



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

Sole Member
The Honourable Mr. Justice Frederick Morris

THE MORRIS TRIBUNAL

OPENING STATEMENT OF COUNSEL

**“THE DETENTION” MODULE - TERMS OF
REFERENCE (b) and (f)**

The Tribunal has already delivered a report in respect of Term of Reference (b) relating to the investigation into the death of the Late Mr. Richard Barron of Raphoe, County Donegal on the 14th of October 1996. The second report of the Tribunal dealt with the progress, management and effectiveness of the Garda investigation and considered the management of informants in the course of that investigation. The Tribunal deferred the hearing of evidence in respect of the detention of twelve persons who were arrested in the course of that investigation until now. It had been hoped to proceed with the hearing of this evidence at the conclusion of the hearings held in respect of the Barron investigation. However, application was made to the Tribunal to defer the hearings in relation to the detention by Mr. Frank McBrearty Junior on the basis that he was involved in High Court litigation and would find it difficult to give his attention to two sets of oral hearings which would be personally burdensome and might have adversely affected his health. In order to convenience Mr. Frank McBrearty Junior the Tribunal proceeded with the three modules which have now concluded in respect of Terms of Reference (d), (g), and (i). The twelve persons arrested and detained in the course of the investigation into the death of the Late Mr. Barron were:

- (1) Frank McBrearty Junior
- (2) Mark McConnell – who was arrested twice
- (3) Roisín McConnell – wife of Mark McConnell
- (4) Frank McBrearty Senior
- (5) Michael Peoples
- (6) Charlotte Peoples – wife of Michael Peoples
- (7) Katrina Brolly – sister of Roisín McConnell
- (8) Martin McCallion
- (9) Mark Quinn
- (10) Edel Quinn – sister of Roisín McConnell
- (11) Sean Crossan
- (12) Damian McDaid

Mr. Frank McBrearty Junior was also arrested on the 4th of February 1997 in relation to an alleged assault in December 1996 on Edward Moss. It is convenient in relation to Mr. Frank McBrearty Junior that both of his detentions on the 4th of December 1996 and the 4th of February 1997, in respect of Edward Moss, be dealt with now and consequently, evidence in relation to Term of Reference (f) relating to the circumstances surrounding the arrest and detention of Mr. McBrearty Junior on the 4th February 1997, and his subsequent prosecution in the Circuit Criminal Court in respect of the alleged assault on Edward Moss (of which he was acquitted), will be heard in the course of this module. Opening statements have already been made in respect of the detention of the twelve suspects and the case of Edward Moss in which your counsel attempted to set out the issues which appeared to present themselves in the papers and materials then available to the Tribunal. In this further statement we outline to you, Sir, such progress as has been made in investigating these issues and outline any important further information that has become available. This statement should be read as a supplement to the Opening Statement delivered in November, 2002.

The detentions of Roisín McConnell and Katrina Brolly – a new statement from Detective Garda John Dooley

When outlining materials available in respect of Mrs. Roisín McConnell's detention on the 4th of December 1996 in November 2002, you were told, Sir, that Mrs. McConnell had made very serious allegations against Detective Sergeant White and Detective Garda John Dooley, in respect of an interview which occurred late in her detention on that date at some time between 19.25 and 20.10 hours approximately. Mrs. McConnell alleged, amongst other things, that Detective Sergeant White threw her off a chair and told her to stand up and flung the chair across the room. He pushed her up against the filing cabinet in the room. He touched her with his shoulder. He kept banging up against her but then told her to stop leaning up against the cabinet or to stop leaning against the wall. She complained that the interviewers were pushing her around the room. She said that Detective Sergeant White was enraged and described that he was roaring and shouting that much that he was frothing on the mouth causing spittle to fly into her face.

She alleged that she was shown photographs of the Late Richard Barron's body and described these photographs in graphic detail. She stated that the two Gardaí were shoving photographs into her face and that they began to switch on and off the lights in the room. She complained that while Detective Sergeant White was pushing photographs up against her face she kept closing her eyes. He was calling her Satan and the devil and said she would never see her late father in heaven and that she would go to hell for what she was doing. She alleged that Detective Garda John Dooley was smirking and at one stage turned round to Detective Sergeant White and told him to watch it that there was somebody out in the hallway. He then quietened down for a minute and listened to see if there was anybody in the hallway and then resumed the abuse.

As previously outlined, Mrs. McConnell complained that Detective Garda Dooley kept telling Detective Sergeant White to show her the photographs saying, "Let the murdering bitch look at them." Mrs. McConnell also alleged that Detective Sergeant White made allegations of infidelity against her husband in order to try to get her to turn against him. He verbally abused her and was physically vulgar towards her. She was constantly called a "murdering bitch" or "a lying murdering bitch". She was made to bless herself and pray to her dead father. Detective Sergeant White allegedly then turned to her and asked her what her father had said to her and she replied that her father had told her she was telling the truth. She alleged that this caused Detective Sergeant White to lose his temper again. All of the allegations made by Mrs. McConnell against Detective Sergeant White were denied by him in his initial statement made in the course of the investigation into the death of the Late Mr. Barron and in a further statement made to Chief Superintendent Carey on the 2nd of June 1998. In fact, he described the allegations made by her as "amazing". Detective Garda John Dooley 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.

Following her release, Mrs. McConnell called to the offices of her solicitors, V.P. McMullen & Son, and on the 23rd of December 1996 they sent a letter of complaint in respect of her treatment to the superintendent at Letterkenny. We have already quoted this letter in which she alleged that she was very distressed as a result of, what she alleged to be the appalling methods of interrogation employed by the interrogating officers. She told her solicitors that her hair had been pulled and that she was generally abused both physically and mentally. Her solicitors alleged that photographs of the body of the Late Mr. Richard Barron were presented to her and pushed into her face and that the interrogating officers had put it to her that this was "the work of her husband" and that he had been unfaithful to her. The letter alleges that Mrs. McConnell, as a result of the trauma experienced in detention, required hospitalisation and psychiatric care.

Detective Sergeant John White and Detective Garda John Dooley also interviewed Mrs. Katrina Brolly who was also arrested on the 4th of December 1996 at 20.25 hours. She did not wish to avail of the suspension of questioning which was offered to her at midnight on the 4th of December and so her interviewing or interrogation continued into the night and until the following morning at 08.15 hours when she was released. As previously outlined, Mrs. Brolly, Sir, made serious allegations about the way in which she was treated whilst detained in Garda custody. She also complained, through her solicitor, on the 10th of December 1996 and instructed them that she had been repeatedly harassed, abused and physically assaulted on two occasions and that her hair was pulled by a female Garda during the course of her detention. She was told that she would not be released until she signed a form stating that she had no complaints regarding her detention. She alleged that she only signed it to secure her immediate release. In a statement made to Superintendent Carey on the 10th of February 1998, she alleged that some time around 23.00 hours she was being interviewed by Detective Sergeant White and Detective Garda Dooley when a Garda entered the room and told them that her husband Mr. Eunan Brolly was in reception and wanted to visit his wife. She alleged that Detective Sergeant White said, "that bastard is having no visitors." She wasn't allowed to see her husband. She alleged that whilst being interviewed by Detective Sergeant White and Detective Garda Dooley in the presence of Garda Joan Gallagher, she was told by Detective Garda Dooley to stand out in the middle of the floor and that the lights were turned down low. They had photographs of the Late Mr. Richard Barron's dead body. She alleged that Detective Garda Dooley rubbed them against her face. Detective Sergeant White allegedly said, "We know it wasn't Mark done it that it was young Frank." Garda Gallagher called her, "a lying bastard" and caught her by the hair of her head. She complained that a few minutes later Garda Gallagher again reached for her hair at which Mrs. Brolly said, "no more" to Detective Sergeant White. She said, "I came in to answer questions, not to be abused." They then continued to ask her questions but she refused to answer them. Garda Gallagher left the room. She was then given a seat and told to sit down. Either Detective Sergeant White or Detective Garda Dooley told her they were going to take her children away from her. They said they were going to arrest her mother. Detective Sergeant White threatened that they would have to get her husband and that he was a cocky little bastard. She also alleged how Detective Garda Dooley had made

disparaging remarks about Mark McConnell and accused him of infidelity to his wife. She was verbally abused by both detectives. They asked her whether she had been unfaithful. They questioned her as to whether Frank McBrearty was bribing her and if she was afraid to talk.

Detective Sergeant White expressed himself to be extremely surprised at the allegations made by Mrs. Brolly because he was of the impression that they had parted company on good terms. He denied all allegations of wrongdoing. On the 17th of April 1998, Detective Garda Dooley made a statement to Chief Superintendent John Carey and denied that he harassed or assaulted Mrs. Brolly at any time during the course of interviews. Garda Gallagher also made a statement on the 1st of April 1998 saying that during the course of her presence in the interview room she did not witness any ill treatment of Mrs. Brolly and that she was not aware that she was harassed or abused in any way. She denied that she pulled Mrs. Brolly's hair. The allegations were totally unfounded and caused her immense distress. For close to nine years the Gardaí who were the subject of these allegations strenuously denied them. This has now changed.

