

OPENING OF THE EXPLOSIVES MODULE

Sir, on the 4th of November last year, and on succeeding days, we, as counsel on behalf of the tribunal, delivered a preliminary opening statement to you. The purpose of this statement was to lay a factual outline of the issues which were likely to come before the Tribunal in the course of its enquiries and hearings. We do not feel that a further lengthy statement in relation to this matter is now appropriate. Some matters do, however, need to be indicated and it seems to us that they can be outlined briefly.

These last three months have been spent furthering the investigative phase of the Tribunal's business. Chief Superintendent Brian Garvie, of the Royal Canadian Mounted Police, and Mr. Michael Finn, formerly a Superintendent member of An Garda Síochána, have spoken to, or formally interviewed many dozens of witnesses. The Tribunal team has also held meetings with a number of witnesses and, where necessary, have travelled for this purpose. Since we last addressed you, and with a view to understanding the dynamic behind what may have occurred in County Donegal, we have spoken to a number of people who were not previously witnesses, but who, we felt, might have some light to cast on the dynamic of the situation which seems to have developed in that county. The persons we spoke to include the Director of Public Prosecutions, the Deputy Director of Public Prosecutions, the Deputy Commissioner of An Garda Síochána, the Deputy Secretary General of the Attorney General's office, Mrs. Maura Geoghan Quinn, Mr. Padraig Flynn and Mrs. Nora Owen, former Ministers for Justice, and Mr. Ciarán MacLachlainn, the State Solicitor for County Donegal. We have also discussed the potential for bringing expert evidence to bear, in relation to police procedures concerning informants and the handling of investigations generally, on these issues. In consequence, we have spoken to experts from England, from Northern Ireland and from Canada. One of these, Chief Superintendent Brian Garvie, is listed as a witness in respect of this module on these issues. Meetings with personnel from Garda Headquarters have improved our understanding of many issues and we thank Assistant Commissioner Conroy for arranging these. In addition, members of the Carty investigation team have furthered their already excellent co-operation by providing statements relevant to this issue from, among others, Superintendent Taghg Foley and Inspector Hugh Coll. These persons are also listed as witnesses.

Sir, when we last addressed you the issue of discovery was outstanding in a number of important quarters. We are glad to say that we have had discussions with personnel in Garda Headquarters and in the Department of Justice and that as a result of that we believe that discovery is complete, or as near complete, as will enable this hearing to take place. The nature of the burden placed upon the Gardaí and upon the Department of Justice in terms of the co-operation demanded pursuant to the Tribunals of Evidence Acts, 1921-2002, is exemplified by the thousands of documents which have had to be gathered, categorised and analysed with a view to assisting the Tribunal. We do not have an issue with any of the parties whom we have mentioned, including the Gardaí and the Department of Justice, in relation to their co-operation and in addition we would thank them for any courtesy which they have extended to us.

Sir, it is a pointless exercise to advise you that you should pursue a line of enquiry which is based upon the merest suspicion or is the product of a mental anguish or emotional turmoil of some person who has become, perhaps through no fault of their own, involved in the events in Donegal. Virtually every single one of the main protagonists to this, and the other modules, it has become clear from what we have read and from what we have observed on meeting people, considers themselves to be a victim. The Tribunal has, for instance, written two letters to all the persons who, in the relevant ten year period, have served as a member of An Garda Síochána, at any rank, in County Donegal. The first of these letters elicited only a derisory response in terms of co-operation. The second letter incorporated a detailed questionnaire on each of the terms of reference. With very very few exceptions the result of this questionnaire was not helpful in terms of the presentation of further information before the Tribunal. In contrast, many of the parties now represented before the Tribunal, or who were, at the relevant time, high officials of the State, have met with us and attempted further enquiries in every way that was possible. We use the word "possible" advisedly because any party dealing with this matter has the same rights as every other citizen. We have no quarrel with the concept of legal professional privilege or privilege which legitimately arises in defined circumstances by virtue of State interest. Where it has been necessary, we have felt it necessary to enquire into documents, and to ask questions, which may have been regarded as traversing a legitimate privilege. We have received levels of co-operation beyond those legally required from parties who have allowed us to look at what would otherwise be privileged documents and to pursue a line of enquiry with a view to seeing whether it is possible to allege any wrongful involvement by high officials of the State. This waiver of privilege has been of immense help and it has had the consequence that we are in a position to advise you in the fullest possible terms as to what lines of enquiry might legitimately be followed. That waiver

