sets the context for the account that you gave involving Sergeant White and the date of your arrest, the 4th of February, 1996 and not on an occasion other than the 4th of February, which seems to be what your evidence was. I am simply going to ask you, do you have any comment to make in relation to that?*

*A. My solicitor has all the statements and documents in relation to that. There are different things that was said, different conversations that weren't added into the actual Statement of Claim. Not everything is put there. But he dealt with everything as regards his Statement of Claim, my solicitor.<sup>331</sup>*

<sup>329</sup> Tribunal Documents, page 5,555.

<sup>330</sup> Transcript, Day 679, page 4.

<sup>331</sup> Transcript, Day 679, page 6.

- 8.23. Mr. O'Donnell continued and said that he thought Sergeant White had come into his house on the 1st of January but he corrected this, saying it was actually the 11th of January, a Saturday night. He also said that all comments that he attributed to Sergeant White were said to him in his own house that night and thereafter repeated in Letterkenny Garda Station on his arrest. Mr. O'Donnell reiterated that all the paperwork in relation to the matter was with his solicitor.<sup>332</sup>
- 8.24. In relation to the night of his arrest, Liam O'Donnell told the Tribunal that Garda O'Dowd and Sergeant White interviewed him in relation to the matter and that the threats were made again towards the end of the interview.<sup>333</sup>
- 8.25. Following on Mr. O'Donnell's recall to the witness box, Mr. White gave his evidence to the Tribunal on this issue. He told the Tribunal that the exchange as alleged by Mr. O'Donnell did not happen, either in the Garda Station on the occasion of Mr. O'Donnell's arrest or on an occasion in Mr. O'Donnell's house. Mr. White pointed out that no complaint had been made by Mr. O'Donnell or on Mr. O'Donnell's behalf in respect of his treatment in Garda custody. Mr. White also said that had such a visit to Mr. O'Donnell taken place there would have been reference to same included in the Moss Garda investigation file. He explained as follows:

*I looked at the report in the Moss file and there is no reference whatsoever to an interview with Liam O' Donnell prior to the arrest of Frank McBrearty Junior and prior to his own arrest and like you say it would have looked better for me on paper if I had made the effort of interviewing Liam O'Donnell and Marty McCallion before making any arrest of any kind, if I had done it the notes would be in my notebook, or be it on a sheet of paper or sheets of paper they would be there, they would be included in the report for the Superintendent and the DPP because it would be very nonsensical to send a report into the DPP which was going to the Circuit Court probably, where paperwork would be left out. It would cause a huge problem in the trial. If we had just simply went there and he had given us some answers or no answers, whichever way it would have to be mentioned in the report. I would be causing a great problem for myself in the witness box later on if I omitted to include that.*<sup>334</sup>

- 8.26. Mr. White also pointed out that the night of the 11th of January 1997 was his first night on duty in Raphoe and on that particular evening he would not have had an opportunity to familiarise himself with the Moss investigation and call to Mr. O'Donnell's residence. He said his diary recorded that he commenced duty at

<sup>332</sup> Transcript, Day 679, page 7.

<sup>333</sup> Transcript, Day 679, page 10.

<sup>334</sup> Transcript, Day 679, pages 146-147.

19.00 hours at which stage he would have unpacked his computer and set it up in Raphoe Garda Station, followed by a talk with Garda O'Dowd about general policing matters in Raphoe. Mr. White said that his diary did not contain any reference to calling to Mr. O'Donnell, and Mr. White pointed out that if same had happened a reference to it would appear in his diary, which recorded all his policing duties for that particular night.<sup>335</sup>

## Conclusion

- 8.27. I do not regard the evidence that Mr. O'Donnell has given to the Tribunal on this matter as reliable. I have already summarised in previous paragraphs the entirety of Mr. O'Donnell's evidence and how he has altered same when confronted with previous statements he has made on the matter. I do not accept that Mr. O'Donnell has adequately explained the inconsistency between the evidence he gave to the Tribunal on his first attendance and the complaint as set out in his Statement of Claim. While I fully accept that Mr. O'Donnell is entitled not to disclose to me papers that are the subject of legal professional privilege, I regard it as unfortunate that if there are papers in the custody of his solicitor that would explain the variation in the testimony given by Mr. O'Donnell to the Tribunal they have not been made available to the Tribunal.
- 8.28. Furthermore, I note that while reference was made in the Garda investigation file to preliminary meetings with another suspect in the assault of Mr. Moss, no such reference is made to any meeting with Mr. O'Donnell. If such a meeting had taken place I accept that there would have been reference to it in the Garda file. I found the evidence given by Mrs. O'Donnell to be unconvincing and it had the appearance of being tailored to comply with the evidence of Mr. O'Donnell.
- 8.29. In all of the circumstances I am not satisfied to conclude that Sergeant White and Garda O'Dowd called to the O'Donnell household and behaved in the manner alleged by the O'Donnells.

<sup>335</sup> Transcript, Day 679, pages 157-158.

### **Part III Allegations of William Flynn**

- 8.30.** Mr. William Flynn had been retained by Mr. Frank McBrearty Senior to act as a private investigator on his behalf. Mr. McBrearty Senior stated that his reason for hiring Mr. Flynn was the fact that he was very worried about the course that the Garda investigation into the death of the Late Mr. Richard Barron had taken. By that time, he and a significant number of his family and extended family and staff had been arrested in connection with the matter. He felt that the Gardaí were trying to frame his son and nephew for a crime that they did not commit. He felt that in order to have the matter properly investigated, he had no option but to retain the services of a private investigator. According to Mr. Flynn, his retainer by Mr. McBrearty Senior lasted from February of 1997 until approximately April of 1998. Thereafter, he continued to do some work for Mr. McBrearty Senior, but this was done on a day to day basis due to his friendship with him.
- 8.31.** In the course of his investigation, Mr. Flynn carried out a large number of interviews with persons who had been in Raphoe on the night that the Late Mr. Barron met his death. Many of these people made statements to him and to his investigators. Mr. Flynn also had a number of very detailed interviews with Frank McBrearty Junior, Mark McConnell and Róisín McConnell in relation to their detention at Letterkenny Garda Station on the 4th of December 1996. Mr. Flynn did not hide the fruits of his investigation. He forwarded copies of all statements and memoranda of interviews to the Garda authorities. He had told Mr. McBrearty Senior that he would only investigate the matter on the basis that if he were to uncover evidence that pointed to involvement on the part of any members of his family in the killing of the Late Mr. Barron, he would have no hesitation in forwarding such information to the Gardaí.
- 8.32.** Early in the course of his investigation, Mr. Flynn became suspicious of the interaction between Superintendent Lennon, Garda O'Dowd and Mr. William Doherty. Through a contact in Telecom Éireann, he managed to obtain a printout of the telephone records in respect of Garda John O'Dowd's house and William Doherty's house. These were to prove to be of crucial importance in the unfolding of subsequent events. The records showed that on the 9th of November 1996, a number of extortion telephone calls had been made from Mr. Doherty's house to the home of Michael and Charlotte Peoples. However, the really significant disclosure was the fact that a call placed at 22.06 hours to Michael and Charlotte Peoples had been made from the home of Garda John O'Dowd. This was a critical piece of evidence.
- 8.33.** In response to a complaint made by Mr. and Mrs. Peoples to the Gardaí in respect of the extortion calls, the Gardaí had sought from Telecom Éireann details of the



incoming calls to Mr. Peoples' house that evening. However, the information that was supplied to them at that time did not reveal the origin of the calls in question.

- 8.34. In these circumstances, Mr. Flynn's discovery was critical in helping to unravel a web of deceit. He could not have known at that time just how far that piece of information would bring his investigation. It is fair to say that the discovery of that information was to prove critical, not just to his investigation, but also to the subsequent Carty investigation and indeed to the investigations carried out by this Tribunal.
- 8.35. In this module, the Tribunal had to enquire into a number of matters that were of concern to Mr. Flynn. He alleged that these were examples of harassment of him by the Gardaí. He was of the belief that the Gardaí had targeted him and attempted to call his character into question in a number of ways, due to the fact that they resented the investigation he was carrying out on behalf of Frank McBrearty Senior. In particular, he felt that they resented the information that he was uncovering, which was tending to show, firstly, that the Barron investigation was a deeply flawed investigation by the Gardaí and, secondly, that there was a web of corruption involving certain Gardaí in Donegal and other persons such as William Doherty and Noel McBride.

### **The Background Report**

- 8.36. His first area of complaint concerned a background report that had been prepared by Sergeant Joseph Hannigan at the request of Superintendent Kevin Lennon on the 12th of February 1997.<sup>336</sup> It has been accepted by both Sergeant Hannigan and by the State that certain things that were written in that background report concerning Mr. Flynn were derogatory of his character and were totally inaccurate in point of fact. Sergeant Hannigan stated that the information that he had provided was not information that he had from his own personal experience. He stated that he had obtained some of the information upon making inquiry at Mr. Flynn's local Garda station, and some he had obtained from other sections within An Garda Síochána. He accepted that the statements contained therein in respect of which objection was taken, were factually incorrect. In his evidence on Day 633 he apologised to Mr. Flynn for the insertion of these incorrect statements in his report. Mr. Flynn accepted the apology proffered by Sergeant Hannigan.<sup>337</sup>
- 8.37. Mr. Flynn stated that it was his opinion that certain elements within An Garda Síochána were responsible for the insertion of these incorrect matters in the report. He felt that these elements were deliberately trying to blacken his name. In circumstances where the content of the statement has been acknowledged to

<sup>336</sup> Tribunal Documents, pages 3,969-3,970.

<sup>337</sup> Transcript, Day 666, pages 12-15.

have been wrong and where the portions to which objection has been taken were furnished to the person writing the report by person or persons unknown, it does not seem that the Tribunal can take the matter very much further. There may well be justification for Mr. Flynn's belief that certain elements within An Garda Síochána were antagonistic to his position working as a private investigator for Mr. McBrearty Senior. However, the Tribunal cannot on the evidence before it make a finding that there was a deliberate attempt by any specific persons to blacken Mr. Flynn's good name.

### **Defamatory Leaflets**

- 8.38. On the night of the 17th/18th of March 1997, further documents appeared which Mr. Flynn felt were designed to take away his good character. These are what have been termed the "defamatory leaflets" that were found in various places on the street around Raphoe that night. These were anonymous documents that were highly defamatory of Frank McBrearty Senior and his family. They stated as follows:

The Murdering McBrearty's  
See them live  
Father and son  
At Frankie's Night Club  
on 8th of March 1997  
with Joe Dolan

---

"Daddy I think they are on to us". "Don't worry Son, I have all the witnesses paid off, I got away with Murder in Scotland. You'll get away with it here, just keep your mouth shut like the rest of us in the club".

As Billy Flynn says,  
***When Money Speaks the truth keeps Silent***  
*Russian proverb*<sup>338</sup>

- 8.39. The final part of the document contained a quotation from a book called "Gibgate" written by Mr. Flynn. He had sent a number of copies of his book to various Gardaí and to other persons in Donegal. He said that he had done this in an effort to "break the ice" so to speak, in the hope that the recipients might assist his investigation.<sup>339</sup> He felt that these leaflets had been produced by Gardaí

<sup>338</sup> Tribunal Documents, page 2,156.

<sup>339</sup> Transcript, Day 666, page 25.

who wished to discredit his investigation. However, he accepted that he had no firm evidence to offer to the Tribunal to back up this belief.<sup>340</sup>

- 8.40. The Tribunal is aware that in the course of an interview with the Carty investigation team, Mr. William Doherty alleged that he had placed these leaflets around Raphoe at the behest of Sergeant John White. However, when he came to give evidence before the Tribunal he withdrew all allegations that he had previously made against Sergeant White. In his evidence to the Tribunal in the course of the Barron investigation module, Mr. White strenuously denied the allegation that had been made by William Doherty to the Carty team.<sup>341</sup> While it is clear that Mr. Flynn was also a target of the defamatory content of these leaflets, in the absence of any further evidence in the matter, the Tribunal can do no more than repeat the conclusion which it previously reached in relation to this aspect in its second report:

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.<sup>342</sup>

### **The Divisional Circular**

- 8.41. Mr. Flynn also complained about the divisional circular issued by Chief Superintendent Denis Fitzpatrick on the 27th of February 1998. The circular has been reproduced in full in Chapter 6 of this report. Mr. Flynn stated that in his opinion this was a further effort on the part of senior Gardaí in Letterkenny to discredit him and his investigation. In the circular the chief superintendent had stated that there was information to hand which suggested that Frank McBrearty Senior from Raphoe was financing a campaign to discredit Gardaí. It alleged that the campaign was being operated mostly by Mr. Flynn, sometimes trading as Zimmerman & Co. from Enfield, Co. Meath. The circular went on to direct that all members of An Garda Síochána were to report any incidents or unusual contacts that may occur either with Mr. McBrearty and his extended family, or with Mr. Flynn and his employees.<sup>343</sup> The divisional circular was duly circularised by Superintendent Kevin Lennon to the detective superintendent, and to each sergeant and to each member of each unit or office within Letterkenny district. This was done by minute dated the 20th of March 1998.<sup>344</sup>

<sup>340</sup> Transcript, Day 666, page 28.

<sup>341</sup> Transcript, Day 259, page 160.

<sup>342</sup> Second Report of the Tribunal, pages 554 -555.

<sup>343</sup> Tribunal Documents, page 1,469.

<sup>344</sup> Tribunal Documents, page 1,471.

- 8.42. Mr. Flynn saw the timing of the circular as being quite critical. It was in the weeks prior to Superintendent Lennon furnishing his report on his investigation into the circumstances surrounding the death of the Late Mr. Barron to the Director of Public Prosecutions. That report was sent up on the 6th of March 1998. Mr. Flynn stated that it was his belief that the divisional circular was an attempt to discredit both Mr. McBrearty Senior and Mr. Flynn. He maintained that if that impression could be successfully portrayed, then combined with the content of the report which had been sent up by Superintendent Lennon, the Gardaí hoped that no prosecution would ensue and that the whole matter would have been covered up successfully.<sup>345</sup>
- 8.43. In his evidence to the Tribunal, Mr. Fitzpatrick stated that he had issued that circular because a number of Gardaí within the division had received correspondence and telephone communication from Mr. Flynn that they found objectionable. He said that the purpose of issuing the circular was merely to let them know that Garda management was standing behind them and was taking heed of their concerns in relation to the matter. He did not recall that any such reports were actually forwarded to his office. He said that if they had been forwarded they would have been put on file for future use if necessary.
- 8.44. Mr. Flynn objected to the content of the circular. He stated that Mr. McBrearty Senior was not financing any campaign to discredit members of An Garda Síochána, nor was he active in carrying out any such campaign. **The Tribunal is aware that Mr. Flynn sent a large amount of correspondence to many different people. In some of the correspondence he was forthright in the expression of his views. However, there is no evidence that he deliberately set out to discredit members of An Garda Síochána. The Tribunal is satisfied that where he expressed criticism of individual Gardaí, he did so genuinely believing that his criticism was well placed. The Gardaí to whom the correspondence was addressed may well have taken a different view of the criticisms levelled against them by Mr. Flynn. The Tribunal is satisfied that the divisional circular issued by Chief Superintendent Fitzpatrick was not an attempt to discredit Mr. Flynn, but was a means of assuring rank and file Gardaí that management had taken account of the concerns expressed by some of those who had received correspondence from Mr. Flynn prior to that time.**

### **Incident in Raphoe**

- 8.45. The final area of concern to Mr. Flynn was an incident that was alleged to have occurred in Raphoe over the June bank holiday weekend of 1997. In a statement furnished to the Tribunal on the 19th of July 2007, Mr. Flynn gave a succinct

<sup>345</sup> Transcript, Day 666, page 76.

account of the event, giving rise to his complaint:

On 2nd of June 1997, the June Bank Holiday, I went to Raphoe accompanied by my wife, my daughter Clare, and her friend Tanya Doran and where I met Sergeant Hugh Smith, outside Frankie's nightclub. While I was talking to Detective Sergeant Hugh Smith a group of detectives/Gardaí came over and verbally abused Mr. Smith for speaking to me. I was in fear of their behaviour towards me at this point, and walked down to the Diamond where my car was parked. My wife and the two girls were coming out of Coyle's shop and I told them to get into the car quickly, which they did, when two Garda cars, manned by two of the detectives from the pub, drove towards my car at speed. One car swerved in front of my car and the other car stopped directly behind my car. I was unable to move and was stuck at the Diamond in Raphoe. I had members of my family in the car with me and I was in fear for all our safety. I was forced to call Mr. Frank McBrearty Senior. He came down and spoke to the detectives, who then moved one of their cars. Mr. McBrearty escorted me from Raphoe.<sup>346</sup>

- 8.46.** Mr. Flynn repeated that account in his evidence. He stated that he had had a very amicable and constructive conversation with Detective Sergeant Hugh Smith outside Frankie's nightclub. It was at that stage that a number of plainclothes detectives apparently crossed the street and made abusive comments about Mr. Flynn to Detective Sergeant Hugh Smith. They told the detective sergeant that he should not be talking to Mr. Flynn. Mr. Flynn became frightened and alarmed. He left the area and returned to his car and proceeded to the Diamond where he parked parallel to the footpath outside Coyle's shop. He said that two police cars then pulled in to the kerb in front of his car and behind his car and wedged him in. By this time his wife, his daughter and her friend had returned to the vehicle. He had no option but to telephone Mr. Frank McBrearty Senior on his mobile phone. He stated that after some minutes, Mr. McBrearty Senior drove down and had words with the occupants of the vehicle in front of his car. As a result of this, he was able to move his car from its parked position and proceed out of Raphoe. He said that he followed Mr. McBrearty Senior for some miles and that he was followed by a marked police car on his way out of the town for some distance. He found the whole experience most frightening.
- 8.47.** The Tribunal also heard evidence from Mrs. Eileen Flynn and Ms. Clare Flynn. The Tribunal accepts that they have given their best recollection as to what happened on the day in question. They recalled being told urgently by Mr. Flynn to return to the vehicle. This they did. They then recalled two cars parking in front of and

<sup>346</sup> Tribunal Documents, pages 3,935-3,936.

behind them. They could not recall if the occupants in either car alighted from their vehicle. Certainly nobody from either vehicle approached, or spoke to Mr. Flynn. They said that they were frightened by the incident. They said that they had no option but to wait for the arrival of Mr. McBrearty Senior. They could not recall what it was that he did which eased the situation, but they could recall being able to move from the parked position and leave the town. They recalled a marked police car following them out of the town for some distance.

- 8.48. Mr. Flynn was not able to identify any of the Gardaí who allegedly abused him while he was having his conversation with Detective Sergeant Smith, nor any of the occupants of the vehicles which had allegedly hemmed him in at the Diamond some moments later.
- 8.49. Mr. Hugh Smith's recollection tallied with that of Mr. Flynn in a number of respects. He did recall having a conversation with Mr. Flynn on the street adjacent to Frankie's nightclub on the day in question. However, he disagreed that their conversation concerned telephone records. He recalled that he did have a conversation with Mr. Flynn at some stage about telephone records, but he thought that this was later on. It does not seem to the Tribunal that this area of dispute between Mr. Flynn and Mr. Smith is of any material significance.
- 8.50. Mr. Smith was adamant that no persons, be they plainclothes detectives or otherwise, made any derogatory comments either about Mr. Flynn or to him concerning Mr. Flynn. He did recall that he and Garda McHale, who was in the car with him that day, had had a cup of tea in the café with Detective Gardaí Jennings and Frain earlier on. They happened to be in Raphoe on a totally different inquiry, nothing to do with the Barron investigation. Mr. Smith was adamant that no detectives abused Mr. Flynn in his presence. He said that had that happened, he would have taken grave exception to such conduct by the detectives.
- 8.51. He said that when he came out of the café to speak to Mr. Flynn and Mr. McBrearty, Detective Garda McHale was with him. Detective Gardaí Frain and Jennings came out of the café a short time later. They just stood in the vicinity. He did not know whether they thought that there was going to be any hassle or trouble with Mr. McBrearty Senior or Mr. Flynn. Mr. Smith stated that he was quite comfortable speaking to both people. He was asked whether anybody might have said anything either in an abusive way or even in a jocular way about whether or not he should be speaking to Mr. Flynn:

*I have no recollection of that and had that been said I wouldn't have tolerated that because I was quite comfortable in my conversation with both people.<sup>347</sup>*

<sup>347</sup> Transcript, Day 638, page 34.

- 8.52. Mr. Smith's recollection was that Mr. Flynn stated that he was in a rush to get back to his home in Enfield. The conversation then concluded. Some time later he and Detective Garda McHale drove down to the Diamond in their unmarked car. They saw the patrol car going around the Diamond and they pulled in close to the filling station. He accepted that they may have parked their car in front of Mr. Flynn's vehicle. They radioed over to Sergeant Hannigan to enquire whether he would bring them out to the Garda station, as they wished to examine some records there. They stated that when Sergeant Hannigan brought the marked patrol car around the Diamond, they then followed him back to the Garda station.
- 8.53. In cross-examination of Mrs. Flynn, it was put to her by counsel on behalf of Sergeant Hannigan that he had been driving the marked patrol car that day. Counsel suggested that insofar as Sergeant Hannigan may have pulled his vehicle in behind Mr. Flynn's vehicle this was purely for the purpose of meeting up with Detective Sergeant Smith for the purpose of bringing him out to Raphoe Garda Station. There was no intention on the part of Sergeant Hannigan to intimidate Mr. Flynn or the occupants of his vehicle. It was denied that Sergeant Hannigan had deliberately followed Mr. Flynn's vehicle out of Raphoe. If that had happened it was purely coincidence that they happened to be going in the same direction towards the Garda station. When he came to give his evidence on Day 677, Sergeant Hannigan stated that his car was not behind Mr. Flynn's car but was on the other side of the Diamond. He said that he was driving a marked car and his firm recollection was that Mr. Flynn's car was pointed out to him at the other side of the Diamond. He said that he may have passed Mr. Flynn's vehicle to come round and see Mr. Smith, he could not say, but he was not behind his vehicle.<sup>348</sup>
- 8.54. **The Tribunal is satisfied that Mr. Flynn has given his honest recollection as to what he recalled in respect of that occasion.** It may well be that his perception of the arrival of the detectives out of the cafeteria onto the street was a cause of some concern to him. Without finding that anything inappropriate was said by the detectives at that time, the Tribunal accepts that Mr. Flynn may well have felt himself intimidated when in the course of a conversation with Detective Sergeant Smith, there suddenly emerged onto the street a number of other plainclothes detectives. In these circumstances, it is understandable that Mr. Flynn may have returned to his vehicle in haste and proceeded to gather in the other occupants of his vehicle, in the belief that things might turn nasty with the Gardaí. The only Garda that was named by Mr. Flynn was Detective Sergeant Hugh Smith. He makes no allegation of discourtesy or improper conduct against him.
- 8.55. The fact that some vehicles may have parked close to his vehicle for some

<sup>348</sup> Transcript, Day 677, pages 58-59.

moments and thereby impeded his exit from the parked position, can often happen in a busy street without there being any malicious intent in such action. The Tribunal accepts that Mr. Flynn and the occupants of his vehicle may well have felt intimidated, particularly as a result of what was reported to them by Mr. Flynn. However, the Tribunal cannot make a finding on the balance of probabilities that any particular Gardaí intended to intimidate Mr. Flynn on the day in question.

- 8.56. The Tribunal notes that none of the occupants of the other vehicles appear to have alighted from their vehicles at any stage. It appears that whatever Frank McBrearty Senior said to the persons in the car in front, the situation was soon rectified and Mr. Flynn proceeded on his way. As noted by counsel for Mr. Flynn in his cross-examination of Sergeant Hannigan, Mr. Flynn was not identifying Sergeant Hannigan as one of the Gardaí involved in the incident that day.
- 8.57. Unfortunately, the Tribunal did not have the benefit of the evidence of Frank McBrearty Senior on this issue. He had left the witness box before dealing with this incident in his evidence. He played a central role in the narrative as recounted by Mr. Flynn. It was Mr. McBrearty Senior who managed to extricate Mr. Flynn's vehicle from its parking difficulties at the Diamond in Raphoe. He also escorted Mr. Flynn's vehicle out of the village. Mr. Flynn has alleged that he was followed by the Garda patrol car for the initial part of the journey. The Tribunal did not have the benefit of Mr. McBrearty Senior's evidence on this aspect either.
- 8.58. While accepting that Mr. Flynn has given his best recollection of events, the Tribunal cannot conclude that there was an attempt by the Gardaí to intimidate him on that occasion.



## Part IV Allegations of Thomas Coffey

### Introduction

8.59. In 1997 Mr. Coffey was working for Zimmerman & Co., Mr. Flynn's private investigation company. From February to October 1997 Mr. Coffey was engaged with inquiries in the Raphoe area. At that time these inquiries consisted of interviewing a number of people who had been in Raphoe on the night of the Late Mr. Barron's death with a view to establishing their exact whereabouts.

8.60. As Paul Barron, the son of the Late Mr. Richard Barron, had been in Raphoe on the night of the Late Mr. Barron's death, he was one of the people that Mr. Coffey wished to interview. Mr. Coffey told the Tribunal that Mr. Flynn wrote a number of letters to the Barron family seeking to arrange such an interview. Mr. Coffey said that he was unaware of correspondence that had passed between P.A. Dorrian & Co., who represented the Barron family, and Mr. Flynn, which correspondence made it clear that the Barron family did not want either Mr. Flynn or his representatives calling to him.<sup>349</sup>

8.61. Mr. Coffey said that prior to June of 1997 he met with Mr. William Hewitt and his wife Celine Hewitt. The Hewitts were relations of the Barron family. Mr. Coffey said:

*In the course of the conversation with William Hewitt he indicated that the Gardaí had told the family that Richie's death was a result of involvement by Frank McBrearty Junior and Mark McConnell, and that was the main reason that the Barron family did not communicate with us and did not want to have anything to do with us.*<sup>350</sup>

8.62. Following that on the 26th of June 1997, Mr. Coffey called to the Barron residence where he met with Mrs. Barron, Vincent Barron and Paul Barron. During the course of that meeting an altercation occurred and Mr. Coffey received injuries. Mr. Coffey was of the belief that the attitude of the Barron family towards him on that occasion was a direct result of the information given to them by the Gardaí: that the McBreartys were responsible for the death of the Late Mr. Barron.<sup>351</sup>

8.63. Following the altercation, Mr. Coffey made his way to Frank McBrearty Junior's home, where an ambulance was summoned. From there he was taken by ambulance to Letterkenny Hospital. En route to the hospital the ambulance was intercepted by Sergeant Hargadon, who had a conversation with Mr. Coffey. Thereafter, a Garda investigation was instigated into Mr. Coffey's allegation of assault, which investigation culminated in a file being sent to the Director of

<sup>349</sup> Tribunal Documents, pages 5,075-5,101 and Transcript, Day 670, page 165.

<sup>350</sup> Transcript, Day 670, page 157.

<sup>351</sup> Transcript, Day 670, page 158-159.

Public Prosecutions. Paul and Vincent Barron each made a statement to Garda O'Dowd and Sergeant White in relation to what they said happened when Mr. Coffey called to the Barron house. Ultimately, a decision was made not to prosecute anybody in respect of the assault on Mr. Coffey. Superintendent Lennon told Mr. Coffey about this decision.

8.64. Mr. Coffey complained that certain parts of that investigation were not conducted in a proper manner. Mr. Coffey was of the view that the Barrons were not sufficiently challenged by Sergeant John White with regard to the description they provided of Mr. Coffey's injuries.<sup>352</sup>

8.65. A copy of the original investigation file is contained in the Tribunal materials.<sup>353</sup> It is apparent from same that the Gardaí received notification at 11.40 hours on the 6th of June 1997 that a serious assault had occurred at the Barrons' house. Sergeant Sarah Hargadon, who was on duty in Raphoe Garda Station, on receipt of this information proceeded to the home of Mr. Frank McBrearty Junior. While en route to same she met an ambulance travelling towards Raphoe. Thereafter she conducted a brief interview with the injured party, Mr. Coffey, who informed her as to his identity and told her that he had been assaulted earlier on by Vincent and Paul Barron. Later on that day, Sergeant Hargadon accompanied by Detective Sergeant Henry went to Letterkenny General Hospital to see Mr. Coffey. The Garda investigation file reveals that while initially Mr. Coffey was co-operative with the Garda investigation, he received a phone call midway through this visit and thereafter he was less co-operative with the Garda investigation. Later on that day, Detective Sergeant Henry called to see Mr. Coffey when he requested that Mr. Coffey hand over his clothes to the Gardaí for a forensic examination. This request was refused. That night Sergeant White requested that Mr. Coffey hand over his clothes but Mr. Coffey again did not do so. He also refused to discuss the alleged assault with Sergeant White and refused to allow the Gardaí to obtain a medical report. Ultimately, on the 16th of July 1997, Mr. Coffey made a statement of complaint to the Gardaí. He also handed over clothing to the Gardaí, which he said he was wearing at the time of the assault.

8.66. Mr. Coffey did not dispute the above sequence of events and explained his actions as follows:

*... it was very hard to co-operate with persons who were accusing innocent people of murder and who were going out of their way to prepare a case ... upon which they would hope to gain a conviction.*<sup>354</sup>

8.67. On the day of the 26th of June, having received a report of an alleged assault

<sup>352</sup> Transcript, Day 670, page 167.

<sup>353</sup> Tribunal Documents, pages 5,035-5,111.

<sup>354</sup> Transcript, Day 670, page 161.

Sergeant White attended at the Barron residence at approximately 12.55 hours. There was nobody home. Mr. White said he examined the driveway of the house but he could not see any evidence supporting the allegation that an assault had taken place. He said that he returned to Raphoe and spoke to Sergeant Hargadon, who gave him details of the complaint made by Mr. Coffey. He was also aware that at that time Mr. Coffey had not completed a statement. Some five minutes later Mr. Vincent Barron called to Raphoe Garda Station whereupon he, Sergeant White and Garda O'Dowd returned to his premises. The Gardaí interviewed both Vincent Barron and Paul Barron at that stage. Both Barrons made statements to the Gardaí. Both men gave Sergeant White the clothes they were wearing at the time of the altercation with Mr. Coffey. A search was carried out of the premises for any potential weapons. This was negative. Thereafter the scene was preserved by Garda O'Dowd until a technical examination was conducted by Detective Garda Michael Jennings.

- 8.68.** Mr. Coffey took particular issue with the statements taken by Sergeant White from the Barrons. Mr. Coffey took issue with the description of him supplied by the Barrons after the altercation. Mr. Paul Barron's statement contains the following description of Mr. Coffey:

I did not hit or kick Mr. Coffey. When the three of us separated there was blood in Mr. Coffey's beard. I don't know exactly what happened to him but it happened during the row.<sup>355</sup>

- 8.69.** Mr. Vincent Barron's statement contains the following description of Mr. Coffey:

When we separated I saw that Mr. Coffey's face was bleeding. There was a bit of blood on his beard but not much...I have since heard that Mr. Coffey went to hospital. I am surprised at this. Other than the bit of blood on his beard there didn't seem to be much wrong with him.<sup>356</sup>

- 8.70.** Mr. Coffey pointed out that in circumstances where Mr. White saw Mr. Coffey's injuries later on that day, which injuries were obviously more extensive than had been described to him by the Barrons an effort should have been made to re-interview the Barrons.<sup>357</sup>

- 8.71.** For his part, Mr. White told the Tribunal that he conducted his inquiries in as diligent a way as possible. He said that at the time he took the statements from the Barrons he had not met Mr. Coffey and was not aware of the extent of his injuries. He also said that his examination of the crime scene did not reveal to him any bloodstains. When he did visit Mr. Coffey in hospital, his wounds had been cleaned and washed. He also pointed out that Mr. Coffey at that stage was not co-operating with the Garda investigation.<sup>358</sup>

<sup>355</sup> Tribunal Documents, page 5,055.

<sup>356</sup> Tribunal Documents, pages 5,052-5,053.

<sup>357</sup> Transcript, Day 670, pages 167-170.

<sup>358</sup> Transcript, Day 674, page 107.

- 8.72. I do not accept that the Gardaí were in some way to blame for the altercation nor do I accept that the matter was not properly investigated.
- 8.73. In this regard I note the series of correspondence from P.A. Dorrian and Company which indicated that the Barrons for reasons unconnected with the Gardaí did not want anything to do with Mr. Flynn or his employees.
- 8.74. I also note the contents of the Garda investigation file. In view of Mr. Coffey's non-cooperation with the Garda investigation I do not regard it as negligent that the Barrons were not re-interviewed and questioned about Mr. Coffey's injuries. The behaviour of Mr. White in not re-interviewing the Barrons is at most an indication that Sergeant White was sympathetic to the Barrons, but does not in my view constitute harassment of Mr. Coffey.

**Part V Complaints Made by Mr. Paddy Lynch**

- 8.75. Mr. Lynch had worked for many years as a part-time car park attendant at Frankie's nightclub. He had two main complaints to make against Sergeant White. The first was that after January 1997, Sergeant White had prevented him from directing traffic on the public street outside Frankie's nightclub, as he had done prior to that time. He regarded this as a form of harassment by the sergeant. His second area of complaint concerned an incident that occurred in the early hours of the 23rd of February 1997. On that occasion, Sergeant White had reprimanded him concerning his driving on the main street in the village and had threatened to prosecute him under the road traffic legislation. Mr. Lynch saw this as a further form of harassment against him. He said that the only reason that he was getting this alleged harassment from the Gardaí, and in particular from Sergeant White, was due to the fact that he was employed by Frank McBrearty Senior.
- 8.76. Mr. Lynch stated that he had worked for Frank McBrearty Senior for fifteen or twenty years prior to 1997. During that time, he had carried out his duties as a part-time car park attendant without any interference at all from the Gardaí. His job as a car park attendant was twofold. Firstly, when cars arrived at the beginning of the evening, he was to ensure that the vehicles were parked in an orderly fashion within the car park itself. There were no actual markings on the surface of the car park, so it was necessary for someone to ensure that the cars were parked in such a way that it was possible for patrons to exit from the car park if they should decide to leave the disco early. This meant that he had to ensure that the cars were parked close to one another and in an orderly fashion, while at the same time leaving aisles or exit routes available for persons leaving the car park. Mr. Lynch stated that on busy nights there could be anything between four hundred and five hundred cars in the car park.
- 8.77. The second area of his duties involved ensuring that vehicles were able to exit from the car park in a safe manner at the end of the evening. To this end, Mr. Lynch would stand on or close to the street and direct traffic out of the car park. This was necessary due to the fact that the exit from the car park was somewhat of a blind exit, rendering it difficult to see the approach of traffic passing up and down Meetinghouse Street, which was quite narrow at that point. In addition, due to the large number of pedestrians who might be crossing the street to go to the chip shop on the far side of the road, it was necessary for vehicles to take care when turning onto Meetinghouse Street itself.
- 8.78. Mr. Lynch stated that his presence in directing the traffic and ensuring that pedestrians did not stray in front of vehicles meant that traffic exited from the car

park in an efficient and safe manner. Mr. Lynch stated that the Gardaí had never objected to his carrying out these duties. Prior to 1997, he did not see many Gardaí at all. Indeed, he stated that if the weather was inclement, the Gardaí tended to stay in their vehicle or stay back at the Garda station. He said that they were only seen out and about in the village if the weather was fine.

- 8.79. Mr. Lynch stated that all this changed upon the arrival of Sergeant White into Raphoe in January 1997. He gave the following description of the way in which matters had changed in Raphoe:

*Well come a Friday night or a Saturday night or a Sunday night, you always looked forward to going to Raphoe, meeting people and having a chat with them. But after the death of Richie Barron you just dreaded going to Raphoe at the weekends. The harassment you were getting, you know. Checkpoints at every end of the town. Stopping people coming into the town, saying there was bomb scares in the nightclub, telling people, just basically harassing people about the town and coming out of the nightclub were just being harassed. So on and so forth, you know it was just a complete nightmare, you just didn't look forward to going to it, you know.*

*After the death of Richie Barron the Guards started to come every night, harassing and I was standing directing my traffic out and a few nights Sergeant White came forward to me and he said to me, he says, you have no end to be here, you're doing my job. So basically the words I asked him was, where was he on a wet night, or a cold night, when I was here on my own?<sup>359</sup>*

- 8.80. Mr. White accepted that he had told Mr. Lynch that he should not be directing traffic out on a public road. His position on the matter was that, while it might have been appropriate for Mr. Lynch to direct some traffic if there were no Gardaí about on a particular evening, once there were Gardaí present in the area, it was not appropriate for a civilian to take on the duty of directing traffic on a public road. That was solely a matter for the Gardaí. Mr. White stated that they had been told during their training in Templemore that Gardaí should not allow civilians to assist them in carrying out their work on the public street, due to the fact that if there was an accident or an incident involving injury to any civilians, either a motorist, or a pedestrian, or the person assisting the Gardaí, that the Gardaí could be held responsible in those circumstances for any ensuing injuries. Mr. White said that it was solely for that reason that he had directed Mr. Lynch to confine his duties to within the car park area, which was private property owned by Frank McBrearty Senior.

<sup>359</sup> Transcript, Day 669, pages 12-13.

- 8.81. While it was perhaps a small matter of disagreement, Mr. White also took issue with a statement made by Mr. Lynch to the effect that if the weather was unpleasant, Sergeant White would not be seen in the village. Mr. White stated that while he was stationed in Raphoe, he was out in all weathers. I have absolutely no doubt but that he is correct in that assertion.

