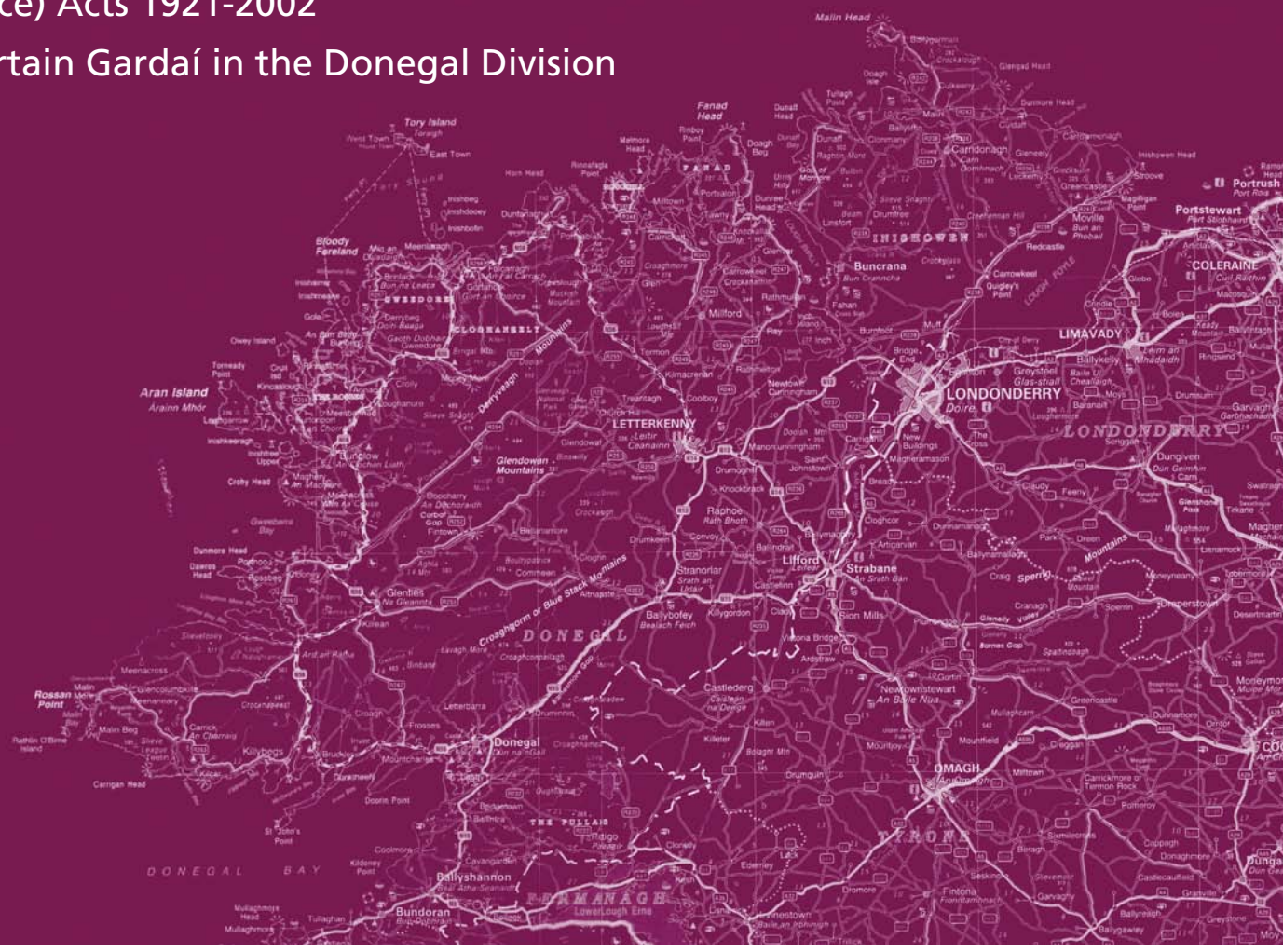
Report of the Tribunal of Inquiry

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 ON THE DETENTION OF 'SUSPECTS' FOLLOWING THE DEATH OF THE LATE RICHARD BARRON ON THE 14TH OF OCTOBER 1996 AND RELATED DETENTIONS AND ISSUES

Term of Reference (b), (d) and (f)

VOLUME 1

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C11. Letter to Mr. David Walley, solicitor, enclosing correspondence sent to Mr. Frank McBrearty Junior by the Tribunal in respect of this matter. 1373

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Tribunals of Inquiry
Established by Instrument
Dated 24th April, 2002.

Belfield Office Park,
Beaver Row,
Clonskeagh,
Dublin 4,
Ireland.
Tel: 01 - 260 1111
Fax: 01 - 260 1122

Mr. Justice Frederick Morris

REP003-06/FM/NT

Thursday, 13th March 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 of Terms of Reference (b), (d) and (f). These are respectively:

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

(d) The circumstances surrounding the arrest and detention of Mark McConnell on 1st October, 1998 and Michael Peoples on 6th May, 1999; and

(f) The circumstances surrounding the arrest and detention of Frank McBrearty Jnr. on 4th February, 1997 and his subsequent prosecution in the Circuit Criminal Court in relation to an alleged assault in December, 1996 on Edward Moss with particular reference to the Garda investigation and the management of both the investigation and the role of the Gardaí in the subsequent prosecution.

As previously indicated, the second report of the Tribunal dealt with the investigation into the death of the Late Mr. Richard Barron and the progress, management and effectiveness of the Garda investigation with particular reference to the management of informants. It was the intention of the Tribunal to revert to the balance of this Term of Reference concerning the treatment of persons in custody in connection with that investigation at the earliest possible opportunity. For various reasons it was necessary to postpone the consideration of that aspect of the Term of Reference. This report deals with these important matters. Similarly, though the Tribunal has already reported in relation to substantive issues concerning Term of Reference (d), circumstances did not permit the Tribunal to conclude its work in respect of the actual arrest and detention of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999. This report also deals with the several arrests and detentions of Mark McConnell and Michael Peoples covered by Terms of Reference (b) and (d).

Mr. Frank McBrearty Junior was arrested twice by the Garda Síochána on the 4th of December 1996 and the 4th of February 1997 in relation to an alleged assault on Mr.

Edmond Moss in respect of which he was later tried and acquitted. The Tribunal considered that the most efficient way of dealing with the issues concerning the arrest and detention on the 4th of February 1997 was to hear all evidence in relation to that matter, together with the arrest and detention of Mr. McBrearty on the 4th of December 1996. This report, therefore, covers all issues concerning Term of Reference (f).

As you are aware from previous reports, 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 16th of May 2007, the Tribunal wrote to Inspector Declan Downey at the Garda Liaison Office to the Tribunal, with a view to ascertaining whether it was reasonably possible or probable that criminal proceedings might be brought arising out of the circumstances which are the subject matter of these modules. Chief Superintendent McGinn replied on the 2nd of July 2007. I enclose a copy of this correspondence. From her letter it is clear that the Garda Síochána are not conducting any criminal investigations in relation to any matter arising out of Terms of Reference (b), (d) and (f) concerning the arrests and detentions of suspects following the death of the Late Richard Barron. In addition, there are no outstanding files currently with the Office of the Director of Public Prosecutions awaiting consideration.

The Tribunal is aware that criminal proceedings in relation to matters concerning Term of Reference (d) arising out of the "Silver Bullet" module concerning events which led to the arrest of Mr. McConnell on the 1st of October 1998 and Mr. Peoples on the 6th of May 1999 have been concluded. In addition, criminal proceedings initiated in relation to the alleged assault on Edmond Moss have also concluded with the acquittal of Mr. Frank McBrearty Junior and others.

The Tribunal has now concluded all of its oral hearings in respect of each of its ten Terms of Reference and is now preparing its final two reports in respect of Term of Reference (c) concerning allegations of harassment of the McBrearty family, its relatives and associates and agents by members of An Garda Síochána and Term of Reference (j) concerning the effectiveness of the Garda Síochána complaints inquiry process, and Term of Reference (h) concerning allegations contained in documents received by Deputy Jim Higgins on the 25th of June 2000 and information received by Deputy Brendan Howlin on the 25th of June 2000, that two senior members of An Garda Síochána may have acted with impropriety.

Yours faithfully,

Frederick Morris

Frederick Morris

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

An Garda Síochána

Ard-Cheannfoirt
Leitir Ceannainn
Condae Dhún na nGall

Tel / Teileafon: (074) 9167111
Fax / Facs: (074) 9128452

Please quote the following Ref. Numbers:

Chief Superintendent
Letterkenny
Co. Donegal

Web Site: www.garda.ie
E-mail: csdon@iol.ie

Mr. Hugh Dockry,
Solicitor to the Tribunal of Inquiry,
Belfield Office Park,
Beaver Row,
Clonskeagh,
Dublin 4.

Re: Tribunal of Inquiry into Certain Complaints Concerning some Gardaí in Donegal. Modules (B), (D) and (F) - Arrests and Detentions of Suspects following the Death of the Late Richard Barron on the 15th October 1996 and Related Issues - Actual or Potential Criminal Proceedings.

A Chara,

I refer to your correspondence of the 16th ult in the above matter and I wish to advise as follows:

As of 29th June 2007, An Garda Síochána are not conducting any criminal investigations in connection with the above modules. Furthermore, there are no outstanding files currently with the Office of the Director of Public Prosecutions awaiting consideration.

Is mise le meas,

TERRY MCGINN.
Chief Superintendent.

02 July 2007

MORRIS TRIBUNAL
- 5 JUL 2007

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

Belfield Office Park,
Beaver Row,
Clonskeagh,
Dublin 4,
Ireland.
Tel: 01 - 260 1111
Fax: 01 - 260 1122
DX Number: 208

Sole Member
The Honourable Mr. Justice Frederick Morris

My Ref: **MT/GDA/MCG010-01/HD/NT** Your Ref: If telephoning please ask for:-

16th May 2007

PRIVATE AND CONFIDENTIAL
STRICTLY ADDRESSEE ONLY
Inspector Declan P. Downey
Liaison Officer
Garda Liaison Office
c/o Morris Tribunal
Belfield Office Park
Beaver Row
Clonskeagh
Dublin 4

Re: Modules (b), (d) and (f) - Arrests and Detentions of "Suspects" following the death of the Late Richard Barron on the 15th of October 1996 and related detentions and issues – Actual or Potential Criminal Proceedings

Dear Inspector Downey,

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

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

(d) The circumstances surrounding the arrest and detention of Mark McConnell on 1st of October 1998 and Michael Peoples on 6th of May 1999;

(f) The circumstances surrounding the arrest and detention of Frank McBrearty Jnr., on the 4th February 1997 and his subsequent prosecution in the Circuit Criminal Court in relation to an alleged assault in December, 1996 on Edward Moss with particular reference to the Garda investigation and the management of both the investigation and the role of the Gardaí in the subsequent prosecution."

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

> ***"(1) If, on receipt by the person to whom a tribunal is required, by the instrument by which it is appointed or any instrument amending it, to report of an interim or the final report of the tribunal, that person considers that the publication of the report might prejudice any criminal proceedings, that person may apply to the Court for directions regarding the publication of the report.***
>
> ***(2) Before the Court determines an application under subsection (1), it shall direct that notice of it be given to—***
>
> ***(a) the Attorney General,***
>
> ***(b) the Director of Public Prosecutions, and***
>
> ***(c) a person who is a defendant in criminal proceedings relating to an act or omission that—***
>
> ***(i) is described or mentioned in the report concerned, or***
>
> ***(ii) is related to any matter into which the tribunal concerned inquired and which is so described or mentioned,***
>
> ***and the Court may receive submissions, and evidence tendered, by or on behalf of any such person.***
>
> ***(3) On an application under subsection (1) the Court may, if it considers that the publication of the report concerned might prejudice any criminal proceedings, direct that the report or a specified part of it be not published —***
>
> ***(a) for a specified period, or***
>
> ***(b) until the Court otherwise directs.***
>
> ***(4) An application under subsection (1) may be heard otherwise than in public if the Court considers that it is appropriate to do so."***

In the event that the Tribunal is in a position to furnish a report to the Minister within the next 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 (b), (d) and (f) as set out above. In this regard, we draw your particular attention to the events which are the subject matter of the forthcoming Report namely:

(i) The arrests and detentions of Michael Peoples on the 4th of December 1996 and the 6th of May 1999;
(ii) The arrest and detention of Róisín McConnell on the 4th of December 1996;
(iii) The arrests and detentions of Mark McConnell on the 4th of December 1996, the 25th of June 1997 and the 1st of October 1998;
(iv) The arrest and detention of Edel Quinn on the 4th of December 1996;
(v) The arrest and detention of Charlotte Peoples on the 4th of December 1996;

(vi) The arrests and detentions of Frank McBrearty Junior on the 4th of December 1996 and the 4th of February 1997 (incorporating Term of Reference (f) relating to events concerning Edward Moss);
(vii) The arrest and detention of Mark Quinn on the 4th of December 1996;
(viii) The arrest and detention of Katrina Brolly on the 4th of December 1996;
(ix) The arrest and detention of Frank McBrearty Senior on the 5th of December 1996;
(x) The arrest and detention of Martin McCallion on the 8th of December 1996;
(xi) The arrest and detention of Seán Crossan on the 11th of December 1996;
(xii) The arrest and detention of Damien McDaid on the 17th of December 1996;
(xiii) The alleged bugging of interview and visitor rooms at Letterkenny Garda Station in December 1996.

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.

In this regard, the Tribunal is already aware that two trials involving Bernard Conlon and Detective Sergeant John White have already concluded in relation to events relevant to Term of Reference (d). The Tribunal is also aware that the trial has taken place of Frank McBrearty Junior in respect of events relevant to Term of Reference (f). The Tribunal is anxious to know whether there are any other criminal proceedings contemplated.

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 (b), (d) and (f) of the Terms of Reference

Set up Pursuant to the Tribunal of Inquiry

(Evidence) Acts 1921-2002

into Certain Gardaí in the Donegal Division

(b), (d) and (f)

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

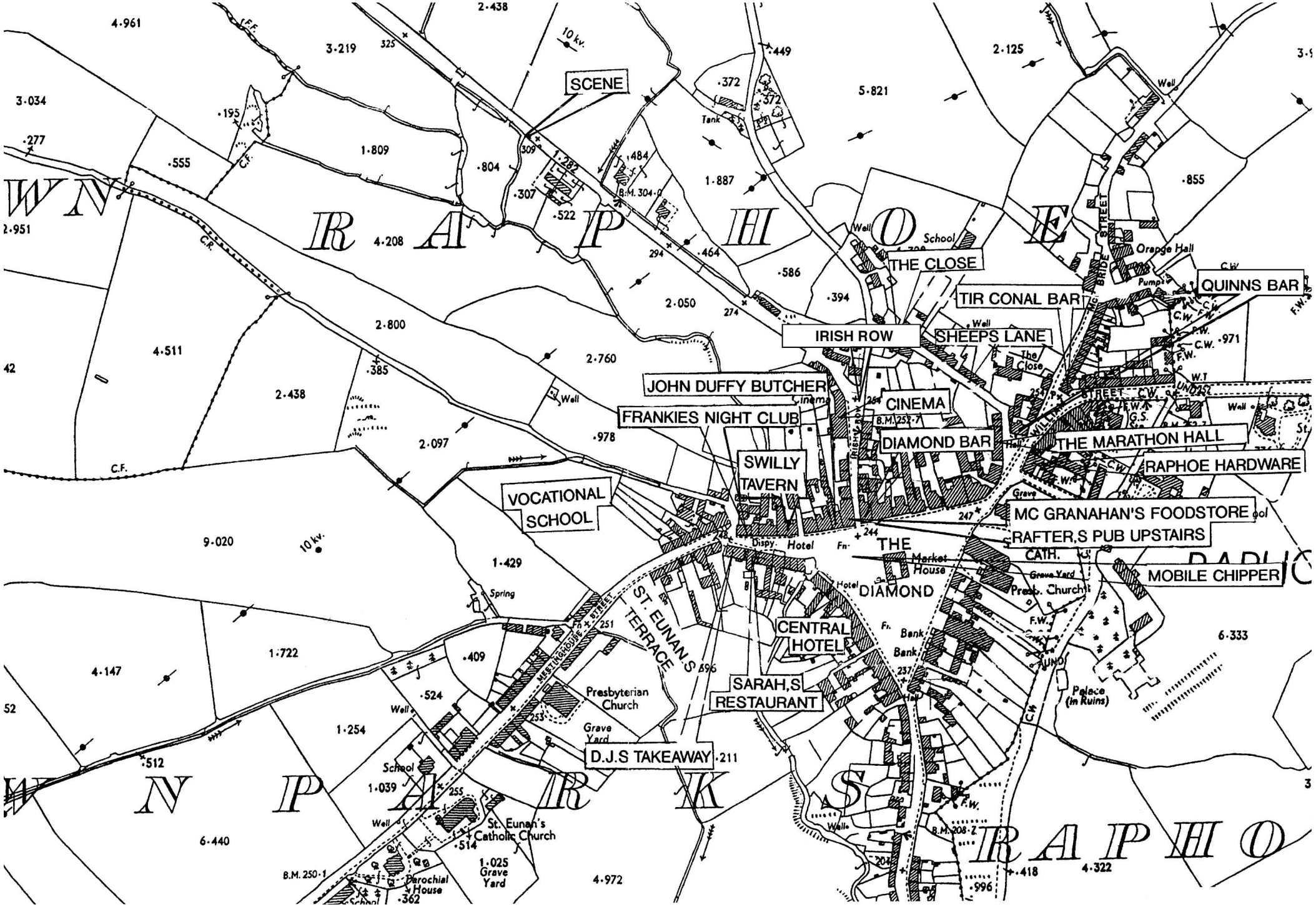
(d) The circumstances surrounding the arrest and detention of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999;

(f) The circumstances surrounding the arrest and detention of Frank McBrearty Junior on the 4th of February 1997 and his subsequent prosecution in the Circuit Criminal Court in relation to an alleged assault in December 1996 on Edward Moss with particular reference to the Garda investigation and the management of both the investigation and the role of the Gardaí in the subsequent prosecution.

Note to the Reader

The reader will please note the following:

1. Quotations from the transcript are designated by a bold indented italic.
2. Quotations from documents are boxed.
3. Particularly important conclusions of the Tribunal are printed in a different colour.
4. Transcript quotes may have been slightly corrected as to punctuation.
5. References in footnotes to Tribunal Documents are those relevant to their own sub-module, unless otherwise specified.
6. In the Report, members of An Garda Síochána are referred to by the rank that they held at the time of events referred to; when giving evidence, that testimony is quoted by reference to the rank that they held at the time of their evidence.
7. Recommendations are set out in Chapter 16.


SCENE
THE CLOSE
TIR CONAL BAR
QUINNS BAR
IRISH ROW
SHEEPS LANE
JOHN DUFFY BUTCHER
FRANKIES NIGHT CLUB
CINEMA
DIAMOND BAR
THE MARATHON HALL
RAPHOE HARDWARE
SWILLY TAVERN
VOCATIONAL SCHOOL
MC GRANAHAN'S FOODSTORE
RAFTER,S PUB UPSTAIRS
MOBILE CHIPPER
THE DIAMOND
CENTRAL HOTEL
SARAH,S RESTAURANT
D.J.S TAKEAWAY
ST. EUNAN'S TERRACE
Presbyterian Church
St. Eunan's Catholic Church
Parochial House
Palace (In Ruins)
RAPHOE
PARK

CHAPTER 1
INTRODUCTION

The Inquiry

1.01. This Tribunal of Inquiry was set up by Resolution of Dáil and Seanad Éireann passed on the 28th of March 2002. Following on the making of this resolution, I accepted the position of Chairman and sole member of the Tribunal. In excess of five years work by me have passed since that time. My legal team joined me in the first week of June 2002. Following on from a comprehensive review of the documentation, the Tribunal delivered an opening statement, which ran to over eight hundred pages and took eight days to deliver at the Courthouse in Donegal town from the 4th of November 2002. The Tribunal commenced its hearings in March 2003 and in October 2007 passed the six hundred and fiftieth day of oral hearings. This does not include the days required for preliminary applications and the delivery of the opening statement.

1.02. The first report of the Tribunal, concerning hoax explosives finds in Donegal during the years 1993 and 1994, was published in July of 2004. Of necessity that report also dealt with related issues of fact which broadened the scope of the period to be inquired into from 1988 up to February of 1999. The second report of the Tribunal was published a year later and was concerned with the investigation into the death of the Late Richard Barron and the extortion calls to Michael and Charlotte Peoples. The third report of the Tribunal was published during the summer of 2006 and concerned the circumstances surrounding the arrest and detention of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999. For shorthand purposes the Tribunal's inquiries into these matters are referred to as the "silver bullet affair". During that same summer the fourth report of the Tribunal was published. It concerned the Garda investigation of an arson attack on property situated on the site of the telecommunications mast at Ardara, County Donegal in October and November of 1996. The fifth report, published at the same time, concerned the arrest and detention of seven persons at Burnfoot, County Donegal on the 23rd of May 1998 and the investigation relating to same. Insofar as it might be claimed in some quarters that these reports are, in some way, historical documents, it should be remembered that they were based on the accounts given in testimony by witnesses, some of whom were serving Gardaí when they gave evidence.

1.03. This report primarily concerns the arrests and detentions of twelve persons in December 1996 in the course of the Barron investigation and their treatment whilst detained in custody. These were:

(1) Mr. Michael Peoples
(2) Mrs. Róisín McConnell
(3) Mr. Mark McConnell
(4) Ms. Edel Quinn
(5) Mrs. Charlotte Peoples
(6) Mr. Frank McBrearty Junior
(7) Mr. Mark Quinn
(8) Mrs. Katrina Brolly
(9) Mr. Frank McBrearty Senior
(10) Mr. Martin McCallion
(11) Mr. Seán Crossan
(12) Mr. Damien McDaid

Mr. Michael Peoples, Mr. Mark McConnell and Mr. Frank McBrearty Junior were all arrested on suspicion of the murder of the Late Richard Barron and eight others were arrested on suspicion of being accessories after the fact to that suspected murder. In the event, there was no murder and these people are and were entirely innocent. Mr. Frank McBrearty Senior was arrested on suspicion of intimidating witnesses and detained under section 30 of the Offences Against the State Act, 1939.

1.04. Mr. Frank McBrearty Junior was arrested for the second time on the 4th of February 1997 in respect of an alleged assault on Mr. Edmond Moss, of which he was ultimately acquitted after a trial in Letterkenny Circuit Court. Mr. Mark McConnell was arrested for the second time on the 25th of June 1997 on foot of a District Court order authorising his further detention on suspicion of the murder of the Late Richard Barron. Mr. McConnell was arrested for the third time on the 1st of October 1998 arising out of the "silver bullet affair", as was Mr. Michael Peoples on the 6th of May 1999: his second arrest.

Structure of the Report

1.05. This report is concerned primarily with the events surrounding the arrests and detentions of those taken into custody in December 1996 in the course of the Garda investigation into the death of the Late Richard Barron, killed as a result of a hit-and-run incident in Raphoe on the 14th of October 1996. That investigation was treated as a murder investigation for reasons which are explained in the Tribunal's second report. The Tribunal has already ruled in its second report on aspects relating to the competence of that investigation. In particular, it has ruled that the Garda investigation fell far below the standard that was acceptable. In this regard, it relied not only on international evidence, but also on expert

evidence from within the ranks of An Garda Síochána itself. The Tribunal also ruled that the arrests consequent on that "murder investigation" were unlawful, being the product of a statement manufactured in police custody of an arrested person, namely Robert Noel McBride, who was thought, by some Gardaí, to possess vital information concerning the death of the Late Mr. Barron. The arrests were in reality based upon a fraud.

1.06. Full details of all of the arrests and detentions outlined above are included in this report. The Tribunal decided that the best way to approach this matter was to consider all of the detentions as separate sub-modules founded on the person arrested. Where a person was arrested two or three times, these detentions were also included in the sub-module. This had the advantage of requiring the attendance, as witnesses, of those detained for a relatively short period of time. During the Tribunal's hearings, the days spent on examining individual sub-modules ranged from a period of a couple of weeks to as much as six weeks. Those detained, however, were only required to give evidence as to their detentions and they were then free to leave.

1.07. I have decided to structure this report on the basis of the chronology in which individuals were arrested. This means that the order in which matters are reported on here begins with the arrests and detentions of Mr. Michael Peoples, followed by the arrest and detention of Mrs. Róisín McConnell, followed by the arrests and detentions of Mr. Mark McConnell, followed by those of Ms. Edel Quinn, Mrs. Charlotte Peoples, Mr. Frank McBrearty Junior, Mr. Mark Quinn, Mrs. Katrina Brolly, Mr. Frank McBrearty Senior, Mr. Martin McCallion, Mr. Seán Crossan and ending with the arrest and detention of Mr. Damien McDaid. If a detainee was subjected to multiple arrests, as was the case in respect of Mr. Michael Peoples, Mr. Mark McConnell and Mr. Frank McBrearty Junior, these arrests are dealt with in a single chapter in respect of that detainee.

1.08. In addition to the arrests and detentions into which the Tribunal enquired, an allegation was made that the Gardaí used listening devices to eavesdrop upon and tape record visits between solicitors and relatives of the detainees and the detainees themselves during the course of their detentions in December 1996. This matter is the subject of Chapter 14 of the report.

1.09. The Tribunal carried out extensive and detailed hearings into the complaints made by the detainees against the Gardaí. These hearings were complicated by the extensive nature of the complaints. Many of these have been established; others have not. In some cases almost every small event involving an encounter between a detainee and a Garda was the source of enormous dispute and rancour; in other cases there was very little dispute. In the cases of Mrs. Katrina

Brolly and Mrs. Róisín McConnell, the Tribunal was greatly assisted in its work by the admissions made by Detective Garda John Dooley in respect of his and Sergeant John White's ill-treatment of these two ladies whilst in custody. For the most part, however, the Tribunal was obliged to delve extensively into the hour by hour and minute by minute treatment of prisoners in order to establish the truth.

1.10. The Tribunal also sought expert assistance from foreign police forces in relation to the investigative and interviewing techniques employed in other jurisdictions with a view to understanding the issues that arose in respect of the interrogations and interviews investigated by the Tribunal and to assist the Tribunal in formulating positive recommendations for the future. This was particularly important having regard to the fact that a false confession had been obtained by An Garda Síochána from Mr. Frank McBrearty Junior in the course of his detention at Letterkenny Garda Station. Gardaí obtained from him an admission that he had assaulted the Late Richard Barron at the time of his death and that his cousin Mr. Mark McConnell was an accessory to that assault, which coincided with the Garda theory as to how the Late Mr. Barron was killed. The Tribunal explored the extensive body of academic and practical police research and innovation in this area with a view to learning how the danger of obtaining a false confession might be minimised in the future.

1.11. The Tribunal commenced its hearings in respect of these sub-modules on the 27th of March 2006 and received final submissions from the various parties in July and August of 2007. In the intervening period, the Tribunal was obliged to interpose the "Anonymous Allegations" module, (Term of Reference (h)), a substantial part of which was completed in February and March 2007. The Tribunal continued oral hearings on other modules whilst preparing this report.

Expert Evidence

1.12. The Tribunal has heard expert evidence from six witnesses as to how the issue of police interrogations may best be approached. In testimony, Professor Gisli Gudjonsson, of the Institute of Psychiatry at the University of London, gave evidence of the pitfalls that can be blundered into during the interrogation of prisoners, consciously or unconsciously, that can lead to false confessions. This was particularly relevant to the detentions of Frank McBrearty Junior because of the false confession allegedly made by him to the murder of the Late Richard Barron, who had in fact been killed in a hit-and-run accident. More importantly, Professor Gudjonsson highlighted that occurrences such as this were not so unusual and can occur in a variety of circumstances. Inspector Don Adam of the Royal Canadian Mounted Police, a policeman of great experience who has

thought deeply on this matter, gave the Tribunal the benefit of the experience which Canada had in reforming its interrogation practice. Inspector Adam is engaged in supervising interrogation in serious cases and in assisting the Royal Canadian Mounted Police in the development of a comprehensive programme.

1.13. The Tribunal also heard evidence from Detective Chief Inspector Gary Shaw of the Northumbria Police. Detective Chief Inspector Shaw is a police officer with great experience. He has been involved in developing interrogation programmes throughout the area of the Northumbria Police and is a National Interview Coordinator, assisting senior investigating officers to develop effective interview strategies in serious and high profile cases throughout the United Kingdom. He has studied and advised upon the issue of interrogation at a national and international level.

1.14. The Tribunal also received evidence from Ms. Mary Schollum, who has conducted extensive research on behalf of the New Zealand Police Service in respect of interviewing procedures and standards, having consulted widely with other police services, including the Police Service of Northern Ireland. In addition, the Tribunal received evidence from Detective Chief Superintendent John O'Mahony and Chief Superintendent Kevin Ludlow of An Garda Síochána in respect of this issue.

1.15. The evidence of these experts has been of immense benefit to the Tribunal. The evidence furnished to the Tribunal by them on the best practice pertaining in other jurisdictions is set out in Chapter 15 of this report. This is followed by a brief set of recommendations in Chapter 16.

The Work of a Tribunal

1.16. When delivering the explanation of the Terms of Reference as 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 the Tribunal was built. I therefore quote that document, in part:

> 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 inquire.
>
> (iii) The service of such evidence on persons likely to be affected thereby.

(iv) The public hearing of witnesses in regard to such evidence and the cross-examination of such witnesses by or on behalf of the persons affected thereby and

(v) The preparation of a report and the making of recommendations based on the facts established at such public hearing.

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

This is an 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 affected persons who are legally represented and, if not legally represented, will make every effort to contact them personally. It is hoped that all persons likely to be affected by material arising in a particular module will be furnished where appropriate with a CD-Rom of all the evidence which is in the possession of the Tribunal relating to that module or where it is thought necessary of all the evidence in the possession of the Tribunal. They will also be furnished with a hard copy of the evidence which the Tribunal considers to be relevant to that particular module from which they can learn the manner in which they might be affected by that evidence. They may then consider this evidence and they may, if they wish, respond to it by making a written submission or a witness statement. The advantages of making such a witness statement or such a written submission are obvious, in as much as it will enable Counsel for the Tribunal to present and consider that response.

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

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

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

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

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

The Tribunal is charged under the instrument creating it to complete its work in as economical manner as possible and at the earliest possible date consistent with a fair examination of the matters referred to. With a view to establishing a procedure which will make the work of the Tribunal both orderly and assist in the completion of the work at the earliest possible date, the Tribunal would propose that where any party wishes to raise a matter of substance, either legal or factual, for the consideration of the Tribunal, it should in as far as possible, give notice to the Tribunal in advance, so that the attendance of witnesses can be dispensed with and the issue disposed of, either before the sitting of the Tribunal in the morning, or alternatively, later in the afternoon. The Tribunal does of course recognise that this may not always be possible, but the Tribunal would appreciate co-operation in this regard.[1]

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

1.17. 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. It is worth explaining that a tribunal of inquiry is different from a court case. Not surprisingly, that is the model the courts best understand. In a civil or criminal case a party accuses another of a wrong. That party replies and the case is decided. The procedure is completely adversarial. In a tribunal of inquiry, no one is accused. Instead, there may be indications that affairs of public importance have gone wrong. The job of a tribunal is to inquire what happened and why. A tribunal of inquiry has no agenda apart from uncovering the truth without any agenda towards any individual or institution. The procedure is inquisitorial.

1.18. It is important to realise that this set of hearings, and examination of documents, conducted by the Tribunal, with the assistance of its legal team, has not been an adversarial contest. The Tribunal did not proceed on the basis that certain people were accused of particular wrongs. The papers indicated that certain wrongs may have occurred during the course of what the Tribunal was required to investigate. The Tribunal attempted to ascertain what happened, why it happened and what might be learned from the events that it found had occurred. As it addressed each sub-module, the Tribunal attempted to identify persons likely to be affected by the available evidence. The Tribunal legal team did an outstanding job in sifting the evidence and the documents for the purpose of seeing where the inquiries of the Tribunal might lead. It was not the purpose of the Tribunal to accuse anyone of anything. The Tribunal did not have an agenda of attempting to find certain people guilty of certain wrongs. The sole focus of the Tribunal was to attempt to find the truth. Where allegations emerged against persons who had not had fair warning of same in the Opening Statement, the Tribunal contacted them and served them with the relevant documents. Applications for representation were always upheld where there was any chance that a person's reputation would be adversely affected by reason of any finding of fact that the Tribunal might make as a result of its inquiry. All decisions and findings that I made in respect of matters of fact set out in this report were made only on the basis that I was satisfied to do so on the balance of probabilities, having considered all of the evidence adduced, together with any submissions made.

The Terms of Reference Explained

1.19. The Terms of Reference relevant to the arrests and detentions, the subject matter of this report, into which the Tribunal was required by Resolution of Dáil and Seanad Éireann to urgently inquire were:

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

(d) The circumstances surrounding the arrest and detention of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999;

(f) The circumstances surrounding the arrest and detention of Frank McBrearty Junior on the 4th of February 1997 and his subsequent prosecution in the Circuit Criminal Court in relation to an alleged assault in December 1996 on [Edward] Edmond Moss, with particular reference to the Garda investigation and the management of both the investigation and the role of the Gardaí in the subsequent prosecution.

1.20. As was necessary in law, I explained the relevant portions of the relevant Terms of Reference on the 15th of July 2002 in terms to which I now turn. Since much of the work in relation to the Barron investigation and the "silver bullet affair" are already the subject of extensive reports, as set out above, I need only quote some partial sections of the explanation of the Terms of Reference.

1.21. Term of Reference (b) was split into three parts. The first part concerned itself with the Garda investigation into the death of the Late Mr. Barron. The third part concerned the use of Garda informers. Both of these parts have been reported on in the Tribunal's second report. The second part required the Tribunal to inquire into the arrest and treatment of persons in custody in connection with Mr. Barron's death. Again, much of the work in relation to this matter has been reported on in the Tribunal's second report. In particular, the Tribunal has looked into the arrests and the legality thereof. What was left was what I explained to be the duty of the Tribunal to:

(vii) Inquire into all aspects of the arrests and detentions including extensions of custody carried out in the course of the investigation and the treatment of persons while in custody;

(viii) Inquire into and establish the standard Garda procedure and practice in relation to the treatment of persons in custody and whether such procedures and practices were observed in the course of the arrests and detentions and treatment of those in custody in connection with

> the investigation and further, the adequacy and fairness of such procedures and practice having regard to the facts as they may be established in evidence at the Tribunal;
>
> (ix) Inquire into any aspect of this Term of Reference in so far as it may be connected to any other Term of Reference.[2]

1.22. Term of Reference (f), concerning the events leading up to and following the arrest and detention of Frank McBrearty Junior on the 4th of February 1997, quoted above, was explained by me in the following way as required by law on the 15th of July 2002. The Tribunal indicated that it proposed to:

> (i) Inquire into and establish the facts in relation to this event;
>
> (ii) Inquire into and examine the material which was then available to members of An Garda Síochána (if any) and consider whether such material had afforded members of An Garda Síochána grounds for reasonable suspicion for the arrest of Mr. McBrearty Junior on the 4th of February 1997;
>
> (iii) Inquire into whether the member of An Garda Síochána alleged to have arrested Mr. McBrearty Junior on the 4th of February 1997 proceeded with the arrest only when satisfied that in respect of Mr. McBrearty Junior his suspicions were reasonable, and/or that he had exercised all appropriate care, caution and diligence in deciding to make an arrest with due regard to the presumption of innocence attaching to Mr. McBrearty Junior and his right to fairness of procedures;
>
> (iv) Inquire into all aspects of the arrest and detention of Mr. McBrearty Junior and his treatment whilst in custody;
>
> (v) Consider whether the member of An Garda Síochána who allegedly made the arrest acted reasonably and in good faith;
>
> (vi) Inquire into and examine the material which was available at the time as to whether the said material tended to implicate Mr. McBrearty Junior or justify his prosecution for the offence for which he was arrested;
>
> (vii) Ascertain whether any material available to members of An Garda Síochána in the course of their investigation came into their possession in accordance with lawful or unlawful practices or means;

[2] Opening Statement, 15th of July 2006, page 4.

(viii) Inquire into:

(a) the investigation into the alleged assault on Edmond Moss by Frank McBrearty Junior;

(b) any report and/or material submitted to the Office of the Director of Public Prosecutions in relation to this investigation;

(c) the reasons for the decision and the decision to prosecute Frank McBrearty Junior in relation to the alleged assault on Edmond Moss;

(d) the prosecution and insofar as it may be relevant, the trial of Frank McBrearty Junior in relation to the alleged assault on Edmund Moss.

It should be noted that these matters will be investigated only insofar as they are relevant to the Terms of Reference of the Tribunal and it is no part of the Tribunal's function to question in any way the order of the Circuit Criminal Court in this regard;

(ix) Consider whether there was in all the circumstances any or any reasonable or probable cause upon which to initiate a prosecution against Mr. McBrearty Junior in relation to the alleged assault on Edmond Moss;

(x) Inquire into and establish the standard Garda procedure and practice in relation to the treatment of persons in custody and whether such procedure and practice were observed in the course of the arrest and detention and treatment of Frank McBrearty Junior following his arrest and detention on the 4th of February 1997, and further, the adequacy and fairness of such procedure and practice having regard to the facts which may be established in evidence at the Tribunal;

(xi) Inquire into the allegations made by Frank McBrearty Junior in relation to his treatment during the course of his arrest and detention;

(xii) Consider whether there was any use of informants and if there was, the approach set out in relation to Term (B)(3) above will then apply;

(xiii) Consider whether there is any connection between the events covered by this Term of Reference and any other of the Terms of Reference.[3]

1.23. In considering how Mr. Frank McBrearty Junior was treated during his detention

[3] "Opening Statement, 15th of July 2006"

on the 4th of February 1997, the Tribunal proceeded in accordance with the explanation given of Term of Reference (f), which was broadly similar to that described in respect of Term of Reference (b).

1.24. Finally, Term of Reference (d) of the Terms of Reference is concerned with the "silver bullet affair". The basis upon which the Tribunal inquired into the arrests and detentions of Mark McConnell and Michael Peoples, who were arrested on foot of Mr. Conlon's lies, was broadly the same as that set out in the explanation of paragraph (b) of the Terms of Reference set out above.

The Reasons for the Various Arrests

1.25. It is useful, at this stage, to set out the background against which the various arrests under inquiry took place.

1.26. The body of the Late Richard Barron was found dead on the roadway outside Raphoe, County Donegal in the early hours of Monday, the 14th of October 1996. His death looked like a hit-and-run accident and it was initially treated as such by the investigating Gardaí. Mr. Barron's remains were examined by a hospital pathologist, not by a forensic pathologist, and buried. As it transpires, this initial theory as to Mr. Barron's cause of death was correct. When the remains of Mr. Barron were exhumed on the 6th of July, 2001, the State Pathologist, Professor John Harbison, found that the signs remaining on the body, and in particular on the skull, indicated a severe contact with the roadway. Evidence was heard by the Tribunal from Dr. Harbison; from his successor, Dr. Marie Cassidy; from Dr. Philip Lumb, a lecturer in forensic pathology at the University of Sheffield; and from Professor Helen Whitwell, a consultant pathologist at the Home Office in Great Britain. Based on this uncontroverted evidence, the Tribunal concluded in its second report that the Late Mr. Barron had died as a result of a road traffic accident. How the investigation into the death of Mr. Barron went so badly wrong and how a murder hunt in relation to his death got going is dealt with extensively in the Tribunal's second report.

1.27. As a result of a rumour at Mr. Barron's wake, a number of people, including the Chief Superintendent of the Donegal Division, came to believe that Mr. Barron's death was a murder. Suspicions soon began to focus on two local men: Frank McBrearty Junior and his first cousin, Mark McConnell. As the investigation progressed, apparently vital information emerged that a certain individual had seen the two suspects coming from the scene of the Late Mr. Barron's death at a relevant time. Garda John O'Dowd introduced the individual to the investigation team as 'Mr. X'. The mysterious figure behind the masked identity was Robert Noel McBride, a person who had a number of previous convictions in relation to

theft and criminal damage offences. Mr. McBride apparently claimed that he had seen Mr. Mark McConnell and Mr. Frank McBrearty Junior crossing down through the car park of Frankie's Night Club from the direction of where the Late Mr. Barron's body was found as the bells on the town clock struck 01.00 hours, which was shortly after what was thought to be the time of death of the Late Mr. Barron. In reality, Mr. McBride had not even been in Raphoe at the time in question, never mind in a position to observe any comings or goings from the nightclub car park. Nevertheless, a false statement was caused to be made by the Gardaí who exploited their knowledge of the investigation in order to create a fraudulent statement through Robert Noel McBride. This false statement was fundamental to justifying the subsequent series of arrests.

1.28. There was a basic theory that the Gardaí were pursuing. It was this. The Late Mr. Barron was supposed to have had a row in the Town and Country public house with Mark McConnell on the evening of his death. An altercation did in fact occur, but on any reasonable view, it was a mild exchange of unpleasantries. Mr. McConnell is then supposed to have contacted Mr. McBrearty Junior. Mr. McConnell and Mr. McBrearty Junior were supposed to have waited up Irish Row for the Late Mr. Barron to return home along his usual route. They were then supposed to have waylaid him and battered him so that he died. They were then supposed to have returned to the town across country and down through the car park of Frankie's nightclub to be met at the door by staff and brought away for the purpose of having their clothing cleaned up.

1.29. There was, as the Tribunal found in its second report, nothing mysterious about Mr. McBrearty Junior's whereabouts for that evening: he was at his work. He never left Frankie's nightclub, his father's premises, for the duration of the entertainment on the night in question, apart from in the course of routine duties and then only as far as the yard or the street. By a careful analysis of the evidence, The Tribunal established in its second report that Mr. Mark McConnell was in the Town and Country public house, where he had earlier had the exchange of words with Mr. Barron, when Mr. Barron was killed in an accident almost one kilometer away. The Gardaí believed, however, that various accounts of Mr. McConnell's whereabouts later on that night were inconsistent, and that this was in some way connected with his earlier movements around the time of Mr. Barron's death. In a bizarre twist, that is best explained by referring the reader to the second Tribunal report, a third suspect, Mr. Michael Peoples was identified by the investigation team as having some unspecified involvement in the suspected murder of the Late Mr. Barron. In fact, both he and his wife were socialising with Mark and Róisín McConnell for much of the evening, in both the Town and Country pub and later in Frankie's nightclub. Mr. Peoples is also entirely innocent

of any wrongdoing. Mrs. Charlotte Peoples, who is the wife of Michael Peoples, and Mrs. Róisín McConnell, the wife of Mark McConnell, were suspected of being involved in a cover up and of harbouring known felons. The same suspicion attached to certain of their friends and certain of the employees and/or patrons of Frankie's nightclub. The failure of certain of these individuals to come forward and tell what was supposed to be the truth, i.e. consistent with the Garda theory, was treated by certain members of the investigation team as a foundation of suspicion for arrest under the common law offence of accessory after the fact to murder. Mr. Frank McBrearty Senior was believed to have orchestrated the establishment and maintenance of a wall of silence to protect those thought by the Gardaí to be guilty and to have attempted to interfere with or intimidate witnesses interviewed by the Gardaí. That is the background against which the twelve arrests, the subject matter of the main part of this report, took place.

The Case of Edmond Moss

1.30. Edmond Moss lives in Castlederg, County Tyrone. He claimed that he had been assaulted in Frankie's nightclub in Raphoe in the early hours of the 30th of December 1996. A Garda investigation resulted in the prosecution of Frank McBrearty Junior, Liam O'Donnell and Martin McCallion in respect of charges of serious assault on Edmond Moss before the Circuit Criminal Court in Letterkenny on the 29th of April 1999. All of the accused were acquitted.

1.31. On the day of the alleged assault Mr. Moss had attended the casualty department of Tyrone County Hospital at Omagh at 11.44 hours, where he gave a history of having turned over on his ankle. He had a tender bruise over the medial aspect of his ankle and was treated for a spiral fracture of the lower third of the right fibula. He had been allowed home the same day, to be reviewed in the Fracture Clinic, and was seen again from time to time at the Fracture Clinic until the 14th of February 1997, when he was discharged. The McBreartys contended that his injury was sustained when Mr. Moss fell over a pothole outside their premises.

1.32. Mr. Moss intended to commence a civil action. Apparently, this cause of action was settled as a result of the exchange of money. It is quite acceptable and proper to pay a sum of money in settlement of a cause of action without acknowledging any liability on one's part. However, Mr. Moss had already made a complaint to An Garda Síochána on the 31st of December 1996, alleging that the injuries that he had sustained were the result of an assault that he alleged was carried out by stewards at Frankie's nightclub, including Mr. Frank McBrearty Junior. Later, Mr. Moss withdrew this statement of complaint, by letter dated the 14th of January 1997. It is hardly surprising that when the criminal prosecution, based on Mr. Moss's original complaint, came on for trial, the jury felt that there was a

reasonable doubt as to what had occurred in the nightclub, or how it had occurred. It is likely that they applied the principle that if the presumption of innocence had not been displaced beyond reasonable doubt, the accused was entitled to be acquitted.

1.33. Mr. Moss was contacted and his co-operation was sought in relation to the proceedings of the Tribunal. The Tribunal has examined the papers and heard evidence relating to the investigation and prosecution arising out of Mr. Moss's complaint. As appears from the report, I am satisfied that a Garda investigation was warranted in respect of the complaint made by Mr. Moss. There is nothing to indicate any misfeasance by any Garda in respect of this matter. In one sense, the entire matter was a perfectly ordinary event involving an incident in and near a nightclub, attendance at an out-patient unit in the casualty department of a hospital, the apparent exchange of money in compromise of civil proceedings and a trial, in which a jury acquitted for everyday reasons. However, the case was made that this investigation became a tool of harassment against Mr. Frank McBrearty Junior and was used in that way by Sergeant White and Garda John O'Dowd.

1.34. What is important in relation to the Edmond Moss affair is that Mr. McBrearty was arrested on the 4th of February 1997. He had serious complaints to make about the fact of his arrest and about how he was treated whilst in custody at Letterkenny Garda Station. He alleged that the true purpose of the arrest was to question him further about the death of the Late Richard Barron. I am satisfied that much of what he alleged about this episode was exaggerated and/or untrue. This is the subject of Part II of Chapter 7 in this report.

The Silver Bullet Affair

1.35. On the 1st of October 1998 and on the 6th of May 1999, Mark McConnell and Michael Peoples, respectively, were arrested on the word of Bernard Conlon. Bernard Conlon had complained that the two had attended at his home and shown him and threatened him with, a silver bullet. Their alleged motivation in relation to this was that Mr. Conlon had been found after-hours drinking in Frank McBrearty Senior's nightclub and had, as he wished to put it, the courage to take part in a prosecution against Mr. McBrearty Senior and in consequence of this, the two men allegedly wished to warn him off giving evidence. This incident never happened. Mr. McConnell and Mr. Peoples were never at or near Mr. Bernard Conlon's house in Cartron Bay in Sligo town. As the third report of the Tribunal explained, Mr. McConnell and Mr. Peoples are, and were, at all times innocent of any attempt to interfere with Mr. Conlon or the course of justice in relation to any licensing prosecution in the District Court against Frank McBrearty

Senior. The story was a complete invention. Nevertheless, despite the fact that Bernard Conlon had numerous prior convictions for dishonesty and other matters, the two men were arrested under section 30 of the Offences Against the State Act, 1939, following false identifications made by Bernard Conlon nominating them as culprits.

The Parameters of Valid Interrogation

1.36. The treatment of persons detained in custody by An Garda Síochána is the subject of a considerable body of law. It is now appropriate to give an outline of the law as to the parameters within which the Gardaí must operate in the interrogation of suspects. For the most part, the issues of controversy that arose in respect of all of these detentions are concerned with how the prisoners were treated in the course of interview or interrogation. Most of this law is derived from decided cases as to when a confession is or is not admissible in evidence in the course of a criminal trial. The law is that a confession statement is admissible only if its validity as the voluntary emanation of an unoppressed mind is proved beyond reasonable doubt. The basic principle is that no person should be subjected to oppressive behaviour in interrogation and that they should be treated at all times with respect and dignity. In legal terms, the Gardaí are obliged to arrest and detain persons in accordance with law, which includes the application of the various statutes and regulations, and to have respect for and vindicate the fundamental rights of arrested persons as guaranteed by the Constitution.

1.37. These laws must be observed by An Garda Síochána in the investigation of crime. History and legal experience contain many examples of forced confessions, whether by oppression, trick or inducement, or confessions obtained by other means in violation of the law or fundamental fairness of procedures. It is clear that, to date, in our criminal justice system, the only effective method by which breaches of the law can be addressed in a public forum is by ensuring that evidence that is the product of such violations of fundamental law is not admissible in the course of any criminal trial against the person from whom it was unlawfully and wrongfully obtained. The issue arises when an accused in a criminal trial objects to the admissibility in evidence of a statement of admission made by him. At that stage, the trial judge has the power and duty to ensure that fundamental fairness is maintained by hearing evidence as to how a confession statement has been obtained, so that it can be admitted against an accused person only if it is established beyond reasonable doubt that it was freely, fairly and voluntarily made. Beyond that, controls

on An Garda Síochána if they have acted in violation of the law have, in such cases, been demonstrably weak. The Garda Complaints procedure established under the Garda Síochána (Complaints) Act, 1986, in these cases proved to be woefully inadequate in dealing with them. The Garda disciplinary code was equally ineffective. Those arrested were left with the option of instituting civil proceedings for damages for false imprisonment. Though this was done successfully after ten or eleven years in some of these cases, the behaviour of the Gardaí involved passed without effective scrutiny or, where appropriate, censure, even when civil proceedings were belatedly settled in favour of the detainees. There was no prompt and effective redress available to those wronged. Those involved in wrongdoing appear to believe that the end justified the means they applied in attempting to obtain admissions. Gardaí are, of course, entitled to fair procedures but it is to be hoped that the Garda Ombudsman Commission will be much more effective in this area and that its work will not be plagued by challenges to its authority based on a culture of excessive legal formalism, whereby the Gardaí under investigation attempt to thwart inquiries as to their behaviour by their superiors or any outside agency. It is also to be hoped that the Garda Síochána will adopt an active role in ensuring high standards of behaviour and not await criticism from outside the force before taking responsibility and action itself when serious issues arise. In the following sections of this chapter, I set out the law that should have been applied to each of the detainees.

Confessions

1.38. A confession is any statement by the accused which either fully accepts his or her involvement in the commission of the crime in question or which accepts any fact that tends to show his or her involvement in the commission of the crime. Confessions are admitted as an exception to the rule against hearsay. In criminal cases, a confession is admissible in evidence only if it is a voluntary statement made by the accused. This means that the prosecution must prove that it was not produced by a hope of advantage or fear of prejudice excited or offered by a person in authority in relation to the prosecution; and did not result from the overbearing of the accused's will by oppressive conduct on the part of those interrogating him. Even if voluntary, a confession must be excluded if it was obtained in breach of the accused's constitutional rights: most particularly his right to liberty,[4] or his right to have reasonable access to legal advice as a counterweight to the power of the State being brought to bear against him through arrest, detention and interrogation.[5] In addition, and on a discretionary

[4] The People (DPP) -v- Madden [1977] I.R. 336 SC.
[5] The People (DPP) -v- Healy [1990) I.L.R.M. 82; [1990] 2 I.R. 73; The People (DPP) -v- Kelly (No. 2) [1983] I.R. 1.

basis, a confession which is voluntary and not obtained in breach of the accused's constitutional rights may be excluded if it was either taken in breach of the Judges' Rules; or through the application of an illegal action to the accused; or in breach of the applicable custody regulations,[6] or by virtue of an unfairness perpetrated by the agents of the State against the accused such that the obtaining of the confession fell below the standard of fairness expected by the Constitution in the administration of criminal justice.[7]

1.39. The rules as to the admissibility of confessions are, in part, derived from a consideration as to the circumstances under which an admission is entitled to credit and in part, from the judicial control of the criminal investigation process in the interests of public faith in that process. From the earliest times, the rules relating to admissibility have been defined and supplemented through judicial intervention motivated by these principles. As judicial experience has grown, the rights of the accused have been extended and now include; a general right to counsel at trial, a right to give evidence in defence of oneself (introduced by the Criminal Justice (Evidence) Act, 1924), the protection of the Judges' Rules of 1918, a general right to legal assistance while in custody and a right not to be subjected to unfair and/or oppressive conduct.

1.40. A confession is crucially important because it proves the prosecution case. A confession as to an involvement in crime is sufficient proof of the accused's culpability.[8] Because the accused has a right not to be forced to incriminate himself, the courts have traditionally maintained control over the admissibility of confessions based upon a general duty to protect this right.[9]

1.41. The mere fact of custody must carry with it particular rights that balance the arrested person's dilemma. It is to be expected that most persons will not be used to imprisonment: for that is what an arrest is, albeit on a temporary basis. In the middle of the nineteenth century the experience of an Irish judge led to the expression of views recognising this issue:

> A confession will be rejected if it appears to have been extracted by the presumed pressure and obligations of an oath, or by pestering interrogatories, or if it have been made by the party to rid himself of importunity, or if, by subtle and ensnaring questions, as those which are framed so as to conceal their drift and object, he has been taken at a disadvantage and thus entrapped into a statement which, if left to himself, and in the full freedom of volition, he would not have made...[I]t is as manifest to everyone's experience that, from the moment a person feels

[6] The Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987, and see section 7(3) of the Criminal Justice Act, 1984.
[7] The People (DPP) -v- Shaw [1982] I.R. 1at 61.
[8] R. -v- Baldry (1852) 2 Den 430.
[9] For example, see R -v- Crampton (1991) Crim. L.R. 277; see A. & R. -v- Taylor (1923) 87 J.P. 104, 17 Cr. App. R. 109, CCA.

> himself in custody on a criminal charge, his mental condition undergoes a very remarkable change, and he naturally becomes much more accessible to every influence that addresses itself either to his hopes or fears.[10]

1.42. Confessions have been subject to judicial sceptism on many fronts.[11] Since the decision of the Supreme Court in the People (DPP) -v- Quilligan and O'Reilly[12] every confession which is not supported by other evidence as to the guilt of the accused is subject to a clear warning or direction as to the evidence relevant to its taking. The Supreme Court, speaking through Finlay C.J., put the matter in the following terms:

> Where, as has occurred in this case, the issue with regard to the admissibility of statements turns largely on allegations of threats, assault, inducement or harassment, or of what is described as the "planting" of statements, then, the function of the jury is, I am satisfied, as follows. It must be clearly directed by the trial judge to have regard to all the evidence which is before it, including all the evidence suggesting that the statement has been obtained by any of the unlawful methods which I have mentioned above for the purpose of ascertaining whether they are satisfied beyond a reasonable doubt that the confession or incriminating statement made by the accused is true and is a sufficient proof of his guilt. A jury is not bound by a finding of fact made by a trial judge in the course of his ruling on the admissibility of a statement such as, for example, a rejection by him of an allegation that a member of the Garda Síochána assaulted the accused whilst in his custody and thus obtained the statement from him. It must be made clear, whether by specific warning or by a positive direction to a jury that their function in having to be satisfied beyond a reasonable doubt as to the truth of a voluntary statement admitted into evidence before them necessarily involves an examination by them of allegations of any description which are relevant to the question as to whether the statement was truly voluntarily given or not. It should be made clear to them that if they have a reasonable doubt as to whether a statement was truly voluntarily given that that would form a very solid ground for also entertaining a reasonable doubt as to whether it was true.[13]

1.43. To that statement of the law one must add section 10 of the Criminal Procedure Act, 1993 which provides:

[10] Johnston (1864) Ir. C.L. 60 at 83-84 (Hayes J.); For a contrary view see Wigmore – Treatise on the American System of Evidence in Trials at Common Law, (3rd Ed.) paragraph 823.
[11] R.-v-Thompson [1893] 2 Q.B. 12 at 18 as per Cave J.
[12] The references are (No. 1) [1986] I.R. 495; [1987] I.L.R.M. 606; (No. 2) [1989] IR 46; and (No. 3) [1993] 2 .IR. 305. In addition, there was also a sentence appeal to the Supreme Court by the appellant, O'Reilly, following on the quashing of the conviction of the appellant Quilligan.
[13] [1993] 2 I.R. 305 at 333-4.

> (i) Where at a trial of a person on indictment evidence is given of a confession made by that person and that evidence is not corroborated, the judge shall advise the jury to have due regard to the absence of corroboration.
>
> (ii) It shall not be necessary for a judge to use any particular form of words under this section.

It is unnecessary to go into the meaning of this section as it has been extensively canvassed in recent decisions, and particularly that of the Court of Criminal Appeal in the People (DPP) -v- Colm Murphy.[14] It is clear therefore, that the law regards a confession statement as one of the strongest elements of a prosecution case but also one that is fraught with danger when policemen in the course of obtaining it bend, or violate the law: a law which rightly must be so framed and applied as to ensure insofar as is possible that the guilty are convicted and that the innocent are not.

Opportunity to Explain

1.44. There is no rule of law that a person suspected of a crime must have put to him, or her, the material upon which An Garda Síochána suspect their involvement in the crime. Nor is it necessary to produce the statements of witnesses or accomplices which implicate the prisoner. It can, however, be desirable for a person facing an accusation of complicity in a crime to be given the opportunity to proffer an explanation for apparently incriminating circumstances. This might be in the form of a confession made by a co-accused naming him as an accomplice, which can be presented to him pursuant to Rule 8 of the Judges' Rules, or some physical evidence apparently linking him to the crime. Legislation also exists which sets out the circumstances in which a suspect may be called upon to explain possession of certain items, or their presence at a certain place, and, if the right to silence is exercised in respect of these demands, such silence may, under certain conditions, be relied upon as evidence at a later trial.[15]

Voluntariness

1.45. Before a confession statement may be admitted for the consideration of the jury, the prosecution must prove beyond reasonable doubt that it was a voluntary statement of the accused. A statement is not voluntary if it was obtained from the accused as a result of a fear of prejudice or hope of advantage, excited or held out by a person in authority.[16] Ultimately, the issue is whether the statement, the admissibility of which is contended for, was given as an act of the free will of

[14] [2005] 2 I.R. 125.
[15] Sections 18 and 19 of the Criminal Justice, Act 1984 as amended and substituted by sections 28, 29 and 30 of the Criminal Justice Act, 2007.
[16] On this issue see Cole - Irish Cases on Evidence (Second Edition, 1982) 55-68.

the accused person.[17] In the People (DPP) -v- McCann[18] the Court of Criminal Appeal adopted the following three point test as to what constitutes an inducement:

> (a) Were the words used by the person, or persons in authority, objectively viewed, capable of amounting to a threat or promise?
>
> (b) Did the accused subjectively understand them as such?
>
> (c) Was his confession in fact the result of a threat or promise?

1.46. On the objective test, anything from prolonged torture to a mild promise of advantage if a statement is made, or detriment if a statement is refused, can amount in law to an inducement. The only exception related to moral or religious issues is one more of historical than practical interest. The reader of this document, however, will note its relevance to the detention of Róisín McConnell, who was directed to pray to her dead father amongst other things. An inducement must relate to temporal consequences, as opposed to the spiritual benefit, or detriment, of confessing, or not confessing, to a crime. Thus, inducements to tell the truth "in the presence of the Almighty";[19] to avoid running "your soul into more sin";[20] or to "be a good girl and tell the truth"[21] are not considered unlawful. This is perhaps because a person under the influence of spiritual convictions is deemed unlikely to make a false confession, in the same way as a dying declaration is an exception to the exclusionary hearsay rule because of what is thought to be the inherent reliability of a statement made in such circumstances, or it may simply be because they are a mere exhortation to tell the truth into which nothing more should be read.[22]

1.47. In the temporal sphere, physical coercion is the most powerful example of conduct which will render a statement inadmissible.[23] Again this is of particular note in relation to some of the detentions which follow: particularly that of Róisín McConnell. At the other end of the spectrum illegal inducements include telling a person that if he did not make a statement he would be arrested;[24] telling a prisoner that "it would be better for him to make a statement admitting his guilt";[25] indicating that an interrogation would continue all night if no statement was made; or indeed anything that points to pleasant (such as the prospect of a lack of opposition to bail) or unpleasant (the vague threat of "trouble") consequences unless a statement is made.[26] Even a statement such as "you will

[17] AG -v- Cleary (1934) 72 I.L.T.R. 84, 1 Frewen 14 at 17-18; Re National Irish Bank Limited [1990] I.R. 145, [1999] 1 I.L.R.M. 321.
[18] [1998] 4 I.R. 397.
[19] R -v- Wilde (1935) 1 Mood C.C. 452.
[20] R -v- Sleeman (1853) Dears 249.
[21] R -v- Stanton (1911) 6 Cr App Rep 198 CCA.
[22] For a criticism see Heydon - Cases and Materials on Evidence (First Edition, 1976) 173-4.
[23] See for example the People (DPP) -v- Shaw [1982] IR 1.
[24] AG -v- Keogh (1957) 91 ILTR 103.
[25] AG -v- Flynn [1963] IR 255.
[26] The People (AG) -v- Galvin [1964] IR 325, held, on the facts, surprisingly, not to be an inducement.

be alright" used in conjunction with the exhortation "come along with me" uttered by a Garda have been construed as an improper inducement.[27] In other words, the questioners, as persons in authority, must unlawfully provoke the confession. Heydon cautions:

> There must be some limitation on the weakness of an inducement which will render a confession inadmissible, if only because the formulation of the rule seems to require that the statement be obtained from the accused by it. If it is so weak as to have no causative effect it cannot be an inducement. Further, as the New South Wales Court of Criminal Appeal said in R -v- Bodsworth, (1968) 2 N.S.W.L.R. 132, at p. 139, it is desirable "to avoid putting ingenious constructions on colourless words so as to detect a hint of improper inducement, as was at one time the case, but rather to construe the words only according to their natural, obvious, and commonsense meaning.[28]

1.48. It is not improper to question a prisoner by putting accurately to him the material which operates as the foundation of Garda suspicions provided this is not accompanied by unlawful inducements.[29] A statement of accurate fact as to the possible attitude of a future court in the event of co-operation with the authorities does not necessarily amount to an inducement. In Ping Lin[30] the statement argued to be an inducement amounted to the accused being told "if you show the judge that you have helped the police to catch bigger people, I am sure he will bear that in mind when he sentences you". The accused had appealed to the police for help, but in reply information was imparted to him which was both factually correct and of common currency. The case also contains a useful restatement of the test:[31]

> In considering whether the statement of an accused was brought about by hope or fear, the judge will have to ascertain all the facts concerning the alleged and so called inducements. If it is said to have consisted in something said by a person conducting an interview then the facts must be ascertained as to what was said and what were the circumstances and what was said must be given in a commonsense way the meaning which it could rationally be understood to have by the person to whom it was said ... [W]as it as a result of something said or done by a person in authority that an accused was caused or led to make a statement? Did he make it because he was caused to fear he would be prejudiced if he did

[27] The People (AG) -v- Murphy [1947] IR 236.
[28] See Heydon at p. 173; In Commissioners of Customs and Excise -v- Harz [1967] A.C. 760, at 820; [1979] 1 All E.R. 177 at 184, Lord Reid indicated that it should be remembered that not all accused persons were reasonable men or women and that they might find themselves ignorant and terrified by the predicament in which they find themselves.
[29] The People (DPP) -v- Pringle, McCann and O'Shea (1981) 2 Frewen 57 CCA.
[30] [1976] A.C. 574; [1975] 3 All E.R. 175; 62 Cr. App. R. 14.
[31] For instance see the People (AG) -v- Murphy [1947] I.R. 236.

> not, or because he was caused to hope that he would have advantage if he did? The prosecution must show that this statement did not owe its origin to this cause.

1.49. The test for the admissibility of a confession is based on causation. In these circumstances the normal rules as to the inference of one fact from another will apply. If the words or conduct, objectively viewed, amount on the face of them to a threat or promise, an inference that the accused so understood the position may easily be made. On occasion a person may be obliged by statute to answer questions on pain of penalty if he refuses. This is a form of compulsion and clearly answers given in response to questions asked under the invoked power are involuntary. The Supreme Court has acknowledged that such a provision does not, of itself, authorise the admission of forced or involuntary confessions in a criminal trial though it also accepted that whether a confession is voluntary or not is, in every case in which it is disputed, to be decided by the trial Judge.[32]

1.50. Traditionally, an inducement is not illegal unless it is made or held out by a person in authority.[33] Since what we are dealing with here are detentions of prisoners who were being questioned by Gardaí, all the interrogators were persons in authority. The rule exists because a person without authority over the conduct of the prosecution is regarded in law as to be so lacking in influence as to be unable to bring about an involuntary statement. Thus, a person who is not in authority may promise an advantage or threaten a disadvantage without invalidating a confession.[34] Any person apparently capable and understood by the accused as such, of influencing the outcome of a potential prosecution can be regarded as a person in authority. This can extend even to a doctor called to a Garda station to examine a person suspected of being drunk in the context of a potential road traffic prosecution.[35] The reasoning behind this rule is important to bear in mind because in the case of Mark McConnell and others, questions have been raised in this form: since you had complaints of abuse, why did you not confide in the doctor brought in to examine you/take a sample from you? It is easy to understand why in such circumstances the attending doctor might be regarded by the prisoner as acting on behalf of and in the interests of An Garda Síochána, notwithstanding the doctor's contention that he was independent in his function, though present at the request of An Garda Síochána. A confession statement made, after inducement, to someone who is not a person in authority, does not render a confession inadmissible because such a person cannot be regarded as having the effect of animating the hopes of the accused, or investing any threat made with awe.[36]

[32] Re National Irish Bank and the Companies Act, 1990 [1999] 3 I.R.145 at 187.
[33] See Cole, Irish Cases on Evidence (2nd Ed., 1982), p.55.
[34] Deokinanan -v- R. [1969] 1 A.C. 20, [1968] 2 All E.R. 346..
[35] Sullivan -v- Robinson [1954] I.R. 161; (1954) 88 I.L.TR. 169 HC.
[36] R. -v- Todd (1901) 13 Man LR 364 at 376. See also Deokinanan -v- R. [1969] 1 A.C. 20 PC; [1968] 2 All E.R. 346 PC.

Causation

1.51. The inducement offered to the accused, or the oppression to which he or she is subjected, renders the confession inadmissible because they have unlawfully caused the confession to be made. The prosecution may succeed in establishing that even though an unlawful inducement has been offered, or even though oppressive conduct has occurred, the confession was not caused by same. Even though a lengthy period of time has passed between the inducement offered and the making of a confession, the confession is inadmissible where the effect of this unlawful conduct has not worn off.[37]

1.52. It has been commented upon that an accused who has made one confession is likely to make another.[38] However, one must always be alive to the possibility that a past illegal inducement or conduct might still be operating on the mind of an accused at a later time when he or she makes a statement. This is to some extent relevant when considering the second alleged statement made by Frank McBrearty Junior while in custody on the 4th of December 1996. The Court of Criminal Appeal considered this matter in the People (D.P.P.) -v- Buckley in the following way:

> It is submitted on behalf of the applicant that by reason of the fact that the applicant had already, on two separate occasions, made incriminatory statements to other members of the Garda Síochána, in circumstances which have been ruled inadmissible by the trial Court, that this must be taken to have coloured the making of the subsequent statements, notwithstanding the intervening caution, and in particular, that he must no longer be considered to have had a freewill in relation to whether or not he would admit guilt at the time of making these statements...[W]here an accused person makes a statement which is incriminatory in nature and has previously been induced to make a statement either by promise, threat or oppression, also incriminatory in nature, which is by that fact rendered inadmissible, … the Court must in respect of the later statement, even though no immediate circumstance of oppression, threat or inducement surround it, have regard to the possibility that the threat or inducement remains so as to affect the freewill of the party concerned and, therefore, the voluntary nature of the statement. The Court is, however, satisfied that very different considerations apply and arise in a case where a previous admission of guilt has been made which is rendered inadmissible, not by virtue of any oppressive circumstances, nor by the holding out of any

[37] R -v- Doherty (1874) 13 Cox 23: See also the People (AG) -v- Galvin [1964] I.R. 325, The State -v- Bernard Treanor [1924] 2 I.R. 193 C.C.A., and see also the People (DPP) -v- Pringle (1981) 2 Frewen 57 and R. -v- Smith [1959] 2 Q.B. 35.

[38] In US -v- Bayer (1947) 331 US 532, Jackson J. stated: "after an accused has once let the cat out of the bag by confession, no matter what the inducement, he is never thereafter free of the psychological and practical disadvantages of having confessed. He can never get the cat back into the bag".

> inducement or threat, but rather by the exercise by the Court of a discretion concerning a breach of the Judges' Rules.[39]

The possibility that any alleged wrongdoing that may have given rise to the making of the first alleged statement by Frank McBrearty Junior might also have affected the making of the second alleged statement was one of the several possibilities which I had to consider in the course of my work.

Oppression

1.53. A confession must be excluded from the evidence if the prosecution fail to prove beyond reasonable doubt that it was not obtained by oppression. Interrogation by the Gardaí does not of itself amount to oppression:

> The accused has the right to remain silent and to refuse to answer or to refrain from answering any questions put to him by members of the Garda Síochána. They have, however, the right to interrogate him while he is in lawful custody, provided that such interrogation or questioning is carried out in a fair and reasonable manner...[such interrogation cannot be] of such a nature as would render any reply thereto as other than voluntary.[40]

1.54. Oppression may be defined as conduct in the treatment or interrogation of the accused which, through its effect on him, undermines the voluntary nature of the statement in question. There is no need, in this context, to attempt to relate the definitional elements of oppression to those of unlawful inducements. Lord McDermott, however, in a widely quoted lecture, since accepted by the Court of Criminal Appeal, made such an attempt. He defined oppression in the following terms:

> Questioning which by its nature, duration or other attendant circumstances (including defective custody) excites hopes (such as the hope of release) or fears, or so affects the mind of the subject that his will crumbles and he speaks when otherwise he would have remained silent.[41]

1.55. It is preferable to consider oppression in the light of the fundamental rule that confessions to be admissible in evidence must be proven to have been voluntary. Physical beatings and other forms of manipulation are practices which have, in the past, been engaged in by interrogators the world over, in order to bend a prisoner to their will. In the pages of this report the allegations of oppressive conduct against interrogators include physical violence; showing bloody post-mortem photographs; using degrading language, like "murdering bastard" or

[39] Per Finlay C.J. (1989) 3 Frewen 210; [1990] I.R. 14 CCA.
[40] The People (DPP) -v- McCann, Judgment of the Special Criminal Court, 23 November, 1980, Unreported and reproduced in part in the People (DPP) -v- Pringle, McCann and O'Shea (1981) 2 Frewen 57 at 92.
[41] See R -v- Prager [1972] 1 ALL E.R. 1114, 56 Cr. App. R. 151; and see the approval by the Court of Criminal Appeal in the People (DPP) -v- McNally and Breathnach (1981) 2 Frewen 43; and the People (DPP) -v- Pringle, McCann and O'Shea (1981) 2 Frewen 57.

"Satan"; yelling; and belittling protestations of innocence with foul dismissal. The danger both in the case of an unlawful inducement, and in oppressive conduct, is that coercion, once begun, will end only when the interrogators have caused the prisoner to confess to precisely what they want to hear. The extraction by coercion of confession statements has been a psychological phenomenon in many societies and has been engaged in for the purpose of the fictitious confirmation of the most extraordinary untruths.[42] The ascertainment of the voluntary nature of a confession statement is thus crucial to the fair administration of justice. The definition of oppression as formulated by Sachs J. in R -v- Priestly[43] was adopted by the Court of Criminal Appeal in the People (DPP) -v- McNally and Breathnach. It is apposite in the context of the allegations before this Tribunal to quote it:

> To my mind the word in the context of the principles under consideration imports something which tends to sap or has sapped, that freewill which must exist before a confession is voluntary...whether or not there is oppression in an individual case depends on many elements. I am not going to go into all of them. They include the length of time of any individual period of questioning, whether the accused has been given proper refreshment or not, and the characteristics of the person who makes the statement. What may be oppressive as regards a child, or someone inexperienced in the ways of the world, may turn out not to be oppressive when one finds that the accused is of tough character and experienced in the way of the world.[44]

1.56. In delivering the majority judgment in the People (DPP) -v- Shaw[45] Griffin J. gave a useful summation of the authorities in the following statement:

> The primary requirement is to show that the statement was voluntary, in the sense in which that adjective has been judicially construed in the decided cases. Thus, if the tendered statement was coerced or otherwise induced or extracted without the true and freewill of its maker, it will not be held to have been voluntarily made. The circumstances which will make a statement inadmissible for lack of voluntariness are so varied that it would be impossible to enumerate or categorise them fully. It is sufficient to say that the decided cases show that a statement will be excluded as being involuntary if it was wrung from its maker by physical or psychological pressures, by threats or promises made by persons in authority, by the use of drugs, hypnosis, intoxicating drink, by prolonged interrogation or excessive questioning, or by any one of a diversity of

[42] Trevor-Roper - The European Witch Craze of the Sixteenth and Seventeenth Centuries (London, 1969) 44-5.
[43] (1965) Cr .App. R. 183; 51 Cr. App. R. 1; and see the commentary at (1966) Crim.L.R. 507.
[44] Approved in the People (DPP) -v- McNally and Breathnach (1981) 2 Frewen 43 at 53.
[45] [1982] I.R. 1.

> methods which have in common the result or risk that what is tendered as a voluntary statement is not the natural emanation of a rational intellect and freewill.

1.57. A consideration as to whether a statement resulted from oppression involves the minute scrutiny of every detail of an accused's detention and interrogation. This is the practice that the Tribunal has followed. In modern practice this can take several days. With the implementation of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 a custody record is kept, independently of the interrogating officers, of each significant event during detention. The Regulations control questioning beyond midnight, provide for periods of rest, limit the number of interrogating officers and require that a Garda officer be placed in charge of overseeing the custody of the accused. It is also that Garda's duty to ensure that the circumstances of his custody are such that due respect is had for the personal rights, dignity as a human person and special needs of the person in custody. Many of the provisions of these regulations may be a reaction to or a codification of earlier decided cases. Equally, the structure of interrogation is regulated so as to maximise the chances of any confession that occurs in these circumstances meeting with judicial and ultimately, jury approval.

1.58. While the circumstances of interrogation, and the allegations which may be levelled against interrogating officers, are almost infinitely varied, some guidance may be gleaned from decided cases. In the People (DPP) -v- Breathnach[46] the Court of Criminal Appeal excluded a confession statement because of the absence of independent legal advice, lengthy periods of questioning and the fact that the accused had been woken "from what must have been a much needed sleep" at 5.20 a.m. on the third day of his detention and "brought to what may have been the menacing environment of an underground passage in the Bridewell Garda Station" where he apparently confessed after having been told that other persons had made statements which incriminated him. In the People (DPP) -v- Pringle[47] the short confession statement made by the accused was not excluded by the Court of Criminal Appeal because, as they explained, whether oppression exists depends not only on the degree of burdens and conduct by the questioners, but also on the character of the person under interrogation and his specific reaction to what was done to him:

> In this case the accused was a man of forty two years of age, in good health, who had for some time prior to his arrest been a fisherman in the Galway area. He was apparently an experienced man of the world not unused to conditions of physical hardship. It was clearly open to the Court of Trial to hold that the will of such a man would not have been

[46] (1981) 2 Frewen 43.
[47] (1981) 2 Frewen 57.

> undermined by the interviews he had experienced and by lack of sleep and that he spoke the inculpatory words when otherwise he would have remained silent.[48]

Unfairness

1.59. A rule was established and ultimately applied, for the exclusion of an unfairly obtained confession statement by the Supreme Court in the People (DPP) -v- Shaw.[49] Wigmore reasoned that the rules as to the exclusion of confession statements were based on experience of objective circumstances which gave rise with high probability to false confessions. He maintained that a confession was not to be excluded because of any breach of confidence or of good faith by which it was obtained. He did not regard mere unfairness, incorporating a promise of secrecy or a favour, a misrepresentation of fact, or a deliberately planned and executed deception upon the suspect, as giving rise to a ground of exclusion of a statement of admission.[50] In evidence to the Tribunal, Frank McBrearty Junior claimed that his alleged confession made on the 4th of December 1996 was obtained by means of a trick. The issue of alleged unfairness was also important in considering an allegation made by Mark McConnell that, at a time before Frank McBrearty Junior's confession had supposedly been made, Gardaí interrogating him read out a different concocted confession, that they attributed to Frank McBrearty Junior, admitting to the killing of Mr. Barron and implicating Mark McConnell as his accomplice.

1.60. In the Shaw case, Griffin J. formulated the additional discretion that may be exercised in respect of unfairly obtained statements as follows:

> Even if a statement is held to have been voluntarily obtained in the sense indicated, it may nevertheless be inadmissible for another reason. Because our system of law is accusatorial and not inquisitorial, and because (as has been stated in a number of decisions of this Court) our Constitution postulates the observance of basic or fundamental fairness of procedures, the judge presiding at a criminal trial should be astute to see that, although a statement may be technically voluntary, it should nevertheless be excluded if, by reason of the manner or of the circumstances in which it was obtained, it falls below the required standard of fairness. The reason for exclusion here is not so much the risk of an erroneous conviction as the recognition that the minimum of essential standards must be observed in the administration of justice. Whether the objection to the statement be on constitutional or other grounds, the crucial test is whether it was

[48] Per O'Higgins C.J. at 82. For a further insight into this case see the People (D.P.P.) –v- Pringle (No. 2) [1997] 2 I.R. 225. See also the reasoning in Lisenba-v- California (1941) 314 US 219.
[49] [1982] I.R. 1.
[50] Wigmore - Treatise on the American System of Evidence in Trials at Common Law Third Edition, paragraph 822. See also the judgment of Walsh J. in the People (AG) -v- Cummins [1972] I.R. 312; (1974) 108 I.L.T.R. 5 SC.

> obtained in compliance with basic or fundamental fairness, and the trial judge will have a discretion to exclude it "where it appears to him that public policy, based on a balancing of public interests, requires such exclusion" - per Kingsmill Moore J. at p. 161 of the report of O'Brien's case".[51]

1.61. This passage has been accepted as representing the law in the Court of Criminal Appeal.[52] It thus appears that even short of finding oppression, a confession may be excluded if the circumstances surrounding its taking fall below fundamental standards of fairness. The difficulty with this rule is in predicting the circumstances in which it will apply with any precision. It may, however, be argued that lies by interrogators that other suspects have confessed and implicated the accused, inveigling the accused into an unguarded moment by claiming to speak "off the record" and misstatements that close relations or friends may find themselves subject to accessory charges, might amount to qualifying circumstances. Questioning an adult with a mental age of a small child may also invoke the unfairness jurisdiction.[53]

Unreliability

1.62. The extent to which a person is able to exercise a free will in making a statement of admission may be influenced by a mental or medical condition, drunkenness, or the effects of addiction. In this regard, the Custody Regulations indicate that a prisoner has a right to medical treatment if he is injured and that, if a person claims to need medication, he should be allowed to take it or to consult with a medical practitioner.[54] These Regulations also fulfil the dual purpose of protecting the accused and buttressing the integrity of confession statements, since they ensure that independent medical evidence will be available to the prosecution as to the state of the accused. If there is controversy on this issue, evidence of a medical practitioner as to his or her opinion concerning whether the accused was 'fit for interview' will usually be called at the trial by the prosecution. This issue is relevant to the arrest and detention of Frank McBrearty Senior, who was hospitalised and under medical attention during the course of his detention. Any special burden, however, which has the effect of making the conduct of the interrogators more oppressive can, and should, be weighed in the balance on the issue of oppression. Any confession which is unreliable because the accused has not exercised his free will in making it should be excluded.[55] The case law concentrates on the extent to which, notwithstanding the circumstance

[51] [1982] I.R.1 at 61; See also The People (AG) -v- O'Brien [1965] I.R. 142.
[52] The People (D.P.P.) -v- Breathnach (1981) 42 Frewen at 55.
[53] R -v- Steward (1972) 56 Cr. App. R. 272; Sinclair -v- R (1946) 73 C.L.R. 316. See, however, the People (A.G.) -v- Sherlock and Collins (1975)1 Frewen 383, in which an innocent misrepresentation by a Garda to a prisoner that his fingerprint was found at the scene of a crime was held not to affect the admissibility of a subsequent confession.
[54] Regulation 21 and Regulation 12 (7),(9).
[55] R. -v- Buchanan (1966) V.R. 9 and R .-v- Philips (1949) N.Z.L.R. 316.

complained of, the will of the accused remains and whether a choice in favour of, or against, confession, was freely exercised. Thus, physical illness,[56] mental illness,[57] or indeed hypnosis are significant in tipping the balance towards oppression.[58]

1.63. If the accused did not rationally exercise his free will in volunteering a statement then it should be excluded.[59]

Custody Regulations

1.64. Following the enactment of section 4 of the Criminal Justice Act, 1984, regulations governing the treatment of persons in custody were introduced, to which some reference has already been made. It should be recalled that this important new investigative tool enabled An Garda Síochána to detain persons initially for six, and by extension for twelve hours, for the proper investigation of the offence for which the person had been arrested. Hitherto, a person arrested would have to be taken before the Courts for the purpose of being charged with an offence as soon as reasonably possible. Up to that time the only power to detain a suspect following upon arrest for the purpose of the investigation of the offence was under section 30 of the Offences Against the State Act, 1939. This new power envisaged that the person detained could be interviewed during the course of his or her detention. The rights of the detainee and the legal duties cast upon the Gardaí in respect of these detentions were set out in detail in the statute and regulations. It was thought to be an appropriate and adequate counterbalance to the extension of Garda powers in this area. Though one might have thought that compliance with the statute and regulations would be of the greatest importance, failure to comply was, curiously, contemplated by the provisions of the 1984 Act itself. Section 7(3) of the Criminal Justice Act, 1984 provides:

> A failure on the part of any member of the Garda Síochána to observe any provision of the [Custody Regulations] shall not of itself render that person liable to any criminal or civil proceedings or of itself effect the lawfulness of the custody of the detained person or the admissibility in evidence of any statement made by him.

It is regrettable that this provision introduced a note of ambiguity into the question of whether the regulations ought to be applied closely by An Garda Síochána, and the consequences of not doing so.

1.65. In the People (DPP) -v- Reddan and Butler[60] the Court of Criminal Appeal

[56] R -v- Burnett (1944) V.L.R. 115; R -v- Treacy [1944] 2 All E.R. 229; R -v- Williams (1959) N.Z.L.R. 502; R -v- Sykes and Campi (No. 1) (1969) V.R. 631.
[57] Jackson -v- R. (1962) 36 A.L.J.R. 198.
[58] R. -v- Booker (1928) 4 D.L.R. 795: See also R -v- Crampton (1991) 92 Cr. App. R. 369.
[59] R.-v- Goldenburg (1988) 88 Cr .App. R. 285; (1988) Crim. L.R. 678.
[60] [1995] 3 .IR. 560.

admitted a statement where the period of interrogation had exceeded the four hours limit set down by the Custody Regulations, but where the interrogation had continued with the consent of the accused. It may be that breaches of the Regulations which are trifling, such as an inadvertent failure to record a change of interviewing officer or the brief and non-oppressive presence for the purpose of questioning of more than the number of Gardaí permitted at any interview may not, of itself, render a confession statement inadmissible. More serious breaches may undermine the procedures designed to ensure fairness and need to be robustly addressed. These might include a failure to notify a foreign national that he has an entitlement to communicate with a diplomatic representative from his country or the persistent and unwarranted exclusion of any visit by a family member or hindrance of access to timely legal advice.[61] In these detentions, the serious matter of failing to note complaints and allegations of bullying prisoners out of making complaints or belittling their complaints come into the picture.

1.66. It is not thought that the reproduction of the full text of the Custody Regulations is going to be of assistance to those studying what follows. A summary, however, may be of assistance.

1.67. The Regulations require the member in charge to keep, or cause to be kept, a custody record.[62] This will indicate the date, time and place of arrest, the time of arrival at the station, the nature of the offence for which the accused was arrested and relevant particulars relating to his physical and mental condition. The detention of a person can only be authorised where, on reasonable grounds, the member in charge, or the Garda officer delegated in that regard, believes that such detention is necessary for the proper investigation of the offence.[63] The arrested person is entitled to be informed what he is being arrested for, that he is entitled to consult a solicitor, and other matters which have now been reduced to a standard form which is read over and explained to an accused person on his arrival.[64] The Garda officer in charge of overseeing the custody of the accused is obliged to ensure that the circumstances of his custody conform with "due respect" for the "person's rights … and … dignity as human persons and … special needs". This particularly applies to people who have any physical or mental disability.[65] Force can only be used against a person in custody where that force is reasonable in self defence, to secure compliance with lawful directions, to prevent escape or to restrain the prisoner from injuring himself or others, damaging property or destroying or interfering with evidence. The use of that

[61] The People (D.P.P.) -v- Connell [1995] 1 I.R.. 244 and O'Brien -v- D.P.P. [2005] 2 I.L.R.M. 444; See also Daly, Does the Buck Stop Here? An Examination of the Pre-Trial Right to Legal Advice in the Light of O'Brien .v. DPP, (2006) 13(1) DULJ 345a Cases and Comment.
[62] Regulation 6.
[63] Regulation 7.
[64] Regulation 8.
[65] Regulation 3.

force must be reported in writing. A complaint made by a prisoner must also be recorded in writing.[66]

1.68. An interview must be conducted in a fair and humane manner. The arrested person is entitled to know the name and rank of the person interviewing him. No more than two people may interview an accused, though up to four may be present with the accused at any one time. The interview periods should not last for more than four hours and then questioning must be adjourned for "a reasonable time". This is generally taken to mean a reasonable period for rest and refreshment of about an hour.[67]

1.69. There are elaborate provisions guaranteeing the right of access to a solicitor. These regulations allow a person "reasonable access to a solicitor of his choice" so that he will be enabled to communicate with that solicitor.[68] Where an arrested person asks for a solicitor he should not be asked to make a written statement in relation to an offence until a reasonable time for the attendance of his solicitor has elapsed.[69] In this case it is disturbing that allegations have been made, in relation to Mark McConnell, that a hindrance was placed on the exercise of this important right.

1.70. An arrested person is not to be kept in isolation. Apart from a right to medical and legal visits, he also has the right to receive a visit from a relative, friend or other person with an interest in his welfare if that is what he desires. This visit is supervised, unlike a legal or medical visit, which takes place in private due to the confidential nature of the relationship between a citizen and a doctor or solicitor. The visit by a relative or friend may take place provided that the member in charge "is satisfied that the visit … will not hinder or delay the investigation of crime".[70] This generally means that where a relative is reasonably suspected of complicity, or of being complicit after the fact, the visit is not allowed. A number of the individuals whose detentions form the subject matter of much of this report were visited by solicitors and relatives while in detention. Allegations were made that these visits were subjected to eavesdropping and tape recording, which allegations are dealt with in a separate chapter. In certain other instances, visits were refused.

1.71. Where an arrested person is under the influence of drink or drugs so that he is unable to appreciate the significance of questions put to him or his answers, he is not to be questioned while he is in that condition without the express authority of the member in charge, who must have reasonable grounds for believing that to delay questioning the person would involve a risk of injury to persons, serious

[66] Regulation 20.
[67] Regulation 12.
[68] Regulation 11(1).
[69] Regulation 12(6).
[70] Regulation 11(4).

loss of or damage to property, the destruction of, or interference with evidence, or the escape of accomplices.[71] As already noted, the accused also has a right to medical treatment where he is injured, under the influence of drugs or drink and cannot be roused, fails to respond normally to questions (except through drink), appears to be suffering from a mental illness or otherwise appears to need medical attention. Where a person claims to need medication a doctor should be called if the member in charge considers it necessary.[72]

1.72. The custody record must include the time and date of the interviews and who was present; the time at which the interview commenced and ended and any relevant occurrences should be brought to the attention of the member in charge.[73] The custody record should be preserved. Many issues arose in the Tribunal hearings as to the accuracy or proper preservation of the custody record.

1.73. Apart from the foregoing, material particulars relating to visits to persons in custody by the member in charge; by other visitors; telephone enquiries and oral enquiries concerning the person; telephone calls made or letters sent by the prisoner; requests made by the prisoner or by persons attending at the station and seeking to visit him; meals supplied to him; the time of release; and whether station bail is granted should be recorded.[74] The regulations also provide that questioning should not continue beyond midnight. This issue arose in the cases of Mark Quinn and Katrina Brolly. The wording of these particular regulations, however, is impossibly confused and it should be changed: this is dealt with in Chapter 16.

Rights of the Accused

1.74. While in custody for the purpose of interrogation, the accused's constitutional rights remain in force. Only his right to liberty and association is curtailed. The infringement of his remaining constitutional rights may have the effect of rendering his custody unlawful, with the exclusion of any evidence thereby obtained. The accused retains his right to medical assistance,[75] and to reasonable access to legal advice;[76] and he or she is not to be hidden away from family members or friends.[77] This latter point must surely include the right to know what has happened to one's children upon one's arrest. This issue arose in a particularly stark way in relation to the detention of Róisín McConnell and her queries as to what had happened to her small child.

[71] Regulation 12(7), (9).
[72] Regulation 21.
[73] Regulation 12(11), (12).
[74] Regulations 23 and 24.
[75] Re: The Emergency Powers Bill, 1976 [1977] I.R . 159.
[76] The People (DPP) -v- Healy [1990] 2 I.R. 73, [1990] I.L.R.M. 313.
[77] The People (DPP) -v- Kelly (No. 2) [1983] I.R. 1.

The Judges' Rules

1.75. Additional rules governing the conduct of An Garda Síochána in the course of questioning suspects are contained in the Judges' Rules. These are administrative rules only and not rules of law. Breach of the rules may result in the exclusion of any admission made by an accused at the discretion of the trial judge: a breach of the rules suggests that a statement has been unfairly obtained. The Judges' Rules probably have their origin in correspondence back in October 1906 between the Lord Chief Justice of England and the Chief Constable of Birmingham. The latter had written seeking advice when, on the same circuit, one judge had censured a policeman for having cautioned a prisoner, while another judge applied a censure where a constable had failed to do so. The rules applied in Ireland were formulated by the judges of the Kings Bench Division, as to the first four in 1912, and the remaining five in 1918. In England these have been made subject to further refinement and restatement.[78] In this jurisdiction the Judges' Rules still constitute the basic guide to acceptable police conduct. Here is the text of the Judges' Rules:

I. When a police officer is endeavouring to discover the author of a crime there is no objection to his putting questions in respect thereof to any person or persons, whether accused or not, from whom he thinks that useful information may be obtained.

II. Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such a person before asking him any questions, or any further questions as the case may be.

III. Persons in custody should not be questioned without the usual caution being first administered.

IV. If the prisoner wishes to volunteer any statement, the usual caution should be administered. It is desirable that the last two words of such caution should be omitted, and that the caution should end with the words 'to be given in evidence'.

V. The caution to be administered to a prisoner when he is formally charged should therefore be in the following words: "Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence". Care should be taken to avoid the suggestion that his answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might assist to clear him of the charge.

[78] Practice Note (Judges' Rules) [1964] 1 All E.R. 327; [1964] 1 W.L.R. 152.

VI. A statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely because no caution has been given, but in such a case he should be cautioned as soon as possible.

VII. A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said. For instance, if he has mentioned an hour without saying whether it was morning or evening, or has given a day of the week and day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.

VIII. When two or more persons are charged with the same offence and their statements are taken separately, the police should not read these statements to the other persons charged, but each of such persons should be given by the police a copy of such statements and nothing should be said or done by the police to invite a reply. If the person charged desires to make a statement in reply the usual caution should be administered.

IX. Any statement made in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to make any corrections he may wish.[79]

1.76. Citizens have a duty to help the authorities in discovering crime and apprehending offenders. They also, however, have a right to silence. Where a person is in custody it was thought that their situation required to be balanced by the administration of a caution declaring their right to silence. Equally, where a police officer has made up his mind to charge someone with a crime this was thought to be equivalent to custody and so demands the administration of a caution. The administration of a caution does not necessarily render a statement voluntary if it has been preceded by an unlawful inducement.[80] The caution should genuinely operate as a warning; a rapid or "parrot-like repetition" does not suffice.[81]

1.77. A breach of the Judges' Rules does not automatically result in the exclusion of evidence. A failure to comply with the provisions of the Judges' Rules activates a

[79] People (AG) -v- Cummins [1972] I.R. 312 at pp 317-318.
[80] The People (AG) -v- Murphy [1947] I.R. 236; (1946) 80 I.L.T.R. 23 C.C.A.
[81] AG -v- Cleary (1938) 72 I.L.T.R. 84 [1934] L.J. Ir. 153 CCA; see also McCarrick -v- Leavy [1964] I.R. 225 SC; see also The People (AG) -v- Kearns (1938) 72 I..T.R. 115 Circuit CC in which it was held that a person temporarily held by two members of the public, pending the arrival of Garda officers, requires the administration of a caution for any statement to be admissible.

discretion vested in the trial judge to refuse to admit the evidence in question, but the exercise of that discretion is not governed by whether or not the statement is voluntary. A statement obtained in breach of the provisions of the Judges' Rules is admissible provided it is a voluntary one. But the fact that it is voluntary does not take away the trial judge's discretion to refuse to admit the evidence if it has been obtained in violation of the Judges' Rules. It is an issue of fairness of procedure.

1.78. A breach of the Judges' Rules will not lightly be excused. If there has been a breach, the seriousness of that breach and the potential effect on the fairness of the interrogation of the accused will be the matters primarily to be considered in exercising the discretion as to admissibility. In the People (DPP) -v- Farrell.[82] O'Higgins C.J., giving the judgment of the Court of Criminal Appeal, put the matter as follows:

> The Judges' Rules are not rules of law. They are rules for the guidance of persons taking statements. However, they have stood up to the test of time and will be departed from at peril. In very rare cases, such as R -v- Mills and Lemmon [1947] KB 297, a statement taken in breach may be admitted in evidence, but only in very exceptional circumstances. Where, however, there is a breach of the Judges' Rules, such as a failure to make a written record of the alleged confession or a failure to invite the accused to accept or reject the statement each of such breaches calls for adequate explanation. The breaches and explanation (if any) together with the entire circumstances of the case are matters to be taken into consideration by the trial judge before exercising his judicial discretion as to whether or not he will admit such a statement as evidence.

1.79. Rule III appears to authorise the questioning of persons in custody. However, a Home Office circular distributed in 1930 explained that this rule:

> … was never intended to encourage or authorise the questioning by cross-examination of a person in custody after he has been cautioned, on the subject of the crime for which he is in custody...but in some cases it may be proper and necessary to put questions to a person in custody after the caution has been administered, for instance, a person arrested for burglary may, before he is formally charged, say "I have hidden or thrown the property away" and after the caution he would properly be asked "where have you hidden or thrown it...?"[83]

1.80. The early judges suspected any policy of questioning as a method of extracting confessions. Of course, a statement made in answer to questions is not

[82] [1978] IR 13; 1 Frewen 558. See further the People (DPP) -v- Kavanagh (1989) 3 Frewen 243.
[83] Quoted in Leigh - Police Powers in England and Wales (London, 1975) 141-148.

inadmissible.[84] What can be objectionable is the interruption of a voluntary statement by cross-examination for the purpose of diverting the statement into an acceptable form that accords with the pre-conceived suspicions of the interrogator. A person who agrees to make a statement should be allowed to use his or her own words and Rule VII indicates that only ambiguities as to detail may be the subject of questions during that process. The question and answer session, outside the process of taking down a narrative offered by the accused, can be objectionable if the process engaged in by the interrogators is unfair. In McDermott -v- R[85] Dixon J. in ruling that a confession made after questioning was admissible, offered the following guidance:

> The character of the questions, the absence of any insistence or pressure in putting them, the fact that no questions were put directed to breaking down or destroying the prisoner's answers or statements and the fact that there was no attempt to entrap, mislead or persuade him into answering the questions, still less into answering them in any particular way, these are all matters which negative such a degree of impropriety as to require the exclusion of the testimony as to the prisoner's admissions.

The method of questioning, or how answers are perhaps rephrased by the interviewer, or the interpretation put upon an answer by the interviewer before writing it down, can also hugely influence the finished document.

1.81. Rule VIII was introduced to overcome any abuse of the decision in R v Christie.[86] What was said in the presence of the accused may be admitted against him at his trial as an exception to the rule against hearsay if his silence can be taken to amount to adoption of the statement. Rule VIII prevents the admissibility of prejudicial, but non probative material, put verbally to the accused by interrogators to which he makes no response. It would appear that prior to Rule VIII the police in England, having obtained the confession of an accomplice, would read over the entire of that statement to the accused. This, it was argued, rendered the statement admissible in evidence against the accused.

1.82. A confession is admissible only against its maker and can never be evidence against the persons named therein. Therefore, in the case of Mark McConnell, if a statement was made implicating him in the death of the Late Richard Barron by Frank McBrearty Junior, Mr. McBrearty Junior's confession could not have been used against Mark McConnell as evidence if he had been charged and prosecuted in respect of the death of the Late Richard Barron. For such evidence to be introduced it is necessary for the accused to be treated as an accomplice, for him to be charged and sentenced, and for him then to give evidence in the ordinary way as part of the prosecution's case. Thus where A1 confesses to his

[84] Ibrahim -v- R. [1914] A.C. 599; [1914-15] All E.R. Rep. 874 P.C.
[85] (1948) 76 C.L.R. 501.
[86] [1914] A.C. 545; 10 Cr App. R. 141.

involvement in a crime with A2, such a confession statement is never admissible against A2. The reading over of such a statement to A2 in circumstances where he might be expected to make a response could, theoretically, render that statement admissible against him. Rule VIII therefore requires that the interrogator simply put the statement before the accused so that he himself can read it and, if he wishes to do so, then decide to volunteer a statement as to his own involvement, if any. Rule VIII is not broken if, in respect of an illiterate person, the Gardaí do no more than tell him that they have a statement from another person implicating him in the crime.[87] In the cases of Mark McConnell and Frank McBrearty Junior, each made the allegation that Gardaí produced an alleged confession purportedly made by the other in the course of their detentions, when no such confessions existed at the time.[88]

1.83. In the earlier years of the twentieth century the use of a pen and paper may have been regarded as a sufficient safeguard against the fabrication of confessions, or the misrepresentation of the words of the accused. That might have been regarded as especially so where, as the rules provide, the accused's statement has been read back to him and he has given his signature in affirmation of the accuracy of the record, or at least has been offered that opportunity. Of course allegations are often made that unlawful inducements have been made by interviewing officers or that they have been guilty of oppressive conduct and the blatant fabrication of statements. The electronic recording of interviews was provided for by section 27 of the Criminal Justice Act, 1984. By the year 2000, video facilities were available only on a trial basis in a handful of Garda stations in the entire country. In 2006 they were available in all divisional headquarters and are now available in designated Garda stations to which persons are to be brought for interviewing. This, it is hoped, will greatly increase the capacity of a trial judge to assess such allegations from properly preserved video tapes and also to get a good sense of the overall conduct of an interview and, most importantly, the approach of the interviewers and the interviewees' interaction with them. In other jurisdictions the introduction of videotaped evidence of interviews has greatly reduced the number of successful challenges to statements of admission.

1.84. It is to be noted that notwithstanding the introduction of video recording and the experience in other jurisdictions it has been shown that incriminatory remarks or statements can be alleged to have been made in the corridor on the way to interview, or in a police car following arrest. In those circumstances one will be thrown back upon the less certain forensic instruments of pen, paper and cross-examination.

[87] The People (DPP) -v- Burke and O'Leary (1986) 3 Frewen 92. See also R -v- Taylor [1978] Crim. L.R. 92.

[88] The alleged confession of Frank McBrearty Junior came into existence later than the time at which Mr. McConnell alleged such a confession had been produced to him in the course of his interrogation.

1.85. It appears to the Tribunal, having listened to the evidence in relation to the detention of twelve separate individuals, that a certain basis must now be introduced upon which judgment can be exercised as to whether a confrontation during questioning amounted to oppression, as to whether inducements were used and as to whether a confession was made. This is especially so in cases where virtually every minor occurrence is challenged by the detainee and results in an allegation of wrongdoing against An Garda Síochána as, for example, in the case of Mr. Frank McBrearty Junior. The most reliable basis for such judgment is through electronic recording. The use of video recording is not a prerequisite to the admissibility of a confession statement but the Court of Criminal Appeal has indicated that the time is near when the absence of a video tape will result in the exclusion of an inculpatory statement. This should be the norm. In the People (DPP) -v- Connolly, Hardiman J., said:

> The courts have been very patient, perhaps excessively patient, with delays in this regard. The time cannot be remote when we will hear a submission that, absent extraordinary circumstances (by which we do not mean that a particular Garda station has no audiovisual machinery or that the audiovisual room was being painted), it is unacceptable to tender in evidence a statement which has not been so recorded.[89]

The Function of Judge and Jury

1.86. Objection may be taken to the admissibility of a confession statement on the commencement of the trial. Defence counsel should mention to prosecution counsel the items of evidence to which objection is taken, and prosecution counsel should not, in his or her opening speech, make any mention of the items of evidence to which objection is taken. Nowadays, so many objections are taken to so many items of evidence that the opening speech for the prosecution may on occasion be reduced to a recital of bare facts and a basic outline of the applicable law. Sometimes counsel for the prosecution will request the defence, for the sake of exactitude, to outline at the commencement of the trial to the judge, in the absence of the jury, the items of evidence to which objection is taken. This tends to lessen any dispute as to what is in contention.

1.87. When the time comes for the prosecution to produce the confession, the defence has two choices. It can elect to leave the confession to the consideration of the jury by waiving any question of admissibility. Considerations as to the evidential weight to be attached to the confession can then be argued through cross-examination, and closing submissions before the jury. It is more usual to call for a voir dire or "trial within a trial" in the absence of the jury: a procedure which allows the judge to decide whether the prosecution can prove beyond reasonable

[89] [2003] 2 I.R. 1 at page 18.

doubt that the confession statement was voluntary, before any evidence is led in relation to it in the presence of the jury. Notwithstanding that the statement has been ruled to be admissible, the accused is still entitled to challenge the statement by cross-examination on the grounds upon which it has already been challenged in the jury's absence. However, this later challenge is mounted in a much different context in that the jury has before it all of the other relevant evidence in the case, against which it can consider the admission, in the light of whatever warning or directions the trial judge gives to the jury about it.[90]

Conclusion

1.88. The Tribunal has set out the relevant law, in some detail, in relation to confessions as a guide to the parameters within which the Gardaí should operate. It should not be thought that these rules are in any sense a legal minefield or a challenge to An Garda Síochána or an obstruction to a Garda investigation. They are tested rules, necessary to ensure, insofar as possible, that admissions ultimately made can be relied upon as freely, fairly and voluntarily made. If the law is fairly and properly applied at this pre-trial stage it can also facilitate the innocent to speak freely without fear of the abuse of power. These legal rules have been and are applied successfully on a daily basis in Garda stations and in criminal courts throughout the country, for the most part properly and without difficulty. Many successful prosecutions have been brought on the basis of their proper application. Gardaí are very well informed of the relevant rules. Rules, however, must from time to time be reviewed as to their adequacy and in the light of modern technical advances. Clearly, with the introduction of certain forms of electronic recording, some portions of the Judges' Rules have been rendered redundant and require revision. As to whether admissions made in other circumstances, such as the corridor of a Garda station or in a police car, ought ever to be introduced in evidence is, as matters stand, a question for trial judges to consider in the light of all the circumstances, bearing in mind the legal requirements of admissibility. Alternatively, the Oireachtas might consider legislation on the matter.

1.89. This report is concerned with the potential for catastrophic injustice that arises when laws are flouted, protections abandoned and lies told by some Gardaí in pursuit of those whom they regard as guilty. That unhealthy

[90] The People (AG) -v- Ainscough [1960] I.R. 136 C.C.A.; see also Ajodha v State [1982] A.C. 204; [1981] 3 W.L.R. 1; [1981] 2 All E.R. 193; 73 Cr. App. R. 129; [1981] Crim. L.R. 555 P.C. The People (DPP) -v- McGowan [1979] I.R. 45. This procedure applies to the Special Criminal Court despite the fact that the three judges of that court try all issues of fact and law without a jury. See also the People (DPP) -v- Quilligan and O'Reilly [1993] 2 I.R. 305 and see R -v- Roberts [1954] 2 Q.B. 329; [1953] 2 All E.R. 340; [1954] 3 W.L.R. 178; 37 Cr. App. R. 86. See Wong Cam Ming -v- R. [1980] A.C. 247; the People (DPP) -v- William Roche (Unreported, Court of Criminal Appeal, July 28, 2004).

focus or tunnel vision in the course of the Barron investigation led to manufactured evidence, wrongful arrests and completely improper behaviour by Gardaí towards prisoners in their custody. It cheapened the presumption of innocence and undermined the truthful resolution of a very tragic case. It dominated the lives and struck at the reputations of two families: the extended Quinn family and the McBrearty family. It did serious damage to the reputation of An Garda Síochána, and its integrity and professionalism. It contributed towards social division in the town of Raphoe where bitterness and resentment related to the death of the Late Richard Barron and the subsequent Garda investigation continue to this day. There must be constant vigilance on the part of Garda management at the highest levels to ensure that the Garda force observes the law, and that proper investigative and interviewing standards are taught and adhered to at all levels throughout the force and are in a constant state of review and if necessary, renewal. The organisation must strive to limit the possibility of a recurrence of these events. In addition, what happened to those wronged in the course of these events, at the very least, requires a full apology by the State and the Commissioner of An Garda Síochána, which at the time of writing has not been forthcoming. Finally, it should also be noted that in monetary terms, the wrongdoing by some Gardaí, as outlined in this and previous reports of the Tribunal, has cost the State dearly. Substantial amounts of compensation were paid to members of the extended Quinn and McBrearty families in the civil actions which they brought against the State. These actions were heard or settled before the High Court sitting in Castlebar, Co. Mayo, towards the end of 2007.

Relationships

1.90. A word as to the interrelationship between the various persons arrested should now be included. Some of this material will be repeated in the various chapters dealing with the interrogation of individual detainees. Most of those arrested were members of the extended Quinn family. Róisín McConnell, who was arrested on the 4th of December 1996, was married to Mark McConnell. He is a first cousin of Frank McBrearty Junior. Katrina Brolly is a member of the Quinn family, and she is a sister of both Róisín McConnell and Edel Quinn. Michael Peoples is married to Charlotte Peoples, who is the cousin of Katrina Brolly, Edel Quinn and Róisín McConnell. Mark Quinn is a cousin of Róisín McConnell, Katrina Brolly and Edel Quinn. He is also a cousin of Charlotte Peoples. Frank McBrearty Senior is the father of Frank McBrearty Junior, and therefore the uncle of Mark McConnell. Seán Crossan and Martin McCallion worked part-time as doormen in Frankie's nightclub. Damien McDaid, an electrician, worked on

occasion in the nightclub and was at the time carrying out some work on Frank McBrearty Junior's new home.

1.91. The Tribunal will now proceed to examine each of the detentions in turn.

CHAPTER 2
The Arrests and Detentions of Michael Peoples

Introduction

2.01. Michael Peoples was the first suspect to be arrested, at 08.00 hours on the 4th of December 1996, following the directions given to effect the various arrests by the senior officers in the investigation. He is the husband of Charlotte Peoples. She is a first cousin to Róisín McConnell, Katrina Brolly, and Edel Quinn. Michael Peoples was taken to Lifford Station where he was detained and interviewed. One hour after his arrest Mrs. Peoples was arrested and brought to Letterkenny Garda Station. The first element of this chapter concerns the arrest and detention of Michael Peoples on the 4th of December 1996, which is the subject of Term of Reference (b).

2.02. Michael Peoples was subsequently arrested on the 6th of May 1999 arising out of the Bernard Conlon "Silver Bullet" allegation, which is the subject of the third report of the Tribunal. On that occasion he was arrested pursuant to section 30 of the Offences Against the State Act, 1939 on suspicion of unlawful possession of ammunition. Mr. Peoples had been falsely accused by Bernard Conlon of attending at his home with Mark McConnell and threatening and intimidating him, in the course of which a "silver bullet" was allegedly produced to Mr. Conlon. Following his arrest Mr. Peoples was conveyed to Manorhamilton Garda Station, Co. Leitrim, where he was detained and interviewed in respect of the matter. This element of the report is submitted under Term of Reference (d).

PART I

The Arrest and Detention of Michael Peoples on the 4th of December 1996

Background

2.03. In the course of the investigation into the death of the Late Mr. Barron, Charlotte and Michael Peoples gave detailed statements to Garda Philip Collins on the 18th and 19th of October, respectively outlining their recollections of their movements on the 13th and 14th of October 1996. These statements are fully set out and discussed in Chapter 3 of the second report of the Tribunal.[91] The two statements cover the period from approximately 21.00 hours on the 13th of October to 01.30 hours on the 14th of October 1996. In these statements Charlotte and Michael Peoples outlined how they had attended the Town and Country Pub in Raphoe on the evening of the 13th of October. Michael Peoples told Garda

[91] Report on the investigation into the death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Terms of Reference (a) and (b) Chapter 3, Paragraphs 3.467 – 3.515.

Collins that he had watched highlights of a motor race on television at approximately 22.00 hours. He met with his friend Geoffrey Dolan at approximately 23.15 hours and witnessed an argument between the Late Richard Barron and Mark McConnell. At approximately midnight he and Geoffrey Dolan left the bar to obtain money from an Ulster Bank ATM machine. They went back to the bar and met with Mrs. Peoples intending to go to Frankie's nightclub. When they were leaving Frankie's nightclub at approximately 01.30 hours a girl told them that the man who had been arguing with Mark McConnell had been killed.[92] Between the 20th of October 1996 and the 4th of December 1996 no Garda returned to Michael Peoples or Charlotte Peoples to seek a further statement from them in relation to any aspect of the investigation into the death of the Late Richard Barron, though there was contact with the Gardaí in respect of another related matter.

2.04. As the reader may be already aware from reading the second report of the Tribunal, on the 9th of November 1996 Michael and Charlotte Peoples received a number of extraordinary telephone calls culminating in an attempt to extort money from Mr. Peoples in order to prevent the caller from giving information to the Garda Síochána implicating Mr. Peoples in the death of the Late Mr. Barron. Of course, any such information would have been false. These calls were made by William Doherty and approved by Garda John O'Dowd. One of the calls was made from Garda O'Dowd's home by William Doherty. Mr. Peoples' reaction to these calls was to seek the help of An Garda Síochána, which he did immediately. Detective Garda Pat Flynn initially attended with the Peoples at their home on the evening of the 9th of November. Michael Peoples made a witness statement in relation to the matter on the 10th of November 1996 to Garda Philip Collins in order to assist in the investigation of these calls, which were clearly extortionate and criminal in nature. In the course of his statement he explained how he agreed to meet the caller at 23.00 hours at White Cross Pub and pay him five hundred pounds. He made this arrangement in order to entrap the caller and obtain his identity for An Garda Síochána. Extraordinarily, this exemplary course of action in trying to assist An Garda Síochána in the investigation of this crime was advanced as a ground for his arrest on the 4th of December 1996.[93]

2.05. Unknown, at the time, to Michael and Charlotte Peoples, at least two other factors of significance emerged in the investigation which contributed to the decision to arrest them. As already noted, during the course of the evening the Peoples were in the company of Geoffrey Dolan. In her statement of the 18th of October 1996, Mrs. Peoples stated that when she and her husband were leaving Frankie's Nightclub at 01.30 hours on the morning of the 14th of October, they

[92] Tribunal Documents - Michael Peoples, pages 40 - 41.
[93] Tribunal Documents – Michael Peoples, pages 42 – 43 and Report on the Investigation into the Death of Mr. Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Terms of Reference (a) and (b) – Chapter 5, paragraph 5.216 and Chapter 6.

met Michelle Scott who told them that Richard Barron had been killed going home. She said that they:

> *got in the car [and] we took a spin up the road towards Mongorry (the accident scene) and we met a few people and they told us again about Richie Barron.*

This was not mentioned in the statement made by Michael Peoples on the 19th of October but neither was it raised with him by Garda Philip Collins who took both of the Peoples' statements. It did not appear to have been raised with Geoffrey Dolan who drove the couple to the scene and then home. He simply said in a statement of the 16th of October 1996, made to Detective Garda Flynn, that he went to Michael Peoples' for tea and got home at 02.20 hours. In fact Mr. Dolan had left Frankie's nightclub some short time before the Peoples. He had parked his car behind his friend Damien Gamble's car and then sat into Mr. Gamble's car with him. Mr. Gamble described how whilst chatting with Mr. Dolan he saw a woman, who the Tribunal is satisfied is Mrs. Peoples, emerge from the nightclub. He described how she had her hand to her mouth and was crying. Mr. Dolan got out of the car when he saw her crying and after a short exchange escorted her to his car. Mr. Gamble said:

> *He immediately took off and drove down the town with her. He came back up the town and passed my car approx. four minutes later. He had a male passenger in the rear seat. I cannot describe him now but he definitely wasn't in the car when he first went down the street.*[94]

The Gardaí returned to Mr. Dolan to obtain his comments in respect of Mr. Gamble's statement and his description of events. He made a further statement on the 4th of November 1996 in which he described how whilst seated in Mr. Gamble's car he saw Charlotte and Michael Peoples coming out of Frankie's nightclub. He said they both got into the car with him and that Mrs. Peoples told him about the death of the Late Mr. Barron. He drove them to the scene and shortly afterwards went to the Peoples' house for tea.[95] None of this was followed up with the Peoples. However, subsequently in 1997, Mr. Dolan made a further statement to An Garda Síochána which described how he initially met Mrs. Peoples outside the Parting Glass. He described how she was crying and told him about the accident which had occurred to the Late Mr. Barron. Both got into Mr. Dolan's car and drove off towards the Diamond. They met up with Michael Peoples who was walking to the Diamond and was heading towards the Town and Country Pub to obtain another drink. They then went to the scene of the

[94] Report on the Investigation into the Death of Mr. Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Terms of Reference (a) and (b), Paragraphs 3.303 – 3.309.
[95] Ibid. Paragraph 3.494.

accident and drove back to the Peoples' house for tea.[96] This incident was also used to justify the arrest of Michael Peoples. I am satisfied that had proper police procedures been followed, and had a follow-up statement been obtained in the course of the investigation prior to the arrest of Michael Peoples, any difficulties which An Garda Síochána had with the respective accounts could have been adequately dealt with. This was a failure of police investigative procedure.[97] Indeed, had a full and comprehensive statement been taken at the initial stage what followed could have been completely avoided. As will be seen a full explanation in relation to these events was supplied by Michael Peoples in the course of the interviews following his detention. He and his wife had a silly domestic squabble over an unrelated trivial matter. They went their separate ways but Mr. Dolan met Mrs. Peoples. He drove with her a very short distance and collected Mr. Peoples who had decided to go to the Town and Country for more beer. They drove up to the scene and returned through Raphoe. They were then seen by Mr. Gamble. There was nothing more to it. Certainly, no suspicion developed concerning Geoffrey Dolan's behaviour arising out of these events whereby he was suspected of being an accessory after the fact to the supposed murder of the Late Richard Barron, nor was such a suspicion warranted. This event happened sometime after the death of the Late Mr. Barron. It was unwarranted to found any suspicion against the Peoples upon it. Any outstanding issues could and should have been addressed by way of further enquiries with the Peoples.

2.06. A further matter of concern to the Gardaí was a telephone call which they discovered had been made from the Peoples' home to Letterkenny General Hospital concerning the welfare of the Late Richard Barron at approximately 02.50 hours on the morning of the 14th of October 1996. This incident has been fully chronicled in the second report of the Tribunal.[98] Mr. Peoples was questioned during the course of his detention about this phone call. At that time he did not know who had made it but informed his interviewers that he would find out when he was released and return to inform them of the identity of the caller.[99] He had his suspicions about the identity of the caller. In another interview it is said that he offered the opinion that if a call had been made it was probably by his mother in law, Mrs. Catherine "Dolly" Eaton.[100] This was confirmed on the 4th of December 1996 by Mrs. Charlotte Peoples when interviewed during the course of her detention. She had initially denied the suggestion that anybody had made the call from the Peoples' house in the early hours of the 14th of October but at the conclusion of an interview admitted that this was untrue and that Mrs. Eaton

96 Ibid. Paragraph 4.497.
97 Ibid. Paragraphs 3.498 – 3.500.
98 Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Terms of Reference (a) and (b). Paragraphs 3.501 – 3.512 and 3.519 –3.523.
99 Tribunal Documents - Michael Peoples, pages 55 – 56.
100 Tribunal Documents - Michael Peoples, pages 53 – 54.

had made the phone call. Her initial lie whilst detained was an effort to protect her mother from arrest.[101] Mrs. Eaton made a statement accepting that she made this call, when interviewed on the 22nd of September 1997.[102] The second report of the Tribunal has already determined that this information could have been obtained by returning to interview Michael and Charlotte Peoples without exercising a power of arrest and that this could have been done prior to the 4th of December 1996 in the course of a proper investigation of this matter.[103]

The Arrest of the 4th of December 1996

2.07. Michael Peoples told the Tribunal that on the night of the 3rd of December 1996, he received a telephone call at his home at approximately 20.00 hours. The caller said that he was from the Garda "Forensic Department" in Letterkenny Garda Station and that he would like to talk to him about the telephone calls made to his home on the 9th of November 1996 (the subject matter of the Tribunal's second report). In this context, Mr. Peoples had already submitted a tape, which he believed was to be enhanced by specialists in that area, to Garda Philip Collins in respect of these phone calls. He was happy that this phone call indicated that somebody was taking an interest in his complaint and he had a discussion with the caller as to when it would be convenient for Mr. Peoples to attend at Letterkenny Garda Station the following day to meet with Gardaí about the calls. The phone call concluded on the basis that the "Garda" would get back to him on the following day to confirm a suitable time. The "Garda" did not identify himself to Mr. Peoples. Nevertheless, Mr. Peoples arranged with his brother that he would operate Mr. Peoples' bread round the following day, so that Mr. Peoples could make himself available for the entire of the following day in order to meet with the "Garda" at Letterkenny. This never occurred because the following morning at 08.00 hours Mr. Peoples was arrested by Detective Sergeant Michael Keane at his home at St. Eunan's Terrace, Raphoe. Mr. Peoples believes that the call to him on the night of the 3rd of December was part of a process calculated to ensure that he was at home on the night of the 3rd of December, and to ascertain what his starting and finishing time was at his work, in order to ensure that he would be available for arrest on the morning of the 4th of December 1996. In the investigation's conference notes for the 2nd of December 1996 Mr. Peoples' name is entered on a list of proposed arrestees. Each name has an entry beside it. In the case of Michael Peoples, the word "telephone" appears beside his name. In addition, he was told by Detective Garda Pat Flynn that the Gardaí arrived outside his house at 05.00 hours on the morning of his arrest. Detective Inspector Keane denied any knowledge of this call. No Garda admitted to making

[101] Tribunal Documents - Charlotte Peoples, pages 111 – 112.
[102] Transcript, Day 59, Q.52 – 67.
[103] Report on the Investigation into the death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Terms of reference (a) and (b). Paragraphs 3.511 – 3.512.

such a call. The Tribunal is satisfied that the call as described by Michael Peoples was received by him.[104]

2.08. The arrest of Michael Peoples has already been considered in the second report of the Tribunal in which the following was stated:

> Michael Peoples was arrested at 8 a.m, on the 4th of December 1996 under common law for the murder of Mr. Richard Barron on the 14th of October 1996. The arresting member was Detective Sergeant Michael Keane. In evidence to the Tribunal, Detective Inspector Keane stated that he arrested Michael Peoples "under common law for the murder of Richard Barron, being an accessory after the fact." He went on to say that he had no evidence to suggest that Mr. Peoples actually committed the murder. This evidence contrasts with an earlier undated statement of his and the custody record for this arrest which indicate that Mr. Peoples was arrested as a principal to murder.
>
> Superintendent John Fitzgerald gave evidence about his role in extending the period of detention for Michael Peoples on this date. His evidence indicates that he believed at the time that Mr. Peoples had been arrested as an accessory after the fact to murder. He stated:
>
> > *Well, if he were arrested for murder, I can assure you that at all times that he was arrested, in my mind, at all times he was arrested for an accessory after the fact … I'm quite sure that I would have extended him, I would have done whatever duties and that that's what was in my mind.*
>
> Bearing in mind the fact that Superintendent Fitzgerald was at that time leading the investigation into the death of Mr. Barron, his evidence, and that of Detective Inspector Keane, serve to illustrate the chaotic nature of the management of the investigation. The fact that both the arresting officer and the senior officer who ultimately extended the period of detention of the prisoner, ultimately claim to have arrested him for a separate offence to the one for which he was, in fact, arrested amounts to a complete disregard for the most basic principles of law. Having observed the demeanour of Superintendent Fitzgerald and Detective Inspector Keane in the witness box, and taken on board the evidence of other members who were asked in passing about the reasons for arresting Michael Peoples, the Tribunal has come to the conclusion that nobody is sure why and for what offence Mr. Peoples was arrested. His arrest can be seen as a crude attempt on the part of the investigation team to put pressure on the chief suspects. This is a clear abuse of the power of arrest.

