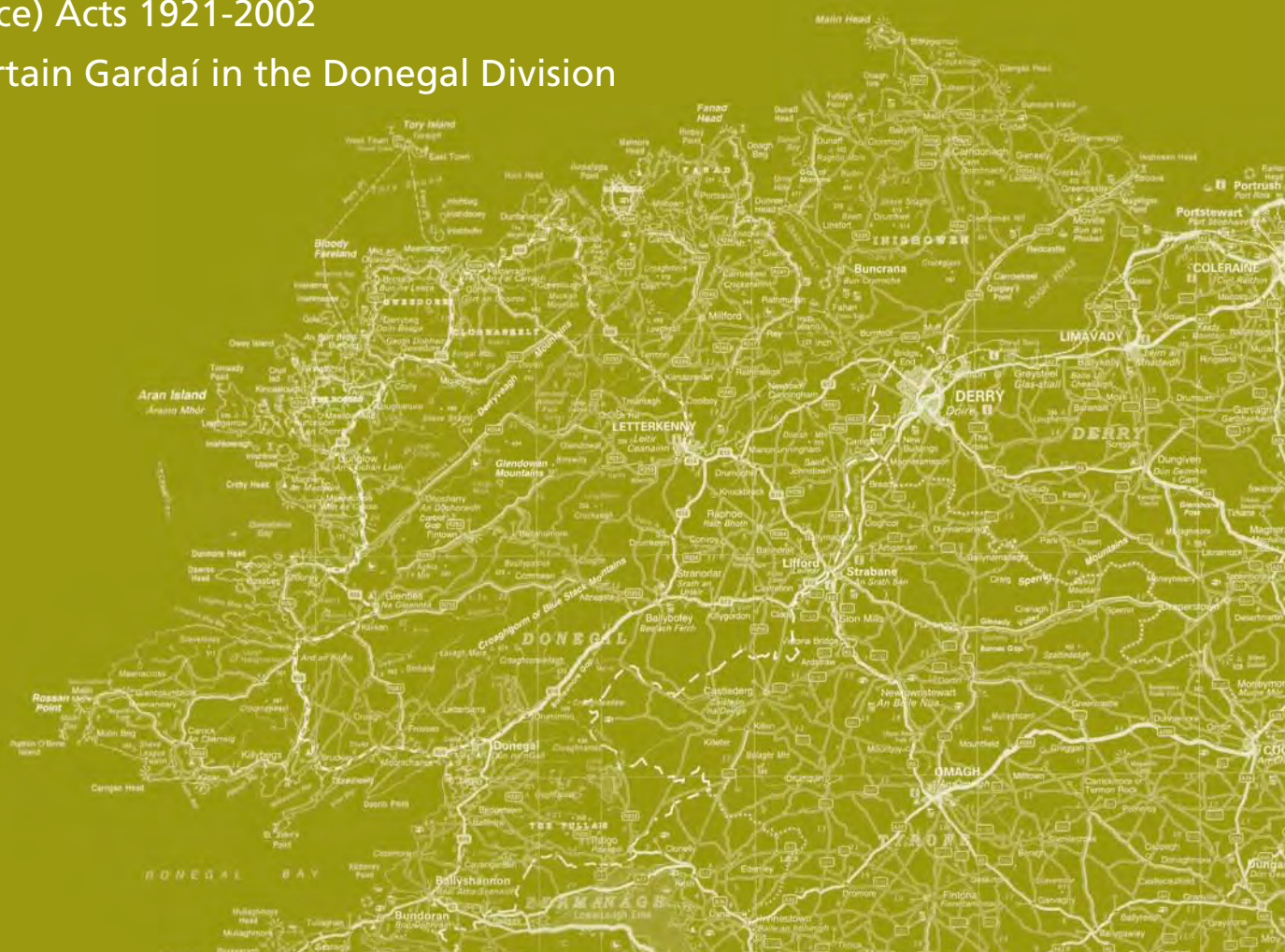




REPORT OF THE TRIBUNAL OF INQUIRY

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

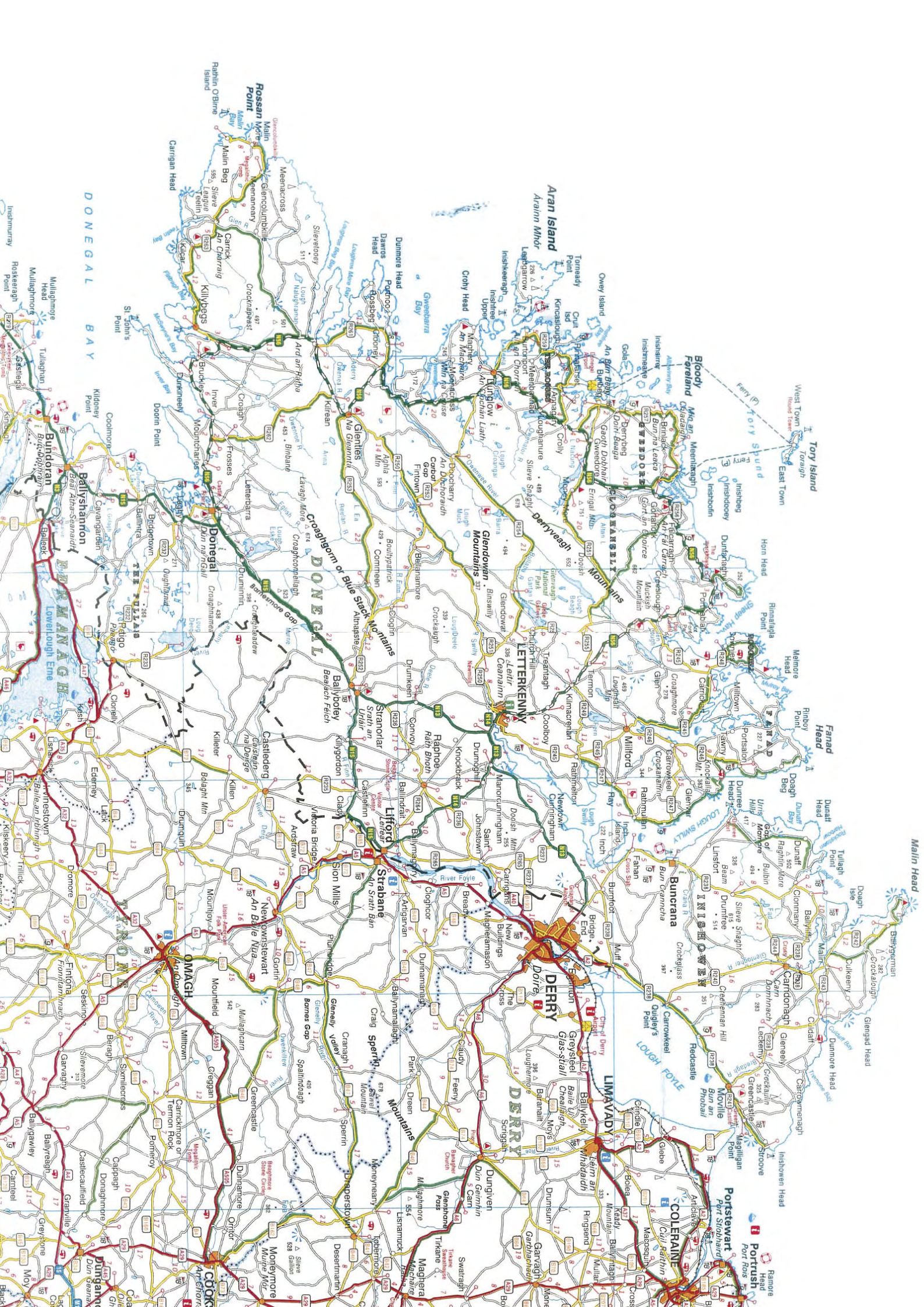


CHAIRMAN:
The Honourable Mr. Justice Frederick R. Morris

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

REPORT INTO ALLEGATIONS CONTAINED IN DOCUMENTS RECEIVED BY DEPUTY JIM HIGGINS ON THE 25TH OF JUNE 2000 AND IN INFORMATION RECEIVED BY DEPUTY BRENDAN HOWLIN ON THE 25TH OF JUNE 2000 THAT TWO SENIOR MEMBERS OF AN GARDÁ SÍOCHÁNA MAY HAVE ACTED WITH IMPROPRIETY.

Term of Reference (h)





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MAY HAVE ACTED WITH IMPROPRIETY

Term of Reference (h)

Solicitor to the Tribunal: Hugh Dockry

Registrar to the Tribunal: Brendan O'Donnell

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Mr. Justice Frederick Morris

ANO/REP003-07/FM/NT

Friday, 29th August 2008

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

Dear Minister,

I enclose herewith my Report in respect of Term of Reference (h) pursuant to which the Tribunal is directed to inquire into the following matters:

- (h) **Allegations contained in documents received by Deputy Jim Higgins on 25th June, 2000 and in information received by Deputy Brendan Howlin on 25th June, 2000 that two senior members of An Garda Síochána may have acted with impropriety**

As you are aware from previous reports, Section 3 of the Tribunal of Inquiry (Evidence)(Amendment) Act, 2002 provides that if you consider that the publication of this report might prejudice any criminal proceedings, then you may apply to the court for direction relating to the publication. With this section in mind the following observations may be of assistance.

On the 21st of January 2008, the Tribunal wrote to Inspector Declan Downey at the Garda Liaison Office to the Tribunal, with a view to ascertaining whether it was likely that criminal proceedings might be brought arising out of the circumstances which are the subject of this Term of Reference. Chief Superintendent McGinn replied to this letter on the 10th of April 2008. I enclose a copy of this correspondence. From her letter it is clear that the Garda Síochána are not conducting any investigations in relation to any matter the subject of Term of Reference (h). Therefore, she was able to confirm that there are no outstanding files currently with the Office of the Director of Public Prosecutions awaiting consideration in relation to any matter relevant to Term of Reference (h).

The Tribunal has now concluded its work. This eighth report is the last report to be delivered by the Tribunal. The only outstanding work to be completed relates to applications for costs in respect of the seventh and eighth reports of the Tribunal. Applicants for costs will have three weeks within which to submit written applications to the Tribunal following the publication of the seventh and eighth reports. Thereafter, the Tribunal will rule on these applications and make the appropriate Orders.

Subject to my making an order for the destruction of confidential documentation relating to evidence heard in private, once that work has been completed my role and work as Sole Member of the Tribunal will come to an end.

Yours faithfully,

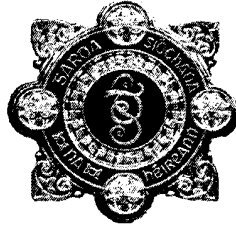
Frederick Morris

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

An Garda Síochána

Oifig idirchaidrimh na nGardaí
Binse Fiosrúchan Morris
Paire Oifig Belfield
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Garda Liaison Office
Morris Tribunal
Belfield Office Park
Beaver Row
Clonskeagh
Dublin 4

Web Site: www.garda.ie

Please quote the following Ref. Numbers:

DO11.2/08.

PRIVATE & CONFIDENTIAL

**MR HUGH DOCKRY,
SOLICITOR TO THE TRIBUNAL OF INQUIRY,
BELFIELD OFFICE PARK,
BEAVER ROW,
CLONSKEAGH,
DUBLIN 4.**

**RE: TRIBUNAL OF INQUIRY INTO COMPLAINTS CONCERNING SOME GARDAÍ IN DONEGAL.
ANONYMOUS ALLEGATIONS - TERM OF REFERENCE (H).
ACTUAL OR POTENTIAL CRIMINAL PROCEEDINGS.**

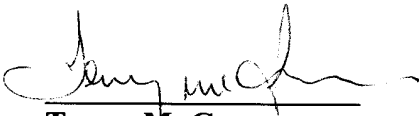
A chara,

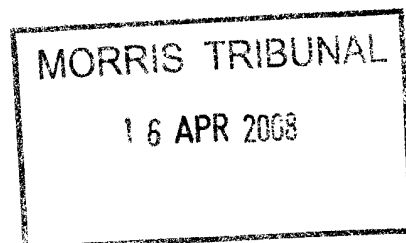
I refer to your correspondence dated the 21st January 2008 in the above.

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

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

Is mise le meas,


**TERRY MCGINN
CHIEF SUPERINTENDENT.**



10TH APRIL 2008.

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

Mission Statement:

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

Is é Mísean an Gharda Síochána:

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

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

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



Sole Member
The Honourable Mr. Justice Frederick Morris

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

My Ref: **MT/GDA/MCG010-01/HD/YR** Your Ref:

If telephoning please ask for:-

PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE

Monday, 21 January 2008

PRIVATE AND CONFIDENTIAL
STRICTLY ADDRESSEE ONLY

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

RE: Anonymous Allegations – Term of Reference (h)
Actual or Potential Criminal Proceedings

Dear Inspector Downey,

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

- (h) **Allegations contained in documents received by Deputy Jim Higgins on 25th June, 2000 and in information received by Deputy Brendan Howlin on 25th June, 2000 that two senior members of An Garda Síochána may have acted with impropriety;**

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

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

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

- (a) the Attorney General,***
- (b) the Director of Public Prosecutions, and***

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

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

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

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

- (a) for a specified period, or**
- (b) until the Court otherwise directs.**

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

In the event that the Tribunal is in a position to furnish a report to the Minister within the next number of weeks, it is important that it should be informed as to the reasonable likelihood of criminal proceedings being brought concerning the subject matter of paragraph (h) as set out above.

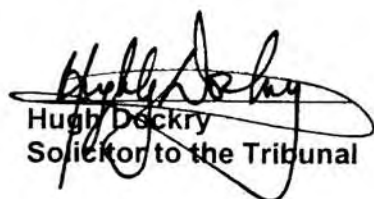
You are in a unique position, having attended most of the public sittings of the Tribunal and having acted in a most helpful way as Liaison Officer between An Garda Síochána and the Tribunal, to assist us in this regard. We would, therefore, ask you to make inquiries as to whether it is reasonably likely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

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

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

We await hearing from you in due course.

Yours sincerely,


Hugh Deckry
Solicitor to the Tribunal

PARAGRAPH (h) of the TERMS of REFERENCE

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

Paragraph (h) of the Terms of Reference requires the
Tribunal to urgently inquire into and report on:

Allegations contained in documents received by
Deputy Jim Higgins on the 25th of June 2000 and
in information received by Deputy Brendan
Howlin on the 25th of June 2000 that two senior
members of An Garda Síochána may have acted
with impropriety

NOTE TO THE READER

The reader will please note the following:

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

CHAPTER 1

INTRODUCTION

- 1.01. This is the eighth and final report of the Tribunal of Inquiry set up by Dáil and Seanad Éireann pursuant to resolutions of the 28th of March 2002. The first report of the Tribunal, concerning hoax explosives finds in Donegal during the years 1993 and 1994, relating to Term of Reference (e), was published in July 2004. The second report of the Tribunal was published in June 2005 and dealt with the making of extortion and hoax telephone calls to the home of Michael and Charlotte Peoples on the 9th of November 1996, and the subsequent Garda investigation into that complaint, as well as the Garda investigation in relation to the death of the Late Mr. Richard Barron of Raphoe, County Donegal on the 14th of October 1996, and the progress, management and effectiveness of that investigation with particular reference to the management of informants as required by Terms of Reference (a) and (b) respectively of the resolution. The final element of Term of Reference (b), namely the arrest and treatment in custody of persons arrested in the course of that Garda investigation, together with the circumstances surrounding the arrest and detention of Frank McBrearty Junior on the 4th of February 1997, and his subsequent prosecution in the Circuit Criminal Court in relation to the alleged assault in December 1996 on Edmond Moss in respect of Term of Reference (f), is the subject matter of the sixth report of the Tribunal delivered in April 2008.
- 1.02. In May 2006 the third, fourth and fifth reports of the Tribunal were submitted to the Minister for Justice, Equality and Law Reform. These reports were in respect of the Garda investigation of an arson attack on property situated on the site of a telecommunications mast at Ardara, County Donegal in October and November of 1996 (Term of Reference (g)), the circumstances surrounding the arrest and detention of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999 (Term of Reference (d)), and the circumstances surrounding the arrest and detention of seven persons at Burnfoot, County Donegal on the 23rd of May 1998 and the investigation relating thereto (Term of Reference (i)). The seventh report of the Tribunal dealt with the alleged Garda harassment of the McBrearty family of Raphoe and how the Garda Complaints Board dealt with various complaints (Terms of Reference (c) and (j)).
- 1.03. This report deals with a series of supposedly anonymous allegations received by Mr. Jim Higgins T.D. and Mr. Brendan Howlin T.D. on the 25th of June 2000.
- 1.04. Under paragraph (h) of the Terms of Reference, the Tribunal was required to inquire urgently into:

Allegations contained in documents received by Deputy Jim Higgins on the 25th of June 2000 and in information received by Deputy Brendan Howlin on the 25th of June 2000, that two senior members of An Garda Síochána may have acted with impropriety.

- 1.05. On the 25th of June 2000, a facsimile message was received by Deputy Jim Higgins containing allegations against two serving Assistant Commissioners of An Garda Síochána, Assistant Commissioner Kevin Carty and Assistant Commissioner Tony Hickey, as well as Detective Sergeant John White. It should be noted from the outset that the Tribunal has found absolutely no evidence to support any of the allegations set out in this facsimile against either of these two officers. The message reads as follows:

Confidential ... confidential ... confidential

For the information of Mr. Jim Higgins, TD

Confidential information has come to hand from a serving Detective Inspector of An Garda Síochána attached to a Station in the D.M.A. concerning the Garda Investigation in the Donegal Division.

- [1]. There appears to be a problem concerning the ongoing investigation into the conduct of one Detective Sergeant John White which would give the impression that the matter is not being dealt with in accordance with the Commissioner's instructions to the investigating Officer, Kevin Carty. If this is the case, it is very worrying, to say the least.
- [2]. The reason for this is the fact that D/Sgt. White worked with both Mr. Carty and Assistant Commissioner Tony Hickey during his service in Dublin and whenever evidence had to be got to prove a case beyond doubt, Mr. White was the man who was given the job of producing the said evidence by unlawful means.
- [3]. A large amount of convictions were achieved by "planting" evidence and both Carty and Hickey were aware that White was a source of the "tramped up" evidence. Payback was extra expenses for White in the form of unworked overtime/travelling and subsistence allowances and this misappropriation of Department of Justice funds continued up to 1998 as White was given blanket permission to claim the aforementioned expenses.
- [4]. There is now a fear among member's of the investigation team that if White is fully investigated he will use his knowledge of those matters

as his defence and in doing so a number of person's convicted which involved lengthy prison sentences will prove to have been unsafe and the consequences for those involved and indeed the entire force, would be unthinkable.

[5]. Another matter which White was involved in was the planting of stolen property on suspects and as a result of this he had a huge amount of stolen property at his disposal. This property was not officially documented in official property books and this malpractice enabled him to have a huge amount of stolen property at his disposal. When he moved to the Donegal Division he moved a large amount of said stolen property with him and this was known by the authorities and indeed was a "running joke" among ordinary Gardaí.

[6]. Taking all this reliable information in to account it is felt that this investigation will be unsuccessful in establishing the true facts of the illegal activities of Detective Sergeant White and the only other alternative is a full and open public enquiry.

It is known that White is in regular contact with Assistant Commissioner Hickey and has an eighteen page document concerning his and others activities whilst he was stationed in Dublin and this document, it appears, is his passport to escaping the rigours of the law and his way of frustrating the ongoing investigation.

END.¹

- 1.06. On the same date, Deputy Brendan Howlin also received information in relation to allegations concerning Gardaí in Donegal from "a person who had in the past kept me informed about the situation in Donegal concerning the Gardaí and the McBreartys". For the moment it is appropriate to use a note in redacted form made by Deputy Howlin which he used as a working note for a meeting with the Minister for Justice, Equality and Law Reform on the 27th of June 2000. The redaction was to preserve the identity of his informant. It reads as follows:

On Sunday evening 25/6/00 I received a call from a colleague to phone a person who had in the past kept me informed about the situation in Donegal concerning the Gardaí and the McBreartys.

- He informed me that serious information had been brought to his attention regarding Det. Sgt. White. He suggested that criminals were used by Sgt. White to give perjured evidence against Mr. McBrearty. He suggested that he (White) planted evidence on a McBrearty

¹ Tribunal Documents – Anonymous Allegations, pages 266-267. The reader should note that the document has been reproduced here with the typographical and grammatical errors as appearing in the original. A photocopy of the original document is to be found at Appendix A1.

associate. He suggested that Sgt. White planted stolen property on youth in Lifford (an action that was common for him).

- Critical issue is that Sgt. White is in a position to blackmail two Ass. Commissioners – Ass. Comm. Kevin Carty + Ass. Comm. Tony Hickey.
- Evidence coming from Garda based in Donegal who has provided my informant with most reliable information in the past.

2

- He (Donegal based Garda) was approached by Sen. Detective from Dublin who told him that Sgt. White “was being looked after”.
- Sgt. White’s expenses make interesting reading – also allowed to have access to stash of stolen property – to plant on people!
- Every case Sgt. White was involved in needs rechecking.
- Informants real concern however is that the Carty Investigation is compromised.
- Explained that case “with Ballymun connection” would cause difficulty for Kevin Carty – White he suggested did “dirty work” for him.²

1.07. This was the material available to the Tribunal when it was established, though other documents relevant to an understanding of this material were made available by Deputy Higgins and Deputy Howlin in the course of the Tribunal’s work. Nowhere did any evidence emerge that would indicate that Assistant Commissioner Carty or Assistant Commissioner Hickey were involved in any wrongdoing or that Assistant Commissioner Carty was compromised in the preparation of his report. These two documents were used as a starting point when the Tribunal, as required by law, explained this Term of Reference on the 15th of July 2002 as follows:

With regard to paragraph (h)

The information available to the Tribunal indicates that Deputy Jim Higgins [as he then was] and Deputy Brendan Howlin at or about the time indicated brought to the attention of the then Minister for Justice, Equality and Law Reform a fax, which had apparently been received by Deputy Higgins on the 25th of June 2000.

The main allegations relevant to this module are that:

² Tribunal Documents – Anonymous Allegations, pages 845-846 and pages 276-277.

- (i) An investigation being carried out into the conduct alleged against a member of An Garda Síochána was not being conducted in accordance with the Garda Commissioner's instructions due to the fact that the member under investigation had worked with two high ranking members of An Garda Síochána one of whom had charge of the investigation in respect of the alleged misconduct;
- (ii) When working with these high ranking members of An Garda Síochána he was alleged to have been given the job of producing evidence by unlawful means to prove a case beyond reasonable doubt whenever such evidence "had to be got";
- (iii) In this regard a large number of convictions were achieved by planting evidence and it is alleged that both of the high ranking Gardaí were aware that the member under investigation was the source of trumped up evidence used in this manner;
- (iv) The member under investigation gained from his actions of producing trumped up evidence which secured convictions in that he had paid to him extra expenses in the form of unworked overtime/travelling and subsistence allowances which continued up to 1998 and that he was given blanket permission to claim such expenses;
- (v) The member under investigation was involved in planting stolen property on suspects and as a result had a huge amount of stolen property at his disposal which he had in the Donegal area and that this was known to members of An Garda Síochána at a number of levels;
- (vi) The member under investigation was in regular contact with a high ranking Garda officer and had an eighteen page document concerning his and others' activities whilst stationed in Dublin which document would enable him to escape the rigours of the law and was his way of frustrating the ongoing Garda investigation into his alleged misconduct.

The Tribunal proposes to:

- (a) Inquire into this matter generally and insofar as it is possible, ascertain the basic facts;
- (b) Fully investigate each of the allegations contained in the document to ascertain whether there is any foundation for same;

- (c) Consider the investigations carried out to date in relation to this matter and generally consider whether these allegations were scrutinised with the seriousness which they merit;
- (d) Ascertain if there is any connection between this incident and any other incident referred to in the Terms of Reference;
- (e) Attempt to ascertain if the author of the fax has any information which would justify the allegations contained therein: in that regard it would be necessary to ascertain the identity of this person and to seek his/her assistance for the work of the Tribunal;
- (f) Attempt to ascertain whether the use of informants has anything to do with this matter and, if that is so, the same approach as set out in relation to Term of Reference (b)(3) will then apply;
- (g) Attempt to ascertain the motive for sending this fax, if this is relevant.³

1.08. Anonymous allegations, unless accompanied by some tangible piece of evidence or information that will lead the investigator to some supporting evidence, serve no useful purpose.

1.09. Following the commencement of the Tribunal's inquiry in January 2003, Mr. Jim Higgins, TD in the course of an interview with the Tribunal investigators produced a second facsimile document received by him on the 15th of July 2000, which contained further anonymous allegations. At that time, Mr. Higgins only had the first and third pages of the facsimile received by him but returned to his source and produced to the Tribunal a copy of a second page of that document. The facsimile received by Mr. Higgins was of poor quality and small portions of the document were illegible. The facsimile, insofar as it was decipherable, reads as follows:

CONFIDENTIAL
MR. JIM HIGGINS, T.D.
DAIL EIREANN

Dear Jim,

I am a serving member of An Garda Síochána in the Donegal Division.

A number of serious questions has arisen concerning the Garda investigation in Donegal under the appointed of Assistant Commissioner in charge of the Northwest region – Mr. Kevin Carty.

³ Opening Statement of the Sole Member of the Tribunal, 15th July 2002, made at Court No. 6, The Four Courts, Dublin 7 available on the Tribunal website: www.morristribunal.ie under the "Opening Statement" link.

Some of the matters that this investigation has failed to cover, concerning the abuse of power by certain named Gardaí is causing grave concern to both senior and junior member's of the Force.

As you are aware a Detective Sergeant [White] was arrested under the provisions of Section 4 of the Criminal Justice Act, 1984 and subsequently questioned. During his interrogation he threatened to expose alleged wrongdoing by very senior members of the Garda Force. He was suspended from duty but, within 28 hours he was mysteriously reinstated and give his choice of a station in the Dublin Metropolitan Area.

It has now come to notice that this was done over the head of, and against the express wishes of the Officer in charge of the investigation, Mr. Kevin Carty. Mr. Carty was in a helpless situation to prevent his reinstatement as the Commissioner, Mr. Byrne, would have signed both forms [1]. revoking suspension and [2]. ordering his required transfer, at public expense.

The D/Sgt. having been suspended made telephone contact with senior officer in Garda Headquarters and for some unknown reason it was decided at the highest level, to have him reinstated and given a Dublin station of his choice.

- (1) Why was this done against the authority and express wishes of Assistant Commissioner Carty?
- (2) Telecommunication records from the phone in the D/Sgt's [illegible] the phones in Letterkenny and Raphoe Garda Stations [illegible] show what contact was made and to whom?
- (3) On whose advice did the Garda Commissioner, Mr. Byrne, take [illegible] that he appointed to investigate Garda corruption in the [illegible]?
- (4) Was it as a result of the D/Sgt's threats to expose wrongdoings by Senior Officer's within the force that Commissioner saw fit to reinstate and grant him his transfer?
- (5) If this is the case, or indeed if the Assistant Commissioner Carty [illegible] and his authority undermined his position as investigating officer is untenable.

The majority of serving Gardaí now believe that this investigation is [illegible] ... by similar incidents. That it is totally flawed by the total lack of cooperation by the member's under investigation and are totally

convinced that the full facts will not come out. They [illegible] that a full and comprehensive sworn public inquiry is the only way ... [illegible].

Another matter causing grave concern is the fact that certain Gardaí who were involved in the instructed harassment and abuse of Mr. McBrearty and his extended family are not coming within the scope of this investigation, namely, Gardaí Shaun Barrett, Noel Keaveney and Sgt. Sarah Hargadon. Those member's were at the forefront of this alleged and instructed conspiracy, i.e. using public monies allocated to B.S.E. duties to harass and intimidate Mr. McBrearty and his family, giving evidence in open Court, under Oath, as instructed by a Garda Superintendent, thereby, committing [allegedly] barefaced perjury??

If those person' are not part of the overall investigation then it completely fails in what it set out to achieve???

Finally, The Minister of Justice can not say the investigation was successful in establishing the facts when after the final report is delivered further serious matters come to light, and I can assure you, Mr. Higgins that this is way the matter will drag on and on and without the granting of a full sworn public enquiry, the Minister will get "egg on his face".

This whole affair can be summed up by the very old saying.. "Old sins cast long shadows."

It was never more true than in this case.

Yours faithfully,

A serving member of An Garda Síochána.⁴

- 1.10. Though the facsimile of the 15th of July 2000 is not included in Term of Reference (h) it is an important document, the origin and contents of which are, in my view, clearly relevant to the Tribunal's inquiry into the origin and nature of the allegations conveyed to Deputies Higgins and Howlin on the 25th of June 2000.
- 1.11. Subsequently two Opening Statements were made by counsel for the Tribunal in November 2002 and on the 19th of February 2007.⁵ It is only fair to emphasise that the core allegations against Assistant Commissioner Carty and Assistant Commissioner Hickey were untrue. The Tribunal has had the benefit of a very thorough Garda investigation of all of the issues raised by the two Deputies, carried out very efficiently by Chief Superintendent Patrick Brehony and Inspector Eugene Corcoran under the supervisory control of Assistant Commissioner

⁴ Tribunal Documents – Anonymous Allegations, pages 745-747. The typographical and grammatical errors are those appearing in the original of the document.

⁵ Transcript, Day 569.

Fachtna Murphy. The Tribunal directed its own investigators, Mr. Michael Finn and Mr. Patrick Cummins (RCMP retired) to further investigate all of these allegations and, if necessary, take them further. They did so and I received extensive evidence from Mr. Cummins in relation to this work.

- 1.12. These allegations could not have been more serious for Assistant Commissioners Hickey and Carty in their private and professional capacities. As part of its overall inquiry as to whether the allegations were true or not, the Tribunal sought to identify the source of the allegations. It successfully identified Mr. Frank McBrearty Senior as the sender of the facsimile of the 25th of June 2000 to Deputy Howlin. It also succeeded in identifying Mr. Martin Giblin S.C., senior counsel to Mr. Frank McBrearty Senior in his civil actions, as the person who conveyed the information to Deputy Brendan Howlin. He did so having received a copy of the facsimile that Mr. Frank McBrearty Senior had sent to Deputy Higgins from Mr. Frank McBrearty Senior, also on the 25th of June 2000. The Tribunal has concluded from the evidence available to it that Mr. Frank McBrearty Senior and Mr. P.J. Togher were responsible for the composition and typing of the material in the facsimile of the 25th of June 2000 and of the further facsimile sent on the 15th of July 2000 to Deputy Higgins, and others by Mr. Frank McBrearty Senior. The Tribunal set out to identify the source or sources of the information in these documents with a view to ascertaining whether these sources had any evidence whatsoever to support the very serious allegations made to the two Deputies. That was the main purpose of this aspect of the Tribunal's work. No such evidence justifying the making of these allegations was produced by anybody. In the course of its work, the Tribunal then sought to ascertain the reasons why false allegations had been made against Assistant Commissioner Carty and Assistant Commissioner Hickey and came to the conclusion that it was done in order to undermine the work that had been carried out by Assistant Commissioner Carty in investigating events in Donegal. Mr. Frank McBrearty Senior, in particular, was campaigning for the establishment of a Tribunal of Inquiry into complaints in relation to the Gardaí in Donegal. He had lost faith in the Carty inquiry and sought to discredit it in order to advance his campaign for an inquiry, which was ongoing in June 2000.

The Tribunal's Approach

- 1.13. The Tribunal has in a number of its previous reports outlined its mode of procedure. Firstly, a preliminary investigation of the material available to the Tribunal was conducted by the Tribunal's legal team and support staff. As a result of this preliminary investigation it was decided that this Term of Reference (h) would be determined in its entirety and alone. It should be noted that the

Tribunal is inquisitorial in nature. It did not proceed on the basis that certain people were accused of particular wrongs. It attempted to ascertain what happened, why it happened and what might be learnt from it. In the course of preparing for this module, the Tribunal identified persons likely to be affected by the available evidence. Persons were contacted and provided with a Book of Evidence relevant to the Tribunal's hearings in respect of the Term of Reference. The parties could then assess the Book of Evidence and if they wished respond to it by making a written submission or witness statement. Some of the witnesses were interviewed by Tribunal investigators. As previously acknowledged the template upon which the work of the Tribunal proceeded was set out in the opening remarks that I made in explaining the Terms of Reference on the 15th of July 2002.⁶

- 1.14. It should be noted that every finding of fact made by the Tribunal is based on the proof of that fact to my satisfaction on the balance of probabilities. I have heard extensive testimony from various witnesses. It emerged during the course of the evidence that though many of these witnesses had told the truth, a number of significant witnesses tried to mislead the Tribunal by lies and lack of candour. As in other hearings in the course of this Tribunal, these hearings were further delayed and complicated by the unwillingness of some of the witnesses to tell me the truth. The hearings on this module extended over a period of approximately six weeks in February, March and June of 2007. Having heard evidence the Tribunal then received extensive oral and written submissions from the various parties, all of which have been considered by the Tribunal in reaching its conclusions.
- 1.15. I have commented in previous reports on the burden assumed by Tribunals. The procedures under which a Tribunal of Inquiry operates are onerous. They involve the necessity to gather together all relevant documents; to interview relevant witnesses; to distribute all relevant documents and witness statements to all interested parties; to allow representation involving the right to cross-examine and make submissions to all parties who might be criticised in the report; to call relevant evidence and test same; to hear submissions; to consider the form of a report and to furnish same to the Minister for Justice, Equality and Law Reform, thus allowing him or her to make a decision as to publication. Thus, before a person can be criticised in circumstances which do not involve any monetary loss or penal consequence, rights and fairness of procedures of a very high degree, and analogous to those afforded to an accused in a criminal trial, must be afforded. This involves a great deal of work on the part of my staff in ensuring that these rights are observed, for which I wish to record my thanks.

⁶ This Ruling is available on the Tribunal website: www.morristribunal.ie under the "Opening Statement" link.

Hoax

- 1.16. This Term of Reference concerns what proved to be an extensive hoax. Innuendo, rumour and half-truths were drawn together by Mr. Frank McBrearty Senior and his associate, Mr. P.J. Togher and used as a basis for composing a facsimile that was sent to Mr. Jim Higgins TD and Mr. Martin Giblin S.C. on the 25th of June 2000. The pervasive theme of the facsimile was that Assistant Commissioner Kevin Carty and Assistant Commissioner Tony Hickey acted in concert with Detective Sergeant White to secure convictions against unnamed persons using perjured testimony and stolen items of property, which were said to have been planted on these persons for the purpose of being used in evidence against them. These allegations against Assistant Commissioners Carty and Hickey of participation in corruption and conspiracy to pervert the course of justice were wholly false. The document sent to Mr. Higgins and Mr. Giblin was focussed centrally on the doubt cast upon the ability of Assistant Commissioner Carty, in particular, to carry out a full inquiry into allegations of wrongdoing by Detective Sergeant White, because he was allegedly open to blackmail by Detective Sergeant White because he could reveal details of his alleged wrongdoing with the Assistant Commissioner. All of these allegations were untrue. There was no basis for concluding that Mr. Carty could be or was compromised in any way in his pursuit of the truth concerning Detective Sergeant White or anybody else involved in the sorry events in Donegal. The evidence was to the contrary.
- 1.17. The writer of the facsimile of the 25th of June 2000 opines that Mr. Carty's investigation would be unsuccessful in establishing the truth concerning any wrongdoing by Detective Sergeant White and that "the only other alternative is a full and open public inquiry". This was an opinion that coincided with the views of Mr. Frank McBrearty Senior, Mr. Jim Higgins TD and Mr. Brendan Howlin TD. The history of the McBrearty affair in Donegal has produced a lot of evidence of injustice and unfairness by Gardaí directed against the McBrearty family and the extended Quinn family. Mr. McBrearty Senior spent many years vindicating his and his family's reputation. In this instance, he and his associates launched the most appalling attack on the professional reputation and careers of two very distinguished Assistant Commissioners in order, in my view, to advance his own case for a Tribunal of Inquiry. This was disgraceful, shocking and unfair to those whose reputations he deliberately besmirched for his own ends.
- 1.18. The Tribunal was at pains to seek out any evidence that might support the

allegations made in the facsimile sent to Mr. Higgins and Mr. Giblin in the course of its work. It sought witnesses to these allegations. There were none. It sought evidence of these allegations. There was none. It sought co-operation in going to the supposed source of the allegations. It got none. As time progressed those who were initially presented and protected as anonymous conduits of the information contained in the facsimiles were revealed as Mr. Frank McBrearty Senior and his lawyer, Mr. Martin Giblin S.C. No other source was presented to the Tribunal to back up these appalling allegations. A lot of time and effort was expended by Assistant Commissioner Fachtina Murphy and a team of Garda investigators in trying to get to the root of these allegations. The Tribunal also invested a lot of time and working hours in investigating these allegations, only to be met by obstruction and obfuscation on the part of Mr. McBrearty Senior and his associate, Mr. Togher, and not a scintilla of evidence was produced to support them. It was precisely because the allegations were so serious, of course, that the Dáil and Seanad included these matters as part of the Terms of Reference of the Tribunal. Given that the allegations were false, I set out to inquire why they were made in the first place by Mr. McBrearty Senior. He maintained that he got the facsimile by post, which for the reasons set out in this report, I do not believe.