### **Conclusion**

- 8.82. Gardaí have the power to direct traffic wherever it is necessary to ensure the safety of all road users. It is inappropriate that these functions should be carried out by a civilian, when there are Gardaí present in the area. I accept that when directing traffic on the public street in Raphoe, Mr. Lynch was doing no more than attempting to ensure that cars could exit from the car park in an efficient and safe manner. I do not criticise him at all for carrying out these duties. However, I accept Mr. White's argument that it was inappropriate for a civilian to undertake such actions when there were Gardaí present. In the circumstances, the actions of Sergeant White in this regard cannot be seen as harassment of Mr. Lynch, or indirectly of Frank McBrearty Senior.

### **An Incident on the Street**

- 8.83. The second complaint made by Mr. Lynch concerned an incident that occurred in the early hours of the 23rd of February 1997. The reader will already be aware that this date was significant in terms of what had occurred during the inspections of Frankie's nightclub carried out by Sergeant White earlier that night. There had also been the significant conversation that had occurred between Sergeant White and Garda Dermot Ward, wherein Sergeant White was informed that the bars had re-opened immediately upon the departure of the Gardaí from the premises. These matters are dealt with in detail in Chapter 3 of this report.
- 8.84. That night Mr. Lynch finished work at some time between 03.30 hours and 04.00 hours. Having purchased a burger for himself in the chip shop, he saw that the mobile chip van was parked down in the Diamond. He decided to purchase a portion of fish for his wife. He got into his car and proceeded down Meetinghouse Street towards the Diamond. He saw the Garda patrol car on the street. It was parked and a man was standing at the side of the vehicle talking to the Gardaí who were sitting in the car. According to Mr. Lynch, just as he was about to pass the Garda car the man who had been speaking to the Gardaí suddenly turned and walked straight into Mr. Lynch's path. He was obliged to swerve in order to avoid hitting the pedestrian. He proceeded on down the street and was about to get out of the car when Sergeant White approached his vehicle and knocked on the window.

- 8.85. Mr. Lynch stated that Sergeant White pulled out his notebook and informed him that he was going to summons him under sections 51, 52 and 53 of some Act. When the Sergeant had finished writing, Mr. Lynch asked him to explain in plain English what this meant. He said that Sergeant White asked him whether he was getting smart. He said that he was not trying to be smart but said to Sergeant White, “You’re beating up the wrong tree when you are beating up my tree. I was in Raphoe before you came to it and I will be in Raphoe when you leave it”. He said that he remained in his vehicle and continued eating his burger. That seems to have been the end of the incident.
- 8.86. Mr. White gave the following account of this incident in his evidence to the Tribunal:

*There was a person talking to the driver of the [patrol] car. A car did a spin around on the road and almost collided with this man as he was leaving the side of the patrol car. He had to swerve violently to avoid him, re-straightened the car then and continued on towards the Diamond. Had that been anybody else other than one of Mr. McBrearty's staff, I would have done the very same thing. Caution him for dangerous driving and hope that he would learn a lesson from it. As you know I didn't go ahead with the prosecution for it because I mean, I would often do that, threaten the person that I would prosecute them, in the hope that they would be more aware from now on and won't take risks or chances. But if I was vindictive I would have initiated a prosecution. I mean I wouldn't even be vindictive to initiate a prosecution, I would be quite within my rights to do so. But I have nothing against Paddy Lynch whatsoever of any kind, he was living quite close to me in Ballybofey, I'd never had a wrong word with him, either at McBrearty's premises or since.<sup>360</sup>*

- 8.87 Having heard both accounts of the incident, I prefer the evidence given by Mr. Lynch. I do not believe that there was any incident that night that required Garda intervention. I am satisfied that this was an incident of harassment or reprisal for what Sergeant White saw as the insults that he had received earlier that same evening in the nightclub. While no summons issued in respect of the incident, it still should not have occurred. It was an occasion on which there was an abuse of Garda powers.

<sup>360</sup> Transcript, Day 674, pages 123-124.



## **Part VI Allegations of William Logan**

- 8.88.** Mr. William Logan is originally from just outside Raphoe, County Donegal. He has been a friend of Mr. Frank McBrearty Senior for a long period of time. Until such time as Frankie's nightclub closed he worked there on each Friday, Saturday and Sunday night. There he performed the function of ticket collector: collecting tickets from patrons who had already paid the entrance fee. Since the closure of Mr. McBrearty Senior's nightclub he continues to work one night a week for Mr. McBrearty in his bar.
- 8.89.** Mr. Logan alleged that he had been the subject of unfair Garda attention from Sergeant White on two occasions. The first allegation refers to an alleged incident on the 7th of July 1997, when there was an encounter with Sergeant John White outside of Frankie's nightclub. The second occasion refers to the 25th of November 1997 in which there was a meeting with Sergeant White which had the result of a number of summonses being issued against Mr. Logan.
- 8.90.** In order to properly appreciate the background within which these complaints are made by Mr. Logan it is of assistance to set out the circumstances in which a van of Mr. Logan's was seized by Gardaí. The Gardaí in Letterkenny were conducting an investigation into stolen vans. As part of that investigation Mr. Logan's van was seized by Gardaí from Letterkenny. Mr. Logan attributed responsibility for the seizure of his van to Sergeant White. The Tribunal is satisfied that there is no evidence linking Sergeant White with the seizure of Mr. Logan's van. However, Mr. Logan remained convinced that Sergeant White was behind the seizure of his van. It is with this frame of mind that Mr. Logan approached his subsequent encounters with Sergeant White.

### **The 7th of July 1997**

- 8.91.** Mr. Logan said that on the night of the 7th of July 1997, he was working at Frank McBrearty's nightclub collecting tickets. He was outside the nightclub in the company of Mr. Liam O'Donnell and Mr. Paddy Lynch. He said that Sergeant White accused him of staring at him and asked him if he wanted to go in the Garda van. In reply Mr. Logan said , "It's not the Garvaghy Road" and went back inside the hall with Mr. O'Donnell and Mr. Lynch. When asked by counsel for the Tribunal whether he had any idea of why he thought Sergeant White may have approached him, Mr. Logan said it was just because he worked for the McBreartys.<sup>361</sup> Mr. Logan subsequently made a complaint to the Garda Síochána Complaints Board in respect of the matter.<sup>362</sup>
- 8.92.** Mr. Logan, when questioned by counsel for Mr. White, admitted that Andrew McBrearty intervened following Sergeant White asking Mr. Logan to calm down.

<sup>361</sup> Transcript, Day 657, pages 103-104.

<sup>362</sup> Tribunal Documents, page 1,596

However, he strenuously denied abusing Sergeant White on the night in question. He also agreed with the proposition put to him by counsel for Mr. White that “at the most irrespective of what was said, words were exchanged between you and Sergeant White.”<sup>363</sup>

- 8.93. Mr. Lynch said that he had been directing the traffic that was coming out of the nightclub on the night in question. Mr. Lynch described what happened as follows;

*... Willie was just basically standing beside me and I was directing out the traffic and just as I seen Mr. White coming across from the chip shop he said to Willie what are you staring at? ... Willie said there is no law against that and Sergeant White pulled out the book and started to write. Then Willie, he says, I'm standing on private property ... I can stand here as long as I like ... when Sergeant White came across to Willie, Liam O'Donnell and Marty McCallion came down to see what was going on. They heard everything that was going on and they took Willie, didn't drag him, they never dragged him into the nightclub they just said to Willie come on ahead in, forget about it you know.*<sup>364</sup>

- 8.94. Sergeant White recorded the incident in a somewhat different light. The following reference appears in the Occurrence Book at Raphoe Garda Station:

2.47am William Logan stood 10 feet from Sergeant White and abusing him for seizing his van. He was informed by Sergeant White that he did not have anything to do with the seizure. He then got excited began cursing and ordered Sergeant White off that area of that street that he was on. Sergeant White requested that he calm down, keep his voice down or move away. Andy McBrearty then claimed that he owned that part of Meetinghouse Street. It was pointed out to him that it was a public place and Sergeant White informed Mr. Logan that he would be arrested and taken to Letterkenny station he [William Logan] was then dragged away from the scene by Liam O'Donnell and John Mitchell.<sup>365</sup>

- 8.95. Mr. White told the Tribunal that at this time members of the McBrearty staff were very hostile towards him. On that particular night Mr. Logan could not resist joining in.<sup>366</sup> He described Mr. Logan as a hard man, and as being aggressive on that particular night; and he said he began to abuse him as he was under the illusion that he had seized his van.

<sup>363</sup> Transcript, Day 657, page 163.

<sup>364</sup> Transcript, Day 669, page 27-28

<sup>365</sup> Tribunal Documents, pages 4,662-4,664.

<sup>366</sup> Transcript, Day 673, Page 104.

- 8.96. I accept that there was an exchange between Mr. Logan and Sergeant White on the street that night. I also accept that the seizure of the van was something that Mr. Logan associated with Sergeant White; and it may well be that he took the opportunity in front of the nightclub to voice his feelings on the matter to Sergeant White.
- 8.97. I have already found in a previous section of this report that I regard it as impossible at this remove to determine which of the parties are correct in relation to their version of events as to what happened on the street over ten years ago. In these circumstances, I reiterate what I have already said in relation to the matter: The Tribunal cannot make any finding on the balance of probability that the allegations made by Mr. Logan are sustained; it is another example of the fact that relations had deteriorated between Sergeant White and members of Mr. Frank McBrearty's staff.

### **The 25th of November 1997**

- 8.98. Mr. Logan told the Tribunal that on the night of the 25th of November 1997 at around 21.00 hours, in the hours of darkness, he had been in Coyle's shop. He drove out of Raphoe in the company of his wife, with the intention of visiting his mother, but decided it was too late. He continued up the street as far as the mart, where he planned on turning the car around as there was sufficient space available there. He said that up at the mart a red car drove in in front of him. He started to get out of the van. He described what happened then as follows:

*... and when I was getting out of the van, [Detective Sergeant White] was getting out of the car and I looked at him and I said it's you, I said, I'll have nothing to do with you. So I got into the van again and went back up to the barracks about 50 yards up the road.<sup>367</sup>*

- 8.99. He intended making a complaint about Detective Sergeant White at the Garda station.<sup>368</sup> When Mr. Logan arrived at the Garda station, Detective Sergeant White was present there so Mr. Logan demanded a copy of "what it was he was supposed to have done". A copy of same was not provided to him and he said he wouldn't leave the barracks until he got a copy. At that stage Garda Barrett, who was in the Garda barracks, told Mr. Logan to leave. Mr. Logan refused and he was caught by the arm by Garda Barrett, who tried to eject him from the Garda station. Mr. Logan agreed with counsel for the Tribunal that there was a "scene" at the Garda station, but denied that he had been shouting. Garda Keaveney then arrived at the Garda station so Mr. Logan left the Garda station.

<sup>367</sup> Transcript, Day 657, Page 111.

<sup>368</sup> Transcript, Day 657, Page 115.

- 8.100. Following that encounter, four summonses were served on Mr. Logan for alleged offences under the road traffic acts and an alleged offence under the Public Order Act, 1994. While there was evidence heard in relation to these summonses in the District Court, the matters were subsequently withdrawn on the application of the D.P.P.
- 8.101. Mr. White had a somewhat different view of events on the 25th of November 1997. At that time, Sergeant White was a Detective Sergeant attached to Letterkenny Garda Station. He had been assigned to Raphoe on duty. On the evening in question he said that he had been driving along William Street in an unmarked car when he encountered a van coming towards him with no lights on. This car had pulled out onto the street in order to avoid a parked Volvo car. Mr. White said he engaged the horn of his vehicle, braked and swerved to the left in order to avoid a collision. Thereafter he reversed his car and followed the offending vehicle up William Street. He said the speed of the vehicle was slightly over 40 m.p.h. in a place where the speed limit was 30 m.p.h. He activated the siren once, at which stage the taillights were switched on in the van. Mr. White said he then flashed the lights of his vehicle and the vehicle that he had been following pulled into the car park in front of the mart. Mr. White said he pulled up to the side of the offending vehicle. He denied jamming the vehicle in. He said it would have been impossible to jam the vehicle in as the area in question was so large. Mr. White got out of his car. He opened the door of the offending vehicle and saw that it was Mr. Logan and a person whom he presumed to be his wife. Neither were wearing seatbelts. He then went on to describe what happened as follows:

*Well I went up to the door and although I knew Mr. Logan very well and he knew me well as is our habit in plainclothes, you take out your ID card and you identify yourself because if you don't it creates a problem afterwards in court. It's just the usual thing you go through and he said to me more or less look I 'effing know who you are. I remember the exact words I can refer to my statement if you wish but I just know who you 'effing are. Words to that effect. Aggression coming out straightaway. He opened the driver's door of the van and a very very aggressive attitude towards me. He went on then to tell me that McBrearty, or sorry Frank McBrearty had me 'effed out of Raphoe and that I had no power in Raphoe and I couldn't say a word to him, if I did he would make a complaint about me. To me it was totally the wrong attitude. I mean I had every reason in the world for stopping the vehicle, the attitude was absolutely wrong to a policeman and I mean I don't*

*think I have ever seen an attitude like that before. If a person is caught doing something wrong, it's hands up saying look I'm sorry I forgot to turn on the lights or I'm sorry I swerved to pass the car. And they would be hoping to get away with it as best they could ... I cautioned him about dangerous driving, it's the usual caution you give to a person under Section 51 (a), 52 and 53 of the Road Traffic Act, 1968 to 1995 ... What I remember from Mr. Logan was abuse. I asked him to produce documents, his driving licence and insurance and he wouldn't. He wouldn't tell me where he was going to produce them. He was extremely I suppose agitated and annoyed and aggressive. And then he said he was going to the Garda station ...*<sup>369</sup>

- 8.102. Mr. White said that during the time of the exchange in the car park there was a couple walking down past the mart who stopped, looking over at the scene.<sup>370</sup> Mr. White described Mr. Logan as being as "near out of control as he would find with a motorist".
- 8.103. Mr. White said that at the Garda station Mr. Logan was demanding that he be furnished with a copy of Mr. White's notes. Detective Sergeant White refused to furnish these. He described Mr. Logan as being very abusive and refusing to leave the Garda station. Eventually when requested by Garda Keaveney Mr. Logan left the Garda station.
- 8.104. Mr. Barrett told the Tribunal that he was in the Garda station that evening along with Garda Keaveney. He said that Detective Sergeant White and Mr. Logan arrived into the Garda station. Detective Sergeant White was asking Mr. Logan for details of his licence and making a demand for production of his documents to him. He said Mr. Logan kept shouting at Detective Sergeant White, refusing to leave the station and demanding a copy of the notes that Detective Sergeant White had taken. He said he went and opened the door and asked Mr. Logan to leave the Garda station. He described Mr. Logan as refusing to leave the station. After a few times of asking Mr. Logan to leave the station he said Garda Keaveney came over and asked Mr. Logan to leave the station. He then said Mr. Logan said, "I'll leave for you but I won't leave for them other two efferes or something to that effect".<sup>371</sup> Mr. Barrett denied twisting Mr. Logan's arm at any time.
- 8.105. Garda Keaveney described the scene in the Garda station in similar terms. He refers to Mr. Logan as being annoyed and accusing Detective Sergeant White of stealing his van.

<sup>369</sup> Transcript, Day 674, pages 89-91.

<sup>370</sup> Transcript, Day 674, page 94.

<sup>371</sup> Transcript, Day 635, page 71.

- 8.106. Accepting but not so finding that Mr. Logan was guilty of some road traffic offence, I am of the view that the behaviour of Detective Sergeant White on this occasion amounted to harassment of Mr. Logan. Mr. White on this occasion stopped Mr. Logan in a manner appropriate to someone suspected of a serious criminal offence. While I accept that there may have been an exchange between Mr. White and Mr. Logan at that point, I do not accept that it was a situation where a genuine breach of the peace took place. This was an occasion where a caution to Mr. Logan would have been the appropriate response. Mr. White, by proceeding to summon Mr. Logan for four offences, behaved in a disproportionate way.
- 8.107. With regard to the exchange in the Garda station, having heard the evidence of all the parties I accept that Mr. Logan was annoyed at that stage. I do not believe that he was assaulted in the manner described by him, but I do believe that he was encouraged to leave the Garda Station.

## CHAPTER 9 CONCLUSIONS

### Introduction

9.01. This chapter sets out the main conclusions that I have reached on the issues raised in the harassment sub-module. While it would be tempting for the reader to confine their attention to this chapter alone, I would stress that the findings that are set out hereunder are based on a close analysis of the evidence, both the oral testimony and the considerable documentary evidence that was opened to the Tribunal, which has been set out in previous chapters. It is important to read those chapters carefully in order to come to a full understanding as to why the conclusions set out hereunder have been reached. Conclusions on smaller, or ancillary, issues have been given in the body of the narrative. These will not be repeated in this chapter. In addition, my conclusions on a number of discrete issues are contained in Chapters 7 and 8, and likewise will not be repeated in this chapter.

### The Transfer of Sergeant White to Raphoe

9.02. The Tribunal accepts the evidence given by Mr. Fitzpatrick and Mr. Fitzgerald to the effect that there was a focus on public order issues in the Donegal division in 1996 and 1997. The death of the Late Mr. Barron, together with the incidents involving Edmond Moss and Mr. Bonner, caused Garda attention to focus on Raphoe. The Gardaí quite wrongly suspected Frank McBrearty Junior and Mark McConnell of having had an involvement in the death of the Late Mr. Barron. They suspected that the wider McBrearty and McConnell families were engaged in a conspiracy to protect these two men. They also wrongly suspected that Mr. Frank McBrearty Senior was interfering in the Garda investigation into that event and, in particular, that he was intimidating witnesses. There was no basis in fact for any of these suspicions held by the Gardaí. However, they are relevant to the perception that they had of the McBreartys and their extended family at that time. It was against this background that the decision was taken by Chief Superintendent Fitzpatrick to send Sergeant John White to Raphoe.

9.03. The Tribunal finds that Sergeant White was selected by Chief Superintendent Fitzpatrick and was sent to Raphoe due to the fact that he was known to be a strict disciplinarian. Garda management had made up their minds that steps had to be taken to deal with the problems as they perceived them in Raphoe. They wanted someone to deal with Frank McBrearty Senior. Sergeant White was selected for this job. I am satisfied that he was sent to Raphoe with a clear mandate to address public order

issues. This was to be done by a strict enforcement of the liquor licensing laws.

- 9.04. The Tribunal accepts the evidence given by Mr. White that he was given sanction to incur overtime by carrying out weekend duties in order to achieve the goal that had been set for him. He was told that he could enlist the assistance of Gardaí from neighbouring stations and in the month of July, additional Gardaí were drafted in to increase the size of the station party in Raphoe. The Tribunal is satisfied that both Garda management in Letterkenny and Sergeant White viewed this as the implementation of a zero tolerance policy for Raphoe. The Tribunal is satisfied that the officers in Letterkenny Garda Station and, in particular, Chief Superintendent Fitzpatrick and Superintendent Lennon, knew of the strict regime that had been enforced in Raphoe by Sergeant White and approved of this method of law enforcement.

#### **Connection to the Barron Investigation**

- 9.05. The question arises as to what connection, if any, there was between the decision to send Sergeant White to Raphoe and the ongoing investigation into the death of the Late Richard Barron. Mr. McBrearty Senior has made the case strongly that in his opinion it was due to the fact that the Gardaí suspected that his son and nephew had been responsible for the death of the Late Mr. Barron that the decision was taken to send Sergeant White to Raphoe as part of a plan to destroy his business. He believed that the Gardaí hoped that by so doing, one or other of the suspects, or perhaps Mr. McBrearty Senior himself, would crack, thereby leading to a further break in the ongoing investigation into the death of the Late Mr. Barron.
- 9.06. The Gardaí who were questioned on this aspect denied that there was any connection between the strict enforcement of the liquor licensing laws and the public order legislation in 1997 and the ongoing investigation into the death of the Late Mr. Barron. When he was asked whether in his view there was a connection between the Garda activity in 1997 and the investigation into the death of the Late Mr. Barron, Mr. O'Dowd stated:

*In my view, in my honest view at that time, that case was solved. That's my honest opinion about that, and this was another issue. This was coming down from the top to sort out the pub issues around Raphoe because of the public order problem, certainly we had the Barron issue there somewhat in the background because the personalities were the same, there's no doubt about that. And maybe Mr. McBrearty did see ... felt annoyed, because he did feel*



*wrongly done by, which is reckoned now is quite so. But I didn't see it at that stage. At that stage I believed that it was a done and dusted case, there was a murder admitted to and now move on with ... this is another issue.*

*Well it was probably affecting his relationship with me, but I didn't get involved with any argy-bargy with him. I had to still deal with him on the 2nd of November in relation to burglary at his premises, which I did and I got it sorted out for him 100%. So if he came to me and says will you do this for me, I'd have done it for him. Now he adopted an attitude to me, but I had to accept that, you know.*

*[Did not believe the purpose was to destroy his business] not at all. I honestly believed that if Mr. McBrearty met us toe to toe at the beginning and just held in ... he knew what was going on, he knew what happened in the club. He knew there was a man nearly killed outside on his footpath and it was nothing to do with him. I honestly believed if he pulled his horns in for four to six weeks ... and I did speak to his son Andy about that, but it was a bit later, I think this never would have developed. I think he jumped the gun a wee bit. That's only my opinion. I could be wrong. But that's what I felt.<sup>372</sup>*

- 9.07. I am satisfied that Mr. O'Dowd has got it right in this analysis of the situation. One could not divorce the personalities that were involved and the connection that those personalities, who were running the pub, had with the Barron investigation and the suspicions that the Gardaí held about them in relation to that matter. However, it would be quite another matter to hold that the clampdown in respect of the liquor licensing laws which affected the McBrearty premises was done in furtherance of the Barron investigation. I do not think that this was the case. This very question was put to Garda Eamonn Earley, who, as already noted by the Tribunal, was a witness that gave fair and balanced evidence in relation to what occurred in Raphoe. He was asked whether he believed that the McBreartys were singled out for special attention due to the fact that they were suspects in the Barron investigation:

*No, I don't believe that. I think what happened after the McBreartys were arrested in connection with the Barron investigation [was] that they felt put upon by the Guards for want of a better word and they felt that any intrusion onto their ... any visits onto their premises were an attack on them in relation to ...*

<sup>372</sup> Transcript, Day 664, pages 69-71.

*continuous pressure in relation to the Barron investigation. But I don't see that was the case, I don't feel it was the case at the time. I never got that impression in Raphoe, that it was being used as a lever, as it were, against them, personally I never did.*<sup>373</sup>

## **Conclusion**

9.08. The Tribunal is satisfied that in sending Sergeant White to Raphoe the Gardaí were not acting in furtherance of their investigation into the death of the Late Mr. Richard Barron. The events are connected only due to the fact that certain personalities were common to both the Barron death investigation and the running of the licensed premises. While the death of the Late Mr. Barron may have been the catalyst leading to the focus of Garda attention on Raphoe, the sending of Sergeant White to Raphoe and the subsequent actions taken by him there, cannot be seen as part of the furtherance of the Garda investigation into the death of the Late Mr. Barron. By that time, a statement of admission (albeit now known to be a false one) had been obtained from Frank McBrearty Junior. The next step to be taken in furtherance of the investigation was to re-arrest Mr. Mark McConnell so that the statement could be put to him. For some unknown reason, the Gardaí did not act promptly in this regard. Mr. McConnell was not re-arrested until June of 1997. I am satisfied that the actions taken by Sergeant White in Raphoe were not carried out in furtherance of the Garda investigation into the circumstances surrounding the death of the Late Mr. Barron.

## **Knowledge on the Part of the Officers**

9.09. I am satisfied that the officers in Letterkenny, being Chief Superintendent Fitzpatrick, Superintendent Fitzgerald and Superintendent Lennon were, kept fully briefed as to what was happening on the ground in Raphoe.

9.10. Mr. White has stated that he had regular contact with the superintendent and also with the chief superintendent, at which times he kept them abreast of developments in Raphoe. The Tribunal accepts this evidence. Mr. O'Dowd has also stated that due to his connection with Mr. William Doherty, which was maintained at the direction of the chief superintendent, he had occasion to have more contact than would be normal between a Garda and his chief superintendent. He stated that in the course of his meetings and contacts with the chief superintendent he kept him fully informed of what was going on in Raphoe. Indeed, he had a recollection that at some time, probably in the month of July 1997, Chief Superintendent Fitzpatrick told him to "give those bucks plenty of paper

<sup>373</sup> Transcript, Day 638, page 64.

out there”.<sup>374</sup> While Mr. Fitzpatrick did not accept that such a comment was made by him to Garda O’Dowd, I am satisfied that a direction along those lines was indeed given by the chief superintendent to Garda O’Dowd. In giving that direction the chief superintendent was making it known to Garda O’Dowd that he wished the pressure to be kept up on the McBreartys.

- 9.11. Support for this conclusion is also to be found in the evidence given by Sergeant Sarah Hargadon:

*Other than the conversations I had with the superintendent and the chief, every time I went to Letterkenny, guess what the topic of conversation was, the McBreartys. So I would have updated everything that I knew at that particular visit with the chief and with the super. So the super certainly knew everything that happened and stirred in Raphoe, because he heard it from me, or he heard ... everything was recorded. I recorded everything that went on in Raphoe in relation to the McBreartys and it’s on record ... Well what was going on in Raphoe wasn’t going on in any other town that I was aware of at that time. There is nothing wrong with asking me, no, absolutely nothing wrong. They are my superiors, they are entitled to ask me. The response was always keep up the good work or keep the pressure going, or whatever. That’s how it occurred to me. That they were telling me.*<sup>375</sup>

- 9.12. The Tribunal notes that Sergeant White made no effort to disguise the enforcement regime that he had put in place. He recorded in the Inspection Book both the length of the inspections and the frequency of those inspections on a night by night basis. That record was available to be inspected by the officers at any time they wished. There was no question of Sergeant White acting in a covert manner. Furthermore, in the files that were sent up in respect of the various inspections, together with the information reports that were furnished by him on the 23rd of February 1997 and the 28th of April 1997, he set out in the clearest possible terms for the officers the type of enforcement regime that he had put in place in terms of the long inspections, the multiple inspections, and the use of covert operatives.

- 9.13. Furthermore, when the civil action was commenced by Frank McBrearty Senior, Superintendent Lennon and Sergeant White put in considerable work in drawing up the report that was furnished by Superintendent Lennon and that was used for the purpose of drafting a replying affidavit, which was ultimately sworn by Chief Superintendent Fitzpatrick. That

<sup>374</sup> Transcript, Day 665, pages 62-63.

<sup>375</sup> Transcript, Day 632, pages 19-21.

document set out in clear terms the enforcement regime that had been put in place. In the circumstances, the Tribunal finds that the officers concerned, being Chief Superintendent Fitzpatrick, Superintendent Fitzgerald, and Superintendent Lennon, were at all times aware of the method of enforcement of the liquor licensing laws and public order legislation in Raphoe adopted by Sergeant White in 1997. That such a regime was approved of by the officers is demonstrated by the fact that when Sergeant White went on holidays, Superintendent Lennon called the members of the Raphoe station party into his office to urge them to keep up the inspection regime for the pubs and nightclubs in Raphoe. That was a clear endorsement of the regime in place at that time.

9.14. The fact that these officers have subsequently come into the Tribunal and tried to distance themselves from the actions that were taken by the sergeant on the ground is an appalling dereliction of the duty that they owed as officers to the men serving under them. Mr. White had the following scathing comments to make in relation to the officers that had been his superiors at the time:

A. *I suppose, Mr. Barr, because both Kevin Lennon and Denis Fitzpatrick, the superintendent and chief superintendent, were fully behind this at the time. But then as time went on and the media attack on this whole proportion of the McBrearty affair, if you like to say, you know. You had 160 to 190 [summonses] and then you had 200 and 300 summonses being issued and the people of Ireland were totally misled in relation to it. The view out there was that this was excessive and that it was wrong and nobody wanted to be involved in that and the idea was leave it with Sergeant White. He's under pressure anyway in other areas and leave it to him, we'll just dump everything on him, simple as that and let him go to hell. That is the thinking of the two senior officers and if they were officers in the army and there was a war on, they would be shot for cowardice. I have no respect for them. None. And I had great respect for Superintendent Lennon. That simply is the situation. When things get hot they go from the front line to the back line and they stay well behind it. I am pretty annoyed over it, Mr. Chairman.*

Q. *So you are saying that because of media and other perceptions that have arisen during the years?*

A. Yes.

Q. *That they have decided to minimise their role, their knowledge and to isolate you and put you out as the scapegoat who was on a frolic of your own, if you like, in terms of the policing strategy adopted?*

A. *It's quite true, Mr. Barr, you can put it better than I did, that's for sure. Yes, that is exactly what I was trying to say.*<sup>376</sup>

9.15. The criticism made by Mr. White of the two officers is justified. They knew exactly what was going on in Raphoe. They supported Sergeant White at the time. They have subsequently attempted to draw back from their position so as to leave Mr. White isolated in respect of the actions that he took in Raphoe in 1997. Mr. Lennon has attempted to put a forced interpretation on certain entries made in his diaries at the time in an effort to show that he was not in favour of the enforcement of a strict regime in Raphoe. The Tribunal rejects this evidence.

#### **Was there a Campaign of Harassment against the McBreartys?**

9.16. The question as to whether the conduct of the Gardaí in Raphoe and, in particular, the conduct of Sergeant White constituted harassment of Mr. McBrearty Senior and his family is a very difficult question to answer. It would be very easy to say that because there were a certain number of inspections, or a certain number of summonses issued, that ipso facto there was harassment of the McBrearty nightclub premises. However, to adopt such a simplistic approach would be both misleading and unfair to the Gardaí whose job it was to enforce the law in an even-handed manner in Raphoe. In order to answer the question, it is necessary to look at the circumstances that presented themselves to the Gardaí at that time.

9.17. Mr. White made the case that from fairly early on he became aware from speaking to a motorist stopped at a checkpoint in January 1997, and subsequently from his conversation with Garda Dermot Ward on the 23rd of February 1997, that management at the premises were flouting the liquor licensing laws. In particular, that they were reopening the shutters as soon as the Gardaí left the premises. This was denied by Mr. McBrearty Senior for a very long time. However, when he came to the Tribunal to give evidence, he eventually conceded that the shutters were in fact opened as soon as the Gardaí left the premises and that the serving of drink recommenced. He also accepted that they were serving outside the legal opening hours. However, he maintained that he had an agreement with Superintendent Lennon that he would be allowed to do

<sup>376</sup> Transcript, Day 673, pages 29-30.

this until approximately 01.15 hours. The existence of such an agreement was denied by Mr. Lennon. The bar manager, Mr. Mitchell, also made significant admissions in his evidence to the same effect. He conceded that a lighting system had been installed at the premises and connected to the C.C.T.V. system, so that they could defeat the purpose of the Garda inspections by ensuring that the shutters were down prior to the arrival of the Gardaí onto the premises.

- 9.18. This was clearly a very difficult situation for any sergeant to find himself in. Sergeant White realised fairly early on that his efforts to enforce the liquor licensing laws were being circumvented by management at the premises. At first he adopted the tactic of leaving Gardaí on the premises for long periods in an effort to prevent the reopening of the bars. That tactic was discontinued in early February 1997 and was replaced by a regime of multiple inspections during each weekend night. The latter tactic was thwarted by the installation of the warning light system connected to the C.C.T.V. system.
- 9.19. In February 1997, Sergeant White began concentrating on the meals issue. It appears that this soon deteriorated into a game of cat and mouse between Sergeant White and the management of the premises. He was told that meals were being provided and as proof of that he was shown the tickets that were placed in a pint glass in the kitchen area. Mr. White said that he had doubts that any meals were in fact provided. This was due to the fact that the tickets in the glass were in sequential order and did not appear to be crumpled. Furthermore, he stated that there was no sign of meals having been served, in that there were no dirty plates, knives or forks, or napkins scattered around the premises, which would signify that a substantial quantity of meals had been provided.
- 9.20. The inspections became more and more frequent. Management complained that Sergeant White was paying attention to every small item that he possibly could, such as to the emergency exits and the issue as to whether a portion of the premises was unlicensed. The Tribunal does not criticise Sergeant White for any attention paid to the emergency exits. These are important issues and should always be the subject of attention by the Gardaí and, as appropriate, the Fire Officer.
- 9.21. What happened after the arrival of Sergeant White in Raphoe was not so much an orchestrated campaign of harassment against Mr. McBrearty Senior, but rather a bitter and escalating conflict, fuelled by the fact that two obstinate and determined men came head to head. Both men thought that they were acting in the right. Both men felt that they were entitled to act as they did. Mr. McBrearty Senior felt that he was entitled to keep his premises open until 01.00 hours on a Sunday morning, due to the fact that he had been able to do so prior to that time

without interference from the Gardaí. He also believed that premises elsewhere in the Donegal division were not being subjected to a similar clampdown. Sergeant White felt that he was obliged to take the steps that he did and the various tactics that he employed, due to the fact that Mr. McBrearty and his staff continued to flout the law on a weekly basis. Mr. White has always maintained that the actions that he took were fair, balanced and proportionate. These actions were condoned by his superior officers.

- 9.22. The Tribunal cannot agree with Mr. White that his policing of Raphoe in 1997 was “fair, balanced and proportionate”. The Tribunal is satisfied that the enforcement regime put in place by Sergeant White, and endorsed by his senior officers, was not commensurate with proper policing in a rural area. Sergeant White attempted to force Mr. McBrearty Senior to comply with the liquor licensing laws. As Chief Superintendent Kelly pointed out to the Tribunal, it is not the duty of the Gardaí to force any particular person to obey the law. Their duty is to carry out inspections and if, on those inspections, they find that there is a breach of the law taking place then they have the option to take the necessary steps to bring the matter before the courts, so that the person can be dealt with in accordance with law.
- 9.23. Sergeant White’s conduct in orchestrating the presence of Mr. Bernard Conlon on the McBrearty premises at 02.55 hours, for the purpose of being ‘found on’ by Gardaí Barrett and Keaveney on the 31st of August 1997, was entirely wrong. In this regard, Sergeant White had gone completely beyond the realms of proper policing. He was prepared to use any methods to secure a conviction for breach of the liquor licensing laws against Mr. McBrearty Senior. Such action was completely wrong and should never have been taken.

### **Conclusion**

- 9.24. I am satisfied that in attempting to force Mr. McBrearty Senior and his management and staff to comply with their obligations under the Liquor Licensing Acts, Sergeant White adopted an incorrect and inappropriate method of policing. I am satisfied that his duty, when confronted by the refusal of Mr. McBrearty Senior and his staff to comply with the law, was to assemble his evidence and bring the matter before the District Court. In failing to do this I am satisfied that he was wrong.
- 9.25. I am also satisfied that blame must attach to Mr. McBrearty Senior and his staff for their obdurate refusal to comply with Sergeant White’s directions and their refusal to obey the law. They saw it as their right to ignore the

law on the basis that others did so. This, they must have known, was wrong. Their open hostility to Sergeant White and the other Gardaí when visiting the premises was an open challenge. Mr. McBrearty Senior and his staff must accordingly bear a share of the responsibility for the consequences which flowed from this conflict.

- 9.26. Sergeant White's senior officers were aware of the difficulties that he was experiencing and, being aware of the manner in which he was confronting Frank McBrearty Senior, they failed to take any appropriate action to resolve the problems and must carry responsibility for the difficulties that ensued.

### **The Situation in Raphoe after August 1997**

- 9.27. The Tribunal is satisfied that the issue of the direction by Superintendent Lennon to Sergeant Hannigan in July 1997 to the effect that there should only be one inspection per night of the McBrearty premises, together with the departure of Sergeant White from Raphoe in August 1997, meant that the situation returned to what it had been prior to January 1997.
- 9.28. The Tribunal accepts the evidence given by Mr. John Mitchell that they continued to break the law on a weekly basis by serving alcoholic drink up to 01.00 hours on a Sunday morning. The C.C.T.V. warning system was also in place. This meant that when the Gardaí did carry out their one inspection of the McBrearty premises, they were unable to actually detect anyone physically serving alcohol. They would find the shutters on the bar closed but evidence of freshly poured drinks throughout the premises. This was not at all an ideal situation. It meant that the nightclub owner was effectively continuing to break the law as he wished. The Tribunal does not criticise the fact that the student Gardaí were sent onto the premises to detect breaches of the liquor licensing laws on the 6th/7th of December 1997. This was a reasonable step for Sergeant Hargadon to have taken at the time.
- 9.29. The Tribunal accepts the evidence given by Mr. Mitchell that there was no undue attention on the nightclub premises after August 1997. The documentary evidence supports this conclusion. Insofar as Mr. McBrearty Senior had any complaint of harassment after August 1997, such complaint was not justified.

### **Summary of Conclusions on the Harassment Issue**

- 9.30. I am satisfied that due to the events that occurred in Raphoe towards the



end of 1996, the Garda authorities in Letterkenny thought that it was time to bring Frank McBrearty Senior to heel. To that end, Sergeant White, a Garda known for the vigorous and determined nature of his policing methods, was sent to Raphoe.