Sir, these allegations are repeated in this opening statement because an important statement has been furnished to the Tribunal by Detective Garda John Dooley in which he admits many of the allegations levelled against him and Detective Sergeant White by Mrs. Roisín McConnell and Mrs. Katrina Brolly. The statement was made on the 14th of October 2005 and in it he chronicles his involvement in the arrest and detention of Mrs. McConnell and Mrs. Brolly. If it is true, Mrs. McConnell and Mrs. Brolly have been the subject of the most dreadful treatment whilst in detention and a most scandalous cover up by the Gardaí involved. If it is true, it also marks a significant breaking away from the culture of lies and deceit and the unwillingness to reveal a truth adverse to a colleague that has been an unfortunate feature of this inquiry. That would be a very positive and commendable development.

Detective Garda Dooley states that he and Detective Sergeant White first interviewed Mrs. McConnell at 08.51 hours on the morning of the 4th of December 1996. During the course of this interview Mrs. McConnell was visited by her solicitor, Mr. James Sweeney. The interview terminated at 11.34 hours. It was resumed and terminated at 11.55 hours at which point Detective Sergeant White and Detective Garda Dooley went to the incident room and handed in the notes of the interview to Sergeant Martin Moylan. Detective Garda Dooley states that:

While in the incident room, Sergeant White and I viewed a bound album of photographs from Richie Barron's post mortem examination for the purpose of briefing ourselves on the nature of the injuries to his body. This album was situated on a table in the conference room with other documentation which were open to all officers involved in the Barron murder investigation. I did not seek anyone's permission to view them. There were a number of such albums on the table, however, I did not remove any albums or photographs at that time.

Detective Garda Dooley also said that during the course of the morning he had a conversation with Sergeant Joseph Hannigan about how the interview was progressing. He told him there had been little progress and in the context of an alleged sighting of Mark McConnell by Caroline Lynch at 02.25 hours on the 14th of October 1996, he enquired of Sergeant Hannigan as to whether Mark McConnell had been known to be involved with other women. Sergeant Hannigan replied that Mark McConnell was having an affair with a named woman and Detective Garda Dooley made a note of this on a slip of paper. Sir, as far as is known, from the material available there is no reason to treat this as anything other than malicious small town gossip. He retained that paper for a short period of time. After the first interview with Mrs. McConnell he brought this information to Detective Sergeant White's attention. He said, "We discussed using this information as an interview tactic in order to persuade Roisín McConnell to come clean and tell the truth re: her husband's whereabouts on the night and early hours of the 13th and 14th of October 1996 respectively."

During the course of the second interview with Mrs. McConnell at 14.25 hours, Detective Garda Dooley states that:

Sergeant White discreetly told me to go to the incident room for the album of post mortem photographs of Richard Barron. I cannot recall at what stage the interview was at when Sergeant White sent me to retrieve these photographs. When I went to the incident room D/Garda John O'Toole was seated at the table in which the albums of photographs were placed. I told him I was taking one album of photographs. Detective Garda O'Toole did not ask me why nor did I tell him why I was taking the album. I then returned to the interview room with the album of photographs without telling the member in charge, Garda Martin Leonard, what I was doing. I know that I should have told Garda Leonard why I had taken these photographs. When I returned to the interview room I discreetly passed the album of photographs over to Sergeant White.

Detective Garda Dooley further states that during this interview it became obvious to him that Mrs. McConnell was evasive in her answers and that she had told lies about phone calls to the Brolly house to Irene Dolan and about her husband having a conversation with a Mr. Daniel Lynch. He then said:

The following matters were put to Roisín McConnell but were not recorded in the written memo of interview. Sergeant White reminded Roisín 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 Roisín McConnell that Frank McBrearty Junior had murdered Richie 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 that she started to tell the truth.

I told Roisín McConnell that her husband was unfaithful to her and I asked her if she knew that her husband was “riding” (a named woman). I have up to now denied the fact that I mentioned Mark McConnell’s infidelity during our interview with Mrs. McConnell. I denied this when questioned in relation to 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 Roisín 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 Roisín McConnell to tell the truth. However, Sergeant White and I never made any physical contact nor did we interfere with the prisoner at any stage during the interview. On terminating this interview Sergeant White read over the memo to Roisín McConnell and he asked her if it was correct. Roisín McConnell agreed that the memo of interview was correct.

Of course, none of this material, if true, was recorded in the memorandum of interview. That interview ended at 16.20 hours.

Detective Garda Dooley and Detective Sergeant White returned to interview Mrs. McConnell at 19.25 hours that evening. He said that the usual caution was administered and that Mrs. McConnell was then questioned about alleged discrepancies in her first two memos of interview. She was confronted in respect of a number of points concerning her account of events of the 13th and 14th of October 1996. He said:

The questioning was intense throughout the interview and conducted at times in raised voices. Some foul language was used during our interviews with Roisín McConnell. Any discrepancies put to Roisín McConnell were dismissed by her as lies. Sergeant White put it to her that she had told lies throughout the interview and that she was giving a false alibi for her husband. Sergeant White called Roisín McConnell a “lying bitch” and ordered her to put out the cigarette she had been smoking. Sergeant White ordered Mrs. McConnell to stand up and told her that she had been too well treated all day and that she had told several lies throughout the three interviews. Sergeant White got up out of his seat, walked around the table and grabbed the chair Mrs. McConnell had been sitting in. On picking up the chair Sergeant White threw it to the other side of the room away from Roisín McConnell in angry exasperation. Sergeant White was angry at that time and I admit that he used foul language during this interview with Mrs. McConnell. Sergeant White then got the album of photographs relating to the post mortem examination of Richie Barron which were placed in a folder. Sergeant White walked

around the table and began to show Roisín McConnell the post mortem photographs one by one. Sergeant White held them about a foot from her face. At this point in time, Mrs. McConnell was standing and Sergeant White was standing in front of her at an angle. During Sergeant White's interrogation of Mrs. McConnell he walked towards Mrs. McConnell while I was standing beside the light switch at the other side of the room. As Sergeant White approached Mrs. McConnell with the post mortem photographs she backed into one of the corners of the room with her back to the filing cabinet in the corner. At no point did Sergeant White or I push Mrs. McConnell into this cabinet. Roisín McConnell closed her eyes in order to avoid seeing the photographs which were admittedly quite graphic. While Sergeant White was showing the photographs to Roisín McConnell I switched on and off the light in the interview room a number of times. I did this spontaneously and on my own initiative to sustain the pressure that had been placed on Roisín McConnell. When the light was switched off in the interview room I remember the room was still dimly lit from the external lighting in the yard. Roisín McConnell looked shocked at the sight of the post mortem photographs. The photograph display lasted what seemed to me for approximately five to ten minutes. Sergeant White reminded Roisín McConnell of the violent death which Richie Barron met and asked her to come clean and tell the truth for the sake of the Barron family. Sergeant White also told her that if she told the truth she would save herself seven years in prison. However, Roisín McConnell insisted that she had been telling the truth all day. Sergeant White was shouting at Roisín McConnell at this stage and told her that she was a "lying murdering bitch" or words to that effect. Foul language was used by Sergeant White. Sergeant White told Mrs. McConnell that he would have no sympathy for her if she was stabbed on the streets of Raphoe. Sergeant White also reminded Roisín McConnell that her child could end up in care if both she and her husband went to prison for the murder of Richie Barron. At this stage, I told Sergeant White to take it easy as Roisín McConnell looked frightened. That was the first time Mrs. McConnell displayed any fear that day. She had previously appeared extremely calm and composed. Sergeant White asked Roisín McConnell if she was close to her father when he was alive and she replied that she was. Sergeant White asked her to swear on her father's grave that she was telling the truth and she said she would not swear on a dead person's grave or words to that effect. Sergeant White then asked Roisín McConnell to pray to her late father for guidance and he in turn would pray to Richie Barron for the truth. There was silence and they were both standing up and appeared to be praying. After what seemed like a few minutes Sergeant White asked her what her father said to her and she replied that she had been telling the truth. There was no written record made of the display of the post

mortem photographs of Richie Barron: switching off and on the lights or Sergeant White and Roisín McConnell praying nor is there any record of the use of profane language on our behalf. Sergeant White then read over the written memo of interview to Roisín McConnell and asked her if it was correct. Roisín McConnell agreed it was correct. Sergeant White invited her to sign it but she declined. Sergeant White and I then signed the memo of interview.

Mrs. McConnell then apparently asked to use the bathroom and Garda Georgina Lohan brought her there following which at 20.10 hours Mrs. McConnell was taken from the interview room to the public office and released from custody.

Though Detective Garda Dooley accepts in this statement that he abused Mrs. McConnell in the way outlined by him, there are still points of difference between them in relation to the nature of that abuse. He admits the allegations that Roisín McConnell was shown photographs of the post mortem examination of the Late Richard Barron by Sergeant White. He accepts that during the display of the photographs he switched on and off the light in the room in order to pressurise Mrs. McConnell into telling the truth. He also accepts that both of them used foul language and raised their voices during interviews with Mrs. McConnell. He has given a graphic account of the occasion upon which Sergeant White asked Mrs. McConnell to pray to her deceased father in order to persuade Mrs. McConnell to “tell the truth”. He also alleged to Mrs. McConnell that her husband was having an affair and in doing so used foul language. Points of difference still exist between his statement and the allegations made by Mrs. McConnell. Detective Garda Dooley “vehemently” denies that either he or Detective Sergeant White physically assaulted and/or pushed Mrs. McConnell around the room. He denies that Sergeant White ever raised his leg and broke wind or spat in Mrs. McConnell’s face. However, the core of the statement acknowledges that Mrs. McConnell was physically and verbally intimidated by Detective Sergeant White and Detective Garda Dooley during the course of her interviews, and accepts as true most of the details outlined by Mrs. McConnell shortly after her release from custody to her solicitor, and subsequently the interview to Mr. William Flynn, Private Investigator.