[104] Transcript, Day 484, Q.42-55 and Q.66-76 and Tribunal Documents - Arrest & Detention page 218 and Transcript, Day 487, Q.185-197.

In an undated statement, Detective Inspector Michael Keane, who was a detective sergeant at the time of the arrest, outlined three grounds for arresting Michael Peoples on the 4th of December 1996. These grounds were:

(1) telephone call made from Mr. Peoples' home in the middle of the night of the 14th of October 1996 to the Letterkenny General Hospital enquiring about the condition of Richard Barron when the caller refused to state their identity;

(2) Mr. Peoples' own admission in a statement to Garda Philip Collins that he offered an anonymous telephone caller to his home the sum of £1000.00p and later the sum of £500.00p on condition that the caller does not contact the Gardaí in relation to evidence he may have linking Mr. Peoples to the murder of Richard Barron;

(3) confidential information received by Gardaí that three men were seen coming through the car park of the Parting Glass from the direction of the murder.

As has already been detailed in Chapter 3 of this report, the phone call to the hospital was, in fact, made by Mr. Peoples' mother-in-law, Mrs. Catherine Eaton, who was staying at the Peoples' house on the night in question and was merely making the enquiry out of neighbourly concern for Mr. Barron, who was a relative of hers. Detective Superintendent Joseph Shelly gave evidence to the Tribunal indicating that this phone call was seen as being "significant at the time". The Tribunal acknowledges that the existence of the phone call to the hospital merited investigation, but that there is nothing particularly sinister about an individual attempting to make discreet enquiries as to the well-being of a person injured in an accident in the manner as outlined. As has been outlined in Chapter 6 on the Peoples' phone calls, it is absurd to suggest that the manner in which Mr. Peoples dealt with the extortion phone calls to his home could have been used to ground a reasonable suspicion against him. In relation to the third ground as outlined by Detective Inspector Keane, that would appear on its face to be a reference to some version of the information provided by Mr. John Patton. However, when this proposition was put to Detective Inspector Keane in evidence, he rejected it, suggesting instead that there was other information in the incident room concerning three individuals coming down the car park, one of whom was Mr. Peoples. There is certainly no reference to this theory throughout the entire documentation of the investigation nor did any other member whose views were canvassed as to the reasons for arresting Mr. Peoples

> mention it. What is apparent, however, is that there were a series of theories floating about the incident room as to the supposed involvement of Mr. Peoples in the death of the Late Mr. Barron. The Tribunal cannot but feel that some individual, or group of individuals in the incident room were manipulating this situation.[105]

2.09. As is clear from the extract quoted above, evidence was received by the Tribunal from Detective Inspector Michael Keane, the arresting officer, that Mr. Peoples was arrested on reasonable suspicion of being an accessory after the fact to the murder of the Late Richard Barron. This was repeated in evidence to the Tribunal in this sub-module by Detective Inspector Keane.[106] It is not supported by the entries in the custody record or the evidence of Garda Bosco Gallagher, who was the member in charge. He recorded that Mr. Peoples had been arrested "under common law for murder of Richie Barron on the morning of 14/10/96". He also recorded that he authorised the detention of Mr. Peoples pursuant to section 4 of the Criminal Justice Act, 1984 for that offence.[107] Michael Peoples recalled that he was arrested "for the murder of Richard Barron."[108]

2.10. Detective Garda Patrick Flynn, a member of the arresting party, told the Tribunal that he heard Detective Sergeant Keane telling Michael Peoples that he was arresting him for murder at common law.[109] Garda Vincent Burke, who also attended at the arrest of Michael Peoples, initially made a statement in which he stated that Michael Peoples had been arrested at common law on suspicion of the murder of the Late Richard Barron but in evidence to the Tribunal said that he could not recall what was actually said. He made his statement on the 2nd of September 1997, relying upon the custody record. He said:

> *As far as I was concerned at that time he was arrested for murder but on hearing Mr. Mick Keane's evidence, I can't say what Mick Keane actually said, whether he arrested him for the murder.*[110]

2.11. Mr. Peoples' solicitor, Mr. Kieran Dillon, told the Tribunal that in his phone call with Mr. Peoples at 10.22 hours, Mr. Peoples told him that he had been arrested at common law for the murder of Richard Barron. "That was his definite instruction to me on the morning of the 4th of December". He accepted that there was a reference in his notes to "client accused of being involved as accessory after the fact" in respect of the 4th of December 1996 but he felt that this reference was to the arrest of Charlotte Peoples, who had been arrested on suspicion of being an accessory after the fact to the murder of the Late Richard

[105] Second Report of the Tribunal, pages 452-454.
[106] Transcript, Day 487, Q. 228.
[107] Tribunal Documents – Michael Peoples, page 45 and Transcript, Day 486, Q.409-415.
[108] Transcript, Day 484, Q.58.
[109] Transcript, Day 486, Q.210-220.
[110] Transcript, Day 488, Q.29-55.

Barron and was held at Letterkenny Garda Station. She was also his client.[111] In addition, he also made a note "arrested under common law for murder" in his attendance.[112]

2.12. The Tribunal is satisfied that Michael Peoples was arrested at common law on suspicion of the murder of Richard Barron on the 14th of October 1996. There was no basis for this arrest and the Tribunal is satisfied that it was unlawful. Indeed, Detective Inspector Keane himself accepted that there was no basis upon which to suggest that Michael Peoples could have been in any way involved in an alleged assault on the Late Richard Barron. The Tribunal is also satisfied that Detective Sergeant Keane was directed to carry out this arrest by the officers in charge of this investigation.

2.13. Mr. Peoples described his arrest in the following way:

> *The following morning [the 4th of December] I got the knock on the door at quarter to eight, there was a bang on the door … there was a Guard standing … he didn't identify himself, he just says, hello, Michael. I looked, I was kind of shocked, I wasn't expecting anybody at that time of the morning. He knocked at the door and he says look I need to talk to you for a few minutes I says what's wrong. I thought there was something happening then with my family at that time of the morning … I says what's wrong he says there is a few discrepancies in your statement. The first thing I thought, I says, the phone calls? He says, no, no, no, Richie Barron … I don't think he actually said Richie Barron he said no your other statement … I asked him to come into the living room. He says no, no, come on out to the car. I says I am not dressed, come into the living room. He more or less insisted I go out to the car. I said look I have to get dressed. He says ok do that he says. So I went up the stairs and Charlotte [Peoples] she came out of the bedroom and she says what's wrong … I said there is a guard downstairs I says he wants me to go out to the patrol car to talk about my statement. She says is there anything wrong, what's wrong and I says I don't know. I got dressed and came down the stairs and I walked out and got into the back of the patrol car … He [Detective Sergeant Michael Keane] says look, Michael, tell us what happened Richie Barron … I says to him I didn't know, he says, aye, you know something. Like normal conversation. He shouted at me and he says, you lying bastard, you. He shouted at me. I was taken aback. I was shocked, like somebody shouting at me like that. I said, I*

[111] Tribunal Documents – Michael Peoples, page 282 and Transcript, Day 486, Q.391.
[112] Tribunal Documents – Charlotte Peoples, page 204.

don't know what you are talking about and he put his left hand on my shoulder and he says I am arresting you for the murder of Richard Barron. I was just in complete shock. I says, I need to tell my wife. I opened the door. He shouted to me, close that door, I'll tell your wife. I was in the back of the car, I wasn't handcuffed … if I had wanted to get away, I could have got away … it was just shock, I just couldn't believe what was happening at the time. He went down to the house, told Charlotte whatever story he told her, I think he told her I would be back in a few minutes, whatever it was, and proceeded then to Lifford in the car.[113]

2.14. Detective Inspector Keane denied that he had arrested Mr. Peoples in the car in the manner described. He told the Tribunal that he effected the arrest on the doorstep of Mr. Peoples' house. Mr. Peoples was dressed and was then brought to the patrol car and placed in the back seat. Detective Inspector Keane said that he then returned to the house and informed Mrs. Peoples that her husband had been arrested and was being taken to Lifford Garda Station. He denied the sequence as described by Michael Peoples. He said that he did not invite Mr. Peoples in the patrol car to tell him what happened to Richie Barron: nor did he shout at Mr. Peoples when he denied knowing anything about the Late Mr. Barron's death, nor did he call him a "lying murdering bastard" or "lying bastard". He said that Mr. Peoples was not arrested in the patrol car.[114] Detective Inspector Keane described Mr. Peoples' account of these events as "exaggerated".

2.15. Garda Vincent Burke and Detective Garda Pat Flynn both denied that Mr. Peoples was called a "lying bastard" or "lying murdering bastard" while sitting in the back seat of the patrol car either at the Peoples' house or during the journey to Lifford Garda Station. Garda Burke did not recall Detective Sergeant Keane asking Mr. Peoples what he knew about the death of the Late Richard Barron in the patrol car. Mr. Peoples sat to his left in the patrol car on the journey to Lifford Station. Detective Sergeant Keane sat in the front of the car. He approached the door of the house with Detective Sergeant Keane and Mr. Peoples was arrested at the door. There was some discussion between them and Mr. Peoples may well have gone back into the house according to Garda Burke. He thought Mr. Peoples returned to the house to get an item of clothing because he was partially dressed.[115] Garda Burke also recalled that there was a delay in effecting the arrest during which he got out of the car at the house and spoke to Detective Garda Flynn. Garda Burke could not remember any "argy bargy" in the car between Detective Sergeant Keane and Mr. Peoples.

[113] Transcript, Day 484, Q.55-60.
[114] Transcript, Day 487, Q.198-207.
[115] Transcript, Day 488, Q.55-120.

2.16. Both Detective Garda Flynn and Garda Vincent Burke described the journey to Lifford Station as uneventful and denied that Mr. Peoples was called any names during the journey.[116]

2.17. For his part Detective Sergeant Keane denied that he had allowed Mr. Peoples into the house to obtain clothing or speak with his wife. He maintained that having arrested Mr. Peoples he brought him to the patrol car and then returned to inform Mrs. Peoples of what happened. His practice was not to let an arrested person out of his sight once he had been arrested. However, Garda Burke's testimony suggests that Mr. Peoples was allowed to go into his house, which on Detective Sergeant Keane's own practice, would suggest that he had not been arrested. The Tribunal is satisfied that Mr. Peoples was arrested in the patrol car in the manner that he described.

2.18. Mr. Peoples told the Tribunal that on the journey to Lifford Detective Sergeant Keane had a discussion with him about his house, whether it was privately owned by him and how he funded its purchase. Mr. Peoples maintained that he gave Detective Sergeant Keane a look such as to say that it was none of his business. He described it this way:

> *I think he asked me who owned the house I was living in. I told him it was my house. … And he asked me how did I afford that. I looked at him as much to say, it's none of your business, I think I answered then I have a mortgage the same as everybody else. He made a remark then, he says … I thought you were going to hit me there. Just being intimidating. I don't know what kind of angle he was going at. That seemed to be … I didn't know what he meant by it. Whether he wanted me … whether he wanted the boys in the front to think I was going to hit him or whatever it was. He made a remark like that. Then, I think, he questioned me. He asked me again tell me this, what happened to Richie Barron. He says, ah you know.*[117]

2.19. Detective Inspector Keane acknowledged that he had a conversation with Mr. Peoples about his house but denied the connotation put on that conversation by Mr. Peoples. He said it was akin to "small talk". It was simply done "in order to break the silence." It was not intended as a demeaning question. He said he never felt that Mr. Peoples was going to hit him. He denied the scenario presented by Mr. Peoples.[118] Garda Burke thought most of the journey took place in silence and had no recollection of any conversation between Mr. Peoples and Detective Sergeant Keane in the car on the way to Lifford.[119] Detective Garda

[116] Transcript, Day 488, Q.120-122 and Transcript, Day 486, Q.228-230.
[117] Transcript, Day 484, Q.60.
[118] Transcript, Day 487, Q.286-293.
[119] Transcript, Day 488, Q.120-122.

Flynn placed Detective Sergeant Keane and Garda Burke in the back of the car with Michael Peoples and had no recollection of any "small talk" that went on. He was adamant that Mr. Peoples was not verbally abused during the journey.[120]

2.20. In this instance, Mr. Peoples' version of events is partially supported by Detective Inspector Keane in that he acknowledges that there was indeed a discussion between them about the ownership and funding of the purchase of Mr. Peoples' house. This tends to support the account given by Mr. Peoples of this conversation, but it may also be that, having regard to the difficult circumstances in which he found himself and, perhaps, his heightened level of anxiety, Mr. Peoples gives an exaggerated importance to this particular conversation. Nevertheless, I am satisfied that he gave me an honest account and his best recollection of what happened on the journey to Lifford.

The Detention of the 4th of December 1996

2.21. Mr. Peoples was then conveyed in the Garda car to Lifford Garda Station where he arrived at 08.27 hours and was processed in the normal way by Garda Bosco Gallagher, the member in charge. Mr. Peoples acknowledged to the Tribunal that Garda Gallagher, as far as he was concerned, simply did his job that day and he had no allegation to make about him.[121]

2.22. Initially Mr. Peoples declined the services of a solicitor:

> *At that stage they actually asked me -- I think I was down at the desk did I want a solicitor. I can't remember was it at the desk or was it going straight into the interview room. I declined the first time. … I thought, look, they've made a mistake, we'll straighten it out here now at the station and I'll be released. I was under the impression I was going to be released in half an hour.*[122]

During the course of his first interview, at approximately 09.45 hours, Mr. Peoples requested that Mr. Kieran Dillon, solicitor, be contacted. A number of attempts were made to do this and finally Garda Gallagher contacted Letterkenny Garda Station:

> *Well Michael Peoples specifically asked for Kieran Dillon and I kept trying his phone number and I couldn't get through, so I decided then to contact Letterkenny Station and get the local patrol car to call down to his office.*[123]

This resulted in a telephone call at 10.22 hours made by Mr. Dillon to Lifford Station in the course of which Mr. Peoples was afforded an opportunity to consult with him for a period of ten minutes.[124]

[120] Transcript, Day 486, Q.229-230.
[121] Transcript, Day 484, Q.117.
[122] Transcript, Day 484, Q.86-87.
[123] Transcript, Day 486, Q.480.
[124] Tribunal Documents – Michael Peoples, page 45.

2.23. The first and third interviews conducted by Detective Garda Pat Flynn and Garda Thomas Burke are for the most part, uncontroversial. No allegation of misconduct or verbal or physical abuse is made against either of these two Gardaí. In respect of the second and fourth interviews conducted by Detective Sergeant Keane and Garda Philip Collins, Mr. Peoples made a series of allegations of misconduct and verbal abuse which became progressively worse over the course of the two interviews, but he does not make any allegation of physical abuse. Notes are available of the first and third interviews conducted with Mr. Peoples, the accuracy of which he substantially accepts save for the qualifications set out in the report. A set of notes exists signed by Garda Philip Collins, and which Mr. Peoples accepts refers to material broadly similar to that covered with him in the course of the second interview. The question arises as to whether this set of notes also covers the fourth period of interview. A further question is whether these notes were made after Mr. Peoples' release from custody, because he had no recollection of either of the interviewers taking any notes during the two interviews. Normally, one would expect to find a separate set of notes for each period of interview or at the very least some reference to the fact that the one set of notes available covers both interviews. The absence of clarity concerning the making of notes for these periods of interview is important because Mr. Peoples alleges that he was verbally abused and intimidated in the course of the interviews.

2.24. The official record of Mr. Peoples' detention is contained in the custody record, the relevant elements of which are set out in tabular form below:[125]

Occurrence on the 4th of December 1996	Detail of Occurrence	Comment
08.00 hours	Arrest of Michael Peoples by Detective Sergeant Michael Keane at St. Eunan's Terrace, Raphoe "under common law for murder of Richie Barron on the morning of 14/10/96."	
08.20 hours	Arrival of Michael Peoples at Lifford Garda Station. He was detained under section 4 of the Criminal Justice Act 1984 by the member in charge, Garda Bosco Gallagher.	
08.27 hours	Michael Peoples brought to an interview room by Detective Garda Patrick Flynn and Garda Thomas Burke (first interview).	
09.30 hours	Garda Gallagher visited Michael Peoples in the interview room "all in order".	

[125] Tribunal Documents - Michael Peoples, pages 45-48.

09.45 hours	Mr. Peoples requested that Kieran Dillon, solicitor, be contacted as his phone was constantly engaged.	
10.00 hours	Breakfast was ordered for Mr. Peoples.	
10.15 hours	Garda Gallagher contacted Letterkenny Garda Station and Garda McHale undertook to ensure that a patrol car called on Mr. Kieran Dillon requesting that he contact Lifford Station concerning Mr. Peoples.	
10.22 hours	Contact was established with Mr. Dillon and Mr. Peoples was afforded an opportunity to speak with him on the telephone.	
10.32 hours	Phone call concluded and Mr. Peoples had breakfast in the cell.	
10.43 hours	Bridget Peoples and Liam Peoples, the mother and brother of Michael Peoples, called to the station and were allowed to see him in the cell.	
10.52 hours	Bridget and Liam Peoples left the station at the conclusion of the visit.	
11.23 hours	Michael Peoples was brought to an interview room by Detective Sergeant Keane and Garda Philip Collins (second interview).	Mr. Peoples alleged that he was shouted at by Detective Sergeant Keane and called "a lying murdering bastard". He alleged that this shouting and name-calling continued whenever Detective Sergeant Keane interviewed him.
12.20 hours	Garda Gallagher visited the interview room "all in order".	
13.05 hours	Supt. John Fitzgerald contacted Lifford Station and gave authorisation for the taking of fingerprints and photographs of Michael Peoples who was informed of this.	
13.45 hours	Supt. John Fitzgerald contacted Garda Bosco Gallagher and gave him authorisation for the further detention of Michael Peoples for six hours for the proper investigation of matters.	
13.47 hours	Michael Peoples was informed of the authorisation to extend his detention.	

14.00 hours	Michael Peoples was returned to the cell by Detective Sergeant Keane and Garda Collins. A lunch was ordered for him.	
14.18 hours	Michael Peoples received a lunch in the cell.	
14.52 hours	Mr. Peoples was brought to an interview room toconsult with his solicitor, Kieran Dillon.	
15.23 hours	Mr. Kieran Dillon finished his consultation with Mr. Peoples and left the station. Detective Garda Patrick Flynn and Garda Thomas Burke "to interview room with Peoples" (third interview).	
16.15 hours	Garda Gallagher visited Mr. Peoples in the interview room "all ok".	
16.16 hours	Mr. Peoples was brought to the day room in order to make a phone call by Detective Garda Flynn.	
16.20 hours	Mr. Peoples was returned to the interview room at the conclusion of the phone call by Detective Garda Flynn.	
17.25 hours	Mr. Peoples remained in the interview room with Detective Garda Flynn and Garda Burke "all in order no complaints".	
18.00 hours	Garda Niall Coady attended at the interview room to fingerprint Michael Peoples.	
18.09 hours	Garda Mick Murphy entered interview room to photograph Michael Peoples.	
18.15 hours	D/Sgt. Keane and Garda Philip Collins commenced an interview with Michael Peoples "all ok" (fourth interview).	Mr. Peoples alleged that Garda Collins left the interview room at Detective Sergeant Keane's request to obtain post-mortem photographs of the Late Richard Barron. Whilst he was absent he alleged that Detective Sergeant Keane took up the leg of a chair and handled it for a very short time in a threatening manner.
19.10 hours	This interview continued and Garda Gallagher visited the interview room "all ok".	
19.53 hours	Michael Peoples was released from custody "has no complaints about his treatment during custody" and signed the custody record.	

The First Interview

2.25. Mr. Peoples was first interviewed by Detective Garda Pat Flynn and Garda Thomas Burke from 08.27 hours until 10.22 hours. Mr. Peoples said in evidence that Detective Garda Flynn told him at the commencement of the interview that he did not know why Mr. Peoples was there and that he did not believe that Mr. Peoples had anything to do with the death of Richard Barron. He described the interview as a simple question and answer session. There was no animosity or bad feeling and Mr. Peoples acknowledged that he was properly treated during the course of the interview. He said that Garda Burke gave him cigarettes as he had none that morning. He said, "Maybe it's the way police interviews should be conducted."[126]

2.26. The notes taken during the course of this interview indicate a question and answer session concerning the night of the 13th/14th of October 1996 and the following morning when Mark and Róisín McConnell came to the Peoples' house for breakfast at about midday. Mr. Peoples thought they had stayed in the Brolly's the previous night. In accordance with the advice of his solicitor he declined to sign these notes when invited to do so by Detective Garda Flynn and Garda Burke, who witnessed them.[127]

2.27. Following this interview Mr. Peoples received a visit at 10.43 hours from his mother, Mrs. Bridget Peoples and his brother Liam Peoples. This visit continued until 10.52 hours. The reason for the visit concerned the smooth running of his bread delivery business. In order to maintain his deliveries, orders had to be placed with the bakery early in the morning for the following day. His family did not know what order to place so they called to the station. His brother and mother were taken to the cell to see him and he wrote out the order for the bread for the following day. Garda Gallagher checked the order and handed it back to Mr. Peoples' brother. At this stage, though he was shocked by the fact of his arrest, Mr. Peoples said that he did not feel under any stress or pressure. He still thought that the Gardaí had made a mistake and that he would be released quite soon.[128]

2.28. Mr. Peoples states that the only omission from the notes of the first interview concerns the calls or call that Detective Garda Flynn alleged had been made from his house on the 13th/14th of October 1996 to Letterkenny Hospital enquiring about the welfare of the Late Richard Barron. Mr. Peoples maintained that he asked Detective Garda Flynn how he knew that calls had been made from the house and also said to him, well if you can get those calls you can get details about the extortion phone calls made on the 9th of November 1996 about which he had made complaint to the Gardaí and concerning which no progress had

[126] Transcript, Day 484, Q.95-125.
[127] Tribunal Documents, pages 50-52.
[128] Tribunal Documents, page 46 and Transcript, Day 484, Q.126-135.

been made in the Garda investigation. Detective Garda Flynn told him that the information concerning the calls to the hospital was obtained in a different way. He said he denied to Detective Garda Flynn and Garda Burke that any call had been made from his house and was told that they had this information. He said that this exchange was omitted from the notes made of the interview.[129]

The Second Interview

2.29. Following the visit with members of his family, Mr. Peoples was brought to an interview room from the cell at 11.23 hours by Detective Sergeant Michael Keane and Garda Philip Collins. He described this interview as being totally different to the one which had earlier concluded. The interviewers took up the theme of phone calls which they alleged had been made from his house on the evening of the 13th/14th of October 1996 to Letterkenny Hospital concerning the well-being of the Late Mr. Barron. Mr. Peoples alleged that Detective Sergeant Keane adopted a very aggressive tone. When he denied ever making a call or knowing about a call made from his house, he said that Detective Sergeant Keane shouted at him and called him "a lying murdering bastard". He alleged that Detective Sergeant Keane adopted this manner of questioning throughout the interview. He said:

> *The questions themselves, he would ask the question and by the time I would answer I wouldn't get possibly time to answer the question and he'd "answer up you lying murdering bastard" and then he would go on to the next question and keep repeating that. … To be quite honest I was sitting terrified, I'm just being truthful about it. It was a hateful, hateful situation to be in. … I didn't know what was coming next … There was no threat at this stage of physical violence but I was waiting on it to happen. That was the atmosphere that was created. I was waiting that day to get it.*

He said that Detective Sergeant Keane was walking around during the course of the interview and Garda Collins was sitting to the right hand side of a table. He had no recollection that Garda Collins took any notes during the course of this interview and his belief was that they had been written up afterwards. He had no memory of being asked to sign notes.[130] Mr. Peoples was very clear that he was never at any stage physically assaulted during the course of his detention.[131]

2.30. The notes of interview that are available were signed by Garda Philip Collins but were not signed by Detective Sergeant Keane and they do not contain any mention of having been read over to Mr. Peoples. They may cover the time from

[129] Transcript, Day 484, Q.147-155.
[130] Transcript, Day 484, Q.135-187 and Q.193-203.
[131] Transcript, Day 484, Q.143 and Q.180.

11.23 hours until the conclusion of the interview at 14.00 hours when he was returned to the cell by the two interviewing Gardaí. The notes are untimed. Indeed, they may be composite notes covering two interview periods according to the interviewers.

2.31. Mr. Peoples, nevertheless, agreed that the contents of the notes reflected the answers that he gave to the two Gardaí during the course of this interview. These answers outline Mr. Peoples' movements on the night of the 13th/14th of October 1996. Mr. Peoples describes in the notes how, having attended at the Ulster Bank ATM machine in the Diamond, he returned to the Town & Country pub to collect Charlotte Peoples, his wife, and went to Frankie's nightclub. They were accompanied by Geoffrey Dolan. He saw Mark McConnell sitting behind him before they left at 01.30 hours. His wife did not wish to leave the nightclub and they had an argument at the door over a coat which he had left in Mr. Dolan's car. Mrs. Peoples was crying. Mr. Dolan got ahead of them in the crowd and when they emerged he was gone.

> I went back in to phone him to get my coat as my keys were in it. I fell out with Charlotte. Told her I was going down the street to Quinn's pub for a pint. Walked down the street well passed the Suíle [tavern]. Geoffrey and me along Charlotte in car. I went into back seat. Drove up Mongorry to see where Richie Barron was killed. Drove up passed and turned and came down and stopped. Asked people there. Left and went home. Me, Charlotte and Geoffrey. Mother-in-law at home. Three of us went in. I made a bite to eat. Don't know who went to bed first. Don't know if anybody made phone call from house. If anybody did it was probably my mother-in-law Dolly. At 10 a.m. Mark McConnell and Róisín arrived at house. This was the following morning. Chatted about Richie Barron's death. The day I got the threatening phone calls. I phoned my father-in-law Charlie. Phoned Geoffrey Dolan. Charlotte phoned Mark Quinn.[132]

Though he had no memory of the taking of notes during the course of the interview, Mr. Peoples acknowledged that the "gist of the answers" seem to reflect the answers which he had given to questions posed by the interviewers.[133]

2.32. Following the second interview, Mr. Peoples was placed in a cell by Detective Sergeant Keane and Garda Collins at 14.00 hours. Prior to this he was informed that Superintendent John Fitzgerald had directed that his detention be extended for a further six hours. After receiving a lunch he was brought to an interview room where he consulted with his solicitor, Mr. Kieran Dillon, from 14.52 hours until 15.23 hours. He told his solicitor the story about the extortion phone calls made to his house about which he had made a complaint to the Garda Síochána

[132] Tribunal Documents – Michael Peoples, pages 53-54.
[133] Transcript, Day 484, Q.162-168.

in November 1996 and in respect of which he had given them a tape, and he and his wife had made statements. He also told Mr. Dillon that he was being accused of facilitating Mark McConnell and Frank McBrearty Junior by allowing them to come to his home and wash their clothes after the killing of the Late Richard Barron. In evidence to the Tribunal, he said that Detective Sergeant Keane told him that the Gardaí did not believe that he had been involved in the killing of the Late Richard Barron but had assisted the two men afterwards. Mr. Dillon recorded an attendance of this consultation. He recorded that Michael Peoples had informed him that a "nice fellow questioned first". He described to his solicitor the statement that he had already made about his movements to the Garda Síochána in October 1996. Mr. Dillon noted the following:

> Client accused of letting someone into house and helping them out in the murder. The next morning Mark and Róisín came into my house. Gardaí asked some questions and start again nice and hard. Phil Collins was at the same carry on.

He also told Mr. Dillon that Detective Garda Flynn had said, "I think you know nothing."[134]

2.33. Mr. Peoples told the Tribunal that Mr. Dillon had informed him that he had tried to contact Charlotte Peoples twice at Letterkenny Station but she had indicated that she did not wish to see him. He asked him again to call to see his wife.[135]

The Third Interview

2.34. At the conclusion of his consultation with Mr. Dillon, Mr. Peoples was further interviewed by Detective Garda Flynn and Garda Burke. He told the Tribunal that this was a simple question and answer session, in which nothing out of the ordinary took place and about which he made no allegations. Mr. Peoples said that he insisted on being allowed to make a phone call to his solicitor at 16.16 hours. This was allowed and caused a break in the interview until 16.20 hours. The interview concluded at 18.00 hours.

2.35. In the course of that interview he told the two Gardaí that he had an argument with his wife outside the Parting Glass and told her that he was going over to Quinn's bar [the Town and Country] for a drink. Shortly afterwards he was picked up by Mr. Geoffrey Dolan who had already collected his wife Charlotte Peoples. He said that the row with his wife was an ordinary disagreement about one of them wanting to leave Frankie's nightclub and the other wanting to stay on. He was asked whether he knew that a telephone call had been made to Letterkenny General Hospital later that morning from his house and he said that that was the first that he had heard of it. He added:

[134] Tribunal Documents – Michael Peoples, page 282.
[135] Transcript, Day 484, Q.258-262.

> But I'll tell you this. I am going to find out when I get out who made that call and I'll be back and tell ye who it was.

He did not know at that stage who it was but he said, "I have my suspicions". The notes were read over to Mr. Peoples and he was invited to sign them but declined to do so. This was in accordance with the advice of his solicitor.[136] From the notes of the previous interview it would appear that his suspicions in respect of the call fell correctly on his mother-in-law who later made a statement to the Garda Síochána accepting that she had made the call.

2.36. Mr. Kieran Dillon, solicitor, told the Tribunal that the suggestion made by Mr. Peoples that he was being questioned "nice and hard would suggest that there were pretty intensive matters being put to Mr. Peoples at the time." Mr. Peoples had also said in evidence that Mr. Dillon had advised him that more pressure might be brought to bear upon him in the course of his detention and that the questioning might become more intense. Mr. Dillon agreed that he had advised Mr. Peoples, as he often advised clients in custody, that things might become more intensive and to "sort of expect the unexpected if I could put it that way". Mr. Dillon acknowledged that he said that physical pressure might be applied and that Mr. Peoples should continue to protest his innocence, if that was his position. Mr. Peoples recalled that he had been advised by Mr. Dillon that one of the things that could happen was that a gun might be produced to him. Mr. Dillon said:

> *The only thing I can say that I have heard that in a previous time I had been in Letterkenny Station with another prisoner in another matter, that had arisen and it was something I was conscious of to tell other people in custody, that that might be something that could arise and to be just wary of anything like that. I mean an example I would have given as a kind of pressure that may occur … taking [a gun] out, tapping it, taking a magazine out. That had been suggested to me previously by other people in custody. That's the kind of thing I would be saying in a general way.*[137]

The reference to a gun arose out of something that had arisen in previous interviews with people arrested under the Offences Against the State Act unrelated to Mr. Peoples, or the detention with which the Tribunal is now concerned.[138]

The Fourth Interview

2.37. Between 18.00 hours and 18.15 hours Mr. Peoples was fingerprinted and photographed. He was then interviewed by Detective Sergeant Keane and Garda

[136] Tribunal Documents – Michael Peoples, pages 55-56.
[137] Transcript, Day 486, Q.275-289.
[138] Transcript, Day 486, Q.290.

Collins from 18.15 hours until 19.53 hours.[139] During the course of this interview Mr. Peoples alleged in his evidence that he was questioned intensely by the two Gardaí and that, after virtually every reply that he made, Detective Sergeant Keane shouted that he was "a lying murdering bastard". He described it in this way:

> *It was getting really heavy at this stage. Any question they asked me or Mick Keane asked me, his answer to that "you're a lying murdering bastard". It continued and then they asked me at one stage, this is the interview where he offered to show me the autopsy photographs and after that event he asked me, he says is your father still alive, how would you like that to happen to your father, is your father still alive, I wouldn't answer that question. He says I know your mother is alive, he says, because she was downstairs earlier visiting you, how would you like that to happen to your mother? And the way it was said to me, how would you like that to happen to your mother, as much to say he could do that … He says I'll show you the autopsy photographs. This was aggressive now, this was a shouting and roaring match. I says I don't care. I says I wouldn't be squeamish like that and he sent Phil Collins out of the room then for the photographs and that's when the incident with the leg of the chair happened over in the left hand corner of the room. And Collins came back in and sat down with no photographs. … That was hot and heavy to the very end. The last word of that was, he looked at his watch, get out of here to f...* [140]

2.38. Earlier in his evidence, Mr. Peoples said:

> *… In the second interview, where there was a lot of shouting and roaring going on and it was really hyped up and at one stage I said I don't know nothing and pumped the table, or banged the table and then he banged the table and he said, don't you thump the table or I'll thump you, and the conversation came round then this poor man Richie Barron look what happened to him, and with this he was going to show me the autopsy photographs, he says to Phil Collins … get the autopsy photographs. I says I don't care, it doesn't bother me. Like I wouldn't be squeamish or nothing like that. And he says you are a heartless bastard. Phil Collins left the room to get the photographs. There was only me and him was in the room. He walked away from the table, he walked over to the left hand corner of the room. There was a broken leg of a chair, a*

[139] Tribunal Documents – Michael Peoples, page 47.
[140] Transcript, Day 484, Q.319-323.

> *steel leg of a chair, it was about I suppose two foot long. He was kind of bent over and he had this in his hand and he was looking back at me like this and he was hitting it into his hand. He didn't speak, he didn't do nothing. I was sitting there, at this stage I thought he is going to hit me with that and I am going to make a run for the door and Collins is outside the door. They created that atmosphere for that to happen. Collins came back into the room and sat down and he didn't bring no photographs with him then. I thought now, he went into the corridor and I thought I am going to get it here now, I was wondering what to do. At that stage I thought I was going to be assaulted and I would have defended myself, I would have had to. It's just a natural reaction. It was fear, I was terrified.*[141]

2.39. Mr. Peoples also said in evidence that Detective Sergeant Keane had created a threatening atmosphere during the course of the interview in the following way:

> *The threatening manner of the interview was he'd walk around the room asking the questions. As I am sitting here, he'd walk around behind me and he would shout into me you lying murdering bastard and I'd answer the questions. Now he's behind me. As he's doing that I am just waiting for the slap or the punch in the back of the head. It's just the way, the atmosphere was created by him, the tension.*[142]

2.40. Mr. Peoples said that the chair incident occurred after Garda Collins left the interview room to get the photographs. He said that though Detective Sergeant Keane went over to the corner and took the leg of the chair in his hand, hitting it into his hand, he did nothing with it. He did not speak and then put the leg of the chair down again in the corner before returning to the table. He had it in his hand for a few seconds while looking over at Mr. Peoples. "If he'd have come across the room I probably would have went out the door."[143]

2.41. Mr. Peoples also alleged that Detective Keane, during the course of this interview, told him that he was going to be charged with murder and that he would be going to a special sitting of the District Court in Donegal town. Mr. Peoples said that he replied that he would get out on bail and Detective Sergeant Keane told him that he would never see the light of day again for fifteen years and that his wife Charlotte Peoples would get seven years and that he also said to him, "Who is going to look after your child?" He was also told by Detective Sergeant Keane that Mrs. Peoples was, "sitting down and she was clearing her conscience, she's

[141] Transcript, Day 484, Q.188 and Q.324-329.
[142] Transcript, Day 484, Q.336.
[143] Transcript, Day 484, Q.337-341.

laughing now, she's told the truth. As much to say she'd admitted her part in it." Detective Sergeant Keane also spoke about the fact that the Barron family had lost their father and whether his father was still alive. He then made reference to his mother as earlier described. He said:

> *Phil Collins was in the room when that was said. Because I remember he walked around behind me and he leaned over, like he was into my left ear. Would you like that done to your mother?* [144]

2.42. Garda Philip Collins was interviewed on the 18th of August 2003 on this matter by Chief Superintendent Garvie (R.C.M.P.), a Tribunal investigator. He gave the following account of these events:

> Q. And for how long in total of the twelve hour period would you personally have interviewed him or in company with others?
>
> A. Three periods of two hours, two members me and another member.
>
> Q. Who is the other member?
>
> A. Sergeant Keane.
>
> Q. Did you take notes during the interview?
>
> A. I didn't make any notes. I took a few notes during the end of the interview.
>
> Q. Would it be a common practice not to take notes during an interview or take notes during an interview?
>
> A. It would be common practice but its basically that there's no ruling on that. If you're sitting down there talking to somebody, what are you taking notes about.
>
> Q. Well is there no obligation on you if the individual was to make an inculpatory statement?
>
> A. Of course you would record that.
>
> Q. I appreciate you would record it but in Irish law is there no accountability for what occurred before that statement was taken? Would you not be expected to recount in detail to a Judge the atmosphere in the room, what was said by the individual prior to the statement being obtained and I am suggesting that if you didn't take any notes until the latter part of the interview there was four hours

[144] Transcript, Day 484, Q.343-355.

where you don't have any notes of what occurred.

A. I understand, yes.

Q. And you have arrested somebody as I recall for either some involvement in what was termed at that time to be the death or murder of Richie Barron. I think it would be incumbent upon you to keep decent notes. Do you still have the notes that you did take?

A. Yes. Whatever I did right, I sent it in.

Q. Did Sergeant Keane to your knowledge keep notes?

A. I don't know. I don't think he did.

Q. Did any other team of investigators interview Michael Peoples?

A. Yes, there was another.

Q. Who was that?

A. I can't remember.

Q. During the course of your interview with Michael Peoples did you show him any post mortem or what would be referred to as autopsy photographs?

A. No.

Q. Did you have possession of such photographs?

A. Yes.

Q. Where were they?

A. I explained that before. I don't know where I left them or did they ever get back.

Q. My recollection of what you said before was that they were in your folder that you had with you but that you did not show them?

A. They weren't in my folder, they were in my pocket. I'm not sure.

Q. But whether it was your folder or your pocket you had them in your possession?

A. Yes.

Q. But you didn't show them?

A. No.

Q. What was the purpose of having them in your folder or your pocket?

A. I thought about it, but then I decided against it because I thought it wasn't right. I got a pang of conscience, if that's the way you want to put it.

Q. Had there been any previous discussion about the showing of the post mortem or autopsy photographs would it be a technique that could or would be used in the interview?

A. A discussion about it?

Q. Yes.

A. No, I can't remember.

Q. Did you have any discussion with Detective Sergeant Keane with respect to the use of the photographs?

A. I don't think so. I honestly don't know.

Q. What was Michael Peoples' demeanour during the course of the interview?

A. The interview was civilised enough.

Q. Cordial?

A. Yes. Cordial. It was. There was a bit of raised voices at times. It wasn't anything major.

Q. You said you had certain questions that you wanted to put to Michael Peoples. What were those questions?

A. I can't remember now. All I know is from discrepancies or things like that that he made statements earlier about the night, based on statements other people made.

Q. Did Michael Peoples ever make an admission with respect to being responsible or involved in the death of Richie Barron?

A. No.

Q. Was he ever abused in any way in your presence during his time in custody?

A. No.

Q. Was he ever mistreated in any way?

A. No.

Q. Are you aware of any mistreatment that occurred to Michael Peoples while he was in custody?

A. No.[145]

2.43. Mr. Collins gave limited evidence of a somewhat strange kind to the Tribunal in relation to his dealings with Mr. Peoples and his possession of post-mortem photographs. It was as follows:

Q. What did you have to do with his arrest and interrogation?

A. I interviewed him. I was part of an interview team.

Q. Right. So you had to know what there was against him before you could interview him?

A. I was aware that he was being arrested, yeah, that he had been arrested, yeah.

Q. And you interviewed him?

A. I interviewed him, two sessions of interviewing yeah.

Q. You had a set of post-mortem photographs in your possession?

A. Not at the interview, no.

Q. You had a set of post-mortem photographs in your folder prior to going into the interview room?

A. Yes.

Q. Why?

A. I just had them.

Q. Why?

A. My own reasons.

Q. What were your reasons? Well, what were your reasons?

A. I said I had my own reasons.

Q. Could you tell us, please?

[145] Tribunal Documents – Michael Peoples, pages 11-46 to 11-49.

A. No, my own reasons. Personal.[146]

I then asked Mr. Collins to answer the question posed by counsel for the Tribunal. It was my view that his failure to answer the question was tantamount to an obstruction of the Tribunal. He asked why counsel wanted to know "what I have in my personal possession".[147] He went on to say that though he had a set of post-mortem photographs in a folder, he did not have them in the interview room. There then followed the following questions:

Q. No, but you didn't bring it in, you had a pang of conscience in relation to bringing it in. That is what you told Mr. Finn?

A. Yes.

Q. And you didn't bring it in. So I am asking you: why was that in your folder in the first place?

A. It was there for a reason.

Q. What was the reason?

A. It's personal.

Q. But it can't be personal, you were about your duties as a member of An Garda Síochána, that's the Irish flag behind you. You are accountable, I am accountable, you are accountable.

A. Yeah.

Q. I am asking you for an account, it can't be personal.[148]

2.44. I am of the view that Mr. Collins has not told the Tribunal the full story in respect of how and why he came to be in possession of these photographs at the time of the interviewing of Mr. Peoples. I am asked to accept that it is a pure coincidence that Garda Collins had on his own admission possession of photographs of the post-mortem of the Late Richard Barron at the time of the interviewing of Michael Peoples but declined to use them because he had qualms of conscience about doing so. Michael Peoples makes an allegation that in the course of the fourth interview Garda Collins was asked to leave the room and obtain post-mortem photographs of the Late Richard Barron for the purpose of showing them to Michael Peoples. I am further asked to accept that it is a further coincidence that it is a common part of the story of Garda Collins and Mr. Peoples that the photographs were not ultimately shown to him. It is my

[146] Transcript, Day 284, Q.967-975.
[147] Transcript, Day 284, Q.982.
[148] Transcript, Day 284, Q.984-989.

view that these supposedly coincidental features of Garda Collins' story with that of Mr. Peoples tend to support the account given by Mr. Peoples of what happened during the course of this interview. I am equally satisfied that Garda Collins has fallen well short of giving a full truthful account to the Tribunal investigators and to the Tribunal concerning his involvement in this interview.

2.45. Detective Inspector Keane denied that he engaged in any abuse of Michael Peoples whether by any acts of aggression, or roaring and shouting at Mr. Peoples during the course of interviews. He said in evidence:

> *In any interview, like an interview of this magnitude is not in my view a tea party and … while I never engaged in roaring and shouting, I would definitely engage in raising voices and that … but put it this way, I did not consider myself shouting and I have never been accused of shouting at anybody in an interview room and that particular interview room anyway, it was actually next door to a private house and you don't want the neighbours coming in … I don't think I was shouting. My voice was raised but it was raised in the asking of the questions not in the interruption of the answers.*[149]

He also denied that he shouted at Mr. Peoples that he was "a lying murdering bastard" when Mr. Peoples answered or tried to answer questions. He said that there was no way he could have made progress in an interview with Mr. Peoples and secure his co-operation if he was calling him names. Any interview that he ever conducted, he said, was for the purpose of seeking the truth. He maintained that over the years he conducted many interviews, often over two day periods, without being frustrated to the extent that he shouted at interviewees, because of what might have been perceived as a lack of progress in the interview. He also observed that Mr. Peoples was answering questions and was co-operative during the course of the interviews.[150]

2.46. Detective Inspector Keane accepted that, as described by Mr. Peoples, he was walking around the interview room during the course of the interviews. It was something he always did. While doing so he continued to talk to a detainee.[151] He denied that he told Mr. Peoples not to reach for his cigarettes during the course of the fourth interview despite the fact that Garda Collins was smoking and denied that he said to him that he, Detective Inspector Keane, was in charge and that he was not to be polluting his air. He also denied the suggestion that Mr. Peoples was precluded from smoking during the course of this interview in order to put further pressure upon him. He further denied the suggestion that he

[149] Transcript, Day 487, Q.509-511 and Q.555.
[150] Transcript, Day 487, Q.547-550.
[151] Transcript, Day 487, Q.564-567.

had thumped the desk with his fist during the course of the fourth interview and that he threatened Mr. Peoples that if Mr. Peoples did not stop thumping the table he, Detective Inspector Keane, would thump him. Nevertheless, he also indicated that he would not take issue with Mr. Peoples' admission that he, Mr. Peoples, had thumped the table.[152]

2.47. The evidence of Mr. Peoples that he was shouted at by Detective Sergeant Keane is accepted. I am satisfied that he was repeatedly called a "murdering bastard" or a "lying murdering bastard" and that this continuous and aggressive verbal abuse was calculated to make him give up information which it was believed he possessed concerning the death of the Late Richard Barron.

2.48. Detective Inspector Keane also denied that he made any suggestion that photographs should be obtained of the Late Mr. Richard Barron's post-mortem and shown to Mr. Peoples. When asked to comment on the account given by Garda Collins to Chief Superintendent Garvie already quoted, Detective Inspector Keane said he had no idea of what Garda Collins might have had in his possession and he had no inclination at all that he had post-mortem photographs.

> *... There was no suggestion at all of showing or getting or acquiring post-mortem photographs.*[153]

He had no recollection of Garda Collins ever leaving the interview room as described by Michael Peoples. Indeed, Garda Collins in his interview with Chief Superintendent Garvie did not describe leaving the interview room in order to obtain the photographs which he said were in his possession. Detective Inspector Keane denied that he took the opportunity, when Garda Collins absented himself from the interview room in order to obtain the photographs of the post-mortem, to obtain a broken leg of a chair about two foot long in the corner of the interview room and hit it or move it into and out of his own hand in the manner which Mr. Peoples took to be threatening. He said:

> *I have no recollection of Garda Collins ever leaving the interview room and I definitely did not go over into the corner of the interview room and start hitting myself with the leg of a chair.*[154]

2.49. I am satisfied that Garda Collins did leave the room in order to obtain photographs of the post-mortem of the Late Richard Barron; and at the request of Detective Sergeant Keane that he should do so. With regard to the allegation made by Mr. Peoples that while Garda Collins was absent from the room, Detective Sergeant Keane picked up and handled the

[152] Transcript, Day 487, Q.577-579.
[153] Transcript, Day 487, Q.580-590 and Q.613-614.
[154] Transcript, Day 487, Q.592-596.

broken leg of a steel chair in a threatening manner by banging it against his hand, I am not sufficiently satisfied that this event, if it happened, was intended by Detective Sergeant Keane as an active threat to assault Mr. Peoples so as to make a finding to that effect. I believe that there are many circumstances in which this incident could have occurred which could be innocently explained and accounted for.

2.50. Detective Inspector Keane said that he had never suggested to Michael Peoples that he would be charged with murder before a special sitting of the District Court, nor did he discuss the issue of bail with him. He did not tell Mr. Peoples that he would not see the light of day for fifteen years or that his wife would be jailed for seven years or that he was not going to see his child. He refuted the suggestion that he had mentioned Mrs. Charlotte Peoples at all during the course of the interviews. He denied telling Mr. Peoples that Mrs. Peoples was now "sitting down, clearing her conscience, she's laughing now, she's told the truth" as much as to say that she had admitted whatever involvement she had in the events surrounding the death of the Late Mr. Barron.[155] I am also satisfied, on the evidence given by Mr. Peoples, that he was threatened with being charged and that he was told by Detective Sergeant Keane that he and his wife would receive lengthy sentences and not see their child and that there was some reference to the issue of bail as described by Mr. Peoples.

2.51. Detective Inspector Keane accepted that Mr. Frank McBrearty Senior was discussed with Mr. Peoples as alleged by him during the course of the interviews. Mr. Peoples contended that this discussion was in the context of the allegations made against Frank McBrearty Senior that he was intimidating witnesses. Detective Inspector Keane did not recall the specific context of the discussion but said it was one of a number of subjects discussed with Mr. Peoples. No notes were taken of this exchange or of the various other subjects discussed. Detective Inspector Keane noted that not everything discussed in an interview was taken down as part of the interview notes. There were topics that were not directly relevant to the offence for which the person was arrested; other topics related to matters of ordinary everyday life, which one would not record.[156]

2.52. Mr. Peoples also alleged that Detective Sergeant Keane made reference to his father and mother during the course of questioning. In respect of his father and related to the discussion of post-mortem photographs, Mr. Peoples contended that Detective Sergeant Keane had asked him whether his father was still alive and "how would you like that to happen to your father?", to which he did not reply. He also contended that reference was made to his mother whom Detective Sergeant Keane was aware had visited him earlier in the day. Again he posed the

[155] Transcript, Day 487, Q.637-645.
[156] Transcript, Day 487, Q.646-656.

question "how would you like that to happen to your mother?" This was said aggressively and he took the reference to his mother as a threat directed towards her "as much to say he could do that."[157] Detective Inspector Keane in giving evidence denied that he made any mention of Mr. Peoples' mother. However, he accepted that he mentioned his father. He said:

> *And I brought everybody's father into it. Because there was a victim here, Mr. Barron was a father who was killed and I put it in the context that we all have fathers, none of us would like maybe the same fate to befall our father that happened to Mr. Barron or some suggestion along that line. It was not done in a threatening manner nor was it spoken into his "left ear" as described by Mr. Peoples.*[158]

2.53. I am not satisfied that it was Detective Sergeant Keane's intention to threaten Mr. Peoples' mother in the way Mr. Peoples interpreted his comments. To say that it would be a terrible thing that any one's close relative might suffer a sudden or apparently violent death is no more than to state a common and obvious human reaction to such an event. It is my view that given the circumstances in which he was interviewed, Mr. Peoples had a heightened and perhaps retrospective and exaggerated sensitivity to these comments which is understandable in the circumstances.

Notes of Interview

2.54. As already noted no serious controversy surrounds the notes of interview furnished in respect of interviews one and three. Only one set of notes is furnished to the Tribunal arising out of interviews two and four and it is unclear from the notes and from the evidence available from Detective Inspector Keane and Mr. Philip Collins as to whether those notes apply to the second interview or are a composite note relevant to both interviews. The notes read as follows:

> MEMO OF INTERVIEW WITH MICHAEL PEOPLES, ST. EUNAN'S TERRACE, RAPHOE, 4/12/96. GARDA COLLINS AND D/SGT. KEANE PRESENT – LIFFORD GARDA STATION. CAUTIONED BY D/SGT. KEANE: You are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be given in evidence.
>
> Q. What time leave Mark Quinn's?
>
> A. Around 12 o'clock.
>
> Q. Who was in the pub?

[157] Transcript, Day 484, Q.319-323.
[158] Transcript, Day 487, Q.657-677.

A. As far as I know Eunan Brolly still there and Katrina and Paul Duffy was there I think.

Q. Where did you go?

A. To the Bank Link, back to pub collected Charlotte, went to Parting Glass. Geoffrey Dolan with us. His car. Went in. Paid. Went for a drink. Me and him. I don't know. I don't know staff. Know to see, didn't know names, there to half one. Saw Mark McConnell sitting behind me before we left at 1.30 am. Arrived with Charlotte, never left nightclub between 12.30 and 1.30. Argument she did not want to leave. Argument again at door over coat left in Geoffrey Dolan's car. Charlotte was crying. Definitely crying. Geoffrey Dolan left with us. We got caught up in the crowds and Geoffrey Dolan got ahead of us. When we got out he was gone. I went back in to phone him to get my coat as my keys were in it. Fell out with Charlotte. Told her I was going down street to Quinn's pub for a pint. Walked down street well past the Suíle. Geoffrey and me along Charlotte in car. I went into back seat. Drove up Mongommy [sic] to see where Richie Barron was killed. Drove up passed and turned and came down and stopped. Asked people there. Left went home. Me, Charlotte and Geoffrey. Mother-in-law at home. Three of us went in. I made a bite to eat. Don't know who went to bed first. Don't know if anybody made phone call from house. If anybody did it was probably my mother-in-law Dolly. At 10 am Mark McConnell and Róisín arrived at house. This was the following morning. Chatted about Richie Barron's death. The day I got the threatening phone calls. I phoned my father-in-law Charlie. Phoned Geoffrey Dolan. Charlotte phoned Mark Quinn.

Philip Collins, Garda.[159]

2.55. This note might be regarded as short even if it was only referable to the second interview, which lasted for 2 hours and 37 minutes. If it referred to a composite period covering the second and fourth interviews, it must also be taken to cover a further period of 1 hour and 38 minutes. Thus the notes would cover the period of 4 hours and 15 minutes if it is a composite note.

2.56. Michael Peoples told the Tribunal that he had no recollection of Garda Collins taking any notes during the course of these interviews.[160] Garda Philip Collins told the Tribunal investigator that, "I didn't make any notes. I took a few notes during the end of the interview." Detective Inspector Keane surmised that perhaps Garda Collins did a composite note incorporating notes of the second interview

[159] Tribunal Documents – Michael Peoples, pages 53-54.
[160] Transcript, Day 484, Q.357-358.

into the first. He acknowledged that he asked the questions and Garda Collins took the notes in both interviews. He accepted that there was nothing in the notes to suggest that they were read over to Michael Peoples at the conclusion of the interviews or that Mr. Peoples was invited to acknowledge whether they were correct or not. The content of the notes were very similar to the questions that were put to Mr. Peoples in both interviews. When asked about the absence of his signature from the notes Detective Inspector Keane said:

> *Well I would … and I am, how will I say it, guessing here now, but Garda Collins, I wouldn't say he ever conducted a similar interview before and I would say I overlooked asking him to, you know … to read them over and put in the refusal or otherwise of the suspect to sign them and to sign them himself … I am putting forward a suggestion that's what could have happened here … That's the only explanation I have.*

However, Detective Inspector Keane acknowledged that this was only a suggestion and that he did not have a specific recollection as to why his signature was not appended to the notes.[161] He rejected the proposition that the notes may have been compiled after the interviews.[162] He said he was, "one hundred per cent sure, as sure as I am sitting here today" that Garda Collins was sitting at the table at both interviews and took notes.[163] Neither could he recall why the notes were not read over to Mr. Peoples at the conclusion of the second interview at 14.00 hours.[164] Detective Inspector Keane acknowledged that no incident occurred which precluded the reading over or signing of the notes at the conclusion of the second interview at 14.00 hours.[165] Statements made by Garda Collins and Detective Sergeant Keane concerning the interviewing of Mr. Peoples which were apparently made in 1997 contained no reference to the reading of notes over to Mr. Peoples at the conclusion of the respective interviews.[166]

2.57. In addition, the unsigned note was not incorporated into either of their statements nor was there any qualification expressed in the statements that a note made in the course of the interviews was a composite note of replies given in the course of both interviews. In addition, there was no discernible point at which the second interview ended and the fourth interview commenced from a reading of the note. It appears to me that the sequence of the answers given suggests a continuum of questions and answers over a single session rather than two sessions of interview. These notes are clearly deficient in providing an acceptable and accurate record of the interviews conducted by Garda Collins and

[161] Transcript, Day 487, Q.427-454.
[162] Transcript, Day 487, Q.455.
[163] Transcript, Day 487, Q.463.
[164] Transcript, Day 487, Q.467-480.
[165] Transcript, Day 487, Q.480-491.
[166] Tribunal Documents – Michael Peoples, pages 1-2 and 12.

Detective Inspector Keane with Mr. Peoples. The onus is on An Garda Síochána to comply properly with the Judges' Rules and custody regulations in the recording of notes of interview. Lapses in this area can only give rise to a deep suspicion as to how such interviews were conducted. More particularly, it is my view that the failure to adequately explain deficiencies in notes of interview or to report and accurately record what transpired between an interviewee and interviewing Gardaí, tends to support, in this instance, the account which Michael Peoples gives of how these interviews were conducted.

The Release

2.58. Michael Peoples told the Tribunal that the fourth interview with Detective Sergeant Keane and Garda Collins ended abruptly and was followed immediately by his release from custody. The Gardaí did not read over any note of interview to him. He described it in the following way to the Tribunal:

> *We were going through that, and I didn't even know the time at this stage. He said get out of here to f…, that's how it ended. It was just shouting and roaring up to the very end. … there was no note read over … there wasn't even paper on the desk … we left together. He took me down the stairs. Took me down to the front office and got my money that I gave him earlier on. I bought cigarettes. I think Bosco Gallagher, that's right, when my mother came into visit me I had no cigarettes and I think he took money, I asked him to take money to go and get cigarettes and he bought 40 blues and I think I picked them up when I was leaving. Mick Keane followed me out the door, I'm not sure if I signed the release or not. But he walked me out to the door and I thought I was going to be arrested again. He put his hand on my shoulder as I was opening the door and he just says, Michael, and I was just waiting for the whole thing to start again. He leaned over to me and he says to me if there is anything I can ever do for you just give me a shout … I felt like turning around and busting his mouth and that's the truth. He left me shaking. I went outside and I phoned my father to come and collect me. I got home then. The house was full. I can't mind. Charlotte … I had to go then and collect Charlotte from Letterkenny Station. … collected her she was in bits.*[167]

2.59. It has been pointed out that Michael Peoples did not make any complaints to Garda Bosco Gallagher on his release and indeed signed the custody record to the effect that he had "no complaints about his treatment during custody."[168]

[167] Transcript, Day 484, Q.359-365.
[168] Tribunal Documents – Michael Peoples, page 47.

2.60. Detective Inspector Keane told the Tribunal that the interview ended:

> *The same as any other interview ends, I would keep an eye on my watch and I never keep a person to the very last minute because I think it's a bit mean to keep them to the very last minute. So I would always leave ten or fifteen minutes before the time because it takes another couple of minutes to get the formalities gone through in the public office as well. … I think I said something to him going down the hall that he didn't take too kindly to. … Along the lines would he at some stage be willing to help the Guards. It's a thing I say to every prisoner when I release them … [he replied] no fecking way or something, some words to that effect. … I cannot say how he actually finished the actual interview per se itself. … From what I see here today, I would be very sceptical if notes were read over …*[169]

He denied that he was in any way abusive or insulting towards Mr. Peoples. He did not accept that the interview ended by his telling Mr. Peoples to get the "f…" out of the interview room.[170]

Subsequent Events

2.61. Michael and Charlotte Peoples attended with their solicitor, Mr. Kieran Dillon, on the 9th of December 1996. Mr. Peoples had described to Mr. Dillon that he had been interviewed "nice and hard". Most of the consultation notes relating to the visit to Mr. Dillon on the 9th of December 1996 concentrate on Mrs. Peoples' detention but there is a note to the effect that "Michael was shouted at while in Lifford to get it off his chest".[171] It was clear from the evidence of Mr. Peoples to the Tribunal that his wife's arrest had a deep and lasting effect on her that required medical intervention. It was clear from the manner in which he gave his evidence on this that this had a deeply upsetting effect upon him. It was the only occasion upon which he lost his composure in the witness box.

2.62. Though Mr. Peoples received advice from his solicitor by letter dated the 16th of December 1996 that he could make a complaint to the Garda Complaints Board, he declined to make such a complaint.[172] Subsequently, civil proceedings were issued against the Commissioner of An Garda Síochána and others relating to this arrest in which the allegation was made that Detective Sergeant Keane had shouted at the plaintiff during the course of his interrogation and had accused him of giving the two alleged culprits, Mark McConnell and Frank McBrearty

[169] Transcript, Day 487, Q.678-686.
[170] Transcript, Day 487, Q.670 and Q.679-681.
[171] Tribunal Documents – Michael Peoples, page 289.
[172] Tribunal Documents – Michael Peoples, pages 284-286.

Junior, assistance when they came to his house by giving them a change of clothes and washing their clothes. The incident involving the leg of a chair and the reference to offering to show him photographs of the body of the Late Richard Barron were set out in the pleadings to that action.[173] A further account of Mr. Peoples' allegations, consistent in many respects with the evidence which he gave to the Tribunal, is to be found in his interview with Chief Superintendent Garvie, RCMP, the Tribunal investigator, on the 10th of June 2003 in the presence of his solicitor.[174] It should be noted, however, that the incident involving the leg of a chair is not mentioned by Mr. Peoples in that interview, though the threat to show him the photographs is.

Conclusions

2.63. The following are the Tribunal's conclusions on this matter:

1. As previously reported, the Tribunal is satisfied that Michael Peoples was unlawfully arrested at common law on the basis of a suspicion that he was involved in the murder of the Late Richard Barron. There was no basis in fact or in law for his arrest. Insofar as it is now suggested that his arrest was on suspicion that he was involved as an accessory after the fact to the murder of the Late Richard Barron, the evidence does not support that contention and I am satisfied on the basis of the evidence of Michael Peoples, Garda Bosco Gallagher, Detective Garda Patrick Flynn and Mr. Peoples' solicitor, Mr. Kieran Dillon, that this arrest was effected on the basis of a suspicion of involvement in the murder of the Late Richard Barron. The fact that there should be a serious difference between Gardaí who formed part of the arresting party concerning the reason for the arrest of Mr. Peoples confirms to me that this investigation was not carried out in a rigorous or professional manner.

2. The reason proffered to the Tribunal and in the various statements received by the Tribunal for the arrest of Michael Peoples, whether as a principal or an accessory after the fact, for the murder of the Late Richard Barron, varied from weak to tendentious. For example, it could only be the "tunnel vision" or bias of the investigation team against Mr. Peoples that gave rise to his arrest on the basis that Gardaí believed that he had made an admission in a statement to Garda Philip Collins that he had offered an anonymous telephone caller to his home a sum or sums of money on condition that the caller did not contact the Gardaí in relation to evidence that he might have linking Mr. Peoples to the murder of the Late Richard Barron. It will be recalled that in this instance, Mr. Peoples had made the complaint to the Garda Síochána and offered them every

[173] Tribunal Documents – Michael Peoples, pages 91-93.
[174] Tribunal Documents – Michael Peoples, pages 73-76.

assistance in investigating extortion calls made to his home of which he and his wife were the victims. The dilatory and unimpressive manner in which this matter was investigated was bad enough: its use as a ground of arrest against Michael Peoples was inexcusable.[175]

3. The Tribunal is satisfied that Michael Peoples gave as full and honest an account as he could to the Tribunal of what happened to him during the course of his arrest and detention on the 4th of December 1996. Indeed, some of his testimony is supported by some evidence given by the Gardaí.

4. I am satisfied that Mr. Peoples' account of his arrest is substantially true. I am satisfied that the journey from his home to Lifford Garda Station was substantially uneventful.

5. Mr. Peoples' allegations concerning what transpired during the course of his detention are largely confined to the second and fourth interviews conducted by Garda Philip Collins and the then Detective Sergeant Keane. I am satisfied for the most part that Mr. Peoples' account of these interviews is an honest and truthful recollection of what he now recalls of them. Having had the benefit of hearing his evidence and watching his demeanour during the course of his testimony, I am satisfied to accept his account of what transpired and what he says was said to him during the two interviews.

6. Mr. Peoples contended that he was shouted and roared at by Detective Sergeant Keane on any occasion upon which he sought to give an answer to questions asked during the course of these interviews. He also indicated that conditions were worse in the fourth interview than in the second. Detective Inspector Keane acknowledged in testimony that he was likely to have raised his voice to Mr. Peoples during the course of the interviews, as this was something he might normally do. I am satisfied that he was loud in his questioning of Mr. Peoples and that this was viewed as intimidatory by Mr. Peoples. In this regard, Detective Inspector Keane also acknowledged that it was his habit to walk around the interview room in the course of an interrogation and to address the detainee from a standing position. This undoubtedly added to a perception of attempted intimidation by Mr. Peoples. I am satisfied that he did repeatedly call Mr. Peoples a "murdering bastard" or a "lying murdering bastard" or something of that nature during the interviews.

7. In respect of the alleged reference by Detective Sergeant Keane to Mr. Peoples' parents, Detective Inspector Keane admits that there was a

[175] See Report on the Investigation into the death of Richard Barron and the Extortion calls to Michael and Charlotte Peoples – Terms of Reference (a) and (b) Chapters 5 and 6.

reference to his father but not his mother and states that the reference was not made in the context of a reference to photographs. I am satisfied that reference was made to both parents but I am not satisfied that there was any threat or intended threat made by Detective Sergeant Keane against Mr. Peoples' mother.

8. I am satisfied that Detective Sergeant Keane threatened that Mr. Peoples would be charged with murder and refused bail, and that he and his wife would receive lengthy custodial sentences and not see their child as described by Mr. Peoples.

9. Mr. Peoples alleged that Detective Sergeant Keane suggested to Garda Collins during the course of the fourth interview that he leave the interview room and obtain the photographs of the post-mortem of the Late Richard Barron in order to show them to Mr. Peoples: the purpose being, presumably, to show him what had been done to the Late Richard Barron and to shock him into an admission as to his part, as the Gardaí perceived it, in his death. Mr. Peoples alleged that Garda Collins left the interview room, as he understood it, to obtain these photographs. However, when Garda Collins returned to the interview room, Michael Peoples accepts that no photographs of the post-mortem were shown to him. Detective Inspector Keane denies that this incident occurred at all. However, Garda Collins in his interview with a Tribunal investigator and in his evidence to the Tribunal acknowledges that he had in his possession photographs of the post-mortem of the Late Richard Barron and though he may have intended to show them to Mr. Peoples, he had qualms of conscience about doing so. He accepted that he did not tell Detective Sergeant Keane about his possession of these photographs which were, he said, in a folder, or in his pocket. I am satisfied that the issue of photographs emerged in the course of the interview as described by Mr. Peoples. I am by no means satisfied that Mr. Collins told the Tribunal the full truth concerning these photographs. There was no reason for Mr. Peoples to know that these photographs were in Garda Collins' possession, even to the extent and in the circumstances outlined by Garda Collins, unless there had been some communication in his presence between Detective Sergeant Keane and Garda Collins referring to photographs of the post-mortem of the Late Richard Barron. I accept Mr. Peoples' evidence in this regard.

10. I am also satisfied that Detective Sergeant Keane at some stage took the leg of a chair in his hand for a period of seconds. However, I am not

prepared to make a finding that he did so with the intention of actively threatening Mr. Peoples with physical assault. I believe that Mr. Peoples in his highly anxious and confused state is mistaken in regarding Detective Sergeant Keane's actions as a threat: though his state of mind can readily be understood given his then circumstances.

11. There is only one set of notes available to the Tribunal in respect of the second and fourth periods of interview between Mr. Peoples and Garda Collins and Detective Sergeant Keane. There is no reference in the initial statements by Garda Collins and Detective Sergeant Keane to the taking of these notes or the reading over of these notes to Mr. Peoples at the conclusions of the respective interviews. The notes are not timed. They are signed only by Garda Collins. Mr. Peoples said that he had no recollection of any notes having been taken during the course of either interview. Garda Collins said that these notes were taken towards the end of the interviews. Detective Inspector Keane said that notes were taken during the course of both interviews. There is no reference to a break in interview in the notes. Indeed, the continuum of the notes indicates to me that answers were given in the course of a single rather than two sessions of questioning. It has been suggested that the notes are a composite of questions and answers during the course of both interviews. In the absence of any other method of verification such as recording or video taping at the time of these interviews, notes taken by the Gardaí constitute the only record available to any outside party such as a Tribunal of Inquiry or a court as a means of testing the accuracy of testimony as to what occurred during the course of interviews. These records were not maintained accurately and properly, and no explanation is furnished for this deviation from proper procedures by either Garda Collins or Detective Inspector Keane.

12. Detective Inspector Keane accepted that notes did exist but were not read over to Mr. Peoples at the conclusion of the fourth interview. He also said that it was his habit to keep an eye on the clock so that he concluded the last interview with a detainee in good time before his release. If that be so, there was no excuse not to read over the notes of interview to Mr. Peoples at the conclusion of the fourth interview. Mr. Peoples for his part said that he was abruptly told to leave the interview room in the manner already described. I am satisfied to accept Mr. Peoples' testimony in this regard notwithstanding the denial of Detective Inspector Keane. The fact that the notes were not read over to him at the conclusion of the interview tends to support the testimony that the interview ended

abruptly. On Detective Inspector Keane's evidence I would have expected that his normal practice would have ensured the reading over of the notes and that his signature would have been appended to the notes with that of his colleague, Garda Collins.

13. I have a doubt as to whether these notes were produced during the course of the two interviews. It may be that they are referable only to the first interview. There is also the possibility, particularly in the absence of Detective Inspector Keane's signature from the notes, that they were produced after the interviews. However, in that regard, I am not satisfied to reach that conclusion on the balance of probabilities.

PART II

The Arrest and Detention of Michael Peoples on the 6th of May 1999

Background

2.64. The arrest of Michael Peoples on the 6th of May 1999 occurred in the course of the investigation by Detective Sergeant Gerard Connolly and Detective Garda Michael Reynolds of the false allegation made by Bernard Conlon that two men had threatened him at his home at 61 Cartron Bay on the evening of the 20th of July 1998. The circumstances surrounding this incident and the background to this arrest and detention are set out in the third report of the Tribunal in respect of Term of Reference (d).[176] As readers of the third report will recall Bernard Conlon alleged that on the evening of the 20th of July 1998 two men called to his front door. One of them had asked if he was:

> … the informer Conlon, took a bullet from his pocket and threatened him with it if he attended at Letterkenny District Court to give evidence in a case versus the McBreartys. He was very scared and stated that he feared for his life. He stated that he had seen one of these people at Letterkenny District Court on a number of occasions.[177]

The Gardaí were called to Mr. Conlon's house in the early hours of the morning of the 21st of July to investigate this alleged occurrence. On meeting Mr. Conlon Detective Sergeant Connolly and Detective Garda Reynolds thought that he was very upset and later, on the morning of the 21st of July, Mr. Conlon made a detailed statement concerning the incident to Detective Garda Reynolds.[178] Mr. Conlon described the two men to Detective Garda Reynolds. The first man, whom he described as the spokesman of the two, allegedly took a silver coloured

[176] Report on the circumstances surrounding the arrest and detention of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999 – Term of Reference (d) submitted to the Minister for Justice, Equality and Law Reform on the 28th of March 2006 (Prn A6/0449).
[177] Tribunal Documents – Silver Bullet, pages 234-235.
[178] Tribunal Third Report pages 134-141.

bullet from his jacket pocket, held it up to him and told him "there is one for you and one for [Detective Sergeant John] White and that White had a trailer missing and he will be missing too." He was told by this man that "if you turn up in court the next day you will get the contents of what I have in my pocket." The description of the "spokesman" led the investigating Gardaí on a trail which ultimately led to the arrest of Mr. Mark McConnell. The description given by Mr. Conlon of the second man whom he accused of threatening him was as follows:

> The other man was aged between 29 years and 30 years and somewhat taller, having black hair cut tight. He wore blue jeans and shoes and a shirt with no collar which I describe as a grandfather shirt. He also wore a leather jacket which was zipped up half way. He kept his hands in his pockets of the jacket and stared me straight into the eyes. He wore an ordinary pair of shoes. As far as I can remember, I think he had a stud or earring in one of his ears. He did no talking, just stood there. I never saw this guy before, but I feel that I would recognise him again if I saw him.[179]

On the 8th of December 1998, Bernard Conlon attended the District Court at Letterkenny and purported to identify Michael Peoples as the second man who had attended at his home on the evening of the 20th of July 1998. This identification was totally false. Bernard Conlon had made up these allegations in relation to the threats of the 20th of July 1998 and falsely accused Mark McConnell and Michael Peoples of being involved in this fictitious event. The manner and circumstances of this identification on the 8th of December 1998 is not without controversy and was fully considered in the third report of the Tribunal.[180]

2.65. Garda Thomas Ward was in attendance at the District Court in Donegal on the 8th of December 1998 in relation to a series of licensing prosecutions which had been brought against Frank McBrearty Senior and others. Michael Peoples was also in attendance. In evidence to the Tribunal, Garda Ward recalled that there had been a break in the proceedings for some fifteen minutes on the morning of the 8th of December. Shortly after proceedings resumed Bernard Conlon tapped him on the shoulder and pointed out to him a man who was seated across the courtroom and informed Garda Ward that this man was one of the two men who had threatened him at his home in Sligo on the 20th of July 1998. Garda Ward approached Garda Noel Keavney, whom he knew to be stationed in Raphoe. Garda Keavney named the man pointed out by Bernard Conlon as Michael Peoples, and furnished Garda Ward with his address. Garda Ward, shortly afterwards, approached Detective Sergeant Sylvester Henry in the foyer outside the courtroom to enquire as to who was investigating the allegations made by

[179] Tribunal Third Report, pages 140-141 – Tribunal Documents – Silver Bullet, page 120.
[180] Tribunal Third Report, pages 173-180.

Bernard Conlon. He was told that the Gardaí in Sligo Station were investigating the matter and he was advised by Detective Sergeant Henry to make a statement about the identification and to forward it to Sligo Gardaí for further investigation. Garda Ward then invited Mr. Conlon to make a written statement about his identification of Mr. Peoples and he agreed to do so. Bernard Conlon made a statement identifying the second man as Michael Peoples on the afternoon of the 8th of December 1998.[181] Garda Ward later forwarded his own statement and that of Mr. Conlon to investigating Gardaí in Sligo through the normal channels on the 8th of December 1998. It is also clear that Detective Sergeant Connolly, who was investigating the matter in Sligo, became aware of this development shortly after it occurred.

2.66. There was a considerable hiatus between the false identification of Michael Peoples by Bernard Conlon on the 8th of December 1998 and the arrest of Mr. Peoples on the 6th of May 1999. This delay and the subsequent decision to arrest Michael Peoples by Detective Sergeant Connolly, with the consent of Chief Superintendent Austin McNally, has already been fully considered by the Tribunal in its third report.[182] The Tribunal's view of the arrest of Michael Peoples on the 6th of May 1999 is as follows:

> 3.131. The arrest of Michael Peoples was caused by the false identification made by Bernard Conlon. Bernard Conlon said he was put up to making this false identification by Detective Sergeant White, who denies the allegation. Superintendent McNally said the reason why the investigation proceeded was because once the allegation and identification were made, the investigation had to be seen through to the end. However, whilst acknowledging that this must be viewed as an evolving investigation and accepting that the fog of deceit surrounding it did not really begin to lift for Chief Superintendent McNally and Detective Sergeant Connolly and others until 2000, nevertheless, there are strong contra indicators which suggest that the arrest of Michael Peoples was not necessary. Bernard Conlon was dishonest. He was not regarded as a person who could be completely relied upon to give his story without encouragement. It was felt necessary, for example, to keep him right by ensuring that his expenses were paid when he attended to assist the Gardaí in the identification of Mark McConnell. The description he gave of the second culprit did not match that of Michael Peoples. The Director of Public Prosecutions had expressed a strong view that he was not credible in his directions of the 24th of February 1999. Bernard Conlon told a story about the alleged attempt to bribe him to

[181] Tribunal Third Report, pages 176-179 – Tribunal Documents – Silver Bullet, page 123.
[182] Tribunal Third Report, pages 188-202.

withdraw his statement and evidence of the 11th of December 1998, to Gardaí on the 27th of April 1999. This story does not seem to have been taken seriously by Chief Superintendent McNally or others in that there is no evidence of any attempt to conduct any investigation about this letter or the allegation of attempted bribery. This is important because the allegation was made that William Flynn, the private investigator acting on behalf of Frank McBrearty Senior, had attempted to bribe Mr. Conlon essentially to withdraw his evidence of the 11th of December 1998. It was his attendance as a witness to give that evidence that gave rise to the intimidation by the silver bullet of the 20th July 1998 according to Bernard Conlon. In the meantime, Mark McConnell had alleged that these allegations were part of an attempt by Bernard Conlon and Gardaí to frame him in relation to the matter. Additionally, the question undoubtedly arose as to whether it was likely that Mr. Conlon would be the subject of such a threat by the two men in a case in which they were not the accused, and which was of a very minor nature and consequence. There was ample basis to review the investigation and vigorously examine Bernard Conlon's statements before the arrest of Michael Peoples, particularly in the light of the events of the 27th of April. This did not happen.

3.132. The Tribunal is not prepared to go so far as to criticise the behaviour of the Gardaí in Sligo as being in any way malicious in their conduct of this inquiry. I am satisfied that they were not part of any conspiracy to set up or frame Mark McConnell or Michael Peoples. They had to operate in a web of deceit and lies spun by Bernard Conlon. Their colleagues in Donegal wrongly held back important information from them: the identification of Mark McConnell by Bernard Conlon of 26th of May 1998 and the alibi defence put forward by Mark McConnell on the 11th of December 1998. It may be, given the background of events in Donegal, that this allegation of intimidation was viewed as part of what they were led to believe could be expected from the McBrearty group, as relayed to them from contacts with colleagues in Donegal. It seems to me that had that element not existed in the case, and had this allegation stood on its own against the two men, the doubts about this story which seemed to lurk beneath the surface of this inquiry could have been examined in a much more critical manner and hence the second arrest of Mr. Peoples for his alleged involvement in the Silver Bullet threat might have been avoided.[183]

[183] Tribunal Third Report, pages 201-202.

2.67. I am satisfied that this arrest of Michael Peoples, which was based on the false allegations of Bernard Conlon, took place in circumstances in which the arresting officer was deprived of essential information which would have led him to question the truthfulness of Mr. Conlon. Firstly, in respect of the supposed identification of Mark McConnell that led to his arrest on the 1st of October 1998, Gardaí in Sligo were not informed that Bernard Conlon had previously identified Mark McConnell in respect of another incident which had allegedly occurred at Letterkenny District Court on the 26th of May 1998. Mr. Conlon's identification of Mr. McConnell on that occasion in Letterkenny meant that he knew Mr. McConnell's name and did not have to go through the elaborate charade of pretending to identify him outside Letterkenny District Court on the 1st of October 1998. Superintendent Lennon and Detective Sergeant White, who were both fully aware of this fact, failed to pass it on to their colleagues in Sligo. Secondly, three days after the identification of Michael Peoples, on the 11th of December 1998, Bernard Conlon was cross-examined in relation to his allegations in respect of the "silver bullet" by counsel on behalf of the McBreartys in the course of the District Court prosecutions at Letterkenny District Court. In the course of that encounter an outline of an alibi, relied upon by Mark McConnell as to his whereabouts on the night of the 20th of July 1998, was put to Bernard Conlon when he was robustly challenged in relation to his allegations. None of this was transmitted to the Sligo Gardaí by Superintendent Lennon or Detective Sergeant White. In addition, the fact that further allegations made by Bernard Conlon on the 27th of April 1999, which also turned out to be false, did not seem to be taken very seriously and went substantially uninvestigated by Sligo Gardaí, also constituted material which undermined the credibility of Bernard Conlon. It was against this background that the decision was made to arrest Michael Peoples on the 6th of May 1999. For him, it was yet another instalment in an appalling personal and family nightmare of engagement with An Garda Síochána. If An Garda Síochána in Donegal had behaved properly and kept their colleagues in Sligo fully informed of what had transpired with Bernard Conlon in Donegal, and if the Sligo Gardaí had been more alive to the flawed nature of the complainant Bernard Conlon, Mr. Peoples and his family would not have been put through this further ordeal. It cannot be thought that the deliberate withholding of such information by the Gardaí in Donegal could give rise to a fair or lawful arrest.

The Arrest on the 6th of May 1999

2.68. Michael Peoples was arrested at 07.50 hours on the 6th of May 1999 pursuant to the provisions of section 30 of the Offences Against the State Act, 1939 by Inspector Gerard Connolly. Inspector Connolly told the Tribunal in evidence that following this identification and because of Mr. Conlon's demeanour and distress on the 21st of July 1998 when he and his colleague, Detective Garda Reynolds, responded to the call to his house, he was of the belief that Mr. Conlon was telling the truth. He was aware that the Office of the Director of Public Prosecutions had expressed scepticism about Mr. Conlon's account in February 1999. Indeed, the then Detective Sergeant Connolly had not recommended that Mark McConnell be prosecuted on the basis of Mr. Conlon's evidence alone. Even though he effected the arrest of Mr. Peoples on the 6th of May 1999, he knew and understood at that time that there was unlikely to be a prosecution if Mr. Peoples, following his arrest, said nothing incriminating to interviewing Gardaí during the course of his detention. He said:

> *You have to pursue everything to try and finalise it. You would often pursue a case, you would often know somebody committed a crime but you would need the evidence and often people aren't prosecuted because the evidence isn't there, even though you would know that they would have committed the crime.*[184]

In fairness to Inspector Connolly this reflected his thinking at the time of the arrest and, of course, he fully accepted in his evidence that Mr. Peoples was totally innocent and that Mr. Conlon's allegations against him were a complete fabrication.

2.69. Nevertheless, the arrests of Mr. Peoples and his wife on the 4th of December 1996 was no small matter for them. It caused extreme worry and anxiety to them in respect of their own welfare and that of their child. Mrs. Peoples suffered seriously afterwards. Mr. Peoples had to cope with that. They had already been the subject of extortion phone calls which caused extreme worry and concern to them, but had received little or no practical help in that regard from An Garda Síochána. Instead the complaint was used as a basis upon which to arrest Mr. Peoples on the 4th of December. Then Mr. Peoples was arrested for the second time on the 6th of May 1999. This inevitably gave rise to further worry and concern, the potential for further damage to his wife's health, and a legitimate sense of grievance against the Garda Síochána and the State. As citizens of the State they were both entitled to the service of a police force that was competent and fair. Instead, they suffered the humiliation,

[184] Transcript, Day 488, Q.421.

opprobrium and damage to Mrs. Peoples' health which followed as a direct consequence of their respective arrests and detentions and investigative failures at all levels within An Garda Síochána.

2.70. Mr. Peoples gave an elaborate account to the Tribunal of how he was arrested on the morning of the 6th of May 1999. At the time he was working as a scaffolder. At about 07.30 hours he got into his van outside his house to go to work. On the way he was to collect a number of fellow workers. On driving out of his street he noticed a red car in the vicinity containing two men. This car followed him. He thought that they might have been investigators in relation to some of his co-workers whom, he thought, might have been suspected of obtaining "dole" money whilst at the same time in paid employment. He picked up two co-workers and made a number of evasive turns before phoning his employer to explain his suspicions to him and the fact that he thought he was being followed. He left the two men off before driving to work and pulled into his employer's yard. The car was still following him. He collected another man and had driven a short distance when he received a phone call from his employer. He told Mr. Peoples that the two men who were following him were Gardaí and they wanted to speak to him. He described his reaction:

> *… I was say, half a mile from the yard. I pulled in the van on the right hand side, … and I just thought more of the same again and I was shaking like a leaf with adrenaline. I jumped out of the van and the car at this stage now pulled up directly behind me and I stepped out of the van and the very words I says, right, bastards, what do you want. ID, what do yous want. That's the words I used. They just [produced] ID to me. I didn't even read it, I couldn't read it. I was just shaking like a leaf. I put my hand out to reach the ID. He says, put your hand back, he says, I'll hold it. He was holding the ID. I was supposed to be looking at it but it was just adrenaline that was going, I didn't even read the name on it. Couldn't read the name on it. I says, what do you want. They proceeded then to search the van and they wouldn't tell me. We were doing a search here, it's a checkpoint. We're doing a search. All they done was go round the van, they opened the van and checked inside it.*[185]

2.71. His employer then arrived at the scene and asked the two Gardaí why they were searching his van. Another acquaintance arrived and Mr. Peoples asked him to get him out of the area because, "these boys are going to lift me." He got into this man's car, at which stage one of the Gardaí approached the car and told Mr. Peoples to get out of it. He told his friend to drive on; then his friend was told to

[185] Transcript, Day 484, Q.410.

get out of the car, and that he was going to be arrested. He said:

> *So I got out of the car then, rather than have him arrested. Just at that, I was walking across the road again, back over to the van, another two cars arrived, possibly three, I'm not sure coming from the Ballindrait side. And I think at that stage I was on the phone to my father explaining the case and more or less telling him to get a solicitor ready, I'm going to be arrested. I think I says to him on the phone, it was either my father-in-law or my mother-in-law, I says … I'm going to be arrested, there's a whole load of Guards after arriving here. With that then Gerry Connolly, he came down, he came walking over to me, you're Michael Peoples, and I said yes. He started going through the procedure, I'm now arresting you. As soon as I heard section 30 Offences Against the State and possession of ammunition. I was on the phone to somebody at this stage. I says, the Bernard Conlon thing, and he says to me, you're well informed, aren't you. I said, I need to be well informed with f…… like you about. That's what I told him at the time.*[186]

2.72. Mr. Peoples said that he was then taken to the patrol car. He was driven to Manorhamilton Garda Station in the company of four detectives. On the way he described, a somewhat bizarre incident involving what he described as "a car chase". He described it in this way:

> *But they started to chase the car up the road and the blue light was on, they had the blue light was out on the dash and the siren was going as well. And they drove up the road, I'd say it lasted for about 30 seconds at the very most and they stopped the car and they must have been doing 80 mile an hour because I remember looking, I could see the actual dash on the car, they reached 80 mile an hour. I remember Gerry Connolly was to my left hand side, Mick Reynolds was there in the car, I think Gerry Connolly said to Mick Reynolds, do you want me to get out and have a word with her. He says, no, I'll go and chat to her. Mick Reynolds did get out of the car, stopped the car and did get out and spoke to her. He got back into the car after they spoke to the lady for whatever it was, a minute or less. He says, aye, she got a bit of a fright. That was that. But I thought that was strange. Arrest a man, detain him for s30, 48 hours, and play traffic cops then.*[187]

2.73. Inspector Connolly and Mr. Reynolds accepted in evidence that a lady driver was pulled over by them on the way to Manorhamilton but rejected the contention

[186] Transcript, Day 484, Q.411-413.
[187] Transcript, Day 484, Q.442.

that a speed of eighty miles per hour was reached by the Garda car in doing so: the siren was activated but neither of them could recall the use of a blue light.[188]

2.74. In a Statement of Claim delivered on behalf of the Plaintiff in civil proceedings arising out of this arrest and detention, it was alleged (inter alia) that Mr. Peoples "was taken to Manorhamilton Garda Station in an effort to intimidate and disorientate the Plaintiff".[189] Inspector Connolly and Mr. Reynolds both denied this was so. Inspector Connolly told the Tribunal that he had consulted with Chief Superintendent McNally about the appropriateness of using Manorhamilton Station during the course of this prolonged section 30 detention. They both agreed that Mr. Peoples should be brought to Manorhamilton because there were facilities available at Manorhamilton Station for a prolonged detention under section 30. Further, Detective Sergeant Connolly had already experienced some difficulties in obtaining the co-operation from colleagues in Letterkenny Garda Station, that he had expected, when Mr. Mark McConnell had been arrested in respect of the same matter on the 1st of October 1998. He did not want to have a similar experience with Mr. Peoples. In addition, both Inspector Connolly and Mr. Reynolds said in evidence that Mr. Peoples was specifically informed that he was being brought to Manorhamilton Garda Station and Inspector Connolly indicated that he offered to write down the station name and phone number for him.[190] Mr. Peoples in evidence said that he did not really know whether he was told by Inspector Connolly that he was being taken to Manorhamilton Station and added, "I'd say they must have".[191]

2.75. In addition, it is clear that Mr. Peoples' family and solicitors knew where to contact him on the morning of the 6th of May 1999 very shortly after his arrest and arrival at Manorhamilton Garda Station.[192] I am satisfied that the choice of Manorhamilton Garda Station as the location at which Mr. Peoples was detained was made for sensible operational reasons. It was not done to intimidate or disorientate Mr. Peoples. He was treated appropriately at the time of his arrest and in the course of being brought to Manorhamilton Garda Station. The evidence which is substantially accepted by Mr. Peoples clearly indicates that he was given reasonable access to family members who telephoned or called to the station and to his solicitors.

The Detention of the 6th and 7th of May 1999

2.76. An official record of Mr. Peoples' detention on the 6th and 7th of May 1999 is

[188] Transcript, Day 488, Q.482-488 and Q.558-564.
[189] Tribunal Documents – Michael Peoples, page 91.
[190] Transcript, Day 488, Q.465-468 and Q.551.
[191] Transcript, Day 484, Q.445.
[192] Tribunal Documents – Michael Peoples, page 265, the Custody Record indicates that Mr. Peoples received a phone call from Mrs. Charlotte Peoples at 10.15 hours and a phone call from his solicitor at 11.15 hours and a further phone call at 11.25 hours.

contained in the custody record, the relevant elements of which are set out in tabular form below:[193]

Occurrence on the 6th of May 1999	Detail of Occurrence	Comment
07.50 hours	Arrest of Michael Peoples by Inspector Gerard Connolly near Ballindrait, Lifford, Co. Donegal pursuant to "section 30 Offences Against the State Act 1939, on suspicion of being in the commission [sic] of a firearm offence."	
09.30 hours	Mr. Peoples arrived at the station accompanied by Inspector Connolly and Detective Gardaí Reynolds and McHale.	
09.35 hours	Mr. Peoples was given appropriate information in relation to his arrest and detention in accordance with custody regulations which he acknowledged when signing the custody record. Mr. Peoples was brought to an interview room accompanied by Detective Gardaí Reynolds and McHale (first interview).	
10.15 hours	Mr. Peoples received a phone call from his wife Mrs. Charlotte Peoples in the interview room.	
10.30 hours	Mr. Peoples was brought to Room No. 1. for breakfast.	
11.15 hours	Mr. Peoples received a phone call from Damien Tansey, solicitor in private in the day room.	
11.20 hours	Mr. Peoples was placed in a cell.	
11.25 hours	Mr. Peoples received a further phone call from Mr. Tansey, solicitor.	
11.27 hours	Mr. Peoples was placed in a cell by the member in charge.	
11.43 hours	Mr. Peoples was brought to an interview room accompanied by Detective Gardaí Caplice and Hunt (second interview). Mr. Peoples was visited in the interview room by the member in charge, Garda Stewart and the member who was replacing him Garda Cassidy.	Mr. Peoples described a "shouting match" between him and Detective Garda Dominick Hunt in the early stages of this interview.
14.10 hours	Detective Gardaí Caplice and Hunt were replaced by Detective Gardaí Murray and Donnelly who commenced an interview with Mr. Peoples (third interview).	

[193] Tribunal Documents – Michael Peoples, pages 264-276.

14.35 hours	This interview terminated and Mr. Peoples was given a meal which he declined.	
14.42 hours	Mr. Peoples was placed in a cell by the member in charge.	
15.45 hours	Mr. Peoples was taken from the cell to the interview room by Detective Gardaí Murray and Donnelly (fourth interview).	
15.55 hours	Bridget Peoples, Mr. Peoples' mother, telephoned the station to speak with him but was informed by the member in charge that her son was being interviewed at that time and she was asked to call back five minutes later.	
16.02 hours	Mrs. Bridget Peoples telephoned once again to speak with her son. He was brought to the public office and spoke with her on the telephone.	
16.05 hours	The telephone call ended and Mr. Peoples was returned to the interview room with Detective Gardaí Murray and Donnelly.	
16.36 hours	The member in charge visited the interview room and found "all in order".	
16.40 hours	Mrs. Charlotte Peoples, Michael Peoples' wife, telephoned to ask if she could visit her husband later and was informed that she could by the member in charge.	
17.15 hours	Mr. Peoples was again visited in the interview room by the member in charge who found "all in order."	
17.45 hours	Detective Gardaí McHale and Reynolds replaced Detective Gardaí Murray and Donnelly in the interview room (fifth interview).	
18.00 hours	The member in charge visited Mr. Peoples in the interview room and he requested a glass of water.	
18.30 hours	Mr. Peoples was furnished with a meal.	
19.00 hours	Permission was given to fingerprint, palmprint and photograph Mr. Peoples by Superintendent John Fitzgerald.	
19.15 hours	Mr. Peoples was placed in a cell.	

20.00 hours	Mrs. Charlotte Peoples, his wife, arrived at the station to visit Mr. Peoples together with his mother, Mrs. Bridget Peoples.	
20.05 hours	Mr. Peoples met with his wife in the Doctor's room.	
20.17 hours	Mr. Peoples then met with his mother, Mrs. Bridget Peoples, in the Doctor's room.	
20.23 hours	Mr. Peoples was returned to his cell after these visits.	
21.05 hours	Mr. Peoples was taken to an interview room where he was interviewed by Detective Gardaí Caplice and Hunt (sixth interview).	Mr. Peoples believes that it was during this interview that Detective Garda Caplice produced a sheet of paper and asked him to sign it on two or three occasions but refused to read it over to Mr. Peoples.
22.30 hours	Detective Gardaí Caplice and Hunt left the interview room and were replaced by Detective Gardaí Murray and Donnelly (seventh interview).	
23.25 hours	Mr. Peoples requested a meal.	
23.40 hours	Mr. Peoples was furnished with the meal which he had requested.	
23.55 hours	Mr. Peoples was placed in a cell for the night.	
Occurrence on the 7th of May 1999	**Detail of Occurrence**	**Comment**
06.55 hours	The member in charge visited Mr. Peoples and informed him that at 23.50 hours on the 6th of May 1999 Chief Superintendent Austin McNally had directed that he be detained in custody for a further period of 24 hours commencing upon the expiration of the period of 24 hours from the time of his arrest, that is 07.50 hours on the 6th of May 1999. The direction was read over to Mr. Peoples who said that he understood it.	
08.00 hours	Mrs. Charlotte Peoples phoned enquiring about her husband and said she would phone later on.	

08.40 hours	Mr. Peoples was taken to the wash room by Garda Geraghty.	
08.52 hours	Mr. Peoples was taken to an interview room by Detective Gardaí Donnelly and Murray and given tea.	
09.00 hours	Mr. Peoples was taken to the day room to receive a phone call from his wife, Mrs. Charlotte Peoples.	
09.15 hours	Mr. Peoples returned to the interview room where the interview with Detective Gardaí Murray and Donnelly continued (eighth interview).	
10.35 hours	Detective Gardaí Edward McHale and Reynolds commenced interviewing Mr. Peoples and replaced Detective Gardaí Murray and Donnelly (ninth interview).	
10.59 hours	Mr. Peoples received breakfast.	
11.40 hours	Mr. Peoples requested to speak with his solicitor, Mr. Ken Smyth of Binchy & Co. The telephone number was provided to the Gardaí.	
11.42 hours	Mr. Peoples contacted Binchy & Co. Mr. Smyth was then unavailable, the member in charge noted, "may ring back if possible to contact him."	
11.44 hours	Mr. Peoples was informed of the situation but did not wish to speak with any other person at Binchy & Co.	
11.59 hours	Mr. Damien Tansey, solicitor, Sligo, requested to speak with Mr. Peoples.	
12.03 hours	Mr. Peoples was brought to the Sergeant's office to speak with Mr. Tansey on the telephone.	
12.10 hours	Mr. Peoples was brought to an interview room with Detective Gardaí Hunt and McHale (tenth interview).	
12.40 hours	Mr. Peoples was placed in a cell.	
13.50 hours	Mr. Peoples was brought to an interview room with Detective Gardaí Caplice and Hunt (eleventh interview).	

14.00 hours	Mr. Peoples was brought "to kitchen for the purpose of formal identification parade".	
14.05 hours	The witness Bernard Conlon was brought to the identification parade.	
14.10 hours	Mr. Peoples was returned to the interview room with Detective Gardaí Caplice and Hunt.	
14.40 hours	Mr. Peoples requested that Mr. Ken Smyth, solicitor, be contacted in Dublin.	
14.41 hours	Entry records "tried to contact Mr. Smith, contacted his office and he may ring back".	
15.07 hours	Mr. Smyth's office was contacted again. Mr. Smyth was still unavailable and Mr. Peoples was informed of this.	
15.16 hours	Mr. Peoples was taken to the Sergeant's office where he received a phone call from Mr. Ken Smyth, solicitor.	
15.30 hours	The phone call concluded and Mr. Peoples was returned to the interview room with Detective Gardaí Caplice and Hunt. He gave a mobile phone number for his solicitor to the member in charge.	
16.00 hours	Detective Gardaí Caplice and Hunt left the interview room (end of eleventh interview). They were replaced by Detective Gardaí Murray and Donnelly (twelfth interview).	
16.40 hours	Mr. Peoples received a meal.	
16.48 hours	Mr. Peoples was brought to the Sergeant's office to take a call from his mother, Mrs. Bridget Peoples.	
17.10 hours	Mr. Peoples was returned to the interview room with Detective Gardaí Murray and Donnelly.	
17.58 hours	Mr. Peoples was placed in a cell for a rest.	
18.10 hours	Mr. Peoples was brought to the Sergeant's office where he received a call from his wife, Mrs. Charlotte Peoples.	
18.24 hours	Mr. Peoples was returned to the cell.	
19.05 hours	Mr. Peoples was taken to the interview room and interviewed by Detective Gardaí E. McHale and Reynolds (thirteenth interview).	

19.30 hours	Detective Garda Reynolds took fingerprints, palmprints and photographs of Mr. Peoples.	
20.20 hours	When this process was completed Mr. Peoples requested that he be allowed to contact his wife Mrs. Charlotte Peoples.	
20.50 hours	Mrs. Peoples was contacted by phone and the call was put through to Mr. Peoples.	
20.53 hours	This call was completed.	
21.50 hours	The member in charge visited Mr. Peoples who requested a meal.	
22.15 hours	Mr. Peoples was provided with a meal.	
23.00 hours	The member in charge spoke with Superintendent Fitzgerald following which he released Michael Peoples from detention under section 30 of the Offences Against the State Act.	
23.02 hours	Mr. Peoples was formally released.	
23.05 hours	Mr. Peoples' property was returned to him and he left the station.	

2.77. The first interview with Mr. Peoples was conducted by Detective Gardaí Reynolds and McHale from 09.35 hours until 10.30 hours on the 6th of May and was described by Mr. Peoples as "straightforward". He was questioned as to his whereabouts on the night of the 20th of July 1998. He tried to address the questions posed; but the Gardaí did not appear to believe his replies. When the notes were read over to him he declined to sign the note of interview. He said that he maintained this attitude throughout the course of the interviews over the following two days. He said that these Gardaí did not behave in any way improperly during the course of this interview. He accepted that the notes produced to the Tribunal in respect of this interview were substantially accurate.[194]

2.78. The second interview with Mr. Peoples was conducted by Detective Gardaí Richard Caplice and Dominick Hunt and continued from 11.43 hours until 14.10 hours. This was the first of three periods of interview with Detective Gardaí Caplice and Hunt that were conducted over the two days of his detention. The second period continued from 21.05 hours until 22.30 hours on the 6th of May (sixth interview). The third period with Detective Gardaí Caplice and Hunt occurred on the 7th of May between 13.50 hours and 16.00 hours (eleventh interview).

[194] Transcript, Day 484, Q.452-465 and Tribunal Documents – Michael Peoples, page 199.

2.79. In the early stages of the interview with Detective Gardaí Caplice and Hunt conducted between 11.43 hours and 14.10 hours on the 6th of May, Mr. Peoples told the Tribunal that there was what he described as a "shouting match" between Detective Garda Hunt and himself. He described it in the following way:

> *The way the interview started, the two detectives come into the room. Detective Hunt, he was sitting at the right hand side and Caplice, he was sitting directly in front of me. I don't even know how it started, the two started a shouting and roaring match, an arguing match with one another. It was … he was shouting and I was shouting. I don't even remember what they were shouting about to be quite honest.*
>
> *Q. Which one of them was shouting?*
>
> *A. Dominick Hunt. Roaring and shouting. I was shouting back. As much as he shouted at me, I shouted back at him. Then I think Caplice says, he says, look stop, stop what you're at, he says, you're impressing nobody.*
>
> *Q. To whom now?*
>
> *A. He said to me. I just calmed down from there, I calmed down then …*
>
> *Q. You're responding, you said, to Dominick Hunt's roaring and shouting, what was he roaring and shouting about?*
>
> *A. To be quite honest I don't remember. It was a shouting and roaring match. If he shouted I shouted back. I don't even remember what the conversation was about. First he is coming in to intimidate me and I was going to show him, look, you're not going to do this to me this time. That's really what that was about.*
>
> *Q. You were basically marking his card?*
>
> *A. Yes.*
>
> *Q. That I can shout as loud as you can?*
>
> *A. That's right. …*
>
> *Q. … Mr. Caplice seems to bring calm to the situation. Is that right or wrong?*

> *A. He knew where I was probably going and he knew where your man was going and he said to me, you're impressing nobody. It was pointless on both our parts maybe.*[195]

Mr. Peoples accepted that the notes produced to the Tribunal in respect of this interview were a fair summary of what transpired between him and the interviewers. They were read over to him and he declined to sign them.[196] He accepted that at the conclusion of that interview relations between the three had "kind of returned to what they should have been possibly".[197]

2.80. Detective Garda Hunt accepted that he may have raised his voice on occasions with Mr. Peoples during the course of this interview but was adamant that he never shouted at him and, in particular, that there was no short "shouting match" between them which had to be calmed down by Detective Garda Caplice at the commencement of the interview.[198] He maintained that Mr. Peoples was agitated and shouting but that he did not reply in kind. Detective Garda Caplice accepted that in the course of this interview, Mr. Peoples was "quite annoyed" that he had been arrested. He said:

> *His voice was quite raised, asking why was he there, what was all this about, he was quite agitated.*[199]

He said that Detective Garda Hunt's voice:

> *may have been raised but I certainly have no memory of any incident, any incident as such, any shouting and roaring at each other, but I do realise … as I would do anyway, just tell the prisoner to settle down that we have to get through our work and he was arrested and we would have to investigate what he was arrested for.*[200]

Detective Garda Caplice accepted that he may well have said to Mr. Peoples that nobody was going to be impressed by his shouting, that he should calm himself down and that they could then get through the interview. He further acknowledged that things did calm down and that the rest of the interview passed off without incident.[201] He accepted the possibility that there were raised voices but did not believe that it went much further than that.[202] Detective Garda Hunt seemed to go so far as to suggest that Mr. Peoples may well have

195 Transcript, Day 484, Q.467-486.
196 Tribunal Documents – Michael Peoples, page 200.
197 Transcript, Day 484, Q.487-494.
198 Transcript, Day 486, Q.601-672.
199 Transcript, Day 487, Q.98-100.
200 Transcript, Day 487, Q.100-101.
201 Transcript, Day 487, Q.103-107.
202 Transcript, Day 487, Q.107.

understood his raised voice to have been somehow intimidatory but would not accept that there was an "argy bargy" or "shouting match" between them.

2.81. Notes of the interview clearly indicate that there was a great deal of agitation on the part of Mr. Peoples as to why he had been arrested. He fully accepts that he was agitated and engaged in shouting with Detective Garda Hunt and that calm was restored by Detective Garda Caplice. Detective Garda Hunt and Detective Garda Caplice refused to designate the occasion as a "shouting match". This may be a matter of a difference in their respective perceptions as to the intensity of the exchange. I am satisfied that the content and tenor of the answers made by Mr. Peoples recorded in the notes of interview by Detective Garda Caplice indicate that Mr. Peoples was challenging the interviewing Gardaí in a very robust and hostile way which reflected his resentment at having been arrested on the basis of the false allegations of Bernard Conlon. I am also satisfied that his attitude provoked a strong response from Detective Garda Hunt. In that context, I am fully satisfied that Detective Garda Hunt engaged in a short but robust and loud exchange of words with Mr. Peoples in the early part of this interview. Not a great deal separates the witnesses in their description of this short exchange. I accept that Mr. Peoples is giving his honest and best recollection of what happened. On this occasion, I find the evidence of the Gardaí to the effect that Detective Garda Hunt may have raised his voice to Mr. Peoples rather than shouted at him to be a distinction without a difference. Clearly, Mr. Peoples correctly felt that he should not have been addressed in this manner. However, I also accept on the evidence that relative calm was quickly restored. The incident was minor and not symptomatic of his overall treatment by the two Gardaí.

2.82. The second issue of contention between Detective Gardaí Caplice and Hunt and Mr. Peoples arises from an allegation made by Mr. Peoples that Detective Garda Caplice asked him to sign "a pre-prepared statement which Garda Caplice had prepared in advance. The Plaintiff naturally refused to comply with this direction".[203] This matter was referred to in the course of an interview between Chief Superintendent Garvie (RCMP), a Tribunal investigator, and Mr. Peoples on the 10th of June 2003 when he said:

> At one stage, what do you call him, Detective Garda Caplice, he wrote down a statement and the other fellow was stabbing him and he was sitting and he asked me to sign the statement. He wouldn't read it back to me. He says just sign it and I wouldn't sign it. I more or less told him to f… off. I wasn't going to sign it and that was it. He made out a statement,

[203] Tribunal Documents – Michael Peoples, page 91 paragraph 8(b) of a Statement of Claim delivered in 2006.

> whatever it was and I refused to sign it. He wouldn't read it over to me or nothing.[204]

Mr. Peoples confirmed to Chief Superintendent Garvie that he was asked to sign something by Detective Garda Caplice "that he had written without … having the opportunity to read it". This was in contradistinction to notes of interview, all of which, Mr. Peoples maintained, were read out to him and which he declined to sign. He said:

> Other statements they did read out to me. Notes that they had taken and they were going to ask me at the end of the notes. That's ok and I says that's alright. Would you sign it and I refused to sign it. Wouldn't sign it. The reason why that other one sticks out in my mind is the fact that he wrote it out. Wouldn't read it back to me. Wouldn't let me see it. Just asked me to sign it and I refused.

He was asked was anyone else present when this request was made of him by Detective Garda Caplice and he said:

> There was but I can't remember which one it was. It's quite possible it had to be, it's only a guess now, Dominick Hunt and Dick Caplice were normally together when they came in. There's 3 different sets of Detectives, 2 and 2 and 2. That's the way it worked in Manorhamilton.

He could not honestly say who was present with Detective Garda Caplice when this incident occurred.[205]

2.83. In evidence to the Tribunal Mr. Peoples was asked whether this incident occurred with Detective Gardaí Caplice and Hunt during the interview that commenced at 21.05 hours or whether there was anything that marked that interview out from any of the others. He replied:

> *One of the interviews, I don't remember which one it was, Detective Caplice … if I can go to the statement, and asked me to sign it, where he produced a statement and asked me to sign it. I asked him what is in it, he refused to tell me what's in it. He says go on just sign it. I wouldn't sign it. Refused to sign it. He asked me two or three times. I says read it out to me. He wouldn't read it out to me. That was it. Like I can't remember did he write it in the room or did he take it in with him, did he add to it. It was a pre-made. … It was a pre-prepared statement. He might have made additions to it, I didn't actually see what was on the paper. But he asked me to sign this bit of paper. … He was sitting straight across*

[204] Tribunal Documents – Michael Peoples, page 79.
[205] Tribunal Documents – Michael Peoples, page 80.

> *the desk from me … I think he came in with a bit of paper and I don't know if he added more to what was on the paper or not or … there mightn't have been anything on the paper, I just don't know, or did he write on the paper but he asked me to sign it and I asked him to read it over to me and he refused two or three times. I wouldn't sign it.*[206]

Mr. Peoples was asked if he could recall whether there was any writing on this paper. He said:

> *I can't say for definite. I'm not going to say there is and I am not going to say there isn't. I can't say for definite. … I think I laughed at it in the end, but like he did ask me to sign a bit of paper and he wouldn't read it over to me or nothing.*[207]

2.84. Mr. Peoples told the Tribunal that he described the document as a statement, not because he saw any writing upon it or because he saw Detective Garda Caplice writing on the paper, but because Detective Garda Caplice refused to read it over to him. He wondered to himself why else would Detective Garda Caplice have asked him to sign a document without reading it over to him. The fact that he would not read the document over to him made Mr. Peoples very suspicious. He was satisfied that the page was not a note of interview because at the end of each interview the notes had been read over to him by the respective interviewing Gardaí and he had declined to sign them. In addition, he was only ever asked to sign each note of interview once; but, on this occasion, he was asked two or three times to sign this "bit of paper and I refused". He took the document to be an admission of liability on his part which Detective Garda Caplice wished him to sign.[208] Though he was not absolutely certain that this incident took place in his second encounter with Detective Gardaí Caplice and Hunt, nevertheless he thought it unlikely to have happened on his third encounter with them on the second day of his detention, which was dominated by the identification procedure. He could not relate it at all to his first encounter with them earlier on the 6th of May.[209]

2.85. Detective Garda Caplice denied that he had proffered a blank piece of paper or a statement of any kind to Mr. Peoples for his signature, or that he had refused Mr. Peoples' request to read over this document to him. He said:

> *I asked him to sign all the notes at the conclusion of every interview and I am aware that he said that he was asked to sign either a note, it was blank, or whether there was something*

[206] Transcript, Day 484, Q.554-566.
[207] Transcript, Day 484, Q.564-567.
[208] Transcript, Day 484, Q.557-593.
[209] Transcript, Day 484, Q.600-602.

> *written on it he wasn't sure. The only thing I can offer on that is the possibility on the second day prior to going, after twelve minutes of interview, when I had recorded you have agreed to stand … Michael you have agreed to stand in an identification parade and he made some comment about he wouldn't stand if there was some guy 5 foot 6, there is a possibility and I'm not saying I did, but there is a possibility I said sign that before he walked out to go to interview, or go to the identification parade. I'm saying this is the only reasonable excuse I can offer for him making that comment.*[210]

He added that he might not have read all of that note to Mr. Peoples:

> *I simply might have said Michael you have agreed to go to the interview will you sign this, it's only a possibility that that happened but there was never any other occasion when I asked him to sign anything that I hadn't read over to him.*[211]

Detective Garda Caplice was invited to comment on the fact that in respect of this document Mr. Peoples claimed that he was asked to sign it two or three times. He said:

> *I have no memory whatsoever of that. None whatsoever. In my opinion it didn't occur.*

He denied the allegation that, when asked to read such a document over to Mr. Peoples, he refused to do so.[212]

2.86. The particular reference made by Detective Garda Caplice to the possibility that he had not read over a note prior to the identification procedure is in respect of an occurrence on the 7th of May during the third period of interview between Mr. Peoples and Detective Gardaí Caplice and Hunt. He said that he might not have read over a portion of the note recording the agreement of Mr. Peoples to go on the identification parade when inviting Mr. Peoples to sign it at that time. However, he was not accepting that he refused when asked by Mr. Peoples to read that note over.[213]

2.87. The notes recorded for the period of interview 21.05 hours until 22.30 hours were read over to Mr. Peoples, who declined to sign them. He also agreed that they were correct at the time. He told the interviewers that he was at home on the evening of the 20th of July looking after his child. His wife was working in the Town & Country bar. He said that he could not say anything else to prove his innocence. There was an exchange concerning the death of the Late Richard

[210] Transcript, Day 487, Q.152.
[211] Transcript, Day 487, Q.153.
[212] Transcript, Day 487, Q.157.
[213] Transcript, Day 487, Q.155-168.

Barron and he was asked whether he knew "who killed Richie Barron if you think that Richie Barron's death caused you all this grief and all this trouble for McBreartys." He was then asked whether he felt that Bernard Conlon should not have given evidence against the McBreartys. He replied that he could not see any reason as to why Mr. Conlon travelled from Sligo to Raphoe to complain about "not getting a bag of chips". He denied that Mr. McBrearty sent him and Mark McConnell to visit Bernard Conlon. He was also asked about the investigations of William Flynn, the private investigator retained by the McBreartys, and whether he was offered money to make a statement to Mr. Flynn, which he denied. He noted that he had spent six hours with Mr. Flynn in Enfield with his wife Charlotte Peoples, that Mr. Flynn took a statement and that this was given over to the Gardaí. The interview concluded with an allegation that Mr. Frank McBrearty Senior was "behind all this, he sent you to talk to Conlon". Mr. Peoples replied, " … talk to McBrearty what if Conlon is telling lies about all this."[214] Mr. Peoples, however, stated that he recalled being asked in somewhat more detail about the death of the Late Mr. Barron by Detective Garda Hunt. For example, he recalled that Detective Garda Hunt summed up to him how the killing occurred:

> *I remember him saying to me I think how this thing started, he says, one thick man met another, he says, and it snowballed from there, something to that effect.*

Mr. Peoples did not believe that all of the questions asked of him in respect of the death of the Late Mr. Barron were included in the notes.[215] Mr. Peoples was unable, notwithstanding the memory which he had of some aspects of this interview, to say that this was the occasion upon which Detective Garda Caplice furnished the sheet of paper for his signature by linking that event to anything else that happened during the course of this interview.

2.88. The third encounter which Mr. Peoples had with Detective Gardaí Caplice and Hunt occurred the following day, the 7th of May, at 13.50 hours. The note recorded of the dealings with him on this occasion indicates that it was wholly concerned with the identification parade which was held that afternoon, at which Bernard Conlon falsely identified Michael Peoples as one of the men who had threatened him on the 20th of July 1998. It was clear from the note that the identification parade was held during the course of the interview period. The note reads as follows:

> Notes of interview with Michael Peoples commencing 1.50 p.m. on 7/5/99 at Manorhamilton Garda Station.
>
> Michael you are still under caution.

[214] Tribunal Document – Michael Peoples, page 204.
[215] Transcript, Day 484, Q.610-Q.621 and Q.628-649.

Yeah.

You have agreed to stand in an I.D. parade.

I want to see who is standing with me first if theres a wee fella 5'6" he's out.

Move to I.D. room at 2.02 p.m. Sergeant Flannery in charge. Back to interview room at 2.10 p.m.

The fat bastard identified me and he's lying the wee bastard.

Michael he says on his mother's life it's you who called to his door that night threatening him.

On my wains life I wasn't there … I don't do that likely [sic]. Someone is putting him up to it that f… is only a monkey. Will I get charged for this, tell the truth what will I get. F… the fat bastard I am concerned about this. I know I'm in the slut [sic] over that fat bastard he must have done something and he's being left off for fingering me. F… sake lads there something wrong here. I know he was going to I.D. me he has seen me more times than enough. I know I didn't do it it's a farce, the whole I.D. is a farce. F…him, f… him (very agitated).

It's a farce Michael because it went against you. It would be fine if you weren't identified.

F… did they get my solicitor yet.

Who are you looking for.

Ken Smyth they are already trying to get him (very agitated). Boys, I have told you everything I know. I wasn't down near that bastard. See here lads I am going to get hung for this shit again. … believe me I wasn't there.

Do you think that nobody was called to Bernard Conlon and threatened him?

Yeah I believe nobody ever called to the fat bastard.

Are you worried about the consequences for you now Michael.

F…… sure I am worried wouldn't you be.

Notes read over to Michael Peoples nodded refused to sign.

Signed: R. Caplice, D/Garda.

Signed: Dominick Hunt, D/Garda.[216]

[216] Tribunal Documents – Michael Peoples, page 209.

2.89. Mr. Peoples told the Tribunal that he was upset after he was identified by Bernard Conlon. He said:

> *I was panicking. I thought that was it. Seven years just was sitting in my mind at this stage, I was going to do seven years in jail. I just firmly believed it. The fact that he actually picked me out … I did expect to be picked out. I wasn't expecting a caution after being picked out. He says, look, you are going to get seven years and, you know, I thought that's it, I was away. I didn't really understand the question at the time to be quite honest. I thought that's what you're getting, seven years. In my own mind I was thinking was is that a charge or what, what was it. I didn't really understand it, that's being quite honest. … It was panic stations at that stage, that's being quite honest. … Kind of more begging there, just going through there, more or less begging for them to believe me like. I was frightened. I believed I was going. I was frightened.*[217]

He accepted that the notes clearly reflect his agitated state. However, they do not reflect his suggestion that when he returned to the interview room he was told he might get seven years in custody for this offence. In the body of the notes there is a question, "will I get charged for this, tell the truth what will I get" for which there is no answer. Nevertheless, Detective Gardaí Hunt and Caplice both deny that there was any reference to a possible seven year sentence.[218] In respect of this question Detective Garda Hunt said:

> *… if I can recall right, I don't think there was an answer given because as I said earlier, at that stage we were fairly satisfied that this was an innocent man and that he wasn't going to do time at all and why would I say you are going to get seven years if I thought this man was innocent.*

2.90. The allegation that it was suggested that Mr. Peoples would get seven years was also made in the body of a Statement of Claim delivered in 2006 in the course of a civil action brought by Mr. Peoples in which he alleges at paragraph 8(d):

> A purported identification parade was held after which Garda Hunt shouted abuse at the Plaintiff. The Plaintiff was told that he was McBrearty's henchman. After the identification parade Garda Hunt said, "it's time to tell the truth" and the Plaintiff was told that he was going to be charged and that he would get seven years in Portlaoise, and that he would be refused bail and that he would be remanded.[219]

[217] Transcript, Day 484, Q.713-721.
[218] Transcript, Day 486, Q.773-778 and Transcript, Day 487, Q.10-33.
[219] Tribunal Documents – Michael Peoples, pages 91-92.

2.91. This interview was also the occasion to which Detective Garda Caplice pointed by way of offering a possible explanation as to how Mr. Peoples' allegation that he was asked to sign something which was not read over to him, may have emerged. He said that at the outset of this interview he said to Mr. Peoples:

> *Michael you are still under caution.*
>
> *Yeah.*
>
> *You have agreed to stand in an I.D. parade [to which Mr. Peoples replied]*
>
> *I want to see who is standing with me first if there's a wee fella 5'6" he's out.*[220]

Detective Garda Caplice did not read over this part of the note at that time to Mr. Peoples. He may have sought his signature to it in advance of the identification parade. This took place immediately thereafter. Mr. Peoples was thereupon returned to the interview room after about ten minutes, following which the balance of the interview took place. Of course, Detective Garda Caplice rejects any contention that he refused to read over these or any other notes to Mr. Peoples. It is offered merely as a possibility which may explain what he regards as Mr. Peoples' confused recollection of what happened.

The Solicitor's Note

2.92. Mr. Ken Smyth, solicitor, gave evidence to the Tribunal that he spoke to Michael Peoples by telephone at 15.00 hours. Mr. Peoples confirmed to Mr. Smyth that Damien Tansey, solicitor, had been advising him and that he had been arrested under section 30 of the Offences Against the State Act at 06.50 hours the previous morning. He had been told he would be kept until at least that time the following morning:

> He said that he was being treated well and fed and watered properly. There had been an identity parade that morning which Damian Tansey had advised him that there was no point in avoiding taking part in … I told him again not to sign or say anything. I told him that Frank Junior, Marty McCallion and Liam O'Donnell had been acquitted unanimously the previous day. He had not heard that. I said that the reality was that he had been arrested the previous morning simply to unsettle Frank McBrearty Junior before he gave evidence. He said that the Guards were telling him that he was going to be charged the following morning and would go to prison for seven to ten years. I told him that the Guards knew that this was not the case. They were bound to say these things motivated by Conlon's

[220] Tribunal Documents – Michael Peoples, page 209.

> lies. They were only doing their job. He said that they were not being nasty to him. … I reminded him that Mark McConnell had been similarly arrested last year and held for 48 hours and released without charge.
>
> Time engaged - 15 minutes.[221]

2.93. Mr. Peoples did not complain to Mr. Smyth about any interviewer shouting at him or any incident involving a demand or request that he sign a document which the interviewer would not read to him when requested. He did, however, complain that following his identification he had been told that he would be charged and get seven to ten years. Mr. Smyth was clear that had he been told of abusive shouting or an attempt to get him to sign a document without reading it over to him, he would have recorded this in his note. It was an issue which he would have been very concerned about in the light of the history of the McBrearty case. In fact it is recorded that Mr. Peoples told Mr. Smyth that "they were not being nasty to him".[222]

2.94. I am satisfied that there was a robust and loud verbal exchange between Michael Peoples and Detective Garda Hunt at the commencement of the second interview at 11.43 hours on the 6th of May 1999. It was not a very serious incident. It involved raised voices or shouting on both their parts but lasted for a very short time. I do not believe that this exchange was other than an isolated occurrence, as it was not repeated during the course of Mr. Peoples' detention.