- 9.31. Once there, two obstinate men, being Frank McBrearty Senior and John White, came head to head. Neither was prepared to back off in the face of the other. Sergeant White became almost obsessive in the level of attention he paid to the McBrearty nightclub premises. This was largely caused by the fact that Frank McBrearty Senior had installed a lighting system in conjunction with the C.C.T.V. system on the premises that enabled him to defeat the Garda inspections of his premises. The staff were instructed to close the shutters on the bars just prior to the arrival of the Gardaí and to re-open them on the departure of the Gardaí from the premises. They continued to serve alcohol in breach of the liquor licensing laws.
- 9.32. In an attempt to overcome this situation, Sergeant White deployed his men for protracted periods on the McBrearty nightclub premises. Subsequently, he changed tactic to have multiple inspections of the nightclub on the same night. Eventually, Sergeant White secured the necessary evidence by means of placing undercover operatives on the premises. Matters were brought to an extreme level when Sergeant White used Bernard Conlon in an attempt to secure a conviction against Frank McBrearty Senior, by arranging to have him deliberately ‘found on’ on the premises at 02.55 hours on the 31st of August 1997.
- 9.33. Attention was also paid to the provision of meals. This quickly became a game of cat and mouse between Sergeant White and management at the nightclub premises. Sergeant White went to almost farcical lengths to establish that Frank McBrearty Senior was not complying with his obligation to provide a substantial meal to patrons in accordance with the conditions attaching to his Special Exemption Orders.
- 9.34. Mr. McBrearty Senior caused the situation to worsen dramatically with the introduction of the ‘pound-a-pint’ promotion, coupled with the reduction in the entrance fee. This led to appalling public order problems on the streets of Raphoe.
- 9.35. Matters returned to a situation approaching normality when the direction was given by Superintendent Lennon in July 1997 that there should only be one inspection per night of the McBrearty nightclub premises. The

situation was further eased by the departure of Sergeant White from Raphoe in August 1997. In the eight months between January and August 1997, Frank McBrearty Senior's nightclub premises had been inspected on almost every weekend night during that period. Often the premises were inspected on a number of occasions in the same night. That was excessive.

- 9.36. In the period October 1996 to July 1998, a total of sixty-eight summonses were issued against members of the McBrearty family, their relations, associates and agents. That number of summonses, coupled with the excessive level of the inspections carried out at the nightclub premises, cannot be seen as the enforcement of the law in a balanced way against a recalcitrant pub owner in a small rural village. It was quite simply excessive. To use a colloquial phrase it was 'over the top'. It has to be acknowledged that much of the escalation of the situation was caused by the obstinacy and brazen attitude on the part of Frank McBrearty Senior. He must share some of the blame for what occurred in Raphoe during those months. However, that does not excuse the fact that the method of policing employed against the publican was excessive. I am satisfied that it constituted harassment of his premises for a period of eight months.

### **Final Conclusion**

- 9.37. The Tribunal has interpreted the word 'harassment' as meaning a persistent or repeated improper use of power calculated to cause trouble, embarrassment, harm, torment or distress which may be effected and/or continued by acts or omissions on the part of an appropriate person to act when he should have acted. I am satisfied that the actions taken by the Gardaí in Raphoe in the period January 1997 to August 1997, under the directing hand of Sergeant John White, constituted harassment within the definition given above. In carrying out these acts, the sergeant acted with the full knowledge and approval of some of the most senior officers in the Donegal division at that time.



## PART II

### CHAPTER 10 THE GARDA COMPLAINTS SYSTEM

#### **Introduction**

**10.01.** This part of the report deals with Term of Reference (j). This was known as the Garda Complaints sub-module. Under this heading the Tribunal was required to enquire into the effectiveness of the Garda Síochána Complaints enquiry process vis-à-vis the complaints made by the extended McBrearty family in the period 1997 to 2001. Thus, the Tribunal's inquiry was of quite a limited nature. Firstly, it only dealt with an examination of how the Garda Síochána Complaints Board dealt with the complaints that had been lodged by Frank McBrearty Senior and members of his extended family. Secondly, it was limited to an examination of the complaints that were lodged in the period 1997 to 2001. This period effectively captured all the complaints that were made by members of the McBrearty family. While some complaints were lodged on behalf of members of the McBrearty family in 1996, these did not come to the attention of the Board until 1997. All of the complaints were subsequently withdrawn in 2001.

#### **Scope of the Enquiry**

**10.02.** The Garda Síochána Complaints Board was established and operated pursuant to the provisions of the Garda Síochána (Complaints) Act, 1986. As and from the 9th of May 2007, all complaints against the Gardaí fall to be considered by the Garda Síochána Ombudsman Commission. That body is an independent statutory body which operates under the provisions of the Garda Síochána Act, 2005 as amended by the Criminal Justice Act, 2007. It is not part of the function of this Tribunal to enquire into the operation of the Garda Síochána Ombudsman Commission. What follows, therefore, is an historical evaluation of how the former statutory body dealt with the complaints, which were lodged by members of the extended McBrearty family during a defined period.

**10.03.** This chapter contains an explanation of Term of Reference (j), together with a brief overview of the complaints system that operated under the Garda Síochána (Complaints) Act, 1986. In the following chapter the Tribunal has set out its analysis of how the Garda Síochána Complaints Board dealt with the McBrearty group of complaints from the time that they were first submitted to the offices of the Garda Síochána Complaints Board in 1997, until their ultimate withdrawal from the Complaints Board in the autumn of 2001. In Chapter 12 the Tribunal will set out its conclusions in relation to specific complaints which were lodged by various complainants.

- 10.04. Given the very large volume of paperwork which was submitted to the Garda Síochána Complaints Board, the Tribunal had regard to all the documentation furnished to it and then carried out an examination of specific identified complaints with a view to getting an overall flavour as to how the Board dealt with the various classes of complaints that were submitted to it. In that chapter the Tribunal will set out its findings in relation to the investigations that were carried out and in particular in relation to the investigations carried out by former Chief Superintendent John Carey, who was the investigating officer who dealt with a large number of the McBrearty complaints.

### **Explanation of Term of Reference (j)**

- 10.05. Paragraph (j) of the Tribunal's Terms of Reference required the Tribunal to urgently enquire into the following definite matter of urgent public importance:

The effectiveness of the Garda Síochána complaints enquiry progress vis-à-vis the complaints made by Frank McBrearty Senior and his family between 1997 and 2001.

- 10.06. On the 14th of July 2002 I gave the following explanation of the enquiry that the Tribunal would undertake in relation to this Term of Reference:

*The information available to the Tribunal suggests that complaints were made by Frank McBrearty Senior and his family to the Garda Síochána Complaints Board. This may or may not be an effective way of dealing with serious complaints made by citizens against members of An Garda Síochána. It is a task of the Tribunal to consider the effectiveness of this entire procedure.*

*The Tribunal will:*

- (i) Establish what complaints were actually made by Mr. McBrearty and his family between the relevant dates;*
- (ii) Establish the manner in which these complaints were dealt with by the appropriate parties and identify whether any of these complaints may not have been dealt with in a satisfactory manner, if that be the case;*
- (iii) Consider the procedures which exist for dealing with complaints under the Garda Síochána Complaints Act, 1986 as amended and the rules made thereunder;*
- (iv) Enquire into the effectiveness of these procedures and advise, if it be the case, how these procedures could be improved.<sup>1</sup>*

<sup>1</sup> Transcript, 15th July 2002.

- 10.07. In order to fully understand the system that operated at the time the members of the McBrearty family lodged their complaints with the Garda Síochána Complaints Board, it is necessary to give a brief outline of the principal features of the Garda Síochána (Complaints) Act, 1986. In this regard, the Tribunal was greatly assisted by the clear and cogent evidence given by Mr. Bryan O'Brien, who was the Deputy Chief Executive of the Garda Síochána Complaints Board from 1984 until his retirement on the 1st of October 2001.<sup>2</sup>
- 10.08. What follows is a brief summary of the mechanics of making a complaint and how it was dealt with once it had been deemed admissible by the Chief Executive of the Board.

### **Making A Complaint**

- 10.09. Mr. O'Brien informed the Tribunal that in order for complaints to be admissible they had to be made in accordance with the provisions of the Garda Síochána (Complaints) Act, 1986. Basically there were two methods of making a complaint: it could be made directly to the Garda Síochána Complaints Board, or a person could make a complaint at a Garda station. The complaint could be made orally, or in writing. However, it could not be communicated to either place over the telephone. If a person wished to make a complaint directly to the Complaints Board they could do so either by calling into the Board's offices in Dublin, where they would be met by a member of the Board's staff, who would take down the complaint that they wished to make. Alternatively, they could write directly by letter to the Board and it would be treated in the same way. The complaint would be given a reference number and would then proceed to a decision on its admissibility.
- 10.10. If the person elected to make the complaint at a Garda station, they could do so by going to the relevant station and there informing the Garda of the nature of their complaint. The Garda would take down the necessary details as to when and where the incident occurred and, if the complainant was in a position to do so, give a description either by name or otherwise of the Garda against whom the complaint was being made. These details were entered onto a specific form, known as a GSC 1 form. That form was then copied, with the original of the form being sent to the Garda Síochána Complaints Board and a copy also being furnished to the Garda Commissioner. Once the complaint was received by the Garda Complaints Board, a written acknowledgement would be sent to the complainant informing him or her that the complaint had been received and that a decision on its admissibility would be made in due course.<sup>3</sup>

<sup>2</sup> That was his official retirement date. His last working day was the 11th of September 2001.

<sup>3</sup> Transcript, Day 681, pages 8-11.

## **Decision on Admissibility**

- 10.11. The next stage was the admissibility stage. The Chief Executive of the Board would examine the complaint that had been lodged to ensure that it satisfied the criteria for admissibility that were set out in section 4(3) of the 1986 Act. That section provided that a complaint would be admissible if it satisfied a number of conditions: the complainant had to be a member of the public, meaning that he was not a member of An Garda Síochána. The Complaints Board did not have jurisdiction to deal with complaints made by one Garda against another Garda. The section also provided that the complainant had to be directly affected by or have witnessed the conduct alleged in the complaint; the conduct had to constitute an offence or a breach of discipline as specified in the fourth schedule to the 1986 Act; the incident giving rise to the complaint had to have occurred within the six months prior to the date on which the complaint was made; that it was not a complaint which was excluded by section 15 of the Act and finally that the complaint was not frivolous or vexatious in nature.
- 10.12. Perhaps the most important of these criteria was the six month time limit within which a complaint had to be lodged. It will be seen that some of the McBrearty complaints were deemed inadmissible on this basis. If a complaint was deemed out of time, there was a provision whereby the Garda Commissioner was entitled to conduct his own enquiry into the complaint, because he was not bound by the six month time limit. However, the Board itself and its staff regarded the six month time limit as being a rigid inflexible limit to its jurisdiction to deal with complaints.
- 10.13. If a complaint was deemed inadmissible, a letter was sent by the Complaints Board to the complainant notifying him or her of that decision. That decision had been made by the Chief Executive or on occasions by the Deputy Chief Executive if the power had been delegated to him. The complainant had a right of appeal to the Garda Complaints Board itself if a decision had been reached that the complaint was inadmissible.<sup>4</sup>
- 10.14. If the complaint was deemed admissible, the Garda Commissioner was notified that the complaint had been received by the Board. He had power under section 5 of the 1986 Act to decide whether the complaint was one that should go to a full investigation under the provisions of the Act, or whether it was one that could be dealt with by what was known as informal resolution. This was only suitable for very minor complaints. This procedure could only be used where both the complainant and the Garda concerned consented to informal resolution of the complaint. Very few complaints were dealt with in this way. Mr. O'Brien thought that probably less than five per cent of the complaints that were received

<sup>4</sup> Transcript, Day 681, pages 11-18.

by the Board were dealt with during his time in this manner. None of the McBrearty group of complaints were dealt with by means of informal resolution.

- 10.15. The vast majority of complaints that were deemed admissible were investigated formally by the Garda Síochána Complaints Board. We will now look at the main provisions that came into play when a complaint was formally investigated by the Board.

### **The Investigating Officer**

- 10.16. Once a complaint had been deemed admissible by the Complaints Board, the Commissioner of An Garda Síochána was notified that a complaint had been made against a particular Garda. The Garda Commissioner would notify the Garda concerned that a complaint had been made against him or her. The Commissioner also had the important function of appointing an investigating officer, who would investigate the matter and furnish a report to the Garda Complaints Board. It is important to note that the Board itself had no input into the appointment of the officer who would investigate the complaint on their behalf.
- 10.17. Over time, a number of agreements were reached between the Garda Commissioner and the Garda Complaints Board as to the rank and identity of the officer who would be appointed as the Investigating Officer. Section 6 of the 1986 Act provides that the investigating officer would not be below the rank of superintendent, or in certain circumstances an inspector could be appointed. It was agreed that the person appointed would always be of higher rank than the Garda against whom the complaint had been made. This was due to the fact that it was thought unsatisfactory that a Garda of lower rank should be asked to investigate a Garda of higher rank. Normally the investigating officer was of superintendent rank. However occasionally, due to the non-availability of a superintendent, an inspector would be appointed as the investigating officer.
- 10.18. The second matter agreed upon was that the investigating officer would be from a different district to the Garda who was the subject of the complaint. Thirdly, it was agreed that the person nominated as the investigating officer would not be the person who was directly above the Garda who was the subject matter of the complaint in the chain of command. This was due to the fact that it was thought undesirable that a particular Garda should be investigated by the person who was effectively his or her supervisor, or next above him in the chain of command.
- 10.19. The effect of these agreements meant that normally the investigating officer would be someone of higher rank than the Garda against whom the complaint was made and would be from a different district. If the complaint was made



against a superintendent, this would require the appointment of a chief superintendent as the investigating officer. This would require going outside the division for the appointment of the investigating officer. In relation to certain of the McBrearty group of complaints, these related to complaints against Superintendent Kevin Lennon. As he was the superintendent and as the chief superintendent in Donegal was next above him in the chain of command, this necessitated the appointment of a chief superintendent from outside the Donegal division as the investigating officer. It was for this reason that Chief Superintendent John Carey of the Mayo division was appointed investigating officer in respect of a large number of the complaints lodged by the McBrearty group of complainants.<sup>5</sup>

- 10.20. Finally, the power to appoint the investigating officer, which was vested under the Act in the Commissioner of An Garda Síochána, had been delegated by him to the local chief superintendent. This meant that what normally happened was that when a complaint came in against a Garda from a particular division, the Garda Commissioner would write to the chief superintendent of that division informing him that a complaint had been made against a particular Garda and asking him to appoint an officer of higher rank to act as the investigating officer. However, for the reasons already stated, that was not the general practice in this case, due to the fact that it was necessary to find an investigating officer from outside the Donegal division. However, the important point to note at this juncture is that the Garda Complaints Board did not have any input into the selection of the investigating officer. This was a matter solely within the authority of the Garda Commissioner.
- 10.21. Once the Garda Commissioner had appointed an officer to act as investigating officer in respect of a particular complaint, he would then notify the Garda Complaints Board of the appointment. The Chief Executive or the Deputy Chief Executive as the case may be would then write to the investigating officer and request that he would furnish a report in respect of the complaint to the Board at the conclusion of his investigation. Mr. O'Brien pointed out that to an extent the Garda Complaints Board was very much reliant upon the goodwill of the person who was appointed as investigating officer. This was due to the fact that the complaint that he was required to investigate was given to him in addition to the ordinary work that he carried out as either a superintendent or chief superintendent within his own district or division. Thus, it was in addition to his normal burden of work. Mr. O'Brien stated that it was for this reason that they would have to try to encourage the investigating officer to produce the report as quickly as he could, or at the least to give it priority over and above the ordinary demands of his work schedule.

<sup>5</sup> Transcript, Day 681, pages 20-24.

## **The Investigation Stage**

- 10.22. Once appointed, the investigating officer would write to the Garda against whom the complaint had been made informing him of the existence of the complaint and of the fact that he had been appointed to investigate the matter. He would also serve on the particular Garda a formal statement of the complaint itself. The next step would be to arrange for a statement from the complainant. To this end, the investigating officer would make an appointment with the complainant and obtain a statement from them. They could either make the statement directly to the investigating officer and sign it before him on that occasion, or they could bring in a statement which they had prepared at an earlier time, with or without the help of their solicitor, and furnish that to the investing officer. The only requirement was that they would have to sign the statement in the presence of the investigating officer.
- 10.23. As a general rule, the investigating officer would try to ensure that as much relevant detail as possible was given in the statement of complaint. However, that was entirely a matter within the control of the complainant. If there were any independent witnesses to the incident in respect of which the complaint was made, the investigating officer would also obtain statements from these people. Likewise, if there were third parties who could give relevant evidence, such as a doctor who had treated a person either during or after a period of detention during which a complaint of assault was made, a statement would be obtained from those parties as well.
- 10.24. The investigating officer would also obtain copies of all relevant documentation such as custody records, duty rosters, medical reports and search warrants. The investigating officer would also take a statement in response from the Garda against whom the complaint had been made. Again, that Garda could either make the statement directly to the investigating officer or could bring in a pre-prepared statement. The only obligation was that he would sign the statement in the presence of the investigating officer. If there were any other witnesses nominated by the Garda concerned, statements would also be obtained from them. If there were any relevant recordings such as C.C.T.V. tapes, the investigating officer would attempt to obtain those as well. Thus, at the investigation stage the investigating officer would attempt to gather in as much relevant evidence in the form of statements, documents and other forms of evidence as he could, so as to enable the Complaints Board to reach a decision on the matter.<sup>6</sup>
- 10.25. In his evidence to the Tribunal, Mr. John Carey made a relevant point in relation to this aspect of the investigation stage. He pointed out that unlike in a normal

<sup>6</sup> Transcript, Day 681, pages 25-28.

Garda investigation, where one could question and challenge a complainant or a Garda, or a witness, on the account that they had given in their statement, this was not possible in relation to statements furnished in the course of an investigation for the Garda Complaints Board. He was obliged to take whatever material was presented to him by the complainant or by the Garda against whom the complaint had been made. They were quite free to come in with a pre-prepared statement. He could not question them on the accuracy of the matters contained in that statement. Their only obligation was to actually sign the statement in his presence. He said that it was important to realise that the investigating officer had no control over what people put into their statements that would be submitted to the Garda Complaints Board, either for or against a particular complaint.

- 10.26.** This is an important point, because it will be seen that a number of statements were submitted by various Gardaí to the investigating officer, in particular by Detective Sergeant White and Detective Garda Dooley, which contained elaborate lies denying the allegations, the subject matter of the complaint. These statements were subsequently admitted by the Gardaí concerned to have been entirely false. Nevertheless, they were statements that the investigating officer was obliged to accept once they were given to him formally by the Gardaí against whom the complaint had been made.
- 10.27.** In terms of the length of time that it would take to carry out an investigation, Mr. O'Brien stated that if the complaint was made at a Garda station, the Gardaí were obliged to forward that complaint immediately to the Garda Complaints Board. Once received, the decision on admissibility would be made by the Chief Executive or the Deputy Chief Executive within approximately two to three days. Thereafter, it usually took a number of weeks to secure the appointment of an investigating officer by the Garda Commissioner.
- 10.28.** Once the investigating officer had been appointed, letters would then be sent by him to the complainant notifying him of his appointment as investigating officer and requesting an appointment for the purpose of taking a statement from him. A letter would already have been sent to the complainant directly from the Garda Complaints Board notifying him of receipt of the complaint and of the decision on admissibility. Mr. O'Brien estimated that it would normally take some weeks to obtain the appointment of an investigating officer and thereafter it would probably be in the region of a month before a statement was obtained by the investigating officer from the complainant.<sup>7</sup> Thereafter, the length of time that the investigation might take was entirely dependent upon the complexity of the matter under investigation. If it was a simple isolated complaint, the investigation could be completed within a relatively short period of time, possibly a number of

<sup>7</sup> Transcript, Day 681, page 27.

weeks. However, in more complex matters, or if there was a difficulty making contact with relevant witnesses, or obtaining statements from them, or if there was a difficulty in obtaining other relevant evidence, then the investigation could be more protracted.

### **The Investigating Officer's Report**

- 10.29. When the investigating officer had collected in all the relevant evidence, he was obliged to write a report for the Chief Executive. Mr. O'Brien stated that that would normally run to anywhere between three and five foolscap pages. The investigating officer would outline how the complaint was made, identify the complainant and identify the steps that he took in relation to investigating the complaints. He would give some analysis of the statements that he had obtained and he would compare the statements made by the complainant with those in response that had been furnished by the Gardaí. He would also deal with the evidence furnished by third parties who had either been nominated by the complainant or by the particular Garda. He would do an analysis of the statements that he obtained. Finally, the investigating officer would conclude his report with an opinion as to where he thought the truth of the matter lay. He did not give a recommendation as to what the Garda Síochána Complaints Board should do in relation to the complaint, as the making of a recommendation was a function specifically reserved under the 1986 Act to the Chief Executive of the Board.
- 10.30. The investigating officer would sign his report and would attach to it copies of all statements and other documentation and material that he had collected as part his investigation. He would send all of this to the Chief Executive of the Garda Síochána Complaints Board. He would also forward a copy to the Commissioner of An Garda Síochána. That would conclude the investigation stage of the complaint.
- 10.31. The 1986 Act provided that the Chief Executive of the Board would supervise generally the investigating of a complaint. This did not mean that the Chief Executive or any of the staff of the Board or any members of the Board were involved in the actual investigation of the complaint. The term 'supervise generally' was taken to mean that the Chief Executive would keep in contact with the investigating officer to see how the investigation was progressing. Occasionally they may discuss some details of a complaint with the investigating officer and perhaps suggest another avenue of inquiry. For instance, if there was a custody record that might be relevant, they might suggest obtaining a copy of that document. Or if it appeared to the Chief Executive that there was a third party who might be in a position to give relevant evidence as part of the

investigation, the Chief Executive might suggest to the investigating officer that that person be approached with a view to giving a statement as part of the investigation. Basically the Chief Executive, or the Deputy Chief Executive, would keep in touch with the investigating officer and, in appropriate cases, they might suggest that certain avenues of enquiry be explored or investigated. However, they did not have the power to direct the investigating officer to take any particular course of action in relation to his investigation. In particular, neither the Chief Executive nor the Deputy Chief Executive could close down an investigation or have a complaint thrown out. Once it had been deemed admissible, it was the Garda Síochána Complaints Board who were the only persons that had the power to consider, and if thought appropriate, dismiss a complaint.

### **Chief Executive's Summary and Recommendation**

- 10.32. When the investigating officer's report and the accompanying documentation was received at the offices of the Complaints Board, a letter was sent to the investigating officer acknowledging receipt of the material. It was then read and analysed by staff in the offices of the Board. One of the members of the staff, in conjunction with Mr. O'Brien, would prepare a summary of the complaint. This was a brief document, which would run to between two and four pages. The details of the complaint were set out, the investigation of the investigating officer was commented upon and significant points were highlighted. The summary was then brought to the Chief Executive, who under the terms of the 1986 Act had to submit a report to the Board. He was obliged to give his views on the complaint and also to give a recommendation as to what decision the Board should make in relation to the complaint.
- 10.33. Mr. O'Brien described how, when preparing the summary, it might occur to the staff at the offices of the Board that perhaps there might be other avenues of inquiry, which could be explored by the investigating officer. He described this in the following way:

*Now, in that examination in the office, sometimes you would do it, or the officers dealing with it, the staff officer/executive officer, the Assistant Principal, the Deputy Chief Executive, the Chief Executive Officer, they would deal with it solely on the basis of the report. But perhaps in anything up to fifty per cent of the cases you might ring up the investigating officer and look for more details just by way of elaboration orally on the report that he or she had written and his or her investigation. Occasionally, as we discussed earlier, you might ask the investigating officer to get some further information, even at that stage, and in a last instant*

*you could still at that stage be talking about giving a direction, going to the DPP for that. But that seldom happened. But anyway you arrived at a stage where your report plus a recommendation was drafted and submitted by the Chief Executive Officer of the Complaints Board, submitted to the Board itself. Now in submitting things to the Board the Board is divided in two halves.<sup>8</sup>*

- 10.34. The very last part of the summary document was a recommendation issued by the Chief Executive to the Board as to what course of action he thought the Board should take in relation to the complaint. This was a statement as to what he recommended should be done. For example, he might recommend to the Board that they should make a finding under section 7(3) of the Act. This was a recommendation that the Board should find that there was neither an offence; nor a breach of discipline disclosed on the part of the Garda against whom the complaint had been made. Or he might make a recommendation that the matter should be dealt with pursuant to section 7(4) of the Act, which provided that where the Board was of the opinion that a breach of discipline on the part of the member concerned may be disclosed, but that any such breach was of a minor nature appropriate to be dealt with informally by the Garda Commissioner by way of advice, admonition or warning, it could refer the matter to the Garda Commissioner to be so dealt with.
- 10.35. Section 7(1) provided that where the Board was of the opinion that the complaint concerned was admissible and that the conduct alleged in the complaint may constitute an offence committed by the member concerned, it was obliged to refer the matter to the Director of Public Prosecutions. In these circumstances the recommendation could be to the effect that the matter should be referred to the Director of Public Prosecutions and in the event that he decided that there should be no prosecution in the matter, then the Board should make perhaps a finding under section 7(3) or section 7(4).
- 10.36. The Board was not entitled to deal with the matter where there was an offence alleged. Irrespective of how strong or otherwise the evidence was, if there was an offence alleged, unless it was deemed by the Board to be vexatious or frivolous, the papers would have to go first to the Director of Public Prosecutions. However, in these circumstances the Board could make up its mind as to what should be done with the complaint, but not implement that decision pending the referral of the papers to the Director of Public Prosecutions. Mr. O'Brien described how such a decision could be reached by the Board:

*The Board in a way has made up its mind at this stage when a summary is submitted to it by the Chief Executive, and they decide*

<sup>8</sup> Transcript, Day 681, page 41.

*that, say in June, they decide we are not going to do anything about this, we don't think there is sufficient evidence, but it has to go to the DPP, but our decision now at this stage is that if the DPP decides not to prosecute, then our decision is that nothing will happen. So in a way they are anticipating what may happen with the DPP. When the letter comes back from the DPP to the Executive saying that he is not going to prosecute, the Executive then proceeded on the basis of the decision that the Board itself had taken prior to the papers going to the DPP.<sup>9</sup>*

In such circumstances, the Board has effectively taken its decision, but suspended implementation of the decision pending the directions of the Director of Public Prosecutions. If he returns to the Board indicating that there is to be no prosecution in the matter, the decision which the Board has already reached is then activated.

- 10.37. If the Chief Executive forms the opinion that there was a breach of discipline disclosed and that it was not a minor breach of discipline suitable to be dealt with under section 7(4) of the Act, then he would recommend to the Board that they should deal with the matter under section 7(5). That subsection provides that subject to subsection (7), if the Board was of opinion that a breach of discipline on the part of the member concerned has been disclosed, it shall refer the matter to a Tribunal. This would be a Tribunal set up pursuant to the 1986 Act. It would deal with matters other than allegations of a crime and would be by way of hearing and eventual decision that could lead to the Garda concerned being dismissed from the Force. Even where the Director of Public Prosecutions has decided that proceedings should or should not be instituted in respect of a complaint referred to him by the Garda Síochána Complaints Board, the Board may either, if it thinks it proper to do so deal with the matter under subsection (4) or (5) of section 7, or decide to take no further action in the matter. It could happen that the Director of Public Prosecutions might decide that there was not enough evidence on which to base a criminal prosecution, but nevertheless the Garda Complaints Board could hold a Tribunal into the matter because they would be dealing with the issue on the basis of a different burden of proof, being the balance of probabilities.

### **The Garda Síochána Complaints Board**

- 10.38. The Garda Síochána Complaints Board was made up of nine members. For the purpose of considering complaints, it was divided into two halves, an A Side and a B Side. The reason for this was that if a decision was reached by the Board that a Tribunal should be set up, the Tribunal would be drawn from members of the

<sup>9</sup> Transcript, Day 681, page 44.

Board, but these could not be persons who had already dealt with the complaint. It was for this reason that if the matter was considered by, for example, the A side and they decided to refer the matter to a Tribunal for a formal determination, then the members of that Tribunal would be drawn from the B Side of the Board. A Tribunal consisted of three persons: two of those had to be members of the Board and the third was a chief superintendent nominated by the Commissioner of An Garda Síochána.

- 10.39. The Garda Síochána Complaints Board met approximately ten times in the year. Meetings were held monthly, but not usually during the months of July or August. In advance of each meeting, a list of complaints was drawn up for each side of the Board to be considered by them at the monthly meeting. Some weeks before the scheduled meeting, the members of each side of the Board would be sent the documents relating to the specific complaints, which they would consider at the meeting.
- 10.40. In respect of each complaint they would be furnished with a copy of the file or statements and other documents that had been drawn up by the investigating officer, together with a copy of his covering report and a copy of the summary and recommendation which had been drawn up by the Chief Executive. The size of the file in respect of each complaint could vary considerably, from approximately twenty-five pages up to one hundred pages or more in respect of a complex complaint.
- 10.41. Board meetings were held on a monthly basis at the offices of the Garda Síochána Complaints Board in Abbey Street, Dublin. At each meeting each side of the Board would deal with anywhere between thirty to fifty cases at one meeting. Mr. O'Brien described how the complaints were considered and dealt with at the Board meetings:

*... and at the meeting each side of the Board was dealing with something of a range of complaints that might run from thirty to say fifty. Now all of this documentation was sent to the members at their homes, home addresses, before the meeting, it was in advance of the meeting, to allow them to read all of this documentation beforehand and to have their views formed, as it were, before they actually sat down at the meeting. Now the result of this was that at the meeting they dealt with cases by way of a summary sheet on which was a list of all of the complaints, their numbers, the name of the complainant, the recommendation of the Chief Executive Officer and then a blank column in which they would record their decision. So if the Chairman would read*



*out Complaint No. 971034, people would say or the Chairman would say, the Chief Executive has recommended 7(3), do you agree with that, or otherwise and normally the Board agreed with it and the decision was 7(3) and the complaint at the Board stage was dealt with that quickly.*

*Now that would probably be the majority of complaints. There would always be debate, some debate on some of the complaints. It might be ten per cent, it might be five per cent, it might be fifteen per cent of them and of course anywhere where there was a recommendation that the thing should be referred to a Tribunal, in other words a 7(5) recommendation by the Chief Executive, usually there would be some debate on that because it was a weighty decision to refer it to a Tribunal. At least that's my reading of it.<sup>10</sup>*

- 10.42. When the side of the Board that was dealing with the matter had reached its decision in respect of a particular complaint, that decision was formally recorded by the Secretary to the Board in the blank column on the document that had been prepared for the meeting. Subsequent to the meeting, the Chief Executive Officer would review the list and compare it with his own notes and then sign the document to confirm that the decisions recorded were those actually reached by the Board at the meeting. The decision was also recorded on the file, which had been created in respect of each complaint.

### **Postponement of Decision**

- 10.43. When a particular complaint came before the Board, it did not have to reach a decision in the matter there and then. The Board had authority under section 6(6) of the 1986 Act to defer making a decision in certain circumstances. One of these was when there were civil proceedings or criminal proceedings instituted which had not been finally determined and where the Board was of the opinion that in those proceedings it was likely that the court would determine an issue relevant to or concerning the conduct alleged in the complaint. In such circumstances the Board had authority to postpone the taking of any action or further action under the Act in relation to the complaint until the civil proceedings or the criminal proceedings had been finally determined. The Board utilised the provisions of this section to defer reaching a decision in relation to the McBrearty group of complaints until the conclusion of the inquiries then being carried out by the Carty investigation team and the conclusion of the criminal prosecutions then pending before the District Court in Letterkenny. That decision was reached by the B Side of Board at its meeting held on the 18th of May 1999. The

<sup>10</sup> Transcript, Day 681, pages 52-53.

circumstances leading to the making of that decision will be examined in the next chapter.

- 10.44. If on considering a complaint, the Board came to the opinion that there was no offence or breach of discipline involved, it could conclude the matter. The complainant would be informed of the Board's decision. He or she would not have a right of appeal against that decision.
- 10.45. If the Board came to the conclusion that a breach of discipline, other than a minor breach of discipline, was disclosed, then it would proceed to make a decision that a Tribunal would be set up under the Act. The Executive of the Board would notify all of the parties involved, being the complainant, the investigating officer, the member against whom the complaint had been made and the Commissioner of An Garda Síochána. The staff of the Board would then set about compiling what is known as a Book of Evidence in relation to the complaint. This would contain all the original statements and documentation, which formed part of the investigating officer's report. However, his covering report would not be included in the Book of Evidence. It was felt that his covering report was done purely for the benefit of the Board, which first considered the complaint. In addition to the Book of Evidence, a statement of the specific charges against the member concerned would be drawn up on a separate sheet. The charges would be drawn up by reference to the breaches of discipline set out in the fourth schedule to the 1986 Act. As none of the McBrearty group of complaints were sent for determination by a Tribunal, it is not necessary to go into the Tribunal procedure at any length. A brief description of that procedure will suffice.

### **The Tribunal Hearing**

- 10.46. The Book of Evidence, together with the statement of the breach of discipline alleged against the Garda concerned, was served upon the particular Garda. He or she was entitled to be represented before the Tribunal either by a representative of their Garda representative body, or by a solicitor or barrister. He or she would be summoned to attend before the Tribunal, which would sit at the offices of the Garda Complaints Board in Dublin. The presentation of the case against the member concerned was then outlined at a formal hearing. The case was presented to the Tribunal by the Chief Executive. However, that power could be delegated to the Deputy Chief Executive. He presented cases to the Tribunal in much the same way that a prosecution counsel would do in a criminal case. He would call the complainant and then the other relevant witnesses, together with witnesses to prove relevant documentation. The witnesses would give evidence on oath before the Tribunal and were subject to cross-examination by

the legal or other representative on behalf of the Garda against whom the complaint was made.

- 10.47.** When the complainant and all other relevant witnesses had been called to give evidence, the Garda against whom the complaint was made had the option of going into the witness box. He also had the option of calling whatever witnesses he wished in response to the charge. The investigating officer was also called as a witness, but merely in a formal capacity to verify that the investigation had been carried out by him and that he had served the requisite notices on the member complained of and that he had obtained statements from various witnesses as appeared in the Book of Evidence. He would not be questioned on his findings or on his views in relation to the complaint.
- 10.48.** Having heard all the evidence the three person Tribunal would then retire to consider their decision. If they reached a decision that the complaint should be dismissed, that was the end of the matter. If they decided that the complaint should be upheld, they then went on to consider an appropriate penalty within the provisions of the 1986 Act. Where a decision had been made that the complaint should be upheld the member concerned had a right of appeal under the 1986 Act to the Garda Síochána Complaints Appeal Board. He could appeal the substantive decision reached by the Tribunal, or he could appeal the severity of the punishment imposed, or both of these matters.
- 10.49.** That concludes this general overview of the system, which operated under the Garda Síochána (Complaints) Act, 1986.

## CHAPTER 11

### THE MCBREARTY GROUP OF COMPLAINTS

#### Introduction

- 11.01. This chapter gives an overview of the handling of the McBrearty group of complaints by the Garda Síochána Complaints Board. In summary, it will be seen that a number of complaints began to come through from members of the McBrearty family at the very end of 1996 and into the early months of 1997. These were added to greatly when a number of complaints were forwarded by Superintendent Lennon in October 1997. Thereafter, Mr. McBrearty Senior forwarded another batch of complaints in a document headed "Points of View". Further complaints were made between 1998 and 2001.
- 11.02. A total of sixty one complaints were lodged by members of the McBrearty family. At a meeting held on the 18th of May 1999, the Garda Síochána Complaints Board decided to defer consideration of these complaints pending the outcome of the prosecutions, which were then being heard in the District Court in Letterkenny, and pending the conclusion of the investigation then being carried out by Assistant Commissioner Kevin Carty. The way was cleared for the Board to consider the complaints when it received the final communications from the Carty and McAndrew investigations in the summer of 2001. The staff of the Board then set about preparing fresh summaries of all of the complaints so that the matters could be re-submitted to the Board for consideration.
- 11.03. However, before that task was completed, all of the McBrearty group of complaints were withdrawn by letters furnished to the Complaints Board by the solicitor then acting on behalf of the complainants, Mr. Kenneth Smyth. This effectively ended the involvement of the Garda Síochána Complaints Board with these complaints.
- 11.04. This chapter sets out the history of the interaction between the Garda Síochána Complaints Board, and its staff, and members of the extended McBrearty family in relation to these complaints. It will examine the interaction that existed between Mr. Bryan O'Brien, the Deputy Chief Executive of the Board, who was delegated to have responsibility for this group of complaints, and the members of the extended McBrearty family. It will also examine the decision, which was taken by the B Side of the Complaints Board to defer further consideration of the complaints, which decision was taken on the 18th of May 1999. It will go on to examine what events subsequently transpired and examine whether the Board was justified in not adjudicating on any of the complaints prior to the withdrawal of same by the solicitor acting on behalf of the McBrearty family.

- 11.05. At the end of the chapter I have set out my conclusions in relation to the conduct of the Board and its staff in their dealings with this group of complaints.