has been temporary, for the purpose of an enquiry, but it has been all the more valuable for that in the sense that it has put us in a position to see whether any potential finding of fact determining fault may be pursued in any particular direction. If there is anything to suggest the necessity to analyse the role of any high State official, that course will be followed. Where that evidence does not so far exist then we cannot advise you that it is appropriate to follow a futile line of enquiry. After all, this enquiry is in relation to the alleged infringement of legitimate rights. It includes claims that police powers allowing for the infringement of liberty and the invasion of the dwelling of the citizen were exercised in circumstances without legal authority and, in particular, without the existence of reasonable suspicion. We have taken a lower standard than that and analysed papers, and spoken to officials on the basis that if any glimmer of suspicion might turn into one that was reasonable upon further enquiry, then that enquiry should be made. We are further cognisant of the Terms of Reference and the fact that your interpretation of them, Sir, allows blame to be laid at the door of whatever State official might have responsibility for any negative fact that you might find in relation to this entire matter.

An Garda Síochána is now organised around a structure of regions, divisions and districts. Up to 1996, the structure was that Garda Divisions reported directly to Garda Headquarters. Now there is an Assistant Commissioner in charge of regions, one of which includes County Donegal. At the relevant time, in relation to this module, the Divisional Officer was the Chief Superintendent based in Letterkenny. He reported directly to Headquarters. County Donegal was, and is, a Garda Division under the command of a Chief Superintendent. Our discussions with the former Ministers for Justice have been instructive in this regard. We understand that it was probably following upon the case of *The People (DPP) -v- Brendan Patrick O'Donnell*, that the idea of a regional commander was first muted. This was because Brendan Patrick O'Donnell kidnapped and murdered people over two counties, Clare and Galway, and over two separate Divisions. This idea of regional commanders was first muted under Mrs. Geoghan Quinn and brought to fruition under Mrs. Nora Owen. Sir, as you will be aware, those persons who served as Superintendents, or as Chief Superintendent, in Donegal at the time of these apparent explosives finds have all been served with a letter and a set of documents indicating that it is possible that their conduct may be critically commented on in the course of this enquiry. An expert witness whom we intend to call in relation to this matter is Chief Superintendent Brian Steel Garvie. In the course of his statement, dated the 17th of February, 2003, he refers to the Garda manual entitled 'Crime Investigation Techniques' and in particular paragraph 16.16 which sets out the role of the Garda in charge of an investigation. He then comments as follows:

The role of senior officers in this matter, and I refer to officers of the rank of Superintendent and above, is essentially a supervisory one. However, the role of every senior officer actually involved in an investigation is to see that the investigation is carried out. This is an individual, as well as a collective, responsibility. I again refer to the manual 'Crime Investigation Techniques' of An Garda Síochána that states, "the District Officer is responsible for the setting up of an investigation office-incident room. The member in charge is accountable for arranging conferences as frequently as he or she considers necessary, at which, having regard for the matters to be discussed, essential members should attend. He should personally conduct the conference and should have a competent note-taker present to make brief notes on the matter dealt with, decisions arrived at, instructions issued, etc. for his subsequent consideration and reference as required. The Divisional Officer as well as other Officers concerned in the investigation should attend these conferences". The Carty investigation team has already identified that there was an absence of paperwork and follow-up investigation in relation to these apparent offences, the failure of senior officers to ask questions, to inform themselves as to the nature of the investigation and its progress and fulfil their role as supervisors. Ultimately, "it is the duty of the District Officer, to attend scenes of serious incidents in the district and to take overall command and to process reports from subordinates and ensure that correspondence is submitted on time and that reports are comprehensive and accurate". An Garda Síochána Code 3.5(14). It is my view that the find at Ardchicken, the operation at Bridgend/Burnfoot, and the two finds at Rossnowlagh were of the nature that require the interest, oversight and involvement where necessary, of the Divisional and District Commander. With respect to the other incidents, namely Strabane, the find at the Oatfield Sweet Factory, the find at Covehill, and the incident at Adrienne McGlinchey's flat require the interest, oversight, and involvement when necessary of the Detective Unit and the District Commander.