It will be recalled, Sir, that Detective Garda Dooley also denied all allegations of the abuse or ill treatment of Mrs. Katrina Brolly whilst in detention. However, in his statement of the 14th of October 2005, he admits that Mrs. Brolly was ill treated. As previously outlined, Mrs. Brolly was arrested on the evening of the 4th of December 1996 and interviewed throughout the night until her release at 08.15 hours the following morning. This is Detective Garda Dooley’s account of his dealing with Mrs. Brolly:

... Sergeant White informed me that we both had to remain on duty for the purpose of interviewing another prisoner namely Katrina Brolly, who is a sister of Roisín McConnell. I was surprised that I was expected to remain on duty and I asked Sergeant White who had given this direction. Sergeant White

informed me that D/Superintendent Shelly had given the direction and told him to stick with her, Katrina Brolly, and that we might “break her” – meaning persuade her to tell the truth. Although I had been on duty since 07.00 a.m. I agreed to remain on duty.

The two detectives questioned Mrs. Brolly from 19.40 hours on the 4th of December 1996 until 00.50 hours on the 5th of December. Detective Sergeant White and Detective Garda Dooley together with Garda Joan Gallagher returned to interview Mrs. Brolly at 02.45 hours. Detective Garda Dooley described this interview as follows:

I cautioned Mrs. Brolly Sergeant White and I questioned the prisoner in relation to what had occurred in her home on the morning of the 14th of October 1996. The interview consisted mainly of repeating questions to Katrina Brolly and her replying with similar answers. I told Katrina Brolly to stand up because I believed she was too comfortable and the interview was going nowhere. She stood up as directed. Sergeant White still had the album of post mortem photographs of Richie Barron’s post mortem examination. I showed these photographs to Katrina Brolly but I certainly did not rub them in her face. The showing of these photographs to Katrina Brolly only lasted a few minutes. I recall that the lights were switched off during this time – however, the outside lighting provided reasonable light within the room. I believe that I switched the lights on and off but I am not one hundred per cent sure about this. The interview continued but I cannot remember the specific questions asked. I do remember that Katrina Brolly continued to deny the fact that phone calls had been made from her home by her sister Roisín McConnell on the morning of the 14th of October 1996. At one stage during the interview, Garda Joan Gallagher left her own seat and walked around the other side of the table behind Katrina Brolly and pulled her hair twice and called Katrina Brolly a “lying bitch” or words to that effect. Katrina Brolly became annoyed and said “I am not here to have my hair pulled”. I offered Katrina Brolly a seat and asked her to sit down. Sergeant White and I continued to question her. At this stage, I was aware that Frank McBrearty Junior had made a statement admitting to the murder of Richie Barron. At the time the interview with Katrina Brolly took place, I believe that Katrina Brolly had knowledge of this but was refusing to tell the truth. The reason I showed the photographs was to shock her into telling the truth. I still had the scrap of paper on which I had written the name of (the woman with whom Mark McConnell was alleged to have had an affair) and I took it from my pocket and asked Katrina Brolly if she was aware that Mark McConnell was “riding” (this woman). She said she had no knowledge of the affair. Sergeant White at one stage reminded Katrina Brolly that if she did not tell the truth she would be forced to spend a

number of years in prison. Sergeant White also informed Katrina Brolly that we had reason to believe that Frank McBrearty Junior had murdered Richie Barron and that Mark McConnell witnessed the murder. I admit that both Sergeant White and I uttered profanities during our interview with Katrina Brolly. Both Sergeant White and I asked Ms. Brolly if she was afraid to talk because the McBreartys had bribed or intimidated her into staying silent. During the course of this interview I was extremely tired and I genuinely cannot remember the specific details of the questions we asked Katrina Brolly.

The interview ended at 04.00 hours and Sergeant White and Garda Gallagher and Detective Garda Dooley left the interview room to be replaced by Sergeant Heffernan and Detective Garda Herraghty.

Sergeant White and Detective Garda Dooley returned to the interview room to question Mrs. Brolly at 07.10 hours on the morning of the 5th of December. He gives the following account of that interview:

We were aware that on the night of the 13th of October 1996 Katrina Brolly had sent her eldest son home with her youngest child (both children were minors) to enable her to stay out and continue socialising in the Town & Country bar. I told Katrina Brolly that if she did not tell the truth I would report her to social services who would more than likely take her children away from her for being an unfit mother. I said this to Katrina Brolly in order to put pressure on her to tell the truth. At 08.15 a.m. Katrina Brolly was released from custody. I realised that there was no written record made of the interviews conducted by Sergeant White and I for the periods 02.45 a.m. to 04.00 a.m. on the 5th of December 1996 and 07.10 a.m. to 08.15 a.m. on the 5th of December 1996. I admit that this was a breach of procedure on our behalf and for that I am sorry. The interviews consisted of repeating questions to Katrina Brolly and her replying with similar answers. I was on duty for over twenty-five hours without a rest and I was exhausted and suffering from chronic fatigue for the greater part of Katrina Brolly's interviews ... This is the principle reason why there are no written memos of interviews for the said periods. I acknowledge that this was a blatant breach of procedure on our behalf and I deeply regret it.

He notes that this was his last involvement in the investigation into the death of the Late Mr. Barron. He apologised for his wrongdoing.

As in the case of Mrs. McConnell, the core story told by Detective Garda Dooley in respect of his interviews with Mrs. Brolly, seems to tally with the account given by her of these events and the allegations made by her through her solicitor. He admitted that foul language and raised voices were used by him and Detective Sergeant White when interviewing Mrs. Brolly. He

accepted that he showed the post mortem photographs of the Late Richard Barron to Katrina Brolly of his own accord and that he switched the lights in the interview room on and off while doing so in order to persuade Mrs. Brolly to come clean and tell the truth. He threatened to report Mrs. Brolly to the social services regarding the care of her children in order to coerce her into telling the truth. Both detectives, he admitted, used profanities and spoke in raised voices during their interview sessions with Mrs. Brolly. He also said:

I admit that Garda Joan Gallagher pulled Katrina Brolly's hair on two occasions during the second interview and called her "a lying bitch" or words to that effect. I admit that Sergeant White and I informed Katrina Brolly that she would spend several years in prison if she did not come clean and tell the truth about the phone calls made from her home on the 13th/14th of October 1996. I admit that I asked Katrina Brolly if the McBrearty family had threatened her and/or bribed her not to tell the truth. I accept that a written record of interview was not made in relation to the second and third interviews taken with Katrina Brolly.

He said that he deeply regretted being involved in these breaches of custody regulations and subsequently denying them. If accepted as the truth, these admissions of his conduct on the part of Detective Garda Dooley also implicate his colleague Detective Sergeant John White, who accompanied him during the course of these interviews, in this mistreatment and abuse of Mrs. McConnell and Mrs. Brolly, and provide supporting evidence for Mrs. Brolly's allegation that her hair was pulled which she made against Garda Joan Gallagher. Both Detective Sergeant White and Garda Gallagher strongly deny any allegation of wrongdoing made against them by Mrs. McConnell and Mrs. Brolly. Both have been asked in the light of this new statement to consider whether they wish to make any further statement to the Tribunal in respect of the matter.

It is also important, Sir, to consider how Detective Garda Dooley addressed this wrongdoing over the last number of years. He accepts that he wrongfully denied it up to the time that he came forward to make his statement of the 14th of October 2005. However, he also alleges that he was advised by Detective Sergeant White to deny allegations made by Mrs. McConnell and Mrs. Brolly during the course of an investigation conducted in April 1998 by Chief Superintendent Carey under the Garda Síochána Complaints Act. He said:

In April 1998, Chief Superintendent Carey ... conducted an investigation into complaints made under the Garda Síochána Complaints Act by both Roisín McConnell and Katrina Brolly. I had intended admitting that the photographs of Richie Barron's post mortem examination were shown to both prisoners. I contacted Sergeant White on receipt of this complaint in order to make him aware of my intentions in this regard. Sergeant White advised me to deny the allegations. I subsequently handed a prepared statement to Chief Superintendent Carey at Letterkenny Garda Station on the 19th

of April 1998 wherein I denied the allegations. I made further statements in defence of civil claims brought by Roisín McConnell and Katrina Brolly wherein I adopted a similar attitude.

If this is true, Sergeant White and Detective Garda Dooley both lied to Chief Superintendent Carey and conspired together to ensure that the truth concerning the ill treatment of Mrs. McConnell and Mrs. Brolly was suppressed. Their denials formed part of the Garda response under the Garda Complaints Act and to the civil proceedings brought by Mrs. McConnell and Mrs. Brolly. It would appear that Mrs. McConnell has settled her civil proceedings relating to these events but, obviously, without the benefit of Detective Garda Dooley's recent statement. The statement made by Detective Garda Dooley on the 14th of October 2005 is an admission, a statement made wholly against his interest in the sense that he cannot hope to gain anything from casting himself in such a bad light. It is a statement that may well result in civil, criminal and/or disciplinary proceedings being taken against him by reason of his behaviour towards Mrs. McConnell and Mrs. Brolly and the lies told previously to his authorities: if that's what they are. Whether the statement is true or not is a matter for you, Sir, to determine in the course of these hearings. However, the fact that a Detective Garda is now admitting to such extremely serious complaints as those made by Mrs. McConnell and Mrs. Brolly, and thereby implicates at least two of his colleagues, is a matter of enormous potential significance to the nature and course of the evidence which you are about to hear in respect of their complaints. The Tribunal awaits the full response of Detective Sergeant White and Garda Joan Gallagher to this statement. The initial short response of Detective Sergeant White is that he completely denies these allegations.