### **The Early Complaints**

- 11.06. The first complaint from a member of the McBrearty family that was received by the Garda Complaints Board was received on the 12th of December 1996. This complaint was made on behalf of the children of Frank McBrearty Junior, Frank and Chantelle McBrearty. It alleged that due to the manner in which their father had been arrested and in particular due to the comments, which it was alleged, had been made by members of the arrest party on the morning of the 4th of December 1996, the children had suffered greatly.
- 11.07. This complaint was processed in the usual way. Inspector Greg Sullivan was appointed as the investigating officer. He obtained statements on behalf of the complainants from Frank McBrearty Junior, Patricia McBrearty and from her sister, Jackie Gallagher. The essence of the complaint was that the Gardaí who had arrested Frank McBrearty Junior on Thorn Road, Letterkenny on the morning of the 4th of December 1996 had made a number of derogatory comments about him at the time of the arrest. In particular it was alleged that they had called him a “murdering bastard” and made other comments of a similar nature. Mr. McBrearty Junior in his statement alleged that Sergeant Hannigan had shouted into the car to the children “shut up, your father is a murderer”. The investigating officer obtained statements from a large number of Gardaí who were part of the arrest party that morning. He obtained statements from Sergeant Joseph Hannigan, Sergeant Michael Brennan, Sergeant Gerard McGrath, and Detective Gardaí Cafferkey, Keating, Fitzpatrick and Anderson. He also obtained statements from Detective Superintendent Joseph Shelly and Garda Tina Fowley.
- 11.08. The allegations which form the subject matter of this complaint have been examined in great detail by the Tribunal in its sixth report.<sup>11</sup> It is not necessary to go into these details again. In his report the investigating officer stated that in his opinion the Garda arrest team had anticipated the presence of children and had included a female Garda for that purpose. He stated “in conclusion, if anything can be considered to be incorrect or insensitive in this matter, perhaps it is the decision to arrest Mr. McBrearty while he had his children with him rather than the conduct of the members complained of”. In his report, the Deputy Chief Executive recommended that the Complaints Board should form the opinion that neither an offence, nor a breach of discipline was disclosed against any member of An Garda Síochána. No decision was ever reached by the Complaints Board on the substance of this complaint. This was due to the fact that consideration of this complaint, along with all the others lodged by members of the extended

<sup>11</sup> See Tribunal’s sixth report, chapter 7.

McBrearty family, was deferred by the decision of the Board taken at the meeting on the 18th of May 1999.

- 11.09. During the first seven months of 1997, a further eight complaints were lodged by various members of the McBrearty family with the Complaints Board. In his evidence to the Tribunal, Mr. O'Brien stated that there was nothing particularly unusual about the nature of the complaints that were lodged at this time. Three of the complaints lodged alleged that summonses were served on the complainants late at night. A number of complaints concerned alleged misconduct by Sergeant White. Frank McBrearty Senior had lodged a complaint alleging misconduct by Sergeant White at a vehicle checkpoint held on the 10th of May 1997. The Tribunal has already examined this complaint in some detail earlier in this report. There were also a number of complaints alleging that Sergeant White stared at various complainants at various places in Raphoe.
- 11.10. Mr. O'Brien stated that he was not aware of the connection between the various complainants at that time. This was due to the fact that while some of the complaints were lodged by persons in the McBrearty family, others were lodged by the McConnell family, and one of the complaints was lodged by Mr. Willie Logan. These complaints were processed in the usual way. They were not seen as forming part of a particular group at that time. However, he was aware that there was some connection with the investigation into the death of the Late Mr. Richard Barron as part of the background to the complaints and in particular as part of the background to the relationship between the complainants and the Gardaí. However, things were to occur in the month of October 1997, which would dramatically alter the perception of the staff of the Complaints Board of this group of complainants.<sup>12</sup>

### **The Delayed Complaints**

- 11.11. At 16.00 hours on the 17th of October 1997, Superintendent Kevin Lennon placed a telephone call to the offices of the Garda Síochána Complaints Board. There he spoke with Mr. Martin O'Flaherty. He informed him that he was forwarding a number of complaints which had been made in December of 1996 by Messrs. V.P. McMullen & Sons, Solicitors, on behalf of members of the extended McBrearty, McConnell and Quinn families, who had been detained in Letterkenny Garda Station on the 4th of December 1996 and on subsequent days. Superintendent Lennon stated that he could not understand why the complaints had not been forwarded to the Complaints Board prior to that time. He noted that letters had been sent to the firm of solicitors acknowledging receipt of their letters by the Superintendent in Letterkenny Garda Station at the time, who was Superintendent John Fitzgerald. This correspondence duly arrived

<sup>12</sup> Transcript, Day 681, pages 68-69.

at the offices of the Garda Síochána Complaints Board on the morning of the 20th of October 1997.<sup>13</sup>

- 11.12. In the correspondence forwarded to the Board were six letters of complaint which had been sent by the firm of solicitors complaining about various aspects of the arrest and detention of their clients, who had been detained in Letterkenny Garda Station on the 4th of December 1996 and subsequent days. There were also two letters complaining about the manner in which the licensing laws were being enforced in relation to Mr. McBrearty's licensed premises in Raphoe.
- 11.13. Mr. O'Brien stated that the receipt of these letters was a "cause of deep concern in the office", for a number of reasons. Firstly, they were in the nature of serious complaints. They were certainly more serious than the nine complaints, which had been received in the previous seven months. Secondly, the complaints were closely related to one another, insofar as they arose out of the same set of events, being the detention of the various complainants in Letterkenny Garda Station. Thirdly, there appeared to be a significant connection between the various complainants in that they were related to one another and had all been arrested in connection with the same investigation. A further matter of concern to the staff of the Board was the fact that these complaints had not been forwarded immediately to the Board for investigation in the usual way. Indeed, nobody was able to inform the Board as to what had happened to the original letters of complaint that had been received at Letterkenny Garda Station.
- 11.14. Immediately upon receipt of this correspondence, Mr. O'Brien and the staff of the Board took a number of steps. A letter was written to the Assistant Commissioner at the Complaints and Discipline Section at Garda Headquarters in the Phoenix Park informing him of the fact that the complaints had been received by the Garda Síochána Complaints Board. A letter was also written to Messrs. V.P. McMullen & Son acknowledging that the complaints had been received by the Board. Mr. O'Brien made contact with Superintendent Lennon to enquire from him as to the reason for the delay in forwarding the complaints and why the original letters had not been forwarded, rather than copies of the correspondence sent by the firm of solicitors. Superintendent Lennon explained that he had come into possession of the correspondence by a somewhat circuitous route. He stated that he had received the letters from Superintendent Tom Gallagher in Ballymoate who, in turn, had received the correspondence from Mr. William Flynn, who was the private investigator who had been retained in February 1997 by Mr. Frank McBrearty Senior. Superintendent Lennon informed Mr. O'Brien that he did not know where the originals of the letters were as he had not been able to locate them at Letterkenny Garda Station.

<sup>13</sup> Tribunal Documents, page 1,697.

- 11.15. He went on to inform Mr. O'Brien that members of the McBrearty family had instituted High Court proceedings against the Gardaí. At that time the exact grounds on which their proceedings were based were not yet notified to the Gardaí. However, Superintendent Lennon thought that it was possible that the civil claims would cover some of the areas mentioned in the letters of complaint. He went on to state that twelve people had been arrested in December 1996 in connection with the death of the Late Mr. Barron. The batch of eight complaints that he had forwarded to the Complaints Board referred to only six people. There was a possibility that others of the twelve that had been arrested had also made complaints, but that their correspondence had not been dealt with.
- 11.16. Mr. O'Brien also made a courtesy telephone call to Messrs. V.P. McMullen & Son to explain to them that he had sent them letters of acknowledgement in respect of these complaints, but that the delay in forwarding same had been due to the fact that there had been a delay in the complaints arriving into the offices of the Garda Complaints Board. However, by letter dated the 22nd of October 1997, Messrs. V.P. McMullen & Son wrote to the Complaints Board informing them that Messrs. Binchys, Solicitors, were now acting on behalf of the McBrearty family. Accordingly by letter dated the 24th of October 1997, Mr. O'Brien wrote to Messrs. Binchys, Solicitors, explaining the situation to them.<sup>14</sup>
- 11.17. On the same date a letter was also written by the Chief Executive, Mr. Seán Hurley, to Frank McBrearty Senior informing him that the complaints had been received and explaining to him what the procedure would be in relation to dealing with those complaints.<sup>15</sup> A letter was also written to Chief Superintendent Denis Fitzpatrick enquiring from him the reason for the delay in forwarding the correspondence to the Garda Síochána Complaints Board and for an explanation as to what had become of the originals of the letters sent to Letterkenny Garda Station by the firm of solicitors. Also at that time, a member of the Board's staff, Mr. Martin Flaherty, was asked to draw up a summary of the initial group of nine complaints that had been forwarded to the offices of the Complaints Board prior to that time. This was to give the Chief Executive and the Deputy Chief Executive a good overall picture of the total number of complaints and the nature of the complaints received from the McBrearty group up to that time.<sup>16</sup>
- 11.18. On the 30th of October 1997 a meeting was held at the offices of the Complaints Board, which was attended by Chief Superintendent Anderson, Superintendent Crotty, Sergeant Brunton, the Chief Executive, Mr. Seán Hurley and the Deputy Chief Executive, Mr. Bryan O'Brien. The purpose of this meeting was to review the overall situation in relation to this group of complaints. The staff of the Garda Complaints Board grew particularly concerned at the delay in the furnishing of

<sup>14</sup> Tribunal Documents, page 1,680.

<sup>15</sup> Tribunal Documents, page 1,683.

<sup>16</sup> Tribunal Documents, pages 1,675-1,679.



these complaints to the Board. They were also concerned by the fact that there were now almost twenty complaints in existence from the one group of complainants arising out of the same or similar incidents. They were also aware of the difficulty that would be posed by the fact that Mr. McBrearty had indicated to Mr. O'Brien that he did not want an investigating officer from the Donegal division. More importantly perhaps was the fact that some of the complaints related to an officer of the rank of Superintendent. This would mean that the investigating officer would have to be of the rank of Chief Superintendent and would have to be of a division other than the Donegal division.

11.19. Mr. O'Brien was also aware of the serious nature of some of the complaints due to a telephone conversation that he had had with Mrs. Róisín McConnell on the previous day. She had told him that she had been admitted to a psychiatric ward on the 14th of December 1996 as a result of the mistreatment, which she had suffered at the hands of the Gardaí during her detention at Letterkenny Garda Station. She stated that she would not have any dealings with an investigating officer from Letterkenny; instead she wanted an investigating officer from Dublin. Mr. O'Brien explained that the appointment of an investigating officer was a matter solely for the Commissioner of An Garda Síochána. She agreed that she would wait to see who was appointed as investigating officer before taking the matter further.

11.20. An indication of how seriously the staff of the Complaints Board took the situation at that time was evident from the fact that a decision was made that Mr. O'Brien would go up to Donegal to talk to Frank McBrearty Senior. This was an unusual step to take. Staff of the Complaints Board did not usually speak directly to complainants in relation to the subject matter of a complaint. However, due to the unusual nature of this case and due to the inordinate delay that there had been in getting the complaints to the Complaints Board, it was deemed necessary to take this unusual step. Mr. O'Brien explained the decision in the following way:

*As I mentioned earlier, we interpreted the Act as personnel from the Executive side of the Complaints Board not being involved in the investigation of complaints. In fact, we didn't have any contact with complainants usually other than writing to them from the time they made the complaint until such time as they either rang us enquiring about them, or if it came to a Tribunal. So, the decision there to go and see Mr. McBrearty, and as it turned out others who had made complaints, that was an indication of how seriously we felt about this group of complaints. It was a most*

*unusual step that an officer of the Board would go and speak to people about them. I don't know if it's said there, but we were anxious to explain why the delay was and we were anxious that people would know what the procedure would be now that the complaints were being admitted.*<sup>17</sup>

- 11.21. In a telephone conversation between Mr. O'Brien and Mr. Frank McBrearty Senior on the 28th of October 1997, Mr. McBrearty informed Mr. O'Brien that he had a number of points written out which he could send on to Mr. O'Brien. It was agreed that he would fax this document to Mr. O'Brien. That afternoon a document headed "Points of View" was faxed by Mr. McBrearty Senior to the offices of the Garda Complaints Board.<sup>18</sup> In a subsequent telephone conversation on the afternoon of the 30th of October 1997, Mr. McBrearty Senior confirmed that he wished to have the points contained in that document treated as individual complaints. This gave rise to a further nine individual complaints coming before the Garda Complaints Board. In the course of that telephone conversation Mr. O'Brien offered to meet Mr. McBrearty Senior to discuss matters generally with him. It was arranged that Mr. O'Brien would travel to Donegal and meet with Mr. McBrearty Senior at 15.00 hours on the 4th of November 1997.

### **Meeting the Complainants**

- 11.22. When Mr. O'Brien arrived at Mr. McBrearty's licensed premises in Raphoe, Mr. McBrearty asked him to come out to his house where there were other people who had lodged complaints who wanted to talk to him. Mr. O'Brien agreed to do this. He went out to the house where he found ten or twelve people who were members of the extended McBrearty and Quinn families. Most of them had lodged complaints with the Garda Complaints Board. He explained to them what had given rise to the delay in acknowledging the batch of complaints that had been forwarded by Superintendent Lennon on the 17th of October 1997. He went on to explain the general procedure that was involved in relation to the appointment of an investigating officer and the taking of statements by him. He also spoke with some of the complainants individually in relation to various aspects of their complaints. Mr. O'Brien stated that he was received very courteously and professionally both by Mr. McBrearty Senior and by the various people with whom he spoke in the course of the afternoon. He recalled that Frank McBrearty Junior seemed to be quite upset at times during the meeting. However, he was never discourteous or aggressive with Mr. O'Brien. The meeting lasted for almost three hours. In the days after the meeting Mr. O'Brien made a comprehensive memorandum of his meeting with the members of the McBrearty family that day.<sup>19</sup>

<sup>17</sup> Transcript, Day 681, pages 87-88.

<sup>18</sup> Tribunal Documents, pages 1,664-1,666.

<sup>19</sup> Tribunal Documents, pages 1,638-1,644.

- 11.23. On the afternoon of the following day, Mr. O'Brien met with Superintendent Fitzgerald at Manorhamilton Garda Station. Superintendent Fitzgerald was not able to explain what had become of the originals of the letters from V.P. McMullen & Son. He said that he would search through his papers to see if he could locate the missing letters. When he gave evidence to the Tribunal on this matter, he explained his reason for not forwarding the letters to the Garda Complaints Board when he received them in December 1996. He stated that he treated the letters as being merely letters from a solicitor, which were "laying down markers" in the event that there should be a prosecution. **Having regard to the serious nature of the matters complained of in some of the letters, in particular where allegations of assault and other forms of serious misconduct were alleged against interviewing Gardaí, the Tribunal does not regard this as a good reason for the non-forwarding of the letters to the Garda Complaints Board. These letters should have been forwarded immediately to the Garda Complaints Board.**
- 11.24. On the 7th of November 1997, Chief Superintendent Denis Fitzpatrick and Superintendent Lennon travelled to the offices of the Complaints Board for a meeting with Mr. Hurley and Mr. O'Brien. In the course of that meeting, the two police officers gave information in relation to the investigation into the death of the Late Mr. Barron, including the current state of that investigation. They also explained that a file in relation to alleged intimidation of witnesses by Mr. Frank McBrearty Senior had been sent to the Director of Public Prosecutions, but that he had made a decision that there should be no prosecution in respect of that matter.
- 11.25. The Garda officers also furnished information about policing in Raphoe and the fact that Sergeant White had taken up duty in the village earlier in the year. The two Gardaí gave details of measures that had been implemented to enforce the liquor licensing laws in the area. The officers also gave details of the involvement of the private investigator Mr. William Flynn. They mentioned that there was a lengthy video tape taken by Mr. Flynn of an interview, which he had held with members of the McBrearty family. It was decided that a letter would be written to Mr. McBrearty Senior enquiring whether there were any matters on the tape, which he wished to have submitted as complaints to the Complaints Board. The Garda officers also mentioned the volume of business that was being done by Mr. McBrearty Senior in his licensed premises. They referred to assaults that had occurred in the area in recent times and the need for more vigorous policing, including vehicle checkpoints. They also mentioned that defamatory flyers had been circulated in Donegal mentioning the McBreartys. At the end of the meeting it was agreed that the Complaints Board officers would assess the

current position and would make contact with the Commissioner of B Branch to discuss the question of the appointment of an investigating officer to deal with all of the complaints. Mr. O'Brien made a detailed memorandum of this meeting.<sup>20</sup>

- 11.26. It appears that the whole picture may not have been given to Mr. Hurley and Mr. O'Brien concerning the state of the investigation into the death of the Late Mr. Barron at that time. Mr. O'Brien had no recollection of being told that one of the key witnesses, Robert Noel McBride, had made a statement concerning the alleged sighting of Mr. McBrearty Junior and Mark McConnell coming back through the car park at the rear of the premises at precisely 01.00 hours on the morning of the 14th of October 1996, nor of the fact that he had made subsequent statements alleging that he had been variously intimidated and/or bribed by members of the McBrearty family not to go to the Gardaí, nor of the fact that on the 16th of September 1997, he had made a comprehensive statement retracting all the previous statements made by him up to that time.
- 11.27. Mr. O'Brien had no recollection of being told that in the course of that retraction statement, Robert Noel McBride had gone on to allege that he had been put up to making all his statements by William Doherty. Nor was he informed that William Doherty had a close connection with Garda John O'Dowd, nor of the fact that when Mr. Doherty was arrested at his home on the 20th of September 1997, Garda O'Dowd's notebook had been found in his bedroom.
- 11.28. Mr. O'Brien stated that the impression that he was given at that meeting was that the murder investigation was still in progress and that it was not anywhere near resolution. He did not know what the state of play was in relation to whether any charges were likely, or how near the Gardaí were to a resolution of their investigation. As far as he could recollect the statement of admission made by Frank McBrearty Junior during his detention in Letterkenny Garda Station in December 1996 was not mentioned at the meeting.<sup>21</sup>
- 11.29. Having regard to the clear testimony given by Mr. O'Brien before the Tribunal and the comprehensive nature of the memoranda kept by him of all his meetings, the Tribunal is satisfied to conclude that he was not told of the retraction statement made by Robert Noel McBride in September of 1997, nor of the impact that that statement had on the state of the Garda investigation. The Tribunal is satisfied that in that briefing, Mr. Hurley and Mr. O'Brien were being given a heavily edited version of the state of play in relation to the investigation at that time.
- 11.30. By letter dated the 20th of November 1997 Mr. O'Brien wrote to the Assistant

<sup>20</sup> Tribunal Documents, pages 1,629-1,630.

<sup>21</sup> Transcript, Day 681, pages 99-101.

Commissioner of B Branch at Garda Headquarters giving him an update in relation to all the complaints that had been received by the Board. On the 24th of November 1997 Mr. Kenneth Smyth, solicitor, furnished to the Complaints Board copies of the video tapes of the interviews that had been held between Mr. William Flynn and members of the McBrearty, McConnell and Quinn families.

- 11.31. Later in the month there was telephone contact between Mr. McBrearty Senior, Mr. McBrearty Junior and Mr. O'Brien enquiring about progress in the matter. Mr. O'Brien indicated to them that at that time it was felt preferable that one investigating officer would be appointed to deal with all of the complaints. This was seen as having a number of advantages. Firstly, it would mean that the investigating officer would have a good overall grasp of the general situation. Secondly, it would prevent a duplication of matters in various covering reports, and thirdly, it would mean that the investigating officer could make one appointment with a complainant and take a statement from that person covering a number of complaints, rather than having a number of separate meetings with separate investigating officers. A further reason why it was felt preferable to have one investigating officer appointed was the fact that such a person would have to be of the rank of Chief Superintendent.

### **Appointment of Investigating Officer**

- 11.32. On the 28th of November 1997 Mr. O'Brien was informed by Superintendent Crotty that Chief Superintendent John Carey of the Mayo Division was going to be appointed as investigating officer for the McBrearty group of complaints. That appointment was due to be formalised in the near future. Subsequently, by letter dated the 14th of January 1998 the Assistant Commissioner of B Branch at Garda Headquarters wrote to the Chief Executive, Mr. Seán Hurley, informing him that by virtue of appointments made on the 28th of November 1997, the 12th of December 1997, and the 13th of January 1998, Chief Superintendent Carey had been formally appointed to deal with the McBrearty group of complaints then in existence, other than a small number of early complaints in respect of which Inspector Sullivan had previously been appointed as the investigating officer.<sup>22</sup> Prior to that official notification, Mr. O'Brien had met with Chief Superintendent Carey in Galway on the 10th of December 1997. The purpose of that meeting was to have a general discussion in relation to the complaints.
- 11.33. Chief Superintendent Carey was assisted in his role as investigating officer by Superintendent Pat Ford. Superintendent Ford is since deceased. Mr. O'Brien said that it was most unusual for an investigating officer to have an assistant. However, given the volume of complaints that were being given to Chief Superintendent Carey it was felt that it was reasonable for him to have assistance

<sup>22</sup> Tribunal Documents, pages 1,610-1,611.

in his investigation. Furthermore, given the delay that had occurred in relation to the receipt of some of the complaints, it was felt necessary that the investigation should proceed as quickly as possible.

- 11.34. At a meeting held in Castlebar on the 21st of January 1998, Chief Superintendent Carey had a general discussion with Mr. O'Brien concerning the complaints. He stated that he had been given the use of an office in Letterkenny Garda Station for the purposes of his investigation. However, he pointed out in his evidence to the Tribunal that he did not set up an office as such in Letterkenny Garda Station; he was merely given the use of a room where he could conduct interviews with various Gardaí from time to time. He informed Mr. O'Brien that he hoped to be in a position to start his investigation into the various complaints in the first week of February 1998.
- 11.35. Before turning to the investigation that was carried out by Chief Superintendent Carey, it is worthwhile to look at the state of knowledge on the part of the actual Board members at that stage, as distinct from the Executive members of the Board who had been dealing with the McBrearty family up to that time. Essentially, the matter had not at that stage come before the Board itself. The matter was only at the beginning of the investigation stage. It was only when that was completed that the matter would be formally brought before the Board. In the interim period, there were various briefings where the Board was updated by its Executive members as to progress in the investigation and related matters.
- 11.36. Mr. O'Brien had a note that on the 3rd of November 1997, the Chairman of the Complaints Board and Assistant Commissioner McHugh were briefed by Mr. Hurley and Mr. O'Brien in relation to the McBrearty group of complaints. Mr. O'Brien stated that this was a very unusual step to take. He described it in the following way:

*Point number 7 there, 3rd November "Chairman of the Complaints Board and Assistant Commissioner McHugh briefed". Now I can't find any note of that actual briefing, but I do remember that the Chairman and the Assistant Commissioner came to the office of the Chief Executive, Mr. Hurley, and that they were briefed on the position at that stage. Now the importance of that is that in all my time, seven or eight years or whatever length I was there, seven years, I never remember any occasion other than this in which a group of complaints was brought to the attention of the Chairman and the Assistant Commissioner. So that is an indication of how serious and perhaps how worried we in the Executive were about this group of complaints, particularly worried about the point that*

*they had been delayed and that by all accounts we were going to have a group of well over thirty complaints from the one group of people with a similar background to a lot of the complaints.*

*As I said, on no other occasion in my seven years on the Board did such a meeting take place. Normally the Chairman and the other members of the Complaints Board only got to know of any specific complaint when it was submitted to them with a view that they are considering it at a meeting, with a view to their making a decision under section 7 of the Act. So this procedure of briefing the Chairman and the Assistant Commissioner was unique.<sup>23</sup>*

- 11.37. Thus, the position coming into the beginning of 1998 was that while the Board itself was not aware of the McBrearty group of complaints, the Chairman of the Board and Assistant Commissioner McHugh had been briefed as to the existence of the complaints and the problem that had arisen in relation to the delay in forwarding some of these to the offices of the Complaints Board.

### **The Investigation**

- 11.38. Chief Superintendent John Carey, assisted by Superintendent Pat Ford, commenced their investigation into the McBrearty group of complaints in early February 1998. On the 13th of February 1998 Chief Superintendent Carey informed Mr. O'Brien that he had taken statements from a large number of complainants, including Frank McBrearty Senior. He also mentioned that the solicitors in the firm of V.P. McMullen & Son were not willing to make themselves available for the purpose of making statements to his investigation. They had been asked to furnish letters to that effect, which they duly did. On the 11th of March 1998, Chief Superintendent Carey sent a progress report to Mr. O'Brien at the offices of the Complaints Board. By that time he had taken statements from twenty four witnesses. The vast majority of those were from the complainants' side of the investigation. No Gardaí had been interviewed at that time. Chief Superintendent Carey was due to be engaged on other duties for the following two weeks. He hoped to be in a position to resume his investigation on the 30th of March 1998. He would endeavour to complete the file as soon as possible after that.<sup>24</sup>
- 11.39. On the 20th of March 1998 Mr. O'Brien received a telephone call from Frank McBrearty Senior requesting copies of the statements that had been made by the complainants to the investigating officer. This gave rise to some protracted correspondence. Ultimately the advices of the Attorney General were sought. At the end of the day, Mr. McBrearty Senior was informed that he was not entitled

<sup>23</sup> Transcript, Day 682, pages 11-12; Tribunal Documents, page 1,608.

<sup>24</sup> Tribunal Documents, page 1,599.

to have copies of the statements until the investigation had been completed by the investigating officer. At that stage, once the file had been submitted to the Board, he could apply in writing for copies of his statements. If other complainants wished to have copies of their statements they would have to make individual requests so that the statements could be released to them.

- 11.40.** It was in the context of this request for the release of copies of the statements that the McBrearty group of complaints was first formally brought to the attention of the members of the Board. As we have seen, the matter had already been discussed between the Chief Executive, the Deputy Chief Executive, the Chairman and Assistant Commissioner McHugh at the meeting held on the 3rd of November 1997. However, it was not until the 19th of June 1998 that the matter was formally brought before the B Side of the Board for the first time.
- 11.41.** Mr. O'Brien prepared a "Note for B Side – McBrearty group of complaints". This was a memorandum, which was to be presented to the B Side of the Board so that they could reach a formal decision in relation to whether or not copies of the statements should be released to Mr. McBrearty Senior. In order to reach a decision on that matter, they had to be briefed regarding the existence of the group of complaints, the appointment of the investigating officer and the state of his investigation at that time. In that memo, the Deputy Chief Executive suggested that as one of the earlier complaints which had been submitted by members of the McBrearty family was already being dealt with by the B Side of the Board, it was felt that that side of the Board should deal with all of the complaints in the group. Mr. O'Brien reported that Chief Superintendent Carey was well advanced in his investigation of the twenty two complaints that had been assigned to him. At that time he had approximately five more statements to obtain. He would then set about writing his report. Mr. O'Brien was due to discuss the draft reports with Chief Superintendent Carey in late August/early September. They anticipated that on receipt of the finalised reports in September 1998 summaries would be written and all of the documentation would then be forwarded to the B Side of the Board in late September 1998.
- 11.42.** Given the volume of documentation involved, it was anticipated that the Board would need a period of a few weeks to read the material. Accordingly it was not anticipated that the Board would be in a position to consider the complaints until it met in late October or early November of 1998.<sup>25</sup> This was the first time that the Board itself was formally notified of the existence of the complaints. However, they were not given any details at that stage of the substance of any of the complaints. It was merely a briefing to give them an overview of the situation and to inform them as to the size of the task that they may anticipate when the

<sup>25</sup> Tribunal Documents, pages 1,588-1,589.



investigating officer had completed his investigation. In the events that subsequently transpired, it was not possible to keep to the timescale outlined in that memorandum.

- 11.43. The briefing of the members of the Board in advance of the completion of the investigation by the investigating officer was itself an unusual step. Mr. O'Brien described it in the following way:

*And this again is unusual because here now you have a position where the B Side of the Board are being notified of a group of complaints prior to the investigation being committed ... sorry, completed, and well in advance of the normal course of events where they wouldn't hear about these complaints until he got the documentation about the investigation of the complaints themselves. The reason they were getting the documentation was, I think it was precipitated by the request for the statements, but it also gave an opportunity of explaining the procedure for the investigation and ultimately for their consideration of the block of complaints.<sup>26</sup>*

- 11.44. On the 4th of August 1998 Mr. O'Brien spoke to Chief Superintendent Carey on the telephone. By that time the Chief Superintendent still had a small number of statements to take from Gardai. He had taken all the civilian statements that were necessary. Once the outstanding statements had been obtained, he intended having a meeting with his assistant, Superintendent Ford, later in the week to discuss strategy for writing up their reports on the complaints. Mr. O'Brien informed him that the complaints had been mentioned at the Board meeting held at the end of June 1998 and that they had requested that he would attend a meeting at which the complaints would be considered. He was agreeable to this course of action. The timescale for the submission of his report was also discussed. Chief Superintendent Carey was hopeful that he would make considerable progress during the month. It was agreed that there would be further contact made between Mr. O'Brien and Chief Superintendent Carey in late August or early September 1998. In relation to the question of supplying copy statements, Chief Superintendent Carey said that as he had finished his investigation he had no problem with releasing the statements. It was agreed that he would send Frank McBrearty Senior a copy of his statement and that other statements would be supplied as and when the complainants themselves applied for them.<sup>27</sup>

- 11.45. On the 1st of September 1998 Mr. O'Brien had a lengthy meeting with Chief Superintendent Carey in Castlebar from 09.30 hours until 14.00 hours. Chief

<sup>26</sup> Transcript, Day 682, page 14.

<sup>27</sup> Tribunal Documents, page 1,585.

Superintendent Carey estimated that it would be towards the end of October before he would have his report ready in relation to the twenty two complaints. He stated that he had already taken approximately one hundred statements, together with a large number of appendices. Given that the material would have to be read and summarised by the Executive side of the Board prior to submitting it to the Board itself, Mr. O'Brien thought that the most optimistic scenario was that the matter would be presented to the Board in the first half of December 1998.

- 11.46. In the course of a fairly wide-ranging discussion, Chief Superintendent Carey mentioned that statements had been made by Superintendent Kevin Lennon and Sergeant John White. He felt that those statements would prove to be very interesting as background material for the Board members. Chief Superintendent Carey and Mr. O'Brien then briefly went through each of the twenty two complaints. There were also a number of interesting points that arose during the discussion: Mr. O'Brien was informed that the District Court hearings in relation to the liquor licensing summonses against Mr. McBrearty Senior were due to be resumed towards the end of September 1998 and that the Director of Public Prosecutions had directed that a prosecution should be brought against Mr. Frank McBrearty Junior in relation to the alleged assault on Mr. Edmond Moss. The relevance of that was that Mr. McBrearty Junior had been arrested in relation to that investigation on the 4th of February 1997 and a complaint had been made in relation to alleged abuse and mistreatment during that period of detention.<sup>28</sup>
- 11.47. Arising out of that meeting, Mr. O'Brien made a further memorandum for the benefit of the B Side of the Board on the 17th of September 1998. They were informed that the estimated timescale would have to be pushed back somewhat due to the fact that Chief Superintendent Carey did not think that his report would be ready until the end of October 1998. Allowing time for the preparation of summaries and recommendations by the Chief Executive, and allowing some time for the Board members to consider the documentation, it was hoped that the matter could be considered by the Board at its meeting in January 1999.<sup>29</sup>
- 11.48. On the 28th of October 1998 Mr. McBrearty Senior telephoned Mr. O'Brien to enquire about progress in the matter. He was informed that the investigating officers' report was not yet to hand, but that it was expected in the near future. He was given an estimated timescale as to when the complaints might be considered by the Board itself.

### **Chief Superintendent Carey's Report**

- 11.49. Chief Superintendent Carey completed his reports into the various complaints

<sup>28</sup> Tribunal Documents, pages 1,578-1,579.

<sup>29</sup> Tribunal Documents, page 1,576.

and his covering report in November 1998. On the 18th of November 1998, Mr. O'Brien travelled to Castlebar to formally receive the reports that had been prepared by Chief Superintendent Carey. He said that he was quite amazed by what he saw. He had never seen a report of that size. The reports, together with supporting statements, ran to approximately one thousand and six pages. There were twenty three appendices, which contained somewhere between one thousand five hundred and two thousand pages. There were also tapes and photographs. Mr. O'Brien stated that he had never seen anything like it before:

*No. No. I had never seen anything the likes of this before. Usually, as I probably explained already, we dealt with individual complaints, occasionally there might be two or three complaints, two or three complainants, complaining about the same event, or a complainant might have complaints about two or three events that were related and you might have a fairly big report. But nothing of the magnitude of this particular group of complaints and the volume of paper that had been assembled by Chief Superintendent Carey.<sup>30</sup>*

- 11.50. Mr. O'Brien took the documentation back to the offices of the Garda Complaints Board. There he and his staff set about the task of preparing summaries on each of the complaints with a view to having them put before the Chief Executive so that he could make a recommendation on each complaint to go before the Board. This was an enormous task and was clearly going to take some time. On the 13th of January 1999 Mr. O'Brien travelled by appointment to Raphoe to meet with Frank McBrearty Senior. He explained to Mr. McBrearty Senior that they had received the report from Chief Superintendent Carey, which was well over one thousand pages and also had voluminous appendices attached to it. He indicated that he would be sending a memorandum to the B side of the Board for consideration at their meeting at the end of the month and that he hoped to have the documentation to them for either a February or a March meeting of the Board.<sup>31</sup>
- 11.51. Mr. O'Brien duly prepared a memorandum for the B Side of the Board on the 26th of January 1999. They were informed that by that stage there were fifty one complaints in all from the McBrearty group. They were given details of the size of the report that had been submitted by Chief Superintendent Carey. It was suggested that given the volume of paper involved the B Side of the Board might wish to make a decision as to how they would proceed to deal with the various complaints. It was suggested that they would hold a meeting devoted exclusively to consideration of the McBrearty group of complaints. It was also suggested that they might consider whether the responsibility for reading some of the

<sup>30</sup> Transcript, Day 682, page 28.

<sup>31</sup> Tribunal Documents, pages 1,568-1,569.

appendices should be assigned to one member of the B Side of the Board rather than requiring all members of the Board to read all the documentation. It was also suggested that they may wish to consider having Chief Superintendent Carey and Superintendent Ford present at the meeting at which the complaints were to be considered.<sup>32</sup>

- 11.52. That memorandum was considered by the B Side of the Board at their meeting held on the 29th of January 1999. They decided that Chief Superintendent Carey's report should be sent to all members on the B Side of the Board. They decided that it was not necessary to circulate the appendices to the members of the Board at that stage. All members would read the investigating officer's report plus the supporting documentation. It was directed that Chief Superintendent Carey and Superintendent Ford should be available to clarify matters for the Board at the meeting when they would consider the McBrearty group of complaints. They directed that the two police officers should not, however, attend the meeting as such.<sup>33</sup>
- 11.53. The staff at the Complaints Board offices continued their work in preparing the draft summaries in respect of each of the complaints. In addition, by letter dated the 26th of February 1999, Mr. O'Brien wrote to Mr. McBrearty Senior informing him of progress in the matter. He was informed that given the size of the documentation it was hoped that they would be in a position to send the documentation out to the members of the Board in late March or early April. In those circumstances it was hoped that the Board might be in a position to consider the complaints lodged at its meeting in May 1999.
- 11.54. Work on the preparation of the summaries and recommendations continued throughout the following months. Summaries of each of the complaints were prepared and the Chief Executive made his recommendation at the foot of each summary as to what the Board might do with each complaint. The documentation then had to be photocopied so that it could be sent out to each member of the B Side of the Board. Mr. O'Brien recalled that the documentation was so voluminous that it was decided that the photocopying would be done on both sides of the page in order to make the volume of documentation more manageable.
- 11.55. The Chairman of the Board at the time was a very experienced barrister, Mr. Séamus McKenna, S.C. He gave a somewhat graphic description of his reaction to the volume of documentation which landed at his desk:

*It was enormous. The pile of documentation would have been well over a foot and a half deep. I am not frivolous when I say this, Sir,*

<sup>32</sup> Tribunal Documents, page 1,567.

<sup>33</sup> Tribunal Documents, page 1,566.

*they were the sort of papers that a barrister would put in the corner of his study, as far away from his desk as possible. It was not an enticing prospect, but it had to be read at some stage.*<sup>34</sup>

- 11.56. The complaints were brought before the B Side of the Board for consideration at its meeting held on the 18th of May 1999. This was the first time that the Board had formally considered the substance of the McBrearty group of complaints. At that meeting a significant decision was made as to how the Board would deal with the matter. It is to that decision that we now turn.

### **The Deferral Decision**

- 11.57. In the weeks prior to the meeting in May 1999, a large volume of documentation was sent out to each of the members on the B Side of the Board. They were provided with a copy of the covering report from Chief Superintendent Carey, a schedule of the McBrearty group of complaints in order of date of incident complained of, and five batches of summaries together with the relevant files in respect of the complaints lodged by Frank McBrearty Senior, Frank McBrearty Junior, Mark McConnell, William Logan, Katrina Brolly, Seán Crossan and Róisín McConnell. They were also furnished with the appendices, including the video tapes and an audio tape. At that time there were three other reports in relation to complaints lodged by the McBrearty group, which were not investigated by Chief Superintendent Carey. Summaries and files in respect of those complaints were to be forwarded under separate cover.<sup>35</sup>
- 11.58. One of the members of the B Side of the Board was Dermot O’Callaghan, a businessman from Dundalk, County Louth. He had served two terms as a member of the Garda Síochána Complaints Board. It happened that Mr. O’Callaghan was not going to be available to attend the meeting, which was to be held on the 18th of May 1999. Approximately a week before the meeting, Mr. O’Brien travelled to Dundalk where he met Mr. O’Callaghan and outlined how matters stood at that stage. Mr. O’Callaghan had received the documentation. He was invited to submit a memorandum if he wished, expressing his views on the complaints. Some time later he sent a memorandum containing his views on the complaints to the offices of the Garda Complaints Board.
- 11.59. That memorandum was made available to the Tribunal and to the parties in the sub-module. In the memorandum Mr. O’Callaghan expressed views that were highly critical of the complainants. He had high praise for members of the Gardaí who had carried on policing duties in Raphoe. He recommended that some of those against whom complaints had been made should be promoted in rank. He concluded the memorandum by expressing the view that Mr. O’Brien and Chief

<sup>34</sup> Transcript, Day 685, page 16.