Every enquiry must follow its own course, but it is certainly the case that a broad outline of what you are required by the Oireachtas to urgently enquire into, Sir, has already been elucidated by your explanation of the Terms of Reference and, we hope, by the section of the Preliminary Opening Statement relevant to this matter. No facts have, as yet, been found. If, however, it is the case that the situation in County Donegal was, with respect to paragraph E of the Terms of Reference, both as

strange and as lax in terms of management supervision as the papers might indicate, then questions need to be asked not only of the Divisional Officer, of the District Officers and of those specifically who are either tasked, or should have been tasked, to investigate these explosive finds, but also the role of Garda Headquarters needs to be investigated. In this respect a very helpful statement has been furnished to us by Chief Superintendent Martin Callinan and it has also been to our benefit to have met with Deputy Commissioner Noel Conroy and Assistant Commissioner Patrick O'Toole. Chief Superintendent Callinan in his statement to the Tribunal, undated, but received on the 18th of February, 2003, states that:

The ultimate responsibility for the investigation of an incident lies with the Divisional Officer with responsibility for the area of occurrence. Security and Intelligence Section acts as a support mechanism where intelligence exists that would tend to assist an investigation. Regular telephone contact is also maintained with Divisional Offices for routine or administrative enquiries.

The foregoing statement is made in the context of explaining the role of the Security and Intelligence Section of An Garda Síochána. It also helpfully outlines the structures for the policing of this country and the role of the various ranks in relation to their assigned responsibility. Donegal may very well be an isolated part of the country, in terms of its geography, principally because of its proximity to Northern Ireland. It is also fair to say that as regards terrorist crime, that the division of the country into two separate jurisdictions is capable of being exploited. While historical and political reasons may contribute to the isolation of County Donegal, these seem to us to be factors which should increase the determination of Garda Headquarters to manage and overview the role of District Officers in that County. Donegal is not an isolated island detached from Ireland, but is part of the jurisdiction subject to our law which is enforced under the direction and control of the Garda Commissioner. In his statement to the Tribunal, Chief Superintendent Garvie, of the Royal Canadian Mounted Police, states:

There is one other area of supervision that I consider relevant. That is the area of managerial review. The Commissioner is responsible for An Garda Síochána as the general direction and control of the force are vested in him. He can delegate responsibilities to subordinates, as he did with the Division and District Officers, but ultimately, he remains accountable. In view of this, there is a requirement for periodic management reviews by headquarters of divisions, divisions of districts, and districts of stations and independent units. To some

degree this requirement is satisfied by the inspections that are identified in the An Garda Síochána Code, however, I have been advised that there is no component of the inspections that requires an inspecting officer to conduct operational or administrative file reviews utilising the principles of modern risk management. The incidents were reported to headquarters as they occurred, but there was no consistent standard of detail or required information, and there was no apparent expectation from headquarters that progress reports about the conduct of the investigation, would be forwarded.

One of the other roles which Garda Headquarters takes on with a view to being useful to the entire national police force is that of intelligence gathering and analyses. The Security and Intelligence Section of An Garda Síochána was established in 1974. A year earlier, Garda management had advised the force of the importance of intelligence gathering and exhorted all ranks to "make a determined effort to build up a sound intelligence system". When the unit was established it was announced by way of headquarters circular 3C/110/65 in the following form:

To help in building up a sound Intelligence System, a separate Unit is being established to have responsibility for examining, assessing and correlating all reports received here. In this way it is hoped to build up a good intelligence network and to provide the necessary feedback to Divisions as required. In introducing this system, which was in operation for in 'C' Branch and is the accepted method in other police forces, it has been decided that members receiving information will...report the name address and occupation and general background of the informants in each case.