2.95. As regards the allegation made by Mr. Peoples that Detective Garda Caplice produced a document to him and asked him to sign it two or three times but refused to read it over to him, I am satisfied that some such incident occurred, but I am not satisfied to assign to it a sinister significance. It would be entirely wrong for a Garda to attempt to trick a detainee into signing a document the contents of which were not read over to the detainee and to invite him to sign a blank page of a document. The inference might be drawn that such action could amount to an attempt to trick the detainee into signing a document upon which, for example, a false confession might have been written, or, if blank, could be inserted later. Mr. Peoples could not recall when this event took place other than that he thought it may have been at the interview which commenced at 21.05 hours. In evidence, he referred to this document as a "statement" because he thought Detective Garda Caplice would not have asked him to sign the document unless it had writing upon it. However, he could not say whether there was any writing on the page which he was asked to sign. If Mr. Peoples thought that Detective Garda Caplice was trying to trick him into signing a false confession or a blank page upon which a false

[221] Tribunal Documents – Michael Peoples, page 302.
[222] Transcript, Day 490, Q.1-32.

confession might subsequently have been inserted, it would have been the first thing on his mind when he next met or contacted his solicitor. Mr. Smyth, his solicitor, said no such allegation was made to him. Indeed, Mr. Peoples told Mr. Smyth that "they were not being nasty to him". Mr. Caplice suggested the possibility that Mr. Peoples, on the afternoon of the 7th of May 1999, may well have been asked to sign notes made by Detective Garda Caplice confirming Mr. Peoples' consent to participate in the identification process. Notes were not signed at that stage and Detective Garda Caplice was adamant that he did not refuse to read the contents of any notes to Mr. Peoples. Nevertheless, Mr. Caplice offered it as a possibility that Mr. Peoples' recollection, as presented to the Tribunal, arose out of that incident. It does not seem likely to me, given the course of the interviews recorded that day, and the relations between the various interviewers and Mr. Peoples throughout the two days of his detention, that a sinister incident of the type described took place. However, I am satisfied that some incident of the kind described by Mr. Peoples occurred and may well have been of the type described by Detective Garda Caplice: an incident to which Mr. Peoples may have retrospectively attached an unwarranted and sinister connotation. In hindsight, he may well genuinely believe that something more sinister was afoot. This can readily be understood in the light of the completely shocking and appalling behaviour of other Gardaí which he and his family had experienced.

2.96. In respect of the suggestion made by Mr. Peoples that, when he returned to the interview room following the identification by Bernard Conlon, Detective Garda Hunt told him that he would receive a sentence of seven years in prison, I am satisfied that this occurred. It is clearly recorded in the note of interview taken immediately after the identification procedure that Mr. Peoples introduced the topic by asking the question, "Will I get charged for this, tell the truth, what will I get?" No reply to this question is recorded. It is likely that a response was given to the question. Mr. Peoples says that he was told he would get seven years in jail or words to that effect. This is exactly what he told his solicitor on the afternoon of the 7th of May. Insofar as there is a conflict of evidence in this regard between Mr. Peoples and Detective Garda Hunt, I accept the evidence of Mr. Peoples.

The Identification Parade

2.97. The identification of Michael Peoples by Bernard Conlon as one of the two men who threatened him on the 20th of July 1998 in the course of an identification parade held at Manorhamilton Garda Station between 14.02 and 14.10 hours on

the 7th of May, was in Mr. Peoples' view a foregone conclusion. He said the solicitor, Mr. Damien Tansey, told him that he had to stand on the identification parade but he thought to himself that he did not have to do this. In this context he asked to speak to Mr. Ken Smyth, his solicitor in Dublin. In any event, he said:

> *I agreed at this stage that I was going to do the ID parade [told either Detective Garda Reynolds or Detective Garda McHale]. At this stage I had no belt in my trousers, I had no laces in my shoes and I said I wasn't shaved. I said, if I go into the ID room, I want the laces back, I want the belt back in my trousers and I want to have a shave and freshen up. He said that would be okay. My next memory then is when I was taken into the room. There's whatever amount of lads was there, five or six lads and I was told to stand wherever I wanted in the line. So I went in, I stood wherever I wanted in the line. But I was in the ID room with no laces in my shoes, no belt in my trousers and I wasn't shaved. So, no matter what's going to happen I would be picked out. I don't even know why I didn't protest, I just went ahead with it. … There was none of them as tall as me. I would have been the tallest person in the room. There was a fella, I think he had red hair, and I walked in and I thought, I'm not standing beside you. I walked over and I just, towards more to the right hand side I think that is where I stood in the room. Conlon, he was brought in. He walked along the line. He pointed to me and says to Detective Flannery, that's the man who was at my house. I looked over to the door and I seen Dominick Hunt. … Just at that Detective Garda Flannery he came over and cautioned me … I was kind of taken aback by the caution because I didn't really know what was happening. First I thought it was a charge, the fact that he had picked me out and he cautioned me, read out a caution to me. At this stage, I wasn't sure what was going on around me and I was taken back then to the interview room and that's when Garda Hunt, he says to me, he says, you were picked out. He says you can get seven years for that boy, you can get seven years in Portlaoise. I thought at this stage now I was going up the line. I thought this was it. I was panicking, I was this, that and the other. I was frightened. It was annoying me. I thought I was going heading away like. It worried me.*[223]

2.98. Sergeant Dermot Flannery conducted the identification parade and did so in a manner which was formally correct. Though Mr. Peoples' shoelaces were not in his shoes, Sergeant Flannery did not think this a matter of particular importance

[223] Transcript, Day 484, Q.700-713.

in distinguishing him from the other eight persons who volunteered to take part in the parade. He did not believe that the absence of a belt was important as other persons on the parade were wearing jumpers and jackets. Similarly, he did not think that an unshaven appearance mattered very much as the volunteers "would have come from all walks of life and some had come from building sites" so that an unkempt appearance would not have stood out. Mr. Peoples accepts that he did not make any objection to any of the participants or to his own appearance to Sergeant Flannery before the parade or during it. Sergeant Flannery said that he advised Mr. Peoples that he was entitled to have his solicitor present but he declined the opportunity. It should be noted that Mr. Ken Smyth was in Dublin and Mr. Damien Tansey was in Sligo and that when the parade was held Mr. Peoples was very anxious to make contact with Mr. Ken Smyth, solicitor, in Dublin in whom he reposed great confidence at the time. In any event, the usefulness of this procedure, in light of the fact that Mr. Conlon had already picked out Mr. Peoples in the informal courtroom identification on the 8th of December 1998, might be regarded as very limited. The same man whom Mr. Conlon had identified on that date was once again produced to him and he identified him again: an unsurprising result.

2.99. In the course of the 6th of May 1999, it is clear that Mr. Peoples reached his lowest ebb mentally following his identification by Bernard Conlon. He felt frightened, isolated and dejected. He believed that the investigating Gardaí totally rejected answers that he had given. He was a citizen who was speaking the truth and was entitled to the presumption of innocence. Bernard Conlon, despite all that was known about him by An Garda Síochána was, nevertheless, considered to be a witness of truth. Apart from the worry, humiliation and opprobrium occasioned by his arrest to Mr. Peoples, he must have felt utterly devastated at the interview following his identification when he felt that he would now be charged and jailed. It is undoubtedly the case that the lack of investigative rigour applied to Mr. Conlon's allegations facilitated his persistent lies and led, ultimately, to Mr. Peoples' moment of despair on the afternoon of the 7th of May 1999. It is important that damage inflicted on an innocent citizen by An Garda Síochána in the exercise of their powers because of investigative inadequacies and lack of discipline and supervision, is understood by An Garda Síochána to have a real human cost to the victim and his family; for Mr. and Mrs. Peoples and others these consequences are of a continuing nature: they are all too easy to trivialise or ignore.

Other Interviews

2.100. In the course of Mr. Peoples' detention on the 6th of May 1999 Mr. Peoples was

also interviewed by Detective Gardaí Murray and Donnelly from 14.10 hours to 14.35 hours (third interview), 15.45 to 17.45 hours (fourth interview) and 22.30 hours to 23.55 hours (seventh interview). He was also interviewed by Detective Gardaí McHale and Reynolds from 17.45 hours to 18.30 hours (fifth interview). He had no complaints to make about any of these interviewing Gardaí. The notes of these interviews were made available to the Tribunal and Mr. Peoples accepted that they were substantially accurate and had been read over to him, but that he declined to sign them. Also on the 7th of May 1999 Mr. Peoples was further interviewed by Detective Gardaí Murray and Donnelly from 08.52 hours to 10.30 hours, by Detective Gardaí McHale and Reynolds from 10.35 hours to 12.03 hours and by Detective Gardaí Hunt and McHale from 12.10 to 12.40 hours. He was further interviewed by Detective Gardaí Donnelly and Murray from 16.00 hours to 17.50 hours and by Detective Gardaí Reynolds and McHale from 19.05 hours to 23.00 hours. Notes of these interviews were also read over to Mr. Peoples and he agreed that they were substantially correct but declined to sign them.[224]

2.101. In the course of these interviews Mr. Peoples protested his innocence of the false allegations made by Bernard Conlon and forcefully made a number of points to the interviewers. On various occasions, he told the interviewing Gardaí that Mark McConnell had an alibi for the 20th of July 1998. He told them that Bernard Conlon had ample opportunity to identify him on previous occasions at the District Court in Letterkenny. He would have seen him at Frankie's nightclub and when working as a doorman at another nightclub attended by Mr. Conlon. He maintained that Bernard Conlon was put up to making these allegations against him and Mark McConnell and blamed Detective Sergeant White and Garda O'Dowd for this. He pointed out that he was 6'2" in height, much taller than the man described by Mr. Conlon. In summary, he sought to refute the allegations by giving an account of his movements on the night and otherwise convincing the interviewers that he had nothing to do with the alleged events.

The Search

2.102. It is a curious feature of the investigation into the "silver bullet" affair that no effort was made to conduct a search of the Peoples' home in an effort to find the "silver bullet" until the 6th of May 1999. Mr. Tadhg Foley , who was then a Detective Inspector, instigated the search of the Peoples' home. He realised, following the arrest of Mr. Peoples, that no search had been carried out of the Peoples' home and he viewed this as an important omission. He had some discussion with Chief Superintendent McNally but could not recall who made the application for a warrant under section 29 of the Offences Against the State Act,

[224] Tribunal Documents – Michael Peoples, pages 207-212.

1939 to Mr. John F. O'Connor (then a Superintendent, now retired) who was then in Letterkenny working with the Carty team. Mr. O'Connor could not recall who made the application to him either but the warrant was given to Sergeant James Fox for execution on the 6th of May 1999.[225] Mr. O'Connor recalled that he received an outline of the case as a result of which he formed the requisite suspicion in relation to the issuing of the warrant under section 29. However, he was not told of a number of developments in the case. For example, he was not told of the critical comments made concerning Mr. Conlon's story in a letter from the Office of the Director of Public Prosecutions in February 1999. He took the events as outlined "on trust". No explanation was offered to him for the delay in seeking the warrant between the 8th of December 1998 and the 6th of May 1999. His impression was that "they were just getting round to it now."[226]

2.103. Sergeant James Fox and a search party, which included the then Inspector Coll, carried out the search. Nothing was found. Superintendent Coll told the Tribunal that he did not believe anything would be found, because if Michael Peoples had been involved in the matter he would have been intelligent enough to ensure that the bullet was not in his home. Superintendent Coll was of the view that this operation on the 6th of May was part of "a tidying up operation" to bring the investigation to a conclusion. A further curiosity about this search is that Mr. Peoples maintained that there were some .22 bullets in his gun locker in the house which were overlooked by the search party for reasons which he did not understand. Sergeant Fox for his part said that there were no such bullets and that he would have taken possession of same if there had been. A legally held shotgun and cartridges for same were left in the gun closet.[227]

2.104. The Tribunal is satisfied that Mr. O'Connor issued this warrant on the basis of what he was told. He was not given the full history of Bernard Conlon and cannot be criticised for issuing the warrant on the basis of the information supplied to him. The search itself was carried out in a proper manner. In hindsight, a number of the Gardaí involved expressed regret to me in evidence that it was carried out at all. I am satisfied that the Gardaí involved in the search acted in good faith.

Conclusions

2.105. The following are the Tribunal's conclusions on this matter:

1. The arrest of Michael Peoples on the 6th of May 1999 was unfair and unlawful. I am satisfied that the arresting officer, Inspector Connolly, acted in good faith in what he regarded as the proper execution of his

[225] Transcript, Day 489, pages 15-34.
[226] Transcript, Day 465, Q.1-36 and Transcript, Day 487, pages 89-98 (Evidence of Mr. O'Connor) Transcript, Day 489, pages 15-34 (Evidence of Mr. Tadhg Foley) and Transcript, Day 465, pages 22-33 (Evidence of Superintendent Coll).
[227] Transcript, Day 487, pages 166-176 (Evidence of Sergeant James Fox) (see also the evidence of Superintendent Coll already cited) and Transcript, Day 484, Q.509-525 (Evidence of Mr. Peoples).

duty in the investigation of the allegations made by Bernard Conlon. It was carried out in order to bring a conclusion to this investigation. However, there were strong indications that this arrest was unnecessary as previously described in the third report of the Tribunal. In addition, Garda colleagues in Donegal held back vital information from the investigation team in Sligo, namely the previous identification of Mark McConnell by Bernard Conlon on the 26th of May 1998 and the alibi defence put forward by Mark McConnell on the 11th of December 1998, that seriously undermined the credibility of Bernard Conlon. It is likely that, had information which was withheld being made available to Inspector Connolly, he would been obliged to revise his assessment of Bernard Conlon completely. It is a duty of the Gardaí not to withhold such important information from their colleagues in the course of the investigation of an offence. I am satisfied that an arrest made in circumstances of such misconduct cannot be regarded as fair or lawful.

2. Following his arrest Mr. Peoples was taken to Manorhamilton Garda Station. I am satisfied that this was not done in an effort to intimidate or disorientate him. I accept that a decision was made to use Manorhamilton Garda Station because the requisite facilities were in place there to detain a person under section 30 of the Offences Against the State Act. I am also satisfied that Mr. Peoples' family and visitors were fully informed as to his whereabouts and were facilitated in contacting him or visiting him in the course of his detention.

3. For the most part, Mr. Peoples accepts that he was properly treated whilst detained at Manorhamilton Garda Station by those who interviewed him and dealt with him in the course of his detention over the 6th and 7th of May 1999. Notes of these interviews have been made available to the Tribunal and Mr. Peoples accepts substantially the accuracy of these notes, that they were read over to him and that he declined to sign them, which, of course, was his right.

4. Mr. Peoples alleged that at the commencement of the interview at 11.43 hours on the morning of the 6th of May 1999, he was shouted at by Detective Garda Dominick Hunt. He said that there then followed a "shouting match" between them. Detective Garda Hunt denied this though he accepted that he may have raised his voice on occasions with Mr. Peoples during the course of the interview. Mr. Peoples said that this short exchange was brought to an end by the intervention of Detective Garda Caplice who told Mr. Peoples that he was not impressing anybody

by his behaviour. The notes of this interview indicate, from their content and tenor, that Mr. Peoples was challenging the interviewing Gardaí in a very robust and hostile way which reflected his resentment at having been arrested on the basis of the false allegations of Bernard Conlon. I am satisfied that this attitude provoked a strong response from the interviewing Gardaí. In that context, I am fully satisfied that Detective Garda Hunt engaged in a short but robust and loud exchange of words with Mr. Peoples in the early part of this interview. The Gardaí accept that Detective Garda Hunt may have raised his voice to Mr. Peoples during the course of this interview. Detective Garda Hunt is adamant that he did not shout at him. I am satisfied that he did shout at him and that Mr. Peoples shouted back in kind. The incident was minor and not symptomatic of Mr. Peoples' overall treatment by the two Gardaí in the course of their three interviews with him. I am satisfied from the evidence that relative calm was quickly restored.

5. It was also alleged by Mr. Peoples that Detective Garda Caplice presented to him and asked him to sign a pre-prepared statement which Mr. Peoples declined to sign. He alleged that he was asked to sign this document two or three times and that when he asked Detective Garda Caplice to read it out to him, Detective Garda Caplice refused to do so. He did not recall whether the document was written out in his presence, but he also said that he did not know whether there was any writing on the paper produced. Detective Garda Caplice denied that he proffered a piece of paper or a statement to Mr. Peoples for his signature, and that he refused to read over the contents of same when requested. Detective Garda Caplice said that there was a possibility that, when he made a note prior to the identification procedure on the 7th of May, in the course of which Mr. Peoples was identified by Bernard Conlon, and Mr. Peoples had confirmed his consent to him to participate in this procedure, he might have asked him to sign that note, but may not have read it over to him at that time. The relations between Mr. Peoples and his interviewers during his detention and the extensive notes of interviews made available to the Tribunal, as well as Mr. Peoples' testimony, suggest that for the most part the Gardaí behaved properly towards him in the course of his detention. No complaint concerning this alleged incident was made by him to his solicitor. I am not satisfied, in the circumstances, that a sinister incident of the type described by Michael Peoples took place. I do not accept that Detective Garda Caplice attempted to trick Mr. Peoples by getting him to sign either an admission of liability without reading it over to him or a

blank page with a view to inserting a concocted admission of liability at a later stage. I am satisfied that some incident of the kind described by Mr. Peoples occurred and may well have been of the type described by Detective Garda Caplice: an incident to which Mr. Peoples may have retrospectively attached an unwarranted and sinister connotation. Mr. Peoples may genuinely believe that something more sinister was afoot in the light of his and his family's experiences with An Garda Síochána; I am satisfied that he is incorrect in his belief.

6. I am satisfied that Detective Garda Hunt told Mr. Peoples, when asked by him whether he would be charged and what he might expect by way of sentence in respect of the allegations made by Bernard Conlon, that he might get seven years imprisonment. This happened after he was falsely identified by Bernard Conlon on the afternoon of the 7th of May 1999. He told his solicitor shortly afterwards that it had been said. A question to that effect is included in the notes of the interview which immediately followed the identification. I accept Mr. Peoples' evidence in this regard.

7. I am satisfied that the search carried out in Mr. Peoples' home on the 6th of May 1999 was done pursuant to a warrant issued by then Superintendent John F. O'Connor pursuant to section 29 of the Offences Against the State Act, 1939 and that that warrant was issued in good faith by him on the basis of the material presented to him. I am also satisfied that the search carried out by Sergeant James Fox and other Gardaí was properly conducted.

8. Overall, I am satisfied that Michael Peoples' account of his arrest and detention on the 6th and 7th of May 1999 is his honest and best recollection of what happened to him. That an innocent person should be subjected to an arrest, detention and interrogation on the basis of false allegations against the background of an inadequate Garda inquiry of the type described in the third report of the Tribunal and in this section of this report, is shocking. Undoubtedly, Mr. Peoples' treatment in respect of his first arrest on the 4th of December 1996, the manner in which his complaints in respect of the extortion phone calls to his family home were investigated and the fact that he was arrested on the basis of the false accusations of Bernard Conlon and was interrogated for an extended period, have coloured to some degree his attitude to these events. For example, he believes the worst of Detective Garda Caplice in relation to the incident in which he says Detective Garda Caplice invited him to sign a note. However, for the most part, I am satisfied that Michael Peoples did

his best to give me his full honest account and appraisal of these events during the extensive evidence which he gave to the Tribunal.

CHAPTER 3
The Arrest and Detention of Róisín McConnell

3.01. Róisín McConnell was arrested on the 4th of December 1996. On that day, the following persons were also arrested: Mark McConnell (her husband), Frank McBrearty Junior (her husband's first cousin), Katrina Brolly (her sister), Michael Peoples (married to her first cousin), Edel Quinn (her sister), Charlotte Peoples (her first cousin and wife of Michael Peoples) and Mark Quinn (her first cousin). She was the second person to be arrested that day.

3.02. An explanation as to these multiple arrests should now be repeated. The Garda theory was that Frank McBrearty Junior and Mark McConnell had murdered the Late Richard Barron. Another version of the theory, widely canvassed in Garda documents of that time, was that Michael Peoples was also in some way involved in Mr. Barron's death. The second Tribunal Report on the investigation into the death of the Late Richard Barron and the extortion telephone calls to Michael and Charlotte Peoples contains a full explanation of the origin of these suspicions and the improper manner in which they were followed through. It is again worth reiterating that any such suspicion arose from an apparent statement of Robert Noel McBride, which was attributed to him through Garda misconduct while he was arrested on a different charge. There was no supporting evidence of any credibility in relation to the alleged activities of the persons suspected of killing the Late Richard Barron. At the same time, it was widely believed that a cover up was in place. This, it was thought, caused the suppression of evidence; and a suspicion was focussed on the McBrearty family, and especially Frank McBrearty Senior. The absence of evidence was, the Gardaí thought, because of a state of secrecy engendered through fear and loyalty at the behest of the McBrearty family, and especially Mr. Frank McBrearty Senior. This was, and is, untrue. What is striking about the list of arrested persons is that they are, in fact, mostly members of the extended Quinn family. This family has consistently shown the Tribunal both support and co-operation.

Reason for Arrest

3.03. The custody record in relation to Róisín McConnell indicates that she was arrested as an accessory after the fact to murder.[228] Sergeant John White is noted to have been the arresting officer. Under section 67 of the Offences Against the Person Act, 1861, which was then in force, every felony which was punishable under the Act carried the penalty of imprisonment for any term not exceeding two years for anyone who was an accessory after the fact to any such felony. The exception to this, however, was murder: the Act provided that "every accessory after the fact to murder shall be liable, at the discretion of the court, to imprisonment for life".

[228] Tribunal Documents, page 380.

3.04. At common law, an accessory after the fact to murder is someone who, knowing that a murder has been committed by another person, either receives, relieves, comforts or assists the offender. An accessory after the fact to murder has to know that the principal offender has committed murder. That offence must be completed at the time. In the case of murder, the definition requires that the victim must have been intentionally killed at the time when the assistance is given. The case law provides that any assistance given to someone who is known to have committed a murder, that is given in order to hinder the apprehension, trial or punishment of the murderer, is sufficient to make a person an accessory after the fact. Instances of this include concealing the murderer in a house; taking money from the murderer in order to assist him in escaping; supplying him with money or a vehicle in order to help him escape; breaking the murderer out from prison; or disposing of evidence of his guilt, such as by burying the murder weapon. The case law provides that to become an accessory after the fact to murder a person must commit a positive act of assistance to the murderer that is connected to hindering his apprehension, trial or punishment. Merely knowing of a murder, and not disclosing it, or knowing of evidence in relation to a murder and not disclosing it, does not make a person an accessory after the fact.[229] Apart from the relationship of husband and wife, no other relationship between persons could excuse the wilful assistance of murderers to evade justice.[230]

3.05. For a wife to assist her husband, however, does not, at common law, amount to the offence of accessory after the fact. The reasons for this are lost in the mists of the development of common law. They may be several: that it is difficult to sort out the normal relations of matrimonial life from the assistance that might be given by a non-spouse; that the obligations between husband and wife excuse their mutual assistance even in such a case; that the spousal relationship is placed on a higher plane of legal obligation than societal ones. The ordinary case law in relation to accessories after the fact to murder indicates this as a typical example: a friend who knows that the accused has murdered the victim and invites him into his house where he can hide and evade police searches proximate to the killing. Normally, however, a husband and wife will live together and offer each other mutual support and assistance. At the conference in Letterkenny Garda Station prior to the arrests which began on the 4th of December 1996, some discussion took place as to the validity of arresting a wife in respect of being an accessory after the fact to murder where the suspect was her husband.

3.06. On two grounds, the arrest of Róisín McConnell was unlawful. Firstly, the exemption at common law in relation to a wife on this charge was not properly considered or applied. Secondly, and in common with all the arrestees, her arrest was based on the fabricated statement of Robert Noel McBride putting in place

[229] Archbold, Criminal Pleading Evidence and Practice (36th Edition) by T. R. Fitzwalter Butler and Marston Garsia, 1968, London, paragraphs 4155-4159.
[230] Archbold, paragraphs 4156-4157.

a scenario of suspicion which never existed. Since the authorship of that document was, in truth, a result of concoction by the Gardaí, its unlawful nature could not found a valid arrest.

The Suspicion

3.07. The full detail of the Garda suspicion in relation to Róisín McConnell is set out in the second Tribunal Report on the Garda investigation into the death of the Late Richard Barron and the extortion telephone calls to Michael and Charlotte Peoples. A brief outline here suffices. The Gardaí believed that as a result of disagreements between members of the Barron and McBrearty families, Mark McConnell, a cousin of Frank McBrearty Junior and a nephew of Frank McBrearty Senior, harboured some kind of resentment towards the Late Richard Barron. On the night of the 13th of October 1996 there was a slight altercation in a public house, whereby words were exchanged between them. This, the Gardaí believed, led to the motivation for Mark McConnell to contact his cousin Frank McBrearty Junior and to arrange to meet with him in order to waylay the Late Mr. Barron as he returned home, and to teach him a lesson by giving him a beating. This, they supposed on the basis of no credible evidence, was what actually happened. Having caused the death of the Late Mr. Barron, it was speculated further that the two culprits came back through the car park from the place where Mr. Barron had been killed and entered the nightclub. There they would have met with relatives and friends and arranged to be cleaned up in order to present an acceptable face to the public. Michael Peoples was supposed to have been involved in this unlikely scenario as well, but to a less defined degree. Since Mark McConnell had been with his wife in the "Town and Country" pub, and since he met her later, the suspicion that focussed on Róisín McConnell was that she was failing to give the Gardaí a full and true account of what she knew as to her husband's activities on that night. This was compounded by a suspicion that Mark McConnell had not spent the entire of that night in his wife's company, sleeping, as they were that night, in the Brolly household, but had gone elsewhere. Róisín McConnell was supposed to have known about all of this and to have failed to co-operate with the Gardaí by giving them a full and accurate account of her husband's movements on the night. Insofar as she had made statements, this alleged failure to co-operate was construed as being part of the generalised suspicion of cover up. The suspicion that Mark McConnell was not with his wife for some portion of that night was a very strong component of the Garda suspicion against him, and against other arrested persons: it was constantly reiterated by various Garda witnesses in the witness box in the evidence leading up to the Tribunal's Second Report as a reason for the arrests.

The Official Account

3.08. The starting point for the Tribunal in relation to the treatment of any of these detainees has been to examine the relevant Garda documents. On that account, the official records compiled in Letterkenny Garda Station indicate that Róisín McConnell was at all times well treated whilst in Garda custody. The details of her arrest as transcribed in the custody record are now set out in tabular form:

Occurrence on the 4th of December	Detail of Occurrence	Comment
08.40 hours	Sergeant John White arrived at Letterkenny Garda Station with Róisín McConnell in custody.	
08.47 hours	Mrs. McConnell is informed by Garda Martin Leonard that she is being detained under section 4 of the Criminal Justice Act, 1984. The detention is on the basis that her earlier written statement as to what occurred was false: also, she is allegedly aware of her husband's involvement after the murder.	
08.49 hours	Mrs. McConnell requests a solicitor and a phone call.	A solicitor is phoned. Her request for a phone call to her family is denied by Garda Leonard on the basis that Sergeant White has told him that such a call would "hinder the investigation".
08.51 hours	An interview with Sergeant John White and Detective Garda John Dooley.	First interview.
10.15 hours	The solicitor arrives at the Garda Station.	
10.55 hours	Mrs. McConnell consults with her solicitor.	Interview interrupted.
11.10 hours	Mr. Sweeney, solicitor, speaks to Sergeant White and Detective Garda Dooley.	Memo of interview requested, but refused.
11.20 hours	Approximately at this time the interview recommences with Mr. Sweeney present.	
11.35 hours	Interview ends.	
11.56 hours	Mr. Sweeney, solicitor, leaves.	Custody record reads "solicitor asked about child".
12.05 hours – 12.45 hours	Interview with Detective Garda Scanlon and Garda Harkin.	Second interview.

12.30 hours	Mrs. McConnell given tea.	
13.00 hours	Meal provided.	
14.10 hours	Superintendent John FitzGerald extends the detention of Róisín McConnell.	The reason given was that she still had vital information as to the murder of Richard Barron and was denying facts put to her concerning the crime.
14.25 hours – 16.20 hours	Another interview with Sergeant John White and Detective Garda John Dooley.	Third interview.
16.20 hours	Interview ends. Garda Georgina Lohan remains with Mrs. McConnell having taken her to the toilet at 16.10 hours and then remained for some minutes.	
16.40 hours – 18.15 hours	Garda John Harkin goes to interview room.	Fourth interview. He notes Róisín McConnell as being tearful.
16.45 hours	Inspector John McGinley joins Garda Harkin.	
18.00 hours	Inspector McGinley leaves the room.	
18.16 hours	Mrs. Anna Quinn visits Mrs. McConnell.	Family visit from mother.
18.45 hours	Mrs. McConnell's mother leaves and a meal is furnished.	
19.25 hours – 20.00 hours	Interview with Sergeant John White and Detective Garda John Dooley	Fifth Interview.
20.00 hours	Mrs. McConnell is brought to the toilet by Garda Georgina Lohan. On return notes of interview are read over to her which she declines to sign.	
20.10 hours	Mrs. McConnell is brought to the public office.[231]	Release at 20.12. No note taken of any complaint.

Summary of the Official Account

3.09. The first interview with Sergeant White and Detective Garda Dooley is said to be a question and answer session. The focus is on Mrs. McConnell's movements. She states how she saw the argument taking place between the Late Mr. Barron and her husband and marked on a map of the bar where it had happened. She confirmed that there was no contact at all between the two men and that it was over in seconds: Mark Quinn told Mark McConnell to go to the poolroom. She

[231] Tribunal Documents, pages 380-383.

stated that the argument took place between 22.30 hours and 23.00 hours and that the deceased left some ten minutes later. She and her husband left the pub between 01.15 hours and 01.20 hours. She remembered that because she asked Mark Quinn for another drink at 01.10 hours, but he would not serve her. She then looked at the clock on the bar. Mrs. McConnell goes on to account for her movements by saying that she walked to Sarah's Café and, on the way, met up with Stephen McCullagh and his wife.

3.10. In the second interview with Detective Garda Padraic Scanlon and Garda John Harkin the notes were made by John Harkin. This was again a question and answer session. In the course of this interview Mrs. McConnell complained that when she made her original statement before her arrest to Detective Garda O'Malley only bits of it were read over to her and parts were left out. She again confirmed the time that she left the Town and Country, also called Quinn's Pub, and that the row between her husband and the deceased was not serious. She asked the question "who is minding my child now?" but does not appear to have been told by the interviewers. She indicated that she could never remember her husband losing his temper.

3.11. In the third interview it was claimed that a caution was administered and that Mrs. McConnell was asked how she was feeling. The original account by Detective Sergeant White was that she remained silent but declined to sign any notes, indicating that a solicitor had told her not to sign anything. Detective Garda Dooley believes that his return to the interview room was at 14.55 hours and not at 14.25 hours. His official account was of cautioning Mrs. McConnell and asking further questions in relation to discrepancies in the first interview. Garda Georgina Lohan is supposed to have taken Mrs. McConnell to the toilet at 14.10 hours and returned at 14.12 hours. On returning to the interview room, a general conversation ensued.

3.12. The fourth interview, the record of which is dealt with extensively later in this chapter, was with Garda John Harkin and, from 16.45 hours, Inspector John McGinley. This interview lasted from 16.40 to 18.15 hours. The interview concluded because Mrs. McConnell was told that her mother, Mrs. Anna Quinn, was there to visit her and it is noted that she appeared emotional at this news and was tearful. The earlier part of the interview, with Garda Harkin, concentrates on the movements of Mrs. McConnell and the time at which she and her husband left Quinn's Pub. She indicated that she thought that Mark Quinn, the publican, would be afraid to tell the Gardaí the proper time that she and her husband had left because he was serving drink illegally, well after hours. When Inspector John McGinley entered the interview room he apparently put the following scenario to Mrs. McConnell:

> I would say you are a good person and I am going to tell you what happened that night and you tell me if I'm telling you a lie? Your husband Mark McConnell had a row with Richie Barron in the Pub. There were no blows struck, but he insulted the McBrearty's and he insulted your husband. He did not like it. He left the pub with you and you ordered your food after walking over and meeting the McCulloughs. You went into Frankies on your own. Mark met Frankie McBrearty and told him what happened. They decided to teach Richie Barron a lesson. They walked up and through the carpark and met Richie Barron staggering home as he always did. He got one wallop and that was it. As far as they were concerned Richie was down. He got a wallop as he often did before, it was no big deal. They were not to know the man would die. They left him and went back down, walked down in fact and into the Parting Glass. Now, tell me, did I tell you a lie?[232]

To this scenario she replied: "Yes it's all lies".[233] Inspector McGinley also suggested to her that Mark McConnell was not with her when she entered the nightclub, but she confirmed that he was right behind her.[234] She was challenged about leaving out some of her movements in her account given to investigating Gardaí on the 16th of October and about her not insisting on having her statement read over to her to make sure it was correct.[235] During this period Mrs. McConnell continued to maintain that she had left Quinn's Pub between 1.15 hours and 1.20 hours and spoke to Stephen McCullagh, had gone to Sarah's Café and ordered some fast food and had seen Wilma Barnett there and was served by a girl from the Laird family. She also identified that Daniel Lynch was outside. Mrs. McConnell is noted as being tearful at the beginning and end of this interview.[236]

3.13. In the fifth interview, which was with Sergeant John White and Detective Garda John Dooley from 19.25 hours to 20.00 hours, Sergeant White officially claimed that he offered Mrs. McConnell a cup of tea in the presence of Detective Garda Dooley and she is supposed to have refused, stating that she had received a meal a short time previously.[237] The official account is of questioning in regard to discrepancies in her first two memos of interview and, according to Sergeant White, a confrontation "with several points in her accounts of what had occurred and how they differed with statements made by witnesses".[238] The notes of this interview are untimed. Questions were asked as to whether Katrina Brolly was woken up when the McConnells arrived in her house to stay on the night that Mr. Barron died. Róisín McConnell is recorded as claiming that she had gone to

[232] Tribunal Documents, page 209.
[233] Tribunal Documents, page 209.
[234] Tribunal Documents, page 211.
[235] Tribunal Documents, page 212.
[236] Tribunal Documents, pages 688 and 693.
[237] Tribunal Documents, page 4.
[238] Tribunal Documents, page 5.

bed after a couple of hours and did not make any telephone calls from the Brolly's house that night, nor was one made by her husband. She is recorded as having spoken of her time in the disco. It was suggested to her that she was in the disco on her own "for a considerable period of time". It was put to her that she was aware that her husband had met Frank McBrearty Junior before the two of them had entered the disco. This was denied by her. It was also suggested to her that she was aware that her husband was in Frank McBrearty Junior's company that night shortly after 00.30 hours for half an hour or so, and that he was involved with him in the murder of the Late Richard Barron on his way home. It was also suggested that she had consistently told lies to the Gardaí regarding her whereabouts, and those of her husband, on the night of the 13th/14th of October 1996. It was put to her that she was aware that Richard Barron was murdered and that she was lying about being in Quinn's pub until 01.00 hours in order to provide an alibi for her husband. It was put to her that she had been observed with her husband in the vicinity of Sarah's Café approximately an hour before she accepted she was there. This sighting was ascribed by the interviewers to Daniel Lynch and was refuted by Róisín McConnell, together with all the other allegations made against her.

Solicitor's Complaint

3.14. The first sign in official Garda records that there might have been something wrong with the interrogation of Róisín McConnell arose by reason of a letter by V.P. McMullin Solicitors, dated the 23rd of December 1996, on behalf of Mrs. McConnell and sent to the Superintendent of An Garda Síochána in Letterkenny.[239] This letter expresses the solicitor's "grave concerns at the atrocious manner in which Mrs. McConnell was treated while in Garda custody." The complaints in the letter fall into three distinct categories:

(a) Mr. James Sweeney complains that he attended at the station at 11.55 hours for the purpose of advising Mrs. McConnell of her rights. He confirms that Sergeant White and Detective Garda Dooley were present for part of his attendance with Mrs. McConnell, at which stage they read out a memo of interview. Prior to reading this memo, Sergeant White informed Mr. Sweeney that he would give him a copy of the memo once he had read it. However, the letter continues that Mr. Sweeney also asked him for a copy of a statement which Mrs. McConnell had previously made and Garda White said that he would furnish a copy of same. Having read the memo of interview, Garda White then left the interview room and said he would return with copies of the memo of interview and the initial statement. He returned a short time afterwards and said "he was not now furnishing

[239] Tribunal Documents, pages 347-348.

copies of same". The solicitor requested copies of these documents to be forwarded immediately.

(b) More seriously, the letter complains that later, on the evening of her release, Mrs. McConnell called to the solicitors' offices where:

> She was obviously in a very distressed state as a result of the appalling methods of interrogation employed by the interrogating officers … Mrs. McConnell also informed us that her hair was pulled and was generally abused both physically and mentally. As a result of this Mrs. McConnell has now been admitted to St. Conal's Hospital for psychiatric treatment …[240]

(c) A specific complaint is made in the letter that "photographs of the body of Mr. Richard Barron were presented" to Mrs. McConnell and that they were, as the letter puts it, in fact pushed into her face while the interrogating officer put it to her that this was "the work of her husband". The letter also complains that an interrogating officer had stated to her that her husband had been unfaithful.

3.15. It would appear that a number of months passed before anything happened in relation to this complaint. It was not passed to the Garda Complaints Board until October 1997.

Detainee's Account of Interview

3.16. In her statements, and in her evidence before this Tribunal, Mrs. Róisín McConnell made very serious allegations against Sergeant White and Detective Garda Dooley in respect of the way she was interviewed by them. She alleged, among other things, that Sergeant White threw her off a chair and told her to stand up and flung the chair across the room; that he pushed her up against the filing cabinet in the room; that he manoeuvred her with his shoulder; that he kept banging up against her, but then told her to stop leaning up against the filing cabinet that was in the room or to stop leaning against a wall. She complained that the interviewers were pushing her around the room. She said that Sergeant White was enraged and described him as roaring and shouting so much that he was frothing at the mouth, causing spittle to fly in all directions, but particularly into her face as he confronted her.[241]

3.17. Mrs. McConnell also alleged that she was shown photographs of the Late Richard Barron's body. These photographs were described in graphic detail. She alleged that the two Gardaí were shoving the photographs into her face, to require her to look at them and apparently to take in their contents. She complained that

[240] Tribunal Documents, page 348.
[241] Transcript, Day 474, pages 93-100.

Sergeant White was pushing these photographs up against her face and nose. She responded by closing her eyes.[242] Mrs. McConnell said that he had called her Satan and the devil[243] and told her that she would never see her late father in heaven and that she would go to hell for all that she was doing. While this was happening, Mrs. McConnell said that Detective Garda John Dooley was smirking and, at one stage, turned around to Sergeant White and told him to, in effect, be careful as there was, or might be, somebody out in the hallway. Mrs. McConnell said that Sergeant White then quietened down for a minute and listened to see if there was anybody in the hallway, and then resumed the abuse.

3.18. Mrs. McConnell also complained that Detective Garda Dooley kept telling Detective Sergeant White to show her the photographs, saying "let the murdering bitch look at them". She said that Sergeant White made allegations of infidelity against her husband, apparently in order to get her to turn against him. He verbally abused her and was physically vulgar towards her by deliberately breaking wind in close proximity to her.[244] She was constantly called "a murdering bitch" or "a lying murdering bitch".[245] She was made to bless herself and to pray to her dead father. Sergeant White, she complained, turned to her and asked her what her father had said to her in prayer. When she replied that her father told her she was telling the truth this, apparently, was the cause of Detective Sergeant White losing his temper.[246]

Denial

3.19. All of the allegations made by Mrs. McConnell against Sergeant White and Detective Garda Dooley were initially denied by them in the course of the investigation into the death of the Late Mr. Barron: in particular in a statement Sergeant White made to Chief Superintendent Carey on the 2nd of June 1998.[247] Detective Garda Dooley had also made a statement on the 17th of April 1998 denying the allegations made by Mrs. McConnell by giving a contrary account of her arrest and detention.[248]

Cracks in the Wall of Lies

3.20. As will be appreciated from the foregoing account, the official position as to the treatment of Róisín McConnell was that it was in order and humane. In other words, that it was normal. During the same month as her arrest, however, Róisín McConnell was admitted for a number of weeks of in-patient psychiatric treatment at St. Conal's Mental Hospital in Letterkenny. This continued over Christmas and into the New Year. The Tribunal has no doubt that Róisín

[242] Transcript, Day 474, pages 99-101.
[243] Transcript, Day 474, page 100.
[244] Transcript, Day 474, page 103.
[245] Transcript, Day 474, page 103.
[246] Transcript, Day 474, pages 102-105.
[247] Tribunal Documents, pages 1-41.
[248] Tribunal Documents, pages 52-58.

McConnell suffered gravely and in direct consequence of whatever had happened to her in Garda custody. Perhaps typical of the denials were those of Detective Sergeant John White who, in statements made to Chief Superintendent Carey on the 2nd of June 1998, described Róisín McConnell's allegations of ill treatment, assault, verbal denigration and blasphemy as "amazing".[249]

3.21. On the 14th of October 2005 Detective Garda Dooley admitted most of the allegations levelled against him and Sergeant White by Mrs. McConnell.[250] The Tribunal is satisfied that in that statement, and in his later accounts, and in evidence, Detective Garda Dooley was doing his very best to be truthful. This is all that can be asked of a witness. Detective Garda Dooley admitted that prior to one interview, while in the incident room, he obtained an album of post-mortem photographs of the Late Richard Barron.[251] When he returned to the interview room he passed this album of photographs over to Sergeant White. He also admitted that a number of matters were put to Róisín McConnell which were not recorded in a written memo of interview. He accepted that Sergeant White had reminded Mrs. McConnell that the offence for which she was arrested carried a prison sentence of seven years on conviction[252] and that her small child would be put into care.[253] He alleged that Sergeant White put it to Mrs. McConnell that Frank McBrearty Junior had murdered Richard Barron, that her husband Mark McConnell had witnessed it, that she had told a number of lies in their interviews and that she should start to tell the truth.[254] Detective Garda Dooley said in this statement, made almost nine years after Mrs. McConnell's detention, that he had told her that her husband had been unfaithful to her with a particular named woman.[255] In his statement he accepted that he had suggested to Mrs. McConnell that she had been coached and tutored by Frank McBrearty Senior in relation to putting forward an appropriate lying story.[256] Questions to Mrs. McConnell had been delivered during the interrogation in a raised and aggressive voice in an attempt to put pressure on her.[257] Significantly, in this statement, Detective Garda Dooley denied that he or his colleague, Sergeant White, had ever made any physical contact with Mrs. McConnell or physically interfered with her at any stage during the interview.[258] He accepted that Mrs. McConnell had been called a "lying bitch"[259] and had been ordered to put out a cigarette that she had been smoking.[260] He accepted that she had been ordered to stand up and had been told that she had been too well treated all day and that she had told several

[249] Tribunal Documents, page 27.
[250] Tribunal Documents, pages 464-486.
[251] Tribunal Documents, page 478; Transcript, Day 476, pages 49-55.
[252] Tribunal Documents, page 475.
[253] Tribunal Documents, page 485.
[254] Tribunal Documents, page 475.
[255] Tribunal Documents, page 475.
[256] Tribunal Documents, page 475.
[257] Tribunal Documents, page 475.
[258] Tribunal Documents, page 485.
[259] Tribunal Documents, page 485.
[260] Tribunal Documents, page 478.

lies during the three interviews. He wrote that Sergeant White got out of his seat, walked around the table and grabbed the chair on which Mrs. McConnell had been sitting. This was thrown to the other side of the room "in angry exasperation".[261] Sergeant White, on this account by Detective Garda Dooley, then got the album of photographs relating to the post-mortem examination of the Late Richard Barron and began to show them to Mrs. McConnell one by one. On his account, they were held "about a foot from her face".[262] Detective Garda Dooley admitted that he had gone and stood beside the light switch on the other side of the room, switching it on and off.[263] He denied that Mrs. McConnell had been pushed into a cabinet by Sergeant White or by him.[264] He acknowledged that Mrs. McConnell looked shocked at the sight of the post-mortem photographs which, he accepted, were graphic. Detective Garda Dooley alleged that Detective Sergeant White also told Mrs. McConnell that if she told the truth she would save herself seven years in prison. When she insisted that she had been telling the truth all day, Sergeant White, on his account, shouted at her that she was "a lying murdering bitch", or words to that effect.[265] Detective Garda Dooley further backed up the complaint of Mrs. McConnell by stating that Sergeant White had asked Róisín McConnell to pray to her late father for guidance and that he in turn had announced that he would pray to Richie Barron for the truth.[266] After a period Sergeant White asked her what her father had said to her and she replied that he had said that she had been telling the truth.[267] None of this nasty abuse was recorded in the memo of interview, naturally enough.

Further Admissions

3.22. At the conclusion of the statement of Detective Garda Dooley of October 2005 a number of points of difference existed between his description and the allegations made by Mrs. McConnell. Detective Garda Dooley "vehemently denied" that either he or Sergeant White physically assaulted or pushed Mrs. McConnell around the room. He denied that Sergeant White had ever raised his leg and broke wind or spat in Mrs. McConnell's face. He did not admit that there had been any reference to Mrs. McConnell in satanic terms.

3.23. Prior to the commencement of the Tribunal hearings in the detention module, the Tribunal sent Detective Garda Dooley's statement to the other persons who were implicated in wrongdoing therein. This course was adopted to enable the individuals concerned to address the matters outlined therein by means of a statement to the Tribunal before Detective Garda Dooley's statement became public knowledge. Detective Garda Dooley's statement was sent to Detective

261 Tribunal Documents, page 478.
262 Tribunal Documents, page 478.
263 Tribunal Documents, page 479.
264 Tribunal Documents, page 479.
265 Tribunal Documents, page 479.
266 Tribunal Documents, page 480.
267 Tribunal Documents, page 480.

Sergeant John White's legal representatives on the 8th of March 2006. By letter dated the 13th of March 2006, P.A. Dorrian & Co. solicitors indicated to the Tribunal that '[t]he allegations involving our client are totally denied'.[268] Counsel for the Tribunal delivered an Opening Statement to the Detention module on the 21st of March 2006 in which Detective Garda Dooley's statement and Detective Sergeant White's denials were outlined. Later that week, Detective Sergeant White's legal representatives contacted the Tribunal indicating that he now wished to make a further statement in which he admitted many of the allegations of abuse made by Róisín McConnell and supported by Detective Garda Dooley's statement. The Tribunal is satisfied that whereas the admissions contained in this statement of Detective Sergeant White dated the 25th of March 2006[269] were both a vindication of the allegations made by Róisín McConnell and of assistance to the work of the Tribunal, this statement was made primarily for self-serving reasons, when it was apparent that the game was up. When he eventually came to give evidence on the matter, John White's attitude, despite his admissions of prolonged and serious mental and physical abuse of Róisín McConnell during the course of her detention, was one of defiance, as if the fact that he believed at the time that Roisin McConnell was not telling him the truth in some way justified his behaviour towards her. He also sought to maintain that he always intended to tell the truth about this matter at the Tribunal. I have serious doubts about this because of his denial in evidence to the Tribunal in 2005 that he had done any of the things alleged by Mrs. McConnell or contributed to her mental illness.[270]

3.24. Detective Sergeant White admitted to a number of allegations made by Mrs. McConnell. He said that he broadly agreed with the statement made by Detective Garda Dooley and with the allegations made by Mrs. McConnell. He agreed that photographs of the Late Richard Barron were shown to her; allegations of infidelity by Mark McConnell were put to her; it was suggested that Frank McBrearty Junior was the main focus of the criminal investigation into the death of the Late Richard Barron; a chair was roughly skidded across the room during an interview with her; intemperate and insulting language was used to her; lights were switched on and off during the course of the interview; references had been made to Mrs. McConnell's father's grave; she had been threatened that if convicted her child would be taken into care; it was suggested that Mrs. McConnell was under the influence of Frank McBrearty Senior; the questioning of Mrs. McConnell was intense; she was forbidden from smoking; the interrogators' voices were raised and abusive language was used and it was suggested that she would face years in prison from which she could save herself by telling the truth.[271] However, Detective Sergeant White denied, as did

[268] Tribunal Documents, page 498.
[269] Tribunal Documents, pages 288-497.
[270] Transcript, Day 295, pages 112-113.
[271] Tribunal Documents, pages 488-489.

Detective Garda Dooley at that time, that he ever assaulted or laid hands on Mrs. McConnell. On this he said:

> In particular I deny that I pushed, shouldered, unseated or had any physical contact with Roisín McConnell. I did not break wind in her face. I did not spit at her. I did not push photographs into her face. I did not call her Satan.[272]

3.25. Subsequently, on the 30th of June 2006, the Tribunal received two further short statements from Detective Garda John Dooley, days before Mrs. McConnell was due to give evidence on the 3rd of July 2006. On that date, these statements were read into the record. Detective Garda Dooley admitted that Róisín McConnell was shouldered whilst being interviewed by Sergeant White and Detective Garda Dooley during their final interview. He said that:

> It commenced after she was ordered to stand up and after her chair had been thrown across the room and before the post mortem photographs of the late Richard Barron were shown to her. At the time I was standing to the right of Roisín McConnell and Sergeant White was standing to her left. Sergeant White was the instigator of this incident. Without warning Sergeant White shouldered Roisín McConnell into me. I shouldered her back to him and this was repeated on three to four occasions.[273]

Detective Garda Dooley also admitted that Róisín McConnell had been referred to as "Satan".

3.26. In relation to matters in general, Detective Garda Dooley also recalled an incident which is set out here:

> Detective Sergeant White and I left Letterkenny Garda Station on a meal break at approximately 5.00 p.m. and returned at approximately 6.00 p.m. or thereabouts via the back entrance to the Station. On opening the back door I heard loud angry shouts from several different male voices. This continued for what seemed like several minutes. The voices were angry and argumentative but I cannot recall any specific word or whether foul language was used. The shouting was coming from upstairs where Frank McBrearty Junior and Mark McConnell were being interviewed. The noise ceased after some time and I cannot be certain about the length of time it continued.[274]

3.27. A third admission by a Garda was made by Garda John Harkin in an interview with the Tribunal investigators, Mr. Finn and Mr. Cummins, on the 17th of July 2006. The issue on which he made his admission seems to be unrelated, certainly

[272] Tribunal Documents, page 490.
[273] Tribunal Documents, page 631.
[274] Tribunal Documents, page 632.

in any direct way, to the treatment of Róisín McConnell. She had never alleged physical or mental mistreatment at his hands and no issue as to misconduct on that score has ever arisen against him. Garda Harkin's admission related to the alteration of interview notes and will be dealt with extensively later on in this chapter.

The Arrest

3.28. It is obvious to the Tribunal, from a consideration of the manner in which the various arrests on the 4th of December were effected, the evidence in relation to the pre-arrest conference on the 3rd of December, and the interrogation files prepared in relation to each of the proposed arrestees, that all of these arrests were carefully planned. That is as it should be. The Tribunal notes that information was gathered as to the background of those to be arrested with a view to seeing what might be important for the purpose of assisting interrogating officers. In the case of Róisín McConnell, for instance, it is noted in the interrogators' file to whom she is related and that her father had died some years previously. The Tribunal is also satisfied that the likely whereabouts of the various detainees was discussed and was noted so that arrests could be effected properly. This does not give rise to controversy save where a different impression has been floated before the Tribunal. In the case of Mrs. McConnell, however, it is not disputed that it was planned to arrest her, and then to arrest her husband, followed by certain other persons who were slated for arrest on that day. Mrs. McConnell does not make any complaint in relation to the manner of her arrest, but her pain on being subjected to this illegal manoeuvre was apparent from her testimony. This is her account of what should have been her normal journey from her house in Raphoe to her place of work in the Fruit of the Loom factory:

> *Lorna O'Donnell … was driving and Mary Pearson, that would have been a sister of hers, was in the passenger seat and I was in the back seat of Lorna's car [on the way to the Fruit of the Loom factory to work] … Well, as I was driving into Raphoe and just coming towards the barracks, there was a lot of Gardaí and detectives and all standing around and whenever I was pulling up, the cars were coming and they were letting other cars in front go on ahead, and they stopped our car. I thought there was an accident, or something, and then John White, he came around to the back of the side door where I was. So, I thought it was somebody belonging to the family was in an accident or something and he asked me was I Róisín McConnell and I says: "that's right" and he told me to step out of the car and all I could hear that morning was: "you're arrested for the murder of Richie*

Barron". I never heard accessory, nothing. He could have said it, but all I heard was "murder" … I was just in total shock and then we were going across the road to get into the unmarked car and I called back to Lorna O'Donnell: "go out and get Mark". And Sergeant White, he told me, he says, "don't make a show of yourself, Róisín" … I was put into an unmarked car. There were two Gardaí in uniform in the front and then John Dooley was on the right hand side and I was placed in the middle and then John White got in beside me then. Then he introduced John Dooley and I think he introduced the two boys in the front as well to me.[275]

In the Car

3.29. The first hint of Garda misbehaviour that arises in the testimony of Róisín McConnell comes in her account of the car journey from Raphoe to Letterkenny. It is common case that Garda John Harkin was in the front passenger seat, making a note from time to time, and that Garda Padraic Scanlon was driving the car. Mrs. McConnell was sitting in the back of the car between Detective Garda John Dooley and Sergeant John White. The only contemporaneous record of what was said in the car is a note taken by Garda Harkin. Róisín McConnell accepts that this note provides a relatively accurate account of the various responses and questions raised by her during the course of the journey to the station.[276] It is, however, a one-sided note, to the extent that it merely records what Mrs. McConnell said and not the questions or propositions that were put to her. Before proceeding to the various accounts of what occurred in the car that were given in evidence, it is as well to quote Garda Harkin's note in full. The note goes as follows:

> Lorna go and get Mark.
>
> Do I have to answer any questions.
>
> It's wild for his family and it's going to be wild for my family. You have a lot of evidence.
>
> What evidence do you have on him.
>
> If you have evidence on him why are you not lifting him.
>
> You have one argument with a man and you're blamed for murdering him.
>
> How many people did murder him.
>
> I'm asking you
>
> What your name

[275] Transcript, Day 474, pages 11-13.
[276] Transcript, Day 474, page 23.

> Sgt. White named all four members in car: Scanlon, Dooley, White, Harkin.
>
> Told about house, is finished since April.
>
> I just know him to see.
>
> Can I make a phone call to Katrina at home to get a childminder.
>
> I can have a solicitor as well.
>
> I will not get any this time of the morning.
>
> I don't need a solicitor, I've done nothing wrong.[277]

3.30. Whereas Mrs. McConnell does not necessarily recall saying any of the things that are recorded in the note, she accepts that she may have said them and places them in the context of a conversation she was having with Sergeant White on the way to the Garda Station. Her view of that conversation was as follows:

> *I was placed in the middle and then John White got in beside me then. Then he introduced John Dooley and I think he introduced the two boys in the front, as well, to me … it was just John White [speaking], nobody else opened their mouth. It was just John White turned around and started on about it was a vicious attack and a vicious murder and it was animals that done it, and he was raising his voice to me at that stage. I can't remember what else he was saying … He was in, as I would say, a bad mood, kind of angry … [He said] it was a vicious attack and a vicious murder and it was animals who done it. And I said to him: "was Richie Barron murdered?" … [He was saying] … about it being a vicious murder and it was animals, like, he said animals, so I must have took it that it was a couple of people that he was implying that had done it. But I really just can't remember really answering...[H]e kept asking going down the road as well about Katrina, do you think Katrina would mind your child and all this here. Sure Katrina works so I wouldn't have been looking for Katrina to mind my child…I probably would have said to phone somebody to get a childminder. But it was him that kept on about Katrina going down in the car, about maybe Katrina would look after your child…So I must have knew at that time then that Mark was going to be arrested…Well it was really White was kind of raising his voice and saying like about -- like, all I remember is Sergeant White saying it was a vicious murder and animals done it and all that there. Like, one minute he could have been in a bad temper and*

[277] Tribunal Documents, pages 78-79.

the next minute then he was as nice as anything. That's the kind of way the man works…Well, I think the bad temper started on the way down the road and then whenever I said about a solicitor and all and he was on about Katrina, he was on about Katrina and Charlotte, but I can't mind what about Charlotte Peoples. But, that was the general conversation, was about Katrina and Charlotte Peoples. Because, like, whenever my solicitor came in to me that morning he says there was another girl arrested and I says well it had to be Katrina Brolly or Charlotte Peoples because, I says, White keeps on about the two of them.[278]

3.31. Garda John Harkin gave an account of the atmosphere in the car as follows:

Well, the tone was sombre. I mean, you know, you had four men and the prisoner in the car, like, you know, initially. But, once she engaged with Sergeant White in the car that certainly lightened up the, you know, the thing. I was in the front passenger seat … Sergeant White was in the back of the car along with Mrs. McConnell when he spoke. In fact if anything he spoke very quietly to her. But, I was sitting in the front and I took out my notebook and I noted her responses … I certainly did not note the questions … but I noted her comments. As I said, it was an area where I felt she was – she had been arrested, she wasn't yet detained and wouldn't be until we got to Letterkenny. Whether – it mightn't have been appropriate to ask her any questions, but these were the comments and I noted her comments … Certainly there was no shouting … that animals had done it. I don't know, as I said, I was in the front of the car, now whether she was – as you say, she was assertive and I had no difficulty hearing her, but Sergeant White would have been right beside her. You know, I can't say – I have no note of what he said … I didn't write down any of his side of the conversation … in a moving car it was difficult enough.[279]

3.32. Mr. White's account of what occurred in the car on the way to the station is that:

I cautioned her as soon as I arrested her. There was nothing said of any relevance after that. We would be inviting any comments in the car on the way back…To be honest I don't know [whether there was any conversation in the car on the way back] … I can't actually remember going back in the car, you know … [T]here would be no shouting or roaring at that stage because you'd be hoping that a person – you get back to the station and when you

[278] Transcript, Day 474, pages 13-24.
[279] Transcript, Day 481, pages 60-62.

interview them -- if you shout and roar at a person first of all they're going to clam up and take a big resentment to you…They're going to get thick. I mean, you'll achieve nothing by doing it. I know from experience you wouldn't … There wasn't [any shouting]… I wouldn't think [I raised my voice] … It would be inside in the car, I doubt it very much. But to be honest I just can't remember going back in the car … To be honest with you, I don't know [whether I said to her that animals did this]. I don't know. If I said it to her in a confrontational way it wouldn't help our case when we got back to the station. If I said it in an off hand way, without confronting her or without causing her aggravation then it would be different, it wouldn't damage our relationship … I just can't be sure. I can't be sure. If I made a comment like the murder was done by animals, it wouldn't be something -- I wouldn't say in fairness. It wouldn't be in a confrontational way, that she was an animal or anything, I wouldn't be putting pressure on her at that stage … It's possible I suppose that one person listening to a comment would take it different to the person making the comment … I mean I don't think it happened but I just can't remember.[280]

3.33. The Tribunal accepts Róisín McConnell's version of the nature and tone of the conversation that occurred in the car. The very fact that she was transported in a car with four people, none of whom she knew, can only have increased her feelings of unease. Róisín McConnell's account is of an apparent attempt by Sergeant White, at that stage, to intimidate her. Although Garda Harkin's note is only one-sided, the general thrust of the conversational themes is apparent. Accepting the fact that Sergeant White was the only Garda addressing matters to her and responding to her in kind for the duration of the journey, his interaction with her is clearly of a kind that was designed to test the waters and to see how far he might push her and on what particular subjects she might be vulnerable. In fairness to Garda Harkin, the Tribunal's view is that he made an honest attempt to note what he heard of the conversation. The impression made on Róisín McConnell was of an intimidating kind, but the Tribunal's view is that this impression may not have been carried over to Garda Harkin, as many of her responses were spirited. He did not hear exactly what Sergeant White was saying to her, and the fact that he was busily recording the note with his back to her would have made it impossible for him to observe Mrs. McConnell's physical, as opposed to

[280] Transcript, Day 564, pages 109-111.

merely vocal demeanour. The Tribunal's view, is that Sergeant White was not actually shouting at this stage, but was raising his voice to a sufficient degree to make Róisín McConnell apprehensive of the interviewing that was to come when they reached the station. Encountering Sergeant White for the first time was not a pleasant experience for Róisín McConnell and that is how it was honestly perceived by her.

3.34. The last matter the Tribunal feels it is important to mention in connection with the journey to the station is something that occurs as a pre-echo of subsequent issues. It is referable to the evidence of Mr. Dooley, Mr. White and Mr. John McGinley, who, at the time of the arrests, was an Inspector in Donegal. Róisín McConnell put it this way:

> *Well, before I got out of the car at all, as I was getting out of the car, Sergeant White was out of the car and he says to me: "Róisín, tell me this here, do you believe in God?" and I looked at him and I says: "I do" and he says: "Oh that's good because so do I".*[281]

This is the first mention of matters religious which, deeply unfortunately, are a recurring theme in the wall of lies that have been built around the detention of Róisín McConnell.

In the Garda Station

3.35. The custody record in relation to the detention of Róisín McConnell indicates[282] that she arrived at the station and was presented to the member in charge, Garda Martin Leonard, at 08.40 hours on the 4th of December 1996. The Tribunal is satisfied that Garda Martin Leonard cannot be faulted for agreeing to the detention of Róisín McConnell. The decision to arrest her was made by senior officers at a conference on the day before. Sergeant John White, the person who justified the detention to Garda Leonard under section 4 of the Criminal Justice Act, 1984 was an officer of long-standing experience and highly respected.

3.36. There is, however, one matter which the Tribunal remarks on as being an unnecessary undermining of Mrs. McConnell's peace of mind during her detention. The Tribunal is of the view that Mrs. McConnell was probably kept without proper knowledge as to who had the custody and care of her one year old child for a number of hours during her arrest. Mrs. McConnell indicates that it was probably not until 18.16 hours, when her mother came in to visit her, that she first became aware, notwithstanding earlier enquiries during the day, that her child had been properly cared for.[283] When she was arrested she did not yet know that her husband Mark McConnell had been

[281] Transcript, Day 474, page 26.
[282] Tribunal Documents, page 380.
[283] Transcript, Day 474, pages 46-47.

arrested. In the ordinary course of events he would have had the primary care of the child and she would have felt secure in that knowledge. However, she became aware that he was arrested during the day or inferred that he had been arrested perhaps from an earlier stage. This was a logical deduction in the sense that if she was being arrested and questioned in respect of being an accessory after the fact, then he surely must have been arrested as well, as being the alleged principal offender. **The Tribunal is left in a state where it is impossible to find out at what stage Mrs. McConnell's fears became pressing. This deprivation of knowledge in relation to her child was unnecessary. As a matter of simple humanity a mother should never be left in a state where she does not know with whom her child is and whether that child is being properly cared for. However, there are references throughout at least the period prior to lunch which indicate that a lack of humanity in relation to this matter seemed to have been a prevailing mood in that Garda station.** Although her concern about a childminder is noted in Garda Harkin's note, the Tribunal does not regard Garda Harkin as being responsible for depriving Mrs. McConnell of knowledge in relation to her child. However, she asked a question of Sergeant White as to the possibility of allowing her to make a phone call in order to arrange for a childminder. At 08.49 hours the custody record notes that she made a request of Garda Leonard to make a telephone call. This was in addition to and separate from the right to make contact with a solicitor. The right to make a family telephone call is enshrined in the custody regulations and is part of the notice of rights read over, on the commencement of detention, by the custody officer to the prisoner. Róisín McConnell gave evidence to the Tribunal of seeing Garda Leonard and Sergeant White in conversation at this time. The telephone call was then refused her.[284]

3.37. During an interview prior to lunch, which is recorded as being with Gardaí Harkin and Scanlon, the following reference is made in the official note to Róisín McConnell's concern over her child:

> I am answering no more questions. My child has got nothing to do with this here.[285]

In evidence to the Tribunal, Róisín McConnell indicated that she never said that she was answering no more questions, and that while she probably did say that her child had nothing to do with this here, that she said this to Sergeant White and Detective Garda Dooley.[286]

3.38. Garda Harkin's account of this matter was that he was certain that arrangements must have been made in relation to Mrs. McConnell's child, but that he regretted

[284] Transcript, Day 474, pages 26-28.
[285] Tribunal Documents, page 405.
[286] Transcript, Day 474, page 41.

not going to find out precisely what was happening. The real fault, in the Tribunal's view, lay in the fact that Garda Leonard consulted with Sergeant White, who told him that it would be unwise, in the interests of the investigation, to allow Róisín McConnell to have a telephone call. The Tribunal regards this explanation as being senseless. If she had been given a family phone call, as was her entitlement, she would not necessarily have warned other persons whose arrest was scheduled for that morning that they were liable to be arrested. There was no way that she could have known who else was going to be targeted for arrest. Furthermore, her arrest had taken place in broad daylight, as had the arrests of several other people. Even if it were necessary to delay the telephone call by half an hour or an hour, that would have been a more humane course. Garda Martin Leonard gave evidence of having spoken to Sergeant White and having become convinced that a telephone call by Róisín McConnell to a family member would, at this stage, have interfered with the investigation. This is how Garda Leonard put the matter:

> *I asked Sergeant White if the phone call – could she ring home or ring wherever. I think it was home she wanted to ring. He said no, it's too early and she might – it might interfere with the investigation, or notify persons that was to be arrested … and it could prevent the arrest of the person. On that grounds then, that phone call was not allowed at that particular point in time. And that's the only ground … Yea. Well, first and foremost, I didn't know anything about Róisín McConnell or her family or ages of children or anything. Secondly, I knew that Ban Ghardaí, as they were referred to at that time, were specifically employed for that purpose. I was looking after all of those issues … and naturally, the Garda Síochána – I just took it for granted that the Garda Síochána would do that … well, the Gardaí were dealing with it.*[287]

It is difficult to understand how, in all decency, Mrs. McConnell was not kept fully informed about the location and welfare of her then only child.

3.39. The Tribunal also notes that at 11.56 hours Mr. Sweeney, solicitor, asked the custody officer in relation to the care of Róisín McConnell's child.[288] The lack of information or response in this matter is deeply disturbing.

The First Interview

3.40. The first interview was with Sergeant White and Detective Garda Dooley. Róisín McConnell's account of this tallies with the official note which has been quoted above. Some additional information was gleaned from her testimony. She said

[287] Transcript, Day 478, pages 57-60.
[288] Tribunal Documents, page 381.

she had no complaint to make in relation to the manner in which that interview was conducted. With a sense of balance, which characterised her entire testimony, she said, in answer to the question as to whether there was anything objectionable in that first period of interview:

> *No. They just more or less asked me about my whereabouts that night and I told them everything.*[289]

Her account of the interview involved it being interrupted by the arrival of Mr. James Sweeney, her solicitor, and Sergeant White being asked whether he could give him, her solicitor, a copy of the interview notes to date. On her account, which appears not to be disputed, he went to seek permission in that regard which, it appears, was refused. The entire of the notes in relation to this matter were put to Róisín McConnell. She agrees that the notes are a fair account of what had occurred. While she cannot remember making a reference to Daniel Lynch it seems probable that some such reference came up in some way. When she placed her time for being in the chip shop at after 01.00 hours on the morning of the death of the Late Mr. Barron, she made a reference to Wilma Barnett. In her evidence, she records that "John White looked at John Dooley and they were kind of shocked".[290] John Dooley has no recollection of this matter, but is not denying that this may have occurred. As it turned out, the testimony of Wilma Barnett before this Tribunal was very material in ascribing the complete absence of opportunity for Mark McConnell to engage in any assault on the Late Richard Barron. The Tribunal has previously commented in its second report on the lack of investigation into that important matter.[291]

The Second Interview

3.41. As noted, the first interview with Róisín McConnell was with Sergeant John White and Detective Garda John Dooley and lasted from 8.51 hours through to a time that is officially noted as 11.35 hours. At 10.55 hours that interview was interrupted so that Mrs. McConnell could consult with her solicitor, Mr. James Sweeney. Fifteen minutes later Mr. Sweeney spoke to Sergeant White and Detective Garda Dooley and, it would seem, ten minutes after that the interview re-commenced with Mr. Sweeney present, and continued for approximately fifteen minutes. It was shortly before midday that Mr. Sweeney left the Garda station having asked about the care of the detainee's child. Officially, a second interview was noted to begin at 12.05 hours, and to continue until 12.45 hours, with Detective Garda Padraic Scanlon and Garda John Harkin. This interview was interrupted, approximately twenty five minutes after it commenced, with Mrs. McConnell being given tea. There is an issue as to whether toast was also

[289] Transcript, Day 474, page 31.
[290] Transcript, Day 474, page 35.
[291] Second Tribunal Report, pages 205-216.

provided. Mrs. McConnell thinks she was never given toast, but that she had requested it. It could be that with the serving of tea, this interview was further truncated from its apparent official time span. Everyone is agreed that at 13.00 hours a meal was provided to Mrs. McConnell and that she was left undisturbed until the third interview at 14.25 hours with Sergeant John White and Detective Garda John Dooley, with Garda Lohan noted as being present at some stage.

3.42. The sequence, as recorded above, is disputed by Mrs. McConnell. The controversy which arises here is as to whether this second interview took place at all and whether the notes purportedly taken by Garda Padraic Scanlon and Garda John Harkin are genuine. This issue arose quite unexpectedly, but very firmly, during the course of Róisín McConnell's evidence. She was asked as to whether she could recall having an interview before lunch with Garda Harkin and Garda Scanlon and she said that she could not. Her view was that Detective Garda Dooley and Sergeant White were still in with her until shortly before she was served with a meal. She said:

> *It still was Dooley and White was still in with me in that interview … I'm nearly one hundred per cent sure there was no other Garda in. The only time other Gardaí came in and it was after dinner time.*[292]

3.43. When asked as to whether she recalled the specific questions which were, apparently, according to the official record, put by Gardaí Scanlon and Harkin, she became firm that answers in relation to her child, and the strong defence of her husband and his integrity were made not to these officers, but to Sergeant White and Detective Garda Dooley. Mrs. McConnell had a recollection of Garda Cannon coming in to take an order for a midday meal but her recollection is that the people in the room at that time were John Dooley and John White.[293] Mrs. McConnell's evidence on this issue is exemplified by a passage where she is answering the questions of Tribunal counsel:

> *Q. Then the note of the interview continues and you were asked what time you left the pub and you put it at about 1.15, "I looked at the clock in the bar" and you explained how you had been refused a drink and the clock was over the bar. And you were asked if the row between your husband Mark and Mr. Barron, if they hadn't been separated would it have come to blows and you said, well maybe it would have been better because Mr. Barron might have been alive and that somebody might have taken him home if he had actually been involved in a serious fight?*

[292] Transcript, Day 474, page 40.
[293] Transcript, Day 474, page 53.

A. That's White saying that there.

Q. You're saying you didn't say that?

A. No, that's White's question. Because I remember White saying about Mark could have threw me out of the way. Or I says – he says Mark – whenever I says that I was between Mark, he says Mark could have threw you out of the way. It was him that was on about – that's not Harkin's question.

Q. You're sure that Garda Harkin or Garda Scanlon mightn't have asked you –

A. No, they didn't.

Q. Something similar, that if the two men hadn't been separated or prevented from even getting engaged, would blows have ensued?

A. No, he might have asked me that in the evening, but that was White in the morning saying to me about Mark and I says, sure if Mark had wanted to hit Richie Barron, he could easily have put me out of the way.

Q. And you said: "I know he didn't do it. He's not got it in him. If he had gone to the wake he would not be sitting here now, if he had been a hypocrite".

A. Yeah.

Q. Was that explaining that your husband hadn't gone to the wake?

A. Yeah, White kept saying about why did he not go to the wake and he says – he was on about Manny Hegarty and all going to the wake.

Q. Yes?

A. And up crying and I said if Mark had have gone to the wake, he'd have been a hypocrite.[294]

3.44. Mrs. McConnell was firm in remembering Gardaí Scanlon, Harkin and Lohan coming into the room, but places that occurrence after, and not before, the midday meal. She places it certainly before Inspector John McGinley came in. Her reasoning in remembering this, as given in evidence, is as follows:

[294] Transcript, Day 474, pages 53-55.

> *Because whenever they came in after dinner time I thought I was glad to see three different people coming in, rather than White and Dooley being in with me … and I thought it strange all morning that a Ban Gharda wasn't with me.*[295]

3.45. If Mrs. McConnell is correct that it was Sergeant White and Detective Garda Dooley who in fact interviewed her during the second interview, and not Gardaí Scanlon and Harkin, then it would follow that not only have the notes of the interview been falsified, or at least falsely attributed to this interview by Gardaí Scanlon and Harkin, but that the custody record has also been falsified so as to record Gardaí Scanlon and Harkin as conducting this interview in the place of Sergeant White and Detective Garda Dooley. The Tribunal has searched for any reason why this falsification would have been made and can find none. No complaint is made against the interviewing Gardaí in respect of this interview. Moreover, Mr. Cannon, who was at the time the Garda responsible for maintaining the custody record, would not appear in this instance to have any reason for falsifying his evidence. The Tribunal is of the view that while it accepts without reservation that Mrs. McConnell has given true evidence of her belief that the interview was conducted by Sergeant White and Detective Garda Dooley, she is nonetheless mistaken. This is a mistake made in good faith by her and is accountable for by the severe trauma which she suffered that day. The recollection of any witness, particularly as to times and who was present, is notoriously subject to infirmity. This is increased in circumstances of trauma, in the Tribunal's experience. The Tribunal considers that this error in Mrs. McConnell's recollection is an unfortunate consequence of the grim matters to which the Tribunal must now refer.

The Third Interview

3.46. Róisín McConnell's account of her third interview that day, with Sergeant White and Detective Garda Dooley, is that she was abused. What is worse is that when she made her complaints, in detail, they were completely denied by those against whom they were directed. Their attitude was to resort to lies and cover ups in respect of this first interview after lunch and in respect of the fifth interview, after dinner, in the evening time. With the change of mind effected, with courage, it must be recorded, by Detective Garda Dooley and the manner in which Detective Sergeant White then made limited admissions, the position now becomes clearer. The Tribunal must stress that the denials effected by Detective Sergeant White and Detective Garda Dooley went beyond the possibility that Róisín McConnell might have been mistaken. Honest witnesses are often mistaken as to times,

[295] Transcript, Day 474, page 58.

dates and places; as to who was or was not present; and as to the order in which events occurred. Instead of saying that she was understandably confused, their denials operated as a direct attack on her integrity. This cannot have helped her in recovering from the experience that she had actually suffered. As the third and fifth interviews were conducted by the same personnel and involved apparently interchangeable abuse, it is difficult to sort out which aspect of the abuse occurred during which interview. The Tribunal is satisfied, however, that there was an accumulative effort on the part of both Gardaí to build up pressure on Róisín McConnell. As the chart indicates, officially the third interview ran from 14.25 hours to 16.20 hours. There was a toilet visit with Garda Lohan at 16.10 hours and this feature also occurs at the end of the fifth interview. The third interview was characterised, according to Róisín McConnell's evidence, which the Tribunal accepts without hesitation, with threats that her child would be taken from her; with shouting and roaring; with names being called; with repeated references to her as being "a dirty lying murdering bastard"; with references to allegations of unchastity against her and her husband; with repeated references to lies and cover ups delivered in a degrading and unpleasant manner and with general and deeply unpleasant abuse.[296]

The Fourth Interview

3.47. The fourth interview of Róisín McConnell began at 16.40 hours and was conducted by Garda John Harkin, who was joined during the course of the interview by Inspector John McGinley. Garda Lohan was also present for most, if not all, of this interview in a passive capacity. The issue of changes to the notes of this interview will be dealt with later in this chapter. As outlined in the chapter concerning the detention of Mark McConnell, Inspector McGinley also appeared in the room where Róisín McConnell's husband, Mark, was being interviewed earlier that day. He was apparently playing a sort of link role, monitoring how the various interviews were proceeding. Róisín McConnell gave evidence that during the course of the interview, Inspector McGinley made a number of derogatory remarks about her husband and Frank McBrearty Junior, describing them as 'Rambo' and the 'big fat pussycat' respectively. Mrs. McConnell also recalled that Inspector McGinley described her as being 'like an IRA woman' in relation to her capacity to withstand questioning. Róisín McConnell gave evidence that:

> *He [Inspector McGinley] came in and he says what's happening here, you know, to me, or whatever. And I just can't recall everything that I said to him, or whatever, but I must have said about the two guards like that they were saying you know that we left Quinn's pub about twenty past twelve, or whatever, and keep*

[296] Transcript, Day 474, pages 61-69.

going on about it. John McGinley was walking about the room and the next thing is he turned around – I don't know, he asked me a few questions, or whatever, and he says to me about he would tell me what happened and he says about that Mark McConnell, my husband, and he referred to him as a "big fat pussy cat" and referred to Frank McBrearty as "Rambo", that Rambo and the big fat pussy cat ran up the road, lifted a piece of timber, seen Richie Barron, waited for Richie Barron to come up and whenever Richie Barron came up that Rambo hit him with a lump of timber and that maybe Mark didn't, but then again maybe Mark did hit him and that they ran back down again and threw the bit of timber away. That's how he explained what happened. He asked me: "is that the way that it happened there Róisín, am I right or wrong". Or along them lines, I just don't remember the exact words he said … Oh then there was the time then that – what was it that was said? He kept asking me about what time I left the pub and I kept saying it was about twenty past one and he said: "it wasn't Róisín, it was twenty past twelve". And I said: "it wasn't, it was twenty past one" and he kept on it was twenty past twelve. So me and him was going over and back and at one time I turned around and I said it was twenty past twelve whenever we left the pub, but I made a mistake. And he said to John Harkin: "write that down, make sure to write that down". I looked at John Harkin and John Harkin just kind of sat moving, kind of moving his head as much as to say: "caught you out on that one". So, in the next breath then, John McGinley turned around and said "So now, Róisin, you left the pub at twenty past one". So I looked at John Harkin as much to say - put that down … And whenever he went like that there I just turned around and I says "look" I says: "I'm not answering any more questions to you" and he turned around and he says something along the lines: "Róisín, you're like an IRA woman. That's the way the IRA goes on there", as much as to say they don't speak. I just looked at him.[297]

3.48. John McGinley gave evidence that he did not recall referring to Frank McBrearty Junior and Mark McConnell as 'Rambo' and the 'big fat pussy cat' in the course of the fourth interview of Róisín McConnell, but that he did not see anything wrong with it if he did say something of that nature.[298] He did not believe that the context existed in which he might have referred to Róisín McConnell as being like an IRA woman.[299] The Tribunal accepts that the evidence given by Róisín

[297] Transcript, Day 474, pages 78-80
[298] Transcript, Day 481, page 176.
[299] Transcript, Day 481, page 177.

McConnell is correct in relation to this matter. The Tribunal believes that Inspector McGinley did make the colourful references to Mark McConnell and Frank McBrearty Junior as outlined, but that these fell within the confines of robust questioning and were not designed to cause, nor did they cause, genuine offence to Róisín McConnell. Compared with the pointed, personalised, mental and physical abuse inflicted upon Róisín McConnell by Sergeant John White and Detective Garda John Dooley in the third and fifth interviews, these remarks were in a different category altogether. The Tribunal also accepts that Inspector McGinley made reference to Róisín McConnell being like an IRA woman in her attitude to questioning. This was somewhat more serious in that it was directed at her as opposed to being a comment in respect of other parties. Nonetheless, the Tribunal believes that the remark was made in a somewhat flippant manner, is not an uncommon albeit inappropriate colloquial reference and was not intended as a serious affront to her integrity: however, it should not have been made.

3.49. In the course of this fourth interview a number of questions are officially recorded in relation to telephone calls from the Brolly's house, where Mr. and Mrs. McConnell and their child were staying. The Tribunal has not resolved the issue, in its second report, as to whether Mark McConnell might have left the Brolly's house in the middle of the night of the 13th and 14th of October 1996. The Tribunal has also not resolved the issue of calls from the Brolly's house, in particular to the Dolan's house, and the nature of such calls. The Tribunal regards it as important to recall the evidence of Chief Superintendent William Keane, an expert witness from An Garda Síochána who testified as to how to conduct serious investigations, that an apparently suspicious circumstance may exist in a case without it necessarily having anything to do with the crime in question.[300] The Tribunal is completely satisfied, as it stated in its second report, that Mark McConnell did not, and could not, have had anything to do with the death of the Late Richard Barron. Furthermore, that death was due to a collision with a vehicle and was not due to an intentional human attack on Mr. Barron with a view to killing or injuring him. The Tribunal is satisfied, however, that questions were asked of Mrs. McConnell in relation to her husband's whereabouts on the morning of the 14th of October 1996. It was an extremely important event in the minds of the Gardaí in terms of forming their suspicions and focussing them in an unwavering manner on Mark McConnell and Róisín McConnell. As the Tribunal has commented, it has come up again and again in the justifications laid before the Tribunal for the arrests on, and subsequent to, the 4th of December 1996. The Tribunal regards it as likely that questions in relation to

[300] Transcript, Day 217, pages 52-53.

telephone calls were asked of Mrs. McConnell during her detention although, in her evidence to the Tribunal, she did not believe that such questions had been asked.[301] The fourth interview came to an end at 18.15 hours.

The Fifth Interview

3.50. The fifth interview began at 19.25 hours and finished at 20.00 hours when Mrs. McConnell was brought to the toilet by Garda Georgina Lohan. The official line in relation to the interview is that it was properly conducted. This only changed with the statement of Garda John Dooley of October 2005, which has been detailed extensively above. The official account is also that Mrs. McConnell returned to the interview room after being taken to the toilet by Garda Lohan, at which time interview notes were read over to her which she declined to sign.

3.51. This fifth interview was horrific and worse in many respects than the third interview, which has already been referred to. It is possible that some elements of what occurred in the fifth interview are being interchanged with what occurred in the third interview. This is understandable. It is something witnessed every day by judges listening to honest and intelligent witnesses. There can be no doubting either the truthfulness of the account given by Róisín McConnell, or her intelligence. Her account is worth quoting extensively:

> *Sergeant White then said to "put out that cigarette, you had a good enough day all day, get up off the chair". So, as I got up off the chair, he just reached for the chair and flung it across the room … Then I moved over beside the filing cabinet and John White, he started – he was roaring and shouting different things and he told me to lean off the filing cabinet. So I kind of moved out a wee bit from the filing cabinet, out to the middle of the room and John Dooley was here and I was here and John White was here, (indicating). So, John White started to shoulder me into John Dooley and then John Dooley shouldered me back over to White … he was shouldering my shoulder in and then Dooley, he was shouldering me back … as though I was a bit of dirt … It would have went on about four or five times … I moved over to where the lights was, the light switch was, and I had my back to the light switch and then John Dooley and John White had been in front of me … when White came in at the start, he had a batch of photos and he threw them down on the table first and then he told me to get off the chair, that I had a good enough day all day. So then, I don't know if it was at that time then, they brought the girl's name*

[301] Transcript, Day 474, pages 66-67.

that my husband was [allegedly] … riding … So I don't know if it was at that stage, it was around that stage there, whenever I was standing up and then John White, he lifted the photo, the post-mortem photographs, up … they were loose photographs … they would have been contained in, you know, the folder that you would put loose photographs into … Then Dooley, he was looking at White and he was nodding to the table like that there, and White lifted the photographs and started to push them into my face and I started to close my eyes tight and every time that I opened my eyes, I could get a glance of blood so I had to close them tight again. And they kept doing this here and I had no other choice but to look at the photograph then. White kept roaring and shouting that this was the work of my husband and that I was nothing but a "dirty lying murdering bastard" … He said about it being the work of my husband and that I was telling nothing but lies all day and that I was Satan and I was the devil … He was roaring and shouting that much that the spits was coming out of his mouth and hitting me in the face and I had to keep wiping my face and at one time in that interview he was frothing at the mouth … He would have had the photograph out a bit, waiting for me to open my eyes … and whenever I eventually had to look at photographs, like, I would [have] kept closing my eyes tight and the photographs was up at my face and I kept closing my eyes again and then eventually then whenever I did look at the photographs, the lights was being turned on and off … I eventually had to look at [the photographs] and then John White, he says about that I was going to get stabbed by somebody in Raphoe and whenever this happened, he would come up and spit on my grave … He told me I was going to get stabbed on the streets of Raphoe … He would come up personally and spit on it. He told me Richie Barron was going to come back and haunt me and come back and tell me, at whatever time that happened, would I come and tell him and I told him "aye, I would come back and tell him" … Then, just before the end of the interview, John White says about swearing on my father's grave and I told him, no, that I wouldn't and he says, "oh, there's some good in you, Róisín" … And then he says, "well will you pray to him to tell the truth then" … So I looked at him and he says, "and I'll say a wee prayer for Richie" … So then he says to me, I was standing and he said "bless yourself", so I blessed myself and I was just standing there

and we stood for about five minutes or so and he says, "well, were you speaking to your father" and I says "aye, I was", and he turned around and he said " what did he say" and I said that he said that I was telling the truth the whole day. And then he went ballistic altogether, then … because he started to roar and shout "you're nothing but a dirty murdering bastard" and "you're nothing but a lying murdering bitch" and he spit on the wall twice and he lifted his leg and passed wind twice. The only way I could see to get out of that room, cause I thought he was going to hit me, because he was punching the table and punching the wall and … he was angry before that, but he got even worse … He lifted his leg and pushed, he was like a madman … it wasn't [an accident]. Then again, I suppose if he was in that big a rage maybe it did … Whenever you're never in bother with any Gardaí, the whole of your life, you don't know what to expect, but you don't expect these sort of things to be – so I was just doing what they were telling me to do … I wouldn't even think of praying to somebody dead. It was him suggested that I pray to my father and he would say a wee prayer for Richie Barron … Because whenever he started he was really roaring and shouting and the froth was coming out of his mouth and after he had passed wind my mind was just going in a blank. I says, he is going to hit me here and I says "I have to go to the toilet." So, they got Georgina Lohan and they took me to the toilet. But there was a lot more happened in that interview room too, different things was said, but I just can't remember now in my head all what happened in that room … She took me down to the toilets and I went to the toilet and on my way back from the toilet Martin Leonard stopped me and says "you don't have to go back into that room" and I says "but my coat is in there" and he says "somebody will get it for you" and I think it was Georgina Lohan he sent in to get my coat …[302]

3.52. The response of Detective Sergeant White was delivered, after Detective Garda Dooley had given his statement in October 2005, by way of a statement on the 25th of March 2006, which has already been extensively detailed. This effectively backs down from the position that the conduct in the room was normal, whatever that might mean. Detective Sergeant White stated, vis-à-vis these events:

> When she insisted that she was telling the truth I asked her to swear it on her father's grave. She then said that she would pray to her father and ask

[302] Transcript, Day 474, pages 93-106.

him for guidance. She did so. There was a reference by me to praying to Richard Barron. There was a short silent moment or two and she said that she had prayed to her father and that he told her that she was telling the truth all along. My voice was deliberately more aggressive but I was not shouting. I accept that this exchange is bizarre … I categorically deny that I assaulted or laid hands on Roisin McConnell or Catriona Brolly. In particular I deny that I pushed, shouldered, unseated or had any physical contact with Roisin McConnell. I did not break wind in her face. I did not spit at her. I did not push photographs into her face. I did not call her Satan …I acknowledge that my conduct in these matters falls far short of an acceptable standard. Despite this however I categorically deny spitting at or breaking wind in the face of Roisin McConnell or assaulting her. I must admit to making a false statement. I have found this to be extremely worrying and it is utterly regretted.[303]

3.53. Detective Garda John Dooley in his evidence to the Tribunal stated as follows:

Chairman, the third interview [we had with Mrs. McConnell, in fact the fifth interview by Gardaí] commenced at 7.25 p.m. and it was put to Róisín McConnell that she was lying and there was a bit of an interview done and that interview was very well done by the time, it was a short interview as well, by the time anything went wrong and Róisín would have said she wasn't lying, it would have been put to her again that Mark and Frank McBrearty Junior were responsible for the crime and that she had been telling us lies all day and at a stage Sergeant White got up off his seat and went around and he said to her that she had been well looked after all day and it was time to start to tell the truth and I think she might have been smoking at this stage, and she was told to put out her cigarette and she was made stand up and Sergeant White threw the chair across the room and I came around the table at that stage and I was to Mrs. McConnell's right, at her right hand side and Sergeant White was to her left side. I'd say, I'm not just a hundred per cent sure but I think it would be – the tone of the language would have been, you know, you're a lying bitch, you've been telling lies all day, we don't believe a word you say, all that type of stuff. And without warning Sergeant White shouldered Róisín McConnell into me and I shouldered her back. This went on three or four times, or maybe at most I think – I say three or four, I think that's what it was, but at most maybe a few more, a few more occasions. Sergeant White got the photographs and you know at

[303] Tribunal Documents, pages 499-508.

that point Róisín McConnell was obviously frightened at that stage and she was back in – she went back – I think she ended up – she was back as far as the filing cabinet, that was in the right-hand corner of the room as you come in and she was shown the photographs and I was beside – I was the other side when he started showing these photographs. She closed her eyes to avoid the photographs, you know. I moved over then to the front door, or to the door of the room, to the light switch and I said this here the last time, I don't know why I did it, but anyway I did, and it was probably to apply pressure on Róisín McConnell I switched on and off the lights and I left them off for a period and – now the room wasn't totally dark, there was light coming in from the outside, streetlight in the station and then the next point was that John White asked her did she, what kind of a relationship had she with her father, did she get on well with her father. She said she did. I think I told John White, I think before that I said to John White to take it easy that she was frightened. I mean, it was terrible really, you know, she was very – it's the first time that Róisín McConnell lost her composure and then John White was asking her about her relationship with her father. She said she got on well with him. We knew from earlier on that her father had died, something like, maybe five years before that. He asked her to swear on his grave, to swear on her father's grave that she was telling the truth and she said she didn't, she wouldn't swear on it – she wouldn't swear on a dead person's – she wouldn't swear on a grave or a dead person's grave, something like that she said. And then he asked her to pray to him for guidance and that he would pray to Richie Barron and I think they both blessed themselves. I know I sat down with my back to the table and sat down at that stage, you know. That seemed to go on, it seemed like a few minutes anyway, and John White asked her then what her father said and he says Róisín said that her father said that she had been telling the truth all day and I think that was the point at where John White called her Satan. I know that was said but I'm not just – I'm not just a hundred per cent sure was it that time or slightly beforehand. Oh yeah, to tell the truth in the interest of the Barron family and he'd have no sympathy for her if she was stabbed on the streets in Raphoe. I know there's an allegation there that John White broke wind in her face. I don't remember that. I mean, that's the ultimate act of bad manners, I don't know how I'd miss it if – I certainly

> *would remember it if I saw it, I do not remember that. The spitting I think, it's the forceful, probably being angry and the forceful voice that John White has I think it would be spitting if you could say unintentionally rather than actually spitting at Mrs. McConnell … I think the memo was read over afterwards and that Róisín didn't, Róisín McConnell didn't sign any of her notes. The memo had to be signed up and Róisín McConnell did look to go to the toilet and I do accept Róisín McConnell was very upset at that time. It was Garda Lohan, as far as I recall, that was sought and brought her to the toilet. It was more or less over at that.*[304]

3.54. Róisín McConnell believed that there were no notes taken at all during the course of that interview, because of the abuse that was going on. Garda Dooley denied that the interview had been tape-recorded, or certainly he had never heard that it had. His evidence was that, in fact, the interview had commenced with a very short formal interview when notes were taken, as he put it "I suppose just to cover ourselves".[305] He claimed that he would not lie in relation to not taking notes. His reasoning was as follows:

> *I mean, if there were no notes taken, it's not half as serious to have no notes taken as some of the things we did. Of course, I wouldn't lie about that.*[306]

Her Son

3.55. Róisín McConnell described the manner in which she was bullied in relation to her then infant son as being the worst aspect of her treatment in custody. It is unfortunate that the Tribunal must record that this tends to marry in with the failure of Garda Leonard to afford her a family phone call, as advised by Sergeant White, and the absence of information in relation to who was taking care of her child, as recorded in the custody notes, and in her own queries to interviewers, which have been set out above. Her account of this matter to the Tribunal was as follows:

> *Well, after lunch that was the time that John White told me that my child would be taken off me and put into care and that I was going to jail for seven years and that I probably would never see my son again and he said that Frank McBrearty Senior was sitting back laughing at us all. And he made me swear on my wain's life that Mark McConnell had nothing to do with the death of Richie Barron … I swore on my wain's life that Mark McConnell – to me that Mark McConnell had nothing to do with it. And then he*

[304] Transcript, Day 476, pages 74-77.
[305] Transcript, Day 476, page 78
[306] Transcript, Day 476, page 78.

started then. He started to roar and shout. I was nothing but a "dirty lying murdering bastard", that I would use my child in that way … it was the worst thing that he said to me … he was angry. He was getting angrier as the day went on … I would say he said it about five or six times, if not more … [the comment in relation to my son] I just remember it the once.[307]

3.56. During the course of Detective Garda Dooley's evidence the following exchange occurred between him and counsel for the Tribunal:

Q. So, you're not contradicting her when she says that she was required to swear on her wain's life that Mr. McConnell had nothing to do with the murder of Mr. Barron?

A. I'm not but I do know that the threat of … her son being taken into care was certainly put; but I just don't specifically recall that but I'm not contradicting her, no.

Q. It might reasonably be regarded as a logical follow up, if you are dealing with a child, that you then talk about the child and swearing on whatever. She says that that [denial] provoked an outburst from Detective Sergeant White and that she was called a murdering lying bastard or words to that effect?

A. I accept that language … of that kind … was used.[308]

In addition in his statement of the 14th of October 2005, Detective Garda Dooley had said:

> Sergeant White reminded Roisin McConnell that the offence for which she was arrested carried a prison sentence of seven years on conviction and that her child would be put into care. Sergeant White put it to Roisin McConnell that Frank McBrearty Junior had murdered Ritchie Barron and that her husband Mark McConnell had witnessed it and that she had told us a number of lies in the interviews up to this point and it was time she started to tell the truth.[309]

3.57. In his evidence to the Tribunal, John White accepted that on arrival at the station he had instructed Garda Leonard not to allow Róisín McConnell to make a family phone call for fear that she would alert the other persons who were due to be arrested and that they would subsequently disappear. He described this as common practice. He denied that it was calculated to deny her knowledge of the

[307] Transcript, Day 474, pages 61-62.
[308] Transcript, Day 476, page 58.
[309] Tribunal Documents, page 475.

whereabouts of her child and he claims not to have been aware that she was still unaware of the whereabouts of her child until her mother visited the station that evening.[310] In respect of the threat that her child would be taken into care, John White had the following to say:

> *That's something that would be said to nearly every prisoner, that if you are convicted and your husband is convicted that your child will be left, I suppose, without a parent. So come on now and tell us the truth, if your husband did something tell us the truth. You'd be there to mind your child, there's no charge against you … It's a pressure point … Yes, but the exhortation would be to tell the truth about your husband otherwise you could end up, this could be a situation that would end up -- it wasn't realistic like. Maybe to the person hearing it it would be different … [T]he majority of all the people I would have arrested before that would be criminals and they would know the system better than me and they would pay absolutely no heed to it. But like you say it could have caused her -- I accept that it did cause her hurt or mental hurt. But it wasn't designed to -- it was designed as a pressure point … It's a pressure point, it doesn't usually work in fairness. In fact I don't know if it has ever worked really, but it's something you try to try to -- in a serious situation to try and get a person to say, yes, I will tell you what happened.*[311]

This passage is indicative of the complete lack of objectivity that informed Sergeant White's actions during Róisín McConnell's detention. He essentially treated her like a particularly intransigent and hardened member of a criminal gang, as opposed to the reality, which was that she was a young woman who had never been in any trouble with the law. The possibility that she may have been innocent of any wrongdoing in relation to the death of Mr. Barron did not form part of his mindset at that time. He perceived his sole objective in the interview room to be to obtain a confession from her. His tactics on the day were informed by this complete disregard for the elements of balance and objectivity that must form part of any legitimate and effective interview process.

3.58. The Tribunal accepts the accuracy of the full account of this matter in the evidence of Róisín McConnell.

Infidelity

3.59. Extraneous and private matters were introduced into these interviews for the purpose of undermining Mrs. McConnell's composure. In his statement of the

[310] Transcript, Day 564, pages 117-122.
[311] Transcript, Day 120-122.

14th of October 2005, Detective Garda Dooley candidly accepted the following:

> In the context of Mark McConnell having been seen alone … on 14th October 1996 wearing different clothes, I asked Sergeant Hannigan if Mark McConnell had been known to be involved with other women. Sergeant Hannigan replied that Mark McConnell was having an affair with a woman called [redacted] I made a note of it on a slip of paper. This was a scrap of paper which I retained for a short period of time. When the first interview with Roisin McConnell was completed I brought this information to Sergeant White's attention. We discussed using this information as an interview tactic in order to persuade Roisin McConnell to come clean and tell the truth re: her husband's whereabouts on the night and early hours of the 13th and 14th October 1996 respectively … I told Roisin McConnell that her husband was unfaithful to her and I asked her if she knew that her husband was "riding" [redacted]. I have up to now denied the fact that I mentioned Mark McConnell's [alleged] infidelity during our interview with Mrs. McConnell. I denied this when questioned in relation to the same to the Garda Complaints Board and also when questioned in relation to a civil claim brought about by Mrs. McConnell which was later settled. During this interview with Roisin McConnell I also put it to her that she had been coached and tutored by Frank McBrearty Senior, who was a bully and had obstructed the Garda investigation. I admit that all of the above would have been communicated in a raised and aggressive voice in an attempt to put pressure on Roisin McConnell to tell the truth.[312]

3.60. In his statement of the 25th of March 2006 Detective Sergeant White stated as follows:

> Allegations of infidelity by Mark McConnell were made to Mrs. McConnell and Mrs. Brolly … It was suggested to Roisin McConnell that she was under the influence of Frank McBrearty Snr. The questioning was intense. She was told to stand and stop smoking … Voices were raised and abusive language was used.[313]

3.61. Further allegations were made by Róisín McConnell against these officers on the question of infidelity. This she ascribes to Sergeant White in the following way:

> *He said to me – I'm nearly sure it was in the second interview – that he said: "which one of the Franks" … [he used the word riding] … Frank Junior or Frank Senior … or both of them. He called me a whore and a slut … I just remember him saying that Frank McBrearty Senior was sitting back laughing at us all being arrested and I just looked at him, like, what was he laughing for.*[314]

[312] Tribunal Documents, pages 473-475.
[313] Tribunal Documents, pages 488-489.
[314] Transcript, Day 474, page 63.

3.62. Giving evidence on this matter, John White said:

> *… I did not call her a whore and a slut. I mean certain things happen but she's obviously upping the ante in a big, big way and trying to include anything and everything she can. No, I didn't call her a whore or a slut. I didn't make any comment to her about either Frank McBrearty Senior or Junior. I couldn't envisage such a thing. I don't think it would have any great effect on her as regards making an admission. It would make her angry and make her, I suppose, very resentful towards me … It isn't that I don't recall, I didn't make a [comment like that] … I'm absolutely certain I didn't, no, no. Not in relation to sex, that they may have been using her. Like I said before laughing at her would be a different thing. But not that, no.*[315]

3.63. The Tribunal is satisfied that Mr. White and Detective Garda Dooley conspired together to dig up mere rumours and to use them against Róisín McConnell for the purpose of undermining her confidence. She was abused in her integrity as a woman and as a spouse in a horrible manner with the specific purpose of causing her to crack in her resistance of the idea that her husband had anything to do with the death of the Late Richard Barron.

3.64. In her testimony to the Tribunal, Róisín McConnell stated that she did not recall either Sergeant John White or Detective Garda John Dooley writing anything. She describes Detective Garda Dooley as "sitting there" and Sergeant White as "walking about the room". The Tribunal, however, must comment that the nature of whatever notes were taken is disingenuous and misleading. None of what was later admitted by Detective Garda Dooley, and subsequently by Detective Sergeant White, is included in those sets of notes. The Tribunal regards the notes that were apparently taken, in this context, as deliberately describing an untrue picture of what occurred in that interview room.

Garda Georgina Lohan - Interview

3.65. Mrs. McConnell's recollection of events is that at some stage during the day, after having been taken to the toilet, she had a conversation with Garda Georgina Lohan. She places this after the visit of Mrs. Anna Quinn to her at 18.16 hours. She does not recall, certainly as being of any significance, a brief time between 16.20 hours and 16.40 hours when Garda Lohan was with her alone. There does not seem to be a serious issue arising here, vis-à-vis Sergeant Lohan. If the

[315] Transcript, Day 564, pages 161-162.

conversation, to which the Tribunal will now refer, took place, it would not be to the discredit of Garda Lohan. Under Rule 1 of the Judges' Rules a police officer is entitled to speak to anyone as to the commission of a crime without cautioning them. The situation that emerges here, however, is that if a conversation of this kind did take place it would not have been easily admissible in evidence as it was in the nature of a private chat, and apparently clearly marked as such, and was not under caution. Róisín McConnell recalls the matter as follows:

> *Well, Georgina Lohan came up and took me and my mother back down to the first interview room that I had been in all day and then somebody must have came and told my mother she had to go. So Georgina Lohan stayed on with me and me and her were sitting talking and we were chatting about my child and all. Then Georgina Lohan was asking me would it be possible that Mark could have, you know, been away for a period of 15 minutes out the front door and I says "no, there's no way that he would, you know, that he would have left the pub that night". She was asking me was there a possibility that Frank McBrearty, you know, did go up the road and do it and I says "no, because you would have to know Frank, Frank wouldn't be the sort of person that would go up, you know, a dark road to wait for somebody. If he's going to do something, he'd probably do it where people would see" … Just having a general conversation and she said that she had no cigarettes and I said to her, I says, "oh don't worry, I says my mother brought me in twenty cigarettes", so I gave her a cigarette.*[316]

Sergeant Lohan's response to this account was to indicate that there was little or no opportunity after the visit from Mrs. Anna Quinn, Mrs. McConnell's mother, at 18.16 hours for her to have a chat with Róisín McConnell. The custody record indicates a family visit from 18.16 hours to 18.45 hours when a meal was furnished to Mrs. McConnell. It is, of course, possible that a chat occurred in the context of that meal. The more likely time, however, for such a conversation to occur would seem to have been in the twenty minutes after 16.20 hours. It is all too easy to get times mixed up in these circumstances. That comment also applies to Sergeant Lohan. In her evidence, Sergeant Lohan said the following:

> *Now, I just, I can't remember taking her mother up to the female rest room, but I have a clear recollection that she was in there, either she came a short time later or was already in there. I'm just not sure, but I do remember bringing Róisín McConnell up there*

[316] Transcript, Day 474, page 90.

and I remember the door was open up there and they were in there for a period and that was, it's the drugs office now in the Garda station, it's up on the first floor and it's on the other side of the Garda station … All I was told to do was to bring her there. It would have been a room where there was a desk and a couple of armchairs there. I think the desk may have been taken out at that time … Well, I didn't have any conversation with Mrs. McConnell up in that room … I don't remember bringing either of the two of them back down again. I have no recollection at all of that … Like that, I don't know if I stayed for the entire duration [of the visit] or not. I just can't remember that. I do remember bringing Róisín up to that interview room. But as regards after that, I can't remember. The next memory I have of that day is being in the public office. So whether I did nor did not bring her down, I just don't know whether I did or did not bring Mrs. McConnell, or bring Mrs. Quinn, up or down, I have no recollection whatsoever of it.[317]

3.66. It seems likely, given the reference by Mrs. Charlotte Peoples to seeing Mrs. McConnell sitting with a Ban Gharda as she passed by a room, that Garda Lohan was there with Mrs. McConnell.[318] It is difficult to say that a formal interview was initiated by Garda Lohan, or that she was sent in as some kind of a spy to befriend Mrs. McConnell with a view to trying to see on an informal basis where the truth might lie. Three possibilities emerge from these accounts, putting aside the issue as to when such a conversation might have occurred as being essentially irrelevant. The first is that Garda Lohan was sent on a mission by her colleagues to engage in a ruse of close personal attention and concern for Mrs. McConnell while attempting to probe her for the truth. The second is that Mrs. McConnell, in the course of general conversation, was speaking freely about matters and strayed onto these issues. The third is that Mrs. McConnell either mentioned some of these issues, or that they came up naturally in the course of conversation and that Garda Lohan simply allowed her to talk on.

3.67. The Tribunal's view is that a decision had been made not to put Mrs. McConnell into a cell. This was a laudable decision which contrasts markedly with her treatment at the hands of the Gardaí during the rest of her detention. It seems probable to the Tribunal that during the rest periods Mrs. McConnell was kept, in effect, under guard. It would have been wrong and impractical for the Gardaí to simply allow her to wander around the Garda station or to leave her in a room on her own. In practical terms this meant that Garda Georgina Lohan was designated to sit and chat with her. The Tribunal does not regard this as being unfair. It

[317] Transcript, Day 477, pages 154-156.
[318] Transcript, Day 456, page 98.

is not believed that Garda Lohan was sent in to spy on Mrs. McConnell. Her true role, in fact, was to keep her company. This was consistent with Garda Lohan's junior status at the time.

Garda Georgina Lohan – Alleged Presence During Ill-Treatment

3.68. In the course of the Tribunal hearings an issue arose as to whether Garda Georgina Lohan witnessed a portion of the disgraceful conduct meted out by Sergeant White and Detective Garda Dooley to Róisín McConnell. Mrs. McConnell's evidence was that she encountered Garda Lohan about "two or three times during that day" because she had been taken to the toilet by her.[319] As the official record, above quoted, indicates, there was a very short toilet break at approximately 16.10 hours and Garda Lohan then returned with Mrs. McConnell to the interview room for a period of approximately eight minutes when, it would appear, the normal practice would have been for notes to have been read over. The official record then shows that Garda Lohan stayed with Mrs. McConnell for approximately another twenty minutes until Garda John Harkin came into the room, closely followed by Inspector John McGinley. This time sequence is important. From the point of view of a person who was in custody and who was severely traumatised by disgraceful behaviour, the Tribunal believes that such a person is in the position of being an honest witness. An honest witness can easily be mistaken as to times and as to the personnel present. Mrs. McConnell said in her evidence:

> *… I would have remembered her if she had been sitting in alone with me … I can't remember her sitting in [with Sergeant White and Detective Garda Dooley] at the end of the third interview just that they would have left the room and just a couple of minutes later these other Gardaí would have came into the room … the only time I had a conversation with Georgina Lohan was after my mother left. Me and her sat for about a twenty to twenty-five minute period talking. That would have been after my mother left and that was whenever the last interview with John White and John Dooley commenced … I can't remember her being there … Well I don't know if it was towards the end of that interview. I just know that she took me to the toilet. I just couldn't tell times, but I know she did take me to the toilet about three times, or something, that day.*[320]

3.69. In her statement on this matter, Garda Lohan set out her position as follows:

> At 4.10pm as a result of a request from Detective Sergeant White I took the prisoner, Roisin McConnell, to the female toilet. I had no conversation

[319] Transcript, Day 474, page 71.
[320] Transcript, Day 474, pages 72-73.

> with the prisoner who appeared quite placid. I returned Roisin McConnell to the Interview room at 4.12pm where Detective Sergeant White and Detective Garda Dooley were. They interviewed the prisoner and I again took no part in the Interviewing of Roisin McConnell. At 4.20pm Detective Sergeant White and Detective Garda Dooley left the Interview room. I remained in the Interview room alone with the prisoner until 4.40pm and during this time I supervised the prisoner. Initially the prisoner's demeanour was calm but then altered in that she became tearful and suddenly emotional. While tearful she spoke of embarrasment of her being arrested and of the difficulty she found in the situation of sitting in a Garda Station as a prisoner. I did not caution Roisin McConnell while I supervised her nor did I interview her in any way concerning the matters for which she was arrested as this was not my function. I made attempts to pacify the prisoner by listening to her and asking if she required anything. At 4.40pm Garda Harkin entered the Interview room and began interviewing Roisin McConnell.[321]

3.70. Mrs. McConnell, however, places this conversation as being after 18.00 hours when her visit from her mother had ended.[322] Mrs. McConnell then places Garda John Harkin and Sergeant Padraic Scanlon and Garda Georgina Lohan coming into the interview room, very shortly after the termination of the interview with Detective Garda Dooley and Sergeant White, to interview her. If this timing is correct, that would have occurred at around 16.20 hours instead of around 16.40 hours. In her statement to the Garda Complaints Board, made on the 10th of February 1998, Róisín McConnell gave an account of this interview which, in part, states:

> After I consumed the meal, a uniformed member whose surname is Harkin and a Ban Garda named Lohan and a third Guard in plain clothes whose name I don't know came into the Interview Room. These three Guards questioned me but didn't abuse me in any way. A plain clothes Guard by the name of John McGinley then came into the interview room. The other three Guards were still there.[323]

3.71. Mrs. McConnell's memory is that Sergeant Padraic Scanlon and Garda Harkin came in together at this time. Mrs. McConnell said:

> *Because in the custody records I know Harkin and Scanlon wasn't in before dinner time and he was the boy that was along with Harkin in the car going down the road … He was the driver of the car whenever I was arrested, but I never ever knew who was the*

[321] Tribunal Documents, pages 108-2-108-3.
[322] Transcript, Day 474, page 75.
[323] Tribunal Documents, pages 337-338.

driver either … I just knew there was another guard and he wasn't in plain clothes, he was in a uniform … well if it wasn't Garda Scanlon, Garda Scanlon wasn't in with me the whole day. There is another Guard that isn't being mentioned in this Tribunal was definitely in the room with Georgina Lohan, John McGinley and John Harkin. There is another Guard in there.[324]

3.72. The main allegation against Georgina Lohan is that she was aware of, and specifically witnessed, some initial aspect of the maltreatment of Mrs. McConnell at the hands of Detective Garda Dooley and Sergeant White. The following exchange occurred between Tribunal counsel and Sergeant Lohan:

Q. When you went back down to Mrs. McConnell at 4.10 to take her to the toilet, how was she?

A. Again, she was – what I can remember of her that day, you know, she was pale and didn't say much. I don't think she even spoke to me, you know.

Q. Was there anything wrong?

A. She never told me that anything was wrong or she never made any complaint to me at all that day, you know, that she was ill treated in any way.

Q. Nothing at that stage appeared to be amiss with you at all?

A. No, Chairman.

Q. How were Sergeant White and Detective Garda Dooley?

A. I can't remember really how – I can't remember very much about Sergeant White and Garda Dooley that day.

Q. Did they seem composed?

A. I can't remember that.

Q. Did someone come and fetch you from the office?

A. Yes. I've a recollection of Sergeant White coming down and coming into the public office.

Q. Are you sure about that?

A. Yeah, I have a clear recollection of him coming in, yeah, I do.

Q. Shortly after that apparently, you come back with Mrs.

[324] Transcript, Day 747, pages 77-78.

McConnell, it might be two minutes, it might be five minutes, and return to the interview room?

A. *Yes, Chairman, yes.*

Q. *You then sat in on the interview, did you, or the balance of it?*

A. *Again from the custody record I'm going from, that I sat in for eight minutes, Chairman.*

Q. *Can you tell us about that?*

A. *I haven't got any recollection of it.*

Q. *At all?*

A. *I could tell you exactly where everyone was sitting in the last interview, you know, with Sergeant Scanlon and Garda Harkin.*

Q. *Mm-hmm?*

A. *I haven't got a clear recollection as to Sergeant White and Garda Scanlon being in there but, I mean, I don't remember at any stage through the day any ill treatment towards Mrs. McConnell whatsoever.*

Q. *We know there was a lot of it?*

A. *Yes, I'm aware of that.*

Q. *And it's quite clear that it was fairly extensive, more extensive in the evening but had been extensive just before you went up at ten past four?*

A. *Yes, Chairman.*

Q. *And I suppose what would be of assistance to the Chairman is your description, if you can give it, of what you saw when you went into the interview room, returning Mrs. McConnell to it?*

A. *I can't, Chairman, remember anything else. I can remember Sergeant White coming down to ask me to take her to the toilet and I cannot recall, as I say, what went on in the interview, whether they were reading over notes or whether*

they were continuing to question Mrs. McConnell or what happened for that eight minutes but I do know, Chairman, that no abuse of Mrs. McConnell took place when I was there.

Q. Was there any tension?

A. Maybe it was I had five and a half years (sic) service and I was oblivious to how Mrs. McConnell was, but I mean definitely I did not see Mrs. McConnell being ill treated at that time or any other time throughout the day.

Q. No, I'm asking you about the atmosphere in the room, if you can help the Chairman on that?

A. I cannot recall it, Chairman.

Q. How was Mrs. McConnell spoken to?

A. I cannot recall that, Chairman.

Q. Was there, there might have been smiles, there might have been a general stand off between them, there might have been aggression of some kind, can you assist in any respect?

A. I can't in that particular interview.

Q. And you can't assist as to what stage of the interview you arrived at?

A. No Chairman. But I know that I would have been only in with those two guards for a very, very short period that day[325]

3.73. At the time of these events, Garda Georgina Lohan was a probationary Garda. She could not have been expected to have much experience in relation to the interrogation of prisoners in serious cases. This makes it unlikely, one would hope, that she would have been inducted into a situation where her Garda colleagues were abusing a detainee in the savage manner that Róisín McConnell was most definitely abused. Whereas it might be thought that she could have picked up on some atmosphere within the room, it is difficult to know how she could have been expected to know from experience that a tearful or agitated response was so unexpected or unusual as to be definitely the result of ill treatment.

3.74. The issue as to whether Garda Georgina Lohan was in the interview room in the

[325] Transcript, Day 477, pages 111-114.

third interview could also be applicable to the fifth interview, which was also with Detective Garda Dooley and Sergeant White. In that respect, Róisín McConnell's evidence as to the question of whether Garda Lohan had witnessed any foul play by her colleagues was an emphatic yes. Mrs. McConnell's evidence was that Garda Lohan had been present for the shouldering episode, to which the Tribunal has referred, and for when Róisín McConnell was made to stand up and the chair that she had been sitting on was made to skid across the room in the fifth interview. Her evidence was that Garda Lohan got up and left the room. Asked why, Mrs. McConnell said:

> *The only thing I can think, that she was disgusted at the treatment that I was getting. That's just in my mind, but maybe that's not the reason she left the room. Maybe she has her own reasons for leaving the room … I don't recall [Sergeant White] making her leave. She left of her own accord.*[326]

3.75. In that regard, the Tribunal notes the manner in which this matter is pleaded by Mrs. McConnell's most experienced lawyers in her Statement of Claim dated the 22nd day of November 2001. This includes a particular that reads as follows:

> Caused or permitted Sergeant John White to order a female Garda officer to depart from the interview room and thereby left the Plaintiff alone in the said interview room with two male Members, namely Detective Garda John White and Garda John Dooley.[327]

3.76. Garda Dooley's account of this matter was that Mrs. McConnell asked to go to the toilet and Sergeant White went out and got Garda Lohan from another part of the Garda station. Detective Garda Dooley could not remember whether or not Garda Lohan might have been there for the very end of the interview after she returned from the toilet, but his view also was that the only people in the room for this abuse was himself and Sergeant White.[328]

3.77. An amended Statement of Claim was put in on the 4th of June 2002 by David Walley and Company Solicitors, wherein this exact formula is repeated.[329] While it is possible that a pleading in relation to Katrina Brolly that Sergeant White had directed Garda Joan Gallagher to leave the room might have been repeated by accident, it must be remembered that this statement of claim was signed by senior and junior counsel. It is the job of lawyers to get these things right and to plead facts only on instructions from their client. The final form of Mrs. McConnell's lawyer's formal pleading indicates copious underlinings consequent on amendments. Garda Lohan's response in relation to this matter was to the

[326] Transcript, Day 474, pages 95-96.
[327] Tribunal Documents, page 577.
[328] Transcript, Day 476, pages 56-61.
[329] Tribunal Documents, page 584.

effect that she couldn't remember very much about Sergeant White and Detective Garda Dooley that day.[330] Her position is fairly summarised by the following quote:

> *I haven't got a clear recollection as to Sergeant White and Garda Scanlon being in there, but, I mean, I don't remember at any stage throughout the day any ill treatment towards Mrs. McConnell whatsoever … I can remember Sergeant White coming down to ask me to take her to the toilet and I cannot recall, as I say, what went on in the interview, whether they were reading over notes or whether they were continuing to question Mrs. McConnell or what happened for that eight minutes, but I do know, Chairman, that no abuse of Mrs. McConnell took place when I was there.*[331]

3.78. The Tribunal would like to comment, further, however, that even as a very young Garda, Georgina Lohan, if she had known of this abuse, would have been expected to make all efforts to bring it to a halt. This comment must refer back to the evidence of Mrs. McConnell that during her abuse a lull was called in the proceedings because one of the Gardaí involved in abusing her thought that he had heard movement in the corridor outside. The systems designed for the care of prisoners in Garda custody did not work adequately and could be expected in general not to work. No-one of rank more senior to Garda Lohan and of service more experienced than her was assigned to deal with Mrs. McConnell; she herself was only assigned on a very limited basis. The Tribunal would have expected, in particular, that all of the custody officers and that Inspector McGinley, in particular, either ought to have known, or ought to have put themselves in a position to know, what was happening, and what had happened to Mrs. McConnell. The Tribunal finds it impossible to safely place that responsibility onto the shoulders of Garda Lohan. The Tribunal would like to have more certainty in making its comments in this regard, but finds that its fact finding mission is undermined by the deceit on other matters of Mr. McGinley and the alteration to the important notes of interview effected through the agency of Mr. McGinley, Sergeant McEntee and Garda Harkin. This makes the statement of any position as regards what happened to Mrs. McConnell that day necessarily fraught with more uncertainty than should be the case. In that regard, the Tribunal must reiterate that the notes actually taken, as an apparent record of the interview by Sergeant White and Detective Garda Dooley, bore no real relationship to what had occurred to Mrs. McConnell while in their custody.

3.79. There is a very serious issue which the Tribunal has to resolve as to whether Georgina Lohan was physically present at a very initial stage of

[330] Transcript, Day 477, page 112.
[331] Transcript, Day 477, page 113.

the abuse of Mrs. McConnell. The Tribunal's view is that it is possible that a mistake as to times and the presence of particular personnel have been made by Mrs. McConnell. This does not in any way undermine the overall credibility of her evidence. This may be attributed to the abuse which she received while in Garda custody. The Tribunal is not satisfied that Garda Lohan was present and witnessed abuse by Sergeant White and Detective Garda Dooley.

3.80. The Tribunal now proposes to go on and deal with the ending of the interviews, where some issues of controversy arise.

Release from Custody

3.81. Mrs. McConnell alleged that on the way back to the interview room, having been brought to the toilet at the termination of the fifth interview, Garda Martin Leonard, the custody officer, stopped her and indicated to her that she did not have to go back into the room prior to her release from custody. This tends to imply that he had some inkling as to what was going on in the interview room, as indeed he should have if he was doing his job properly. Mrs. McConnell's account is that she was then asked whether she had any complaints to make. She answered in the affirmative and indicated that she did. Her conversation with Garda Leonard was recounted by her to the Tribunal as follows:

> *Yes, I definitely said to him that I had a complaint about the two boys pushing me into one another and he laughed at me and said "do you need a doctor?" and I just looked at him and I just thought to myself: you're as bad as the other two in there, and I says "no", and he says "I suppose you're not going to sign this either", that was the release form … and I didn't sign it … Afterwards, whenever I was released, and I think it was [Garda Lohan] phoned my mother's house for my brother Paul to come down for me, she turned around and said "for what it's worth, Róisín, I believe you", or "I believe yous", I don't know the exact words, but she said I believe you or it was yous.*[332]

3.82. Garda Lohan's recollection of any conversation which she might have had with Róisín McConnell, a conversation which she accepts probably took place, would be to the effect that she may have tried to say something of comfort to a prisoner on her release. It does not seem a serious matter for a Garda to attempt to comfort a person who is so clearly put into a state of stress. In her evidence she stated:

> *I'm sure I would have said something to her going out the door. Whether I said I believe you or not, I mean, I wasn't involved in the*

[332] Transcript, Day 474, pages 107-108

investigation, it wouldn't be for me to say something like that. However, I'm sure that I would have said something to comfort. Let it be, it'll be all right or something like that, you know … to every prisoner, you know, going out the door, you would usually say something to them.[333]

3.83. On the issue of whether the very serious duty of recording a complaint from a prisoner was or was not carried out by Garda Leonard the Tribunal refers to the custody record, which states:

8.10 pm:	Prisoner Released from Provisions of Sec 4 CJA 1984 making no Complaints. No Property to Return. Phone [redacted] to arrange transport home.
8.12 pm:	Prisoner released. MJL.[334]

Garda Leonard was questioned in relation to this matter by counsel for the Tribunal. It is to be observed that in relation to the detention of Mr. Mark McConnell, Garda Leonard had noted in his custody record that allegations had been made by Mark McConnell and that he, as custody Garda, had gone in and checked with Mark McConnell who indicated that he did not need medical attention.[335] There is controversy as to whether this action was for form's sake or done genuinely for the purpose of making a proper record. This is considered in Chapter 4. In this instance, however, Garda Martin Leonard agreed that Mrs. McConnell did make a complaint, but he decided not to note this. This, for whatever reason, he blamed on his colleagues:

I think it's terrible, like, what has happened. I think it's terrible because these are colleagues that put me in this position. I think it's disgraceful and then nine and a half years [later] this quantum leap of truth comes out.[336]

3.84. The following exchange occurred between counsel for the Tribunal and Garda Leonard:

Q. Okay. I'm going to go through it one last time. "You don't need to go back in there", you agree you said that?

A. Yes.

Q. "Where is my coat?" You agree she said that?

A. Yes.

[333] Transcript, Day 478, page 17.
[334] Tribunal Documents, page 383.
[335] Tribunal Documents, page 320 (Mark McConnell's book of evidence).
[336] Transcript, Day 478, page 126.