<sup>35</sup> Tribunal Documents, pages 2,564-2,565.

Superintendent Carey should attend the ongoing liquor licensing prosecutions, which were being heard in the District Court in Letterkenny. He also advised that the Board should await the report from Assistant Commissioner Kevin Carty prior to reaching any decision on the substantive complaints lodged by the McBrearty family.

**11.60.** This memorandum was available to the other members on the B side of the Board in advance of the meeting. In his evidence to the Tribunal, Mr. O’Callaghan accepted that the views expressed in that memorandum may not have been correct, given events which had subsequently come to light as a result of both the Carty investigation and the enquiries carried out by this Tribunal. However, given his state of knowledge, the views which he expressed in that memorandum were views, which he genuinely held at that time. The Tribunal can readily understand how, given the content of statements which had been given by some Gardaí to Chief Superintendent Carey and given the content of the Chief Superintendent’s covering report, members of the Board could easily have come to hold views along the lines of those expressed by Mr. O’Callaghan.<sup>36</sup>

**11.61.** On the day prior to the date of the meeting, Mr. O’Brien prepared a document by way of aide-mémoire to enable him to make a presentation to the Board at its meeting on the following day. In that document he set out the purpose of the meeting in the following terms:

The purpose of this meeting in the view of the executive is to give Board members an opportunity to:

- (i) Give their general views to one another on the block of complaints as a whole.
- (ii) To direct the investigating officer to carry out any further investigations they consider necessary.
- (iii) To decide whether the Board should be represented at the District Court when the court gives its decisions on licensing prosecutions.
- (iv) To decide on whether there should be another meeting at which decisions will be taken on individual complaints or decide on some other course of action, e.g. postpone making decisions on the complaints until such time as the District Court finalises its considerations of the licensing summonses and/or the outcome of Assistant Commissioner Carty’s investigation is known.<sup>37</sup>

**11.62.** Mr. O’Brien’s recollection of the meeting held on the 18th of May 1999 was that he gave a brief presentation to the B Side of the Board in relation to the

<sup>36</sup> Transcript, Day 660, page 58.

<sup>37</sup> Tribunal Documents, pages 1,558-1,559.

background and history to the McBrearty group of complaints. This was followed by the showing of a portion of a video tape. Mr. O'Brien thought that this was the tape of the time when Frank McBrearty Junior was detained at Letterkenny Garda Station on the 4th of February 1997. There was some dispute between Mr. O'Brien and Mr. Carey as to whether or not the investigating officer gave any presentation to the meeting. Mr. Carey had a definite recollection that he addressed members of the Board in relation to his investigation at some stage. However, he was not able to put a definite date as to when this occurred. Mr. O'Brien's recollection was that while Chief Superintendent Carey and Superintendent Ford were in the building at the time of the meeting on the 18th of May 1999, they did not in fact address that meeting at any stage. Mr. McKenna, S.C. had no recollection of ever actually meeting Chief Superintendent Carey. He did not think that he addressed the meeting.

- 11.63.** It does not appear necessary to the Tribunal to resolve this conflict. What is clear is that the documentation that had been prepared by Chief Superintendent Carey had been furnished to the Board members in advance of the meeting. Insofar as the Tribunal is aware of any views that were reached by individual members of the Board, the only evidence on this aspect is the memorandum which was furnished by Mr. O'Callaghan. This shows that he certainly held views that were highly critical of the McBrearty group of complainants and highly favourable in terms of the Gardaí.
- 11.64.** At the meeting held on the 18th of May 1999 a decision was taken by the Board that it would defer further consideration of the McBrearty group of complaints. The Board directed that the Deputy Chief Executive, Mr. O'Brien and the investigating officer, Chief Superintendent Carey, should attend at the District Court whenever the liquor licensing prosecutions were to be resumed in relation to Mr. McBrearty's premises. The second reason that they decided to defer consideration of the complaints was that it was felt that the investigation which was then being carried out by Assistant Commissioner Carty might yield material of relevance to their consideration of the complaints. Accordingly, it was thought sensible to await the outcome of that investigation prior to proceeding further.
- 11.65.** In his evidence to the Tribunal, the Chairman of the Board at the time, Séamus McKenna, S.C., outlined the dilemma that faced the Garda Síochána Complaints Board. In essence, he said that they were presented with what was potentially a picture of Garda corruption on an enormous scale. He doubted that with the limited resources that were available to the Complaints Board, they would be able to get to the bottom of the matter and achieve justice. He expressed the view that had the Board embarked on a consideration of the substantive complaints

at that time, there was a strong likelihood that they may have come to the wrong conclusion; one which they would have bitterly regretted with the passage of time:

*There was no ... there was nobody we could refer to. In particular, there would have been an enormous public reaction if the Board publicly notified the Minister, we just can't deal with this, get somebody else to deal with it. It never crossed my mind really. What I did, I was very very worried about the content and if I may say at that stage, it was premature, it wasn't a question of getting it right, Sir, you tried that in every case. But I felt, having regard to the import of it, it was essential that we did not get it wrong. Now I know there is a distinction without a difference, but it's a positive way of putting it that I regarded, as everybody on the Board did, that this was a very dangerous thing landing on our lap.*

*Dangerous in that it was essential not to make a mistake of any kind. And not making a mistake involved the judgment call. I know I am going ahead probably, Mr. McDermott. At the end of the day a determination of who is telling the truth in this matter. And getting that right was going to be virtually impossible. [The structures available were not adequate] In hindsight definitely not. I can't say that I thought about it beforehand because beforehand I thought of it in more simple terms. Although there were a lot of cases, at the end of the day it came down to a decision, do you believe what the Guards are saying in their statements to the investigation officer, or is the truth, does the balance of truth lie with the McBreartys, who in some respects would be regarded as not the most reliable informers. But they had their ... what they were saying was extremely serious and if true, we were presented with what Lord Justice Denning referred to as the appalling vista ... I mean to reduce it to a sentence, I think the problem was this: not only were there some Guards in Donegal who were corrupt, but there was a large conspiracy, if what McBrearty said was true, to do all sorts of terrible things perverting the course of justice, or were they simply not to be relied upon at all. You can develop that if you like, but that was the essential problem, it never changed from the time it first arose until the very end.<sup>38</sup>*

- 11.66. In the circumstances, Mr. McKenna, S.C. was strongly of the opinion that consideration of the substantive complaints should be deferred until the District

<sup>38</sup> Transcript, Day 685, pages 18-19.



Court prosecutions had concluded and until Assistant Commissioner Carty had had an opportunity to continue with his investigation. He saw no option but to defer consideration of the complaints pending the outcome of these two separate avenues of inquiry. He felt at the time that the decision was correct. He continues to hold that view. He explained his reasoning in the following way:

*May I get into the heart of the matter as I see it, I hope, Mr. McDermott, I am not interrupting. By hindsight it looks bad, to use the word, that the Complaints Board deferred and didn't take any further action until the complaints were withdrawn. I take full responsibility for that in the sense that as far as I know the contents of Mr. Carey's report, which will be prejudicial to the good name and reputation of the McBreartys, did not affect me and as far as I know did not, and certainly should not have affected any member of the Board. The reason it was deferred was this: on the one side, Sir, we had this stack of paper from a very industrious investigating officer, leaving aside the quality of your judgment on the comments of the McBreartys, an awful lot of work had been put into it. As against that, there were complaints from the McBreartys and their family which, if true, reflected an appalling state of affairs.*

*My fundamental aim and interest and only aim and interest, was to get to the truth of the matter insofar as I could with the circumscribed power of the Board. The result was something as I learned from practice and you and everybody else has learned, the written word is the most unreliable way of determining the veracity of the statements that are in any document and is absolutely useless unless in contrast to another document, or some fact you know to be true, the story in the original statement is wrong. But per contra I am a great believer, it comes from one's experience, not my experience, that in a court or in a kind of adversarial situation where people give evidence that any impartial person of reasonable intelligence will generally, after an hour or certainly a whole day, will know who is telling the truth. And I take responsibility that the idea for deferring it until the District Court proceedings were over at least, came from me, and I did it, having formed, perhaps too early a judgment on what the Board were likely to do if it proceeded with those matters to a hearing on the date when they were referred ... I have no doubt, Sir, though I am speculating in and making a value judgment as to*

*what would have been the result if the Board had on that day, could with the benefit of hindsight, resulted in major injustice. To put it another way, I don't want to be here this morning at all, I was telling the Tribunal counsel, but I am a lot happier here defending the delay than I would be defending what the Board had done if they had got it wrong.*<sup>39</sup>

- 11.67. Mr. McKenna, S.C. went on to state that while it may be argued that strictly speaking the Board did not have jurisdiction under section 6(6) of the 1986 Act to defer making a decision in circumstances where there were no criminal or civil proceedings in being and that therefore he had no entitlement to await the outcome of the Carty investigation before embarking upon a consideration of the substantive complaints, he made no apology for taking this course of action. He stated that his sole aim was to get to the truth of the matter. It seemed to him that it was commonsense and in accordance with justice to await the outcome of the Carty investigation to see if they could shed any light on where the truth lay. Such a decision seems to accord with the dictates of commonsense and the requirements of justice.<sup>40</sup>
- 11.68. The formal outcome of that meeting was that the Garda Síochána Complaints Board decided to defer consideration of the McBrearty group of complaints until the District Court prosecutions had been brought to finality and until liaison had been established to see whether the Carty investigation could shed any light on the complaints under consideration. To this end, Mr. O'Brien and Chief Superintendent Carey were directed to attend at the next sittings of the District Court in Letterkenny at which the McBrearty prosecutions would be heard.
- 11.69. Coincidentally, Mr. McBrearty Senior telephoned Mr. O'Brien on the morning of the 19th of May 1999 to enquire about his complaints. He was informed that the Board had made a decision to defer further consideration pending the outcome of the District Court prosecutions. Mr. O'Brien explained to Mr. McBrearty Senior that he and Chief Superintendent Carey would be attending at the forthcoming sittings of the District Court, which were due to commence on the 1st of June 1999. On the 28th of May 1999, Mr. O'Brien spoke to Chief Superintendent Austin McNally of the Carty Investigation team in relation to the complaints that were being investigated by the Garda Complaints Board. Thus, steps were immediately taken to pursue the two avenues of enquiry as directed by the Board at its meeting on the 18th of May 1999.

### **Conclusion on the Deferral Decision**

- 11.70. I am satisfied that the decision taken by the Board at its meeting on the

<sup>39</sup> Transcript, Day 685, pages 24-25.

<sup>40</sup> Transcript, Day 685, pages 28-29.

18th of May 1999 to defer further consideration of the McBrearty group of complaints pending the conclusion of the District Court prosecutions and pending the outcome of the Carty investigation was a reasonable and sensible decision to have taken in the circumstances. Mr. McKenna, S.C. was correct in his analysis of the situation. In essence, he stated that while he did not know at that time the exact extent of the problem that was unfolding in Donegal, he was acutely aware that had the Board embarked on a consideration of the substantive complaints, there was a strong likelihood that they would have reached the wrong conclusion. It was in these circumstances that he and the other Board members decided that it was best to defer reaching a decision in relation to the complaints. In reaching that conclusion they demonstrated a very shrewd analysis of the circumstances. They made the correct decision.

### **Attendance at the District Court**

- 11.71. Mr. O'Brien and Chief Superintendent Carey attended the hearings, which were held before the District Court sitting at Letterkenny from the 1st of June to the 4th of June 1999. Mr. O'Brien drew up a comprehensive twenty one page memorandum in respect of the evidence given at those hearings.<sup>41</sup> In that memorandum Mr. O'Brien pointed out that during the hearings there had been reference to a "general issue" which had been raised by counsel on behalf of the accused persons. In effect, they were making the case that there was an issue which was wider than the individual summonses, which involved Garda misconduct in the form of harassment in a general way arising out of the perception held by the Gardaí that members of the McBrearty family were involved in the death of the Late Mr. Barron. They alleged that as a result of that perception they were being subjected to harassment, both on an individual basis and in relation to the operation of Mr. McBrearty's business. The Judge had directed that he would hear evidence in relation to the individual summonses first, but that he would defer making a decision in each individual case until he had heard evidence at the end in relation to the so-called general or wider issue. In his report to the Board, Mr. O'Brien recommended that he should attend at the next sitting of the District Court, which was due to take place in September 1999. He felt that if there was evidence in relation to the so-called wider issue, this would be of interest to the Board as background information to the complaints.<sup>42</sup>
- 11.72. On the 15th of June 1999 Mr. Martin O'Flaherty, a member of the staff of the Complaints Board, received a telephone call from Mrs. Patricia McBrearty. She informed him that Garda John O'Dowd had been arrested by the Carty investigation team. Some days later, on the 18th of June 1999, Mr. McBrearty

<sup>41</sup> Tribunal Documents, pages 1,531-1,554.

<sup>42</sup> Tribunal Documents, page 1,533.

Senior rang Bryan O'Brien to inform him of the arrest of Garda O'Dowd. He also informed him that Robert Noel McBride and William Doherty had also been arrested by the Carty investigation team. They had all been arrested on the 10th of June 1999. These were clearly significant developments, which would have indicated to the staff of the Board that, although they may not have been aware of the precise nature of the issues, there were serious matters being uncovered in Donegal at that time.

- 11.73. Mr. O'Brien attended at the hearings in the District Court, which were held in Donegal town on the 6th and the 7th of September 1999. These sittings commenced with the somewhat surreal spectacle whereby the barrister acting for the accused requested an adjournment. In support of the application he referred to a letter, which had been issued by Assistant Commissioner Carty indicating that he was supporting the defence application for an adjournment. This application was resisted by counsel appearing on behalf of the prosecution. Thus, the very senior officer who was carrying out an investigation into alleged Garda corruption in Donegal was supporting the defence in its application for an adjournment of the matter.
- 11.74. According to Mr. O'Brien's note, the learned District Court Judge read the letter from Assistant Commissioner Carty, but agreed with counsel on behalf of the prosecution that it was a matter for the Director of Public Prosecutions to look for an adjournment and if he had not done so, the matter would go ahead. However, before the hearing could commence there was an intervention by Mr. Paudge Dorrian, a solicitor who practiced in Donegal. He indicated to the Court that he was representing Garda John O'Dowd and Sergeant John White. He was objecting to Garda O'Dowd being called to give evidence due to the fact that his official notebook had been seized by the Gardaí at the time that Mr. William Doherty was arrested on the 20th of September 1997. He stated that Garda O'Dowd would be prejudiced if he was required to give evidence without having the original of his official notebook with him. He indicated that Garda O'Dowd should not be cross-examined without having access to the original of his notebook. The Judge directed that Garda O'Dowd should be furnished with his notebook. Ironically, when the Judge asked who had requested the presence of Garda O'Dowd in court, Mr. Giblin, S.C., the counsel representing the accused, indicated that it was he who wanted the Garda present.
- 11.75. The remainder of the first day's hearing was taken up with legal argument in relation to disclosure of documents to the defence. On the following day Mr. Dorrian again indicated to the court that he was representing Sergeant White and Garda O'Dowd. He objected to the court having jurisdiction to deal with any

questions affecting Sergeant White and Garda O’Dowd. Mr. Dorrian argued that were the court to embark on examination of the so-called wider issue, then the Judge would be exceeding his jurisdiction as he would no longer be dealing with matters of a “minor nature”. The remainder of the hearing was taken up with an argument as to whether or not the learned District Court Judge had jurisdiction to embark upon the wider issue. There was also protracted argument in relation to the adequacy of disclosure of documents. The hearing was then adjourned without any date being fixed for the resumption of the prosecutions. Mr. O’Brien prepared a detailed memorandum in relation to the hearings in the District Court on this occasion.<sup>43</sup>

- 11.76.** The hearings resumed before the District Court sitting at Donegal town on the 23rd of November 1999. Mr. O’Brien did not attend those hearings due to the fact that he was abroad in the United States of America at the time. Ms. Brenda Ward from the Complaints Board attended in his place. She prepared a memorandum of what transpired at those hearings. Again, there was no substantive evidence given in relation to any of the complaints. However, in the course of the legal argument concerning disclosure of documents, the learned Judge outlined what he understood was meant by the “wider issue”. He stated that the wider issue was that the summonses amounted to an abuse of process on the part of the Gardaí. He went on to direct that certain classes of documents were to be produced to the defence. The matter was then adjourned for hearing to the 1st of December 1999. Ms. Ward prepared a memorandum of the proceedings before the District Court.<sup>44</sup>
- 11.77.** It appears that the prosecutions were mentioned before the District Court on the 1st of December 1999, but did not come on for hearing until the 13th of that month. At that time, there was further argument about disclosure of documents to the defence. The matter was further adjourned to early in the year 2000. The B Side of the Board was kept informed at its regular monthly meetings as to the progress of the hearings before the District Court in Donegal.
- 11.78.** In the early part of 2000, a number of calls were made by Frank McBrearty Senior and Frank McBrearty Junior to Mr. O’Brien at the offices of the Garda Complaints Board. They were complaining about the delay on the part of the Board in dealing with their complaints. Mr. O’Brien outlined to them that a decision had been taken to defer consideration of their complaints pending the outcome of the District Court prosecutions. Indeed, Mr. O’Brien pointed out that it was Mr. McBrearty Senior himself who had suggested to him that he should come to Donegal to hear what was being said in the District Court. Mr. McBrearty Senior agreed that he had in fact given that advice to Mr. O’Brien.

<sup>43</sup> Tribunal Documents, pages 1,447-1,457.

<sup>44</sup> Tribunal Documents, pages 1,476-1,478.

- 11.79. Mr. O'Brien conceded that the complainants were becoming somewhat agitated by virtue of the fact that none of the complaints had been adjudicated upon by that time. There were a number of telephone calls from Mr. McBrearty Senior and Mr. McBrearty Junior during the months of January, February and March 2000 complaining about delay on the part of the Complaints Board in dealing with the matter.
- 11.80. On the 28th of March 2000, Mr. O'Brien attended a brief hearing of the District Court sitting in Donegal. On that occasion, prosecution counsel indicated to the learned District Court Judge that matters had come to light in recent weeks, which might be relevant to the defence case. He indicated that those matters arose in the course of an ongoing Garda investigation by the Gardaí in Donegal. The Assistant Commissioner in charge of the investigation was preparing a report and an interim report had been sent to the Director of Public Prosecutions. In the light of those developments, counsel for the prosecution was asking for an adjournment for a number of weeks. Counsel on behalf of Mr. McBrearty Senior indicated that he was consenting to the request for an adjournment. The learned District Court Judge commented that apart from any interlocutory applications, the only matter that remained before him was the wider issue, meaning the alleged abuse of process, together with some cross-examination that remained to be completed. The Judge granted the adjournment sought by the prosecution.<sup>45</sup>
- 11.81. Mr. O'Brien returned to the District Court in Donegal on the 29th of May 2000. On that occasion prosecution counsel again sought an adjournment to allow the Director of Public Prosecutions to consider the report of the Garda investigation of the matters in Donegal. Counsel stated that there was a vast volume of paper involved and that the Director had been unable to consider it all in the time allowed. He requested a further adjournment. He estimated that four weeks would be needed. The Judge stated that he would list the matter for mention in his court on the 21st of June 2000. He wanted to be told on that occasion whether or not the Garda investigation had been completed. He stated that he would want documentation in front of him on the matter and he would decide whether the documents sought by the defence were relevant to their case. He indicated that he would then fix the hearing of the remaining matters being the wider issue, peremptorily, to commence on the 4th of September 2000. However, that scheduled hearing into the wider issue never took place due to the fact that the prosecutions took an unexpected turn when the matter was listed for mention before the District Court on the 21st of June 2000.

### **Summonses Withdrawn**

- 11.82. When the matter came before the District Court on the 21st of June 2000,

<sup>45</sup> Tribunal Documents, pages 1,354-1,355.

counsel for the Director of Public Prosecutions indicated that the matter would not be proceeding due to the fact that the Director of Public Prosecutions had directed that all the summonses should be withdrawn. As luck would have it, this was the one hearing in the District Court at which neither Mr. O'Brien, nor any member of the Boards staff, had attended. It appears that Mr. O'Brien was not in the country on that date. The absence of a representative of the Complaints Board may have been due to the fact that the matter had only been listed for mention. It was never envisaged that any substantive hearing would occur at that time. In any event, the first that any staff of the Garda Complaints Board knew about the withdrawal of the summonses was when a somewhat irate Frank McBrearty Junior telephoned the offices and spoke to a Mr. Declan Hoban. This is his memo of the telephone conversation that he had with Mr. McBrearty Junior that day:

Note for Information

Mr. McBrearty Junior phoned the office today. He was very annoyed that no one from the Board had been in court today. I explained that the first the Board was aware of the intention of the DPP to withdraw the charges was when we heard the morning news today.

Mr. McBrearty was very anxious that his complaints would now be finalised. He then stated that he was not prepared to meet with Superintendent McLoughlin, or indeed any other members under the command of Chief Superintendent Fitzpatrick, in relation to his complaints. He indicated that his complaints related to the Chief Superintendent who was behind what he called the corruption in the division. Mr. McBrearty demanded that his complaints be investigated by an officer of at least Assistant Commissioner rank.

I explained that Mr. O'Brien was out of the office on business until Monday week, but that I would make a note of the phone call and would ensure that he received this on his return.

\_\_\_\_\_  
Declan Hoban

21st June 2000<sup>46</sup>

- 11.83.** Mr. O'Brien was out of the country at that time. There was a Board meeting scheduled for the 23rd of June 2000. However, he was not in a position to inform the Tribunal whether the Board was informed at that meeting that the summonses had been withdrawn two days previously. Mr. O'Brien did recollect

<sup>46</sup> Tribunal Documents, page 1,339.

that in the light of the withdrawal of the summonses, steps were taken to bring the matter before the Board to see what further directions they might issue in the light of these developments.

- 11.84.** Those directions were ultimately given by the Board at its meeting on the 29th of August 2000. The Board authorised staff members to disclose information in the McBrearty group of complaints to members of An Garda Síochána in the context of sharing information with Assistant Commissioner Carty and his team of investigators. That authorisation was formally recorded in the record of the Board decision dated the 30th of August 2000.<sup>47</sup> It was necessary for the Chief Executive and his staff to obtain this authorisation, which was given pursuant to section 12 of the 1986 Act, because without such authorisation they could not approach the Carty team and indicate to them what areas were of interest to them in the context of the complaints that they were investigating.
- 11.85.** However, by this time, Mr. McBrearty Senior was becoming somewhat agitated by the Board's delay in dealing with his complaints. In a telephone call to Mr. O'Brien on the 3rd of July 2000 he stated that the Board should have made decisions long before then. However, he also went on to say that the Board should obtain further statements in order to fully understand what had happened. He mentioned statements by Sergeant White, Bernard Conlon, William Doherty, Garda O'Dowd and Garda Mulligan. He went on to state that four Dublin detectives had fabricated a statement which was alleged to have been made by his son, Frank McBrearty Junior. He also told Mr. O'Brien that they should look at the statement of Garda Tina Fowley, who had said that she had seen a detective practising the signature of Frank McBrearty Junior.<sup>48</sup>
- 11.86.** On the following day a letter arrived from Mr. Kenneth Smyth, the solicitor acting on behalf of the McBrearty family. He requested that now that the one hundred and sixty or so summonses against the extended McBrearty family had been withdrawn at Donegal District Court, would the Board write to him and advise when the various complaints already lodged with the Board would be likely to come to a conclusion. He ended by asking whether the Board could come to a conclusion in the matter when the "wider issue" remained undealt with.<sup>49</sup> That letter was acknowledged by Ms. Ward on behalf of the Board.
- 11.87.** On the following day Mr. O'Brien spoke to Frank McBrearty Senior on the telephone. He acknowledged having received the letter from his solicitor. He explained to Mr. McBrearty Senior that the Board would now have to consider the wider issue. Mr. McBrearty Senior mentioned that certain facts would have emerged in the District Court hearings and that these would not now be aired in the District Court due to the withdrawal of the summonses. Mr. O'Brien

<sup>47</sup> Tribunal Documents, page 1,165.

<sup>48</sup> Tribunal Documents, page 1,335.

<sup>49</sup> Tribunal Documents, page 1,334.



commented by saying that the wider issue before the Board might be broader than what might have emerged in the course of the District Court hearings, insofar as the Board would have to consider the investigation which had been carried out over the preceding fourteen months or so by Assistant Commissioner Carty in Donegal. Mr. McBrearty expressed his disappointment in the performance of the Complaints Board in dealing with his complaints up to that time.<sup>50</sup>

### **Contact with the Carty Investigation Team**

- 11.88.** Following on the decision taken by the Board at the meeting on the 29th of August 2000 to authorise the divulging of information by officers of the Board to the members of the Carty investigation team, with a view to establishing whether there was any information which that investigation team could give to the Complaints Board which might assist it in its work, it was not until the 29th of March 2001 that a letter was sent by Mr. Hurley to Assistant Commissioner Murphy at Garda Headquarters enquiring whether arrangements could be made to exchange information between the Garda Complaints Board and the various investigations to see if there was any overlap of matters under investigation.
- 11.89.** Mr. O'Brien was unable to explain why that letter was not sent out until seven months after the date of the meeting authorising such liaison. He could only offer as an explanation the possibility that there were a number of different investigations ongoing at that time in addition to the investigation being carried out by Assistant Commissioner Carty, and that it may have taken some time to go through the relevant areas in which to make inquiry.<sup>51</sup> By letter dated the 12th of April 2001 Assistant Commissioner Murphy responded to the Garda Complaints Board indicating that Chief Superintendent Carey should liaise with Assistant Commissioner Carty and with Chief Superintendent Ray McAndrew, who had been appointed to investigate disciplinary allegations arising out of Assistant Commissioner Carty's report.<sup>52</sup>
- 11.90.** By letter dated the 25th of May 2001, Mr. Kenneth Smyth forwarded to the Board a letter that he had received from Mr. Frank McBrearty Senior dated the 23rd of May 2001. In his letter, Mr. McBrearty Senior complained bitterly in relation to the manner in which the Garda Complaints Board was dealing with his complaints. He felt that it was wrong to deal with his complaints as one single group. He wanted to have each individual complaint considered on its merits separately. He went on in the letter to outline his opinion that the Complaints Board should not defer its decision in the matter pending the outcome of any further investigations:

<sup>50</sup> Tribunal Documents, page 1,330.

<sup>51</sup> Transcript, Day 682, pages 86-88.

<sup>52</sup> Tribunal Documents, page 1,289.

... it is also my considered opinion, that the Garda Síochána Complaints Board should deal with the complaints reported to that Board under the specific powers granted to them under the Garda Síochána (Complaints) Act, 1986 and should not refer to (a) proceedings in the District Court and (b) Assistant Commissioner Carty's enquiry. A deferral of further consideration pending the finalisation of any other enquiry defeats the whole purpose of the Board and makes a mockery of the Act itself.

Are they trying to tell us that they will be influenced by a decision of any other enquiry and therefore not come to a proper conclusion in their own right. Surely, the very fact that they were set up in the first place was to investigate, consider and pass judgment on each individual case reported to them without influence brought to bear on that Board from any other source within the Garda Síochána. If so, relying on "Carty", "McAndrew", or anybody else is in any layman's language a wasted exercise and the Chief Executive of the Garda Complaints Board should be made aware of my opinion on said matters immediately.

Yours faithfully,

Frank McBrearty Senior<sup>53</sup>

- 11.91.** That correspondence was considered by the B Side of the Board at its meeting held on the 12th of June 2001. That meeting also reviewed the history of the District Court prosecutions together with the up-to-date position of the inquiries in relation to the Carty and McAndrew investigations. It was noted that the Board was then awaiting the reports of Chief Superintendent Carey and the three other investigating officers following their consultations with Assistant Commissioner Carty and Chief Superintendent McAndrew. It was anticipated that that consultation process would take a further two months to complete.<sup>54</sup>
- 11.92.** In consultation with Mr. McKenna, S.C., Mr. O'Brien forwarded a response to Mr. McBrearty by letter dated the 3rd of July 2001. In that letter Mr. O'Brien set out the basis on which the Board felt that it was correct in the procedure that it had adopted to consider all of the complaints together. It further outlined the basis on which the Board felt that it was necessary to collect as much information as possible that may be relevant to the consideration of those complaints. This involved attendance at the District Court hearings and liaising with the Carty and McAndrew investigation teams to see if they had anything that might be of relevance to the Board's deliberations. The letter concluded by stating that the Board was anxious to progress its consideration of the complaints as soon as possible. It would consider the matter as soon as the information had been obtained from the relevant investigation teams.<sup>55</sup>

<sup>53</sup> Tribunal Documents, page 1,272.

<sup>54</sup> Tribunal Documents, pages 1,219-1,220.

<sup>55</sup> Tribunal Documents, pages 1,215-1,216.

- 11.93. By letter dated the 3rd of July 2001 Superintendent Gallagher, who had been appointed as investigating officer to some of the McBrearty complaints, informed the Board that following his consultation with the Carty and McAndrew investigation teams there was no overlap between their investigation and any of the complaints which he was investigating. By letter dated the 17th of July 2001 Chief Superintendent Carey informed the Board that there was no overlap between the complaints that he was investigating and the investigation conducted by Chief Superintendent McAndrew. Save for some small insignificant areas, there did not appear to be any overlap between the complaints he was investigating and the matters investigated by Assistant Commissioner Carty.<sup>56</sup>
- 11.94. Mr. O'Brien stated that it was his understanding of the correspondence that, while there were some small areas of overlap, they were insignificant. Accordingly, the Complaints Board was now in the situation that it had gleaned as much information as it could from the two avenues of inquiry, being the District Court prosecutions and liaison with the other investigation teams. At that time, the Chief Executive, Mr. Seán Hurley, had been absent from the offices of the Board following a heart attack suffered on the 1st of April 2001. Mr. O'Brien therefore had full responsibility for dealing with the complaints. He set about preparing fresh summaries of the complaints so that they could be re-submitted to the Board for their consideration. This work was begun during the summer of 2001. It was still continuing at the time that Mr. O'Brien effectively commenced his retirement on the 9th of September 2001.

### **Withdrawal of the Complaints**

- 11.95. By letter dated the 11th of October 2001 Mr. Kenneth Smyth, solicitor, acting on behalf of the members of the extended McBrearty family wrote to Mr. John Roycroft, the Chief Executive at the Garda Complaints Board, withdrawing all of the complaints which had been submitted on behalf of the McBrearty group of complainants. That letter was in somewhat emphatic terms:

11th October 2001

Mr. John Roycroft, An Garda Síochána Complaints Board, Block 1, Irish Life Centre, Lower Abbey Street, Dublin 1.

Re: Frank McBrearty and the Extended McBrearty Family

Dear Sir,

As you may be aware, our clients are expected to believe that the campfires are still burning in Donegal, that Assistant Commissioner Carty conducts an investigation, devoid of delay, tactical or otherwise, which

<sup>56</sup> Tribunal Documents, pages 1,201-1,203.

continues to serve some purpose other than damage limitation.

*Ab asino lanam.*

As you are well aware our clients have forwarded many complaints against a small number of Garda officers, over the past four and a half years, not one of which has, thus far, been determined.

The delay of the Board is incomprehensible to our clients given the serious, but straightforward, nature of the complaints concerned and the evidence that Garda stations in Raphoe, Letterkenny, and perhaps elsewhere, became for a time, Garda Síochána Grudge houses (GSGH), some of the Denizens of which are, surely, if rumours of its existence are well founded, members of the esoteric Garda Síochána National Bureau of Underworlders (GSNBU), whose oeuvre if it exists, has resulted in the obloquy of the Garda force in Donegal and elsewhere, athwart the heroic efforts of decent members of the force to uphold the rule of law and to protect our innocent clients from the vile conspiracy of their corrupt colleagues and other, civilian, members of the GSNBU.

For the existence and honourable conduct of these decent members of the force in Donegal and, thankfully, elsewhere, our clients have offered many a Te Deum. If and when it should become possible to reveal the gníomh gasice, den chead scoth, of these fine Garda officers, the reputation of the force will be comprehensively restored.

Unfortunately, our clients have lost all confidence in the capacity of the Garda Complaints Board to conduct a competent and independent investigation of their complaints. If the Board had acted in a timely fashion, our clients have no doubt that they would have been spared years of oppression.

Accordingly, our clients will not be pursuing their complaints before the Garda Complaints Board but will, instead, repose their reliance in juries of their peers in the High Court of Justice.

Yours faithfully,

per pro Binchys

Kenneth Smyth<sup>57</sup>

- 11.96. The receipt of that letter effectively brought to a close the consideration of the McBrearty group of complaints by the Garda Síochána Complaints Board. Some correspondence subsequently passed between the Board and Mr. Smyth, wherein

<sup>57</sup> Tribunal Documents, pages 1,192-1,193.

the table of complaints was set out and Mr. Smyth was asked to confirm that all of the complaints listed had in fact been withdrawn as a result of his letter. He confirmed that the entirety of the complaints lodged by the McBrearty group of complainants were intended to be withdrawn by virtue of his letter dated the 11th of October 2001.

11.97. In his evidence to the Tribunal, Mr. Kenneth Smyth outlined the thinking on the part of his clients which had led to that letter of withdrawal. He began by stating that he and his clients had no particular objection to the decision that had been made in May of 1999 to defer further consideration of the complaints pending, inter alia, the conclusion of the District Court prosecutions. He noted that while Mr. McBrearty Senior was complaining of delay in January 2000 he was also anxious that representatives of the Garda Complaints Board would attend at the District Court, because he felt that important information would be revealed in the course of those hearings.<sup>58</sup> He said that by 2001 his clients had become somewhat frustrated by the delay in the matter. It was for this reason that he forwarded to the Board the letter that he had received from Mr. Frank McBrearty Senior dated the 23rd of May 2001. He said that when he received the response to that letter from the Garda Complaints Board indicating that they felt that it was necessary for them to liaise with the Carty and McAndrew investigation teams, he was happy to hear that such consultation was taking place. While he appreciated that it was yet another delay, he felt that it was not an unwarranted delay. He hoped that it might yield beneficial results for his clients.<sup>59</sup>

11.98. Mr. Smyth stated that he was not happy sending the letter of withdrawal dated the 11th of October 2001. It was not drafted by him. He said that it was drafted by counsel. It reflected the clients' frustration with the Garda Complaints Board, particularly in relation to the two core issues: that the delay on the part of the Board was incomprehensible to his clients and that they had lost all confidence in the capacity of the Garda Complaints Board to conduct a competent and independent investigation of their complaints. He stated that these were not necessarily views that he held at that time. He described the background to that letter in the following way:

*It's not a letter I was happy sending. It's not a letter I would normally send, particularly to people like Mr. O'Brien and I don't want to be too precious about this, but I didn't draft a word of that letter. It's gone out in my name. But I was a little bit embarrassed by it afterwards I think. That's all I'll say ... Look perhaps what I should say is, the way I should put it is that that letter actually was about six weeks I think in its drafting. I know*

<sup>58</sup> Transcript, Day 683, pages 146-150.

<sup>59</sup> Transcript, Day 683, page 161.

*Mr. Giblin probably ran through five or six separate drafts before it went out in that format. Without breaking privilege, I think the feeling was that, look, the clients want to bring this to an end, counsel and the legal team feel it should come to an end and I think the feeling was, well it should end on some very dramatic note and it was written in those terms.<sup>60</sup>*

11.99. Mr. McKenna, S.C., gave his reaction to that letter in the following terms:

*Yes. I have very mixed feelings about that. This was the biggest and a very appropriate matter that ever confronted the Board. In a sense we failed because we couldn't do what I wanted to do, reach a conclusion, which was probably right on fact. We just couldn't and didn't, so to that extent I have to confess failure. The excuses, you can infer them, I am not going to make excuses or whinge about it ... well may I comment on that by saying this, and I have already said it and I am sorry if I am repeating myself: I am very glad, while I am sorry if we couldn't on the powers we had come to a conclusion, I am very glad we didn't come to a wrong one, it probably would have been a very wrong one in this case. I mean, you know and your colleagues in the Tribunal have been most assiduous in looking after the truth and I am sure that while you can't agree, you will at least understand and say how difficult it was confronted with nothing, but a mountain of paper to determine where the truth lay.*

*The Late Mr. Justice McCarthy, very highly esteemed, once said that he objected strongly to the admission of medical reports, he said you are judging the credibility of a doctor on his ability as an author and not as his credibility as a witness. [Anything further to add?]. Nothing, but beyond this: if either any member of the McBrearty family or any individual Gardaí feel they were let down by the Board, I am sorry to hear that. I wouldn't say I apologise, I regret it, but the Board, as in this case and as in always, tried to do the very best they could, I believe.<sup>61</sup>*

### **The Staff of the Garda Complaints Board**

11.100. It would not be possible to give a conclusion as to how the Garda Complaints Board itself dealt with the McBrearty group of complaints without giving an opinion as to the manner in which the staff of the Board dealt with this group of complainants. In this regard, it was primarily Mr. Bryan O'Brien, the Deputy Chief

<sup>60</sup> Transcript, Day 683, pages 162-163.

<sup>61</sup> Transcript, Day 685, pages 44-47.

Executive, who had the job of looking after this group of complaints at the offices of the Garda Síochána Complaints Board. It was he who liaised with the complainants, both in person and over the telephone. He was the person who dealt with any correspondence that was received from the complainants.