This was later revised through a consciousness of the need for the security of information and the privilege acknowledged in law to repose in informants until such time as they come forward as witnesses to the same subject matter. Since the Gardaí have a dual function of policing and State security the Security and Intelligence branch coordinates counter terrorist strategies. Superintendent Callinan indicates in his statement:

The main function of the branch is to receive information so that it can be examined, assessed, correlated and disseminated. The receipt of such information allows for the monitoring of trends in subversive and criminal activity and the formulation of appropriate responses, mainly strategic, but in some cases operational/tactical. The section strives to develop and implement best

practice in intelligence management. Many of the desk officers have received training as intelligence analysts. The computerised storage system for this intelligence is constantly being developed to facilitate the analysis of the available intelligence. During the analysis process, close contact is maintained with Divisions or the specialist unit concerned.

Later on in this statement, Chief Superintendent Callinan states:

Depending on the nature of the information it may be necessary for all or part of the information to be passed to a Chief Superintendent within a Division or a specialist unit for further investigation or enquiry. It may be necessary to summarise the information so as to protect the source of the information. In many instances revealing the full content of the information would lead to the source being identified resulting in a risk to his/her safety.

With this consideration in mind, Sir, we do not intend to say anything further as to the role which the Security and Intelligence Section of Garda Headquarters played in this entire matter. The questions which arise will concern the proper functioning of the role as so helpfully outlined by Chief Superintendent Callinan and in particular the identified need for not simply the gathering of information, but its analysis and dissemination to District Officers. In some instances, and this may be one of them, the follow up from Headquarters might reasonably be considered to be part of a functioning management structure. Where a legitimate informer privilege exists and has not been waived by the informant making a statement either to the Carty team or to this Tribunal on the same subject matter, we, Sir, agree that the methodology of closed hearings agreed between us and counsel for the Garda Commissioner should be followed. A protocol for dealing with these situations has been agreed following a considerable amount of work and we would like to thank the Gardaí and their counsel for this. We hope to structure the hearings in such a way as to allow for minimum disruption to the public, the press, and to the parties who are not directly interested in the subject matter, and who therefore would not be made the subject of a critical comment on foot of same, by reserving any examination relative to such matters to discreet portions of the hearing.

Any consideration of the role of the Security and Crime branch brings us to the question of the relationship of the Gardaí to the Department of Justice. From the Garda point of view, Chief Superintendent Callinan indicates the following:

The Minister for Justice, Equality and Law Reform is responsible for the setting of Government objectives and principles for An Garda Síochána. The Commissioner has responsibility for the implementation of such objectives and principles. Daily liaison takes place between management at Security and Intelligence Section and senior personnel within the Northern Ireland and Security Division of Justice, Equality and Law Reform on various issues, significant incidents and arrests affecting the security of the State. Security and Intelligence Section also performs the security vetting for persons employed in sensitive posts within the civil and public service.

A lengthy statement has been provided to us by the Department of Justice though, as yet, the official who may be called upon to give evidence is unidentified. Our meetings with the Department of Justice have, however, been helpful and those whom we have met have shown a real knowledge of the working of the Department and a willingness to assist the Tribunal. There is a corresponding section within the Department of Justice dealing with security matters, to that in Garda Headquarters. This was at the relevant time referred to as the Security Division, but more recently, from 1999 by the mysterious title of the Crime 3 Division. What is the purpose of this organ? In a statement it is described as follows:

The main purpose of the Division is to further develop policies and implement measures to underpin the security of the State, including through assisting in seeking a resolution of the conflict in Northern Ireland and to continue to keep, in liaison with the Garda Síochána, the Minister and the Government advised of any threat to that security and of measures - including legislative, administrative or resource issues, which may be necessary to combat it. This involves - regular liaison with the Garda Síochána on security matters; [and] the provision, on the basis of ongoing contacts with the Garda Síochána, of general briefing and advice to the Minister and to the Government on the terrorist threat; and the keeping under review of legislation in the light of changing circumstances and the making of any necessary proposals for legislative, operational or administrative change.