Alleged bugging of Visits in Letterkenny Garda Station on the 4th and 5th of December 1996

On the 15th of April 2002, a report was submitted to the Deputy Commissioner of Operations at An Garda Síochána by Assistant Commissioner W.I. Rice concerning an investigation which he carried out into allegations that interview rooms in Letterkenny Garda Station had been "bugged" during the course of visits between persons detained in custody and solicitors or relatives. The use of secret eavesdropping equipment in the course of a professional visit by a solicitor to his client in custody by members of An Garda Síochána would be a gross violation of the detainee's right to communicate in private and out of the hearing of police officers with his solicitor. The Supreme Court and the Court of Criminal Appeal have recognised that the right of access to a solicitor plays a fundamental role in ensuring fairness in the administration of justice and in affording a measure of equality between the suspect and the State at the investigation stage.

Section 5 of the Criminal Justice Act, 1984, provides that a member in charge of a Garda Station must ensure that a detainee is informed without delay of his entitlement to consult a solicitor and relay any such request to the solicitor. Regulation 11 of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána stations) Regulations, 1987 provides that:

- (1) An arrested person shall have reasonable access to a solicitor of his choice and been able to communicate with him privately ...**
- (2) A consultation with a solicitor may take place in the sight but out of hearing of a member.**

Other visits may also be received by a detainee from a relative or friend though his right to receive such a visit does not appear to have any constitutional status. Regulation 11 in the custody regulations also provides that:

- (4) An arrested person may receive a visit from a relative, friend or other person with an interest in his welfare provided that he so wishes and the member in charge is satisfied that the visit can be adequately supervised and that it will not hinder or delay the investigation of crime ...**
- (6) Before an arrested person has a supervised visit or communicates with the person other than his solicitor, he shall be informed that anything he says during the visit or in the communication may be given in evidence.**

There is no provision under the regulations for the taping of these meetings even if done openly. There is no legal basis for the secret bugging of rooms provided to facilitate this. The deliberate violation of a detainee's constitutional right of access to a solicitor and the privacy of his communications with his solicitor and the unlawful taping of such interviews and other visits with relations at the Garda Station in Letterkenny has the most serious implications for the Gardaí against whom allegations are made in this regard. However, the allegations extend beyond alleged bugging of interviews in Donegal as it is also alleged that the bugging of such interviews between solicitors and detainees and detainees and his visitors may be widespread within An Garda Síochána. If these allegations are true, it would mean that the integrity of the administration of justice in this country has been wantonly and consistently undermined as a matter of policy in the investigation of crime. The more immediate question for you, Sir, concerning the allegations in Donegal is to determine on the evidence if any interviews were "bugged" and if so, how, by whom; and, if it did happen, whether it is probable that such unlawful "bugging" was widespread within An Garda Síochána. It must be emphasised that there are no specific allegations of "bugging" of interviews made to the Tribunal beyond this case other than the general suggestion made by Detective Sergeant White that he may have knowledge of such "bugging" from his work outside the Donegal division.

Sir, you will recall, that the principle source of this allegation of the "bugging" of visits to detainees at Letterkenny was Detective Sergeant John White who set out in some detail in his statement of the 25th of February 2002 an encounter which he had with Detective Sergeant Joseph Costello of the technical support section of the Garda Technical Bureau at Letterkenny Garda Station. In addition, Garda Tina Fowley indicated in a statement made on the 7th of March 2002, that she was aware that the assistance of the technical

support group was sought and that she “understood the purpose was to install a listening device on conversations between the prisoners and any visitors they may have had”, though she saw no equipment and heard no tapes. In his statement, Detective Sergeant White said that he was aware when talking to Detective Sergeant Costello that conversations between prisoners and other persons were being recorded but he did not know by whom or where. Detective Sergeant Costello had told him that they had had trouble with the tapes earlier in the morning but that they were “ok” now. He then described an encounter with Detective Inspector John McGinley in the District Inspectors office later on the 4th of December. He knocked on the locked door of the Detective Inspector’s office and was admitted by Detective Inspector McGinley. He entered the room and the door was locked behind him. Detective Inspector McGinley allegedly played a portion of a tape to him on which he heard the voice of Mrs. McConnell’s solicitor, Mr. James Sweeney. Both were agreed that the quality of the recording was perfect. He was told that there was nothing of interest on the tape from Mrs. McConnell. He asked that he be informed if anything of interest relating to Mrs. McConnell came up. He then left the room.

When describing his encounter with Detective Sergeant Costello in the statement of the 25th of February 2002, Detective Sergeant White said that when he met Detective Sergeant Costello he was in the company of Detective Garda John Dooley whom he introduced to Detective Sergeant Costello. In a statement made on the 13th of February 2002, Detective Garda Dooley was asked to address this issue and he said:

I recall that Roisín McConnell had a consultation with her solicitor in the interview room that day, the 4th of December 1996, it was early in the day around 11.00 a.m. I was not aware of that consultation being recorded. I did not hear and I am not aware of any tape recordings of conversations between Roisín McConnell and her solicitor or Katrina Brolly and her solicitor being played over by Detective Inspector John McGinley in Letterkenny Garda Station on the 4th of December 1996 or any other day. I can recall meeting Detective Sergeant Joe Costello of the Technical Support Unit, Garda Headquarters, Dublin in Letterkenny Garda Station on the 4th of December 1996. I was introduced to him by Sergeant John White, he was introduced to me as Joe Costello, a brother of Sergeant John Costello, the then sergeant in charge of Letterkenny Garda Station. I was not aware of Detective Sergeant Joe Costello’s duties in Letterkenny on that day, the 4th of December 1996. This statement has been read to me and is correct.

In his more recent statement, dated the 14th of October 2005, Detective Garda Dooley radically altered his account and described the encounter with Detective Sergeant Costello as having occurred following a meal break. He said:

Following our return to Letterkenny Garda Station, while walking along a corridor we met a man who was dressed in

civilian attire. Sergeant White shook hands with him and introduced him to me as Detective Sergeant Joe Costello from Garda Headquarters. Sergeant White informed me that he was a brother of Sergeant John Costello who was then the sergeant in charge of Letterkenny Station. I knew Sergeant John Costello. I remarked that there was a striking resemblance between the two brothers. Sergeant White and Detective Sergeant Costello had great welcome for each other. Sergeant White discreetly asked Detective Sergeant Costello how were the tapes going and Detective Sergeant Costello replied that they were talking very low. I did not know what Sergeant White and Detective Sergeant Costello were talking about. This was the first time I had heard anybody mention tapes. I was very confused. As I did not know Detective Sergeant Costello I walked away and indicated that I was going to the kitchen in Letterkenny Garda Station where I was joined a short time later by Sergeant White. Sergeant White informed me that the visitors room in Letterkenny Garda Station had been bugged by Detective Sergeant Costello and that Roisín McConnell's mother, Mrs. Anna Quinn, was visiting her there at that time. I was shocked to hear the visitors room was bugged. I was not made aware of the nature of the device used or how it was put in place. I did not see the tapes being made, the device used, the tape recordings nor was I invited to listen to the recordings made. I cannot remember the exact time of meeting Detective Sergeant Costello but I am of the belief that it was around 18.30 p.m. as Sergeant White and I had spent time in the incident room following our meeting with Detective Sergeant Costello prior to our final interview with Roisín McConnell which commenced at 19.25 p.m.

This part of Detective Garda Dooley's new statement tends to support the story told by Detective Sergeant White in relation to his encounter with Detective Sergeant Costello. Importantly, it describes a detailed conversation about this eavesdropping which occurred at the time of the alleged "bugging".

Garda Tina Fowley has also given additional detail of her knowledge concerning the alleged "bugging" of "the visiting room". In a memo of interview on the 28th of March 2002 she said that she had been present on the 2nd of December 1996 in the incident room when Superintendent John Fitzgerald, Detective Superintendent Joe Shelly and Inspector John McGinley discussed obtaining the services of technical support, the purpose being "to glean information relating to the investigation from visitors to the prisoners." In a subsequent interview on the 26th of June 2003 with the Tribunal investigators, she elaborated on this:

It wasn't at conference that it was discussed, it was just in the general chit chat that would have taken place in and out of the conference room as officers were in. It was decided that a room should be set aside for visitors that if a prisoner's mother came in to see them that they would be taken to this room and

maybe something could be gleaned from the conversation that the prisoner would have with their mother, brother or sister that would give an indication of a degree of guilt. That room was downstairs, it was then the GRA office and is now the fines on the spot office. ... They were to acquire the services of Technical Support in Garda Headquarters ... He would bug the room, the downstairs room [by means of] a listening device. ... I knew about it. It was a frank matter. I had no qualms about it personally because these conversations weren't in any way privileged. It was visitors only. There was no indication or intent that I was aware of that this room could be used for a solicitor's consultation. The room was set up after conference. I can remember them looking for an armchair and there's a ... female guards rest room with armchairs in it and they wanted to take the armchairs from that to set up the visitors room. From my recollection of things that room is referred to in custody records as the visiting room. ... Detective Superintendent Shelly was present and Inspector McGinley. I was there myself. I was part of it. There would have been other people in the room but not just privy to the conversation.