- 11.101. The former Chairman of the Garda Complaints Board, Mr. Seamus McKenna, S.C., told the Tribunal that in his opinion the executive officers of the Board, Mr. Hurley and Mr. O'Brien, had been exceptional public servants:

*Indeed, if you don't mind me saying so, Mr. Chairman, without in any way transgressing on your function in evaluating the witnesses you have had, I would like to put it on record that Mr. Hurley and Mr. O'Brien in particular were exceptional public servants, who served a small and under-funded Board way and beyond the call of duty. I trusted them implicitly.<sup>62</sup>*

- 11.102. Given the fact that the complaints were ultimately withdrawn, one might have expected that the complainants and their representatives might have had a different view of Mr. O'Brien and Mr. Hurley. That was not the case. In his evidence, Mr. Smyth indicated that it was his belief that Mr. McBrearty and his other clients had a very favourable opinion of the staff of the Garda Complaints Board and of Mr. O'Brien in particular. He paid them the following compliments:

*... I believe that Mr. McBrearty and the other clients formed a favourable ... a very good impression of Mr. O'Brien after that as well. Without having researched it hugely since, that's the impression I have ... and that continued to be the case without going forward too much, certainly with the individuals we dealt with, Mr. O'Brien, Mr. Hurley and anybody else we dealt with, we found them very courteous, very easy to deal with, very quick to react and to respond. I suppose later, we might deal with perhaps the way the clients might ultimately have felt that their hands were tied by the legislation. I suppose the whole system underpinning the board, of guards investigating guards. I suppose it's fair to say that the clients, most of them had a significant difficulty with that ... Mr. McBrearty can be quite an exacting person, but I got the impression that the Complaints Board passed his test. The individuals passed his test, the legislation underpinning their function didn't pass his test. I think there is a reference there to meeting with the Attorney General so that a better Complaints Board can be set up. I presume what he is talking about presumably there is different legislation, to give it a*

<sup>62</sup> Transcript, Day 685, page 4.

*different start in life ... I think my clients felt as I did, that we were all being met with courtesy and efficiency by the officers from the Board. That would feed back to me through Mr. McBrearty in particular.*<sup>63</sup>

- 11.103. The Tribunal has had regard to the various memoranda and correspondence, and in particular to the respective dates of these documents, in reaching the conclusions that are set out hereunder in relation to the efficiency of the staff of the Garda Síochána Complaints Board.

## **Conclusions**

- 11.104. The Tribunal has heard extensive evidence concerning the complaints which were lodged by members of the McBrearty, McConnell and Quinn families in the period 1997 to 2001. It is satisfied that as a result of the evidence that has been given by the various witnesses and from an examination of the documentation that has been furnished to it by the Garda Síochána Complaints Board, it has been furnished with a full and complete picture of what happened from the time that the first complaints were made at the very end of 1996 right through to the withdrawal of the complaints in October of 2001. In these circumstances, the Tribunal is in a position to make the following conclusions in relation to the efficacy of the handling of the McBrearty group of complaints by the Garda Síochána Complaints Board in the period under review:

1. I am satisfied that in attempting to deal with this group of complaints, the Garda Síochána Complaints Board was attempting to deal with a set of circumstances that was far beyond its capability given the limited nature of its resources and in particular the limited nature of its investigatory powers under the Garda Síochána (Complaints) Act, 1986. The fact that the Garda Síochána Complaints Board did not have investigators of its own was a serious impediment to its ability to deal with the complaints in a meaningful way. I am satisfied that the Garda Síochána Complaints Board did the best that it could within the confines of the limited powers available to it.
2. The apparatus provided for under the Garda Síochána (Complaints) Act, 1986 was never designed to deal with corruption on the scale witnessed in Donegal. I am satisfied that that Act provided a mechanism whereby individual complaints of a relatively minor nature could be dealt with satisfactorily. Given the limited nature of the investigatory tools available to the Complaints Board under that Act, it was highly unlikely that they would ever have been able to get

<sup>63</sup> Transcript, Day 683, pages 128-129, 141, 153.



to the bottom of the corruption and misconduct on the part of Gardaí that was endemic in the Donegal division at that time. This was particularly so given that certain Gardaí were prepared to tell blatant and extensive lies to the investigating officer who was investigating the complaints on behalf of the Board. The Complaints Board cannot be criticised for the shortcomings of the legislation under which it had to act.

3. As already stated, I am satisfied that the decision taken by the Board at its meeting on the 18th of May 1999 to defer further consideration of the McBrearty group of complaints pending the conclusion of the District Court prosecutions and pending the outcome of the Carty investigation, was a reasonable and sensible decision to have taken in the circumstances. Mr. McKenna, S.C. was correct in his analysis of the situation. In essence, he stated that while he did not know at that time the exact extent of the problem that was unfolding in Donegal, he was acutely aware that had the Board embarked on a consideration of the substantive complaints at that time, there was a strong likelihood that they would have reached the wrong conclusion. It was in these circumstances that he and the other Board members decided that it was best to defer reaching a decision in relation to the complaints. In reaching that conclusion they demonstrated a very shrewd analysis of the circumstances. They made the correct decision.
4. It was entirely reasonable of the Complaints Board to decide to await developments that might have occurred in the course of the District Court prosecutions and to await further information that may become available as a result of the ongoing Carty investigation. They were not to know that the District Court prosecutions would continue for a protracted period, without ever reaching a consideration of the so-called 'wider issue'. At the time that they made the decision to defer further consideration of the complaints, the Carty investigation was in its infancy. It would take some considerable time for that investigation team to be in a position to address their inquiries in any meaningful way. It was reasonable for the Complaints Board to await the outcome of that investigation before proceeding further.
5. The Tribunal is aware that there was a seven month period between August 2000 and the end of March 2001 during which there was a delay in contacting Assistant Commissioner Murphy in relation to

setting up a liaison with the various investigation teams. While no definite explanation for this state of affairs has been forthcoming, the Tribunal is satisfied that there was no culpable negligence on the part of the Board or its staff in relation to the delay that occurred during this period. The Tribunal is satisfied that once the responses were received in relation to the areas of overlap between the various investigations, which responses were received in the summer of 2001, there was no undue delay in having the files re-assessed in preparation for re-submission to the Board.

6. The Tribunal was impressed by the evidence given by Mr. Bryan O'Brien. He gave his evidence in a clear and straightforward manner. He answered all the questions that were put to him. The Tribunal is entirely satisfied that he was a committed public servant, who carried out his duties in a diligent manner. One only has to look at the various files to see that they were properly maintained. Memoranda were made of relevant telephone calls and meetings. Correspondence was answered promptly. The Tribunal is satisfied that Mr. O'Brien and the other members of the Board's staff attended to their duties in a workmanlike manner.
7. I am also satisfied that Mr. O'Brien actually cared about what he was doing. He answered many telephone calls from members of the McBrearty family and had face to face meetings with them. He also attended at the District Court hearings in Donegal on a number of occasions. I am satisfied that in so doing, he was motivated by a desire that the Complaints Board would reach the truth in respect of the complaints that had been submitted to it for its consideration.
8. In its annual report for the year 2000, the Garda Complaints Board was strongly of the view that given the pervasive nature of the changes that were required to the complaints system, the most practical approach was to replace the Garda Síochána (Complaints) Act, 1986 rather than to seek to amend it. This was ultimately done by virtue of the Garda Síochána Act, 2005, which established the Garda Síochána Ombudsman Commission. This body has far greater powers and more extensive resources than those that were available to the Garda Síochána Complaints Board. It is to be hoped that the shortcomings in the system that led to the unhappy situation whereby the complaints lodged by the McBrearty group of complainants could not be satisfactorily addressed will not again be experienced by any group of complainants in this jurisdiction.



## CHAPTER 12

### THE EXAMINATION OF SPECIFIC COMPLAINTS

#### Introduction

- 12.01. In total there were sixty one complaints lodged by members of the extended McBrearty family. A number of these complaints were deemed inadmissible. Others did not progress very much beyond the initial stage for one reason or another. The remainder of the complaints went to a full investigation by the investigating officer appointed for each complaint. While the Tribunal had regard to all of the files that had been submitted by the Garda Síochána Complaints Board, it was decided that the best way to deal with the matter was to select a number of complaints from each category and to examine these in some depth. At the same time, however, the Tribunal did have regard to the other complaints by way of general overview.
- 12.02. This chapter sets out those complaints that were selected by the Tribunal for detailed examination. It gives an account of what became of each complaint. These are just a sample of the complaints submitted to the Complaints Board. The reader who wishes to know what became of the other complaints that are not examined in this chapter should look at the Tribunal's website, where The Preliminary Opening Statement of counsel contains a summary of all the complaints lodged with the Complaints Board.<sup>64</sup>

#### Complaints Deemed Inadmissible

- 12.03. At 16.37 hours on the 20th of May 1997, Mark McConnell attended at Raphoe Garda Station, where he made a complaint to Garda Eamonn Earley concerning an incident which he alleged had occurred at Frankie's nightclub on the night of the 16th of March 1997. He alleged that Sergeant White had made gestures with his hands as if he was hitting somebody over the head with an implement. Mr. McConnell took this to be a provocative gesture designed to give the impression that Sergeant White thought that it was he who had struck the Late Richard Barron over the head with some form of weapon. He also complained that Sergeant White barged through the crowd where Mr. McConnell and his friends were dancing and used bad language while so doing. He said that as this was happening, Garda O'Dowd produced his notebook and started writing in it. On the 26th of March 1997 Mark McConnell made a statement setting out his complaints in the matter. He brought this with him when he attended at the Garda station on the 20th of May 1997. Garda Earley took his complaint and recorded it on the form known as a GSC1 form, headed "Notification of Complaint Made at a Garda Station". Garda Earley duly forwarded the form

<sup>64</sup> The Tribunal's website address is: [www.morristribunal.ie](http://www.morristribunal.ie).

along with a copy of Mr. McConnell's statement to the Garda Síochána Complaints Board.<sup>65</sup>

- 12.04. By letter dated the 26th of May 1997, the Garda Complaints Board acknowledged receipt of Mr. McConnell's complaint.<sup>66</sup> On the same date a letter was written to the Superintendent at Letterkenny Garda Station asking him to provide a brief report on the incident so that a decision on admissibility of the complaint could be made by the Chief Executive of the Complaints Board. By letter dated the 10th of June 1997 Inspector Peter Hughes responded to the Garda Complaints Board in the following terms:

Re: Mark McConnell

With reference to the above and your letter of 26th May 1997 I wish to state that the complainant Mark McConnell has made a number of complaints against Sergeant John White. He is an associate of the McBrearty family in Raphoe who has also made complaints against Sergeant White.

Sergeant John White was involved in the investigation of the murder of Richard Barron and which Mark McConnell and the McBreartys were arrested and interviewed.

The premises in question where this incident is alleged to have occurred is owned by Frank McBrearty. There is a disco attached to the premises which attracts a large crowd to same at weekends. Sergeant White and Garda O'Dowd would have been acting in the course of their duty in inspecting this premises for breaches of the licensing laws.

There are High Court proceedings instituted by the McBreartys and McConnell against the Minister for Justice and the Gardaí in relation to the investigation of this member (sic).

Forwarded for your attention please as requested.

Peter Hughes, Inspector<sup>67</sup>

That letter was received by the Complaints Board on the 16th of June 1997. On the following day a member of staff in the office of the Garda Complaints Board spoke to Inspector Hughes on the telephone. The Inspector could not assist any further in the matter. He had not spoken to the members complained of, but had based his report mainly on discussions with a superintendent in Letterkenny, Superintendent Kevin Lennon. Inspector Hughes was on temporary transfer to Letterkenny at the time and was returning to Dublin on the following day.

<sup>65</sup> Tribunal Documents, pages 363–364.

<sup>66</sup> Tribunal Documents, page 358.

<sup>67</sup> Tribunal Documents, page 355.

- 12.05. On the 16th of June 1997 a member of staff in the office recommended that a decision should be made that the complaint was not admissible under the 1986 Act, as the conduct complained of did not constitute an offence or a breach of discipline. On the 20th of June 1997 the Chief Executive, Mr. Hurley, agreed with the recommendation and the formal decision was made to that effect.<sup>68</sup>
- 12.06. By letter dated the 8th of September 1997 Mr. McConnell was informed of the decision that had been reached and of the grounds on which his complaint had been held inadmissible.<sup>69</sup> On the following day, Mr. McConnell telephoned the offices of the Complaints Board in relation to the letter that had been sent to him. He spoke with Mr. Martin O’Flaherty. Mr. McConnell stated that he was very surprised by the Chief Executive’s decision. He was informed that it was open to him to appeal that decision if he wished. He concluded the call by indicating that he would be appealing the decision made by the Chief Executive. However, no appeal appears to have been lodged in the matter.
- 12.07. The next complaint deemed inadmissible by the Complaints Board, on this occasion because it was outside the six month time limit, arose out of the document headed “Points of View”, which had been submitted by Frank McBrearty Senior on the 28th of October 1997. The fifth point in that document stated “I want to know the names of the Gardaí who went to the Barron family and told them that we were the murderers”. At that stage it was not clear whether Mr. McBrearty Senior wished each of the points contained in that document to be treated as complaints. He subsequently confirmed that it was his wish that the Complaints Board should do so.
- 12.08. By letter dated the 10th of November 1997, the procedure in relation to how the Complaints Board would deal with the various complaints contained in that document was sent to Mr. McBrearty Senior.<sup>70</sup> On the 26th of November 1997 in the course of a fairly wide-ranging telephone conversation between Mr. O’Brien and Mr. McBrearty Senior, Mr. McBrearty Senior was asked when the alleged comments had been made by the Gardaí to members of the Barron family. He stated that the conduct in question was probably more than six months prior to that date. It was indicated to Mr. McBrearty Senior that in those circumstances it would probably not be possible for the Complaints Board to deal with his complaint. There was some discussion on the matter. The conversation ended with Mr. O’Brien asking Mr. McBrearty Senior to write to him in relation to that particular complaint.<sup>71</sup> Mr. O’Brien also told Mr. McBrearty Senior that he would be speaking to his solicitor, Mr. Kenneth Smyth, concerning his complaints. On the 28th of November 1997 Mr. O’Brien discussed the matter with Mr. Smyth. It

<sup>68</sup> Tribunal Documents, page 359.

<sup>69</sup> Tribunal Documents, page 352.

<sup>70</sup> Tribunal Documents, page 393.

<sup>71</sup> Tribunal Documents, pages 389-390.

was agreed that Mr. Smyth would take further instructions from his client when he was due to see him on the following Friday.

- 12.09. When no response was received, a reminder letter was sent to Mr. McBrearty Senior on the 16th of December 1997. Early in the following year, Mr. McBrearty Senior sent a fax to Mr. O'Brien responding to his query in relation to his complaint. He stated that four named Gardaí had gone to the Barron family in "early 1997, probably Feb/March, we are not sure of the exact date". In these circumstances, given that the complaint had not been made until the 28th of October 1997, it was held to be inadmissible as being outside the six month time limit provided for under the 1986 Act.
- 12.10. Mr. O'Brien stated that the understanding of the members of the Board itself, and of the executive officers, was to the effect that the six month time limit provided under the 1986 Act was absolutely rigid. He stated that in some of the annual reports issued by the Complaints Board, they recommended that there should be some amendment of the legislation so as to enable the Board to have a discretion to extend the six month time limit in appropriate circumstances. However, their view at the time was that the legislation did not permit them to entertain any complaints that were made more than six months after the event giving rise to the complaint.<sup>72</sup>
- 12.11. The next inadmissible complaint arises out of a letter that was written by Messrs. Binchys, Solicitors, to Mr. O'Brien after his meeting with Mr. McBrearty Senior and other members of the extended family in Raphoe on the 4th of November 1997. In the course of that extensive letter, a number of new complaints were made. One of these was a complaint by Frank McBrearty Junior to the effect that at the time of his arrest in December 1996, his car was unlawfully seized and extensive damage was done to it while in Garda custody.<sup>73</sup> The letter from Binchys, Solicitors, was formally acknowledged by letter dated the 12th of November 1997. They were informed that each of the complaints contained in their letter would be given a separate reference number and would be treated individually. On the same date, a second letter was sent to Binchys, Solicitors, asking them to specify the date on which Mr. McBrearty Junior alleged that his car had been impounded. This had not been stated in the original letter of complaint. A further request for this information was sent by letter on the 16th of December 1997. Reminders were sent on the 4th of March 1998 and the 15th of May 1998. By letter dated the 9th of June 1998, Messrs. Binchys, Solicitors, responded saying that the complaint arose out of the arrest and detention which had occurred on the 4th of December 1996.
- 12.12. A letter was sent to Superintendent Lennon on the 17th of June 1998 asking for

<sup>72</sup> Transcript, Day 683, page 55.

<sup>73</sup> Tribunal Documents, pages 462-464.

a brief report in relation to this matter. Superintendent Lennon replied by letter dated the 22nd of June 1998 confirming that the car had been seized and technically forensically examined as part of the investigation into the death of the Late Mr. Richard Barron. He alleged that this action had been taken in accordance with the provisions of the criminal law and was authorised in High Court judgments. He stated that the file was currently being considered by the Director of Public Prosecutions. He had not issued his decision in the matter at that time. The complaint was ultimately deemed inadmissible on the basis that the conduct complained of had occurred more than six months before the date on which the complaint was made. That decision was made on the 16th of July 1998.<sup>74</sup>

- 12.13. A letter was sent to Messrs. Binchys, Solicitors, on the 3rd of August 1998 informing them of the decision that had been made. They were also informed that the complainant had the right to appeal this decision if he wished. The only further development on the file was that on the 7th of August 1998 Mr. Martin O’Flaherty, a member of the staff, received a somewhat irate telephone call from Frank McBrearty Junior in relation to the decision that had been reached on his complaint. However, the decision deeming the complaint inadmissible was not appealed.
- 12.14. Appeals against a decision deeming two complaints inadmissible were lodged in respect of complaints bearing reference numbers 990619 and 990620. These particular complaints commenced with a letter sent by Messrs. Binchys on behalf of their clients on the 18th of March 1999. They were complaining about two documents that had been created and circulated within the Gardaí in the Donegal division. One was a divisional circular referring to the extended McBrearty family. The other document was a forwarding report by Superintendent Lennon directing that the first divisional circular should be brought to the attention of the various members of various station parties in the division. Copies of the two offending documents were forwarded to the Complaints Board. It was alleged that the documents had only become available to the McBrearty legal team when they were produced in the course of the District Court prosecutions heard in Letterkenny in the month of March 1999. The divisional circular had issued on the 27th of February 1998, with Superintendent Lennon’s instruction having issued on the 20th of March 1998.<sup>75</sup>
- 12.15. An amount of correspondence passed between the Complaints Board and the complainants in an effort to ascertain exactly what complaint they had in relation to the two documents. By letter dated the 1st of April 1999 Messrs. Binchys, Solicitors, indicated that they had heard rumours of the existence of the document for the first time in December 1998. When they requested

<sup>74</sup> Tribunal Documents, page 451.

<sup>75</sup> Tribunal Documents, pages 536-537.



Superintendent Lennon to disclose it in the course of the District Court prosecutions, they alleged that its existence was always denied. They alleged that a number of Gardaí had given evidence in the District Court denying that they had ever seen it. It was eventually disclosed to them on the 10th of March 1999. They submitted that on this basis, the complaint should not be deemed out of time under the six month time limit.

12.16. By letter dated the 25th of June 1999 Messrs. Binchys, Solicitors, were informed that the Chief Executive was of the opinion that the complaints in relation to the two documents were not admissible as they had not been shown to satisfy the requirements of the legislation. In particular, it had not been shown that the conduct complained of would constitute an offence or a breach of discipline. The Chief Executive was of the opinion that the documents referred to in the complaints were internal Garda correspondence and, as such, were not intended for public use. In the circumstances the Board did not propose to take any further action in relation to these complaints. They were informed that if they wished to appeal the decision ruling the complaints inadmissible, they should do so in writing within one month from the date of that letter.<sup>76</sup>

12.17. By letter dated the 30th of June 1999 Mr. Kenneth Smyth wrote to the Complaints Board formally lodging a Notice of Appeal. The grounds of appeal were stated as follows:

... Please note that our client Frank McBrearty appeals against each of these findings on the basis that the circumstances under which the documents complained of came into being were so tainted by the surrounding circumstances of harassment against Mr. McBrearty and the extended Mr. McBrearty family that their very existence and circulation in the Donegal Division was fundamentally tainted and objectionable ...<sup>77</sup>

12.18. By further letter dated the 22nd of July 1999 Mr. Smyth added a further ground of appeal to the effect that they had been reliably informed that the documents, in respect of which complaint had been made, were not only available to members of An Garda Síochána, but were displayed in Garda stations in such a manner that they were clearly visible to members of the general public attending in the public offices of those stations. He alleged that the reality on the ground was that the existence of the document was extremely well known among ordinary members of the public in Donegal. He alleged that it took members of An Garda Síochána approximately six months and approximately five days of questioning in court to even recall that the documents existed, yet alone to produce them.<sup>78</sup>

<sup>76</sup> Tribunal Documents, page 522.

<sup>77</sup> Tribunal Documents, page 520.

<sup>78</sup> Tribunal Documents, page 518.

- 12.19. By letter dated the 12th of August 1999 Mr. Smith was informed that the appeals would be put before the Board at their next meeting. A summary and recommendation was prepared in advance of the matter being submitted to the Board. The salient parts of that document are as follows:

... The complainant's solicitor states that the complainant wishes to appeal on the grounds of the circumstances under which the documents came into being (i.e. the harassment of the McBreartys) makes the existence and circulation of the documents in the Donegal Division fundamentally tainted and objectionable (see page 2).

The solicitors further state in a second letter (page 2A) that they are reliably informed that the documents were readable by general members of the public attending at Garda public offices and was certainly read by civilian members of staff at various Garda stations in the division.

The Chief Executive deemed the complaints inadmissible on the grounds that the documents were internal Garda correspondence and as such were not intended for public use. Superintendent Lennon's letter is marked for Garda use only and confidential. Sergeant White's document is clearly a memo to his superiors giving his observations on the policing of Raphoe. Mr. McBrearty obtained the documents when they were disclosed in the District Court having sought disclosure following rumours of their existence. The documents were never intended to be in the public domain.

It is difficult to see how members of the public could view such documents in the public office unless, for example, they were pinned to a public notice board. It is possible the civilian staff would see such documents, but such staff members would be bound by the rules of confidentiality.

Accordingly, I recommend that the Board decide to confirm the Chief Executive's original decision that the complaints are inadmissible.

Recommendation: confirm the Chief Executive's decision – complaints inadmissible.<sup>79</sup>

- 12.20. The appeals in these two matters came before the Board at the meeting held on the 27th of August 1999. The Board confirmed the decision of the Chief Executive that the complaints were inadmissible. A letter informing Mr. Smyth of that decision on the appeal was sent on the 10th of September 1999. A similar letter was sent to Mr. Frank McBrearty Senior on the 25th of September 1999. By letter dated the 16th of September 1999, Mr. Smyth wrote to the Board indicating that his clients wished to state in the strongest possible terms that they

<sup>79</sup> Tribunal Documents, pages 478-479.

could not understand how the divisional circular which related to the extended McBrearty family could not be deemed to be admissible as a complaint. They felt that this was surprising given the circumstances which they alleged had been shown to have prevailed concerning the treatment of his clients by An Garda Síochána. Mr. Smyth advised the Board that it was his client's intention to continue to raise the matter in the District Court and to bring the matter to the attention of the news media.<sup>80</sup>

### **Conclusion on the Inadmissible Complaints**

12.21. That concludes the examination of the specific complaints that had been deemed inadmissible by the Chief Executive, or on appeal by the Complaints Board. The Tribunal is satisfied that there was nothing arbitrary or capricious in the way that these complaints were handled.

### **Complaints Resulting in a Stalemate**

12.22. The next group of complaints examined by the Tribunal was a group where a number of complaints had been deemed admissible, but for one reason or another did not proceed to a full investigation. This was very often due to the fact that parties would not co-operate with the investigating officer appointed to deal with the complaint, or were unwilling or unable to provide the necessary information to enable the complaint to be properly investigated.

12.23. By letter dated the 30th of June 2000 Mr. Kenneth Smyth submitted a complaint on behalf of Frank McBrearty Junior. This was a complaint against a particular sergeant. I am not going to name the sergeant in this report due to the fact that this complaint did not proceed to an investigation due to the fact that Frank McBrearty Junior would not deal with the person who was appointed as the investigating officer for this complaint. Accordingly, the sergeant was never notified of the complaint, nor was he given any opportunity to respond to same. In these circumstances it would not be fair to name him in this report.

12.24. The essence of the complaint was that while a particular sergeant had indicated to Mr. McBrearty Junior that he wished to speak to him about a complaint that he had made concerning Mr. Paul Barron, it was alleged that the sergeant asked Mr. McBrearty Junior, in front of his three young children, whether he had threatened to kill the said Mr. Paul Barron. Mr. McBrearty Junior complained that this action humiliated him and upset the three children and in particular the eldest girl, who heard and understood every word that was said. It was alleged that this incident brought back memories of the first arrest of Mr. Frank McBrearty Junior, at which she was also present. In the letter of complaint, the solicitor indicated that he had written several letters to the Gardaí indicating that

<sup>80</sup> Tribunal Documents, page 471.

Mr. McBrearty Junior would not make a statement to the Gardaí or speak to them.<sup>81</sup>

- 12.25. The complaint was deemed admissible and Superintendent E.M. McLoughlin of Buncrana was appointed to investigate the matter. By letter dated the 8th of July 2000 the investigating officer wrote to Mr. Kenneth Smyth asking him to have his client contact the investigating officer at his earliest convenience.<sup>82</sup> By letter dated the 21st of August 2000 the investigating officer informed the Complaints Board that Mr. Smyth had been unable to persuade Mr. McBrearty Junior to meet with the investigating officer. By letter dated the 6th of September 2000 the Complaints Board informed Mr. Smyth that if his client wished to have his complaint pursued, it would be necessary for him to contact the investigating officer within three weeks of the date of that letter. By letter dated the 9th of October 2000 the investigating officer informed the Complaints Board that Mr. McBrearty Junior had failed to make contact with him.
- 12.26. There were no further developments on the file until the 12th of April 2001, when Mr. Smyth wrote to the Board enquiring as to the status of the complaint. He was informed by letter dated the 27th of April 2001 that the investigating officer had been unable to proceed with the investigation due to the fact that his client had failed to make a statement or to contact the investigating officer.
- 12.27. The only further development on the file was the preparation of a summary and recommendation drawn up by the Chief Executive in respect of this complaint, and two similar complaints, in respect of which Superintendent McLoughlin had been appointed as the investigating officer. The summary noted that it appeared that a stalemate had been reached with these complaints. The complainant continued to refuse to accept Superintendent McLoughlin as investigating officer. The Chief Executive recommended that a letter should be written to the complainant stating that unless he co-operated with the investigating officer the Board would take no further action in these matters.<sup>83</sup> It does not appear that any such letter was issued prior to the withdrawal of all the complaints by Mr. Smyth on behalf of his clients in October 2001. The last document on the file was the formal recording of the Board decision reached on the 3rd of December 2001: that there should be no further action in the matter due to the complaint having been withdrawn.<sup>84</sup>
- 12.28. A similar stalemate position was reached in respect of two other complaints, being those bearing reference numbers 991013 and 990905, due to the fact that officers from within the Donegal division had been appointed as investigating officers in respect of these complaints. The complainants refused to deal with any

<sup>81</sup> Tribunal Documents, pages 707-708.

<sup>82</sup> Tribunal Documents, page 702.

<sup>83</sup> Tribunal Documents, pages 586-587.

<sup>84</sup> Tribunal Documents, page 458.

officers from within the Donegal division. The Garda Commissioner had been informed of this position, but had refused to change the identity of the investigating officer in these cases.

- 12.29. Mr. O'Brien outlined the problem that was presented in relation to these investigating officers by stating that initially Chief Superintendent Carey from the Mayo division had been appointed to deal with a large number of complaints that had come into the Board in October 1997 and shortly thereafter. However, after some time, it was felt that it would be unfair to burden him with further complaints to investigate. Accordingly, the Commissioner started to appoint officers from other districts from within the Donegal division. Mr. O'Brien outlined the problem that arose at that stage:

*... Now at some stage, and I can't remember when, the investigating officers changed from Chief Superintendent Carey to a small number of superintendents who were from the Donegal division. In some cases the complainants refused to co-operate ... sorry, first of all should I say, first of all the complainants objected to the appointment of investigating officers from the Donegal Division. I think I probably explained at some stage yesterday that the appointment of investigating officers is a matter for the Garda Commissioner under the terms of the Act. In other words, it wasn't the Chief Executive or the Board who appointed an investigating officer, it was the Commissioner and he had delegated that power ... that actually was delegated down to the Chief Superintendent. In other words, the man in charge of the Garda division in which the complaint happened and normally it would be investigated by an officer from another district in that division. Either an inspector or a superintendent.*

*Anyway in this latter small number of complaints people were appointed from the Donegal division, but always of course from a district other than the district in which Raphoe was situated. The practice of the Board when they got an objection to the appointment of an investigating officer was to inform the Commissioner's office of that objection. This applied whether it was Donegal or any other division. That was the practice. The reason for that of course was as I said, the power was in the hands of the Chief Superintendent. Neither the Board nor the Executive of the Board could make a change if a change was to be made, it had to be made by the Garda Commissioner. Now apparently not*

*in that case, but in some of the cases in Donegal where there was an objection, we did write to the Commissioner and say there is an objection to the appointment of this particular man ... in all cases, by the way, it was men ... and left it to him to decide what to do. My recollection is that he did make a change in one case early on, but in these latter ones he didn't. And that was his decision.*<sup>85</sup>

- 12.30. The situation as described by Mr. O'Brien occurred in relation to complaint number 980163. That arose out of a letter forwarded by Mr. Kenneth Smyth to the Board on the 12th of February 1998. He forwarded a letter from Mrs. Patricia McBrearty complaining that on the 9th of February 1998, while she and her husband were bringing their children for the purposes of a medical appointment to Letterkenny General Hospital, two named Gardaí had passed them in a car. The Gardaí stopped some considerable distance ahead and set up a vehicle checkpoint. It was alleged that this was done solely for the purpose of stopping the McBrearty vehicle, so that a summons could be served on Frank McBrearty Junior. It was alleged that the incident caused considerable upset for the two children who were sitting in the back of the car because they had been present in the vehicle with their father at the time that he was arrested on the morning of the 4th of December 1996.<sup>86</sup>
- 12.31. The complainants were informed by letter dated the 27th of February 1998 that their complaint had been deemed admissible. On the 31st of March 1998, the Garda Commissioner appointed Inspector Sullivan from Buncrana as the investigating officer for this complaint. There then followed an amount of correspondence passing between the complainants and the Board due to the fact that the complainants were refusing to deal with Inspector Sullivan because he came from Donegal. This was brought to the attention of the Commissioner. By letter dated the 28th of May 1998 the Assistant Commissioner wrote to the Chief Executive indicating that he did not propose to change the investigating officer in a total of five complaints in which the same situation had arisen, including this particular complaint.<sup>87</sup>
- 12.32. The complainants and their solicitors were informed of the decision made by the Assistant Commissioner. The impasse remained and there was no further development in respect of this complaint. The complainants never actually made a statement to Inspector Sullivan. Due to the impasse, he never got to commence his investigation into the complaints. They were ultimately withdrawn by virtue of the solicitor's letter in October 2001.
- 12.33. Mr. O'Brien's recollection was that Inspector Sullivan had in fact been appointed

<sup>85</sup> Transcript, Day 683, pages 67-68.

<sup>86</sup> Tribunal Documents, pages 878-884.

<sup>87</sup> Tribunal Documents, page 859.

as the investigating officer to deal with the very first complaint lodged, which was the complaint lodged by Patricia McBrearty and Frank McBrearty Junior on behalf of their children arising out of the arrest which had occurred on the 4th of December 1996. While there had been some initial reluctance on their part to deal with him, they ultimately did make statements as part of the investigation into that complaint. However, when the same man was appointed as investigating officer subsequently, the complainants did not have the same attitude and refused to deal with him simply because he was stationed in the Donegal division. Mr. O'Brien's recollection was that the cases in which there had been an impasse were submitted along with all the other complaints to the B Side of the Board at its meeting held on the 18th of May 1999. While the recommendation from the Chief Executive was that a letter should be written to the complainants clearly setting out what would happen if they did not co-operate with the investigating officer, he said that in all probability that letter did not issue because the general decision made was that there should be no further action on the complaints pending conclusion of the District Court prosecutions and the enquiries which were being made of the Carty investigation team.<sup>88</sup>

- 12.34.** The final complaint examined in this category is a complaint made by Mark McConnell. It had been forwarded to the Board under cover of a letter dated the 4th of February 1999 from Mr. Kenneth Smyth. In that letter he enclosed a copy of a four page handwritten statement signed by Mark McConnell in which he made complaints against a number of Gardaí. Effectively it was a complaint against a number of officers; Superintendent Lennon, Detective Sergeant White, Garda John O'Dowd, Sergeant Gerry Carroll and Detective Garda Reynolds, arising out of the so-called 'Silver Bullet' affair following on from the statement made by Mr. Bernard Conlon in July 1998. His main complaint was that the false allegation made by Mr. Conlon had been done at the behest of the Gardaí. He complained that the Gardaí had facilitated, encouraged and caused Mr. Conlon to make that statement. He also complained that they had encouraged him by paying him unwarranted expenses when bringing him to Donegal town to give evidence in the context of the prosecutions against the McBrearty licensed premises.
- 12.35.** Initially, Superintendent Tom Long was appointed as the investigating officer. Mr. McConnell objected to his appointment. He was removed as investigating officer, not due to any complaint by Mr. McConnell, but due to the fact that he was transferring out of the division. Chief Superintendent Carey was appointed in his place. A further problem was posed due to the fact that while Mark McConnell had signed his original statement, he refused to resign the statement in the presence of the investigating officer.

<sup>88</sup> Transcript, Day 633, page 71-72.

- 12.36. Chief Superintendent Carey telephoned Ms. Ward at the Board's offices on the 3rd of December 1999. He said that it was his opinion that it was good practice not to commence an investigation until a signed statement had been obtained. He felt that at this stage the McBrearty group were only concerned with the making of complaints and not with the actual complaints themselves.
- 12.37. It was decided that the matter should be brought before the Board. A summary and recommendation was drawn up. The Chief Executive recommended that the Board should write to Mark McConnell requesting that he sign his statement so that the investigation of his complaints may proceed. On the 21st of December 1999 a letter was sent from the Board to Mark McConnell informing him that the investigation of his complaint could not proceed without a signed statement from him, signed in the presence of the investigating officer. He was informed that if he wished to have his complaint investigated, he should contact the investigating officer within three weeks of the date of that letter, otherwise the Board would be informed of his failure to co-operate with the investigation and would decide what further action should be taken in the matter.
- 12.38. After further correspondence concerning the investigation of the complaint, Mr. McConnell was informed by letter dated the 4th of April 2000 that it was essential that his statement be signed in the presence of the investigating officer. He was told that Chief Superintendent Carey would be in contact with him to arrange for that to happen. If he wished he was allowed to have his solicitor present when he signed the statement.<sup>89</sup> It appears that there was no further communication between Mr. McConnell and the investigating officer. A summary was prepared and it was recommended to the Board that as Mr. McConnell had failed to contact the investigating officer with a view to signing his statements, the Board should decide to constructively withdraw his complaint and that no further action should be taken in the matter.
- 12.39. It appears from the file that on the 10th of April 2000 there was a telephone conversation between Mr. O'Brien and Mr. McConnell, wherein the position was explained to him that he had to make the statement 'live' so to speak and that he could if he wished have his legal adviser present when he signed the statement in the presence of the investigating officer. Mr. McConnell said that he would await hearing from Chief Superintendent Carey. However, it does not appear that anything further was done in relation to the matter. This complaint was part of the block of complaints ultimately withdrawn in October 2001.
- 12.40. Mr. O'Brien's recollection was that out of the total number of complaints admitted, just under half of the complaints did not proceed either because they were declared inadmissible or because there was some element leading to

<sup>89</sup> Tribunal Documents, page 770.



stalemate preventing the investigation being taken further. This estimation of the number of complaints which did not proceed to a formal investigation would appear to be correct based on the documentation available to the Tribunal. It appears that out of a total of sixty one complaints lodged, nineteen were deemed inadmissible and ten ended in a stalemate without proceeding to a full investigation.

### **Conclusion on Complaints Resulting in Stalemate**

- 12.41. Having considered the specific complaints outlined above, together with the documentation concerning other complaints in which the same result ensued, the Tribunal is satisfied that the failure to reach a formal resolution of these complaints was not due to any neglect or wrongdoing on the part of the Garda Complaints Board or its staff. In the majority of the cases in which a stalemate was reached, this state of affairs was caused by the refusal of the complainants to co-operate with the person appointed as investigating officer. In these circumstances, it was the intransigence of the complainants that prevented the complaint being further investigated.