- 1.19. Late on the evening of the 25th of June 2000 Mr. Martin Giblin S.C. spoke to Deputy Brendan Howlin about information that he had received from a Garda based in Donegal. He did not send Mr. Howlin a copy of the facsimile that he had received from Mr. Frank McBrearty Senior or read it to him over the phone. Instead he referred to a number of matters contained in the facsimile, including the allegation that Detective Sergeant White was allowed to have access to a stash of stolen property to plant on people and that he did dirty work for Assistant Commissioner Carty. He said that his informant's real concern was that the Carty inquiry was compromised because Detective Sergeant White was in a position to blackmail the Assistant Commissioner. He did not tell Deputy Howlin that he had received a facsimile containing some of these allegations from Mr. Frank McBrearty Senior. He also added a number of other allegations, some of which were historical and had been aired publicly already in the District and High Courts. These included the use of criminals to give false evidence against Mr. McBrearty Senior and the planting of evidence on a McBrearty associate.
- 1.20. These two allegations related to events in respect of which there was

some truth. The Tribunal has determined regarding Bernard Conlon, a petty criminal, that he was procured as a witness against Mr. McBrearty Senior in respect of a liquor licensing prosecution by Detective Sergeant White. The Tribunal has also determined that the allegation that Detective Sergeant White planted drugs on a McBrearty associate, namely Mr. Paul Quinn, a brother of Mrs. Róisín McConnell, was true. However, neither of these allegations were part of the facsimile of the 25th of June 2000. Further, the allegation made by Mr. Giblin concerning a “Ballymun case” against Assistant Commissioner Carty was found upon investigation by the Tribunal to be completely untrue. As will be seen, much of Mr. Giblin’s information was said to come not from the facsimile but from two other informants. No satisfactory explanation has been given to the Tribunal as to why this was not explained to Deputy Howlin and why he was not informed of the existence of the facsimile.

- 1.21. The Tribunal is also satisfied that the facsimile of the 15th of July 2000 that was sent by Mr. Frank McBrearty Senior to Deputy Jim Higgins and others was false. It complained of the unexplained reinstatement and transfer to Dublin of Detective Sergeant White following his suspension upon his arrest in relation to the Bernard Conlon affair in March 2000. It suggested that Assistant Commissioner Carty was in favour of the suspension but was left helpless in the face of a decision made by other senior officers which he opposed, and that consequently his authority and that of his investigation were undermined. This document also called for a public inquiry as the only means of getting to the truth. It presents Assistant Commissioner Carty as an officer whose view that Detective Sergeant White should be suspended was overridden mysteriously by other senior officers who went over his head and against his wishes. This is in total contradiction to the tenor of the facsimile of the 25th of June 2000, that Assistant Commissioner Carty was guilty of corruption in concert with Detective Sergeant White and that his investigation was compromised because he was susceptible to blackmail by Detective Sergeant White, who could reveal details of their joint wrongdoing. The two further allegations contained in the facsimile of the 15th of July 2000 against three named Gardaí, that they committed perjury in respect of a divisional circular in the District Court and that BSE money was used to fund Garda harassment of Mr. McBrearty Senior, his family and his employees, concerned matters with which Mr. Frank McBrearty Senior had been greatly preoccupied and agitated for a considerable period. The Tribunal is satisfied that these two allegations are largely untrue and are largely

constructed upon half-truths and rumour. The existence of this facsimile was not revealed by its recipients until January 2003, at which time its significance became apparent to the Tribunal.

- 1.22. The Tribunal is satisfied that this facsimile was also composed and typed by Mr. Frank McBrearty Senior and Mr. P.J. Togher, who hoped that the various recipients of the facsimile would use it for the purpose of the campaign for a public inquiry. However, once read by its recipients it is likely that the contradiction referred to above was recognised. It was clear that the document could have damaged the campaign by undermining the reliability of the information contained in the first facsimile and thereby undermining the informant's credibility. The facsimile was not forwarded by Deputy Higgins to the Minister for Justice, Equality and Law Reform: nor was it furnished to Deputy Howlin by Mr. Martin Giblin S.C. The use made of the two Deputies in these events is discussed later in chapter 3 of this report.
- 1.23. In the course of this aspect of the inquiry there was a juxtaposition of law and politics, which was perhaps made inevitable by the nature of the grievances held by Mr. McBrearty Senior and his perception that he was engaged in efforts to clear his family's name with two central pillars of State authority: An Garda Síochána and the monolith of the Department of Justice, Equality and Law Reform, which stood full square behind An Garda Síochána. The Tribunal is satisfied that Mr. McBrearty Senior put forward these threadbare allegations because of his view, shared by others of his acquaintance, that the Carty investigation was unsatisfactory because it involved the investigation of complaints against Gardaí by Gardaí and that the only way to establish the truth of what happened in Donegal was through the mechanism of a sworn public inquiry. In that he may have been correct, but to use that as a justification for attacking the work of Assistant Commissioner Carty was to belittle the enormous amount of work he and his investigation team put into uncovering the truth in Donegal and was unfair to him as a professional and independently minded police officer. Assistant Commissioner Carty faced the same problems with which the Tribunal was confronted, namely lies and cover up. From the papers available to the Tribunal it is clear that Assistant Commissioner Carty made substantial progress in trying to uncover the truth in Donegal and I am satisfied that his work when investigating the myriad allegations of wrongdoing with which he was faced was carried out with determination, integrity and vigour.

- 1.24. The Tribunal is satisfied that the composition and sending of the facsimile on the 25th of June 2000 had a political purpose. It was a tool calculated to put pressure upon the Minister for Justice, Equality and Law Reform to institute a public inquiry into alleged Garda wrongdoing in Donegal. It has been said, most notably in evidence by Mr. Brendan Howlin TD, that the content of the first five reports of this Tribunal justified its establishment and this may be so. However, the Tribunal can only deprecate the cynical manipulation of these events by Mr. Frank McBrearty Senior and others, in the course of which he sought to obtain the establishment of a Tribunal of Inquiry by falsely attacking the reputation of two Assistant Commissioners of An Garda Síochána. This was calculated to create a sensational crisis of confidence in the conduct of the Carty inquiry into events in Donegal and in senior Garda management which it was hoped would propel the Minister for Justice, Equality and Law Reform, Mr. John O'Donoghue TD, to accede to the calls for a sworn public inquiry. The Tribunal is also satisfied that Mr. McBrearty Senior must have embarked on this enterprise with some advice and the support of his associate Mr. Togher and/or some other Gardaí or retired Gardaí with whom he was in constant contact at the time. He also had the support of his legal team and the two politicians in calling for the establishment of a public inquiry. Their view was based on events up to the 25th of June 2000 and was to a large measure confirmed by the information conveyed to them that day. However, the end did not justify the means. Assistant Commissioners Carty and Hickey should not have been targeted in this manner. They did not deserve the calumny that attached to them by reason of these allegations which, I have no doubt, have caused them acute embarrassment ever since they were made and were calculated to bring them into public scandal, odium and contempt personally and professionally.
- 1.25. For its part the Tribunal, having investigated the core allegations against these two officers set out in the facsimile of the 25th of June 2000, is satisfied that they are untrue. In order to reach this point it was necessary to have a comprehensive understanding of what went on in Donegal in respect of various allegations made by the McBrearty family and the extended Quinn family and the involvement of Detective Sergeant White in numerous other matters. It took a great deal of time to examine and unravel events that occurred over many years in order to enable the Tribunal to reach a complete overview of matters set out in the nine other Terms of Reference and ultimately to distinguish the events relevant to

those Terms of Reference from the lies, half-truths, dissimulation and rumour with which it was confronted in respect of Term of Reference (h).

The Persons Involved

- 1.26. Prior to embarking on a consideration of the matters arising out of Term of Reference (h) it is useful to give a brief description and introduction of the main persons featured in the allegations and in the work of the Tribunal.

Assistant Commissioner Kevin Carty

- 1.27. Assistant Commissioner Carty joined An Garda Síochána in August 1969 and has now achieved a proud record of thirty-nine years' service. By 1994 he was chief superintendent in charge of the Wexford division. On the 1st of September 1994 he became chief superintendent in charge of the Central Detective Unit in the Dublin Metropolitan Area. He remained in that position until September 1995, when he was appointed the director of the new Garda National Drugs Bureau; and he remained in that position until 1998 when he was promoted to the rank of assistant commissioner. He was then transferred on promotion to the Northern Region Headquarters in Sligo. He remained in that position until February 2003 as assistant commissioner for the northern region. At that time he was transferred to Dublin and became assistant commissioner in charge of the Dublin Metropolitan region. He served from August 2003 with the United Nations as part of an inquiry team to investigate events leading to an attack on the United Nations headquarters in Baghdad, Iraq. In February 2004 he was appointed as head of the European Union police mission in Bosnia-Herzegovina and remained in that position until early 2006. At that stage he was seconded by the Irish government to the Organisation for Security and Co-operation in Europe (OSCE) having its headquarters in Vienna, Austria. He acted as senior police adviser to the Secretary General of the organisation, in which capacity he was still serving when he gave evidence to the Tribunal in 2007.
- 1.28. On or about the 15th of February 1999, Deputy Commissioner Noel Conroy directed Assistant Commissioner Carty to carry out an investigation into matters arising out of the investigation into the death of the Late Richard Barron. In the course of his inquiry, his team interviewed over eleven hundred people and took approximately eleven hundred to twelve hundred statements and memoranda of interview. Many people were visited and re-visited and a number of people were arrested in the course of the inquiries. An important and extensive report on various aspects of the inquiry was compiled and submitted in July 2000. In the course of that inquiry, a number of Gardaí and others had been arrested and interviewed. In particular, Detective Sergeant White was arrested, detained and

interviewed on the 21st of March 2000 in relation to issues concerning his association with Bernard Conlon, and again on the 19th of June 2001 when he was arrested on suspicion of being in possession of a firearm for an unlawful purpose at Burnfoot on the 22nd of May 1998. On the basis of reports submitted to the Director of Public Prosecutions arising out of the investigation by Assistant Commissioner Carty and his team, Detective Sergeant White was charged with offences in respect of the matters for which he was arrested. These matters are the subject of two reports of the Tribunal.⁷

- 1.29. Assistant Commissioner Carty's investigation also extended to the issuing of summonses against Frank McBrearty Senior and members of his family and staff in respect of alleged breaches of the liquor licensing laws and public order legislation. The Tribunal is satisfied that his report on the matter resulted in the withdrawal of these summonses on the 21st of June 2000 following a consideration by the Director of Public Prosecutions of the material submitted to him by Assistant Commissioner Carty. **The Tribunal is satisfied that Assistant Commissioner Carty became the subject of these allegations because Mr. McBrearty Senior had become disillusioned with the progress of Assistant Commissioner Carty's inquiry, which he considered was not focused enough on his main concerns and complaints. In particular, he was annoyed and frustrated that Assistant Commissioner Carty's investigation had not by that stage exonerated his son, Mr. Frank McBrearty Junior and his nephew, Mr. Mark McConnell in respect of any involvement in the death of the Late Mr. Richard Barron. He had reached the conclusion that Gardaí should not be investigating Gardaí. He was campaigning for a sworn public inquiry into alleged Garda misconduct in Donegal. The Minister for Justice, Equality and Law Reform was resisting such an inquiry at that time and was relying upon the work being done by Assistant Commissioner Carty. These allegations were calculated to undermine the status of that inquiry by attacking the character of Assistant Commissioner Carty by alleging that he was involved in a criminal conspiracy with Detective Sergeant White to plant evidence on persons who were subsequently accused and convicted of crimes that they had not committed. These appalling allegations against Assistant Commissioner Carty were completely untrue.**

Assistant Commissioner Tony Hickey

- 1.30. Assistant Commissioner Hickey joined An Garda Síochána in January 1965 and retired in March 2005 after forty years of exemplary service. In 1980, on

⁷ Report on the Circumstances Surrounding the Arrest and Detention of Mark McConnell on 1st October 1998 and Michael Peoples on 6th May 1999 – Term of Reference (d) and Report on the Arrest and Detention of Seven Persons at Burnfoot, Co. Donegal on the 23rd of May 1998 and the investigation relating to same – Term of Reference (i). Mr. White, it should be noted, was ultimately acquitted of these charges.

promotion to detective sergeant, he joined the investigation section at headquarters, after which he served in various operations, the drug squad, the serious crimes squad, and headquarters as a superintendent in charge of drug law enforcement. On promotion to chief superintendent he was assigned to Castlebar, Co. Mayo where he remained for approximately eighteen months. He was then re-assigned to crime branch at Garda headquarters in 1995. On his next assignment, some nine months later, he was appointed as detective chief superintendent at the Central Detective Unit at Harcourt Square to replace Assistant Commissioner Carty in September 1995. He was promoted to the rank of assistant commissioner in 1996 and was in charge of the murder inquiry into the Late Veronica Guerin, which was based at Lucan, County Dublin and upon which he was engaged for approximately four to five years. He served for a short time in charge of the northern region and in Mullingar in charge of the eastern region, and subsequently in the Dublin Metropolitan region and for two years at Harcourt Square in charge of national units.

- 1.31. Unfortunately, he was drawn into this inquiry by reason of the false allegations made against him to the effect that he worked with Detective Sergeant White during his tenure in Dublin and that he had, when the occasion required it, procured evidence by unlawful means using Detective Sergeant White. As in the case of Assistant Commissioner Carty, it was falsely alleged against him that Detective Sergeant White was planting evidence on innocent persons at his behest for which extra expenses in the form of unworked overtime, travelling and subsistence allowances was given as payback to Detective Sergeant White. It was further alleged that Detective Sergeant White was in regular contact with Assistant Commissioner Hickey and had an eighteen page document concerning his other activities whilst he was stationed in Dublin, which was allegedly Detective Sergeant White's passport to escaping the rigours of the law and his way of frustrating the ongoing Carty investigation into wrongdoing in Donegal.
- 1.32. The Tribunal is satisfied that all of these allegations were untrue. Assistant Commissioner Hickey had nothing to do with the investigation carried out by Assistant Commissioner Carty in Donegal. The Tribunal is entirely satisfied that Detective Sergeant White never worked with Assistant Commissioner Hickey in any capacity apart from one investigation in 1982. Mr. Hickey was an assistant commissioner of the highest integrity and professionalism. These appalling allegations were an unwarranted attack calculated to destroy his character. They undoubtedly caused him personal and professional embarrassment and should never have been made.

Detective Sergeant John White

- 1.33. Mr. John White joined An Garda Síochána in September 1974 and was appointed to Ballybofey Garda Station in January 1975. He was then transferred to Castlefin Garda Station in April 1978, where he remained until April 1979. Then he was transferred to Graiguenamanagh, Co. Kilkenny at his request. He remained there for some sixteen months and then applied to join the newly formed investigation section at Garda headquarters, to which he was transferred in August 1980 and with which he remained until October 1983. He was appointed to the divisional crime unit at Harcourt Square in 1983, remaining there until April 1984. He was then transferred to the detective unit at Blanchardstown Garda Station, Dublin. At his own request he was transferred in July 1994 to Lifford Garda Station, Co. Donegal as a uniformed Garda. On promotion to sergeant he was transferred to Carrick Garda Station, Co. Donegal in March 1995. He operated as a uniformed sergeant. On the 3rd of December 1996 he became involved in the Barron investigation. He interviewed Mrs. Róisín McConnell and Mrs. Katrina Brolly on the 4th of December 1996. He subsequently admitted ill-treating both women. On the 10th of January 1997 he was transferred to Raphoe Garda Station as a uniformed sergeant, where he became involved in the enforcement of the liquor licensing legislation in the town.
- 1.34. On the 7th of August 1997 he took up duties as detective sergeant in Letterkenny. On the 21st of March 2000 Detective Sergeant White was arrested and detained by members of the Carty investigation team and suspended from duty from 19.15 hours, but was reinstated on the 24th of March 2000. He was thereafter transferred to the special detective unit, Harcourt Square on the 24th of March 2000. However, he reported sick and unfit for duty on that date and did not move on transfer. This transfer is the subject of an allegation contained in the facsimile of the 15th of July 2000.
- 1.35. Detective Sergeant White was subsequently suspended from duty on the 19th of June 2001 following his arrest on suspicion of possession of a firearm at an encampment at Burnfoot, County Donegal. As already noted, the two matters in respect of which he was arrested were the subject of two reports of this Tribunal. He became the subject of further allegations in relation to his involvement in the enforcement of liquor licensing and public order legislation in Raphoe during his period of service in Raphoe from January to August 1997. That matter is the subject of the seventh report by this Tribunal in respect of Term of Reference (e). In that regard, Detective Sergeant White was accused of harassing the McBrearty family and its employees in the operation of its licensed premises by the issuing of an excessive number of summonses against them.

- 1.36. The Tribunal has made findings of misbehaviour on the part of Sergeant White in the past and has found part of his evidence to be unreliable. However, the Tribunal is satisfied that there is no evidence to support any of the allegations made against him in the facsimile of the 25th of June 2000. There was no evidence to support allegations that he was involved in a criminal conspiracy with Assistant Commissioner Hickey and Assistant Commissioner Carty to plant evidence on people, or that he had a hoard of stolen goods for that purpose, or that he blackmailed or attempted to blackmail either Assistant Commissioner Carty or Assistant Commissioner Hickey or any other Garda officer by threatening to reveal information contained in an eighteen page document or otherwise in respect of supposed misconduct that they were alleged to have engaged in with him.

Mr. Patrick J. Togher

- 1.37. Mr. Patrick J. Togher is a retired member of An Garda Síochána. He joined An Garda Síochána in 1971 and was appointed to Cork city. After a number of months he was transferred to border duties and over the course of his career he worked on criminal matters, was a scenes of crime officer, and carried out some investigations in respect of subversive matters. He initially served in Ballybofey and was then transferred on a temporary basis to Buncrana and completed his service in Convoy Station. He retired on the 31st of October 1998. For the last two years of his service he was engaged in BSE duties in the border area.
- 1.38. Mr. Togher acknowledged that he knew Mr. Frank McBrearty Senior during the course of his career, from whom he received considerable assistance in the investigation of local crime until April 1996, when he took up BSE duties. Between April 1996 and the 15th of September 1998 he denied any contact with Mr. Frank McBrearty Senior. On that occasion he met Mr. McBrearty Senior in the foyer of the District Court at Letterkenny. Later Mr. Frank McBrearty Senior drove to his house and asked him whether he would give him a reference in respect of the District Court prosecutions which were then pending. He agreed and gave Mr. Frank McBrearty Senior a reference.
- 1.39. Subsequently, in early 1999 Mr. Frank McBrearty Senior asked him to carry out some paperwork in his office. He said that he did any typing that he was requested to do and other general clerical duties, including the gathering of receipts for VAT returns for the accountant. He indicated that he worked for Mr. McBrearty Senior approximately once a month. He would later advise Mr. McBrearty Senior in respect of certain matters, including the statement allegedly taken from his son Mr. Frank McBrearty Junior. In April 1999 he travelled to

Dublin to meet Deputy Jim Higgins with Mr. McBrearty Senior in order to lobby him in respect of Mr. McBrearty Senior's allegations concerning the alleged statement of admission. He subsequently visited Deputy Higgins' home with Mr. McBrearty Senior in autumn 1999.

- 1.40. On the 7th of March 2000 Mr. Togher visited Dáil Éireann with Mr. Frank McBrearty Senior, Mr. Frank McBrearty Junior, Mr. Mark McConnell and Mrs. Róisín McConnell, who were lobbying Deputy Higgins for support for the establishment of a sworn public inquiry into the alleged wrongdoing of Gardaí in Donegal. Mr. Togher is alleged by Mr. William Flynn, a private investigator, to have made the allegations contained in the facsimile of the 25th of June 2000 at a gathering at Mr. Flynn's house following the meeting at Dáil Éireann on the 7th of March 2000. Deputy Jim Higgins also identified Mr. P.J. Togher as the person whom he believed to be the source of the material contained in the facsimile. For these reasons, Mr. Togher became the subject of inquiries, by An Garda Síochána initially, and subsequently by this Tribunal as to whether he was the source of this information or whether he had anything to do with the composition of either of the facsimiles or knew anything about them. **The Tribunal is satisfied that he typed both facsimiles and that he was also involved in the composition of their contents.**

Mr. Martin Giblin S.C.

- 1.41. Mr. Martin Giblin S.C. was the senior counsel representing Mr. Frank McBrearty Senior in the defence of various summonses in Donegal in about 1998, 1999 and 2000. He also represented Mr. Frank McBrearty Senior and the extended McBrearty and Quinn families in relation to civil actions which they brought against An Garda Síochána and the State in respect of Garda wrongdoing in Donegal. He was the "legal source" who furnished information to Deputy Brendan Howlin on the evening of the 25th of June 2000, with which Mr. Howlin went to the Minister for Justice, Equality and Law Reform on the 27th of June 2000. His involvement in this matter was unknown to the Minister, An Garda Síochána or the Tribunal until 2003, for reasons which will become apparent. He had in fact received a copy of the facsimile on the evening of the 25th of June 2000 but did not transmit it or read it to Deputy Howlin, though he did outline some of its contents to him. He also added other allegations from what he said were other informants. Subsequently, he also received the facsimile of the 15th of July 2000 and again failed to transmit it to Deputy Howlin.

Mr. Frank McBrearty Senior

- 1.42. Mr. Frank McBrearty Senior sent the facsimile of the 25th of June 2000 to Deputy

Higgins and to Mr. Martin Giblin S.C. on the evening of that day. This was unknown to the Tribunal until 2003. The Tribunal is satisfied that both he and Mr. Togher embellished rumours and stories which they heard about Garda wrongdoing and put together the entirely false allegations contained in the two facsimiles of the 25th of June 2000 and the 15th of July 2000. The Tribunal is satisfied that they were both responsible for the composition of those facsimiles and sent them to a number of people including Deputy Higgins, Mr. Martin Giblin S.C., Mr. Frank Connolly and Mr. McBrearty Senior's solicitor, Mr. Kenneth Smyth, for the purpose of advancing a campaign for the establishment of a sworn public inquiry in relation to alleged Garda wrongdoing in Donegal. They used rumour, half-truths and lies as a basis upon which to construct these false allegations.

Structure of the Report

- 1.43. The following is provided to assist the reader in reading this report, but the more detailed conclusions and opinions of the Tribunal are to be found elsewhere in the body of the report. The report is the fruit of an inquiry into allegations to which there is no substance. As already noted earlier in this chapter, the allegations were the product of a hoax for which nobody was prepared to accept responsibility. Following this introductory chapter, Chapter 2 of the report examines the various allegations and accusations contained in the facsimile sent on the 25th of June 2000 by Mr. Frank McBrearty Senior to Deputy Jim Higgins and the information given by Mr. Martin Giblin S.C. to Deputy Brendan Howlin on the same date. It also examines the allegations made in the second facsimile dated the 15th of July 2000 sent by Mr. Frank McBrearty Senior to Deputy Higgins, Mr. Martin Giblin S.C. and Mr. Kenneth Smyth. In Chapter 2 the Tribunal also sets out the reasons underlying its conclusion that these allegations were tantamount to a hoax. In simple terms there was no evidence to support them. In Chapter 3 the Tribunal sets out what it is satisfied is the origin or provenance of this hoax, why it occurred, and how it evolved. Chapter 4 of the report is concerned with recommendations.

CHAPTER 2

THE FALSE ALLEGATIONS

- 2.01. This chapter is divided into two parts. Part 1 outlines the extensive steps that were taken to examine the allegations of misconduct levelled in the facsimile of the 25th of June 2000 against Assistant Commissioner Carty and Assistant Commissioner Hickey. It also examines the other allegations made by Mr. Martin Giblin S.C. to Deputy Brendan Howlin as set out in the notes made by Deputy Howlin of his conversation with Mr. Giblin on the 25th of June 2000 quoted in Chapter 1. Part 2 outlines the further enquiries pursued in respect of the allegations set out in the facsimile of the 15th of July 2000.

PART 1

Allegations of the 25th of June 2000

- 2.02. The allegations contained in the facsimile of the 25th of June 2000 may be separated into the following matters:
- (1) The allegation that Detective Sergeant White stored stolen property and planted it upon innocent persons who were subsequently convicted of offences;
 - (2) The allegation that Detective Sergeant White was directed to carry out or carried out illegal acts by planting stolen property on innocent persons for the purpose of securing their convictions by Assistant Commissioner Kevin Carty and Assistant Commissioner Tony Hickey and that he was paid overtime allowances or other expenses to which he was not entitled to compensate him for this behaviour;
 - (3) The allegation that Detective Sergeant White had prepared an eighteen page statement in which he chronicled wrongdoing between himself and the two assistant commissioners which could be used as an instrument of blackmail to ensure that he was not brought to justice in respect of any wrongdoing that was under enquiry by Assistant Commissioner Carty;
 - (4) The over-arching allegation that as a result of these matters Assistant Commissioner Carty's enquiry into wrongdoing by Gardaí in Donegal, and in particular into alleged wrongdoing by Detective Sergeant White, was compromised.
- 2.03. The matters relayed by Mr. Martin Giblin S.C. to Deputy Brendan Howlin on the 25th of June 2000 included references to the allegations contained in the

facsimile. However, Mr. Giblin did not read the contents or furnish a copy of the facsimile to Deputy Howlin or make him aware of its existence or provenance. Additional matters were also referred to by Mr. Giblin in his conversation with Deputy Howlin that were not referred to in the facsimile. They were:

- (5) The suggestion that criminals were used by Detective Sergeant White to give perjured evidence against Mr. McBrearty Senior. This was primarily a reference to the testimony given by Mr. Bernard Conlon in the course of District Court prosecutions against the McBrearty family and employees.
- (6) The alleged planting of evidence on a McBrearty associate. It later emerged that this referred to the alleged planting of a small quantity of drugs on Mr. Paul Quinn, a brother of Mrs. Róisín McConnell, at Raphoe Garda Station on the 10th of February 1997.
- (7) The alleged planting of stolen property on a youth from Lifford.
- (8) An allegation that a case with a “Ballymun” connection would cause difficulty for Assistant Commissioner Carty, coupled with the suggestion that Detective Sergeant White did “dirty work” for Assistant Commissioner Carty.⁸

2.04. The Tribunal investigated these matters. The Tribunal has, in the course of its work over the last six years in respect of this and the other Terms of Reference, investigated and heard evidence regarding many allegations. The core or distinctive feature of the allegations made relevant to this Term of Reference is that they seek to discredit Assistant Commissioners Carty and Hickey. The content of these allegations is replete with rumour and half-truth. Those who made the allegations were clearly aware of controversies concerning Detective Sergeant White. Some of the allegations contained in the facsimile and information conveyed reflected elements of the truth in respect of certain matters. For example, in making the allegation that Detective Sergeant White had possession of stolen property and planted it on innocent people to secure a conviction, it was true to say that Detective Sergeant White, as has been found by the Tribunal, was involved in the planting of an explosive device at Ardara in October/November 1996.⁹ The Tribunal has also found that Detective Sergeant White was responsible for the planting of a small amount of drugs on Mr. Paul Quinn on the 10th of February 1997.¹⁰ The Tribunal also found that Detective Sergeant White had been involved in the planting of a firearm at an encampment of the Irish Travelling Community in May 1998 at Burnfoot with a view to securing arrests in respect of

⁸ Tribunal Documents – Anonymous Allegations, pages 276-277 and pages 845-846.

⁹ Report on the Garda investigation of an Arson Attack on Property situated on the Site of the Telecommunications Mast at Ardara, County Donegal in October/November of 1996 – Term of Reference (g).

¹⁰ Seventh Report of the Tribunal.

another investigation.¹¹ It must be acknowledged in respect of the latter allegation that it had not been formally made by the time of the sending of this facsimile in June 2000 and was not the subject of an official inquiry by the Carty team until June 2001. To that extent there was evidence that Detective Sergeant White was engaged in planting items. In addition, similar allegations that Detective Sergeant White had been involved in planting items in the course of his work were being made by Mr. Frank McBrearty Senior and others before the facsimile was sent in 2000.

- 2.05. Further, the allegation that petty criminals were used to give perjured evidence against members of the McBrearty family in the District Court prosecutions brought against them was also partly true. The Tribunal has found as a fact that Bernard Conlon, a petty criminal, was used by Detective Sergeant White as an agent. He was asked to attend at the McBrearty premises. He allowed himself to be found on the premises with alcohol, following which he made a statement to the Gardaí in Sligo, as a result of which he became a witness against the McBreartys in a prosecution in the District Court for breach of the liquor licensing laws. He was paid witness expenses to which he was never entitled as a reward for so doing.
- 2.06. Further, it was also true that Detective Sergeant White had access to his wife's family's shed at Gortahurk. Subsequently, the Tribunal accepted that he had stored a shotgun planted by him at Burnfoot in that shed.
- 2.07. I draw attention to these matters because it is not entirely correct to say that every element of the allegations made in the facsimile and information conveyed on the 25th of June 2000 is untrue. A vestige of truth exists. However, onto that vestige of truth scandalous and untrue allegations were grafted by Mr. Frank McBrearty Senior, who sought to discredit Assistant Commissioner Carty and Assistant Commissioner Hickey in a manner that was completely unjust to them, and to Detective Sergeant White, notwithstanding his wrongdoing in respect of other matters.
- 2.08. The truth was also distorted in a number of other respects. It was alleged that Detective Sergeant White had received expenses and overtime allowances to which he was not entitled as a "payback" for his wrongdoing. In fact in or about 1994 and 1995 Detective Sergeant White had travelled out of the division on confidential duties that involved contact and working with Assistant Commissioner Carty. He had also been involved in confidential duties in or about 1998 with Detective Chief Superintendent Jennings, which also required him to travel out of the division. This entitled him to make various claims for allowances,

¹¹ Report on the Arrest and Detention of Seven Persons at Burnfoot, County Donegal, on the 23rd May 1998 and the Investigation relating to same – Term of Reference (i).

expenses and overtime to which he was entitled and which were duly certified by these and other officers. These facts were known to Gardaí in Letterkenny Garda Station. Onto these facts was grafted the further falsehood that monies paid to Detective Sergeant White had been wrongfully claimed and were corruptly made available to him as “payback”.

- 2.09. In this context a further fact, also known to Gardaí within Letterkenny Garda Station, was also distorted in the facsimile. It was suggested that Detective Sergeant White was in regular contact with Assistant Commissioner Hickey. **The Tribunal is satisfied that this suggestion was based on nothing more than messages left in the form of a prank by a friend of Detective Sergeant White, Detective Sergeant Pat Walsh, at Letterkenny Garda Station. The message was to the effect that Assistant Commissioner Hickey required Detective Sergeant White to telephone him. In fact, this was simply a device to ensure that a message got to Detective Sergeant White from Detective Sergeant Walsh, who left his own number at Letterkenny Garda Station for the return call. The Gardaí within the station might well have assumed that Assistant Commissioner Hickey was in contact with Detective Sergeant White, which information made its way through Garda sources to Mr. Frank McBrearty Senior and into this facsimile, but with the addition of a wholly false allegation suggesting that this contact was part of a corrupt conspiracy.**
- 2.10. Further, the fact that Detective Sergeant White made complaints about Assistant Commissioner Carty when arrested which were included in his custody record of the 21st of March 2000, and that he made a sixteen page statement to senior officers on the 24th of March 2000, formed the factual background onto which was grafted the suggestion that Detective Sergeant White had made an eighteen page statement outlining his own and others wrongdoing while he was stationed in Dublin. This it was said was his passport to escaping the rigours of the law and frustrating the ongoing Carty inquiry.
- 2.11. **Therefore, the Tribunal is satisfied that though there were elements or grains of truth in some of the material set out in the facsimile and the information of the 25th of June 2000, the core allegations of participation in corruption and a conspiracy to pervert the course of justice made against the two officers and grafted onto these elements or grains of truths were utterly false. There was no fact or evidence known to Mr. McBrearty Senior or Mr. P.J. Togher that warranted the extravagant claims that were grafted onto these other events.**
- 2.12. The issues raised at (5), (6) and (7) were not new allegations but were well known

to Mr. Frank McBrearty Senior and his lawyers. The use of Bernard Conlon and others had been raised in cross-examination in the course of the District Court prosecutions in December 1998. Mr. Quinn had already complained to and retained Mr. Smyth as his solicitor in relation to the alleged planting of the drugs in 1999 and the issue about a youth from Lifford had also been canvassed with the Carty team. The matter in relation to the “Ballymun” connection was something that did not arise out of the facsimile or anything that Mr. Frank McBrearty Senior or his associates had told Mr. Martin Giblin S.C. Mr. Giblin told the Tribunal that this allegation came from an entirely different source, a matter which is dealt with elsewhere in this report.

(1) Allegation of Storing and Planting Stolen Property

- 2.13. It was alleged in the anonymous facsimile of the 25th of June 2000 that Detective Sergeant John White had accumulated a store of stolen goods that had been recovered in Dublin so that he could plant them on individuals with a view to obtaining convictions. As has been mentioned earlier, John White served as a Detective Garda based in Blanchardstown Garda Station from January 1984 to July 1994, when he was transferred to the Donegal Division. During his time in Blanchardstown, Detective Garda White was involved in a number of criminal investigations in the Dublin Metropolitan Area, some of which involved the recovery of stolen property. When he and his family moved to Donegal in July 1994, Garda White made use of a shed on his wife’s family’s land at Gortahork near Ballybofey. The allegation against him was embellished by the further allegation that he used this shed to store the stolen property that he had wrongfully retained. The allegation is outlined in the following terms at paragraph 5 of the anonymous facsimile:

[5]. Another matter which White was involved in was the planting of stolen property on suspects and as a result of this he had a huge amount of stolen property at his disposal. This property was not officially documented in official property books and this malpractice enabled him to have a huge amount of stolen property at his disposal. When he moved to Donegal Division he moved a large amount of said stolen property with him and this was known by the Authorities and indeed was a “running joke” among ordinary Gardaí.¹²

- 2.14. It should be noted that a reference to Detective Sergeant White’s shed in Donegal appeared in a memorandum of interview with Frank McBrearty Senior taken by Detective Sergeant James Fox and Sergeant Dermot Flannery on the 27th of March 2000, almost three months before the anonymous facsimile was sent. In that memorandum, Mr. McBrearty Senior set out the following question that he wished to have addressed:

¹² Tribunal Documents, page 267.