... I was present when John Costello was seeing about the room and it was him who asked for the armchairs to set up the room. I never saw any listening device or the room set up because I didn't partake in the custody aspect of things.

Sergeant John Costello was the brother of Detective Sergeant Joseph Costello.

Sir, undoubtedly, the story of the alleged bugging of visits is very strange. Apart from Detective Sergeant White and Detective Garda Dooley, Garda Tina Fowley is the only other Garda at Letterkenny Station who understood that Detective Sergeant Costello was in Letterkenny for that purpose. For his part, Detective Sergeant Costello states that he was there because Superintendent Joseph Shelly told him that "he may need some form of technical assistance in the event of any disclosures from the subsequent interviews" and that having travelled to Donegal he "got no specific instructions or requests from anyone ... [and] was not requested to perform any duty ... or render any technical assistance to the investigation ... from the 3rd to the 7th of December, 1996." Of course this is in marked contrast to the statements of the other three Gardaí. This is supported by Superintendent Shelly in his interview with Tribunal investigators on the 23rd of June 2003. He said that he spoke to Detective Sergeant Costello and requested him to come down to Letterkenny Station. It was intended that he might provide technical surveillance to the investigation team depending on how the interviews developed and what information was gleaned from the interviews. Detective Sergeant Costello was in a position to photograph, make videos and conduct that kind of surveillance if that was necessary. It was envisaged that "... subsequent on the release of certain individuals, if it transpired that new names came into the arena or whatever, that we would be in a position, that

he would be in a position to take a photograph or whatever of those individuals but, as I said, it didn't happen anyway so we didn't use it." He was not aware that Detective Sergeant Costello had any listening devices or any such equipment in his possession and "he certainly had not got that expertise or that capability. That's not what he was there for."

Also on the 23rd of June 2003 Superintendent Fitzgerald told the Tribunal investigators that he understood that Superintendent Shelly had requested the assistance of Detective Sergeant Costello. He could provide "technical surveillance". He gave, as an example, of the technical assistance which might be supplied by Detective Sergeant Costello that he could be used in the course of Detective Superintendent Shelly's enquiry into alleged intimidation of persons in Raphoe by the McBreartys. He was not aware whether the Technical Bureau had the capacity and ability to do overt or covert interception of communications. Nothing of the kind was ever mentioned to him at the time.

When interviewed by the Tribunal investigators on the 2nd of September 2003, Detective Superintendent McGinley gave a somewhat similar understanding of why Superintendent Shelly sought the assistance of Detective Sergeant Costello. He said:

He was asked to come down by Superintendent Shelly [who] sought assistance from that section on the basis, as I understood it, that we had planned to make all these arrests. We had also planned to arrest Frank McBrearty Senior for the intimidation, and intimidation was widespread in Ballybofey, as we discussed yesterday. It was felt that, following on from these arrests where people would be questioned, the facts put to them and individuals mentioned that, after that process, that people who were being questioned would be aware of who these people were in Raphoe and that this activity was liable to continue and Sergeant Joe Costello was in a position, if that had arisen. It didn't arise because, first of all, Frank McBrearty Senior wasn't there on the day and Joe Costello would have been in a position to go out. He wasn't known. He would have been able to travel around Raphoe and record ... He wasn't known he would have been able to do videos of any such activity.

The absence of Mr. Frank McBrearty Senior referred to by Detective Superintendent McGinley is a reference to the fact that Mr. Frank McBrearty Senior was not available to be arrested in Donegal on the 4th of December but was in fact in Dublin and was not arrested until the 5th of December; indeed, he took ill shortly afterwards. Sir, it should also be noted that Detective Superintendent McGinley said of Detective Sergeant White's allegation that it was:

... completely untrue and false and vindictive. I mean there was no solicitor. I am thirty years in the Guards. I have never heard, seen or have been a party to any solicitor anywhere

ever having his conversation taped. It didn't happen in Letterkenny that day. It didn't happen any other day and it never happened and it's completely wrong to suggest that. ... I have heard that Sergeant White has alleged that the GRA office in Letterkenny was to have been set up so that when solicitors came in and interviewed their clients that they would be taped. That's absolutely wrong, completely wrong, it never happened.

Detective Superintendent McGinley also states that, insofar as it is alleged by Detective Sergeant White that an encounter whereby he is alleged to have played a tape to him, took place in the office of the Detective Inspector at Letterkenny, he was a uniform inspector at Letterkenny Garda Station and his office was on a different corridor in the station. The office of the Detective Inspector was unoccupied. Importantly, he added:

However, the Detective Inspector's office was taken into use as an interview room on the 4/12/96 due to the number of prisoners in custody and the requirement for additional interview rooms. As far as I can recall Mark McConnell was interviewed in this office for the duration of his period of detention which was between 8.22 a.m. and 8.20 p.m. on the 4/12/96. It would therefore have been impossible for me to have had any such meeting with Sergeant White as alleged.

He said he only took up occupancy of the Detective Inspector's office in February 1997.

It might be regarded as strange that Detective Sergeant Costello would not have been told why he was in Letterkenny Garda Station at all other than to provide some general form of technical assistance which was never specified to him. The three senior officers interviewed claim to have understood the purpose to relate to some sort of surveillance that might subsequently be carried out after interviews: rather than any assistance that might be provided within Letterkenny Garda Station. As far as Detective Sergeant Costello is concerned, he was present from the 3rd to the 7th of December 1996 at Letterkenny Garda Station and given no specific task and received no specific request for technical assistance during that period. A number of other Gardaí recall his being present but did not understand the purpose for which he was present. Others do not recall him at all.

There are no tapes of any alleged recordings available to the Tribunal. There is no record of any official request from Letterkenny Station to the Garda Technical Bureau for the assistance of Detective Sergeant Costello. However, there is a record for a travelling and subsistence claim made by Detective Sergeant Costello for his period of time in Donegal. There is a serious conflict of fact between the Gardaí in Letterkenny concerning this matter, which hopefully can be resolved on the hearing of the evidence of the respective witnesses. The additional statement of Detective Garda Dooley and the interviews with the three senior officers to an extent crystallise the issues concerning the alleged "bugging" and it may be that Detective Sergeant Costello may be able to offer some further insight into what was

going on, if anything. Detective Sergeant Costello at all times has denied any wrongdoing.

The Alleged Statement of Mr. Frank McBrearty Junior of the 4th of December 1996

In the previous Opening Statement in November 2002 issues which arise in respect of Mr. Frank McBrearty Junior's alleged statement of the 4th of December 1996 have already been highlighted. Since then the second report of the Tribunal of Inquiry has been published. This dealt with, amongst other things, the last known movements and probable cause of death of the Late Mr. Richard Barron. It also examined the evidence surrounding the movements of Mr. Frank McBrearty Junior on the night of the 13th/14th of October 1996. The time spent in investigating these matters it is hoped, will now enable your counsel to focus more clearly and narrowly on the relevant issues surrounding this statement, in the light of the conclusions reached in the second report.

Sir, it is perhaps useful to quote the alleged statement of admission, which was in its original form written in longhand. The first page contains the allegedly incriminating material and does not bear the signature of Frank McBrearty Junior. The reverse second page is shorter and contains a signature, which is said to be that of Frank McBrearty Junior and the two Gardaí who allegedly took the statement, Detective Garda John Melody and Detective Garda John Fitzpatrick:

Listen I'll tell you what happened on the 14.10.96. I heard that Richie Barron was up to his old tricks again, mouthing about the McBreartys, Mark McConnell, his my first cousin, told me this. He had a row with him in Quinn's pub that evening. His wife Roisín was also there. Mark was very annoyed over the row and what Richie Barron said to him. When he came over to the club, that is Mark McConnell, he told me that he had seen Richie Barron heading towards home and that he was drunk. We decided that we would head him off at the top of the road. We went up the back way across the car park and got onto the main road. We waited for Richie Barron there. We intended having a word with him. We saw Richie coming. He was on his own. I picked up a bit of timber. When we stopped him he lashed out at us but he missed. I hit him a slap on the head and he fell back. We then ran. I dropped the timber I had on the way back. We got into the club and it wasn't until later that I heard that Richie had been knocked down by a hit and run. Michelle Scott told me. My father found out about what happened and he said he would look after it for us.

That concludes the contents of the first page of this statement. The second page contains the following:

My father never intimidated anyone. He never offered to my knowledge money to anyone not to give evidence against me. This statement has been read over to me and it is correct.

**Frank McBrearty Junior
John Melody, Detective Sergeant 8.25 pm
John Fitzpatrick, D/Garda
04/12/1996.**

It is proposed, Sir, in the light of your findings into the likely cause of death of the Late Mr. Richard Barron, and his last movements on the evening of the 13th/14th of October 1996, and your conclusions in respect of the likely movements and whereabouts of Mr. Frank McBrearty Junior on that evening, to proceed on the basis that the contents of this alleged statement are untrue.