Q. Well, "I'll send somebody in to get it for you", you agree you said that?

A. Yes.

Q. "Do you have any complaints?" You agree you said that?

A. Yes.

Q. She said "Yes, I was pushed"?

A. Yes.

Q. You agree she said that?

A. Yes.

Q. But not "shoved". You agree you said, "Do you need a doctor"?

A. I said … (interjection)

Q. "Do you want a doctor"?

A. "I have to call in a doctor".

Q. Okay. You disagree that you were smiling when you said that, but you do agree that she said "no, I don't want a doctor"?

A. She said "don't bother" …

Q. You say [in your statement of evidence] she signed the record to say that she'd no complaint. She didn't?

A. Well, that's an error, isn't it. I mean it's obvious.

Q. Well it's a very, very, very, very, very serious error if you don't mind me saying so, because when something is there in black and white, when you are putting in the exact opposite in your statement, it is extraordinary?

A. It's in black and white she didn't sign the custody record. You can put it both ways. You know, you can be very uppity about this, if you want. She didn't sign the custody record. It's there for anyone to see. The custody record is the record, produced in courts. Produced anywhere. Produced here. Right. Any statement I make after these are secondary statements, these are the statements, these are the records.[337]

[337] Transcript, Day 478, pages 13 -140.

3.85. The Tribunal prefers the evidence of Róisín McConnell on this matter. The evidence given by Garda Martin Leonard to the Tribunal may, on the face of it, be regarded as ludicrous. This, however, is to characterise his misconduct in relation to serious duties in a manner which is insufficiently grave. To fail to carry out these duties in a proper manner has had the result, in part at least, that the misconduct which Mrs. McConnell suffered has remained hidden over a period of ten years. Had he performed his duties as member in charge conscientiously and honestly, and had he given truthful evidence, then the entire nature of this scandal would have been uncovered earlier. Instead he has chosen to be part of a cover up.

The Fourth Interview

The Forging of Interview Notes

3.86. One of the most remarkable and confusing controversies to arise out of the detention of Róisín McConnell concerned the circumstances surrounding the changing of interview notes taken by Garda John Harkin. Garda Harkin interviewed Róisín McConnell twice during her detention in Letterkenny Garda station on the 4th of December 1996. His first interview was conducted with Detective Garda Padraic Scanlon between 12.05 hours and 12.45 hours (referred to hereafter as the 'morning interview').[338] Although Mrs. McConnell has no recollection of this interview, and gave evidence that Detective Gardaí White and Dooley were the only guards who interviewed her before she got her lunch that day,[339] the Tribunal believes that she is mistaken in this regard, and that such an interview did in fact take place. In any event, nothing in particular turns on this first interview, as no allegations of wrongdoing arise in respect thereof.

3.87. The second interview that Garda Harkin was involved in that day occurred between 16.40 hours and 18.15 hours (referred to hereafter as the 'afternoon interview') and it was the fourth interview conducted with her that day. Although Garda Harkin conducted certain parts of this interview on his own, the custody record indicates that Inspector John McGinley entered the interview room at 16.45 hours and remained there until 18.00 hours.[340] It is likely that Garda Georgina Lohan was also present in the interview room for a portion of the time, but did not participate in the questioning process. The issue as to whether Inspector McGinley made certain derogatory comments concerning members of Mrs. McConnell's family during this time has already been dealt with earlier in this chapter.[341] It is accepted, however, that during his time in the interview room on that day, Inspector McGinley put a number of questions to Mrs. McConnell. He

[338] Tribunal Documents, pages 405-410. This has earlier been described as the second interview with her that day; see paragraphs 3.39-3.44.
[339] Transcript, Day 474, page 40.
[340] Tribunal Documents, page 382.
[341] See paragraphs 3.47-3.48.

also outlined the Garda theory as to how the Late Richard Barron was murdered.[342] On its face, these questions and the Garda theory (or scenario) were recorded accurately in the notes of interview compiled by Garda Harkin, and also, to a lesser extent, in notes that Inspector McGinley claims to have taken himself at the time. In evidence to the Tribunal, however, it emerged that whereas Garda Harkin initially recorded this portion of the interview in an accurate manner, he subsequently amended it at the behest of Inspector McGinley. The authenticity of Inspector McGinley's notes also came into question at the Tribunal. The nature of these amendments, the manner in which they were effected, the actions of other parties in either assisting or uncovering the mystery behind them and the subsequent denials in respect thereof raised further serious questions as to the integrity of the entire interview process.

The Amendments

3.88. The Tribunal has commented on a number of occasions about the inherent difficulties that exist in accurately recording notes of interview in the absence of any electronic or audiovisual aids. With the best will in the world, an individual taking a handwritten note while attempting to keep up with the general flow of conversation that sometimes occurs in an interview process will make mistakes and omit to include certain things that were said. It is also an almost inevitable consequence of this system that remarks or questions that the recorder feels are superfluous or damaging to the process itself will be omitted from the memorandum. The Tribunal does not in any way single out Garda Harkin for criticism in this regard. His notes of interview are generally much more comprehensive relative to the duration of the interview in question than those of many of his colleagues. It is, however, an inevitable conclusion in the light of his subsequent preparedness to enter into a conspiracy to amend his notes of interview that the notes of interview that were originally taken by him were not, and could not, have been seen by him to have been accurate to a fault. This fact, the Tribunal believes, may have made it easier, although no more excusable, for an individual such as Garda Harkin to enter into a conspiracy to amend notes of interview.

3.89. It is generally accepted by the parties to the conspiracy that what was proposed in effecting the amendment to the notes recorded by Garda Harkin was to remove two questions that Inspector McGinley had put to Mrs. McConnell during the course of the afternoon interview. The preamble to the scenario that he put to Mrs. McConnell, which represented the Garda theory as to her husband's alleged involvement in Mr. Barron's death, and which followed directly after the two questions, was also omitted from the amended memo of interview. Garda

[342] See the scenario as put by Inspector McGinley at paragraph 3.12 above.

Harkin gave evidence that he was instructed to remove this preamble also, whilst Mr. McGinley and Sergeant Brian McEntee, who acted as an intermediary in respect of the amendment request, denied this. This aspect will be dealt with in greater detail later. In any event, the portion of the interview that it was proposed to omit (with the preamble included) was as follows:

Q. What sort of a woman are you? Are you a good woman?

A. There are worse than me.

Q. Are you a religious woman?

A. The prisoner shrugged her shoulders and laughed.

Q. I would say you are a good person and I'm going to tell you what happened that night …

Garda Harkin is Approached by Detective Inspector McGinley

3.90. The investigation into the death of Richard Barron commenced in October 1996, with a large number of statements taken in the following weeks in the lead up to the arrests on the 4th of December, 1996. Those arrests in turn generated a series of memoranda of interview, many of which were filed at the time or in the days after the arrests, but some of which were not filed until much later. It was also the practice of interviewing Gardaí to submit statements in respect of their dealings with particular detainees, and many of these statements, particularly those taken by the various note-takers, contained a verbatim account of the various interviews conducted by that member with the individual detainee concerned. It was not unusual for the incident room staff to have to issue reminders to interviewing members who had, for whatever reason, not submitted either the memoranda of interviews drafted by them from their notes of interview or their statements. It was also general practice for the incident room to issue requests for a member to submit his/her original notes of interview, if he/she had not already done so, so that these could be retained on the working file on which the final file submitted to the D.P.P. was based. For a clearer understanding of the sequence of events set out in this section of the report, the term 'notes' should be taken to refer to the original handwritten notes taken by the interviewing Garda in the interview room, while the term 'memorandum of interview' should be taken to refer to the typed copy of the notes that would ordinarily appear in the final file to be submitted to the Director of Public Prosecutions. Needless to say, in the ordinary course of events, the content of both should be identical.

3.91. Garda Harkin gave evidence that on the day of the arrest of Róisín McConnell, he

submitted the original notes of the morning interview to the incident room and kept a photocopy of these notes himself. He also gave evidence that for some unknown reason he did not follow the same procedure with the afternoon interview notes, and that he brought them home with him without leaving a copy in the incident room.[343] Garda Harkin gave evidence that he took no further action in relation to the various notes of interview until he received a request to submit his statement in respect of his overall dealings with Róisín McConnell in a reminder signed by Superintendent Kevin Lennon on the 21st of August 1997.[344] As a result of this request, Garda Harkin prepared a statement dated the 3rd of September 1997. He typed up the memoranda of interview from the photocopied version of the morning notes and from the original version of the afternoon notes. He then prepared the statement in typewritten form, copying and pasting the contents of the memoranda of interview into the relevant portion of the statement. Garda Harkin forwarded this statement and the two memoranda of interview to the incident room. He is not sure how soon after the 3rd of September 1997 he submitted these documents, but he believes that it was shortly thereafter.[345] The statement submitted by Garda Harkin on that date was given the statement number '516'.[346] It is submitted by Garda Harkin that what he produced at that time was an entirely accurate reflection of his notes of interview.

3.92. The circumstances in which Garda Harkin's documents recording the content of the afternoon interview came to be amended appears to have occurred shortly after he submitted his statement and the two memoranda of interview. It apparently arose out of a chance encounter between Garda Harkin and Detective Inspector John McGinley in which the conversation turned to the interview in question. Although neither party confirmed the point in evidence to the Tribunal, it seems to be an inescapable conclusion, given the timeframe involved and the nature of the matters discussed, that the context of the conversation was general concern amongst Gardaí about the ramifications of the civil action being brought by Mrs. McConnell. Garda Harkin's account of his encounter with Detective Inspector McGinley was as follows:

> *Following submission of my typed statement, my signed statement and the notes,[347] I was in Letterkenny station one afternoon, Letterkenny would be my district headquarters, I was based in Newtowncunningham, I would call in there periodically. And in the corridor I met Inspector John McGinley … He spoke with me and*

[343] Transcript, Day 492, pages 7-10.
[344] Tribunal Documents, page 1073.
[345] Transcript, Day 492, pages 10-14.
[346] This number appears in the Statement Index book to the Barron investigation: Tribunal Documents, page 869.
[347] It is clarified elsewhere in his evidence that what Garda Harkin refers to here as 'notes' was in fact the typed memoranda of interview.

the topic moved around to the notes of the interview, or to the detention rather. And from speaking to him it was obvious that he had got sight of my notes and he said, he commented to me, he said somebody said we were a bit hard on her in that interview, or somebody said we were a bit hard on her, I can recall that anyway, I'm not sure about in the interview. I was a little taken aback at that comment. I certainly … I knew it must have been something to do with the notes because I didn't consider anything inappropriate or I didn't consider there was any question of ill treatment towards Mrs. McConnell by anybody present during that interview. So I wasn't too sure what he was talking about. But it was obviously the note because he said to leave it with him. Now, I knew, I was thinking to myself then well, you know, he was present during the interview, I did record notes, he wasn't there at the termination of the interview. I had never in the intervening period, between the 4th December '96 and this time, whenever it was, in September, late September '97, I had never shown him the notes that I recorded, he had never looked to see them and I thought to myself, you know, well maybe that was wrong and unfair of me, that I ought to have given him an opportunity since he was included in the notes … I don't know if he said she's made a complaint or there's been complaints made about her treatment, our questioning of her…And for whatever reason … I said well I still have the notes of that interview, the original notes of that interview. Whatever prompted me to say that, I said it, I volunteered that. And he said, leave it with me. That's all that was said on that occasion … This happened following submission of my notes and my statement … I believe it was a period of weeks … I believe it was more than a week. I would have put this at towards the end of September.[348]

3.93. It is apparent from the context and nature of the conversation outlined above that Detective Inspector McGinley had at that stage read a copy of either the statement or the memorandum of the afternoon interview submitted by Garda Harkin sometime shortly after the 3rd of September 1997. Mr. McGinley confirmed this when he gave evidence to the Tribunal to the effect that he was also asked to urgently submit his statement to the incident room at the beginning of September 1997. Upon receipt of this request, he contacted the incident room to get a copy of Garda Harkin's statement and made his own statement from that.[349] In the context of subsequent events it is of importance to note that the

[348] Transcript, Day 492, pages 14-18.
[349] Transcript, Day 495, page 33.

statement produced by Detective Inspector McGinley at that time was a typed statement[350] that included all of the original questions subsequently extracted by Garda Harkin from his own statement and memoranda. John McGinley's account of the meeting on the corridor accords with that of Garda Harkin in many respects, but there were a few significant differences, particularly in relation to its conclusion and what was to happen next. He gave evidence that:

> *My recollection of meeting Garda Harkin, I say it could have been October perhaps that I had said to him that we had conducted an interview. I had put some questions to her, I felt the two questions were inappropriate, that they were part of the general conversation and I didn't expect them to be recorded … What I said to Garda Harkin, I believe, was when I saw the interview notes subsequently that there was two questions that I wasn't happy about, I felt they weren't a part of it…Garda Harkin may have said that he still had the original notes, I don't recall that … And I had made my own statement of evidence at that time and I had said to Garda Harkin that we had conducted this interview and that I was, I suppose disappointed that those two questions had appeared in it because I felt it was general conversation. [The meeting] wasn't planned … Well I was annoyed … I was probably disappointed that they were there and I probably was thinking in my own mind at some stage of approaching him to see could we take them out of it … I think it was [in the nature of a reprimand] to this extent, Chairman … Not so much a reprimand, but I felt maybe inexperience on his part or whatever that a casual conversation should appear in it … I think he just agreed that, he just said that he recorded what was asked and that was all … And that was the way we left it. I didn't ask him to do anything, he didn't say he would do anything and we acknowledged that the questions were asked and he had them recorded and I felt it was inappropriate and that was the way that we left it at that time.*[351]

3.94. The Tribunal accepts the evidence of both Gardaí as to the casual nature of the first encounter between them. It is apparent that no concrete plan was put in place at that time to amend the record. It is alarming, however, that Garda Harkin so readily identified a mechanism whereby such a change might be effected. To amend notes in such a manner completely undermines the integrity of the interview process, something that Garda Harkin was fully aware of. One would have expected him to reassure Detective Inspector McGinley that they had done nothing wrong, and that there was nothing to worry about; that the questions

[350] Tribunal Documents, pages 190-196: the statement was numbered '529' on the working file and '43' on the final investigation file. A copy of the statement appears as document 5 in Appendix A.
[351] Transcript, Day 495, pages 29-37.

could at their height be regarded as robust and inappropriate, but not indicative of anything more sinister. In the context of the concern that an individual might have whose conduct will come under the spotlight in the context of a civil claim, the content of this conversation is explicable, if inappropriate. The conduct that followed rendered this conversation the basis of a conspiracy to alter evidence.

The Involvement of Detective Garda Brian McEntee

3.95. After the initial contact between Detective Inspector McGinley and Garda Harkin, no action was taken for a number of days. At that stage, for some reason that remains a mystery to the Tribunal, owing to the reluctance of the parties involved to explain the matter in a rational way, Detective Inspector McGinley recruited Detective Garda Brian McEntee to act as an intermediary to encourage Garda Harkin to submit amended notes. It seems probable that Detective Inspector McGinley chose this course of action to impress upon Garda Harkin the notion that the request had been in some way regularised or, perhaps, to distance himself from the wrongdoing which he had initiated. Sergeant McEntee gave the following account of the circumstances in which he came to be involved in the matter after an encounter with Detective Inspector John McGinley:

> *I was what was called the border superintendent's clerk in Letterkenny. I was a D/Garda and John McGinley was D/I, the Detective inspector … So in effect he would be my boss on a day-to-day basis in Letterkenny…I was working in one of the offices one night, or one evening and Detective Inspector McGinley came in and he was reading and he said … he read out the two questions: are you a good woman, are you a religious woman? And he said, what do you think of that? I says, what's that about? He says, oh that's in relation to the Róisín McConnell interview. I said, what's the problem? Ah, he says, no, they're inappropriate. I couldn't see and I said, what's the big deal. He says … you shouldn't ask a lady about her religion. Again, I couldn't understand what the issue was. He went on about it, no, he said, no that's … you shouldn't do that. So it was sort of hanging in the air there for a while and then he went on to the fact that it was himself and John Harkin were in the interview at the time … He was going through the two questions and he said, look it, he says, will you speak to John Harkin and see will he take those out. He says, I shouldn't have asked those, they're inappropriate. They shouldn't have went in. You know, asking a woman about her religion or asking is she a good woman, that shouldn't have went in. Again, I was saying like nothing turned on it, it was a simple*

comment during a conversation. I couldn't see the harm in it … I said I'd talk to John Harkin and I was sort of pushing it from my mind … and maybe a few days after it John McGinley asked me again, he said did you see Harkin yet and I hadn't and I said no I couldn't get him. So then I said I would contact him and I contacted John Harkin.[352]

3.96. Garda Harkin gave evidence that some weeks after his initial contact with Detective Inspector McGinley, Detective Garda McEntee phoned him at work. Garda Harkin and Detective Garda McEntee knew each other well as they had both served in the Donegal Division for a number of years at that stage, although it does not appear that they were close personal friends.[353] Garda Harkin gave evidence that he was fully aware that Detective Garda McEntee was at that stage serving as the border superintendent's clerk in Letterkenny. Garda Harkin's account of the phone call from Detective Garda McEntee was as follows:

He contacted me by telephone at Newtowncunningham Garda station. I was working and it was a telephone call late at night, 11 o'clock or close to midnight. He alluded to the Róisín McConnell interview. I was surprised at that at the time … it pretty quickly got to this so I can't say what the lead up to it was. But it was obvious that he knew what he was talking about, in my mind…I took it that he was acting at the behest of Inspector McGinley, because as I said Inspector McGinley was the only person who I had any contact with in relation to it… [He wanted me] to delete material from the statement, from my notes of interview … Those two questions and two answers … And an introductory line to the scenario to Mrs. McConnell…I did not ask him why... So I retrieved my file and he obviously had the file in front of him or the note in front of him, because it was him that dictated the changes to me … I queried was there much to it and he said no, very little, and he outlined the proposed changes to me. And I viewed them and I said that's okay, and the response was to carry out the request … I viewed the questions and the answers and it was two questions and there was one answer and this introduction, this part of the question, the way the scenario was introduced. And in my mind I didn't consider that it was a serious matter to do this … So I made a decision that I would carry out the request. My concerns then were that I knew what I had in the system already, I had submitted my statement and I had submitted my notes, albeit the typed copy. And I expressed this concern to Brian McEntee. I told him exactly

[352] Transcript, Day 494, pages 69-86.
[353] Transcript, Day 492, page 38.

what it was. And he responded that is my job … Now I took it that it was his responsibility to remove or retrieve the material that was already within the system … and to substitute what I was going to forward to him … What I did was prepared a fresh typed statement and a fresh note with the deletions requested … And I placed them in an envelope to Brian McEntee. And I left it and I didn't hand it to him now, I took it to Letterkenny station and left it for his attention…I know I carried out the job maybe that night or whatever, but it was delivered. It wouldn't have taken very long, I can't say when.[354]

3.97. Sergeant McEntee's account of his conversation with Garda Harkin was not dissimilar to that of Garda Harkin in many respects. However, he downplayed the notion that he was doing anything other than passing on a message in an entirely disinterested manner. He also flatly denied that he asked Garda Harkin to delete the preamble to the scenario, or that he gave Garda Harkin any assurance that he would retrieve and replace Garda Harkin's earlier statement from the file. Sergeant McEntee's evidence to the Tribunal was as follows:

I don't know was it that I spoke to him on the telephone or did I meet him at the station in Letterkenny. When I did I spoke to John Harkin and I relayed the message from John McGinley … The conversation would have started off as you know with a general nicety and then I went in and said that John McGinley, I was talking about … we were talking about the interview with Róisín McConnell and I said that John McGinley was unhappy with two questions that he had put during that interview with Róisín McConnell. He said he felt they were inappropriate and he was embarrassed by them … And then I think maybe John was taken aback by me asking about the questions, as I said about the good woman, religious woman, and he said to us is there anything in this or what's the big deal, he just thinks they're inappropriate, they shouldn't have been asked. Maybe it was because Raphoe or whatever it is, you shouldn't ask somebody about their religion. So I spoke to John Harkin and on finishing the conversation there was nothing agreed when I left John Harkin … [I asked him] to take them out, would he take them out of the interview, will he take them out of the memo of interview … There was no undertaking given. He never said I will or I won't. I don't know did he say leave it with me or I'll think about it, but I know for certain he didn't say I'll definitely do that or I'll do that … And I didn't look for an

[354] Transcript, Day 492, pages 39-53.

> *undertaking from him to do so. You know, I didn't push him and say are you going to do it or not or anything like that there and we left the conversation … The two questions what sort of a woman are you, are you a good woman, are you a religious woman, that's what was asked and that's what I asked John Harkin … I think when I called it out to him he said -- he read out the two passages … If John McGinley had asked me to say and change the scenario situation I would have done so. I wasn't asked, nor did I ask John Harkin to do so.*[355]

3.98. The Tribunal accepts the account of this conversation given in evidence by Garda Harkin. It does not accept Sergeant McEntee's assertion that he did not ask Garda Harkin to amend the preamble to the scenario. Garda Harkin had no reason for taking it upon himself to make any amendments additional to those requested. Further, the proximity of the amendment to the preamble to the two questions that Sergeant McEntee acknowledges he asked Garda Harkin to remove, is sufficient to satisfy the Tribunal that the amendment to the preamble formed part of the request he made to Garda Harkin: the preamble follows the two questions immediately. With regard to Sergeant McEntee's assertion that Garda Harkin gave him no undertaking as to whether he would make the amendments or not, the Tribunal is satisfied that this version is incorrect. Considering the fact that he went to the trouble of phoning Garda Harkin with what can only be described as an extraordinary request, forming no part of his regular police duties, it is incredible that he would simply leave the matter hanging in the air, with no idea as to whether Garda Harkin would comply with the request. Even for the benefit of his subsequent dealings with Detective Inspector McGinley, he would have needed at least some assurance from Garda Harkin that the request would be acted upon.

3.99. The Tribunal accepts Garda Harkin's evidence that not only did Detective Garda McEntee outline the specific matters that were to be amended, but that he reassured Garda Harkin that he would take it upon himself to make the necessary switches of documents on the file. Sergeant McEntee gave evidence that he did not make the switch in question, and also that he would not have had the opportunity, given that he had no involvement in the investigation.[356] The Tribunal heard evidence of how supposedly difficult it would have been for an ordinary Garda with no involvement in the investigation to access the files to effect such a switch, but was unconvinced by that evidence, given the frequency with which the

[355] Transcript, Day 494, pages 69-91.
[356] Transcript, Day 494, page 107.

Tribunal's business has been hampered by the disappearance of original documentation and exhibits from Letterkenny station over the last number of years. Indeed, the disappearance of original statements from the final Barron file is commented upon further at a later point in this chapter. In any event, in connection with Garda Harkin's documents submitted subsequent to the phone call from Detective Garda McEntee, the Tribunal is satisfied that the fact that the switch in documentation either did not occur at all or was bungled so that the original statement and memorandum of interview remained in the system emboldened Sergeant McEntee to deny to the Tribunal that he gave any assurance about it being his job to effect the switch to Garda Harkin. It may be the case that Detective Garda McEntee never in fact intended to make the switch himself, but that he merely intended to pass the documents on to Detective Inspector McGinley to complete the task himself. Such an explanation, allied with an acceptance that he gave some sort of assurance to Garda Harkin, would have been at least plausible. However, Sergeant McEntee simply denied to the Tribunal that any plan was made or assurance given at that time. The Tribunal does not accept this evidence. The Tribunal is satisfied that Garda Harkin would not have submitted the amended documents into a void. There had to have been some reasonable plan of action outlined to him, and the Tribunal is satisfied that Detective Garda McEntee communicated that plan to him on the night of the phone call.

The Plan Goes Awry

3.100. Garda Harkin gave evidence that as a result of his phone call with Detective Garda McEntee, he prepared a fresh typed statement and a memo of interview, probably on the evening in question or shortly thereafter. He placed these in an envelope addressed to Brian McEntee and dropped the envelope into the station in Letterkenny for the latter's attention. He did not call Detective Garda McEntee either before or after this to check whether or not he had received the envelope.[357] Sergeant McEntee gave evidence that he never received the envelope in question, and certainly did not take any steps to place the amended documents on the file.[358] The Tribunal is sceptical about this assertion. However, as there is no conclusive evidence that these amended typed documents submitted by Garda Harkin did in fact make it onto the file at that time or indeed subsequently, the Tribunal feels that it can not rule out the possibility that the envelope went astray. Mr. McGinley gave evidence that, as far as he was concerned, he expected to receive the amended documents directly from Garda Harkin, and would have then decided exactly

[357] Transcript, Day 492, pages 52-53.
[358] Transcript, Day 494, pages 101-102.

what to do with them. When he did not receive the amended documents at the time, he claims to have forgotten about the matter until the issue resurfaced five months later in February 1998.[359] In support of this proposition is the fact that he appears to have taken no steps at that time to ensure that his own statement, apparently submitted in or around that time, was amended to reflect the alterations he had suggested through Detective Garda McEntee to Garda Harkin.

3.101. **The Tribunal does not accept the proposition that, having gone to the trouble of recruiting Detective Garda McEntee to liaise with Garda Harkin about amending his statement and memorandum of interview, Detective Inspector McGinley took no further steps to ensure that the file was adjusted accordingly.** The Tribunal believes that the event of which Garda Tina Fowley gave evidence, if it occurred, may have been an attempt by Detective Inspector McGinley to carry through an exchange of documents so as to substitute Garda Harkin's amended documentation for the documentation already on file. Garda Tina Fowley, who was working on the investigation file at the time, gave evidence that on the 26th of September 1997, Detective Inspector John McGinley entered the office and requested the original notes of interview that had been prepared by Garda Harkin. Garda Fowley described the incident as follows:

> *On the Friday, the 26th of September 1997, I was working in the traffic office on the custody files. That particular week there had been a lot of goings on in the station. There had been some dispute between Inspector McGinley and Superintendent Kevin Lennon. The investigation into the Barron death was being taken over officially … not taken over, because Kevin Lennon was always responsible for it, but it was being taken over personally by Kevin Lennon and he had assigned a new team of individuals to carry out the investigation. I was aware of this on the Friday evening. Sometime before 6 p.m. coming up on six o'clock, Inspector McGinley came into the traffic sergeant's office and he looked for the Róisín McConnell notes of interview, the original notes of interview of Róisín McConnell. I had them on the table in front of me, underneath another file and I stated to him that I did not have them and I did not provide him with them. He did not ask me for a copy or ask me to leave them to him later on or get them to him when I did have them in my possession again … [I told him a lie] because given the climate in the station that particular week there was something going on that I was not aware of. I wasn't happy with the notes of interview and he was an individual involved in*

[359] Transcript, Day 495, pages 47-51.

> *the particular notes of interview and the particular question. I was suspicious of him…To be quite blunt about [it I thought he might]…get rid of them, to rectify the discrepancy that was in them in some way.*[360]

3.102. This account is supported to some extent by the evidence of Kevin Lennon, who gave evidence that he recalled Garda Fowley appearing at the door of his office at that time and informing him that Inspector McGinley had approached her looking for the notes of interview of Róisín McConnell. She wanted to know what to do with them and told him that there were discrepancies in the notes. He directed her to retain the notes and assured her that he would send somebody over from the incident room to collect them from her. He went over to the incident room and told somebody there, probably Detective Sergeant John White, that Garda Fowley had documents that he should collect and keep in the incident room. Superintendent Lennon said his primary concern was to ensure that all of the original documentation was transferred over to the possession of the new investigation team, of which Garda Fowley was not a member.[361]

3.103. John McGinley denied that this incident ever took place, and claimed that he had no recollection of speaking to Garda Fowley at any time about anything related to the Barron file.[362] He described the scenario as put by Garda Fowley as being absurd.[363] As far as he was concerned, he could not have asked for Garda Harkin's interview notes on that date, as according to the evidence of Garda Harkin, his original interview notes were not in the system at that time.[364] He also drew the Tribunal's attention to his Form A85 (i.e. overtime claim form) for the 26th of September 1997.[365] It indicates that although he was originally scheduled to take a rest day, he was in fact on duty for eleven hours until 21.00 hours that night due to a sudden death investigation in Lifford. It is noted that Mr. McGinley is not sure at what stage that afternoon he left Letterkenny to go to Lifford, although he believes it was maybe three or four o'clock.[366] There does not appear to be any way of establishing this independently. The Tribunal does not believe that the evidence in relation to Detective Inspector McGinley's duty in Lifford is sufficient to undermine Garda Fowley's account of the incident occurring shortly before 18.00 hours.

3.104. The clear implication of Mr. McGinley's denial that the incident with Garda Fowley occurred at all is that Garda Fowley has deliberately invented the account to do down Mr. McGinley. When asked to comment on what motivation Garda Fowley would have to invent the story, Mr. McGinley indicated that he believed that

[360] Transcript, Day 478, pages 197-198.
[361] Transcript, Day 493, pages 126-128.
[362] Transcript, Day 482, page 55.
[363] Transcript, Day 482, page 56.
[364] Transcript, Day 495, page 105.
[365] Tribunal Documents, page 1048.
[366] Transcript, Day 495, page 106.

Garda Fowley has been manipulated by other parties hostile to him. He stated that for a period until Superintendent Kevin Lennon was transferred to Milford in the course of the Carty investigation in early 1999, Garda Fowley had 'a particular role there where she had a fair degree of autonomy'.[367] With the transfer of Superintendent Lennon, that changed, and he believed that Garda Fowley blamed him for undermining Superintendent Lennon. Until then, he never had any difficulties with Garda Fowley, but in the middle of that year, she contacted the Carty team and made a number of allegations against him. Since then, she has had, he believes, a 'huge vendetta' against him and is paranoid about him.[368]

3.105. The Tribunal is satisfied that the incident as outlined by Garda Fowley did occur. It does not believe that Detective Inspector McGinley would have gone to the trouble of asking Garda Harkin to amend his documents without some plan as to how the file would be ostensibly regularised. Garda Fowley's account is consistent with an attempt on the part of Detective Inspector McGinley to ensure that the original version of the materials was removed from the file, with a view to replacing them with amended versions. Garda Fowley's actions on that day, whatever their motivation, frustrated him in that regard. Whether Detective Inspector McGinley abandoned his plan after this incident and simply forgot to inform Garda Harkin is unclear, as Detective Inspector McGinley has denied that the incident took place. However, the Tribunal is satisfied that Garda Harkin is correct in asserting[369] that he received no further instructions from either Detective Inspector McGinley or from Detective Garda McEntee in relation to his amended documents at that time.

Submission of the Amended Handwritten Notes of Interview

3.106. As already mentioned, Garda John Harkin submitted his original typed statement and typed memoranda of interview in early September 1997, and sent his amended typed statement and typed memoranda of interview to Sergeant McEntee in Letterkenny subsequent to his meeting with Detective Inspector McGinley and phone call with Sergeant McEntee. He gave evidence to the Tribunal that he had not previously, nor did he at that time submit any handwritten statement or handwritten notes in respect of the afternoon interview. In making that assertion, Garda Harkin states that at some time much later, probably towards the end of 1997/early 1998, he received a request from the Barron investigation team to submit his original notes of interview. He presumed, incorrectly as it turned out, that either Sergeant McEntee or Detective Inspector McGinley had by that stage orchestrated a switch on the file, so that his original typed statement and typed memo of interview would have been

[367] Transcript, Day 481, page 136.
[368] Transcript, Day 481, pages 131-136.
[369] Transcript, Day 492, page 69.

removed and replaced by the amended version he had submitted in the aftermath of their contact with him. With that in mind, and without reference to either Detective Inspector McGinley or Detective Garda McEntee, Garda Harkin rewrote the entirety of the notes of the afternoon interview, omitting the two questions and preamble to the scenario. He also destroyed his original note of the afternoon interview at that time.[370] In the course of his preparation of the amended handwritten notes of the afternoon interview, it would appear that Garda Harkin omitted a number of further questions after the so-called scenario. The Tribunal accepts his evidence that these omissions were entirely accidental and were not requested by any other party.[371]

3.107. Garda Harkin identified[372] the amended handwritten note of interview that he submitted in late 1997/early 1998 as being a document with the designation '26E' in the top right hand corner.[373] Had the original switch of the typed documents been made by either Sergeant McEntee or Detective Inspector McGinley, which is what Garda Harkin presumed when he submitted document '26E', there would have been no discrepancies on the file (other than the accidental omissions), and the matter may never have given rise to future controversy.

3.108. To clarify further when this request for the handwritten notes was made, the Tribunal heard evidence from a number of members of the Barron investigation team who took over the file on the 26th of September 1997. Hugh Dillon, a member of that team at the time, gave evidence that although he has no specific recollection of numbering document '26E', he is 99% certain that the figures '26E' are in his own handwriting, which would indicate to him that the document was not received in the incident room until after the commencement of the new investigation on the 26th of September 1997. He also gave evidence that he spent the first five or six weeks after the 26th of September 1997 reading statements and familiarising himself with the other documentation, and that he would not have been numbering statements during that period. He expressed doubt that notes could have been in the incident room without a number being assigned to them straight away.[374] The Tribunal also examined the new Jobs Book that was started at that time. The following entry is made in respect of Job 171:

> Garda John Harkin took notes during an interview with Róisín McConnell at Letterkenny G. S. on the 4-12-96. Typed copy at Incident Room.
>
> The original of these notes are required at the Incident Room.

[370] Transcript, Day 492, pages 77-82.
[371] Transcript, Day 492, page 101.
[372] Transcript, Day 492, page 83.
[373] Tribunal Documents, pages 423-429; see also document 2 at Appendix A.
[374] Transcript, Day 496, pages 50-55.

> Instructions GIVEN or Action taken: Contact Garda John Harkin and obtain original notes.
>
> Passed to: D/Garda Kilcoyne
>
> Date: 2-12-97.
>
> Garda Harkin contacted on 8/12/97
>
> 6/12.97 John Harkin has located all of his original notes and will forward same to incident room before week ending 11.Jan 97.
>
> 6.1.98 Ongoing.
>
> 19.1.98 Ongoing.
>
> 26.1.98 Some items received. Gda. Kilcoyne to liaise further.[375]

3.109. The Tribunal is satisfied that this entry, combined with the evidence of Hugh Dillon, is sufficient to support Garda Harkin's assertion that his original notes of interview were not submitted to the incident room at any stage, and that document '26E' is the falsified set of notes that he prepared when he was called upon to submit his original notes on the 8th of December 1997.

Superintendent Lennon and the Proofreading of the File

3.110. Superintendent Kevin Lennon submitted the completed file in the Barron investigation to the State Solicitor for Donegal on the 2nd of March 1998. In the preceding months, the investigation team had taken various steps to complete the file. One of these steps, as previously outlined, was to gather in all of the original notes of interview that had not been already submitted. A final proofreading took place at that stage between handwritten and typewritten versions of the various statements, memoranda and notes of interview. A record of progress in this matter is seen in the Jobs Book associated with the new investigation team.[376] As recorded in respect of Job No. 14, the proofreading commenced on the 24th of November 1997 and was completed on the 31st of January 1998. In the course of that proofreading, the discrepancy between the handwritten notes '26E' (i.e. the amended notes submitted by Garda Harkin in late 1997/early 1998) and the original typed statement,[377] which had, unbeknownst to Garda Harkin, never been taken from the file, became apparent.

3.111. The investigation team held a conference on the 10th of February 1998. The conference notes from that day include the following entry: 'John Harkin is required in Incident Room tomorrow (11th) arrange'.[378] It appears that no such

[375] Tribunal Documents, pages 1085-1086.
[376] Tribunal Documents, pages 1083-1084.
[377] Which had been allocated the number '516' on the working file.
[378] Tribunal Documents, page 790.

arrangement was made in the direct aftermath of that meeting. However, the following week, on the 17th of February, a fax[379] containing the original typed statement of Garda Harkin that included the two questions and the preamble to the scenario (i.e. statement 516) was sent from the Garda station in Letterkenny to Raphoe Garda station, whence it was forwarded on to Newtowncunningham Garda station, where Garda Harkin was based at that time. Whether this misdirection of the fax was an accident on the part of the sender or another bizarre twist in the story is unclear. It does appear that Garda Harkin provided some cover at weekends in Raphoe at that time, so this may explain why the fax was originally sent there. A couple of days after the fax was sent, Garda Harkin was summoned to attend Superintendent Lennon's office on the 20th of February 1998 to account for the discrepancy between the faxed document and the handwritten notes, '26E'. Superintendent Kevin Lennon gave the following account of the circumstances of that meeting:

> *I had spotted there was a typed written set of notes and there was a handwritten set of notes and they didn't marry … There was more in the typed written document than there was in the handwritten document…[The sending of the fax with Garda Harkin's original statement] was certainly done behind my back and if I gave that instruction that would be in the conference note. And besides I wouldn't because I was going interviewing him, I had my mind made up to interview him … I came in to my office and I introduced him to the problem I had encountered. I told him what I had discovered and I showed him both sets of notes, the typed written set with all the extras in it and the handwritten manuscript set in his handwriting with those matters left out … I told him there was a problem between his two sets of notes and to refresh his memory I handed him both sets of notes, the typed written set which John Harkin's name was typed into and the handwritten set signed by John Harkin and I asked him, I told him there was discrepancies in them and will he account for it. So he took them and looked at them and pointed to each and said that's right and that's right, referring to the typed written set and the handwritten set and I said well both can't be right. So I said we'll proofread them. So I took the handwritten set in my possession, he took the typed written set, he read from the typewritten set and I went through the handwritten set as he was reading them and I stopped him on every omission that was in my note, well the note in his handwriting. And he did, I asked him had he any other notes, there must be other notes if this typewritten set is correct there*

[379] Tribunal Documents, pages 989-997; see also document 4 at Appendix A.

must be another set of notes and he said no that's all the notes and he couldn't explain the discrepancies so he said to me do you want me to take away the scripted set, the hand scripted set and type it. I said no I've a typist, that's not a problem. I didn't want to let it out of my possession. So he was unable to answer it. And I left, he went off and I brought them back to the room and filed them away again…I told him first before he left, I told him John this is a serious matter and I said some day you'll account for this in the High Court in terms of the defence files and I said the witness box is a lonely place. He made no comment … If something is in a note of interview it cannot be extracted from it. Whether it's for you or against you, that's the question you asked, that's the question you got the answer to and you must accept it. So therefore there was a seriousness in that matter. The questions weren't important questions and nothing was going to create a major issue if Róisín McConnell's defence raised them in cross-examination somewhere, because they weren't of any seriousness in terms of what she had been unfortunately arrested for. So that's my view on it. But they should never have been removed, that's my view, that's why he was there in the first instance to explain the discrepancies…I got no answer [from Garda Harkin]…I went back to the incident room, I filed back the original in its position and I put the other one back on the working file.[380]

3.112. Garda Harkin gave evidence that he recalled the fax arriving in Newtowncunningham station, but that it was not accompanied by any particular note or direction. He recalled that his own sergeant at the time, Tom McMenamin, received a phone call from Superintendent Lennon on the 20th of February 1998, and that as a result of that phone call he was directed to go to Letterkenny station to meet Superintendent Lennon. Although he was not quite clear why Superintendent Lennon wished to speak to him, he presumed it related in some way to the fax. He did not, however, contact either Detective Inspector McGinley or Detective Garda McEntee before the meeting with Superintendent Lennon. When he arrived in Letterkenny station, Superintendent Lennon produced document '26E' (i.e. the amended handwritten notes) and the original typed memorandum that he had submitted in September 1997, and asked for an explanation as to the discrepancies between them. Garda Harkin recalled that Superintendent Lennon, in outlining the discrepancies, also mentioned the questions after the scenario that he had accidentally omitted from document '26E'. This threw him somewhat, as he had neither intended nor been directed to make that omission.[381] In any event, he decided not to come clean with

[380] Transcript, Day 493, pages 136-147.
[381] Transcript, Day 492, pages 88-101.

Superintendent Lennon. He explained his decision as follows:

> *I decided to stonewall that I wasn't going to tell him the truth of what happened. The reason for this was because I had submitted the forged note, I had changed my statement and I was concerned how this would be viewed and he assured me that he wasn't on a witch hunt, but given the fact that it involved another Inspector McGinley, I was reluctant and didn't tell the full truth about what happened. I did tell him that I had submitted the note that he had in his hand, the typed note, and that I wasn't happy with it, but I didn't tell him why and that's why it's omitted, the further typed note … [A]nother thing that threw me during this interview, he stated, he says after addressing it with me he said Superintendent McGinley or Inspector McGinley has made 25 pages of a statement and these questions appear in his statement … [H]e did not [produce that statement to me] … [H]e didn't really press me on it, I mean I was taken aback to say the least that that was the case, these things should appear on his statement after me being asked to delete them out of mine … He asked me had I had any other notes … And I told him that I didn't, and I didn't have at that time because I had destroyed them.*[382]

3.113. In the wake of that meeting, Superintendent Lennon gave evidence that he went from his office to the conference room, where he met Garda Hugh Dillon, who was heavily involved in the preparation of the investigation file. As far as he can recall, Superintendent Lennon dictated a record of his meeting with Garda Harkin to Garda Dillon at that time.[383] Garda Dillon remembers the matter somewhat differently and recalled Superintendent Lennon and Garda Harkin discussing the discrepancies in the conference room itself, and Superintendent Lennon asking him to take a record of the discussion in the conference notebook.[384] A typed copy of the notes in question was produced to the Tribunal and reads as follows:

> 20/2/98 – 4.50 p.m.
>
> Supt. Lennon had a meeting with Garda John Harkin in his office and discussed Interview Notes (26e – Róisín McConnell), both typed and handwritten – Supt. Lennon discussed discrepancies in these documents and he showed Garda Harkin both documents. In relation to the handwritten documents, Supt. Lennon asked Garda Harkin if they were his original notes and he said they were and were made at the time.
>
> Supt. Lennon then pointed out discrepancies between the typed and

[382] Transcript, Day 492, pages 101-103.
[383] Transcript, Day 493, page 153.
[384] Transcript, Day 496, pages 32-35.

> handwritten documents and Garda Harkin couldn't account for them but Garda Harkin did say that he had personally typed out the typed copy and submitted it early into the Incident Room.
>
> During the discussion, Supt. Lennon read the handwritten notes and Garda Harkin read the typed copy – both noted the discrepancies.
>
> The meeting then ended at that.[385]

3.114. The Tribunal does not believe that anything much turns on the conflict of evidence between Superintendent Lennon and Garda Dillon as to where the meeting took place, as there is no particular disagreement between Superintendent Lennon and Garda Harkin as to the matters discussed at the meeting, wherever in the station, and in whoever's presence, it took place. Superintendent Lennon then spoke to Chief Superintendent Fitzpatrick and told him what he had discovered in relation to the discrepancies and that he had not as yet managed to get to the bottom of it. Chief Superintendent Fitzpatrick told him to forget about it, that his priority at that stage was to get the file completed and submitted to the D.P.P.[386] Superintendent Lennon submitted the final file in the Barron investigation to the State Solicitor for Donegal on the 2nd of March 1998. In the course of his report, he made the following comment:

> Garda John Harkin submitted a typed copy of the notes of interview with Róisín McConnell (S. 91e) he made during the course of an interview with her which commenced at 4.40 p.m. on the 4th December 1996. He subsequently submitted the original handwritten notes (S. 91f) to the Incident room which, when proof read, did not equate with the typed version. On Friday the 20th of February 1998 Superintendent Lennon asked Garda John Harkin how this discrepancy came about. Garda John Harkin was unable to offer an explanation.[387]

3.115. The report in question does not go on to elaborate on this point. For the purposes of clarification, it should be noted that the numbering used for the final file (e.g. 91, 91a, 91b, etc. in respect of Róisín McConnell) differs from the numbering used on the working file (e.g. 26, 26a, 26b, etc. in respect of Róisín McConnell), as the final file numbering was included sequentially when the file was complete and ready for transmission. What Superintendent Lennon describes in his report as 'S. 91f' should therefore equate with document '26e' as earlier introduced. On the account of the meeting between Superintendent Lennon and Garda Harkin as outlined above, one would expect that 'S. 91e' would be an unamended typewritten version of the memorandum of interview that included the two questions and the preamble to the scenario. It transpires, however, that what

[385] Tribunal Documents, page 794.
[386] Transcript, Day 493, pages 150-151.
[387] Tribunal Documents (General Detention), page 22.

appears on the final file as 'S. 91e'[388] is an amended version of the typed memorandum of interview. In other words, it is an exact transcription of document '26e', including not only the suggested omissions but also the accidental ones. There is therefore, in effect, no discrepancy between the handwritten and typed version of the memorandum of interview of Róisín McConnell on the final file. None of the officers involved in the preparation of the final file were in a position to shine any light on what occurred to bring that position about, although it is apparent that somebody made a decision to mend the fences.

3.116. An additional difficulty concerning the working file on which the final file submitted at that time is based is that a number of original statements have been removed from it and have not subsequently been located, including that of Garda John Harkin dated the 3rd of September 1997. Where the original statement of Garda Harkin should appear on the working file as statement no. 516, there is in its place a green page.[389] At the top of the page, the note 'To D/Sgt. White 26E' has been scribbled over. Beneath that is the note, 'on 9/2/98.', with the numbers '516' and '529' on the right hand side of the page. Beneath these is a line across the page, underneath which is another note that has been scribbled out, '64 Alan Crawford taken by J. Harkin'. The numbers '516' and '529' represent the working file numbers for the original statements of Garda John Harkin and Detective Inspector John McGinley, while number '64' corresponds with the statement of a witness named Alan Crawford, which statement was taken by Garda John Harkin. Inquiries conducted by the Tribunal investigators revealed that the handwriting on this green page belonged to Detective Garda Frank Feeley, who worked as part of the second investigation team established by Superintendent Kevin Lennon. Detective Garda Feeley gave the following evidence at the Tribunal:

> *Early on I was involved in doing jobs, taking statements and follow up statements and later on then around Christmas time there was a need for more assistance in the incident room … I think Detective Garda McHale and myself went to the incident room…to assist Garda Dillon and Sergeant Burke … I was involved in logging documents and stuff like that … It must have been sometime in late January/early February. I do see a note there on the screen page, that's my writing on that green page to D/Sergeant White and that's dated the 9/2/1998 … So it must have been at that stage or just prior to that … Sergeant White must have asked me or must have taken those from the file and I would replace it with that so that I would know where the original documents were … I would*

[388] Tribunal Documents, pages 430-437; see also document 1 of Appendix A.
[389] Tribunal Documents, page 820.

> *have given those, I would take from that that I gave those to Detective Sergeant White on the 9/2/98. Those documents. They would be the original documents … I don't really recollect handing it over to him but yes I would, I gave it to him yeah … Yeah, it must have been that he must have asked me for it. I don't remember exactly how it arose … It must have been at that stage there must have been noticed these discrepancies in John's statement … My recollection is that John White was going to see John Harkin … That there was a problem with this statement.*[390]

3.117. John White, who was part of the second investigation team at the time, gave evidence that he had no specific recollection of the circumstances surrounding the insertion of the green page and the removal of the statements mentioned therein. He stated that:

> *I have no idea in the world. I can only say that the most likely situation is that Superintendent Lennon would have asked me for it … And I would then have taken out the file and told – obviously its not my writing there so I would have told somebody to put that sheet in. But I'm only assuming that, I have no memory of it … If I took them out it would be to give them to Superintendent Lennon for a reason and then they should be put back on the file afterwards where they were … I would have no reason in the world whatsoever to take them and to move them away or not to give them back.*[391]

3.118. The above account provides a reasonable explanation for how the original documents might have been signed out by Detective Sergeant White to enable Superintendent Lennon to confront Garda Harkin shortly thereafter about the issue of the discrepancies. If that is what did happen, and on the evidence before the Tribunal, it seems probable, there was clearly an obligation on the person in whose name the documents were signed out to replace them on the file. Documents '26E' and '529' were subsequently returned to the file, although the latter is noted as being missing when the Carty team first looked at the file in 1999.[392] It is apparent that whatever happened to it later, statement '516' was in existence in February 1998, as that number appeared at the top of the statement faxed to Garda Harkin on the 20th of that month.[393] The corresponding statement number '242'[394] on the final investigation file submitted just over two weeks later, however, is an amended version of the statement with the suggested amendments omitted. Interestingly, this particular version of the statement

[390] Transcript, Day 498, pages 41-44.
[391] Transcript, Day 565, pages 119-125.
[392] Tribunal Documents, page 1069.
[393] Tribunal Documents, page 989; see also document 4 of Appendix A.
[394] Tribunal Documents, pages 1013-1020; see also document 3 of Appendix A.

includes the questions that were accidentally omitted during Garda Harkin's preparation of the handwritten forged notes in late 1997/early 1998 (i.e. document '26e'), which suggests that it may be the amended typed statement submitted by Garda Harkin in the envelope addressed to Detective Garda McEntee. The Tribunal does not, however, believe that the evidence is sufficiently clear to make any definitive finding in that regard. In any event, the disappearance of statement '516' from the working file, the appearance of statement '242' on the final file and the clearing up of the discrepancy between the handwritten and typed memoranda of the afternoon interview that appeared on the final file, can only lead the Tribunal to conclude that somebody, at some level on the investigation team, decided to sweep the matter under the carpet. There is, however, insufficient evidence before the Tribunal to identify who that individual or group of individuals was.

The Deception Continues

3.119. In the aftermath of his meeting with Superintendent Lennon, Garda Harkin believed that there could be serious consequences for him. With that in mind, he attempted to contact Detective Inspector McGinley, who called him back a fortnight or so later. He outlined to Detective Inspector McGinley what had transpired at the meeting with Superintendent Lennon, and asked him to explain why his own original statement had remained in the system and why Detective Inspector McGinley had not made the suggested changes to his own statement. Garda Harkin gave evidence that Detective Inspector McGinley did not seem to have any sort of an explanation to give him as to what had gone wrong, and that he 'more or less sort of trivialised it' by saying that Superintendent Lennon 'had very little to be bothering him'.[395] Garda Harkin gave evidence that he did not contact Detective Garda McEntee at the time, nor did he have any contact with him about the matter until much later, when the Carty team started investigating the matter in late 1999.[396]

Garda Fowley Speaks Out

3.120. On the 16th of June 1999, Garda Tina Fowley was asked to submit a statement to the Carty investigation team in respect of whether Garda John O'Dowd had spoken to her at any time about his missing notebook, which was subsequently found in William Doherty's bedroom on the 20th of September 1997. The Tribunal has already reported upon that issue in an earlier module.[397] It would appear that while she was delivering her statement to Inspector Hugh Coll that evening, Garda Fowley raised a number of concerns she had about certain issues regarding the Barron investigation. A week later Inspector Coll informed her that

[395] Transcript, Day 492, page 138.
[396] Transcript, Day 492, pages 137-151.
[397] Second Tribunal Report, pages 445-446.

he had received directions from his superiors that she should report these matters to her chief superintendent, who was at that time Denis Fitzpatrick. The Tribunal believes that this is a classic example of an instance where, had there been an independent complaints procedure in place, the concerns of Garda Fowley, which amounted to a series of allegations against senior officers, would have been best addressed by referring her to that body, rather than referring her to her divisional officer. In the absence of such a facility at that time, however, the Tribunal does not believe that the direction transmitted through Inspector Coll, though unfortunate, was inappropriate.

3.121. It appears that Garda Fowley left the matter in abeyance for a couple of months before meeting with Chief Superintendent Fitzpatrick on the 17th of August 1999, at which time she outlined the concerns that she had previously raised with Inspector Coll. Chief Superintendent Fitzpatrick asked Garda Fowley to submit her concerns in writing, which she did two days later in the form of a confidential report addressed to him.[398] The report referred to Garda Fowley's role assisting in the incident room during the investigation into the death of Richard Barron. It and a subsequent statement she made to the Carty team[399] raised three particular concerns: firstly, the fact that the legality of the detention of Róisín McConnell was raised at conference the evening before the arrest took place, secondly, the fact that she had observed Detective Inspector McGinley practicing Frank McBrearty Junior's signature in the incident room on the afternoon of the arrests and thirdly, the fact that she had noticed discrepancies in the notes of interview of Róisín McConnell, and that Detective Inspector McGinley had approached her and asked her for the original notes in question. As has now been accepted by the senior officers, the first of these allegations was correct.[400] As the Tribunal has found in the chapter of this report dealing with the detention of Mark McConnell, Garda Fowley's second allegation in relation to Detective Inspector McGinley practicing Frank McBrearty's signature was also correct. The third allegation must be seen not only in that context, but also in the context of there having indeed been discrepancies in the documents relating to Róisín McConnell's detention as a result of a conspiracy that, on the evidence of all conspirators, she could not have known about at any stage and that was being played out at about the time she claims to have noticed the discrepancies in September 1997.

3.122. As mentioned earlier in this chapter, the Tribunal is satisfied that Garda Fowley is correct in her assertion that Detective Inspector McGinley approached her in her office looking for the original notes of interview of Róisín McConnell on the 26th of September 1997. The fact that he was unsuccessful in achieving this was due

[398] Tribunal Documents, pages 174-177.
[399] Tribunal Documents, pages 178-181.
[400] Transcript, Day 481, pages 143-145 (John McGinley); Transcript, Day 282, page 85 (Superintendent James Gallagher); Transcript, Day 482, pages 176-181 (Sergeant Brendan Roache).

to Garda Fowley's refusal to hand over the files on that occasion. However, the Tribunal does not believe that this finding necessarily bolsters the first limb of her third allegation. On the one hand, the issue as to whether Garda Fowley is correct in asserting that she noticed the discrepancies in the notes of interview in September 1997 might be thought to be somewhat irrelevant to the overall picture. Even if the assertion is untrue, it does not alter the fact that discrepancies did in fact come about through the wilful improper acts of certain other individuals. On the other hand, the Tribunal felt obliged to examine closely Garda Fowley's version of events as to what she allegedly saw in September 1997 in the context of the credibility of Garda Harkin's evidence on this and other matters. There was a clear conflict in the evidence between Garda Fowley and Garda Harkin on the issue as to what documents could have been in the incident room in September 1997. In the event of such a conflict being resolved against Garda Harkin, it would call into question the reliability of his evidence to the extent that it also conflicted with other parties on associated matters.

3.123. Garda Fowley was a member of the original incident room team in the Barron investigation. Amongst her duties was that of reading, collating and filing statements as they entered the incident room. It would appear that after her initial involvement in the Barron investigation in late 1996, Garda Fowley took a position in the divisional operational planning office in the early months of 1997. She was not involved in the day to day running of the Barron investigation again until the 12th of September 1997, when Sergeant Martin Moylan approached both Garda Fowley and Sergeant Brendan Roache and sought their assistance in sorting out the documentation in relation to the custody aspect of the investigation.[401] As has already been mentioned, a significant changeover of personnel occurred in the Barron investigation on the 26th of September 1997, when a new investigation team under the more direct supervision of Superintendent Kevin Lennon took over the investigation file. Garda Fowley did not form part of the new investigation team, and her involvement with the Barron investigation paperwork ceased entirely at that time. This fact is significant in the context of determining what, if any, discrepancies in the documentation Garda Fowley could have noticed at that time. In effect, there was a two-week period during which she had access to the investigation file, i.e. between the 12th and 26th of September 1997, and it must have been during the course of that two week period that she noticed any discrepancies in the materials, if her account is correct. Garda Fowley gave the following evidence of what she allegedly noticed at that time to the Tribunal:

> *I was to prepare the custody … file from start to finish, proofread the documents and ensure that the custody aspect of the*

[401] Transcript, Day 478, page 191.

investigation was completed. This would involve taking each of the prisoners, the custody record, their extension notices, their permission to fingerprint and photograph, every bit of documentation relevant to their custody, perusing it, logging it, and cross-checking it, proofreading it and ensuring it was all there. It also involved writing out to some of the members who had not submitted, which would be done through Sergeant Roache, who had not submitted their statements or notes of interview and requesting them from them … You're proofreading the notes of interview against the typed notes of interview. Any statements, you proofread those against the custody record to ensure that times are right and that there is no errors … In relation to Garda Harkin's notes of interview he submitted them to the incident room while I was still there in December '96. The typist had great difficulty in reading his handwriting and she couldn't actually type what he had written so he was provided with the notes of interview to type them up himself and the typed version was submitted by him, having been typed by him … rather than the typist which was the normal way of doing it ... In proofreading Garda Harkin's notes of interview, of an afternoon interview that involved Detective Inspector McGinley attending there was a typed set and there was a handwritten set. When I proofread the typed set against the handwritten set I found that there was more in the typed version than there was in the handwritten version. This was a difficulty that I couldn't reconcile. If it was the other way around it could be put down to just missing the questions but I could not understand how extra questions would have appeared in the typed version and not exist in the original. There was a variation then in relation to another question. The discrepancy was not huge in itself but it was unexplainable from my point of view because the original couldn't have questions in it that the typed one could have … I brought it to the attention of my immediate supervisor, Sergeant Roache. There was I think twelve or fourteen custody files to be completed at the time so I worked away on the remainder of those files … and left the Róisín McConnell file in abeyance.[402]

3.124. Garda Fowley gave evidence that one of the documents that she had in her possession in September 1997 when she noticed the discrepancies in the materials submitted by Garda Harkin was the set of notes with the mark '26E' in the top right hand corner.[403] As has been already outlined, the document in

[402] Transcript, Day 478, pages 192-194.
[403] Tribunal Documents, page 1056; see also document 2 of Appendix A.

question is ostensibly the handwritten note of the afternoon interview of Róisín McConnell taken by Garda Harkin. It does not include the two questions and the preamble to the scenario, nor the other materials that were accidentally omitted. If Garda Fowley did have document '26E' for comparison purposes in September 1997, that would be consistent with her contention that she had a handwritten document that had less content in it than a typed version of the same interview. Garda Fowley claimed that she recognised the '26E' designation as being in her own handwriting, and that she filled it in when she discovered the notes had not had a number assigned to them.[404] In furtherance of this point, Garda Fowley submitted a number of documents, including a 'post-it'[405] note and Form A85[406] on which she suggested that the letter 'E' was similar to that on the document in question. As has already been mentioned, Garda Harkin, on the other hand, contended that document '26E' was not in the system in September 1997, that the only handwritten notes of his that were in the system at the time concerned the morning interview and that document '26E' was in fact the product of a request to submit his original notes to the incident room that he received in late 1997/early 1998, by which stage Garda Fowley no longer had access to the files. **The Tribunal, in light of the supporting evidence provided by Garda Hugh Dillon and the Jobs Book entry that suggests that Garda Harkin was asked to submit his handwritten notes in late 1997/early 1998, prefers the evidence of Garda Harkin in relation to document '26E' not being in the system in September 1997.**

3.125. Sergeant Brendan Roache, who was working on the custody files with Garda Fowley in September 1997, gave evidence that he remembered Garda Fowley making a comment to him about discrepancies in Garda Harkin's notes at some time during the period from the 12th to the 26th of September 1997. He stated that, although he did not look at any documents himself at that time, he remembers Garda Fowley mentioning that there appeared to be more material in the memorandum of interview than in the handwritten notes of that interview. He also recalled that she identified the portion of interview she was concerned about as being the 'scenario' that was put to Mrs. McConnell, which was similar to the version of events that appeared in the Frank McBrearty Junior confession statement.[407] Sergeant Roache advised Garda Fowley to continue to work on the other files, and that they would get back to have another look at the discrepancy in Garda Harkin's documents when everything else was finished. It appears, on Sergeant Roache's account of events, that before this review could be conducted, the new investigation team was put in place on the 26th of September 1997, and their work on the files came to an end at that time. The Tribunal does not accept

[404] Transcript, Day 496, pages 95-101.
[405] Tribunal Documents, page 1050.
[406] Tribunal Documents, page 1049.
[407] Transcript, Day 483, pages 3-12.

the evidence of Sergeant Roache on this matter. Garda Fowley herself does not in any way suggest that she regarded the discrepancies as being anything other than suspicious in their own right, and certainly has never suggested that she saw them as being in some way linked to the statement of Frank McBrearty Junior. Sergeant Roache's evidence in this regard is seen by the Tribunal to be tendentious and misleading, albeit most probably motivated by a justifiable feeling that his friend and colleague, Garda Fowley, has been generally hard done by and merits his support.

3.126. Superintendent Kevin Lennon gave evidence that when Garda Fowley called to his office on the 26th of September 1997 in the aftermath of Detective Inspector McGinley's visit to her, while she did mention something about discrepancies in the notes, she did not inform him about the nature of the discrepancies. Mr. Lennon indicated that he did not see there to be anything sinister in whether there were discrepancies or not at that stage. He did not know anything about the nature of the discrepancies at that time, and his discovery of the discrepancies in the course of the proofreading of the statements on the file a couple of months later was an unconnected event.[408] Had Garda Fowley mentioned the discrepancies in Garda Harkin's notes to him in September 1997, the Tribunal regards it as being unlikely that Superintendent Lennon would have made no mention of this fact when he met Garda Harkin in February 1998. Again the Tribunal is satisfied that his evidence in respect of what Garda Fowley said to him in respect of the discrepancies that she had allegedly seen is tainted by an unwillingness to give evidence that contradicts her.

3.127. In relation to the first limb of her third allegation in 1999, the Tribunal does not accept that Garda Fowley noticed discrepancies in documents submitted by Garda John Harkin during the course of her work on the files in September 1997. Garda Fowley could not have seen the document marked '26E' (i.e. the amended handwritten notes of interview) at that time, as the Tribunal is satisfied on the evidence before it that this document was not submitted to the incident room until late 1997/early 1998, when Garda Fowley no longer had access to the files. The Tribunal is also not convinced that the amended typed documents forwarded by Garda Harkin in the envelope addressed to Detective Garda McEntee ever in fact made it onto the file, as such a lodgment would surely have entailed a simultaneous removal of the original documents from the file. It is apparent that such a removal did not occur at that time as the original documents, in particular statement '516', were still on the file causing the discrepancies to be noticed a number of months later by the Lennon investigation team. The Tribunal is satisfied that Garda Fowley, in making

[408] Transcript, Day 493, pages 126-129.

her assertion in 1999 to the Carty team as to the discrepancies she had apparently noticed in September 1997, combined her recollection of Detective Inspector McGinley's request for the original notes and whatever suspicions she may have had regarding his motives for that request, with her knowledge that discrepancies in the notes had subsequently been found and commented upon by Superintendent Lennon in his report.

3.128. In determining this issue, the Tribunal would in no way regard this confabulation on the part of Garda Fowley as being in the same category of blameworthiness as that of the individuals who have in fact admitted to the Tribunal that they engaged in a conspiracy to amend the notes of interview in question and to subsequently go on to deny this on numerous occasions when the opportunity arose to set the record straight. The greater good was served by Garda Fowley making the allegations in question, and the fact that she overstated the extent of her knowledge in respect of one of the allegations does not undermine the fact that it was an issue worthy of investigation, which would not have been subject to such investigation had she not placed it firmly on the agenda. Had Detective Inspector McGinley and Garda Harkin taken the honourable course of action when Garda Fowley made her allegations in 1999 and admitted their part in creating the discrepancies, the inquiry would have quickly moved away from the credibility of Garda Fowley's version of events. Unfortunately, all of Garda Fowley's allegations were contested at the time, and Detective Inspector McGinley, in particular, made a deliberate attempt to question her motivation for making them, as a means of deflecting attention away from his own wrongdoing.

Further meetings and denials

3.129. In the aftermath of Garda Fowley's statement to the Carty team, Detective Superintendent John McGinley and Garda John Harkin were called upon to make statements in relation to their knowledge of any discrepancies in the notes of interview of Róisín McConnell: discrepancies that had been mentioned, not only by Garda Fowley, but also by Superintendent Lennon in the Barron investigation report. Detective Superintendent McGinley and Garda Harkin had another clear opportunity at that point to make a clean breast of matters, but chose instead to submit lying statements. When asked to account for his failure to disclose his involvement in amending the notes of interview to the Carty investigation team, Garda Harkin told the Tribunal that shortly after Garda Fowley made her statement to the Carty team in the summer of 1999, he was approached in

Newtowncunningham Garda station by Detective Superintendent John McGinley, who informed him of the development for the first time.[409] It would appear that the purpose of this meeting was merely to touch base and alert Garda Harkin as to what Garda Fowley was now saying. As far as Garda Harkin was concerned, he was not in the mood for coming clean at that point, and while Detective Superintendent McGinley did not seek any assurances from him at that meeting, his own attitude was clear, so that there was no particular need to seek assurances. Once he had decided not to come clean to Superintendent Lennon, whom he knew well, he certainly was not going to open up to the Carty team. In his own words, he was 'up to [his] eyes in it at that stage'.[410] A further meeting took place with Detective Superintendent McGinley in a car park in Newtowncunningham at some time not long after that. Detective Garda Brian McEntee was also in attendance on that date. It was Garda Harkin's understanding that the purpose of this meeting was to see whether they could come up with some sort of a story that would put the matter to bed once and for all. Garda Harkin gave the following evidence in relation to that meeting:

> *It was at Newtowncunningham in a local car park in the centre of Newtowncunningham … I met them, I sat into the car and spoke with them…That was the only occasion, Chairman, that I asked what happened [to the altered documents that I had submitted in September 1997] and I said it to Brian, I says, Brian, what did happen? … Whether he intended to answer the question or not or [before] he was given an opportunity, Inspector McGinley butted in and said, this is my fault … or my responsibility. On that meeting, I think it was just to see … what way could one try and cobble together a cover up for how this could have occurred. Now, as I said, the only one whose fingerprints were all over this as far as I was concerned at that time were my own…I had no willingness to tell the truth to the Carty team. I was afraid … There was no decision finalised on that date … Certainly if something arose in that meeting, I would have gone with it I dare say … As I said, it certainly wasn't with a view to coming clean anyway … There was a question that there might have been a mix-up between the typing, between typing and disks going from one computer to another, something of that nature … I'm not that au fait with computing or word processing or certainly wasn't at that time … I don't think nothing was ruled in or out at that meeting … I don't recall any other option discussed … This meeting went on for about 20, 25 minutes…I believe that there was nothing decided, I*

[409] Transcript, Day 492, page 151.
[410] Transcript, Day 492, page 158.

think that the two of them were going to go away and maybe have a think about it.[411]

3.130. The presence of Detective Garda Brian McEntee at this meeting puts him squarely in the middle of the ongoing cover up. Had his involvement in September 1997 been as minimal as he portrayed it to be at the Tribunal, it would have been remarkable that he became involved in the matter again when it came to be investigated by the Carty team. Whatever difficult questions Detective Superintendent McGinley or Garda Harkin were likely to face in the wake of Garda Fowley's statement, there was no reason for anybody else to suspect Detective Garda McEntee of having anything to do with the matter. In relation to his involvement in this meeting, Sergeant McEntee stated the following:

My recollection is we were returning from Derry or Northern Ireland … myself and Detective Inspector McGinley … And we were in his car and we were coming back … from a meeting. From I think it was Derry. As we were coming up towards Newtowncunningham, he turned in to Kiernan's, Kiernan's Centra, it's on the main road and he pulled in and he said, I have to see someone. Right. I took nothing from it but shortly after that John Harkin arrived…I can just remember him getting into the car, he got into the back of the car … The three of us were in the car … Then … honestly, what was discussed, it was in relation to the notes, the notes of the interview. But the detail of that I am not clear on. And the reason I am going through that is that if he said to me, we're going here to talk about the notes, I would have been out the door in a flash, you know, but he didn't, he didn't do so … I know what I had done was wrong but still I thought that I was only a facilitator … So I didn't particularly think, incorrectly, that I had done anything really wrong … I would have felt that it's between the two of them … I would love to be able to tell you exactly what was said in the car, but all I know it was in relation to notes … [M]aybe I was just burying my head in the sand … but I don't know exactly what was said in it … I couldn't dispute what John Harkin said in relation to his evidence in relation to what happened in the car. I couldn't dispute it … As regards … in relation to him saying that the two of us would go away, as in John McGinley and myself, that wouldn't have been the case. I would be walking away from it … I did not go away and think about it … It's only here and now that I'm aware that there was other meetings going on, that John McGinley had met John Harkin and there was telephone contact, I wasn't aware of that at the time.[412]

411 Transcript, Day 492, pages 169-175.
412 Transcript, Day 494, pages 108-128.

3.131. The Tribunal is satisfied that Detective Sergeant McEntee's evidence in relation to this meeting is deliberately evasive. It is simply incredible to believe that he has no recollection of what was discussed at the meeting in question, given that he remained in the car for its duration and the matters under discussion were clearly of great significance. Not only were Detective Superintendent McGinley and Garda Harkin discussing a scheme to frustrate the Carty investigation in its investigation of the discrepancies issue, but the clear implication of their scheme was that Garda Fowley would be discredited in the context of an allegation that they all knew to be substantially correct. The Tribunal is satisfied that Detective Garda McEntee knew more at that time than he is prepared to admit now and that he appeared at the meeting in question to impress upon Garda Harkin the notion that now was not the time to break ranks. The corollary of that was that Garda Fowley was to be left out on a limb. Sergeant McEntee gave the Tribunal no rational explanation for why he was prepared to go along with this continuing cover-up. As mentioned earlier in this report, the Tribunal is satisfied that Sergeant McEntee has not been completely truthful at the Tribunal as to his actual involvement in the events of September 1997, and his further involvement in the cover-up in the course of the Carty investigation must be seen in this light.

3.132. Some time after the meeting in the car park, it appears that Detective Superintendent McGinley contacted Garda Harkin with a suggestion as to how they might explain the discrepancies in the documents. His suggestion was to the effect that if he himself could produce a note of the interview of Róisín McConnell, that would explain the additional questions in his statement that did not appear in the falsified notes submitted by Garda Harkin. In other words, it would be possible to explain that, in drafting the portion of his statement that dealt with the Róisín McConnell interview, he had made use of two different sources: Garda Harkin's notes and his own notes. It is Garda Harkin's recollection that Detective Superintendent McGinley outlined this new plan to him over the phone.[413] The notes that were produced by Detective Superintendent McGinley at that time[414] eventually became an appendix to the Carty report. He believes that he submitted it as an attachment to another statement he submitted at that time that covered a range of other issues.[415] Ostensibly Detective Superintendent McGinley's notes record the portion of the interview that included the two questions and the preamble to the scenario that were taken out by Garda Harkin.

3.133. When he first gave evidence to the Tribunal in relation to these notes, John McGinley gave an entirely false account of their origin. He claimed that they were

[413] Transcript, Day 492, page 172.
[414] Tribunal Documents, pages 438-439; see also document 6 of Appendix A.
[415] Transcript, Day 495, pages 73-74.

an entirely legitimate product of the interview process. He gave an elaborate explanation of how he had entered the interview room with a leather folder and commenced taking notes himself, before realising a few minutes later that Garda Harkin was already doing so. He gave evidence as follows:

> *I interviewed Mark McConnell early in the day and I had a folder, a leather folder, which I carried during the course of my work … I would have had blank witness statements and a couple of half sheets, and other materials for that purpose. I had it with me when I interviewed Mark McConnell and I took a statement off him and I had it with me when I interviewed Róisín McConnell and I took a statement off her. Well, I didn't take a statement off her, I took part in the interview and I noted a number of questions … I think John Harkin was behind the desk and Róisín McConnell was the other side of it, under the desk and I sat at the end of it … I might have been standing or walking for a small bit when I went in first when I was getting an overview from John Harkin as to what happened, but certainly I recall sitting down during the putting the questions to Róisín and I recall making a note of those questions and I wasn't, I was sitting back a small bit from the table. I don't think I got up and walked around after that. Maybe I did … It's a zip up folder, there's a plastic nameplate and little pockets on one side … I have been in many interview rooms in my time and as a detective and as a uniform member and I wouldn't go into an interview room without having paper and pen to record verbals or whatever might arise … In this case I had never worked with either Garda Harkin or Lohan, I had never been in an interview with them before. I think in my own case, to go into an interview room and sit down and take notes, I think it creates an effect. I didn't know what stage the interview was at when I went in and when I went in there was nothing taking place for a while, as I said, when the talk was going on. And when I sat down, the first thing I did was I began to write when I started asking formal questions. It was only after a while I saw Garda Harkin was doing the same and I stopped then … I mean, you could have a situation where, when you go into an interview room, there wouldn't have been a lot taking place … and ask a number of questions and it could happen nobody would make a note. Coming from my background, I mean, you would be conscious of recording what was taking place. I was just going to have a record anyway. I mean, I could have said to him to take a record but I decided to do it myself.*[416]

[416] Transcript, Day 481, pages 152-158.

3.134. Despite being challenged extensively on the unlikelihood of this proposition, Mr. McGinley held firm on this line. In the wake of Garda Harkin's evidence as to the origins of the notes in question, this position changed and Mr. McGinley admitted that the notes had been fabricated as a means of papering over some of the cracks that had started to appear. He described it as 'a plausible way of explaining the discrepancies'.[417]

3.135. Garda Harkin submitted a fresh statement in respect of his dealings with Róisín McConnell on the 25th of April 2000.[418] In it, he set out the various interviews as recorded in his amended memoranda of interview. Sergeant Fergus Treanor of the Carty investigation team then interviewed Garda Harkin on the 25th of May 2000. In the course of the statement that emerged from that interview,[419] Garda Harkin identified notes marked '26B' and '26E' as being the original notes of interview of Róisín McConnell taken by him on the 4th of December, although he was fully aware at the time that the notes marked '26E' had been falsified by him. When the interviewing members read the extract from Garda Fowley's statement that dealt with the discrepancies in the notes out to him, he again reiterated that '26E' was the original note of interview and that he had no recollection as to why certain lines appeared in a typed copy of the statement that did not appear in '26E'. He made a further statement at that time, dated the 23rd of June 2000,[420] in the course of which he was shown the notes of interview that had been fabricated by Detective Inspector John McGinley. He stated that he did not recall seeing that document before. In this answer, he may have been factually correct, but given his knowledge of the circumstances in which the notes in question came into existence, his answer was both evasive and misleading.

Garda Harkin's Confession at the Tribunal

3.136. Garda John Harkin initially gave evidence on this matter to the Tribunal on the 11th and 12th of July 2006. At that time, Garda Harkin denied that he had done anything wrong. He did not mention any of the meetings or phone calls with Detective Inspector McGinley and/or Detective Garda McEntee, and was generally evasive in response to questions directed at him in respect of the alleged discrepancies. The Tribunal was left in no doubt at that stage that Garda Harkin's position was that nothing irregular had occurred. On the 17th of July 2006, however, Garda Harkin made himself available for interview with the Tribunal investigators, Mr. Finn and Mr. Cummins, and admitted that he had been 'obstructive and evasive' in his answers and 'untruthful in relation to questions'.[421] In the course of that interview, Garda Harkin made available to the Tribunal

[417] Transcript, Day 495, page 75.
[418] Tribunal Documents, pages 83-1-83-16.
[419] Tribunal Documents, pages 84-85.
[420] Tribunal Documents, page 83.
[421] Tribunal Documents, page 707.

investigators the faxed document that has been referred to earlier in this chapter with the number '516' in the top right hand corner.[422] This is apparently the only remaining copy of the original unaltered statement submitted by Garda Harkin in September 1997, before he had any contact on the matter with Detective Inspector McGinley or Detective Garda McEntee. It is also a copy of the document that was apparently produced to him by Superintendent Lennon at their meeting in February 1998, before mysteriously disappearing completely from the working file, with an amended version of same appearing on the final file in the Barron investigation. Garda Harkin also made his computer from the time available to the Tribunal. Unfortunately attempts to identify when various documents were created and/or amended proved to be unsuccessful. In effect, Garda Harkin put up his hands during the course of the interview with the Tribunal investigators and admitted his involvement in amending the interview notes at the behest of Detective Inspector McGinley and Detective Garda McEntee, and his engagement in a continued cover-up, including his initial appearance at the Tribunal in the context of the Róisín McConnell sub-module. It was in the course of this interview that the involvement of Detective Garda Brian McEntee was first brought to the Tribunal's attention. The Tribunal is satisfied that in making his statement to and co-operating with the Tribunal investigators, Garda Harkin has attempted to belatedly remedy some of the damage that his earlier actions had done to the integrity of the Barron investigation and the capacity of the Carty team to uncover the truth behind the discrepancies. Although his evidence does not entirely corroborate Garda Fowley's version of events, the Tribunal is satisfied that it lends substantial support to the proposition that the issues that she raised about discrepancies in these notes and that caused enquiries to be made, were legitimate. Garda Harkin did not attempt to shirk responsibility in respect of his own involvement in the matter. His evidence was a classic example of a statement against interest, and the Tribunal accepts that his evidence, albeit at the second time of asking, was truthful and of great assistance to its enquiries.

3.137. In the wake of Garda Harkin's statement, the Tribunal wrote to all of the other parties involved in the conspiracy and invited them to submit statements.[423] Detective Sergeant McEntee's statement is consistent with the evasive evidence he gave to the Tribunal. The Tribunal is satisfied that far from making a full confession as to his involvement in the matter, Sergeant McEntee in this statement, admitted the barest details of what Garda Harkin could have said about him. His evidence to the Tribunal was likewise tailored to minimise his own involvement in the matter. John

[422] See document 4 of Appendix A.
[423] Tribunal Documents, pages 743-745.

McGinley's statement of the 28th of August 2006[424] also conforms to a great extent with the evidence he subsequently gave to the Tribunal, thereby conflicting with much of the evidence in the matter that he initially gave on the 12th and 13th of July 2006.[425] It made no reference, however, to the fact that he had gone to the trouble of concocting his own notes[426] for the purpose of hoodwinking the Carty team. It also gives the impression that he was the victim of an unfortunate series of events that occurred to him, rather than the prime mover behind a conspiracy that not only denied fair play to Róisín McConnell, but implicated two other Gardaí in wrongdoing, while undermining the legitimate attempts of another member to shine a light on that wrongdoing.

Conclusions on the Forged Notes

3.138. The most disturbing aspects of the conspiracy entered into by Garda John Harkin, Detective Garda Brian McEntee and Detective Inspector John McGinley were the casual manner of its inception, and the lengths to which they were prepared to go, to cover the matter up. The Tribunal believes that the fundamental principle that memoranda of interview should not be altered under any circumstances registered with the Gardaí concerned at the time, but that they deliberately chose to ignore it. They entered into the conspiracy with their eyes wide open. The Tribunal accepts that the changes effected were relatively minor, and were not designed to mask the type of abuse that prevailed in the interviews conducted by Detective Sergeant White and Detective Garda Dooley. However, given the Tribunal's findings as to the colourful references to 'Rambo' and the 'big fat pussycat' that Detective Inspector McGinley made during the course of this interview and which are also not reflected in the notes, these amendments constituted a concerted attempt to conceal the reality of what exchanges in fact occurred in the interview in question, and amounted to a perversion of Mrs. McConnell's right to fair procedures.

3.139. The complex nature of the conspiracy entered into between the parties inevitably caused the Tribunal to consider the possibility that Detective Inspector McGinley and Garda Harkin had more to hide than the relatively minor changes that they have admitted to would tend to indicate. It has been suggested that the changes were designed to in some way mask the fact that the scenario that succeeded the extracted questions bore a striking similarity to Frank McBrearty Junior's alleged statement of confession that came into being later that day. Clearly, this suggestion

[424] Tribunal Documents, pages 746-747.
[425] Transcript, Days 481 and 482.
[426] Tribunal Documents, pages 438-439; see document 6 of Appendix A.

makes no sense whatsoever, as any such attempt would surely have involved either the removal of the scenario from the notes altogether or at least a significant alteration thereof. The preamble to the scenario that was removed bore no distinctive feature linking it to Frank McBrearty Junior's statement. In any event, the Tribunal is satisfied that the scenario as posited by Detective Inspector McGinley to Róisín McConnell represented no more than the generally held Garda theory as to what occurred on the night in question, albeit based to a large extent on the forced statement of Noel McBride. However the reason that is presented by Mr. McGinley for making the change, namely that the questions put to Mrs. McConnell inquiring whether she was a good or religious woman were inappropriate and embarrassing, is in the Tribunal's view nonsense. It does not accept that any serving Detective Inspector would go to the lengths to which John McGinley went in order to avoid facing up to inappropriate or embarrassing questions. The original explanation was to the effect that the matter arose only in an informal conversation which Detective Inspector McGinley was having with Mrs. McConnell and should not have been recorded as part of the interview. It is clear to the Tribunal that the party who is at the core of this transaction, namely Mr. McGinley, is not prepared to tell the truth about why he went to these lengths to effect the alterations. The Tribunal is also of the view that whatever may be the reason it does not bear on the Terms of Reference, which relate to the treatment of Mrs. McConnell while she was in custody and about which the truth is now known.

3.140. John McGinley may be correct in asserting that part of Garda Fowley's motivation for making the various allegations against him stemmed from a sense of injustice with regard to her colleague, Superintendent Kevin Lennon. The Tribunal also accepts that Garda Fowley was to some extent manipulated by other parties to strike a blow on their behalf. The fact that her motivation in making the allegations was not entirely unalloyed by intrigue does not, however, undermine the essential veracity of what she asserted. She was correct in respect of the conversation at the pre-arrest conference, the practicing of the signature and Detective Inspector McGinley seeking the original notes of interview from her. While her version of noticing the discrepancies was incorrect, and involved a degree of confabulation on her part, nevertheless it was because of her suspicion that unexplained discrepancies existed that the matter was ultimately investigated and uncovered. When one considers the question of manipulation in this whole business, however, the primary manipulator is most certainly John McGinley. As a detective inspector, he abused his rank

to initiate the sequence of events that gave rise to the discrepancies, recruiting Detective Garda McEntee to do his bidding along the way. Neither Garda Harkin nor Detective Garda McEntee should ever have been put in the position that Detective Inspector McGinley put them in when the amendments were first mooted. The Tribunal is satisfied that Detective Superintendent McGinley was also the driving force behind the continuation of the cover-up when the Carty team investigated the matter in the wake of Garda Fowley's allegations.

3.141. The Tribunal considers it proper to register in the strongest terms its shock at the deliberate perjury of Mr. McGinley. In summary, his evidence was to the effect that the document which was presented to the Tribunal was his, Mr. McGinley's, handwritten note of part of his interview with Mrs. McConnell. When Garda Harkin changed his evidence so as to tell the Tribunal the truth about the alteration of his interview notes, then and only then did Mr. McGinley acknowledge that his previous evidence was untrue, and that the document in question was a false set of notes created by him to cover up and provide an explanation for the discrepancy which his misconduct had caused in the documentation. It is not possible to say whether the truth would ever have emerged had not Garda Harkin decided to tell his account of the matter to the Tribunal. That a serving Detective Inspector should behave as Detective Inspector McGinley did and then cover up his misconduct by lodging false documentation and by perjury is shocking.

Effects

3.142. Any person can be of a normal or a calm disposition. The Tribunal has no definite evidence as to where, within these normal limits, Róisín McConnell was, prior to her detention by Gardaí on the 4th of December 1996. What the Tribunal does accept, however, is that she was and is a hard-working woman who was dedicated to her family and, as a mother, committed to bringing up her children in the best possible way. The Tribunal is satisfied that, in consequence of what occurred to her in Garda custody, she went through a terrible time. The following represents an edited account of her testimony to the Tribunal as to the unfortunate consequences of her detention:

> *Well from the time that I got out, then my mind started to work on what they had done and everything and then I was trying to think, you know, who did kill Richie Barron and, you know, my head was just going and then John White had said that Richie Barron was going to come back and haunt me. So I used to sit up*

every night, like I couldn't sleep anyway and I could hear noises in the house. Well, I would imagine I was hearing noises probably in the house and all and different things and from that there I just started to slowly go downhill. I was at the doctor's, it would have been the following Friday, just before the Saturday I was admitted, and they advised me to go back to work on the Monday. So on the Saturday, I can't even remember going to Dr. Lavelle, but it was Mark who brought me up to Dr. Lavelle and once he seen me, he knew straight away, he kept me in to get psychiatric help … Well, I went into hospital on the 14th and, as I say, I was gradually going downhill. I knew there was something wrong, but I just didn't know what was wrong with me. Then, whenever I was admitted, I remember different parts of being in the hospital, but then there's parts that is just totally blank to me. I remember thinking that I was the devil, you know, while I was in there … I had it that they were all detectives and guards [that is how I regarded the medical staff]. This was all, you know, that they were all just in there just to get me and like all my family, I didn't even trust them … I remember Christmas day, but it would be vaguely. I remember my son coming in with all his toys and then they left and I remember they wanted me to go down for dinner and I kept saying I wasn't going …Well, to be quite honest, I didn't know what was going on with me [when I had three sessions of electro-convulsive therapy]. I knew there was something wrong, but I didn't know, I never went through anything like it … I was never in hospital all my life, only apart from having my first child … [When I was released from hospital] I wasn't able to work and I was on the sick [benefit payments] and then they called me in then and told me that if I left the job that I would have a better chance of getting back into that job if I reapplied to get back into it. But then, it so happened, that [the Fruit of the Loom factory] closed up … [During the first half of 1997] … my whole head was sore and down the back of my head it felt like there was a big lump in it. So, then I had a relapse so I was either going to be admitted for another shock treatment or go on another tablet so I took a choice of going on another anti-depressant … Well I was away in England for two weeks, my mother and sister took me over and it was just the day after I came back that I stayed with Mark's mother and she came down to the room and says to me "don't be getting alarmed, but Mark's arrested again". So I thought this is it they're going to set him up

for murder … [This was over the silver bullet affair] … Well they were never ever going to give me a chance to get better because they kept doing things and like I wasn't, I was getting worse the more that they were doing to us, I was actually getting worse, I wasn't getting a chance to get better …[427]

3.143. Asked by counsel as to whether she had ever received an apology on behalf of the Garda Commissioner, on behalf of the Minister for Justice or on behalf of the State, Mrs. McConnell stated: "None to this day … I still haven't got one, no".[428]

Conclusions of the Tribunal

3.144. The Tribunal has no doubt as to the integrity of Mrs. McConnell as a witness as to fact. There are some minor details of these events such as the exact time of day they happened or who may have been present as a witness to, as opposed to a participant in certain events, in respect of which the Tribunal has found that Mrs. McConnell may have made an honest and completely understandable mistake of recollection. In terms of the substance of this matter the Tribunal hearings have had the result that a story that would otherwise have been regarded as unbelievable has been vindicated as the truth. She has described in detail how this Garda brutality and mistreatment was followed shortly after by a lapse into mental illness and the hospitalisation of an innocent and decent woman. To maintain these lies an airtight conspiracy was needed. It has cracked and the repulsive nature of what occurred to Mrs. McConnell and the shocking nature of the conspiracy to publicly maintain that she was a liar in defence of the reputations of those who wronged her have been exposed as horrible. Some of those involved hoped that her strength and courage would fail her and that she would not attend and might be discouraged for medical or other reasons from attending at the Tribunal to give her evidence. Mrs. McConnell found the strength to come and give her evidence to the Tribunal. The ultimate act of courage in upholding the truth has been that of Mrs. McConnell.

[427] Transcript, Day 474, pages 135-139.
[428] Transcript, Day 474, page 140.

CHAPTER 4
The Arrests and Detentions of Mark McConnell

Introduction

4.01. Mark McConnell, the husband of Róisín McConnell and the first cousin of Frank McBrearty Junior, was arrested three times over the period 1996 to 1998 in respect of offences which he did not commit. This chapter of the report deals with each of these arrests and detentions in chronological sequence:

(i) The arrest and detention of Mark McConnell on the 4th of December 1996 at common law on suspicion of having committed the murder of the Late Richard Barron on the 14th of October 1996;

(ii) The re-arrest and detention of Mark McConnell on the 25th of January 1997 for the same offence, on foot of an order made pursuant to the provisions of section 10 of the Criminal Justice Act, 1984; and

(iii) The arrest of Mark McConnell on the 1st of October 1998 under section 30 of the Offences against the State Act, 1939 on suspicion of possession of ammunition at the home of Bernard Conlon on the 20th of July 1998.

4.02. In 1996 Mark and Róisín McConnell resided at Tullyvinney, Co. Donegal with their infant son Dean. On the 4th of December 1996 at 08.22 hours, Mark McConnell was arrested at his home by Garda John O'Dowd on suspicion of involvement in the murder of the Late Richard Barron on the 14th of October 1996. He was the third member of the extended Quinn and McBrearty families to be arrested that day. His wife, Róisín McConnell, had, unknown to him, been arrested twenty-two minutes earlier. Following his arrest, Mark McConnell was taken to Letterkenny Garda Station, where he was interviewed by various detectives for a continuous period of approximately twelve hours until his release at 20.20 hours on the evening of the 4th of December. The Tribunal has already made the following determination in respect of Mark McConnell's arrest:

> Mark McConnell was arrested at 8.22 a.m. on the 4th of December 1996 under common law for the murder of Richard Barron on the 14th of October 1996. The arresting member was Garda John O'Dowd. In his evidence to the Tribunal, Garda O'Dowd proffered the following reasons for the arrest of Mark McConnell on that date:
>
> *[T]he suspicions were – you see, it was the basis of McBride's statement at the time, which was believed to be correct and there*

> *was some difficulty with his movements the following morning. I think there was a problem with – no, that's basically the reasons that were there.*
>
> The Tribunal has concluded that this evidence was a deceit. Notwithstanding the Tribunal's determination that the ultimate responsibility for the arrests lies with the senior officers directing the investigation, whose suspicions in respect of Mr. McConnell were unreasonable, it is undoubtedly the case that the arresting officer in this instance, Garda O'Dowd, was directly responsible for manufacturing the evidence on which his reasons for arresting Mr. McConnell were based. He was centrally involved in the forced statement of Robert Noel McBride on the 29th of November 1996. His actions in this regard were also mala fide. No lawful arrest can occur where the agency effecting the arrest is responsible for manufacturing the evidence on which the grounding suspicion was allegedly based.[429]

4.03. Mark McConnell's second arrest occurred in the following way. Detective Superintendent Joseph Shelly made an application by way of sworn information to the District Court on the 11th of June 1996, pursuant to section 10 of the Criminal Justice Act, 1984, for an order for the re-arrest of Mark McConnell on suspicion of his involvement in the murder of the Late Richard Barron. The Tribunal was informed that this application was made in order to afford the investigation team the opportunity to put the alleged statement of admission made by Frank McBrearty Junior to Mr. McConnell and interrogate him about it. Mr. McConnell had been released on the 4th of December 1996 at 20.20 hours and Mr. McBrearty Junior's statement had not been completed until 20.25 hours. The statement was presented to the District Court as additional information which had come to the attention of An Garda Síochána following Mr. McConnell's release. Mr. McConnell was then re-arrested on the 25th of June 1997 at 09.06 hours by Garda John Nicholson and was interrogated in relation to the death of the Late Richard Barron until his release at 21.03 hours on the evening of the 25th of June.

4.04. Mr. McConnell was arrested for the third time pursuant to the provisions of section 30 of the Offences against the State Act, 1939 on the 1st of October 1998. This arrest was made in the course of an investigation of allegations falsely made by one Bernard Conlon that two men had attended at his home on the evening of the 20th of July 1998 and threatened him with a "silver bullet". He was told that he should withdraw a statement that he had made against the McBreartys in the context of a liquor licensing prosecution brought against them

[429] Report on the Investigation into the death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples – Term of Reference (a) and (b) – paragraph 5.216, pages 451-452.

in the District Court. The investigation of this matter has already been the subject of the third report of the Tribunal of Inquiry and the full background concerning this arrest and detention is set out in that report.[430] Mr. McConnell was arrested on this occasion on suspicion of possession of ammunition at Mr. Conlon's house on the 20th of July 1998. He was taken to Letterkenny Garda Station where he was detained and interviewed by a number of Gardaí for a period of forty-eight hours.

This chapter now sets out the details of each of these arrests and detentions.

PART I

The Arrest and Detention of Mark McConnell on the 4th of December 1996

4.05. Mark McConnell, in evidence to the Tribunal, described his arrest at 08.22 hours on the morning of the 4th of December 1996. By that stage his wife, Róisín McConnell, who had earlier left for work, had been arrested at 08.00 hours near Raphoe Garda Station when the car in which she was travelling was stopped by Garda John O'Dowd. Mark McConnell described the arrest in this way:

> *I was in my bed and the child was sleeping beside me. Next thing I heard was a knock on the back … a knock on the front door of the house. I didn't get up to answer it because the child was sleeping and I didn't want to wake it. I thought it was Frank Junior because he was using the power from my house. … Then after a couple of minutes I got a loud bang on the back window of the house, on the back bedroom. I jump up and I says who is it. They said it's the Gardaí, will you please come to the front door. I was a bit shocked and got up … just put on a shirt and walked out to the front door and the Guards were standing at the door when I opened it. … There was four to five Guards, or maybe more. I'm not sure, it was that long ago now but it seemed a lot to me because I never had Guards near my house before. It seemed numerous Guards, that's all I can say … [There are] three steps up the front of my house and there was definitely two up the top of the steps. As for the rest of them, I think they were just on the driveway. … I recognised one of the Guards as John O'Dowd … I got to know him because I knew he was going around spreading rumours about me about the town. Because up until 1996, October 1996, I didn't even know John O'Dowd existed in Raphoe. …. The only Guards I knew were Joe Hannigan. … People were telling me that he was going into houses and spreading rumours about me. It was him that was*

[430] Report on the Circumstances surrounding the Arrest and Detention of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999 – Term of Reference (d).

> *standing at the door along with, I think it was Mick O'Malley, and I knew him because he was a Garda or a sergeant in Raphoe years ago. … I can't remember the precise way it happened but he either stepped into the house or asked me to step out of the house, I can't remember John O'Dowd: I remember him putting his hand on my shoulder and I remember his hand was actually shaking and his voice was quivering. He told me he was arresting me for the murder of Richie Barron. I now know why his hand was quivering because he was setting me up for murder and covering up for himself, for what he done himself that night.*[431]

4.06. Mr. McConnell said that he was very distressed and shocked at being arrested. He asked the Gardaí why they were there arresting him and they told him not to make a scene but to get his clothes on. His son, then aged approximately 18 months, was in the hallway with him. He said that he was not given time to put the child's clothes on. He went to a downstairs room. He thought the Gardaí came into the house just inside the door. He took a baby bag and lifted his son into his arms. He described what happened next:

> *I went to the front door. While leaving the front door [Garda] Georgina Lohan, I didn't know her at the time, I now know her, she had long hair, a fairly young girl, standing at the door and she put her hands out to reach for the child as I came out the door and I told her, I swore like, I said no … way are you taking my child. I says you have to take me to his granny's house … They seemed to have a plan afoot. They were taking the child somewhere, where they were going to take him I don't know, but Georgina Lohan had her hands out.*[432]

Mr. McConnell insisted that he was going to take the child to his mother's home, to which there was no objection.[433]

The Presence of Garda Lohan

4.07. There is some controversy as to the presence and role of then Garda Georgina Lohan at the house at the time of the arrest. In the initial statements furnished by Detective Sergeant Leheny, Detective Garda O'Malley, Detective Garda Patrick Tague and Garda John O'Dowd, there is no mention of the presence of Garda Georgina Lohan. Garda Lohan, for her part, submitted a statement in response to the general request for information made by the Tribunal on the 17th of January 2003. She said:

[431] Transcript, Day 501, Q.1-17.
[432] Transcript, Day 501, Q.27-81.
[433] Transcript, Day 501, Q.32.

> I recall entering Mark McConnell's home. I recall my duty was to be present, as it was known that his child would be there. It became known to me that Mark McConnell was to take his child to its grandparents' house. I returned to Letterkenny Garda Station.[434]

4.08. Mr. McConnell recalled that Garda Lohan accompanied him and the child in the patrol car to the grandparents' house. Garda Lohan had no recollection of this. Further, she had no recollection of how she got to Mark McConnell's house or how she got back to Letterkenny Garda Station. Later when Mark McConnell complained to the Garda Complaints Board about the manner of his arrest, Detective Sergeant Leheny, in a statement on the 28th of April 1998, said that the suggestion that Garda Lohan was present was "totally untrue as no female member of the force was in my party".[435] Sometime after he received Garda Lohan's statement, Mr. Leheny said that he met her in the foyer of the Four Courts in Dublin and asked her about her presence at the scene of the arrest. He said that Garda Lohan told him that she was only a very junior Garda at the time and had no recollection of the matter. She said that she was "totally confused".[436] Sergeant Lohan thought this was a fair account of her conversation with Mr. Leheny.[437]

4.09. Sergeant Lohan in evidence to the Tribunal had no recollection of being in the car with Mr. McConnell, though he was adamant in evidence and in submission to the Tribunal that she was. I do not believe that anything turns on this particular fact. I note the submission made by Mr. McConnell that the Gardaí involved in the arrest make no reference at all to Garda Lohan's presence. Indeed, Detective Sergeant Leheny went so far as to assert that Mr. McConnell was lying in making the suggestion that she was there. For their part, Mr. and Mrs. McConnell were clearly concerned that there was an intention on the part of the Garda Síochána to take their young son into care at the time of the arrest. I do not believe that this was seriously considered because it was clear that Mr. and Mrs. McConnell had a large extended family in the area to whom they could turn and who would in all likelihood look after the child. The evidence given in relation to this episode is, I believe, indicative of the polarised and sometimes exaggerated perspectives adopted by the various witnesses to these events.[438]

4.10. Mark McConnell said that before he left the house, Detective Garda O'Malley told him to lock up the house, which he did. Detective Garda O'Malley then took the keys out of his hand.

[434] Tribunal Documents – Mark McConnell Vol. 1, pages 120-1.
[435] Tribunal Documents – Mark McConnell Vol. 1, page 83.
[436] Transcript, Day 511, Q.321-355.
[437] Transcript, Day 527, Q.580-583.
[438] Transcript, Day 511, Q.100-120. It should be noted that Detective Garda Tague said in evidence that his reason for excluding any reference to Garda Lohan was that he could not make up his mind as to whether it was Garda Kyne or Garda Lohan who accompanied him in the car with Edel Quinn back to Letterkenny Station following Ms. Quinn's arrest, which occurred shortly after the arrest of Mark McConnell near the entrance to his home.

> *He reached for the keys. He put his hands out for the keys, reaching towards my hand. I gave him the keys, the keys to the car were also on the bunch of keys.*[439]

Mr. McConnell said there was no specific agreement or arrangement to give the keys to the Garda Síochána.

4.11. Mr. McConnell said that he was given the option of travelling in a Garda car or an unmarked car. He chose an unmarked car. He said that he travelled with Detective Sergeant Leheny and Garda Georgina Lohan, who sat beside him in the rear seat. Garda O'Dowd drove the car. Initially, Garda O'Dowd drove towards Mr. McConnell's mother-in-law's home but was redirected by Mr. McConnell to his own mother's house. On arrival at the house, Mark McConnell said that he brought his son in his arms into the house and was followed in by Detective Sergeant Leheny and Garda O'Dowd. He said that when they walked into the house his mother was quite shocked. He said:

> *I went down to the room with the child and she was fairly shocked to see me … I says, I have been arrested for the murder of Richie Barron. She got up in a very bad state, both her and my father. They came up into the kitchen. My mother was crying and my father was in a bad state. I remember my mother saying to John O'Dowd, Mark didn't kill anybody and John O'Dowd agreed with her. He says, don't worry, I know he didn't. Don't worry about it.*

He said his father went outside and encountered Garda Lohan. He tried to calm his mother down. He got her a glass of water because she felt a bit faint. He said he just left whatever he had in the bag and the Gardaí took him out of the kitchen. He was then brought to Letterkenny Garda Station in the unmarked car.[440] It is clear and I fully accept that this process was hugely distressing to Mr. McConnell's parents.

Mark McConnell's Car

4.12. The only substantive issue to emerge out of Mr. McConnell's description of these events relates to the circumstances in which his motor car was taken by Detective Garda O'Malley, who drove it to Letterkenny Garda Station. There, it was subjected to a forensic examination by Garda Niall Coady later that day. Of course, nothing was found in the course of that forensic examination to link Mr. McConnell to the death of the Late Mr. Barron. This was unsurprising, having regard to the fact that Mr. McConnell had nothing to do with Mr. Barron's death. Mr. McConnell maintained that his car was not taken by consent. He denied that he was cautioned by Detective Sergeant Leheny that if he gave his consent to the

[439] Transcript, Day 501, Q.32-38.
[440] Transcript, Day 501, Q.44-53.

forensic examination of the vehicle, results of this examination could be given in evidence at his trial. Mr. Leheny said that when he asked Mr. McConnell for permission to take the vehicle away in order to have it forensically examined, Mr. McConnell gave his consent and the keys to him.

4.13. Detective Sergeant Leheny gave his initial account of these events in his statement of the 6th of December 1996, in which he said:

> On leaving the house, Mark McConnell secured the front door of the dwelling with the key. Parked outside the McConnell home, I saw a Motor Car Regd. No. 88 LM 874 a white Toyota Corolla model. I asked Mark McConnell if he was the owner of the vehicle and he replied that he was. I then asked him if he had any objection to me having the vehicle removed to Letterkenny Garda Station, as I wished to have the vehicle forensically examined in relation to the murder of Richard Barron, which we were investigating. I further informed him that the results of such examination may be given in evidence. Mark McConnell stated that he had no objection to me having his vehicle forensically examined saying that, "It's clean, that car was not involved in the accident" and he then produced to me the keys for the vehicle. I then gave D/Garda M O'Malley the keys of McConnell's car and instructed him to convey the car to Letterkenny Garda Station.[441]

4.14. Mr. Leheny acknowledged that no note or memorandum in writing was made of this caution that might have been used at any subsequent trial had anything materialised from the forensic examination. He said that he made the request of Mark McConnell at the instigation of Superintendent John Fitzgerald.[442] Mr. Leheny also said that he did not commit the consent and caution to writing as this was the first time upon which he had asked for a car in such circumstances. A suggestion was made that his detailed statement to the effect that such consent was sought and given, and that the caution was also administered to Mr. McConnell in respect of the car, was an elaborate retrospective attempt to justify what might have been regarded as an unlawful removal of the vehicle to Letterkenny Garda Station. Mr. Leheny denied this. Mr. O'Malley, in evidence, denied that he received the keys of the car from Mark McConnell. He received the keys from Detective Sergeant Leheny and then drove it to Letterkenny Garda Station.[443]

4.15. In this regard, Mr. McConnell said that he did not know of the seizure of the vehicle until later in the afternoon of the 4th of December when he saw it in a nearby yard whilst he was being moved through the Garda Station. Mr. Leheny in his evidence accepted that Mr. McConnell possibly saw the car in the position

[441] Tribunal Documents – Mark McConnell – page 56.
[442] Transcript, Day 511, Q.424-449 and Transcript, Day 512, Q.87.
[443] Transcript, Day 504, Q.136-161.

that he indicated.[444] In addition, Mr. McConnell was allegedly recorded as having said to Inspector McGinley in the course of an afternoon interview at which Detective Sergeant Leheny was present the following:

> I left the clothes in the washing machine for three weeks and out in my house. So I says that I have nothing to hide – if the Guards want to take them and my car they can.[445]

If that statement is taken at face value it would appear that during the afternoon of the 4th of December Mark McConnell offered his car to the Garda Síochána for forensic examination as he had nothing to hide. This would suggest that he had not given consent and did not know at that time that his car had been taken to Letterkenny Garda Station for forensic examination by Detective Garda O'Malley earlier in the morning. It also tends to support the proposition that it was not until much later in the afternoon when he saw his car in the Garda Station yard that he became aware that it was in the possession of the Garda Síochána. However, an issue arose during the Tribunal hearings as to whether these notes were in fact made by Inspector McGinley at the time of that interview. This will be considered later in this chapter.

4.16. The Tribunal accepts Mark McConnell's description of how he handed over the keys of his car to Detective Garda O'Malley. The Tribunal is not satisfied that he was cautioned in the elaborate manner outlined by Mr. Leheny and Mr. O'Malley about the taking of his car. The Tribunal is satisfied Detective Sergeant Leheny was directed by Superintendent Fitzgerald to take his car and have it forensically examined. They did this. At the time they had no legal power to seize the car. Though Mr. McConnell acquiesced in this by handing over the keys, the Tribunal is not satisfied that he was aware of his right to refuse to allow them to take it or that he was informed of his right to refuse to allow them to do so. The Tribunal does not accept the evidence of Mr. Leheny and/or Mr. O'Malley in this regard.

The Detention

4.17. The custody record states that Mark McConnell arrived at Letterkenny Garda Station at 09.15 hours. His personal details were entered into the custody record by Garda Martin Leonard, who authorised his detention pursuant to section 4 of the Criminal Justice Act, 1984 at 09.17 hours. Mr. McConnell signed the custody record in acknowledgement of the receipt of notice of his rights at 09.19 hours. The following are the main details recorded in the custody record in respect of his detention set out in tabular form:

[444] Transcript, Day 511, Q.465.
[445] Tribunal Documents – Mark McConnell – page 250.

Occurrence on the 4th of December 1996	Detail of Occurrence	Comment
09.15 hours	Garda John O'Dowd arrived at the station with Mark McConnell and outlined the reason for the arrest to Garda Leonard. Garda Leonard records that he "discussed fully the circumstances of arrest and reason fordetention under section 4 of l the Crimina Justice Act, 1984".	
09.17 hours	Garda Leonard was satisfied that the detention was necessary and authorised it.	
09.20 hours	McConnell was taken to an interview room by Detective Sergeant James Leheny and Detective Garda Michael O'Malley.	Commencement of first interview. Mr. McConnell alleges that he was verbally and physically abused at some time during the first interview.
10.15 hours	Solicitors James Sweeney and James O'Donnell arrived at the station.	
10.30 hours	Mr. O'Donnell had a consultation with Mr. McConnell.	
11.10 hours	This consultation ended.	
11.11 hours	Detective Sergeant Leheny and Detective Garda O'Malley returned to the interview room.	
11.20 hours	Mark McConnell was provided with tea.	
11.35 hours	Detective Sergeant Leheny and Detective Garda O'Malley left the room.	End of first interview.
11.35 hours	Detective Sergeant Hennigan and Detective Garda Tague entered the interview room. Mark McConnell recorded as "ok".	Commencement of second interview. Mr. McConnell alleges that Garda John O'Dowd sought permission to search his home during this interview on occasions that were not recorded in the custody record.
12.15 hours	The keys of Mark McConnell's house were handed over to James O'Donnell, solicitor, by Garda William Cannon.	

12.30 hours	Garda John O'Dowd entered the interview room to ask Mark McConnell if he would give a sample of blood.	
12.31 hours	Garda O'Dowd left the interview room.	
12.35 hours	Garda O'Dowd phoned Dr. John McColgan who agreed to come to the station.	
12.40 hours	Dr. McColgan arrived at the station.	
12.55 hours	Garda John O'Dowd, Garda Michael Jennings and Dr. McColgan went into the interview room to take a blood sample which was to be provided voluntarily.	
12.57 hours	Mark McConnell went to the toilet and asked to consult with his solicitor before providing the blood sample.	
13.02 hours	Mr. O'Donnell, solicitor, was phoned but there was no reply. Mark McConnell was informed of this. He wished to wait in order to speak to his solicitor before giving the blood. He agreed to give a hair sample. Garda Leonard cautioned him in respect of providing samples and Mark McConnell indicated that he understood the caution. He said that he was "ok".	
13.05 hours	He was then taken back to the interview room.	
13.07 hours	Dr. McColgan left the station.	
13.10 hours	The hair sample was provided to Detective Garda Jennings.	
13.14 hours	Detective Garda Jennings left the room and Sergeant Hennigan and Detective Garda Tague entered the room.	
13.18 hours	The interview between Mark McConnell and Detective Sergeant Hennigan and Detective Garda Tague ended and he was taken to the cell for a rest and ordered a meal.	End of second interview.
13.30 hours	Mark McConnell was provided with dinner.	
13.40 hours	Garda Leonard checked Mark McConnell in the cell "supervised dinner and asked for tea".	
13.45 hours	Tea was provided.	
13.50 hours	Permission was granted to fingerprint and photograph Mark McConnell by Superintendent John Fitzgerald. Mark McConnell was informed of this.	

14.05 hours	Mark McConnell was taken from the cell by Gardaí Carroll and Coady to be fingerprinted and photographed. He was taken to the interview room for this purpose and was notified of the authority to do so given by Superintendent Fitzgerald.	
14.10 hours	Permission was granted by Superintendent John Fitzgerald to extend the detention period of Mark McConnell for a further six hours and this was notified to Mark McConnell. He indicated that he understood this.	
14.15 hours	Gardaí Carroll and Coady finished the taking of the fingerprints and Garda Michael Murphy took photographs of Mark McConnell.	
14.16 hours	Detective Sergeant Leheny and Detective Garda O'Malley entered the interview room.	Commencement of third interview.
14.35 hours	Garda Leonard phoned James O'Donnell, solicitor, and Mark McConnell spoke to him.	
14.37 hours	Garda Cannon requested a voluntary blood sample from Mark McConnell who replied, "no".	
14.45 hours	Inspector McGinley went to the interview room.	
14.45 hours	James O'Donnell, solicitor, requested to speak to Mark McConnell.	
14.55 hours	Garda Cannon phoned the solicitor James O'Donnell on behalf of Mark McConnell who was permitted to speak to the solicitor.	Mr. McConnell maintains that he complained to Mr. O'Donnell about abuse during this call. This is confirmed by his solicitor. Mr. O'Donnell states he told Mr. McConnell he would call to the station. The Gardaí deny that any complaint was made by Mr. McConnell to his solicitor.
14.58 hours	Garda Cannon requested a voluntary blood sample from Mark McConnell who agreed to provide it provided it was divided in two. Detective Sergeant Leheny and Detective Garda O'Malley then continued the interview.	

15.20 hours	Mr. James O'Donnell came to the station and requested a meeting with Mark McConnell. Garda Leonard went to the interview room and consulted with Inspector McGinley as to the suitability of this and was told that it was unsuitable and that the solicitor had had reasonable access. Garda Leonard recorded "returned to solicitor told him accordingly, made allegations. I handed copy of allegations to solicitor."	Mr. O'Donnell states that he attended the station because he had been told by Mr. McConnell that he had been abused.
15.30 hours	Solicitor left the station.	
15.31 hours	Garda Leonard "checked prisoner and he was ok in no need of medical attention and he made no complaint to me."	
15.50 hours	Dr. McColgan arrived at the station.	
15.55 hours	Dr. McColgan was taken to the interview room by Detective Gardaí Jennings and Coady. Detective Sgt. Leheny and Detective Garda O'Malley and Inspector McGinley left the room.	
15.56 hours	Mark McConnell gave a sample of his blood after caution and "requested sample which was provided he received one sample of choice."	
16.00 hours	Dr. McColgan, D/Gardaí Jennings and Coady left the room and Detective Sergeant Leheny and O'Malley entered.	
16.30 hours	Mark McConnell was given a change of clothing by Garda Coady.	
16.31 hours	Detective Sergeant Leheny and Detective Garda O'Malley left the interview room.	End of third interview.
16.31 hours	Sergeant Hennigan and Detective Garda Tague entered the room with Garda Coady. Mark McConnell changed into the clothing provided and gave his clothing to Garda Coady who left the room at 16.33.	Commencement of fourth interview.
17.30 hours	Garda Leonard checked Mark McConnell in the interview room and he was "ok". He asked him if he had any complaint and he replied, "no".	During this interview Mr. McConnell alleges that he was physically abused and shown post-mortem photographs of the Late Richard Barron.
18.00 hours	This interview terminated and Mr. McConnell was placed in a cell.	End of fourth interview.

18.10 hours	Mark McConnell was provided with a meal.	
19.05 hours	Mark McConnell was taken from the cell to an interview room by Detective Garda O'Malley and Detective Sergeant Leheny.	Commencement of fifth interview.
19.45 hours	Detective Garda O'Malley left the room and Sergeant Hennigan entered the room.	Mark McConnell maintains that Detective Garda O'Malley did not leave the interview but remained throughout and it was during the course of this interview that he alleges that a forged statement from Frank McBrearty Junior was produced to him.
20.20 hours	Released from custody. No complaints to make.	The fifth interview terminated at about this time.

The First Interview

4.18. Mr. McConnell was first interviewed between 09.20 hours and 11.35 hours by Detective Sergeant James Leheny and Detective Garda Michael O'Malley. In his first statement in respect of this detention made on the 6th of December 1996, Detective Sergeant Leheny described this interview. He said that he took Mr. McConnell to an interview room after he had been processed by Garda Leonard. He was accompanied by Detective Garda O'Malley. At the outset of the interview he first cautioned Mark McConnell in the normal way and explained to him in ordinary language the reason for which he was detained in Garda custody. He said that he informed Mr. McConnell that he had good reason to believe that Mr. McConnell was involved in causing the death of Richard Barron and that he could assist the Gardaí in their investigation. He said that Mr. McConnell acknowledged that he was fully aware as to why he was detained in Garda custody but denied any involvement in the death of the Late Richard Barron. Detective Sergeant Leheny said that he asked Mr. McConnell for:

> A full account of his movements and actions from 6.00 p.m. on Sunday night the 13th October 1996 to 10.00 a.m. on Monday morning the 14th October 1996 during which period Richard Barron met his death.

He said that Mr. McConnell agreed to give an account but that he would not make any statement until he saw his solicitor. He was then told that Detective Sergeant Leheny would make a written record of any account of his movements and actions for that period that he might give. Mr. McConnell then gave an

account of his movements which was recorded in writing. He said that during the course of the interview at 10.30 hours Garda Martin Leonard, the member in charge, interrupted the interview to enable Mr. McConnell to have a consultation with his solicitor Mr. James O'Donnell. This occurred between 10.30 hours and 11.10 hours, during which the interviewing Gardaí remained outside the interview room. Following this consultation, Detective Sergeant Leheny described how he administered the caution to Mr. McConnell again, to which Mr. McConnell replied:

> I have told my solicitor the account of my movements for the night Richie was killed, which I have given you and he has advised me not to say anything further, to make no statement and to sign nothing.

Detective Sergeant Leheny said that when questioned Mr. McConnell declined to say anything further in relation to the death of Mr. Barron. He also said that when Garda Leonard returned to the room at 11.20 hours to provide light refreshments to Mr. McConnell, he asked Mr. McConnell if he had any complaints to make to which Mr. McConnell replied, "No". Detective Sergeant Leheny then said that he read over to Mark McConnell the entire written account of his movements and actions, which he had noted. He then asked Mr. McConnell if he wished to sign the notes as an acknowledgement that they were a true and accurate account of what he had said, to which he replied, "my solicitor has advised me not to sign any statement". He declined to sign the interview notes, which was, of course, his right. Detective Sergeant Leheny then said that he signed the interview notes. At this point he and his colleague were replaced in the interview room at 11.35 hours by Sergeant P. Hennigan and Detective Garda Pádraig Tague.[446]

4.19. Detective Garda Michael O'Malley also made a number of statements which describe this interview and which substantially agree with the account given by Detective Sergeant Leheny.[447]

4.20. Notes of this interview were available to the Tribunal. Having been completed, these notes appear to have been handed in to the incident room shortly after they were made, probably on the 4th of December 1996. This was recorded at the time in the index of investigation statements. The notes are signed by Detective Sergeant James Leheny but not by his colleague Detective Garda O'Malley. They contain a series of answers which are an outline of Mr. McConnell's movements from approximately 18.00 hours on the evening of the

[446] Tribunal Documents – Mark McConnell Vol. 1, pages 59-61. This account was repeated in a further statement made by Detective Sergeant Leheny to Chief Superintendent John Carey on the 28th of April 1998, Tribunal Documents – Mark McConnell Vol. 1, pages 74-76 and a further statement made in response to civil proceedings issued by Mr. McConnell which is undated, Tribunal Documents – Mark McConnell Vol. 1, pages 92-95.

[447] Tribunal Documents – Mark McConnell Vol. 1, pages 38-39 (undated statement): pages 41-44 (statement 23rd February 1998 in response to civil proceedings issued by Mr. McConnell): pages 48-50 (statement 28th of April 1998 made to Chief Superintendent Carey and Superintendent Forde).

13th of October 1996 until sometime after 10.00 hours on the morning of the 14th of October 1996. They also contain a number of answers in which he denies having anything to do with the death of the Late Richard Barron; speaking to Frank McBrearty Junior at the disco that evening; being present in the Tudor bar at any time that night; being in the car park attached to Frankie's nightclub at any stage that night; or being at the scene of the death of the Late Richard Barron at any stage. They also contain a denial that he had any discussion about any words that he may have had with the Late Richard Barron in the Town & Country bar with any of the McBreartys.[448] Mr. McConnell, in evidence, said that he could not remember the taking of notes during the course of this interview. Nevertheless, he accepted that the answers set out in the notes were substantially accurate.[449] When asked whether the notes were read over to him and whether he refused to sign them on the advice of his solicitor, he denied that any of that happened. He had no recollection of anybody writing anything during that period.[450]

4.21. Mr. McConnell alleged in evidence to the Tribunal that this interview was not conducted in the manner outlined by Detective Sergeant Leheny and Detective Garda O'Malley, but that from the outset he was subjected to abuse by both Gardaí. He described it this way:

> *I remember it being very abusive. I thought with O'Malley coming into the room at least it was a face that I knew and it would have helped a bit maybe during this interrogation. But he came into the room and went completely ballistic, O'Malley. Shouting and roaring calling me a fat murdering bastard. It was just abuse from the start of the interview until the end. … From the get go they were very abusive. Especially O'Malley. … As far as I can remember I was brought upstairs, somewhere on a long corridor into a room. I can't remember was I took in by O'Malley and Leheny or was I took in by somebody else or who came in when. But as soon as the interview started he was a Jekyll and Hyde kind of a character, just went completely berserk, O'Malley. Roaring and shouting. … On about murdering Richie Barron, an innocent man, just down the town for a drink, that he was celebrating his grandson's birth and you, you fat murdering bastard and your cousin murdered him. This was the general gist of it. At a stage he got me to stand up and then I was pushed about the room by both of them. Leheny and O'Malley. … [Detective Sergeant Leheny] wasn't doing an awful lot to tell you the truth. It was more O'Malley was the instigator of the whole thing. … O'Malley was standing and*

[448] Tribunal Documents – Mark McConnell Vol. 1, pages 318-326.
[449] Transcript, Day 501, Q.90-102.
[450] Transcript, Day 501, Q.103-112.

Leheny was sitting … I was sitting at the beginning … he just told me to stand up and he started pushing me and then Leheny got up and done the exact same thing, they were pushing me from one to the other and telling me to come clean and that an innocent man had been murdered and kept going over the same thing, same thing, and how they had all these witnesses that could place us at the scene and people had seen us coming down through the car park, very reliable witnesses and just in general, just abusive during the whole period … [451]

Mr. McConnell was then asked to describe how he was pushed. He said:

Well they were in front of me when I was sitting at the desk and both of them came towards me and O'Malley pushed me and then Leheny joined in just by pushing on the arm [demonstrated].

Q. Were they pushing you with their hands?

A. Mm-hmm.

Q. Were they standing on either side of you or in front of you and behind you?

A. It was done randomly, they pushed me and I can't remember exactly whether they pushed me from one to the other, all I can remember is them pushing.

Q. … I was going to ask you did they sit down again?

A. Mm-hmm.

Having pushed you?