Q. 30 Have you ever searched the shed that Sgt. White owns along the border, it is alleged he was storing items there that he was bringing down from Dublin.¹³

The allegation concerning the storage of stolen property by Detective Sergeant White in this shed was repeated in a letter of the 12th of July 2000 by Mr. Frank McBrearty Senior, as discussed in Chapter 3.

- 2.15. The Tribunal is satisfied that the implication of this question was that Detective Sergeant White was storing materials that he was not legitimately entitled to have in his possession in his shed. Although the question does not describe the provenance of the items or the use to which such items were to be put, it clearly demonstrates knowledge of elements of the allegation in the facsimile as outlined above. It represents an attempt by Mr. McBrearty Senior to float an allegation that is so vague and non-specific that it is almost impossible to prove or disprove. Given the seriousness of the allegation, however, the Tribunal felt obliged to inquire into this matter, independent of any assessment of the reliability of the source of the allegation.
- 2.16. It would be remiss of the Tribunal not to mention at this point a previous occasion on which it has had reason to consider the use to which Detective Sergeant White's shed in Donegal was put, although, for the reasons set out below, it is ultimately of little assistance in determining the veracity or otherwise of the allegations presently at issue. In its fifth report, the Tribunal dealt with an allegation that Detective Sergeant White planted a gun at an encampment near Burnfoot, Co. Donegal, with a view to arresting and detaining members of the Irish Traveller community who were staying there, in the course of a murder investigation. The Tribunal accepted the evidence of Detective Garda Thomas Kilcoyne that he accompanied Detective Sergeant White on the night on which the latter collected the gun from this shed at Gortahork near Ballybofey, test-fired it into an earthen bank outside the shed and then brought it to the encampment, where he proceeded to plant it at the place it was found during the course of an organised Garda search the following morning. Detective Sergeant White denied this account in its entirety throughout the Tribunal hearings. The Tribunal was unable to determine how the gun came to be in Detective Sergeant White's possession or how long it had been stored in his shed before it was collected and brought to Burnfoot.
- 2.17. It should be noted, however, that this allegation only came to light in June 2001, when Detective Garda Kilcoyne made a statement to the Carty investigation team, more than a year after the anonymous facsimile that forms the subject matter of this current module was sent. The happenings at the shed in the lead

¹³ Tribunal Documents, page 955.

up to the planting of the gun at Burnfoot were a matter exclusively within the knowledge of both Detective Sergeant White and Detective Garda Kilcoyne. The Tribunal cannot completely rule out the possibility that elements of this story became part of the rumours and/or innuendos on which the anonymous allegation set out above is based. It should also be noted that the gun was planted for the purpose of arresting the individuals concerned in a manner that would facilitate prolonged questioning on another matter, and not for the purpose of securing a conviction, which is the alleged *modus operandi* outlined in the anonymous facsimile. This might be regarded as a small point if it were not for the fact that the core allegation maintained that the planting of stolen items was for the purpose of obtaining wrongful convictions. However, the Burnfoot gun matter was of little assistance in determining the veracity or otherwise of the allegation at issue against the two officers.

- 2.18. The matter at issue has already been the subject of extensive investigation by members of an investigation team under the direction of Assistant Commissioner Fachtna Murphy. Detective Inspector Todd O'Loughlin was mandated to analyse the available property and firearms records relating to Detective Garda White during the period that he was stationed at Blanchardstown between the 3rd of January 1984 and the 21st of July 1994.¹⁴ Although the allegation as framed indicates that Detective Garda White operated his alleged campaign of planting stolen property in a manner that ensured that the property was simply not documented at all, the analysis of the property books enabled Detective Inspector O'Loughlin to determine whether and to what extent Detective Garda White made use of the property books during his time in Blanchardstown. It also enabled him to identify whether and, if so, to what extent, discrepancies existed between the property books and the receipts book in respect of property recovered by Detective Garda White, thereby identifying any items that may have gone astray.
- 2.19. The Tribunal investigators, Mr. Patrick Cummins and Mr. Michael Finn, initially evaluated the documentation recovered, assembled and analysed by the previous investigation teams before conducting their own independent review of the relevant materials with a view to either validating or discounting the allegations made in respect of the allegedly misappropriated property. As well as looking at the property books and associated documentation, they also focused on all of the complaints that had been made against Mr. John White throughout his career in An Garda Síochána with a view to determining whether any of them might suggest a propensity to plant stolen or recovered property to secure a conviction. Mr. Cummins prepared a detailed statement on the matter, the conclusions of which were not challenged by any party before the Tribunal.¹⁵ There was no such evidence.

¹⁴ Detective Inspector O'Loughlin's report is in Tribunal Documents, pages 296 - 298.

¹⁵ Tribunal Documents, pages 1156 - 1173.

Procedures for Storing Stolen/Recovered Property

- 2.20. When stolen property is recovered by a member of An Garda Síochána, the appropriate manner of dealing with it is to record it in a station Property Book - Chapter 21.1 of the Garda Síochána Code provides that:

Property found, handed in or taken possession of should be kept in safe custody until disposed of to the lawful owner, claimant or finder as the case may be. The member in charge of the station to which property is handed in will record accurately the descriptive particulars in the Property Book and will then issue a receipt to the person surrendering it.

- 2.21. In the Dublin Metropolitan Area, property is recorded in both a Property Book and a Receipt Book, which has duplicate numbered receipts. The Receipt Book serves to track any disposal or transfer of the property to its lawful owner, or to the station or appropriate district or divisional storage facilities.

Analysis of Records Kept

- 2.22. The Tribunal investigators sought and were provided with records from Blanchardstown Garda Station for the period from the 1st of January 1989 until Detective Garda White's transfer to Donegal in 1994. Records before that date are no longer available.¹⁶ Initially, all property was recorded in the Blanchardstown Station Property Book. From the 9th of April 1990 onwards, however, the detectives in Blanchardstown District Detective Unit commenced using their own dedicated property book. Although Detective Garda White made some entries in the Station Property Book after that date, most of his entries are to be found in the District Detective Unit Property Book. The Tribunal Investigators examined the Blanchardstown Property Book (1st January 1989 to 29th August 1998), the District Detective Unit Property Book (9th April 1990 to 14th January 2001) and two District Detective Property Receipt Books (9th April 1990 to 24th February 1995).
- 2.23. Of the twenty-three entries attributable to Detective Garda White in the Blanchardstown Property Book, five were cancelled as a result of being duplicated on the following page and one was cancelled with the notation 'Property came into possession of DDU'. The remaining seventeen entries are properly receipted. All the entries in the Blanchardstown Property Book related to Detective Garda White are accounted for and there are no indicia that might suggest non-compliance with the regulations on the handling of property.¹⁷ There are sixty-three entries attributable to Detective Garda White in the Blanchardstown District Detective Unit Property Book, all of which are appropriately entered with

¹⁶ It appears that records over ten years old were discarded when the station party in Blanchardstown moved to a new station in December 1998, as per the report of Detective Inspector Todd O'Loughlin in Tribunal Documents, page 296.

¹⁷ Tribunal Documents, page 1164 (Statement of Tribunal Investigator Cummins).

corresponding receipts. With only four exceptions, receipts were issued on the date the property came into the possession of An Garda Síochána. A number of items that were listed as being in storage in the District Stores have not been located. These are: a spirit level, a meter rule, a yellow oilskin jacket, four screwdrivers, two pliers, one Stanley knife and five small spanners of various sizes.¹⁸ The Tribunal is satisfied that, in the greater scheme of things, the disappearance of items of this nature does not indicate the extraordinary criminal intrigue alleged against him. It should be noted that the entries made by Detective Garda White represent 38% of all entries made in the Blanchardstown District Detective Property Book from its inception to the date on which he transferred to Donegal. This would tend to suggest that Detective Garda White was not only a frequent user of the Property Book but that he complied with the Garda regulations on the handling of stolen property in respect of the entries examined.

Other Complaints

- 2.24. There are a total of twenty Garda Complaints Board files recorded against Mr. John White. The Tribunal has already dealt with the subject matter of fourteen of these complaints in other modules. None of them were of assistance in assessing the validity of the allegation at issue. Of the other six complaints, each one concerned a complaint of assault or harassment. The Garda Complaints Board deemed three of the complaints to be admissible, but the D.P.P. directed no prosecution in each instance. The nature of these complaints is such that they are of little assistance in assessing the validity of the allegation at issue. The Tribunal investigators examined two further files concerning complaints against John White that were not dealt with by the Garda Complaints Board, but which were the subject of general Garda investigation. These concerned an allegation of harassment and alleged mistreatment in custody. Both matters were fully investigated and did not result in a prosecution. The Tribunal Investigators also examined three further files relating to Detective Sergeant White, but found them to be of no assistance in assessing the validity of the allegations at issue.¹⁹

Conclusions on the Stolen Property Allegation

- 2.25. The evidence suggests that Detective Garda White was a regular user of the appropriate property recording procedures in Blanchardstown Garda Station during his service there. Although he had been the subject of a large number of complaints of mistreatment and/or harassment, some of which have been made during the course of the Tribunal's hearings, none of the complaints made against him constitute an allegation that he

¹⁸ See Report of Detective Inspector O'Loughlin in Tribunal Documents, page 297 and Statement of Investigator Cummins in Tribunal Documents, page 1165; the items are mostly and curiously tools!

¹⁹ Tribunal Documents, page 1161 (Statement of Investigator Patrick Cummins).

planted stolen property on an individual to secure a conviction during his service in Blanchardstown. The Tribunal is satisfied that had he engaged in any such practice the individual concerned would have come forward over the past number of years when Detective Sergeant White's other improper activities came to light and were the subject of much public discourse. As already noted, the Tribunal has determined that on one occasion Detective Sergeant White stored an item, a shotgun, in the shed at Gortahurk and planted it at the encampment at Burnfoot. The Tribunal has also made findings that Detective Sergeant White was engaged in the planting of a device at the mast at Ardara and a small quantity of drugs on Mr. Paul Quinn. However, his misbehaviour in these events had nothing whatsoever to do with Assistant Commissioners Carty and Hickey. There was no evidence to substantiate the allegation that these two officers directed Detective Sergeant White to plant stolen items that he had accumulated or stored at a shed or elsewhere on other persons in order to secure convictions.

- 2.26. This was a very easy allegation to make against the two officers. An attempt was made to give it some legitimacy by attributing it to a Detective Inspector in the Dublin Metropolitan Area. The facsimile suggested that possession of the stolen property was well known to ordinary Gardaí and was a "running joke" amongst them. It would be remarkable if there had been such extensive repeated gross misconduct that at least one Garda would not come forward to expose it, or that at least one person convicted on the basis of the planting of allegedly stolen evidence would not have complained to the courts, the Garda Complaints Board, their solicitor or the Tribunal. Each alleged theft would have had a victim; each conviction an accused; each case would likely have involved more than one Garda; the stolen property would have had a provenance to be proved in each criminal trial. Indeed the logic of the allegations is difficult to fathom. If Detective Sergeant White found "stolen property" he would have to have retained it until he "re-found" it and planted it on a suspect. He would then have to process it properly, presumably entering it in the appropriate property book where he was stationed. It would then form the basis, presumably, of an allegation that it was stolen and in the possession of a culprit on whom it had been planted, who would then be prosecuted to conviction. All of this gave enormous scope for challenge and discovery. Repetition of this wrongdoing increased the chances for discovery.

(2) Overtime, Travelling and Subsistence Allowances Paid to Detective Sergeant White

- 2.27. The further allegation was made in the facsimile of the 25th of June 2000 that Detective Sergeant White received “payback” of extra expenses in the form of unworked overtime, travelling and subsistence allowances “up to 1998” and that he was given blanket permission to claim these expenses. The payback was supposedly for the large amount of convictions achieved by “planting” evidence for that purpose at the behest and with the full knowledge of Assistant Commissioners Carty and Hickey. This allegation is entirely groundless. It is clear that for a period Detective Sergeant White carried out confidential duties which required him to travel to Dublin and elsewhere and also to have contact with Assistant Commissioner Carty in respect of one matter and Detective Superintendent Jennings in respect of another. The Tribunal is satisfied that this contact was in respect of entirely legitimate Garda business. This matter was investigated by Assistant Commissioner Murphy and the Tribunal investigators, and was the subject of evidence before the Tribunal.
- 2.28. In a statement made on the 3rd of May 2001 Assistant Commissioner Carty outlined that in September 1994 he was appointed as Detective Chief Superintendent in charge of the Central Detective Unit at Harcourt Square, Dublin. There was continuous interaction between that unit and district detective units, including the one at Blanchardstown Garda Station to which the then Detective Garda White was attached. Assistant Commissioner Carty said:

Shortly after my appointment to the Central Detective Unit I was contacted by John White. At this time the member was a uniformed Sergeant attached to the Donegal Division. He gave me to understand that he was operating an informant in North Dublin who was in a position to supply information on the movement of drugs and car thefts in Dublin city. He then began to supply information from the informant to my unit. Sergeant White would have visited my office at Harcourt Square on a number of occasions between December 1994 and September 1995. In September 1995 I was appointed as Detective Chief Superintendent in charge of the Garda National Drug Unit. Sergeant White continued to supply information from the same informant to the National Drug Unit. This continued until early 1996. The information supplied by Sergeant White over that period i.e. late 1994 to 1996 never resulted in a seizure of drugs of any description, or the arrest and charging of any persons with criminal offences. I had some reservations about the motivation of the informant and I dispensed with his services to the National Drug Unit in the early months of 1996. I informed Sergeant White of my decision and he

accepted the situation. Over the period that Sergeant White was working with the informant he would have travelled to Dublin and other locations in the country on a number of occasions to meet the informant or to develop the information ... Over [this] period ... I signed certifications that Sergeant White had attended at the offices in Harcourt Square on specific dates and was involved in confidential duties between specified times. This was normal procedure and I was satisfied that what I signed was correct and that the dates and times were accurate.²⁰

Assistant Commissioner Carty verified a number of certifications that he had issued in respect of these duties which enabled Detective Sergeant White to make the appropriate application for reimbursement.

- 2.29. Detective Chief Superintendent Dermot Jennings outlined in a statement taken on the 4th of January 2001 dealings that he had with Detective Sergeant White in respect of a security and intelligence matter over a number of months in 1998. He outlined how these dealings were carried out with the knowledge of Detective Sergeant White's Divisional Officer, Chief Superintendent Denis Fitzpatrick. In order for Detective Sergeant White to effectively carry out these duties he was required to use his own motor vehicle and had to work continuously long hours, even on rest days. By agreement with Chief Superintendent Fitzpatrick, Detective Superintendent Jennings certified a record of hours worked by Detective Sergeant White over a period from February to June 1998.²¹
- 2.30. Further statements were made by other senior officers of An Garda Síochána in respect of Detective Sergeant White's A85 claim forms concerning allowances and overtime claimed by him for work that he carried out in respect of the matters referred to by Assistant Commissioner Carty and Detective Superintendent Jennings.²²
- 2.31. Chief Superintendent Denis Fitzpatrick also made a statement on the 6th of September 2000 setting out his knowledge of the detective sergeant's work in association with Assistant Commissioner Carty and Detective Chief Superintendent Jennings, and the documentation by which he authorised certain payments to Detective Sergeant White in respect of this work.²³
- 2.32. Assistant Commissioner Murphy's team investigated the overtime, expenses and allowances paid to Detective Sergeant White in respect of these matters. He outlined in his report of the 10th of December 2001 the extent of that

²⁰ Tribunal Documents – Anonymous Allegations, pages 228-234.

²¹ Tribunal Documents – Anonymous Allegations, pages 247-248 and Transcript, Day 588, page 5.

²² Tribunal Documents – Anonymous Allegations, pages 237-246 (Statements of Superintendent James Gallagher, Superintendent Kevin Lennon, Superintendent John Manley and Inspector T.V. O'Brien).

²³ Tribunal Documents – Anonymous Allegations, pages 235-236.

investigation and his conclusion that no irregularities of any nature had been uncovered by his investigating officers. All of the district officers and acting district officers who certified claims for the period were interviewed and the relevant documents produced to them. All officers who certified the claims in question confirmed that they were satisfied that the duty was performed in all cases and that the claims were correct.

2.33. Assistant Commissioner Murphy noted that Detective Sergeant White responded to these allegations by pointing to the fact that he had not claimed approximately IR£3,000 in overtime. Superintendent Denis Cullinane (now retired) corroborated Detective Sergeant White's account. In a statement of the 20th of December 2000, Mr. Cullinane, who was the district officer in charge of Glenties district in which Detective Sergeant White was serving, acknowledged that Detective Sergeant White was obliged to travel within and outside the district when assisting the local detective unit in criminal investigations. He was also aware that Detective Sergeant White travelled to Dublin on duty at the request of the then Chief Superintendent Kevin Carty, who had phoned and consulted with him about these duties. He used his own private car to travel to Dublin and also incurred overtime and subsistence allowances. Mr. Cullinane was satisfied that all claims submitted to him by Detective Sergeant White in respect of these matters were properly incurred by him and that he worked a substantial amount of overtime for which he never submitted any claims. He also identified various claims which he authorised during the period 1995 to 1997.²⁴

2.34. The Tribunal investigators considered the extensive review of Detective Sergeant White's expenses and overtime based on information retrieved and collated by the Department of Justice, Equality and Law Reform (Finance Division). The issue of expenses paid to Detective Sergeant White had already been the subject of evidence given by Assistant Commissioner Carty and Assistant Commissioner Dermot Jennings in the earlier days of the Tribunal.²⁵ The extensive review carried out of this material in Assistant Commissioner Murphy's report of the 30th of May 2001 and his further report of the 23rd of October 2002 set out in considerable detail the extensive evidence available of all allowances, overtime or expenses claimed by Detective Sergeant White and the careful scrutiny carried out by the relevant authorised officers who all had to be and were satisfied that any claims made were valid before certifying them for payment.

2.35. **On this evidence, and on the basis of the evidence of documentation received and examined by the Tribunal in respect of this issue, the Tribunal is satisfied that there is no substance in the allegation that any of these**

²⁴ Tribunal Documents – Anonymous Allegations, pages 173-174 and Transcript, Day 580, pages 170-172 (Evidence of Mr. John White) and Transcript, Day 580, page 5-8 (Evidence of Assistant Commissioner Carty).

²⁵ Transcript, Days 319, 579-580 (Assistant Commissioner Carty) and Transcript Days, 406-407 (Assistant Commissioner Jennings).

claims were made, certified or paid on the basis of un-worked overtime or bogus claims for travelling or subsistence allowances.²⁶ Once again a completely false allegation was constructed on the basis of a complete distortion of the facts in relation to Detective Sergeant White's service, which involved him in contact with Assistant Commissioner Carty and Detective Chief Superintendent Jennings in respect of two separate and bona fide duties carried out with the full knowledge and consent of his divisional commander. It is clear that the person who made up this false allegation must have had knowledge of the basic facts that Detective Sergeant White had indeed travelled to Dublin, and made the claims referred to, and that these claims were authorised by Assistant Commissioner Carty and Detective Chief Superintendent Jennings and other officers, before being certified and paid. The Tribunal is satisfied that the person who provided that information is likely to have been a Garda or former Garda who became aware of it in the course of his work. The Tribunal is satisfied that Mr. Frank McBrearty Senior and Mr. P.J. Togher, in composing and typing the letter of the 25th of June 2000, added to these false allegations the further false allegation that these payments were in some way a "payback" for wrongful activity committed at the behest of Assistant Commissioner Carty and Assistant Commissioner Hickey. There was not the slightest basis for this wild allegation or for its inclusion in the facsimile. It was made for the purpose of causing a crisis of confidence in Assistant Commissioner Carty's investigation into matters in Donegal.

(3) The Eighteen Page Statement

2.36. It was also alleged in the facsimile of the 25th of June 2000 that:

It is known that White is in regular contact with Assistant Commissioner Hickey and has an eighteen-page document concerning his and other activities whilst he was stationed in Dublin and this document, it appears, is his passport to escaping the rigours of the law and his way of frustrating the ongoing investigation.²⁷

2.37. Assistant Commissioner Hickey in a statement made on the 10th of January 2001 noted that the only time that he had worked with Detective Garda John White was for a day in either August or September 1982 when they traced the owner of a suspicious car. This was an inquiry carried out in relation to the Malcolm McArthur case. The owner of the car was located and he was ruled out of the inquiry. Mr. Hickey had served from October 1980 as a detective sergeant in the investigation section of Garda Headquarters. This contained a staff of

²⁶ Transcript, Day 589, pages 125-126 (evidence of Mr. Patrick Cummins).

²⁷ Tribunal Documents – Anonymous Allegations, pages 266-267.

approximately forty personnel, one of whom was Detective Garda John White. Detective Garda White was transferred with a number of others from the investigation section to the Dublin Metropolitan Area in April 1983. Assistant Commissioner Hickey outlined how he had served as an inspector in Operations at Garda Headquarters, as a detective inspector in the Drug and Serious Crime Squad, as a superintendent with responsibility for drug law enforcement at Garda Headquarters, as chief superintendent at Castlebar and at crime branch at Garda Headquarters, as a detective chief superintendent in charge of the Central Detective Unit and as Assistant Commissioner at Sligo and Mullingar. He never worked with or had any dealings with Detective Garda White during his service in Dublin. In relation to the allegation concerning the existence of an eighteen page document and supposedly regular contact on his part with Detective Sergeant White he denied any such regular contact and said:

In the investigation section between 1980 and 1983 our contact was minimal. Since then I have never telephoned Detective Sergeant White, he has never telephoned me. My only recollection of meeting Detective Sergeant John White is while on official duty at Letterkenny Garda Station some time in the first half of 1997 when he was in the company of other members. Since 1983 I feel I did meet Detective Sergeant White on a few occasions informally (as I would similarly have met many other members) at some social occasions and once perhaps at a funeral.²⁸

Mr. Hickey repeated these denials in evidence to the Tribunal.²⁹

- 2.38. At a meeting on the 16th of November 2000 in respect of these allegations Detective Sergeant White said that he had met Assistant Commissioner Hickey twice in six years and had never worked for him and could not recall any telephone call from him in that time. He confirmed that he did not telephone Assistant Commissioner Hickey either. He told the interviewers that he made one statement of complaint in handwriting consisting of eighteen pages to Superintendent James Gallagher. He informed them that this statement contained two complaints regarding a break-in to his locker on a date between the 17th and the 20th of March 2000 and a further unofficial entry to his locker on the 21st of March 2000, which was purportedly carried out for the purposes of technical examination. He said that nobody knew about this statement and that it contained no allegation against any person whatsoever.³⁰ Mr. White in evidence to the Tribunal repeated his denial of contact with Assistant Commissioner Hickey. He told the Tribunal that there never was an eighteen page document outlining details of any wrongdoing by him with the two Assistant Commissioners and that he had no document prepared at that time in relation to any such complaints.³¹

²⁸ Tribunal Documents – Anonymous Allegations, pages 226-227.

²⁹ Transcript, Day 580, pages 153-154.

³⁰ Tribunal Documents – Anonymous Allegations, pages 300-301.

³¹ Transcript, Day 581, pages 42-46.

- 2.39. In his interview with investigators Detective Sergeant White also told them that he had made a statement which he believed to be eighteen pages in length in relation to the alleged break-in to his locker at Letterkenny Garda Station on the 20th of March 2000: a statement that was made on the afternoon of the 24th of March at his home. In fact, the statement made by Detective Sergeant White on the 24th of March 2000 is sixteen pages in length.³² However, the Tribunal notes that this statement was made within the timeframe and against the background of an intensification of the Carty investigation of the Bernard Conlon affair, which led to the arrest of Detective Sergeant White on the 21st of March 2000. This arrest was preceded by a number of fraught meetings between the Carty investigators and Detective Sergeant White and/or his solicitor, which have already been chronicled in the third report of the Tribunal.³³
- 2.40. Following his arrest on the 21st of March 2000, Detective Sergeant White made extensive complaints which he insisted be entered in the custody record at that time. This was an unusual step to take. He complained that his arrest was illegal and unlawful and was as a result of a recent meeting he had had with Assistant Commissioner Carty at the Hillgrove Hotel in Monaghan, at which he had brought to the Assistant Commissioner's notice certain aspects of the current investigation in Donegal. These included the allegation that the statement taken from Mr. Frank McBrearty Junior on the 4th of December 1996 in the course of the Barron investigation was false and that the arrest of Michael Peoples on the 6th of May 1999 was an unlawful arrest. He alleged that he had informed Chief Superintendent McNally of the Carty team and Detective Inspector John McGinley of three valid reasons why Mr. Michael Peoples should not have been arrested for allegedly threatening Bernard Conlon on the 20th of July 1998 at Sligo. He also outlined other matters that he alleged he had brought to the attention of Assistant Commissioner Carty at that time. He alleged that his arrest was simply to discredit him in relation to any future court cases. In its third report, the Tribunal concluded that the factual basis of what Detective Sergeant White had dictated to the member in charge for inclusion in the custody record at the time of his arrest was substantially false. It found that the allegation that the arrest was simply made to discredit him was totally without substance.³⁴
- 2.41. In this instance also, the Tribunal is satisfied that whoever drafted and typed this facsimile was aware that Detective Sergeant White made complaints when he was arrested on the 21st of March 2000 and that he had also made a statement or statements of a complaining nature. The

³² Tribunal Documents – Anonymous Allegations, pages 310-325.

³³ Report on the circumstances surrounding the Arrest and Detention of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999 – Term of Reference (d), paragraphs 1.62 to 1.64, paragraphs 3.157 to 3.180.

³⁴ Report on the Circumstances surrounding the Arrest and Detention of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999 – Term of Reference (d), pages 231-232.

germ of truth was there but it was then wholly distorted. As already noted the first set of complaints entered in the custody record included complaints against Assistant Commissioner Carty. The second complaint related to an alleged break-in to Detective Sergeant White's locker. The wholly false allegation that Detective Sergeant White had composed a document containing allegations against Assistant Commissioner Carty and Assistant Commissioner Hickey and outlining their involvement with him in corrupt behaviour was grafted onto the factual position that Detective Sergeant White had indeed made a statement of similar approximate length and had made some complaints against Assistant Commissioner Carty of an entirely different nature on the 21st of March 2000. The Tribunal is satisfied that these allegations were composed from information supplied by a Garda or a retired Garda who had some knowledge of what was going on in the investigation in relation to Detective Sergeant White. There was not a scintilla of evidence produced to the Tribunal that could in any way justify the distortion of these events and the wholly false allegations contained in the facsimile.

- 2.42. The Tribunal is satisfied that the allegation that there was continuous contact between Assistant Commissioner Hickey and Detective Sergeant White was also completely false. Assistant Commissioner Hickey's reputation was quite deliberately attacked on the basis of rumour, which is likely to have emanated from a Garda or a retired Garda who had knowledge of certain telephone calls made to Letterkenny Garda Station purporting to be on behalf of Assistant Commissioner Hickey to Detective Sergeant White. In a statement made on the 10th of July 2001 Detective Sergeant Patrick Walsh outlined the fact that he had known Detective Sergeant John White since 1980 when he was attached to the investigation section at Garda headquarters for a short time while Detective Sergeant Walsh served there. He said of Detective Sergeant White:

During his time in Donegal he travelled to Dublin on duty and I would have met him on occasions. I would also have spoken to him by phone off and on. On occasions when I phoned Letterkenny Garda Station wishing to speak to D/Sergt. White I left a message for him if he was not at the station. The nature of the message would be to phone Assistant Commissioner Tony Hickey, or Chief Supt. Brian Garvey, Commissioner's office. I always left my own mobile phone no. so D/Sergt. White would know it was me who called. He always returned my calls.³⁵

In effect Detective Sergeant Walsh used Assistant Commissioner Hickey's name to ensure that the message that he had called would get through to Detective

³⁵ Tribunal Documents – Anonymous Allegations, pages 349-350.

Sergeant White. He was trading on the fact that a lower ranking Garda would be more likely to ensure that a message from an assistant commissioner was passed to Detective Sergeant White to avoid perhaps getting into trouble. Detective Sergeant White also believed that it was a form of practical joke on the part of Detective Sergeant Walsh. He said in evidence that it happened on five or six occasions and that when he called Detective Sergeant Walsh back he thought it was very funny. He believed that a number of Gardaí in Letterkenny Garda Station were aware of this supposed contact with Assistant Commissioner Hickey. They were also aware that he was allowed to travel out of the division on occasion and he believed that there might have been a certain amount of jealousy, having regard to the overtime and expenses that he could claim in respect of such work. Mr. White's belief was that this particular element of the facsimile emerged from Letterkenny Garda Station because nobody operating as a detective in the Dublin area would have believed that he had any contact with Assistant Commissioner Hickey.³⁶

- 2.43. Assistant Commissioner Hickey, in evidence, told the Tribunal that he was unaware that Detective Sergeant Walsh was leaving his name when calling Letterkenny Garda Station. This was volunteered by Detective Sergeant Walsh in 2001. He said:

*On the face of it it's a very harmless event that has dragged me into this thing that has gone on for seven years and it has been pretty serious ... as far as I'm concerned.*³⁷

- 2.44. The Tribunal is satisfied that the gossip and rumour created by the messages left by Detective Sergeant Walsh led to an incorrect conclusion on the part of some Garda or Gardaí within Letterkenny Garda Station that Detective Sergeant White was in close contact with Assistant Commissioner Hickey. Once again a wholly false allegation unsustained by any evidence was grafted onto this event to suggest that Assistant Commissioner Carty was involved corruptly with Detective Sergeant White in the planting of stolen property on innocent persons for the purposes of securing their convictions for which the payback was the expenses already mentioned and in respect of which Detective Sergeant White had composed an eighteen page statement. It was a concocted scenario that was completely unfair to Assistant Commissioner Hickey, Assistant Commissioner Carty and Detective Sergeant White.

(4) Allegation that the Carty Inquiry was compromised

- 2.45. The Tribunal is completely satisfied that the inquiry carried out by

³⁶ Transcript, Day 581, pages 30-43.

³⁷ Transcript, Day 580, pages 149-150.

Assistant Commissioner Carty from its inception in February 1999 until June 2000 and beyond was conducted diligently, professionally and with vigour. This is clear to the Tribunal from the extensive reports compiled by Assistant Commissioner Carty and his team and the many hundreds of statements taken in the course of the inquiry. The Tribunal is satisfied that any allegation made against any Garda was investigated thoroughly with a view to getting to the truth of the matter. The facsimile of the 25th of June 2000 suggests that by reason of alleged corrupt activities with Detective Sergeant White, Assistant Commissioner Carty might have been susceptible to blackmail if he pursued Detective Sergeant White in relation to any allegation made against him. Detective Sergeant White, it was suggested, could expose their mutual wrongdoing. There is no substance to this allegation and the facts point to the contrary. On the 29th of February 2000, in an interim report, Assistant Commissioner Carty recommended that Detective Sergeant White be suspended from duty. He wrote to his superiors:

[Detective Sergeant White] will be interviewed in relation to Bernard Conlon's allegations when a number of related inquiries are finalised. The question of an arrest will be an option depending on the attitude he adopts to the interview. The allegations are of the most serious nature and indicate a criminal conspiracy to deprive innocent persons of their liberty. The question of Sergeant White's continued employment as a serving officer in Donegal, pending the determination of the allegations must be considered. He has the opportunity to interfere with the conduct of the present investigations while he remains employed as a Detective Sergeant ... The motivations of Detective Sergeant White in instituting proceedings for licensing and public order offences against the extended McBrearty family is questionable in the light of the current allegations. The fact that the member was involved in the investigation of an assault on Thomas Coffey tends to taint the Garda investigation of the incident.

There are rumours that further allegations may surface against Detective Sergeant White as the investigation progresses. To preserve the integrity of the current investigations and maintain fairness to all parties it is recommended that Detective Sergeant White be suspended from duty until the matter is resolved.³⁸

This recommendation to suspend Detective Sergeant White was not followed because Deputy Commissioner Conroy on the 2nd of March 2000 recommended that Detective Sergeant White should be interviewed by the investigating team

³⁸ Tribunal Documents – Anonymous Allegations, pages 1107-1108.

before consideration of suspension. If Detective Sergeant White was thought to be obstructive, or interfered directly or through any third party with the work then being carried out, he further recommended that consideration should be given by the investigating Gardaí to the exercise of their statutory powers at that stage.³⁹ Subsequently, in June 2001, Detective Sergeant White was rearrested by the Carty team in relation to the finding of a firearm at Burnfoot. This led to his suspension from duty and his prosecution in respect of the Bernard Conlon affair and the finding of the firearm.

- 2.46. In June 2000 there was no basis upon which to conclude that Assistant Commissioner Carty was in any way dilatory in his inquiries. In addition to the Bernard Conlon affair, Assistant Commissioner Carty was already investigating the allegations of harassment of the McBrearty family and their employees in relation to the operation of their licensed premises by Gardaí in Raphoe, and in particular allegations made against Sergeant John White and Garda John O'Dowd and others. He had supported an application for the adjournment of the prosecutions against the McBrearty family in 1999 because he wished to complete his inquiries in relation to that and other matters before those prosecutions proceeded. He was even prepared to appear at the District Court to support the McBrearty family in that application. He had also been directed to investigate the planting of an explosive device at the mast at Ardara, another investigation in which Detective Sergeant White was involved, and in respect of which allegations were made against him. He was also requested to investigate the case of the youth from Lifford mentioned by Mr. Martin Giblin S.C. to Deputy Howlin on the evening of the 25th of June 2000. It is clear from the documentation that all of this work was being pursued in a professional manner by Assistant Commissioner Carty and his team. **The Tribunal is satisfied that there was no factual basis for the allegation that Assistant Commissioner Carty was in any way compromised or could be compromised in relation to his inquiries. This must have been obvious to anyone connected with the case. Certainly Mr. Frank McBrearty Senior and Mr. P.J. Togher would have been aware of Assistant Commissioner Carty's willingness to support their application for the adjournment outlined above and also of the arrest of Bernard Conlon and Detective Sergeant White earlier in 2000.** I now turn to consider the further allegations made by Mr. Martin Giblin S.C. to Deputy Brendan Howlin on the evening of the 25th of June 2000 that are not contained in the facsimile.

(5) Bernard Conlon

- 2.47. Mr. Giblin told Deputy Howlin that criminals were used by Detective Sergeant

³⁹ Tribunal Documents – Anonymous Allegations, pages 1109-1110.

White to give perjured evidence against Mr. McBrearty Senior. The Tribunal is satisfied that this was primarily a reference to the testimony given by Mr. Bernard Conlon in the course of the District Court prosecutions. The contact and relationship between Mr. Bernard Conlon, Detective Sergeant John White and Garda John Nicholson has already been considered extensively by the Tribunal in its third and seventh reports. The Tribunal concluded that Bernard Conlon, a petty criminal, was retained as an agent by Detective Sergeant White, through Garda John Nicholson, to attend Frankie's nightclub in Raphoe on the evening of the 30th of August 1997 and the early morning of the next day. He was to be discovered on the premises by Gardaí who would inspect the premises after licensing hours. He was directed by Detective Sergeant White to be in possession of as many alcoholic drinks as possible and to co-operate with the inspecting Gardaí. The Tribunal concluded that this was part of a plan whereby he would ultimately make a statement as to how he purchased and consumed drinks at Frankie's nightclub after hours, which would form the basis of a prosecution against Frank McBrearty Senior, the licensee of the premises, and members of his staff. Bernard Conlon was promised that he would be (and was) rewarded financially for doing this. Bernard Conlon was summonsed to give evidence at the District Court sittings on several occasions in the course of the resulting licensing prosecution. For this he was paid witness expenses and travel allowances to which he was not entitled. These claims were submitted by Detective Sergeant White. False loss of earnings certificates in respect of Bernard Conlon were procured by Garda John Nicholson and Detective Sergeant White to justify the payment of these monies. Bernard Conlon ultimately gave evidence in the District Court that was challenged by lawyers on behalf of Mr. Frank McBrearty Senior.