Amongst the conclusions relevant to this approach are:

- 4.82. There is no possibility that the Late Richard Barron met his death in any other way than by collision with the roadway caused as a result of impact with some kind of a vehicle. While his injuries appear to be atypical, bruising to his shins or knees cannot be excluded. While much about this case is atypical, the reality is that the Late Richard Barron was attempting to find his way home while staggering as a result of alcohol consumption and attempting to hold himself up by clutching on to walls. He could have been in any position on the roadway, crawling, lying or falling, when the collision which killed him occurred.**
- 3.35. ... The Tribunal is satisfied that Mr. Barron turned up Irish Row at some time between 00.30 and 00.40 hours and had completed his journey, with fatal consequences, at some time between 00.40 and 00.55 hours. In considering this matter, the Tribunal has made all due allowance for the disparity in times furnished by various witnesses. ... There was a very short interval between the last sighting of the Late Mr. Barron and his death. From the times given in evidence, the incident which gave rise to his death (whatever it was) had to have occurred between 00.40 and 00.55 hours approximately.**
- 3.264. The Tribunal is satisfied that in respect of the relevant period 00.30 and 01.30 hours on the morning of the 14th of October 1996 there was evidence to support the proposition that Mr. McBrearty Junior was indeed working in his father's nightclub and could not, given the short period of opportunity available, have been involved in any attack on the Late Mr. Barron. ... There was nothing in the contents of the statements to**

support a proposition that Frank McBrearty Junior was taking any steps to establish an alibi by way of positive assertion that he was specifically at a particular location between 00.40 and 01.00 hours. However, the statements gathered suggest that he was carrying out his duties at the nightclub during that period. As might be expected, if witnesses were being honest, there were times during which no-one could account specifically, or minute by minute, for his presence at Frankie's nightclub. Within that period there was no evidence to contradict his general assertion that he was at his work. There was absolutely no evidence that put him in contact with or in the company of Mark McConnell. The Garda Síochána made an assumption of guilt. An aura of suspicion was created in respect of a short period of fifteen to twenty minutes which was not capable of proof on the basis of the statements obtained. This thesis of guilt, once proposed and shared, was treated as fact. It was not sustainable in respect of Frank McBrearty Junior on the basis of any statement obtained from persons who were actually present in Raphoe that evening.

These are but three of the findings made in the last report, which will enable your counsel to narrow the focus of the inquiry into the alleged statement, which must now be undertaken. As noted in paragraph 5.217 of the report:

Given the analysis of the medical evidence that has been conducted by the Tribunal, it is important to see how Frank McBrearty Junior could have made such a statement. The Tribunal is mindful of the fact that there may well be a multitude of explanations for it. The Tribunal would wish to know what they are. But the Tribunal wants the truth.

The statement is untrue. The questions for you, Sir, are:

- (i) Did Mr. Frank McBrearty Junior make this statement or any part of it?
- (ii) If Mr. Frank McBrearty Junior made this statement, and it is false, why did he make it? Was it because of something said or done by any of the interviewing Gardaí? Was it an involuntary statement?
- (iii) Did Mr. Frank McBrearty Junior agree to the contents of the second page of the statement, and sign it, after which the first page of the statement, which tended to incriminate him in the death of the Late Mr. Barron, was concocted and written on the page by one of the interviewers?
- (iv) Did one of the interviewers write out the entire of the statement knowing it to be untrue and attribute it to Mr. Frank McBrearty Junior and, at the same time or later, procure his co-interviewer or some other Garda, to forge the signature of Mr. Frank McBrearty

Junior on the statement (as is suggested in a number of statements by Mr. Frank McBrearty Junior)?

Some of these possibilities have already been referred to in the previous Opening Statement but the Tribunal need not now be distracted by any question as to whether the statement is true or not. That issue is closed. The main issue now is how the untrue statement came to be made.

The Signature

In interview with Chief Superintendent Garvie on the 11th of June 2003, Mr. Frank McBrearty Junior said that he did not believe that the signature on the alleged statement of admission of the 4th of December 1996, was his. In the previous Opening Statement, reference was made to the fact that the original of the statement was sent for document analysis by Detective Sergeant John P. Lynch, who having examined the questioned signature of Frank McBrearty Junior on the document made on the 4th of December 1996, compared it with signatures attributed to him on a number of other documents. In his opinion, the questioned signature was consistent with having been written by Frank McBrearty Junior. A similar conclusion was reached by Mr. Kim Harry Hughes in his report of the 28th of February 2000. In this regard, Sir, it is also important to note that in a report submitted by Mr. James Nash, a forensic document examiner and handwriting consultant, to Messrs. Binchys solicitors, (acting on behalf of Mr. Frank McBrearty Senior and others). He states that he examined nineteen cheques drawn on the Ulster Bank all bearing signatures attributed to Frank McBrearty Junior and compared the signatures on those cheques with the signature "Frank McBrearty Jnr." on a photocopy of the statement of the 4th of December 1996. He concluded that the questioned signature had common handwriting features with the signature on the cheques and states:

From the handwriting evidence available, in my opinion, on balance of probabilities, Frank McBrearty Jnr., author of B.1. to B.19. specimen signatures, (the signatures on the cheques), wrote the A.1. questioned signature (on the photocopy of the document on the 4th of December 1996). However, I would like to have an opportunity to examine the original questioned signature, in the event of a Court hearing, in this matter. The examination of the original is the best evidence and it is possible I may find some evidence that may cause me to change the opinion, I have expressed.

That opinion was expressed in a report dated the 24th of July 1997. The Tribunal has recently asked Mr. Nash to examine the original of the statement and awaits his further report.

The original statement was also furnished to Mr. Robert W. Radley, forensic handwriting and document examiner, in England for examination. His expert opinion was requested as to whether he could determine whether the text on side 1 of the statement of the 4th of December 1996 was written first and immediately followed by the text and signatures on side two, or, whether the

text on side 2 was written and the signatures applied first and that the writing on side 1 was completed subsequently. In the event, notwithstanding considerable efforts on his part, he was of the opinion that the evidence was inconclusive as to whether the text of side 1 was written prior to the text and signature in the name of Frank McBrearty Jnr. on side 2. He was also requested to examine the signature "Frank McBrearty Jnr" on side 2 of the document. He compared it with five known signatures as presented to him. He qualified his conclusion by saying that it was highly desirable to see a larger volume of known signatures for comparison purposes without which he considered his examination to be restricted. On a comparison of the five known signatures against the questioned signature on the statement, he considered that there was "limited, approaching strong evidence to support the proposition that Frank McBrearty wrote the signature in question." He also examined a further three documents which were put forward by An Garda Síochána as having been written by Mr. Frank McBrearty Junior during their investigations. He assumed these were Mr. Frank McBrearty Junior's signatures for the purpose of his examination. He said:

The correlation of detail when all of these signatures are taken into consideration for comparison against the questioned signature, is much greater than the comparison of the questioned signature against the known signatures alone. On this comparison basis, I am of the opinion that there is strong evidence to support the proposition that Frank McBrearty wrote the signature on the Statement in question and I consider it unlikely that another individual has so successfully copied his general signature style. I find no evidence to support any proposition that this signature in question has been written by someone other than Mr. McBrearty.

Mr. Radley has requested a much larger selection of known authentic signatures of Mr. McBrearty Junior for comparison purposes. Mr. McBrearty Junior has been requested, by letter, to supply signatures. Subject to further examination by the handwriting experts, the tendency of the evidence which all four propose to offer is to the effect that Mr. McBrearty, Junior's signature on the document of the 4th of December 1996 is authentic. If that be so, which is a matter for you, Sir, to determine, the question of any forgery on the part of a member of An Garda Síochána may not arise and the issue in relation to the signature may reduce itself to the question as to how this signature of Frank McBrearty Junior came to be appended by him to the alleged statement of admission on the 4th of December 1996.

How did the Statement of the 4th of December 1996 come into existence?

In the previous Opening Statement of November 2002, an attempt was made to set out to you, Sir, what was believed to be Mr. Frank McBrearty Junior's account of the events of the 4th of December 1996 and how he believed the statement was created. It will be noted that the statement is timed at 20.35 hours on the 4th of December 1996. He was interviewed by separate teams from the National Bureau of Criminal Investigation namely, Detective Sergeant John Melody and Detective Garda John Fitzpatrick, who constituted one team,

and Detective Sergeant Eamon O'Grady and Detective Sergeant Gerard McGrath, who constituted the second team. The custody record purports to contain a chronology of the interviews conducted by these two teams of interviewers. The times ascribed to these interviews largely coincide with the times as they appear on the notes of these interviews which are said to have been taken and witnessed by the interviewers at the conclusion of each interview. It may be, Sir, that having heard the relevant evidence you conclude that the chronology in the custody record is accurate.