A. Yeah.

Q. Can you say how many times you were pushed or for how long the pushing went on?

A. It went on for a few minutes, that's all I can say. It went on for a few minutes.

Q. When it ceased what did they do?

A. They told me to sit down again and they sat down the other side of the table and they interviewed me.[452]

4.22. Mr. McConnell complained that throughout the interview they called him a liar. They accused him of lying in respect of every answer that he gave in explanation

[451] Transcript, Day 501, Q.68-77.
[452] Transcript, Day 501, Q.78-84.

of his movements and said that anybody who could give him an alibi for that night was also lying.[453]

4.23. In evidence Mr. James Leheny told the Tribunal that there was "not an inch" of scope for any of these allegations. He denied completely that there was any pushing and shoving by him or Detective Garda O'Malley. He said that for the entire period that they were with Mr. McConnell, Mr. McConnell remained seated in the inspector's chair and never got out of it while they were in the room.[454] Mr. O'Malley in evidence also denied this allegation "completely and categorically". He said that neither he nor his colleague Detective Sergeant Leheny stood up and walked around the room at any stage. He accepted that he did not sign the notes of this interview which he said was an omission on his part.[455]

The Solicitor's Visits and Telephone Calls

4.24. Mr. James O'Donnell, solicitor to Mr. McConnell, visited him between 10.30 and 11.10 hours. The typed note of his attendance states:

> The client told me that he was being questioned by Garda Mick O'Malley. The client told me that the questioning Guard had said that his statement was a pack of lies. He said that he had been seen by the Guards going with Frank McBrearty up a road to murder Richard Barrons. They said that they had witnesses who had made a statement on Wednesday or Thursday after the murder. Mark McConnell told me that he had told the interviewing guards that he had made the phone call that night to the hospital. He had made the phone call to enquire as to the condition of the now deceased Richard Barrons. He said that he phoned the hospital at about 3.00 a.m. Mark said that the Guards had told him that his wife had been seen coming out of the Parting Glass. Mark told me that the keys of his car and the keys of his house were taken by the Gardaí. Mark told me that the Guards had told him that Frank McBrearty Senior was putting people under pressure to change their statements. The Guards said that they had a way of dealing with that. Mark told me that the Gardaí arrested him at the front door of his house this morning. Mark told me that on the night of the death of Richard Barrons himself and all his relations were down in the Parting Glass for Mark Quinn's son christening. Mark said that the Gardaí put it to him that he went up the road with young Frank McBrearty junior and bludgeoned Richard Barrons with an iron bar. Mark further told me that the Gardaí are saying that Frank Senior is harassing witnesses. Mark told me that he made the phone call to the hospital from Eunan Brolly's house.

[453] Transcript, Day 501, Q.85-86.
[454] Transcript, Day 512, Q.102-111.
[455] Transcript, Day 512, Q.250-282.

> I advised client not to say anything other than what he had already stated in his statement. I further advised him that if the Guards stated that he had to make a statement he should refuse to do so and request to speak with me.
>
> I further advised him that should they require any blood samples etc. that he was to ring me and I would advise him accordingly. Mark asked me to ring his mother and father at [number supplied] and to ask the Guard in charge to give me the keys of his house so that he could get clothes.
>
> I was told that Mark was being detained pursuant to Section 4 of the Criminal Justice Act, 1984 as amended. …. [456]

4.25. In the handwritten note of this attendance Mr. O'Donnell records the name of only one of the interviewing Gardaí, that of Detective Garda O'Malley. It is also clear from those notes that his solicitor was informed that there was nobody down at the house and that the keys of the car and the keys of the house were in the possession of An Garda Síochána. The phone number of Hannah and Noel McConnell (Mr. McConnell's parents with whom he had left his son earlier in the day before being brought to the station) was furnished to Mr. O'Donnell beside which Mr. O'Donnell made the entry "needs to get clothes".[457]

4.26. Mr. O'Donnell, in evidence, said that during the course of the consultation, Mr. McConnell was agitated and distressed about the manner of and the reason for his arrest, and the manner in which he had been questioned during the course of the interview up to that point. Mr. McConnell made no complaint to him at that stage that he had been physically abused or pushed from one Garda to another. Mr. O'Donnell said that had he been told such a thing he would probably have made a note of it.

4.27. Mr. McConnell alleged that he was asked about the role of Frank McBrearty Senior. It was suggested to Mr. McConnell by the interviewers that:

> *You're all in Frank Senior's pay book and you're all related and Frank Senior is really orchestrating this and aren't you really all going to do what Frank Senior tells you, and we've ways of dealing with that and that anything that he had said heretofore or was saying was a pack of lies.*[458]

4.28. In that regard, Mr. McConnell said that there was no reference in the notes taken of this interview of the questions which had been asked of him concerning Frank McBrearty Senior.[459] In addition, Mr. McConnell stated that they did not contain

[456] Tribunal Documents – Mark McConnell Vol. 2, pages 397-398.
[457] Tribunal Documents – Mark McConnell Vol. 2, pages 394-395.
[458] Transcript, Day 509, Q.65.
[459] Transcript, Day 501, Q.116-117.

the proposition that he and Frank McBrearty Junior, "had gone up the road and bludgeoned Richard Barron with an iron bar", which he said was mentioned in the first interview and was "also a common trend throughout the day".[460]

4.29. Later on in the afternoon, there was further telephone contact between Mr. O'Donnell and Mark McConnell. At 14.35 hours Mr. O'Donnell received a telephone call from the Garda station and was allowed to speak to his client. He gave his client advice about whether he ought to give a blood sample to the investigating Gardaí. Mr. O'Donnell described it in this way in his note:

> At approximately 2.40 p.m. I received a phone call from Garda Willie Cannon to say that my client wanted to speak with me. I spoke with the client, Mark McConnell, who said that the Guards had told him that they wanted to take a blood sample. I then spoke with Garda Willie Cannon again, who told me that he was requesting the blood sample on a voluntary basis. I advised Mark not to agree to give this.[461]

Mr. O'Donnell then reconsidered this advice having reviewed the legislation. His note then records that he telephoned the Garda station again at approximately 14.50 hours and spoke with Garda Willie Cannon. He told Garda Cannon that he wished to speak with his client as he had reconsidered the matter and would advise him now to permit the taking of the sample but only on the understanding that one half of the sample be given to his client for independent analysis. He noted that:

> Garda Willie Cannon put me on to my client and I spoke with the client and advised him of this. The client agreed to this course. The client during the course of this interview, told me that he was being abused by one particular member of the Gardaí and that he asked Garda Willie Cannon, as far as I'm aware, who was standing near him, who the name of the Guard was that was abusing him and Garda Cannon refused. I told Mark McConnell that I would attend on him at the Garda Station.[462]

4.30. Mr. McConnell explained this conversation with his solicitor in the following way:

> *All I can remember is I asked Garda Cannon the name, I was trying … to the best of my ability I wanted to get all the names of the Guards who were interviewing me, plus anybody who was abusing me, I wanted their names because I knew nobody. In particular, as far as I can recall at that stage, I didn't know who Leheny was and I had asked Garda Cannon who he was and he refused to tell me.*[463]

[460] Transcript, Day 501, Q.119-122.
[461] Tribunal Documents – Mark McConnell Vol. 2, page 398.
[462] Tribunal Documents – Mark McConnell Vol. 2, pages 397-398.
[463] Transcript, Day 501, Q.259.

He subsequently became aware of the identity of the particular Guard whose name he did not know, that is Detective Sergeant Leheny. Mr. McConnell said that the abuse he was referring to in this conversation with his solicitor was that which had occurred in the first interview in the course of which he was pushed and shoved. He already knew the identity of Detective Garda O'Malley.[464]

4.31. In evidence, Mr. O'Donnell said that in the course of the conversation on the telephone with Mr. McConnell:

> *He told me that he was being harassed, he had been actually physically abused and he didn't know the name of the Guard. So I took it from that that he wasn't a local Garda. So because of my concern I went to the Garda Station and asked to speak, I think I spoke with Garda Leonard and Garda Leonard wouldn't let me. He said I had had reasonable access to the client previously. I asked him to note the allegation in the custody record and I asked him also that he be assessed by a doctor because of the allegation that he had made and Garda Leonard told me at that stage, no, that he would decide whether or not my client needed to see a doctor. However, he said that he would note my request for a doctor in the custody records … That was it. … I would have been quite agitated myself at that stage when I arrived up … I had been involved in one or two very minor matters but other than that, and I was practising two to three years at that time, I had never dealt with criminal law. … I think to be fair there was certainly frustration from my client and the fact that nobody knew who the Guard was who was I suppose the main instigator of the abuse. I mean there seemed to be some sort of secrecy shrouding the identity of the Guard. That's my interpretation. … I am talking about when I went up to the station that time. … During the phone call and when I went up to the station. … He was very upset on the phone … I don't think I would have rushed up so hastily unless he had been so upset.*[465]

This telephone call concluded at 14.58 hours.

4.32. Mr. O'Donnell then made his way to Letterkenny Garda Station. He arrived there at 15.20 hours and immediately requested access to his client from the member in charge, Garda Leonard. After consultation with Inspector McGinley, (to which reference will be made at a later stage), he was then refused the consultation.

4.33. Garda Leonard recorded this incident in the custody record as follows:

[464] Transcript, Day 501, Q.259-264.
[465] Transcript, Day 509, Q.81-91.

> Mr. James O'Donnell came to station and requested meeting with client. I went to interview room. Consulted with D/Inspector McGinley as to suitability and was told it was unsuitable. Solicitor had reasonable access. Returned to solicitor told him accordingly. Made allegations. I handed copy of allegations to solicitor.[466]

4.34. The note which Mr. Leonard told the Tribunal he wrote in the presence of Mr. O'Donnell said the following:

> Mark McConnell
>
> 3.20 pm Mr. O'Donnell specifically allegation Garda abusing him asking name refused.
>
> Client to find out.
>
> Garda refused to give name of other Garda.
>
> Client asks solicitor to come to station in relation to abuse.
>
> When arrived M.I.C. M. Leonard advised solicitor of reasonable access, can have no further access.
>
> Ask.
>
> Check with client said Ass. I was told decision of M.I.C.
>
> Martin Leonard - MIC[467]

Mr. Leonard said that he wrote this note out in front of Mr. O'Donnell who also corrected elements of it while Garda Leonard was writing it. He said that Mr. O'Donnell was very angry with him when he refused the access on Inspector McGinley's direction. Mr. Leonard, in evidence, accused Mr. O'Donnell of becoming very agitated and said that he was only making the allegation of abuse against Gardaí because he was refused access to his client. He said:

> *Both of us got a bit, I got a bit hot about that too. I felt this was a smart, smart one … After I told him he couldn't have further access, he then got … I'm making allegations, I want them put into the custody record, or I want a record of them, right. I started the record, my client is getting abused, that's what is in there, he didn't specify … Whatever that other thing is there. Something about asking the Garda, the Garda refused. The medical assist is what got on my nerves, got under my skin ... because this was a last throw of the dice on his part … it was medical and he wanted a doctor called in to see his client. He was alleging that maybe … for*

[466] Tribunal Documents – Mark McConnell Vol. 1, page 313.
[467] Tribunal Documents – Mark McConnell Vol. 1, page 29.

> *medical reasons. That's back to me. He was casting aspersions therefore that I was … that this man needed medical attention because of Guard activity … If there was an allegation of abuse he should have put that allegation to me when he was asking for his consultation. When I refused the consultation as instructed, it was then that he got a bit … you know, so I took this thing as crap.*[468]

He did not believe Mr. O'Donnell when he told him that he was there because his client had complained of abuse and thought that was nonsense:

> *Well he was using it, not that he deliberately made it up, that he was using it.*[469]

4.35. Mr. O'Donnell, for his part, had no recollection of being furnished with any note of the allegations that he had made. As already noted, he said he went to the Garda station because of his concern at the allegation that had been made to him by his client that he had been physically abused. He said that having been refused access to his client he asked Garda Leonard to note the allegations in the custody record and that his client be assessed by a doctor because of the allegation that he had made. He said that Garda Leonard told him, at that stage, that he would decide whether or not his client needed to see a doctor. However, he was told by Garda Leonard that he would note the request for a doctor in the custody record.[470] He said that he got quite agitated himself. In relation to the note that Mr. Leonard said he handed to Mr. O'Donnell, he told the Tribunal that he had absolutely no memory of getting anything like that and had he been given such a note it would be on the file of V.P. McMullin Solicitors.[471]

4.36. Garda Cannon gave evidence that the telephone call received by Mark McConnell from his solicitor was made from or to the interview room (the Detective Inspector's office). On the Garda evidence it is contended that Detective Sergeant Leheny, Detective Garda O'Malley, Inspector John McGinley and Garda Cannon were present. Mr. McConnell's recollection was that he was brought to another room for the call and that he, Garda Cannon and Detective Sergeant Leheny were present. He contends in evidence that during this call he received advice from his solicitor concerning the giving of the blood sample, but also complained that he had been pushed by Gardaí who had been interviewing him. He told Mr. O'Donnell that he was not able to name one of the Gardaí involved and that Garda Cannon would not name that Garda to him. That Garda was in the room with him at the time of the call. He subsequently learned that the Garda whom he could not name was in fact Detective Sergeant James Leheny.[472]

468 Transcript, Day 539, Q.927-967.
469 Transcript, Day 539, Q.971.
470 Transcript, Day 509, Q.80.
471 Transcript, Day 509, Q.117-213.
472 Transcript, Day 501, Q.259-264 and Transcript, Day 524, Q.82-126 (Evidence of Mr. William Cannon).

4.37. Mr. Leheny, Mr. O'Malley, Mr. McGinley and Mr. Cannon all denied that any such complaint was made at this time.[473] They each gave evidence that the call was taken or made in their presence but that Mr. McConnell never complained to Mr. O'Donnell of any abuse during the course of the phone call. If he had, they all contended that they would have heard it. Undoubtedly, Mr. O'Donnell came directly to the Garda Station following this call. The purpose of this call was, originally, to advise Mr. McConnell that he should give a sample of blood if it was split in two and one half of the sample retained for examination by Mr. McConnell's expert. Mr. McConnell acted on this advice. Therefore, there was no reason at all for Mr. O'Donnell to attend at the Garda Station unless something else had happened. I am satisfied that it had: a complaint of physical abuse had been made to Mr. O'Donnell by Mr. McConnell in the course of the telephone call, in response to which he went promptly to the station out of concern for the well being of his client. I do not accept the evidence of the Gardaí in respect of this phone call.

4.38. Mr. O'Donnell was clear that the complaint of physical abuse was made against those conducting the first interview. He believed that Mr. McConnell was trying to obtain the identity of the "main instigator" of the abuse, namely, Detective Sergeant Leheny. However, in evidence, Mr. McConnell described Detective Garda O'Malley as the main perpetrator of the abuse. Nevertheless, I am satisfied that Mr. McConnell most definitely complained about physical abuse. Mr. O'Donnell very properly and promptly attended at the Garda Station where, having been refused access to his client, he made a complaint of physical abuse and requested that a doctor attend at the station and that his complaint be noted in the custody record. Garda Leonard did this. Garda Leonard was also aware that Mr. McConnell was complaining that a Garda had refused to give the name of another Garda said to have been involved in the abuse. However, Garda Leonard did not accept that there was any reality to the complaint. He saw it as a contrived gesture of annoyance by a solicitor who had been refused access to his client. In this he was entirely wrong.

4.39. It should also be noted that this was a phone call which Mr. McConnell was permitted to take in order to obtain legal advice from his solicitor, Mr. O'Donnell. Garda Cannon knew this, as did any Garda who was present. Such a communication is one which a prisoner is entitled to make out of the hearing of a Garda.[474] He was entitled to the protection of legal professional privilege. No Garda should have been in a position to hear what was said in the course of this phone call by either Mr. McConnell or

[473] Transcript, Day 518, Q.144-210; Transcript, Day 509, Q.513-598 (Evidence of Mr. O'Malley); Transcript, Day 526, Q.256-273 (Evidence of Mr. McGinley)..
[474] See The People (DPP) -v- Finnegan unreported C.C.A. 15th July 1997.

his solicitor. The presence of these Gardaí during the course of this phone call, and in the knowledge that it was for the purpose of obtaining legal advice, was a clear violation of Mr. McConnell's right of access to his solicitor. It does not leave me with any confidence that much regard was had to the rights of Mr. McConnell, much less to the custody regulations.

4.40. The Tribunal is satisfied that the course of these events as described, and to some extent recorded in the custody record and the solicitor's attendance, support the allegations made by Mark McConnell that he was assaulted in the course of the first interview. Events which are described in the section on the third interview also tend to substantiate Mr. McConnell's story. As will be seen, Garda Leonard, following the departure of Mr. O'Donnell, returned to the interview room at 15.31 hours and asked Mr. McConnell whether he had been assaulted or required a doctor. There was no reaction at all on the part of the three interviewing Gardaí to these specific questions. Mr. McConnell was said to have replied in the negative to each question but the Gardaí present made no enquiry of Garda Leonard as to what this was all about. It clearly concerned the allegation made by Mr. McConnell, conveyed through his solicitor to Garda Leonard, that he had been assaulted in the first interview. The allegation had implications for two of those now present in the interview room, namely, Detective Sergeant Leheny and Detective Garda O'Malley.

4.41. The Tribunal is satisfied that Mr. McConnell was pushed by Detective Garda O'Malley and Detective Sergeant Leheny. Detective Sergeant Leheny, I am satisfied, played a lesser role. The pushing was of a minor nature and lasted for a very short period. Of course, it should never have happened. The Tribunal is also satisfied that this first interview was conducted in an aggressive and hostile manner which contributed to the atmosphere in which the physical excesses occurred.

The Second Interview

4.42. The second interview with Mr. McConnell was conducted by Sergeant Patrick Hennigan and Detective Garda Patrick Tague between 11.35 hours and 13.18 hours. Mr. McConnell described it in evidence as "fairly straightforward". He said in evidence that he was asked about his movements on the night of the 13th/14th of October 1996. He also said that this was the first occasion during the day upon which "a booklet of photographs" was produced:

> *This was the first time that it was slapped down on the table.*[475]

[475] Transcript, Day 501, Q.124.

The photographs in the booklet were not displayed to him until later in the day. Whilst he described "fairly aggressive questioning" during the course of this interview, he told the Tribunal that there was no physical ill treatment suffered by him during this period.[476]

4.43. Notes provided to the Tribunal, which the interviewers said in evidence were taken during this interview, were read over to Mr. McConnell at its conclusion and acknowledged as correct by him.[477] Mr. McConnell could not recall this occurrence but could not say that it did not happen.[478] A number of topics are recorded in these notes. These include the movements of Mark McConnell on the night of the 13th and the morning of the 14th of October 1996, the parking of his car, and his attendance at the Brolly home. A reading of the notes suggests that at times Mr. McConnell was firm in his assertions: on one occasion when told that the interviewer was not satisfied with his account of his movements, he replied, "that's it." When asked was he telling the full truth he replied, "Listen boys, how would I know Richie was going up that road?"[479] Nevertheless, Mr. McConnell was not happy that the notes taken were an accurate account of what was said. He claimed that there were omissions, exemplified by the one line synopsis of what was alleged to have been said by him during a twenty minute period from 11.50 hours to 12.10 hours which was:

> Mark McConnell then spoke about row in Quinn's bar and gave an account of what happened.[480]

I am satisfied, however, that the notes presented are a broadly accurate picture of the questions posed and answers elicited by the interviewers during this period.

4.44. In the body of these notes two visits by Garda John O'Dowd to the interview room are recorded. In the first visit the record indicates that he was accompanied by Garda William Cannon. The entries in the notes are:

> 11.50 a.m. Garda Dowd and Cannon entered and spoke to prisoner, left shortly afterwards …
>
> 12.10 p.m. Garda Dowd entered and spoke with Mark McConnell.[481]

These visits are not recorded in the custody record.[482]

Mark McConnell gave evidence that Garda O'Dowd asked him on two or three occasions to "sign a search warrant for my house" which he refused to do

[476] Transcript, Day 501, Q.182.
[477] Tribunal Documents – Mark McConnell Vol. 1, pages 327-335.
[478] Transcript, Day 501, Q.181.
[479] Tribunal Documents – Mark McConnell Vol. 1, pages 333-334.
[480] Tribunal Documents – Mark McConnell Vol. 1, page 328.
[481] Tribunal Documents – Mark McConnell Vol. 1, page 328.
[482] Tribunal Documents – Mark McConnell Vol. 1, page 310.

initially.[483] He told the Tribunal that he then relented and agreed to do so "after receiving legal advice" to give his consent "but only on the condition that the solicitor was present".[484] He said that Garda O'Dowd had a piece of paper in his hand which Mr. McConnell had to sign if he wished to give his consent for the search.

4.45. In his evidence on this matter to the Tribunal Mr. John O'Dowd said that he had not been asked to secure the consent of Mark McConnell to search his family home at any stage. He said that his visits to the interview room at 11.10 and 12.10 hours arose in the following way:

> *His solicitor required keys so that he could get into his house in some way and the member in charge wanted a written permission from Mark McConnell to hand over the keys. I was assigned that job to go up and ask Mark McConnell would he be prepared to give written permission to have his keys handed over and he wouldn't. The note says there I was with Garda Willie Cannon but I don't remember that … How and ever, at 12.15 same keys were actually handed over by Willie Cannon to his solicitor … That was the only reason, that was the only thing I asked him would he give … would he sign over his permission for us to hand over the keys.*[485]

4.46. Mr. O'Dowd's evidence that he went to the interview room with Garda Cannon in order to obtain permission from Mr. McConnell for the release of his household keys to his solicitor, Mr. James O'Donnell, is supported by three other pieces of evidence. Firstly, Mr. McConnell's child had been left with his grandmother. Róisín McConnell was in custody and the child had been removed to its grandparents' home at short notice and with very little opportunity for preparation. Secondly, in this context, Mr. James O'Donnell made an entry in his attendance note of the 4th of December which included a telephone number for Hannah and Noel McConnell, the child's grandparents, with the accompanying note "needs to get clothes".[486] In the typed version of these notes Mr. O'Donnell records that:

> Mark asked me to ring his mother and father at [no. supplied] and to ask the Guard in charge to give me the keys of his house so that he could get clothes.[487]

Thirdly, it is recorded in the custody record that at 12.15 hours the:

> keys of his house handed to James O'Donnell solr by Gda. W. Cannon.[488]

[483] Transcript, Day 501, Q.140.
[484] Transcript, Day 501, Q.141-145 and Q.151-155.
[485] Transcript, Day 503, Q.939-997 and Transcript, Day 504, Q.1-11.
[486] Tribunal Documents – Mark McConnell Vol. 1, page 395.
[487] Tribunal Documents – Mark McConnell Vol. 2, page 398.
[488] Tribunal Documents – Mark McConnell Vol. 1, page 310.

4.47. Mr. McConnell's solicitor, Mr. O'Donnell, had no recollection of any issue arising with Mr. McConnell concerning a possible search of his home or giving any advice to him that he could consent only if he, the solicitor, was present for the search. Whilst he had no recollection of receiving the keys to the house from Garda William Cannon at 12.15 hours he accepted that Mr. McConnell:

> *was anxious that the keys be got to a member of his family in relation to obtaining the clothes.*[489]

Mr. William Cannon (retired Garda) who was an assistant to Garda Leonard, the member in charge, on the 4th of December 1996 recalled that he went to the interview and requested Mark McConnell to consent to the handing over of a set of car keys to his solicitor. He did not seek any written consent from Mr. McConnell and did not recall the purpose for which the keys were to be handed over to Mr. O'Donnell. There was nothing in his statement, prepared shortly after the event, to indicate that he had visited the room earlier with Garda O'Dowd and he had no recollection of it.[490] On the basis of his statement and the custody record and his recollection, he was certain that he did not visit the room earlier than 12.15 hours.[491]

4.48. Mr. Martin Leonard told the Tribunal that he insisted that written permission should be sought before the keys could be handed over. He presumed it had been obtained because it was Mr. McConnell who wanted the keys to be handed over to his solicitor. He expected that Mr. McConnell would have signed a permission before the keys were handed over. It should have been brought back to Garda Leonard and put in the custody record. He thought this had been done. He was not aware of any attempt to obtain Mr. McConnell's consent to search his family home. He was not told that Garda O'Dowd and Garda Cannon had visited Mr. McConnell at 11.50 hours or that Garda O'Dowd had returned at 12.10 hours though these visits are recorded in the interview notes. He contended that he should have been so informed. He accepted that the fact that he requested somebody to obtain the written permission of Mr. McConnell in order to hand over the keys was not recorded in the custody record and added that there was no requirement on a Garda to go in and get written permission but that it was good practice.[492]

4.49. I am satisfied that the keys to Mr. McConnell's family residence were handed over, at his request, to his solicitor at 12.15 hours on the 4th of December 1996. Mr. McConnell's infant son had been taken at short notice to his grandparents at the time of Mr. McConnell's arrest. His mother was also in custody. Access was needed to the family home by the

[489] Transcript, Day 509, Q.213-245.
[490] Tribunal Documents – Mark McConnell Vol. 1, page 32.
[491] Transcript, Day 524, Q.62-82.
[492] Transcript, Day 509, pages 164-177.

grandparents in order to obtain clothes for the child. This finding is supported by Mr. O'Donnell's evidence and notes of attendance with Mr. McConnell. Indeed, I see no difficulty in Gardaí asking the permission of a householder to enter and search his home if they believe it appropriate. Such a permission can always be withheld. The householder should be cautioned in respect of the possible legal consequences in that what may be found may be used in evidence.

4.50. It is clear that during the course of the investigation into the death of the Late Mr. Barron the family homes of Mark McConnell and Frank McBrearty Junior had not been searched in order to ascertain whether there was any forensic link between any object (weapon or clothes) that might be found in their respective homes and the death. The Gardaí had no power to obtain a search warrant at the time in order to search either of the homes. This legal position has since been changed. Nevertheless, the vehicles of both suspects were taken by An Garda Síochána at the time of their arrests. In the case of Mr. Frank McBrearty Junior, he gave a written consent to An Garda Síochána to search his family home on the 4th of December 1996 whilst in detention. I am satisfied that a consent was executed by Mr. Frank McBrearty Junior in the early afternoon of the 4th of December 1996. It would be logical for the Gardaí to take a similar consent from Mr. Mark McConnell. It would be equally logical that Mr. McConnell, if requested, would seek legal advice in respect of that matter. Mr. O'Donnell, his solicitor, does not recall Mr. McConnell seeking any advice from him as to whether he should comply with such a request. He does, however, recall that Mr. McConnell asked him to phone the grandparents of the child and to obtain the keys to the family home from the Garda Síochána in the context of a need to get clothes. If Mr. McConnell simply refused to give permission, there would be no need to hide the fact that this had occurred. Similarly, I do not see any advantage to Garda O'Dowd in declining to receive a permission which Mr. McConnell said he gave for the search of his family home on the basis that his solicitor was present during the course of the search. It would make sense that if such a permission was offered, it would be accepted and it would be then for a more senior officer to decide whether to act on such a permission or not. Mr. McConnell maintains that the permission proffered was unacceptable to Garda O'Dowd because there would have been independent oversight of the search which would not have facilitated any nefarious activity that the Gardaí conducting the search wished to carry out. I am not satisfied that this is so. Further, I am not satisfied on the evidence that Mr. McConnell was asked for permission to search his family home at 11.50 and 12.10 hours by Garda O'Dowd. It seems more likely that these visits were concerned with

the issue of keys to his family home as recalled by his solicitor. I do not find Mr. McConnell's evidence on this matter reliable.

4.51. The notes of interview and the custody record also record two further visits to the interview room by Garda John O'Dowd prior to the conclusion of the second interview at 13.18 hours. The third visit at 12.30 hours was, according to the custody record, for the purpose of requesting Mr. McConnell to provide a sample of his blood.[493] At 12.31 hours Garda O'Dowd is recorded as leaving the room. He then telephoned Dr. McColgan who agreed to call to the station to take the blood sample. Garda O'Dowd, Detective Garda Jennings and Dr. McColgan then went to the interview room to take the blood sample. However, at 12.57 hours Mr. McConnell requested an opportunity to consult with his solicitor about this matter. Efforts were then made to contact Mr. James O'Donnell and at 14.35 hours Mr. McConnell had a telephone consultation with Mr. O'Donnell after which he declined to provide the blood sample at 14.37 hours on the basis of legal advice. Nevertheless, in the meantime he provided a hair sample as requested to Detective Garda Jennings.[494]

Extension of Detention

4.52. Following the second interview Mr. McConnell was taken to a cell and provided with a meal. Permission was granted by Superintendent John Fitzgerald to fingerprint and photograph Mr. McConnell at 13.50 hours. At 14.10 hours Superintendent Fitzgerald directed that Mr. McConnell's detention be extended for a further period of six hours. In his statement on the matter, Superintendent Fitzgerald said that he kept in touch with the progress of the investigation by consulting with Sergeant Pat Hennigan and Garda Martin Leonard, the member in charge. He described what happened in the following way:

> During the course of my consultation with Sergeant Pat Hennigan and Garda M Leonard, the member in charge, and briefing myself on the up to date situation, Sergeant Hennigan told me that he did not believe the account given by Mark McConnell as to his movements and actions on the night and morning of the murder of Richard Barron and that his account was in conflict with other witnesses, that he believed he was not telling the truth and was denying facts put to him concerning the crime for which he had been arrested, that he was holding back on vital information in his possession relating to the murder of Richard Barron. Garda M Leonard, the member in charge, requested the further detention of Mark McConnell for a further period of six hours. I also checked on the situation with Garda Leonard, the member in charge at Letterkenny. Having all the facts and the progress in the investigation I considered the further detention of Mark

[493] Tribunal Documents – Mark McConnell Vol. 1, pages 311 and 329.
[494] Tribunal Documents – Mark McConnell Vol. 1, pages 311 to 312 and page 334.

> McConnell necessary for the proper investigation of the crime for which he was arrested.[495]

Mr. Fitzgerald confirmed this account in evidence to the Tribunal.[496] Mr. Fitzgerald said that it was his policy to be briefed by somebody directly concerned with the prisoner. Mr. Fitzgerald believed the application made to him by Garda Leonard was made "on the request of Sergeant Hennigan in this case".[497] Mr. Fitzgerald said he was contacted twice by Garda Leonard, firstly in relation to the authorisation for the fingerprinting, photographing and palm printing of Mr. McConnell at 13.50 hours, at which stage he was informed about the state of affairs concerning Mr. McConnell and was told by Garda Leonard that, like Sergeant Hennigan, he did not believe what Mr. McConnell was saying about his movements and actions on the 13th/14th of October 1996. Twenty minutes later, at 14.10 hours Superintendent Fitzgerald was again contacted by Garda Leonard, who briefed him on the up to date position and requested the authorisation for the extension, to which he acceded. He was asked about whether Garda Leonard was the appropriate person in the circumstances to make an application for the extension of detention in this case. He thought that he was and that Garda Leonard was not compromised in his role as envisaged in the custody regulations: he did not accept that Garda Leonard was thereby drawn into the investigation. He replied that Garda Leonard, insofar as he had to satisfy himself that the person should be detained under section 4 of the Criminal Justice Act, was automatically brought into the whole investigation. It was his practice to consult the investigating officer and the member in charge.

4.53. Mr. Leonard told the Tribunal that he had been told by the interviewing officers that an extension of detention for six hours was required. He said that:

> *To make sure that the law is complied with I have to ensure that the regulations are complied with in that the extension is granted by the superintendent and he has to tell me that he has granted it. [It was on occasion necessary] because of stupidity on behalf of interviewing officers, they go away, he'd be put into the cell, he'd go away, they'd go away, and I'd be left with minutes to go. He is not detained unless I get permission from the superintendent and if I have to get that permission I have to ring the superintendent and ask for it and explain to him why … There was no progress in the investigation that's what the two boys had told me there was no advancement, so it follows …*[498]

Mr. Leonard pointed out that he had two roles, one as a member in charge and

[495] Tribunal Documents – Mark McConnell Vol. 1, page 145.
[496] Transcript, Day 527, pages 168-186.
[497] Transcript, Day 527, Q.632.
[498] Transcript, Day 539, pages 179-185.

another as a Garda. As member in charge he was obliged to ensure that the law and regulations relating to detention were complied with and as a Garda, not to act as an 'adversary' to other Gardaí. If necessary, therefore, he felt it was his duty to apply for an extension where others had not applied for it. He had done this before and at smaller stations a member in charge might, of necessity, also be involved in the detention and no conflict was deemed to arise.

4.54. The question arises as to whether it is appropriate for a 'member in charge' to make application for an extension of detention in circumstances such as this. The regulations in respect of the treatment of persons in custody are made under section 7 sub-section 2 of the Criminal Justice Act, 1984 which provides that:

> The regulations shall include provision for the assignment to custody the member of the Garda Síochána in charge of a Garda Síochána station, or to some other member, of responsibility for overseeing the application of the regulations at that station, without prejudice to the responsibilities and duties of any other member of the Garda Síochána.

Regulation 4 of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987[499] defines the role of 'member in charge' of a Garda station in regulation 5(1) as follows:

> The member in charge shall be responsible for overseeing the application of these regulations in relation to persons in custody in the station and for that purpose shall visit from time to time and make any necessary enquiries.

Regulation 4(3) provides that:

> As far as practicable, the member in charge shall not be a member who is involved in the arrest of a person for the offence in respect of which he is in custody in the station or in the investigation of that offence.

Undoubtedly, in the past, there were occasions upon which a member in charge of a station to which an arrested person is brought may also have been involved in the investigation of that offence, by reason of manpower constraints. That did not apply in Letterkenny Garda Station in 1996. Nowadays, an arrested person under the Criminal Justice Act would be taken to a designated Garda station, appropriately equipped for interviewing. Having regard to the functions of the member in charge, it seems to me entirely inappropriate that he or she should make application or be involved in the making of an application for the extension of detention of a prisoner by a superintendent. His or her obligation is to oversee the enforcement of the regulations. If the time for detention of the prisoner has expired, his or her obligation is to ensure that he is released. The role of the member in

[499] Statutory Instrument No. 119 of 1987.

charge should not be compromised by drawing him or her into aspects of the investigation, such as, making application to the superintendent for the further detention of a suspect "for the proper investigation of the offence". The decision to make such an application is for those investigating the offence. The member in charge should be regarded as having an important, independent function during the course of detention to ensure diligently that the custody regulations are applied, and to make such decisions and representations to those investigating the offence or their appropriate officers as he or she feels are justified and proper in order to fulfil this duty.

The Third Interview

4.55. The following account of the third interview highlights a number of matters that emerged in the evidence. It deals with the refusal to Mr. McConnell of access to his solicitor at 15.20 hours. It concludes the story of the solicitor's complaint that his client had been assaulted and an account of the Garda response to the making of that complaint when Mr. O'Donnell left the station at 15.31 hours. There then follows an account of what is said to have occurred during the interview itself, which was broken into three identifiable segments. It also considers deficiencies in the taking and preservation of notes during this interview. The Tribunal also examined specific allegations made by Mr. McConnell concerning this period: that Mr. McConnell had been interrogated loudly and aggressively and that he had been spat upon. However, Mr. McConnell made no allegation of any other physical abuse against his interviewers in respect of this period.

4.56. This interview, which was conducted by Detective Sergeant Leheny, Detective Garda O'Malley and Inspector McGinley commenced at 14.16 hours and concluded at 16.31 hours, according to the custody record.[500] Reference has already been made to a number of occurrences during this period. Gardaí requested that Mr. McConnell provide them with a sample of his blood at 14.35 hours: he ultimately complied with this request, following his receipt of legal advice at 14.55 hours by telephone. Mr. McConnell complained to his solicitor in the course of that telephone call that he had been physically abused during the course of the first interview. His solicitor attended at Letterkenny Garda Station in response to this complaint at 15.20 hours. He was refused access to his client, following which he made a formal complaint to Garda Martin Leonard in relation to a number of matters.

Refusal of Access to the Solicitor

4.57. The refusal of access by Mr. O'Donnell, solicitor to Mr. McConnell, was made

[500] Tribunal Documents – Mark McConnell Vol. 1, pages 313-314.

upon the direction of Inspector John McGinley. According to the custody record and his own evidence, Inspector McGinley was present in the interview room from 14.45 hours. He told Garda Leonard that Mr. O'Donnell's request for further access to his client was "unsuitable [as the] solicitor had reasonable access."[501] Regulation 11 of the custody regulations provides that:

> (1) An arrested person shall have reasonable access to a solicitor of his choice and be enabled to communicate with him privately …
>
> (3) A consultation with a solicitor may take place in the sight but out of hearing of a member …

Mr. McGinley, in evidence, said that when he was informed by Garda Leonard that Mr. McConnell's solicitor was at the station and sought a visit with his client, he consulted the custody record. He then saw that Mr. O'Donnell had already visited with Mr. McConnell and had spoken to him twice on the telephone. Therefore, he decided that the solicitor had had adequate and reasonable access to his client and directed Garda Leonard to refuse the request for access.[502]

4.58. Undoubtedly, there may be circumstances in which it is responsible on the part of an investigating Garda to refuse or grant access to a legal adviser. If a solicitor has had a lengthy consultation with his client, who had been arrested for the proper investigation of the offence, and the solicitor seeks a further lengthy consultation shortly thereafter, it may be that in those circumstances a refusal may take place because the solicitor has already been afforded reasonable access to his client. Nevertheless, the decision to refuse access in this instance must also be viewed against the background that Mr. McConnell had made a serious allegation of physical abuse over the telephone to his solicitor, who had then attended at the station.

Garda Response to Solicitor's Complaint

4.59. All the Gardaí who say they were present at the time of this telephone call deny that any such complaint was made. Furthermore, Garda Leonard, having dealt with Mr. O'Donnell as previously described, returned to the interview room at 15.31 hours, following the departure of the solicitor from the station, and then made the following entry in the custody record:

> Checked prisoner and he was ok. In no need of medical attention and he made no complaint to me.[503]

4.60. Mr. Leonard told the Tribunal that:

> *I went up [to the interview room] because of the solicitor's visit.*

[501] Tribunal Documents – Mark McConnell Vol. 1, page 313.
[502] Transcript, Day 526, Q.19-23.
[503] Tribunal Documents – Mark McConnell Vol. 1, page 314.

> *And I went in and checked. And I asked him specifically in relation to these allegations, was he assaulted or did he have a complaint to make? And he says no. And I asked him did he require a doctor and he says no. So that was it. Therefore my suspicions were confirmed about the solicitor just throwing in a red herring.*[504]

According to Mr. Leonard, Mr. McConnell denied that he was assaulted or that he needed medical attention as requested by his solicitor. None of the Gardaí present, including Inspector McGinley, made any comment in relation to the questions that he posed. Mr. Leonard did not see anything surprising in this because, he said, a lot of prisoners make allegations of assaults:

> *You must remember … that decent people are not ending up in Garda stations … it's unfortunately people, you know, who have problems etc. you know we're dealing with that, people of a lesser … what's the word you know they have their own problems. We're not dealing with the likes of upper classes. So they … allege assaults against us. You find it unusual? Most prisoners allege assaults against Gardaí. It's par for the course.*[505]

4.61. For his part, Mr. McGinley gave evidence that he believed that Garda Leonard had come to the interview room and posed these questions in order to demonstrate to Inspector McGinley, as an officer, how thoroughly he, Garda Leonard, was carrying out his duties as member in charge.

> *I thought it was just Garda Leonard, and because I was there as an inspector in the interview room that he was posing these questions. I didn't believe there was any grounds for it and he posed them for my benefit and left again. And when the prisoner replied in the negative, it was something … I neither pursued … with Mr. Leonard or with Mr. McConnell.*[506]

Mr. McGinley made no note of the occurrence.[507]

4.62. Mr. Leheny, in evidence to the Tribunal, said that he was aware that Mr. McConnell had declined previously to give a sample of blood and had consulted his solicitor about the matter. He also knew that Garda Cannon had entered the interview room and informed Mr. McConnell that his solicitor wished to give him further advice about the giving of blood and that he would facilitate the phone call. Both phone calls were conducted from the interview room in Detective Sergeant Leheny's presence. He did not hear Mr. McConnell make a complaint of assault or abuse on the telephone. He confirmed that Garda Leonard entered the

[504] Transcript, Day 539, pages 206-208.
[505] Transcript, Day 539, page 209-210.
[506] Transcript, Day 526, Q.289.
[507] Transcript, Day 526, Q.290-291.

interview room at 15.31 hours and asked the prisoner three questions, namely, whether he was "ok", whether he had a complaint of assault, and whether he needed any medical attention. Notwithstanding the question regarding an assault, Mr. Leheny said that he was not aware of any allegation of assault at that stage. He was not at all surprised that Mr. McConnell had been asked these questions, though he accepted that in 1996 it was unusual for the questions to have been posed.[508] Though Mr. Leheny maintained that during the 1970's and 1980's it would have been normal to pose questions of that kind to a suspect, especially if they were dealing with alleged subversives, nevertheless, he conceded that such questions had not been asked of a detainee for years. Like Mr. McGinley he ascribed the posing of the questions to Mr. McConnell by Garda Leonard to being overly officious.[509] He did not place any importance on the questions posed and because they did not cause him any concern, he did not make any enquiries of Garda Leonard as to why these questions were being asked.

4.63. The following day, the 5th of December 1996, Detective Sergeant Leheny received a copy of the custody record in which he saw that allegations had been made by Mr. McConnell's solicitor. He did not do anything about that. Mr. Leheny also rejected any allegation that his identity was being "shrouded" and kept from Mr. O'Donnell or Mr. McConnell during the course of the telephone call or at any other time during the afternoon. He said that he had been introduced by Detective Garda O'Malley to Mr. McConnell earlier in the day and that Mr. McConnell was fully aware of his identity at all times. He denied that Garda Cannon refused to reveal his identity to Mr. McConnell when Mr. McConnell was on the telephone to his solicitor or at any other time. He also noted that Mr. McConnell's allegation to his solicitor referred to the non-identifiable Garda as the main abuser in the course of the first interview, whereas in evidence, Mr. McConnell described Detective Garda O'Malley as the main abuser.[510]

4.64. Mr. O'Malley in evidence also denied that any complaint was made in the telephone conversation between Mr. McConnell and his solicitor. He accepted that he would have heard it had it been made. He accepted that he had no particular reaction to the questions posed by Garda Leonard to Mark McConnell but thought at the time that the third question as to whether Mr. McConnell required medical attention was strange.[511]

4.65. Mr. McConnell, in interview with Mr. Flynn, in respect of the phone call with Mr. O'Donnell and subsequent events, said that having received advice from his solicitor by telephone to give a blood sample:

[508] Transcript, Day 518, Q.165-216.
[509] Transcript, Day 518, Q.216-217.
[510] Transcript, Day 518, Q.253-261.
[511] Transcript, Day 510, Q.1-92.

> I asked then who the Garda was who was giving me the abuse, and Martin Leonard says you are not telling the solicitor about this you are telling him about a different subject altogether. That was grand. I went back into the room and I said to Martin Leonard I want to make a complaint now about these Guards here. And he says right, and he says do you want to make it of Mick O'Malley or one of the detectives, he says is this prisoner being abused while he has been in this room. And Mick O'Malley says no I never seen no prisoner being abused. He said to the other fellow, has John been abusing this prisoner while he has been in this room. No he hasn't been and Martin Leonard turned around to me and says what the f… are you making a complaint about.[512]

In evidence to the Tribunal, Mr. McConnell said that he was taken from the interview room, in order to have contact with his solicitor in respect of the advice concerning the blood sample, by Garda William Cannon. He complained that Garda Cannon declined to tell him the identity of Detective Sergeant Leheny, who was in the room with them at the time of the making of the call. He said that he was then returned to the interview room by Garda Cannon and Detective Sergeant Leheny, having complained to his solicitor on the telephone that he had been pushed and shoved in the first interview. The solicitor recorded that Mr. McConnell told him that he was "being abused by one particular member of the Gardaí" whom he could not identify by name. He reported that it was Garda Cannon who refused to give the name of the Garda to him. Mr. McConnell did not give evidence that Garda Leonard supervised him in respect of this phone call but accepted that it was supervised by Garda Cannon. He did not give evidence as set out in his interview with Mr. Flynn of the verbal exchange between Garda Leonard and Detective Garda O'Malley as set out in the extract quoted above. However, he made similar allegations involving Garda Leonard and Detective Garda Tague in a complaint which he made later in the afternoon in respect of the showing of photographs during the course of an interview.[513] He said that Garda Leonard asked Gardaí present whether they had witnessed this abuse and they had replied no. Garda Leonard allegedly then asked Mr. McConnell what he was complaining about in a dismissive manner.

4.66. I am satisfied that Mr. McConnell's complaint of assault was treated dismissively by Garda Leonard when it was made by Mr. O'Donnell. It is wrong when a prisoner makes a complaint of such a serious nature that it should be ignored by the senior investigator present, in this case Inspector John McGinley. It was clearly an accusation that Garda Leonard knew referred to the two interviewers who conducted the first interview and in

[512] Tribunal Documents – Mark McConnell Vol. 1, page 381.
[513] Transcript, Day 501, Q.256-269 and Q.486-488: see also statement of Mark McConnell to Superintendent Carey 18th February 1998 Tribunal Documents Vol. 1, pages 291-292; and see paragraph 4.95 infra.

front of whom he chose to put three questions as to whether Mr. McConnell was "ok", had been assaulted and required medical attention. The form of the question connotes concern, but the inaction of the Gardaí present demonstrated complete indifference.

Three Segments of Third Interview

4.67. The period from 14.16 hours to 16.31 hours may be broken into three segments. The first segment is from 14.16 hours to 14.45 hours, during which Mr. McConnell was interviewed by Detective Sergeant Leheny and Detective Garda O'Malley. The second segment is from 14.45 hours, when the interviewers were joined by Inspector John McGinley, until 15.55 hours, when he left. The third segment is the period from 15.55 hours until the interview ended at 16.31 hours.

4.68. The first segment was interrupted at 14.35 hours when Mr. McConnell was allowed to speak to his solicitor by telephone, following which he refused to furnish a blood sample, as already described, at 14.37 hours. Mr. McConnell said in evidence that during the first segment, Detective Garda O'Malley left the room for a short period which was not recorded in the custody record. During this period Mr. McConnell was alone with Detective Sergeant Leheny and enjoyed what he described as a "fairly cordial" conversation. This ended when Detective Garda O'Malley returned to the room. Mr. McConnell described it in this way:

> *We talked about a number of things. I think he talked in general … at the time I was severely overweight and the conversation got up over that and how he'd lost weight and stuff like this, it was just an ordinary conversation. I can remember then when O'Malley re-entered the room Leheny started to get … it was as if somebody had turned a switch on him. And he started being abusive. From the way I took it was he was trying to make it look as if he'd been involved in some hard questioning of me while O'Malley had been out of the room.*[514]

He alleged that Detective Garda O'Malley was verbally abusive towards him and seemed to take the death of the Late Richard Barron "even more personal than most of the other Gardaí".[515] There are no notes available for this segment of the interview.

4.69. The second segment of the interview commenced with the arrival of Inspector John McGinley at 14.45 hours and continued until he left at 15.55 hours. The interruptions which occurred during this segment have already been set out in preceding paragraphs. Mr. McConnell described his dealings with Inspector McGinley at this time. He told the Tribunal that Inspector McGinley had

[514] Transcript, Day 501, Q.189-201.
[515] Transcript, Day 501, Q.201-203.

photographs of the post-mortem of the Late Richard Barron in his hand during the course of this interview but did not show them to him. As he questioned Mr. McConnell he started to raise his voice to him because he did not like the answers that Mr. McConnell gave. On a couple of occasions, Mr. McConnell alleged that Inspector McGinley questioned him very aggressively and shouted and roared at him. Inspector McGinley was standing and Mr. McConnell was sitting down. He alleged that Inspector McGinley got so close to his face on a couple of occasions that "there was actual spit coming onto my face, his saliva". He described this questioning in the following way:

> *He was questioning me very aggressively and shouting and roaring, he was totally fixated also with Frank Senior, a lot of his questions were pointed at … he had this theory in his head that Frank McBrearty had convened some kind of a meeting in the Parting Glass of all the people involved in the supposed murder of Richie Barron and that he had coached everybody on what to say and everybody was to keep their stories right and he more or less thought that Frank McBrearty was co-ordinating some sort kind of cover-up. Which I told him was a load of lies. As I say his questioning got very aggressive and he came towards me and he was nearly shouting and roaring into my face and the spit was flying, either purposefully or not I don't know. But that's the way he was behaving during that interview. As I say, totally obsessed with Frank Senior and [from] what I can see trying to pin him or trying to get evidence on him on some kind of a cover-up … The questioning changed to the whereabouts, things calmed down again for a minute and he sat down on his seat and started asking general questions about my movements.*[516]

4.70. Mr. McConnell's earliest account of this encounter with Inspector McGinley was made to Mr. William Flynn in 1997:

> One of the people that was really really bad to me was Inspector John McGinley. He was really …
>
> Interviewer: In what way was he bad to you?
>
> M.McConnell: He was sat on my face continuously I'd say for two minutes.
>
> Interviewer: What do you mean sat on your face?
>
> M.McConnell: Well not sat on my face but know say that's his face there I was sitting in a seat like that there he was, I'd do that and he'd do the spittle was blinding me, he was shouting at me he was shouting you dirty

[516] Transcript, Day 501, Q.204-216.

> fat murdering bastard and he would repeat this continuously for two minutes steady steady going at me with this.
>
> Interviewer: Did you ask to phone your solicitor?
>
> M.McConnell: I wanted to make a complaint to the Guard that you make the complaints to was Martin Leonard.
>
> Interviewer: Martin Leonard who is he?
>
> M.McConnell: He must have to do with custody or somebody who watches over the prisoners. While all this abuse was going on to me they were throwing chairs and they were spitting and they were holding your head like this here and putting Richie Barron's photograph under your face saying look what you done you murdering bastard. I wanted to make a complaint. Martin Leonard came in as he came in the door my solicitor phoned looking for me.[517]

This exchange with Inspector McGinley is accompanied by allegations that photographs were shown to Mr. McConnell of the post-mortem of the Late Richard Barron and that he was physically abused and that chairs were thrown in the course of the interview. The next matter recorded in sequence in that interview is the account of the phone conversation which he had with James O'Donnell, his solicitor, in the course of which he was advised to give a blood sample provided it was split in two, which has already been described in preceding paragraphs. In evidence to the Tribunal Mr. McConnell said that there was no physical abuse during the course of this interview. I am satisfied that he was not physically abused during this interview.

4.71. In an interview with Tribunal investigators on the 11th of June 2003 Mr. McConnell made the direct allegation that "Inspector McGinley spat in my face, one of the times he was in the room." This was a repetition of an allegation made on the 18th of February 1998, when he said in his statement:

> Inspector John McGinley kept coming in. One time he came up close to my face and called me a murdering bastard. He spat in my face.[518]

Clearly, these were allegations which Mr. McConnell was not willing to stand over in evidence. I am not satisfied that Inspector McGinley spat in Mr. McConnell's face intentionally or accidentally.

4.72. The only notes of the third interview available are those said to have been taken by Inspector McGinley during the second segment of the interview and are contained in typed form in a statement made by the then Detective Inspector

[517] Tribunal Documents – Mark McConnell Vol. 2, pages 380-381.
[518] Tribunal Documents – Mark McConnell Vol. 1, page 291.

McGinley in 1999.[519] The notes reflect that Mr. McConnell was told that he was lying about the time that he had left the Town & Country pub, which Mr. McConnell had put at 01.30 hours approximately. It was incorrectly suggested to him that Stephen McCullough had made a statement to An Garda Síochána that he had met the McConnells at 00.25 hours. He was then asked about statements made by Philomena Laird and Carmel Connolly, two young women who were working in the local chip shop and who initially maintained that Mr. and Mrs. McConnell had arrived in the chip shop at 00.30 hours, approximately an hour before they said they had left the Town & Country bar. Inspector McGinley then read the statements of the two women to Mr. McConnell. Mr. McConnell was recorded as saying that other people who gave times which were different to those offered by him and his wife were telling lies. The notes conclude in the following way:

QD/I	You knew the Guards were going to come for you at some stage?
	I thought you would be here before now.
QD/I	These things take time.
	Can I repeat myself now. I left the clothes in the washing machine for three weeks out in my house. So I says that I have nothing to hide – if the Guards want to take them and my car they can.

4.73. Mr. McGinley then recorded in his statement that Garda Leonard entered the interview room and informed them that Dr. McColgan had come to examine the prisoner. He said that he then read over the notes to Mr. McConnell and asked him to sign them, but that Mr. McConnell said that he was signing nothing on the advice of his solicitor. The notes were then signed by Inspector McGinley, Detective Sergeant Leheny and Detective Garda O'Malley. Mr. McConnell said in evidence that he had no recollection of this occurring.[520]

4.74. Mark McConnell accepted that much of what was contained in these notes actually passed between him and Mr. McGinley. However, he said that there were a number of omissions. For example, Mr. McGinley:

> *Also went on about the Noel McBride statement. He didn't name Noel McBride and also the feature of all interviews was the ringing of the town clock at one o'clock as Noel McBride was in the car park … There's no mention of the Frank McBrearty scenario where he took everybody into the Parting Glass …* [521]

[519] Tribunal Documents – Mark McConnell Vol. 1, pages 217-219.
[520] Transcript, Day 501, Q.241.
[521] Transcript, Day 501, Q.219 and Q.236.

4.75. In respect of the last segment of the notes quoted above, Mr. McConnell seemed to imply that these notes were inaccurate but then said:

> *Unless he mentioned to me at that stage that my car was in the Garda station I can't recall to be a hundred per cent sure. He's obviously said to me that your car is here and I probably, if that's the case, I probably says well do whatever you have to do.*[522]

4.76. It should also be noted that in his first statement concerning this interview Inspector McGinley said:

> During the interview, the prisoner was asked if he could be mistaken in his times as Summer Time had concluded the previous week. Mr. McConnell stated that he was not mistaken and that it was ordinary time.[523]

This statement, though typed, did not contain a typed version of notes of interview in the form in which they appeared in the second statement, though a summary of the interview appears. The question posed about Summer Time, though acknowledged as important by Mr. McGinley in evidence to the Tribunal, was not included in the original handwritten notes of the interview. This omission could not be explained by Mr. McGinley in evidence to the Tribunal.[524]

The Original Notes of Interview

4.77. The original handwritten notes of this interview became known as document 25(f) and was made available to the Tribunal in that form. The numbering sequence is in line with the numbering of documents referable to statements made by Mark McConnell in the course of the initial investigation into the death of the Late Mr. Barron and such notes of interview as are available from Mr. McConnell's detentions on the 4th of December 1996 and the 25th of June 1997. Investigations reveal that prior to the submission of the Lennon report in respect of the death of the Late Mr. Barron to the Director of Public Prosecutions in March 1998, six documents, including Mr. Mark McConnell's original statement of the 16th of October 1996 and five sets of notes attributable to interviews conducted during both of his detentions, were received in the incident room and submitted as part of the report. These documents were assigned the numbers 25 (Mr. McConnell's statement), 25(a), 25(b), 25(c), 25(d), and 25(e). A statement index in respect of the initial investigation into the death of the Late Mr. Barron, which covers the period up to August 1997 approximately, indicates that two sets of notes referable to Mr. McConnell's detention on the 4th of December 1996 were received, namely 25(a), notes attributable to the first interview with Detective Sergeant Leheny and Detective Garda O'Malley, and 25(b), notes which are attributed to interviews conducted with Detective

[522] Transcript, Day 501, Q.239-240.
[523] Tribunal Documents – Mark McConnell Vol. 1, page 203.
[524] Transcript, Day 526, pages 56-59.

Sergeant Hennigan and Detective Garda Tague.[525] Document 25(c) was a further note of interview between Mark McConnell, Sergeant Hennigan and Detective Garda Tague. Documents 25(d) and 25(e) are notes of interview referable to Mr. McConnell's detention on the 25th of June 1997. The originals of these notes 25(f) were not received by the incident room prior to March 1998.

4.78. The original of the note contained in 25(f) records how Inspector McGinley entered the interview room at 14.45 hours and how he reviewed the progress of the interview with Detective Sergeant Leheny in respect of which it is noted "prisoner not responding – gave a/c – and saying no more on advice of solicitor". It is a two page handwritten document on one sheet of paper and concludes with the note "asked to sign and refused on advice of solicitor" with the three signatures of the interviewing Gardaí at the very end of the interview notes. There was very little room for Mr. McConnell to sign had he wished to do so. Otherwise the notes, apart from the question referred to above in respect of Summer Time, reflect the questions and answers contained in the typed version of the notes in a later statement of Inspector McGinley. Mr. McConnell accepts the broad accuracy of these notes apart from two significant omissions already mentioned. The first refers to the absence of questions in the notes in respect of questions put concerning the contents of Robert Noel McBride's statement and a further omission of questions put in respect of Mr. Frank McBrearty Senior, alleging that he was involved in some sort of conspiracy to suppress the truth about the events of the 13th/14th of October 1996.

4.79. Mr. McGinley, in evidence, said that these notes 25(f) were not immediately furnished by him to the incident room staff. He said:

> *The notes first of all would go for typing but I didn't put them into the incident room to have that done with Mark McConnell's on that date. I think they didn't go in until the following week, when they went in along with Frank McBrearty's. That's my recollection of it. Then when they'd have come back out and been corrected, they would have been … my recollection is they would have been left in the incident room then. The notes themselves would have been left in the incident room and I would have made up my statement of evidence on the typed version. No, the notes would have been typed and saved to a disk and the manuscript would have gone into the system (in mid December of 1996).*[526]

[525] Tribunal Documents – Róisín McConnell, pages 856, 875-876 (Index of Statements Book 494) and pages 884 and 904 (Name Index Book 499) and pages 914 and 927 (Index to Statements Book 492) – in which the existence of the originals of 25, 25(a), 25(b), 25(c), 25(d) and 25(e) are confirmed and the documents are reassigned the numbers 70, 70A, 70B, 70C, 70D and 70E for the purpose of the Lennon report.

[525] Transcript, Day 526, Q.146-162.

He said that he personally left the notes in a tray in the incident room. He left in the original manuscript and a photocopy of the original manuscript. The typed version of the manuscript was left on his desk, "it was always on my desk then thereafter for putting it into statements or whatever".[527]

4.80. It is clear from the numbering system assigned to the statements and interview notes of Mark McConnell that had these notes entered the system in or about December of 1996 they would have been assigned the next numbering sequence to 25(c). 25(d) and 25(e) entered the system in June of 1997. Though typed statements of Mr. McGinley were forwarded in the Lennon Report which contained the typed version of these notes, it is clear that the originals of the notes had not been assigned a number before the Lennon report was submitted in March 1998. How the document came to be assigned the number 25(f) remains a mystery. The reference to the question about Summer Time in the body of a statement made in 1997 which was not included in the notes of interview is also unexplained, though the question was thought to be important by Inspector McGinley. In the Garda mindset, it ruled out a possibility of innocent error on the part of Mr. McConnell in furnishing his times. Therefore, there is a body of evidence that tends to suggest that the originals of the notes came into existence after the interview. On the other hand, both Mr. Leheny and Mr. O"Malley recall that Inspector McGinley took notes during the course of the interview and they gave evidence that they signed the document at the conclusion of the second segment of the interview, as is evident from the original of the document. **However, it is a curious feature of the first and third segments of this interview that no notes of interview are available in respect of these periods. The non-taking of notes during the entire period of this interview is consistent with the account given by Mr. McConnell that it was conducted in a verbally aggressive manner. He had no recollection of Mr. McGinley taking any notes during the second period.**

4.81. The second segment of the interview concluded at 15.55 hours when Dr. McColgan was taken to the interview room by Detective Gardaí Jennings and Coady in order to take the blood sample from Mr. McConnell. At this stage, Detective Sergeant Leheny, Detective Garda O'Malley and Inspector McGinley are noted in the custody record as having left the room. At 16.00 hours Dr. McColgan and the two Detective Gardaí left the room and Detective Sergeant Leheny and Detective Garda O'Malley re-entered to continue the interview with Mr. McConnell. This continued for a further half an hour until 16.31 hours. Mr. McConnell in evidence to the Tribunal said that he could "vaguely recall" that period. He said:

[527] Transcript, Day 526, Q.174.

> *Anything that O'Malley was involved in that day it was all, it was fairly aggressive interviewing, that's all I can remember. It was more or less going over the same ground. He might have went over my movements, I can't say for a hundred per cent. As I say I can remember certain things fairly clear and O'Malley's general demeanour that day was completely mad.*[528]

No notes were available to the Tribunal in respect of the first and third segments of this interview period.

Evidence of Mr. Leheny and Mr. O'Malley

4.82. Mr. Leheny said in evidence that he and his colleague Detective Garda O'Malley continued to question Mr. McConnell and "we just continued where we had left off". He said:

> *He'd answer anything in relation to an account of his movements on the night in question, covering the points he had already covered in his first interview. If we varied off that and started to probe anything outside that equation he wouldn't answer it, he'd tell us on the advice of my solicitor I'm not saying anything.*[529]

Mr. Leheny denied that either he or his colleague raised their voices to Mr. McConnell or were in any way aggressive to him during this period.[530]

4.83. Mr. O'Malley described the third interview in evidence to the Tribunal. He said that Mr. McConnell agreed to answer questions about his movements on the night of the 13th/14th of October 1996 during the course of the first and third segments of the interview. However, following his morning consultation with his solicitor he refused to answer any questions outside that topic on the basis of legal advice. Mr. O'Malley denied that he ever left the room during the first segment of the interview or that he was in any way verbally or otherwise aggressive or abusive towards Mr. McConnell. The questions put to Mr. McConnell during the afternoon were described by Detective Garda O'Malley as similar to those posed in the first interview. He agreed that Detective Sergeant Leheny took notes during the first and third segments of the interview and that Mr. McConnell added very little to what he had already said in the first interview. These notes were not read over to Mr. McConnell at the end of the first and third segments. The questioning of Mr. McConnell continued until the arrival of Inspector John McGinley at 14.45 hours with the exception of a short break in respect of a telephone call to Mr. McConnell's solicitor between 14.35 and 14.37 hours.

[528] Transcript, Day 501, Q.249-254.
[529] Transcript, Day 518, Q.277.
[530] Transcript, Day 518, Q.279-280.

4.84. The arrival of Inspector McGinley was not expected by either Detective Garda O'Malley or Detective Sergeant Leheny and Mr. O'Malley accepted that Inspector McGinley became the note taker during the second segment of the interview. He said that Inspector McGinley became the note taker because of a rearrangement of seating after Garda Cannon entered the interview room in order to facilitate the telephone call between Mr. McConnell and his solicitor at 14.55 hours. During the course of the call the interviewing Gardaí stood up from the table and when they sat down again Inspector McGinley was in a better position to write on the table. Detective Sergeant Leheny had moved a short distance from the table. Detective Garda O'Malley said that he asked a number of questions during the second segment. He was not able to offer any reason as to why the notes were not read over at the conclusion of the first and second segments.

4.85. The third segment of the interview concluded upon the arrival of Garda Niall Coady at 16.30 hours. Mr. McConnell was given a change of clothing at that stage. The two interviewers left the room and met their replacement team of interviewers, namely Sergeant Pat Hennigan and Detective Garda Patrick Tague, with whom they discussed the progress of the interviews:

> *They said that they would go in for the next period of interview. So we didn't go back into the interview room.*

Mr. O'Malley said that Detective Sergeant Leheny retained the interview notes. Mr. O'Malley took the view that these notes could be read over at the next interview. The notes were not read over at 16.30, he said, because Garda Coady came into the room with the clothing.

4.86. For his part, Garda Coady told the Tribunal that he was aware that a change of clothes was to be purchased for Mr. McConnell so that the clothes which he was wearing could be taken for forensic testing. When newly purchased clothes were made available to him he went to the interview room. It was expected that the change of clothing would take place late in the afternoon. As far as he was concerned no pressure was placed upon Detective Sergeant Leheny and Detective Garda O'Malley to terminate their interview by his arrival. He was not asked to wait until the interviewers had concluded their business.[531]

4.87. As will become apparent, a further interview was conducted by Detective Sergeant Leheny and Detective Garda O'Malley with Mr. McConnell at 19.05 hours. However, the notes of the third interview, though in Detective Sergeant Leheny's possession, were not read over to Mark McConnell at that time or at any other time during the course of the evening; nor were the notes of that subsequent interview. In addition, all of these notes were later "lost". As noted

[531] Transcript, Day 522, Q.437-481.

elsewhere in this report the primary duty to keep good records and notes of what happens in the course of any detention lies with An Garda Síochána. The failure by Detective Sergeant Leheny and Detective Garda O'Malley to comply with basic procedures in relation to the taking and the preservation of notes during the course of these important interviews with one of the main suspects in a murder case tends to support the case put forward by Mr. McConnell that he was verbally abused and aggressively questioned during the course of these interviews. Furthermore, a curious conflict between Mr. McGinley's evidence that he furnished the originals of the notes of the second segment of the interview in mid-December 1996, and the clear absence from the investigation records of the originals of these notes, up to the furnishing of the report on the investigation to the Director of Public Prosecutions in 1998, together with the assignment of the number 25(f) to the notes by some unknown hand after that date, creates a mystery that should not exist in an investigation of this kind. It is for An Garda Síochána to maintain clear and accurate records of notes in respect of interviews. It is regrettable that it is a repeated feature of these detentions that when notes became unavailable or "lost", there was no explanation required of the person whose responsibility it was to make and preserve the notes. For example, it is clear from the Lennon report that numerous sets of notes were unavailable in this detention and others but, for the most part, explanations were not sought of those who were at fault.[532]

4.88. In this instance, I do not accept that Inspector McGinley placed these notes into the system in or about December 1996. The numbering sequence belies that. Somebody, for some reason, tried to give the impression that the notes had been properly received by designating them as 25(f). This remains unexplained. The absence of these notes, and the absence of any satisfactory explanation as to how and when the original notes made by Inspector McGinley, came to be numbered and received into the system years afterwards, casts suspicion on the behaviour of the interviewing Gardaí. As the persons in the position of power and authority over their prisoner it is for them to explain how this came about. They have failed to do so.

4.89. I am satisfied that the interviews conducted during these three segments of the third interview were occasioned by loud and aggressive questioning by those involved. However, I am not satisfied that Mark McConnell was spat upon by Inspector McGinley, intentionally or

[532] An exception was the encounter reported between Superintendent Lennon and Detective Garda Harkin in respect of notes which were changed in respect of the detention of Mrs. Róisín McConnell. However, in that case there were no consequences and the fact that no explanation was available from Detective Garda Harkin was simply noted.

accidentally. There was no other allegation or evidence of physical abuse during the course of the third interview.

The Fourth Interview

4.90. This interview was conducted by Sergeant Patrick Hennigan and Detective Garda Patrick Tague between 16.31 hours and 18.00 hours. The custody record indicates that Garda Leonard, the member in charge, paid one visit to the detainee at 17.30 hours. Mr. McConnell was asked if he had any complaints and it was recorded that he replied "no".[533] Following the interview Mr. McConnell was placed in a cell.

4.91. A set of interview notes was available to the Tribunal that was attributed to this period by the interviewers.[534] These notes were written on white notepaper and not on the usual "half sheet" normally used by An Garda Síochána. They were assigned the document number 25(c) in the course of the investigation into the death of the Late Mr. Barron. In numerical sequence this was the third set of notes said to have been received by the incident room attributed to this detention. The commencement of the notes is timed at 16.35 hours. The notes record that Mr. McConnell was "asked to make a statement about his involvement in this murder". He is recorded as replying that he had already made a statement and on the advice of his solicitor he was not making any further statement. "I'm keeping quiet and saying nothing." Notwithstanding that reply, the set of notes contain twelve further answers before Garda Leonard's visit at 17.30 hours and a further five answers for the half hour period up to 18.00 hours – a total of seventeen answers, presumably to seventeen questions, over a period of eighty-five minutes. Apparently, it was not possible to record the questions during this period.

4.92. Mr. McConnell gave a dramatically different account of this interview in his evidence to the Tribunal. He said that:

> *It probably turned out to be one of the most severe interviews of the lot … the most traumatic.*[535]

In evidence Mr. McConnell alleged that Detective Garda Tague:

(1) showed him photographs of the post-mortem of the Late Richard Barron;

(2) kicked him in the shin under the table at which he was seated;

(3) pulled him by the ear in an effort to get him to look at the photographs of the Late Richard Barron;

[533] Tribunal Documents – Mark McConnell Vol. 1, pages 314-315.
[534] Tribunal Documents – Mark McConnell Vol. 1, pages 336-337.
[535] Transcript, Day 501, Q.269-270.

(4) grabbed him by the hair in a further effort to get him to look at the photographs of the Late Richard Barron;

(5) poked him with or put his finger into his eye in a provocative manner on numerous occasions (but not in a manner that amounted to gouging);

(6) poked him and gave him digs in the ribs on numerous occasions, in a provocative manner.

Mr. McConnell said that Sergeant Hennigan did not participate in this abuse but sat at the table and did not intervene to stop it. The following extract from the transcript is his account of what happened:

> *Well I remember Tague coming into the room, holding the same book that I had seen numerous times during the day and smiling, and he said to me, what do you think is in this? I says, I haven't got a clue. He then slapped the photos, well the book on the table and he then sat down and done a bit of an interview with me. He never mentioned the booklet for a time, just went over general issues and started to get a bit aggressive. I remember at one stage him digging at my shins underneath the table with his own foot … It happened a couple of occasions … He started … more or less he was calling me a murderer, said that I told nothing but lies during the whole day and that he was going to sort me out. And with that he got up and he reached for the book and again asked me what did I think was in the book, and I says I haven't a clue. He came towards me and opened the book and I could see the photographs of Richie Barron inside the book. I didn't want to look at them because I wouldn't be a great person looking at something like that, even at a wake or a funeral. I wouldn't particularly like looking at a corpse, but especially on this occasion because it was so graphic. … I looked away from the pictures. He then reached for me by the ear and made me look at the photos. I still didn't look at them. He also grabbed for my hair. I eventually got sight of the photographs and he started saying, look what you done to Richie Barron, this is your work, this is you and Frank Junior's work, what's happened to this man. And as I say the photographs were very graphic in detail. … He was coming the right-hand side of the table towards me, with the book and opened the book. He reached for my ear by the right-hand side, by his right hand and tried to force me round to look at the photographs. He was to my left. He reached for my hair at the back of my head [with] his right*

hand … He tried to show me numerous photographs and at one stage then put the booklet on the table and flicked through them. I pulled away at one stage and he was still showing the photographs and I looked away but I could still see what was in the photographs as such. At another stage he tried to force me again at one stage to look at the photographs and I reached for his hand and pulled his hand away, and he more or less invited me to hit him or to do something, he said he would love if I would hit him and more or less I took it as a threat that he would … that I would be charged with some kind of assault … He tried to show them more or less all through that interview. There was very little questions or answers in that interview, it was more abuse more than anything. He was doing childish things like poking me in the eye and he was digging me in the sides on my ribs and stuff like this, tried to provoke me anyway. But as for interviewing during that interview, I can't recall any interviewing of any sort. There was a wee bit at the beginning but apart from that there was very little. … It was kind of a very childish kind of thing, like he was putting his finger just into my eye. It was very childish behaviour as far as I could see but I didn't know what he was up to. I'd say it more provoked me … the poke in the eyes didn't really hurt like, I closed my eyes and he was … I don't know why he done it, he'll have to answer that himself when he comes up onto the stand. [He did it on] numerous occasions … he was just … digging into the side of me and sometimes he would close his fist and dig in. There wasn't no great pain involved in it but he was … as I say, I took it more as provocation more than anything. … I can't recall the definite number but there were numerous [digs or pokes in the ribs]. … It was Tague doing all the speaking as far as I can recall, that it was me and Frank Junior done this to Richie Barron, look at the state you left him in, this is all your work. It was quite frightening to tell you the truth to see. I never in my life had seen photographs like that before and don't want to ever see them again to tell you the truth. I still be thinking about them. They should never have been shown to anybody in an interview room, I know that.[536]

Sergeant Hennigan, he said, did not take any part in this. He was sitting at the opposite side of the table but would have seen and heard what was going on between Mr. McConnell and Detective Garda Tague.[537]

[536] Transcript, Day 501, Q.271-295 and Q.304-313 and Q.321.
[537] Transcript, Day 501, Q.315-320.

4.93. Mr. McConnell was asked to describe the photographs that he was shown to the Tribunal. He said:

> *I can remember one of Richie Barron lying on a slab. As far as I can remember he might have been bare from the waist up, I'm trying to remember. I'm trying to put it out of my mind but I can remember a blood soaked pillow. I can remember a picture of his hand. I can remember a picture but the only way I can describe it is that it was the inside of his brain. I can remember a date superimposed on one of the corners of the picture. … There was some kind of date on one of the pictures. I can also remember there was a picture of a car. … They showed a car. I think there was two cars but I can remember one car in particular. It was kind of a sky blue or dark blue … I can't remember, it was blue in colour anyway, a Cavalier. I think, I'm not sure but there was some damage done to the car and I remember passing a comment, is that the car that knocked Richie Barron down, that knocked him down, and Tague took this as me taking the piss as such and started to get angry at me even passing the comment. There was damage to the car. Something sprang to mind about the wing mirror and something about the front of it, as far as I can remember.*[538]

The original album of photographs produced to the Tribunal of the post-mortem of the Late Richard Barron contained photographs of a Vauxhall Cavalier car as described by Mr. McConnell.

4.94. Mr. McConnell also alleged that Inspector McGinley entered the interview room but he could not put a time on this visit. He said:

> *From the three o'clock interview he was in and out then most of the evening into my room. Maybe sometimes not for long periods. I recall him asking Tague what does he think of the photographs and does he see what he has done. He told Tague to keep the pressure on and then made a reference, Tague made a reference to the fact that I didn't like the photographs. He said, well it's him that left the man like this, he'll have to see what he done himself. As I say, he wasn't in for that long but he did come in.*[539]

4.95. In relation to the visit to the interview room by Garda Leonard at 17.30 hours, Mr. McConnell said that he made a complaint to him about the showing of the photographs. He said:

[538] Transcript, Day 501, Q.296-303.
[539] Transcript, Day 501, Q.345-348.

> *He [Garda Leonard] asked me did I have a complaint to make and I says I did, I says these people are abusing me and showing me pictures. He turned around then and asked the Guards that were present, did you see this prisoner being abused and Tague said no, the other fellow said no, I think McGinley could have been present also at the same time, I'm not sure, they all said no and then Martin Leonard turned around to me and said, well what the f... are you complaining about? ... That was the end of it, there was no much point. If the custody Guard who is there supposed to protect you, what is the point in making any more complaints as far as I was concerned. I was in a desperate situation at that time and I didn't know what way this interview was going to go. They had given me the impression the whole day that it was only a matter of time before I was going to be charged with the murder. The pressure was enormous on me. It was getting to the stage where your whole mind was in a muddle. It was just very hard to concentrate even.*[540]

4.96. In evidence, Sergeant Hennigan, Detective Garda Tague, Mr. Leonard and Mr. McGinley all denied any allegations of abuse or improper behaviour made by Mr. McConnell.

Mark McConnell's Previous Accounts

4.97. In the course of their evidence and in cross-examination of Mr. McConnell, emphasis was placed by the Gardaí concerned on the fact that the allegation that he had been shown photographs of the post-mortem of the Late Richard Barron by Detective Garda Tague was never made by him to his solicitor. He saw his solicitor immediately after his release on the 4th of December 1996 and on the following day the 5th of December 1996. No complaint was made on either of these occasions about the showing of these photographs to him or of any specific assault by Detective Garda Tague upon him in the course of his detention. In addition, there was no reference to the matter in his solicitor's letter of complaint that followed, addressed to the Superintendent at Letterkenny, on the 10th of December 1996.[541] Further, in civil proceedings initiated against the Garda Commissioner and others, no allegation was made in the Statement of Claim delivered on the 29th of September 1997 or Replies to Particulars delivered on the 22nd of January 1998, that the post-mortem photographs were shown to Mr. McConnell. However, in the latter document there is an allegation that Mr. McConnell was "pushed, shoved and poked in one of his eyes".[542] An allegation of assault in civil proceedings can sometimes be broadly drafted. However, I

[540] Transcript, Day 501, Q.350-357.
[541] Tribunal Documents – Mark McConnell Vol. 2, pages 394-402.
[542] Tribunal Documents – Mark McConnell Vol. 1, pages 344-349.

would have expected a reference to the showing of the post-mortem photographs in these pleadings. They were the formal legal documents in which the Plaintiff was obliged to set out the particulars of his claim and were drafted by experienced lawyers.

4.98. The first mention of the photographs by Mr. McConnell in any document available to the Tribunal occurred during the course of a taped interview with Mr. William Flynn in 1997 in which the following exchange occurred:

Interviewer:	Right did you happen to see some photographs.
M.McConnell:	They continuously, maybe once every hour of the twelve hours, would show us the post mortem pictures of Richie Barron, lying with no clothes on him and his head completely open.
Interviewer:	Did you see any other photographs?
M.McConnell:	There were two photographs of a Vauxhall Cavalier car in them with a, there was a mirror hanging off it, a front wing was dented.
Interviewer:	And is your car a Vauxhall Cavalier?
M.McConnell:	No, a white Toyota Corolla.
Interviewer:	Do you know anyone with a Vauxhall Cavalier.
M.McConnell:	No.
Interviewer:	With such damage to it?
M.McConnell:	No.
Interviewer:	Any other allegations, did they mistreat you in custody, did they hit you?
M.McConnell:	They hit me around the ribs they were here digging me and pointing their fingers into my eyes holding my eye like that there and …
Interviewer:	Which Gardaí were this?
M.McConnell:	The Gardaí that were the most abusive, the detectives I don't know. One of the people that was really really bad to me was Inspector John McGinley. He was really …
Interviewer:	In what way was he bad to you?

M.McConnell: He was sat on my face continuously I'd say for two minutes.

Interviewer: What do you mean sat on your face?

M.McConnell: Well not sat on my face but know say that's his face there I was sitting in a seat like that there he was, I'd do that and he'd do the spittle was blinding me, he was shouting at me he was shouting you dirty fat murdering bastard and he would repeat this continuously for two minutes steady steady going at me with this.

Interviewer: Did you ask to phone your solicitor?

M.McConnell: I wanted to make a complaint to the Guard that you make the complaints to was Martin Leonard.

Interviewer: Martin Leonard who is he?

M.McConnell: He must have to do with custody or somebody who watches over the prisoners. While all this abuse was going on to me they were throwing chairs and they were spitting and they were holding your head like this here and putting Richie Barron's photograph under your face saying look what you done you murdering bastard. I wanted to make a complaint. Martin Leonard came in as he came in the door my solicitor phoned looking for me.[543]

Mr. McConnell then goes on to recount the telephone call with his solicitor Mr. O'Donnell, how he tried to make a complaint against Detective Garda O'Malley and how he was denied the name of a Garda whom he could not identify but who had been abusing him. Obviously, this chronology of events in which he does not make any allegations against Detective Garda Tague or Sergeant Hennigan specifically was different to that given in evidence in that it appears to place the incident with the photographs prior to the telephone call with the solicitor. This call, of course, occurred much earlier in the afternoon than the interview with Detective Garda Tague and Sergeant Hennigan. This account contains the further allegation that the photographs were shown continuously to him "maybe once every hour of the twelve hours" and the additional allegation that:

> While all this abuse was going on to me they were throwing chairs and they were spitting and they were holding your head like this here and putting Richie Barron's photographs under your face saying look what you done you murdering bastard.

[543] Tribunal Documents – Mark McConnell Vol. 2, pages 380-381.

4.99. However, in a statement to Chief Superintendent John Carey on the 18th of February 1998 Mr. McConnell gave a further account of these events in which he said:

> In the afternoon sometime I was interviewed by Detective Tague. I think this is his name. … There was another man with him. Inspector John McGinley kept coming in and out during the interview. Detective Tague was the first to produce the post mortem photographs of Richie Barrons. I refused to look at them. He tried to make me look at them. He bent my ear to force me to look at them. He pulled my ear. Another time, he pulled my hair to make me look at them. Inspector John McGinley kept coming in. One time he came up close to my face and called me a murdering bastard. He spat in my face. Detective Tague punched me in the side with his fist. He kept poking me in my eyes. I pulled away his hands at one stage. He asked me to hit him. He said, "please hit me". … Martin Leonard came in, I think, twice during the whole day. On one of these occasions I made a complaint to him about the abuse I was getting from Detective Tague and others. He asked the Guards present if they witnessed this abuse. They replied, "No". He then said aggressively, "What are you making a complaint about so". I was then taken down to where I was signed out. Tague and McGinley, I think were with me at the desk. One of them told me I wouldn't be released if I didn't sign the form.[544]

4.100. The Tribunal investigator, Chief Superintendent Brian Garvie (RCMP), interviewed Mr. McConnell on the 11th of June 2003 when he gave the following account relating to the behaviour of Detective Garda Tague:

> … The worst aggression came later on in the day when, as far as I can recall, I didn't know his name at the time but I've since found out, I think it is Detective Tague, I still might be mistaken maybe but I would know him to see, I see him regularly when I'm down in Letterkenny, he was when the physical side of the thing really got serious. Detective Tague, I remember him coming in and the first thing he done was he slammed down a booklet on the table. I didn't know what was in this booklet. It was a wee small book … after looking at it I knew what it was. It held photographs, the book. It's the size of a photograph and the photographs slip into wee plastic pockets on it. I can't remember offhand what colour the book was. I can't recall. He then, he started to interview me but never went near the book. He would have been, under the table, he would have been kicking at my shins under the table, that was Detective Tague. I can't recall who was along with him at the time. Then after about half an hour of interviewing me he stood up and reached for the book and started looking

[544] Tribunal Documents – Mark McConnell Vol. 1, pages 291-292.

through the book, he started to laugh and asked me what I thought was in this book and I said I don't know and he said it's your friend Richie Barron in the book here. I didn't want to look at the photos because they were very graphic. I got a quick glimpse of them because they held the book up and they were very graphic in detail of him lying on a slab in the mortuary. I took it that it was the mortuary in Letterkenny and I turned my head away and he pulled me by the ear to look at the pictures but I pulled my head away again. He then reached for me by the hair to look at them and I still tried to, but I could see photographs because they were pushing photographs into my face. I can recall seeing one of him on a soak-drenched kind of a pillow. I can remember one, all I could think of was that it looked like a brain that was red in colour like with a caption, you know, the date automatically would have been put onto the photo with a camera. Just in general, Richie Barron's dead body just. I can remember a couple of cars also being in this, pictures of cars. I remember one a cavalier, a blue metallic coloured cavalier and I remember joking to them, oh was this the car here that killed Richie Barron and they took that as a smart comment and he just started the aggression again. He was just generally, I don't know childish things he was doing, sticking his fingers towards my eyes and I remember pulling away his hand one time and he invited me then to hit him. He said please hit me. I said no, I'm not that kind of person. He said please hit and I'll have you down in the court as soon as possible under an assault charge and during this period then, up to 4 to 5 times, Inspector McGinley would have been in and out of the room constantly giving verbal abuse and coming close up to my face and shouting and roaring about being a fat murdering bastard and I'd never see my children again or my child again, and at one stage Inspector McGinley spat in my face, one of the times he was in the room. He was also egging as inspector. He would have given encouragement to further the abuse on me. I remember then one time the member in charge coming in and asking me did I have any complaints and I said I did, that I was being physically abused and he asked all the Guards present and they all denied it and he says what the f… are you complaining about. That's the exact words he said to, Martin Leonard, and so there was no complaint lodged because then the evening progressed with the same treatment more or less to the end … [545]

This account then continues with an account of events which occurred later on in the evening. The last two accounts on the 18th of February 1998 and the 11th of June 2003 are closest to the detail provided in evidence by Mr. McConnell. The Tribunal is mindful of the rule against narrative and self corroboration;

[545] Tribunal Documents – Mark McConnell Vol. 1, pages 309-17 to 309-18.

nevertheless, it is not the case that Mr. McConnell came out for the first time in his evidence with these allegations. However, it is contended that the omission of the photograph allegations from his earlier accounts amounts to an inconsistency and points to a lack of credibility in his testimony as to what happened.

Evidence of Detective Garda Tague

4.101. In his evidence to the Tribunal, Detective Garda Tague denied the allegations made by Mark McConnell. In particular, he denied that he showed him any photographs. His attention was drawn to the specific description of the damaged blue Vauxhall car, photographs of which, Mr. McConnell said, were in the album shown to him. Detective Garda Tague had no understanding or explanation as to how Mr. McConnell came to have such a specific detailed memory of the damaged vehicle, if the photographs had not been shown to him during the course of his detention. It is clear, and was accepted by Detective Garda Tague, that Róisín McConnell, Mark Quinn and Katrina Brolly, all of whom had been shown photographs by various interviewers during the course of their respective detentions, did not describe the presence amongst those photographs of photographs of a damaged Vauxhall car. The only other two detainees in Letterkenny Garda Station that day were Mark McConnell and Frank McBrearty Junior. Neither Edel Quinn nor Michael Peoples, who were detained that day in Lifford Garda Station, made any complaint that photographs were shown to them, although Mr. Peoples alleged that a threat of that kind was made to him in the course of his interviews. The specific detail in relation to the damaged Vauxhall car did not emerge in the account given by Frank McBrearty Junior of photographs shown to him until he gave evidence to the Tribunal. A description of a damaged blue Vauxhall car was furnished by Martin McCallion in his account of his arrest and detention and the photographs that were shown to him by interviewing Gardaí. Mr. McCallion gave this description of the photographs which he alleged were shown to him on the 12th of April 2006. It had not been included in a Statement of Claim served on his behalf in 2003. The details of what Mr. McCallion told Tribunal investigators approximate closely to what Mr. McConnell told the Tribunal, and previously told Mr. Flynn in 1997. In fact, Mr. McConnell's description of the photographs of a damaged Vauxhall Cavalier car was the first in time from the three persons who now claim to have seen these photographs whilst in detention, namely Frank McBrearty Junior and Mark McConnell on the 4th of December 1996 and Martin McCallion on the 8th of December 1996. Notwithstanding the point that he appears to have delayed in giving this description to Mr. Flynn until 1997, Mr. McConnell is the only detainee from the 4th of December 1996, who is recorded as having seen a damaged Vauxhall car in the photographs amongst those of the post-mortem of the Late

Richard Barron. Further, it was accepted by Detective Garda Tague, who carried out enquiries in relation to this matter, that the photographs of a damaged Vauxhall car had not been included in the papers which were made available to parties and the coroner at the Late Mr. Barron's inquest. Consequently, Detective Garda Tague was satisfied that Mr. McConnell could not have obtained his information from photographs which had been available at the inquest. In that regard, Mr. McConnell indicated that he had not attended the inquest.[546]

4.102. Detective Garda Tague accepted that the notes of this interview were taken by him and that Sergeant Hennigan asked the questions. However, the notes were not a true reflection of the entire interview. He acknowledged that there were only seventeen answers set out in the note to cover a period of eighty-nine minutes approximately. The note of the earlier interview, which had been conducted with Mr. McConnell by him and Sergeant Hennigan earlier in the day, contained many more questions and answers over a similar period of time. Detective Garda Tague said that the contrast between the two sets of notes lay in the fact that in the second interview Mr. McConnell was no longer willing to answer questions because of the advice given to him by his solicitor. Therefore, he said, there was a lot of general conversation in the course of which Detective Garda Tague attempted to also ask some relevant questions, which gave rise to answers, which were recorded. The bulk of this general conversation was not recorded. He described the interview as follows:

> *In actual fact we started off this interview and I actually asked for a statement, which was my intention, hopefully we'd go into the second interview … because we had a good rapport in the first interview we'd ask him to make a statement after caution. He told us I've told you before, I've told you before on the advice on my solicitor, I'm making nothing further … you said that was a problem. That wasn't a problem for us that was another development and we moved on from there. We started talking to him about football and different things and every now and again Sergeant Hennigan and maybe myself would ask a question. I wrote down the answer to those questions. They went on in sequence. There is seventeen answers there. In the middle of those answers there is Martin Leonard asking the prisoner was he ok. Well we can verify from the custody record what time that was, so there was questions before it and questions after it. So what I am saying is, those questions lasted for the entire period of the interview, one and a half hours, mixed in with a lot of chit chat to keep Mark McConnell going, keep talk going, which was our objective … That was the format I adopted in the notes during*

[546] Transcript, Day 510, pages 109-158 and Transcript, Day 511, pages 3-49.

> *that interview. Those answers do reflect the questioning if you go into them … When you go into an interview room you go in with the objective that at the end of the day you're going to come out of the interview, hopefully it will finish up in court. That's the objective. My interest with them notes is that if there was anything significant coming forward in relation to what the man was arrested for, regardless of what the interview would be about. Sergeant Hennigan asked the questions and I can assure you Sergeant Hennigan would ask very long questions and I didn't write them down, I wrote down the answers. That there took us all of one and a half hours. And that's the way that interview went.*[547]

4.103. Detective Garda Tague denied that there was any shouting or pushing or abuse. This was the first time that Mark McConnell had adopted the attitude to them that he would not be making any further statements on the advice of his solicitor. For the most part Mr. McConnell kept quiet and said nothing. In a statement to the Tribunal on the 15th of September 2006, Detective Garda Tague outlined how the interview progressed and the general conversation which they had:

> This general conversation was an attempt by us to build up a relationship with the prisoner as he was not very cooperative and his attitude towards us had changed from the first interview. We spoke to him about his house, he told us about getting the site for his house about having a mortgage of something like £26,000, he spoke about music and his band and about playing in pubs. He spoke about his son Dean and he spoke about soccer. He said that he played soccer and I passed the comment that he was too fat for soccer. Mark McConnell took offence to this remark and became very aggressive, he came close to my face and said you are not too thin yourself you fat bastard. He was very annoyed and very angry with me. I did apologise to Mark McConnell by saying I was sorry. It was not my intention to insult or to antagonise Mark McConnell and I passed the comment about his weight as a throw away remark with no insult intended. I certainly did not pass any similar remarks for the remainder of the interview.[548]

This account was substantially repeated in evidence by Detective Garda Tague.[549] In that regard, Mr. McConnell denied that he ever played soccer. He had no recollection of any discussion about the matters set out by Detective Garda Tague. He acknowledged that there could have been some general discussion of that kind in the first interview but "during that interview there it was nothing but pure abuse."[550] When Mr. McConnell was further cross-examined that he had

[547] Transcript, Day 510, Q.618-621.
[548] Tribunal Documents – Mark McConnell Vol. 2, page 408.
[549] Transcript, Day 510, Q.586-597.
[550] Transcript, Day 502, Q.25-28.

taken offence to a remark made by Detective Garda Tague to him that he was too fat to play soccer and that he then became aggressive, towards Detective Garda Tague, coming close to his face and saying "you're not too thin yourself, you fat bastard", Mark McConnell denied the allegation and said:

> *I can assure you that I never shouted at his face. I was called a fat murdering bastard nearly all day. I'm sure if he had called me fat, it was nothing more than I had heard ten, twenty times already that day.*[551]

4.104. Detective Garda Tague also denied kicking Mr. McConnell on the shin and evidence was given by a number of interviewers that the physical configuration of the table did not permit this to occur. There was, it was said, only a small gap under the table through which kicking might be attempted, but only with difficulty.

Evidence of Sergeant Hennigan

4.105. Sergeant Hennigan in evidence substantially supported Detective Garda Tague's evidence. He described the exchange between Mark McConnell and Detective Garda Tague about soccer in the course of which Detective Garda Tague said to Mr. McConnell that he was too fat to play soccer. He insisted that this occurred and that Mr. McConnell raised his voice in reply in a flash of annoyance but that there was no shouting on the part of the two interviewing Gardaí.[552]

4.106. In respect of the allegation that photographs were shown to Mr. McConnell, Sergeant Hennigan also denied that he ever saw any photographs of the post-mortem of the Late Richard Barron in the conference room or the interview room with Mr. McConnell on the 4th of December 1996. He was not aware that any photographs were shown to Mr. McConnell. He first saw the photographs of the post-mortem at about the time that he was asked to provide a statement in respect of the civil actions in or about 1997. As to how Mr. McConnell could describe, with such particularity, the photographs of the damaged blue Vauxhall car which were amongst the post-mortem photographs, he could only suppose that Mr. McConnell obtained these details from his wife or somebody else along the line. He further denied that Mr. McConnell had made any comment to Detective Garda Tague as to whether this was the car which was involved in the death of the Late Richard Barron and that this annoyed Detective Garda Tague. He denied all of the allegations of physical abuse made by Mr. McConnell against Detective Garda Tague, including the pulling of Mr. McConnell's ear and hair, poking him in the ribs, or any shouting or verbal abuse to the effect that he was a "fat murdering bastard". He said that Inspector McGinley never entered the

[551] Transcript, Day 502, Q.28-34. He also complained that it had taken ten years for Detective Garda Tague to recall this expression on Mr. McConnell's part.
[552] Transcript, Day 519, Q.694-708.

room during the course of the afternoon interview and, it was untrue to suggest that Inspector McGinley had any encounter with Mr. McConnell in which he shouted at him or in which spittle flew into Mr. McConnell's face.[553]

4.107. There is nothing in the custody record to the effect that Inspector McGinley was present during any of this period. It must also be noted that Garda Leonard was dependent on being told who was in the room with Mr. McConnell from time to time. Mr. McConnell's interviews were conducted upstairs in the detective inspector's office. I have already indicated two visits involving Garda O'Dowd and Garda Cannon earlier in the day that were not entered in the custody record.

4.108. I am satisfied that Mr. McConnell was shown the photographs of the post-mortem of the Late Richard Barron in the course of this interview by Detective Garda Tague in the presence of Sergeant Hennigan. The detailed account of the photographs that he was able to provide to Mr. William Flynn in 1997, particularly of the damaged Vauxhall car, which had no bearing on the murder inquiry, indicates that he was shown the photographs. I have looked at the photographs and Mr. McConnell's description of them was accurate. He is the first detainee arrested on the 4th of December 1996 to provide this description. I am satisfied that he is giving his best recollection of what he saw and what happened. There are some elements of his story which may be mistaken and exaggerated but the core of his story is credible and I accept it. I am not satisfied on the balance of probability that Inspector John McGinley entered the interview room during the fourth interview, nor am I satisfied that Mr. McConnell was spat upon by Inspector McGinley. Nevertheless, I am satisfied that this was an unpleasant interview and that Mr. McConnell was poked and had his ear pulled on a number of occasions during the showing of the photographs. I also accept that there was some kicking at Mr. McConnell's shin under the table. I accept his account of the interview as broadly accurate. I accept also that he was called names such as "a fat murdering bastard". I do not accept the evidence of Detective Garda Tague or Sergeant Hennigan on these matters.

The Fifth Interview

4.109. At the conclusion of the fourth interview Mr. McConnell was placed in a cell at 18.00 hours and provided with a meal. At 19.05 hours he was taken from the cell to the interview room and further interviewed by Detective Sergeant Leheny and Detective Garda O'Malley. The custody record indicates that at 19.45 hours Detective Sergeant O'Malley left the interview room and was replaced by Sergeant Patrick Hennigan. The next entry in the custody record indicates that at

[553] Transcript, Day 520, Q.121-150.

20.20 hours Mr. McConnell was "released from custody no complaints to make" and that he signed the custody record to that effect.[554] The Garda account of this interview is very straightforward. Questions of the type that had been asked of Mr. McConnell all day were put to him again. No progress was made and he gave substantially the same answers in respect of his movements and his denial of involvement in the death of the Late Mr. Barron. Mr. McConnell, on the other hand, claims that he was interviewed aggressively during the course of this period and that at one stage Inspector John McGinley entered the room and showed to him a document which he represented as a statement of admission said to have been made by Frank McBrearty Junior. Mr. McConnell contended that this was an attempt to hoodwink him and put further pressure on him into admitting some part in the death of the Late Mr. Barron. Unfortunately, the notes of this interview are also unavailable to the Tribunal.

4.110. The allegation that a document was presented to Mark McConnell in the course of his interrogation purporting to be a statement of admission of Frank McBrearty Junior, and that it bore the purported signature of Frank McBrearty Junior, was made against the background of an unusual allegation made by Garda Tina Fowley and to an extent supported by Sergeant Brendan Roache. Garda Fowley alleged that earlier in the afternoon of the 4th of December 1996, Inspector John McGinley was in the incident room "practising" the signature of Frank McBrearty Junior on a document to which he drew Garda Fowley's attention, by asking whether she thought it was a good likeness to Mr. Frank McBrearty Junior's signature. In that regard, Frank McBrearty Junior relied upon Garda Fowley's allegation in support of the proposition that the signature on the alleged confession supposedly made by him was not his and was in fact a forgery. However, the evidence from four handwriting experts satisfied me that this was not so and that the signature on that statement and other documents, which the Gardaí said was signed by Frank McBrearty Junior, were in fact signed by him in the course of his detention. The allegation made by Garda Fowley, however, falls also to be considered in the light of the allegation made by Mark McConnell in respect of the alleged statement, purportedly signed "Frank McBrearty Junior" that he said was presented to him by Inspector McGinley. I will return to this subject later in this chapter.

4.111. Mr. McConnell described to the Tribunal how he was taken from the cell to the interview room for the first session by Detective Sergeant Leheny and Detective Garda O'Malley. The time as recorded in the custody record was 19.05 hours. At the time he said that he could hear Frank McBrearty Junior roaring and shouting very plainly, together with other voices, that he did not recognise, of people who were shouting back at him. Mr. McBrearty Junior, he said, was, "Just really giving

[554] Tribunal Documents – Mark McConnell Vol. 1, page 315.

it to them that he was an innocent man and they weren't going to fit him up." There was a lot of swearing going on. Detective Sergeant Leheny and Detective Garda O'Malley were laughing at the amount of noise that was being generated. Mr. McConnell said that Mr. McBrearty Junior had been shouting about his innocence in this manner from about 15.00 hours.[555]

4.112. When Detective Sergeant Leheny and Detective Garda O'Malley brought him to the room one or other of them told Mr. McConnell that:

> *Frank McBrearty Junior had made a statement and it was about time I was getting my side of the story right and that he was blaming me for the murder. Just as I say they were telling me it's about time now Mark that you got your side of the story across because he's going to sink ye and we're willing now to take a statement off you and you can outline how the murder happened, and we've a fair idea that you weren't to blame for the murder but we need details of what happened. I told them, I says I don't care what Frank McBrearty has signed or what you say about Frank McBrearty Junior, I'm not admitting to no murder because I've nothing to do with it.*[556]

He said that they were putting pressure on him to "get my side of the story across before young Frank … ". This occurred at "near enough the start of the interview".[557]

4.113. Mr. McConnell further alleged in evidence that Inspector John McGinley came into the room with a document "after a brief period". He described what happened:

> *He had a statement with him. He informed me himself, Mr. McGinley, who the statement was from. It was an admission from Frank McBrearty Junior. … There was numerous pages in it, that's all I can say, but there was no less than four pages in it. It was fairly lengthy. … It was handwritten … I can't recall if it was in single sheets or if it was a flip over.*[558]

Mr. McConnell said that there was a signature that appeared to be of Frank McBrearty Junior appended to the very end of this statement. However, he did not believe at the time that this signature was authentic because:

> *We lived beside each other for years, the McBreartys and the McConnells, and went to school together and young Frank, I can remember even remarking the statement [sic] and many people in*

[555] Transcript, Day 501, Q.373-380.
[556] Transcript, Day 501, Q.381.
[557] Transcript, Day 501, Q.382-395.
[558] Transcript, Day 501, Q.402-408.

> *our family would remark the statement [sic]. It was very similar to his own father's statement … or his own father's signature. It's a fairly rare statement [sic] where you have a big starting letter and then squiggles and then a large finish letter. Say, Frank, big F big K and squiggles in between and the same with the rest of it. I remarked that it wasn't his, I knew by looking at it that it wasn't his signature.*[559]

Another feature of the statement produced to Mr. McConnell caused him to doubt its authenticity. He expressed this in the following way:

> *There was something to do with the address on the document I can remember, but I'm trying to remember over this last couple of weeks what the problem was with the address but there was something that stuck out with the address.*[560]

4.114. Mr. McConnell said that the document was then read out to him by Inspector McGinley. His doubts about its authenticity were increased as he listened to what was read out and he told the Gardaí present in clear terms that he did not believe that the statement was authentic. This is what he told the Tribunal:

> *I'll never forget the opening line of it because I knew, the minute that he said the opening line I knew definitely that young Frank wouldn't use that kind of phraseology. Something to the lines of I, Frank McBrearty, am showing remorse for what I have done. And the minute that line was said to me I knew right away that there was something fishy about the document and I let him read on and read on and like I remember before he had finished the reading of the statement, because it was fairly lengthy, as I say it was four pages plus, I remember the custody Guard coming into the room that my time was up and he was nearly at the end of the statement and I said, even though I was desperate to get out of the Garda station, I wanted him to finish the statement and it was only maybe … he was five six lines from the end of the statement and he finished it. And when he had finished it he told me well what you do you think of that. I told him in no uncertain terms what I thought about it. I told him the best way I can put it, but I put it a lot cruder than this, that he would be far better going and relieving himself in the toilet and wiping his behind with it. That's the exact words I said to him about the statement, I said to him it was a load of rubbish. Because I know for a fact I had nothing to do with Richie Barron's death.*[561]

[559] Transcript, Day 501, Q.410.
[560] Transcript, Day 501, Q.411.
[561] Transcript, Day 501, Q.412-415.

4.115. A number of questions were then asked of Mr. McConnell by Tribunal counsel in order to assist in obtaining further details of this statement. It is as well to quote the excerpt from the transcript in full:

Q. Can you remember what the gist of it was?

A. It was very vague to me the detail in it but I can remember certain bits of it. After thinking about it for a long time. Because as you know I have other things wrong in my life over the last six or seven years that I had enough on my plate without thinking about this case. But I can remember it kind of more or less painted a picture of me contacting Frank Junior, meeting him at the Parting Glass.

Q. Just before you get to that. Did it indicate why you and Mr. McBrearty might want to do some harm to this man, did the statement indicate that?

A. To be quite honest I can't recall, I know that it had something to do with the fight years ago and the Bakers Corner was mentioned I'm nearly sure.

Q. Yes?

A. And that it was something to do with Richie Barron was up to his tricks again and abusing the McBreartys and that I got in contact with Frank Junior about it and that we had hatched some kind of a plan to head him off up near where he lived and that we took off up through the car park and met him and that young Frank Junior had lifted something or lifted a metal bar and had hit Richie Barron over the head with it, that we had been waiting on him up near where he died and that Richie Barron had, that when we got up as far as him, Richie Barron, that he was hit over the head with the iron bar.

Q. Are you sure it was that the weapon was an iron bar?

A. I'm nearly positive it was an iron bar they mentioned now.

Q. Did the statement say what you did after the assault?

A. Just there was mention of the, I'm nearly one hundred per cent sure there was mention of a cover-up then in the statement, that we came back down and had been let in the

front way in the Parting Glass and that we had got our clothes changed and went on as if nothing had happened. As I say I can recall certain bits of the statement but as for the whole four plus pages.

Q. Was the allegation in it as far as you were concerned that you had participated in this scheme by phoning Mr. McBrearty?

A. Mm-hmm.

Q. Going up the road with him?

A. Mm-hmm.

Q. Was it alleged that you had done the striking or that he had done the striking of Mr. Barron?

A. No it was alleged that young Frank done the striking.[562]

Who was Present?

4.116. The custody record states that the two Gardaí who took Mr. McConnell to the interview room and remained with him from 19.05 to 19.45 hours were Detective Sergeant Leheny and Detective Garda O'Malley. It then indicates that Sergeant P. Hennigan replaced Detective Garda O'Malley at 19.45 hours and that Detective Sergeant Leheny and Sergeant Hennigan remained in the interview room with Mr. McConnell until his release at 20.20 hours. Detective Garda O'Malley said in evidence that he was called out of the interview at 19.45 hours in order to go to the home of Eunan and Katrina Brolly in order to interview Mr. Brolly. He said that he was replaced by Sergeant Hennigan in the interview room. Detective Sergeant Leheny and Sergeant Hennigan agree with him in their evidence. Inspector John McGinley denies that he was ever in the interview room between 19.05 hours and 20.20 hours. Garda John Harkin made a statement in respect of this matter and gave evidence to the Tribunal to the effect that he was directed at a conference, which he thought occurred at approximately 19.00 hours, to travel with Detective Garda O'Malley to the home of Eunan Brolly in order to clarify some aspect of a previous statement made by him on the 4th of December 1996 to Garda Pádraig Mulligan (in the presence of Garda Tina Fowley and Detective Garda Noel Jones). Garda Harkin had an un-timed memo of that interview in his notebook which was signed by Eunan Brolly. Garda Harkin's recollection of the matter was that this job was given by Superintendent Fitzgerald to Detective Garda O'Malley because he had dealt originally with Mr. Eunan Brolly when he made his original statement on the 16th of October 1996.

[562] Transcript, Day 501, Q.415-425.

His recollection was that neither of them brought any of the prior statements made by Eunan Brolly or any other documents with them when they travelled out to meet him. Garda Harkin did not give a definite time for their departure from Letterkenny Garda Station. He did not go to the interview room and ask that Detective Garda O'Malley join him. Detective Garda O'Malley joined him in the conference room prior to their departure. It took them twenty minutes to travel from Letterkenny to Raphoe approximately. The discussion with Mr. Brolly took between fifteen to twenty minutes, interrupted by a phone call. Having left his home they went to Raphoe station and phoned Letterkenny Garda Station where they received instructions to return to the station, which took them twenty to thirty minutes. Detective Garda O'Malley telephoned Detective Superintendent Shelly at Letterkenny Station and informed him that they had interviewed Mr. Brolly. Detective Superintendent Shelly informed Detective Garda O'Malley that there had been a development and that they should return to Letterkenny Garda Station. Following their return to the station they attended the conference at 22.00 hours at which, Garda Harkin said, the alleged statement of admission of Mr. McBrearty Junior was read out.[563]

4.117. Garda Harkin's evidence is not precise as to the time at which he and Detective Garda O'Malley left Letterkenny Garda Station. It is clear that the "development" in respect of Frank McBrearty Junior's statement of admission became known to Detective Superintendent Shelly some time shortly after 20.30 hours. They arrived back at the station in time for the conference at 22.00 hours.

4.118. In his evidence to the Tribunal Mr. Eunan Brolly described the attendance of a number of Gardaí at his home on the evening of the 4th of December 1996. He said that at approximately 17.30 hours or around teatime Garda Mulligan, Garda Tina Fowley and Detective Garda Noel Jones came to his home and took a statement from him. Subsequently, Detective Garda O'Malley and Garda Harkin arrived at approximately 20.00 hours and stayed, he thought, for approximately two hours. He acknowledged that he signed the short statement recorded by Garda Harkin, already referred to above. Mr. Brolly's estimate as to the time at which Detective Garda O'Malley and Garda Harkin arrived at his home roughly approximates with the time it would take to drive from Letterkenny Garda Station to Raphoe, if they had left at 19.45 hours. That estimate was given by Garda Harkin as twenty minutes.[564] Detective Garda O'Malley, Garda Harkin and Mr. Brolly could not recall the point that required to be clarified with Mr. Brolly.[565]

4.119. It is clear from the evidence, therefore, that Mr. Eunan Brolly received a visit from Garda John Harkin and Detective Garda O'Malley at

[563] Transcript, Day 532, Q.1-43.
[564] Transcript, Day 434, pages 176-198.
[565] Tribunal Documents – Barron Module, pages 1569-1575 (statements of Eunan Brolly) and Tribunal Documents – Mark McConnell Vol. 2, pages 452-453.

approximately 20.00 hours which took them both away from Letterkenny Garda Station for at least one hour, on the evidence of Garda John Harkin, and perhaps in excess of two hours on the evidence of Mr. Eunan Brolly. Contact was made with Detective Superintendent Shelly from Raphoe Garda Station by Detective Garda O'Malley, according to Garda John Harkin, at a time which had to be after 20.30 hours, given that he was then told that there had been a development i.e. the statement of Frank McBrearty Junior.

4.120. Therefore, though I am satisfied that Detective Garda O'Malley was in the interview room between 19.05 hours and 19.45 hours, I am not satisfied that Detective Garda O'Malley was present in the interview room with Mr. McConnell from 19.45 to 20.20 hours on the evening of the 4th of December 1996. I am satisfied that Mr. McConnell's evidence in this regard is incorrect.

4.121. In evidence to the Tribunal Mr. John McGinley denied that he was present at all during this interview or that he showed Mr. McConnell the supposed statement by Frank McBrearty Junior as alleged.[566]

4.122. For his part, Sergeant Hennigan gave evidence that he attended the fifth interview and replaced Detective Garda O'Malley at 19.45 hours and remained in the interview room until the interview's conclusion and the release of Mr. McConnell at 20.20 hours. He also denied that Inspector McGinley was in the room during that period or that any statement purporting to be a statement of admission of Frank McBrearty Junior was read over to Mr. McConnell.[567] Though there is evidence to suggest that Detective Garda Tague was at Letterkenny Garda Station during the course of the evening, there is no independent evidence to suggest that he was present in the interview room with Mark McConnell at any time between 19.05 hours and 20.20 hours.

Mark McConnell's Previous Accounts

4.123. Though Mr. McConnell consulted with his solicitors shortly after his release from custody, there is no record in their attendances or in correspondence that he made any complaint that a statement allegedly that of Frank McBrearty Junior had been shown to him by Inspector McGinley.[568] The allegation was not included in the letter of complaint written by the solicitor on the 10th of December 1996.[569] It was not included in a Statement of Claim delivered on Mr. McConnell's behalf in civil proceedings relating to this matter on the 29th of September 1997 by his solicitors, or in a further statement of Particulars of his claim delivered on

[566] Transcript, Day 526, Q.491-515 and Transcript, Day 527, Q.1-19.
[567] Transcript, Day 520, Q.100-117.
[568] Tribunal Documents – Mark McConnell Vol. 2, pages 394-400 and Transcript, Day 509, Q.441-482 (testimony of Mr. James O'Donnell, solicitor).
[569] Tribunal Documents – Mark McConnell Vol. 2, pages 401-402.

the 22nd of January 1998. These were legal documents drafted on the instructions of the client by competent and careful lawyers.[570]

4.124. The earliest reference made by Mr. McConnell to this event is contained in his interview in 1997 with Mr. William Flynn, private investigator, which was taped and in which the following is recorded:

Interviewer:	Did they tell you they had a confession from someone else?
M.McConnell	They said to me that they had a confession from Frank Jnr admitting the murder, they brought the statement in.
Interviewer:	Did they read something out to you?
M.McConnell	They read the four pages of a statement out.
Interviewer:	Give me a short synopsis of it.
M.McConnell	I'll give you a short bit - it was Frank McBrearty's statement was written at top of it and underneath I Frank McBrearty Jnr have shown remorse for the murder of Richie Barron, I am now admitting to the murder, I am very sorry for what I have done and then it continued me and Mark McConnell went up the back of the Parting Glass and this four pages of continuous lies.
Interviewer:	Was it signed by?
M.McConnell	Signed Frank McBrearty Jnr.[571]

4.125. A further account was given by Mr. McConnell on the 18th of February 1998 to Chief Superintendent Carey of the Garda Complaints Board. He told him:

> As the evening wore on and the twelve hours were nearly up, four detectives came into the room. Inspector John McGinley was one of them. Tague and O'Malley were also there. They produced a four page statement. They said it was a confession of Frank McBrearty. I cannot recall which of them read it. I can recall the start of it. It said, "I Frank McBrearty Junior am showing remorse for what I have done." The statement said that me and him went up the road, that I held Richie Barrons and that Frankie hit him and that he fell and hit his head on the ground. It was signed and all. They pointed it out. It wasn't Frank McBrearty's signature because he has a funny signature. I've seen his signature before. I definitely know it wasn't his signature. The address wasn't right either. I cannot remember exactly but I was suspicious of the signature. I didn't make any statement while I was in custody.[572]

[570] Tribunal Documents – Mark McConnell Vol. 1, pages 340-353.
[571] Tribunal Documents – Mark McConnell Vol. 2, page 379: see also paragraphs 4.228-4.232.
[572] Tribunal Documents – Mark McConnell Vol. 1, page 292.

A number of features of this account coincide with that given in evidence by Mr. McConnell in that he alleges:

(1) A statement said to be a confession of Frank McBrearty Junior was produced to him;

(2) It was read out to him;

(3) It commenced with a supposed statement by Frank McBrearty Junior that he was "showing remorse for what I have done";

(4) The statement supposedly bore the signature of Frank McBrearty Junior;

(5) The address given for Frank McBrearty Junior was said not to be right.

However, there are a number of differences between that account and the one given in evidence, in that Mr. McConnell states that:

(1) Four Gardaí came into the room towards the end of the detention and produced a four page statement which was read to him. He did not ascribe the reading of the statement to Inspector McGinley. In evidence to the Tribunal he said that there was a mistake in this statement;[573]

(2) The account read over to him suggested that he and Frank McBrearty Junior went up a road and that Mark McConnell held the Late Richard Barron while Frank McBrearty Junior hit him and that the Late Richard Barron then fell and hit his head on the ground. The suggestion that Mr. McConnell held Mr. Barron while the blow was struck was absent from his subsequent account in evidence;

(3) There is no reference to Garda Leonard entering the interview room towards the end of the reading over of the statement and Mr. McConnell demanding that the reading be concluded;

On the 28th of April 1998 Detective Garda O'Malley and Detective Sergeant Leheny both made statements to Chief Superintendent Carey denying these allegations.[574]

4.126. Mr. McConnell also had a meeting with Detective Gardaí Maloney and Flynn on the 10th of January 2000. He did not make a statement in the course of this meeting. However, a memorandum of the interview was prepared and signed by the two Gardaí. It was not read over to Mr. McConnell and he was not invited to agree with its contents or to sign it. Nevertheless, the memorandum states that

[573] Transcript, Day 501, Q.496.
[574] Tribunal Documents – Mark McConnell Vol. 1, pages 48-51 and 81-84 respectively.

when asked if he was shown any documents during the course of his detention in Letterkenny Garda Station on the 4th of December 1996:

> Mark McConnell stated that about ten or fifteen minutes before he was released from custody, John McGinley read to him, or showed him a handwritten document, three or four pages in length, purporting to be a statement of admission from Frank McBrearty Junior. Mark McConnell said he had a poor recollection about the detail in the document, but he remembered seeing or hearing the following words at the beginning, "I Frank McBrearty show remorse … ". McConnell said that he remembered that as "not words which Frank McBrearty Jnr., would use." He also remembered that he saw either Frank McBrearty's name and address at the end of the document, one of which was spelled wrongly. He could not remember if his own name was mentioned in this document and when asked, he could not recollect if the document implicated himself in any wrongdoing. Mark McConnell said he mentioned this document to his solicitor at that time.[575]

The similarities between this account and the account given in evidence are that a statement was either read or produced by Mr. McGinley; it was three to four pages in length purporting to be a statement of admission from Frank McBrearty Junior and including words at the beginning to the effect that Mr. McBrearty Junior showed remorse; it included Mr. McConnell's view that these were words which Frank McBrearty would not use. However, the criticism made by Mr. McConnell of Mr. McBrearty's signature as appended to the document was not that it did not seem to be Mr. McBrearty's but that it was not spelled correctly. In addition, he said he could not remember if his own name was mentioned or if he was implicated in it, whereas in his statement to Chief Superintendent Carey he said that he was said to have held the Late Mr. Barron while Mr. McBrearty Junior hit him. In addition, it was suggested that Mr. McConnell mentioned the document to his solicitor at the time, but this is not supported by the attendances with the solicitor or the letter of complaint that was sent on the 10th of December 1996.

4.127. Mr. McConnell told Tribunal investigators the following about this statement:

> … Just near the tail end, that's when Inspector McGinley had left the room and came back in and he came in with a statement. He said do you want to hear this statement now, Mark. I said I don't care. It's up to yourself, whatever. He said this is a statement of admission from Frank McBrearty, Jnr. for the murder and he is blaming you for it and your name is mentioned in it he says and you better get your side of the story right now

[575] Tribunal Documents – Mark McConnell Vol. 1, page 303.

> before you leave this Garda station today or you're going to get the blame and he started to read the statement. I can remember vividly the first lines of that statement because I knew it was something that Frank McBrearty, Jnr. wouldn't say. It was something like, I, Frank McBrearty, am showing remorse for what I have done, and then, I can't remember in detail the rest of the statement but I can remember that line there because I knew to myself that it definitely would not be something that Frank McBrearty, Jnr. would have in his vocabulary … I could see it [the statement]. I could see it from where I was. He showed me what looked like a signature at the bottom of it. … I did say, as far as I remember, Frank McBrearty but with him living beside us and us more or less going to school together I can remember he has a funny signature and I remember the signature. I knew there was something funny with the signature at the bottom and the statement was, it was a very lengthy statement. It was at least, there was no less than 4 pages and it could have been up to 6 pages long, the statement.[576]

This account contains no detail of the actual contents of the statement, which Mr. McConnell said he could not remember in detail. He does not say that the signature is misspelt but says that there was "something funny" with it. He describes it as four to six pages long rather than three to four, or four. He does not state that he insisted that the reading of the statement be completed when Garda Leonard came into the room towards the end of the interview session, or that he told Inspector McGinley what he could do with it.

4.128. A number of Garda witnesses have drawn attention to inconsistencies between the various accounts given by Mark McConnell in respect of this alleged incident. Whilst there are differences in detail across the various accounts, the substantive core of his story has remained the same since he first gave it to Mr. William Flynn in 1997. In reaching my determination in relation to this matter, I have taken into consideration various submissions made in respect of these inconsistencies and differences, together with the relative consistency that he maintained in respect of the essence of the story. However, that is only part of the backdrop against which this matter falls to be determined. As already noted, Garda Tina Fowley made an allegation that Inspector John McGinley on the afternoon of the 4th of December 1996 was practising the signature of Frank McBrearty Junior in the incident room at Letterkenny Garda Station. This allegation must now be considered in the context of Mr. McConnell's allegation that he saw a forged signature of Mr. Frank McBrearty Junior appended to what was represented to him as being a statement of admission by Frank McBrearty Junior. Mr. McConnell's allegation was originally made in 1997, well before the allegation made by Garda Fowley.

[576] Tribunal Documents – Mark McConnell Vol. 1, pages 309-18 to 309-20 (Interview with Tribunal investigators on the 11th of June 2003).

Practising Frank McBrearty Junior's Signature

4.129. In March 1999, whilst assigned to the Carty team at Letterkenny Garda Station investigating allegations against Gardaí in the Donegal division, the then Inspector Hugh Coll was told in the course of an interview by Garda John O'Dowd that his notebook had been stolen from the conference/incident room at Letterkenny Garda Station and that he had made enquiries about this with Garda Tina Fowley and Sergeant Brendan Roache.[577] Inspector Coll enquired of Garda Fowley if Garda O'Dowd's assertions were correct and asked her to submit a statement in this regard. Subsequently on the 16th of June 1999, Garda Fowley requested to speak with Inspector Coll as she had a number of concerns. Inspector Coll spoke to Garda Fowley on that date and she outlined a number of concerns that she had in relation to the previous investigation into the death of the Late Richard Barron. Inspector Coll made a note of these concerns. The first concern was that then Inspector John McGinley had allegedly copied the signature of Frank McBrearty Junior onto a statement, and the second concerned discrepancies between notes of interview in relation to Mrs. Róisín McConnell. Inspector Coll brought these matters to the attention of his superiors. Subsequently, on the 23rd of June 1999, he again had a discussion with Garda Fowley and informed her that she should report the concerns she had outlined to him on the 16th of June 1999 to her Chief Superintendent, Denis Fitzpatrick.[578] Again on the 13th of October 1999 Garda Fowley made a statement to Detective Sergeant George Kyne and Detective Inspector John O'Mahony in which she set out the details of her concerns as follows:

> On the 4th of December 1996 I was on duty in the incident room. On that date Frank McBrearty Junior and Mark McConnell were in custody in Letterkenny Garda Station. That afternoon I was in the incident room with Superintendent John McGinley and Sergeant Brendan Roche. At some stage, I had cause to retrieve some papers from a table that Superintendent McGinley was sitting at. He was writing at the time on an official half sheet. He showed me the half sheet and I could see the name Frank McBrearty written about one third to half way down the page. There was writing above the signature. I could also see a form C.8 (photocopy) on the table, which had Frank McBrearty's signature on it. Superintendent McGinley drew my attention to the signature of Frank McBrearty on the half sheet and said words to the effect, "is that a good likeness". As he was saying this he was laughing. I took this as a practical joke and started laughing also. I then went back to my table and a few minutes later Superintendent McGinley left the room. Sergeant Roche asked me what was all that about and I told him. We both discussed it and both of us

[577] This matter is dealt with in the second report of the Tribunal of Inquiry.
[578] Tribunal Documents – Arrest and Detention Vol. 1, pages 534-535 – the second of these concerns has been dealt with in this report in respect of the arrest and detention of Róisín McConnell.