- 2.48. The Tribunal concluded that Detective Sergeant White manipulated people and events to his own ends both in organising the escapade of the 30th/31st of August 1997 and in subsequently trying to conceal his involvement. Arising out of this affair Garda Nicholson was prosecuted and pleaded guilty to three counts of uttering forged documents on the 26th of July 2000 following a successful investigation by the Carty team. The investigation by the Carty team into this affair involved an inquiry into Bernard Conlon's participation in the District Court prosecution, the arrest and detention of Bernard Conlon in early 2000 and the arrest and detention of Detective Sergeant White on the 21st of March 2000. Both were subsequently prosecuted. The investigation by the Carty team into all aspects of this matter was thorough. All appropriate steps were taken by Assistant Commissioner Carty to ensure that the appropriate files were prepared and presented to the Director of Public Prosecutions. Assistant

Commissioner Carty's investigation into this matter was well known to Mr. Frank McBrearty Senior and his legal team. They were well aware of the arrest that had taken place in early 2000 and that Assistant Commissioner Carty had personally indicated his support to Mr. Frank McBrearty Senior and his legal representatives for an adjournment to the District Court prosecutions until his investigations into this and other matters were concluded. It is difficult to understand how this matter could realistically be presented to Deputy Howlin by Mr. Giblin as a fresh matter requiring urgent contact with Deputy Howlin. Mr. McBrearty Senior and his legal team had already challenged Bernard Conlon in relation to his involvement in this affair in evidence in the District Court and they were clearly aware that a Garda inquiry into the matter was well advanced.

(6) The Alleged Planting of Evidence on a McBrearty Associate

- 2.49. Mr. Giblin also alleged to Deputy Howlin that evidence had been planted on a McBrearty associate. It later emerged that this referred to the alleged planting of a small quantity of drugs on Mr. Paul Quinn, a brother of Mrs. Róisín McConnell, at Raphoe Garda Station on the 10th of February 1997. The Tribunal was satisfied that Detective Sergeant White was engaged in wrongdoing on this occasion. This allegation on the 25th of June 2000 was not a fresh allegation. It did not involve the use of stolen property to procure a conviction. It had nothing to do with Assistant Commissioners Carty or Hickey. The incident was relayed to Deputy Howlin by Mr. Martin Giblin on the evening of the 25th of June 2000, but it had nothing to do with the facsimile that Mr. Giblin had received from Mr. McBrearty Senior earlier that evening. By this time Mr. Paul Quinn had already made this allegation to his solicitor, Mr. Ken Smyth, in 1999.
- 2.50. At the time they were made to Deputy Howlin neither of the allegations referred to at (5) and (6) were new allegations. The Tribunal was satisfied, however, that both allegations were substantially true to the extent already outlined. They were not contained in the facsimile of the 25th of June 2000. Their addition to the discrete allegations contained in the facsimile served only to cause confusion when presented as fresh, serious and requiring urgent attention.
- 2.51. Two other matters were raised by Mr. Giblin with Deputy Howlin: the case of a youth from Lifford on whom it was alleged material was planted by Detective Sergeant White and a case concerning a "Ballymun" issue.

(7) The Youth from Lifford

- 2.52. In a note of the telephone conversation on the 25th of June 2000, Mr. Brendan Howlin recorded Mr. Martin Giblin as stating:

White planted stolen property on a youth in Lifford (part of his M.O.)⁴⁰

In evidence to the Tribunal, Mr. Giblin indicated that he never got to grips with that particular issue, and that he felt that his mentioning it on that occasion may have been some form of conflation with the allegation of the planting of a shotgun in Bridgend.⁴¹ **In this instance the Tribunal is satisfied that Mr. Giblin was passing on a rumour that had developed and was doing the rounds at the time.** In fact what the youth from Lifford had alleged against Detective Sergeant White was a different species of wrongdoing concerned with the alleged wrongful procurement of an admission, not the planting of stolen property on him. That allegation simply never arose in the case.

- 2.53. One of the complaints made against Detective Sergeant White concerned an allegation that he had applied undue pressure in obtaining statements of admission from two individuals in the course of an investigation into criminal damage to mushroom huts, which damage occurred on the 12th of October 1996. The statements of admission at the centre of this complaint were made when the two individuals concerned were arrested and brought to Lifford Garda Station on the 21st of March 1997. A number of months later, on the 27th of August 1997, both parties lodged complaints at Letterkenny Garda Station alleging that their previous statements had been false and had been obtained through undue pressure on the part of Detective Sergeant White and a number of other officers. As one of the parties was underage at the time of making the complaint, his complaint was submitted to the Garda Complaints Board, which deemed it inadmissible. The other complainant requested that the Garda authorities themselves should investigate the matter. On the 19th of September 1997, a brother of the younger of the two complainants made a statement admitting that he and two other men had damaged the mushroom huts on the night in question. This statement appeared to exonerate the two complainants. Superintendent James Gallagher was appointed to investigate both complaints and took additional statements from all the parties who had made statements in the original investigation, as well as those mentioned as alternative culprits by the younger complainant's brother. These statements and a covering report dated the 6th of June 1998 were forwarded to the State solicitor for Donegal, who in turn forwarded a copy of the statements to the complainants' solicitors by the 14th of July 1998. The more senior of the two complainants, who was the youth from Lifford, was convicted after a trial that took place at the Circuit Court in Letterkenny on the 14th and 15th of July 1999. He was sentenced to three years imprisonment, was given temporary release on the 23rd of February 2001, and was deemed to have completed his sentence on the 12th of May 2001.

⁴⁰ Tribunal Documents – Anonymous Allegations, page 843.

⁴¹ Transcript, Day 578, pages 55-56.

- 2.54. On the 1st of April 2000, Sergeant Patrick Thornton, who was a family friend of the man who had been convicted, wrote a memorandum to Superintendent Foley of the Carty investigation expressing concerns about Detective Sergeant White's involvement in the criminal damage investigation. He alleged that on the date of the conviction, Detective Sergeant White had said to him that if the younger complainant's brother had still been alive (he had died some time before that date), the man who had been convicted would not be going to prison. It should be noted that ten days earlier, on the 21st of March 2000, the Carty investigation team had arrested Detective Sergeant White in connection with the 'Silver Bullet' allegations. Assistant Commissioner Carty directed Superintendent E.M. McLaughlin, Buncrana, to fully investigate the complaints made by the two men. Statements were taken and additional complaints were made by the alleged injured parties reiterating and specifying their allegations of abuse by Detective Sergeant White on the date of their arrests. Another individual, who had also been arrested in connection with the matter in March 1997, also made an allegation of physical abuse by Detective Sergeant White and another officer during the course of that investigation. It should be noted that the commencement of that investigation coincides approximately with Mr. Giblin's aforementioned conversation with Mr. Howlin. Superintendent McLaughlin ultimately concluded in his report of the 21st of January 2002 that the complainants were not reliable, that their accounts were inconsistent and that the death of the individual whose statement appeared to exonerate them made it impossible to attribute matters to him that were incapable of verification. The fruits of Superintendent McLaughlin's investigation were furnished to the new solicitors of the individual who had been convicted and served a sentence for the matter.⁴²
- 2.55. Detective Sergeant White did not make a statement to the McLaughlin investigation, but in evidence to the Tribunal he vehemently denied the allegations that had been made against him. He stated that Superintendent Lennon had tasked him to conduct the investigation in conjunction with Sergeant Conaty of Carrigans Garda Station as the site of the damaged mushroom huts straddled two sub-districts. He said that they had arrested a youth in Lifford in connection with the matter and that he had made a full and complete statement of admission that identified a number of other culprits. Those individuals had been subsequently arrested and made cautioned statements in the presence of their parents. He went on to say that when the two complaints were made against him, the matter was investigated fully by Superintendent Gallagher, it was referred to the Director of Public Prosecutions, and a direction was given that

⁴² The Tribunal notes that a discrete issue concerning this conviction is listed before the Court of Criminal Appeal as of the end of June 2008, but has not yet been advanced to the point of fixing a hearing date. It is understood that, in any event, the issue does not involve an allegation of Detective Sergeant White having planted an item of stolen property or real evidence on the applicant, and is therefore not relevant to this section of the Tribunal's report.

the prosecution should proceed. Full disclosure of this investigation was also furnished to the Defence in advance of the trial. When the complaints were raised with him again in July 2000, Mr. White indicated that he gathered up whatever papers he had relating to the case and furnished them to the sergeants in Letterkenny who were assisting Superintendent McLaughlin in his investigation.⁴³

- 2.56. The Tribunal is satisfied that the allegation made against Detective Sergeant White in relation to planting evidence on a youth in Lifford contained in Mr. Giblin's conversation with Mr. Howlin on the 25th of June 2000 is entirely without foundation. The allegation that he brought undue pressure to bear on two individuals, thereby procuring false confessions in connection with an investigation into criminal damage to mushroom huts, had been investigated by two independent senior Garda officers. The Tribunal is satisfied that all appropriate steps were taken to ensure that the legal representatives of the individual who was eventually tried and convicted in relation to the matter were provided with copies of all material gleaned in the course of those investigations. No allegation was ever made by this youth that any item of stolen property or real evidence had been planted on him.

(8) Ballymun Case

- 2.57. The last matter recorded by Deputy Howlin in his note of the conversation with Mr. Giblin S.C. concerned a case with a "Ballymun connection" which was said to be something that would cause difficulty for Assistant Commissioner Carty and that "White did dirty work for him". Mr. Giblin informed the Tribunal that during Hilary Term 2000 (January to March 2000) he was told of the "Ballymun issue".⁴⁴ His source was a serving detective sergeant who was a friend of Detective Sergeant John White. The allegation was said by Mr. Giblin to relate to intelligence of a very serious nature that was allegedly passed to Assistant Commissioner Carty, who allegedly gave orders that the commission of a serious criminal offence should be allowed to take place. At the time the information was received it was not known to Mr. Giblin that the detective sergeant who was a source of the information was a close friend of Detective Sergeant White. This detective sergeant has since died. During his contact with this detective sergeant during 1998 and 1999, Mr. Giblin was told that Detective Sergeant White was a very dedicated member of An Garda Síochána. The detective sergeant claimed that Detective Sergeant White had believed the original "garda intelligence" on the Richard Barron case but had later become sceptical about it, and that he was now being victimised because he was asking questions about the alleged confession of Frank McBrearty Junior. By March 2000, coincidentally, this was

⁴³ Transcript, Day 580, pages 174-179.

⁴⁴ Tribunal Documents – Anonymous Allegations, pages 971-972.

Detective Sergeant White's contention also. Mr. Giblin was told by this detective sergeant that Sergeant White was being given a hard time because he was raising the "Ballymun case" and other alleged intelligence relating to the Omagh bombing in 1998. Mr. Giblin was told that "the reputation of Sergeant White was being shredded in the interests of internal Garda politics and the protection of the reputations of senior Garda officers".⁴⁵ Mr. Giblin told the Tribunal that he informed Deputy Howlin about this allegation because it was to the forefront of his mind at the time, because he had just recently been told of it.⁴⁶

2.58. All of this information was conveyed by the detective sergeant in the context of supporting Detective Sergeant White's position at the time. Detective Sergeant White had been arrested on the 21st of March 2000 by the Carty team. It was factually incorrect to say that he had raised the "Ballymun case" as an allegation against Assistant Commissioner Carty by June 2000. However, at the time of his arrest, Detective Sergeant White had directed the member in charge to insert in the custody record several detailed complaints that he had against Assistant Commissioner Carty and his investigation up to that point; this most serious allegation was not included.

2.59. The Tribunal has carried out extensive hearings in private session in relation to the "Ballymun case" and is satisfied on all of the evidence and the submissions made by the relevant parties in respect of this allegation that it is entirely untrue. It was a serious allegation and involved the examination by the Tribunal of a series of events and extensive documentation relating to an alleged occurrence in 1995. Once again the Tribunal was satisfied that true events became the subject of distortion and false allegations, which in this instance were grafted onto true events by Detective Sergeant White. The Tribunal is satisfied that this was an effort on the part of Detective Sergeant White to discredit Assistant Commissioner Carty, who at the time was focussing upon Detective Sergeant White's wrongdoing in the course of his investigation. The Tribunal is satisfied that this allegation had nothing whatsoever to do with Mr. Frank McBrearty Senior or Mr. P.J. Togher. It came into the picture when it was conveyed to Mr. Martin Giblin S.C. by another detective sergeant who was a friend of Detective Sergeant White. The Tribunal was obliged to receive evidence on the "Ballymun case" in private session. I determined that it was expedient to exclude the public during that part of the proceedings of the Tribunal relating to this allegation for reasons connected with the subject matter of the inquiry and the nature of the evidence to be given in respect of the allegation in accordance with Section 2 of the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002.

⁴⁵ Tribunal Documents – Anonymous Allegations, pages 819-822 (Statement of Martin Giblin S.C. dated 28th of April 2006).

⁴⁶ Tribunal Documents – Anonymous Allegations, page 971.

- 2.60. The Tribunal has concluded as a matter of probability that the allegation made against Assistant Commissioner Carty in relation to the “Ballymun case” was false and that there was no evidence that he acted other than with integrity, honesty and professionalism in relation to all of these events.⁴⁷ It is to be noted that this allegation, which is additional to those contained in the allegations of the facsimile of the 25th of June 2000, is not said to be one of the matters in respect of which Assistant Commissioner Carty might be compromised or subject to blackmail in that document, and the writers of that document appear to have been unaware of it. There is no evidence that any attempt was made by Detective Sergeant White to blackmail Assistant Commissioner Carty by reference to this allegation. Even if an attempt had been made, the allegation was false and therefore could not have been effective as a mode of blackmail. The fact that Assistant Commissioner Carty was in favour of the suspension of Detective Sergeant White from duty and that his inquiry led to Detective Sergeant White’s arrest on the 21st of March 2000 and subsequently in June 2001 is clear evidence that Assistant Commissioner Carty’s inquiry was not in any respect compromised in respect of Detective Sergeant White. This was a mischievous allegation made by a colleague supportive of Detective Sergeant White, who was under inquiry by Assistant Commissioner Carty, and which was persisted in by Mr. White at the Tribunal. This false allegation conveyed to Deputy Howlin by Mr. Giblin was additional to those set out in the facsimile and the Tribunal is satisfied that its authors had nothing to do with it.

⁴⁷ The Tribunal heard evidence in private session in respect of this matter for a period of seven days.

PART 2

The Facsimile of the 15th of July 2000

2.61. The three allegations contained in the facsimile of the 15th of July 2000 are:

- (1) The allegation that senior officers in An Garda Síochána facilitated the transfer of Detective Sergeant White following his suspension from duty in the wake of his arrest on the 21st of March 2000, and that this was done contrary to the wishes of Assistant Commissioner Carty and over his head and was calculated to undermine the authority of his investigation in relation to Detective Sergeant White. The implication of the facsimile is that the transfer was granted to him for an improper or corrupt motive;
- (2) The allegation that three named Gardaí, Sergeant Sarah Hargadon, Garda Seán Barrett and Garda Noel Keaveney, committed perjury in the District Court when asked questions about whether they had seen a divisional circular said to target the McBrearty family and their investigator Mr. William Flynn;
- (3) Allegations that the funds provided for Garda duties in respect of B.S.E. duties were improperly used for the employment of Gardaí in the harassment and intimidation of the McBrearty family.

(1) The Suspension and Reinstatement of Detective Sergeant White

2.62. In the facsimile addressed to Mr. Jim Higgins, TD and received by him on the 15th of July 2000, a serious allegation was made that though Detective Sergeant White was suspended from duty following his arrest he was, within forty-eight hours, “mysteriously reinstated” and given his choice of a station in the Dublin Metropolitan Area, to which he was transferred. It is further alleged that this was done “over the head of, and against the express wishes of the officer in charge of the investigation, Mr. Kevin Carty”. The document goes on to allege that Mr. Carty:

was in a helpless situation to prevent his reinstatement as the Commissioner, Mr. Byrne would have signed both forms, [1]. revoking suspension and [2]. ordering his requested transfer, at public expense.⁴⁸

It is alleged that Detective Sergeant White:

having been suspended made telephone contact with a senior officer in Garda headquarters and for some unknown reason it was decided at the highest level to have him reinstated and given a Dublin station of his choice.⁴⁹

⁴⁸ Tribunal Documents – Anonymous Allegations, page 745.

⁴⁹ Tribunal Documents – Anonymous Allegations, page 746.

The document poses the questions (*inter alia*) as to why this was done against the authority and express wishes of Assistant Commissioner Carty and whether it was as a result of threats made by Detective Sergeant White to expose wrongdoings by senior officers within the force that the commissioner “saw fit to reinstate and grant him his transfer”.⁵⁰

2.63. Chief Superintendent Denis Fitzpatrick suspended Detective Sergeant White from duty at 19.15 hours on the 21st of March 2000. Detective Sergeant White had been arrested and was detained in custody from 19.05 hours on the 21st of March 2000 until 00.15 hours on the 22nd of March 2000.

2.64. Chief Superintendent Fitzpatrick suspended Detective Sergeant White in accordance with powers vested in him under Regulation 35 of the Garda Síochána (Discipline) Regulations, 1989. This provides that:

- (1) Where in the opinion of the Commissioner the circumstances render such a course desirable he may suspend a member from duty.
- (2) The power of suspension conferred on the Commissioner by this regulation may be delegated by him to a member not below the rank of Chief Superintendent but the power, when so delegated, shall not be exercised so as to impose a suspension of more than 72 hours.⁵¹

2.65. Following the expiration of the seventy-two hour period, Detective Sergeant White would automatically have reverted to his duties prior to suspension, unless he was further suspended. For that to happen, a decision to further suspend him had to be made by Assistant Commissioner Fachtna Murphy, then head of the relevant personnel branch of An Garda Síochána, to whom this power had been delegated by the Commissioner of An Garda Síochána in accordance with the regulations.⁵²

2.66. Prior to the expiration of the seventy-two hour period Assistant Commissioner Murphy acceded to an application from Detective Sergeant White for a transfer to the Dublin Metropolitan Area “in plainclothes”, which had been forwarded to him by facsimile at 17.20 hours on the 24th of March 2000. He indicated that he was acceding to this application in two memos forwarded to the chief superintendent at Letterkenny on the 24th of March 2000 at 18.55 hours. The suspension of Detective Sergeant White was due to expire at 19.00 hours on the 24th of March 2000. The consequence of the decision made by Assistant Commissioner Murphy to transfer Detective Sergeant White as requested was to remove him from the Donegal division. In fact, Detective Sergeant White never transferred out of the Donegal division and reported “sick” on the 26th day of

⁵⁰ Tribunal Documents – Anonymous Allegations, page 746.

⁵¹ S.I. No. 94 of 1989.

⁵² Garda Síochána (Discipline) Regulations, 1989 Regulation 4(2).

March 2000 and remained on sick leave until his further suspension following his arrest on the 19th of June 2001.

- 2.67. The author(s) of the facsimile of the 15th of July 2000 appear to have some understanding of the operation of the suspension system and of the course of events that occurred in respect of the suspension and transfer of Detective Sergeant White between the 21st and 24th of March 2000. As will become apparent this knowledge extended to the fact that following his suspension Detective Sergeant White was in touch with a senior Garda officer, Detective Chief Superintendent Dermot Jennings, who contacted Assistant Commissioner Murphy. As a result of that contact the suspension originally recommended and effected by Chief Superintendent Fitzpatrick was not extended and an application for permanent transfer submitted by Detective Sergeant White was granted by Assistant Commissioner Murphy. The author(s) of the facsimile of the 15th of July 2000 sought to put a sinister construction on these events by suggesting that the transfer was granted as a result of Detective Sergeant White's threats to expose wrongdoings by senior officers within the force. The question arose during the course of the hearings as to whether there was any truth in the substance of the allegation contained in the facsimile or any wrongdoing in the decision made by Assistant Commissioner Murphy to accede to the application for transfer made by Detective Sergeant White. The full documentation in respect of these events has been received and inquired into by the Tribunal and evidence was taken from the officers involved in the consideration of the suspension and transfer.
- 2.68. The Tribunal is satisfied that the transfer was not as a result of any threat by Detective Sergeant White to expose alleged wrongdoing by senior officers. The sinister connotation placed upon the transfer in the facsimile was most likely the result of speculation grafted onto the fact of transfer in an atmosphere of deep mistrust and suspicion engendered in the mind of Mr. Frank McBrearty Senior as a result of the series of appalling experiences he had at the hands of An Garda Síochána. It may not have been unreasonable for Mr. Frank McBrearty Senior or anybody else to assume that something "mysterious" had happened or that something untoward was going on within An Garda Síochána. He had made various complaints against Detective Sergeant White and knew that he had been arrested on suspicion of committing a serious criminal offence and suspended. It was not surprising that Mr. McBrearty Senior was deeply suspicious of the actions of senior officers in reinstating Detective Sergeant White as a result of his contact with a senior Garda officer. The Tribunal is satisfied, however, having examined the evidence and the

documentation, that the transfer was not the result of threats made by Detective Sergeant White to expose wrongdoing by senior officers within the force.

Procedure for Suspension

- 2.69. Assistant Commissioner Murphy was appointed head of Human Resources Management “B” Branch at Garda Headquarters on the 6th of December 1999. One of the functions delegated to him under Regulation 4(2) of the Garda Síochána (Discipline) Regulations 1989 was to consider the suspension of Gardaí. In that context, as already noted, a chief superintendent could suspend a Garda for a maximum period of seventy-two hours under Regulation 35(2) of the regulations. That was the power exercised by Chief Superintendent Denis Fitzpatrick when suspending Detective Sergeant White at 19.15 hours on the 21st of March 2000. The suspension was to continue until 19.00 hours on the 24th of March 2000. Upon its expiration Detective Sergeant White would have been entitled to return to duty at Letterkenny. It was Assistant Commissioner Murphy’s function to consider whether that suspension should continue beyond the period of seventy-two hours. He had to make that decision before the expiration of the seventy-two hour period.
- 2.70. The Assistant Commissioner was obliged to make this decision under the Garda Síochána (Discipline) Regulations 1989. He was also obliged to operate a policy authorised by the Commissioner of An Garda Síochána and implemented some years before, whereby a Garda whom it had been decided to suspend could be offered a transfer in lieu of suspension. Assistant Commissioner Murphy explained to the Tribunal in evidence how this policy was agreed and how it was meant to operate in practice.
- 2.71. In October 1995 a committee, the Garda Welfare Committee, was set up to examine alternatives to suspension in An Garda Síochána. The Garda Welfare Committee consisted of representatives of An Garda Síochána, and the representative groups including the Garda Representative Association (G.R.A.) and the Association of Garda Sergeants and Inspectors (A.G.S.I.). Prior to the establishment of this working group a “policy document” on the suspension of members from duty under the Garda Síochána (Discipline) Regulations 1989 had been issued in April 1994. This document recognised that most Gardaí subject to long-term suspension were almost without exception the subject of investigation into alleged criminal conduct on their part. It noted that the duration of an individual suspension order was normally three months, which allowed for regular reviews of the case and a decision to either lift the suspension or continue it at the end of that period. A review of all long-term suspensions was

synchronised to take place on the first day of February, May, August and November each year. The report noted that an earlier policy that a Garda would be suspended with effect from the date of his first appearance in Court until the final determination of the case against him no longer applied. This policy had the consequence that a Garda who was the subject of a criminal investigation would remain on full duty for the duration of the investigation and pending the decision of the Director of Public Prosecutions, and even beyond that until the date of his first appearance in Court, if charged. This trend had changed by 1994. It was noted that:

When suspension is applied it is now more likely that a member will be suspended from the time that initial reports are received concerning the relevant incident. This eliminates the situation whereby members, the subject of investigation into serious criminal matters, are still performing normal Garda duties. However, it can also result in a member being suspended from duty on false allegations and then reinstated when the investigation reveals the true facts of the case.⁵³

The policy document recommended that “the following be adopted as to when a member will be suspended from duty”. It said:

A member will be suspended from duty

- (1) Where the Commissioner has signified an intention to dismiss him/her from the force ...
- (2) On receipt of a decision of a Tribunal set up by the Garda Complaints Board, to the effect that a member be dismissed or required to retire or resign as an alternative to dismissal.
- (3) Where there is evidence to show that a member has committed acts of such seriousness as would result in his dismissal from the force if they are proved true, but not until such time as preliminary inquiries rule out the possibility of the member being the subject of false or malicious allegation. It is possible that there may be cases which cannot be properly decided until such time as the investigation is fully complete. This is a grey area which will have to be dealt with on a case by case basis.

2.72. Under the heading “Alternative to Suspension from Duty”, the policy document recommended that:

in certain cases subject to consultation with the local Divisional Officer, members be employed on other duties, indoor duties etc., pending

⁵³ Tribunal Documents – Anonymous Allegations, pages 1070-1075.

determination of the case against them. This would have a number of advantages while at the same time achieving the primary purpose of suspension in many cases. From a Garda Management point of view it would mean that they would be getting work from the member in return for his pay as opposed to paying him a suspension allowance for nothing.⁵⁴

The document also acknowledged the potential for financial hardship for persons who are suspended. Apart from recommending that a Garda should be suspended from duty in the circumstances outlined above, the document also recommended that consideration be given in certain cases to employing Garda on indoor duties as an alternative to suspension.⁵⁵

- 2.73. The working group established in October 1995 considered the policy document. In a report by Superintendent Martin Crotty dated the 15th of August 1996 to the Assistant Commissioner at 'B' Branch a draft proposal was set out which had been forwarded to the Staff Representative Associations, the G.R.A. and the A.G.S.I., which stated the following:

Where the Commissioner is considering the suspension of a member from duty pursuant to Regulation 35 of the Garda Síochána (Discipline) Regulations, 1989, and a factor in his decision is the present location or the nature of the duties of the member concerned, the question of re-allocating the member to another station within a reasonable distance or to different duties in his present station should be considered as an alternative to suspension. Where the member agrees to such re-allocation pending the conclusion of the relevant proceedings against him/her, the suspension should not then take place.

The foregoing is without prejudice to the right of the Commissioner to suspend a member in any case where the circumstances so warrant or to transfer a member where the interest of the service so requires.

- 2.74. It was noted that this proposal was accepted by the G.R.A. but that the A.G.S.I. concluded that the current criteria in relation to suspension should continue in relation to members of their Association. Superintendent Crotty requested that his draft proposal on alternatives to suspension be forwarded to the Commissioner of An Garda Síochána for his approval.⁵⁶
- 2.75. The Tribunal was provided with the correspondence that led ultimately to approval being given by the Commissioner of An Garda Síochána to this proposal on the 30th of August 1996.⁵⁷ This approval was given formal recognition in an agreed report, number 523, of the Garda Conciliation Council dated the 7th of October 1997 as follows:

⁵⁴ Tribunal Documents – Anonymous Allegations, pages 1077-1078.

⁵⁵ Tribunal Documents – Anonymous Allegations, pages 1081-1082.

⁵⁶ Tribunal Documents – Anonymous Allegations, pages 1100-1105.

⁵⁷ Tribunal Documents – Anonymous Allegations, pages 1096-1099.

The Official Side pointed out that, recently, following separate discussions outside Council, the Staff Side and the Commissioner had reached agreement that where possible and depending on the allegations involved, members facing suspension would be given the option of being transferred to another station and/or alternative duties while the allegations were being dealt with.⁵⁸

- 2.76. Assistant Commissioner Murphy explained to the Tribunal that in practice an Assistant Commissioner in charge of Human Resource Management exercised his authority in relation to suspension by reference to the documents already cited. For example, the three circumstances in which suspension should take place as set out in the 1994 policy document formed the basis upon which suspension was considered by him during his period in administering the personnel department, as they had under his predecessor. Assistant Commissioner Murphy told the Tribunal that the suspension of Detective Sergeant White would have been considered by him under the third circumstance quoted above, namely where there is evidence to show that a member has committed acts of such seriousness as would result in his dismissal from the force if they are proved true.⁵⁹ In addition, he had regard to the Staff Reconciliation Meeting Record No. 523 already quoted, together with the proposal on the alternative to suspension adopted by the Commissioner in August 1996.⁶⁰ Assistant Commissioner Murphy said that there was no clear policy document “that I can walk to and take off a shelf which replaced all these documents, other than the agreement of the Commissioner in 1996.” **The Tribunal is satisfied, having regard to the rather complex background against which the decision to suspend or offer a transfer in lieu thereof was to be made by the Assistant Commissioner, that the disciplinary regulations should be amended to take account of that option and should define more clearly the circumstances in which suspension should occur and transfer in lieu of suspension may be granted. This is all the more important in the light of what the Tribunal regards as the confusion which arose in this case between the appropriate application of transfer in lieu of suspension and the availability of a permanent transfer under Chapter 7 of the Garda Code.**
- 2.77. Chapter 7 of the Garda Code sets out the conditions and circumstances in which an application by a Garda for a permanent transfer within his division or to another division may be made and considered. In most cases it is a long drawn out process, sometimes requiring a number of years to achieve, particularly between the divisions. An example of such delay is the fact that it took a number of years for Detective Sergeant White to achieve the transfer which he sought

⁵⁸ Tribunal Documents –Anonymous Allegations, pages 1085-1087.

⁵⁹ Tribunal Documents – Anonymous Allegations, pages 1077-1079 and Transcript, Day 583, pages 85-104.

⁶⁰ Tribunal Documents – Anonymous Allegations, pages 1096-1105.

from Dublin to Donegal earlier in his service. Paragraph 7.2 of Chapter 7 outlines the delegation of power to divisional officers to transfer Gardaí within their divisions up to and including the rank of inspector. A transfer out of a division under paragraph 7.7 of Chapter 7 must be made on Form D.19 and must include various details. It is clear that the chapter itself envisages the possibility of considerable delay in this process. It provides in the same paragraph that all applications for transfer on Form D.19 not renewed within a two-year period automatically become inactive. Transfers between divisions must be effected on the Commissioner's authority under paragraph 7.1. It is clear that in this case Detective Sergeant White was granted a permanent transfer following his application to Assistant Commissioner Murphy on the 24th of March 2000. It is equally clear that transfer in lieu of suspension under the Disciplinary Regulations and Policy was envisaged as a temporary transfer quite divorced from the permanent transfer under Chapter 7, and indeed it is also a matter of Garda policy that permanent transfers should not in any way be associated with issues of discipline. As will be seen Assistant Commissioner Murphy acknowledged in his evidence the difference between the two types of transfer. However, he maintained that the application that he received from Detective Sergeant White fell within a general policy framework within which he was permitted to make a permanent transfer, and that it really mattered little how the application was designated in the sense that he was entitled to transfer a Garda anyway in lieu of suspension within the overall policy. The Tribunal is not satisfied that this was the correct approach to this issue.

- 2.78. The Tribunal is not satisfied that it is appropriate to consider a permanent transfer application from a Garda under Chapter 7 at a time when he is suspended and at a time when the receiving officer is about to consider whether that suspension should be continued under the disciplinary regulations. In the view of the Tribunal the primary overriding issue to be considered in those circumstances is whether the Garda should be suspended from duty and that decision should take precedence over any application for permanent transfer that might then be made or pending. This confusion and error hopefully will be avoided in the future if appropriate clarifying amendments are made to the Garda Disciplinary Regulations. The Tribunal now sets out how the permanent transfer of Detective Sergeant White came to be made.

Notification of Suspension to Headquarters

- 2.79. Following his suspension of Detective Sergeant White Chief Superintendent

Denis Fitzpatrick furnished a report to Assistant Commissioner Murphy, Human Resource Management and Research, Garda Headquarters, by facsimile on the 23rd of March 2000 at 14.05 hours. In his report he outlined the circumstances in which Detective Sergeant White had been suspended by the exercise of powers vested in him under Regulation 35(2) of the Garda Síochána (Discipline) Regulations 1989, suspending Detective Sergeant White from duty from 19.15 hours on the 21st of March 2000 to 19.00 hours on the 24th of March 2000. The reason for the suspension is set out as follows:

That D/Sergeant White was a member of the Garda Síochána and had been arrested under Section 4(3) of the Criminal Law Act, 1997 and detained under the provisions of the Criminal Justice Act 1984.

The report further recited that at 19.35 hours on the 21st of March 2000, Detective Sergeant White was informed of his suspension from duty, that he was released from custody at 00.15 hours on the 22nd of March 2000 and that the chief superintendent permitted the suspension of Detective Sergeant White to continue after his release from custody having consulted with Detective Chief Superintendent Austin McNally. Detective Chief Superintendent McNally was the officer who was conducting the investigation into the 'silver bullet' affair in respect of which Detective Sergeant White had been arrested.⁶¹ Chief Superintendent Fitzpatrick then set out his recommendations in respect of Detective Sergeant White as follows:

The suspension from duty of D/Sergeant White expires at 7.00 pm on Friday 24th March 2000. It is my recommendation that D/Sergeant White's suspension from duty should be continued for the following reasons:

- The nature and seriousness of the allegations contained in Mr. Conlon's statement;
- The supporting statements available in relation to the allegations contained in Mr. Conlon's statement;
- The nature of the duties D/Sergeant White carries out in his current position, he is a member of detective Branch whose duties are operational, investigative, security, reporting and supervision.

There then follows a very short resume of Detective Sergeant White's career outlining that he had served for twenty-five years in the Garda Síochána, was married and resided with his wife and family in County Donegal and had been appointed to Detective Branch at Letterkenny in 1997. Attached to this report were a copy of the statement of Bernard Conlon (who had made extensive

⁶¹ The Report on the Circumstances Surrounding the Arrest and Detention of Mark McConnell on the 1st October 1998 and Michael Peoples on the 6th of May 1999 – Term of Reference (d).

allegations against Detective Sergeant White), a copy of the custody record and a copy of the suspension order.⁶²

- 2.80. Detective Sergeant White contacted Detective Chief Superintendent Dermot Jennings by telephone at Garda Headquarters on the 23rd of March 2000. Detective Chief Superintendent Jennings was one of the most senior officers at Crime and Security branch of An Garda Síochána and had worked with Detective Sergeant White in respect of confidential security matters of considerable importance. Assistant Commissioner Jennings made the following statement in respect of his dealings with Detective Sergeant White over this period:

I recall that in the early part of March, 2000 D/Sergeant John White made contact with me by telephone following his arrest and subsequent release. I recall that he was in a very distressed state. He told me that he was in Dublin and asked if I could meet with him. I agreed and I met with him at the Hole in the Wall. I went to the Hole in the Wall, Licensed Premises, Blackhorse Avenue, Dublin 7 accompanied by another member of the Garda Síochána, D/Garda Denis Murphy who sat in the premises but did not participate in the discussion. D/Sergeant White arrived shortly afterwards accompanied by his wife. After a brief introduction to his wife she left and said that she will wait in the car. D/Sergeant White was very stressed and told me that he was on medication. He asked me if I could get him a transfer out of Donegal.

I explained to him that in my position (i.e. D/Chief Superintendent, Crime and Security) that the granting of transfers was not part of my responsibility. I recall that he was very embittered by the fact of his recent arrest and because of that he gave me to understand that he felt that he could no longer work in the Donegal Division.

He was of the view that his credibility had been destroyed and he asked me if there was anything which I could do to help him. I reiterated my position that I could not arrange a transfer. However, I was sympathetic of his position. D/Sergeant White had previously provided valuable assistance in the security and intelligence area which I was aware of. Arising from his previous contacts with me in this area he regarded me as a friend. Following my meeting with D/Sergeant White I spoke to Assistant Commissioner, Human Resource Management, Garda Headquarters and to Chief Superintendent Fitzpatrick, Letterkenny. I made both officers aware of the fact that D/Sergeant John White had called to see me, seeking my assistance. I informed both officers of my position regarding D/Sergeant White's request and my response to him namely that I was not

⁶² Tribunal Documents – Anonymous Allegations, pages 706-708.

in a position to (a) interfere in any way with any investigation or (b) to arrange a transfer for him as requested. I also informed both officers that I had advised D/Sergeant White to make an application for a transfer in the normal way setting out his reasons why it should be considered.