Pursuant to section 1 of the Ministers and Secretaries Act, 1924, the Department of Justice, Equality and Law Reform is a Department of State responsible for "the administration and business generally of public services in connection with law, justice, public order and police". Under section 8 of the Police Forces Amalgamation Act, 1925, the Commissioner of An Garda

Síochána has general direction and control of the police subject to regulations made by the Minister and approved by the Government. In relation to these Divisions of statutory responsibility, the Department of Justice, makes the following case:

As the organisation with primary responsibility for maintaining public order within the State and investigating criminal activity, the Garda Síochána has the lead role in gathering intelligence in relation to subversives, in the analysis of such intelligence and in carrying out operations with a view to taking into custody illegally held firearms and explosives and investigating illegal activities. They liaise directly with the relevant law enforcement and security/intelligence agencies of other jurisdictions. Because of the implications for the security of the State and developments in Northern Ireland, it is the practice for the Garda Síochána to give regular briefings to the Department, the Minister and the Taoiseach, as appropriate, on their assessment of the security situation. It is not the function of the Minister and the Department to become involved in criminal investigations or intelligence gathering nor do they have the expertise, the resources or a legal basis for such involvement. Any effort at involvement in a criminal investigation would be inappropriate and expose the Minister and the Department to allegations of improper interference with Garda operations. The role of the Minister and the Department is to provide a primary input into the formulation and implementation of Government policy...while the Department would not be operationally involved in particular cases, the emergence of issues of particular concern (for example, indications of an increased security threat or large scale fraudulent activity) would usually lead to more intensive engagement with the relevant bodies in order to arrive at a global assessment, to determine trends and to decide on whether the Department needs to address strategic or other issues including potential legislative changes.

Sir, as we have indicated, comprehensive discovery has been made by the Department of Justice. These include the telexes which were referred to in the preliminary opening statement. The Department explains that in some cases telephone communications take place between Garda Headquarters and the relevant section in the Department of Justice. In some instances, where the first news of a particularly important incident occurs outside office hours, oral briefings to the Minister may be appropriate. In addition to that, the finds which you are required to enquire into, Sir, were made the subject of periodic report and

correlation for the purpose of briefing the Minister in his role as the delegate to the Anglo-Irish Inter-Governmental Conference. An informal file was therefore kept of all notifications in relation to munitions finds and these were included in the relevant section of the brief to the Minister. We have been furnished with the briefing documents, but we have not had regard to anything other than the security section. Everything else is irrelevant to the work of the Tribunal. In the Conference briefing of the 28th of January, 1994 the explosive find at Ardchicken on the 19th of November, 1993 is set out as follows:

A Garda search of a vacant house in Donegal town located a number of bags of home-made explosives. Each bag contained five kilograms. An army team confirmed that the substance was an explosive substance.

In the briefing for the Inter-Governmental Conference of the 25th of April, 1994 the search of Adrienne McGlinchey's flat on the 14th of March, 1994 was set out as follows:

In the course of a search operation at Bunrana the Gardaí discovered a quantity of home-made explosives in a flat. The find included 37 5-lb bags of explosive mixture and other bomb-making materials.

Finally, in the briefing note for the Anglo-Irish Inter-Governmental Conference in London of the 23rd of September, 1994, the Rossnowlagh finds of the 18th of July, 1994, were reported as follows:

In the course of planned searches in the Rossnowlagh area of County Donegal (near Ballyshannon) Gardaí located a quantity of home-made explosives in a derelict house. There were 70 in all, containing about 850 lbs of HME, as well as 3 gallons of diesel oil and about 100 rounds of .22 ammunition.

In its statement, the Department of Justice detailed the circumstances under which a suspicion first arose within the Department that these finds might not be genuine. This did not occur until about five years after the last find, which, was in 1994. The Department forcefully make the following point:

It should be borne in mind, that at the time, irrespective of whatever means of communication, there would have been no reason for the Department not to take the reports of finds at anything other than face value.