> dismissed it as another one of his pranks. Superintendent McGinley is known for being a practical joker around the station. I gave it no more thought and forgot about it until an article appeared in the Sunday Business Post expressing concerns in relation to the veracity of the statement of admission of Frank McBrearty Junior. This is the reason that I have raised my concern. I have been asked today to describe the document that I saw Superintendent McGinley in possession of and I describe it as an official half sheet (cypher) colour. By this I mean yellow – it is one of the old type half sheets, it had a yellow tinge. I have been shown a number of half sheets and I have pointed out to Detective Inspector O'Mahony the type of half sheet it was. I have also been asked to point out the approximate position on the half sheet where I remember seeing Frank McBrearty's signature. It was approx. fifteen lines from the top of the page and was on the left hand margin. On today's date I have been shown by D/Inspector J. O'Mahony two original documents, both statements of Frank McBrearty made on the 4th of December, 1996. The first one made to Detective Sergeant John Melody and John Fitzpatrick and the second one made to Detective Sergeants McGrath and O'Grady. I can definitely say that neither of these documents are the document that I saw Superintendent McGinley in possession of in the incident room on the 4th of December, 1996 …[579]

4.130. Garda Fowley repeated these allegations in an interview with the Tribunal investigators on the 26th of June 2003, in which she elaborated on some of the detail of the encounter with Inspector McGinley that afternoon. She said:

> It was early afternoon. Inspector McGinley came in to the office. The incident room is a long narrow room angled at one end, straight-walled at the other … He came in and he went around the table and he sat down with his back to the windows just almost facing the door, slightly below it. I was working on a précis of evidence and had done a couple of them and he was sitting there a few minutes, and I went to the conference room table and the table was spread with different books and matters pertaining to the investigation. Sergeant Roache was present … He was seated at the top circular table. I believe he was reading statements … I walked behind Superintendent McGinley. He didn't speak and I didn't speak. It was very, very quiet in the incident room. He was writing at something. I walked behind him and went further down to the table to get the précis of evidence file and turned and came back and as I was coming back by him he started chuckling and he had a sheet of paper held up in his fingers along with a pen. The sheet of paper was a sepia-toned half sheet, which

[579] Tribunal Documents – Arrest and Detention Vol. 1, pages 531-532.

> had writing on it and he drew my attention to the page. About a third of the way down the page was a signature of Frank McBrearty, Jnr. a long kind of scrawl. In front of him was a Form C8 … a pre-printed form that is used to take a statement off a witness. … And there was a signature of Frank McBrearty on that sheet. I recognised the C8 to be a copy of a witness statement that Frank McBrearty Junior had made in the early days of the investigation and, as Inspector McGinley was chuckling, he asked me was that a good likeness. I started laughing. I didn't say anything. I laughed with him and I never said yes or no and I went back and I sat down. Anyway, I suppose 5 to 10 minutes later, Inspector McGinley got up and left and Sergeant Roache commented to me. He asked what was that about and I told him and we discussed it and Inspector McGinley is renowned as being a practical joker. At that stage, I didn't believe there was anything sinister in what he was doing. He would be the type of individual that would walk down to the coffee room or if they were on a tea break and say, here lads we have got a confession and get a laugh-up to booster everyone's spirits. … I would have regarded it as typical of McGinley. I could have seen him, like I said, go down to the tea room and say, lads we have a confession, you can go home, making a joke of it but, with everything that I know at this stage, I am sorry that I didn't react stronger to it. I spoke with Sergeant Roache in relation to it at the time and … I would have enormous trust in his direction and guidance on things, him having been my duty sergeant and worked with him for a number of years and I did lean towards it being a ruse, a joke. The concept of it being maybe something more was just totally alien to what I knew of An Garda Síochána at that time.[580]

4.131. Garda Fowley claimed that she felt let down by Inspector Coll in that she felt that the Carty team was in Donegal to investigate the investigation into the Late Richard Barron's death in the Donegal division and she had spoken to him in confidence about the matter. She was astonished that she was told to take her concerns to Chief Superintendent Fitzpatrick, who was the divisional commander at the time of the first investigation. Garda Fowley did not make a statement about the matter until some three years later. She acknowledged that she was surprised to learn that Frank McBrearty Junior had made an inculpatory statement later on that evening. She said:

> The fact that John McGinley was in the conference room at around half two, between 2 and 3 that afternoon and making a joke of copying Frank McBrearty, Jnr.'s signature did not automatically show propensity that he was party to a writing of an alleged statement of admission by the N.B.C.I. investigators.[581]

[580] Tribunal Documents – Arrest & Detention Vol. 1, pages 552-553.
[581] Tribunal Documents – Arrest & Detention Vol. 1, page 556.

Notwithstanding Garda Fowley's surprise at the making of a statement by Frank McBrearty Junior, she did not link that to what she had witnessed in the incident room earlier in the afternoon with Inspector McGinley. She was not aware until much later that Frank McBrearty Junior had alleged that his signature was forged. It was not until September of 1997 that a further incident occurred involving Superintendent McGinley which caused her to be concerned about notes taken during the course of the interview with Ms. McConnell, which are dealt with elsewhere in this report. By 1999 the Carty team was investigating the investigation into the death of the Late Mr. Barron and when Inspector Coll came to her concerning the lost notebook of Garda John O'Dowd, she took the opportunity to make known her concerns to him in confidence.

4.132. In evidence to the Tribunal Garda Fowley substantially repeated the accounts of the incident which she had already given in her statement and in her interview with the Tribunal investigators.[582] She made a number of significant points. Garda Fowley confirmed to the Tribunal that the statement on a "C8 Form" was probably a pre-printed witness statement completed by Sergeant Michael Carroll and signed by Frank McBrearty Junior on the 18th of October 1996. Strangely, though she was willing to accept Sergeant Roache's suggestion that Inspector McGinley was playing a joke, nevertheless she described how the following day she went to the original document file and satisfied herself that the C8 which she had seen was a photocopy of the original statement of the 18th of October 1996. This had not been included in Garda Fowley's statement or interview with the investigators. The following exchange took place in the course of her evidence with counsel for the Tribunal:

Q. *I suppose in the context of a murder inquiry where there are a number of people detained and Mr. McBrearty Junior is a principal suspect in a murder inquiry and it is hoped to get an admission out of him, practising his signature … would be a rather surprising if not a shocking thing to see?*

A. *It was and I suppose … even though I had the discussion with Sergeant Roache, I didn't really know what to make of it. I know I consulted with the original documents file. And I came across the C8 and that's how I can be satisfied it was a C8.*

Q. *When did you do that?*

A. *In the next day or two afterwards.*

Q. *Why did you do that?*

[582] Transcript, Day 521, Q.415-501.

A. *I just don't … what he was doing didn't sit with me, even though I discussed it with Sergeant Roache as a prank or that, I just … I went to the original document file, I suppose … I was kind of expecting the statement of admission to be there. It wasn't in it, which could be explainable in other ways, if it was being treated as an exhibit rather than a statement. And I had a look at the C8 and I was happy that that was the C8 that he had copied. And I suppose the fact that Detective Inspector McGinley, to my knowledge, was not interviewing Frank McBrearty Junior, swayed me more inclined to thinking, well maybe this was a joke or maybe this was a prank you know …*

Chairman: *I'm sorry Garda you went to the document file and you came upon the C8?*

A. *Yes, which was Frank McBrearty's witness statement.*

Chairman: *And what did you conclude from then on, that that was the one that he had been using?*

A. *That that was the one that he had been using, yes.*

Chairman: *But he had been using a photocopy was it not?*

A. *Yes but it was a photocopy of that particular one. I was happy enough that that was the one that he had had in front of him in a photocopied form. The statement of admission wasn't there … I had a look at the C8, I was satisfied it was a photocopy of that that he had had in front of him and I kind of … I thought about it but John McGinley had not been involved in interviewing Frank McBrearty, so I kind of dismissed it in my mind. I ruled it out as a possibility I suppose … of it being a genuine attempt, I suppose, to forge Mr. McBrearty's signature … And I suppose I was inclined to dismiss it as a prank but at the same time I went and had a look just to see. It was on my mind, it was something kind of that wasn't sitting well with me and I suppose out of nosiness … I just went to have a look at it.*[583]

4.133. Garda Fowley made clear in her evidence that the document shown to her by Inspector McGinley, bearing the signature Frank McBrearty Junior, which he drew

[583] Transcript, Day 521, Q.488-501.

to her attention and asked whether she thought it a good likeness to the signature of Frank McBrearty Junior, was not the statement of admission said to have been made on the 4th of December 1996 at 20.25 hours to Detective Sergeant Melody and Detective Garda Fitzpatrick. Further, it was not the second statement that had been made to Detective Sergeants Eamon O'Grady and Gerard McGrath.[584]

4.134. Garda Fowley noted that the signature on the document shown to her by Inspector McGinley was "justified to the left". The signature on the alleged statement of admission of Frank McBrearty Junior of the 4th of December 1996, she observed, was "justified to the right hand side rather than … to the left."[585] In addition, as already noted, the colour of the "half sheet" of paper upon which the alleged statement was written differed from the "half sheet" put in front of her by Inspector McGinley: the latter was a lined sepia coloured page and the former a lined white page.[586] In respect of the shorter statement allegedly made to Detective Sergeants O'Grady and McGrath, Garda Fowley said the same difference in colour existed between the sepia coloured page shown to her by Inspector McGinley and the white coloured page upon which that alleged statement was written.[587] I am satisfied that the signatures appearing on both of these documents are the true signatures of Frank McBrearty Junior appended by him to the respective documents.[588]

4.135. Garda Fowley was asked whether she attempted to examine the original of the statement of admission allegedly made by Mr. McBrearty on the 4th of December 1996 with a view to comparing it with a document which she had seen in the possession of Inspector McGinley on the afternoon of the same day. She said:

> *I went to look at the documents because of what I had seen happening. I suppose, yes, I would have taken out the C8 and I would have taken out the statement of admission if it was there, I would have gone ahead and made a comparison, taken a look at them.*[589]

4.136. Sergeant Brendan Roache in a statement made on the 18th of October 1999 said:

> My recollection of this incident is as follows, sometime in the afternoon I was in the incident room (approx. 3 to 4 pm). I was seated at the table at the top of the incident room and Garda Tina Fowley was working at a table at the other end of the room. Superintendent (then Detective

584 Tribunal Documents – Arrest & Detention Vol. 1, page 532 and Transcript, Day 521, Q.444 and Q.518-521.
585 Transcript, Day 521, Q.454-457.
586 Transcript, Day 521, Q.444 and Q.446-455.
587 Transcript, Day 521, Q.520.
588 The Arrests and Detentions of Frank McBrearty Junior, Chapter 7.
589 Transcript, Day 521, Q.522.

> Inspector) John McGinley came into the room and took up a position half way down the room. He commenced work on papers that he had in his possession. I continued with my work and took no notice of him. At one stage I saw Superintendent McGinley and Garda Fowley in conversation and he was showing her some documents that he had in his hand. The conversation was light hearted. I did not enter this conversation and after a period of time (5-10 minutes) Superintendent McGinley left the incident room. Superintendent McGinley was only in the room for about 10 minutes at most. After he left I asked Garda Fowley what was that about. She replied that Superintendent McGinley had asked her was that a good likeness of Frank McBrearty's signature from papers that he had in his hand. I replied that that would be typical of McGinley as a practical joker. I dismissed it and thought no more about it. I did not see any of the documentation in Superintendent McGinley's possession. As I have said I thought no more about it until Garda Fowley mentioned it to me a few months back, after her seeing some article in the paper in relation to Richard Barron's death. She said that it annoyed her greatly and that she was going to have to bring it to the notice of the authorities.[590]

4.137. In evidence to the Tribunal, Sergeant Roache repeated what was in his statement but elaborated considerably on the details. He told the Tribunal that he took advantage of a quiet period in the afternoon to prepare a class which he was giving to some Gardaí. At approximately 15.00 to 16.00 hours Inspector McGinley entered the incident room. He described it in the following way:

> *He was carrying his usual folder with him. He went down towards Garda Fowley and round and sat down at the conference table with his back to where the window was and facing the door, opened up his folders and started working … At one stage while I was reading and looking up I noticed Garda Fowley walk from where she was seated up behind Superintendent McGinley and retrieve some document or paper off the table closer to where I was than between me and Superintendent McGinley from the conference table, I was further up at the circular table. She retrieved the document, this is just periphery vision of this. She went back and as she went to go by Superintendent McGinley again, when I looked again or concentrated again on it he was looking around as to engage her as she went back by him again. He had something in his hand and he was looking at her, engaging her with something in his hand and something in front of him and that is the image I got as I looked down at them. Whatever it was*

[590] Tribunal Documents – Arrest & Detention, pages 584-585 (statement made to Detective Sergeant George Kyne and Detective Inspector John O'Mahony).

it was jovial because I could see him smiling and I could see a side profile of her smiling. That was the incident. She went back to where she was seated and I would say Superintendent McGinley in total was in the room, Mr. Chairman, for about ten minutes. … After that ten minutes he packed up or gathered up the papers he had or the folder he had with him and he went off out of the room, again going down by Garda Fowley and out the door. And after he left I spoke down to Garda Fowley and I said what was all that about and Garda Fowley said to me, she relayed the story that he asked her a question was that a good likeness … she said Superintendent McGinley was asking her to compare was it a good likeness between the signature he had on the paper in his hand and the signature on a document, I think she said a C8, a document in front of her or in front of him on the table. I said that would be typical of John McGinley, he'll go down now and he'll pull a prank on somebody. It's a joke on his part, he'll go down now and say there we are boys, there's an admission from Frank McBrearty Junior and he'll get a laugh out of it. He'll pull a prank or pull a joke on somebody with that. And that's the only notice I paid of it. I took it as what I saw the interchange between them, I took it as a joke.[591]

4.138. Mr. McGinley accepted in evidence that he had been in the incident room on numerous occasions during the 4th of December 1996. He thought that he might even have been sitting beside Garda Fowley on one such occasion that morning. He did not recall any occasion during that day upon which he was in the incident room with only two other people, namely Garda Fowley and Sergeant Roache. He denied that he had possession of a copy of the C8 witness statement made by Frank McBrearty Junior on the 18th of October 1996. In order to obtain a copy of that document, he said that he would have had to ask some member of the incident room staff to photocopy the original. He had no recollection of having a joke with Garda Fowley and had no specific memory of any particular event involving interaction with her.[592] Mr. McGinley denied that he ever engaged in practising the signature of Frank McBrearty Junior on the afternoon of the 4th of December as alleged by Garda Fowley. He accepted that in the ordinary course of his work he may have written the name Frank McBrearty Junior or Róisín McConnell a number of times when writing notes or in preparing notes prior to interviews. However, he said he never made any attempt to copy Mr. Frank McBrearty Junior's signature. He thought that in the course of his work on some occasion he probably wrote the names of suspects, including that of Frank

[591] Transcript, Day 522, Q.569-575.
[592] Transcript, Day 526, Q.342-360.

McBrearty Junior, in Garda Fowley's presence but certainly not in the context as outlined by Garda Fowley to the Tribunal.[593]

4.139. Mr. McGinley made the following observations in the course of his evidence in respect of the allegation that he had been practising Frank McBrearty Junior's signature. He said that if he had written a statement for the purpose of passing it off as Mr. Frank McBrearty Junior's with a forged signature, he would have had to interview Mr. Frank McBrearty Junior. He would have had to explain how his own writing came to be on the statement. Though Mr. Frank McBrearty Junior said in evidence that Mr. McGinley was in and out of the interview room all day and abused him on occasions verbally,[594] Mr. McGinley denied any such encounter. There was nothing in the custody record to support this. The emergence of such a forged statement in Mr. McGinley's hand would be very difficult to explain in the light of his absence from the list of those who interviewed Mr. McBrearty Junior contained in the custody record and the other notes of interview referable to Mr. Frank McBrearty Junior's detention. In addition, he highlighted the risk of easy discovery by means of expert handwriting analysis once the signature was denied by Mr. Frank McBrearty Junior. In addition, it must of course be noted that Garda Fowley, in her evidence, said that the document shown to her with writing upon it and to which the signature of Frank McBrearty Junior was appended, was not the same document as either of the two statements allegedly made to Detective Sergeant Melody and Detective Garda Fitzpatrick and Detective Sergeants McGrath and O'Grady respectively. Clearly, on her evidence, and on the expert evidence available to the Tribunal, the signatures on those documents are not forgeries: they are the signatures of Frank McBrearty Junior.

4.140. Mr. McGinley told the Tribunal that he believed that Garda Fowley was used by others in setting out the allegation to Inspector Coll that she had seen him practising the signature of Frank McBrearty Junior. This occurred against the background of his own inquiry into the activities of Garda John O'Dowd in 1998 and the supposed loss of Garda John O'Dowd's notebook, which was later found in the possession of the informant, William Doherty, during a search of his bedroom. Mr. McGinley believed that the making of this allegation was part of an effort to discredit him and raise a cloud of suspicion over him while he was making his enquiries into Garda O'Dowd's involvement with William Doherty and the events concerning the making of extortion phone calls to Michael Peoples.[595] He said that it was now clear that a widely publicised allegation in the media that he had been practising Frank McBrearty's signature for the purpose of affixing it to the statement of admission made by Mr.

[593] Transcript, Day 526, Q.421-531.
[594] See Chapter 7.
[595] See Report on the Investigation into the Death of Richard Barron and the Extortion Phone Calls to Michael and Charlotte Peoples - Terms of Reference (a) and (b) - Chapter 6.

McBrearty Junior on the 4th of December 1996 was untrue. In that he is correct. He justifiably complained that he was wrongfully accused of that for many years.

4.141. He further complained that now the issue had shifted to focus upon Mark McConnell's allegation that he had been shown a statement supposedly that of Frank McBrearty Junior and which allegedly bore Mr. McBrearty Junior's forged signature. The Tribunal is satisfied, however, that the resolution of Garda Fowley's allegation is relevant to Mark McConnell's allegation. If Garda Fowley is correct then the occurrence which she described called for an explanation from Inspector McGinley, particularly in the light of Mr. McConnell's allegation. In that context, Mr. McGinley was asked about the possibility of the occurrence of any event similar to that described by Garda Fowley, which was capable of misinterpretation by Garda Fowley or could otherwise bear an innocent explanation, for example, as part of a prank or joke.

4.142. Mr. McGinley addressed this matter in the course of his evidence. He acknowledged that he definitely:

> *Would have written in her presence his name [Mr. Frank McBrearty Junior's] I'm sure that day and all the other names as well, I have no doubt about that … but I might have said there is a term in Irish "Léann an púca an rud a scriobhann sé féin". That the púca can read whatever he writes himself and it's a term that I often use. I could have said something that he was as good a scribe as myself. … I could have. I don't know. It's quite possible I did. … I know there was banter during the day. There was banter during the day at one stage. I feel that at one stage. I feel that at one stage … I know at one stage I came into the room and I said that I had interviewed Frank McBrearty the last three hours or something and he admitted the whole thing to me. Now, I said it as a ruse and that was the last I heard about it. Now, I didn't hear anymore about it after that for three years. … I don't think anybody took it seriously. Because first of all they knew that I wasn't interviewing him at any time and for somebody to jump on the bandwagon then and forge a statement on his behalf, was an awful long distance down the road. … Well you asked me was there a context in which there could have been middle ground … but I don't think for one minute that Garda Fowley thought that I did, that had I interviewed him or that he had made a statement at that time, I don't think for one minute she thought that … [the incident] I*

> *think it was in the morning, it was fairly early in the morning maybe about 11 o'clock … well half 11/12 o'clock I'd say … I would have had my folder with me I'd say … I think I said I had it in my file, yeah. I'm not sure exactly what I said other than you know, that it was a fait accompli at the time. I don't think anybody … everybody knew from my demeanour that it was a bit of levity in the middle of the thing. … I don't think it was to her, no, I think it was to whoever was there. … I don't [recall] who was there.*[596]

4.143. Mr. McGinley was asked why he never divulged the information about the prank that he had played on the morning of the 4th of December 1996 to anybody until giving evidence on the afternoon of day 526 of the Tribunal's hearings on the 16th of November 2006. He replied that in 1999 Mr. Frank McBrearty Junior was alleging that he had not made any statement and that Garda Fowley was saying or alleging that he (Mr. McGinley) had made the statement on behalf of Mr. Frank McBrearty Junior. He said:

> *How could you say … this man has a statement made which he says he didn't sign, and I'm making a bit of banter about it in the morning and people linking me with it, how could you come out and say … they were saying that I was responsible for it as it was, without me saying anything. I mean it was in every paper and media outlet that Garda Fowley found this man practising Frank McBrearty's signature, he has a statement made he didn't sign anything. I mean I was … it was virtually out there that I had made that statement on his behalf. It was a couple of years later before forensics established that that wasn't the case. That he signed the statement himself.*[597]

4.144. Mr. McGinley acknowledged that he had not revealed the morning prank to the Tribunal investigators when interviewed: nor had he made any statement prior to or after the publication of the first two Tribunal reports: nor had he acknowledged the occurrence of this prank when asked in evidence, by counsel for the Tribunal, whether there was any ground upon which any action of his could have been misinterpreted or mistaken for something else by Garda Fowley or any other Garda, shortly before he revealed the occurrence of this prank to the Tribunal in his evidence on the afternoon of the 16th of November 2006. He said that it had been very difficult for him to acknowledge the occurrence of this prank for a number of reasons, including the passage of time. He said:

> *Well you know, I've been carrying this around for a long time and you know, it's been carried around and bandied about that I was*

[596] Transcript, Day 526, Q.415-460.
[597] Transcript, Day 526, Q.465.

responsible for Frank McBrearty and so on and in that context, Chairman, it's a very difficult thing to do. Like I had never interviewed Frank McBrearty, I had absolutely nothing to do with it and yet Garda Fowley knows that as well as I knew, but in the context in which she threw it out, it was implied that I was responsible for doing it.[598]

4.145. Mr. McGinley also emphasised to the Tribunal that the allegation made by Garda Fowley occurred in the context of allegations made by Garda John O'Dowd that his notebook had been stolen and planted by Gardaí at William Doherty's house in the course of investigations into William Doherty and links which he may have had with Garda John O'Dowd. Mr. McGinley drew attention to the fact that Inspector Coll was told by Garda O'Dowd that he had discussed the loss of his notebook with Garda Fowley. He thought it was no mere coincidence that when Inspector Coll approached Garda Fowley in 1999, she returned and made her allegation concerning the practising of Frank McBrearty's signature by Mr. McGinley. He believed that she had been used as a "pawn" by others under investigation at that time.[599] Nevertheless, Mr. McGinley insisted that Garda Fowley had not seen him practising Frank McBrearty's signature and that her contention in that regard was either an untruth or it was a misinterpretation on her part. In that regard, the following exchange took place between counsel for the Tribunal and Mr. McGinley:

Q. But in terms of what she says she saw in relation to that day on the 4th of December 1996, the fundamental question is was what she saw reality … did she physically see and experience what she says she saw and experienced?

A. No she didn't see me practising Frank McBrearty's signature. That's what she is saying.

Q. Are you allowing for the possibility that she may have seen you write Frank McBrearty's signature, not his signature but write the name Frank McBrearty Junior?

A. I don't think so.

Q. And saying anything in the nature of a joke to her about it?

A. Oh well, I mean, I wouldn't have used the word joke. I mean, I think it would have been an understood thing that it was a joke. I never said anything about a joke to her. I mean she knew herself whatever I was at it wasn't anything serious.

[598] Transcript, Day 526, Q.473.
[599] Report on the investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples – Term of Reference (a) and (b) – Chapter 6 and Transcript, Day 526, Q.476-479.

Q. What I am trying to figure out is what it was you were at?

A. No I'm sorry, I told you what I was at. I came in the door and I said this is a fait accompli.

Q. But I thought she wasn't there for that, that was in the morning?

A. In the morning, yeah.

Q. But I thought she wasn't there for that?

A. She might have been there, I don't know. I came into the room and said that.

Q. But there is no comment in relation to the púca and the signature to her?

A. No.

Q. That's just a for instance?

A. Yeah.

Q. So if she insists on the scenario that she has given in evidence it's an untruth?

A. Well either that or it's a misinterpretation on her part.

Q. Well, what I'm trying to understand is the misinterpretation?

A. Well I don't know, I can't speak for her. I can't speak for her sure.

Q. Well let's say it was being argued to the Chairman that he should decide for some reason that this was a misinterpretation of events, that there must be a factual basis allowing for misinterpretation by somebody, can you offer any factual basis allowing for a misinterpretation?

A. I can't.[600]

4.146. I am satisfied on the balance of probabilities that Inspector McGinley was practising the signature of Frank McBrearty Junior whilst in the conference room and that Garda Fowley's and Sergeant Roache's evidence on this matter is correct. There was no good reason for Inspector McGinley behaving as described by Garda Fowley. Subsequently, Mr. McGinley denied that it ever happened. Therefore, the explanation of what was

[600] Transcript, Day 526, Q.479-489.

described by Garda Fowley and Sergeant Roache as a prank, does not arise from his story. One must, therefore, seek some other reason for his behaviour and why he denied it. That explanation does not lie in the allegation that he was practising the signature of Frank McBrearty Junior as a preparatory step to forging a statement of admission by Frank McBrearty Junior to which he then appended the forged signature of Frank McBrearty Junior. The Tribunal is satisfied that the statement of admission of the 4th of December 1996, which it has examined in Chapter 7, is in the handwriting of Detective Sergeant Melody and that the signature appended to that document is the authentic signature of Frank McBrearty Junior. The remaining purpose open for consideration is that Mr. McGinley was creating a bogus statement of admission purportedly signed by Frank McBrearty Junior which would be presented as authentic to Mark McConnell. The purpose of doing so would be to trick Mr. McConnell into believing that Frank McBrearty Junior had admitted his involvement in the death of the Late Richard Barron and thereby trick him into admitting his own involvement and/or implicating Frank McBrearty Junior. Mark McConnell's account of what was shown to him gains some support from my acceptance that Inspector McGinley was indeed engaged in the practising of Frank McBrearty Junior's signature on the document viewed by Garda Fowley.

The Garda Evidence

4.147. The three Gardaí concerned in the interview between 19.05 and 20.20 hours, as previously noted, were Detective Sergeant Leheny and Detective Garda O'Malley between 19.05 hours and 19.45 hours and Detective Sergeant Leheny and Sergeant Pat Hennigan between 19.45 hours and 20.20 hours. To these must be added Mr. McConnell's evidence that Inspector McGinley played a major part in this interview in reading out the false statement of admission said to have been made by Frank McBrearty Junior.

4.148. Mr. Leheny in his evidence to the Tribunal said that matters proceeded as normal in the first half of the interview between 19.05 and 19.45 hours, when Detective Garda O'Malley was present. He described in a statement made on the 6th of December 1996 a very straightforward encounter. He said:

> At the outset to this interview I first administered the caution to the prisoner Mark McConnell … I then informed the prisoner that we wished to interview him further in relation to the death of Richard Barron in the early hours of the morning on the 14th of October 1996 as we had good reason to believe that he was involved in causing the death of Richard

> Barron and that in our two previous interviews with him he had not disclosed his involvement with the McBreartys which resulted in the death of Richard Barron and to which he replied: "I have given you an account of my movements for the night Richie was killed. On the advice of my solicitor I am saying nothing further and I am making no statement or signing anything". During the course of this interview the prisoner Mark McConnell again re-affirmed the written account which he had given to us in our first interview with him earlier that same day of his movements and actions from 6pm on Sunday the 13/10/96 to 10am on Monday 14/10/96 during which period Richard Barron met his death. Again he declined to elaborate further on any aspect of our investigation apart from denying having any involvement in the death of Richard Barron and saying: "I know ye suspect me because of the row between myself and Richie in Quinn's Bar but I had nothing to do with his death". During the course of this interview at 7.45pm D/Garda M. O'Malley left the interview room to attend to other Garda related matters and at same time I was joined in the interview room by Sergeant P. Hennigan of Castlefin Garda Station. In the presence of the prisoner I informed Sergeant P. Hennigan that the prisoner was under caution. At 8.28pm the interview with the prisoner terminated … [601]

Detective Garda O'Malley in his statement made in 1997 gave virtually the same account of this interview including the two quotations attributed to Mr. McConnell contained in Detective Sergeant Leheny's statement.[602] In this regard, it is likely that the whereabouts of the missing notes must have been to the forefront of both their minds at the time they made their respective statements as they were purporting to attribute accurate quotations to the interviewee.

4.149. Mr. O'Malley told the Tribunal that during this period he and Detective Sergeant Leheny were still trying to reason with Mr. McConnell in relation to his version of events having regard to the statements in their possession, which differed from his version. The interview was essentially a repetition of questioning which had occurred in previous interviews.[603] Mr. O'Malley emphatically denied that Inspector McGinley was present in the room between 19.05 and 19.45 hours or that any prefabricated statement of the type described by Mr. McConnell was read to Mr. McConnell in Mr. O'Malley's presence.[604]

4.150. Mr. Leheny in his evidence elaborated significantly on his description of events, particularly in relation to the latter part of the interview when Sergeant Hennigan came into the room. He said:

[601] Tribunal Documents – Mark McConnell Vol.1, page 65-66.
[602] Tribunal Documents – Mark McConnell Vol.1, page 40.
[603] Transcript, Day 510, Q.274-276.
[604] Transcript, Day 510, Q.245-285.

> *Sergeant Hennigan came in and he remained with me and for the last 15 minutes of interview I decided that I would avail of the opportunity, I knew I was going nowhere with Mark McConnell. I was beginning to have various doubts at that moment. I had been with him for a long period that day and I had my mind made up that he was fairly truthful. I couldn't find him in all the times he repeated any of his questions, accounting for his movements, he was always accurate, he never variated [sic] off. I felt that he wasn't telling lies and I had a feeling that he was telling the truth and I began to doubt so I used the last 15 minutes and I discussed with him trying to elicit from him what the possibilities was, had he any real knowledge of why Richie met his death. I used that period of trying to elicit information out of him. For that period he talked freely but he told me he couldn't see any reason why anyone would murder Richie Barron. He told me about the fallout that was between them. But that didn't justify killing Richie Barron. He assured me that none of his family, the McBreartys, were involved. He couldn't nominate anyone around Raphoe or from any place that would cause the death of Richie and that's what our last 15 minutes of the interview were.*[605]

Subsequently Mr. Leheny returned to this theme and said that during the last segment of the interview in the presence of Sergeant Hennigan no notes were taken because of the free flowing and general nature of the discussion with Mr. McConnell:

> *A. Yeah, Sergeant Hennigan was in for 30 minutes.*
>
> *Q. Yes.*
>
> *A. And there'd be 20, 25 minutes of that was free flowing.*
>
> *Q. Well you told me 15?*
>
> *A. 15, the greatest portion of that half hour.*
>
> *Q. So you think it's more than that, more than 15?*
>
> *A. 15 to 20 would be the max.*
>
> *Q. So there were times certainly during, for a good portion of that interview you say where no notes were taken at all?*
>
> *A. For that … yeah. … Yeah, a lot of things Mark says I never recalled.*[606]

[605] Transcript, Day 512, Q.211.
[606] Transcript, Day 519, Q.407-414.

4.151. Sergeant Hennigan in a statement made on the 24th of July 1997 said the following:

> At 7.45pm I returned to the interview room where Mark McConnell was being interviewed by Detective Sergeant Leheny and Detective Garda Michael O'Malley. Detective Garda O'Malley left the interview room and I joined Detective Sergeant Leheny. Detective Sergeant Leheny and I questioned Mark McConnell about the events of the night of the 13th and 14th of October, 1996 and the murder of Richie Barron. He denied being involved. The interview concluded at 8.20p.m. when the prisoner was taken from the interview room to the Public Office.[607]

In a further statement, he added:

> On my visit to the interview room at 7.45 D/Sergeant Leheny informed me that Mark McConnell was still under caution. Mark McConnell again denied being involved and stated that his accounts given earlier were correct.[608]

On the 17th of January 1998 a similar account was given with the further addition that Mr. McConnell "appeared calm" when Sergeant Hennigan entered the room.[609] He agreed in evidence that towards the end of the interview he and Detective Sergeant Leheny were having a general conversation with Mark McConnell which was "free flowing". He thought time must have caught up on them as Garda Leonard entered the room to say that Mr. McConnell was to be released.[610] He thought that there were perhaps three to six questions and answers noted by Detective Sergeant Leheny in the last half hour of the interview.[611]

4.152. There is no reference in any of the statements made by Detective Sergeant Leheny, Detective Garda O'Malley or Sergeant Hennigan to the taking of notes by Detective Sergeant Leheny during the fifth interview.

4.153. Mark McConnell's account must also be considered in the context of the absence of interview notes in respect of the third and fifth interviews conducted with him.

The Absence of Notes

4.154. No notes exist in respect of the fifth interview period. Mr. Leheny said in evidence that he took notes but that they were not read over to Mr. McConnell at the conclusion of the interview because of the time factor. He was unable to read the notes over because Garda Martin Leonard, the member in charge, had entered

[607] Tribunal Documents – Mark McConnell Vol. 1, page 129.
[608] Tribunal Documents – Mark McConnell Vol. 1, page 130.
[609] Tribunal Documents – Mark McConnell Vol. 1, page 141.
[610] Transcript, Day 519, Q.461-469.
[611] Transcript, Day 519, Q.489-497.

the room and told those present that the time for the detention of Mark McConnell was about to expire. Moreover, this had the further consequence that the notes referable to the first and third segments of the third interview were not read over to Mr. McConnell either. Mr. Leheny said that it had been intended to read over the notes of all of the interviews in which he had participated since 14.16 hours to Mr. McConnell at the conclusion of the fifth interview. It will be recalled that Sergeant Leheny said that circumstances were such that they prevented the reading over of the notes at what might have been regarded as the more appropriate time at the conclusion of the first and third segments of the third interview respectively.

4.155. The Tribunal has examined the earlier statements of Detective Sergeant Leheny, Detective Garda O'Malley and Sergeant Hennigan in respect of the notes of the fifth interview. In Detective Sergeant Leheny's statement of the 6th of December 1996 there is no mention of the taking of any notes by him or his colleague during the course of the third interview. However, there is a detailed description of the taking of notes by Inspector McGinley during the second segment of that interview, the reading of the notes to Mr. McConnell and the signing of the notes by Inspector McGinley, Detective Sergeant Leheny and Detective Garda O'Malley. Detective Sergeant Leheny addressed the failure to read over notes at 14.45 hours and 16.31 hours to Mark McConnell. He said that he decided to defer the reading over of the notes, which he had taken before Inspector McGinley entered the room, until later. He said that at 14.45 hours he spent approximately ten minutes briefing Inspector McGinley.[612] He did not read over the notes of the first segment of this interview at the conclusion of the second segment when Inspector McGinley was said to have read over his notes. They were interrupted at that time by the arrival of Garda Leonard, Sergeant Coady, Detective Garda Jennings and Dr. McColgan for the purposes of taking a blood sample. They left the interview room during this procedure. He was again interrupted in the course of his interview at 16.30 hours when Garda Coady arrived to give a change of clothing.

4.156. In evidence, Mr. Leheny said that the notes which he wrote during the period between 16.00 and 16.30 hours were "a rehash of our first iterview." He said that during this interview Mr. McConnell went into more detail about the amount of alcohol which he had consumed on the night of the 13th of October 1996 in response to questions put by Detective Garda O'Malley. He said that he included references to the amount of the alcohol in the set of notes made at this time. Though questions were asked in the first interview concerning this matter he had not made notes of Mr. McConnell's responses in that regard because he thought they were "irrelevant" because other witnesses had indicated that Mr. McConnell

[612] Transcript, Day 512, Q.267-280.

was not intoxicated. In addition, he said other topics were covered such as locals who were sitting in a car and the details of a phone call that was allegedly made from the Brolly household to the Dolan household. He said:

> *He went into more about the phone call that was made, allegedly made from Brollys to, I forget her name, Laura [Dolan] they were looking for Mark, that Róisín was looking for Mark, I think that was discussed. I just can't recall her second name.*[613]

4.157. In a statement made on the 15th of February 2005 Mr. Leheny said:

> During the course of the two periods of interview, 2.16 pm to 2.35 pm and 4 pm to 4.30 pm, Detective Garda O'Malley and I had alone with the prisoner, I made a written record of any answers the prisoner Mark McConnell made to questions put to him in relation to the death of Richie Barron. The only questions he made any replies to were to re-affirm the written account of his movements and actions from 6 pm on Sunday the 13/10/1996 to 10 am on Monday the 14/10/1996, which he had given to us during the course of the first interview with him on same date. To any other questions put to him he replied "On the advice of my Solicitor I am saying nothing further and I am making no statement or signing anything". Due to the manner in which this interview with the prisoner was interrupted I had not the opportunity to read over to the prisoner the notes, which I had made during the course of this interview. As the said notes contained nothing in addition to notes of the first interview I decided not to return to the interview room for the purpose of reading same over to the prisoner, that I would read them over to him in conjunction with any further notes I would make in our next interview with the prisoner.[614]

This account made no reference at all to questions posed to Mr. McConnell about the amount of alcohol he had consumed or the phone call to Laura Dolan. Whilst there may have been some information available to the investigation that there had been phone calls from the Brolly house to the Dolan residence in the early hours of the morning of the 14th of October 1996, the information contained in the statements of Laura Dolan and Irene Dolan did not become available to the investigation team until January 1997. In particular, the suggestion that it was Róisín McConnell who had asked whether her husband Mark McConnell was present at the Dolan house in the course of the phone call made was not made known to the Gardaí until Irene Dolan made her statement on the 16th of January 1997 to Sergeant J. Hannigan.[615] The evidence given by Mr. Leheny

[613] Transcript, Day 512, Q.315-341.
[614] Tribunal Documents – Mark McConnell Vol. 2, page 405.
[615] Tribunal Documents – Barron Investigation, page 2557 and see Report on the Investigation into the Death of Richard Barron and The Extortion Calls to Michael and Charlotte Peoples – Term of Reference (a) and (b) – paragraphs 3.394 to 3.427.

concerning these questions, which he said were put to Mark McConnell in the course of the first and third segments of the third interview, differs from the clear suggestion in his statement that Mr. McConnell said he would say nothing "to any other questions put to him". Clearly, the notes also contained further additional material concerning the Dolan telephone call and the consumption of alcohol by Mark McConnell. However, the statement says that the notes contained nothing in addition to the notes of the first interview. It is difficult, therefore, to accept the proposition that Detective Sergeant Leheny decided not to return to the interview room for the purpose of reading over his notes to the prisoner because the notes contained nothing new. However, Mr. Leheny added that he decided that he would read the notes over to Mr. McConnell in his next interview with him, together with any further notes that he made. This did not happen.

4.158. Later in his statement of the 15th of February 2005, Mr. Leheny described how during the course of the fifth interview he made notes but never read them over to Mr. McConnell. It would appear that he had the notes of the third interview in his possession, which he had intended to read over during the course of this interview but did not do so. He described how the interview concluded:

> At 8.15 pm approximately Garda Leonard entered the interview room and informed me that he was taking the prisoner downstairs in order to release him from Garda custody. At this stage time did not permit me to read over to the prisoner Mark McConnell the written record of the interview notes, which I had made during the course of our second and third interview with him, as to do so would have resulted in him being detained in Garda custody outside the period of his lawful detention in Garda Custody, which was due to expire at 8.22 pm. I was also fully aware that in reading over the said interview notes to the prisoner Mark McConnell was of no benefit as he would not have signed them on the advice given to him by his Solicitor and furthermore the said interview notes contained no admissions to incriminate him or any other person in any way whatsoever in causing the death of Richie Barron.[616]

The one point of agreement between the Gardaí and Mr. McConnell is that each of their accounts of how the interview ended suggests that it was ended in something of a rush, making it difficult to conclude the business then in hand, whatever it was.

4.159. In evidence Mr. Leheny said that as the interview progressed he became totally engrossed in talking to Mark McConnell about what in Mr. McConnell's opinion happened to the Late Richard Barron but Mr. McConnell was unable to help him

[616] Tribunal Documents – Mark McConnell Vol. 2, page 406 and Transcript, Day 512, Q.337-355.

in any way. He had not been keeping a check on the time and "you could say I was caught unawares".[617] He said that in his statement he was simply trying to convey that there was nothing lost or gained by not reading over the notes to Mr. McConnell "because there was nothing in them that was of any relevance to a State Prosecution".[618] He summed up his approach by saying that:

A. *Time did not permit me to read over the notes and for him to sign it. Time was the main factor.*

Q. Chairman: *And you are going on to say it doesn't matter because he didn't say anything.*

A. *I'm only expressing my opinion that I lost nothing and I gained nothing by taking that course of action.*[619]

What was done with the Notes

4.160. Subsequently, Mr. Leheny said in a statement of the 15th of February 2005 that after the release of Mr. McConnell from Garda custody he went to the incident room with the intention of handing over the original notes taken by him during the course of the third and fifth interviews to Garda Tina Fowley. When he entered the incident room there were a number of Gardaí present but Garda Fowley was absent. He assumed that she was only temporarily absent from her desk and he said that he left the original interview notes on her desk together with the McConnell briefing file. He said that he then left the Garda Station and went for a walk. Subsequently, when he returned to the Garda Station at approximately 21.30 hours he learned from Detective Superintendent Shelly that Frank McBrearty Junior had made a statement of admission; he later attended a conference in respect of this matter. Following the conference he left Letterkenny Garda Station. He did not make contact with Garda Fowley prior to leaving the station concerning the interview notes. He then said that on the following day Thursday, the 5th of December 1996, he telephoned Garda Fowley at the incident room at Letterkenny Garda Station. He said:

> I requested her to fax me a copy of the said interview notes as I was then in the process of making my statement of evidence. Garda Tina Fowley subsequently made contact with me and informed me that the said interview notes were not available in the incident room. To this date the said interview notes were never located and I accept that they were accidentally mislaid and that there was no malicious intent on any member.[620]

[617] Transcript, Day 512, Q.379-382.
[618] Transcript, Day 512, Q.383-388.
[619] Transcript, Day 512, Q.383-413.
[620] Tribunal Documents – Mark McConnell Vol. 2, page 407.

Mr. Leheny repeated this in evidence to the Tribunal. He said that he made no photocopy of the notes that he handed in, even though the facilities were apparently available.[621]

4.161. Mr. Leheny said in evidence that after Mark McConnell's release:

> *Myself and [Sergeant Hennigan] I think we decided we'd go for a walk but I says I'll go round to the incident room and I'd leave the documentation in. There was no office on the top floor but a Photostatting available, so I went directly into the incident room. And my recollection that Martin Moylan and it was either John O'Toole, there was a few other detectives, I just cannot recall who they were, they were sitting around reading documentation, but I was dealing directly with Tina Fowley. I dealt with her directly in the morning. Tina, where her usual seat was she wasn't present and I assumed she was temporarily out of the office. I just talked to the boys and I told them Mark McConnell was released, we made no progress, he has stood by his account given in the earlier interview, it didn't change. I left my notes down on Tina's desk, I had them, I had to tear them from the page. I stapled them and I left them where Tina sits. I left the station then and I couldn't find [Hennigan] and I went on my own, I decided I'd go for a walk …* [622]

4.162. In a statement made on the 5th of November 2006, Garda Fowley denied that she had received any notes covering the periods of the third and fifth interviews from Detective Sergeant Leheny. She said:

> On the 5th December 1996 Mr. Leheny telephoned me in the Incident room and informed me that he was preparing a statement in relation to the detention of Mark McConnell on the 4th December 1996. However what Mr. Leheny requested me to fax over to him was a copy of Mark McConnell's Custody record, not, as he claims, the subsequent interview notes relating to Mark McConnell's detention. Following Mr. Leheny's request I duly copied and faxed the aforementioned Custody record to Buncrana Garda Station, Co. Donegal. I later telephoned Mr. Leheny back in order to confirm whether he had received the faxed copy of the custody record or not. I never discussed nor was I aware of any issue surrounding Mark McConnell's notes of interview at any stage of this investigation or during the compilation of the custody file in 1997. … Mr. Leheny in his statement dated the 15th February 2005 maintains that the subsequent interview notes relating to Mark McConnell were innocently mislaid. However, I wish to state that if the said notes of interview had been

[621] Transcript, Day 518, Q36-40.
[622] Transcript, Day 512, Q.214 - an initial reference to Garda O'Malley was later corrected to Sergeant Hennigan Q.216.

> missing and/or mislaid as alleged and I or my fellow colleagues in the Incident room had become aware of this there would have been a thorough search carried out for the documents concerned and the matter recorded and reported to the District Officer, Superintendent Fitzgerald.[623]

4.163. In evidence to the Tribunal, Garda Fowley described how the system in respect of the receipt of notes of interview should have worked during the course of the 4th of December 1996. At the commencement of the day's work it was intended that the notes of interview would be delivered to the incident room. A file in the form of a manila envelope was available in respect of each of the detainees into which the original notes of interview in respect of each detainee would be placed as they were delivered to the incident room staff. As the day progressed it became apparent that this system broke down and that the interviewing Gardaí were not bringing the notes of interview to the incident room and informing the incident room staff of progress in respect of each detainee. Therefore, Sergeant Martin Moylan took it upon himself to go downstairs and try to obtain information as to the progress of interviews. The manila envelopes remained empty and unused. However, Garda Fowley said that one set of interview notes was received during the course of the day from Detective Sergeant Leheny and Detective Garda O'Malley, which covered their interview with Mark McConnell – the first interview described in this chapter.[624]

4.164. Garda Fowley also said in evidence that at the conclusion of a conference later on the night of the 4th of December at approximately 21.30 to 21.45 hours, a request was made that if there were any other original notes of interview available, they should be submitted to the incident room. Following this request a number of those present submitted original notes of interviews in respect of a number of the detainees. These were then entered in a statements book, number 494, probably the following day.[625]

4.165. It should be noted that Mr. Leheny maintained in his statements and in his evidence that he left interview notes in respect of the third and fifth interviews stapled together on Garda Fowley's desk. In the incident/conference room Garda Fowley had a desk which she used in respect of her B.S.E. duties and at which she sat for most of the conferences which she attended. Detective Sergeant Leheny said that he left the notes for Garda Fowley, without any particular note that they were for her attention. He also said that when he left in the notes two other members of staff, whom he thought were Sergeant Moylan and Garda John O'Toole, to whom he could have delivered the notes, were also present. He chose not to. Garda Fowley, for her part, felt that:

[623] Tribunal Documents – Mark McConnell Vol. 2, pages 437-438.
[624] Transcript, Day 521, Q.181-213.
[625] Transcript, Day 521, Q.201-205. The time of this conference has been given by others at 22.00 hours.

If he was particularly leaving them for my attention it would be the B.S.E. table that he would come to, my particular table.[626]

4.166. The Tribunal is satisfied that in his statements and in his evidence, Mr. Leheny was of the view that he was dealing with Garda Tina Fowley in respect of furnishing notes to the incident room. However, Mr. Leheny said that when he made mention of Garda Fowley's desk, he actually meant the place at which he had seen her sit at the conference table during the course of conferences that he attended.[627] This meant that when leaving the notes of original interview on the desk, he said nothing to the two members of the incident room staff who were present and did not indicate to them or leave a message for Garda Fowley that these notes were intended for her. Up to that point, I understand the drift of his statements and evidence was to the effect that the notes were left specifically on Garda Fowley's desk intended for her attention because he had dealt with her during the course of the day. He maintained that no blame could attach to Garda Fowley for the missing notes and he accepted any responsibility and indeed that any criticism made by the Tribunal should be directed against him for the manner in which he left the notes in the room.[628]

4.167. The Tribunal is not satisfied that the notes of the third and fifth interviews were brought to the incident or conference room by Detective Sergeant Leheny and left on a table. Though Mr. Leheny states in his statement and in his evidence that he did not wish to attribute any blame to Garda Fowley for the loss of these notes, the clear implication was that she had dealings with him about notes which he submitted on the 4th of December to the incident room and that they had been so mishandled by her as to become mislaid within twenty-four hours of their receipt. Certainly the innuendo that Garda Fowley had been somehow negligent in the matter and was aware of this difficulty from the 5th of December 1996 was developed in the account provided by Mr. Leheny concerning his dealings with Garda Fowley on the 5th of December 1996. The Tribunal is satisfied from the evidence that Detective Sergeant Leheny did not by telephone on the 5th of December 1996 request that he be faxed the notes of the third and fifth interviews by Garda Fowley and that Garda Fowley was unable to do so because they had been mislaid. The Tribunal accepts Garda Fowley's account that she was asked for a copy of the custody record which she provided.

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4.168. In a further statement made on the 4th of November 2006 in the course of

[626] Transcript, Day 521, Q.328-335.
[627] Transcript, Day 519, Q.137-151.
[628] Transcript, Day 518, Q.32-93; Transcript, Day 519, Q.137-153 and pages 97-100 (Evidence of Mr. Leheny).

Tribunal hearings on this matter, Garda Fowley brought to the attention of the Tribunal the fact that she had been approached during a chance meeting by Mr. Leheny in Letterkenny on the 9th of May 2006. Mr. Leheny, when negotiating a junction in Letterkenny, pulled over and called Garda Fowley over to him. She said they discussed a number of matters including her welfare and "the saga of the Barron investigation". Garda Fowley said that Mr. Leheny said that Sergeant Roache, Garda O'Toole and she were not experienced enough to run the incident room during the investigation but "this was not necessarily our fault". She said:

> … Mr. Leheny proceeded to state that he had experienced problems locating the notes of interview of Mark McConnell. I did not know what Mr. Leheny was talking about. Mr. Leheny then asked me whether I recalled the trouble he had had retrieving the said interview notes and how he had endeavoured to find them when they went missing. I was taken aback by Mr. Leheny's assertions. I did not know how to respond as I was confused as to what missing notes he was referring to. I neither confirmed nor denied Mr. Leheny's allegations. I remained guarded throughout the conversation as I had no knowledge that the interview notes had been missing and the topic of conversation was a matter the subject of a Tribunal of Inquiry. … I wish to state that to the best of my knowledge the location (misplaced or otherwise) of the notes of interview of Mark McConnell were never at issue.[629]

4.169. Garda Fowley substantially repeated this account in her evidence to the Tribunal. She said that she felt Mr. Leheny was putting her on the spot in relation to the matter:

> *I felt it was a subject that he wanted to mention to me to see what way the land lay on it. As to whether I would be in a position that I was going to be able to confirm his story or that I was, you know, unclear about it. … He seemed to be checking with me as to whether I was going to confirm that he had that difficulty. … That he was going to see what my approach to this whole issue was.*[630]

4.170. Mr. Leheny denied that he made any reference to the incident room team or their competence to deal with the Barron investigation in this meeting on the 9th of May 2006. He accepted that the conversation "came around to their attendance at the Tribunal" and he informed Garda Fowley that he had two modules in respect of which his evidence would be required, the Burnfoot module and the Mark McConnell detention. He told her that he had no problems. He said:

[629] Tribunal Documents – Mark McConnell Vol. 2, pages 429-433.
[630] Transcript, Day 521, Q.390-414 and Transcript, Day 522, Q.69-123 – in this regard Garda Fowley also implied in a further statement that an encounter between Sergeant Pat Hennigan and Mr. Leheny which she had witnessed in a department store might also have been an attempt by Mr. Leheny to canvass the matter with Sergeant Hennigan – Tribunal Documents – Mark McConnell Vol. 2, page 441, though she later accepted the evidence given at the Tribunal that this was not so and that the encounter was otherwise explained – Transcript, Day 522, Q.87.

> *I referred to her about my notes of interview. I says I am going to encounter a problem with that but I'll get over that, you know. I made a reference of that, of them interview notes in them terms, not in the way she has it. I made very little of it. Very little chat. And that was it.*[631]

Mr. Leheny denied that he was testing the water to see where Garda Fowley stood. He further denied that he was making it clear what his evidence at the Tribunal would be in the hope that Garda Fowley would be able to mould her evidence to fit that.[632]

4.171. The Tribunal is satisfied that Mr. Leheny's encounter with Garda Fowley at the junction in Letterkenny was unplanned and casual. Nevertheless, it is clear from the circumstances that he took full advantage of this occasion to stop his car in a most awkward location to take the opportunity to have a conversation with Garda Fowley about what he perceived to be his one "difficulty" at the Tribunal, namely the missing notes of Mark McConnell. It is not surprising that Garda Fowley viewed this as an attempt to sound her out in some way in relation to her position on the notes. Mr. Leheny denies that this was his intention but I am satisfied that it was. It was the second time upon which he had such a casual encounter with a female colleague in relation to his forthcoming evidence at this Tribunal.[633] Further, I am satisfied that, in approaching Garda Fowley in this way, Mr. Leheny intended to get her acquiescence in or agreement to his untrue story about the interview notes and the telephone calls he said he made to Garda Fowley and the return call in which he claimed, falsely, that Garda Fowley had informed him that the notes had been mislaid. This was a devious attempt to square Garda Fowley's evidence with his version of telephone calls about the notes. Garda Fowley, properly, did not oblige him and allow herself to be used in that way.

Release

4.172. Mr. McConnell was released at 20.20 hours. Some minutes prior to this, at 20.15 hours, Garda Martin Leonard had gone to the interview room and informed those present that Mr. McConnell's "time was up". Mr. McConnell alleges that Inspector McGinley had almost completed reading over the fabricated statement of Frank McBrearty Junior to him when Garda Leonard entered the room. At Mr. McConnell's request, it is said, Inspector McGinley then concluded the short portion of the statement remaining, after which Mr. McConnell made some dismissive remarks about it.[634] Mr. McConnell said that the Gardaí present then

631 Transcript, Day 519, Q.212-245.
632 Transcript, Day 519, Q.251-254.
633 See the encounter with Garda Lohan as described at paragraph 4.08, earlier in this chapter.
634 Transcript, Day 501, Q.414-415.

told him that he was being taken to be charged with the murder of the Late Richard Barron.[635] He said:

> *… They were giving me the impression that I was being took to be charged for the murder … and a couple of them led me down the corridor and I mean at this stage I was in a terrible state to tell you the truth and I thought I was going to end up in jail for something I hadn't done and that I would never see my wife and child again. … All I remember is I think it was Martin Leonard was sitting at the table and whoever brought me down they were more or less saying we're bringing you Mark now to charge you and when we got as far as the table I can remember a book sitting open, some kind of a book and I thought this is the point they were going to charge with the murder but it turned out that they were releasing me, but I didn't know that at the time. You see, also what I forgot to say was that at some time during that day too they also took, they removed my clothes and replaced them. … All this was on my mind and I was sure they were going to charge me and I knew that I had nothing to do with the murder but adding everything up I said these shower is going to charge me with the murder that I hadn't done … I signed something on the way out but I was told if I didn't sign this document that they were going to hold me for a further six hours and I didn't, this is the truth, my head was gone at that stage and I didn't even know what I had signed. … I walked into the foyer of the police station we had no lift home and I remember Róisín sitting there and she was overly calm to tell you the truth I thought she would be in a terrible state once I'd see her, but she was sitting there just kind of in a trance outside in the foyer … I went over to her and of course I was wearing I think it was a grey tracksuit and a grey pair of runners and she thought that I was wearing some kind of prison gear or something like that, she thought that I was being taken away, but I reassured her that no it was nothing like that, I said they took my clothes. … I didn't want to stay about the foyer any longer and I think there was some kind of arrangement for Paul Quinn to come down to pick us up. So we stood outside the Garda station waiting on a lift.*[636]

4.173. The custody record has the following entry in respect of Mr. McConnell's release:

[635] Transcript, Day 501, Q.432.
[636] Transcript, Day 501, Q.434-440 and Q.459-462.

> 8.20 p.m. released from custody. No complaints to make.
>
> Signed Mark McConnell.[637]

4.174. Though Mr. McConnell said initially in evidence that he could not remember the identity of the Gardaí who led him down the corridor to be released[638], he later said that he was "nearly positive" it was Garda Tague along with another Garda whose name he could not recall who brought him down to be released. He said, "Tague was definitely there" but Garda Leonard was also present.[639]

4.175. Mr. Leonard, in evidence, said that when he went to the interview room shortly before the release, he informed those present that Mr. McConnell's period of detention was about to expire and he presumed that those present were those entered as present in the custody record, namely Detective Sergeant Leheny and Sergeant P. Hennigan. If any other person was present in the room such as Inspector John McGinley he would have been entered in the custody record as present. However, Mr. Leonard could not say that he had a clear recollection that the only persons in the room were Detective Sergeant Leheny, Sergeant Hennigan and Mr. McConnell. Mr. Leonard stated in evidence to the Tribunal:

> *Is that any help to you now. Because you see, I want to be helpful. I am not protecting anybody. I'm telling you I remember going up having to take him out because it was getting too close to the time. … I don't know. I'm saying to you I don't know from memory who was there. All right.*[640]

Mr. Leonard also denied in evidence that he made any suggestion that Mr. McConnell could be detained for another period unless he signed the custody record to the effect that he had no complaints. Mr. Leonard also believed that had Mr. McConnell interjected when he arrived in the room and requested that the reading of a statement be completed before he was taken from the room, he would have recalled that fact and would probably have asked the Gardaí present about the statement.[641]

4.176. Mr. Leheny said in evidence that at the conclusion of the fifth interview, when Mr. McConnell was taken down to be released, he and Sergeant Hennigan decided that they would go for a walk, "But I says I'll go round to the incident room and I'll leave the documentation in." Having done this, as already described, he left the Garda station to go for a walk. He could not at the time find Sergeant Hennigan. He said:

> *I went down to the lower floor, passed through the day room and*

[637] Tribunal Documents – Mark McConnell Vol. 1, page 315.
[638] Transcript, Day 501, Q.435-436.
[639] Transcript, Day 503, Q.436-454.
[640] Transcript, Day 539, pages 220-221.
[641] Transcript, Day 539, pages 222-223.

> *out through the front door. In the reception area Mark McConnell was standing there, there was a girl there that I didn't know who she was. I now accept that it was his wife Róisín … Mark was standing there, to my recollection, she was sitting on a seat. I says to Mark have you a way home, I'll arrange transport for you if you wish and he says no, he says they were waiting on a lift. I bid him adieu, I walked out the door and I proceeded up the high road for a walk. I returned to the station at half nine and I came in via the back door.*[642]

Mr. Leheny said that Garda Leonard entered the interview room at approximately 20.15 hours to inform him that he was taking the prisoner downstairs in order to release him from Garda custody. He was aware of the time constraint that applied in that Mr. McConnell's detention was due to expire at 20.22 hours. He said that he was so engrossed in trying to elicit Mr. McConnell's opinion about what Mr. McConnell believed happened to the Late Richard Barron that he had not kept a check on the time.[643]

4.177. Sergeant Hennigan said that he and Detective Sergeant Leheny "went our separate ways when Mr. McConnell was released". They had no conversation about their respective views as to Mr. McConnell's involvement in the death of the Late Mr. Barron. Detective Sergeant Leheny did not say to Sergeant Hennigan at any stage that he had a growing belief that Mr. McConnell had not been involved.[644] Sergeant Hennigan said that he felt, having regard to the evidence which existed, that the interviews had been disappointing. He went away "maybe to gather my own thoughts but I didn't see or speak to Jim Leheny until the conference".[645] Sergeant Hennigan said in evidence that the interview concluded at approximately 20.15 hours as it must have taken approximately five minutes to take Mr. McConnell through the release process. Sergeant Hennigan did not go to the public office. He said that he and Detective Sergeant Leheny separated without exchanging any words. He thought Detective Sergeant Leheny went with Mr. McConnell. There was no discussion about the notes or the fact that they were not signed. He had no recollection of deciding to go for a walk with Detective Sergeant Leheny. He did not go for a walk with him and he had no recollection of Detective Sergeant Leheny saying that he was going for a walk or that he would go down to the incident room and drop in the interview notes.[646]

4.178. It must have been clear to the interviewers (whoever they were) that the detention of Mr. McConnell would terminate at 20.22 hours. It is difficult to

[642] Transcript, Day 512, Q.214.
[643] Transcript, Day 512, Q.374-413.
[644] Transcript, Day 519, Q.512-518.
[645] Transcript, Day 519, Q.518-521.
[646] Transcript, Day 519, Q.530-591.

accept that Detective Sergeant Leheny, a very experienced detective, accompanied by his colleague Sergeant Hennigan, also an experienced Garda, would without comment allow the period of detention to expire without concluding the essential business of reading over the notes taken by Detective Sergeant Leheny spanning a substantial part of the interview period undergone by Mark McConnell. The fact that this occurrence went unremarked by the two interviewers, whilst in the interview room, is extraordinary. The fact that it went unremarked after the interview is incredible. The idea that notes might not be read over to a main suspect in a murder inquiry, as each period of interview came to its natural conclusion, is unusual and calls for an explanation. The caution administered under the Judges' Rules advises the interviewee that he is not obliged to say anything unless he wishes to do so "but whatever you say will be taken down in writing and may be given in evidence" as is clear from The People (Attorney General) and Cummins:[647]

> Care should be taken to avoid the suggestion that his answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might assist to clear him of the charge.

The excuse put forward by Mr. Leheny that notes were unimportant as they did not incriminate Mr. McConnell and might not tend to assist in a prosecution brought against him, is one, which as an experienced member of An Garda Síochána, he well knows to be unsustainable in law and police practice.

4.179. As regards Mr. McConnell's claim that he thought he was going to be charged at the time of his release, I am satisfied that he was probably advised by his solicitor that the maximum period for which he could be held was twelve hours. It may be, having regard to what happened after his solicitor's visits, that he had some doubts that this was so. Even if he thought that he was going to be charged when taken from the room at approximately 20.15 hours, I am satisfied that it became rapidly apparent to him that he was about to be released. I am not satisfied that he was told that he would be further detained if he did not sign the custody record. However, I am satisfied that in his then state of mind it is understandable in his eagerness to get out of the Garda station and take himself and his wife home to their infant child, that he took the road of least resistance in signing the custody record to the effect that he had no complaints. In addition, I accept that he had little or no confidence in the value of making complaints to the member in charge. Clearly, Mr. McConnell had many legitimate complaints to make.

4.180. I have set out in extensive detail the evidence of the various Garda

[647] [1972] I.R.312 at 317 to 318.

witnesses and Mark McConnell relating to the final interview, and the evidence of others in relation to the practising of Frank McBrearty Junior's signature by Inspector McGinley, as well as the evidence in respect of the lost notes and the release of Mark McConnell, because they are all relevant to an understanding of the background against which Mark McConnell makes the allegation that the document which was represented to him to be a confession signed by Frank McBrearty Junior, was made. I am satisfied that Mr. McConnell's evidence that a false statement of admission attributed to Frank McBrearty Junior was read out to him by Inspector McGinley during the course of the fifth interview, is true. Though inconsistencies have been pointed to, the core of Mr. McConnell's story has remained the same since 1997. This exercise was calculated to trick him into thinking that some admission had been made by Frank McBrearty Junior. In my view, this was with a view to cajoling or tricking him into making some admission of involvement in the death of the Late Richard Barron. It was a somewhat desperate and unsuccessful effort to get something out of the interviews with Mr. McConnell.

4.181. Credible evidence was received from Garda Fowley that Inspector McGinley was attempting to reproduce the signature of Frank McBrearty Junior on the afternoon of the 4th of December 1996, which the Tribunal accepts as being truthful. Mr. McGinley could give no rational explanation for this. He said that he did not do it, even in jest. The Tribunal is satisfied on the evidence of Garda Fowley and Sergeant Roache that what they described took place. Mr. McGinley's evidence is untruthful. Further, the Tribunal is also satisfied that the explanation given by Detective Sergeant Leheny about the missing notes, to the effect that he left them on a conference room desk, to be taken and filed by Garda Fowley, is also untrue. The Tribunal is not satisfied that Detective Sergeant Leheny brought any notes to the incident room in respect of the third and fifth interviews of Mark McConnell. The Tribunal has serious doubts that they existed at all. The Tribunal does not accept the evidence of Inspector McGinley and Mr. Leheny on these matters. Having drawn these conclusions, the Tribunal is satisfied that the lies told to it tend to support the account of Mark McConnell, not only because they undermine the credibility of Mr. McGinley and Mr. Leheny and the accounts they gave of the interview, but because they are relevant to the subject matter of the allegation. The practising of Frank McBrearty Junior's signature must have been for a purpose. Mr. McGinley said it never happened and it was not a prank. It was not for the purpose of forging Frank McBrearty Junior's signature on the alleged confession signed by him on the 4th of December

1996: the Tribunal is satisfied that that signature is the authentic signature of Frank McBrearty Junior. The Tribunal is satisfied, therefore, that it was for the purpose of producing a forged signature on the document that was read to Mr. McConnell. The Tribunal is also satisfied that the untruth told by Mr. Leheny in respect of the notes of interview constituted an attempt on his part to explain away the fact that no notes of interview were handed in by him to the incident room. His reason for doing so was either because of something embarrassing to the Gardaí contained in the contents of the notes that were never handed in or because they did not exist. These findings, therefore, tend to support Mr. McConnell's contention that there was improper behaviour by Gardaí in the course of these interviews.

4.182. It has been difficult to unravel who was present in the final interview and a party to what happened. I am satisfied that Detective Garda O'Malley left the interview room at 19.45 hours. He was present for whatever happened during the first forty minutes of the interview. I am not satisfied that Detective Garda Tague was present during the course of the interview. Though Mr. McConnell made no reference to Sergeant Hennigan as one of the officers present during this interview, he is, nevertheless, named in the custody record as being present for the latter part of the interview, and I am satisfied from his own evidence that he was present. I am not satisfied that Mr. O'Malley or Sergeant Hennigan have told me the complete story of what happened during the course of that interview. The behaviour of the Gardaí in this matter has been unprofessional and shocking.

Conclusions

4.183. I now set out a summary of my conclusions on this arrest and detention.

1. Mark McConnell's arrest on the 4th of December 1996 was unlawful. The arresting Garda, John O'Dowd, was directly involved in the manufacturing of the evidence on which his reasons for arresting Mr. McConnell were based. He was involved in procuring the false and forced statement of Robert Noel McBride on the 29th of November 1996 and acted mala fide. The Tribunal has already determined that no lawful arrest can occur when the agency effecting the arrest is responsible for manufacturing the evidence upon which the grounding suspicion was allegedly based. This arrest was facilitated by the negligence and tunnel vision of those in charge of the investigation, and especially by their failure to carry out any enquiries into the McBride statement, which, I am satisfied, could not have stood up to the most basic Garda enquiries.

2. The arrest of Mark McConnell was undoubtedly a distressing and shocking experience for him. This was compounded by the fact that he was home alone with his infant son and that his wife, Mrs. Róisín McConnell, had, unknown to him, been arrested some minutes beforehand on her way to work. Whilst it must have been unpleasant to be the focus of a Garda murder enquiry in the months preceding his arrest, this arrest marked the commencement of a personal nightmare for Mr. McConnell and his unfortunate family. It had the most serious, social and personal consequences for Mr. McConnell. The medical consequences of his wife's arrest and detention took an enormous toll on her and must have rebounded on him and his child also. However, this was only the beginning. He would be further arrested on the 25th of June 1997 on the basis of Frank McBrearty Junior's false confession. He would then be arrested for the third time on the 1st of October 1998 on the basis of the false and malicious allegations made by Bernard Conlon and held for a further forty-eight hours. During the detentions he would be subjected to prolonged interrogations in respect of matters of which he was totally innocent. The effect upon him and his immediate family of these appalling events must have been shattering. As they tried to assist Mrs. McConnell in her recovery in 1997 and 1998 their lives were twice turned upside down by the actions of An Garda Síochána and events over which they had no control. This must have been physically and mentally draining. It is disgraceful and shocking that Mark McConnell, an innocent citizen, was subjected to these arrests and detentions and that he and his family have had to live under their shadow for in excess of ten years.

3. The Tribunal has heard Mr. McConnell's account of his arrest and detention on the 4th of December 1996 and also the evidence of the various Gardaí and others involved. I am satisfied, for the most part, that Mr. McConnell has made every effort to give his truthful recollection of these events. I am satisfied that the core of his account is true. Nevertheless, there are matters in respect of which I believe his evidence to be mistaken, or exaggerated, or untrue. I have indicated in the report where I believe this to be. I ascribe this to the passage of time and to some extent to the outrage and resentment which he feels against the Gardaí for the damage done to him and his family by their actions over the years. I have, of course, also considered the evidence of the Gardaí involved in this arrest and detention. Some of them have difficulty in recollecting the events of ten years ago: some are mistaken in the evidence which they gave; some have been truthful and a number have told lies.

4. Mr. McConnell was arrested at his family home by Garda John O'Dowd. He described how, when he was emerging from the house, a female Garda, Georgina Lohan, reached out as if to take his infant son out of his arms. He refused to hand his child over and insisted that the child be taken to his grandparents' house. I am satisfied that Garda Lohan was present at the scene, as directed by her superior officer, in order to assist with the child, because it was anticipated that the child would be present. I do not see anything wrong or sinister about this. The suggestion was made that there was a plan afoot to place the child in care. I am not satisfied that this is so. It was clear to all involved that Mr. and Mrs. McConnell were members of a large extended family, including grandparents, who would be willing and able to look after the child, and that is what happened. Mr. McConnell was facilitated in that he was driven to the child's grandparents' house where the child was left in their care.

5. At the time of the arrest, Mr. McConnell's car was taken by Detective Garda O'Malley and driven to Letterkenny Garda Station. Detective Sergeant Leheny (now retired) said that he was directed to obtain the car for forensic examination. He said that he requested permission from Mr. McConnell to take the car for the purpose of a forensic examination and duly cautioned him that the results of any such examination could be given in evidence. He said that Mr. McConnell produced the car keys to him, which he then gave to Detective Garda O'Malley. Detective Garda O'Malley agreed with this version of events. Mr. McConnell said that the keys were taken from his hand by Detective Garda O'Malley, not forcefully, but without any discussion. I accept Mr. McConnell's description of how he handed over the keys of his car to Detective Garda O'Malley. I am not satisfied that he was cautioned in the elaborate manner outlined by Mr. Leheny and Mr. O'Malley. I am satisfied that Mr. Leheny was directed by Superintendent Fitzgerald to take his car and have it forensically examined. At the time the Gardaí had no legal power to seize the car. Though Mr. McConnell acquiesced in the taking of the car by handing over the keys, I am not satisfied that he was aware of his right to refuse to allow them to take it or that he was informed of his right to refuse to do so. No note was taken by Detective Sergeant Leheny of the caution which he said he administered, nor was any written acknowledgment obtained from Mr. McConnell to verify his permission. I do not accept the evidence of Mr. Leheny or Mr. O'Malley on this matter. However, I do not believe that Mr. McConnell would have objected to the taking of the car as he made no objection when he learned that his car was under forensic examination later on in the day.

6. Mr. McConnell alleged that in the course of the first interview he was questioned aggressively by Detective Garda O'Malley, who had a leading role in this interview. He also alleged that he was pushed and shoved by Detective Garda O'Malley and Detective Sergeant Leheny. He complained that he was shouted and roared at and called names such as "a fat murdering bastard" and a liar. The interview took place between 09.20 hours and 11.35 hours and was interrupted by a visit to Mr. McConnell by his solicitor, Mr. O'Donnell between 10.30 and 11.10 hours. At this stage Mr. McConnell made no complaint to his solicitor. However, later that afternoon when he was receiving advice from his solicitor at 14.55 hours by telephone, he complained to him that he had been physically assaulted in the first interview by his interviewers. The Gardaí who say they were present when this phone call took place were Detective Sergeant Leheny, Detective Garda O'Malley, Inspector McGinley and Garda William Cannon. They all denied that they heard Mr. McConnell make any complaint at all to his solicitor about being abused or assaulted. Mr. McConnell alleged that only Detective Sergeant Leheny and Garda Cannon were present for this phone call and that he asked Garda Cannon to give him the name of the other Garda present, namely Detective Sergeant Leheny, whose name he did not know at the time, and that Garda Cannon refused this. He wished to pass this name to his solicitor as this Garda was one of his assailants. Mr. McConnell's solicitor, Mr. O'Donnell, had only one purpose for making this telephone call and that was to give advice to his client about the giving of a blood sample to the Gardaí. When he received the complaint of physical abuse Mr. O'Donnell immediately attended at the Garda station, sought and was denied access to his client by Inspector McGinley, and made a complaint that his client had been assaulted. He also requested that a doctor be called to examine his client. His complaint was noted but treated in a dismissive way by the member in charge, Garda Leonard. The solicitor left the station. Garda Leonard then went to the interview room and asked the prisoner in the presence of his interrogators Detective Sergeant Leheny, Detective Garda O'Malley and Inspector McGinley, two of whom were implicated in the complaint of assault, whether he was ok, had been assaulted or wished to see a doctor. It is said that Mr. McConnell replied in the negative. Mr. McConnell contends that Garda Leonard did not treat any complaint that he made during the course of the day with any degree of seriousness. I am satisfied that this first interview was conducted in an aggressive and hostile manner and that this contributed to an atmosphere in which Mr. McConnell was assaulted by being pushed and shoved by Detective Garda O'Malley and

Detective Sergeant Leheny. Detective Sergeant Leheny, I am satisfied, played a lesser role. This pushing was in my view of a minor nature and lasted for a very short period.

7. Having regard to the attendance notes and the evidence of Mr. O'Donnell I am fully satisfied that Mr. McConnell complained to his solicitor in the course of the telephone call at 14.55 hours. It is disturbing that the Gardaí who say they were present at the time of this call all deny that Mr. McConnell made any complaint of abuse or assault to his solicitor. Mr. O'Donnell's attempts to fulfil his duty to his client and obtain further instructions concerning his allegation of assault were frustrated when he was denied access to his client by Inspector McGinley when he attended at the station at 15.20 hours. He was treated in a highhanded and dismissive manner by the member in charge, Garda Leonard, and was completely frustrated in his efforts to advance his client's legitimate complaint. Garda Leonard's visit to Mr. McConnell at 15.31 hours, after the departure of the solicitor, and his posing of the three questions in the presence of two Gardaí who were the alleged assailants, carries no conviction as a serious effort to pursue the matter in the light of how Mr. O'Donnell was treated. A senior officer involved in the interviews, Inspector McGinley, and Detective Sergeant Leheny and Detective Garda O'Malley, treated these questions with total indifference. They made no enquiry of Garda Leonard as to what assault had been alleged, by whom, or when. I am satisfied that that is because at least two of them, Detective Sergeant Leheny and Detective Garda O'Malley, already knew what the allegation was about.

8. Mr. McConnell's phone call to his solicitor at 14.55 hours was held in the presence and hearing of the Gardaí. This should not have happened. He was a prisoner seeking legal advice from a solicitor and was entitled to receive that advice out of the hearing of the Gardaí. A prisoner is entitled to reasonable access to his solicitor and to receive that advice privately. This is a cornerstone of a person's right to fair procedures in the course of a criminal investigation at a pre-trial stage.

9. Mr. McConnell also alleged that he was visited twice by Garda John O'Dowd in the course of the second interview, which was conducted by Sergeant P.J. Hennigan and Detective Garda Patrick Tague between 11.35 hours and 13.18 hours. Mr. McConnell described this interview as fairly straightforward but said that in the course of the interview he was requested on two or three occasions by Garda John O'Dowd to sign a search warrant in respect of his house. He stated that he refused initially

to do this but then relented and agreed to do so "after receiving legal advice" to give his consent provided that his solicitor was present during the course of the search. In the interview notes, two relevant visits, one by Garda John O'Dowd and Garda William Cannon at 11.50 hours and the second by Garda O'Dowd at 12.10, hours are recorded. They are not recorded in the custody record. Mr. O'Dowd said that he went to the interview room with Garda Cannon in order to obtain permission from Mr. McConnell for the release of his household keys to his solicitor, Mr. James O'Donnell. Garda Martin Leonard, the member in charge, insisted that a written permission should be sought before the keys could be handed over. The keys were in fact handed over to Mr. O'Donnell at 12.15 hours but without a written consent from Mr. McConnell. Mr. McConnell maintained that the permission proffered to Garda O'Dowd to search his home was unacceptable to Garda O'Dowd because there would have been independent oversight of the search and this would not have facilitated any nefarious activity that the Gardaí conducting the search wished to carry out. I am not satisfied that this is so. I am not satisfied on the evidence that Mr. McConnell was asked for permission to search his family home at 11.50 and 12.50 hours by Garda O'Dowd. The keys to Mr. McConnell's family residence were handed over, at his request, to his solicitor at 12.15 hours on the 4th of December 1996. Mr. McConnell's infant son had been taken at short notice to his grandparents at the time of Mr. McConnell's arrest. His mother was also in custody. Access was needed to the family home by the grandparents in order to obtain clothes for the child. Mr. McConnell's solicitor, Mr. O'Donnell gave evidence and produced notes of attendance to this effect. He did not recall that Mr. McConnell sought any advice from him as to whether he should comply with the request to search his house. He recalled that Mr. McConnell asked him to phone the child's grandparents and obtain the keys to the family home from An Garda Síochána because of a need to get clothes. If Mr. McConnell refused to give permission for the search of his family home, that was his right and there would be no need to hide that fact had it occurred. I am satisfied that the visits at 11.50 and 12.10 hours by Garda O'Dowd to Mr. McConnell were concerned with the issue of keys to his family home and I do not find Mr. McConnell's evidence in respect of this matter to be reliable.

10. Superintendent John Fitzgerald extended the initial period of detention for a period of six hours on the application of the member in charge, Garda Martin Leonard. It was said that Garda Leonard was acting in some

way on behalf of Sergeant P.J. Hennigan in this respect. Garda Leonard said that he made the application because nobody else had and because the initial period of six hours was about to run out. He said that he had been told by the interviewing Gardaí that an extension of the detention was required. I am satisfied that Superintendent Fitzgerald exercised his power in a bona fide way. He said that it was his practice to consult the investigating officer and the member in charge. However, I do not accept that it is appropriate that the member in charge should take it upon himself to apply to a superintendent to extend the detention of an arrested person as a matter of good practice. The custody regulations envisage an independent role for the member in charge in overseeing the application to the prisoner of the custody regulations. Regulation 4 of the custody regulations provides that the member in charge "as far as practical shall not be a member who is involved in the arrest of a person for the offence in respect of which he is arrested or the investigation of that offence". In my view, to permit the member in charge to apply for an extension of detention for the proper investigation of the offence is to draw him into the investigation in a manner which is contrary to the spirit and intention of the regulations and it should not have occurred. Whilst the member in charge might be consulted in relation to the prisoner's welfare by the superintendent, it is not appropriate for his view to be sought or tendered in relation to whether the detention is appropriate for the further proper investigation of the offence. The member in charge should be regarded as having an important, independent function during the course of the detention in ensuring that the custody regulations are applied diligently and to make such decisions and representations to those investigating the offence or their appropriate officers as he feels are justified and proper in order to fulfil his duty. In my view, it should be the responsibility of a Garda involved in the investigation of the offence to make the application for the extension of the detention, save in exceptional circumstances. In my view, if the period of detention is about to expire, it is not the function of the member in charge to make an application for an extension of detention: it is his duty to release the prisoner when the period of detention expires.

11. Mr. McConnell complained that when interviewed by Inspector McGinley between 14.45 hours and 15.55 hours together with Detective Sergeant Leheny and Detective Garda O'Malley, Inspector McGinley questioned him very aggressively and was shouting and roaring at him to the extent that his face came in close proximity to Mr. McConnell's and that spittle was

flying into his face. He said that he was also called names such as "a fat murdering bastard". I am satisfied that at some stage in the course of this interview Inspector McGinley questioned Mr. McConnell loudly and aggressively. However, I am not satisfied that Inspector McGinley spat at Mr. McConnell deliberately or accidentally, and I do not accept Mr. McConnell's evidence in this respect.

12. I am satisfied that Detective Sergeant Leheny and Detective Garda O'Malley questioned Mr. McConnell loudly and aggressively from 14.16 hours to 14.45 hours and from 15.55 hours until the interview ended at 16.31 hours.

13. The third interview extended from 14.16 hours to 16.31 hours. No notes of interview exist in relation to interviews carried out by Detective Sergeant Leheny and Detective Garda O'Malley from 14.16 hours to 15.55 hours and from 16.00 hours to 16.30 hours. This is dealt with below. There are interview notes available in respect of a period of the third interview with Detective Sergeant Leheny and Detective Garda O'Malley when they were joined by Inspector McGinley between 14.45 hours and 15.55 hours. These notes were purportedly made by Inspector McGinley at the time of the interview, read over to Mr. McConnell and signed by Inspector McGinley and the two other detectives. Mr. McConnell accepted the broad accuracy of these notes, apart from two omissions. Mr. McGinley said that they were furnished to the incident room staff in mid-December of 1996. They are incorporated into a typed statement made by Inspector McGinley in 1997. However, the number supposedly assigned by the incident room staff to the original handwritten notes said to have been made by Inspector McGinley during the interview, 25(f), indicates that these notes did not come into the incident room until some time after March 1998. I do not accept that Inspector McGinley placed these notes into the system in or about December 1996. Somebody, for some reason, tried to give the impression that the notes had been properly received by designating them as 25(f). This remains unexplained. The absence of these notes and the unsatisfactory absence of any explanation as to how and when the originals made by Inspector McGinley came to be numbered and received into the system years afterwards, casts suspicion on the behaviour of the interviewing Gardaí. Mr. Leheny and Mr. O'Malley said that notes were taken in the course of their interviews with Mr. McConnell but that they were not read over to him at any stage and were subsequently lost. It is completely unacceptable that notes in respect of important interviews conducted with Mr. McConnell, a murder suspect, would become

unavailable or lost without any or any adequate explanation as to why or how. Repeatedly, during the course of the Barron investigation notes of interview were unavailable or lost. This was apparent well before the establishment of this Tribunal and in many instances in the course of the preparation of the Lennon report. It is astonishing that for the most part no explanation was required from the person responsible for making and preserving the notes. The absence of notes or any sensible explanation as to how they were dealt with casts suspicion on the interviewing Gardaí and tends to support Mr. McConnell's evidence that the interviews were not conducted in a proper manner.

14. In respect of the fourth interview conducted by Sergeant Patrick Hennigan and Detective Garda Patrick Tague between 16.31 hours and 18.00 hours, Mr. McConnell made a series of allegations that Detective Garda Tague, showed him photographs of the post-mortem of the Late Richard Barron, kicked him in the shin under the table at which he was seated, pulled him by the ear and hair in an effort to get him to look at the photographs of the Late Richard Barron, poked him in the eye on a number of occasions and poked him and gave him digs in the ribs on other occasions in a provocative manner. For the reasons set out in the report I am satisfied that Mr. McConnell was shown the photographs of the post-mortem of the Late Richard Barron in the course of this interview by Detective Garda Tague in the presence of Sergeant Hennigan. The detailed account of the photographs contained within the original album of photographs of the post-mortem, that Mr. McConnell was able to provide to Mr. William Flynn in 1997, of a blue Vauxhall car which had no bearing on the murder inquiry, indicates that he was shown the photographs. Though these photographs were shown to other detainees, Mr. McConnell's description given to Mr. Flynn in 1997 was the first to include details of the blue Vauxhall car. In addition, I am satisfied from the evidence that this was an unpleasant interview and that Mr. McConnell was poked and had his ear pulled on a number of occasions during the showing of the photographs. I also accept that there was some kicking at Mr. McConnell's shin under the table. I am satisfied that Mr. McConnell's core account of the interview is broadly accurate. I accept that he was called names such as "a fat murdering bastard". However, there are some elements of his story which may be mistaken or exaggerated. He suggested that Inspector McGinley entered the interview room during this period and spat at him; I am satisfied that this did not happen. Nevertheless, where there is a conflict on the central issues relating to this

interview period I accept Mr. McConnell's evidence and I do not accept the evidence of Detective Garda Tague and Sergeant Hennigan on these matters.

15. I am satisfied that when Mr. McConnell attempted to complain to Garda Leonard about the behaviour of Detective Garda Tague and Sergeant Hennigan, his complaint was not treated seriously or recorded by Garda Leonard.

16. In the course of the final fifth interview of his detention between 19.05 and 20.20 hours, Mr. McConnell alleges that he was interviewed aggressively. He said that Detective Garda O'Malley told him that Frank McBrearty Junior had made a statement blaming Mr. McConnell for the murder and that he should put his side of the story. He alleged that Inspector John McGinley came into the room with a document and told him that it was a statement of admission from Frank McBrearty Junior signed by him, and then read it out to him. He said that the reading of the document was interrupted when the member in charge came into the interview room and said that his detention period was nearly up. Mr. McConnell said that he insisted Inspector McGinley complete the reading of the statement, at the conclusion of which he dismissed it as rubbish. The three Gardaí who were recorded as present at this interview are Detective Garda O'Malley, Detective Sergeant Leheny and Sergeant Pat Hennigan: all deny that Inspector McGinley was present in the interview room at all during this period or that any such document was read to Mr. McConnell. I heard evidence from the four named Gardaí and Garda Martin Leonard, the member in charge, together with that of Mark McConnell on this issue.

17. In addition, I heard evidence from Garda Tina Fowley and Sergeant Roache that on the afternoon of the 4th of December 1996, Inspector McGinley visited the incident room in which they were working. He had an encounter with Garda Fowley in which he showed her a sheet of paper which had writing on it and drew her attention to a signature of Frank McBrearty Junior and asked her whether she thought it was a good likeness. Garda Fowley was satisfied that Mr. McGinley was attempting to imitate the signature of Frank McBrearty Junior. Sergeant Roache supported Garda Fowley's evidence to a large extent and Mr. McGinley denied the incident. It was suggested to him that such an incident may have occurred but that it was a prank. This was also denied. Having heard the evidence on this issue I am satisfied that Inspector McGinley was

practising the signature of Frank McBrearty Junior whilst in the incident room and that Garda Fowley's and Sergeant Roache's evidence on this matter is correct. Since Mr. McGinley denied that the incident happened even as a prank, I cannot dismiss it as a prank. I was left to consider why Inspector McGinley was practising Frank McBrearty Junior's signature and why he denied doing so. I am satisfied that he was creating a bogus statement of admission purportedly signed by Frank McBrearty Junior which could be presented to Mr. McConnell as authentic in order to trick Mr. McConnell into believing that Mr. McBrearty Junior had admitted his involvement in the death of the Late Richard Barron and thereby trick him into admitting his own involvement and/or implicating Frank McBrearty Junior. In my view Mr. McConnell's account of what was shown to him is supported by the fact that Inspector McGinley was indeed engaged in practising Frank McBrearty Junior's signature on the document viewed by Garda Fowley.

18. No notes exist in respect of this interview period. Detective Sergeant Leheny said that he left the notes of the fifth interview together with the notes of the third interview on a desk in the incident room on the 4th of December 1996 believing that they would be duly received and filed by Garda Fowley, with whom he had dealt earlier in the day. He sought to support this by claiming that on the following day, the 5th of December 1996, he telephoned Garda Fowley at the incident room at Letterkenny Station and requested that she fax him a copy of the interview notes which he had left with her together with a copy of the custody record in order to assist him in preparing a statement of evidence. He further claimed that Garda Fowley had returned his telephone call and informed him that the interview notes were not available in the incident room. Garda Fowley denied that she had been asked to furnish him with a copy of the interview notes but accepted that she had been asked to furnish him with a copy of the custody record, which she did. I am not satisfied that these notes of interview were brought to the incident room by Detective Sergeant Leheny and left on a table. Further, I am not satisfied that he sought these notes when he telephoned Garda Fowley on the 5th of December 1996 or that she told him that they were mislaid. I accept Garda Fowley's account that she was asked for a copy of the custody record only, which she provided. If notes were not produced and lies subsequently told about them, it must be because either there was something embarrassing to the Gardaí in the notes, or they did not exist. This gives further support to Mr. McConnell's allegation of improper behaviour by the Gardaí during these interviews.

19. I am satisfied that the chance meeting between Mr. Leheny and Garda Fowley on the 9th of May 2006 was used by Mr. Leheny as an opportunity to obtain Garda Fowley's acquiescence in or agreement to his version of the furnishing of the notes of interview and his intended evidence to the Tribunal that Garda Fowley told him in a telephone call that the notes had been mislaid. This was a devious attempt to square Garda Fowley's evidence with his intended evidence in advance of giving that evidence to the Tribunal on this issue. It failed, because on this occasion Garda Fowley did not allow herself to be used in that way.

20. There are some details of Mr. McConnell's account which are wrong. I do not accept that Detective Garda Tague, who was said by Mr. McConnell to be present during the fifth interview, was present. He said that Detective Garda O'Malley was present for the entire period of the interview. I am satisfied that Detective Garda O'Malley left the interview room at 19.45 hours, approximately mid-way through the interview. He does not state that Sergeant Hennigan was present but I am satisfied from the custody record and Sergeant Hennigan's evidence that he was present for the latter half of the interview between 19.45 hours and 20.20 hours.

21. I accept the evidence of Mark McConnell that the document purporting to be a statement of admission by Frank McBrearty Junior was read out to him by Inspector McGinley during the course of this interview. I accept that the core of his story is correct. I am satisfied that the practising of Frank McBrearty Junior's signature by Inspector McGinley in the incident room earlier in the afternoon was significant. I am also satisfied that the complete absence of notes of interview for this period has not been satisfactorily explained by those who admit that they were present, namely Detective Sergeant Leheny, Detective Garda O'Malley, and Sergeant Pat Hennigan. I also take into account the fact that I do not accept the account given by Mr. Leheny as to how he dealt with notes of interview on the 4th of December 1996, or his evidence that when he sought a copy of these notes from Garda Fowley she told him they were mislaid. I am not satisfied that Detective Garda O'Malley and Sergeant Pat Hennigan have told me the full truth about what happened when each of them was in the incident room with Mr. McConnell. I am satisfied that those present at this interview behaved in a manner that was unprofessional and shocking, or tolerated such behaviour to occur in their presence.

22. Mr. McConnell alleged that when he was taken from the room at 20.20

hours the Gardaí present told him that he was going to be charged with the murder of the Late Richard Barron. I am not satisfied that this is so. Had it happened, I am satisfied that it would have become rapidly clear to him that he was about to be released. He accepts that he signed the custody record to the effect that he had no complaints but claimed that he did so because he was told that he would be further detained if he did not. I am not satisfied that this occurred. It is more likely that, for whatever reason, he felt it was necessary to sign the custody record in order to conclude his business and leave the station. He was eager to leave the station and he had little confidence in making any complaints to the member in charge, having regard to his previous experience with him. In those circumstances, I am satisfied that he took the path of least resistance and signed the form to the effect that he had no complaints.

23. I am satisfied that there was a complete failure on the part of Detective Sergeant Leheny and Inspector McGinley as note takers in the course of their respective interviews to comply properly with the practice and procedure applicable to the taking and preservation of interview notes. It is utterly unacceptable in any criminal investigation, but especially in a murder inquiry, that experienced investigators would show such disregard for the keeping of such essential records. It is to An Garda Síochána in these circumstances that one is entitled to look for an accurate record of what transpired in the course of an interview. When there is a serious failure to explain the absence of interview notes and the manner in which they were dealt with, serious suspicion arises that the interviews were not conducted properly, particularly where allegations are made by the prisoner interviewed. A further disturbing aspect of this case is that those reviewing the interview notes which were ultimately compiled for the Lennon report for onward transmission to the Director of Public Prosecutions must have been aware that the original notes of interviews conducted with certain detainees, including Mr. McConnell, were missing. Yet this matter was not pursued with the interviewers concerned. There was a serious lack of accountability displayed or expected from these Gardaí in the course of the investigation. This was due to a lack of discipline and a failure of leadership on the part of the officers in charge of the investigation.

24. It is clear from these conclusions that having been unlawfully arrested, Mr. McConnell was treated in a disgraceful and shocking manner. He was verbally abused and assaulted. He was shown photographs of the post-mortem of the Late Richard Barron and a statement purporting to be an

alleged confession by Frank McBrearty Junior as part of a rather crude trick to convince him to make an admission. He was shouted at. His complaint of ill treatment was not treated in a serious manner by the member in charge. The member in charge was drawn into the investigation by making application for an extension of his detention. His solicitor was denied access to him when he attended at the station in order to obtain his instructions about an alleged assault whilst in custody. Notes of interview, said to have been taken by interviewing Gardaí, were not read over to him and are said to have been mislaid. Numerous false statements were made by the Gardaí for the purpose of the initial Barron investigation, the Garda Complaints Board, and the civil action initiated by Mr. McConnell: those statements contained lies in which the members persisted when giving evidence during the course of the Tribunal's hearings. The senior rank and experience of the personnel involved convinces me that there was a deliberate flouting of Mr. McConnell's rights as a detainee by those involved in this misbehaviour. Behind the veneer of propriety suggested by the entries in the custody record, there was the raw reality of Garda ill treatment and misconduct. It was encouraged and motivated by the unquestioning and unquestioned conviction by senior officers leading this inquiry that Mark McConnell was guilty of the murder of the Late Richard Barron. They were entirely wrong.

PART II

The Arrest and Detention of Mark McConnell on the 25th of June 1997

Background

4.184. Mark McConnell was re-arrested on the 25th of June 1997 on foot of an order made under section 10(1) of the Criminal Justice Act, 1984 which provides:

> Where a person arrested on suspicion of having committed an offence was detained pursuant to Section 4 and is released without any charge having been made against him, he shall not -
>
> (a) be arrested again for the same offence, or
>
> (b) be arrested for any other offence of which, at the time of the first arrest, the member of the Garda Síochána by whom he was arrested suspected him or ought reasonably to have suspected him,
>
> (c) except on the authority of a Justice of the District Court who is satisfied on information supplied on oath by a member of the Garda

> Síochána not below the rank of superintendent that further information has come to the knowledge of the Garda Síochána since the person's release as to his suspected participation in the offence for which his arrest is sought. A person arrested under that authority shall be dealt with pursuant to section 4.

4.185. An application pursuant to this section was made to Judge Thomas Fitzpatrick on the 11th of June 1997, on the information on oath of Detective Superintendent Joseph Shelly, as a result of which the Learned District Judge made an order authorising the arrest of Mark McConnell "on suspicion of [his] having committed … an offence to which section 4 of the above Act applies, namely, Murder at Common Law." The order was directed to the Superintendent of the Garda Síochána, at Letterkenny.[648]

4.186. Detective Superintendent Shelly swore the information upon which the application was made to the District Court pursuant to the provisions of section 10(1) of the Act. The "further information" that had come to the knowledge of An Garda Síochána since Mr. McConnell's release on the 4th of December 1996 was cited in the sworn information as follows:

> A written statement after caution has been obtained from another suspect, i.e. Frank McBrearty (Junior) implicating Mark McConnell in the murder of Richard Barron.[649]

4.187. Detective Superintendent Shelly said in a statement about this matter that in addition to the information sworn before District Judge Fitzpatrick, he informed him of the following matters:

> I outlined to the Judge of the District Court details of new information that had come to the knowledge of the Gardaí since Mark McConnell's first arrest for the murder of Mr. Richard Barron on the 4th day of December 1996. I informed Judge Fitzpatrick that a written statement, after caution, had been made by another suspect in the case (i.e. Mr. Frank McBrearty Jnr) implicating Mark McConnell in the murder of Richard Barron. I informed Judge Fitzpatrick that both Mark McConnell and Frank McBrearty (Jnr) had been arrested on the 4th day of December, 1996 in connection with the murder of Mr. Richard Barron in Raphoe, Co. Donegal on the 13th/14th day of October, 1996. I informed Judge Fitzpatrick that Mark McConnell was released from Garda Custody at 8.20 p.m. on the 4th of December, 1996 having been detained in connection with the murder of Richard Barron. Mr. Frank McBrearty (Jnr) signed a written statement after caution at 8.25 p.m. in which he admitted striking Richard

[648] Tribunal Documents – Arrest and Detention of Mark McConnell on the 25th of June 1997, page 92.
[649] Tribunal Documents - Arrest and Detention of Mark McConnell on the 25th of June 1997, page 91.

> Barron with a piece of timber in the company of his cousin Mark McConnell. This assault took place according to Frank McBrearty (Jnr) on the night that Richard Barron died in Raphoe. As Mark McConnell has already been released from custody, it was not possible to put the contents of this statement to him. Frank McBrearty (Jnr) made a further written statement to the Gardaí between 8.30 p.m. and 8.58 p.m. on the 4th of December, 1996 and likewise it was not possible to put the contents of this statement to Mark McConnell. District Judge Fitzpatrick asked me if I was involved in the Garda investigation into the circumstances of Richard Barron's death and I said that I was. Judge Fitzpatrick questioned me on the contents of the information which I had sworn in accordance with Section 10 of the Criminal Justice Act, 1984 and I replied under oath. Judge Fitzpatrick issued the order. I identified my signature on the true copy of the information. Having obtained the order I handed it to Superintendent James Gallagher to arrange for its execution.[650]

4.188. In a short report in relation to the investigation into the death of the Late Richard Barron and, in particular, the alleged involvement of Mr. McConnell, Superintendent John Fitzgerald wrote on the 14th of January 1997:

> As a result of arrests, interrogations and investigations to date, it now appears that there were two persons involved in this crime. The present position is that those two persons have been arrested and interrogated. An admission of involvement has been made by one of those persons, during the course of which he has named his accomplice, that accomplice being the person already suspected by the Gardaí. The second accomplice has vehemently denied his involvement throughout interview. Since his release, fresh evidence is coming to hand which indicates further, his involvement.
>
> The present position is that these matters are being pursued and exhausted so that all available evidence may be obtained against him with a view to re-arresting this accomplice under Section 10 of the Criminal Justice Act, 1984.[651]

4.189. The next reference in the documentation to any proposed re-arrest of Mark McConnell is contained in conference notes for the 20th of January 1997, in

[650] Tribunal Documents - Arrest and Detention of Mark McConnell on the 25th of June 1997, pages 1-2.

[651] Tribunal Documents – Arrest and Detention of Mark McConnell on the 25th of June 1997, page 2-1 – this was a report updating two previous reports of the 5th and 20th of December 1996 from Superintendent Fitzgerald to the Chief Superintendent of the Donegal Division and to the Assistant Commissioner 'C' Branch at Garda Headquarters. This report has also been considered in the context of the behaviour of Darcy Connolly, Paul Roulston, William Doherty, Roderick Donnelly and Kieran Roulston in the Tribunal's "Report on the Investigation into the death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples – Term of Reference (a) and (b)" – (second report) - Chapter 7.

which the agenda for same contains an item at No. 2 "re-arrest of Mark McConnell".[652]

4.190. Detective Superintendent Shelly acknowledged that a conference was held in which it was decided that the contents of the statement allegedly made by Frank McBrearty Junior on the 4th of December 1996 would have to be put to Mr. McConnell. For that purpose Mr. McConnell had to be re-arrested. Detective Superintendent Shelly said that he was not directly involved in the investigation into the death of the Late Mr. Barron in March and April of 1997, in the course of which he was away from the division on a superintendents' development course. In the month of May he was asked by Superintendent Lennon to look after the re-arrest, while Superintendent Lennon was away on holidays. He agreed to do this. He accepted that the decision to re-arrest Mr. McConnell had been made by officers at a conference in early January of 1997.[653] Notwithstanding the contents of Superintendent Fitzgerald's letter of the 14th of January 1997, he was unaware of any other fresh evidence coming to hand to support the proposition that Mark McConnell was involved in the death of the Late Richard Barron other than the alleged statement made by Frank McBrearty Junior.[654]

4.191. During May of 1997 the first suspicions began to emerge regarding the reliability of Robert Noel McBride in respect of the allegations that he had made in various statements that members of the McBrearty family had tried to intimidate him or bribe him over the information which he said he had concerning the evening of the 13th/14th of October 1996. All of his statements in respect of the alleged sightings that he made of Frank McBrearty Junior and Mark McConnell in the car park of Frankie's nightclub on the evening of the 13/14th of October 1996 and the allegations that he made of bribery and intimidation by members of the McBrearty family against him were, of course, false, but this did not emerge clearly until the early Autumn of 1997.

4.192. It was also known at this stage that serious issue was taken by Mr. Frank McBrearty Junior with the suggestion that he had made a confession to his involvement in the death of the Late Richard Barron to Detective Sergeant Melody and Detective Garda Fitzpatrick on the 4th of December 1996. This was clear from correspondence in or about April 1997 from his solicitor, Mr. Smyth of Binchy & Company solicitors, and correspondence from Mr. William Flynn to the Garda authorities. Nevertheless, it was thought appropriate and important that the statement made by Frank McBrearty Junior on the 4th of December 1996 be put to Mark McConnell and it was considered that the proper way to do that was to cause him to be rearrested.

[652] Tribunal Documents – Barron Investigation, page 6022.
[653] Transcript, Day 258, Q. 2 – 16.
[654] Transcript, Day 258, Q. 23 - 28.

4.193. This arrest was procured under the provisions of section 10(1) of the Criminal Justice Act, 1984. I am satisfied that the proper procedure was followed in obtaining this order. The Learned Judge acted fully in accordance with law in issuing the order authorising the re-arrest of Mark McConnell. However, the making of this application suffered from a number of infirmities of which the Judge was unaware. I am satisfied that had he been aware of these infirmities, the Learned Judge would not have considered making this order. The additional evidence placed before the Learned Judge was said to be the alleged confession of Frank McBrearty Junior made on the 4th of December 1996, which was false. It was obtained during the course of an unlawful detention that followed Mr. McBrearty's unlawful arrest on foot of the false statement of Robert Noel McBride made on the 29th of November 1996. Garda John O'Dowd, was found by the Tribunal to have been centrally involved in obtaining the forced statement of Robert Noel McBride and to have acted mala fide. Therefore, the false confession was obtained in breach of Mr. McBrearty Junior's fundamental right under the Constitution not to be detained "save in accordance with law". In addition, it is clear from the Tribunal's inquiry into the investigation of the death of the Late Richard Barron that proper enquiries were not carried out into the statement made by Robert Noel McBride by the investigation team. As previously reported such enquiries would likely have exposed the statement as false. I do not accept that the Learned Judge would have considered making this order had he been aware of these shocking matters. In these circumstances, this order cannot be regarded as having been lawfully procured. Evidence was put before the Learned Judge which was unconstitutionally obtained. It consisted of a false confession procured during an unlawful detention that followed an unlawful arrest grounded on a suspicion based on the false statement of Robert Noel McBride in the manufacture of which Garda O'Dowd was involved and which was never subjected to scrutiny in the course of a negligent Garda investigation.

The Arrest

4.194. The second arrest of Mark McConnell took place at 09.06 hours on the 25th of June 1997 when he was arrested by Garda John Nicholson near his home in Raphoe. Mr. McConnell described what occurred in this way to the Tribunal:

> *On the morning of the arrest, my wife had been taken to England at that stage by her sisters to get her away from the continued harassment from all the Guards. The sisters clubbed together a few pound and took her to England and I was watching the child.*

> *While she was away I was staying at my mother's house and on that morning I had left my mother's house to go out and check my own house because there was nobody in it. While driving by the Parting Glass Frank Senior waved me down and said to me, there's something going to happen today in Raphoe, because there's a terrible amount of Guards about and they are heading out towards Tullyvinney and they're driving about the town. He thought they were coming to arrest Frank Junior. I says well I'm going out to Tullyvinney anyway, I'll check, see is everything alright, I'm going out to check my own house. Just as I was getting into the car John White drove by in the local patrol car. I seen him immediately when he seen me going on the radio in the patrol car. I then headed out towards Tullyvinney and as I was heading towards the house there was a checkpoint about maybe a quarter of a mile outside the town boundary. I was stopped and they asked me to get out of the car and a Guard arrested me there for the murder. He showed me something, he might have showed me some kind of a warrant or something and he told me that I was being arrested again for the murder of Richie Barron. I was completely shocked to tell you the truth.*[655]

He said that he was both distressed and angry at what had happened.[656] Mr. McConnell felt that there was an unnecessarily cruel element to the manner in which this arrest was effected in that his wife had been hospitalised for psychiatric care as a result of her arrest and was now away in England trying to recover from what had happened. In addition, he became aware that the private detective retained by the McBrearty family, William Flynn, had contacted a member of the family to say that he had been speaking to Superintendent Lennon in an effort to demonstrate to him how Frank McBrearty Junior had nothing to do with the death of the Late Richard Barron and had been told there was going to be a development that week and that somebody was going to be arrested. Ironically, Mr. McConnell said that he looked upon this as a positive development. Consequently his re-arrest was a shock and a disappointment to him. However, he said on this occasion:

> *I tried to bat my own corner as best I could when I was in custody. I wasn't the tame, nervous person I was during my first arrest.*[657]

4.195. Garda John Nicholson described in evidence how he effected this arrest in the company of his colleagues Detective Garda Paul Casey, Detective Garda Patrick Maguire and Detective Garda John McHale.[658] Garda Nicholson arrested Mr.

[655] Transcript, Day 502, Q.48.
[656] Transcript, Day 502, Q.56.
[657] Transcript, Day 502, Q.63-64.
[658] Tribunal Documents – Arrest & Detention of Mark McConnell on the 25th of June 1997, pages 3-4 and Transcript, Day 525, Q.127.

McConnell on foot of the order of the District Court as directed by Superintendent James Gallagher. He conveyed Mr. McConnell to Letterkenny Garda Station where he was detained in accordance with the provisions of the Criminal Justice Act, 1984. Mr. McConnell makes no complaint in relation to the manner in which he was arrested and the journey to Letterkenny Garda Station was uneventful.

The Detention

4.196. The Garda record of Mr. McConnell's detention on the 25th of June 1997 is contained in the custody record, the relevant features of which are set out below in tabular form:

Occurrence on 25th of June 1997	Detail of Occurrence	Comment
09.06 hours	Arrest of Mark McConnell by Garda John Nicholson. It was noted as "re-arrest pursuant to the warrant issued by Judge Fitzpatrick on 7th June 1997, suspicion of murder, Richard Barron".	
09.41 hours	Mark McConnell was detained pursuant to section 4 of the Criminal Justice Act, 1984 at Letterkenny Garda Station.	
09.42 hours	Information was given to Mark McConnell in accordance with regulation 8(1) – notice of his rights.	
09.45 hours	Mr. McConnell requested that his solicitor, Mr. Ken Smyth, be contacted at a given phone number in Dublin.	
09.46 hours	Mr. McConnell was searched in an interview room and some change and his car keys were removed from him.	
09.46 hours	Garda John Nicholson and Detective Garda Paul Casey commenced an interview with Mr. McConnell (first interview).	
09.55 hours	Mr. Ken Smyth, solicitor was contacted by the member in charge.	
10.00 hours	A phone call was received from Mr. Ken Smyth, solicitor at the Garda station. Garda Nicholson and Detective Garda Casey left the interview room at this stage.	
10.06 hours	Garda Nicholson and Detective Garda Casey returned to the interview room.	

10.30 hours	Mr. McConnell took a phone call from Mr. Shiels, solicitor in the Sergeant's office.	
10.33 hours	Mr. McConnell was returned to the interview room.	
10.50 hours	Mr. McConnell received a visit from his father, Mr. Noel McConnell.	
10.53 hours	Mr. McConnell received a visit from his brother, Eamonn McConnell.	
11.00 hours	Mr. McConnell's father and brother left the interview room and Garda Nicholson and Detective Garda Casey returned to the interview room.	
11.35 hours	Mr. McConnell spoke to his solicitor, Mr. Shiels by telephone.	
12.43 hours	Mr. McConnell requested a meal.	
12.45 hours	The member in charge visited the interview room; "all in order".	
12.50 hours	A meal was supplied to Mr. McConnell and Garda Nicholson and Detective Garda Casey left the interview room (end of first interview).	
13.10 hours	Mr. McConnell was brought from the interview room to a cell for a rest period.	
13.45 hours	Mr. McConnell was brought to the interview room for a consultation with Cathal Quinn, solicitor.	
14.33 hours	Mr. McConnell concluded his consultation and was brought to an interview room and Detective Gardaí Maguire and McHale commenced an interview with him (second interview).	
14.36 hours	Mr. Cathal Quinn, solicitor requested that the member in charge record the following in the custody record "Mark McConnell told his solicitor that he was told by the interviewing Gardaí we can do a deal with you, if you help us, or words to that effect. He was also informed that Stephen Barron will be coming to get him, and there will be no Garda protection available for him, and that he, Stephen Barron, knows who murdered his father. The purpose of this is to frighten him, Mark McConnell."	

14.57 hours	Permission was granted by Superintendent James Gallagher for an extension of Mr. McConnell's detention for a second period of six hours.	
15.00 hours	Mr. McConnell was informed that he was being detained for a further six hours.	
16.00 hours	Mr. McConnell was visited by the member in charge who found "all in order".	
17.30 hours	Mr. McConnell was visited again by the member in charge who found "all in order".	
18.00 hours	A meal was supplied to Mr. McConnell and Detective Gardaí Maguire and McHale left the interview room (end of second interview).	
18.20 hours	Mr. McConnell was placed in a cell.	
19.05 hours	Mr. McConnell was taken to an interview room and again interviewed by Detective Gardaí Maguire and McHale. Third Interview.	
19.20 hours	Mr. Cathal Quinn, solicitor visited Mr. McConnell and Detective Gardaí Maguire and McHale left the interview room.	
19.30 hours	Mr. Quinn, solicitor left the Garda station and Garda Nicholson and Detective Garda Casey returned to the interview room (fourth interview).	
21.02 hours	McConnell was released from custody and his property was returned to him.	
21.03 hours	Mr. McConnell is recorded as having "no complaints"	

4.197. Following his arrest, Mr. McConnell was interviewed over four identifiable periods by two teams of Gardaí, the first consisting of Garda John Nicholson and Detective Garda Paul Casey and the second consisting of Detective Garda Pat Maguire and Detective Garda John McHale. As with other interviews conducted in the course of this investigation, some of the notes said to have been taken by Gardaí in the course of this detention are missing. I am asked, once again, to accept that they have been lost within a system for which nobody has been made accountable or taken responsibility.

The First Interview

4.198. Garda John Nicholson and Detective Garda Paul Casey interviewed Mr. McConnell between 09.46 hours and 12.50 hours. This interview was interrupted on a number of occasions in order to enable Mr. McConnell to consult with Mr.

Ken Smyth, his solicitor, by telephone between 10.00 and 10.05 hours and with Mr. S. Shiels, solicitor, between 10.30 and 10.35 hours. Mr. McConnell then received a visit at 10.50 hours from his father, Noel McConnell, and at 10.55 hours from his brother, Eamonn McConnell. These visits concluded at 11.00 hours. There was a brief interruption at 12.43 hours when a meal was requested for Mr. McConnell, with which he was furnished at 12.50 hours, at which point the interview concluded.[659] The first interview, therefore, lasted for a period of three hours and four minutes. Mr. McConnell in his evidence told the Tribunal that during the first interview he was annoyed and upset and "probably let them know what I thought of them to tell you the truth". He was determined to "try and hold my own". He said that in the earlier part of the day a proposition was put to him by Garda Nicholson:

> *Well they said the deal they were putting to me was that if I made an admission or signed an admission of guilt … fingering young Frank for the murder that they would give me a lighter sentence when the thing came to court. As a lay person in this country I haven't a clue what way it lies with deals or no deals but if you're weak, if you are a weak person and had something to do with it, you know what I mean … He made it in one of the interviews as far as I can recall. … All I know is the arresting officer was the same person who put the deal to me. ... There was somebody else in the room but I don't know who.*[660]

In describing the two Gardaí Mr. McConnell has indicated that the arresting officer Garda Nicholson put this proposition to him. He said:

> *I think it was Nicholson because Nicholson was the arresting officer and I can remember him wearing some kind of old fashioned grey and some kind of pullover with a v in it and he had his tie and shirt underneath it when he arrested me. That's why I figured out that it was him. It was the same person that arrested me that put the deal to me.*[661]

He also told the Tribunal that there was another Garda present at the time when this proposition was put by Garda Nicholson. He said:

> *… He might have been taller I think, I'm not sure, than Nicholson but I'm only kind of going, I'm really only kind of guessing to tell you the truth. I have a very vague memory of who was along with him. … They told me to make a statement more or less that we …*

[659] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, pages 4-5 (Statement of Garda John Nicholson made 27th of June 1997) and pages 16-17 (Statement of Detective Garda Paul Casey made 24th of August 1997).
[660] Transcript, Day 502, Q.65-77.
[661] Transcript, Day 502, Q.66.

> *their general theme that day was they knew that I didn't kill Richie Barron but that if I would make a statement outlining young Frank's involvement in it that they would do a deal with them. They seemed to be, they probably seemed to be under the impression maybe that I knew what had happened as far as I can make out.*[662]

4.199. The second matter that Mr. McConnell complained about in respect of that first interview was a threat concerning the Barron family. He said:

> *There was a general threat throughout the day that the Barron family would possibly come looking, come after me to maybe assault me or even kill me and that they could do it even out at my own house or they could do it while you're walking the street in Raphoe and that they'd be no Garda protection for you and did I realise that.*[663]

When asked to identify who had said this to him he replied:

> *That was a general, numerous Guards I'm sure Nicholson was one of them. As I say I don't really know any of the rest of the Guards involved. It was a common thread of a lot of the interviews.*[664]

4.200. Mr. McConnell states that the rest of the day was uneventful and he had no further complaints to make other than in relation to these two matters.[665] Later on that day, after the conclusion of the first interview, and in the course of the second interview, Mr. McConnell was visited by Mr. Cathal Quinn, solicitor, at 14.36 hours. He complained to Mr. Quinn about the proposition put to him by Garda Nicholson that morning. Mr. Quinn requested Garda William Cannon, the member in charge, to record this complaint in the custody record which he did in the following way:

> Cathal Quinn, solicitor, requested the following to be recorded in custody record. Mark McConnell tells his solicitor that he was told by the interviewing Gardaí we can do a deal with you, if you help us, or words to that effect. He was also informed that Stephen Barron will be coming to get him, and there will be no Garda protection available for him, and that he, Stephen Barron, knows who murdered his father. The purpose of this is to frighten him Mark McConnell.[666]

4.201. Mr. Cathal Quinn, solicitor, gave evidence to the Tribunal concerning this consultation which he had with Mr. McConnell between 13.45 hours and 14.33

662 Transcript, Day 502, Q.79-93.
663 Transcript, Day 502, Q.72 and 78.
664 Transcript, Day 502, Q.74-95.
665 Transcript, Day 502, Q.83.
666 Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, pages 68-69.

hours. He was asked to attend Mr. McConnell on behalf of Mr. Ken Smyth of Binchys solicitors. Mr. Quinn made a handwritten note during the course of the interview with Mr. McConnell. He subsequently drew up a typewritten note of his attendance, which contains some further detail that was not in the handwritten note. He ascribes this to the fact that the handwritten note was necessarily very short. He supplied further details in the typewritten version on the 25th of February 1998 when requested to do so by two senior Garda officers who asked him to make a statement in relation to the matter. Mr. Quinn recorded in his handwritten note that Mr. McConnell told him the following:

> Arrested 9.06am 25/6/97 at my home. He said further evidence came to light. When they interviewed me this morning it was in relation to statements wee Frank (Frank Jnr.) made last Dec. when the two of us were arrested. Gardaí forged a page of that statement and inserted it after Frank Jnr. signed the statement saying that he knew nothing and had nothing to do with it. The page inserted implicated both him and me. At present time they are saying to me, we know you had nothing to do with it that young Frank did the killing. They said, "we can do a deal with you". I have told them that Frank Jnr.'s statement was forged. They denied this. They think I was in a café in Raphoe at the time … across the road from Parting Glass. I have 20 or more witnesses putting me in the bar at the time. I was still in bar at 1.15am when I was refused a drink. I never left pub. Barron was found at 12.50 lying on road. Argument between me and Barron was at 11.30pm. Guards say phone call was made at 11.05 from pub to Parting Glass. They are saying Stephen Barron will be coming to get you and there would be no Garda protection available for you. They said we have told him everything and he knows who murdered his father. Interview ended at 2.30.[667]

Following this consultation Mr. Quinn then made the complaint to Garda Cannon already quoted. He subsequently wrote a letter to Mr. Ken Smyth of Binchys solicitors on the 3rd of July 1997 setting out these events.[668]

4.202. Mr. Quinn in his further statement of the 25th of February 1998 repeated the contents of the handwritten note of his attendance and added the following comment:

> I cannot be certain that at the time Mr. McConnell made any connection between the statement that there would be no Garda protection available for him with his claim that they would be willing to do a deal with him. He told me about these two matters at different stages of my interview with him and therefore it may be that he did not make any association between

[667] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, page 80.
[668] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, pages 81-83.

> the two. He was calm and did not make any complaint that he was being ill treated or abused. He was annoyed that he had been arrested a second time on foot of what the Gardaí said was new evidence but that when they were interviewing him they were simply going over the same old ground and did not appear to have any new evidence. He also felt it was ridiculous that the Gardaí were attempting to make a connection between a phone call which they claim was made from the pub to the Parting Glass at 11.05pm and the argument which he had with Mr. Barron at 11.30pm. I advised him that the Gardaí were not entitled to offer to do any deal with him or to try to frighten him into making a statement by saying that there would be no Gardaí protection available for him when Stephen Barron would come to get him. I advised him as to his legal position. He seemed calm.[669]

4.203. In evidence to the Tribunal Mr. Quinn gave a description of Mr. McConnell's demeanour which tends to support Mr. McConnell's recollection of his then state of mind. He said:

> *He was also saying to me that there was no new evidence, he was most indignant. I remember distinctly how indignant he was in the station. I was expecting to find a man frightened, a man in custody on suspicion of murder I thought would be frightened. I went into the room and found a man who was angry and indignant at his arrest, at his re-arrest on what he regarded at the same old rubbish they had told him the first time round, or put to him the first time round. He was indignant that there was no further evidence and that he had been re-arrested, allegedly on the basis that there was new evidence, fresh evidence, which as far as he was concerned there was not.*[670]

Mr. Quinn also told the Tribunal that Mr. McConnell did not identify any particular Garda as having made an offer of a deal or the threat to him other than to say that "they" were telling him these things. However, Mr. McConnell had only been interviewed by Garda John Nicholson and Detective Garda Casey by the time of the consultation and Mr. Quinn believed Mr. McConnell to be referring to the interviewing team.[671]

4.204. Later in a statement made on the 18th of February 1998 Mr. McConnell said that he could not recall who had arrested him and that when he was taken to Letterkenny Garda Station he was questioned again about the murder of the Late Richard Barron. He said:

[669] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, page 85.
[670] Transcript, Day 511, Q.78-181.
[671] Transcript, Day 511, Q.210-214.

> I was not questioned at length. I was questioned for about 1/3 of the time about the murder. The rest was small talk and periods in the cell. I was never really questioned. Some Garda who was wearing a jumper over his shirt and he talked about a deal if I signed a confession. He never said what the deal was. I refused. There were four Gardaí involved. They are not local Gardaí. They are based down the country. I think some of them mentioned Galway. All four of them threatened me that Stephen Barrons and his family would come and get me and there wouldn't be any Garda protection. They said it could happen any time, in Raphoe or when I was going into my house … There was no physical or mental abuse.[672]

4.205. Mr. McConnell has expressed some reservation about the accuracy of this statement. Nevertheless, two observations may be made about this description. Firstly, he states that it was never stated to him what the deal on offer was. Secondly, in respect of the alleged threat that Stephen Barrons and his family would come and get him, Mr. McConnell attributed this to "all four" interviewers.