I understand that D/Sergeant White subsequently made a formal application for a transfer which was in fact granted. Finally, I did not seek to influence in any way the decision of the Commissioner relating to any transfer sought or granted to D/Sergeant White.⁶³

- 2.81. Mr. John White in evidence to the Tribunal said that he telephoned Detective Chief Superintendent Jennings on the morning of the 23rd of March 2000. He wished to meet with him because he wished to report to him that very important and sensitive confidential reports and documents had been removed from his locker at Letterkenny Garda Station. He wished to explain to the Assistant Commissioner that these documents were gone and he was concerned about what might happen to them. He would later make a sixteen page statement in respect of this alleged break-in to his locker on the 20th of March 2000 to Superintendent James Gallagher. Later on the 23rd of March he travelled to Dublin with his wife. He had a consultation with his psychiatrist, which lasted from 16.15 hours to 18.40 hours that afternoon. He said that the meeting with Detective Chief Superintendent Jennings took place in the ‘Hole in the Wall’ public house. The sole purpose was to discuss with Mr. Jennings his concerns about the missing documents.⁶⁴ Mr. White insisted that he was not going to meet Detective Chief Superintendent Jennings “at all about my suspension”.⁶⁵

Meeting at the ‘Hole in the Wall’

- 2.82. Mr. White said that the meeting took place between 20.00 hours and 22.30 hours approximately. He described it in this way:

The documents were the first thing was mentioned. I told him they were in a brown envelope with lots of tape wrapped around them. And that they were gone. I didn’t know whose hands they were in. He was a bit concerned but not overly concerned, I felt, about them. He felt they were in some Garda’s hands anyway. It wasn’t a criminal coming into the station to take them. ... We discussed the report, like I said, and he wasn’t overly concerned but he showed some concern in relation to the report. I felt that at least once I told him that it was off my shoulder to a certain degree and if it appeared in the paper I would be shocked but I wanted to ... I

⁶³ Tribunal Documents – Anonymous Allegations, pages 1053-1054 – Statement made on the 12th of May 2003.

⁶⁴ Transcript, Day 581, Q.197-228.

⁶⁵ Transcript, Day 581, Q.209.

hoped it wouldn't appear or more importantly if it got into subversives' hands, you know. ... Anyway we dealt with that. Nothing the two of us could do about it really at that stage. Then I discussed the Conlon case. Obviously because I had been arrested two days before that and I felt very upset about this. I didn't want Dermot Jennings to think that I was involved or believe that I was involved in this crime. ... I was very close to him and I wanted to persuade him that I wasn't involved in it. I also asked him if he would check out my phone records, which would show that I wasn't in Sligo on the four dates in question and that would be beneficial to me. But to do it in an official capacity, this wasn't under counter or anything. He was a detective chief superintendent and he was in charge of Crime and Security, that was his job, part of his job. ... His words were he said, John, it looks very black for you. My response to that was ... I won't use foul language but it was f... it, this is crazy, you know. I thought that he believed that I was involved in it. ... My perception was that from what he had been told, that there was rock solid evidence against me, that was my perception. I told him that it wasn't the case. My only request to AC or Chief Jennings was that he check out formally those four calls. Nothing else. Nothing more, nothing less.⁶⁶

- 2.83. Mr. White said that he was very upset at having been arrested in respect of the Conlon matter and that Detective Chief Superintendent Jennings replied that he felt that there were three problems:

Three items he wished to discuss with me, you know. One was that I had the wrong solicitor, that Mr. Dorrian aggravated Garda authorities and Garda headquarters. He suggested I change my solicitor. He also told me I should forget about the statement of Frank McBrearty Junior, that that was only getting me into bother. The third thing was that I should apply for a transfer to Dublin. Now that's one thing that I did not want to hear, applying for a transfer to Dublin, because I had worked very very hard in Dublin over the years and I had moved from Dublin to Ballybofey to rear my kids in the country and that was something that I strongly wished to do. I felt that I was being ... if I was sent to Dublin, I would be being railroaded into a transfer I didn't want. But the more we discussed it, the more he said was

⁶⁶ Transcript, Day 581, Q.234-241.

that there was no way are you going to be allowed to work on in Letterkenny, you know. And unless you apply for a transfer that you will remain suspended. That's a certain fact. I thought over in my mind, I said I will discuss it with my wife, she's out in the car. He advised me not to discuss it with my wife, because this had to be done tomorrow. He said, I'll do the best I can for you in relation to it. ... There was no question of moving anywhere else in the country. He suggested that I would apply for a position in the SDU which is a special branch in Harcourt Square. My answer to that was, how the hell am I going to walk into Harcourt Square ...

Q. Was he offering you his support in any effort you might make to transfer?

A. He was yes. Maybe support is too strong a word on it, he was outlining to me the options open to me, I suppose, you know. But that he would look about it himself, he would make enquiries on my behalf.⁶⁷

2.84. He took the suggestion by Detective Chief Superintendent Jennings as support for the work he had done for him over the years and though he viewed his suggestion as a way out of the suspension he never actually considered going to Dublin. Assistant Commissioner Jennings told him to phone him the following morning at about 10.00 or 10.30 hours.

2.85. The following morning (the 24th of March 2000) Mr. White said that he went to a coin box outside Andy's supermarket in Stranorlar and had a telephone conversation with Detective Chief Superintendent Jennings at approximately 11.00 hours. Mr. Jennings told him that "he was having some difficulty with this in relation to D/Branch" and that he (Detective Sergeant White) was to phone back at 14.30 hours. Mr. White said that at this stage he was very tired, having arrived back in Donegal in the early hours of the morning, and was very stressed.

2.86. Detective Sergeant White was, shortly after this call, requested by Superintendent Gallagher in Letterkenny to make a statement concerning the alleged break-in to his locker to Superintendent Gallagher in the company of Detective Superintendent Joseph McGarty at his home and was with them from 12.00 until 15.20 hours. This prevented him from telephoning Assistant Commissioner Jennings at 14.30 hours as arranged. He received a call from Detective Superintendent Jennings at 15.25 hours and he went to the coin box again at

⁶⁷ Transcript, Day 581, Q.242-254.

15.50 hours, where he had another conversation with Detective Chief Superintendent Jennings. He said that Detective Chief Superintendent Jennings told him that he was to have a written application in for transfer at 16.45 hours in Letterkenny Station or else his suspension would not be lifted. He said that Detective Chief Superintendent Jennings told him in the course of this telephone call that “he was doing the best he could but one officer was against this move”.⁶⁸ Mr. White insisted that he had told Detective Superintendent Jennings the previous night and on the telephone that he did not want a transfer to Dublin.⁶⁹ He said that he was hugely embarrassed about the suspension and found it very difficult to make a proper decision at the time. All he wanted was to have the suspension lifted and try to work something out afterwards.⁷⁰

- 2.87. Nevertheless, on the afternoon of the 24th of March 2000 following this later telephone conversation with Detective Superintendent Jennings Mr. White wrote the following application for transfer:

Supt.

Letterkenny

Re: Application for Transfer to D.M.A. Division

I wish to make application for transfer from my present status in Letterkenny to The D.M.A. in plainclothes as I feel that I will not be able to work in this Division again due to embarrassment etc.

Forwarded for your consideration.

Please.

John White D/Sergeant 19787D

Chief Superintendent Letterkenny

24/3/00

Forwarded for consideration

James P. Gallagher Superintendent.⁷¹

- 2.88. In a statement made on the 13th of July 2005 Assistant Commissioner Jennings said the following:

As set out in my statement of May 2003 I did receive contact by telephone from Sergeant White in March 2000, following his arrest and subsequent release. Sergeant White told me that he was in Dublin and that he wanted to see me. He pleaded with me to meet him. He said that I was the only friend that he had left in the job that he could trust and that he was

⁶⁸ Transcript, Day 581, Q.276-280.

⁶⁹ Transcript, Day 581, Q.278-279.

⁷⁰ Transcript, Day 581, Q.285-287.

⁷¹ Tribunal Documents – Anonymous Allegations, page 711.

begging me to give him an audience. He would not come to my office as he said that he was embarrassed about his arrest. I agreed to meet him later that evening at the "Hole in the Wall" licensed premises, beside the Phoenix Park. Before this phone call from Sergeant White I had no prior knowledge of Sergeant White seeking to meet with me. Subsequent to my discussions with John White I also spoke with Chief Superintendent Denis Fitzpatrick. I was hesitant at first about meeting him but decided to do so out of compassion and because of my dealings with him in 1998. Contrary to what is alleged by Sergeant White I did not seek this meeting and I was not told by Sergeant White that there were any documents missing from his locker nor did I have any knowledge about the alleged break-in to his locker at that stage. I went to the 'Hole in the Wall' and I was driven there by Detective Garda Denis Murphy who sat in the premises but did not participate in the discussions. When Sergeant White arrived he was accompanied by his wife, who after a brief introduction left to wait in their car. Sergeant White was in a very distressed state and told me that he was on medication. He pleaded with me at length to get him out of Donegal Division as he could no longer work there, that his credibility had been destroyed. He continually talked and repeated himself over and over that he was destroyed as a member of An Garda Síochána in Donegal and he begged me to get him out of it. I listened and expressed some sympathy with his situation. When he calmed down a little I advised him that he should discuss his transfer request with his wife that he should think about it overnight and that if it was still his desire for a transfer that he should apply in writing stating his reasons for the transfer. He also indicated that he would prefer, if at all possible, to stay in plain clothes as he had spent most of his career in Detective Branch. I explained my position very clearly to him that I could not arrange his request for a transfer but that if he wished I would pass on his expressed wish to Assistant Commissioner, Human Resource Management and to his Chief Superintendent at Letterkenny. Sergeant White understood my exact position that I could not interfere with the process. I again advised him that his first priority should be his family and that he should discuss it with his wife before he made any firm decision. He agreed and said that he would ring me the following morning. He was paranoid about his phone and feared that it was "bugged". He said that he would call me from a phone-box, which he did. Sergeant White contacted me the following morning; he said that he had considered overnight his position and that he was going to apply for a transfer to get out of Donegal Division. He was very insistent that I would try to help him. Again I told him my position but told him that I would

contact A/Commissioner, H.R.M. and his Chief Superintendent at Letterkenny on his behalf. I agreed with him that he could contact me later. This he did and he told me that he was going into Letterkenny Garda Station to submit his transfer request. In this conversation he was very anxious about getting out of Donegal and that he wished to remain in plain clothes. After his first phone call on that date I did ring Assistant Commissioner, H.R.M. and told him that Sergeant John White had contacted me because of my previous dealings with him and that he was applying for a transfer out of Donegal Division. I also contacted the Chief Superintendent at Letterkenny and informed him likewise. While at the 'Hole in the Wall' premises and having concluded discussing the transfer issue Sergeant White alleged to me that his personal locker had been broken into at his office and that a number of files had been removed, including his copies of intelligence reports that had been forwarded to Security and Intelligence Branch in 1998 regarding the activities of a subversive terrorist organisation. I had one very serious concern which was: "if the source of the information was contained anywhere in the documents". He assured me that there was no mention of the source in any of the documents. I did express my concern about the documentation: however, the content was now in the past. I did not agree with Sergeant White that the alleged break-in had to be the work of a member of An Garda Síochána. Sergeant White also asked me to make contact with the investigators in Donegal and to get telephone details for him. I told him that I was not familiar with the investigation and that under no circumstances would I or could I interfere with the investigation. Sergeant White appeared to understand this. He continued to repeat that he was finished as a policeman and that he would never be able to work in Donegal again. He was accusing the Carty investigation team of "setting him up" and that he was the victim – that he was basically looking for someone to help him out. I did not make any promises to Sergeant White and I emphasised to him that I would not under any circumstances attempt to interfere with the investigators in Donegal or anywhere else. He pleaded with me to help him on account of his family. As stated earlier Sergeant White was very upset. After about an hour his wife returned to the premises and asked him if he was ready to go. He left a short time later.⁷²

- 2.89. The Tribunal is satisfied that the purpose of the meeting sought by Detective Sergeant White with Detective Chief Superintendent Jennings was primarily to seek his support and assistance in the situation in which he then found himself. He was the subject of a criminal investigation and

⁷² Tribunal Documents – Anonymous Allegations, pages 1055-1057.

had been suspended for seventy-two hours with every likelihood that that would be extended if something was not done to prevent it. Having regard to the decision and recommendation of his Chief Superintendent it was clear at that stage of the investigation that a transfer to other duties was the only feasible means of avoiding further suspension at that time. I am satisfied that Detective Sergeant White pleaded with Detective Chief Superintendent Jennings for help on the basis of past service with him and that he pleaded with him to get him out of Donegal. The Tribunal is also satisfied that he was received and listened to sympathetically by Detective Chief Superintendent Jennings, who asked him to consider overnight whether he wanted a transfer. He advised him that if he wished to seek a transfer he should apply in writing, stating his reasons for so doing. I am also satisfied that Detective Chief Superintendent Jennings explained to Detective Sergeant White that he could not arrange a transfer, but that if he wished he would pass on his expressed wish to the Assistant Commissioner at Human Resource Management, namely Assistant Commissioner Murphy, and to his Chief Superintendent at Letterkenny. He further informed him that he could not and would not interfere with the ongoing investigation. The Tribunal accepts the evidence of Detective Chief Superintendent Jennings on this matter.⁷³

Contact between Detective Chief Superintendent Jennings and Chief Superintendent Fitzpatrick

- 2.90. Mr. Fitzpatrick, in a statement made on the 14th of June 2005, outlined the circumstances of the suspension and described how on the 23rd of March 2000 he had been made aware by Superintendent James Gallagher that Detective Sergeant White was travelling to Dublin to meet Detective Chief Superintendent Jennings. He contacted Detective Chief Superintendent Jennings and told him that Detective Sergeant White was suspended and that he was recommending that the suspension should be continued. He added that Detective Chief Superintendent Jennings said that he intended to meet Detective Sergeant White but he did not discuss with Mr. Fitzpatrick the purpose of this meeting.
- 2.91. In evidence to the Tribunal, Mr. Fitzpatrick said that at the time he made his report on the 23rd of March 2000, there was no question of a transfer. He said, "It wasn't in my mind at that stage."⁷⁴ He had no contact with any senior officers in Dublin before making his report. At that stage he heard that Detective Sergeant White was about to travel to Dublin to see somebody in headquarters. He said:

⁷³ Transcript, Day 588 and Day 591, pages 37-45.

⁷⁴ Transcript, Day 583, Q.2.

... There was nothing mentioned to me as to what the meeting would be about. It was on my own assumption or my own knowledge, or a chance that I took, that I took it might be Assistant Commissioner Jennings. And it was on that idea that I rang Assistant Commissioner Jennings and I warned him of ... I told him that I had heard that he was going to Dublin to meet a senior officer, but I didn't know who it was and I assumed ... I was wondering [if] it was him and he said it was. And I told him that he had been arrested and he was suspended and my views ... that the suspension should continue ... I didn't want him to be door-stepped basically. And when I rang him, Dermot Jennings told me he was meeting him, and I told him I didn't think it was a good idea. He said words to the effect that he had to meet him. And I left it at that. ... My intention in ringing Dermot Jennings was that he wouldn't be door-stepped in his office by somebody who was under suspension. And I didn't think ... My view was that he shouldn't meet him really in the present circumstances.⁷⁵

The question of transfer was not discussed with Chief Superintendent Jennings in that phone call.⁷⁶ Assistant Commissioner Jennings told the Tribunal that this telephone call never happened.⁷⁷

- 2.92. On the afternoon of Tuesday the 24th of March, Chief Superintendent Fitzpatrick told the Tribunal that he received a call from Detective Superintendent Jennings some time between 15.30 hours and 16.30 hours. He described it in the following way:

I got a phone call, a very brief phone call and it was one of those ... he just says, you never got this phone call, you will be getting an application in the next half hour, send it up immediately. And that was the first I got about a transfer, that there would be something, an application for something, that was the first ... it was as quick a phone call as I ever got ... the phone call ended.⁷⁸

- 2.93. Mr. Fitzpatrick did not accept the description of that call given in the statement made by Assistant Commissioner Jennings on the 12th of May 2003, to the effect that he may have made Chief Superintendent Fitzpatrick aware that Detective Sergeant White had been to see him seeking his assistance and that he had told Detective Sergeant White that he was not in a position to interfere in any way with any investigation or to arrange a transfer for him as requested. Mr. Fitzpatrick did not accept that he had been told by Detective Chief

⁷⁵ Transcript, Day 583, Q.3-10.

⁷⁶ Transcript, Day 581, Q.8-9.

⁷⁷ Transcript, Day 588, pages 10-12.

⁷⁸ Transcript, Day 583, pages 10-11.

Superintendent Jennings that Detective Sergeant White was advised by Detective Chief Superintendent Jennings to make an application for transfer in the normal way and setting out his reasons as to why he should be considered for one. Mr. Fitzpatrick added that he found his conversation with Detective Chief Superintendent Jennings to be strange and decided to await developments.

- 2.94. Assistant Commissioner Jennings told the Tribunal that he telephoned Chief Superintendent Fitzpatrick much earlier on the morning of the 24th of March, at approximately 11.00 hours, to let him know what had occurred with Detective Sergeant White and that Detective Sergeant White would be sending in a transfer application later on that day.⁷⁹ Assistant Commissioner Jennings said that he later phoned Chief Superintendent Fitzpatrick at approximately 15.30 hours to inform him that he had spoken to Detective Sergeant White and that he was actually going to make a formal application for a transfer. He said that Chief Superintendent Fitzpatrick “seemed quite happy with that”.⁸⁰
- 2.95. He did not accept that he told Chief Superintendent Fitzpatrick at the time of the making of this call that “you never got this phone call”.⁸¹ He rejected any suggestion that there was any aura of secrecy or mystery about his communications with Chief Superintendent Fitzpatrick. There is a clear conflict in recollection between the two officers in respect of the sequence and some of the content of these phone conversations. This may in some respects be due to the passage of time. Having regard to the determination that I have made that there was nothing unlawful or corrupt about the transfer of Detective Sergeant White, I am satisfied that the contact made between these two officers was not for any wrongful purpose.

Transfer Application

- 2.96. The application made by Detective Sergeant White for a transfer on the 24th of March 2000 was preceded by a number of telephone calls between Assistant Commissioner Murphy and Detective Chief Superintendent Jennings, Detective Chief Superintendent Jennings and Chief Superintendent Fitzpatrick, Detective Chief Superintendent Jennings and Detective Sergeant White and Assistant Commissioner Murphy and Chief Superintendent Fitzpatrick, some of which I have already considered.
- 2.97. Assistant Commissioner Jennings told the Tribunal that at the meeting with Detective Sergeant White on the 23rd of March 2000 Detective Sergeant White had expressed his interest in a transfer out of the Donegal division due to the circumstances of his suspension. As already noted, Assistant Commissioner Jennings advised Detective Sergeant White to discuss the matter with his wife

⁷⁹ Transcript, Day 588, pages 53-54.

⁸⁰ Transcript, Day 588, pages 58-59 and page 62.

⁸¹ Transcript, Day 588, pages 66-69.

and consider the matter overnight. He asked him to phone him the following morning, which he did sometime around 11.00 hours. Assistant Commissioner Jennings told the Tribunal that in the course of this telephone call Detective Sergeant White confirmed that he intended to seek a transfer out of the Donegal division. They discussed how that might be done. He said that he told Detective Sergeant White that if he wanted a transfer he should apply in writing and set out the circumstances. He believed that Detective Sergeant White knew that there had to be an element of formality about it. He informed Detective Sergeant White that he would make contact with the Assistant Commissioner in Human Resource management, Assistant Commissioner Murphy, to ascertain the options available in respect of transfer. He said:

... In a normal situation of somebody looking for a transfer, you would say look, you put in your transfer in writing, but this wasn't just a normal situation. Like, as he explained to me, he was suspended. And I didn't know if that would have a bearing or not on an application. So I said, look, I will find out for you and see what the procedure should be. And that's what I did.⁸²

- 2.98. Mr. White accepted at the Tribunal that he made this phone call at 11.00 hours to Detective Chief Superintendent Jennings and that the transfer was discussed. He said that he told Detective Chief Superintendent Jennings in forceful terms that he did not want a transfer to Dublin for family and personal reasons, as he had told him at the previous night's meeting.⁸³ Though he felt that Detective Chief Superintendent Jennings did nothing wrong in seeking to help him concerning the transfer issue, nevertheless he felt that he was being railroaded into making the decision to apply for a transfer. He based this on the pressure that was brought to bear upon him, he said, by Detective Chief Superintendent Jennings at the meeting on the 23rd of March 2000. He alleged that at that meeting Detective Chief Superintendent Jennings had told him that he had three problems namely retention of Mr. Dorrian as a solicitor, his persistence in making allegations about the statement taken from Mr. Frank McBrearty Junior, and that he needed to remove himself from Donegal; and that if those matters were addressed, difficulties in relation to Bernard Conlon would not continue. This was completely denied by Detective Chief Superintendent Jennings in evidence and I accept that denial. **I do not believe that Detective Chief Superintendent Jennings was in any way attempting to railroad Detective Sergeant White into seeking a transfer out of the Donegal division either at the meeting of the 23rd of March 2000 or in the course of the phone call on the morning on the 24th of March 2000. I am satisfied that that telephone call concluded with a request by Detective Chief Superintendent Jennings that**

⁸² Transcript, Day 588, pages 28-31.

⁸³ Transcript, Day 581, pages 79-80.

Detective Sergeant White telephone him at 14.30 hours that afternoon. In the meantime, Detective Chief Superintendent Jennings contacted Assistant Commissioner Murphy and Chief Superintendent Fitzpatrick in relation to the options that might be available to Detective Sergeant White.

- 2.99. Shortly after 11.00 hours, following his conversation with Detective Sergeant White, Detective Chief Superintendent Jennings telephoned Assistant Commissioner Murphy in relation to the matter. He told the Tribunal what transpired:

When I rang the Assistant Commissioner I said to him what are the options for this man ... First of all I was apprising him actually [of] the situation that I found myself in, that John White had come to see me, that I knew him from the past, that he was on suspension. He was familiar with the fact, naturally enough, that he was suspended. And I said that he asked me ... that he had said that he wanted to transfer out of Donegal and I said what can he do. He did explain to me that this new procedure that was there, that he could ... it was an option that was available, that a person actually could get a transfer in lieu of suspension. Now I hadn't known that, and it is not something that I would be dealing with. I said to him this man was anxious to get out of Donegal, and in a very short comment, he said if the man ... wants to get out of Donegal, if he puts in his application, let it up to me and I will decide on it ... He did say to me if you hear anything more let me know because I told him that John White was going to be ringing me back at 2.30 ... [I told him that] he was stressed and very upset and that he felt he was finished in Donegal.⁸⁴

- 2.100. Assistant Commissioner Jennings told the Tribunal that he was not in any way seeking to interfere or trying to influence Assistant Commissioner Murphy in any decision that he had to make. He was seeking information from the Assistant Commissioner as to whether Mr. White could apply for a transfer and what procedure should be adopted, particularly in the light of the unusual background of his suspension.⁸⁵ Assistant Commissioner Jennings told the Tribunal that Assistant Commissioner Murphy told him that though Detective Sergeant White was on suspension he could apply for a transfer and that an application for transfer would have to be sent to the Assistant Commissioner. He said that later on that afternoon he informed Detective Sergeant White that he could make an application for a transfer notwithstanding the fact that he was suspended, and

⁸⁴ Transcript, Day 588, pages 32-33.

⁸⁵ Transcript, Day 588, pages 34-37.

Detective Sergeant White informed him that he was going to make out an application for transfer.⁸⁶

- 2.101. Detective Chief Superintendent Jennings understood from his conversation with Assistant Commissioner Murphy that he was going to facilitate the making of the application for transfer in the sense that he would wait for the receipt of the application before making any decision on the continuation of the suspension.⁸⁷
- 2.102. Shortly after the phone call with Assistant Commissioner Murphy, Detective Chief Superintendent Jennings then telephoned Chief Superintendent Fitzpatrick to inform him of his meeting with Detective Sergeant White the previous evening on the 23rd of March 2000. He said that he also told Chief Superintendent Fitzpatrick that Detective Sergeant White would be sending in a transfer application later on in the day.⁸⁸
- 2.103. Detective Chief Superintendent Jennings had arranged with Detective Sergeant White that he would telephone him at 14.30 hours, at which time it was intended by Detective Chief Superintendent Jennings to inform Detective Sergeant White of developments and that he could put in his application for a transfer in Letterkenny Station, which could then be transmitted to Assistant Commissioner Murphy. However, the phone call did not take place at 14.30 hours because at that stage Detective Sergeant White was being interviewed by two Senior Garda officers at his home in relation to the alleged break-in to his locker. That interview took place between 12.00 hours and 15.20 hours approximately.
- 2.104. Assistant Commissioner Murphy confirmed to the Tribunal that he received the telephone call from Detective Chief Superintendent Jennings some time around 11.00 hours. Detective Chief Superintendent Jennings informed him that he had met with Detective Sergeant White, who was very distressed and concerned for his future in Donegal, and who sought to get out of Donegal. He asked him about the procedures applicable to seeking a transfer out of Donegal. Assistant Commissioner Murphy said that he advised Detective Chief Superintendent Jennings that he would be considering the issue of the continued suspension of Detective Sergeant White and a report from Chief Superintendent Fitzpatrick and explained to Assistant Commissioner Jennings that:

*In certain circumstances ... [it was] possible to get a transfer in lieu of suspension. He said that John White would be submitting an application for transfer and I told him ok, if that is the case, let it come to me and I will deal with it then.*⁸⁹

⁸⁶ Transcript, Day 588, page 37.

⁸⁷ Transcript, Day 588, pages 45-52.

⁸⁸ Transcript, Day 588, pages 53-55.

⁸⁹ Transcript, Day 583, page 110.

- 2.105. Assistant Commissioner Murphy's impression was that Detective Chief Superintendent Jennings was disposed to helping Detective Sergeant White and was not in any way trying to influence the decision that Assistant Commissioner Murphy had to make. Detective Chief Superintendent Jennings was aware of the time factor involved. A decision would have to be made before 19.00 hours that evening. Assistant Commissioner Murphy accepted that he deferred making any decision until he saw the application for transfer. His impression was that Detective Chief Superintendent Jennings was:

*coming to me trying to help what he considered was his friend and trying to, you know, can anything be done to get this man out of Donegal, that really was the thrust of it ... what I did tell him was to remember to put in his application for a transfer and I will deal with it when it comes ... he didn't suggest that I do or not do anything. That I mean in the circumstances, the fact that he rang me, you could interpret it as that ...*⁹⁰

- 2.106. As far as he was concerned Detective Chief Superintendent Jennings was not suggesting anything underhand. A man had come to him and he was trying to help him to get a transfer out of Donegal. Assistant Commissioner Murphy said that he was not going to do anything without a written application because that would have been very foolish. He confirmed that he made further contact with Detective Chief Superintendent Jennings and Chief Superintendent Fitzpatrick during the course of the day to ascertain whether in fact a transfer application had been received at Letterkenny or whether he might expect it in the course of the afternoon.⁹¹
- 2.107. Mr. Fitzpatrick's account of his telephone contact with Detective Chief Superintendent Jennings has already been set out.
- 2.108. Some time in the early afternoon Assistant Commissioner Murphy telephoned Chief Superintendent Fitzpatrick to ascertain whether any transfer application had been received by him from Detective Sergeant White. He asked Chief Superintendent Fitzpatrick whether Detective Chief Superintendent Jennings had been in touch with him as he had informed Assistant Commissioner Murphy that he would make contact with Chief Superintendent Fitzpatrick. No transfer application had been received by Chief Superintendent Fitzpatrick at that time.⁹² Assistant Commissioner Murphy also telephoned Detective Chief Superintendent Jennings to ascertain whether he had any information about any proposed application for transfer, but he had no news either.⁹³ At this stage Detective Sergeant White had failed to telephone Detective Chief Superintendent Jennings

⁹⁰ Transcript, Day 583, pages 116-122.

⁹¹ Transcript, Day 583, pages 120-136.

⁹² Transcript, Day 583, pages 141-142.

⁹³ Transcript, Day 588, pages 57-58.

at 14.30 hours as arranged. Prompted by the telephone call from Assistant Commissioner Murphy, Detective Chief Superintendent Jennings phoned Detective Sergeant White who apologised and indicated that he had been interviewed by two senior Garda officers since midday. This contact was made with Detective Sergeant White at 15.25 hours. Assistant Commissioner Jennings told the Tribunal that he informed Detective Sergeant White that he had the option to apply for a transfer and Detective Sergeant White replied that he would do so and would attend at Letterkenny Garda Station straight away.⁹⁴ Mr. White in evidence said that he initially received a phone call from Detective Chief Superintendent Jennings and then telephoned him from a coin box, at which point he was told to have a written application into Letterkenny Garda Station at 16.45 hours or his suspension would not be lifted. He said that he was informed that some senior officer was against this transfer.⁹⁵

2.109. Detective Sergeant White then attended at Letterkenny Garda Station, where he presented his application for transfer to Superintendent James Gallagher and Chief Superintendent Fitzpatrick.⁹⁶ This application to transfer, together with a letter from Chief Superintendent Fitzpatrick, was sent by facsimile to Assistant Commissioner Murphy at 17.20 hours. His application was handwritten and has already been quoted in full.

2.110. A letter accompanying this transfer application from Chief Superintendent Fitzpatrick was as follows:

Assistant Commissioner
H.R.M. & Research

Re: Application for Permanent Transfer to D.M.R. –
D/Sergeant John White 19787D, Letterkenny Station

The attached application received from Superintendent Gallagher, Letterkenny at 5.00 p.m. on this date.

The member is presently on suspension from duty under Regulation 35(1) of the Garda Síochána (Discipline) Regulations 1989, which is due to expire at 7.00 p.m. on this date.

Application is forwarded for consideration. Should the application be granted it would remove D/Sergeant White from direct Police work in Donegal Division. On this basis the application is recommended.

(D.N. Fitzpatrick)
Chief Superintendent
24th March 2000⁹⁷

⁹⁴ Transcript, Day 588, pages 55-56.

⁹⁵ Transcript, Day 581, pages 78-81.

⁹⁶ Transcript, Day 581, pages 83-84.

⁹⁷ Tribunal Documents, Anonymous Allegations, page 1039.

- 2.111. Mr. Fitzpatrick said that as Chief Superintendent in Donegal he was not aware of the existence of the policy that enabled the Assistant Commissioner to offer a transfer in lieu of suspension in 2000. He recalled the arrival of Detective Sergeant White to his office and his handing over of the transfer application to Superintendent James Gallagher, who was present. Detective Sergeant White then left, but returned a short time later to make a small amendment to the document and insert the words "in plain clothes", after which he left again. He described Detective Sergeant White as being upset at the time. He then immediately contacted Garda Headquarters and spoke to Assistant Commissioner Murphy informing him that he now had the application for transfer and Assistant Commissioner Murphy told him to send it up to him. He said that Assistant Commissioner Murphy also asked him whether he got a phone call to which he replied that he had and added:

He said there were some discussions in the background and I didn't enquire with whom or what. I just sent up the application, recommended at once he be out of the Division and at that stage if John White was to be removed from Donegal I was quite happy. If he gets a transfer out of here, it takes him out of Donegal. That was my position ... My understanding was this was expected, that there would be some kind of an application expected and it was expected and it would not be a surprise in headquarters when it was received. So the point I was making was out of Donegal he must go in my view ... I had the sense that, well this is going to happen either way ... I was told there was a transfer application coming in. The thing was probably decided before I ever got the application, that was my feeling on the issue at the time. Headquarters are going to do what they wish to do anyway and it seems to me it was a fait accompli at that stage, once the application came it was fait accompli ... I was never told the reason. I gave the reasons why he should be suspended. The suspension was never discussed after that with me by anybody ... The suspension wasn't in my view being dealt with as hastily as I thought it should be. Once the application for a transfer came in for Dublin I felt that that was a fait accompli. That was probably going to be granted. I knew the situation, I had this man in my Division. I am after recommending that he should be suspended and that's my belief ... I didn't think there was any underhand dealing, but I wasn't comfortable with what was going on. I felt that he should have been suspended ... I was put in the situation

*where I had made that recommendation, held onto it, and here was other people, we'll say, arranging for a transfer for him and my recommendation being sidelined and I [was] put in the position where I get an application from him, I have to process it ... If I had wrote on that application, application is not recommended, 7.00 o'clock arrives and there is nothing dealt with, the suspension, here I am not recommending a transfer, I am left with him.*⁹⁸

- 2.112. For his part Assistant Commissioner Murphy, who received the application for transfer, then considered it and granted a permanent transfer to Detective Sergeant White from the Donegal division to the Special Detective Unit (S.D.U.) in Dublin. It is clear from Mr. Fitzpatrick's testimony that he was not au fait with the policy whereby an Assistant Commissioner could grant a temporary transfer in lieu of suspension to a Garda whose suspension he had decided to continue after the expiration of the seventy-two hour period. Mr. Fitzpatrick acknowledged that he had no experience of this particular provision. Assistant Commissioner Murphy told the Tribunal that his contact with Chief Superintendent Fitzpatrick in respect of the transfer was because he dealt with the case as a matter of urgency with regard to the expiration of the suspension at 19.00 hours. There was no question, as far as he was concerned, of putting pressure on Chief Superintendent Fitzpatrick to recommend a transfer or in any sense to leave him with an ultimatum that if he did not so recommend, the suspension would be allowed to lapse and Chief Superintendent Fitzpatrick would face the prospect of Detective Sergeant White working within the division contrary to his wishes. I accept the evidence of the Assistant Commissioner in that regard and that whatever Chief Superintendent Fitzpatrick's interpretation of events, no ultimatum was given or intended. Assistant Commissioner Murphy dealt openly with the Chief Superintendent and Detective Chief Superintendent Jennings in all of his dealings with them. He described his reasons for granting the transfer as follows:

I received the fax, a copy of that, to the best of my recollection ... Having considered what it was about in the overall context of the situation, where the member was then under suspension, I had decided to accede to that and to transfer the member straight away out of Donegal and the place I chose for him, for the reasons I have mentioned already, was the Special Detective Unit, the S.D.U. in Dublin. For my part it was in ease of the member, he was getting out of Donegal. He was being kept in plain clothes, so to speak, in Detective Branch and it was an area where several options were available to the Chief Superintendent in charge

⁹⁸ Transcript, Day 583, pages 12-30.

*where he could be utilised, pending of course, you know, the results of the investigation down the road, the matter could be reconsidered ...*⁹⁹

- 2.113. It is clear from the evidence of Assistant Commissioner Murphy that the mechanism adopted for receiving and determining an application for a permanent transfer did not fall within the ordinary procedures envisaged in relation to suspension governed by Regulation 35 of the Disciplinary Regulations already discussed. It was clearly acknowledged by the Assistant Commissioner that the normal procedure to be followed under Regulation 35, coupled with the policy in operation that allowed a transfer in lieu of suspension to be offered to the Garda whom it was proposed to suspend under the Regulation, was not applied in this case. He told the Tribunal:

A. *Having decided to suspend somebody, I would then, depending on the gravity of the case or depending on the circumstances on the case by case, then and only then would I offer that person a transfer in lieu of suspension. So the ingredients of suspension would have to be present, Mr. Chairman, and it's only then I would offer that. Now in the case that we are discussing here in this Tribunal, I never reached that situation, as I would be able to explain to you as we go along. So in theory, the actual issue of transfer in lieu of suspension never really arose, in that I gave the member concerned a permanent transfer, he having applied for transfer. So the transfer in lieu of suspension is a mechanism essentially to get somebody away from a particular division or to defer ... to allocate somebody to other duties for a temporary period of time. This is not what happened in this case.*

Q. *This was a permanent transfer?*

A. *Absolutely.*

Q. *Are you divorcing it totally from the suspension issue then?*

A. *Ultimately, yes. But as I will explain when I got a phone call from the then Chief Superintendent Jennings, it was an issue I explained to him.*

Q. *So in fact what you are not doing is invoking paragraph 3 of document 523?*

⁹⁹ Transcript, Day 593, page 154.