The former Ministers for Justice, to whom we spoke, also indicated the same points. They were at a distance from the Crime and Security Section of Garda Headquarters and were certainly not briefed on the contents of any intelligence gathered. Insofar as any query might have been raised, then this was done through the appropriate section of the Department of Justice liaising with Garda Headquarters. The former Ministers all indicated that they had no grounds whatever to doubt the bona fides of any report which was made to the Anglo-Irish Conference. Further, they were all strongly of the view that it would have been wrong for them to interfere in any operational matter since the detection and investigation of crime, and the maintenance of the public peace, was vested in Garda Headquarters, through the Commissioner, while their role was one which related to policy, legislation and the provision of resources. Nothing drew their attention to any suspicious circumstances at this time. Further, the information which they received was primarily directed by Garda Headquarters in the sense that personnel there decided what the Department should be informed about, when, and in what form. It may be that this situation might be regarded as clarifying the burden placed upon Garda Headquarters in the management and control of the Divisions around the country, and it may be that this tends to undermine any theory that the appointment of a District Officer is of itself a sufficient means of managing the police force in Donegal. Insofar as the competence and application of persons of Superintendent and Chief Superintendent rank is called into question by reason of the matters set out in paragraph E of the Terms of Reference, their training and the manner by which they came to hold rank of such responsibility may be further explored. In this regard, our discussions with the former Ministers have been extremely helpful and any recommendations as regards structural change which they may wish to make may be useful, Sir, to the work of the Tribunal. As to whether it is useful or necessary to call them in evidence is, of course, a matter for you, Sir, as Chairman of the Tribunal.

Since we last addressed you, Sir, we are in possession of more apparent facts than were outlined in the Preliminary Opening Statement. These include an incident where Adrienne McGlinchey was found in apparent possession of number plates taken from cars, which we do not feel should concern you and the recovery of seven rounds of .22 calibre ammunition on Thursday, the 30th of April, 1992. Because of a Directive, which appears to have originated from Chief Superintendent Ginty on the 2nd of November, 1990, both Adrienne McGlinchey and Yvonne Divine were kept under observation in Donegal by members of An Garda Síochána. On the 30th of April, 1992 they apparently fled into fields from St. Mary's Road in Buncrana. Later, a blue jacket similar to that normally worn by Ms. Divine was found there which contained seven rounds of .22 calibre ammunition. For some

reason, notwithstanding the fact that the scene of this jacket was under observation, both Ms. McGlinchey and Ms. Divine kept returning to the scene. An interpretation put on this is contained in the report of Sergeant Michael Murphy to the Superintendent at Buncrana, of the 4th of May, 1992, which was in the following form:

It would appear that McGlinchey and Divine are prepared to carry a certain amount of ammunition or other objects to test the field. They may be under the impression that they will not be searched because they are females. This could be a dummy run designed by the PIRA to ascertain whether the two females would be stopped or searched by uniform members. Both females are kept under constant observation by foot and mobile patrols.

Another assessment was that made by Detective Sergeant Walsh two months later on the 7th of July, 1992 when he wrote to the Sergeant in charge of Buncrana in the following terms:

Before coming to Buncrana Ms. McGlinchey set up residence in a flat at Port Road, Letterkenny and in October, 1990 Yvonne Devine joined her in the flat...since coming to Buncrana the subjects have been seen to associate and visit [a named place]...at times while being checked out both ladies had in their possession combat jackets, balaclavas, walkie-talkies and torches. Also [people] have visited their flat at No. 2, The Crescent, Buncrana. This flat was recently searched under the provisions of section 29 OAPA 1939 with negative results. While both ladies are running around the town until the early hours, sometimes with bags, etc. one wonders if they are only trying to attract the attention of the Gardaí. One cannot rule out the possibility that they are being used by the PIRA at certain times. Both are presently employed in the Jatbee Clothing Factory, Carndonagh...the movements of both parties will receive ongoing attention and any developments worthy of notice will be reported in course. At the present time it is not believed that subjects are members of the PIRA.

In a statement to the Carty investigation team, dated the 24th of January, 2003, Chief Superintendent Denis FitzPatrick referred to a memo which he wrote on the 18th of May, 1993 which was to the effect that there were concerns in relation to the behaviour of Adrienne McGlinchey and that insofar as anyone, rightly or wrongly, regarded her as being of assistance, that there should be a total lay-off for six months. In addition, the contents of Superintendent Lennon's locker have come to our attention. What happened was that a circular was issued by the Carty investigation

team which resulted in a search of various disused areas of Letterkenny Garda Station. One place which was looked at was a locker which it since has transpired appears to have been used by Superintendent Lennon at relevant times. Since privilege is claimed over these, and since it may be necessary to deal with particular sections of these documents during the course of hearings by moving into closed session, these documents will not be referred to further by us.