4.206. Mr. John Nicholson and Detective Garda Paul Casey both made statements and gave evidence to the effect that Garda Nicholson took notes during the course of this first interview. They state that these notes were not read over to Mr. McConnell at the conclusion of the first interview at 12.55 hours but were subsequently read over to him at the commencement of their second interview with him later that evening at 19.30 hours. They both maintained that when these notes were read over to Mr. McConnell he stated that they were correct and that he was happy with them but when invited to sign the notes he declined to do so. Both also maintain that they then signed these notes.[673]

4.207. A note was made available to the Tribunal of what Mr. Nicholson concedes to be a chronological and contemporaneous note of what he did on the 25th of June 1997 in relation to Mr. McConnell. This note was created by him during the course of the day and it was intended for future use as an aide memoir when preparing the statement which he believed he would inevitably have to make in relation to the matter. It might be regarded as somewhat unusual in that both Mr. Nicholson and Detective Garda Casey signed the note on the 25th of June 1997. Indeed Detective Garda Casey remained of the view that it was the note of interview. Mr. Nicholson in evidence said that this was not so and that the notes of interview had gone missing.[674] He said that he handed the original of the notes of interview into the incident room in Letterkenny. He did not photocopy the

[672] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, page 59.
[673] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, pages 4-5, 8 and 14 (Statements of Garda John Nicholson) and pages 17 and 21 (Statements of Detective Garda Paul Casey).
[674] Transcript, Day 525, Q.16-32.

notes of interview but did obtain a photocopy of the contemporaneous note of the day's events already referred to.[675]

4.208. Detective Garda Casey could not assist as to whether Garda Nicholson was making two separate sets of notes during the course of the interview, namely the notes of interview, now lost, and the continuing chronicle of the day's events that they both later signed.[676] He thought it was quite possible that Garda Nicholson was taking two separate sets of notes as he was "a meticulous investigator". He said:

> *I don't know if it's a question of do I believe, I heard what he said and I have no reason to disagree with it.*[677]

4.209. Mr. Nicholson said in evidence that Mark McConnell was totally co-operative during the course of their interview and answered whatever questions he was asked. He did not recall Mark McConnell alleging that the statement of admission made by Frank McBrearty Junior on the 4th of December 1996 was a forgery or a concoction.[678] However, he did recall how Mr. McConnell repeatedly told the interviewers that they were on the wrong track and that the Gardaí were conspiring to blame Frank McBrearty Junior and him in the wrong.[679] The interviewers had a copy of the statement in their possession and put it to Mr. McConnell. He accepted that Mr. McConnell was upset about being arrested. He denied that there was any reference to the Barron family in the course of the interview or that the Barron family had been informed of who was responsible for the death of the Late Richard Barron by the Gardaí and that the Gardaí would not provide protection to him from the Barron family.[680] He also denied that he suggested to Mark McConnell that his culpability was lesser than that of Frank McBrearty Junior in the death of the Late Mr. Barron, or, that he offered him a deal that if he made a statement of admission to this lesser involvement, it would assist the Gardaí in their investigation and that he could deal with his problems by pleading guilty to a lesser offence, thereby obtaining a lesser sentence. Mr. Nicholson said that they put the statement of Frank McBrearty Junior to Mr. McConnell because "we were anxious that he'd co-operate and tell the truth".[681]

4.210. Detective Garda Casey also recalled that Mr. McConnell answered all of the questions put to him in the first interview fully. He also accepted that Mr. McConnell was annoyed and made clear his annoyance to them. He said that as a result of a statement made by Frank McBrearty Junior, he believed that Mark McConnell was in very serious trouble and that it was his duty to interview him

675 Transcript, Day 525, Q.32-42 see also Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, pages 6-8.
676 Transcript, Day 525, Q.189-198.
677 Transcript, Day 525, Q.196-197.
678 Transcript, Day 525, Q.71-72.
679 Transcript, Day 525, Q.73-77.
680 Transcript, Day 525, Q.77-85.
681 Transcript, Day 525, Q.85-114.

and get his view, should he wish to give it, on that statement. He did not remember the details of what was said in the first interview but clearly Mr. McConnell believed that the alleged statement of Frank McBrearty Junior was rubbish. He accepted that the question as to whether Mr. McConnell's involvement was less than Frank McBrearty Junior's in the death of the Late Mr. Barron was certainly a real issue. However, he could not recollect whether it was put to him in those terms because of the absence of the memo of interview for the first interview. He accepted that it was possible that his lesser culpability was discussed with Mr. McConnell. However, he said that the approach suggested in relation to a deal "would be totally out of order". He maintained that his function in interviewing Mr. McConnell was to put the statement to him and invite his reply. He did not accept that anything he or his colleague said could have been misinterpreted by Mr. McConnell. If Garda Nicholson had said something in relation to a deal, Detective Garda Casey said that he would not have forgotten it, because he knew about the complaint within hours of it having been made. He totally discounted the idea of a deal or any possibility that there was a discussion in relation to culpability or that perhaps a misconstruction was put on that discussion by Mr. McConnell, who wrongly deduced that he was being asked for a deal.[682] Detective Garda Casey said that that they did not say anything to Mr. McConnell about the likelihood or possibility of his receiving a lesser sentence than Frank McBrearty Junior by reason of his lesser involvement in the death of the Late Mr. Barron as set out in the statement of admission.[683]

4.211. Mr. Nicholson and Detective Garda Casey both denied the suggestion that Mr. Nicholson was wearing a v-necked jumper or any jumper on the 4th of December 1996. Detective Garda Casey offered the following possible explanation for why Mr. McConnell made a false complaint against them:

> *The difference in Mr. McConnell's demeanour between the first interview when we met him and the last interview was quite extreme. When we interviewed Mr. McConnell on the first interview he was extremely annoyed and when I went back and discovered that he'd made a complaint subsequent to our interview, and I fully accept that his allegations are pointed at myself and Garda Nicholson and our first interview. I took it that he was lashing out, not in a physical sense, but lashing out at the Guards because he was extremely annoyed over the entire situation. And that's what I put it down to. … And I said it to the Commissioner's legal team when they spoke to me, that it was like something from the tv, that we'd offer a deal.*[684]

[682] Transcript, Day 525, pages 56-77.
[683] Transcript, Day 525, Q.227-278.
[684] Transcript, Day 525, pages 72-73.

4.212. In addition, Detective Garda Casey pointed out that he specifically noted the fact that the notes of the first interview had been read over to Mr. McConnell during the course of the fourth interview between 19.30 hours and 20.58 hours that evening. He noted the following:

> Garda Nicholson read over his notes to Mark McConnell. Mark McConnell agreed with the contents of these notes. He nodded his head in agreement with each point. On hearing these notes he agreed they were correct saying "yeah there fine, there grand".[685]

4.213. Mr. McConnell told the Tribunal that "the same Guard with the jumper" asked him to withdraw his complaint. Apparently, this occurred some time later in the afternoon. It was not done in a threatening manner. He said that he replied that he would not withdraw the complaint as it was a genuine complaint and he wanted it noted.[686] Mr. Nicholson denied "absolutely" that he ever asked Mark McConnell to withdraw the complaint that day.[687] He could not understand why the complaint was made. He said about Mr. McConnell that:

> *He was complimentary towards us and he was treated with the height of respect and courtesy by us which he was entitled to and he did say that it's a pity we didn't meet earlier on.*[688]

4.214. Mr. McConnell also described this incident in his interview with Chief Superintendent Brian Garvie (RCMP), an investigator for the Tribunal, on the 11th of June 2003. He thought it possible that during the course of the interviews he was shown the alleged statement of admission of Frank McBrearty Junior. He thought he had seen the statement before as it had been exhibited in High Court proceedings by the Garda Síochána. He stated that:

> *They tried to offer me a deal to make a statement. That was the only thing I took exception with. That if I incriminated young Frank in a statement that they would see that I got off light in Court with a sentence.*

He emphasised that he did not know the name of the Garda who made this offer to him at that time. He said, "I think I know him as John Nicholson, a Garda from Sligo". He said that there was another Garda with Mr. Nicholson at the time but he was not too sure of the identity of that Garda and could not name him. He said that there was a possibility that notes were taken during that interview but he did not sign anything.[689]

4.215. I am satisfied that when interviewed by Garda Nicholson and Detective

[685] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, page 77.
[685] Transcript, Day 502, Q.98-100.
[687] Transcript, Day 525, Q.145-154.
[688] Transcript, Day 525, Q.155.
[689] Tribunal Documents – Mark McConnell Vol. 1, pages 309-21 to 309-24.

Garda Casey a copy of the alleged statement of admission of Frank McBrearty Junior was in the possession of the two interviewers. This statement clearly outlines a scenario in which Frank McBrearty Junior is said to accept that he delivered a blow to the Late Mr. Barron. It describes Mr. McConnell as playing a lesser role in the encounter with the Late Mr. Barron. The whole point of re-arresting Mr. McConnell was to put the contents of the statement of Frank McBrearty Junior to him to elicit his response. Consequently, the extent of Mr. McConnell's role in the death of the Late Mr. Barron and the fact that he is ascribed a less culpable role in the statement by Mr. Frank McBrearty Junior, must have been discussed with him. This was denied by Mr. Nicholson but accepted as a possibility by Detective Garda Casey. I am satisfied that, in that context, an exchange took place between the interviewers and Mr. McConnell as to the nature of his role, the fact that it involved a lesser degree of culpability on the part of Mr. McConnell and that if he made a statement acknowledging his involvement he might or would end up with a lesser sentence than Mr. Frank McBrearty Junior. I am satisfied that such an exchange took place which Mr. McConnell interpreted as the offer of a deal. He refused to make a statement. He then complained to his solicitor who visited him fifteen minutes after this encounter and duly noted the complaint: he insisted that it be recorded in the custody record, and it was. I do not accept the evidence of Mr. Nicholson and Detective Garda Casey that the issue of a lesser sentence was not discussed in any way. This was not an offer of a "deal" but a statement as to how they viewed Mr. McConnell's position. It was an unwise statement: it has the hallmarks of an inducement and should not have been said. Further, I am satisfied that Mr. Nicholson approached Mr. McConnell at some stage during the day and asked him to withdraw the complaint.

4.216. I am also satisfied that Mr. McConnell was told in the course of this interview that members of the Barron family "knew" who was responsible for the death of the Late Richard Barron. That statement had to have a context. I am satisfied that something was said to Mr. McConnell about possible trouble from certain members of the Barron family and that perhaps it could happen some time when An Garda Síochána were not in the vicinity to offer assistance to Mr. McConnell if he were to be approached or assaulted. It is clear that the arrests of Frank McBrearty Junior and Mark McConnell on suspicion of the murder of the Late Richard Barron on the 4th of December 1996 would have been well known by June of 1997 to members of the Barron family. Defamatory leaflets against the McBrearty family had been circulated around Raphoe

suggesting their involvement in the alleged murder. It is my view that there was little the Gardaí could pass on to the Barron family members of the alleged involvement of Frank McBrearty Junior and Mark McConnell in the death of the Late Richard Barron that they did not already suspect or believe about them. Mr. McConnell interpreted this as a threat, as set out in his complaint to the solicitor. Indeed, his belief that it was a threat and one which had to be taken seriously, is supported in his mind by the fact that he was in fact seriously assaulted in Raphoe by members of the Barron family on the 3rd of February 1998 in which he suffered a broken leg and was kicked all over his body including his head. However, I am not satisfied that that incident in 1998 arose out of or was a fulfilment of a threat allegedly made in June 1997: though it may be that the atmosphere in which the 1998 incident occurred was contributed to by the negligence and appalling behaviour of other members of An Garda Síochána in the course of the Barron investigation as outlined in the second report of the Tribunal.

4.217. I am satisfied that the remarks made to Mr. McConnell in respect of a possible assault by members of the Barron family were made in order to convey to Mr. McConnell that if he made a statement accepting his involvement in the Late Mr. Barron's death, the possibility of any such behaviour might recede. I am satisfied that these remarks were calculated to impress upon Mr. McConnell that the making of a statement of admission would likely mollify the anger of the Barron family and make less likely any violence on the part of any of their members. These remarks were unwise and should not have been made. It was a weak form of inducement that did not work.

4.218. It should also be noted that Mr. McConnell was determined to assert and maintain his innocence during the course of these interviews. He was annoyed at being rearrested. He told his solicitor that there was no fresh material put to him in the course of this first interview. He felt that he was not questioned at length or in an intensive way about the death of the Late Richard Barron.[690] Indeed, I am satisfied that the interviews carried out in the course of this detention were not conducted in the same heightened atmosphere as those conducted on the 4th of December 1996 and that the real object of the exercise was to afford the Gardaí an opportunity to put the statement of Frank McBrearty Junior to Mr. McConnell, because it was something that had to be done before the file could be completed and sent to the Director of Public Prosecutions.

[690] Tribunal Documents – Mark McConnell Arrest & Detention on 25th June 1997, page 59.

Second and Third Interviews

4.219. Detective Garda Patrick Maguire and Detective Garda John McHale conducted the second and third interviews. The second interview took place between 14.33 and 18.00 hours and the third interview between 19.05 and 19.20 hours. As already noted Mr. Quinn, solicitor, had just completed a consultation with Mr. McConnell prior to the commencement of the second interview. At 14.57 hours permission was granted by Superintendent Gallagher for an extension of Mr. McConnell's detention for a period of six hours about which Mr. McConnell was informed at 15.00 hours. No complaint of any kind of misbehaviour was made by Mr. McConnell against either of these two Gardaí in respect of these two interviews.[691]

4.220. The third interview between 19.05 hours and 19.20 hours passed without incident. It was held for the purpose of reading over the notes of the second interview, following which Mr. McConnell requested slight amendments, which were made, but Mr. McConnell declined to sign the notes. These notes are available and signed by Detective Garda Maguire and Detective Garda McHale.[692]

4.221. Mr. McConnell said in evidence that the statement, that if he were attacked by one of the Barron family there would be no Garda protection for him was made by a number of Gardaí, and was "a common thread of a lot of the interviews". As previously noted in his statement of the 18th of February 1998, Mr. McConnell said that all four of the interviewers had threatened him that Stephen Barron and his family would come and get him and that there would not be any Garda protection and that this could happen at any time in Raphoe or when he was going into his house. I believe that this claim of Mr. McConnell's is somewhat exaggerated.

4.222. Following the third interview, in which the notes of the second interview were read over to Mr. McConnell, at 19.20 hours Mr. McConnell was visited once again by his solicitor, Cathal Quinn, until 19.30 hours.[693] Mr. Quinn's statement of the 25th of February 1998 records:

> I again briefly attended on Mr. McConnell at the Garda station at about 7pm on the same date and he had no particular complaints. I asked him had the Gardaí covered any new ground since I had been with him earlier and he told me they had not.[694]

4.223. In the notes of interview of the second and third interviews, there is a reference to Stephen Barron as follows:

[691] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, pages 68-70.
[692] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, pages 72-74.
[693] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, page 70.
[694] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, page 86.

> Stephen Barron is a lump of ….
>
> Off the record.
>
> He signed a statement when he was in the Station about his whereabouts the night of the murder.
>
> He was referring to Frank Junior.
>
> Stephen Barron is a good for nothing, if he is willing, let him come on. I will take him on. I will not be signing anything. I would not sign in here.[695]

4.224. Mr. McConnell in his testimony pointed to this extract as evidence that there was a discussion with these interviewers about Stephen Barron. He said the interview was very uneventful apart from what the interviewers said about the Barrons.[696] Detective Garda Maguire was asked about this extract from the interview notes and he said:

> *The only discussion we had with him on the Barrons was did he know them and would he have a problem meeting them afterwards, how friendly he was with them and things like that. Just general conversation … I think Detective Garda McHale asked him about would he have a problem if he met the Barrons down the street … I think the only reason why he would say that was he was asked what would happen if he met Stephen Barron or any of the Barron family down the town. Would there be any animosity between them.*[697]

4.225. Detective Garda Maguire denied any threat was made that if any member of the Barron family approached Mr. McConnell and assaulted him, there would be no Garda protection available to him. It was pointed out to him that this extract might tend to support the account given by Mr. McConnell. He repeated that they did not threaten Mr. McConnell that the Gardaí would not be there to protect him.[698]

4.226. Detective Garda John McHale also denied making any threat that Garda protection would not be available to Mr. McConnell. He accepted that he asked Mr. McConnell about his relationship with the Barron family including the Late Mr. Barron's sons. He was trying to explore whether there would be a problem if Mr. McConnell met one of them down the town in Raphoe. The following exchange occurred with Detective Garda McHale:

> *Q. What you seem to be implying there is, look, do you have something on your conscience? Is your conscience not*

[695] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, page 73.
[696] Transcript, Day 502, Q.107-108.
[697] Transcript, Day 524, Q.495-514.
[698] Transcript, Day 524, Q.522-527.

pricked when you meet these people who lost their loved one or whatever and would it not be better therefore to relieve your conscience by making a statement telling the truth in relation to matters. Is that what you are trying to say?

A. I suppose it could be taken that way, but we were just trying to explore really the feeling between himself and the Barrons, and if there would be serious issues.

Q. Could you tell us how that would help?

A. It might get him to talk open up to us.

Q. In other words, if he was having hell from the Barrons he might start talking about that and be more open in relation to other things?

A. He just might. Trying to keep the conversation going in the interview room.[699]

4.227. I am satisfied that there was a discussion between Detective Gardaí McHale and Maguire and Mr. McConnell in respect of his perception of Mr. Stephen Barron. Mr. McConnell makes clear in the replies that he had very little time for Mr. Stephen Barron and that there was mutual antagonism between them, probably rooted in the death of the Late Mr. Barron. Mr. McConnell deduced from this line of questioning that An Garda Síochána might not be much support to him if he were approached in the manner canvassed in the interview notes. It is difficult to understand the reason for these questions about his relationship with the Barron family. Nevertheless, it provides a context from which he deduced that the Gardaí were giving him the message that he need not look to An Garda Síochána for support, if attacked, and that he really ought to co-operate with them. Having regard to what I accept was said to him earlier in the day by the two other interviewers, I am satisfied that Mr. McConnell has, understandably, exaggerated in his own mind what was said to him by Detective Gardaí McHale and Maguire and conflated the questions which they posed with those posed by the other two interviewers. He saw all of these questions as a further threat. I do not believe that Detective Gardaí McHale and Maguire intended to threaten or threatened Mr. McConnell that he would not be provided with Garda protection in the event of him being approached or assaulted by any member of the Barron family. The tone and substance of the rest of their interviews with Mr. McConnell do not suggest aggression or threats on their part.

[699] Transcript, Day 524, Q.567-588.

4.228. The record of Mr. McConnell's interview with Detective Gardaí Maguire and McHale indicates that he was questioned about the alleged statement of admission made by Frank McBrearty Junior on the 4th of December 1996. Mr. McConnell became aware of this statement some time between April and the 25th of June 1997, because it had been exhibited in an affidavit of Chief Superintendent Denis Fitzpatrick in the course of civil proceedings in April 1997. The record of the interview states as follows:

> Take a look at the statement it is rubbish.
>
> What statement are you talking about?
>
> Statement of Frank McBrearty's.
>
> How many pages did you see.
>
> 1 full page, 1/4 page and another 1/4 page.
>
> Did you recognise Frank's signature?
>
> I would not know his signature.
>
> Do you believe what you see in the statement is real?
>
> No way, I never even seen young Frank McBrearty that night.
>
> You must have switched a bit of paper.
>
> Do you accept that the signature on the statement is Franks.
>
> I don't know his signature it is with a handwriting expert in England.
>
> As far as I am concerned I never met Frank Junior that night.
>
> There is a conspiracy in this Garda Station. …
>
> He signed a statement when he was in the Station about his whereabouts the night of the murder.
>
> He was referring to Frank Junior. … [700]

At the end of the notes it is recorded that at 19.05 hours Detective Garda Maguire read over the notes to Mr. McConnell and invited him to sign them. Mr. McConnell requested that certain amendments be made to the notes but refused to sign them.[701]

[700] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, pages 72-73.

[701] On the original handwritten note of interview it appears that the amendment referred to was made – Mr. McConnell had requested that the note be changed on the second page in respect of his answer to the question "Does Frank pay for everything" to which he had replied, "When I work for him he does." Mr. McConnell had requested that the words "It's hard to get money from him or off him" inserted. An amendment to that effect appears to have been inserted in the original of the note.

4.229. It was pointed out to Mr. McConnell at the Tribunal that if the note was correct, it clearly stated that he did not know what Frank McBrearty Junior's signature was like and that, therefore, he could not have given his opinion that the document which he said was produced to him during his own detention on the 4th of December 1996 by Inspector McGinley bore the forged signature of Frank McBrearty Junior. Secondly, it was pointed out to him that no complaint was made by him to Detective Gardaí Maguire and McHale of the showing of the forged document to him by Inspector McGinley when he was questioned on the 25th of June 1997. It might be thought that he would take the opportunity to make this complaint on this occasion when the alleged confession of Frank McBrearty Junior of the 4th of December 1996 was a central issue. Mr. McConnell, when asked about these matters, said in evidence that the replies recorded by Detective Gardaí Maguire and McHale were either false or mistaken.

> *I would know his signature. That's took down incorrectly. He has a very distinctive signature … and I knew what it was like. I'd say every member of my family would.*[702]

He also said:

> *I couldn't have said it because I know his signature.*[703]

4.230. Mr. McConnell's responses in this regard can best be understood when viewed within the timeframe that they were made. In 1997 Frank McBrearty Junior was maintaining the position that his signature was not on the alleged confession of the 4th of December 1996. He also maintained that if it were his signature that it had been obtained by a trick. His strong position was that he had never signed a document in which he had admitted any involvement in the death of the Late Richard Barron. Insofar as Mr. McConnell made reference to the fact that the alleged confession had been sent for expert examination, he was correct, insofar as a copy of the alleged confession had been sent to Mr. James Nash, an Irish handwriting expert, who did not report in respect of the matter until July of 1997. Therefore, at the time of these interviews on the 25th of June 1997, the signature on the alleged confession was under examination. I am satisfied that Mr. McConnell made the responses recorded by Detective Gardaí Maguire and McHale in their notes. I do not accept his evidence to the effect that these notes are false or mistaken in respect of his saying that he did not know the signature of Frank McBrearty Junior. Nevertheless, I am further satisfied that the responses made by Mr. McConnell in June of 1997 to the two Gardaí constitute an effort on his part to maintain support for Mr. Frank McBrearty Junior's

[702] Transcript, Day 502, Q.104-105 and Transcript, Day 503, Q.495.
[703] Transcript, Day 503, Q.499-500 and Q.504-509.

position. I am fully satisfied that he was in a position during the course of this interview, had he wished, to give his view that the signature of Frank McBrearty Junior on the alleged confession of the 4th of December 1996 was, as far as he was concerned, authentic. I believe that he chose not to do this in order to support his cousin's position at that time and not be seen to let him down at a time when the signature was under examination.[704] In those circumstances, I do not accept that this determination has any bearing on my findings that Inspector McGinley read a statement purporting to be an admission of Frank McBrearty Junior to Mr. McConnell on the 4th of December 1996. The notes were accurate. Mr. McConnell's allegation, made in evidence, that the two Gardaí were lying or mistaken in respect of these notes was false.

The Fourth Interview

4.231. The last interview of the 25th of June 1997 was conducted by Garda John Nicholson and Detective Garda Casey and commenced at 19.30 hours and continued until 21.02 hours, just prior to Mr. McConnell's release from custody. Mr. McConnell made no complaint of any physical or verbal abuse by the two Gardaí during the course of this interview. Prior to the interview he had been seen by his solicitor, Mr. Cathal Quinn, between 19.20 and 19.30 hours. The notes of the interview contain Mr. McConnell's views that a number of Gardaí in Letterkenny were involved in a conspiracy against him and Mr. McBrearty Junior. He described the manner of the police investigation as "a witch hunt" and suggested that the Gardaí "take the blinkers off" or they were going to make "a laughing stock" of themselves.

4.232. Mr. McConnell made some further comments about the alleged confession of Frank McBrearty Junior of the 4th of December 1996. He said:

> That statement is way out lads, do you think if someone made a statement of admission about a murder that they would take a wee bitty statement like that? They would have taken a lengthy statement about it lads. It's very easy to forge a signature lads. I put it to you that no Garda would forge a statement. Well I put it to you that plenty of Guards are crooked. I'm telling you the truth lads, you can't live with the facts.[705]

I am satisfied that these comments, like those previously made to Detective Gardaí Maguire and McHale, must be viewed in the context of Mr. McConnell's determination to support his cousin's story at a time when the signature was questioned by Frank McBrearty Junior and had been sent for forensic examination.

[704] Transcript, Day 502, Q.104-105.
[705] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, pages 75-76.

4.233. The notes also record that upon enquiry being made as to whether he had any further information in relation to the death of Mr. Barron, Mr. McConnell replied:

> Why should I tell you anything else lads. Things might have been different if I had met you lads at the start.[706]

Though Mr. McConnell did not accept the accuracy of the last quoted response from the notes because he did not see how the involvement of these two interviewers would have made any difference to the course of the investigation, nevertheless, he accepted the accuracy of the notes generally and, in particular, the earlier response quoted above in relation to the alleged statement of Frank McBrearty Junior.[707] Further, he agreed that the notes of interview would have been read over to him by Garda Nicholson. He accepted that he may have nodded agreement and said that they were "fine" and "grand". Mr. McConnell, however, also said that he could not remember.[708] The interview is recorded as having concluded at 20.58 hours.[709] The notes were signed by Detective Garda Casey and Garda Nicholson. At the conclusion of the interview Garda Nicholson said that he wished Mr. McConnell luck. Detective Garda Casey then left the room with Mr. McConnell, who was then released.[710]

Release

4.234. Mr. McConnell was released from custody at 21.02 hours on the evening of the 25th of June. It is noted in the custody record that his property was returned and that he had no complaints to make at that time. The only thing that Mr. McConnell noted on his release was that, "for some reason the Garda informant that set me up was outside the Garda station when I was released … William Doherty".[711]

Conclusions

4.235. There follows a summary of the conclusions that I have reached in relation to this arrest and detention.

1. The order procured under section 10(1) of the Criminal Justice Act, 1984 was made on the basis of evidence which the Learned Judge did not know and could not have known was entirely flawed. Evidence was put before the Learned Judge which was unconstitutionally obtained. It consisted of a false confession procured during an unlawful detention, that followed an unlawful arrest. This was itself based on a false statement of Robert Noel McBride in the manufacture of which Garda O'Dowd was directly involved, and which was never subjected to scrutiny in the course of a negligent Garda investigation.

[706] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, pages 76-78.
[707] Transcript, Day 502, Q.19.
[708] Transcript, Day 502, Q.120.
[709] Tribunal Documents – Mark McConnell Arrest & Detention on 25th of June 1997, page 78.
[710] Transcript, Day 525, Q.150.
[711] Transcript, Day 502, Q.124.

2. Mr. McConnell alleged that in the course of the first interview of this detention, conducted by Garda John Nicholson and Detective Garda Paul Casey, Garda Nicholson told him that if he made an admission of involvement in the death of the Late Richard Barron, implicating Frank McBrearty Junior in his death, he would be assisted in getting a lighter sentence when the matter came to court. Mr. McConnell complained to his solicitor that he had been offered this "deal". I do not accept that what happened amounted to the offer of a "deal". The main purpose of re-arresting Mr. McConnell was to put the contents of the statement of Frank McBrearty Junior to him to elicit his response. Consequently, the extent of Mr. McConnell's role in the death of the Late Richard Barron, and the fact that he was ascribed a less culpable role than Mr. McBrearty in the statement of admission, must have been discussed with him. I am satisfied that, in this context, an exchange took place between the interviewers and Mr. McConnell as to the nature of his role, the fact that it involved a lesser degree of culpability on the part of Mr. McConnell and that if he made a statement acknowledging his involvement he might or would end up with a lesser sentence than Mr. Frank McBrearty Junior. I am satisfied that this was interpreted by Mr. McConnell as the offer of a "deal" but he refused to make a statement. Mr. Nicholson denies that any of this occurred and Detective Garda Casey accepts the possibility that there was a discussion with Mark McConnell about his lesser role in the death, but denies that the question of his receiving a lesser sentence was discussed at all. I do not accept the evidence of Mr. Nicholson that these matters were not discussed at all with Mr. McConnell. I do not accept the evidence of Detective Garda Casey that the issue of a possible lesser sentence was not discussed. I am satisfied that the discussion that took place was unwise and bore all the hallmarks of an inducement to make a statement. It should not have been said but it did not amount to the offer of a "deal".

3. I am also satisfied that Garda Nicholson approached Mr. McConnell during the day and asked him to withdraw this complaint.

4. Mr. McConnell gave evidence that he complained to his solicitor that in the course of the first interview with Garda Nicholson and Detective Garda Casey, he was threatened that the Gardaí had told a member or members of the Barron family that he and Frank McBrearty Junior had killed the Late Richard Barron and that, if attacked by any member of the Barron family, no Garda protection would be provided or available to him. Mr. McConnell took that to be a threat or a form of intimidation on the

part of the interviewers. Both Garda Nicholson and Detective Garda Casey deny making any threat to Mr. McConnell of this nature. However, I am satisfied that something was said to Mr. McConnell about possible trouble from certain members of the Barron family, who were said to know who was responsible for the death of the Late Richard Barron. It is clear from the evidence that I have heard to date at the Tribunal that members of the Barron family suspected Mark McConnell and Frank McBrearty Junior were involved in the death of the Late Richard Barron. A suspicion certainly existed for months in advance of the second arrest of Mr. McConnell: Frank McBrearty Junior and Mark McConnell were arrested on suspicion of the murder of the Late Richard Barron on the 4th of December 1996, a fact that was widely known. I am also satisfied that something was said to Mr. McConnell during the course of this interview to the effect that he could be approached or assaulted by members of the Barron family, at some time when An Garda Síochána was not in the vicinity to offer assistance to Mr. McConnell. Mr. McConnell interpreted this as a threat as set out in his complaint to the solicitor. This belief was strengthened, in his own mind, when he was in fact seriously assaulted in Raphoe by members of the Barron family on the 3rd of February 1998 and suffered a broken leg and other injuries. I am not satisfied that that incident in 1998 arose out of or was a fulfilment of a threat allegedly made in the course of this interview. I am satisfied that the remarks were made to convey to Mr. McConnell that if he made a statement accepting his involvement in the death, the possibility of any such behaviour might recede. I am not satisfied that Mr. McConnell was told that Gardaí would not protect him if he were to be assaulted by members of the Barron family. However, I am satisfied, from Mr. McConnell's perspective, that these remarks were capable of being interpreted as a threat, particularly in the light of the behaviour of An Garda Síochána towards him and his extended family up to that point in the course of the Barron investigation. These remarks were calculated to impress upon Mr. McConnell that the making of a statement of admission would likely mollify the anger of the Barron family and make less likely any violence on the part of any of their members. These remarks were unwise and should not have been made. It was a weak form of inducement that did not work.

5. Detective Gardaí Patrick Maguire and John McHale conducted two interviews with Mr. McConnell. Mr. McConnell said that they also had threatened him that Stephen Barron and his family would come and get him, that there would not be any Garda protection for him and that this

could happen at any time in Raphoe or when he was going into his house. The two detectives accept, and indeed it was recorded in their notes of interview, that Detective Garda McHale questioned him as to whether he would have a problem if he met the Barrons in the streets of Raphoe and whether there would be any animosity between them that might lead to violence. However, both detectives denied that they threatened Mr. McConnell that there would be no Garda protection available to him in those circumstances. Detective Garda McHale said he was simply trying to keep the conversation going in the interview room because they were not making any progress. He thought his questions might help Mr. McConnell to open up to the Gardaí because if he was having difficulties with the Barrons he might start talking about that and be more open in relation to other things. The essential difference between the Gardaí and Mr. McConnell on this matter is whether he was told that the Garda protection would not be available to him if he were to be attacked by any member of the Barron family. Having regard to what I accept was said to Mr. McConnell earlier in the day by Garda Nicholson and Detective Garda Casey, I am satisfied that Mr. McConnell has, understandably, an exaggerated recollection of what was said to him by Detective Gardaí McHale and Maguire and has conflated the questions which they posed, in his own mind, with those posed by the other interviewers. He saw all of these questions as a further threat. I am not satisfied on the balance of probabilities that Detective Gardaí McHale and Maguire intended to threaten or threatened Mr. McConnell that he would not be provided with Garda protection in the event of being assaulted by any member of the Barron family. The tone and substance of the rest of their interviews with Mr. McConnell do not suggest aggression or threats on their part.

6. Mr. McConnell made no allegation of physical or verbal abuse in respect of any of these interviews. His main complaint focussed on a deal that had been offered to him by Garda Nicholson. He was released without making any further complaint at 21.02 hours.

7. Once again a set of interview notes in respect of the first interview was not available or mislaid. Detective Garda Casey noted that these notes were referred to in the notes of the fourth interview and were read over to Mr. McConnell at that stage. I am astonished that, having taken the trouble to re-arrest Mr. McConnell on suspicion of murder with a view to putting the alleged confession of a co-suspect to him, these notes were not properly accounted for and preserved. Their absence from the system passed without notice or comment up to and including the finalisation of

the Lennon report on the Barron investigation in March 1998. This is further evidence of the lack of discipline and negligence with which this investigation was carried out.

PART III

The Arrest and Detention of Mark McConnell on the 1st of October 1998

Background

4.236. This arrest occurred in the course of the investigation by Detective Sergeant Gerard Connolly and Detective Garda Michael Reynolds of the allegation made by Bernard Conlon that two men had threatened him at his home at 61 Cartron Bay on the evening of the 20th of July 1998. The circumstances surrounding this incident and the whole background to this arrest and detention are set out in the third report of the Tribunal in respect of Term of Reference (d).[712] The allegation made by Mr. Conlon was false. In the early hours of the morning of the 21st of July 1998 a call was received at Sligo Garda Station in respect of this incident in response to which Detective Sergeant Connolly and Detective Garda Reynolds called to the home of Bernard Conlon. Bernard Conlon complained to them that two men had called to his door. One had asked if he was:

> … the informer Conlon, took a bullet from his pocket and threatened him with it if he attended at Letterkenny District Court to give evidence in a case versus the McBreartys. He was very scared and stated that he feared for his life. He stated that he had seen one of these people at Letterkenny District Court on a number of occasions.[713]

Mr. Conlon at the time appeared to the two Gardaí to be upset and trembling and the following morning he made a detailed statement concerning the incident at Sligo Garda Station to Detective Garda Reynolds. In that statement he said:

> At 11.45 p.m. I heard a knock on the front window of the sitting room. It was dark outside and the street lighting outside the house was not on. I went to the front door and on my way to open the door I put on the porch light. As soon as I opened the door I saw two males standing outside. One of the fellows said to me, "Are you informer Conlon? I seen you in the Court in Letterkenny on a few occasions, you are a State witness against Frank McBrearty, Senior". I said to them "it was none of your business" and he said back to me "it is our business." I was very frightened at this stage as I was on my own and I have no phone in the house. The spokesman took a silver coloured bullet from his jacket pocket and held it

[712] Report on the circumstances surrounding the Arrest and Detention of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999 – Term of Reference (d) submitted to the Minister for Justice, Equality and Law Reform on the 28th of March 2006 (Prn A6/0449).
[713] Tribunal Documents – Silver Bullet, pages 234-235.

> up to me and said, "there's one for you and one for White and that White had a trailer missing and he will be missing too." I knew straight away that those boys were serious and knew what they were talking about. I knew White was a plain clothes Guard in Letterkenny. I started going into a trance when the fellow that was doing all the talking said, "I saw your statement". I could feel myself shaking and getting weak at the knees. I banged at the door and as I was doing this one of them shouted "if you turn up in court the next day you will get the contents of what I have in my pocket."[714]

4.237. In the course of this statement Mr. Conlon also gave a description of one of the two men who called to his house as follows:

> I even now can see those two boys at my door and it's something that will stick in my memory forever. The fellow that did all the talking, I'd describe him as a stout lump of a lad with scraggy hair and a goatee whisker, about 5ft. 7 inches and aged between 22 and 25 years. His hair was black. He had a rough appearance and spoke with a rough northern accent. He was wearing a tee-shirt which I described as brown to darkish and he had a brown longish leather jacket. This is the man that produced the bullet. I am almost certain I saw this lad in the Court House in Letterkenny the last time I attended. He appears to be with a gang that was at the court. I'd say I'd know him again if I saw him. He also wore a pair of white and blue runners which I clearly remember observing.[715]

4.238. In his evidence to the Tribunal and in an extensive statement made concerning these events on the 9th of June 2005, Inspector Gerard Connolly said that within a day or two of the incident he telephoned Superintendent Kevin Lennon at Letterkenny Garda Station and read to him over the phone a description of the two culprits from the statement of complaint that had been taken by Detective Garda Reynolds from Mr. Conlon on the 21st of July 1998. Superintendent Lennon informed him that he thought that one of the descriptions fitted Mark McConnell. He asked Superintendent Lennon if he could nominate somebody who would know Mark McConnell and with whom he could liaise. Superintendent Lennon suggested that he contact Detective Sergeant John White, who had previously served in Raphoe. He did so and informed Detective Sergeant White that Superintendent Lennon thought that one of the descriptions fitted Mark McConnell and Detective Sergeant White confirmed to him that "it probably did".[716] Over the following weeks Detective Sergeant Connolly liaised with Detective Sergeant White with a view to arranging an occasion on which Mark McConnell would be present with other men and at which Bernard Conlon

[714] Tribunal Documents – Silver Bullet, pages 118-119.
[715] Tribunal Documents – Silver Bullet, page 119.
[716] Tribunal Documents – Mark McConnell, pages 22-23.

would have an opportunity to identify the man whom he had described. Eventually, Mr. Conlon picked out Mark McConnell on such an occasion, who was then arrested in connection with the alleged threat.

Identification and Arrest

4.239. Mr. Conlon was brought to Letterkenny on the 1st of October 1998 where it was expected that Mr. McConnell would attend as a witness in the District Court that morning. As Mr. McConnell approached the courthouse he was identified by Bernard Conlon as one of the culprits. He was then arrested at 11.07 hours by Detective Sergeant Connolly under section 30 of the Offences against the State Act, 1939 on suspicion of being concerned in the commission of a firearms offence under the Firearms Act, 1925 as amended, for the possession of a bullet at 61 Cartron Bay, Sligo on the 20th of July 1998. Detective Sergeant Connolly said that he informed Mr. McConnell:

> That he had been identified as the man that had made the threats and produced the bullet. I then cautioned him … he became very abusive towards me and used foul language towards me. At 11.07 a.m. I informed him that I was arresting him under Section 30 of the Offences against the State Act, 1939 … I again cautioned him … I informed him that I was taking him to Letterkenny Garda Station for questioning. He was again very abusive towards me. He called me a bastard a f… and a w…. He told me that he would take me to the High Court and that he would take everything from me and that he would put me and my b… family on the side of the road. He stated his name was Mark McConnell.[717]

Detective Sergeant Connolly said that Mr. McConnell did not resist arrest in any way. He also said that when Mr. McConnell became abusive a number of uniformed Gardaí approached a crowd that had gathered around him and Mr. McConnell. He requested one of these Gardaí to provide a patrol car in order to convey Mr. McConnell to Letterkenny.

4.240. Detective Sergeant Connolly gave three reasons for the arrest of Mr. McConnell on the 1st of October 1999 in his statement and in evidence. They were:

> (a) Bernard Conlon picked out Mark McConnell in an informal identification on the 1st of October 1998. I felt I was obliged to continue the investigation and following the informal identification the continuance of it necessitated the arrest of Mark McConnell.
>
> (b) Superintendent Kevin Lennon had informed me within a day of so of the silver bullet incident that he thought that the description given by

[717] Tribunal Documents – Mark McConnell, page 11.

Bernard Conlon in his statement of complaint fitted Mark McConnell.

(c) I believed the account given by Bernard Conlon.[718]

4.241. Inspector Connolly also acknowledged that prior to the informal identification, the information available to him was insufficient to justify an arrest. This stage was reached when Mr. Conlon identified Mark McConnell as the man who had threatened him and produced the bullet to him.[719] Of course, all of the allegations made by Bernard Conlon against Mark McConnell were false, as was his identification of Mark McConnell outside Letterkenny courthouse.[720]

4.242. Mr. McConnell, in evidence to the Tribunal, described how he came to be at Letterkenny District Court that day. He said that a number of weeks before the 1st of October 1998 Garda Tom Kilcoyne came out to his house in respect of an assault case which arose out of an incident on New Year's Eve 1997. A person had jumped on the stage at a venue in Letterkenny at which he was performing and tried to assault him. The person was related to the Barron family through marriage and Mr. McConnell was the alleged victim of the assault. He was also assaulted by a woman who became involved in the incident. Garda Kilcoyne called to inform him that both parties were pleading guilty in the case but that there was no reason for him to attend at Letterkenny District Court. Mr. McConnell was suspicious of this as he had fully intended to attend the court. He had previously attended court on a number of occasions but the matter dragged on. A week before the 1st of October 1998 he telephoned the Garda Station in Letterkenny in respect of the case, which was now listed for that date. He was initially told that he need not attend the District Court if a plea of guilty was being entered. Before he put the phone down he was asked his name, which he gave. However, he was telephoned back within one or two minutes by the same Garda, whom he believed to be in a somewhat anxious state, who told him:

> *I think you should appear, even if they are pleading guilty.*[721]

4.243. Mr. McConnell described his arrest on the 1st of October 1998 when giving evidence to the Tribunal. He was stopped when walking towards the courthouse and was arrested by Detective Sergeant Connolly. He said he was completely shocked "another bolt out of the blue". He said:

> *I was bundled into the back of the car in front of numerous people … I was really ashamed to tell you the truth, in the middle of Letterkenny, the very centre of Letterkenny and put into the car. I tried to get out of Gerry Connolly what I was being arrested for and I just pleaded with him that I had nothing to do with it and*

[718] Tribunal Documents – Mark McConnell, page 28.
[719] Tribunal Documents – Mark McConnell, pages 28-29.
[720] See Chapter 3 of the Tribunal's Third Report.
[721] Transcript, Day 502, page 46.

asked them had they families of their own, had they children and wives of their own and could they not see what was going on here in Donegal and they just told me to keep quiet and took me to the Garda station.[722]

4.244. Mr. McConnell was then conveyed by Detective Sergeant Connolly and other Gardaí to Letterkenny Garda station and he commenced a period of detention under section 30 of the Offences Against the State Act. This provision allows for the detention of an arrested person for an initial period of twenty-four hours, which may be extended by an officer, not below the rank of chief superintendent, for a further period of twenty-four hours. Mr. McConnell was arrested at 11.07 hours on the 1st of October 1998 and released at 11.00 hours on the 3rd of October 1998. He was detained for the full period of forty-eight hours.

4.245. The following is an account of the main events recorded in respect of Mr. McConnell's detention as set out in the custody record:[723]

Occurrence on 1st of October 1998	Detail of Occurrence	Comment
11.30 hours	Prisoner searched and taken to interview room by Detective Sergeant Connolly and Detective Garda Keating (first interview).	
11.36 hours	Mr. McConnell was informed that no solicitor was available from McMullin Solicitors. Detective Sergeant Connolly left the interview room. Mr. McConnell informed the member in charge that he did not want any other solicitor but also requested that the member in charge phone Mr. Kieran Dillon's office and ask him to attend at the Garda station whenever he was free to do so.	
11.46 hours	Detective Sergeant Connolly entered the interview room.	
11.42 hours	The member in charge phoned Quinn Dillon solicitors and left a message for Mr. Dillon.	
11.50 hours	Solicitor Sinead O'Brien arrived at the Garda station and was allowed immediate access to Mr. McConnell.	
12.05 hours	Ms. O'Brien left the interview room and consulted with the member in charge.	
12.07 hours	Ms. O'Brien returned to the interview room to Mr. McConnell.	

[722] Transcript, Day 502, Q.137-138.
[723] Tribunal Documents – Arrest & Detention of Mark McConnell 1-3 October 1998, page 104-122.

12.08 hours	Ms. O'Brien left the interview room. Detective Sergeant Connolly and Detective Garda Keating entered the interview room. Mrs. Hannah McConnell, Mr. McConnell's mother spoke to Garda Finan on the telephone. She said that Detective Sergeant White "is the most evilest bastard that ever lived".	
12.20 hours	Ms. Róisín McConnell, Mr. McConnell's wife phoned and requested to speak with Mr. McConnell and he agreed to speak to her.	
12.24 hours	Mr. McConnell finished the phone call with his wife and returned to the interview room with Detective Sergeant Connolly and Detective Garda Keating.	
12.50 hours	Mr. McConnell was checked in the interview room and had no complaints.	
13.10 hours	Mr. McConnell was again checked in the interview room and he had no complaints. He refused the offer of a dinner.	
13.40 hours	Mr. McConnell was allowed to go to the toilet and had no complaints.	
13.45 hours	Detective Sergeant Connolly and Detective Garda Keating left the interview room (end of first interview). Detective Garda Joseph Foley and Detective Garda Frain entered the interview room (second interview).	
13.55 hours	The member in charge spoke to Mr. McConnell in the interview room. He had no complaints and refused the offer of a dinner.	
14.05 hours	The member in charge went to the interview room and Mr. McConnell alleged that he had been assaulted by Detective Garda Joseph Foley. He stated that he was struck on the shoulder. He was asked if he required a doctor and he stated that he did not.	
14.20 hours	Solicitor, Sinead O'Brien, arrived at the Garda station and was taken to the interview room. Detective Gardaí Foley and Frain left the interview room.	
14.35 hours	The solicitor left the interview room and Detective Gardaí Foley and Frain returned to continue the interview.	

14.40 hours	Mr. McConnell received a cup of coffee.	
15.00 hours	The member in charge checked on Mr. McConnell who was "ok".	
15.10 hours	Solicitor, Cathal Quinn, phoned requesting to speak to Mr. McConnell who was brought to the phone.	
15.20 hours	The phone call between Mr. McConnell and his solicitor ended. Mr. McConnell requested to use the toilet. On the way he met Superintendent Lennon and said to him, "Is this another one of your tricks, Lennon it won't work this time". On the return journey from the toilet to the interview room he again addressed Superintendent Lennon with the words "these tricks won't work Lennon and they never will".	
15.25 hours	Mr. McConnell was returned to the interview room with Detective Gardaí Foley and Frain.	
15.30 hours	Mr. McConnell was taken from the interview room to the cell and again addressed Superintendent Lennon with the words, "Your the devil, the f… devil". (end of second interview).	
16.35 hours	Mr. McConnell was taken from the cell to the interview room by Detective Sergeant Connolly and Detective Garda Keating (third interview).	
17.13 hours	Cathal Quinn, solicitor, requested to speak to Mr. McConnell on the telephone and Mr. McConnell was brought to the phone.	
17.21 hours	The phone call terminated and Mr. McConnell was returned to the interview room.	
17.40 hours	Mr. McConnell was checked in the interview room and found to be "ok"	
18.15 hours	Mrs. Róisín McConnell called to the station to see Mr. McConnell.	
18.17 hours	Mrs. McConnell was brought to the interview room to speak with her husband.	
18.25 hours	Solicitor, Ms. Sinead O'Brien, called to see Mr. McConnell together with Mr. Noel McConnell, Mr. McConnell's father.	
18.27 hours	Mr. Noel McConnell was taken to the interview room to see Mark McConnell together with his solicitor. The solicitor left the interview room in	

	order to allow Mark McConnell a private conversation with Noel McConnell and Róisín McConnell.	
18.40 hours	Noel McConnell and Róisín McConnell left the interview room and left the station. Mr. McConnell was then taken to the toilet by Detective Sergeant Connolly.	
18.42 hours	Mr. McConnell was taken to the interview room accompanied by Detective Sergeant Connolly.	
18.45 hours	Ms. Sinead O'Brien, solicitor, went to the interview room to consult with Mark McConnell. No Garda was present during the consultation. Ms. O'Brien objected to the holding of an identification parade. She asked the member in charge to note this objection in the custody record. She spoke to Detective Sergeant Connolly in relation to the identification parade. The solicitor and Mark McConnell remained in the interview room.	
19.05 hours	Ms. O'Brien left the Garda station.	
19.06 hours	Detective Garda Keating and Detective Sergeant Connolly returned to the interview room.	
19.45 hours	Mr. McConnell was provided with a meal.	
20.15 hours	Mr. McConnell was taken from the interview room to a cell for a rest period (end of third interview).	
20.45 hours	Mr. Cathal Quinn phoned requesting to speak to Mr. McConnell, who was brought to the phone.	
21.00 hours	The telephone call terminated and Mr. McConnell was returned to the cell.	
21.20 hours	Detective Sergeant Connolly and Mark McConnell went to the interview room (fourth interview).	
22.30 hours	Detective Sergeant Connolly left the interview room (end of fourth interview). Detective Gardaí McHale and Scanlon entered the interview room (fifth interview). Mr. McConnell requested a cup of tea and was provided with same by D/Garda McHale.	
23.00 hours	Mrs. Róisín McConnell telephoned the station and asked to speak with Mr. McConnell. This call was taken and was supervised by Detective Garda McHale.	

23.05 hours	Mr. McConnell was returned to the interview room with Detective Gardaí McHale and Scanlon.	
23.35 hours	Mr. McConnell was checked in the interview room and was found to be "ok".	
23.50 hours	Mr. Noel McConnell called to the station to see Mark McConnell.	
23.55 hours	Noel McConnell was taken to see his son in the interview room (end of fifth interview). Shortly afterwards Noel McConnell left the Garda station and Mark McConnell was placed in a cell.	
Occurrence on 2nd of October 1998	**Detail of Occurrence**	**Comment**
08.15 hours	Mr. McConnell was taken to an interview room by Detective Garda Frain (sixth interview).	
08.50 hours	Detective Garda Foley entered the interview room.	
09.15 hours	Mr. McConnell received a breakfast.	
09.35 hours	Ms. O'Brien, solicitor, called to see Mark McConnell and was taken to the interview room. Detective Gardaí Foley and Frain left the interview room.	
09.55 hours	The solicitor left the Garda station. Detective Gardaí Frain and Foley returned to the interview room.	
10.05 hours	Detective Gardaí Foley and Frain left the interview room (end of sixth interview). Detective Garda Reynolds entered the interview room (seventh interview).	
10.30 hours	Mr. McConnell's wife telephoned.	
11.00 hours	Chief Superintendent Denis Fitzpatrick extended the period of detention of Mark McConnell for a period of twenty-four hours. Mr. McConnell was informed that his detention had been extended and notice to this effect was read over to him.	
11.14 hours	Róisín McConnell telephoned the Garda station.	
11.15 hours	Mark McConnell was taken to the day room to take a telephone call from his wife.	
11.20 hours	Prisoner taken to interview room by Detective Garda Reynolds.	
11.30 hours	Detective Sergeant Connolly entered the interview room.	

12.15 hours	Detective Sergeant Connolly and Detective Garda Reynolds left the interview room and Mr. McConnell was placed in a cell for a rest (end of seventh interview).	
12.55 hours	Mark McConnell's mother called and he was brought to the day room to take the telephone call.	
13.10 hours	Mr. McConnell was returned to the cell.	
13.15 hours	Mr. McConnell was given a cup of tea.	
13.30 hours	Mr. McConnell was taken to an interview room by Detective Gardaí Jennings and Frain (eighth interview).	
14.20 hours	Mrs. Róisín McConnell called to the station and was allowed to speak to her husband.	
14.35 hours	Mrs. McConnell left the station and Detective Gardaí Jennings and Frain resumed the interview.	
15.10 hours	Detective Gardaí Jennings and Frain left the interview room (end of eighth interview). Detective Garda Reynolds entered the interview room (ninth interview).	
15.20 hours	Detective Sergeant Connolly entered the interview room.	Mr. McConnell alleges that his injured leg was pushed off a chair by Detective Garda Reynolds.
16.25 hours	Dr. McColgan was taken to the interview room. Detective Sergeant Connolly left the interview room and the member in charge explained to Mark McConnell that Dr. McColgan was called on behalf of An Garda Síochána to examine him as he had made a complaint of assault. He said he made no complaint and did not wish to be examined. Detective Garda Reynolds was present.	
16.32 hours	Dr. McColgan left the station.	
16.35 hours	Detective Sergeant Connolly returned to the interview room.	
17.30 hours	Mr. McConnell was taken from the interview room to the day room to receive a phone call from Cathal Quinn, solicitor (ninth interview).	

17.45 hours	Mr. McConnell was returned to the cell where a meal was provided.	
18.05 hours	Ms. Sinead O'Brien, solicitor, called and was allowed to speak to Mr. McConnell in the interview room.	
18.40 hours	Solicitor left and Mr. McConnell was returned to the cell.	
18.50 hours	Mr. McConnell was taken from the cell and taken to an interview room by Detective Garda Carroll.	
19.00 hours	Mr. McConnell was checked in the interview room and found to be "ok".	
19.10 hours	Detective Garda Tolan entered the interview room (tenth interview).	Mr. McConnell alleged that a gun was placed on the table by Detective Garda Tolan.
19.40 hours	Detective Gardaí Carroll and Tolan left the interview room (end of tenth interview). Detective Sergeant Connolly and Detective Garda Reynolds entered the interview room (eleventh interview).	
21.00 hours	Mark McConnell's wife attended the station with Mr. Noel McConnell and was allowed to speak to Mr. McConnell in the presence of Detective Garda Reynolds.	
21.05 hours	Mrs. Róisín McConnell left the station. Mr. Mark McConnell asked the member in charge to call back his wife for a message. When they were about to leave the member in charge called Mrs. McConnell back because her husband had a message for her. She refused to come in. He told Mr. McConnell of her decision.	
21.10 hours	Detective Sergeant Connolly returned to the interview room.	
21.30 hours	Mr. McConnell was returned to the cell (end of eleventh interview).	
21.35 hours	Mr. McConnell was taken to the day room to receive a telephone call from his solicitor, Ms. Sinead O'Brien.	
21.40 hours	Mr. McConnell was returned to the cell.	
21.50 hours	Superintendent Lennon gave the member in	

	charge permission to photograph Mr. McConnell and he was so informed.	
21.55 hours	Mr. McConnell was returned to the day room to receive another phone call from his solicitor, Ms. O'Brien.	
22.00 hours	Mr. McConnell was returned to the cell.	
22.15 hours	Mr. McConnell was taken to the interview room to be interviewed by Detective Gardaí Anderson and Carroll (twelfth interview).	
22.55 hours	Mr. McConnell was placed in a cell (end of twelfth interview).	
Occurrence on 3rd of October 1998	**Detail of Occurrence**	**Comment**
08.00 hours	Mr. McConnell was taken from the cell to the toilet area to wash.	
08.05 hours	Mr. McConnell was then taken to the interview room where he was interviewed by Detective Sergeant Connolly and Detective Garda Reynolds (thirteenth interview).	
08.10 hours	Breakfast was supplied to Mr. McConnell and the two detectives left the interview room.	
08.40 hours	Detective Sergeant Connolly went into the interview room.	
09.00 hours	Mrs. Hannah McConnell, Mark McConnell's mother, phoned the station to speak to her son. Mr. McConnell was taken from the interview room to the day room and spoke to his mother on the phone.	
09.03 hours	The phone call terminated and Mr. McConnell was returned to the interview room by Detective Garda Reynolds. Detective Sergeant Connolly left the interview room.	
09.15 hours	Detective Sergeant Connolly returned to the interview room.	
09.35 hours	Ms. Sinead O'Brien contacted the station to enquire as to whether Mr. McConnell was being charged.	
09.47 hours	Hannah and Noel McConnell called to the station to see their son.	

09.50 hours	Hannah and Noel McConnell were taken to the interview room to visit with Mark McConnell.	
09.55 hours	Mr. McConnell's parents left the interview room.	
10.08 hours	Mrs. Róisín McConnell telephoned and asked if she could speak with her husband. She was informed that her husband was now in interview and had just received a visit.	
10.30 hours	Detective Garda Reynolds left the interview room.	
10.35 hours	Detective Garda Reynolds returned to the interview room. At this stage a number of doctors were telephoned and requested to attend at the station. They were unable to attend.	
10.45 hours	Mr. McConnell was photographed by Detective Garda Reynolds.	
11.00 hours	Mr. McConnell was released from custody. The custody record notes the following "prisoner released without his wedding ring. Wedding ring not available to give to the prisoner at the time of his release. Prisoner said he had no complaints on his release after being asked by myself. He said he had no complaints but refused to sign the custody record."	

4.246. Four issues emerged from the papers and the evidence concerning this detention which I consider important. The first relates to an allegation initially made by Mark McConnell that he was assaulted by Detective Garda Joseph Foley, which he later withdrew. The second concerns an allegation made by Mark McConnell that Detective Garda Matt Tolan produced a gun and placed it on a table in front of Mr. McConnell in the course of an interview. The third issue concerns a complaint made by Mark McConnell that Detective Garda Michael Reynolds in the course of an interview pushed his injured leg off a chair causing pain to Mr. McConnell. The fourth issue concerns the temporary loss of Mr. McConnell's wedding ring when he was leaving the Garda station. The other evidence which I received concerning the lengthy interviews conducted over the forty-eight hour period of his detention does not, in my view, indicate any other area of controversy as between Mr. McConnell, his interviewers or anybody else dealing with him in the course of that detention.

4.247. The evidence also indicates to me that Mr. McConnell was clearly annoyed at the fact that he had been arrested for a third time. This was completely understandable. His arrest was based on completely false evidence. He was entirely innocent of any wrongdoing in the matter. He felt, understandably, that

he was the subject of either a conspiracy between the Gardaí and Bernard Conlon to frame him, or a completely bungled police investigation that failed to focus on the reality that the complainant had extensive criminal convictions, had adequate opportunity to see him in the District Court in Letterkenny during the course of the liquor licensing cases brought against the McBreartys, and was telling a very unlikely story. This belief and anger were expressed fully to the interviewers in robust terms during the course of the detention.

Interviews on the 1st of October 1998

4.248. In the course of the first day of his detention Mr. McConnell was interviewed by Detective Sergeant Gerry Connolly and Detective Garda P.J. Keating between 11.30 hours and 13.45 hours (the first interview) and later between 16.35 hours and 20.15 hours (the third interview). Detective Sergeant Connolly interviewed Mr. McConnell alone between 21.20 hours and 22.30 hours (the fourth interview).

4.249. In the course of interview Mr. McConnell was questioned about the Bernard Conlon allegation. Mr. Keating told the Tribunal that he had concerns about Mr. McConnell's detention. He thought, at the time, that Mr. McConnell was answering questions and had explained himself quite well. He was able to give answers concerning his movements at the time of the alleged offence. He did not believe that Mr. McConnell was telling them lies. He felt that the allegation made by Bernard Conlon was unusual. From what he knew of Mark McConnell he thought him to be a sensible person and not the type of individual that would go and threaten Mr. Conlon in the way alleged. He did not know a great deal about Bernard Conlon but was aware that he had previous convictions, having been told this by Detective Sergeant Connolly. He did not know that Mr. Conlon was asked to remain at Letterkenny Garda Station to make himself available for the purpose of holding an identification parade during the course of the detention. He recalled that he had a concern and reluctance to get involved in this investigation. It was a Sligo case. It was related to the McBrearty liquor licensing cases and the issue as to whether this bordered on harassment of Mr. McConnell crossed his mind. He did not convey any of these concerns to any of his superior officers. He said:

> *I'm trying to think … what way I thought about it obviously the way I thought about it was that somebody was trying to finger this person Mark McConnell.*

He acknowledged that it probably occurred to him at the time that somebody perhaps within An Garda Síochána may have been "pulling (Mr. Conlon's)

strings" and he believed that this thought also occurred to some of his colleagues. He said:

> *I don't remember discussing it with anybody. I'd say possibly people mentioned it in passing, you know, but they had done their duty and done what they were supposed to do.*

He said that the reason he did not convey his suspicions to any superior officer was lack of proof:

> *I suppose proof and you would need a certain amount of proof to go to a superintendent or a chief superintendent and say these are my reasons why I'm not happy with all of this.*[724]

4.250. It was indicative of the difficulty that Detective Sergeant Connolly had in obtaining willing interviewers at Letterkenny Garda station that he was obliged to conduct an interview on his own with Mr. McConnell between 21.20 and 22.30 hours (fourth interview). The notes of that interview record how Mr. McConnell expressed his strong belief that Detective Sergeant White and Superintendent Lennon were behind the allegations made by Bernard Conlon. Mr. McConnell verbally abused Detective Sergeant Connolly about his involvement in the investigation. He said that ultimately Bernard Conlon would be exposed as a liar under cross-examination in court even if he were coached as a witness. He said that the Gardaí, including Detective Sergeant Connolly, Detective Garda Reynolds, Detective Sergeant John White and Superintendent Kevin Lennon, together with Bernard Conlon, "will be shown up … it will all come out. We'll prove you wrong".[725] It is clear that Mr. McConnell was strongly assertive in his determination to establish the truth of his innocence of the allegations made by Bernard Conlon and that he fully intended to do so.

4.251. This strong and assertive attitude and resentment at being falsely accused and arrested was also manifest from his encounter with Superintendent Lennon during the course of the afternoon. He told Superintendent Lennon when passing him in the corridor that his tricks would not work and that he was "the devil".[726]

False Allegation of Assault

4.252. The second interview of the day was conducted by Detective Garda Joseph Foley and Detective Garda James Frain between 13.45 hours and 15.30 hours. Early in the course of this interview, an incident occurred which was described in the following way by Detective Garda Foley:

[724] Transcript, Day 524, Q.418, Q.436 and Q.435 and pages 96-110.
[725] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 129-130.
[726] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 109.

> *It arose … I would think ten minutes after I entered the room or approximately that. He was very hostile initially … and I was standing beside him and I just put my hand lightly on his shoulder. It was more of a gesture just to settle down and we'll get through this and talk about it. Just to probably enhance the relationship between us and him at the time … I think the interview had gone on and Mark was very, very annoyed and very, he was non-cooperative initially to my recollection … Sometimes I had a habit to walk around the room while I was speaking to somebody. … There was certainly no assault in it, I think Mr. McConnell knows himself, he stated that. That's my recollection of it. I don't think it was really a greeting. He said it was a greeting, I wasn't quite sure if it was a greeting.*[727]

4.253. Detective Garda Foley said that at this point he went straight to the member in charge, Garda Martin Finan, and told him of the allegation. He thought that he may have told Mr. McConnell "to settle down" or something of that nature and that he had meant absolutely nothing by touching him on the shoulder.[728]Detective Garda Frain, who was in the interview room at the time, told the Tribunal that when Mr. McConnell made the allegation of assault, steps were taken to ensure that the proper measures were put in place to facilitate the making of the complaint. Garda Finan was requested to come to the interview room and Mr. McConnell was asked whether he required a doctor. This was done to ensure that all Mr. McConnell's reasonable requests in relation to the matter were dealt with together with their own "safety and welfare" in the face of an allegation from a prisoner.[729]

4.254. Garda Martin Finan, the member in charge, recorded the incident in respect of Mr. McConnell at 14.05 hours in the custody record as follows:

> Went to interview room where prisoner alleged he had been assaulted by D/Garda Foley. He stated he was struck on the shoulder. I asked him if he required a doctor, he stated he did not.[730]

Sergeant Finan said in evidence that he went to the interview room and spoke to Mr. McConnell:

> *I asked him in relation to the allegation, had he been assaulted, and he stated to me yes, that Detective Garda Foley had struck him on the shoulder. I asked him then did he require medical attention. He said no, that he didn't require medical attention. I then said to*

[727] Transcript, Day 525, Q.783-795.
[728] Transcript, Day 525, Q.796-797.
[729] Transcript, Day 524, Q.285-289.
[730] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, page 109.

> *him that I'd have to leave the interview room because I was going to get the GSE 1 to take the complaint from him and he said to me, no, no, no Guard he says that's all right he says I'll look after this myself. So I took it from that that he wasn't actually making a complaint to me in relation to the assault.*[731]

At 14.20 hours Ms. Sinead O'Brien, solicitor, visited Mr. McConnell for fifteen minutes and she made no complaint to Sergeant Finan about the matter.[732] Ms. Sinead O'Brien had no memory at all of her dealings with Mr. McConnell in the course of his detention[733] and no notes of her attendances were available to the Tribunal.

4.255. For his part, Mark McConnell, accepted in evidence that he had made a false complaint of assault against Detective Garda Foley. He said:

> *I might have said that he came in and placed his hand on my shoulder or something like that but there shouldn't really [be] a complaint lodged really because it wasn't. … Because all Joe Foley done when he came into the interview room was, how's it going, Mark, and went like that on my shoulder. To kind of counteract anything that I thought might have happened that day I said to Joe Foley are you assaulting me or something like that, and what are you doing, aye, because I didn't want to be assaulted again while in custody …*[734]

4.256. Inspector Connolly told the Tribunal that the following day, the 2nd of October 1998, he made arrangements for the attendance of Dr. Brian McColgan at Letterkenny Garda station to examine Mr. McConnell in the light of the recorded allegation of assault. He said that he had witnessed Detective Garda Foley clapping Mr. McConnell on the shoulder as a greeting on the changeover at the commencement of the second interview at 13.45 hours. He said that Mr. McConnell then said that that was an assault. This may not be correct having regard to the fact that the member in charge visited the interview room at 13.55 hours and the matter was only reported to Garda Finan at 14.05 hours. It also conflicts somewhat with the evidence of Detective Garda Foley, who said that the incident occurred sometime into the interview.[735] Dr. McColgan's attendance is recorded in the custody record on the 2nd of October 1998 at 16.25 hours as follows:

> Dr. McColgan attended and I took the doctor to interview room. D/Sergeant Connolly left the room. I explained to Mark McConnell that Dr.

[731] Transcript, Day 525, Q.448-458.
[732] Transcript, Day 525, Q.460-462.
[733] Transcript, Day 504, Q.404-479.
[734] Transcript, Day 502, Q.153-161 and Transcript, Day 503, Q.1-20.
[735] Transcript, Day 520, Q.440-451.

> McColgan was called on behalf of the Gardaí to examine the prisoner as he had made a complaint of assault. He said he made no complaint and did not wish to be examined. D/Garda Reynolds was present. Dr. McColgan left the station after the prisoner refused to be examined by the doctor.[736]

Dr. McColgan himself had no memory of this event.[737]

4.257. At the time of the Doctor's attendance, Mr. McConnell was being interviewed by Detective Sergeant Connolly and Detective Garda Reynolds. Detective Garda Reynolds remained in the room and made a note of what happened, which contains the following further material:

> Mr. McConnell says he made no complaint and it's all a joke, I have no injuries only an old scar on my leg. He lifts up his trousers and shows the scar to the Doctor. Mark McConnell stated that I told my solicitor that it was a joke. He then told Garda Rouse that D/Garda Foley had tapped him on the shoulder yesterday. Dr. McColgan made notes and leaves the interview room at 4.33 pm. Mark then says I hope there is not a complaint lodged, it's all a joke. Goes to day room for telephone call.[738]

Mr. McConnell acknowledged in evidence that this is a broadly accurate account of what happened.[739]

4.258. I am satisfied that Mark McConnell made a false allegation of assault against Detective Garda Foley during the interview which commenced at 13.45 hours on the 1st of October 1998. He said he did so on the basis that he was laying some kind of marker down to the Gardaí that he was not going to tolerate any assault by them upon him during the course of his detention. He said that he did so because of his previous experience of physical abuse whilst in Garda custody. Detective Garda Foley took appropriate action in relation to this complaint and every opportunity was given to Mr. McConnell to get this complaint aired. The following day he described it to Dr. McColgan, Garda Rouse and Detective Garda Reynolds as a "joke". Mr. McConnell had no justification for making this complaint. He properly withdrew it the next day. The making of false allegations against the Gardaí must be condemned. It is completely wrong and unfair. In my view it was not done out of fear but anger at his arrest.

4.259. The last interview of the 1st of October 1998 (the fifth interview) was conducted by Detective Garda Alphie McHale and Detective Garda Padraic Scanlon and no allegation of physical or other abuse was made by Mr. McConnell against either

[736] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, page 116.
[437] Transcript, Day 512, Q.62-66.
[738] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 141-142.
[739] Transcript, Day 502, Q.155

of these interviewers. Notes of this interview show that the two Gardaí continued to question Mr. McConnell about Bernard Conlon's allegations and his movements on the night of the 20th of July 1998. The notes were read over to Mr. McConnell and he accepted that they were correct.[740] He declined to sign them.[741] The interviewers took the allegations made by Bernard Conlon at face value and indeed, Detective Sergeant Scanlon believed them to be plausible because Mark McConnell was related to the McBreartys. He thought that might be Mr. McConnell's motive for engaging in the activity alleged.

Interviews on the 2nd of October 1998

4.260. During the course of the second day of his detention, Mark McConnell was interviewed seven times by different pairs of detectives over a period of ten hours approximately. There were various interruptions during the day for visits by Mark McConnell's solicitors and family members, as recorded in the custody record. The morning commenced with an interview between Mr. McConnell and Detective Garda Frain at 08.15 hours. They were joined at 08.50 hours by Detective Garda Foley and they remained with him until 10.05 hours (the sixth interview). At 09.15 hours Mr. McConnell received breakfast. His solicitor, Ms. Sinead O'Brien, visited him between 09.35 hours and 09.55 hours. The notes of interview reflect a series of questions and answers in which the interviewers pressed Mr. McConnell about Bernard Conlon's allegations and Mr. McConnell strenuously denied them.[742]

4.261. This interview was followed by an interview between Detective Sergeant Connolly and Detective Garda Reynolds and Mr. McConnell that continued from 10.05 hours to 12.15 hours (the seventh interview). During the course of this interview Mr. McConnell again protested his innocence. He was informed by Garda Rowland at 11.00 hours that his detention had been extended by Chief Superintendent Denis Fitzpatrick for a further period of twenty-four hours. Mr. McConnell complained that this was a disgrace and refused to answer any more questions and was somewhat abusive towards the interviewers. He spoke on the telephone with Mrs. McConnell at 11.15 hours and was then further questioned about his movements on the night of the 20th of July 1998. He was placed in a cell for a rest period at 12.15 hours.[743]

4.262. At the conclusion of this, his first, interview with Mr. McConnell, Detective Garda Frain became uneasy about the case. In a statement made on the 18th of September 2006 he said:

[740] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 131-134.
[741] Transcript, Day 525, pages 190-195 (Evidence of Detective Garda Alphie McHale) and Transcript, Day 525, pages 165-174 (Evidence of Detective Sergeant Padraic Scanlon).
[742] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 136-138; Transcript, Day 525, Q.775-782 (Evidence of Mr. Joseph Foley) and Transcript, Day 524, Q.292-293 (Evidence of Detective Garda James Frain).
[743] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 139-140.

> Following the initial interview with the prisoner I was uneasy about the complaint made by the injured party Bernard Conlon. I went to the communication centre where I requested the member on duty there to carry out a criminal record check on Bernard Conlon. At this time there was no pulse system in operation and this was the only system available to the Gardaí to conduct criminal background checks on persons. The check revealed that Bernard Conlon had a long list of criminal convictions. I recall that the member on duty whom I think may have been Garda Pauric Conway was unable to print off the list at the time due to some technical problem. Following the discovery of a criminal record on Bernard Conlon, I went and spoke with the District Officer Superintendent Lennon, whom I observed in his office. I asked Superintendent Lennon if he was aware that Conlon had a large list of criminal convictions, I am unable to recall exactly what the superintendent replied, however it was words to the effect that it had no bearing on the present investigation and that we should carry on, he also indicated that this investigation was a Sligo investigation and that we were assisting the Sligo Gardaí, I recall that later I spoke with members of the Gardaí from Sligo including Detective Sergeant Connolly and they were aware of Conlon's previous history. I should point out that my concerns were more with the fact that I found it strange that a man of Conlon's age would travel all the way from Sligo to Raphoe to frequent Frankie's nightclub a distance of approximately 75 miles. And I was curious as to why he would be a witness for the state in liquor licensing prosecutions.[744]

In evidence, Detective Garda Frain added that he did the background check on Mr. Conlon because of various things that Mr. McConnell had said in the course of the interview about him. He said that when he asked his colleague to conduct a search in relation to Bernard Conlon's previous convictions:

> *The screen filled up, I don't think the screen would accommodate all the data that was on it in relation to Mr. Conlon. So that certainly set the red light flashing in my mind anyway.*[745]

He was also curious as to why Mr. Conlon was involved in a liquor licensing prosecution. His unhappiness at the course of events is described by him in this way:

> *I think there was an air of concern about what was going on in Raphoe. If I could put it like that. I certainly wasn't happy with it at that stage, there were concerns. … I mean I don't have facts to give to the Chairman here I wish I did, but I don't. But there were*

[744] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, page 158.
[745] Transcript, Day 524, Q.304-306.

> *general concerns in my mind anyway about what was going on and the avenues that the Gardaí were going down and certain things that were going on.*[746]

4.263. Detective Garda Frain told the Tribunal that having discovered Mr. Conlon had previous convictions, and in the light of his concerns in the matter, he attempted to conduct subsequent interviews with Mr. McConnell with a view to eliciting concrete information from him in relation to his whereabouts on the 20th of July 1998. Mr. McConnell was trying his best to give the information but certain matters remained unclear and there was a certain "ambiguity" about some of his answers.[747]

Extension of Detention

4.264. Chief Superintendent Denis Fitzpatrick made an order directing the extension of Mr. McConnell's detention from 11.00 hours on the 2nd of October 1998 until 11.00 hours on the 3rd of October 1998.[748] He made this order on the application of Detective Sergeant Gerry Connolly, who informed him about the nature of the offence for which Mr. McConnell had been arrested. He was told that Bernard Conlon had been summonsed as a witness in liquor licensing offences involving the McBrearty family. He had convictions for crime. He had been living in Sligo for fifteen years. Detective Sergeant Connolly told Chief Superintendent Fitzpatrick that Mr. Conlon had identified Mark McConnell on the street as the person who made the threat to him. He was also told that Mr. McConnell had not fully accounted for his movements on the 20th of July 1998. Further, Mr. McConnell had, on the advice of his solicitor, refused to participate in a formal identification parade and that more time was needed for the proper investigation of the offence. He was also informed that Mr. McConnell had made a verbal complaint of assault by Detective Garda Foley in the course of his detention but that no medical attention had been required or requested.[749]

4.265. It is clear from the evidence of interviewing Gardaí that Mark McConnell was answering questions put to him in relation to his movements on the 20th of July 1998. He was protesting his innocence strongly in the course of all the interviews. He was raising quite legitimate questions over the credibility of Bernard Conlon. Detective Garda Keating already harboured a belief that he was telling the truth. Nevertheless, his detention was extended under the provisions of section 30 of the Offences Against the State Act, 1939. Chief Superintendent Fitzpatrick denied that he was in any way influenced by the fact that Mr. McConnell was related to the

[746] Transcript, Day 524, Q.322-326.
[747] Transcript, Day 524, Q.298-321.
[748] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 170-171.
[749] Transcript, Day 532, Q.154-165; Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 172-174; Transcript, Day 520, Q.387-390.

McBrearty family, and had been previously arrested twice as the main suspect in the course of the investigation into the death of the Late Richard Barron on suspicion of his murder, when making this extension order. It is difficult to see how Chief Superintendent Fitzpatrick could not have been influenced by these events and by the ongoing prosecutions against members of the McBreaty family (including Mark McConnell) at the District Court. He had sworn an affidavit in April of 1997 defending High Court proceedings alleging harassment by him and his officers of the McBrearty family. I accept the evidence of Mr. Fitzpatrick that he acted on the representations made to him by Detective Sergeant Connolly in respect of this extension order. However, it is difficult to accept that he was not in the slightest bit influenced by the history of these events.

Further Interviews

4.266. Detective Garda James Frain and Detective Garda Michael Jennings conducted the next interview with Mr. McConnell between 13.30 hours and 15.10 hours (the eighth interview). During this period Mr. McConnell received a visit from his wife Mrs. Róisín McConnell between 14.20 and 14.35 hours. The notes suggest that the level of confrontation during this interview was much reduced. The interviewers emphasised to Mr. McConnell repeatedly that they were looking for information as to his whereabouts on the 20th of July 1998 and in particular to support any alibi that he had in respect of that date. They sought a copy of his diary for the night and the names of any witnesses whom he could rely upon in respect of his movements. Mr. McConnell attempted to address some of these questions, but others he deferred and said that he would give details and any documents to his legal advisers. It should be noted that the type of questions asked tend to support Detective Garda Frain's stated intention to try and ascertain details from Mr. McConnell, which might support the denial of the allegations previously referred to. It should also be noted that Mr. McConnell was arrested unexpectedly some three months after the night in question and bombarded with questions about the 20th of July 1998, a date which, up to that point, had no particular importance for him. The only significance of the date was that it was the date upon which Bernard Conlon chose to set his false story.[750]

4.267. Detective Gardaí Frain and Jennings were replaced at 15.10 hours by Detective Garda Reynolds. He was joined at 15.20 hours by Detective Sergeant Connolly and they conducted an interview with Mr. McConnell until 17.30 hours (the ninth interview). This interview was interrupted at 16.25 hours until 16.32 hours by the visit of Dr. McColgan previously described. The notes of this interview indicate that Mr. McConnell was again asked to furnish the diary he had mentioned in

[750] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 146-151.

relation to booking dates for his band. He replied that he would give any correspondence or notes he had concerning dates or times to his barrister. He again refused to take part in a formal identification parade on the advice of his solicitor because he had already been identified in the street and the person who identified him (Bernard Conlon) would be familiar with his features, because he had seen him previously in court. He insisted that he had already given an adequate account of his movements and alleged that Gardaí were behind Bernard Conlon and had dragged the two Sligo Gardaí, Detective Sergeant Connolly and Detective Garda Reynolds, into the case. Later in the interview he declined to answer any more questions. At the conclusion of the interview, it is recorded that notes of the interview were read over to him by Detective Garda Reynolds and that Mr. McConnell requested that a correction be made in the notes, which was done. He declined to sign the notes.[751]

The Leg on the Chair Incident

4.268. The Tribunal has already made passing reference in a previous report in respect of Term of Reference (d), to a complaint made by Mr. McConnell against Detective Garda Michael Reynolds which was originally furnished to the Garda Complaints Board on the 25th of January 1999 in which he said:

> Garda Reynolds went as far as to throw my leg off a chair which I had it on because earlier that year I had broken the leg and had to keep it up in the event of it swelling. This caused me great pain and it was obvious that he had done this because I would not sign a statement of guilt which he had prepared. He then got very angry and said that I was wasting his good golfing time which was precious to him. He said that he didn't care if I was innocent or guilty but just to sign the statement so that he could get away to play golf.[752]

4.269. In evidence Mr. McConnell said that during the course of one of the interviews with Detective Sergeant Connolly and Detective Garda Reynolds, he placed his left leg on a chair. This leg had been broken previously and a number of plates had been surgically inserted in it. He still suffered problems with his leg and on this occasion he could feel his leg starting to get "pins and needles" and becoming stiff. Therefore, he placed his leg on the chair. He said that Detective Garda Reynolds asked him to remove his leg from the chair and that he explained to Detective Garda Reynolds that he had severe pins and needles in the leg and needed to rest it. He said that Detective Garda Reynolds replied that he did not

[751] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 140-142.
[752] Report on the Circumstances Surrounding the Arrest and Detention of Mark McConnell on 1st of October 1998 and Michael Peoples on 6th of May 1999 – Term of Reference (d), para. 3.67 – See Tribunal Documents–Mark McConnell Arrest & Detention 1-3rd October 1998, pages 162-168 – this complaint was not taken up with Tribunal investigators when interviewed with his solicitor on the 11th of June 2003; Tribunal Documents–Mark McConnell Arrest & Detention 4th December 1996, pages 309-24 - 309-27.

care. Mr. McConnell thought that either Detective Garda Reynolds did not believe that he had suffered a broken leg or that he thought Mr. McConnell was behaving in an annoying or arrogant fashion.[753] At that stage, Detective Garda Reynolds was sitting on the opposite side of a table to Mr. McConnell beside Detective Sergeant Connolly. Mr. McConnell said he was seated "back a bit from the table with my leg up on the chair".[754] Mr. McConnell alleged that Detective Garda Reynolds then got up from his chair, came around the table and over to where his left leg was resting and pushed it off the chair with his hand.[755] Mr. McConnell said that when his leg was pushed off the chair and hit the ground it caused him pain because he also had a problem with a tight Achilles tendon, for which he was receiving physiotherapy at the time.[756]

4.270. For his part, Detective Garda Reynolds had previously given evidence, which he repeated to the Tribunal, denying this allegation. However, he accepted that there was an incident involving Mr. McConnell's leg which he described this way:

> *Mr. McConnell had his foot up, he was sitting across the table from us and he had his left foot right up in front of us, up on the bench and I requested him to take down his foot and that's all. Nothing happened beyond that.*[757]

4.271. In further evidence to the Tribunal Mr. Reynolds said the following:

> *I don't think and I'm not a hundred per cent sure, I don't think it was a chair, I think it was right up on the desk or bench that we were working on he had his foot. I did request him to take it down and he muttered and reluctantly did take it down … He was still muttering and giving out … It was either on the desk or the table because it was right on, it was right on my face. I'm almost sure of it. That's my recollection of it now. We're talking about eight years ago … I have thought long and hard about that and that's my recollection of it. I don't know which leg he had up. But I know that there was no question of him saying he had a sore leg or anything happened his leg. There was never an issue like that. Because if it was I would have written it, I have would have taken note of it because I am long enough around to take note of those things.*[758]

4.272. Inspector Connolly told the Tribunal that he was aware during the course of the interviews that Mr. McConnell had suffered an assault and a broken leg. At the

[753] Transcript, Day 502, Q.240-247.
[754] Transcript, Day 502, Q.236.
[755] Transcript, Day 502, Q.236-239 and Q.256-258.
[756] Transcript, Day 502, Q.259.
[757] Transcript, Day 337, Q.522.
[758] Transcript, Day 520, Q.579-597.

time of his arrest "he had a pretty serious limp". He described the incident in this way:

> *He had his leg raised on a chair and something like that I'm not sure where it was he had his leg raised and Detective Garda Reynolds asked him to remove his leg to put it down on the ground, he did that. I don't know why Detective Garda Reynolds asked him to do that. … He was very comfortable and I would have asked him to remove his leg as well if D/Garda Reynolds hadn't asked him to remove it. … He was relaxed back in the chair and his leg up on another chair. It was a very awkward interview and I possibly thought that that was a follow on of it. Maybe a bit cocky, his leg up on the chair.*[759]

It is clear that Inspector Connolly would have told Mr. McConnell to take his foot off the chair if Detective Garda Reynolds had not done so, because he did not like his attitude. He denied, however, that his colleague simply lost his temper and pushed the leg off the chair. He said that Mr. McConnell lifted his leg down himself. Inspector Connolly maintained that he did not realise that Mr. McConnell had a sore leg but he acknowledged that he did have a limp. Mr. McConnell did not indicate that his leg was sore and that he was resting it because of the injury which he had sustained when he was asked to take his foot off the chair.[760]

4.273. Mr. McConnell also alleged in evidence that:

> *Reynolds in particular said that he was fed up in Letterkenny these last three days … both him and Connolly said that they knew that I was the person that perpetrated the crime in Sligo, they were a hundred per cent sure, they were confident in their witness who was a good upstanding citizen and that Reynolds in particular said that will you hurry up and sign the statement and admit to it so that I can get back and play a bit of golf in Sligo.*[761]

Mr. Reynolds in evidence denied that he said this to Mr. McConnell and, in particular, denied the reference to golf as he explained that he did not play golf.[762]

4.274. It is common case between Mr. McConnell, Mr. Reynolds and Inspector Connolly that there was an incident in the course of one of the interviews involving Mr. McConnell's leg. Mr. McConnell believed that he was asked to remove his leg from the chair because of increasing frustration on the part of the interviewers with his attitude and his responses to the questions asked. Inspector Connolly agreed that the interviews were difficult. Inspector Connolly also agrees that he

[759] Transcript, Day 520, Q.390-403.
[760] Transcript, Day 520, Q.403-439.
[761] Transcript, Day 502, Q.251.
[762] Transcript, Day 520, Q.604-635.

was aware that Mr. McConnell was suffering from a limp as a result of a broken leg at the time of his arrest. He also accepts that Mr. McConnell's leg was on a chair, not as Mr. Reynolds said, on the table. Both are agreed that Mr. McConnell was asked to remove his leg from the chair. Mr. Reynolds said that Mr. McConnell removed his leg reluctantly from the table. Both Gardaí deny that Mr. McConnell told them that he was resting his leg on the chair because he was suffering pins and needles and stiffness as a result of his leg injury. They both also deny that Mr. Reynolds went around the table and pushed the leg onto the floor. The difference that remains between them is in respect of the push. **I am satisfied that whatever happened was not intended to cause Mr. McConnell pain but was borne out of frustration or annoyance at what was perceived to be his arrogance or attitude in placing his leg on the chair in the context of what they regarded as a difficult interview. I am not satisfied that Mr. Reynolds physically removed Mr. McConnell's leg from the chair.**

The Gun Incident

4.275. Following this interview Mr. McConnell was returned to his cell at 17.30 hours. He received a further telephone call from a solicitor, Mr. Cathal Quinn, which continued until 17.45 hours at which time he was taken to a cell. He received a meal. At 18.05 hours Mr. McConnell received another visit from his solicitor, Ms. Sinead O'Brien, which ended at 18.40 hours. He was then returned to the cell from which he was taken for a further interview by Detective Garda Michael Carroll at 18.50 hours. They were joined at 19.10 hours by Detective Garda Matt Tolan. The interview continued until 19.40 hours (the tenth interview).

4.276. The notes of this interview record that for the first twenty minutes Mr. McConnell was again asked various questions about the 20th of July 1998 and denied going to Sligo that evening. He is recorded as being abusive to Detective Garda Carroll and the notes suggest something of a strained atmosphere during the course of the interview. The notes then record the arrival of Detective Garda Tolan to the interview room. Mr. McConnell was questioned about whether he had access to a gun and matters related to the Conlon allegation. In response, he is recorded as "sitting chair making noises with his tongue off the top of his mouth".[763]

4.277. Mark McConnell gave an account to Chief Superintendent Brian Garvie (RCMP), a Tribunal investigator, of an interview which he believed involved Detective Garda Tolan on the 11th of June 2003 in the presence of his solicitor, Mr. David Walley, as follows:

B.G.	With respect to this interview, any comments that you would like to make with respect to your treatment?
M.McC	They were accusing me of something that I didn't know nothing

[763] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 152-153.

about and I was fairly confused and I didn't know what they were talking about and I can remember one of the most frightening moments was that I had never seen a gun before in my life and I can remember them in some of the interview, that the people that were interviewing me, coming in and putting loaded guns, well I don't know if they were loaded but they were putting guns in front of me when they were interviewing me.

B.G. In this interview?

M.McC Yes. With Bernard Conlon.

B.G. Do you know who did that?

M.McC I think, but I'm not sure, I think that the person named was Matt Tolan but I could be wrong again. I think that's the person that done it.[764]

4.278. Mr. McConnell described this incident in evidence to the Tribunal. He said that Detective Garda Tolan came into the interview room at the beginning of an interview. There was another Garda with him. He could not recall upon which particular day of his detention period the incident occurred but it was on one of the "long days". This suggested that it occurred on the first or second day of his detention. He also said that it occurred late in the evening.[765] He described what happened in this way:

> *As far as I can remember he wasn't in for very long in the interview room. He came in, he seemed to have come in from some other job or some other work and he came in and he went to sit down and he sat down, he got back up and took the gun out of the back of his trousers and sat down again, and placed it on the table. … It must have been lodged in the back of his trousers somewhere and put the gun on the table and sat down.*[766]

Mr. McConnell said that Detective Garda Tolan did not say anything about the gun. It was the first occasion upon which Mr. McConnell had seen a gun:

> *It was a small firearm as far as I remember. I'm nearly sure it was like a revolver type gun. I'm not too sure about guns, but it wasn't a very big handgun now, as far as I recall … At that stage a gun was a gun to me because I had never seen a gun before in my life. As I said Carroll … or whoever was the other interviewer was sitting on the right hand side facing me and Matt Tolan was sitting on the left facing me. (The gun) was at the right hand corner of the table.*[767]

764 Tribunal Documents – Mark McConnell Vol. 1, pages 309-24 to 309-27.
765 Transcript, Day 502, Q.163-168.
766 Transcript, Day 502, Q.163 and Q.169.
767 Transcript, Day 502, Q.198-199 and Q.204.

Mr. McConnell said that the production of the gun frightened and intimidated him.[768] He also thought that it was very careless for a Garda in an interview room to take a gun out when a prisoner was sitting across the table from him.[769]

4.279. As can be seen from the extract of the interview with the Tribunal investigator, Mr. McConnell initially appeared to be unsure about the identity of the Garda who produced the gun. In evidence to the Tribunal, he acknowledged that he did not know the man at the time of the incident but that he made efforts to identify him when he was released from custody. He gave a description of the man who had produced the gun to Frank McBrearty Junior. He described him to Frank McBrearty Junior as a man with very dark complexion, not particularly tall and perhaps in his early forties. He saw him a number of times around Letterkenny. He identified Detective Garda Tolan at the Tribunal.[770] Though he acknowledged to the Tribunal investigator that he could be wrong in his identification of Detective Garda Tolan, he was adamant in evidence that he was correct in his identification. He declared that he had no reason to pick out Detective Garda Tolan from anybody else:

> *I mean I have no call to pick out Matt Tolan out of anybody in this because he didn't abuse me during the interview, it happened that's the way it happened … It did happen. Because I didn't know him from Adam. If I was going to tell lies about Guards putting guns on a table I could have picked any Guards, especially Guards that abused me. But this is the truth. I didn't know the man, I have no grudge against the man but he came in and he put his gun on the table.*[771]

Though Mr. McConnell indicated in the interview with Mr. Garvie that more than one person interviewing him had come in and put "guns" in front of him during interviews, he said in evidence that the reference in the interview should be singular because there was only one occasion upon which it happened.[772]

4.280. Mr. McConnell recalled that at the end of the interview, which he said was "short enough" Detective Garda Tolan had to reach for the gun when he was leaving.[773] Mr. McConnell acknowledged that he made no complaint to his solicitors about the production of the gun during the course of the remainder of his detention or immediately afterwards. In fact the first complaint made by Mr. McConnell in relation to the matter appears to have been to the Tribunal investigator in June 2003.

[768] Transcript, Day 502, Q.171, Q.183 and Q.186.
[769] Transcript, Day 502, Q.185.
[770] Transcript, Day 502, Q.173-181.
[771] Transcript, Day 502, Q.212.
[772] Transcript, Day 502, Q.206-211.
[773] Transcript, Day 502, Q.172.

4.281. The only interview attended by Detective Garda Tolan recorded in the custody record is that which occurred between 18.50 hours and 19.40 hours on the evening on the 2nd of October 1998. During that period Mr. McConnell was visited twice by the member in charge at 19.00 hours and 19.15 hours and he noted that all was "ok" in the custody record.[774]

4.282. Detective Garda Tolan and Detective Garda Carroll deny that a gun was produced during the course of this interview. In a supplemental statement made on the 1st of October 2006, Detective Garda Tolan said as follows:

> From my short time in the interview room I do not recall Mark McConnell being in any way abusive or confrontational towards D/Garda Carroll and I. Given the fact that I only spent thirty minutes in the interview room, and the fact that I had no previous interviews with Mark McConnell, I believe my contribution to the interview would have been minimal. That is why it surprises me that in an interview with Chief Superintendent Brian Garvie on the 11th of June 2003, Mark McConnell alleges that he thinks it was me who placed a gun in front of him during the course of an interview. I had never met Mark McConnell prior to this interview and I have not met him since, and I would have no reason whatsoever to try and intimidate him. The investigation was being conducted by the Gardaí from Sligo and I was not closely involved in it. It is unclear whether Mark McConnell is alleging that this happened in more than one interview but I wish to state that it most certainly did not happen during the course of my interview with him. I never wear my gun in the interview room for the obvious safety reasons and the risk that a prisoner might make a grab for the gun. What Mark McConnell is alleging is ludicrous. Even if a member did happen to be wearing his gun during the course of an interview, it would be totally irresponsible and stupid to place it in front of a prisoner, either loaded or unloaded. It is strange that Mark McConnell only made this allegation in 2003, some five years after his arrest, and I would seriously question his motives. The allegation as contained in his interview with Chief Superintendent Brian Garvie is somewhat vague and expansive. Perhaps during his evidence to the Tribunal this will be clarified at which time I may be able to comment further on it.[775]

4.283. In evidence to the Tribunal, Detective Garda Tolan further denied producing the gun to Mr. McConnell as alleged. He had no recollection of the particular interview. He said in respect of the allegation:

> *It definitely did not happen. I know it has never happened in my whole life. I have never seen a gun on a table in an interview room.*

[774] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, page 117.
[775] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 160-161.

> *Never. It would be a totally stupid thing to do. Especially in view of the fact that this was a section 30 prisoner whom I didn't know, I had never met him before, I didn't know what he was capable of. It would be a totally stupid thing to do, to place a gun on the table, in front of anybody. I don't carry a gun in my trousers. I carry it in a side holster on the right hand side. Even if a person did happen to take a gun to the interview room, it certainly would not be placed on a table. It is no way uncomfortable to wear the gun. Mr. Chairman, the gun is worn in the car, when you are sitting in the car, there is no discomfort whatsoever.*[776]

He said that he had no dealings with Frank McBrearty Junior whom he had never met. He could not understand how Mr. McBrearty Junior recognised the general description given by Mr. McConnell as Detective Garda Tolan.[777] He believed that the allegation made by Mr. McConnell had come from somebody other than Mark McConnell or Frank McBrearty Junior because neither could identify him. He was surprised that Mr. McConnell was able to pick him out at the Tribunal.[778]

4.284. Sergeant Michael Carroll gave evidence to the Tribunal. He recalled that having come on duty, he was asked to attend this interview which he did on his own initially. He said that he was struggling in the interview with Mr. McConnell. It is clear from the notes that this appears to be correct, having regard to the disparaging comments made by Mr. McConnell to then Detective Garda Carroll. In retrospect Sergeant Carroll did not blame Mr. McConnell for what he was saying to him at the time and what is recorded in the interview notes having regard to what subsequently emerged. However, he was glad to see Detective Garda Tolan when he arrived. He was not expecting him. Detective Garda Tolan sat down. Sergeant Carroll did not know whether Detective Garda Tolan was carrying a gun at the time but he said that Detective Garda Tolan did not take a gun from his trousers and put it on the table. He said that had Detective Garda Tolan done so, he would have seen it and recalled it as a very unusual thing to happen in the course of an interview; it was something that he would not condone.[779] Though there was no specific regulation forbidding the introduction of a firearm into an interview room, Sergeant Carroll said that it clearly came under general advices given in relation to the safe handling of firearms that one did not bring it into an interview room as you might be alone in the company of a prisoner and be overpowered. Sergeant Carroll was asked whether the Tribunal was now faced with a situation that a gun had been produced and placed on the table but that both the interviewers were now embarrassed by the occurrence. They knew that it was not the right thing to do and they were not going to own

[776] Transcript, Day 524, Q.760-787.
[777] Transcript, Day 524, Q.788-803.
[778] Transcript, Day 524, Q.804-821.
[779] Transcript, Day 520, Q.699-760.

up to that because it would not look good and they might be criticised. Sergeant Carroll said that it did not happen and that the gun was not put on the table in his presence.[780]

4.285. It should also be noted that the allegation that a gun was produced to Mr. McConnell during the course of his detention on the 1st to the 3rd of October 1998 was not made in his complaint to the Garda Complaints Board on the 25th of January 1998.[781] Mr. McConnell said that this was because he was concentrating in that complaint on what he believed to be a Garda conspiracy against him in relation to the Bernard Conlon allegations.[782]

4.286. I am not satisfied that a gun was produced to Mark McConnell in the course of this detention. It is difficult to understand the absence of any reference to this event by Mr. McConnell, if it made such an impression upon him, until he was interviewed by a Tribunal investigator in June 2003. No complaint was made, that the Tribunal is aware of, to any of the members in charge, or to either of the solicitors who attended, in person and by telephone, upon Mr. McConnell during the course of his detention. The fact that he clearly implied that this had happened on more than one occasion in his interview with the Tribunal investigator, and that he was unsure about the identity of Detective Garda Tolan as the person who produced the gun, cause me concern. His uncertain identification changed to certainty by the time he gave his evidence to the Tribunal. Evidence of identification should be approached with caution as mistaken identification is always a real danger in cases such as this.[783] In addition, I do not find this testimony credible and I accept the evidence of Detective Garda Tolan and Sergeant Carroll that Detective Garda Tolan did not produce a firearm in the course of this interview.

4.287. The next interview was conducted by Detective Sergeant Connolly and Detective Garda Reynolds from 19.40 hours until 21.30 hours (eleventh interview) when Mr. McConnell was returned to the cell. The custody record states that during this period Mr. McConnell received a further visit, this time from his wife, Mrs. Rosin McConnell, from 21.00 hours to 21.05 hours under the supervision of Detective Garda Reynolds. When she left, Mr. McConnell asked that she be called back in order that he might give her a message: however, she declined to return. The notes of this interview indicate that Mr. McConnell was again questioned about his movements on the night of the 20th of July 1998 and they record that the notes were also read over to him and he agreed that they were correct but declined to sign them.[784]

[780] Transcript, Day 520, Q.789.
[781] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 162-168.
[782] Transcript, Day 503, Q.528-565.
[783] The People (Attorney General) v Casey (No. 2) [1963] I.R.33.
[784] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 142-144.

4.288. At 21.35 and 21.55 hours Mr. McConnell received two further phone calls from his solicitor, Ms. Sinead O'Brien. Superintendent Lennon gave permission to have him photographed at 21.50 hours. At 22.15 hours he was again taken from the cell for the final interview of the day (twelfth interview) with Detective Gardaí Martin Anderson and Michael Carroll. This interview continued until 22.55 hours when he was placed in the cell for the night. Mr. McConnell's fatigue and annoyance at being asked the same questions repeatedly is clear from the notes taken of this interview. It was again recorded that the notes were read over to and agreed by Mr. McConnell and that he declined to sign them.[785] No allegation of any kind was made by Mr. McConnell in respect of the last two interviews of the day.

Interviews on the 3rd of October 1998

4.289. Mr. McConnell's day began at 08.00 hours when he was taken from the cell to the toilet area to wash. He was then taken to the interview room at 08.05 hours to be further interviewed by Detective Sergeant Connolly and Detective Garda Reynolds. This interview continued with some interruptions until 11.00 hours when Mr. McConnell was released from custody (thirteenth interview). He was provided with breakfast between 08.10 hours and 08.30 hours. At 09.00 hours he received a phone call from his mother, Mrs. Hannah McConnell, until 09.03 hours. Mrs. Hannah McConnell then called to the station at 09.47 hours together with her husband Mr. Noel McConnell. This visit continued until 09.55 hours when Mr. McConnell's parents left the interview room. At 10.08 hours Mrs. Róisín McConnell asked if she could speak with her husband. She was informed that her husband was in an interview and had just received a visit. There was a further short interruption of the interview between 10.30 hours and 10.35 hours when Detective Garda Reynolds left the room for a short while. At 10.45 hours Mr. McConnell was photographed by Detective Garda Reynolds. In addition, at 09.35 hours his solicitor Ms. Sinead O'Brien telephoned the Garda station and asked to be informed if Mr. McConnell was to be charged. At 11.00 hours Mr. McConnell was then released from custody. The notes of this interview record that Mr. McConnell made allegations that Bernard Conlon had been coached by the Gardaí and that he was lying. He alleged it was a pure "vendetta against me set up by (Detective Sergeant) White". Again it is recorded that the notes were read over to Mr. McConnell and he agreed they were correct but refused to sign them.[786] No allegation of ill-treatment is made by Mr. McConnell in respect of this period.

[785] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 154-155 and Transcript, Day 524, pages 54-68 (Evidence of Detective Garda Anderson) and Day 520, Q.701 (Evidence of Detective Sergeant Carroll).

[786] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 144-145.

The Release

4.290. Garda Pat Kilcoyne dealt with Mr. McConnell when he was released from custody. There is a note in the custody record in the following terms:

> Prisoner released without his wedding ring. Wedding ring not available to give to the prisoner at the time of his release. Prisoner said he had no complaints on his release after been asked by myself. He said he had no complaints but refused to sign the custody record.[787]

4.291. It is perhaps again indicative of the polarisation that existed between Mr. McConnell and the Gardaí that Inspector Connolly gave evidence to the Tribunal, when asked what way they parted from each other, to the effect that Mr. McConnell accused him and his colleague Detective Garda Reynolds of stealing his wedding ring. He told the Tribunal that after Mr. McConnell left the station his wedding ring was found in the toilet area where he had washed that morning: apparently, he had taken off his wedding ring in order to wash himself. It was then returned. Mrs. McConnell was informed by telephone that the ring had been found and it was returned to Mr. McConnell. Mr. McConnell agrees that his wedding ring was missing and that he told the member in charge that it was missing. He denied that he ever alleged that his wedding ring had been stolen by the Gardaí. Inspector Connolly recited this incident as evidence that Mr. McConnell and the Gardaí did not part on the best of terms. He felt that Mr. McConnell went away with a grudge and that he had been very aggressive throughout the whole interview. He said the accusation was made in the presence of the member in charge.[788] Detective Garda Reynolds said that he heard Mr. McConnell making reference to his wedding ring on his release and that he said words to the effect that the Gardaí probably had it. He could not remember the exact reference but he got the impression that he was saying that the Gardaí who were present had his ring. Detective Garda Reynolds said that he was concerned that Mr. McConnell was missing his wedding ring and that Mr. McConnell was upset about this.[789] I am satisfied that both of these witnesses gave their honest and best recollection to the Tribunal of this occurrence.

4.292. The member in charge, Garda Kilcoyne, said that Mr. McConnell's wedding ring was not in the property taken from him when he was detained. He recorded that Mr. McConnell complained that his wedding ring was missing at the time of his release. He said:

> *The prisoner was released … I gave him back his property and the prisoner looked for his wedding ring. His wedding ring wasn't there, it wasn't in his property. He said that he had his wedding*

[787] Tribunal Documents – Mark McConnell Arrest & Detention 1-3rd October 1998, pages 119-122.
[788] Transcript, Day 520, Q.489-523.
[789] Transcript, Day 520, Q.688-698.

ring when he had called to the station but the wedding ring wasn't present there and I couldn't find the wedding ring. It wasn't there so the prisoner was released without his wedding ring at that time.

Garda Kilcoyne also said in evidence that Mr. McConnell did not say that the Gardaí had stolen his wedding ring and if he had he would have noted it in the custody record.[790] Mr. McConnell acknowledged in evidence that he lost his ring in the Garda station and denied that he had alleged it had been stolen by the Gardaí.[791]

4.293. I am satisfied that while Mr. McConnell may not have made an express charge that the Gardaí had stolen his ring, I have no doubt that when drawing attention to the fact that his ring was missing he did lay blame on the Gardaí for the fact that he did not have it. I do not believe he would have left the station without it, if he believed that it could be found. It follows, in my view, that he believed that the Gardaí were responsible for it's loss and indicated to them that he held them accountable for it. No specific allegation was made to the member in charge that the ring had been stolen. Undoubtedly, Mr. McConnell was upset at the fact that his ring was missing. It is indicative to me of the highly charged nature of the interviews which had occurred over the previous forty-eight hours that they should part on these terms, a state of affairs that is further indicated from a reading of the interview notes over that period.

Conclusions

4.294. The following is a summary of my conclusions in relation to Mr. McConnell's arrest and detention on the 1st to the 3rd of October 1998.

1. The events leading up to the arrest of Mr. McConnell on the 1st of October 1998 have already been examined and made the subject of findings in the third report of the Tribunal. Mr. McConnell should not have been arrested. He was innocent of the allegation made by Bernard Conlon that he had threatened Mr. Conlon with a silver bullet on the 20th of July 1998. All of Mr. Conlon's allegations were false. Mr. McConnell was arrested by Detective Sergeant Connolly pursuant to the provisions of section 30 of the Offences Against the State Act, 1939 and his period of detention was subsequently extended for a further period so that he was held for a total of forty-eight hours.

2. This was his third arrest for an offence of which he was innocent. Each arrest brought with it its own disruption of his work and his personal and

[790] Transcript, Day 525, Q.523-541.
[791] Transcript, Day 503, Q.41-45.

social life. In Mr. McConnell's case this upset was further exacerbated by reason of the fact that his wife, Mrs. Róisín McConnell, was still recovering from the abuse which she had received from interviewing Gardaí in December 1996.

3. Mr. McConnell was interviewed in thirteen sessions over a forty-eight hour period. For the most part, he had no complaints against the Gardaí and appears to have been robustly assertive of his innocence. This extended to considerable verbal abuse of a number of the interviewers.

4. In the course of the second interview Mr. McConnell made a false allegation of assault against Detective Garda Joseph Foley, who immediately reported the allegation to the member in charge. Mr. McConnell told the member in charge, Garda Martin Finan, that he had been struck on the shoulder by Detective Garda Foley but that he did not require a doctor. He made no complaint to his solicitor, who visited him fifteen minutes later. The following day when Dr. McColgan called to examine Mr. McConnell, he declined to allow himself to be examined and said that he had made no complaint. Mr. McConnell told the Tribunal that he made this complaint in order to discourage any misbehaviour by way of assault or otherwise by the Gardaí during the course of this detention: he did not want to be assaulted again whilst in custody. The making of a false allegation against a Garda is a serious matter and must be condemned. Mr. McConnell may well have been angry, frustrated or apprehensive about what was going to happen to him whilst in custody, but he was well aware by that stage that a call had been made to his solicitor who in this instance visited him almost immediately after the making of the false complaint. He had numerous visits and telephone calls from solicitors throughout his detention. He had already, on the 25th of June 1997, adopted a more assertive and determined attitude in the course of that arrest which he also displayed in the course of this arrest. His behaviour in making this false complaint is rooted more in anger than fear and was completely unacceptable.

5. Mr. McConnell alleged that Detective Garda Reynolds, in the presence of Detective Sergeant Connolly, in the course of one of the interviews pushed his injured leg off a chair on which he had been resting it. Mr. McConnell alleged that this caused him great pain because he was still recovering from a broken leg. He believed that it was done in the knowledge that he had an injured leg and that it would cause pain and further, because he would not sign a statement admitting his guilt. He further alleged that Detective Garda Reynolds told him to hurry up and

sign the statement and admit threatening Mr. Conlon so that Detective Garda Reynolds could go back and play golf in Sligo. The Gardaí accept that there was an incident involving Mr. McConnell's leg. Mr. Reynolds said that Mr. McConnell removed his leg reluctantly from the table upon which he had placed it when asked to do so by Mr. Reynolds. Inspector Connolly recalled that it was removed from a chair. Both deny that Mr. McConnell told them that he was resting his leg on the chair as a result of his leg injury. They denied that they pushed the leg onto the floor. I am not satisfied that Mr. Reynolds removed Mr. McConnell's leg from the chair but I am satisfied that he told Mr. McConnell to remove it because of his frustration or annoyance at what he perceived to be Mr. McConnell's arrogance and defiant attitude in placing his leg on the chair in the course of what Mr. Reynolds regarded as a difficult interview. I am satisfied that Mr. McConnell has exaggerated what happened.

6. Mr. McConnell also alleged that a gun was produced by Detective Garda Tolan in the course of a short interview with him on the second day of his detention. Detective Garda Michael Carroll was also present at this interview. Both denied that a gun was produced and placed on the table in front of Mr. McConnell. This complaint was first made by Mr. McConnell in the presence of his solicitor to a Tribunal investigator in June 2003. It was not made to any of the members in charge or to either of the solicitors who attended in person and by telephone upon Mr. McConnell during the course of his detention. In his interview with the Tribunal investigator Mr. McConnell was very unsure about the identity of Detective Garda Tolan, but this uncertainty changed to certainty by the time he gave his evidence to the Tribunal. Evidence of identification must be approached with caution as mistaken identification is always a real danger in cases such as this. I do not find the evidence of Mr. McConnell credible in relation to this matter and I accept the evidence of Detective Garda Tolan and Sergeant Carroll that Detective Garda Tolan did not produce a firearm in the course of this interview.

7. Detective Garda Reynolds and Inspector Connolly said that when Mr. McConnell was released his wedding ring was not to be found and he accused the Gardaí present of having stolen it. This was presented to the Tribunal as another false allegation made by Mr. McConnell. The member in charge and Mr. McConnell say that, though the wedding ring was missing, it was found and returned to Mr. McConnell shortly after it had been misplaced. The member in charge, Garda Kilcoyne, said in evidence that Mr. McConnell did not complain that the Gardaí had stolen his ring.

I am satisfied that Mr. McConnell charged those members present with responsibility for the loss of his ring and indicated that he held them accountable for its loss. He did not make any direct charge against them that they had stolen it. He was distressed that it was not available to him when he was leaving the Garda station. It was found and returned to him. Inspector Connolly and Detective Garda Reynolds gave their honest, if somewhat exaggerated recollection of what they believe Mr. McConnell alleged, but this was a simple case of a misplaced wedding ring that was ultimately found and returned to its owner.

8. I am satisfied that Mr. McConnell made three allegations against the Gardaí which were untrue in respect of this period of detention. He abandoned the first allegation of assault within twenty-four hours of making it; but he gave evidence in relation to his allegations concerning the leg and gun incidents in evidence to the Tribunal. I believe the reason for this was his anger and frustration at having been arrested on a third occasion in respect of a crime which he did not commit. Nevertheless, it is not acceptable that false allegations of this kind should be made against the Gardaí and it should not have happened.

CHAPTER 5
The Arrest and Detention of Edel Quinn

5.01. Edel Quinn was one of those arrested on the 4th of December 1996. As this section of the report may be regarded as standing alone it is as well to reiterate the names of the other persons arrested on that date. They were: Mark McConnell, Róisín McConnell, Frank McBrearty Junior, Katrina Brolly, Michael Peoples, Charlotte Peoples and Mark Quinn. Of those arrested, Róisín McConnell and Katrina Brolly are Edel Quinn's sisters; Charlotte Peoples and Mark Quinn are her cousins and Mark McConnell and Michael Peoples are connected to her by marriage.

Reason for Arrest

5.02. Edel Quinn was arrested as an accessory after the fact to murder, then classified as a felony. Under section 67 of the Offences Against the Person Act, 1861, which was then in force, every felony which was punishable under the Act carried the penalty of imprisonment for any term not exceeding two years for anyone who was an accessory after the fact to any such felony. The exception to this, however, was murder: the Act provided that "every accessory after the fact to murder shall be liable, at the discretion of the court, to imprisonment for life". At common law, an accessory after the fact to murder is someone who, knowing that a murder has been committed by another person, either receives, relieves, comforts or assists the offender. An accessory after the fact to murder has to know that the principal offender has committed murder. That offence must be completed at the time. In the case of murder, this means that the victim must have been intentionally killed and is dead at the time when the assistance is given. The case law provides that any assistance given to someone who is known to have committed a murder, that is given in order to hinder the apprehension, trial or punishment of the murderer, is sufficient to make a person an accessory after the fact. Instances of this include concealing the murderer in a house; taking money from the murderer in order to assist him in escaping; supplying him with money or a vehicle in order to help him escape; breaking the murderer out from prison; or disposing of evidence of his guilt, such as by burying the murder weapon. The case law provides that to become an accessory after the fact to murder a person must commit a positive act of assistance to the murderer that is connected to hindering his apprehension, trial or punishment. Merely knowing of a murder, and not disclosing it, or knowing of evidence in relation to a murder and not disclosing it, does not make a person an accessory after the fact.[792] Apart from the relationship of husband and wife, no other relationship between persons can excuse the wilful assistance of murderers to evade justice.[793]

[792] Archbold, Criminal Pleading Evidence and Practice (36th Edition) by T R Fitzwalter Butler and Marston Garsia, 1968, London, paragraphs 4155-4159.
[793] Archbold, paragraphs 4156-4157.

Accessory After the Fact

5.03. Even apart from its existing ruling, the Tribunal must comment that even had there been reasonable grounds for believing that the Late Richard Barron was murdered by certain persons with whom Edel Quinn interacted at or around the time of his death, what the Gardaí suspected Edel Quinn of doing did not amount, and could not have amounted, to the offence of being an accessory after the fact to murder. Taking into account the questions that were asked of Edel Quinn in the four sessions of interrogation which she underwent in Lifford Garda Station after her arrest, of which only three sets of interview notes survived, the Tribunal cannot regard it as ever having been reasonable to suspect Edel Quinn of being an accessory after the fact to murder. At most, she was suspected of knowing something about the perpetrators of the supposed murder of the Late Richard Barron, and of those who supposedly assisted them. She was never suspected of having actively engaged in the concealment of evidence or of otherwise attempting to assist a perpetrator or of ensuring that it was more difficult to detect him.

The Arrest

5.04. Edel Quinn has not alleged in evidence before the Tribunal that the manner of her arrest was deliberately designed by the Gardaí so as to be especially humiliating or violent. The account she gave the Tribunal was of an experience of arrest which, had it been necessary, would unfortunately have carried the stigma of suspicion being attached to her. She accepts that the arrest was carried out in an orderly manner. The Tribunal has already found in its second report that the arrest of Edel Quinn was unlawful for the same reason that the arrests of the other persons arrested in the Barron investigation were unlawful. All of the arrests were predicated on the statement of Robert Noel McBride, which was deliberately designed by a Garda to unlawfully found the suspicion necessary for these arrests.

5.05. Edel Quinn got up at 08.00 hours in the morning. She worked as a quality controller in the Fruit of the Loom factory, which was then operational in Raphoe, a walk of some ten minutes duration from her home at 330, St. Eunan's Terrace. There were two ways that she could go from her house to the factory. She described her arrest in the following terms:

> *… I got up at about a quarter to eight. It was dark so I had the light on and I pulled the curtains and I saw a car, a Dublin registration car, parked over the roadway a bit and I just thought: right, strange the way it was sitting there, but I just thought, okay. So then I had my breakfast and I got ready for work and I left. When*

I came out of the house, as I was walking along, the car started to go by my side, to drive by my side … and I remember thinking, this is strange, but I walked over … up Guest House end, but the car then went up the Terrace. When I was half ways up Guest House End a friend of mine that Róisín got a lift to work with was driving down and she stopped and waved me into the car. She says that Róisín had been arrested, she told her to get Mark, so that's why she'd come for me, to get Mark. So she drove then to Guest House End and back up the terrace way to go out to Tullyvinney. When we got out there the house was surrounded with cars and people … well, I thought it was to get Mark, because the way Róisín thought, she was the only one being arrested, so she shouted for to get Mark to, I suppose, follow her. So I was going out there because I knew if he had to get her, somebody had to mind the baby … They hadn't much of a driveway it was stone at the time. There was cars up there and there were cars sitting at the front of the house. Then they were at the front door, there was about four of them standing around the front door trying to get in. They were knocking away. Then there was a Ban Gharda standing as well … I spoke to Georgina Lohan … I went up to her and asked her what was going on, she asked me who I was and I told her I was Edel Quinn, that I was Róisín's sister. She just nodded. She couldn't give me any information. I said what about the baby, I said I want the baby or whatever. She says, "No, get back into the car." So I got back into the car and we sat waiting there … so we did to see what was going on. Then she came down and she asked me to wait then just in case the baby wouldn't go with them. We sat waiting … so we waited and then another Garda came down and told us to go to work. I can't remember who he was. But as Lorna was reversing her car out then the car was stopped again and Garda Tague opened the back door and asked me to step out. I didn't know any of them. He put his hand on my shoulder and told me he was arresting me for accessory after the fact for the murder of Richie Barron and asked me if I understood what it meant and I said "No". He says, "You know who murdered Richie Barron". He took me up, put me in a patrol car outside the house and he put me in the back and he was in the front and then he turned around to me and he says to me to tell him who murdered Richie Barron and he wouldn't tell anybody, it would just be between me and him. And he said that it's not a thing they go out and do everyday, his

> *arresting people for murder: that they had a lot of information and statements concerning me, that's why I was arrested … I told him I didn't know. I didn't know nothing.*[794]

5.06. The manner in which this arrest was effected was not the subject of any complaint by Edel Quinn. The arresting officer, Detective Garda Patrick Tague, described her as having been "certainly very surprised to be arrested".[795] She described her reaction to the arrest as follows:

> *The way I felt, all the pins and needles I had for Róisín, the shakes, everything left me. I went numb. I couldn't believe it. I just went totally numb … I just thought, this is crazy like, sure how would I know who murdered Richie Barron.*

5.07. Detective Garda Tague and Edel Quinn were left alone in the Garda car for some minutes before anyone else joined them. She was not handcuffed and was left unguarded in the back of the car, Detective Garda Tague understanding that she was likely to be a person of good behaviour. Both Edel Quinn and Detective Garda Tague agree in their evidence that he turned to her and explained to her that the arrest was being made on the basis of information and that now was an opportune time if she knew anything for her to tell him about it. Edel Quinn describes Detective Garda Tague as speaking to her as if she were "a twelve year old sitting in the back of the car", but does not complain as to the manner of his approach.[796] His attitude towards her is perhaps understandable as an attempt by him to put an arrested person at ease and to use language which would be readily understandable notwithstanding the inescapable shock of arrest. Edel Quinn specifically said that she was neither manhandled nor maltreated by Detective Garda Tague. The balanced approach that she was able to take to her evidence is manifested by her having told the Tribunal that if murder had been suspected she would not have found it remiss for the Gardaí to use handcuffs on her. In the event this did not happen.[797]

5.08. Edel Quinn told the Tribunal that Garda Pauline Golden then came up and got into the back of the car with her. The car, driven by Detective Garda Tague, then left Tullyvinney and went to Lifford Garda Station. Garda Golden had a different account. She said that she had no clear memory of being at St. Eunan's Terrace and, perhaps, watching Edel Quinn's bedroom. She claimed to have a clear recollection of sitting in the patrol car at the Diamond in Raphoe together with Detective Sergeant Sheridan and Detective Garda O'Grady. She has no recollection of being in the car as it drove along in the proximity of Edel Quinn, but claimed that she entered the car driven by Detective Garda Tague and

[794] Transcript, Day 448, pages 15-20.
[795] Transcript, Day 449, page 40.
[796] Transcript, Day 448, page 21.
[797] Transcript, Day 448, page 21.

containing Ms. Quinn on the Diamond in Raphoe, and not in the vicinity of Mark and Róisín McConnell's house in Tullyvinney.[798] Detective Garda Tague had no clear recollection of which member of the Gardaí had accompanied him when he drove Edel Quinn to Lifford Garda Station to be detained. He was quite definite, however, that someone travelled in the car with Edel Quinn and himself and he stated:

> *I believe whoever was in the back of that car was in the back of the car when I left Tullyvinney until I got to Lifford, that's my belief. Who that person was I am not sure.*[799]

5.09. The Tribunal considers the description that was given by Edel Quinn of her arrest is both accurate and truthful. Many of the details are supported in the evidence of Detective Garda Tague, Garda Golden, Detective Sergeant Desmond Sheridan and Detective Garda Michael O'Grady. The Tribunal regards it as probable that the car apparently shadowing Edel Quinn on that morning was a Garda car. The Tribunal is aware from other modules that it is the practice of An Garda Síochána to "bed down prisoners", as it was previously colourfully put. It is therefore highly likely that the Gardaí took steps prior to the 4th of December 1996 to acquaint themselves with Edel Quinn's residence, her place of work and the likely route she would take to pursue her working day. It is highly probable that they knew where her bedroom was and that some Garda, whether those who have given evidence before the Tribunal in this module or others, were aware that her bedroom was then towards the front of her house and that she had her own television which could be seen, perhaps, during hours of darkness flickering in a characteristic way.[800] The Tribunal does not regard it as likely that a Garda would drive from Tullyvinney to Raphoe, a distance of approximately two miles, with a prisoner unattended in the back of a Garda car. This could result in the prisoner jumping out or causing sudden mayhem with no opportunity for restraint. The Tribunal therefore considers it likely that Garda Golden entered the Garda car at Tullyvinney and accompanied Edel Quinn from shortly after her arrest up to her being checked in at Lifford Garda Station.

5.10. However, the Tribunal does not consider that the Gardaí are telling a false story, or attempting to deliberately mislead the Tribunal. These events occurred approximately ten years ago. No doubt the Garda members who were involved in this arrest have carried out other broadly similar arrests during that period. It is unrealistic to expect that they could clearly remember this particular largely uneventful arrest, notwithstanding their attempts to assist the Tribunal. Their evidence is mistaken, the Tribunal believes. It should be noted that nothing material turns on the circumstances of the interrogation that are in dispute since the nature of what Ms. Quinn has said as to her treatment during her time in

[798] Transcript, Day 449, pages 156-157.
[799] Transcript, Day 449, pages 43-44.
[800] Transcript, Day 449, page 69.

custody has been clarified by her counsel in the manner set out.