A. *Ultimately no.*

Q. *You are not?*

A. *I granted a transfer ...*

Q. *So therefore, this transfer application, does it fall squarely within Chapter 7?*

A. *On the day?*

Q. *On the day.*

A. *If we go to sometime after 5.00 o'clock on the day.*

Q. *Thank you. Just bear with me now for a moment?*

A. *Yeah.*

Q. *Chapter 7 of the transfer section of the Garda code?*

A. *Yes.*

Q. *Did this transfer fall squarely within what I might call an ordinary application for transfer?*

A. *No, it wasn't an ordinary application, it was done on a particular day in circumstances where I was considering a recommendation for suspension. So it couldn't be ordinary in that sense, but its effect was the same, you know. The type of forms that would normally accompany a transfer requesting that, which I would call a kind of a slow burner request, did not apply. This was an unusual situation.*

Q. *It was the ordinary procedural transfer applied in extraordinary circumstances?*

A. *Yeah, I would agree with that.*¹⁰⁰

2.114. Having made the decision to transfer Detective Sergeant White, Assistant Commissioner Murphy sent two memoranda to Chief Superintendent Fitzpatrick on the 24th of March 2000. He briefly summarised the Chief Superintendent's recommendation in his report of the 23rd of March that Detective Sergeant White be suspended and in his further report of the 24th of March in which the Chief Superintendent had recommended acceptance of the application for transfer to the Dublin Metropolitan Area. It recites that since the Assistant Commissioner has agreed to the transfer "as requested" he did not propose to

¹⁰⁰ Transcript, Day 583, pages 108–111.

continue the suspension of Detective Sergeant White. The second facsimile directs that Detective Sergeant White should move “on permanent transfer to the Special Detective Unit, Harcourt Square with effect from this date – 24th March 2000”.¹⁰¹ He also furnished a report in respect of this matter to the Deputy Commissioner, Strategic and Resource Management on the 30th of March 2000. Though this document appears to emphasise the recommendation made by Chief Superintendent Fitzpatrick as the reason for the transfer, the Tribunal is satisfied and Assistant Commissioner Murphy accepts that the decision was entirely his, having afforded Detective Sergeant White the opportunity to make the transfer application by delaying his consideration of a continued suspension.¹⁰²

- 2.115. On the 20th of April 2000 Detective Sergeant White submitted a report to the Superintendent at Letterkenny applying for a withdrawal of his previous transfer application of the 24th of March 2000. This application alleged that the original application for transfer was made under extreme duress and inducement and on the understanding that Detective Sergeant White would take a different stand or view in relation to allegations of harassment and improper procedures “by various members of the investigation teams and effectively allow my evidence to suit the wishes of my superior officers”. He had by that stage reported sick on the 26th of March 2000 at Letterkenny Garda Station suffering from severe stress.¹⁰³ **The Tribunal does not accept that the initial transfer request was made under any duress or inducement.**

Conclusion

- 2.116. **The Tribunal is satisfied that the procedure followed in respect of the transfer of Detective Sergeant White was not the procedure envisaged in respect of suspension and the offer of a transfer in lieu of suspension that was considered appropriate to a person whom it was intended to suspend. Detective Sergeant White, having pleaded for assistance with Detective Chief Superintendent Jennings and having indicated to him that he wished to get out of Donegal, was assisted by the Detective Chief Superintendent to an extent. Detective Chief Superintendent Jennings contacted Assistant Commissioner Murphy and was informed that there was a procedure in place in respect of the granting of a transfer in lieu of suspension in accordance with Regulation 35 and the Garda policy in that regard. Time was short in that Detective Sergeant White’s suspension was to be the subject of a decision by Assistant Commissioner Murphy as to whether it should be extended before 19.00 hours on the 24th of March.**

¹⁰¹ Tribunal Documents – Anonymous Allegations, pages 709-710.

¹⁰² Tribunal Documents – Anonymous Allegations, pages 714-715.

¹⁰³ Tribunal Documents – Anonymous Allegations, pages 712-713 and see also Tribunal Documents – Anonymous Allegations, pages 1040-1052.

Rather than adhere to the normal procedures in these circumstances, in effect an application for a permanent transfer under Chapter 7 of the Garda Code was made in a rushed fashion by Detective Sergeant White in the hope that it would be acceded to and that his suspension would not be continued. This was clearly recognised by Chief Superintendent Fitzpatrick, who headed his letter “Re: Permanent Transfer” when sending up the transfer by facsimile to Assistant Commissioner Murphy, and by the Assistant Commissioner, who referred to the transfer as permanent in the memorandum of the 24th of March. The Tribunal understands that in normal circumstances transfers under Chapter 7 should not have anything to do with the issue of discipline. However, in this instance, whether by reason of oversight or confusion caused by the urgency created by the pressure of time, the matter was dealt with as an application for permanent transfer. This was acknowledged by Assistant Commissioner Murphy to be outside the four walls of the suspension procedure.

2.117. The Tribunal is satisfied that Assistant Commissioner Murphy permitted a delay in relation to his decision as to whether he should suspend Detective Sergeant White further until he received this application for transfer. Having received it, he then made a decision to transfer Detective Sergeant White permanently out of the Donegal division to the S.D.U. in Dublin. The Tribunal is satisfied that Assistant Commissioner Murphy misdirected himself in this case in the way in which ‘transfer in lieu of suspension’ should operate. That system only applied to temporary transfers. It only applied where the nature of the case was such that it could be operated satisfactorily while keeping the member working in circumstances where the public interest would not be prejudiced. Permanent transfer was never envisaged as a substitute for suspension. What may have led to this misunderstanding was the fact that a transfer in lieu of suspension could only operate with the Garda’s consent and therefore Assistant Commissioner Murphy needed to know that Detective Sergeant White was agreeable to the transfer before operating the system. This may have led to the request that Detective Sergeant White put in an application for transfer.

2.118. The Tribunal is completely satisfied, bearing in mind Assistant Commissioner Murphy’s limited state of knowledge about Detective Sergeant John White, that he did not transfer Detective Sergeant White away from Donegal in order to protect any senior officer of An Garda Síochána or for any improper reason. He afforded Detective Sergeant

White the time and opportunity to make his application for a transfer only at the request of Detective Chief Superintendent Jennings and ultimately granted the transfer because he believed it to be an appropriate step to take in the light of the facts of which he was then aware concerning Detective Sergeant White's case.

- 2.119. The Tribunal is satisfied also that there was no reason why Assistant Commissioner Murphy should not have conformed to the ordinary procedure and practice in relation to transfer in lieu of suspension on a temporary basis with his consent as is envisaged within the disciplinary regulations and practice. The Tribunal is satisfied that the procedure whereby Detective Sergeant White was permitted to make an application for permanent transfer was totally mistaken, but it was a bona fide mistake and an incorrect use of the system.
- 2.120. The Tribunal is further satisfied that in reaching this decision due regard was not had to the nature of the offence under investigation in respect of Detective Sergeant White. The allegations under enquiry in respect of which Detective Sergeant White had been arrested on the basis of reasonable suspicion are clearly allegations which, if true, rendered Detective Sergeant White unfit to operate as a Detective Sergeant in any capacity and would have warranted his dismissal. The Tribunal is satisfied that when senior officers have conducted an investigation that results in the arrest of a member of An Garda Síochána concerning an offence that strikes at the root of the proper and independent functioning of the police service, suspension is the appropriate remedy in order to protect the integrity of An Garda Síochána pending the outcome of the enquiry. While the Tribunal acknowledges that every case must be considered on its own facts, nevertheless it is difficult to envisage a more serious case for a serving Garda, or one more intimately connected with the carrying out of his duties as a Garda. The Tribunal is satisfied that in a case such as this it should require extraordinary circumstances to justify the non-continuance of a suspension until an investigation is completed. The Tribunal is not satisfied that any such extraordinary circumstances existed in this case. However, it should be clearly noted that whilst the Tribunal may take a different view in respect of the merits of the decision made by Assistant Commissioner Murphy, it is absolutely satisfied that it was a bona fide decision made under pressure of time in an effort to deal humanely and decently with Detective Sergeant White. Insofar as the facsimile of the 15th of July 2000 implies any base motive for the making of this decision, the Tribunal utterly rejects that proposition.

- 2.121. The Tribunal is also satisfied that insofar as Detective Chief Superintendent Jennings meddled in this affair, he was not in any way motivated by a desire to protect any other senior officer in An Garda Síochána or by any base motive whatsoever. I am satisfied that his actions in contacting Assistant Commissioner Murphy and Chief Superintendent Fitzpatrick were in response to Detective Sergeant White's plea for help. Detective Sergeant White was obviously operating under extreme stress at the time and consulted with a psychiatrist on the afternoon of the 23rd of March. In his dealings with Detective Sergeant White, Detective Chief Superintendent Jennings had always found him to be an excellent Garda officer and never thought of him as someone who would get involved in the kind of behaviour alleged against him. He acknowledged that he was happy, even though Detective Sergeant White had been arrested, to help him in any way that he could. The Tribunal is satisfied that Detective Chief Superintendent Jennings' actions were guided by a plea made to him by Detective Sergeant White that he had to get out of Donegal. He acknowledged that the mere fact of making an enquiry on behalf of a Garda who had served with him or under him perhaps gave some weight to an application for a transfer. The Tribunal is satisfied to accept Assistant Commissioner Jennings's evidence that he telephoned Assistant Commissioner Murphy in order to obtain information concerning the issue of transfer from the Assistant Commissioner and also to alert him to the fact that Detective Sergeant White was a person who had a good record and somebody to whom he was inclined to offer support. The Tribunal is satisfied therefore that in that sense Detective Chief Superintendent Jennings was putting in a good word for Detective Sergeant White and that he also informed Assistant Commissioner Murphy of the stressed condition in which he found the Detective Sergeant on the 23rd of March. The latter was something of which Assistant Commissioner Murphy was unaware and could be thought useful in arriving at the decision he had to make. The former was an attempt on the part of Detective Superintendent Jennings to deal humanely and decently with the plea made to him by Detective Sergeant White. The Tribunal is absolutely satisfied that Detective Chief Superintendent Jennings did not act with any corrupt or base motive by contacting Assistant Commissioner Murphy.¹⁰⁴
- 2.122. The intervention by Detective Chief Superintendent Jennings was calculated to assist Detective Sergeant White to obtain the optimum result in the circumstances, which was regarded as a transfer out of Donegal.

¹⁰⁴ Transcript, Day 591, pages 4-91.

The combination of the misapplication of disciplinary rules and practice already considered, and the likely knowledge within Letterkenny Garda Station that Detective Sergeant White had been to see a senior officer in Dublin, which visit had been followed by a series of phone calls between officers in Letterkenny and Dublin, following which his suspension was lifted and he was given a permanent transfer to Dublin, created an air of mystery and suspicion around the transfer. It even affected Chief Superintendent Fitzpatrick's perception of events. The effect of Detective Chief Superintendent Jennings's intervention therefore was to leave these events open to the construction of a conspiracy theory as set out in the facsimile, which was grafted onto the actual events accompanied by rumour and innuendo, which Mr. Frank McBrearty Senior, in his then state of mind, was happy to advance.

- 2.123. The Tribunal recommends that the Garda Code in relation to discipline and transfer and the Garda Regulations in relation to discipline be amended to incorporate the present practice and policy whereby transfer in lieu of suspension may be considered in respect of a person whom the Assistant Commissioner has decided to suspend. This will contribute to a clearer and more transparent suspension procedure and practice. If a Garda is under suspension, a permanent transfer should not be considered or granted until the suspension or disciplinary issue has been determined.

(2) Allegation of Perjury

- 2.124. The facsimile of the 15th of July 2000 also contained an allegation that Sergeant Sarah Hargadon, and Gardaí Shaun Barrett and Noel Keaveney should be under inquiry because of allegations that they were at the forefront of the alleged harassment and abuse of Mr. McBrearty Senior and his extended family and were involved in using public monies allocated to B.S.E. duties to harass and intimidate Mr. McBrearty Senior and his family and "giving evidence in open Court, under oath, as instructed by a Garda superintendent, thereby, committing [allegedly] barefaced perjury??"
- 2.125. This allegation relates to evidence given by the three Gardaí in the course of the District Court prosecutions initiated against Mr. Frank McBrearty Senior, his family and staff in the years 1996 to 1998 and ultimately withdrawn in June 2000. In the course of those prosecutions Sergeant Sarah Hargadon, Garda Shaun Barrett and Garda Noel Keaveney gave evidence in respect of a number of incidents relating to the summonses. In the course of their cross-examination the alleged existence of a divisional circular issued by Garda management in Letterkenny directing Gardaí on the ground to monitor the extended McBrearty family and file

reports in respect of their movements was canvassed with the three Gardaí. The Tribunal is satisfied that no such document ever issued from Letterkenny Garda Station. However, a document was issued under the direction of Chief Superintendent Denis Fitzpatrick dated the 27th of February 1998. It was in the following terms:

Confidential

Superintendent,
Letterkenny

Re: Campaign to discredit Gardaí in Donegal Division

I refer to the attempts to discredit Gardaí from this Division and other members involved in the Barron investigation.

There is information to hand which suggest Frank McBrearty (Senior) from Raphoe is financing a campaign to discredit Members of the Force. The campaign is being operated mostly by Mr. Billy Flynn, and sometimes trading as Zimmermann & Co. from Enfield, Co. Meath.

Members of your District Force, and Gardaí who assisted in the investigation into the Richard Barron death should be notified of this matter, and directed to report any incidents or unusual contact that may occur either with Mr. McBrearty and his extended family or Mr. Flynn and his employees.

This document is for Garda use only and is confidential.

D.N. Fitzpatrick
Chief Superintendent¹⁰⁵

- 2.126. On the 9th of December 1998, Mr. Ken Smyth recorded in a memorandum of consultation, now available to the Tribunal, that Mr. P.J. Togher produced a copy of this divisional circular to Mr. Frank McBrearty Senior, Mr. Smyth and Mr. Martin Giblin S.C. It is noted that though Mr. Giblin viewed the document, Mr. McBrearty Senior and Mr. Smyth declined to view it. Mr. Smyth recorded that:

In the utmost confidence, he told us about a Divisional Circulation dated the 22nd of February 1998 and asked could we get a court order for its production. He had it in his hand and was willing to show it to us. He was conscious of his obligations under the Official Secrets Act. He said that the document could have a grave effect on the members. It was dated the 22nd of February 1998 but arrived on the 20th of March 1998. Counsel said that we would give our right arm to read it. Garda Togher said that

¹⁰⁵ Tribunal Documents – Harassment, page 1469.

he hates injustices and that is why he was speaking to us. ... Garda Togher handed the document to counsel confidentially to read. Frank and I purposely did not read it. Garda Togher left shortly afterwards and we thanked him formally for his help.¹⁰⁶

Subsequently during the course of the District Court hearings the existence of the circular was put to these Gardaí. From the note taken by Mr. Smyth, however, the document was described by counsel acting on behalf of Mr. Frank McBrearty Senior as a document targeting the extended McBrearty family. The impression given was that it was a direction to Gardaí to report on the movements of members of the extended McBrearty family and their agents, in much the same way as reports might be submitted to a collator in relation to the movements of known criminals. The document was not produced at the time of this cross-examination and it does not appear from the note of the cross-examination made by Mr. Smyth that the fact that the document had been viewed by Mr. Giblin was made known to the Court. Indeed, discovery of the document was sought. When the document was described to these Gardaí they denied that they had seen it.

2.127. After legal argument, Superintendent Lennon, having first asserted privilege against its production on the basis that it was a confidential Garda document, waived the privilege and produced a copy of the divisional circular, which had been issued by Chief Superintendent Fitzpatrick, as set out above. When the document was produced, another Garda witness, Garda Pádraig Mulligan, admitted that he had seen the document. He thought that he had seen it in Raphoe Garda Station. The Tribunal has already considered this matter in the seventh report of the Tribunal.¹⁰⁷

2.128. In that report the Tribunal reached the following conclusion:

6.65. I am satisfied that the allegation levelled against the Gardaí concerned to the effect that they committed perjury as to whether they had seen the document is not well founded. While Mr. Smyth's note is not a complete note by any means, it is fair to say that the description given by counsel for the Defence to the Garda witnesses when asking them about this matter, did not accurately accord with the content of the divisional circular. In particular they were asked as to whether there was any document which targeted the extended McBrearty family by instructing them to report on movements or interaction which they had with Mr. McBrearty Senior or his private investigator. The circular which issued from Chief Superintendent Fitzpatrick only required the Gardaí to report "any incidents or unusual contacts" that may occur

¹⁰⁶ Tribunal Documents – Anonymous Allegations, pages 1138-1139.

¹⁰⁷ Report on Allegations of Harassment of the McBrearty family of Raphoe, County Donegal and of relatives, associates and agents of that family by members of the Garda Síochána, paragraphs 6.62 to 6.65, Chapter 6.

either with Mr. McBrearty Senior, his extended family, or his private investigator. In these circumstances, and in the absence of very clear evidence of what was said in the District Court, the Tribunal is not prepared to make any finding of perjury against any of the Garda witnesses questioned on this aspect.

- 2.129. The Tribunal is satisfied that this allegation and the allegation in respect of the abuse of B.S.E. funds considered later became an issue of particular and personal focus for Mr. Frank McBrearty Senior. It is clear that by February 1998 the main period of alleged harassment of the McBrearty business, which was at its most intense up to August of 1997, was over. Yet in July 2000 Mr. McBrearty Senior was persisting in his pursuit of Sergeant Hargadon, Garda Barrett and Garda Keaveney. The allegation contained in the facsimile of the 15th of July was unfair and unwarranted.

(3) B.S.E. Allegations

- 2.130. The 'B.S.E. operation' in the Donegal division ran from March 1996 to June 1998. It involved the allocation of extra funding to pay for increased policing of border areas to detect illegal movements of livestock. These measures were put in place to combat the spread of B.S.E. or 'mad cow disease', as it is colloquially known, which at that time threatened the future of the Irish beef industry. The extra funding provided not only for the temporary transfer of additional members of An Garda Síochána into the various border divisions, but also for the payment of overtime expenses to those from within the division who were allocated to B.S.E. duties in addition to their regular duties. The substance of the 'B.S.E. allegations' is that a portion of this funding was covertly applied to providing extra policing for the town of Raphoe on weekend nights. The allegation was made against the background of Mr. Frank McBrearty Senior's claims, as set out in detail in the Tribunal's seventh report, that his business was subjected to unwarranted police attention in the form of raids and police checkpoints in the vicinity thereof, in a manner that was disproportionate to legitimate policing requirements, thereby damaging his business by unduly discommoding his employees and clientele. The implication of the B.S.E. allegations is that it was possible to disguise this alleged campaign of harassment by committing to Raphoe members of An Garda Síochána who were officially assigned to B.S.E. duties elsewhere.
- 2.131. The B.S.E. allegation seems to have first appeared as a query raised by Frank McBrearty Senior during the course of his meeting with Detective Sergeant James Fox and Sergeant Dermot Flannery on the 27th of March 2000, which has been referred to earlier in this report. The query read:

Q.24 Why was BSE money used by Gardaí on overtime to raid my premises.¹⁰⁸

- 2.132. The allegation appeared in the following form in the second anonymous facsimile received by Deputy Jim Higgins on the 15th of July 2000, the contents of which cast doubt on the independence and competence of the ongoing Carty investigation:

Another matter causing grave concern is the fact that certain Gardaí. who were involved in the instructed harassment and abuse of Mr. McBrearty and his extended family are not coming within the scope of this investigation, namely, Gardaí Shaun Barrett, Noel Keaveney and Sergeant Sarah Hargadon. Those members were at the forefront of this alleged and instructed conspiracy. i.e. using public monies allocated to B.S.E. duties to harass and intimidate Mr. McBrearty and his family, giving evidence in open Court, under Oath, as instructed by a Garda Superintendent, thereby, committing [allegedly] barefaced perjury?¹⁰⁹

- 2.133. In addressing this allegation, the Tribunal focussed on three main areas. Firstly, it looked at the overtime payment system in the Letterkenny division, with a particular emphasis on the B.S.E. budget, to determine whether there was any evidence of an orchestrated campaign of applying B.S.E. funds to public order policing in Raphoe. Secondly, the Tribunal looked at the duties performed by the three Gardaí mentioned in the anonymous facsimile to determine whether any or all of them, whilst ostensibly performing B.S.E. duties, actually engaged in public order duties in Raphoe, and, if so, to what extent those duties were mandated. Finally, the Tribunal looked at the duties performed by Gardaí who were drafted into the Donegal division as part of the B.S.E. operation with a view to determining whether, and if so, to what extent, they were deployed on public order policing duties in Raphoe.

The B.S.E. Operation

- 2.134. Each Garda district to which B.S.E. funding was allocated drew up an operational order setting out the objectives, methodology and logistics of the operation in that district. The operational orders for the Letterkenny district were known as 'Operation Matador'. A total of five such orders were drawn up covering the different phases of the operation. The first two phases, up to the 7th of October 1996, involved the maintenance of a permanent checkpoint on each of the twenty-three border crossings in the district. Phase Three, which commenced on the 7th of October 1996, provided for just one permanent static checkpoint on Lifford Bridge, with the other officers allocated to the operation manning a series

¹⁰⁸ Tribunal Documents, page 954.

¹⁰⁹ Tribunal Documents, pages 746-747. (The additional question mark is not a typographical error, but a true representation of the text appearing in the document).

of non-permanent or mobile checkpoints along the border. When Phase Four of the operation commenced on the 25th of February 1997, the system of monitoring became fully mobile. The district was divided into two zones for the purposes of both Phases Three and Four: Ballybofey to Castlefin and Carrigans to Lifford. Two dedicated B.S.E. operational patrol cars were allocated to each zone. The fifth and final phase of the operation ran from October 1997 to June of the following year. As the period during which the harassment of the McBrearty premises, as set out in the Tribunal's seventh report, occurred during Phases Three and Four of the B.S.E. operation, it is the operational orders for these phases with which the Tribunal is most concerned in assessing whether B.S.E. funds were misapplied to facilitate this harassment. The operational orders for Phases Three and Four of Operation Matador set the following objectives for the mobile units on BSE duty:

1. To maintain the integrity of the bovine herd in the state.
2. To prevent any illegal movement of cattle and bovine products into the state.
3. In addition to the foregoing, members on these duties will continue to be vigilant in preventing subversive and criminal activity and enforcing road traffic legislation, particularly speed offences and seatbelts, to give effect to the current Garda offensive on these matters.¹¹⁰

2.135. The specific duties of each mobile unit were then set out in the operational order, with areas of particular concern highlighted. Various schedules of checkpoints were set out and the operational order directed that they be strictly adhered to. However, operational orders indicated that "B.S.E. patrol cars will assist in routine police duties when matters of an urgent nature arise".¹¹¹ It was therefore clearly envisaged that a patrol car and Gardaí on B.S.E. duty could, on occasion, be diverted to deal with a particular situation that required additional manpower on an ad hoc basis. It should also be noted that whereas the operational order for Phase Three of 'Operation Matador' (i.e. covering the period 7th October 1996 – 25th February 1997) contained a provision indicating that temporary transfer members drafted into the division for B.S.E. duties would be deployed solely for that purpose and "will not perform routine patrol duties",¹¹² no such provision is set out in the operational order in respect of Phase Four.

2.136. Superintendent Bartholomew Faulkner¹¹³ and Inspector John J. Keane¹¹⁴ both prepared reports with a view to determining whether the additional funding

¹¹⁰ Tribunal Documents - Harassment, pages 2499-2500 (Phase 3) and 2514 (Phase 4).

¹¹¹ Tribunal Documents - Harassment, page 2503 (Phase 3) and 2517 (Phase 4).

¹¹² Tribunal Documents - Harassment, page 2500.

¹¹³ Tribunal Documents - Harassment, pages 2533-2535.

¹¹⁴ Tribunal Documents - Harassment, pages 2441-2468.

allocated in respect of B.S.E. duties was misapplied. They conducted an analysis of the various duty details (D27s) and occurrence books for Raphoe, overtime claim forms (A85s) and travelling and subsistence allowance claims (Forms A13s) of members of An Garda Síochána employed as part of the B.S.E. operation. The relevant Gardaí submitted statements to the investigators, outlining their duties during the operation. Inspector Keane's ultimate finding was that, "[he] did not find evidence to substantiate the allegation nor did [he] find evidence of criminality against the three named members".¹¹⁵ The Tribunal investigators, Mr. Cummins and Mr. Finn, conducted additional inquiries into the matter, with a particular emphasis on the circumstances, if any, in which members of an Garda Síochána ostensibly engaged in B.S.E. related duties were directed to Raphoe to deal with public order matters there. The Tribunal investigators' findings are contained in a statement by Mr. Cummins,¹¹⁶ the contents of which were not challenged by any party before the Tribunal. Mr. Cummins was "...of the considered opinion ... that, but for the anonymous allegation itself, there is no evidence to support the allegations advanced against Sergeant Sarah Hargadon, Garda Noel Keaveney or Garda Shaun Barrett."¹¹⁷

- 2.137. Garda Tina Fowley took up duty as administrative assistant in what later became known as the Operational Planning Office shortly after the commencement of the B.S.E. operation in April 1996. Her duties in the office included the preparation of duty details and the checking of overtime claim forms, not merely in respect of the B.S.E. operation, but in respect of all policing operations incurring overtime within the Letterkenny district. All operational matters requiring manpower outside normal district resources were sourced and organised from the office. Overtime was divided into three categories in the records kept by Garda Fowley: B.S.E. overtime, B.S.E. consequential overtime and regular policing overtime. The duty detail for the B.S.E. operation was generally drawn up three days in advance. A completely separate system of mandating extra manpower existed in respect of other regular policing operations and these were accounted for in the regular policing overtime budget. Amongst the operations falling into this category was public order policing in Raphoe. Garda Fowley oversaw the entire system of overtime within the district, by comparing the overtime claim forms (A85s) and subsistence and traveling expense claim forms (A13s) of members against the relevant duty details, which were retained in the Operational Planning Office, when the former were submitted at the end of each roster period.¹¹⁸

¹¹⁵ Tribunal Documents - Harassment, page 2468.

¹¹⁶ Tribunal Documents, pages 1156-1173.

¹¹⁷ Tribunal Documents, page 1173.

¹¹⁸ Tribunal Documents - Harassment, pages 2481-2484 (Statement of Garda Fowley submitted to Inspector Keane's investigation) and pages 2761-2771 (Statement of Garda Fowley to Tribunal Investigators Cummins and Finn).

- 2.138. The Tribunal is satisfied that Garda Fowley performed her duties in this regard in a meticulous, professional and evenhanded manner. The Tribunal is satisfied from the records provided by Garda Fowley and from an analysis of the relevant duty details and overtime claim forms that funds designated for B.S.E. overtime were applied to that purpose and that any supplement of manpower for public order policing duties in Raphoe came from the regular policing overtime budget.

Sergeant Hargadon, Garda Keaveney and Garda Barrett

- 2.139. Amongst the local officers engaged on B.S.E. duties on a number of occasions was Sergeant Sarah Hargadon. Sergeant Hargadon was transferred to Raphoe upon promotion to that rank on the 18th of June 1997. She had never worked in Raphoe prior to her promotion there. During her time in Raphoe, Sergeant Hargadon did not perform any B.S.E. duties on weekend nights. From her arrival in Raphoe to the conclusion of the B.S.E. operation, Sergeant Hargadon performed nineteen tours of public order duty on weekend nights in Raphoe. On a number of occasions, Sergeant Hargadon was involved in inspections of the McBrearty premises during this time. Many of these have been described in detail in the Tribunal's seventh report. In any event, they had nothing to do with the allocation of B.S.E. monies.¹¹⁹ The allegation that Sergeant Hargadon was involved in a conspiracy to use money allocated for B.S.E. duty to intimidate or harass Mr. McBrearty Senior or his business interests is therefore entirely without foundation.
- 2.140. Garda Noel Keaveney was transferred to Raphoe from Lifford on the 14th of July 1997. The records indicate that he attended at Raphoe on two occasions prior to this date while working on B.S.E. mobile duty. On the first occasion, the evening of the 27th – 28th June 1997, Garda Keaveney participated in traffic management duties outside Frankie's nightclub and arrested an individual who was committing a public order offence. In a report dated the 9th of July 1997, Superintendent Kevin Lennon indicated that due to serious public order difficulties in Raphoe on that occasion, with which the members of An Garda Síochána present were unable to cope, reinforcements were requested. The individual who Garda Keaveney arrested was responsible for breaking windows in the Diamond.¹²⁰
- 2.141. The following weekend, Garda Keaveney was again requested to attend in Raphoe when public order difficulties arose. On that occasion, he made two further arrests for criminal damage and public order breaches. The Tribunal is satisfied that the two occasions on which Garda Keaveney attended in Raphoe while officially on B.S.E. duty fall within the provision of the operational order

¹¹⁹ Tribunal Documents - Harassment, pages 2673-2699 (forms A85 of Sergeant Hargadon for period 24th March 1996 – 19th April 1998).

¹²⁰ Tribunal Documents - Harassment, pages 2278-2280.

that mandates those on B.S.E duty to assist with routine police business when matters of an urgent nature arise. Upon his transfer to Raphoe, Garda Keaveney was regularly involved in public order policing at weekends in Raphoe, but this was within the context of his regular duties, and was rostered as such.¹²¹ The allegation that Garda Keaveney was involved in a conspiracy to use money allocated for B.S.E. duty to intimidate or harass Mr. McBrearty Senior or his business interests is therefore entirely without foundation.

- 2.142. Garda Shaun Barrett was transferred to Raphoe from Castlefin Garda station on the 14th of July 1997. The records indicate that he attended Raphoe in relation to public order difficulties on two occasions while working on B.S.E. mobile patrol duty. On the 5th/6th of September 1997, Garda Barrett and Garda Taafe, who were on B.S.E. duty in the Castlefin patrol car at the time, assisted in quelling a fight in Raphoe.¹²² On the 21st/22nd of March 1998, Garda Barrett assisted on checkpoint duty in Raphoe from 03.20 hours to 04.30 hours while officially on B.S.E. duty in Lifford.¹²³ The Tribunal is satisfied that the two occasions on which Garda Barrett attended in Raphoe while officially on B.S.E. duty fall within the provision of the operational order that mandates those on B.S.E duty to assist with routine police business when matters of an urgent nature arise. Upon his transfer to Raphoe, Garda Barrett was regularly involved in public order policing at weekends in Raphoe, but this was within the context of his regular duties, and was rostered as such.¹²⁴ The allegation that Garda Barrett was involved in a conspiracy to use money allocated for B.S.E. duty to intimidate or harass Mr. McBrearty Senior or his business interests is therefore entirely without foundation.

Members on Temporary Transfer

- 2.143. Superintendent Philip Lyons gave evidence that he was drafted into the Donegal division to supervise the B.S.E. operation on three separate tours of duty.¹²⁵ The operation primarily made use of local resources. The various checkpoints and other associated operations were conducted on a 24-hour basis at the height of the crisis. As has already been noted in the Tribunal's seventh report,¹²⁶ Inspector Lyons was directed by Superintendent Kevin Lennon to go to Raphoe on the evenings of the 4th and 5th of July 1997 to make a report on public order issues. That report outlined in great detail the public order difficulties that existed in Raphoe at that time. In his report, Inspector Lyons indicated that, "...without

¹²¹ See Forms A85 of Garda Keaveney for period 26th February 1996 – 19th April 1998 at Tribunal Documents - Harassment, pages 2613-2640.

¹²² Tribunal Documents - Harassment, page 2529 (extract from Raphoe Occurrence Book).

¹²³ Tribunal Documents - Harassment, page 2574 (extract from Raphoe Occurrence Book as entered by Sergeant Hargadon).

¹²⁴ See Forms A85 of Garda Barrett for period 26th February 1996 – 19th April 1998 at Tribunal Documents - Harassment, pages 2641-2672.

¹²⁵ Transcript, Day 639, pages 3-4.

¹²⁶ Tribunal's Seventh Report, paragraphs 4.16-4.19.

exaggeration the scene at Raphoe between 2 a.m. and 3.30 a.m. on Friday night/Saturday morning was the most serious I have ever witnessed in relation to a licensed premises.”¹²⁷ He went on to indicate that he felt the situation required “urgent and high profile attention”.¹²⁸

2.144. Although Inspector Lyons’ attendance in Raphoe on that weekend fell outside the scope of his B.S.E. duties, the Tribunal is satisfied that Superintendent Lennon’s direction for him to attend at Raphoe was directly tied in with the escalation in public order difficulties that had manifested themselves there over the previous weekends, with the introduction of a drinks promotion at Frankie’s Nightclub.¹²⁹ The Tribunal is satisfied that Inspector Lyons performed his duties in Raphoe in a thorough, even-handed and professional manner. Inspector Lyons’ form A85 for that roster period shows his duties as “B.S.E. Inspections and Duty Raphoe”.¹³⁰ There was therefore no subterfuge whereby his public order duty in Raphoe was in any way disguised as B.S.E. duty. In addition to his attendance at Raphoe on the occasion as outlined above, Inspector Lyons also performed court duties and policing duties in connection with sporting events during his time in Letterkenny. He estimated that during his time on temporary transfer in the Letterkenny district, more than 90% of his time was taken up with B.S.E. duties, while about 10% was taken up by other duties as directed by the district officer.¹³¹ The Tribunal is satisfied that, as Inspector Lyons’ tours of duty in the Letterkenny District took place during Phases Four and Five of ‘Operation Matador’, it was permissible for the district officer to deploy him on other police duties in addition to his B.S.E. duties. His duty records indicate that the allegation that he was involved in a conspiracy to misapply B.S.E. monies is completely without foundation.

2.145. Inspector James Griffin, Inspector John Dunleavy and Sergeant Noeleen Griffin were also temporarily transferred to the Letterkenny district at various stages during the B.S.E. operation. Inspector Griffin attended at a bomb scare in Frankie’s Nightclub on the 3rd/4th of May 1997.¹³² He also has a diary entry indicating that he visited Raphoe the following night due to ‘problems at the Parting Glass Nightclub. No arrests’.¹³³ Inspector Dunleavy attended at a bomb scare in Frankie’s Nightclub on the 23rd of November 1997.¹³⁴ Sergeant Noeleen Griffin took part in undercover operations at Frankie’s Nightclub on the 20th and

¹²⁷ Tribunal Documents - Harassment, page 2120.

¹²⁸ Tribunal Documents - Harassment, page 2121.

¹²⁹ See report of Superintendent Lennon dated 9th July 1997 at Tribunal Documents - Harassment, pages 2278-2280.

¹³⁰ Tribunal Documents - Harassment, page 2711.

¹³¹ Tribunal Documents - Harassment, page 2839 (interview with Tribunal Investigator Cummins dated 7th March 2007).

¹³² See statement of Inspector James Griffin dated 13th May 1997 at Tribunal Documents - Harassment, pages 2888-2889.

¹³³ Tribunal Documents - Harassment, page 2890.