### **Investigated Complaints**

- 12.42. During the evidence given by Mr. O'Brien and Mr. Carey, the Tribunal explored in some detail the investigation of a number of complaints which were submitted by various persons within the McBrearty group of complainants. A number of these complaints arose out of allegations made by the complainants that they were mistreated during their periods of detention at Letterkenny Garda Station in December 1996. While looking at the reasonableness of some of the decisions reached in these complaints, one has to bear in mind that the investigating officer and through him the Complaints Board were being presented with a picture by certain Gardaí that was totally false. This was due to the fact that some of the Gardaí who made statements to the investigating officer told extensive lies in the course of their statements.
- 12.43. It would be easy, but quite wrong, to criticise the investigation with the benefit of knowledge which has subsequently been made available to the Tribunal. This is particularly relevant in relation to the allegations made by Ms. Róisín McConnell and Ms. Katrina Brolly. While it is now known that these complaints were entirely justified, it has to be remembered that at the time these investigations were carried out, the allegations were being strenuously denied by the Gardaí against whom they were made.
- 12.44. The Tribunal accepts the evidence given by Mr. Carey to the effect that in his position as investigating officer, he was not in the same position as he would

have been in the course of a normal criminal investigation. In particular, he was not in a position to probe or cross-examine any of the persons making statements as to the veracity of the contents thereof. He simply had to take whatever statement was proffered to him and furnish it with his comments to the Complaints Board.

- 12.45. Indeed, Mr. Carey stated in evidence that he would have preferred if he did not have to give any opinion in relation to the merits of the complaint. He would have been content to merely collect the evidence and present it in a coherent format to the Complaints Board. However, a circular had been issued by the Garda Commissioner on the 22nd of October 1992, which set out the matters which should be in an investigating officer's report. The salient part of that circular contained the following provisions:

Re: Garda Síochána (Complaints) Act, 1986 -

Investigations Under Section 6 – Guidelines for Investigating Officers

The following guidelines are to be observed by investigating officers appointed under the terms of section 6(1)(a) of the Garda Síochána (Complaints) Act, 1986 when carrying out investigations under the Act.

1. Investigation Reports

(a) What should they contain?

Reports should, where possible, contain the following Information:

1. A heading giving the complainant's name and address, the complaint reference number and the date of the complaint.
2. Particulars of the appointment of the Investigating officer.
3. The name, rank, number and station of each member complained of.
4. A short statement of the substance of the complaint.
5. A summary in chronological order of the events leading to, during and after each incident comprising the complaint as they appear from the statements taken, locations visited, records inspected and other enquiries made during the investigation.

The summary should draw attention to significant differences in versions of events given by different witnesses; it may sometimes be necessary to set down summarises versions of two or more completely conflicting stories.

It may on occasion be necessary to precede the chronological sequence with a short paragraph or two setting the scene if for instance there are special or local factors of relevance of which the Board might not otherwise be aware.

The report should address all of the allegations made by the complainant both in the original complaint and in any statement made subsequently.

6. An opinion on the credibility of each witness who gave a statement, where this is relevant.
7. An opinion as to where the truth lies ...<sup>90</sup>

The circular also contained directions as to what documentation should be attached as part of his report. It also gave advice in relation to carrying out the investigation and in particular advice in relation to what should happen if the complainant refuses to co-operate with the investigation; what should be done if the complainant has nothing to add to their original statement; what should be done if the complaint appears inadmissible and steps to be taken when new allegations are made by the complainant.

- 12.46. It is appropriate now to look at the complaints that were investigated in some detail and in particular to have regard to the opinions expressed thereon by both the investigating officer and the Deputy Chief Executive. However, before coming to the individual complaints, it is necessary to look at the covering report that was furnished by Chief Superintendent Carey. This report was intended to give the members of the Complaints Board an idea of the background and personality of the complainants.

### **The Covering Report**

- 12.47. Chief Superintendent Carey prepared an extensive covering report, which accompanied the individual reports that he had prepared in relation to each of the complaints investigated by him. This was a report which gave a detailed background in relation to each of the individual complainants. It set out the history of how Frank McBrearty Senior had left Ireland as a young man, it went through his work and related matters while he was abroad and went on to give a picture as to how he built up his business in Raphoe from the early days right down to the time of Chief Superintendent Carey's investigation. There was also a detailed background report on Frank McBrearty Junior. The detail given in relation to the remainder of the complainants was not nearly as extensive.

- 12.48. I do not propose to go into any detail in relation to the content of that report.

<sup>90</sup> Tribunal Documents, pages 2,558-2,560

This is due to the fact that much of what was contained therein was highly critical of the McBreartys and of Frank McBrearty Senior and Frank McBrearty Junior in particular. Mr. Carey stated that some of the information contained in the report he was able to verify from his own reading of various files that were made available to him in Letterkenny Garda Station. Some of the other allegations of fact contained in the report were not checked by him. These were pieces of information which had been supplied to him by the senior officers in Letterkenny, in particular Superintendent Lennon and Chief Superintendent Fitzpatrick. It has not been established to the satisfaction of the Tribunal that these allegations of fact were accurate. No checking was done of these facts at the time and no evidence was proffered to establish their veracity before the Tribunal. In these circumstances, I see no purpose in reciting the various matters in this report.

- 12.49. The question which has to be squarely addressed is whether the purpose of that report was to create a bad image of the complainants in the minds of those on the Complaints Board who would ultimately hear and determine their complaints. Mr. Carey vehemently denied that that had been his intention. He gave the following appraisal of his overall investigation:

*[Did you think this investigation should be regarded as a fair and balanced investigation?] I do, yeah. It was an honest assessment of how I saw things at that time. I am absolutely convinced that every shred of evidence that was out there on either side of the debate that I gathered it. Now, evaluating it is another issue like, you know. But I didn't necessarily see myself as ... well I didn't see myself as a decision maker in the same way as I would have in a criminal investigation or a disciplinary investigation where I had quite an amount of experience of dealing with discipline matters under the Garda Síochána Discipline Regulations, I would have seen it, it was a bit different than that ... That's as I say as matters were then. I am sure this Tribunal established certain things that might have found that I wasn't exactly right on everything that I said ... Well, I think it's important to point out as well that I wasn't investigating the organisation in Donegal. I was investigating specific complaints. Now they were related to ... Obviously they were related to other things that happened in Donegal and I would have been aware of that, but it wasn't my brief. I didn't have jurisdiction in the same way as I would have had jurisdiction in my own division.<sup>91</sup>*

- 12.50. Mr. Carey went on to deal with his covering report. He stated that the function of the covering report was to give an account of the individuals' backgrounds

<sup>91</sup> Transcript, Day 684, pages 52-53.

insofar as he was aware of these matters. He stated that his sole determination was to give a full picture of all the information that was available to him, so that it could be put before the Complaints Board:

*Well the way I would look at [it], it's not evidence first of all. I would expect that ... I would have looked on the evidence as being in the statements. There was a separate file on each file away from the covering report. If I was doing a major criminal investigation I would do a covering report and have done and give an account of all the individuals, background insofar as I knew them. In that case I did it there, I obviously relied on information that I got from the Gardaí in Donegal.*

*Well I am not sure I would have been conscious as to where my report was going, but I was in view of everything and what I said at the outset, determined to give a full account of all the information available to me, to the Board. I wasn't quite aware as to how the Board would use my report. But I would have expected that the Board was comprised of legal people, eminent legal people. I would have expected decisions would have been largely based on what was in the statements, the evidence. That's the way I would look at an investigation file, crime or otherwise. What evidence is there to support or rebut a charge.*

*[The background information.] I learned it obviously, I can't say specifically, but obviously from the Guards in Donegal. I wouldn't have known anybody, the Garda side or any of these people. I read the investigation file, perhaps some of it came from that, background material on that. I am not sure about that now. [The Barron investigation file] in the death of Richie Barron, yeah. [The Edmond Moss file] I think I probably did, I think I probably did. Edward Moss was one of the witnesses that I couldn't locate or get to speak to. I think it was relevant to one of the files. He was somebody I didn't, but I think I saw the file which recommended a prosecution of whatever [the information] well I think it would have come from the file and I expect it was Superintendent Lennon or the Chief Superintendent, they were about the only ones I suppose that would have the complete file.<sup>92</sup>*

- 12.51. The significance of the covering report was not just that it existed and contained comments that were highly derogatory and critical of members of the McBrearty family, but that in the individual reports which were prepared by Chief

<sup>92</sup> Transcript, Day 684, pages 55-57.

Superintendent Carey in relation to individual complaints, there was a constant refrain therein to the effect that “this complaint must be viewed in the context of the overall background”. Thus, the reader of the individual files was constantly being referred back to the covering report. I was very concerned about this aspect. I asked Mr. Carey whether the reference in individual reports referring back to the covering report was effectively indicating to the members of the Complaints Board that the complainants were a crowd of blaggards and that they were only making trouble by lodging their complaints. Mr. Carey stated that that was certainly not true.

12.52. The issue arose in the course of the examination of the complaint that had been lodged by Ms. Katrina Brolly, to the effect that she had been grossly mistreated during her period of detention at Letterkenny Garda Station by Sergeant White, Detective Garda Dooley and Garda Joan Gallagher. Each of these Gardaí had made statements to the investigating officer vehemently denying her complaint. Since that time, Mr. White and Mr. Dooley have changed their position. They admitted that the statements they originally supplied were entirely false and that the abuse complained of by Ms. Brolly did occur. While Garda Joan Gallagher maintained her denial right down to the time that she gave evidence before the Tribunal, that evidence has not been accepted by the Tribunal. These were all matters which post-dated Chief Superintendent Carey’s investigation. However, in the context of his covering report on that complaint, he made the comment that the complaint made by Ms. Brolly would have to be looked at in the context of the background report already furnished. I asked him whether that was meant to be an indication that the complainants were disreputable and were only making trouble. He responded as follows:

A. *That is certainly not true. What I meant by that, and if you go back to when I talked about the preparation of the files, when I make a reference like that, I don’t want to have to repeat the same thing in relation to the main file, if you want to look for background. That I was basically referring the reader back to the other file. But I wasn’t, certainly I didn’t have it in my mind that these were a particular shower or anything like that.*

Q. *Chairman: And what was in the main file that bore on this?*

A. *Well rather than ... I was probably conscious of the amount of time that I would have had to write on various things if I went into the background on each.*

Q. *Chairman: I follow. Just describe to me what it was that was in the main file that was necessary to carry in the back of your mind when you were reviewing this complaint?*

A. *Well I can't, at this remove I can't think exactly what was in my mind. There was certainly nothing sinister in my mind.*

Q. *Chairman: But I am sorry to put it in these terms, could you think of anything else that it could mean?*

A. *No, well I certainly wasn't of that mind.*

Q. *Chairman: Can you think of anything else?*

A. *Well maybe it's a comment, that I shouldn't have made or whatever, but I certainly didn't do it with any malice.*

Q. *Chairman: Do you see I am troubled, because if I am reading that afresh, knowing nothing about the case and if I was to go back to the main file and I was to see all those derogatory comments made about the McBrearty family, now I come back here and I say I see you saying - look when you are considering this complaint, go back and remember all that I said about the McBrearty family. To my mind, I am sorry, but one and one makes two and I hope you can persuade me that it meant something different.*

A. *Well that certainly wasn't in my mind. Derogatory comments, the information on the covering report was information that I thought to be true at that time.*

Q. *Chairman: I will grant you that ...*

A. *Yes.*

Q. *Chairman: ... Yes. So what you are saying, there is true information that these are blaggards?*

A. *No, I am not saying that. I believe what I was ...*

Q. *Chairman: Can you tell me what you are saying then?*

A. *Well in relation to this particular point I don't know if*

*I had any clear point in my mind, but I certainly didn't have anything sinister in my mind.*

*Q. Chairman: "Must be viewed in the context of the overall background". What was the overall background?*

*A. I can refer to a report, I have covered everything in it in relation to there seemed to be a coming together or complaints being collated or pulled together, that was possibly what I had in mind.<sup>93</sup>*

12.53. In the conclusion section of the covering report, Chief Superintendent Carey concluded by making a number of points. Firstly, in relation to policing in Raphoe over the years, he said that historically this had left a lot to be desired. One of the appendices to his report contained the discipline file relating to the Sergeant who had served there previously for a protracted period. Chief Superintendent Carey stated that it appeared that Frank McBrearty Senior policed his own premises. Assaults and disturbances were dealt with by him in his own way. Very few were processed through the courts. He went on to note that in recent times there had been a change in policing policy. He stated that he did not believe that that had arisen for the reasons alleged by Frank McBrearty Senior. He said that extra resources and more diligent workers had been assigned to Raphoe. That had been done due to the increased incidences of violence. Because much of that arose out of abuse of alcohol, the liquor licensing laws had received particular attention. He stated that all licensed premises received the same attention. He stated that the various records and documents set out in the appendices to his report supported that conclusion. He finished the report by commenting on the investigation into the death of the Late Richard Barron in the following way:

With regard to the investigation into the death of Richard Barron, I did not find any compelling evidence of abuse of the McBrearty family. I have read the file and I believe there is evidence on the file to show that the Gardaí were on the right track. Whether there is sufficient evidence to charge anyone in respect of the death of Richard Barron is another matter. I don't believe there is. The file is with the DPP.

The file is forwarded for your information.

I am available to brief the Board on detail or any matter they wish to clarify in this investigation.

John Carey,

Chief Superintendent<sup>94</sup>

<sup>93</sup> Transcript, Day 684, pages 107-109.

<sup>94</sup> Tribunal Documents, page 1,787.



### **Conclusions on the Covering Reports**

- 12.54. It is evident from the documentation on the files that Chief Superintendent Carey was met with the 'Blue Wall' of Garda denial in relation to the complaints that had been made. All of the Gardaí denied in trenchant terms all of the complaints made by the various complainants. Some of the complaints were very serious in nature, particularly those relating to the alleged misconduct on the part of the Gardaí towards prisoners detained at Letterkenny Garda Station. Those complaints were denied in the most vehement terms by the Gardaí. Nobody, at that time, admitted the truth.
- 12.55. Superintendent Lennon and Detective Sergeant White had each furnished Chief Superintendent Carey with extensive statements. In those statements they set out a justification of the Garda position in their dealings with the McBrearty family. As already noted, Sergeant White denied in trenchant terms that he had mistreated Róisín McConnell or Katrina Brolly. It appears that the information with which the Chief Superintendent was supplied for the purpose of his background report was supplied by the officers with carriage of the investigation, who had a vested interest in putting forward this line to the Chief Superintendent. In these circumstances, the Tribunal is not surprised that the tenor of the covering report issued by the Chief Superintendent should be in terms that were highly critical of members of the McBrearty family.
- 12.56. The Tribunal is satisfied that the Chief Superintendent was being fed a particular line by many of the Gardaí then serving in the Donegal division. Some of these Gardaí had a strong interest in blackening the names of members of the McBrearty family. They wanted to discredit the complainants, so that their own wrongdoing in the matter might not be exposed. The Tribunal does not blame Chief Superintendent Carey for the content or tenor of his covering report. Given the limitations on the type of investigation being carried out by him under the 1986 Act and the inevitable closeness of his relationship to the Gardaí in Donegal, it would have been almost impossible for him to have ascertained the truth. The Tribunal accepts the evidence given by Mr. Carey that there was no malice on his part in drafting the report in the way that he did.

### **Examination of Selected Complainants**

- 12.57. We now turn to the examination of the sample complaints which were investigated by the investigating officer. In the summaries which follow, the reader will see what investigation was carried out by the investigating officer in

each case, and what conclusion he gave at the end of his report, together with a summary of the recommendation given by the Chief Executive or Deputy Chief Executive. The reader will notice the absence of any decision by the Board on any of these cases. This was due to the fact that consideration of all of the complaints had been deferred by virtue of the decision of the Board taken on the 18th of May 1999. The files were in the course of preparation for re-submission to the Board when the complaints were withdrawn in 2001. This is why some of the summaries which follow appear to end somewhat 'up in the air', without any formal conclusion being reached on specific complaints.

## **Complaints of Frank McBrearty Senior**

### **Incident at a Vehicle Checkpoint**

- 12.58. The first complaint investigated by Chief Superintendent Carey concerning Frank McBrearty Senior arose out of an alleged incident at a vehicle checkpoint at the Diamond, Raphoe at 00.55 hours on the 10th of May 1997. It was alleged that Sergeant White made comments to the effect that the best thing would be for Frank McBrearty Junior to stand on his own two feet and go down to the Barracks and admit to the murder of the Late Mr. Richard Barron. It was also alleged that Sergeant White tried to remove the keys of Mr. McBrearty Senior's car. Chief Superintendent Carey obtained statements from Frank McBrearty Senior, from his daughter Maria McBrearty and from Superintendent Gunther, to whom the McBreartys had complained on the night of the incident.
- 12.59. Responding statements were furnished by Detective Sergeant John White and Garda John O'Dowd. There was also a memo of interview taken from Mr. James McGranaghan, a shopkeeper who lived on the Diamond and who had seen the incident. He told the investigating officers that the Gardai were doing their duty and did nothing wrong as far as he was concerned. Chief Superintendent Carey gave his opinion as follows: "There are conflicting versions of what transpired. The independent evidence, insofar as it goes, supports the Garda version. I don't believe there is evidence to support any action against D. Sergeant White".
- 12.60. Initially this complaint had been deemed inadmissible by the Chief Executive. This had been appealed by Binchys, Solicitors, on behalf of Mr. McBrearty Senior. However, the Garda Complaints Board could not find the original letter. In the first report from the Chief Executive, he then recommended that the complaint be deemed admissible. On the 1st of December 1997 the Board ruled that the complaint was admissible, but the complaint was deferred by virtue of the Board decision made on the 18th of May 1999.
- 12.61. In a second report the Chief Executive stated as follows: "I am of the view that

the balance of evidence is to the effect that McBrearty was acting provocatively and aggressively and accordingly I think it is reasonable to accept Detective Sergeant White's version of events as being the more credible. I recommend that the Board form the opinion that no offence or breach of discipline is disclosed". For an unknown reason there was a further report from the Chief Executive, but he gave the same recommendation to the Board. This complaint was never adjudicated upon, but was ultimately withdrawn in autumn of 2001.

### **Complaints Concerning Mr. McBrearty Senior's Detention**

- 12.62. The second complaint investigated by Chief Superintendent Carey from Frank McBrearty Senior concerned a complaint that he was mistreated during his detention at Letterkenny Garda Station on the 5th of December 1996. When interviewed about the complaint on the 3rd of February 1998, Mr. McBrearty Senior told the investigating officers that the complaints had been made by his solicitors at the time, Messrs. V.P. McMullen & Son, and that they would have to take the matter up with them. Eventually, after a number of efforts to make contact with the solicitors concerned, the following letter was sent by fax to Letterkenny Garda Station for the attention of the investigating officer:

Superintendent John Carey, Garda Station, Letterkenny.

Private and Confidential

Re: Frank McBrearty Senior, Frank McBrearty Junior,  
Mark McConnell and Others

Dear Superintendent [sic] Carey,

We refer to your recent request for a meeting with our Mr. James Sweeney and Mr. James O'Donnell regarding the above mentioned parties. Having considered the matter, however, please note the I do not wish to make any comment or statement regarding complaints made against An Garda Síochána by the above mentioned parties.

Yours faithfully,

James Sweeney V.P. McMullen & Son<sup>95</sup>

- 12.63. In the course of his evidence, Mr. Carey stated that he felt that the sending of these letters was particularly significant. Firstly, the solicitors had indicated to him that they did not wish to contribute to his investigation. He asked them to send this in in writing to him. He informed them that they could do this privately. He noted that while they marked the correspondence "private and confidential" they did not put it in an envelope and bring it around to the Garda station for his

<sup>95</sup> Tribunal Documents, pages 2,115-2,116.

attention, but rather sent it to the general office at the Garda station by means of fax. In this way, the content of the letter would have become known to the persons in the communications office and through them to the station party at Letterkenny Garda Station. He thought that perhaps the solicitors had adopted this method of communication as a way of ensuring that the word would get out that they were not supporting the McBreartys in their complaints against the Gardaí. He thought that the solicitors may have reached that position either because they did not believe that the complaints were genuine, or because they did not want to be seen to be going against the Gardaí in their own locality. Either way, he thought that it was significant that the solicitors would not support the complainants and made their position known in a somewhat public manner.

- 12.64. In relation to this complaint submitted by Frank McBrearty Senior, Chief Superintendent Carey obtained statements from Garda John Rouse and Detective Garda P.J. Keating. He also obtained a copy of the custody record. He stated his opinion in the following terms:

It was clear when we interviewed Mr. McBrearty about this that he had no cause for complaint. He referred us to his solicitors and I believe he did this because he didn't have any complaint. It should also be remembered and it will be clear from this investigation that Mr. McBrearty has kept comprehensive records of his dealings with the Gardaí. I believe that this letter from V.P. McMullen was a routine legal letter about a prisoner in custody. In view of the way it has been dealt with by Mr. McBrearty and indeed his solicitor, I doubt if either, at the time, intended it to be forwarded to the Garda Complaints Board. There is no evidence here.<sup>96</sup>

- 12.65. In a report prepared by the Chief Executive, he stated that it was not clear to what extent the solicitor was making a complaint and to what extent he was merely making points for the record. On the basis of the statements furnished by the two superintendents he was of the opinion that there were grounds for the arrest of Frank McBrearty Senior. The report goes on to state that due to a lack of supporting evidence from Mr. McBrearty Senior in relation to the verbal abuse or harassment, he did not recommend that any inquiry forms be served on members who dealt with Mr. McBrearty Senior while in custody. There being no evidence, he recommended that the Board should form the opinion that there was no offence or breach of discipline involved.
- 12.66. Chief Superintendent Carey also investigated another complaint lodged on behalf of Frank McBrearty Senior concerning his detention at Letterkenny Garda Station. In complaint number 971036 the complaint was contained in a letter from Messrs. V.P. McMullen & Son, which complained that Mr. McBrearty Senior

<sup>96</sup> Tribunal Documents, pages 292-293.

had been interrogated by the Gardaí despite the letter which had issued from Dr. Brian Callaghan and which advised against further interrogation of Mr. McBrearty Senior on medical grounds. As in the previous complaint, when the investigating officer approached Frank McBrearty about the complaint, he referred him to his solicitors at the time, Messrs. V.P. McMullen & Son. Their only response was to send the letter already referred to in preceding paragraphs. The investigating officer obtained statements from Garda Rouse and Detective Garda P.J. Keating and also obtained a copy of the custody record.

- 12.67. Chief Superintendent Carey reached the opinion that, as in the previous matter, Mr. McBrearty Senior did not seem to have any genuine complaint. He believed that the letter issued by his solicitor at the time was a legal one dealing with legal issues surrounding the arrest and detention of Mr. McBrearty. He doubted whether either Mr. McBrearty or the solicitor had intended it as a complaint for investigation by the Garda Complaints Board. He thought that subsequent events seemed to confirm his belief in this regard. He stated that there was no evidence to support this complaint.<sup>97</sup> The Chief Executive noted that neither Mr. McBrearty Senior, nor his solicitor was willing to make a further statement. In his second report, he recommended that no further action be taken by the Board.

### **Complaint of Harassment**

- 12.68. Complaint number 971037 concerned an allegation that Gardaí were actively trying to put Mr. McBrearty out of business. Chief Superintendent Carey contacted Mr. McBrearty Senior, who referred him to his solicitor at the time, Messrs. V.P. Mullen & Son. They refused to make any comment or statement on the matter. A detailed statement was obtained in response from Superintendent Kevin Lennon, and a statement was also obtained from Superintendent John Fitzgerald.
- 12.69. In his report on the matter, the investigating officer noted that the complainant had referred him to the solicitors, but that they were unwilling to assist the investigation. Both Superintendent Lennon and Superintendent Fitzgerald had outlined in detail the difficulties that the Gardaí had with Mr. McBrearty Senior in regard to the licensing laws. Chief Superintendent Carey concluded “there is no evidence to suggest that Mr. McBrearty was unfairly treated in this regard”.<sup>98</sup> There is no report from the Chief Executive on the file. The Complaints Board, at its meeting on the 18th of May 1999, made a decision to defer consideration of this complaint. The complaint was ultimately withdrawn in October 2001.

### **Hoax Bomb Calls**

- 12.70. Chief Superintendent Carey also investigated file number 971120, which

<sup>97</sup> Tribunal Documents, pages 294-295.

<sup>98</sup> Tribunal Documents, page 297.

concerned a complaint by Mr. Frank McBrearty Senior about the length of time that it took the Gardai to investigate abusive and hoax bomb calls which were made to him. Statements were obtained from Frank McBrearty Senior, Ms. Rosalind McBrearty, Sergeant Joseph Hannigan and Detective Sergeant Hugh Smith. The investigating officer expressed the opinion that the matters that Mr. McBrearty Senior complained of had been dealt with. He stated that the telephone calls investigation was inextricably linked to the overall investigation. The speed or urgency involved in relation to the matters in question by the Gardai was a moot point. He stated that there were a number of factors which contributed to the length of time involved. These were dealt with in the main covering report.<sup>99</sup>

- 12.71. In his first report, the Chief Executive stated that investigations were carried out. However, it was not clear whether these were done promptly. Any delay may have been due to the Garda investigation into the death of the Late Mr. Richard Barron. He recommended that the investigating officer be directed to make further enquiries. On the 18th of May 1999 the Board made a decision to defer the consideration of this complaint. In a second report from the Chief Executive he stated that matters had been subsequently dealt with by the criminal investigation. He recommended that the Board should form the opinion that no offence or breach of discipline was disclosed.

### **Delay in Forwarding Complaints**

- 12.72. On the 28th of November 1997 Chief Superintendent Carey was appointed to investigate complaint number 971121, which concerned the failure on the part of the Gardai to forward letters that had been sent by Messrs. V.P. McMullen & Son, Solicitors, to the Garda Complaints Board in December 1996. The investigating officer obtained statements from Frank McBrearty Senior, Sergeant J. Costello, Catherine Friel, Garda Mary McMenamin, Garda Liam Dowd, Superintendent James Gallagher, Superintendent John Fitzgerald, Detective Inspector John McGinley, and letters from the solicitors Mr. James O'Donnell and Mr. James Sweeney.
- 12.73. Chief Superintendent Carey noted that Superintendent Fitzgerald accepted that he did receive the letters and indeed had acknowledged receipt of same. Superintendent Fitzgerald claimed that he did not interpret them as complaints that should be forwarded to the Garda Complaints Board. Chief Superintendent Carey believed that the explanation given by Superintendent Fitzgerald was a reasonable one. He noted that while some allegations of abuse were made in the correspondence, many of the letters were requesting information on legal issues. He said that the only member who might be deemed to be at fault was

<sup>99</sup> Tribunal Documents, page 299.

Superintendent Fitzgerald. However, he believed that his explanation was a reasonable one and was given honestly. He noted that the solicitors' firm had legal knowledge and if they wanted the matters brought before the Garda Complaints Board they could have brought the matter directly to the attention of the Board. He believed that they did not take that step because they did not send the letters intending them to be taken as complaints in the first place. He believed that this was done later at Mr. McBrearty Senior's request when he believed that he had the Gardaí in some trouble.<sup>100</sup>

- 12.74. In his first report on the matter, the Chief Executive did not agree with the opinion put forward by Chief Superintendent Carey or Superintendent Fitzgerald. He regarded the letters as containing complaints that should have been forwarded to the Complaints Board. He was of the view that the non-forwarding of the letters was a serious matter. He recommended that further enquiries be made. On the 18th of May 1999, the Board decided to defer further consideration of the complaint. The Chief Executive, in his second report, noted that upon receipt of the report from the investigating officer in November 1998, he had recommended that further enquiries be made. As nothing was done in the interim, he felt that it would be inadvisable to resume this investigation at this juncture due to the delay that had arisen in dealing with the matter. He therefore recommended that no further action be taken.

### **Defamatory Flyers**

- 12.75. Mr. McBrearty Senior also submitted a complaint in relation to the defamatory flyers that had been circulated in and around Raphoe in March 1997. While he had initially made his complaint about these documents to Sergeant White, he subsequently made a complaint to the Complaints Board that he felt that it was Sergeant White and Garda O'Dowd who had been responsible for circulating the documents. This was strongly denied by the Gardaí.
- 12.76. The investigating officer in his report noted that a full investigation had been carried out by the Gardaí, but that this had been hampered by virtue of the refusal by Mr. McBrearty Senior and Mr. William Flynn to provide any originals of the documents for forensic testing. The investigating officer concluded by saying that there was no evidence as to who the author or distributor of the documents in question may have been. He stated that the Gardaí did carry out an investigation and the evidence on file supported that conclusion. He believed that there was no case to answer by any member of An Garda Síochána in Letterkenny district in relation to this complaint.
- 12.77. The Chief Executive in his first report recommended that further enquiries be made as to whether the investigation was ever finalised and/or the results of

<sup>100</sup> Tribunal Documents, pages 300-301.

same were ever communicated to Mr. McBrearty Senior. In his subsequent report, the Chief Executive said that the matter was investigated by the Gardaí and it must be assumed that the author was not found, as nobody was prosecuted. He recommended that the Board form the opinion that no offence or breach of discipline was disclosed.

### **Further Complaint of Harassment**

12.78. In the course of an investigation into a complaint lodged by Frank McBrearty Senior to the effect that Gardaí were harassing his premises by means of frequent inspections and the mounting of vehicle checkpoints in close proximity to his premises, Chief Superintendent Carey obtained a number of statements, together with a large number of appendices. He obtained statements from Frank McBrearty Senior, John Mitchell, Andy McBrearty, Superintendent Fitzgerald, Superintendent Lennon, Detective Sergeant White and Garda John O'Dowd. He was supplied with copies of the so-called "Mitchell diary", together with a copy of the Garda Inspection Book. He concluded his report, stating "Mr. McBrearty is not alleging that he was prosecuted for offences that were not breaches, but rather that the Gardaí were picking on him and not on others. It is difficult to show or prove that Gardaí were acting even handed in situations like this. What is clear is that McBrearty's premises was badly run. Drug abuse, breaches of public order, assaults and breaches of the licensing laws were common".<sup>101</sup> There is no report from the Chief Executive on this file.

### **Failure to Supply Documents**

12.79. In complaint number 971145, a complaint was made that Superintendent Kevin Lennon failed to supply copies of custody records to Messrs. Binchys, Solicitors, on behalf of Frank McBrearty Senior. In his statement, Mr. McBrearty Senior accepted that he did eventually receive the records. In his opinion, the investigating officer stated that the records were supplied, but that there may have been a delay. He had been unable to establish the relevant dates because neither Mr. Smyth nor Superintendent Lennon had been able to give the precise dates on which the request for the custody records had been made and the dates on which they had been furnished. Chief Superintendent Carey did not recommend that any action be taken against Superintendent Lennon.

12.80. The Chief Executive in his report stated that it was not possible for the investigating officer to pinpoint when exactly the request for the records was made. He was of the view that the custody records should have been provided more quickly. There may have been a minor breach of discipline by Superintendent Lennon. He recommended that Superintendent Lennon should

<sup>101</sup> Tribunal Documents, page 304.



be invited to make representations in the matter. It does not appear from the file that this was done prior to the withdrawal of the complaints.

### **Complaint About a Bomb Scare**

12.81. In a further complaint, Mr. McBrearty Senior complained that Garda Barrett acted inappropriately when he attended at Frankie's nightclub on the 22nd of November 1997 for the purpose of dealing with a bomb scare. Chief Superintendent Carey obtained statements from Frank McBrearty Senior, John Mitchell, Andy McBrearty, Garda Barrett, Garda Doherty, Garda Boyce and Inspector Dunleavy. He came to the conclusion that the Gardaí had acted reasonably on the night. They took the bomb threat seriously and sought to clear the premises. The attitude of the McBrearty family was best exemplified by Inspector Dunleavy in his account. He noted that Inspector Dunleavy was present in Raphoe on temporary duty and could be relied on as an independent and honest witness. He noted also that the complaint was made on the 15th of December 1997, some three weeks after the event. The Chief Executive furnished two reports in the matter, in each of which he recommended that the Board should reach the opinion that no offence or breach of discipline was disclosed.

### **Complaints of Frank McBrearty Junior**

#### **Complaints of Assault**

12.82. Chief Superintendent Carey also investigated three complaints which had been submitted by Frank McBrearty Junior. The first of these was complaint number 971034, which was to the effect that Frank McBrearty Junior had been poked and nudged by the Gardaí while travelling to Letterkenny Garda Station after his arrest on the 4th of December 1996. He also claimed that he had been assaulted in the same manner during his first period of interview at the Garda station.

12.83. Chief Superintendent Carey took a total of nineteen statements in his investigation of this complaint. He also noted that a complaint had been made by the solicitor acting for Mr. McBrearty Junior to the member in charge and that this complaint had been recorded in the custody record. However, for the purpose of this investigation, the solicitors were not prepared to make any further statements on the matter. Chief Superintendent Carey reached the following opinion:

There is a complete conflict of evidence in this case and there is no independent or corroboration evidence other than the note in the custody record. If physical abuse took place, I believe it could only have been very minor in nature. From my dealings with Frank McBrearty [Junior] I do not

believe that he is the type that would be intimidated into signing a custody record that he had no complaint, if in fact he had. He is a strong man physically. He is volatile and quick tempered. He is not likely to have been unduly perturbed by verbal or minor physical abuse. See statement of F. McBrearty at pages 8 and 9. I do not recommend any action against any member of An Garda Síochána.<sup>102</sup>

- 12.84.** The Chief Executive in his report stated that there was only Mr. McBrearty Junior's own word for it that he was ill treated. He noted that there was no medical evidence to back up the claim. On the basis of the investigation, he concluded that there did not appear to be any evidence against any of the members complained of. As the complaint included an allegation of an offence, the file would have to be sent to the Director of Public Prosecutions. In the event that no prosecution was directed, he recommended that the Board should form the opinion that there was neither an offence nor a breach of discipline disclosed.
- 12.85.** In a further complaint, Frank McBrearty Junior alleged that during his detention on the 4th of February 1997 at Letterkenny Garda Station, he had been verbally abused by Detective Sergeant White and Garda John O'Dowd on the way to the station. He also alleged that the same Gardaí had physically abused him in the station and that Garda O'Dowd had punched him in the face. He also complained that his detention was unlawful because he had been arrested for an alleged assault on Mr. Edmond Moss, but had been questioned at length about the murder of the Late Mr. Richard Barron.
- 12.86.** The investigating officer obtained statements from Frank McBrearty Junior, Garda John Rousse, Doctor McFeehily, Dr. McColgan, Mr. Liam O'Donnell, Detective Sergeant White, Garda O'Dowd, Garda Thornton, Detective Sergeant Hugh Smith, and Detective Garda Cullen. He also obtained letters from Mr. James O'Donnell and Mr. James Sweeney, solicitors. In his conclusions, the investigating officer noted that there were differences between the account of Frank McBrearty Junior and his account to a doctor as to his injuries. He noted that Garda Rousse gave clear evidence in his statement that Frank McBrearty Junior had injured himself. The video supplied by Sergeant White was supportive of the Gardaí. He noted that Frank McBrearty Junior was a boxer of some note and would have some insight into head injuries and how they would show up. He noted that as there was a conflict of evidence, it was a matter that may only be resolved before a Tribunal of Enquiry set up under the 1986 Act. He did not believe that there was any evidence to support the allegation that Mr. McBrearty Junior had been wrongfully detained. He concluded by saying that overall, he personally believed that the injuries were self-inflicted.<sup>103</sup>

<sup>102</sup> Tribunal Documents, page 316.

<sup>103</sup> Tribunal Documents, page 318.

- 12.87. In fairness to Chief Superintendent Carey it should be pointed out that on this occasion his investigation had been lied to, not by the Gardaí, but by the complainant himself. Mr. McBrearty Junior subsequently admitted that at least some of his injuries had been self-inflicted. The Tribunal has already rejected his contention that his head was banged off the floor or a table by Garda John O'Dowd on that occasion.
- 12.88. In his report the Chief Executive stated "it comes down to the credibility of the individuals involved. On the basis of the investigation, I regard the Garda version of events as being the more credible". As the complaint involved an allegation of an offence, the file had to be referred to the Director of Public Prosecutions. In the event that no prosecution was directed, the Chief Executive recommended that the Board should decide that neither an offence nor a breach of discipline was disclosed. Thus, in this case, while the investigating officer had recommended that the matter should go before a Tribunal set up under the Act, the Chief Executive was disagreeing with that view and was recommending that the matter should not proceed further in the event that the Director of Public Prosecutions did not institute a criminal prosecution.

### **Complaint of Harassment**

- 12.89. In complaint number 971192, Frank McBrearty Junior alleged that while in Letterkenny, Sergeant White stopped his car and came across the road and alleged that Frank McBrearty Junior had been shouting at him; and then commenced writing in his notebook. Mr. McBrearty Junior alleged that this was harassment, or an attempt to provoke him into committing an offence. Statements were obtained from Frank McBrearty Junior, Patricia McBrearty and Detective Sergeant John White.
- 12.90. In his conclusion, Chief Superintendent Carey noted that this complaint, like the others, had to be viewed with the knowledge of the background as outlined on the main file. He felt that the credibility of the complainant's wife was open to question. He noted that he had spoken to an independent witness on the telephone. The witness said that he recalled that day and said that he had made a statement to the Gardaí that day. However, he could not recall any details when he spoke to Chief Superintendent Carey. The investigating officer had been unable to get a copy of this man's statement. He concluded by saying "There is conflict of evidence here. I am inclined to believe Sergeant White's evidence".
- 12.91. The independent witness had made a statement on the 22nd of October 1997. This was the day on which the event occurred. It appears that this was made available by the time that the file reached the offices of the Complaints Board

because it appears on the file. It supported the Garda version of events. In his report, the Chief Executive stated that Sergeant White's version of events, supported as it was by the statement of the independent witness, seemed more credible. He recommended that the Board form the opinion that no offence or breach of discipline was involved.