The Interrogation

5.11. The evidence received by the Tribunal indicates that the Garda Síochána custody record has recorded accurately the various transactions that concerned Edel Quinn. The more important of these are therefore now set out in tabular form:

Occurrence on the 4th of December:	Detail of Occurrence:	Comment:
08.53 hours	Detective Garda Tague arrived at Lifford Station with Edel Quinn in custody.	
09.00 hours	Edel Quinn brought to the medical room for interview by Detective Sergeant Sheridan and Garda Pauline Golden.	First interview.
10.30 hours	Edel Quinn offered breakfast, which she refused, but accepted tea and toast.	Meal
11.09 hours	Interview with Detective Sergeant Sheridan and Garda Golden finished and Edel Quinn was given tea. Did not require any other refreshments.	Break.
11.30 hours to 13.00 hours	Detective Garda O'Grady and Detective Garda O'Regan interview Edel Quinn in the medical room (this interview lasted until 13.00 hours).	Second interview. Notes of this are missing.
12.05 hours	Katrina Brolly visits her sister (up to 12.15 hours).	Visit from sister.
14.00 hours to 17.30 hours	Interview of Edel Quinn by Detective Garda O'Grady and Garda Golden, Detective Garda O'Grady being shortly replaced by Detective Sergeant Sheridan.	Third interview.
14.22 hours to 14.50 hours	Kieran Dillon, Solicitor, consults with Edel Quinn in private.	Solicitor's visit.
17.30 hours	Edel Quinn eats a meal of chicken, chips and Fanta.	Meal
17.50 hours	Break	
18.18 hours	Sergeant Niall Coady takes Edel Quinn's fingerprints.	
18.30 hours to 19.20 hours	Detective Garda Brendan Regan and Detective Garda Michael O'Grady interview Edel Quinn.	Fourth interview.
19.12. hours to 19.20 hours	Anna Quinn visits her daughter.	
20.22 hours	Edel Quinn is released.	Release.[801]

[801] Tribunal Documents, pages 55-58.

5.12. The Tribunal has available to it the interview notes of three of these four interviews.[802] The missing interview is that in respect of Detective Garda Brendan Regan and Detective Garda Michael O'Grady from 11.30 hours to 13.00 hours. No explanation has been proffered in relation to the absence of these notes. The Tribunal is unable to ascribe responsibility in respect of these missing notes to anything other than the chaotic nature of the investigation.

Summary of the Interviews

5.13. It is possible to set out a concise record of the focus of attention of the Gardaí during the three interviews in respect of which notes are available and to describe the attitude taken by Edel Quinn. All of the interviewing Gardaí were at pains to assert that Edel Quinn was both co-operative and pleasant during the interviews. The Tribunal accepts this evidence and it is in accordance with the Tribunal's own judgment of her demeanour and attitude while giving evidence before the Tribunal. During the first interview she was asked about her movements on Sunday, the 13th of October 1996 and the early hours of Monday morning the 14th of October 1996. It will be recalled that the Late Richard Barron met his death shortly before 01.00 hours on that Monday morning. She indicated that at around lunchtime on the 13th of October she had driven with her boyfriend Ebby Walsh to Strabane and then, using his car, had taken her mother to visit her daughter, Pauline, in Convoy town. Some time on that Sunday evening, Róisín McConnell visited the Quinn home with her husband Mark McConnell and her son Dean. The McConnells then went to Mark Quinn's pub. Edel Quinn returned home and at 20.15 hours her friend Joan Colhoun visited her. They then went to Strabane to collect Ebby Walsh and the three of them then returned to Raphoe and took some refreshments in Friel's bar. At 23.00 hours Edel Quinn, Ebby Walsh and Jean Laird went to the Tudor Lounge, which is part of Mr. McBrearty's extended premises, where they met with Paula Ayton and Rodney Bogle. At about 00.30 hours on the 14th of October 1996 they were invited, free of charge, to attend the discothèque in Frankie's Nightclub. At some time after 01.00 hours she noticed her sister, Róisín, together with her husband Mark McConnell, at the disco. At some time around 02.00 hours Edel Quinn left the disco, apparently because of the volume of the music, with Ebby Walsh and Róisín and Mark McConnell. When they came out, Mark McConnell was told that Richie Barron was dead and his reaction was one of shock. Mark McConnell was then described as walking along with Ebby Walsh. A car, together with passengers Edel Quinn, and Róisín and Mark McConnell, was driven by Ebby Walsh out to the McConnell household where some baby requisites were collected for Dean. Mark McConnell remained quiet.[803]

[802] Tribunal Documents, pages 61, 68 and 72.
[803] Tribunal Documents, pages 61-67.

5.14. The notes for the second interview with Detective Garda O'Regan and Detective Garda O'Grady are lost. In their evidence, they claimed that the focus of their attention was on what Edel Quinn might have known in relation to the supposed murder of Richard Barron. In particular, they focussed, so they assert, on the condition of Mark McConnell after hearing that Richard Barron was dead and on the movements of those suspected of the supposed murder, namely Mark McConnell and Frank McBrearty Junior.

5.15. The notes of the third interview are available. During the course of that interview Detective Sergeant Sheridan and Garda Golden asked about Edel Quinn's belief, which was no more than the reception of a rumour, that Richie Barron had been beaten to death. She recited that she had heard that he had been hit on the head. The attention of the interview was focussed on whether Mark McConnell and Frank McBrearty Junior were together on that night and as to why Mark McConnell was upset on hearing of the death of Richie Barron. The theory that the row in the Town and Country pub between Richard Barron and Mark McConnell was the motivation behind the supposed murder was also gone into.[804]

5.16. The fourth interview was conducted by Detective Gardaí O'Grady and Regan. Immediately before the release of Edel Quinn she was, according to the notes which are available to the Tribunal, asked about what she had seen of Frank McBrearty Junior, the movements of Mark and Róisín McConnell and the reaction of Mark McConnell to the news that Mr. Barron was dead.[805]

Detainee's Account of the Interview

5.17. Where the four interviewing Gardaí and Garda Pauline Golden in particular, referred to Edel Quinn's account of her four interviews with the Gardaí as containing allegations or complaints, the Tribunal would prefer to simply deal with her testimony as an account. In this regard, it has received helpful assistance in the form of submissions from Mr. Kenneth Fogarty SC, who appeared on behalf of Ms. Quinn. The entire tenor of her evidence was that her treatment after her arrest, and during interrogation, was one of moderation. The Tribunal accepts her account that she had lived with her mother in Raphoe prior to her arrest and that she had worked hard in her job as a quality controller at the Fruit of the Loom factory. The Tribunal accepts that after her arrest her life changed for the worse. She was seen by some elements in the town and elsewhere, to have been one of those involved with the group that had supposedly murdered the Late Richard Barron. The degree of division and bitterness in the town has been commented on already in the second Tribunal Report. It suffices to recall here that the degree of bitterness against those supposed to be responsible for

[804] Tribunal Documents, pages 68-71.
[805] Tribunal Documents, pages 72-75.

the supposed murder of the Late Richard Barron inspired slogans being painted on the public highway; business cards being falsely printed up about "murdering services"; false leaflets being distributed about the murderers being on stage in Frankie's nightclub and the blasphemous use of the sign of the cross when the main suspects were encountered in the street. Edel Quinn was subject to at least part of that. In addition, she recounted two unpleasant episodes in her evidence. These are set out later herein. It is impressive that in her evidence, Edel Quinn shied away from naming any of those responsible for introducing this note of bitterness into her life but, instead, said that she understood the pain of those who had lost Richard Barron as a friend and who had been misled as to the authorship of the events that had caused his death.

The Issues in Summary

5.18. Edel Quinn was, understandably, unable to recall which Garda had been responsible for particular aspects of her four interviews. Those aspects of her interviews which she says could not be ascribed to any particular Garda, or any particular one of the two teams of interviewers, include: asking her if she had been to confession in relation to her guilty knowledge; making a friendly-enough reference to her Late father;[806] stating that Róisín McConnell had confessed to her alleged involvement in Letterkenny Garda Station and had indicated the knowledge that Edel Quinn was supposed to have of these matters;[807] asking her if she would like to see the post-mortem photographs of the Late Mr. Barron;[808] telling her that she would be ashamed to appear in work if she did not tell the Gardaí what she knew, and might be black-listed,[809] calling her a liar, or possibly adding an expletive to the word;[810] explaining that an accessory after the fact was similar, or the same, as the motorbike rider who had driven the killer as a pillion passenger in the savage murder of Veronica Guerin[811] and saying that she was used to interrogation because of her demeanour in apparently staring down the Gardaí.[812]

5.19. Edel Quinn was never an accessory after the fact, even in the scenario as the Gardaí apparently believed it. No murder had been committed in relation to the Late Richard Barron who, as the Tribunal's second report indicates, died as a result of a motor car colliding with him. Throughout some of the testimony quoted or referred to in this section of the report in relation to the detention of Edel Quinn she is, from time to time, referred to as a suspect. The Tribunal has already ruled on the unlawfulness of Edel Quinn's detention. Her arrest was a false arrest. Even had the elements that were supposed to have been in place in relation to the

[806] Transcript, Day 448, question 193.
[807] Transcript, Day 448, questions 202 and 385.
[808] Transcript, Day 448, question ???
[809] Transcript, Day 448, question 391.
[810] Transcript, Day 448, question 380.
[811] Transcript, Day 448, questions 369, 374 and 403.
[812] Transcript, Day 448, question 175.

Robert Noel McBride statement that the two main alleged suspects were seen coming down from the car park at the time of the supposed murder of Mr. Barron been validly in place, what was thought of, on a subjective level, against Edel Quinn would never have justified her arrest. She should not therefore have been a prisoner.

5.20. In addition, specific references were made in the evidence of Edel Quinn to particular Gardaí as being responsible for certain aspects of the interviews. These included: Garda Golden saying that she might get fourteen years, eleven years or seven years in jail for her part of being an accessory after the fact;[813] Detective Gardaí O'Grady and Regan saying that they had been following her for some weeks and that they had a room full of photographs of her;[814] asking her to swear on the Bible twice that she was telling the truth, when the book in question was some kind of a Garda code of conduct (this was ascribed to Detective Garda Brendan Regan in the last interview);[815] Detective Garda Regan telling her on leaving that if she learnt anything she could telephone him and ask for him by name and a remark by Detective Garda Michael O'Grady after the visit to her by her mother, that her mother seemed to believe her, but that, then again, so would his.[816]

Effect of the Account

5.21. The Tribunal is of the view that it is the job of the Gardaí, and an unpleasant one at that, to carefully gather information that might implicate a suspect in a crime and to then fairly and forcefully put those matters to a suspect while in custody. Professor Gudjonsson, who gave general evidence as to the pitfalls in interrogation which might result in a false confession, agreed that this was the purpose of interrogation. At the end of the helpful submissions by Ms. Jane Murphy, appearing on behalf of Ms. Quinn, the following exchange occurred between the Tribunal and Mr. Fogarty:

> *Chairman:* *I would be grateful if whoever is representing Ms. Quinn could tell me what her attitude is, and in particular whether they see these events as being in any way improper as far as the Gardaí are concerned. Now, if we take them in the order in which you mention them, first of all there is the threat of fourteen … years in Mountjoy. First of all, what is it that you say that the Gardaí said that was wrong if in fact you do say that there is something wrong with it because I am postulating that there can be*

[813] Transcript, Day 448, question 145.
[814] Transcript, Day 448, questions 243, 293 and 399.
[815] Transcript, Day 448, question 247.
[816] Transcript, Day 448, question 423.

circumstances in which it might be perfectly proper for a Garda to say: do you realise how important this inquiry is, do you realise that the penalty for the offence that we are suspecting you of could end you up in Mountjoy for twelve to fourteen years? Now do you see something wrong with what happened? … I do acknowledge that her arrest has upset her, and there can be no doubt about that, that Ms. Quinn was terribly upset at what she saw as a wrongful arrest: we can leave that aside. What I am asking you is specifically about each of these elements: do you see something wrong? …

Mr. Fogarty: *… on the instructions that I have received I am quite satisfied to be able to tell you, Chairman, that in themselves, and individually, these eight things have nothing wrong with them; absolutely nothing wrong with them. The significance from your point of view, Chairman, we would respectfully submit, is that as innocuous and benign as each of them are, each one of them can be said in the course of any investigation legitimately. No difficulty at all. In fact, as has been pointed out on a number of occasions, the observation could be made that a failure to do some of them might be regarded as grossly inept police work. So the only point that we make in respect of this on behalf of Edel Quinn is that there seems to be a runaway attitude from each one of the Gardaí to it. If they said "yes, we did each one of these eight things", I don't think Edel Quinn could actually have a complaint. Because if you take the first one, the threat of Mountjoy for periods of fourteen, eleven and seven years … the fact of it being said to a prisoner is legitimate. This is a very serious matter. It's not a six months or probationary offence. It's very serious. But the inclusion of the word murder or accessory may be a technicality lost on someone like Edel Quinn, but in my respectful submission it would be legitimate for a Garda to impart, using the simplest phraseology: "you are in serious bother if you are involved in this."*

Chairman: *Then your criticism is that the Gardaí have rejected even the most benign and trivial complaints?*

Mr. Fogarty: *Yes.*

Chairman: *And you make the submission to me that in so doing that they have failed in their duty to inform the Tribunal fully?*

Mr. Fogarty: *Correct.*

Chairman: *Of the events?*

Mr. Fogarty: *Yes. And if I might add from Edel Quinn's point of view, if the Tribunal accepts that these are benign and if the instructions I received are interpreted properly, it means nine and a half years afterwards when they could individually, or as a group, come in and say "Chairman, we did this, we felt entitled to do this", she would have no complaint, but to sit in time after time in contradiction to what my instructions are, effectively means "we know what went on here, we're not forgetting it, but you have to prove your point whether on the balance of probabilities or beyond a reasonable doubt and we will continue your torture", effectively.*[817]

5.22. The Tribunal would add a comment to the above matter. The Tribunal realises that bad language is now commonplace. It should, however, be avoided in interviews. It would be ridiculous to suggest that a heated exchange between a prisoner and an interrogator, or some improper language, necessarily renders a confession inadmissible. However, it is the duty of the Gardaí to maintain composure and control so that they remain in charge of the interview rather than the prisoner dictating the tone of police enquiries. The Tribunal feels it necessary to comment on two matters. Firstly, the Tribunal does not regard it as legitimate for a lie to be told as to the attitude taken up by another prisoner. This is specifically dealt with in Rule VIII of the Judges' Rules. This provides that where another prisoner, who is perhaps an accomplice of the prisoner under interrogation, has made a statement implicating him or her, it is appropriate to bring that statement and to truthfully lay it before the prisoner. While the relevant Rule specifies that such a confession statement should not be read out loud, it seems to the Tribunal that an exception has been made by the courts to this Rule where a prisoner is unable to read. This is not, however, to apply the rule in R. -v- Christie[818] whereby

[817] Transcript, Day 451, pages 82-85.
[818] [1914] A.C. 545; [1914/1915] All E.R. 63.

something said in the presence of the accused may be made admissible against him. A confession statement by A implicating B is only admissible against A. Reading it out to B does not make it admissible against B. Certainly, it is not a legitimate way of making it admissible against him. Secondly, the Tribunal does not regard it as legitimate to pretend that a book is a Bible and to ask someone to swear on it. Other than that, the Tribunal can see good reasons why particular interviewing techniques might be engaged in by Gardaí in appropriate circumstances.

5.23. The Tribunal now moves to deal with the specific points in the account given by Edel Quinn.

Lying

5.24. The Tribunal takes the view that it is not wrong for the Gardaí to confront a suspect and to suggest to them that their account may be untrue or that they may be telling lies. Deceit is a primary instrument in the execution of crime and to fail to confront a suspect in custody with the facts which suggest to the Gardaí that lies are being told to them would be wrong. Despite the fact that the interviewing Gardaí have denied that this matter was canvassed with Edel Quinn, the Tribunal accepts her evidence in this regard. The Tribunal has the benefit of two sets of notes made by Kieran Dillon, which are dated the 5th of December 1996 and the 30th of May 1997. The first set of notes were, in fact, made during his visit to Edel Quinn on the 4th of December between 14.22 hours and 14.50 hours. During the course of this the following instructions from Edel Quinn are recorded:

> Gardaí think I have info regarding the death of Mr. …
>
> They seem to think I know about the murder of Richie Barron.
>
> The Gardaí think I know about it.
>
> The Gardaí keep saying you are [obscure] they won't believe her.
>
> You are telling twenty per cent of the truth … Gardaí say Mark and Frank, two Quinns. People tell them Mark changed his clothes.[819]

5.25. During the course of her evidence Edel Quinn said that it was possible that an 'F' or 'B' word was attached to the accusation that she was lying, or was a liar. Edel Quinn's evidence was careful not to trespass onto anything that she was not sure of and she does not assert this as an allegation. The Tribunal accepts Ms. Quinn's evidence.

[819] Tribunal Documents, pages 94-95. The punctuation is necessarily random in the note. The punctuation here attempts to reproduce the notes accurately.

Veronica Guerin Reference

5.26. Edel Quinn asserted that during the course of one of her interviews, one of the Gardaí, whom she cannot name, asserted to her that her position was the same as, or similar to, the involvement of the motorbike driver in the vicious murder of Veronica Guerin. As will be recalled from that case, one of the murderers of the Late Ms. Guerin drove a high speed motorcycle, which had previously been stolen, and which was carrying a pillion passenger armed with a Magnum handgun, up beside Ms. Guerin's car as she was stopped, returning home from a court case in Naas, at the junction of the Naas Road and Boot Road. The pillion passenger shot her several times in the back and murdered her. This was a notoriously savage killing. It might be regarded as an attempt to undermine the composure of Ms. Quinn to assert that her role, whatever it was believed to have been, in the aftermath of the Richard Barron supposed murder was similar to that of those in the Veronica Guerin murder case. However, Edel Quinn did not put it in that way. This is what she said:

> *I remember that they classed me the same as the driver on the motorbike, as [in the case of Veronica Guerin]. They told me that I was the same as the driver of that motorbike. I was classed the same … I would think [Gardaí] Golden and Sheridan [said this]. But saying that, I am not a hundred per cent sure … it was just that I was an accessory after the fact that I was classed the same as the driver of the motorbike.*[820]

5.27. The Tribunal construes this as an attempt by interviewing Gardaí, who are unidentified, to explain the difficult concept of an accessory. It may be that in using an analogy to the Veronica Guerin case the Gardaí were intent on putting across to Edel Quinn their belief in the seriousness of the situation. The concept of what is an accessory before or after the fact, or an abettor, or a principal in the first or second degree, is difficult. The Tribunal accepts the evidence of Edel Quinn on this point. The Tribunal regards it as likely that a reference was made to the Veronica Guerin case in the context of attempting to explain the position which they felt that she was in.

Blacklisted

5.28. An unidentified Garda is asserted by Edel Quinn to have said to her some words to the effect that she should be ashamed to go back to work if something remained on her conscience in relation to the supposed murder of the Late Richard Barron and that she might be blacklisted. This is how Edel Quinn put the matter in evidence:

[820] Transcript, Day 448, pages 63-64.

> *I remember them saying, asking me, about going back to work … would I not be ashamed at the fact of what had happened to appear back to work: and I told them "no, I would go back to work, I had nothing to hide".*[821]

5.29. All of the interviewing Gardaí have denied any reference to any such remark having been made. However, in the contemporaneous note made by Mr. Dillon, solicitor, the following reference appears:

> Client has signed the questions.
>
> Client works in Fruit of the Loom.
>
> It will be in the papers, plus it will be local gossip.
>
> Gardaí say her name would be blacklisted.
>
> The Gardaí asked was R Barron murdered.
>
> Client says she thinks she heard rumours.
>
> Client was questioned how she knew that.[822]

5.30. The word 'blacklisted' is apparently, not a word that Edel Quinn normally uses. It seems likely that this word was an interpretation put on a set of instructions by Mr. Dillon. Edel Quinn has made no attempt to exaggerate her evidence or to alter its colour in relation to this matter. It is highly likely that some Garda in an attempt to appeal to her conscience, put it to her that she should be, or might be, ashamed to return to work if there remained information in relation to the death of Richard Barron about which she had not cleared her conscience by passing it on to the Gardaí. It is possible that the nature of the interview went further to attempt to evoke shame in her.

Róisín Confessing

5.31. In the course of her evidence, Edel Quinn told the Tribunal that a reference had been made to her sister Róisín in the following terms:

> *I remember them saying to me that Róisín had confessed to them in Letterkenny, that I knew about it … that I knew about it and I just remember saying "well I don't, she must be lying" because I didn't know.*[823]

5.32. The Tribunal cannot say which Garda is said to have said this. The Tribunal, however, notes that in the attendance taken by Mr. Dillon of his client, the following passage appears:

821 Transcript, Day 448, page 68.
822 Tribunal Documents, page 95.
823 Transcript, Day 448, page 36.

> People tell them Mark changed his clothes.
>
> They said Charlotte Peoples has let go and told them Charlotte, she is a mental case.
>
> She has let go.[824]

5.33. In the light of this note, it seems probable to the Tribunal that a reference was made by someone who dealt with Edel Quinn that a confession statement was made by either her sister Róisín or by her cousin Charlotte. It appears a genuine mistake had been made as to which one reference was made. If, as appears to the Tribunal to be probable, a reference was made falsely by someone interviewing Edel Quinn to a confession having been made by one of her sisters, that practice would be improper. Firstly, it would be an unjustifiable lie. Secondly, Rule VIII of the Judges' Rules provides that where an accomplice has made a confession statement which implicates another prisoner, the text of that statement should be laid before the other prisoner and he or she should be allowed to read it and to comment on it if he wishes. To lie to a prisoner to the effect that someone else has implicated them in a crime is wrong.

Confession

5.34. It seems to the Tribunal to be highly probable that references were made in the course of the four interviews with Edel Quinn to her family, to her work and to her general interests. In that context, it is hardly wrong that, as Edel Quinn asserts, a reference was made to her Late father. This was mixed in with the questions as to her religious practice:

> *The only thing I remember was just they asked me about my father: what age he was when he died and about me being in confession, when was the last time I was at confession, and did I go to the funeral, and did I go to the wake, which I hadn't, and I hadn't been at confession. I took it that they must have thought I went and confessed, got it all off my chest to the priest in confession, but I hadn't been in confession either … I thought – the way I took it was that they must have thought that whatever guilt that I had, I passed it on to the priest; that I felt grand then leaving the confession box.*[825]

5.35. The case law as to the admissibility of confession statements indicates that promises of advantage, or fear or prejudice, held out or offered by persons in authority render a confession inadmissible. Appeals to conscience, however, which result in a confession statement do not render

[824] Tribunal Documents, page 95.
[825] Transcript, Day 448, page 34-35.

such evidence inadmissible. Whereas it might be unpleasant, and unnecessarily denominational, to enquire into someone's religious practices, the Tribunal cannot say that it would be wrong for the Gardaí to make an appeal to conscience in an attempt to elicit the truth. The Tribunal regards it as highly likely that this occurred and therefore considers Edel Quinn's evidence to be reliable. In this instance it was unnecessarily strident.

Post-mortem Photographs

5.36. Edel Quinn did not allege in her evidence that she was shown post-mortem photographs. However, she indicated that at some stage during her detention a Garda asked her would she like to see the post mortem photographs. The Tribunal considers that the way that this suggestion was put might have been on the basis of attempting to bring home to a suspect the seriousness of a crime that had been committed. The Tribunal notes the disapproval of showing such photographs expressed by a number of senior officers.

5.37. The Tribunal accepts Edel Quinn's evidence in this regard. This completes the issues of evidence that relate to unidentified Gardaí. The issues which follow relate to the Gardaí who have been in a position to deny these allegations.

Lies and Truth

5.38. It would be wrong not to confront a prisoner with an allegation of untruth. Yet even this was shielded away. The attitude of the Gardaí to the account given in evidence by Edel Quinn is perhaps typified by the evidence of Detective Garda Michael O'Grady. The exchange between Detective Garda Michael O'Grady and the Tribunal on these various issues raised by Edel Quinn is now worth reproducing in full:

Chairman: *What form was putting the other statements to her to take? You say to her, we have two statements that say [Mark McConnell] was crying?*

A. *We have two statements, yes.*

Chairman: *And she says no, what happens then?*

A. *Well usually what is done is the relevant section of the statement would be read out to her.*

Chairman: *All right, so you would read out, here is what he says. He says, I saw Mark Quinn and he was crying?*

A. *Yes.*

Chairman: *What happens then?*

A. *You would say, have you any comment on that.*

Chairman: *And she says, no he wasn't, what happens then?*

A. *You'd go onto the next statement and you would read it out and you'd ask her to comment on that and say, that's two people.*

Chairman: *And she'll say, well that's what they say but I say he wasn't. What happens then? Do you see, I'm asking these rather naïve questions because I find it hard to credit if you were doing your job at all, that you wouldn't, so to speak, confront her and say, come on now, you're not helping us at all here, you're not telling us the truth?*

A. *Oh well I'm sure, yes, I'm sure that was said, yes. That there's two people say one thing, you're saying another thing.*

Chairman: *Yes?*

A. *So two people cannot be wrong, both on the same line.*

Chairman: *I mean you're rejecting this phrase [from the solicitor's notes] that Mr. Charleton has been drawing to your attention, "you're only telling us 20 per cent of the truth", and you're saying, if I may say so without any disrespect, hiding behind the 20 per cent, you say, I don't deal in percentages. But would you not say to her words to the effect: I don't think you're telling us anything like the full truth here, you're probably only telling us 10 per cent or 15 per cent or half the truth or something, would you not say that?*

A. *No, I wouldn't Chairman, no I wouldn't put it like that, no.*

Chairman: *What way would you put it?*

A. *I would just say that you're not, according to these*

people, you are not telling us the whole truth. I would never deal in percentages of truth.

Chairman: *I'm not asking you to deal in percentages but whatever phrase would be appropriate to you or would come readily to your mind. Would you not tell her that she is not telling you the whole truth?*

A. *Oh I would, yes. I would say, you're not being truthful with us.*

Chairman: *You would say that?*

A. *Or words to that effect.*

Chairman: *Well I'd expect that?*

A. *Oh you would indeed, yes.*

Chairman: *You see, Garda, the thing that astonishes me is that everybody is running a mile from anything she says here. There was nothing wrong with saying to her, we think you're only telling us 20 per cent of the truth. I'm exaggerating now, but everyone is holding up their hands and saying, oh good God, I wouldn't say a thing like that to the woman. But that is not the case, you may say – you may not use the 20 per cent?*

A. *Yes, the terminology is not the same as I would use now.*

Chairman: *Why is everyone running a mile from every word that this woman says? Do you know what I mean? Surely you did challenge her and surely you did accuse her of not telling the truth?*

A. *Oh yes, and we'd have tried to tease it out as best we could to get to the truth from her.*

Chairman: *But would you not challenge her that she wasn't telling the truth?*

A. *Oh we would, yes. But I'd never use …(INTERJECTION)*

Chairman: *No?*

A. *Language.*

Chairman: *I can understand that?*

A. *That type of language.*

Chairman: *It doesn't sound like the type of language anyone would normally use. But is she telling the truth when she says that she was accused of not telling the whole truth?*

A. *Well during the first interview with her, I didn't think that she was telling the whole truth.*

Chairman: *No. My question is: Is it correct when she says that she was challenged with not telling the whole truth?*

A. *She would have been, it would have been put to her that she was not telling the whole truth.*

Chairman: *Right?*

A. *Because there was two statements to the effect …*

Chairman: *That makes sense to me and I'm just wondering why it is that everyone runs a mile from it?*

A. *Yes, I get the point, Mr. Chairman, but the way it's put there, it would not be the way I would put it?*[826]

5.39. The Tribunal is disturbed that in relation to a number of issues that have been raised there has been a reaction by the Gardaí of sanitising the evidence. This is how Edel Quinn put the matter:

> *Every time I stared at one of them they would have to look away and then eventually one of them said to me, at the end of it, that I seemed to have done this kind of thing before; that it wasn't the first time I seemed to be in a station and was interrogated. But I don't know which one of them said it … They would sit and they were staring at you … and when they stared, I just stared back and they would have to look away first … you know … so I don't know what way they thought of me; maybe they thought it was cheeky. I don't know.*[827]

The Tribunal is not adverse to a reluctant suspect, if they genuinely were a suspect, being confronted with the truth or being questioned in a forthright fashion. The Tribunal finds it difficult to understand the attitude that was typified by the exchange quoted above. It suffices to say that it accepts the evidence of Edel Quinn.

[826] Transcript, Day 450, Edel Quinn sub-module, pages 110-113.
[827] Transcript, Day 448, pages 32-33.

Fourteen Years

5.40. During the course of all of the interviews with Edel Quinn, the Garda focus of attention continually returned to the question as to whether Mark McConnell, on hearing of the death of Richard Barron, began to cry. Edel Quinn's position on the matter was that he was upset in the context of the disagreement that had occurred between them in the Town and Country pub earlier in the evening. In evidence to the Tribunal, Edel Quinn stated that the seriousness of her position had been emphasised by Garda Pauline Golden in reference to the possible prison sentence that an accessory after the fact to murder could receive. Section 67 of the Offences Against the Person Act, 1861 provides:

> In the case of every felony punishable under this Act, every principal in the second degree and every accessory before the fact shall be punishable in the same manner, and every accessory after the fact to any felony punishable under this Act, except murder, shall be liable to be imprisoned for any term not exceeding two years and every accessory after the fact to murder shall be liable, at the discretion of the court, to imprisonment for life.

5.41. An issue arose during the Tribunal's hearings on this sub-module as to whether an accessory after the fact to a felony, as the matter was then defined back in 1996, could be liable to a fourteen year jail term. The matter was researched by counsel for the Tribunal and I am satisfied that the law, as stated above, was as it stood in 1996. A genuine accessory after the fact to murder, that is to say someone who harboured a murderer with knowledge of their crime and with intent to evade their detection by the police, could be liable to any term of imprisonment up to life imprisonment. The manner in which the seriousness of her situation was put to Edel Quinn when she was in custody was dealt with by her in the following way:

> *They were insisting that I said that Mark was crying, that he was crying in the disco. And I told them that I hadn't said it. They told me that I had said it to him, the two of them were insisting that I said it in the interview. I said, well, if I did, I didn't mean to say it. I think it was [during] that interview that Pauline Golden then had told me about I was going to Mountjoy for fourteen years … for murder, for accessory after the fact … that that's the sentence I'd be getting … They wanted to know the truth and I didn't know nothing. So she, obviously, felt that I was hiding something and that more or less, that if I told them that I probably wouldn't do the fourteen years … As it went on, it must have been the next*

> *interview then, it was eleven years and then it was seven years that I would get. So it must be that if I told them I would get a lesser sentence …*[828]

5.42. In the course of cross-examination by counsel for Edel Quinn, Garda Pauline Golden was asked, first of all, why she took the view that the issues raised by Edel Quinn could be described as allegations. She was then asked which of these issues she took most exception to. Her answer was:

> *I take exception most to the amount of years I am supposed to have said she would spend in Mountjoy, and to the fact that I was walking around the room.*[829]

When questioned on this specific issue about a potential term of imprisonment Garda Golden said:

> *I didn't say this and therefore it upsets me to think that that's what is being said about me, that that's what was said, I didn't say it.*[830]

5.43. The Tribunal regards it as likely that in the course of interviews Garda Golden made a reference to a potential term of imprisonment. It is also highly likely that a law book, or a superior officer with the requisite knowledge, was consulted as to the potential term of imprisonment that could be faced by those who knowingly assist a murderer to escape or to conceal evidence. The issue raised by Edel Quinn that there was a reference to a potential term of imprisonment of between seven and fourteen years for those who are accessories after the fact therefore rings true. In the note of the interview taken by Mr. Kieran Dillon, solicitor, on the 30th of May 1997, the following appears:

> The client doesn't understand why Gardaí did it … The client said she fourteen years in Mountjoy, then seven years, then [indecipherable].[831]

5.44. There is a possibility of a misunderstanding between the parties in relation to this matter. Again, in order to bring home the seriousness of the situation, as it was subjectively perceived by the interviewing Gardaí on the instructions of their superior officers, an attempt could have been made, as in the Veronica Guerin murder reference, to bring home the seriousness of the situation to the prisoner by referring to a term of imprisonment. The Tribunal regards it as likely that Garda Golden made a reference to a term of imprisonment of between seven and fourteen years and that this reference was, as Edel Quinn has asserted, made on a number of occasions. It is likely as well that Edel Quinn interpreted this as a threat to the effect that she was going to go to jail for those periods of time. A situation that seems to the Tribunal to be probable is one that occurs between

[828] Transcript, Day 448, pages 29-30.
[829] Transcript, Day 449, page 198.
[830] Transcript, Day 449, pages 198-199.
[831] Tribunal Documents, page 102.

those two extremes. The Tribunal is satisfied that Garda Golden made a reference to the seriousness of the situation and the potential sentence that might arise and that this was seen in a threatening way by Edel Quinn. The Tribunal cannot account for the reluctance of Garda Golden to deal with this issue save for the fact that it may be a case of non-recollection coupled with an unfortunate attitude towards the issues raised by Edel Quinn of seeing them as allegations and of backing away from them.

Following Edel Quinn

5.45. In her evidence, Edel Quinn described how Detective Garda Brendan Regan and Detective Garda Michael O'Grady had, or one or other of them had, made a reference in the course of one of their interviews to having had her under surveillance. She put the matter as follows:

> *Well, I am not one hundred per cent sure if it was actually [the interview before lunch] that I was told that they had been following me for six weeks and that there was a room full of photographs of me in Lifford Station.*[832]

5.46. This allegation was denied by Detective Garda Regan and Detective Garda O'Grady. A reference was also made to the position of Ms. Quinn's room in her home. In the course of her evidence, Mrs. Anna Quinn was asked about her daughter Edel's reaction to her detention. Describing the atmosphere in her house thereafter she said the following:

> *It's a terrace house, there's two rooms to the front and one to the back … and a bathroom … It's two storey … She used to lie in the front room, but that was where they were taking the photographs and all and were watching her … She wouldn't lie in it any more, she thought they were watching her. She stayed up the stairs then most of the time, she just … took over worrying more about Róisín than she worried about herself. [She changed rooms] because she thought they were watching her … She thought the Guards were watching her, you know, they were still watching her … and I moved rooms with her, I moved rooms then.*[833]

5.47. Furthermore, in the course of the note taken by Mr. Dillon, solicitor, the following appears:

> Gardaí knew what room client slept in.
>
> Gardaí watching client beforehand for days.[834]

[832] Transcript, Day 448, page 44.
[833] Transcript, Day 448, pages 156-157.
[834] Tribunal Documents, page 95.

5.48. The Tribunal also has regard to the evidence regarding the manner in which this arrest was effected. The Tribunal is aware of a practice of ensuring that prisoners are available for arrest by checking on their whereabouts late at night. If a person has a television in their bedroom then a characteristic flicker can be seen from it, even through light curtains. **The Tribunal accepts Edel Quinn's evidence that a Garda car was waiting outside the terrace where she lived when she rose on the morning of the 4th of December 1996, and that on leaving the house the Garda car shadowed her for a time. The Tribunal would regard it as negligent if the Gardaí did not make enquiries in relation to the habits of someone who is about to be arrested. The Tribunal accepts the evidence of Edel Quinn.**

Bible

5.49. In the course of the note made on the 30th of May 1997 by Kieran Dillon, his client is recorded as stating the following:

> Róisín McConnell is getting over it.
>
> Gardaí accused client said she fourteen years in Mountjoy, then seven years, then …
>
> Swear on bible.
>
> Client got pulled in because a sister of Róisín.[835]

5.50. The issue raised by Edel Quinn was that during the course of her last interview with Detective Garda Regan and Detective Garda O'Grady, Detective Garda Regan proffered what appeared to her to be a Bible to her in order that she should swear to her innocence, meaning her lack of knowledge as to anything to do with the supposed murder. This is how she described the matter:

> *Well I also remember that Garda Regan asked me if I was willing to swear on a Bible that I was telling the truth. It was actually the second interview … I told him that I would and he brought out a book and he put my hand on it and I swore on it that I was telling the truth … I swore that I knew nothing about what happened to Richie Barron … He asked me to swear on it again and I swore again that I didn't know anything. Then he turned it around and it was a Garda Síochána book … He told me – I just kind of shook my head, I put my eyes to the ceiling and he told me that I looked relieved to find out that it was a Garda Síochána book, that it wasn't a Bible … It was yellow … it would be like – just size wise, like a dictionary size … but not very big … it was bigger than that*

[835] Tribunal Documents, page 102.

[Bible on the witness stand]. It might have been about that width … and it was bigger than that. Maybe twice the size of it and it was yellow … a yellow book, that's what I remember, just yellow … Because he turned it around and the logo of the Garda Síochána was on the front of it. That's all I had seen, just the Garda Síochána logo.[836]

During the course of examination by counsel for the Tribunal of Detective Garda Regan, the following exchange occurred:

Q. Do you dispute that this is an accurate statement by Ms. Quinn?

A. Of the notes of Mr. Dillon?

Q. Yes, if Mr. Dillon is accurately recording – in other words that Ms. Quinn is saying … that she was asked to swear on the Bible, that she was told she might get fourteen years?

A. No, I didn't ask her to swear on the Bible. There is no mention about fourteen years whatsoever.

Q. But would it have been wrong to think that the Gardaí would have, for example, you know, an approach that might involve some degree of sleight of hand … that people might not say to somebody, look, if you are really telling the truth there is a book there, would you swear on the Bible; she swears on the Bible and it is turned around and it happens to be something else. Are you saying that didn't happen?

A. That definitely did not happen.

Q. And that she kind of pulled it out of nowhere?

A. Well, Mr. Chairman, I have twenty three years service, twenty in Detective Branch, and have interviewed numerous amounts of people, hundreds, and taken numerous amounts of statements, I have never ever asked anybody to swear on any book or any Bible, ever.

Q. Was there a book in the room?

A. I didn't bring any book into the room. I certainly didn't see no book … I am not aware of any yellow book with a crest on it, Mr. Chairman.[837]

[836] Transcript, Day 448, pages 44-47.
[837] Transcript, Day 450, pages 76-78.

On this issue Detective Garda Michael O'Grady stated:

> *Definitely there was no book in the interview room that I saw during the interview anyway and she was not asked at any time to swear on any Bible or book by myself or Detective Garda Regan.*[838]

The Tribunal has carefully considered this conflict of evidence. It accepts the evidence of Edel Quinn.

Your Mother Seems to Believe You

5.51. Edel Quinn stated that when her interview with her mother ended at around 19.20 hours, Detective Garda O'Grady made a remark to her, whether in the interview room, or the corridor, or elsewhere is not clear, that "your mother seems to believe you … but then again my mother would too".[839] This was denied.[840] The Tribunal accepts Edel Quinn's evidence on this matter and regards it likely that Detective Garda O'Grady has forgotten about this remark.

Contact Me

5.52. Edel Quinn stated that when she was leaving the Garda station at 20.22 hours, Detective Garda Brendan Regan suggested that she should return to him, in the event that she discovered anything about the supposed murder. She put the matter in this way:

> *He asked me that if I had any information, would I come back and tell them it, if I would find out anything. And I told him I would. He says to me: "how would you know who to ask for?" I says "I wouldn't". He says "well my name is Brendan Regan, ask for me". That's how I know it was definitely him.*[841]

This was denied.[842]

5.53. The Tribunal would regard it as negligence if Detective Garda Regan had not made an attempt to win the confidence of Edel Quinn. The Tribunal is certain that he did. The Tribunal is satisfied that it was both right and reasonable for him to have made a reference to his name and to have asked Edel Quinn to contact him in the event that she learned anything in relation to the supposed murder.

The Aftermath of the Arrest

5.54. In the aftermath of her arrest, the attitude of certain people in Raphoe changed towards Edel Quinn. She stated:

838 Transcript, Day 450, page 123.
839 Transcript, Day 448, page 74.
840 Transcript, Day 450, pages 154-155.
841 Transcript, Day 448, pages 49-50.
842 Transcript, Day 450, pages 82-84.

When I was released that night, and by the time I had got home, the word came in that when Katrina went down to get Róisín, that they arrested her. So me and my mother had to go down to Katrina's house to look after the children for [her husband] Eunan to go to Letterkenny. So the whole night, I never slept and all I kept thinking about was [what] they said to me about going back to my work: would I not be ashamed? So the main thing in my mind was that I was going to work in the morning … because I had done nothing wrong and I was innocent. Where I worked there was seven hundred people there. I walked in and some people spoke, some people couldn't look. Like, I say, I don't know if half of it was through embarrassment, that they didn't know what to say to me or half of them believed it. I was in for half a day. I took a pain in my chest and I had to leave; it was just exhaustion like. So then afterwards I was out one night and I was in a bar, I kind of tried to stay away from Raphoe and I went to Ballybofey and … there was a group of people and I got a punch in the stomach as I was walking past and I stopped to look and there was a gang of them so I walked on. And then there was another night I went to the toilet and I was followed into the toilet by a group of women and they were saying about Raphoe that if you went into Raphoe you wouldn't get out of it alive: if you went to Raphoe for a drink. And I had to come out of the toilet. I couldn't wash my hands because they were waiting on me to hit me. So that was kind of what was happening to us … Just with Raphoe being the way it was, there was a lot of hatred in Raphoe, because the Barrons had been told their father was murdered; they had a lot of rage, then you had our side that was being blamed for it. So if you went into a bar, you always met someone from the Barrons or their friends or whatever, so there was always staring. I used to try and always drink outside Raphoe and then, at the end, I just wanted to get away from Raphoe. I was made redundant in my job, so it was my best opportunity to get out of Raphoe and to come to Dublin … that's what I did and I never looked back.[843]

5.55. Edel Quinn made the following comment in relation to the Gardaí.

I would just kind of, would like to say, like, as for the Gardaí; the way we were brought up, that they were there to protect us and like, at the end of the day, they done the harm to us. But we ended up having to spend a Christmas with Róisín in a psychiatric unit

[843] Transcript, Day 448, pages 79-81.

over what they had done. Like her baby was a year and nine months and we had to sit and play with him in a psychiatric ward.[844]

Conclusions

5.56. Edel Quinn has made no attempt to exaggerate the nature of what occurred to her in Garda custody. The Tribunal accepts her evidence. The Tribunal has come to the following conclusions:

1. Edel Quinn was unlawfully arrested. The unlawfulness of this arrest occurred due to the fact, already reported in the Tribunal's second report, that the main foundation of Garda suspicions was a statement of Robert Noel McBride, which was in fact concocted by the Gardaí while Mr. McBride was in Garda custody. In addition, what was suspected by Gardaí that Edel Quinn had done in the aftermath of the supposed murder of the Late Richard Barron did not amount, and could not possibly have amounted, to the offence of being an accessory after the fact.

2. While notes were missing in respect of the interrogation of Edel Quinn the Tribunal is unable, in her case, to ascribe responsibility in respect of these missing notes to anything other than the chaotic nature of the investigation. There was no accountability for missing notes in the investigation.

3. What Edel Quinn had complained of in relation to her interrogation has been conceded, by senior counsel on her behalf, to be, from an individual point of view, innocuous and benign. The criticism advanced is that the Gardaí have denied even the most benign and trivial of complaints. The Tribunal has concluded that this criticism is correct.

4. The Tribunal finds that a high level of bad language was used during the interviews conducted with Edel Quinn. The nature of human beings suggests that a heated exchange between a prisoner and an interrogator, or some improper language, can occur. This did not necessarily render a confession inadmissible. The Gardaí in this instance however, failed to maintain the composure and control necessary so as to remain in charge of the interviewing process.

5. It has been denied by interviewing Gardaí that they accused Edel Quinn of lying. In the Tribunal's view it is not wrong for Gardaí to suggest to a suspect that their account is untrue and to confront them with an allegation of lying. The Tribunal is satisfied that this occurred in relation

[844] Transcript, Day 448, page 82.

to the detention of this prisoner and is disappointed that the Gardaí would deny the matter.

6. The Tribunal regards it as likely that a reference had been made in the course of Edel Quinn's interrogation to the Veronica Guerin case, but regards this as being an attempt to explain the position that they felt Edel Quinn was in, based solely on their own suspicions of her being an accessory to a principal offender.

7. The Tribunal finds that it is highly likely that some Garda made a reference to Edel Quinn being blacklisted at her work in some form.

8. During the course of interviewing Edel Quinn a false reference was made by an unidentifiable Garda to a confession having been made by one of her sisters. Whereas Edel Quinn recounted this as a reference to Róisín McConnell, it seems more likely that the reference was to her cousin Charlotte Peoples.

9. Edel Quinn has asserted that reference was made to the sacrament of confession during her interrogation. The Tribunal regards this as having been proven. The Tribunal does not say that it would be wrong for the Gardaí to make a robust appeal to conscience, however this reference was unnecessarily denominational and strident.

10. Edel Quinn did not allege that she was shown post-mortem photographs. Instead she claimed that during her detention an unidentifiable Garda asked her if she would like to see the post-mortem photographs. The Tribunal accepts her evidence in this regard. The showing of photographs to suspects was a distressing aspect of the detentions reported on in relation to this module.

11. At some stage during her detention one of the interviewing Gardaí made a reference to a very serious potential term of imprisonment which Edel Quinn might face as accessory after the fact, supposing Garda suspicions in relation to her could be proved both in law and in fact. This reference was probably made by Garda Pauline Golden, who did not intend her reference to be seen as threatening.

12. The Tribunal also accepts the evidence of Edel Quinn that she had been put under some surveillance as to her whereabouts, from at least the night prior to her arrest. As a result of this, she had difficulty sleeping in her usual room at home. This can be a legitimate Garda practice. What the Tribunal regards as unfortunate is the denial made, which required it to expend time and effort chasing up this matter.

13. During the course of her last interview while in Garda custody, Edel Quinn was asked whether she would swear on the Bible that she was telling the truth. When she agreed that she would, the interviewing Gardaí, Detective Garda Brendan Regan and Detective Garda Michael O'Grady, played a ruse on her whereby they pretended that an ordinary book was a Bible. It is a pity that, for whatever reason, they were not prepared to accept this.

14. The Tribunal finds that a comforting remark, coupled with an attempt to win the confidence of Edel Quinn, was made as she was being discharged from the Garda Station. The Tribunal finds it extraordinary that it was necessary to engage in a dispute in relation to these matters. This seems to stem from an uncertainty in the minds of An Garda Síochána as to what is and what is not acceptable when someone is in Garda custody.

15. The Tribunal was impressed by the way in which Edel Quinn explained the unpleasant aftermath of these events. This amounted to inter-community conflict in relation to which she, as an innocent person, was subjected to abuse. Her charitable attitude towards those who had offended her is an example to our community.

CHAPTER 6
The Arrest and Detention of Charlotte Peoples

Introduction

6.01. Mrs. Charlotte Peoples was arrested at 09.00 hours on the 4th of December 1996 by Detective Sergeant Henry on suspicion of being an accessory after the fact to the murder of Richard Barron. She was arrested in the forecourt of Raphoe Garda Station. She was brought to Letterkenny Garda Station where she was detained for a period of twelve hours. She was released at 21.50 hours.

6.02. It is common case that Mrs. Peoples was generally treated in a dignified manner during her detention at Letterkenny Garda Station. She was given cups of tea and provided with medication which she was taking at that time for pleurisy. She was allowed to take her rest periods in the interview room. She was not put into a cell. Her primary complaint is that when she could hear what she described as roaring and shouting coming from the room where Róisín McConnell was being questioned, the Gardaí in her room did nothing to intervene in that situation.

Issues Arising

6.03. Charlotte Peoples does not allege that she was physically abused in any way during her period of detention. She does, however, make the following allegations:

(a) When she became upset at the loud noises emerging from the adjoining interview room, where her cousin Róisín McConnell was being interviewed, Mrs. Peoples states that she asked Sergeant Michael Carroll and Detective Garda Michael Jennings to intervene, but they did not do so. The two Gardaí accept that they reassured Charlotte Peoples that she would not be shouted at, but they deny that any request to intervene was made of them.

(b) Charlotte Peoples also alleges that Sergeant Carroll and Detective Garda Jennings used the noise emanating from the adjoining room as a means of putting psychological pressure on her. This was denied by the two Gardaí.

(c) An issue arises as to whether her mother was refused the opportunity to visit Mrs. Peoples when she went to Letterkenny Garda Station during the morning of the 4th of December 1996 and if so, whether the member in charge, Garda Martin Leonard, behaved in a rude fashion when refusing the visit.

(d) Charlotte Peoples alleges that insulting remarks were made to her during her period of questioning: Sergeant Carroll asked her if she was having an affair with a named man from Raphoe; she alleged that when she replied in the negative, Detective Garda Jennings remarked that everyone had "skeletons in the cupboard".

(e) Mrs. Peoples alleged that Sergeant Carroll told her during one interview that her husband had made a statement either admitting to knowledge of the murder of Mr. Richard Barron, or admitting to the murder and had stated that she had knowledge of it as well; when no such statement or admission had been made by Michael Peoples.

(f) It was alleged that Mrs. Peoples' solicitor had been informed by Gardaí on two occasions that she did not require to see a solicitor when his office made two telephone enquiries to Letterkenny Garda Station in that regard.

(g) An issue also arises as to whether at approximately 16.30 hours, Detective Sergeant Henry, who says that he was concerned about the noise emanating from the room in which Mrs. McConnell was being interviewed, asked Martin Leonard, the member in charge, whether everything was all right in that interview room. To this Martin Leonard allegedly replied that everything was in order in the interview room.

The Arrest

6.04. Mr. Michael Peoples, the husband of Charlotte Peoples, was arrested at his home at 08.00 hours on the 4th of December 1996. Later in the morning, Charlotte Peoples saw Mark McConnell sitting in the rear seat of a Garda car; she presumed that he had been arrested as well. Not knowing to which Garda station her husband had been taken, she went with her father-in-law to the Garda station in Raphoe to make enquiries. There was nobody present in the Garda station. As she was about to speak into the communications box known as the 'Green Man', a Garda car arrived. Detective Sergeant Sylvester Henry emerged from the vehicle and arrested Charlotte Peoples on suspicion that she had committed the crime of being an accessory after the fact to the murder of Mr. Richard Barron on the 14th of October 1996.

6.05. Detective Sergeant Henry stated in evidence that the grounds for her arrest were that the Gardaí were in possession of a statement from a witness who said that he had seen Charlotte Peoples coming out of the nightclub in a distressed state; that she was crying; that she got into a car driven by a friend and proceeded in the direction of the scene where Mr. Barron had met his death. Some short time later the witness saw her return in the same vehicle, but this time Mr. Michael

Peoples was a rear seat passenger in the car. Detective Sergeant Henry stated that there was also a question in relation to a telephone call which had been made from the Peoples' home to Letterkenny General Hospital in the early hours of the 14th of October 1996. The caller had given a false name and had made enquiry as to the condition of Mr. Barron at that time. It was on the basis of these bald facts that the Gardaí thought that Mrs. Peoples was an accessory after the fact to the murder of Mr. Barron.[845]

6.06. The Tribunal has already ruled that the arrest of all the suspects on the 4th of December 1996 was unlawful having regard to the fact that the entire operation was predicated on the statement of Robert Noel McBride, made on the 29th of November 1996, which statement was deliberately designed by the Gardaí to unlawfully found the suspicion necessary for these arrests.

6.07. In addition, the Tribunal is satisfied that there was no sufficient basis in fact for holding the suspicion that Charlotte Peoples had done anything to aid the 'murderers' so as to make her an accessory after the fact to the crime of murder. As already noted in the second report of the Tribunal,[846] when the Gardaí discovered that there had been a telephone call from the Peoples' home to Letterkenny General Hospital in the early hours of the 14th of October 1996, they ought to have investigated the question of the telephone call further by returning to Michael and Charlotte Peoples to ask them about this call. The Tribunal is satisfied that had they done so, they would in all probability have learnt that the call was made by Mrs. Catherine 'Dolly' Eaton, the mother of Charlotte Peoples. She was related to the deceased. The Tribunal has already found that there was no basis to support the targeting of Michael and Charlotte Peoples for the murder of Richard Barron, or for being an accessory after the fact in assisting the escape of his 'murderers'. The Tribunal has already noted that there was uncontroversial evidence showing as reasonable an account of the movements of Michael Peoples as could be expected on the basis of plucking a random night out of his life, and that of his wife. His evidence was dismissed and treated with suspicion. Her evidence was treated with contempt. Those supporting an account of their movements consistent with their innocence were regarded as mendacious.[847] This is shocking.

6.08. In relation to the actual effecting of the arrest of Charlotte Peoples, no complaint was made by her that this was done in a distressing or inappropriate way. Having considered the evidence given by Charlotte Peoples, Detective Sergeant Henry and Garda Debra Kyne, the Tribunal is satisfied that Detective Sergeant Henry carried out his duty that morning in an appropriate manner.

[845] Transcript, Day 464, pages 4-5.
[846] Second Interim Report, paragraph 3.511.
[847] Second Interim Report, paragraph 3.615, number 14.

Arrival at Letterkenny Garda Station

6.09. No complaint was made by Charlotte Peoples in relation to the manner in which she was processed upon her arrival at Letterkenny Garda Station by the member in charge, Garda Martin Leonard. Having taken the usual personal details from her, he gave her a copy of the notice of rights for persons in custody. In the custody record it was noted that, at 09.27 hours, she was asked by the member in charge if she required a solicitor, to which she replied that she did not. Mrs. Peoples accepted in evidence that that had indeed been her attitude at that time.

6.10. The following table gives a summary of the salient events as recorded in the custody record in relation to the detention of Charlotte Peoples:

Occurrence on the 4th of December 1996	Detail of Occurrence	Comment
09.00 hours Henry.	Arrest.	Detective Sergeant
09.20 hours	Arrived at Letterkenny Garda Station.	
09.27 hours	Prisoner refused to have solicitor notified.	
09.30 – 11.07 hours	First interview – Detective Sergeant Henry and Garda Kyne.	Notes not read over.
10.10 – 10.15 hours	Member in charge asks about medication. Prisoner declines consultation with solicitor.	
11.20 hours	Garda Cannon provides medication to prisoner.	
11.07 – 12.50 hours	Second interview – Sergeant Carroll and Detective Garda Jennings.	
12.50 – 14.05 hours	Rest period, meal delivered.	
14.05 – 14.30 hours	Third interview – Detective Sergeant Henry and Garda Kyne.	Notes not read over.
14.45 hours	Fingerprints taken and photographed.	
15.00 – 15.15 hours	Fourth interview – Detective Garda Jennings and Garda Kyne.	
15.15 – 15.45 hours	Visit from mother.	Noises heard.
15.45 – 17.00 hours	Fifth interview – Detective Sergeant Henry and Garda Kyne.	Reassured about noises from next room.
17.05 – 18.00 hours	Sixth interview – Sergeant Carroll and Detective Garda Jennings.	

18.15 hours	Given tea, meal declined.	
19.30 – 20.30 hours	Seventh interview – Sergeant Carroll and Detective Garda Jennings.	Reassured about noises.
20.30 – 20.50 hours	Eighth interview – Detective Sergeant Henry and Garda Kyne.	All notes read over to prisoner.
20.50 hours	Prisoner released.	

Early Interviews

6.11. Charlotte Peoples was interviewed by Detective Sergeant Henry and Garda Kyne from 09.30 hours to 11.07 hours. She had no complaint in relation to the conduct of this interview. The custody record noted that she was provided with a cup of tea at 10.00 hours. At 10.10 hours Garda Leonard recorded that he had asked the prisoner if she required medication. He also noted that her mother had phoned. He noted Charlotte Peoples' reply that she did not immediately need the medication. He noted that he had arranged with her mother that Sergeant Hannigan would collect the medication.

6.12. An issue arose in relation to whether Garda Martin Leonard had asked Charlotte Peoples whether she wanted to see a solicitor who was then in the building. In the custody record, he had recorded the following as having occurred at 10.15 hours:

> I asked her if she wanted to see solicitor who was in the station. She did not.[848]

6.13. In her evidence, Charlotte Peoples stated that she did recall such a question being asked of her by the member in charge, but that this had happened later in the day, after the visit from her mother, which had been between 15.15 hours and 15.45 hours. Mrs. Peoples stated that she had replied to Garda Leonard that she was expecting a visit from Mr. Kieran Dillon, solicitor, so that if the solicitor in the building was Mr. Dillon, then she would see him, but that if it was someone else, she would await Mr. Dillon's arrival. She was adamant that this encounter occurred after the visit from her mother, due to the fact that it was during that visit that her mother had informed her that arrangements had been made to have Mr. Dillon call to see her.

6.14. Mr. Leonard disputed that evidence. He stated that while he did not have an actual recollection of putting this question to Mrs. Peoples during the first interview, the fact that it was recorded by him in the custody record as having occurred at 10.15 hours led him to believe that that was when he had told her of the availability of the solicitor in the station. He said that the custody record

[848] Tribunal Documents, page 76.

was a contemporaneous and chronological record of all that had transpired that day.[849]

6.15. Mr. Leonard's evidence was supported by three independent pieces of evidence. The first was that as a matter of fact there were two solicitors present in Letterkenny Garda Station at 10.15 hours that day. Mr. James Sweeney and Mr. James O'Donnell were both present for the purpose of holding consultations with their clients Frank McBrearty Junior, Mark McConnell and Róisín McConnell. The second element was that Detective Sergeant Henry stated that he recalled Garda Leonard coming to the door of the interview room during the first period of interview with Mrs. Peoples and informing her that there was a solicitor in the building if she wanted to see him, to which she replied either that she did not want to see a solicitor, or that she did not need one.[850] Thirdly, Garda Kyne had a similar recollection, although she could not say at what time in the day the encounter occurred.[851]

6.16. The Tribunal is satisfied that each of the witnesses have done their best to recount honestly what they recalled on this issue. Having regard to the fact that there were two solicitors present in the Garda station at the time recorded in the custody record and having regard to the evidence of Detective Sergeant Henry and Garda Kyne, the Tribunal finds that Mrs. Peoples was informed during the first period of interview that she could consult with a solicitor who was then in the Garda station, but that she declined this offer. The Tribunal is satisfied that Mrs. Peoples is mistaken in her recollection. It is also satisfied that the inaccurate account of this event given by Mrs. Peoples arises solely from a mistake in her recollection. She was not attempting to mislead the Tribunal.

The Mother's Visit

6.17. Charlotte Peoples' mother, Catherine 'Dolly' Eaton, described how she came to go to Letterkenny Garda Station on the morning of the 4th of December 1996. Her daughter had gone to Raphoe Garda Station with the father of Michael Peoples to ascertain the whereabouts of her husband, Michael. She had been arrested at the Garda station by Detective Sergeant Henry. Mr. Peoples Senior returned to tell Mrs. Eaton the news that her daughter had been arrested. Mrs. Eaton was shocked and upset by this news. She telephoned the Garda station where she spoke to a male Garda. She informed him that she had medication for Charlotte Peoples. She asked if she could come down to the station. The Garda said that she could.

6.18. Some time later that morning, Mrs. Eaton went to Letterkenny Garda Station

[849] Transcript, Day 466, page 13.
[850] Transcript, Day 464, page 10.
[851] Transcript, Day 456, page 171.

with her nephews Paul Quinn and Gerard Quinn and her niece Katrina Brolly. She was not sure of the time that she went to the station, but thought that it was after 10.00 hours. In the custody record it is noted that Mrs. Eaton phoned at 10.10 hours. From the custody record it is also clear that the visit was before 11.20 hours, because that is the time when Garda William Cannon gave the medication which Mrs. Eaton had brought to Charlotte Peoples.

6.19. Mrs. Eaton gave a description of how she was told in an unpleasant manner by Garda Leonard that she could not see her daughter:

> *A. He said no, you weren't getting in. And they said to him, well let the woman in, her daughter's sick and she is down with her medication, let her in. He said no, you're not getting in. I said to him – well I gave the medication to him and he [gave it to] Charlotte but he never gave her the jacket; for Michael had to go down the next day and collect her jacket.*
>
> *Q. Apart from not allowing you in, how did he treat you, what was his manner like with you?*
>
> *A. Well to me he had no manner. He would need to learn some manners.*
>
> *Q. Yes. Can you describe to the Chairman was he rude or offhand or disinterested or how would you describe it?*
>
> *A. Well, as I said he just wasn't a nice person. It didn't matter my daughter was in there and she was sick, and I came down to see her with her medication and he didn't care and he told me I wasn't getting in and, I mean, he didn't say it in a nice sort of a way.*
>
> *Q. What kind of a way did he say it?*
>
> *A. He says, "you're not getting in, I told you you weren't getting in." So, I mean, the way it was with me at that time, I didn't know what was going on and I was terrified, what was happening here.*[852]

6.20. Katrina Brolly also described this same incident in her evidence on Day 429. She stated that Garda Leonard had been laughing when he told her that Edel Quinn was not detained in Letterkenny Garda Station but at Lifford Garda Station.[853]

6.21. In his evidence, Mr. Leonard accepted that Mrs. Eaton had telephoned the station

[852] Transcript, Day 456, page 17.
[853] Transcript, Day 429, pages 38-39.

and that it may well have been with him that she spoke, but he did not have a clear recollection of that. He did recall her speaking to him at the Garda station. However, he denied that there was any argument or controversy about her not being able to visit her daughter at that time. He could not recall her requesting to see her daughter, but he accepted that if she had done so, he probably would not have allowed such a visit, given that only a short time had elapsed since the time of the arrest of Charlotte Peoples. Mr. Leonard represented himself before the Tribunal in this sub-module. In the course of his cross-examination of Mrs. Eaton, the following exchange took place:

Chairman: *Would you talk one at a time, please? Garda Leonard came out and what happened then?*

Mrs Eaton: *Garda Leonard came out and he asked what I was looking for and I said to him, explained to him what I was looking for, I wanted to go in to see Charlotte, I had her medication with me and her jacket, and he said to me, no, you cannot go in to see her. And Gerard or Patrick, I just don't know which of the two of them, nephews of mine, said to him, let the woman in to see her daughter, she's sick. And he said, she's not getting in to see her. And you told me that you would ring me, is that right or wrong?*

Mr. Leonard: *Yes, indeed that's true.*[854]

6.22. Mr. Leonard also accepted that he may not have consulted with Detective Sergeant Henry, or Garda Kyne, in relation to whether a visit should be allowed at that time. He could not recall if he did consult them. Mrs. Eaton stated that the refusal by Garda Leonard was instantaneous; he did not go off to check with anyone before giving his answer. Mr. Leonard stated that if he did not check with anyone before refusing the visit, this was because he knew that it was too soon in the detention period for such a visit to be permitted. Mr. Leonard denied that he treated Mrs. Eaton in a rude or dismissive manner. He stated that he had treated her in the same way that any Garda would have done in similar circumstances. He could not explain why the refusal of the visit was not recorded in the custody record.

6.23. Having considered the evidence of Mr. Leonard, Mrs. Eaton and Katrina Brolly, and having regard to the entries in the custody record, I am of the view that this episode must be viewed in the context that Garda Leonard, assisted by Garda Cannon, had a very heavy workload in his position as

[854] Transcript, Day 456, page 52.

member in charge at Letterkenny Garda Station that day. I note that Garda Leonard had provided tea to Charlotte Peoples early on in her detention and had taken steps to have Sergeant Hannigan call out to obtain her medication. These were the actions on this occasion of a diligent member in charge. In all the circumstances, the Tribunal is satisfied that Garda Leonard did refuse to allow Mrs. Eaton to visit her daughter. The Tribunal is satisfied that he did so because Charlotte Peoples had only been in custody for a short period. While that may have been a valid reason to refuse a visit, it was not a decision which Garda Leonard in his position as member in charge was qualified to make. He should have consulted with the interviewing officers, Detective Sergeant Henry and Garda Kyne, as to whether a visit at that time would have hindered or delayed the investigation of the crime. He did not do so, but made the decision unilaterally.

6.24. The Tribunal is not disposed to find that Garda Leonard, in refusing the visit, did so in a rude or unpleasant manner. While I accept that Mrs. Eaton has done her best to recollect the events that day, and has given evidence in an honest manner, the Tribunal cannot make the finding that Garda Leonard behaved rudely when informing Mrs. Eaton that she could not have the requested visit to her daughter. However, the failure by Garda Leonard to record her request for, and his refusal of the visit in the custody record was a clear breach of the custody regulations.

Enquiries from the Solicitor

6.25. It was common case among the parties that Charlotte Peoples did not receive any visit from a solicitor during her twelve hours in custody. An issue arose as to whether upon enquiry by the office of Messrs. Quinn Dillon & Co., they were told by some Garda in Letterkenny Garda Station on two occasions that Charlotte Peoples did not require a solicitor.

6.26. The story begins in Lifford Garda Station, where at 09.45 hours, Michael Peoples had requested that Mr. Kieran Dillon, a partner in the firm of Quinn Dillon & Co., be contacted. Garda Bosco Gallagher, the member in charge in Lifford, had difficulty contacting Mr. Dillon's office by telephone. To overcome the problem, he contacted Garda McHale at Letterkenny Garda Station and asked him to call around to Mr. Dillon's office to ask him to telephone Lifford Garda Station. This he did and at 10.22 hours Mr. Dillon spoke to Michael Peoples on the telephone. In the course of that ten minute telephone conversation, Michael Peoples asked Mr. Dillon to make contact with his wife and see if she needed a solicitor in Letterkenny Garda Station.

6.27. Mr. Dillon stated that while he had no recollection of personally telephoning Letterkenny Garda Station, there was a note on his file as follows:

> 4/12/96. We phoned L.K. Gda Station twice and asked if Charlotte Peoples wanted a solicitor. We were told that she did not on the two occasions.[855]

6.28. Given the wording of the note, Mr. Dillon thought that the telephone calls had probably been made by his secretary. He said that while he could not say to whom his secretary had spoken on either occasion, it would be usual for any enquiry relating to a person in custody to be channelled through the member in charge. He stated that the first of these telephone calls would probably have been made shortly after the termination of his call to Mr. Michael Peoples at 10.32 hours. This would have been a relatively short time after the refusal by Ms. Peoples to see a solicitor who was in the building, which happened at 10.15 hours. Mr. Dillon was less certain as to when the second call may have been placed to Letterkenny Garda Station. He accepted that in all probability it would have been a number of hours after the first telephone call. He said that it could have been prior to his departure for Lifford Garda Station at 14.00 hours. However, it could have been after he had spoken to Michael Peoples in the afternoon. He had left Lifford Garda Station at 15.23 hours. He could only say that as a result of the responses given by the Gardaí to those two enquiries, whenever they were made, he did not go to Letterkenny Garda Station that day.

6.29. He subsequently had a consultation with Michael and Charlotte Peoples. In a letter following that consultation written to Mr. and Mrs. Peoples on the 16th of December 1996, Mr. Dillon stated:

> … In this regard on two occasions on the 4th December, 1996 we telephoned Letterkenny Garda Station indicating that we wished to see you [Charlotte]. We were informed that on each occasion you had declined to see a solicitor. It appears that this is not the correct situation especially on the second occasion that we telephoned. Therefore, we intend to obtain a copy of the custody record to see what entries were made in relation to our enquiries to the member in charge.[856]

6.30. The custody record ought to have cleared up the question as to when the enquiries were made by Mr. Dillon's firm. Unfortunately, it does not do so, for the simple reason that there is no mention in the custody record of any such enquiries having been made.

6.31. Mr. Leonard, as the member in charge at that time, was not able to throw much light on the subject either. He had no recollection of any enquiries having been made by Mr. Dillon's office in relation to Charlotte Peoples. However, he did not question the accuracy of the note which was made by Mr. Dillon's secretary.[857]

[855] Tribunal Documents, page 204.
[856] Tribunal Documents, page 205.
[857] Transcript, Day 466, page 45-46.

6.32. Mr. Leonard stated that having been told by Charlotte Peoples at 09.27 hours that she did not require a solicitor and having declined the offer to consult with a solicitor who was in the building at 10.15 hours, he took it that the answer was that she did not require a solicitor when the first enquiry was made by Mr. Dillon's office, which was probably shortly after 10.32 hours. He was then asked about the response given to the second call, which was probably placed some hours later. He stated that he had given the same answer as before, based on her earlier declared position. He accepted that he had not gone back to enquire of Mrs. Peoples if she had changed her mind. He denied that there was anything underhand or calculated in his failure to do so:

Q. Did you go back to the prisoner and enquire as to whether she had changed her mind?

A. No, I didn't.

Q. Because we know that in all probability the two calls from his office to Letterkenny Station were a number of hours apart?

A. No I didn't go back to her.

Q. Why would you not go back to her to see if she had changed her mind over that period of hours?

A. I don't know. There was nothing calculated or designed to prevent access to solicitors because solicitors were in the station all day. Well, regularly.

Q. Why is it that neither of those calls are recorded in the custody record?

A. Because I have to take the phone calls out in the public office. That's one reason, or one explanation. Not a reason. One explanation. I take the phone calls in the public office, my records are down below on the desk. Anything could happen. There could be any reason why I didn't go back and put it into the record straightaway. I could have gone maybe anywhere.

Q. Why didn't you put it into the record at all?

A. I know, I just – look …

Q. Never mind straightaway?

> *A. Look, it's not in the record and if I have to be blamed for that then I'll take that blame. No question about that. There was nothing calculated or devious or threatening by not putting it in.*[858]

6.33. The Tribunal is satisfied that two enquiries were made by telephone in the course of the day on the 4th of December 1996 by Mr. Dillon's office to the Gardaí in Letterkenny Garda Station, enquiring as to whether Charlotte Peoples required to see a solicitor. These enquiries were in all probability made to Garda Leonard in his capacity as the member in charge. The Tribunal accepts the evidence of Mr. Leonard that while he does not have a specific recollection of either call, he probably did say that she did not require the services of a solicitor based on her earlier declared position.

6.34. It is the Tribunal's opinion that Mr. Dillon is a conscientious solicitor, who gave good advice to his clients and attended to their requirements in a diligent manner. If he had gone to Letterkenny Garda Station he would have asked at the front desk if Charlotte Peoples required to see a solicitor. Presumably the member in charge would then have asked the prisoner if she wanted to see him. By placing the telephone calls he was in effect making the same enquiry. He was not to know that when giving the response in the negative, Garda Leonard had not in fact asked Charlotte Peoples on either occasion if she wanted to see Mr. Dillon. Mr. Dillon was entitled to presume that she had been consulted by the Gardaí and that she had declined his services. The Tribunal makes no criticism of the way in which Mr. Dillon carried out his duties in this regard.

6.35. The failure by Garda Leonard to ask Ms. Peoples if she wished to see Mr. Dillon and his failure to record these enquiries in the custody record was wrong. He ought to have specifically asked Mrs. Peoples if she wished to see Mr. Dillon. He should not simply have relied on her earlier refusals to see a solicitor. He ought to have recorded each enquiry and her response in the custody record. On balance, the Tribunal accepts his evidence that these omissions were not due to any calculated or devious motive on his part. They are yet again another example of a somewhat cavalier, and unfortunate, attitude on the part of Garda Leonard to the provisions of the custody regulations and the maintenance of the custody record.

Extension of the Period of Detention

6.36. In the early afternoon of the 4th of December 1996 Superintendent Fitzgerald had a consultation with Detective Sergeant Henry. He was told by Sergeant Henry that Charlotte Peoples was denying knowledge of facts and was not disclosing

[858] Transcript, Day 466, pages 48-49.

vital facts directly relevant to the murder of Richard Barron; that she was not being truthful concerning the events which took place on the night of the murder of Mr. Barron for which she was arrested. Detective Sergeant Henry also told him that she was denying that any telephone calls had been made from her house on the morning of the murder. Detective Sergeant Henry requested the detention of Charlotte Peoples for a further period of six hours. Superintendent Fitzgerald stated that having consulted with the member in charge, he considered that the further detention of Charlotte Peoples was necessary for the proper investigation of the crime for which she was arrested. He gave authorisation for the further period of detention orally at 14.50 hours. He subsequently gave the required authorisation in writing.

Disturbing Noises

6.37. Mrs. Catherine Eaton stated that having been refused a visit by Garda Leonard in the morning, she proceeded in a somewhat distressed state to Lifford Garda Station to see Michael Peoples. She was not allowed to see him, as his parents were already visiting with him. She stated that a Garda in Lifford Station, probably the member in charge, Garda Bosco Gallagher, was very kind to her. When she explained that she was upset at not being allowed to visit her daughter, he suggested that she should telephone the superintendent. This she did when she arrived home. She stated that she was put through to a male Garda whom she presumes was the superintendent. He said that she could come in to Letterkenny Garda Station to visit her daughter.

6.38. Charlotte Peoples received a visit from her mother between 15.15 hours and 15.45 hours. During this time she was provided with a cup of tea by Detective Sergeant Henry. He also spent some time talking to her, explaining the procedures in relation to the detention period.

6.39. Mrs. Eaton stated that her daughter seemed "terrified" when she saw her during that visit. She described hearing thumping noises coming from an upstairs room. She described it as being like a thump on a desk. She could hear someone in a loud voice calling someone else a "lying bastard". She said that when she asked her daughter about the noise, Charlotte Peoples replied that it had been going on all day.[859]

6.40. Garda Debra Kyne was supervising the visit of Mrs. Eaton with her daughter. She said that she heard raised voices coming from other rooms in the station during the visit. She said that it was not unusual to hear raised voices when prisoners were being interviewed.[860] She thought that the voices were coming from the adjoining room, where Róisín McConnell was being interviewed. However, later

[859] Transcript, Day 456, page 22.
[860] Transcript, Day 456, pages 181-182.

in her evidence she denied that she had heard that noise during the visit by Mrs. Eaton.[861] Detective Sergeant Henry stated that he could not recall hearing any noises during Mrs. Eaton's visit. However, he did note that Charlotte Peoples was "tearful" when he and Garda Kyne commenced their interview with her at 15.45 hours.[862]

6.41. The interview between Charlotte Peoples and Detective Sergeant Henry and Garda Kyne, which was held between 15.45 hours and 17.00 hours, was significant because it overlapped for a period of about twenty-five to thirty minutes with the conclusion of an interview going on in the adjacent interview room between Detective Sergeant John White, Detective Garda John Dooley and Róisín McConnell. It has been admitted by Detective Sergeant White and Detective Garda Dooley that Róisín McConnell, who is a cousin of Charlotte Peoples, was abused during this period of interview: in particular, that there were raised voices and that she was called all manner of unpleasant names.

6.42. Charlotte Peoples has stated that she became very upset due to the noises which she could hear emanating from the next room. She was particularly concerned because she knew that her cousin and good friend, Róisín McConnell, was the person being interviewed in that room.

6.43. Garda Debra Kyne stated that she heard muffled shouting or raised voices. She could not make out what was being said. They were male voices. The noise was coming from the room where Róisín McConnell was being interviewed. She said that she was wondering what was going on in that room. They had to reassure Mrs. Peoples that she would not be treated in a similar fashion. They told her that they would not do anything like that to her.[863] Garda Kyne stated that they had to reassure Charlotte Peoples several times that she would not get the same treatment. She said that the voices were loud, with a degree of intensity or aggression involved.[864]

6.44. On the 27th of January 2004, Garda Kyne made a statement in response to the Statement of Claim, that had been filed on behalf of Charlotte Peoples. This statement was for the benefit of the State's legal advisors. When dealing with the specific allegations about noise emanating from the room where Róisín McConnell was being interviewed and the request allegedly made by Charlotte Peoples to Sergeant Carroll and Detective Garda Jennings to do something about it, Garda Kyne simply stated that she had not mistreated the plaintiff in any way, nor had Charlotte Peoples complained to her about the treatment of any other persons. She did not state that they had in fact heard noises coming from that interview room, or that they had had to reassure her as to how she would be treated. Garda Kyne baldly stated:

[861] Transcript, Day 457, page 6.
[862] Transcript, Day 464, page 20.
[863] Transcript, Day 456, pages 182-186.
[864] Transcript, Day 457, page 12.

> In relation to paragraph 6(a), (b) and (c), I deny the allegations contained therein. While I was present with the plaintiff, she was at all times treated with courtesy and respect and in accordance with the Treatment of Persons in Custody Regulations 1987. I did not at any time intimidate the plaintiff nor did I witness any other person do so in my presence. At no stage did the plaintiff make any reference to me about any alleged mistreatment of her or of any other person. At no time did the plaintiff make any request to me in relation to access to a solicitor.[865]

6.45. Detective Sergeant Henry stated that from time to time he heard raised voices coming from the next room. He said that he could not make out, or could not recall, exactly what was being said. He could recognise the voice as being that of Sergeant John White. He thought that it lasted from the time the interview started at 15.45 hours until about 16.10 hours. He stated that he reassured Charlotte Peoples as follows:

> *I did, well I think that evening, earlier in the day, because as I said, if you just bear with me for a second. As I said, when we started the interview, you know, I said to her, I said, Charlotte, I said, "I am in charge of the people that is going to be interviewing you and you're going to be treated in a proper manner and looked after and whatever you want, you're going to get it," etc. etc. You know, I reassured her because, as I said, she was nervous all day and she was upset I suppose. I think it was from the point of view as well her husband being arrested and herself being arrested and everything else that goes with it. But I did reassure her again at that time and I says, "look, you can rest assured that as far as I'm concerned and as long as I'm here, nothing is going to happen to you, it's as simple as that."*[866]

6.46. Detective Sergeant Henry stated that while no direct request was made of him by Charlotte Peoples to intervene in the interview going on next door, he did raise it with the member in charge when he went out to get a cup of tea for Mrs. Peoples at approximately 16.30 hours. This, if fact it be, was mentioned by Detective Sergeant Henry for the first time in his evidence. He said that he raised it with Garda Leonard because he felt that if the line of unacceptable behaviour had not been reached by the Gardaí interviewing Róisín McConnell, they were certainly very close to it at that time. This is what he maintained he said to Garda Leonard:

> *I says, "is everything okay next door", and he says, "yeah, yeah". I says, "are you sure," and he says, "yeah".*[867]

[865] Tribunal Documents, page 209.
[866] Transcript, Day 464, page 21.
[867] Transcript, Day 464, page 25.

6.47. Detective Sergeant Henry stated that this conversation took place in a small foyer just outside the double doors leading from the interview room area towards the public office. He said that his recollection was that having stated that everything was alright in the interview room, Garda Leonard proceeded on his way into the male toilet.

6.48. Mr. Leonard stated in evidence that he found it "extraordinary" that Detective Sergeant Henry would come forward almost ten years after the event and state that he recalled making such a comment to him:

> *A. But wait, okay I'll answer the question. I have absolutely no memory or recollection and this was never, ever mentioned in nine years, ever, even in Statement of Claims or anything that he consulted the member in charge. This is something that has come up now in the last few days.*
>
> *Q. You're quite right. It was first raised, I think, by way of cross-examination of Garda Kyne by counsel on behalf of Sergeant Henry?*
>
> *A. Well I don't know, but I'm only saying …*
>
> *Q. That would appear to be the first time that it was suggested that Sergeant Henry …*
>
> *A. Well that's extraordinary, Mr. Barr.*
>
> *Q. … talked to you?*
>
> *A. Extraordinary. It's a very significant point for Mr. Henry, I must say. Very significant for him.*
>
> *Q. Are you saying that it didn't happen and that Sergeant Henry is not telling the truth?*
>
> *A. Wait, I don't like to put people down just like that. If he said to me is everything okay next door, everything was okay next door. I was satisfied everything was sound. There was no problem in that Station on that day as far as I was concerned. So if I answered the question, yes, everything was okay, it was the correct answer. Now the inference though here is, you know, the inference is that I knew something was wrong, that is completely and utterly wrong. There was nothing wrong.*

Q. There was nothing wrong?

A. There was nothing wrong.

Q. But there are admissions by the two Gardaí who were in the interview room interviewing Róisín McConnell, that there was roaring and shouting, calling her a lying, murdering bitch, showing her post-mortem photographs, making her stand up and that she ended up, whether she was pushed or backed into it herself, into the filing cabinet?

A. But I didn't know.

Q. And a chair was thrown across the room?

A. Mr. Barr, I hadn't a clue what was going on, not a clue.

Q. But when Sergeant Henry came to you did you not think that it was time then to find out what was going on?

A. Well sure there was nothing wrong, Chairman, as far as I was concerned. Absolutely nothing wrong. Sure hadn't I observed Mrs. Róisín McConnell sitting in the interview room, having tea and smoking cigarettes. And she was there for long periods of time. She had an hour consultation with her solicitor. She was in and out to the bathroom. There was absolutely no concern, I had no concern at all whatsoever about the treatment of Mrs. McConnell or Charlotte Peoples. None.[868]

6.49. Mr. Leonard stated that while he could not dispute that the comment was made to him by Detective Sergeant Henry, he did dispute the assertion that the tenor or impact of the comment was that he should do something about any noise coming from the interview room. He stated that if the comment was made at all it was made in a very bland way; he denied that it was said as any sort of urgent request that he should take action in the matter. He stated that the question was not asked in the manner: is everything alright? as if to indicate that there was in fact something wrong going on in the room.[869] Mr. Leonard also made the point when under cross-examination by counsel acting for Detective Sergeant Henry, that if the detective sergeant had wanted him as member in charge to do something about the noise, he should have been considerably more direct in his approach to him, than merely asking a bland question to the effect, is everything alright in there? Counsel for Detective Sergeant Henry stated that in retrospect the detective sergeant wished he had done more. Mr. Leonard replied:

[868] Transcript, Day 466, pages 34-36.
[869] Transcript, Day 466, pages 39-41.

> *Well I wish he did do more. Because there was a responsibility on that detective sergeant that if he felt like that, he should have made me aware of it. It's not good enough asking me is everything okay because everything was okay … He did not make me aware of. He did not make me aware of it. He said is everything okay, everything was okay. I'm not saying he did ask me that because I have no recollection of him saying that to me. How would I have a recollection when it never came up for nine and a half years and he's coming in with this now. This is ridiculous.*[870]

6.50. The curious thing is that at the time that Detective Sergeant Henry says that he brought the noise to the attention of Garda Leonard at approximately 16.30 hours, the offending interview between Sergeant White, Detective Garda Dooley and Róisín McConnell had terminated some ten minutes earlier, so as a matter of fact, at that time, there would have been no noise emanating from that interview room. However, a strange feature of the exchange is that Detective Sergeant Henry did not have to go into any detail as to what he meant by asking the question. He said that he presumed that Garda Leonard knew that he was referring to the shouting and loud noises coming from the next interview room, because Garda Leonard did not ask him to what he was referring; he simply replied that everything was alright.[871]

6.51. There is no entry in the custody record dealing with this exchange. The Tribunal notes that until the statements made by Detective Garda Dooley in October 2005 and Detective Sergeant White in March 2006, the two Gardaí concerned were maintaining a complete denial that there had been any mistreatment whatsoever of Róisín McConnell. None of the Gardaí who dealt with Charlotte Peoples in the adjoining room admitted to hearing anything untoward coming from that interview room, until Sergeant Carroll made a statement on the 16th of May 2006 and Detective Garda Jennings made a statement on the 17th of May 2006.

6.52. In a Statement of Claim issued on behalf of Mrs. Peoples in 2002, it was pleaded that the arrest, detention and incarceration of the Plaintiff, together with the manner of her interrogation and alleged intimidation, terrorising tactics and appalling methods of interrogation employed by the Gardaí during her period of detention, had caused the Plaintiff to suffer personal injury, loss and damage. One of the Particulars furnished in the Statement of Claim was as follows:

> While the Plaintiff was in custody, one Róisín McConnell was in custody and was in the process of being interviewed next door to the Plaintiff, when the Plaintiff heard banging, roaring and shouting coming from the said interview room. The Plaintiff pleaded with Gardaí Jennings and Carroll

[870] Transcript, Day 466, pages 58-59.
[871] Transcript, Day 464, page 33.

> to intervene and stop what was going on next door. The Plaintiff was very apprehensive and fearful that the same treatment would be meted out to her.[872]

6.53. On the 25th of February 2004, Detective Sergeant Henry made a statement addressing the allegations contained in the Statement of Claim. He merely stated that during her period of detention, Charlotte Peoples was not intimidated, abused or terrorised by him or any other Garda in his presence. He stated that during her detention period she was not placed in the cell due to the fact that she had informed him that she was sick. He stated that her interviews were fair and polite. He stated that she was provided with cups of tea and with her medication. He did not advert to hearing any loud voices or noises coming from the interview room where Róisín McConnell was being interviewed.[873] Nor did he state that such was the level of noise coming from the adjoining interview room that he had asked the member in charge if all was in order in that room. However, shortly after Sergeant Carroll and Detective Garda Jennings made their statements, on the 22nd of May 2006, and just before he was due to give evidence, Detective Sergeant Henry made a further statement which he submitted to the Tribunal:

> Further to my previous statements in relation to the arrest of Charlotte Peoples and on foot of the evidence given to the Tribunal in this module I wish to state that during the interviews with Charlotte Peoples I heard raised voices coming from the interview room next door on a number of occasions; two or three. There were muffled voices, I could not hear what was being said. It sounded like vigorous questioning. Afterwards, I asked Garda Martin Leonard if everything was ok next door to which he replied that it was. I also remember saying to Charlotte Peoples that I was in charge of the Gardaí who were interviewing her and that she would be well looked after, or words to that effect.[874]

6.54. The first time that the issue of the alleged comment made by Detective Sergeant Henry to Garda Leonard emerged was when it was put by Ms. Quinn, B.L. on behalf of Detective Sergeant Henry to Garda Kyne in cross-examination on Day 457 on the 19th of May 2006.

6.55. The Tribunal has found Detective Sergeant Henry to have been an honest and careful Garda in his previous evidence before the Tribunal. However, on this aspect, the Tribunal makes two observations. Firstly, it was odd that Detective Sergeant Henry only made known his recollection of a significant exchange with the member in charge at a very late stage. He did not mention it when making his statement in 2004. It was raised for

[872] Tribunal Documents, page 169.
[873] Tribunal Documents, page 216 and onwards.
[874] Tribunal Documents, page 269.

the first time in cross-examination of Garda Kyne on the 19th of May 2006 and was then put forward in his statement of the 22nd of May 2006. Secondly, if Detective Sergeant Henry had such concerns, the Tribunal would have expected that as an experienced detective sergeant, he might have done more to ensure that whatever was going on in the interview room with Róisín McConnell was completely within the letter and spirit of the custody regulations. He does not appear to have done so. It is only when experienced and honourable Gardaí stand back and do nothing of an effective nature that abuse of the kind which has been admitted in respect of Róisín McConnell can take place.

A Plea to Interrogating Gardaí

6.56. Charlotte Peoples gave a detailed account of how she asked Sergeant Carroll and Detective Garda Jennings to do something about the noise emanating from the interview room where Róisín McConnell was being questioned:

> *I was actually sitting in the interview room and my door was open and Róisín had actually passed down by and there was a Ban Gharda with her and her mother was with her. And I remember she was carrying this silver tray, but her mother then passed up just shortly afterwards again. But I mean they didn't see me. But I remember just sitting looking out of the door and these two boys coming walking down past and it was actually the man with the beard, it was the beard that actually threw me because it was just sort of things going through your head and I was just … I didn't know that they could have beards in the force, he was a Guard, you know, for I never seen a Guard actually with a beard. … And as I said he had passed down past and the next thing O'Carroll [sic] had come into the room and he had closed the door and I think Jennings came in after, I'm not actually sure if the two of them came in together to tell you the truth, or if Jennings came in afterwards or that. But the next was like roaring and shouting had started and I mean roaring and shouting. And I could hear. I heard them saying I heard somebody saying you lying bitch you, I heard them saying you lying bitch you murdering B and that. But I heard a clash and to me it was this silver tray that I had seen Róisín carrying and I have asked them, I have pleaded with them, I was crying and I had said to them please go in and stop what is going on next door. And I did say to them, I says if you start that there with me, I said you'll be carrying me out of here in a wooden box. And they said that will not be happening to you. Well it was*

actually more or less O'Carroll [sic] was doing all the chatting like. He says that will not be … don't worry that will not be happening to you and I was please, go in and tell them to stop, she didn't do anything, tell them to stop, she doesn't deserve this. And the description where they are giving where both of them were sitting to one side of the table and I was sitting on the other side, that is not true. O'Carroll [sic] was sitting to one side of the table, myself and Jennings was actually facing one another.

He actually got up and he came around and he sat to this side of the table. He got up and just sat like this at the side of the table. And I said to him please go in and stop what is going on. He says I'm telling you it's not going to happen to you. This isn't going to happen to you. And he walked around the back and he just for a split, and I was still, I was roaring and crying and pleading with them, he walked around the back and he just sort of like this tipped on the shoulder and he says I am telling you we are not going to let that happen to you. Now when he came around the back of me that's where I actually thought this is it, I thought this is where he is just going to pull me and this is where I am going to get it now. And I did, I said to him you can go on ahead now, I don't care any more, I says you can batter me, you can throw me up against walls, you can do whatever you want to me now I can't tell you anymore than what I am telling and that's the truth.[875]

6.57. Charlotte Peoples has consistently said the same thing over a long period of time. In her Statement of Claim, it was pleaded that "the Plaintiff pleaded with Garda Jennings and Carroll to intervene and stop what was going on next door". On the 10th of June 2003, she met with Chief Superintendent Brian Garvie, one of the Tribunal's investigators. She told him that she "was begging them to go in and please stop what was happening next door". Finally, during her interview with another Tribunal investigator, Mr. Pat Cummins, on the 13th of April 2006, she said that, "It was actually that bad that I was crying and pleading and begging O'Carroll [sic] and Jennings to go on and stop what was going on next door."[876]

6.58. Sergeant Carroll and Detective Garda Jennings accept that Charlotte Peoples was upset by what she heard from the adjoining room. They accept that they reassured her that nothing like that would happen to her. However, they denied that any request was made of them to go next door to put a stop to whatever was happening there.

[875] Transcript, Day 456, pages 98-100.
[876] Tribunal Documents, pages 169, 146 and 159.

6.59. On the 20th of February 2004, Sergeant Carroll made a statement in response to the Statement of Claim issued by Charlotte Peoples. He denied that he heard any such noises:

> In relation to paragraph 6(b) of this statement of claim I deny the allegations contained therein. I do say that I was aware that one Róisín McConnell was being interviewed in an adjoining interview room. However, I did not hear any banging, roaring or shouting coming from this room as alleged by the Plaintiff. At no time did the Plaintiff make a request of me to intervene in the interview with Róisín McConnell, and no such request was made to any other person in my presence. At all times the Plaintiff was dealt with in a courteous manner and in accordance with the Treatment of Persons in Custody Regulations 1986.[877]

6.60. A week later, on the 27th of February 2004, Detective Garda Jennings made his statement in response to the Statement of Claim. He was somewhat less emphatic in his denial:

> In relation to paragraph 6(b) of the Statement of Claim, both I and D/Garda Carroll treated the Plaintiff in a fair and courteous manner. We did not raise our voices or shout at the Plaintiff at any time during the course of interviews which we conducted with her at Letterkenny Garda Station on the 4th of December 1996. I have no recollection of the Plaintiff asking me to intervene in the adjoining interview room. At all times I was concentrating on the interviews with the Plaintiff to ensure that an accurate record was kept by me in relation to these interviews.[878]

6.61. In the course of cross-examination of Charlotte Peoples by Ms. Tara Burns, B.L. on behalf of the two Gardaí, it was put to the witness that she was lying about her request to them to intervene in the Róisín McConnell interview, due to the fact that she had a civil action pending before the High Court claiming damages not only for an unlawful arrest, but also due to an alleged refusal by the two Gardaí to intervene in the interview of Róisín McConnell. Charlotte Peoples responded to this accusation in a robust manner:

> *Q. I have to suggest to you, Mrs. Peoples, that there is a reason why you may say that you did ask them to do this when in fact you didn't. Because obviously your proceedings, they are based on the fact that the allegations you are making, the sickness that you have suffered since, you say is caused because you had to sit and listen to this. The first question that anybody would ask is why didn't you ask them to do something to stop it?*

[877] Tribunal Documents, page 235.
[878] Tribunal Documents, page 231.

A. I did ask them.

Q. They say you didn't?

A. They're liars, they're liars, I am telling the truth. I did ask them. They're liars. I am just so sorry that they are not sitting down there today, that I can call it to their face, because I am strong enough now to look at them. I'm strong enough. I'm not the vulnerable little girl back ten years ago sitting, what they did put me through. I am strong enough to look at them and call them liars to their faces.

Q. Mrs. Peoples, they will be as adamant as you are that you didn't ask them to do anything about it?

A. I'm telling you now before they take the stand and before they reach for that Bible they will be telling lies.[879]

6.62. Mrs. Peoples further stated that it was her belief that the two Gardaí had used the fact that unpleasant noises were coming from the next room as a means of putting subtle psychological pressure on her during their interview. This was strenuously denied by the two Gardaí concerned.

6.63. Sergeant Carroll gave the following description of the relevant interview and his interaction with Charlotte Peoples:

> *Not during the course of the first or the second interview as far as I remember. When I came into Mrs. Peoples to carry out the third interview, Mrs. Peoples was sitting in the room, she was crying, I recall that I was in the interview room a couple of moments or a couple of minutes before Detective Garda Jennings, I think he may have been away looking for a paper, looking for something or other, and she was upset. I asked her what was wrong and she said that they were shouting at Róisín next door and I said well, look, to compose yourself and she did, and to relax, that we weren't going to be doing any shouting at her. That there wasn't going to be any pressure put on her, all we wanted to do was ask questions and get the truth of those questions.*
>
> *She did compose herself and when Detective Garda Jennings came back to the room we continued with her interview and I remember a couple of times during the interview hearing loud voices coming from next door, although I could not hear what was being said. For the volume of the voice that was coming through, someone had to*

[879] Transcript, Day 456, pages 157-158.

be using raised voices in the interview room next door. I remember at one stage during that interview that Charlotte became upset and that it may have even been more than one time during that interview that Charlotte became upset and both Detective Garda Jennings and I would have again reassured her that we weren't going to shout at her or that we weren't going to raise our voices to her. I have heard of … word being said here at the interview but there was banging in the room next door. I did not hear, or cannot recall, any banging coming from the room next door. She was upset before I came into the room at all. She was actually crying when I came into the room. I don't recall her crying again throughout the interview, throughout the course of our interview, that was our final interview with her. I have no recollection of her actually breaking into tears but I have a recollection of her becoming upset when voices could be heard from the room next door. I couldn't at any time determine what was being said in the room next door.

But I have to accept that Charlotte was sitting in this interview room with the door open and she may very well have heard what was said in the interview room next door prior to my entering the interview room. Because sound would travel far easier through the corridor and in through the open door than what it would when the door was closed.[880]

6.64. Sergeant Carroll denied touching Charlotte Peoples on the shoulder, even in an effort to reassure her. He stated that he simply would not do that to a female prisoner for fear of being accused of assault. He also denied that any request was made of him or Detective Garda Jennings to intervene in the interview concerning Róisín McConnell.[881]

6.65. Detective Garda Michael Jennings stated that while they did hear raised voices coming from the next room, they did not have to raise their voices to be heard in their interview room. When asked as to whether Charlotte Peoples had pleaded with them to intervene in Ms. McConnell's interview, he stated that that was not the case. He recalled that she asked them not to shout at her, as she could not put up with that. They reassured her that that would not happen to her. He thought that this occurred during their last interview between 19.30 and 20.30 hours. He stated that they had to reassure her two or three times during that interview that nothing untoward would happen to her.[882]

[880] Transcript, Day 457, pages 80-82.
[881] Transcript, Day 457, page 88.
[882] Transcript, Day 464, page 52.

6.66. Before dealing with the conflict between Charlotte Peoples and Sergeant Carroll and Detective Garda Jennings on this matter, it is necessary to examine briefly one or two other matters relating to her interviews with them.

The Affair

6.67. In her evidence, Charlotte Peoples claimed that Sergeant Carroll had asked her during an interview whether she was having an affair with a named man in the town of Raphoe. She had replied that she was not having an affair with him. In point of fact, he was a good family friend, who had grown up with the Eaton girls, her maiden name, and was a good friend of both the Eaton and Peoples families. Charlotte Peoples had been upset by the question. She stated that it made her feel degraded, cheap and dirty. She had pleaded the matter in her Statement of Claim in the following way:

> The Plaintiff was told by Garda Carroll that she had skeletons in her cupboard and in particular that she was having an affair with one [name redacted]. The Plaintiff was told that she was a liar.[883]

6.68. In a statement made by Sergeant Carroll on the 20th of February 2004 in response to the Statement of Claim, he had stated:

> At no time did I make any reference to the Plaintiff having an affair with one [name redacted] as alleged by the Plaintiff and no other person made any such allegations to the Plaintiff in my presence.[884]

6.69. However, in a statement made on the 16th of May 2006, his position had changed somewhat:

> I do recall asking Charlotte Peoples if she was having an affair with [name redacted] during one of my interviews with her. It was at the time that I was asking her about the phone calls and her telling me that [name redacted] phoned the house and asked whoever answered for a taxi. Charlotte Peoples stated that she rang [name redacted] back after this and was joking with him on the phone. I thought that when Mr. [name redacted] rang the house and asked for a taxi that it may have been a code between them, it was at this time I asked her were they having an affair, I did not ask the question a second time I just went on with other questions.[885.]

The Policy of Denial

6.70. When Sergeant Carroll was asked why he had responded to the Statement of Claim in the way that he did in 2004, he stated:

[883] Tribunal Documents, page 169.
[884] Tribunal Documents, page 235.
[885] Tribunal Documents, page 194.

Q. You made a statement on 20th of February 2004 essentially denying the allegation set out in Mrs. Peoples' Statement [of Claim]?

A. That's correct.

Q. As far as the Tribunal is concerned then, was there a change in your approach to that and if there was can you outline why there was?

A. We have specific instructions in relation to answering Statements of Claim.

Q. Yes?

A. And when I was answering the Statement of Claim I would have followed those instructions.

Q. What are the instructions?

A. It would be that all matters were to be refuted where possible.

Q. Is "where possible" the appropriate phrase?

A. I think that's the way it's worded now, I can't remember exactly what the wording of the …

Q. Is there a circular or something?

A. There is … it would be a matter for An Garda Síochána code, I think, Chapter 6.[886]

6.71. In An Garda Síochána Code, paragraph 6.37 (4) is part of the section under the heading Preparing Files to Defend Civil Actions, it states:

> Each of the allegations shall be addressed and refuted where possible.

6.72. Sergeant Carroll stated that when addressing a Statement of Claim, the Gardaí were instructed to adopt a restrictive approach. If a Plaintiff's allegation was not absolutely correct and accurate in all respects, it was to be denied. This was how he interpreted the instructions given to him.[887]

6.73. In his statement in response to the Statement of Claim filed on behalf of Charlotte Peoples, Detective Garda Jennings did not deal with the allegation that Sergeant Carroll had asked the prisoner whether she was having an affair. He said that he did not address this particular allegation in the Statement of Claim

[886] Transcript, Day 457, pages 113-114.
[887] Transcript, Day 457, pages 119-120.

because it did not concern him directly. He said that he only dealt with those allegations which pertained to him personally.

6.74. This question appears to have been one of a series of eleven questions put to Charlotte Peoples concerning a telephone call from the particular man, which was made to her home in the early hours of the 14th of October 1996. Detective Garda Jennings, who was taking the notes during that interview, recorded ten questions concerning the telephone call, but did not record the question in which it was put to Charlotte Peoples that she was having an affair with this man. He denied that this had been a deliberate omission. He stated that he simply had difficulty keeping up with Sergeant Carroll's questioning of the prisoner. He stated that while it was not a question that he would have asked, he felt that it was not asked in an effort to degrade the prisoner, but in an effort to get to the bottom of the telephone call issue. It was put to him that he had said "sure we all have skeletons in the cupboard", or words to that effect. He denied that he, or Sergeant Carroll, had made any such reference to skeletons in the course of their questioning of Charlotte Peoples.

A Successful Ruse

6.75. In an early interview, Charlotte Peoples denied that a telephone call had been made from her home to Letterkenny General Hospital early in the morning of the 14th of October 1996. The Gardaí knew that such a call had been made by someone who gave a false name and enquired after the health of Richard Barron. During his interview with Charlotte Peoples, Sergeant Carroll pretended to make a telephone call on his mobile telephone to check the exact time of the call to Letterkenny General Hospital. In fact there was nobody at the end of the line. However, the ruse worked; Charlotte Peoples admitted that the call had been made by her mother. She stated that she had lied about the call initially for fear that her mother would be arrested if she told the truth.

6.76. Later Sergeant Carroll tried another ruse. He stepped out of the interview room for a short period. When he returned he put it to Charlotte Peoples that her husband had made a statement admitting to knowledge of the murder and stating that she had knowledge of it too. She responded by saying that if her husband had knowledge of the murder, she knew nothing about it. Sergeant Carroll then asked her if she thought that her husband would set her up like that, to which she replied in the negative. No such statement had in fact been made by Michael Peoples. Sergeant Carroll stated that this was a ruse designed to get Charlotte Peoples to tell the truth. He accepted that in adopting this tactic he may not have been "boxing by the Queensberry rules"[888], as it was put by him.

[888] Transcript, Day 457, page 109.

6.77. In her Statement of Claim, Charlotte Peoples had pleaded this aspect as follows:

> The Plaintiff was intimidated by Detective Garda Carroll and Jennings. Detective Garda Carroll told the Plaintiff that she was telling lies and that the murderer had confessed and was further told that she knew about the murder. The Plaintiff protested that, if someone had confessed to the murder, then they had framed the Plaintiff and Garda Carroll replied did the Plaintiff think that her husband would frame her.[889]

6.78. In his statement in response to that allegation in the Statement of Claim, Sergeant Carroll stated as follows:

> I refer in particular to paragraph 6 of the Statement of Claim and I deny the allegation contained therein. I did not at any time intimidate the Plaintiff and neither did any other person do so in my presence. In relation to paragraph 6(a) of this claim I deny the allegation contained therein. I did not at any time call the Plaintiff a liar nor did any other person do so in my presence. I did not state to the Plaintiff that anybody had confessed to the murder. I did not ask the Plaintiff if she thought that her husband would frame her and I did not make any reference to "skeletons in the cupboard" as referred to by the Plaintiff.[890]

6.79. However, in his statement made on the 16th of May 2006, Sergeant Carroll changed his position:

> I believe that it was in my last interview with Charlotte Peoples that I put it to Charlotte Peoples that her husband Michael had admitted to having knowledge of Richard Barron's murder, I recall that she replied that if he did, she didn't know anything about it. I then asked her did she think her husband would set her up like this, I can't recall exactly what her reply was to this, but I do recall it was in the negative. I did not labour this point nor did I go on about it, I only ran it by her the once.[891]

6.80. In the course of his evidence Sergeant Carroll described these ruses in the following way:

> *At an earlier stage, earlier in the interviews during the day, I pretended that I had made a phone call on my mobile phone and asked the person that I called, or the person I pretended to call, if they knew exactly what time, or what time they said exactly the phone calls were made to Letterkenny General Hospital. At that point Charlotte Peoples gave in that there was phone calls made to Letterkenny General Hospital from the house. Then later on in*

[889] Tribunal Documents, page 169.
[890] Tribunal Documents, page 235.
[891] Tribunal Documents, page 194.

> *the evening I stepped outside the door of the interview room and stepped back in again and I said to Charlotte Peoples that her husband Michael had admitted to having knowledge of the murder of Richard Barron and her answer to that was that if he did, that she knew nothing about it. And I asked her did she think that her husband would set her up like this and her answer to that was in the negative. I can't remember what it was. But that's all it was about it. We moved on and we continued on with her memo of interview after that. … It wasn't true, no. It wasn't true. I may not have been boxing by the Queensberry rules in relation to the interview in relation to that.*[892]

6.81. Sergeant Carroll had denied this allegation when made in the Statement of Claim: the point of disagreement being that Sergeant Carroll denied that he told Charlotte Peoples that her husband "had admitted" the murder, but accepted in evidence that he had told her that he "had knowledge of" the murder. It need hardly be stated, but this appears to the Tribunal to be a very fine distinction to draw in the matter. Detective Garda Jennings did not address this aspect in his statement made in response to the Statement of Claim.

Conclusions

6.82. The following are the Tribunal's conclusions on the various issues raised in connection with the detention of Mrs. Charlotte Peoples at Letterkenny Garda Station on the 4th of December 1996:

1. Having heard evidence from Mrs. Charlotte Peoples over a number of days both in 2003 and in 2006, and having carefully analysed all of her statements and interviews over a period of ten years, I am satisfied that she is an honest and reliable witness. She has told her story in a fair and forthright manner. She has not attempted to make gratuitous or unfounded allegations against any of the Gardaí who dealt with her. I am satisfied that she has told the truth. The Tribunal accepts her evidence.

2. Insofar as findings are reached by the Tribunal which do not accord with the account given by Mrs. Peoples, the Tribunal finds that on some small points her account, although honestly given, was mistaken in point of fact. However, on the major aspects, her evidence has been accepted.

3. The evidence of Martin Leonard that he offered Charlotte Peoples the opportunity to consult with a solicitor who was then in the Garda station at 10.15 hours, is supported by the entry in the custody record and by the evidence of Detective Sergeant Henry and Garda Kyne. While Charlotte

[892] Transcript, Day 457, pages 108-109.

Peoples did not accept this evidence, maintaining that it occurred later in the day, she did accept in evidence that other entries in the custody record throughout the day were accurate. The Tribunal finds that Mr. Leonard is accurate in his recollection in this regard.

4. The Tribunal is satisfied that two telephone calls were made by Mr. Dillon's office to Letterkenny Garda Station enquiring as to whether Mrs. Peoples wanted to see a solicitor. The Tribunal accepts the evidence of Mr. Leonard that, as member in charge, he answered these questions in the negative due to the fact that Charlotte Peoples had, earlier in the day, on two occasions, declined the opportunity to have a solicitor contacted, or to see one who was in the building. The Tribunal finds that Garda Leonard did not return to Charlotte Peoples to see if that was still her state of mind. The Tribunal is of opinion that having regard to the noises emanating from the adjoining interview room and their effect on Mrs. Peoples, it was highly likely that she would have welcomed a visit from Mr. Dillon, particularly given the fact that her mother had informed her during the afternoon that he would be calling to see her. Garda Leonard was negligent and in breach of his statutory duty as the member in charge in failing to ask her whether she wanted to see Mr. Dillon on each occasion that his office contacted the Garda station. He should have asked Charlotte Peoples whether she wished to see the solicitor and should have recorded her answer in the custody record.

5. As regards the refusal of a visit by Garda Leonard to Mrs. Eaton, the Tribunal finds that such refusal was made by Garda Leonard due to the fact that Charlotte Peoples had been taken into custody a short time previously. In making that decision he did not consult with the interviewing Gardaí, Detective Sergeant Henry or Garda Kyne, to ascertain whether such a visit at that time would hinder or delay the investigation. Given that Charlotte Peoples was a sick woman, who was shocked at being arrested on the same morning as her husband, it was wrong of Garda Leonard to make the decision unilaterally without recourse to the interviewing Gardaí. The Tribunal makes no finding that his refusal was communicated to Mrs. Eaton in a rude or offensive manner.

6. The Tribunal is satisfied that Detective Sergeant Henry and Garda Kyne treated Charlotte Peoples with compassion and respect both at the time of her arrest and throughout the period of her detention at Letterkenny Garda Station. The Tribunal notes that Detective Sergeant Henry brought tea to Mrs. Peoples and her mother and also directed that due to her ill

health, she should be allowed to take her rest periods in the interview room, rather than in a cell. These were kind acts on his part.

7. There was no objectionable questioning of Charlotte Peoples by Detective Sergeant Henry or Garda Kyne. While the notes of interview were not read over until towards the end of the detention period, there was no attempt to disguise this fact as the time of the signing of the notes was recorded therein. The Tribunal accepts the explanation given by Detective Sergeant Henry that in 1996 it was thought that as long as the notes were read over to a prisoner prior to the end of the detention period, that was sufficient compliance with the custody regulations. Detective Sergeant Henry accepted that that view was no longer regarded as being correct. He accepted that the notes should have been read over at the conclusion of each interview. The Tribunal accepts his evidence in this regard.

8. The Tribunal was particularly impressed by the evidence of Garda Debra Kyne. She gave her testimony in a free flowing and direct manner. The Tribunal is satisfied that she has told the truth.

9. When Detective Sergeant Henry and Garda Kyne heard noises coming from the adjoining interview room and when they saw how upset Charlotte Peoples was becoming as a result of same, there was an onus on them as honourable Gardaí to do more than reassure Mrs. Peoples that she would not be treated in a similar fashion. The Tribunal recognises that Garda Kyne was a very junior Garda at the time. She was sent to Letterkenny Garda Station as her first station in March 1996. She was in phase four of her training at the time of the detention of Mrs. Peoples in December 1996. She completed her training and "passed out" in April 1997. She was accompanied in the interview by a vastly experienced detective sergeant. In the circumstances, her failure to take the matter any further was excusable.

10. Detective Sergeant Henry stated for the first time in 2006 that he raised the matter with the member in charge by asking him if everything was alright in the adjoining interview room, to which the member in charge was alleged to have replied that everything was alright. The person to whom the remark was allegedly made, Martin Leonard, has said that he has no recollection of that remark being made to him. At this remove, some ten years later and in the absence of any corroborating evidence either way, the Tribunal cannot make a finding that such a comment was in fact made by Detective Sergeant Henry to Garda Leonard.

11. Even if the comment or question was made by Detective Sergeant Henry, the Tribunal is of opinion that he should have done more if he genuinely believed that something untoward was happening in the adjoining interview room. The fact that an honourable decent Garda sergeant did not do more at the time, permitted what we now know did take place in that and subsequent interviews with Róisín McConnell, to happen. When decent Gardaí fail to act others of a different nature can go about their obnoxious work unhindered.

12. The Tribunal has looked carefully at the issue as to whether Charlotte Peoples asked Sergeant Carroll and Detective Garda Jennings to intervene in what was happening in the adjoining interview room where the interview with Róisín McConnell was taking place. As already stated, the Tribunal is satisfied that Charlotte Peoples has given her evidence in a truthful fashion. The Tribunal notes that she has been consistent in her account of what she said and did. The same cannot be said of the accounts furnished by Sergeant Carroll and to a lesser extent by Detective Garda Jennings. The Tribunal was unimpressed by the content of their statements made in response to the Statement of Claim issued on behalf of Charlotte Peoples. The Statement of Claim was so finely parsed by them, and the responses given so narrowly confined, that the end result was that the statements themselves were not an accurate reflection of the truth of the situation.

13. In passing, the Tribunal would point out that such an approach, while perhaps protecting other colleagues against whom more direct allegations of wrongdoing were levelled, did no service to the State who were in the process of trying to ascertain what defence should be mounted to various civil claims. If Gardaí do not tell the full truth in such statements, the lawyers representing the State in civil litigation cannot advise their clients as to what prudent course of action should be taken at any given stage in the litigation. Such disingenuous statements from the Gardaí only cloud the issues, leading to considerable difficulties when the true picture emerges at a much later stage, usually at the pre-trial consultation. The result often is that the State case collapses, with the opportunity lost of making a lodgement or tender, or reaching a favourable settlement at an earlier stage. It is time for a more enlightened approach to be taken by Gardaí at all levels when responding to civil litigation. In short, that means telling the full truth. The Tribunal recommends that the direction given to members on the method of dealing with complaints and civil actions should be amended so as to

prevent the response of members to the complaint constituting a flat denial.

14. While Sergeant Carroll and Detective Garda Jennings denied that they were aware of the responses given by Detective Sergeant White and Detective Garda Dooley to the allegations made by Róisín McConnell, the Tribunal is satisfied that they knew or strongly suspected that the two Gardaí would be adopting a position of denial to her allegations. That being the case, it would have been difficult, if not impossible, for them to admit that there was noise of such level coming out of that room and that they were asked by the prisoner to intervene. It is noteworthy that it was not until after the statements of admission had been furnished by Detective Garda Dooley in October 2005 and Detective Sergeant White in March 2006 that they modified their position somewhat, to make partial admissions that there had been sounds and that they had to reassure the prisoner on that account. At the same time Sergeant Carroll changed his stance on a number of important matters, in particular the question concerning an affair and the ruse concerning an alleged statement of admission by the prisoner's husband. In these wearying circumstances, the Tribunal prefers the evidence of Charlotte Peoples on this aspect. The Tribunal is satisfied that she did ask Sergeant Carroll and Detective Garda Jennings to intervene in the Róisín McConnell interview. They did not do so, but reassured her that nothing of that nature would happen to her.

15. The Tribunal accepts the evidence of Charlotte Peoples that during her interview with Sergeant Carroll and Detective Garda Jennings, she was touched on the shoulder by Sergeant Carroll. In fairness to Mrs. Peoples, while she stated that she did fear an assault at that time, she did not ever allege that this action constituted an assault on her. The Tribunal is satisfied that this brief incident occurred. However it was simply a kind gesture designed to reassure the prisoner, rather than to frighten her. It was not an assault in the real sense.

16. The Tribunal does not accept the interpretation that Sergeant Carroll and Detective Garda Jennings deliberately failed to intervene as a tactic to put pressure on Charlotte Peoples. Their conduct during the remainder of their interviews with her does not support such a contention.

17. The Tribunal is concerned about a matter connected to the custody regulations: being the manner in which the period of Mrs. Peoples' detention was extended by Superintendent John Fitzgerald on the 4th of December 1996. As this aspect is common to a number of the detention

sub-modules, it will be dealt with in the recommendations section in Chapter 16.

18. The Tribunal rejects the contention put to Mrs. Peoples in the course of cross-examination that she had lied about the request allegedly made to Sergeant Carroll and Detective Garda Jennings, due to the fact that she had pleaded in her civil action that failure to accede to same had caused distress at the time, thereby contributing to her suffering personal injury for which she blames the Gardaí and the State. The Tribunal is satisfied that Mrs. Peoples has given a truthful account of her dealings with Sergeant Carroll and Detective Garda Jennings in this regard and has not been motivated by any desire to increase her level of damages in civil litigation on the same matter.

Malin Head
Ballygerman
Crockalough
Glengad Head
Doagh Isle
Culkeeny
Tullagh Point
Dunmore Head
Malin
Culdaff
Tory Island
Toraigh
West Town
Round Tower
East Town
Fanad Head
Dunaff Head
Ballyliffin
Clonmany
Carndonagh
Carn Domhnach
Cartowmenagh
Gleneely
Inishowen Head
Ramore Head
Portrush
Port Rois
Tory Sound
Ferry (P)
Melmore Head
Rinboy Point
Doagh Beg
Dunaff Bay
Dunaff
Raghtin More
Gap of Mamore
Urris Hills
Dunree Head
Leckemy
Crockaulin
Greencastle
Moville
Bun an Phobail
Magilligan Point
Portstewart
Port Stiobhaird
Horn Head
Rinnafagla Point
FANAD
Portsalon
Milltown
Tawny
Slieve Snaght
Drumfree
Creehennan Hill
Inishbeg
Inishdooey
Inishbofin
Dunfanaghy
Sheep Haven
Bloody Foreland
Mín an Cladaigh
Meenlaragh
Carrickart
Knockalla Mt.
Glenvar
INISHOWEN
Redcastle
Buncrana
Bun Cranncha
Crockglass
Carrowkeel
Quigley's Point
LOUGH FOYLE
Articlave
COLERAINE
Cúil Raithin
Glebe
Macosquin
Crindle
Bolea
Keady Mountain
Ballyintagh
Mullan
Inishsirrer
Inishmeane
Gola
Owey Island
Torneady Point
Cruit Isd
Aran Island
Árainn Mhór
Kincasslough
Leabgarrow
Annagry
Crolly
Loughanure
Meenbannad
Burtonport
Ailt an Chorráin
THE ROSSES
Derrybeg
Doirí Beaga
Gweedore
GWEEDORE
Brinlack
Bun na Leaca
Gortahork
Gort an Choirce
Falcarragh
An Fál Carrach
Creeslough
Muckish Mountain
Derryveagh Mountains
CLOGHANELLY
Errigal Mtn
Gaoth Dobhair
Dunlewy
Lough Nacung
Money More
Dooish
Glenveagh National Park
Garton L.
Slieve Snaght
Derryveagh
Lough Beagh
Glen
Croaghmore
Carrowkeel
Crockanaffrin
Rathmullan
Fahan
Cross-Slab
Inch Island
Inch
Burnfoot
Muff
Bridge End
Buncrana
Greysteel
Glas-shiall
Baranailt
Loughermore
Ballykelly
Baile Uí Cheallaigh
Moys
LIMAVADY
Léim an Mhadaidh
Ringsend
Drumsurn
Garvagh
Garbhachadh
Keady Mountain
Ballintemple
Mullan
Bolea
Crindle
Ballykelly
Greysteel
Eglinton
LONDONDERRY
Doire
City of Derry Airport
Grianán an Aileach
Newtown Cunningham
Millford
Ray
Lough Swilly
Termon
Kilmacrenan
Rathmelton
Coolboy
Treantagh
Church Hill
LETTERKENNY
Leitir Ceanainn
Glendowan Mountains
Glendowan
Binswilly
Lough Swilly
Newmills
Dooish Mtn
Carrigans
Manorcunningham
Saint Johnstown
Drumoghill
Magheramason
New Buildings
The Cross
Scriggan
Dungiven
Dún Geimhin
Carn
Claudy
Feeny
Swatragh
Tirkane
Tirkane Sweathouse
Glenshane Pass
Banagher Church
Maghera
Machaire Rátha
Mullaghmore
Lisnamuck
Tobermore
Draperstown
Desertmartin
Sperrin Mountains
Sawel Mountain
Craig Sperrin
Moneyneany
Cranagh
Glenelly Valley
Barnes Gap
Spaltindoagh
Slieve Gallion
Moneymore
Muine Mór
Beaghmore Stone Circles
Greencastle
Dunnamore
Orritor
Mullaghcarn
Mountfield
Creggan
Milltown
Carrickmore or Termon Rock
Pomeroy
Sixmilecross
Beragh
Cappagh
Donaghmore
Dungannon
Dún Geanainn
Castlecaulfield
Granville
Ballyreagh
Greystone
Moy
Ballygawley
Carnteel
Seskinore
Slievemore
Garvaghy
Fintona
Fionntamhnach
Dromore
Trillick
Kilskeery
Lack
Ederney
Clonelly
Kesh
Lisnarick
Irvinestown
Baile an Irbhinigh
Lough Erne
Lower Lough Erne
FERMANAGH
TYRONE
OMAGH
An Omagh
Drumquin
Killeter
Bolaght Mtn
Castlederg
Caisleán na Deirge
Newtownstewart
An Baile Nua
Victoria Bridge
Ardstraw
Gortin
Plumbridge
Glenelly Valley
Sion Mills
Strabane
An Srath Bán
Lifford
Leifear
Castlefinn
Stranorlar
Srath an Urláir
Raphoe
Ráth Bhoth
Convoy
Drumkeen
Ballindrait
Artigarvan
Dunnamanagh
Cloghcor
Ballymagorry
Ballynamallaght
Park
Dreen
Bready
Knockbrack
Lough Deele
Crockalough
Ballybofey
Bealach Féich
Killygordon
Clady
Croaghgorm or Blue Stack Mountains
Barnesmore Gap
Altnapaste
Cloghin
Commeen
Boltypatrick
Aghla Mtn
Glenties
Na Gleannta
Ardara
Ard an Rátha
Meenacross
Malin More
Glencolumbkille
Meenaneary
Malin Beg
Carrick
An Charraig
Slieve League
Teelin
Killybegs
Rossbeg
Portnoo
Dooey
Dawros Head
Dunmore Head
Gweebarra Bay
Loughros More Bay
Loughros Beg Bay
Rossan Point
Malin Bay
Rathlin O'Birne Island
Carrigan Head
Slievetooey
Lough Nalughraman
Crocknapeast
Croagh
Inver
Bruckles
Mountcharles
Kilcar
Dunkineely
Frosses
Letterbarra
Druminnin
Croaghnamea
Donegal
Dún na nGall
Laghy
Oughtarnid
Bridgetown
Ballintra
THE FULLARS
Rotigo
Páirtigh
Coolmore
Cavangarden
Kildoney Point
Doorin Point
St. John's Point
DONEGAL BAY
Ballyshannon
Beal Átha Seanaidh
Bundoran
Bun Dobhráin
Belleek
Tullaghan
Mullaghmore Head
Mullaghmore
Castlegal
Roskeeragh Point
Inishmurray
Lough Eske
Croaghconnellagh
Lavagh More
Binbane
Owenroe R.
Owenea R.
Aderry
Reelan R.
Finn R.
Deele R.
Swilly R.
Owenwee River
Owenalor R.
Gweebarra R.
Glen R.
Eske R.
Derg R.
Camowen River
Owenreagh
Ulster-American Folk Park
Megalithic Tomb
Megalithic Tomb
Visitor Centre
Bellany Stone Circle
Church
Castle
Lough Muck
Lough Croaghan
Lough Barra
Lough Finn
Lough Ea
Lough Anna
Lough Derg
Lough Eany
Lough Dunlewy
Lough Altan
Lough Fern
Lough Salt
Lough Inch
Lough Mourne

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