¹³⁴ See report of Inspector Dunleavy dated 1st December 1997 at Tribunal Documents - Harassment, pages 2789-2791.

27th of April 1997 and on the 4th of May 1997 that have been described in detail in the Tribunal's seventh report.¹³⁵ She was rostered for B.S.E. duties on the night of the 3rd/4th of May 1997.¹³⁶ However, the Tribunal is satisfied that her attendance in Raphoe that night was not in any way part of an alleged scheme or conspiracy to use public monies allocated to B.S.E. duties to harass or intimidate Mr. McBrearty Senior and his family.¹³⁷ The Tribunal is satisfied that each of these officers attended in Raphoe on a *bona fide* basis under direction from a more senior officer and performed their duties there in a professional manner. The phase that had been reached in 'Operation Matador' made it permissible for the officers concerned to be deployed in such a manner. **The Tribunal rejects the allegation that any or all of the above officers were involved in a conspiracy to misapply B.S.E. monies to intimidate or harass Mr. McBrearty Senior or his business interests.**

Conclusions on the B.S.E. Allegations

- 2.146. The Tribunal is satisfied that the B.S.E. allegations are without substance. The three local officers named in the anonymous facsimile were generally deployed on regular public order duty at weekends when they were posted in Raphoe. Sergeant Hargadon never performed public order policing duties in Raphoe while rostered for B.S.E. duties. Gardaí Barrett and Keaveney both performed public order duties in Raphoe on two separate occasions while officially on B.S.E. duty, in response to particular public order situations and at the direction of senior officers. Each of these situations fell within the scope of the operational order on which the B.S.E. operation was based. On each of these occasions, the member concerned performed his or her duties professionally and expeditiously. A number of officers from outside the Donegal division who were drafted in to perform tours of duty as part of the B.S.E. operation performed limited duties in Raphoe. They focused on an important public order problem that existed in the town at the time, and the duties performed by the officers concerned were designed to solve rather than to exacerbate that problem. These officers performed their duties in a professional and expeditious manner. There was no subterfuge involved. Funds allocated to pay for the B.S.E. operation were applied and accounted for in a proper manner. Once again the allegation that there was an abuse of funds had been grafted onto a wholly innocent set of circumstances in a mischievous attempt to undermine the careers of a number of Gardaí and, in particular, the three Gardaí named in the facsimile.

¹³⁵ Tribunal's Seventh Report, paragraphs 3.38 – 3.40.

¹³⁶ Tribunal Documents - Harassment, pages 2810-2811 (forms A85 of Sergeant Noeleen Griffin).

¹³⁷ Transcript, Day 633, pages 166-172.

CHAPTER 3

THE MAKING OF THE FALSE ALLEGATIONS

- 3.01. This section of the report seeks to identify the course of events that preceded and precipitated the making of the false allegations on the 25th of June and the 15th of July 2000. These allegations, if true, would have devastated public confidence in An Garda Síochána. It was therefore important to establish the identity of those who sought to bring this about and why. The Tribunal is satisfied that the motivation of those making the allegations was the achievement of a political goal: the establishment of a Tribunal of Inquiry into allegations of Garda wrongdoing in Donegal. To do that Assistant Commissioner Carty's investigation had to be undermined and that was the expressed object of both facsimiles, more particularly the first. The second facsimile was calculated to have the same effect but was not deployed for the intended purpose. Why that was so is explained later in this section. The following section chronicles what the Tribunal is satisfied are the relevant events leading up to the emergence of these allegations in the two facsimiles, the various attempts made to identify the source of the allegations by An Garda Síochána and by the Tribunal, and the conclusions reached by the Tribunal on that matter.

Background

- 3.02. The making of these allegations can only be understood when set against events that occurred in the Donegal division of An Garda Síochána in the four years prior to June 2000. In the early hours of the morning of the 14th of October 1996 the body of the Late Richard Barron was discovered on the roadway just outside the town of Raphoe. This gave rise to a murder inquiry in which the two main suspects were Mr. Frank McBrearty Junior and his first cousin, Mr. Mark McConnell. They, along with ten other persons, including Mr. Frank McBrearty Senior (Mr. Frank McBrearty Junior's father), were arrested and detained in the course of that investigation. The investigation was negligent and attended by a 'tunnel vision' determination on the part of An Garda Síochána that the two main suspects were guilty. A false confession was obtained from Mr. Frank McBrearty Junior on the 4th of December 1996. This was a Garda investigation in which false evidence was procured by Gardai using an informant, William Doherty, and petty criminals. Attempts were made to implicate Mr. Michael Peoples in the death of the Late Mr. Barron by using the informant William Doherty. He made extortion phone calls to the Peoples' home threatening to inform the Gardai of evidence suggestive of Mr. Peoples' involvement in the death of the Late Mr. Barron. He used the phone in the home of Garda John O'Dowd to do so. There was no such evidence. The Late Mr. Barron died as a result of a hit and run

collision. It was not a murder. The three men were innocent. All of this is chronicled in the second and sixth reports of the Tribunal.¹³⁸ The Garda investigation and focus on members of Frank McBrearty Senior's family and employees produced an outraged response from him. He was determined that the lies, rumours and innuendos surrounding the death of the Late Mr. Barron and the shocking Garda investigation to which he and his family were subjected would be exposed and his family's reputation would be restored.

- 3.03.** His extreme frustration at Garda behaviour was further increased by what he regarded as the unwarranted harassment to which he, his family and his employees were allegedly subjected in the course of 1997 and through to June 2000. In January 1997 Sergeant John White was appointed by Chief Superintendent Denis Fitzpatrick to enforce the liquor licensing laws and public order legislation strictly in the town of Raphoe. Mr. Frank McBrearty Senior, his family and staff alleged that this involved repeated and unnecessary inspections of his nightclub premises on an unprecedented scale, the mounting of roadblocks or checkpoints near his premises to intimidate his customers, the unwarranted prosecution of him and his staff for breaches of the liquor licensing laws and public order legislation and alleged perjury by Gardaí in the course of District Court prosecutions arising out of these events. A total of sixty-eight summonses were issued in respect of events arising out of Garda attendance at his nightclub, involving in excess of one hundred and thirty different charges. Mr. McBrearty Senior also alleged that a number of hoax telephone calls warning of bombs on his premises were orchestrated by members of An Garda Síochána. Mr. McBrearty Senior's complaints focussed on Gardaí and officers attending at his premises or in the town during the course of this period, or who were involved in the prosecutions.
- 3.04.** Mr. Frank McBrearty Senior focussed upon Sergeant John White and Garda John O'Dowd as his alleged main tormentors. Sergeant White at the time of his appointment to Raphoe was the subject of complaints made by Mrs. Róisín McConnell and Mrs. Katrina Brolly of ill treatment whilst they were detained in custody on the 4th of December 1996 during the course of the Barron investigation. Though these allegations were denied initially by Sergeant White, he eventually admitted to most of them in the course of the Tribunal hearings. In addition, Garda John O'Dowd accompanied Sergeant White on many of the nightclub inspections of the premises in respect of which complaint was made.
- 3.05.** One of the allegations that emerged from this period was made by Mr. Paul Quinn, a brother of Mrs. Róisín McConnell, who alleged that on the 9th of February 1997 Sergeant White planted drugs on him in the course of a drugs

¹³⁸ Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples – Term of Reference (a) and (b) and Report of the Tribunal of Inquiry on Arrests and Detentions – Terms of Reference (b), (d) and (f).

search at Raphoe Garda Station. This complaint was included in the information furnished to Deputy Howlin by Mr. Martin Giblin S.C. on the 25th of June 2000, but was not contained in the facsimile of the same date to Deputy Higgins.

- 3.06. Some of the allegations made by Mr. Frank McBrearty Senior were untrue or exaggerated; others were justified. This is all chronicled in the Tribunal's seventh report.¹³⁹ It is clear that Sergeant John White loomed large in Mr. McBrearty Senior's sense of grievance at the manner in which he and his family had been treated. It is also important to note that all of these summonses were withdrawn on behalf of the Director of Public Prosecutions on the 21st of June 2000, a number of days before the facsimile information, the subject matter of this Term of Reference, was received on the 25th of June 2000. The Tribunal is satisfied that the withdrawal of the summonses is a fact that influenced the making of the false allegations and their presentation to the two politicians as matters of urgent importance.
- 3.07. In February 1997, Mr. William Flynn, a private investigator, was retained by Mr. McBrearty Senior to investigate the death of the Late Richard Barron. His brief included a direction that if he unearthed any evidence favourable or unfavourable to the McBrearty family in respect of the death of the Late Mr. Barron it was to be submitted to An Garda Síochána. There is evidence that this was done, though no unfavourable evidence was uncovered. Though Mr. Flynn's retainer by Mr. Frank McBrearty Senior expired sometime in 1998, he continued to maintain a strong interest in the investigation of the death of the Late Mr. Barron and related matters, and engaged in extensive correspondence with the authorities and with Mr. Frank McBrearty Senior throughout this period up to March 2000 and indeed beyond. A number of parties complained about the extensive and prolific correspondence received by them from Mr. Flynn, Mr. Frank McBrearty Senior included. Indeed he felt obliged to request that his solicitor write to Mr. Flynn requesting that he stop sending material to him. The original purpose for which Mr. Flynn was retained was an endeavour on the part of Mr. Frank McBrearty Senior to clear his son's and nephew's names. There was no doubt that Mr. Frank McBrearty Senior was angered and frustrated by the manner in which the Gardaí had treated him and his family and found this Garda attention, the prosecutions and these events to be an enormous personal strain.
- 3.08. The Tribunal has also investigated how Gardaí came to use a petty criminal, Mr. Bernard Conlon, as a witness against Mr. McBrearty Senior in the course of the District Court prosecutions. It concluded in the report on the matter that Bernard Conlon was retained as an agent by Detective Sergeant White through Garda John Nicholson to attend at Frankie's nightclub in Raphoe on the evening of the

¹³⁹ Report on Allegations of Harassment of the McBrearty Family of Raphoe and of Relatives, Associates, and Agents of that family by members of An Garda Síochána – Term of Reference (c).

30th of August 1997. He was directed by Detective Sergeant White to be in possession of as many alcoholic drinks as possible and to co-operate with inspecting Gardaí. This was part of a plan whereby Mr. Conlon would ultimately make a statement as to how he purchased and consumed drinks at Frankie's nightclub after hours, which would form the basis of a prosecution against Frank McBrearty Senior, the licensee of the premises, and members of his staff. Bernard Conlon was promised that he would be, and was, rewarded financially for doing this. This is chronicled in the third report of the Tribunal.¹⁴⁰

- 3.09. On the 21st of March 2000 the Carty team arrested Detective Sergeant White on the suspicion that he was involved with Bernard Conlon in respect of these matters. He was subsequently charged and acquitted. The point to note is that the full rigour of the law was brought to bear on Detective Sergeant White when that was thought to be appropriate in the course of the Carty inquiry.
- 3.10. In addition, Mr. Conlon made false allegations, also chronicled in the third report, against Mr. Mark McConnell and Mr. Michael Peoples that they had threatened him and Sergeant White with a "Silver Bullet" if he were to attend and give evidence against Mr. Frank McBrearty Senior. This allegation was also entirely false and led to the third arrest of Mark McConnell and the second arrest of Michael Peoples by the Gardaí. Mr. Conlon also concocted a story against Mr. William Flynn, whereby he was alleged to have attempted to bribe Mr. Conlon in a menacing fashion not to give evidence against the McBreartys. Mr. Conlon made other allegations against Detective Sergeant John White that he had procured Mr. Conlon to make these false allegations against Mr. McConnell and Mr. Peoples, which the Tribunal did not accept.
- 3.11. Following Detective Sergeant White's arrest on the 21st of March he was suspended. During the course of this initial period of suspension he made an application for a transfer, at the prompting of then Detective Chief Superintendent (now Assistant Commissioner) Dermot Jennings following a meeting in Dublin. This was granted by Assistant Commissioner Fachtina Murphy, who directed his transfer to detective duties at Harcourt Square in Dublin. This made the suspension issue redundant as far as the Garda authorities were concerned. Documents concerning this transfer were leaked from Letterkenny Garda Station and were obtained by Mr. Frank McBrearty Senior prior to the sending of the facsimile of the 15th of July 2000. The allegation was then made in the second facsimile that the lifting of the suspension and transfer of Detective Sergeant White was done contrary to the wishes of Assistant Commissioner Carty and was calculated to undermine his investigation. It was clearly implied that this transfer occurred because of Detective Sergeant White's alleged threat to expose

¹⁴⁰ Report on the Circumstances Surrounding the Arrest and Detention of Mark McConnell on 1st of October 1998 and Michael Peoples on 6th of May 1999 – Term of Reference (d).

wrongdoing by very senior Garda officers. The Tribunal is satisfied that though a transfer was directed it was not done for the purpose implied in the letter. This allegation was included in the second facsimile by Mr. McBrearty Senior and Mr. Togher because they considered that it would advance their call for a public inquiry. Clearly, those who received the second facsimile did not agree and did not use it: any reader must have recognised a glaring contradiction between the condemnatory assessment made of Assistant Commissioner Carty in the first facsimile and the assessment of Assistant Commissioner Carty as a well intentioned diligent officer trying to do the right thing but thwarted in that regard by his colleagues, contained in the second.

3.12. Allegations would later appear in the facsimile letter of the 15th of July 2000 that three Gardaí, namely Gardaí Shaun Barrett and Noel Keaveney and Sergeant Sarah Hargadon, were to the forefront of an organised conspiracy to harass and abuse Mr. McBrearty Senior, his extended family, and his employees in the manner in which they enforced the liquor licensing and public order legislation in Raphoe. This allegedly involved the abuse of monies allocated for B.S.E. duties, which it was alleged were diverted to fund this conspiracy in providing the necessary finance for the man hours required. The letter also included allegations that the three Gardaí had committed perjury in the District Court during the course of the prosecution of summonses against Mr. McBrearty Senior and his family and staff. The latter allegation arose from a divisional circular which was interpreted (inaccurately in the view of the Tribunal) as a direction to target members of the McBrearty family and Mr. William Flynn, a private investigator, working on their behalf. The three Gardaí denied that they had seen a document described in those terms to them by counsel in the course of the District Court prosecutions. The Tribunal was satisfied that the three did not commit perjury. The contention made in court was overblown and a misinterpretation of the document.

3.13. Of importance to this aspect of the inquiry is the fact that these two issues became a core personal complaint repeatedly made by Mr. Frank McBrearty Senior at every opportunity. They were also matters referred to by Mr. P.J. Togher in a meeting with Mr. Kenneth Smyth, solicitor, on the 9th of December 1998. The fact that these singular complaints became what I regard as something of a personal agenda for Mr. Frank McBrearty Senior, and then appeared in the letter of the 15th of July 2000, cannot be regarded as a mere coincidence. In addition, the Tribunal notes that these events were not new matters of complaint: they were historical and had already been canvassed before the District Court. However, they and other matters globally referred to in the District Court as “the wider issue” remained unresolved by reason of the withdrawal of the

summonses. The facsimile of the 15th of July 2000 sought a public inquiry on the basis that the three Gardaí had not been included in the Carty inquiry, and that therefore the inquiry would be a complete failure. The Tribunal notes that a substantial report was delivered in July 2000 by Assistant Commissioner Carty. This letter was also calculated to undermine the Carty inquiry, and ultimately the Carty report.

- 3.14. A further series of events also the subject of inquiry by this Tribunal are relevant to the background to the allegations made on the 25th of June 2000. These are events relating to a Garda investigation of an arson attack on property situated on the site of a telecommunications mast at Ardara, Co. Donegal in October/November 1996.
- 3.15. The Garda investigation of this matter concerned allegations of impropriety by Detective Sergeant White in the conduct of that investigation. Ultimately the Tribunal was satisfied that a device found on the mast was caused to be put on it by Detective Sergeant White for the purpose of effecting arrests under Section 30 of the Offences Against the State Act, 1939 in respect of an earlier arson attack on the mast. It also found that arrests made in respect of the explosive device on the mast were based on a false premise and founded on the wrongdoing of Sergeant White. The investigation centred on the Divers and Shovlin families, who resided in the area of the mast. Those who were subjected to this investigation, their friends and their families were of course aware of what had happened to them. A number of the Gardaí involved in the investigation had serious reservations concerning what happened. The Tribunal is satisfied that both inside and outside An Garda Síochána suspicions and rumours existed in Donegal as to how Detective Sergeant White had behaved in the course of his involvement in that investigation.¹⁴¹ Deputy Tom Gildea brought his concerns about this issue to the attention of the Minister for Justice, Equality and Law Reform in or about March 2000. He, in turn, on the 4th of April 2000 directed that the matter be referred to the Garda Commissioner. The Garda Commissioner then directed Assistant Commissioner Carty to carry out an investigation as part of his overall inquiry in Donegal.¹⁴²
- 3.16. One of Mr. McBrearty Senior's sources of information was a retired Detective Garda, Mr. James Madigan. He had retired from An Garda Síochána in 1993 and in the course of his career had known Mr. McBrearty Senior and had been assisted by him on many occasions in relation to the investigation of local crime. He met Mr. McBrearty Senior in April/May 1997. Mr. McBrearty Senior was in quite a distressed state and showed him the alleged confession made by Mr.

¹⁴¹ Report on the Garda investigation of an Arson Attack on property situated on the site of the Telecommunications Mast at Ardara, Co. Donegal in October and November of 1996 – Term of Reference (g) – see especially paragraphs 1.64 to 1.65 and pages 48-52.

¹⁴² Tribunal Documents – Anonymous Allegations, pages 891-892 and Transcript, Day 577, pages 33-36.

Frank McBrearty Junior in respect of the death of the Late Mr. Barron. Mr. Madigan gave his opinion to Mr. McBrearty Senior that he did not believe the statement was worth the paper it was written on. Mr. Madigan was told about the multiple inspections of the McBrearty licensed premises and he believed it strange that these premises were getting special attention and that the inspections were “overboard”. He met Mr. McBrearty Senior and Mr. McBrearty Senior’s lawyers, Mr. Kenneth Smyth and Mr. Martin Giblin S.C., on a number of occasions between December 1998 and early 2000. He came to the view that Mr. McBrearty Senior was being harassed in respect of the licensing prosecutions, which he thought were excessive. At various meetings he discussed the liquor licensing prosecutions, the case of Mr. Bernard Conlon and the investigation into the death of the Late Mr. Barron. He gave Mr. McBrearty Senior information about a number of other matters that were of concern to him, namely suspicions of wrongdoing in respect of the finding of a device at Ardara in November 1996 and the search of the Gallagher family lands in March 1997, the subject of findings by the Tribunal in its fourth and first reports respectively.¹⁴³ Mr. McBrearty Senior was described as a frequent visitor to Mr. Madigan’s house, as were a number of serving and retired Gardaí. The Tribunal is satisfied that on these occasions all manner of events were discussed in the Madigan household relevant to Garda activity in Donegal, ranging from rumour to suspicion to fact.¹⁴⁴ The Tribunal is satisfied from the evidence of Mr. McBrearty Senior and Mr. Madigan that he first heard suspicions about the Ardara mast affair and the search of the Gallagher lands during his visits to Mr. Madigan, and indeed passed on this material to the Carty inquiry.¹⁴⁵

- 3.17. Mr. Frank McBrearty Senior also said that he received a great deal of information about other misconduct by Gardaí in the Donegal division from Mr. William Flynn in the course of extensive correspondence from him between 1997 and 2000. This may constitute the source of some of the allegations contained in his own correspondence with others.¹⁴⁶
- 3.18. Later, allegations emerged that members of the detective branch of An Garda Síochána deliberately planted a weapon at a campsite of the Irish Traveller Community on Friday the 22nd of May 1998. This was done with a view to ensuring that a search that was planned and in respect of which warrants had

¹⁴³ Report on the Garda Investigation of an Arson Attack on Property Situated on the Site of the Telecommunications Mast at Ardara, Co. Donegal in October and November of 1996 – Term of Reference (g) and Report on “Explosives Finds” in Donegal, Term of Reference (e), pages 387-392.

¹⁴⁴ Transcript, Day 577, pages 152-220 and Transcript, Day 578, pages 3-11 – Evidence of Mr. James Madigan.

¹⁴⁵ Mr. Madigan does not accept that he was the first to give information about the alleged planting of a gun at the Traveller community’s encampment at Burnfoot on the 22nd of May 1998 to Mr. McBrearty Senior. He believed it was Mr. McBrearty who told him about the matter – Mr. Madigan was unwell and hospitalised in April 1998 and the Burnfoot event occurred shortly thereafter while he was recuperating at home. See also Transcript, Day 577, pages 79-151 – Evidence of Mr. Frank McBrearty Senior.

¹⁴⁶ Transcript, Day 576, pages 92-97.

been issued under Section 29 of the Offences Against the State Act for the following day would be successful. The finding of the weapon meant that an arrest under Section 30 of the Offences Against the State Act could be justified. A firearm was planted at the campsite so that a number of individuals could be arrested and interrogated. The Tribunal found in that instance that Detective Sergeant White, on the night of the 22nd of May 1998, planted a very old double barrelled sawn-off shotgun together with clothes and cartridges at a Traveller's encampment at Burnfoot. This was done to secure the arrest of the seven adult Travellers so as to enable the questioning of them by a team investigating the murder of the Late Edward FitzMaurice. In planting the gun, Detective Sergeant White was aided by Detective Garda Thomas Kilcoyne, who acted as lookout at the critical time. Detective Garda Kilcoyne made a lengthy statement admitting these events on the 13th of June 2001. Thereafter, Detective Sergeant White was again arrested on the 19th of June 2001 by the Carty team, following which he was again suspended. The Tribunal cannot conclude that this allegation, referring as it does to 'planting' an item, had any influence on the drafting of the facsimile, as the report of the event only emerged officially in June 2001. One could speculate that elements of this story contributed to rumours or stories that Detective Sergeant White was engaged in planting evidence on people. However, that is only a possibility and the Tribunal has not found any concrete evidence to support its existence as a factor prior to June 2000.

3.19. Further, by June 2000 Mr. Frank McBrearty Senior was well aware that Detective Sergeant White had access to a shed at Gortahork. His private investigator was enquiring into the title to the shed. Mr. McBrearty Senior believed it was used at least for the storage of vintage cars. The Tribunal is satisfied that by June 2000 there were at least two events that gave rise to rumour or suspicion, or an allegation that Detective Sergeant White was involved in the planting of items in order to advance criminal investigations. These were the alleged planting of the drugs on Paul Quinn, and the alleged planting of a device at Ardara. The Tribunal is satisfied that it is around this type of rumour and suspicion that the extensive false allegations contained in the facsimile and information of the 25th of June were constructed.

3.20. In or about 1995 Detective Sergeant Patrick Walsh, a friend and colleague of Detective Sergeant White, made a number of telephone calls to him at Letterkenny Garda Station. To make sure that Detective Sergeant White got the message the sergeant would leave a message that Detective Sergeant White was to phone Assistant Commissioner Hickey. Detective Sergeant Walsh would leave his own mobile telephone number for the return call. Alternatively, he left the assistant commissioner's private secretary's name with this telephone number in

order to ensure that Detective Sergeant White would get the message much more quickly. They both found it somewhat amusing and effective in having the message transmitted to Detective Sergeant White. The Tribunal is satisfied that Detective Sergeant Walsh left the messages. It considers it likely that Gardaí within Letterkenny Garda Station, on hearing of such messages being left for Detective Sergeant White from Assistant Commissioner Hickey or his office, jumped to the conclusion that there was something of a close working relationship between Detective Sergeant White and the assistant commissioner, which was quite untrue. This curious piece of evidence is the only evidential link between Assistant Commissioner Hickey's name and that of Detective Sergeant White in Letterkenny Garda Station. The Tribunal is satisfied that, from the rumour that there was some connection between Assistant Commissioner Hickey and Detective Sergeant White, based on these calls and spread probably by Gardaí amongst themselves and former colleagues and heard by Mr. McBrearty Senior, Assistant Commissioner Hickey was drawn into these appalling allegations; and from this rumour a further lie was constructed.¹⁴⁷

3.21. Towards the end of 1994 Sergeant White approached the then Chief Superintendent Kevin Carty, who was at the time head of the Central Detective Unit, with what appeared to be a promising source of information. From then until June of 1995 Sergeant White travelled to Dublin to talk to his informant and follow up on different aspects of the information with which he was supplied. By February 1996, however, for various reasons Chief Superintendent Carty indicated a reluctance to act on any further information from this source. His contact with Sergeant White in relation to this source of information ended at or about that time. The contact was renewed in September 1996 when further information was brought to Chief Superintendent Carty. At that time he was satisfied that Sergeant White was behaving properly as a Garda. He had confidence in a source of information which was not ultimately shared by Chief Superintendent Carty. He was authorised to visit Dublin and payments in respect of those visits were certified by Chief Superintendent Carty, who was satisfied that these were not in any way excessive and in some respects were minimal claims. It was during this period that the events concerning the "Ballymun case" occurred.

3.22. It should be noted that following his arrest on the 21st of March 2000, Detective Sergeant White insisted that certain complaints that he had against Assistant Commissioner Carty and others be entered in the custody record. It should also be noted that the events concerning the "Ballymun case" referred to by Mr. Giblin and involving Assistant Commissioner Carty, members of his team and Sergeant White, occurred in or about 1995. No allegation was made by Detective

¹⁴⁷ Tribunal Documents – Anonymous Allegations, pages 349-350 (statement of Detective Sergeant Walsh).

Sergeant White of any kind in respect of the “Ballymun case” at that time. The Tribunal is satisfied that contact between Chief Superintendent Carty and Sergeant White between 1994 and 1996, and the payment of expenses to him in respect of duties carried out by him at that time, were reasonably well known within the Donegal division and Letterkenny Garda Station. Once again, the Tribunal is satisfied that some of these factual events became known to Mr. Frank McBrearty Senior and subsequently, whether in the course of the retelling or otherwise, were fashioned into wholly false suspicions and allegations as set out in the first facsimile.

- 3.23. The Tribunal is satisfied that the “Ballymun case” came from Mr. Martin Giblin S.C. in the form of a story supplied much later by a detective sergeant who was friendly with Sergeant White, and is further satisfied that the allegation made by Sergeant White in respect of the “Ballymun case” is false. It was never and could not have been used as a device to blackmail Assistant Commissioner Carty in relation to the conduct of his investigation of Detective Sergeant White which, in any event, was conducted rigorously to the point of criminal prosecution.
- 3.24. In the course of 1997 and 1998 very many reports were sent by Mr. William Flynn concerning his investigations to Garda Headquarters. During 1997 Mr. McBrearty Senior’s civil action against the State and Detective Sergeant John White seeking an injunction to restrain him from carrying out what were alleged to be acts of harassment against him and his business brought events outside the Donegal division to the attention of higher authorities at Garda Headquarters in Dublin and the Chief State Solicitor’s office. In March of 1998 the Director of Public Prosecutions received a report that did not recommend the prosecution of Frank McBrearty Junior in relation to the death of the Late Mr. Barron. This report raised significant issues concerning the alleged confession of Frank McBrearty Junior made on the 4th of December 1996. Mr. McBrearty Senior began to seek the assistance of very many local and other TDs without success during this period. He also began to receive letters and documents and information from other people in Donegal and elsewhere who had grievances against An Garda Síochána and information from serving and retired local Gardaí in respect of their disquiet concerning certain matters.
- 3.25. Early in 1999 Mr. Frank McBrearty Senior retained Mr. Patrick J. Togher, a Donegal based Detective Garda who had retired in October 1998, to carry out what the Tribunal was told were typing duties and other clerical tasks once or twice per month. The Tribunal is satisfied that this association was a close one, and that Mr. Togher offered advice to Mr. Frank McBrearty Senior on information and documents which he was receiving. He also attended numerous important

meetings with Mr. Frank McBrearty Senior and the Tribunal is satisfied that he was closer and of more use to his employer than either of them were willing to admit at the Tribunal. He typed and drafted correspondence for Mr. Frank McBrearty Senior and was sufficiently close to him to enable Deputy Higgins to form the opinion that he was a very reliable source of information on Garda matters in Donegal. Mr. Martin Giblin S.C. relied upon him as another of Mr. McBrearty Senior's associates in Donegal to filter what he regarded as irrelevant communications before they were sent on to him.

- 3.26. Many of Mr. McBrearty Senior's complaints were eventually the subject of the investigation carried out by Assistant Commissioner Kevin Carty. He was directed by a deputy commissioner on the 12th of February 1999 to carry out a special inquiry into matters concerning the Garda investigation of the death of the Late Mr. Richard Barron. Though the immediate cause of concern that precipitated his appointment was apprehension that the Gardaí were involved in an attempted extortion attempt perpetrated against Michael Peoples in November 1996 and the Garda investigation into that matter, this event in itself was inextricably linked to the investigation into the death of the Late Richard Barron and other matters. Shortly after the commencement of the investigation on the 16th of March 1999 there was a very serious development when a Mrs. Sheenagh McMahon, the wife of Detective Garda Noel McMahon, gave certain information to the Gardaí which led to an investigation into alleged hoax explosives finds and the activities of Detective Garda McMahon, Superintendent Kevin Lennon and Ms. Adrienne McGlinchey. This is chronicled in the first report of the Tribunal.¹⁴⁸
- 3.27. It is clear that although Assistant Commissioner Carty carried out a wide ranging and detailed investigation of many of the matters included in this Tribunal's Terms of Reference over a lengthy period, he encountered many of the difficulties which this Tribunal has encountered, and was met by lies and dissimulation in many quarters. The fact that his extensive inquiries took a long time and were focussed on matters other than the concerns of Mr. Frank McBrearty Senior in respect of allegations concerning him and his immediate family and business, caused Mr. Frank McBrearty Senior enormous frustration and anger from time to time. Though he continued to co-operate with members of Assistant Commissioner Carty's investigation, he became increasingly disillusioned with it, as did other members of his family. He began to seek a different way to establish the truth. He began to distrust the idea that Gardaí could effectively investigate Gardaí.
- 3.28. In April of 1999, together with Mr. Togher, he met Mr. Jim Higgins TD, who became interested in his case, and to whom he submitted a lengthy statement outlining his grievances. In the course of 1999 he maintained contact with Mr.

¹⁴⁸ Report on Explosives "Finds" in Donegal – Term of Reference (e).

Higgins, and ultimately on the 7th of March 2000, following a succession of parliamentary questions asked by opposition spokesmen on Justice, Equality and Law Reform about the McBrearty affair in Dáil Éireann of the Minister for Justice, Equality and Law Reform, Mr. Jim Higgins TD announced publicly at Dáil Éireann that he and the Fine Gael party would support the establishment of a sworn public inquiry into the McBrearty affair in Donegal.

- 3.29. It would be later alleged by Mr. William Flynn that at a gathering on the evening of the 7th of March at his home attended by Mr. Frank McBrearty Senior, Mr. Togher and Mr. Mark McConnell, Mr. Togher made the allegations that are set out in the first facsimile and that those present were agreed that a public inquiry was the only way to progress Mr. McBrearty Senior's cause. Though the Tribunal does not accept that these allegations originated from Mr. Togher at that meeting, it is satisfied that they were discussed at it; and later a number of these allegations appeared in the facsimiles and information conveyed to the two politicians.
- 3.30. On the 24th of March 2000 Detective Sergeant White made a handwritten statement to Superintendent James Gallagher at Detective Sergeant White's home which was sixteen pages in length. This statement related to allegations made by Detective Sergeant White that his locker at Letterkenny Garda Station had been broken into and a number of important papers and tapes stolen from it.¹⁴⁹ It is possible that the making of this statement, together with the fact that Detective Sergeant White made some complaints against Assistant Commissioner Carty when arrested on the 21st of March which were inserted in the custody record, entered the rumour mill at Letterkenny Garda Station and emerged in an embellished and exaggerated form in the facsimile of the 25th of June 2000. There the allegation was also made that Detective Sergeant White had an eighteen page document concerning his and other activities whilst he was stationed in Dublin which he would use to escape the rigours of the law and frustrate the Carty investigation.
- 3.31. The extent of Mr. Frank McBrearty Senior's frustration with the Carty investigation may be gauged from a memo of a meeting between Detective Sergeant Fox and Sergeant Flannery from the Carty inquiry team with Mr. Frank McBrearty Senior and Mr. John Mitchell, his bar manager, on the 27th of March 2000. In the course of that meeting Mr. McBrearty Senior raised forty-six issues with the two sergeants concerning the work of the Carty inquiry. These included inquiries as to whether the Carty team had conducted investigations in relation to visits by Detective Sergeant John White to his licensed premises; the state of the investigation into allegations made that he had intimidated witnesses; the alleged

¹⁴⁹ Tribunal Documents – Anonymous Allegations, pages 310-327 and Transcript, Day 582, pages 149-151 (evidence of Superintendent Gallagher).

planting of drugs on Paul Quinn and allegations that Sergeant White “hassled” Edmond Moss into making statements against Frank McBrearty Junior, Liam O’Donnell and Martin McCallion. These three were acquitted of charges relating to an alleged assault on Edmond Moss in early May 1999.

- 3.32. In addition, Mr. McBrearty Senior raised queries as to what action had been taken about the wrongful arrests of Mark McConnell and Michael Peoples after the false allegations made by Bernard Conlon concerning the ‘silver bullet’. He wanted to know whether there were any developments in respect of what he alleged to be the fabrication of statements by four detectives from Dublin against Frank McBrearty Junior in the course of the Barron investigation. He inquired as to the status of investigations into Darcy Connolly and allegedly false allegations that he had made of dangerous driving against Frank McBrearty Junior. He raised the issue of an incident that occurred on the 10th of May 1997 when he and his daughter were allegedly stopped in the Diamond, Raphoe by Sergeant John White and Sergeant White allegedly told Mr. Frank McBrearty Senior “to get Frank Junior to make a statement and admit to the murder of Richie Barron”. He made inquiries as to the state of the Carty investigation into William Doherty and his alleged association with Garda John O’Dowd. He raised the issue as to “why was B.S.E. money used by Gardaí on overtime to raid my premises”. He also raised the question as to whether “the gypsy arrested in Bridgend and a gun planted on him was being investigated.” He raised the Ardara issue in the following way:

The bomb made by Sergeant White at the rear of Glenties Garda Station in 1996 – all the Gardaí in Glenties knew of this incident.

He asked:

Have you ever searched the shed that Sgt. White owns along the border, it is alleged he was storing items there that he was bringing down from Dublin.

He wanted to know how much money was taken from a secret service fund which he said was controlled by Chief Superintendent Fitzpatrick and given to Detective Sergeant White for the purpose of investigation “to pay criminals for information”. He also wanted to know how much money was paid to Detective Sergeant White for “travelling expenses, overtime and other allowances for the past five years”. They were asked if they knew Deputy Commissioner Noel Conroy from Belmullet, Mayo. He raised a complaint that members of the Garda Complaints Board had approached certain politicians and asked that they put pressure on the Minister for Justice, Equality and Law Reform about what was

happening the McBrearty family. A number of these issues that were of great concern to Mr. McBrearty Senior are reiterated in the anonymous allegations as conveyed to Deputy Higgins and Deputy Howlin.