The Human Resources Management Section of Garda Headquarters have furnished us with their files in relation to the entire Donegal matter. These indicate that disciplinary proceedings were commenced against certain members of the Gardaí arising from the Carty report. A number of people have been suspended. In essence, this is a private matter between the Garda Commissioner and those whom he employs as Gardaí, except insofar as it may impact on the work of the Tribunal or may suggest recommendations which the Tribunal might make. It is worthy of note, however, that the ordinary Garda discipline code has been the subject of a judicial review in the High Court. The claim was that because this Tribunal is considering the same factual subject matter that in some way the statutory right of the Garda Commissioner to deal with his employees is thereby undermined. We would not wish to make any comment in relation to this matter.

Superintendent Kevin Lennon has issued proceedings claiming that his constitutional rights have been infringed by virtue of the manner in which this Tribunal operates. Any of these proceedings, viz a viz individual members of the Gardaí, and the State, are primarily inter-parties litigation. What is of concern, perhaps, to you Sir, is that the Tribunal has been used as an excuse, perhaps validly we do not know, to block the necessary measures of discipline which are essential to the correct functioning of a police force. Because Superintendent Lennon, in particular, was claiming that his side of the case ought to be fairly put before the Tribunal, and because any fair minded person would agree with that, we met with him and a lengthy statement was generated as a result. This is now part of the papers before you. In essence, what Superintendent Lennon states is that he is the victim of both circumstances and of the malicious personalities of others serving in the Donegal Division of An Garda Síochána. He alleges that because of the incompetent way, as he puts it, in which the death of the Late Richard Barron was investigated, and in this respect we are making no assumption as to whether this was correct or incorrect, his re-investigation caused a number of persons of high rank in Donegal to be cast in a less than flattering light. He says that in consequence of this an investigation was conducted which resulted in these allegations, as detailed in paragraph E, coming to light. He says the witnesses giving evidence against him are completely unreliable. He says that he transacted business with Adrienne McGlinchey at arms length and through her handler, who was Detective Garda Noel McMahan. He says that in common with other finds he knew nothing of them in

advance, in other words until information came to him through Noel McMahon as to their existence. Thereafter, he claims, acting on the exiting Directive, apparently dating from years earlier and which had not been changed, to the effect that any munitions should be immediately taken out of commission, he acted so as to neutralise the availability of these to terrorist organisations by seizing them. He says that his contact with Adrienne McGlinchey was limited to the receipt of information and that he was not in any way involved in the planting of explosives. In the intervening time since we last addressed you, Sir, Adrienne McGlinchey has made a statement to her solicitor which indicates that she was never a member of the I.R.A. The cooperation of her solicitor has been useful to our work.

We are continuing to receive ongoing assistance from the Police Service of Northern Ireland on matters of factual interest and in relation to issues of principle which are called into question by the Terms of Reference. Our factual enquiries are ongoing and any new material should be presented towards the end of this hearing. We would also like to thank the Department of Foreign Affairs for their cooperation in opening their files to us for viewing purposes.

Sir, having outlined the fashion in which the focus of your enquiries might possibly be somewhat realigned we would like to proceed with the hearing. You will already have reported to the Minister for Justice on the likely timescale involved in this. You have authorised us to say that this hearing will proceed until such time as it is finished. We hope to sit in Donegal as and from the 24th of June to consider the Barron death and investigation, including the issue of informers in that process, and to return to Dublin to consider the arrests and interrogations arising out of the death of the Late Mr. Barron as and from a date in mid-September. These are the three most weighty aspects of the work facing the Tribunal and we hope to assist you in every way in the knowledge that the concise presentation of evidence and the efficient dispatch of business will contribute towards ensuring that the Tribunal's work does not have to continue beyond what is necessary.

3 March 2003

Peter Charleton SC
Paul McDermott SC
Anthony Barr BL