## **Complaints of Mark McConnell**

### **Late Service of Summons**

- 12.92. Chief Superintendent Carey also investigated four complaints submitted by Mr. Mark McConnell. In the first of these, Mr. McConnell complained about the late service of a summons upon him by Sergeant White and Garda O'Dowd on the night of the 15th of April 1997. Statements were obtained by the investigating officer from Mark McConnell, Róisín McConnell, Hannah McConnell, Detective Sergeant White, Garda O'Dowd and Sergeant Doherty. He also had regard to extracts from the station diary at Raphoe Garda Station. In his conclusion he stated "Complaint was not made until 14th May 1997. Station Record made on night supports Garda version. I believe the Garda version."
- 12.93. In his report, the Deputy Chief Executive stated "In my view it was at least inconsiderate and perhaps an abuse of authority to call to the house at that hour of the night. I recommend that the Board form the opinion that a minor breach of discipline on the part of the members may be disclosed. They should be invited to make representations under section 7(4) of the Act." It is not clear if this was done as the next correspondence on the file deals with the withdrawal of the complaint.

### **Complaint of Harassment**

- 12.94. In complaint number 97659, Mark McConnell made an allegation that Sergeant White had stared at him on the street in Raphoe on the night of the 7th of July 1997. Chief Superintendent Carey obtained statements from Mark McConnell, Sergeant White, William Logan, Liam O'Donnell and Michael McConnell. He gave the following conclusion in his report: "This complaint lacks any credibility. None of the witnesses agree as to any detail. It will also be noted that one of the witnesses, William Logan, made a similar complaint about an alleged incident earlier in the night".<sup>104</sup> There does not appear to be a report from the Chief Executive on this file.

### **Seizure of Vehicle and Abuse**

- 12.95. Chief Superintendent Carey investigated a complaint by Mark McConnell arising out of his arrest on the 4th of December 1996. He complained about his

<sup>104</sup> Tribunal Documents, page 428,

property, including his car, being taken into the possession of the Gardaí; and that he was told that unless he signed the forms saying that he had no complaints against the Gardaí he would be detained for a further period of twelve hours. He also alleged that he had been continually harassed and abused during his detention. He made a statement to the investigating officer on the 18th of February 1998. His solicitor declined to make a statement in the matter. Responding statements were obtained from Detective Gardaí Tague and O'Malley, Garda Leonard, Detective Inspector McGinley and Detective Sergeant Leheny. All the Gardaí concerned were interviewed and all denied the allegations. Chief Superintendent Carey stated that the custody record showed that Mark McConnell was treated in accordance with the custody regulations. He noted that the prisoner signed the custody record to the effect that he had no complaints. He gave the following conclusion: "There is a direct and irreconcilable conflict of evidence. There is no corroboration for the allegations. The seizure of property and vehicle is covered by D. Sergeant Leheny's statement. I do not recommend any action against any member of An Garda Síochána."<sup>105</sup>

- 12.96. The report of the Chief Executive stated: "There is only McConnell's word for the allegations which he makes. All of the members who had dealings with him strongly deny the allegations. As the allegations concern an offence they must be forwarded to the DPP. If no prosecutions come, I recommend that the Board decide that neither an offence nor a breach of discipline is disclosed".

### **Threats and Inducement**

- 12.97. Chief Superintendent Carey also investigated an allegation by Mark McConnell during his second arrest on the 25th of June 1997: he was offered a "deal" if he would admit to some part in the circumstances leading to the death of the Late Mr. Barron. He also alleged that he had been threatened that in the event that he was assaulted by members of the deceased's family, there would be no Garda protection available for him in Raphoe.
- 12.98. Statements were obtained from Mark McConnell, Cathal Quinn, Solicitor, Garda Nicholson, Detective Gardaí Carey, Maguire and McHale and from the member in charge, Garda William Cannon. The Gardaí denied any impropriety in their dealings with Mr. McConnell that day. The investigating officer reached the following conclusion: "The evidence of Mark McConnell re: allegation of threat of Stephen Barron seems credible having regard to Cathal Quinn's evidence and the custody record. The Gardaí, however, vehemently deny this. The question to be decided, really, was whether this was a breach of discipline".<sup>106</sup>
- 12.99. In his report the Chief Executive stated: "It seems incredible that four experienced

<sup>105</sup> Tribunal Documents, page 330.

<sup>106</sup> Tribunal Documents, page 332.

Garda interrogators would make the type of comments complained of by Mr. McConnell. His story does not ring true”. He recommended that the Board form the opinion that neither an offence nor a breach of discipline was involved. He noted that the solicitor’s complaint on behalf of his client should have been notified to the Board.

## **Complaint of Katrina Brolly**

### **Abuse and Assault During Detention**

12.100. Ms. Katrina Brolly complained that she was grossly mistreated at the hands of the Gardaí during her detention at Letterkenny Garda Station in December 1996. Her allegations were vehemently denied at the time by the Gardaí concerned. In the course of his investigation, Chief Superintendent Carey obtained a statement from Katrina Brolly, together with a letter from her solicitor, Mr. James O’Donnell, indicating that he did not wish to participate in the investigation. He also obtained a statement from Mr. Eunan Brolly. On the Garda side, statements were obtained from Garda Leonard, Detective Sergeant White, Detective Garda Dooley, Garda Joan Gallagher, Garda Tina Fowley, Detective Sergeant Heffernan and Detective Gardaí Herraghty and Tague. In his report he gave the following conclusion: “This like other complaints, must be looked at in the context of the overall background as outlined in the main file. There is no independent evidence. Complaint was not made until some days later and solicitor J. O’Donnell declines to make a statement. I do not recommend any action against any member of An Garda Síochána”.<sup>107</sup>

12.101. In his report, the Chief Executive stated: “There is nothing to support Ms. Brolly’s allegations other than her own statement and the fact that she reported these allegations to her solicitor. I do not find Ms. Brolly’s allegations credible. The Garda version of events seems more plausible”. The matter would have to be referred to the Director of Public Prosecutions. However, the Chief Executive stated that in the event that no prosecution was directed, he would recommend that the Board form the opinion that neither an offence nor a breach of discipline was disclosed.

## **Complaint of Róisín McConnell**

### **Assault During Detention**

12.102. Chief Superintendent Carey also investigated a complaint made by Róisín McConnell that she too had been assaulted and mistreated during her detention at Letterkenny Garda Station on the 4th of December 1996. Statements were obtained from Róisín McConnell and her mother, Anna Quinn. Letters were

<sup>107</sup> Tribunal Documents, page 340.

obtained from Mr. James O'Donnell and Mr. James Sweeney, solicitors, indicating that they did not wish to make any statement. Responding statements were obtained from a number of Gardaí: Detective Sergeant White, Detective Garda Dooley, Garda Lohan, Detective Inspector McGinley, Garda Leonard, Garda Harkin, Detective Garda Scanlon and Garda Gallagher.

- 12.103.** In his report, the investigating officer gave the following conclusion: "This like all the other complaints, must be viewed in the context of the overall background. Statement of complaint differs from complaint lodged by solicitor. Solicitor declines to make a statement. The complaint lodged three weeks after the alleged incident. There are no independent witnesses. Custody record shows no complaint recorded. I don't recommend any action against any member of An Garda Síochána".<sup>108</sup>
- 12.104.** In the course of his evidence, Mr. Carey was asked how he had been able to reach such a conclusion given the stark conflict that appeared on the statements before him. He stated that there were a number of factors which led to the conclusion given. Firstly, he felt it was significant that there was no independent evidence. In particular, the solicitors who had dealt with the complainants both during and immediately after their period of detention were not willing to assist his investigation, or make any statement to it. Secondly, he stated that these were "pretty awful allegations", he candidly admitted that he simply did not believe that any member of An Garda Síochána would have abused women to the degree alleged by the complainants. Thirdly, he stated that he did not feel that the fact that he did not believe the complaint made by the complainants was going to determine the issue. He made the point that he had gathered all of the evidence that was available in respect of each complaint. He had submitted the information to the Board for their consideration. He did not think that his interpretation of the information gathered, or his comments on it, were going to be determinative of any issue that came before the Board.<sup>109</sup>
- 12.105.** The report of the Chief Executive stated that the Garda version of events seemed more credible on the basis of the investigation, than that of the complainant. As an offence had been alleged the file would have to be sent to the Director of Public Prosecutions. In the event that no prosecution was directed, he recommended that the Board form the opinion that neither an offence nor a breach of discipline was disclosed.
- 12.106.** In his evidence, Mr. O'Brien was asked whether he could stand over the recommendation that he had made in relation to the complaint lodged by Róisín McConnell. He explained his position in this way: in preparing summaries for the Board, he was in effect attempting to draw their attention to the salient

<sup>108</sup> Tribunal Documents, page 345.

<sup>109</sup> Transcript, Day 684, pages 113-115.

statements and to any conflicts that arose between various statements and various other documents on the file. Even though he or the Chief Executive would go on to make a recommendation as to what the Board might do, they were always free, having read the original statements, to make up their own mind as to what should be done in relation to any given complaint. In essence, they had three options:(a) make further enquiries in the matter; (b) decide that there should be no further action on the basis that the complaint was unfounded; or (c) decide that the matter should be referred to a Tribunal for determination. However, the ultimate decision always rested with the members of the Board in relation to each specific complaint. In relation to his recommendation in this particular complaint, he said that what was written accurately reflected his feeling at the time that he wrote it.<sup>110</sup>

12.107. Earlier in the course of his evidence, Mr. O'Brien explained his approach to a situation where there was the complainant on one side, but he or she was outnumbered by the number of Gardaí who were denying that the alleged conduct happened at all. In such circumstances, in the absence of corroborative evidence, such as a complaint made to a solicitor during a visit or immediately at the conclusion of the detention period, or evidence from a doctor that he or she found evidence of injury on the complainant, it was very difficult in those circumstances to make a recommendation in favour of the complainant. It was put to the witness that whenever there was an allegation of abuse in custody, there was nearly always going to be a numerical advantage in favour of the Gardaí. The following portion of transcript shows Mr. O'Brien's thoughts in the matter:

Q. *... So you will always have a stacked defence numerically speaking which would be greater than the complainant, just in terms of numbers of statements. Sometimes I suggest to you that the person analysing the statements, the person presenting to the Board, maybe even the Board itself based on what was put before them, would have to sometimes take a risk, or take a more adventurous option and say that notwithstanding that there are four statements denying any mistreatment, we still think that this person has an air of credibility and it should go to a Tribunal where, under cross-examination, the truth may come out, even though it is one against four, or one against three, or whatever.*

A. *Yeah. Well if I may say so, you are assuming there that the Guards would not be telling the truth in the four statements.*

<sup>110</sup> Transcript, Day 683, pages 96-97.



- Q. *Well they were not in this case anyway. We know that?*
- A. *You know that now. And I know it because I have heard it also. But if I am looking at a complaint and I have statements from five people, unless there is evidence there which indicates to me that one or more of them are not telling the truth, I have to accept it that if there is in actual fact four saying that it was this way and there was only one saying that it was another way, I will go with the four.*
- Q. *That would mean the complainant then, particularly if it's a case of physical, but non-injury causing abuse, say for example being shown gory post-mortem photographs, things being said to them, or a type of physical assault that does not amount to an injury, so that there is nothing you can go to the doctor with, then is the complainant always going to lose?*
- A. *I think it is very difficult in that situation for me to come down with a decision that, yes, the complainant is telling the truth rather than the other way around. Remember, I am thinking of a Tribunal and I am thinking of evaluating all of the evidence.*
- Q. *But surely that is an enormous flaw in the system, if it means that a complainant who does not have the means, because there are no witnesses there, to corroborate their version, that they are always likely to lose on paper before the Board?*
- A. *You see it as a flaw, I still say that you have to look at the evidence that is there.<sup>111</sup>*

Mr. O'Brien pointed out that the scenario presented was peculiar to allegations of abuse in custody. The usual type of complaint concerned something that happened outside a Garda station where it was quite common to have evidence from other sources, such as independent witness evidence and occasionally C.C.T.V. tapes.

- 12.108. That concludes the brief analysis of the investigations carried out into the specific complaints that were examined during the hearings of the Tribunal on this sub-module. However, the Tribunal would point out that in reaching the conclusions that are set out hereunder, it has had regard to the totality of the documentation

<sup>111</sup> Transcript, Day 683, pages 25-27.

furnished by the Garda Complaints Board in respect of all the complaints lodged by this group of complainants. It has also had regard to the summaries of those complaints as set out in the Book of Evidence.<sup>112</sup>

## Conclusions

12.109. The following are the conclusions reached by the Tribunal on the basis of the evidence presented to it by the witnesses and on a perusal of all the documentation furnished to it by the Garda Complaints Board. In this regard, the Tribunal is grateful for the extensive discovery that was made by the Garda Complaints Board in the matter. The files presented were in a logical and ordered format. This greatly assisted the Tribunal in its work.

1. The Tribunal is satisfied that Chief Superintendent John Carey undertook an enormous burden of work in carrying out his investigation of the complaints that were referred to him. The Tribunal is satisfied that he approached his task in a diligent and professional manner. It is a credit to both him and to his assistant, Superintendent Pat Ford, since deceased, that this enormous task was completed in the period from the 3rd of February 1998 to the 18th of November 1998. In addition to this work, they also had to deal with the requirements of their own jobs as officers in the Mayo Division. Both men deserve credit for the way in which they got the job done.
2. The Tribunal notes that while the complainants on occasion had difficulty with other persons being appointed as investigating officers in respect of their complaints, they had no difficulty dealing with Chief Superintendent Carey. Indeed, on occasions when they objected to the appointment of a particular officer as investigating officer, they often requested that Chief Superintendent Carey could be appointed in place of the officer in respect of whom objection had been made. I am satisfied that in carrying out his duties as investigating officer, Chief Superintendent Carey dealt with the complainants and with the Gardaí against whom complaints had been made in a dignified and proper manner.
3. The Tribunal notes that in hardly any of the complaints that were lodged was there a finding or recommendation in favour of the complainant by either the investigating officer, or the Chief Executive or the Deputy Chief Executive of the Board. While it might have been unrealistic to expect an actual finding or recommendation in favour of a complainant, particularly when the Gardaí against whom

<sup>112</sup> Tribunal Documents, page 2,435-2,526.

complaint had been made were very often submitting lying statements which vehemently denied any wrongdoing, nevertheless one might have expected that in some cases the investigating officer or the staff of the Board, in preparing their summaries, might have indicated to the Board that there was at least a conflict which should be resolved by the hearing of oral evidence before the Board.

4. Mr. O'Brien stated that such a course was not always available to them because if they were to do that in every case in which there was a conflict between complainants on the one hand and a denial by Gardaí on the other, the system would have completely collapsed due to the fact that they were not equipped to hold numerous Tribunals of Inquiry into the various complaints. I accept that the views expressed by Mr. Carey and Mr. O'Brien in their evidence as to why they reached the opinions that they did in the various complaints, were genuinely held views based on the evidence presented to them at that time. That they were trapped within a system that did not and could not give effective redress to complainants in situations such as this was not their fault.
5. Given the preponderance of the opinions expressed by the investigating officers and the recommendations to the Board given by the Chief Executive and the Deputy Chief Executive, it was little wonder that Mr. O'Callaghan reached the views that he did on reading the documentation. In these circumstances, Mr. McKenna's determination to persuade the Board to defer further consideration of the complaints when they first came before it in May of 1999 showed an appreciation of the situation that was quite remarkable.

### **Final Conclusion**

6. Of the sixty one complaints lodged by what may be termed the McBrearty group of complainants, nineteen were deemed inadmissible. Ten complaints ended in a stalemate, usually due to a refusal on the part of the complainant to deal with the person appointed as investigating officer for the complaint. This left approximately thirty two 'live' complaints. In none of these complaints did the Board get to consider the substantive merits of the complaint prior to their withdrawal in October 2001.
7. I have already held that in making the decision that it did on the 18th of May 1999 to defer further consideration of this group of

complaints until the conclusion of the prosecutions that were then proceeding before the District Court in Letterkenny, and pending inquiries being carried out with the investigation team headed by Assistant Commissioner Carty, the Garda Síochána Complaints Board acted in a reasonable and sensible manner. The District Court prosecutions continued until the 21st of June 2000. The inquiries made of the Carty and McAndrew investigation teams were not completed until the summer of 2001. While it was regrettable that there was a protracted delay in the matter, this was not the fault of the Garda Síochána Complaints Board. It was caused by the complexity of the matter with which they were faced. Quite simply, they did not have the resources or the investigatory tools to enable them to get to the truth of the matter.

8. The Garda Síochána Complaints Board was particularly limited in its investigatory powers. The system of Gardaí investigating Gardaí, particularly when faced by a 'blue wall' of denial from the Gardaí under investigation, was never going to be capable of uncovering the corruption that was endemic in the Donegal division at that time. The investigating officer was severely restricted in the type of investigation that he could carry out under the 1986 Act. He had to accept whatever statements the complainants and the Gardaí were prepared to furnish to him. He could not cross-examine or probe either party on the content of their statements. I am satisfied that due to the statutory framework in which he operated, the investigating officer did not have the power to fully investigate the complaints that were entrusted to him.
9. The investigation carried out by the investigating officer was also limited in terms of the resources at his disposal. Often the investigating officer had to carry out his investigation on his own and in addition to the demands of his ordinary duties. In this case, due to the exceptional nature of this group of complaints, Chief Superintendent Carey had the assistance of Superintendent Ford. It was a huge burden for both men to carry. They did a remarkable job in furnishing the report that they did in such a short period of time.
10. I do not blame the Garda Síochána Complaints Board, or its staff, or the investigating officers for the failure to deal satisfactorily with the McBrearty group of complaints. This failure was caused by the shortcomings in the legislative framework established by the Garda

Síochána (Complaints) Act, 1986. That apparatus simply could not cope with the enormity of the complaints submitted by the McBrearty group of complainants.

## CHAPTER 13

### ALLEGATION OF POLITICAL INTERFERENCE

#### Introduction

- 13.01. On the 20th of June 2001 Mr. Frank McBrearty Senior wrote to Mr. Seán Hurley, the then Chief Executive of the Garda Complaints Board, in relation to a number of matters. The letter contained the following complaint:

(1) It has come to my notice from a most reliable source that one of your colleagues, in the Garda Síochána (Complaints) Board Offices, allegedly, approached Mr. John Bruton, then leader of the Opposition, and requested of him that he try and silence certain members of his party who were endeavouring to bring my case to the floor of the Dáil. Mr. Bruton approached those members of his party and they informed him that they felt there was a great miscarriage of justice carried out against me and a distinct smell of a conspiracy hatched against me and my family and my extended family and they would not rest until accountability and proper justice prevailed. Thanks to them and them alone we are now getting justice, it may be like pulling hens teeth, but we are getting there.<sup>113</sup>

- 13.02. This complaint was introduced in public session during the course of the Tribunal's hearings in a somewhat diluted form during the course of the Anonymous Allegations module. Mr. Frank McBrearty Senior, who represented himself for this sub-module, put the matter as follows to Senator Jim Higgins:

*Q. Well what I can recall of it is that John Bruton was approached in Dundalk by a member of the Garda Complaints Board ... that [Jim Higgins] were to ease off helping the McBrearty family, and extended McBrearty family?*<sup>114</sup>

#### Constituency Meeting

- 13.03. For his part Mr. Bruton did not deny that he had been approached in Dundalk in relation to the McBrearty affair, but denied that he had asked Mr. Higgins to "ease off helping the McBrearty" family.
- 13.04. In February 2000, Mr. John Bruton was the leader of the Fine Gael party, which was then in Opposition. In or around the 25th of February 2000, he attended at Dundalk in his role as party leader. He told the Tribunal:

*I believe that on that day I was visiting Dundalk, not for a whole day as I think I said in my statement, but for part of a day. It*

<sup>113</sup> Tribunal Documents – Garda Complaints, page 1,772.

<sup>114</sup> Transcript, Day 573, page 61.

*consisted of a visit to an industry ... an industry in the town. A brief meeting with a young scientist who came from the town and a lunch in the Windsor Bar...I believe I had a discussion at the lunch on [the McBrearty affair in Donegal] and... Mr. O'Callaghan himself passed the comment or a comment to the effect that Jim Higgins should be careful. I don't exclude the possibility that it wasn't he at all but someone else who passed this remark on. I certainly have met Mr. O'Callaghan on a number of occasions. I may indeed have had a meal with him and it is possible that I allied the two memories, so to speak, of another occasion on this occasion. But my recollection, as best I can, is that in fact he was there himself. But I don't exclude the other possibility.<sup>115</sup>*

### **Mr. O' Callaghan**

- 13.05. The Mr. O' Callaghan referred to by Mr. Bruton was Mr. Dermot O'Callaghan who was at that time a member of the Garda Complaints Board. He was first appointed to the Garda Complaints Board by the then Minister for Justice, Mr. Alan Dukes, in 1987. From that time he served in the Garda Complaints Board until 1992 and was reappointed to the Board in 1997 where he served through to 2002.<sup>116</sup> The role of Board members has already been set out in Chapter 10 of this report.
- 13.06. Mr. O'Callaghan told the Tribunal that he recalled dealing with the McBrearty group of complaints as part of his duties at the Garda Complaints Board. He said that he recalled receiving Chief Superintendent Carey's report together with the relevant files, which had been delivered by members of the Board staff to his home in Dundalk. He had been invited by the then Deputy Chief Executive of the Board, Mr. Bryan O'Brien, to overview the thirty-five complaints. He spent quite a considerable time analysing the complaints and he subsequently summarised his views and committed same to writing, which he made available to Mr. O'Brien. He thought that had occurred sometime in 1999.

### **Background Knowledge**

- 13.07. Mr. Bruton told the Tribunal that he was aware that Mr. O'Callaghan was a member of the Garda Complaints Board. He said that in relation to the McBrearty affair, he was generally aware that Mr. Jim Higgins was pursuing the matter but Mr. Bruton for his part was not following developments closely.<sup>117</sup>
- 13.08. Mr. Bruton also said that he probably did not understand at that stage that the McBreartys had many complaints before the Complaints Board. He said:

<sup>115</sup> Transcript, Day 660, page 17 and 18.

<sup>116</sup> Transcript, Day 660, pages 52 – 53.

<sup>117</sup> Transcript, Day 660, pages 19-22.

*I wouldn't have had a sufficient knowledge of the issue to be aware of you know the detail of the nature of the complaints or the number of complaints.*<sup>118</sup>

- 13.09. Mr. Bruton told the Tribunal that Mr. O'Callaghan was a person whose family he knew for a number of years and he was a person that he held in high regard. Mr. Bruton was aware at that time that the views expressed to him on the 25th of February was information being conveyed to him by a person who he knew to be a member of the Garda Complaints Board, a person who would have been knowledgeable on the topic.<sup>119</sup> When asked by counsel for the Tribunal if he put more substance in the information he received because the person conveying it to him was a member of the Garda Complaints Board, Mr. Bruton had the following to say:

*I did, because I felt that he would be someone who would have more information on the basis of which he could come to a judgement.*<sup>120</sup>

- 13.10. The exchange with counsel for the Tribunal continued as follows:

Q. *Did you view the giving of this information or a view to you as in a sense of being politically motivated, insofar as being a member of Fine Gael and talking to the leader of Fine Gael about a spokesman in Justice, that Mr. O'Callaghan was seeking to influence your approach and Fine Gael's approach through Mr. Higgins to the issue of the McBrearty cases?*

A. *The view I took about this matter was that the view was being expressed to me from the prospective that the Fine Gael party shouldn't do anything that be injurious to the interests of the Fine Gael party, in terms of doing something that would be seen to convey an impression that Fine Gael, as a party which founded the institutions of the State, was in any way undermining unnecessarily or without adequate foundation public confidence in those institutions and that given, if you like, the nature and history of the Fine Gael party, that it wouldn't be in the interests of the party to find itself in that situation, in that sense that was a political observation but I did not consider at any time that I was being put under any pressure at all to do this by anybody. I considered that I was being given the benefit of a consideration that I ought to bear in mind and that that was the basis upon which I conveyed the consideration to Mr. Higgins subsequently.*<sup>121</sup>

<sup>118</sup> Transcript, Day 660, page 23.

<sup>119</sup> Transcript, Day 660, page 23.

<sup>120</sup> Transcript, Day 660, page 26.

<sup>121</sup> Transcript, Day 660, page 27.



## Denial of Conversation

- 13.11. Mr. O’Callaghan told the Tribunal that he never at any stage had any conversation with Mr. John Bruton touching on Mr. Higgins’ involvement with the McBrearty affair. He said that he had established to his satisfaction, from inquiries made with a local councillor, that he was not present at the lunch in the Windsor Bar on the 25th of February 2000. He said that the last occasion on which he met Mr. Bruton was at a Chamber of Commerce lunch sometime around 1993 or 1994 in Ballymascanlon.<sup>122</sup>
- 13.12. Furthermore, Mr. O’Callaghan told the Tribunal that it was a strongly held view of his that political interference in the justice system was totally out of order.<sup>123</sup> With regard to same, Mr. O’Callaghan included the Garda Síochána Complaints Board as being part of the justice system.
- 13.13. However while denying that he ever had such a conversation with Mr. Bruton, Mr. O’Callaghan said that he would have articulated this view of his on various social occasions. In particular, he would have expressed the view that Mr. Jim Higgins’s championing of the McBrearty cause was not acceptable. Mr. O’Callaghan said that the McBrearty affair was a topic of interest at the time and he would have been invited to comment on it at various social functions he attended. Mr. O’ Callaghan assumed that he would have been asked for his views, as it was known that he was a member of the Garda Complaints Board.<sup>124</sup> Mr. O’Callaghan told the Tribunal that he did remember saying to certain members socially that Mr. Higgins was “off side in what he was doing”.<sup>125</sup> Counsel for the Tribunal put the matter as follows to Mr. O’Callaghan:

*Q. [John Bruton] said that it was indicated to him that you have a concern that Deputy Jim Higgins might be going too far or might be going over the top. So ..the view that you did hold at the time seems to accord very much with what Mr. Bruton recalls he was told?*

*A. Well as I said you know numerous times, I do and held that personal view, and I did express it. I did express it to many people during that era, you know.<sup>126</sup>*

- 13.14. I accept that a message was conveyed to Mr. Bruton on the 25th of February 2000 that Mr. Higgins, the then party spokesman for Justice, should proceed with caution in his dealings with the McBrearty cause. In this regard I note the evidence of Mr. Bruton, his diary entries made at the time and the subsequent discussion he had with Mr. Higgins, all matters which are consistent with such a request having been made of Mr. Bruton.

<sup>122</sup> Transcript, Day 660, pages 66-67.

<sup>123</sup> Transcript, Day 660, pages 58-60.

<sup>124</sup> Transcript, Day 660, pages 59-64.

<sup>125</sup> Transcript, Day 660, page 69.

<sup>126</sup> Transcript, Day 660, page 70.

- 13.15. I am not satisfied to conclude that Mr. O’Callaghan spoke to Mr. Bruton on the 25th of February and expressed a view that the actions of Mr. Higgins were not wise. However, bearing in mind Mr. O’Callaghan’s acceptance that what was conveyed to Mr. Bruton coincided with his views on the matter, together with the fact that Mr. O’Callaghan admits that he articulated this view to various party members on social occasions, I accept that the genesis of what was communicated to Mr. Bruton lies in these social conversations of Mr. O’Callaghan’s. Furthermore, I accept that Mr. Bruton understood the information to be coming from Mr. O’Callaghan, a person he could reasonably have expected to have an in depth knowledge of the matter.
- 13.16. I have had the benefit of hearing Mr. O’ Callaghan in evidence in connection with this matter. While I accept that the views expressed by Mr. O’ Callaghan were genuinely held ones I do not regard it as acceptable that individuals appointed by politicians to independent statutory boards proceed to express their personal views in relation to the ongoing work of those boards to members of the political party responsible for their appointment.

### **Subsequent Actions of Mr. Bruton**

- 13.17. Mr. Bruton said that after his day’s outing to Dundalk he had three issues that he had noted down that he needed to do something about.<sup>127</sup> He said that he probably made phone calls about each of those issues and that:

*I believe I made, as I say a phone call to Jim Higgins conveying the caution that had been expressed or the concern that had been expressed.<sup>128</sup>*

*He told the Tribunal as follows:*

*My best recollection of it as I described in the statement I submitted, that I said that I had become aware that there was a concern on the part of Mr. O’Callaghan. I asked Jim Higgins was he satisfied that he had solid grounds for everything he was doing, that he should be careful if he wasn’t. He indicated to me that he had solid grounds for what he was doing. I was satisfied with that. I didn’t ask him to ease off. The conclusion of the conversation was not that he should ease off. My belief is the conclusion of the conversation was that I accepted, having raised the issue concerned with Mr. Higgins, that Mr. Higgins had adequate grounds for what he was doing. That we both left it at that and I*

<sup>127</sup> Transcript, Day 660, page 30.

<sup>128</sup> Transcript, Day 660, page 31.

*understand Mr. Higgins proceeded to deal with the matter as he had previously been dealing with it.*<sup>129</sup>

- 13.18. While Mr. Higgins did not initially remember any such approach by Mr. Bruton when the matter was first raised in the Tribunal he subsequently corrected this position and said that Mr. Bruton had asked him to ease off in helping the McBrearty family and extended McBrearty family.<sup>130</sup> He did not challenge Mr. Bruton's evidence on the matter to the Tribunal.
- 13.19. I accept that the approach of Mr. Bruton, as described by him, to Mr. Higgins could reasonably be interpreted by Mr. Higgins as a request to 'ease off'. While in retrospect it may have been wiser for Mr. Bruton not to have approached Mr. Higgins, given that he did not have an in depth personal knowledge of the 'McBrearty affair', I do not believe, given the fact the he understood that he was receiving relevant information from an informed source, that he should be criticised for his actions.

### **Reaction of the Garda Complaints Board**

- 13.20. In the absence of Mr. Hurley, who was then the Chief Executive of the Garda Complaints Board, Mr. McBrearty Senior's letter of the 20th of June 2001 was passed to Mr. Bryan O'Brien, the Deputy Chief Executive of the Board. After the Board meeting on the 29th of June 2001 Mr. Bryan O'Brien discussed Mr. McBrearty Senior's letter with Séamus McKenna S.C., the then Chairman of the Board. Following on same a letter was sent to Messrs. Binchys, Solicitors on the 9th of July 2001<sup>131</sup> in which Mr. O'Brien asked that the Board be provided with the name of the person who allegedly approached Mr. Bruton and when and where this approach had taken place. Further letters were sent to Messrs. Binchys, Solicitors on the 9th of August 2001<sup>132</sup>, 12th of September 2001<sup>133</sup> and 22nd of October 2001.<sup>134</sup> Ultimately the name of the person alleged to have made the approach to Mr. Bruton was never provided to the Garda Complaints Board by Mr. McBrearty Senior or his representatives.
- 13.21. By letter dated the 25th of June 2001, Mr. Kenneth Smyth of Binchys Solicitors, who at that time acted for the extended McBrearty family, forwarded a copy of Mr. Frank McBrearty Senior's letter of the 20th of June 2001 to the then Minister for Justice, Equality and Law Reform Mr. John O'Donoghue, T.D.<sup>135</sup>
- 13.22. In turn, on the 5th of July 2001 the Minister for Justice, Equality and Law Reform wrote to the Mr. McKenna, S.C. stating that:

<sup>129</sup> Transcript, Day 660, page 31.

<sup>130</sup> Transcript, Day 573, page 61.

<sup>131</sup> Tribunal Documents – Garda Complaints, page 1,744.

<sup>132</sup> Tribunal Documents – Garda Complaints, page 1,735.

<sup>133</sup> Tribunal Documents – Garda Complaints, page 1,731.

<sup>134</sup> Tribunal Documents, page 1,727.

<sup>135</sup> Tribunal Documents – Garda Complaints, page 1,749.

The penultimate paragraph of the letter contains an allegation that a member of the staff of the Board approached Deputy John Bruton in an effort to prevent members of the Fine Gael Party from raising certain matters in Dáil Éireann.

You will appreciate that, if substantiated, Mr. McBrearty's allegation of interference in the political process by an official of the Board would have serious implications for the integrity and operation of the Garda Complaints system. Moreover, the question of disciplinary action against the person concerned would also arise and this is an aspect in which I could have a role under the Terms of the 1996 Complaints Act.

In the circumstances I would be grateful if you could inform me of the steps being taken by the Board to enquire into the allegation and of the outcome of any such enquiry. Given the nature and importance of the relevant issues, I would appreciate an early response on the matter.<sup>136</sup>

- 13.23. The matter was further discussed between Mr. Bryan O'Brien and Mr. McKenna S.C. following the Board meeting of the 11th of July 2001. On the same date Mr. McKenna, S.C. sent a letter to the Minister for Justice, Equality and Law Reform where he reported as follows to the Minister:

This allegation was discussed with me following our last Board meeting on the 29th of June and I instructed the Deputy Chief Executive, Mr. Bryan O'Brien, to write to Mr. McBrearty's solicitors emphasising the seriousness of the allegation, and the need to have the matter fully investigated. To facilitate an investigation we have asked Mr. Binchys if their client would provide us with the name of the person who allegedly approached Mr. Bruton and when and where this approach took place. In due course I shall be writing to Mr. Bruton seeking any assistance he can give me on the matter.

You may take it that I completely agree with the concerns expressed on paragraph 3 of your letter and will do everything I can to ensure that the matter is, if possible expeditiously resolved. I am determined that this allegation will be fully and impartially investigated. To this end I will be in touch again with you in the near future when I hope to be in a position to outline how the Board intends to proceed. Full account will be taken of your role under the Garda Síochána (Complaints) Act, 1996.<sup>137</sup>

- 13.24. Mr. McKenna, S.C. explained to the Tribunal as follows:

**A. *The then Minister for Justice wrote to me and I wrote to Mr.***

<sup>136</sup> Tribunal Documents – Garda Complaints, pages 1,747 – 1,748.

<sup>137</sup> Tribunal Documents, pages 1,742-1,743.

*Bruton ... I definitely commissioned Mr. Hurley and/or Mr. O'Brien, I can't remember who was handling it at the time, to investigate their staff because I was perfectly satisfied to rely on them. If they found that a member of staff had been unwittingly indiscreet or improper in any way that they would report that to me, even though they mightn't enjoy doing so. I myself raised it at a Board meeting and apart from that spoke I think to every individual member of that section of the Board. I got their assurances and decided as a matter of probability it was something ... a witness before this Tribunal who gave evidence was misinterpreted or misconstrued the effect of what he was trying to do... I believe that Mr. O'Callaghan may have been trying to prevent, not in any way improperly, a member of the Dáil from getting egg on his face on the basis of a wrong approach.<sup>138</sup>*

13.25. Following a Board meeting, on the 5th of November 2001, Mr. McKenna, S.C. in the company of Mr. John Roycroft, the Deputy Chief Executive of the Garda Complaints Board, approached Mr. Dermot O'Callaghan. Mr. McKenna, S.C. asked Mr. O'Callaghan whether he was the person referred to as having approached John Bruton. Mr. O'Callaghan's attitude to Mr. McKenna was on all fours with his reply to the Tribunal inquiries in respect of this matter.

13.26. The memo of that conversation records as follows:

Mr O'Callaghan said he did not at any stage say anything to John Bruton about this case and in fact has not spoken to him for about two or three years. He did, however, remark or make a statement that he felt it was wrong that politicians should be making public comments about it.<sup>139</sup>

13.27. Mr McKenna, S.C. also wrote to Mr. Bruton seeking information as to whether any member of the staff or a member of the Board had made contact with him in the manner described in the allegation.<sup>140</sup> Mr. Bruton replied as follows on the 21st of August 2001:

Dear Chairman,  
  
Thank you for your letter of 23rd July.  
  
No member of the Garda Complaints Board asked me to silence members of my party endeavouring to bring this case to the floor of the Dáil.  
  
Yours sincerely,  
  
John Bruton T.D.<sup>141</sup>

<sup>138</sup> Transcript, Day 685, pages 49-50.

<sup>139</sup> Tribunal Documents, pages 1,725-1,726.

<sup>140</sup> Tribunal Documents, page 1,738.

<sup>141</sup> Tribunal Documents, page 1,732.

13.28. Mr Bruton was questioned about this reply by counsel for the Tribunal:

*Q. ... It's a very direct response and would appear to suggest that you weren't approached by anyone on the Garda Complaints Board?*

*A. No. It doesn't suggest that. It simply suggests that I wasn't asked by any member of the Garda Complaints Board to silence any member of my party in bringing the matter up. I was simply answering the question I was asked ... I think I would have felt that if I started to expand on the matter that I would in some way indirectly suggesting by giving additional information that in fact there was a possibility that someone had asked me to silence Mr. Higgins. Nobody asked me to silence Mr. Higgins. And I didn't want to give any legs to that statement or that suggestion.<sup>142</sup>*

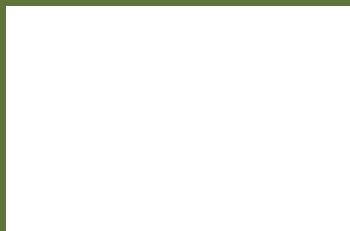
13.29. No further information was made available to the Garda Complaints Board about the matter. Mr. McKenna S.C. told the Tribunal that:

*When I got that letter I would already have spoken to Mr. O'Callaghan and would have formed my own conclusion or drawn my own inferences as to what had happened.<sup>143</sup>*

13.30. I am satisfied that the Garda Complaints Board, having received Mr. McBrearty's complaint investigated the matter promptly and thoroughly. Given the limited powers available to the Board, they brought the matter as far as they could.

<sup>142</sup> Transcript, Day 660, pages 40-42.

<sup>143</sup> Transcript, Day 685, Page 53



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