It is not intended to review the matters and issues identified as between Mr. Frank McBrearty Junior and the interviewing Gardaí and others in the first Opening Statement of November 2002. However, it is appropriate to draw to your attention to the fact that in August 2004, Mr. Frank McBrearty Junior in an interview with Mr. Patrick Cummins, a Tribunal Investigator, revisited many of these issues and gave a broadly similar account to that previously furnished. This pertains up to the interview at 19.00 hours on the 4th of December 1996, which continued until 20.30 hours with Detective Sergeant Melody and Detective Garda Fitzpatrick during the course of which the alleged statement of admission was made and allegedly signed by both Gardaí. In the interview of the 12th of August 2004, Mr. Frank McBrearty Junior now ascribed this interview to Detective Sergeants McGrath and O'Grady rather than Detective Sergeant Melody and Detective Garda Fitzpatrick. Up to this point, it would not have been understood, having regard to the previous statements made by Mr. Frank McBrearty Junior, that this was his case: that he disputed the custody record or the accounts given by Detective Sergeant Melody and Detective Garda John Fitzpatrick that they had interviewed him during this period or that they had witnessed the alleged statement of admission. In this interview Mr. Frank McBrearty Junior also told Mr. Cummins that having been subjected to the interview between 19.00 and 20.30 hours with Detective Sergeants McGrath and O'Grady, he then had an interview with Detective Sergeant Melody and Detective Garda Fitzpatrick. This would have occurred at 20.30 hours. It was during this period that he was said to have made a short statement under caution saying:

I have already made a statement to the other two Gardaí. I have cooperated with them. I told them the truth about what happened.

He was then supposed to have signed that statement which on its face is signed and witnessed by Detective Sergeants O'Grady and McGrath. What Mr. Frank McBrearty Junior was now telling Mr. Cummins was that this interview was conducted with Detective Sergeant Melody and Detective Garda John Fitzpatrick. If true, this reverses the order in which he was interviewed by these members from 19.00 hours onwards, as previously understood from the interview and statement of Mr. Frank McBrearty Junior, the custody record and other documentation.

Indeed, it should also be noted that in a previous interview with Chief Superintendent Garvie, R.C.M.P., a Tribunal Investigator, on the 11th of June 2003 Mr. Frank McBrearty Junior denied that this short statement was made

by him to Detective Sergeants O'Grady and McGrath. He said that he made a different statement to them:

I made a full statement that I was at my work and about my movements when I went to work. When I went to work, what time and what time I left work.

He believed that he signed this statement but also believed that the short statement quoted above and produced to him by Chief Superintendent Garvie was not the one signed by him.

In his account of the 12th of August 2004 Mr. Frank McBrearty Junior repeated elements of the account given by him of the 11th of June 2003 to Mr. Pat Cummins, a Tribunal Investigator. Importantly, he then told Mr. Cummins that he was asked by Sergeants O'Grady and McGrath to make this statement about his movements, which he did, and was then asked questions as to whether his father had bribed anybody or given anybody money to which he replied that his father would not do that. This latter questioning contains material which seems to coincide with the contents of page two of the alleged statement of admission. He said:

Then McGrath and O'Grady came back in again and they started interrogating me again. The interrogation started to change, it wasn't getting as bad. They were still calling me a murderer and saying things to me about my father and about ones covering up for me and all this ... come to the end of this interrogation anyway and one of them left the room. I don't know which one ... and McGrath was sitting talking to me ... O'Grady came back in and the two of them asked me would I make a statement. I says, "A statement about what?" He says, "A statement about your movements that night". I says, "I have already told you where I was that night then. I was at my work and all this." "So if you have nothing to hide Frank, you have nothing to be frightened of." So I says, "I'll make a statement I was at work." ... McGrath started writing and O'Grady was asking the questions and writing down what I was saying and I was telling him what time I went to work and what time I left and what kind of things I did at work. It was just a general statement about me going to my work and coming home and that was basically it. (Mr. Frank McBrearty Junior alleged a continuous interruption of the interview at this stage by Detective Sergeant Melody) ... the statement was finished after a period and I recall them they read the statement over to me. ... At the end of the statement the two of them asked me about my father and "To your knowledge" he said to me "has your father ever bribed anybody or given anybody money" I says, "My father wouldn't do that ... no way would my father do that ... I am an innocent man." And so they wrote something to that effect down and it was all in the one statement. I can't honestly remember if it was a page or a page and half or two

pages. It was roughly like that there and they read the statement to me and I signed it.

In this account Mr. Frank McBrearty Junior appears to say that he made a lengthy statement of one to two pages to Detective Sergeants O'Grady and McGrath and signed it during what appears to be the period 19.00 to 20.30 hours approximately. Though he denies making any admission, the short exchange described by him concerning his father, which he says was included in this statement, is similar to the contents of the second page of the disputed statement of the 4th of December 1996. He then went on to describe to Mr. Cummins how he came to make the short statement of the 4th of December 1996 which bore the signatures of Detective Sergeants O'Grady and McGrath and which he now ascribed to Detective Sergeant Melody and Detective Garda Fitzpatrick.

It should be noted that this interview of the 12th of August 2004 was furnished to Mr. Frank McBrearty Junior and was circulated by the Tribunal with a qualification that it was furnished to Mr. Frank McBrearty Junior in order that he might make whatever clarifications and/or qualifications he felt appropriate. This did not occur and consequently the statement was circulated. However, by letter dated the 3rd of February 2005, Mr. McBrearty Junior's solicitors wrote to say that he was not happy with elements of the memorandum of interview and that he had not had sufficient opportunity to make such amendments to that memorandum due to personal reasons. It was indicated by the Tribunal that the memorandum should be read with that context expressly in mind. No further addition, amendment or qualification has been furnished by Mr. Frank McBrearty Junior or anyone on his behalf since the making of this statement in August 2004. It may be, though this is a matter for you, Sir, a matter of enormous significance to your inquiry that Mr. McBrearty Junior's story had changed in such a fundamental respect. In the interview an attempt was made to get Mr. Frank McBrearty Junior to address this issue by reference to the custody record entries. He did not accept the entries for the period 19.00 to 20.30 hours, which indicated that he was indeed interviewed by Detective Sergeant Melody and Detective Garda Fitzpatrick during that period and that Detective Sergeants McGrath and O'Grady then interviewed him from 20.30 hours during which the short statement was made. This may have significant implications for the allegations made against the respective interviewers during this period. Their identification is important. It calls for an explanation.

It may be that Mr. McBrearty Junior was confused during his interview for some reason, that he was in some way medically unwell, physically or mentally, or that he was indeed correcting the record with Mr. Cummins and setting out what he believes to be the true version of events and that he intended to change his version. This matter is unclear and can only be resolved by means of the further assistance of Mr. Frank McBrearty Junior as to the true facts of this case. The truth of the matter can only be ascertained when he gives his evidence. In fairness to those whom he accuses, he should make clear exactly what accusations he is making by taking advantage of the invitation, which has been extended to him to clarify the matter, a step he has chosen not to take, to date.

The Arrest and Detention of Frank McBrearty Junior on the 4th of February 1997

Term of Reference (f) requires the Tribunal to inquire into the circumstances surrounding the arrest and detention of Mr. Frank McBrearty Junior on the 4th of February 1997, amongst other matters. In the preliminary Opening Statement made in November 2002, the issues arising out of this Term of Reference, and the documentation then available to the Tribunal, were set out in detail. It is necessary to repeat in short form some of the allegations made by Mr. Frank McBrearty Junior against Garda John O'Dowd and Sergeant John White that span the entire period from the time of his arrest in Raphoe by Garda John O'Dowd at 12.52 hours until his release from custody at 22.18 hours that evening. In the course of the afternoon Mr. McBrearty Junior was visited by his solicitor, Mr. James Sweeney, between 14.40 and 15.10 hours. Mr. Sweeney complained that his client was being questioned about matters other than the matter for which he had been arrested in relation to the assault on Edward Moss. After his solicitor left Mr. Frank McBrearty Junior alleged that:

I was alone in the room with Garda O'Dowd. I was sitting with my head in my hands. Garda O'Dowd punched me in the face two or three times. I shouted for help. A number of Gardaí and my solicitor came into the room ...

He describes exchanges which took place between the Gardaí and his solicitor and said in an interview with Mr. Flynn (the Private Investigator retained by Mr. Frank McBrearty Senior) that:

O'Dowd just done that with my head on the ... desk with the two punches in the face like ... this was in the room on his own like.

He demonstrated what was done to him. He said his head was shoved into the desk and he was punched. He stated that he shouted for help and also shouted that Garda O'Dowd had been beating him up. He had two black eyes and a bump on his head. He said:

You know he (Garda O'Dowd) turned round and he says he beat himself up, he banged his head off the wall, he is just after punching himself and all. I says I didn't and the lawyer, he was out in the hallway, and the lawyer came in and I says to the lawyer if you don't get me out of here I am going to ... kill myself because these ... are going to kill me.

Garda John O'Dowd alleges that he went to the interview room at 15.15 hours and sat across from Mr. McBrearty Junior. He maintained that he did not question him in relation to the alleged assault at this stage and all of sudden Mr. Frank McBrearty Junior said, "I am going to bang my head off that wall and I am going to blame you." Garda John O'Dowd immediately took Mr. McBrearty out of the interview room and placed him in a cell. He said he reported the incident immediately to the member in charge, Garda Martin

Leonard, and also brought it to the attention of Mr. James Sweeney, the solicitor. He asked him to make a note of it. This incident is recorded in the custody record, as is the fact that at 15.30 hours Mr. McBrearty Junior was taken from the cell to the interview room by Garda O'Dowd and Sergeant White. Sergeant White is then said to have gone to the toilet. This left Garda O'Dowd alone in the room with Mr. Frank McBrearty Junior. Garda O'Dowd in a statement made on the 5th of February 1997 described the incident in the following terms:

I again returned along with Sergeant John White and I took Frank McBrearty from the cell to the interview room. After entering the interview room I administered the usual caution. Sergeant John White informed the prisoner that we would continue our questioning in relation to the assault on Eddie Moss. Frank McBrearty seemed to get agitated and excited and said, "If you ask me about Eddie Moss again I'll bang myself" putting his two fists up by the side of his head. Sergeant John White left the interview room. Frank McBrearty asked when was his doctor coming. I told him Dr. McFeely had been contacted and would be here as soon as he could. Frank McBrearty then said to me, "I'm going to bang my head off that wall." He immediately jumped up from the chair and hit the wall with his forehead. As soon as he did that he began to punch himself with his fists around the eyes and the side of his head. I could see from the way he punched himself it was a boxer style. I immediately alerted a member, Garda John Rouse, who was in the corridor to come into the interview room and witness what Frank McBrearty was doing to himself. Garda John Rouse was standing alongside me at the doorway while Frank McBrearty was busy hammering away at his own head. As soon as he became aware that there was another Garda standing watching him beat himself he stopped and sat down. I informed Garda J. Rouse to bring the member in charge to the interview room. I pointed out to Garda Martin Leonard redness on Frank McBrearty's forehead and around his eyes. I informed him Frank McBrearty was after inflicting these injuries on himself in the previous minute, firstly by banging his head off the wall and then systematically punching himself with both his fists around the eyes and head. Frank McBrearty made no response to this.

Sergeant John White's statement, as previously indicated to you, Sir, supports Garda John O'Dowd's version of these events. Garda John Rouse said that when he was called to the interview room by Garda John O'Dowd at approximately 15.31 hours:

Frank McBrearty was standing in the room and he had his two fists clenched. He was punching himself on both sides of his face and around his eyes. Around his eyes and both sides of his face were red as he was punching himself with some force. As he looked around and saw me standing in the doorway he

stopped beating himself. I immediately informed Garda Leonard, member in charge, and his solicitor, James Sweeney, who was in the day room of what the prisoner was after doing.

Much of this is reflected in the entries in the custody record.

Mr. James Sweeney, solicitor, made an attendance of his consultation with Mr. Frank McBrearty Junior on the 4th of February 1997 which was furnished initially to Mr. William Flynn and by him to the Tribunal, in which he noted:

Overall Frank was very calm when I spoke to him, however, he said that he intended to punch himself in the face and bang his head off the wall and any injuries caused to himself he said he would blame on the Gardaí. I advised him not to do this as I was aware that it was unlawful and advised Frank of this. Frank said that he was on medication for tension and had asked for Dr. McFeely to call to see him. Dr. McFeely had, however not yet called. He also intends going to Dublin on the 14th February for counselling.

In the course of an interview between Chief Superintendent Brian Garvie, a member of the Royal Canadian Mounted Police and an Investigator for the Tribunal and Mr. Frank McBrearty Junior and his solicitor, Mr. David Walley, on the 11th of June 2003, Mr. Frank McBrearty Junior was asked whether at any time he had demonstrated to Gardaí, whether in jest or distress or whatever, that he intended to assault himself. He said that he never spoke at all. He was asked whether he hit himself or whether he demonstrated to Gardaí at the time that he intended to hit himself. He replied that he did not understand the questions and didn't know what Chief Superintendent Garvie meant. He said what happened was on a video which had been taken by Detective Sergeant White at the time. The interview proceeded into other aspects of Mr. McBrearty Junior's other complaints in respect of mistreatment which he allegedly received from the Gardaí on the 4th of February 1997. He was asked if he had anything else to add to this statement and he indicated that he had not. The interview concluded at 11.55 hours. At 12.36 hours Mr. Walley and Mr. Frank McBrearty Junior indicated to Chief Superintendent Garvie that Mr. Frank McBrearty Junior wished to make a further comment in relation to the second interview that was conducted by Detective Sergeant White and Garda O'Dowd with him on the 4th of February 1997. He gave the following additional information during the course of this interview in question and answer format. He said that when he was left alone with Garda John O'Dowd he sat with his head forward and his hands covering his ears not looking up at anybody. He said:

F.McB I couldn't look at John O'Dowd and O'Dowd kept getting up and slapping me on the back of the head. Slapping me on the side of the ears and that and I would look up every time he was slapping me and then I says to him, the next ... time you slap me that is the exact words I says you'll see what is going to happen in this room. I meant, like, I was going to ...

hit him back. O'Dowd went out of the room. He left me on my own and came in with a Garda O'Toole who took me out of the room and took me down to the cell. Then I was left in the room. I was taken back to the room again and Sergeant White and O'Dowd were in the room. And the two of them were abusing me and O'Dowd was telling me that I was going to make a confession today if it was the last thing I was going to do. That I would confess to the death of Richie Barron and I never spoke, my head down like this and my hands over my ears so I couldn't hear them because I couldn't look at them. So O'Dowd again was the same thing again slapping me but when Sergeant White got up and left the room ... I says to O'Dowd ... the next time now you ... slap me I says, you'll know all about it so O'Dowd came over and banged my head into the desk, my forehead and I had a mark on my forehead there where my head was banged into the desk so I went straight up and I punched myself exactly four times in the face and I started shouting and roaring that O'Dowd assaulted me and then when I started shouting and roaring a whole pile of Guards came into the room and that's exactly what happened ...

B.G. Did you do anything else to your person such as bang your head off the table, bang your head off a wall?

F.McB I never banged my head. That's a complete lie that O'Dowd has told and he told another lie that Rouse came into the room and seen me hitting myself. That's another lie. That's completely false. O'Dowd did that to cover up for himself. He banged my head on the desk and because I couldn't defend myself in the barracks, with the frustration, I punched myself with the abuse that O'Dowd was giving me, trying to get me to sign blank pieces of paper ...

B.G. Did you report the abuse to your solicitor?

F.McB Yes.

B.G. So he came after these events that occurred?

F.McB I told the solicitor that O'Dowd had been assaulting me and I had told O'Dowd if he assaulted me again that I was going to ... assault him but I ended up, I knew myself if I assaulted O'Dowd I'd have been charged with an offence, so I told the solicitor I

assaulted myself and I says that if you don't get me out of this ... room, I says they're going to kill me.

Though Mr. McBrearty Junior still alleges that he was assaulted by Garda John O'Dowd, he significantly, acknowledges that he punched himself in the face in the manner which is consistent with that described by Garda John O'Dowd and Garda John Rouse. He explains this on the basis that he was so frustrated, stressed and upset at what was happening that he took this drastic action. At the beginning of this interview his solicitor, Mr. Walley, asked him to explain the cause of his being under doctor's care for a period of three weeks before his arrest on the 4th of February 1997 which he indicated was, "Stress and anxiety and depression as a result of his first arrest and as a result of the harassment the Guards were giving [him]". This version of events is at odds with the previous version which he had given to Mr. William Flynn.

Sir, the previous account given by Gardaí O'Dowd and Rouse which involved the allegation that Mr. McBrearty Junior had punched himself might have seemed wildly implausible when it was made. This has now changed and, of course, the change calls for an explanation as to why Mr. McBrearty Junior's more recent account acknowledging that he punched himself was not made in the first instance and why a different account was given to Mr. Flynn, his family's own private investigator. It may be that there is a reason for this related to Mr. McBrearty Junior's then state of mental or physical health. Reference was made by Mr. McBrearty Junior to his state of mind whilst detained and also in reply to the questions by his own solicitor, to his medical treatment in the weeks preceding his arrest on the 4th of February 1997. If there is evidence in relation to this matter available to Mr. Frank McBrearty Junior from the doctor then treating him or who provided subsequent treatment, it might be relevant to this matter. It should be provided to the Tribunal. Mr. McBrearty Junior has recently been invited to submit any medical reports which he thinks relevant to the Tribunal.

Sir, it is also proposed to call evidence from Professor Gisli Gudjonsson, Professor of Forensic Psychology at the Institute of Psychiatry Kings College London and Head of Forensic Psychology Services at Maudsley Hospital London, which is potentially relevant to all of the detentions. As an expert in the psychology of interrogation and the effects of interrogation on interviewees, it is hoped that Professor Gudjonsson's evidence will assist the Tribunal in providing a critique of proper interviewing techniques which are most calculated to elicit the truth. It is important to understand the effect which various interviewing techniques and the conditions of interrogation can have on the psyche of an interviewee. People can be psychologically vulnerable in many different ways. People who are not vulnerable can also be made or induced to confess falsely. It is with a view to providing an overview of these vulnerabilities together with an understanding of what might be regarded as best interview practices that the Professor's evidence may be of assistance to the Tribunal when considering the generality of the issues as to how these individuals were interviewed and interrogated. His evidence may also be of assistance in formulating such recommendations as may be made at the conclusion of this module.

The issues surrounding the arrests and detention of these twelve individuals and the making of what is a false confession by Mr. Frank McBrearty Junior can only be resolved by those involved coming before the Tribunal and telling their story in a straightforward and open manner. It is clear that many of the witnesses to be called on this module have hard questions to answer. The Tribunal wants the truth. Telling the truth in relation to each of these detentions by those who participated in them whether as Gardaí or as detainees should not be a complex or difficult matter. Their respective accounts are confined to a relatively short period of time and are either true or untrue. The people through Dáil Éireann and Seanad Éireann have provided a forum in which any grievances in respect of these detentions can be fully heard and adjudicated upon. The Tribunal believes that it is in the public interest to resolve these important issues and appeals to all parties for their support in its work. It expects all witnesses summonsed to attend and to comply with their obligations as citizens and witnesses to the Tribunal and to the people of this country.