3.33. As already noted the summonses laid against Mr. McBrearty Senior, and his family and employees were all withdrawn on the 21st of June 2000 by the Director of Public Prosecutions. This followed the consideration by the Director of Public Prosecutions of a report and papers submitted to him by Assistant Commissioner Carty. By this time Assistant Commissioner Carty had carried out extensive inquiries as set out in Chapter 1. These led to the arrest of Detective Sergeant White by Assistant Commissioner Carty's team in respect of the Bernard Conlon affair. Detective Sergeant White was suspended from duty on the 21st of March 2000 by Chief Superintendent Denis Fitzpatrick following his arrest. This suspension was not renewed under the Garda Síochána Disciplinary regulations but, as set out in Chapter 2, Detective Sergeant White was granted a permanent transfer to the Special Detective Unit, Harcourt Square on the 24th of March 2000. In February 2000, Assistant Commissioner Carty had formed the view that Detective Sergeant White ought to be suspended. In addition, Assistant Commissioner Carty also supported an adjournment application of the District Court prosecutions brought against the McBreartys late in 1999 on the basis that he had concerns about the proliferation of summonses against Mr. McBrearty Senior and his extended family and wanted to have these summonses adjourned pending the outcome of his inquiries into the background events. When he was opposed by his own authorities and the Director of Public Prosecutions on this matter, he unusually contacted the Defence lawyers to indicate his support for their application for an adjournment. By June 2000, Assistant Commissioner Carty had shown a determination to deal with the matters under inquiry. Detective Sergeant White was under no illusion, nor could any reasonable person, that all allegations against him were being investigated thoroughly by Assistant Commissioner Carty.

3.34. The withdrawal of the summonses caused an unusual reaction on the part of the McBrearty camp, including their lawyers. They saw it as a successful conclusion of the criminal proceedings but it also closed the door of a forum where they hoped to explore the "wider issue": the term used for allegations that they wished to make against the Garda Síochána of abuse of process arising from the issuing of so many summonses and what they believed amounted to further intimidation and harassment of their clients. They wished to pursue and expose other alleged wrongdoing by An Garda Síochána, which I have already summarised. Most of these matters have been covered in the other reports of the Tribunal. Therefore, they concluded that another forum in which to agitate these

matters was required. That could be by way of civil proceedings, which had already been initiated, or through a Tribunal. However, by this time it was clear from the evidence that Mr. McBrearty Senior was already campaigning for the establishment of a sworn public inquiry into alleged Garda misconduct in Donegal. He and his advisers had become disillusioned with the Carty investigation. It was taking too long. It had not exonerated Mr. Frank McBrearty Junior or Mr. Mark McConnell from involvement in the death of the Late Mr. Barron. It was pursuing inquiries which were not Mr. Frank McBrearty Senior's main concern. He had no faith in an investigation being carried out by senior Gardaí into alleged wrongdoing by Gardaí – the implication being that the findings would not be adverse to the Garda Síochána, especially at senior ranks. By June 2000 this campaign had stalled in that the Minister for Justice, Equality and Law Reform's response to the plea for a Tribunal of Inquiry was that he was awaiting the report of Assistant Commissioner Carty, which he expected to address all of these issues, and he proposed to consider the matter further on receipt of the report.¹⁵⁰ In addition, the Minister did not wish to compromise any potential criminal proceedings arising out of Assistant Commissioner Carty's report.

- 3.35. The Tribunal is satisfied that the first facsimile was calculated to further the campaign for a sworn public inquiry. What was new about the facsimile of the 25th of June was that it targeted Assistant Commissioner Carty directly and alleged that he was corrupt, and that by reason of his unlawful corrupt behaviour with Detective Sergeant White in the past he could be blackmailed by Detective Sergeant White into not carrying out his duty to investigate the Donegal affair insofar as it involved Detective Sergeant White.
- 3.36. The Minister in evidence acknowledged that the allegations made on the 25th of June 2000 were not the reason that he ultimately proposed a public inquiry into allegations of wrongdoing by certain Gardaí in Donegal. The Minister said that he was concerned that a public inquiry should only be held if a stage were reached whereby other avenues such as civil proceedings, the Garda Complaints Board, criminal prosecutions, Garda disciplinary proceedings or the Carty inquiry would not yield the truth. He had not decided against a public inquiry. However, he accepted that in political terms the allegations were being used as a means of applying political pressure. Nevertheless, he was satisfied that Deputies Higgins and Howlin were also attempting to do the proper thing with the allegations which they had received; but, he said that he was highly sceptical of the allegations.¹⁵¹ The Minister was also of the view that by turning to him with the information they were deliberately not taking the allegations to the Garda Commissioner: this was partly for a political purpose, to create a potentially embarrassing situation for the Minister.

¹⁵⁰ Transcript, Day 577, pages 3-78 (evidence of Mr. John O'Donoghue TD).

¹⁵¹ Mr. Hickey noted somewhat wryly that this scepticism was never made known to him.

- 3.37. On receipt of these allegations the Minister brought them to the attention of the Garda commissioner who directed that an investigation be carried out in relation to them. Subsequently, on the 29th of November 2001 the Minister for Justice, Equality and Law Reform referred the matter for the consideration of Mr. Shane Murphy SC directing him to conduct an independent review and undertake a thorough examination of action taken and of relevant papers held by An Garda Síochána and the Department of Justice, Equality and Law Reform relevant to allegations that members of An Garda Síochána in the Donegal division had been engaged in criminal, unethical or unprofessional behaviour particularly in the context of the investigation into the death of the Late Mr. Richard Barron and the finds of bomb making equipment. Mr. Murphy recommended the establishment of a Tribunal of Inquiry to inquire into certain of these allegations. The Dáil and Seanad acted on these recommendations by passing resolutions on the 28th of March 2002. Though the Tribunal accepts that these allegations were not the immediate reason for the establishment of this Tribunal, it is satisfied that the making of the allegations was calculated to achieve the establishment of a sworn public inquiry and to bring pressure on the Minister for Justice, Equality and Law Reform in that regard, as part of Mr. McBrearty Senior's campaign. This is what happened.

The 25th of June 2000

Deputy Higgins Receives a Call

- 3.38. On the 25th of June 2000 Mr. Jim Higgins TD and Mr. Brendan Howlin TD each received unusual telephone calls. As subsequently emerged in evidence, the first relevant telephone call was made by Mr. Frank McBrearty Senior to Mr. Higgins at his home at or about 16.00 hours. Mr. McBrearty Senior told Mr. Higgins that he would be receiving a facsimile. Mr. Frank McBrearty Senior then sent him the facsimile, which was collected by Mr. Higgins from the machine. Mr. Higgins then telephoned Mr. McBrearty Senior and had a brief discussion with him about it. He described the events in this way:

I received a telephone call from Frank McBrearty Senior telling me that he would be sending a fax to me. The fax duly arrived. I then telephoned him back and confirmed that I had got the fax and I asked him where the fax had come from. He told me that it had come from my friend. Now I always understood my friend to be Mr. P.J. Togher. Because in my conversations with Mr. McBrearty on the telephone, both of us were cautious and coy in respect of what we would actually say, because there was an anxiety and a fear, on Mr. McBrearty's part and also on my part, that our telephones were

*actually being tapped. So when we were talking about my friend, I explicitly understood my friend to be Mr. P.J. Togher. ... I asked him where did it come from, he said it came from my friend. I understood that to [be] Mr. Togher and I certainly believed at the time when Mr. McBrearty mentioned my friend, I believed that Mr. Togher was in fact the source and the author of the document.*¹⁵²

Mr. Higgins said that he told Mr. McBrearty Senior that he regarded this document as “extremely serious” and informed him that he would have to contact the Minister for Justice, Equality and Law Reform, Mr. John O’Donoghue TD, to bring it to his attention. He recalled that the conversation was extremely short and he did not go into detail with him about the information in the document.¹⁵³

- 3.39. Mr. Frank McBrearty Senior said in evidence that he had received this facsimile document in the post on a date of which he was unsure. He said that he did not show the document to anybody after he received it. He did not retain the envelope. He left it on a table. He was adamant that he never told Mr. Higgins that the document had come from “his friend” Mr. P.J. Togher. He said that he also sent a facsimile of the document to Mr. Martin Giblin S.C., a senior counsel who had represented him in all legal proceedings relating to this scandal, to his then solicitor Mr. Kenneth Smyth, and to Mr. Frank Connolly, a journalist with The Sunday Business Post. He maintained that he never told Mr. Higgins that he was sending the document to him in confidence. However, it will be noted that the word ‘confidential’ was repeated three times at the head of the document. In addition, it will be noted that the facsimile was specifically addressed “for the information of Mr. Jim Higgins, TD” which leads me to conclude that, at the very least, the author believed that Mr. McBrearty Senior was in close contact with Mr. Jim Higgins. Indeed, it is a wonder that if the author was unconnected with Mr. McBrearty Senior, he did not address the document to Mr. Higgins at Dáil Éireann, rather than channel it through Mr. McBrearty Senior. Mr. McBrearty Senior also maintained initially that he did not read the document before sending it, but later relented and accepted that he knew that the document “contained allegations against certain named people”. He insisted that he needed advice about the document before gaining an understanding of its seriousness.¹⁵⁴ He maintained that his difficulty in understanding the document was compounded by his limited reading skills. He said that he had never shown this document to Mr. P.J. Togher between the time of receipt and forwarding it to various parties on the 25th of June 2000.¹⁵⁵

¹⁵² Transcript, Day 572, pages 111-112.

¹⁵³ Transcript, Day 572, pages 112-113.

¹⁵⁴ Transcript, Day 576, pages 31-35.

¹⁵⁵ Transcript, Day 575, pages 184-209.

“My Friend” P.J. Togher

- 3.40. In a statement to the Tribunal of the 19th of October 2006, Deputy Higgins described how he had received the facsimile of the 25th of June 2000. Mr. McBrearty Senior told Deputy Higgins in a telephone call late on the afternoon of the 25th of June that he would shortly be receiving a facsimile message from him “which was drawn up by a Garda source”. The facsimile arrived shortly after the phone call. Following its receipt Deputy Higgins said that he spoke again to Mr. Frank McBrearty Senior. He said:

I asked Mr. McBrearty who gave him the document and he indicated that it came from “my friend”. Often in our previous conversations, Mr. McBrearty had used the phrase “my friend” when speaking of Mr. P.J. Togher. On this occasion I understood his use of the term “my friend” to mean Mr. Togher. Mr. McBrearty stated to me that he had forwarded the document to me in confidence.¹⁵⁶

This was the first definitive statement by Deputy Higgins that the document had been given to Mr. Frank McBrearty Senior by Mr. P.J. Togher, that it had been drawn up by a Garda source and that Mr. McBrearty had stated to Deputy Higgins that he was forwarding the document to him in confidence.

- 3.41. In evidence to the Tribunal, Deputy Higgins said that Mr. P.J. Togher was known to him. He had met him on a number of occasions and time and again Mr. Frank McBrearty Senior had referred to Mr. Togher in gratitude as one of his two main supporters, the other being Deputy Higgins. When documentation was forwarded to him by Mr. Frank McBrearty Senior, Deputy Higgins said that he used to enquire of Mr. McBrearty Senior whether his “friend” had read the documentation.¹⁵⁷ He emphasised that Mr. Togher was referred to as “my friend” in telephone conversations between him and Mr. Frank McBrearty Senior because of concerns that the conversation might be tapped. Mr. Frank McBrearty Senior for his part rejected this and said that he always referred to Mr. Togher openly in conversations with Mr. Higgins on the telephone. Deputy Higgins said that that had only been true since the establishment of the Tribunal.¹⁵⁸ Senator Higgins told the Tribunal that he took the phrase “my friend” to refer “explicitly and exclusively to Mr. P.J. Togher”.¹⁵⁹

Meeting 6th of January 2007

- 3.42. On the 6th of January 2007, a meeting took place at the Sligo Park Hotel between Mr. Frank McBrearty Senior, Mr. P.J. Togher and Mr. Higgins. Mr. Frank McBrearty Senior said in evidence that there was a discussion about the facsimile

¹⁵⁶ Tribunal Documents – Anonymous Allegations, page 852.

¹⁵⁷ Transcript, Day 573, page 46.

¹⁵⁸ Transcript, Day 573, pages 46-49.

¹⁵⁹ Transcript, Day 575, pages 3-8.

documents. He claimed to Mr. Higgins that though he had sent the facsimiles he had never mentioned anybody's name to him or anything about "my friend". He suggested to Mr. Higgins that he must have picked him up incorrectly. He told Mr. Higgins that the letters had come in the post and that he had then faxed them to Mr. Higgins. Mr. Frank McBrearty Senior said that Mr. Higgins then said that he would write to the Tribunal to explain what had happened and Mr. Togher told him that he could not do that as it might not appear proper to be meeting and discussing these matters in advance of the Tribunal's hearings about the matter. Mr. McBrearty Senior told the Tribunal that whilst Deputy Higgins did not concede that he was wrong he did say that he would write to the Tribunal and would indicate that there was a meeting and the stance being taken by the different parties at the meeting.¹⁶⁰

3.43. Mr. Togher for his part told the Tribunal that on the 6th of January 2007 Mr. Frank McBrearty Senior told him that he was travelling to Sligo to see Mr. Higgins. He said he went to this meeting with Mr. McBrearty Senior for "the run" and not to discuss the issue of whether he was the source of Mr. McBrearty Senior's information. He said he was only present for a very short part of the meeting. He went outside, had a cigarette, and had a short conversation with the then Senator Higgins. Senator Higgins produced his October statement and it was discussed. Mr. Togher said that he did not discuss the "friend" aspect of it. He said that when discussing other matters the issue arose as to what the newspapers were saying about Mr. Higgins' statement of October 2006. He reported that Mr. McBrearty Senior told Mr. Higgins that "friend" was a word that he used to refer to many people and that Mr. Higgins said "I will write to the Tribunal and I will put that matter right". Mr. Togher then said that he [Mr. Togher] "replied by saying I do not want to discuss it, you will not write to the Tribunal on my behalf, you will go with your opinion as you are entitled to do" and that he finished the conversation by saying "you do what you have to do and I'll do what I have to do."¹⁶¹

3.44. Mr. Higgins told Tribunal investigators on the 16th of February 2007 that at this meeting he told Mr. Frank McBrearty Senior and Mr. P.J. Togher that he would be telling the Tribunal that he understood from Mr. McBrearty Senior that the facsimile of the 25th of June 2000 had come from Mr. P.J. Togher. He would also say that he understood that Mr. P.J. Togher actually gave it to Mr. McBrearty Senior and that he would be referring to Mr. P.J. Togher as the "friend" who gave the document to Mr. Frank McBrearty Senior. He said that Mr. Togher had disclaimed any knowledge of the facsimile, and denied that he was the author and said, "you have to do what you have to do and I have to do what I have to do". They did not discuss it any further.¹⁶²

¹⁶⁰ Transcript, Day 576, pages 125-127.

¹⁶¹ Transcript, Day 570, pages 132-135.

¹⁶² Tribunal Documents – Anonymous Allegations, pages 984-985.

- 3.45. Mr. Togher, for his part, complained to the Tribunal that Mr. Higgins left out of his account that he told Mr. McBrearty Senior and Mr. Togher that he would immediately write to the Tribunal about the matter. Mr. Togher then said that he did not know what Mr. Higgins was going to convey to the Tribunal but that he did tell Mr. Higgins that he should not write to the Tribunal on his behalf. He wanted Mr. Higgins to clarify the matter when he attended the Tribunal in case he was accused of interfering or procuring a change of evidence on the part of Mr. Higgins. He felt a bit uncomfortable when Senator Higgins produced his statement and he wanted to put an end to the discussion. He confirmed that Mr. McBrearty Senior may have said to Senator Higgins that he had it all wrong and that when he said “my friend” to him on the 25th of June 2000 he did not mean Mr. Togher. He said:

I think he may have mentioned something like that, he may have said well I call a lot of people my friend or something like that.

He maintained that he did not tell Mr. Higgins that he had got the matter wrong, notwithstanding Mr. Higgins’ insistence in his statement to the Tribunal that Mr. Togher had disclaimed any knowledge of the facsimile and denied that he was the author of it.¹⁶³

- 3.46. **I am satisfied that Mr. Frank McBrearty Senior and Mr. P.J. Togher have not given me an accurate account of this meeting.** Mr. Higgins’ identification of Mr. Togher as the person identified by Mr. Frank McBrearty Senior as the source of the facsimile of the 25th of June 2000 was being challenged by Mr. Frank McBrearty Senior and Mr. P.J. Togher. Mr. McBrearty Senior sought to imply that Mr. Higgins’ misinterpretation of the use of the phrase “my friends” rather than “my friend” on the occasion of the receipt of the facsimile led to the incorrect conclusion on his part that Mr. Togher was the source. Mr. Higgins maintained that he only knew of and met one of Mr. McBrearty Senior’s friends in that context, namely Mr. Togher. On the other hand, Mr. McBrearty Senior maintained that he always referred to Mr. Togher openly in conversation with Mr. Higgins on the telephone and suggested in his evidence, already referred to, that he never used the code of “my friend” with Mr. Higgins. As already pointed out, Mr. McBrearty Senior also claimed that he had told Senator Higgins that he had received this facsimile in the post anonymously. There is a clear contradiction between them on this issue.
- 3.47. Mr. Togher, for his part, could not understand why Mr. Higgins left out of his notes to the Tribunal investigators that he would “put it right and I’ll do that tomorrow”, meaning that he would write to the Tribunal, which he asked him not to do. However, Mr. Togher maintained that he did not know how Mr.

¹⁶³ Transcript, Day 570, pages 135-142.

Higgins intended to put the matter “right”. Clearly, if words have any meaning, putting it “right” in this context meant firstly, that something had to be corrected that was wrong, and secondly, in this context, that Mr. Higgins was to correct his mistaken view that Mr. Togher was the source. In the immediate aftermath of this meeting none of the participants wrote to the Tribunal to correct any misapprehension that the Tribunal might have been under in relation to the source of the facsimile. Mr. Higgins did not write. I am satisfied that there was no reason for him to change his position and that he did not offer to do so. I am equally satisfied that Mr. McBrearty Senior’s story has changed and is contradictory and that Mr. Togher’s story suggesting that there might be something to put “right” without specifying what it was or what he understood that to mean lacked coherence and credibility.

- 3.48. The Tribunal is satisfied that Mr. Higgins did not invent or misunderstand the conversation that he had with Mr. Frank McBrearty Senior in relation to the source of this facsimile and that he was told that it came from “my friend”. The Tribunal is further satisfied that this was the phrase used between them to denote Mr. P.J. Togher and that the remarks made by Mr. Frank McBrearty Senior in that context amounted to an acceptance and an admission that the source of the document was Mr. P.J. Togher. I am not satisfied that Deputy Higgins was told that the facsimile letter arrived anonymously by post. I have found the accounts given by Mr. Frank McBrearty Senior and Mr. P.J. Togher in relation to this matter to be evasive and unconvincing. They have not told the truth to the Tribunal about their involvement in the creation and sending of this facsimile.

Denials of Mr. P.J. Togher

- 3.49. In an affidavit of the 10th of April 2003 Mr. Togher denied that he was the author of the facsimile of the 25th of June 2000. In that affidavit he said the following:

41. In this regard I think it is appropriate here to mention that the first time that I ever saw the document referred to as the “Anonymous Allegations” was when I was shown a copy of same by members of the Tribunal investigation team on or about the 15th day of January 2002 when I was being interviewed by Detective Superintendent Brehony.

42. I do have a recollection that Frank McBrearty Senior showed me a letter in February or March 2000 which was addressed to Jim Higgins TD. Frank McBrearty Senior told me that this had come in the post and that he had already sent it to his lawyers. I scanned through the

document and I remember thinking that it was strange that Frank McBrearty Senior would fax this to Higgins when it was actually addressed to Jim Higgins himself. I do remember that Frank McBrearty Senior did ask me what I thought of the allegations contained in that letter. I don't remember precisely what my reaction was on seeing this letter. I believe that it would have been similar to the reaction to a lot of the documentation which was being received by Frank McBrearty Senior at this stage. By that I mean that I may have been concerned in a general sense that there may have been some truth in the allegations that there were difficulties with the Garda force in Donegal but that I had no information regarding the veracity of any such allegations.

43. I have however a very specific recollection that at the time I was shown this document Frank McBrearty Senior told me that it had already been sent to Jim Higgins. This led to some confusion in my mind as to why Frank McBrearty Senior would have sent this document to Jim Higgins when it had come to Frank McBrearty Senior having apparently been addressed to Jim Higgins T.D.
44. I therefore specifically say I had no hand, act or part in the authorship or dissemination of the document, whether it be in this form or in any other form at any stage. I further say that I do not know who the author is
48. In conclusion therefore I would like to say that I had no hand, act or part in the formulation of the document entitled "anonymous allegations" and I certainly was not involved in the dissemination of this information to Brendan Howlin T.D. or Jim Higgins TD. ...¹⁶⁴

3.50. It is noteworthy that this affidavit makes no reference at all to the subsequent letter of the 15th of July 2000 and does not identify the letter that was shown to Mr. Togher by Mr. Frank McBrearty Senior as the letter of the 15th of July 2000. As will be seen later in this chapter Mr. Togher failed to reveal to the investigation conducted by Assistant Commissioner Murphy when interviewed on the 15th of January 2002 that he had seen this second letter. For some reason he clearly associated the letter shown to him by Mr. Frank McBrearty Senior in his affidavit with the facsimile of the 25th of June 2000 shown to him on the 15th of January 2002. His position shifted in this regard in his interview with Tribunal investigators on the 9th of November 2003. He now said:

¹⁶⁴ Tribunal Documents – Anonymous Allegations, pages 566-577.

The documentation that was shown to me on the 15/1/2002, I had not seen before but I saw similar typed documentation at some stage, which bore Mr. Higgins's name, at some stage. I mentioned it briefly to Mr. McBrearty and I can't recall what he said, whether he said he sent it to Mr. Higgins or Mr. Higgins sent it to me or whatever but, at the time, I thought his answer did not correspond with the front page of what he was looking at. Bear in mind ... I advised Mr. McBrearty not to be dealing with anonymous rubbish and, for the most part, he heeded my telling him ... The Dear, I call it the Dear Jim one, since this came into this domain, this Tribunal business, I refer to it as the Dear, there's Dear Jim on it. I'm not sure who he said he forwarded it to but I thought he said he forwarded it to somebody but whoever he said he forwarded it to, as he walked out of the office, it didn't really make sense with me and I discarded it and I think I'm not sure if that was part of ones I burned but I'm sure. I think I threw it into the bundle. It didn't matter to me. I saw so many anonymous letters, some coming from, allegedly, sources with Garda stamps, some coming from cranks. I never, during my service, dealt much with anonymous letters but you have to deal with some of them you know.¹⁶⁵

- 3.51. He then said that he thought he found this letter in the vicinity of the office. He did not think that Mr. McBrearty Senior specifically showed it to him, though he may have.

He may have said what do you think of that. That was usually what he said when he got an anonymous letter. ... My comment would usually be it could be rubbish or maybe it's not. I would say it's probably rubbish, 90% rubbish. A person that writes anonymous letters always has a reason for doing so. It was similar ... On the 15/1/2002, it then reminded me, ... while I was having a perusal of the letter, which was handed to me by Mr. Brehony, that I had seen a similar letter, similar in writing, similar, not in content perhaps, but similar in writing of the type. It was an unfamiliar type. It was large. Technically I didn't know a name for the type but it didn't seem like anything I had seen for quite some time before. I can't recall seeing that type of type. It then dawned on me that I had seen a letter similar and I think it was afterwards it dawned on me and I didn't give it much thought but I remember at the time that either Mr. McBrearty said what do you think of that or that I saw it. I think to be honest I'm not a hundred per cent sure. I think he says I've sent that to Mr. Higgins. It came in in the post and he either went to answer the telephone outside or he went to do something and suddenly it dawned on me that that comment did not appear right because I thought that he had received it

¹⁶⁵ Tribunal Documents - Anonymous Allegations, pages 603-604.

from Mr. Higgins by post. ... That Mr. Higgins had got this letter from a person, allegedly someone within the Garda Síochána and that he had sent a copy of it to Mr. McBrearty in the post but I didn't go into detail about that.¹⁶⁶

He denied contributing in any way to the preparation of the document of the 25th of June 2000 or any similar document.

3.52. In January 2003 Senator Higgins revealed to the Tribunal the existence of the second facsimile of the 15th of July 2000. In October of 2003 Mr. McBrearty Senior referred to this second facsimile in a statement to the Tribunal. The first clear acknowledgment of the existence of the second facsimile by Mr. Togher was made in his interview with the Tribunal investigators in November 2003. Up to that point, a reading of his affidavit of April 2003 suggested to the reader that he had seen a copy of the facsimile of the 25th of June 2000 at some stage after it had been sent to Deputy Higgins.

3.53. Mr. Togher denied to the Tribunal that he had ever seen the facsimile of the 25th of June 2000 and said that Mr. McBrearty Senior had never shown it to him. He was now satisfied that on the 4th of July 2000 he had seen a copy of the second facsimile. He said that he had gone around to work for Mr. McBrearty Senior and informed him that a Chief Superintendent McNally had called to see him at his home. He believed he typed some letters for Mr. McBrearty Senior and read some letters from his solicitors who had worked with him for some two to three hours. He said:

I'm not sure on that date but I remember seeing the two-page document with confidential on it, and for the attention of Mr. Higgins or something, and Dear Jim on it. I remember seeing that, whether it was then or that particular time. And he brought it to my attention. I looked at it. One page didn't seem to correspond to the second page and he said I faxed that to Mr. Higgins. ... I think it was around that time [the 4th of July]. ... I read it, I scanned through it, yes. But there was only two pages, ... I didn't see the first fax.¹⁶⁷

Mr. Togher was then asked if Mr. McBrearty Senior had then told him that he had faxed a two-page document to Mr. Higgins on the night of Sunday the 25th of June:

Q. Did he tell you he had faxed a document, a two-page document to Mr. Higgins on the night of Sunday, 25th of June?

A. I thought he was referring to the document that was lying

¹⁶⁶ Tribunal Documents - Anonymous Allegations, pages 606-607.

¹⁶⁷ Transcript, Day 570, pages 73-75.

on the desk and he said I faxed that to Mr. Higgins.

Q. *So are you saying that the second faxed document?*

A. *Yes.*

Q. *Which didn't go to Mr. Higgins until the 15th of July?*

A. *Yes.*

Q. *Was already in Mr. McBrearty's possession?*

A. *It was on the desk, yes.*

Q. *But did he tell you that he had sent the first faxed document?*

A. *No.*¹⁶⁸

3.54. As a matter of common sense, Mr. McBrearty Senior could not have told Mr. Togher on the 4th of July 2000 that the second facsimile had been sent by him to Deputy Higgins at that time. Clearly that facsimile was not sent until the 15th of July 2000. He was, however, in a position to tell Mr. Togher that he had faxed a letter to Deputy Higgins on the 25th of June 2000. However, Mr. Togher maintained that he did not know of the facsimile of the 25th of June 2000 on the 4th of July 2000 and that on that occasion Mr. McBrearty Senior did not even mention to him the fact that he had sent a document containing the serious allegations to Deputy Higgins.¹⁶⁹ **The Tribunal is satisfied, having regard to the relationship between Mr. McBrearty Senior and Mr. Togher and the extent of Mr. Togher's work for Mr. McBrearty Senior, that it would be most unlikely that Mr. McBrearty Senior would not have discussed the sending of the facsimile of the 25th of June to Deputy Higgins with Mr. Togher. The Tribunal is satisfied that Mr. Togher's evidence in relation to the events of June and July 2000, and in particular July 4th 2000, was lacking in coherence, commonsense and credibility, and that he was correctly identified to Mr. Higgins as a source of the facsimile of the 25th of June 2000 by Mr. Frank McBrearty Senior.**

P.J. Togher's Assessment of Detective Sergeant White

3.55. In his meeting with Detective Superintendent Brehony and Inspector Corcoran on the 15th of January 2002 Mr. Togher, when asked about the allegations made in the facsimile of the 25th of June 2000, replied that:

¹⁶⁸ Transcript, Day 570, pages 75-76. It should be noted that the facsimile of the 15th of July 2000 as originally presented to Tribunal investigators by Deputy Higgins consisted of the first and third pages: later on a third page was produced which was in fact page 2 of the document. Mr. Togher in evidence said that he only saw two pages and that the second page did not seem to flow from the first. However, Mr. Frank McBrearty Senior at all times had all three pages in his possession so it is unlikely that Mr. Togher saw only two pages of the second facsimile lying on the table. The facsimile of the 25th of June 2000 however had only two pages.

¹⁶⁹ Transcript, Day 570, pages 74-80.

He had great time for Sergeant White and he never had any difficulty with him. He said that he never made any complaint to any person about John White.¹⁷⁰

Mr. William Flynn would make the allegation that on the 7th of March 2000 Mr. Togher said at a meeting at his house that Gardaí from Ballybofey had made representations to Chief Superintendent Fitzpatrick that they did not wish to work alongside Detective Sergeant White because he framed people. In his affidavit of the 10th of April 2003, Mr. Togher denied that he said this.¹⁷¹

- 3.56. In evidence to the Tribunal Mr. Togher said that his view of Detective Sergeant White was that he had served with him in Ballybofey and:

*He was an excellent policeman, a very good policeman, very good to work at crime, a good rapport with the people, a brave policeman, would take on stuff that others wouldn't take on and I always had the best, good respect for him and I didn't comment much when he'd be castigated by Mr. McBrearty. I commented little because I said he'd changed and [if] that's the way he is now, he's changed since I knew him.*¹⁷²

He accepted that this was a diametrically opposite view to that expressed by the McBreartys to their lawyers. In November 2003 he told Tribunal investigators that he found Detective Sergeant White to be a very good policeman with whom he was friendly. He had never seen him do anything underhand of which he disapproved.¹⁷³ He denied that he had made any allegation to Mr. Flynn that Gardaí from Ballybofey did not wish to work alongside Sergeant White. He said:

Absolutely not ... I would have no problem in working with Sergeant White the days of my life. No problem.¹⁷⁴

He also told the Tribunal that he thought he told Mr. Smyth, Mr. McBrearty Senior's solicitor, of the high regard that he had for Sergeant White from his experience of working with him.¹⁷⁵

- 3.57. A memorandum of a meeting attended by Mr. P.J. Togher and Mr. Smyth, solicitor, of the 9th of December 1998 was made available to the Tribunal. This was the first occasion upon which Mr. Smyth met Mr. Togher. He recorded as follows:

Garda Togher said that he hates injustices and that is why he was speaking to us. He and a lot of Guards had refused to work with John White. It was

¹⁷⁰ Tribunal Documents - Anonymous Allegations, page 60.

¹⁷¹ Tribunal Documents - Anonymous Allegations, pages 572 and pages 357-359.

¹⁷² Transcript, Day 569, page 123.

¹⁷³ Tribunal Documents - Anonymous Allegations, page 599.

¹⁷⁴ Tribunal Documents - Anonymous Allegations, pages 600-601.

¹⁷⁵ Transcript, Day 569, pages 125-126.

looked on badly by the GRA when he came as the second sergeant in Raphoe as there had only been one previously ... He had caused trouble in Letterkenny. Ballybofey did not want him back and Letterkenny wanted him to go back to Ballybofey. He said that White is ruthless and dangerous. He would not even share a car with him. White is well in with the Technical Bureau.¹⁷⁶

Mr. Togher denied making these comments on the 9th of December 1998 and said that Mr. Smyth's note was absolutely inaccurate.¹⁷⁷ Mr. McBrearty Senior accepted that the note represented what happened at this meeting.¹⁷⁸ Mr. Smyth gave evidence to the Tribunal that the memorandum of the 9th of December 1998 was an accurate record of that meeting.¹⁷⁹

- 3.58. The Tribunal is satisfied and accepts the evidence of Mr. Kenneth Smyth that he made an accurate note of what was said at the meeting of the 9th of December 1998. Mr. Togher at that meeting is recorded as having particularly strong views in relation to Detective Sergeant White, which are totally at variance with the views that he subsequently expressed to the Murphy investigation, the Tribunal investigator, in his own affidavit and in the evidence that he gave to the Tribunal. These were all calculated to deceive the Tribunal into accepting that he had no animus whatsoever against Detective Sergeant White, and indeed held him in the highest esteem. This was clearly not the case. The Tribunal is satisfied that he gave this evidence dishonestly with a view to convincing the Tribunal that he had no reason whatsoever to make any of the allegations levelled against Detective Sergeant White and specifically that he did not make the allegation that Gardaí in Ballybofey would not work with Detective Sergeant White as alleged by Mr. Flynn. The Tribunal is satisfied that this behaviour is consistent with his being involved in the formulation and dissemination of these allegations.¹⁸⁰

Mr. Martin Giblin S.C. Receives a Call

- 3.59. On the evening of the 25th of June 2000, Mr. Martin Giblin S.C. told the Tribunal that he was working at home when he received a telephone call from Mr. Frank McBrearty Senior informing him that he had sent him a facsimile. He said that Mr. Frank McBrearty Senior told him:

That a document has come in ... which was code for come in in the

¹⁷⁶ Tribunal Documents - Anonymous Allegations, pages 1138-1139.

¹⁷⁷ Transcript, Day 569, pages 64-77.

¹⁷⁸ Transcript, Day 586, page 188.

¹⁷⁹ Transcript, Day 589, pages 77-83.

¹⁸⁰ The Note of the 9th of December 1998 also outlines how it was Mr. Togher who first produced the so-called divisional circular to Gardaí to Mr. McBrearty Senior's lawyers, which is the focus of the allegation of perjury levelled against three Gardaí in the facsimile of the 15th of July 2000 - Tribunal Documents - Anonymous Allegations, page 1138.

post ... or the fax, but that it would mean that he didn't know where it came from. Because he had received an awful lot of documentation, unsolicited. So whatever he said left me with that impression, that it's a document that has come in. I don't think he would, at that time, have used the word anonymous, but that was the sense of it you know ... In fact I didn't want him to be sending me documents at all but you couldn't stop him. But at least he did stop sending me the strange ones. There were ones which just had nothing to do with the case. So my preferred route was the solicitor and then the solicitor could send them to me. But he is just so persistent that he kept sending stuff directly and I think he was doing it with other people as well. I think he had a mailing list. ... The friends were a group of Garda officers whom he had known over the years, and dealt with, and ... I think it would be fair to say they were sympathetic to his plight and to his family's plight. I met two of them, only two of them ever, P.J. Togher and Jim Madigan. But I was aware that there was another group. I don't want to use the word in the background, I don't think that there was any secret about the existence of these men. It's just that I never met them. I never met the others. ... I can't remember exactly what he said but I am certain I would have made reference you know to the friends, have the friends seen this. I don't mean necessarily seen the document, but the information is what is of interest to me, it's not the document, it's the information. ... I got some kind of indication that the friends had been involved in approving the contents in some way, I wouldn't have known how or you know whether they formally read the document or whether he met one of them and said I got a document in and it says X, Y and Z what do you think. He would be inclined to go to people as I understand it and ask them bluntly for their opinions on issues, you know. So I didn't know how the friends were involved but I got the message that the friends were involved someway.¹⁸¹

- 3.60. Following this call, Mr. Giblin retrieved the document from his facsimile machine, which was upstairs in his home, and telephoned Mr. McBrearty Senior. The document caused him a great deal of concern. He told Mr. McBrearty Senior that he intended to bring the document to the attention of Mr. Brendan Howlin TD, the then Labour spokesman on Justice, Equality and Law Reform. Mr. McBrearty Senior told him that the same facsimile had been sent or was being sent to Mr. Jim Higgins TD. Mr. Giblin did not seek any further information from Mr.

¹⁸¹ Transcript, Day 578, pages 19-23.

McBrearty Senior concerning the contents of the document. He then made efforts to contact Mr. Brendan Howlin TD. Mr. Giblin was given to understand that the document had come in and that Mr. McBrearty Senior's friends had approved or endorsed the contents of the document in some way following its arrival. He did not understand that any particular friend such as Mr. P.J. Togher or Mr. James Madigan had approved or endorsed the document. In fact if Mr. P.J. Togher had done so he would have expected Mr. McBrearty Senior to refer to him as "the man from Drumkeen" which was the form of code he used to identify Mr. P.J. Togher when speaking to Mr. Giblin on the telephone.¹⁸²

- 3.61. Having received the facsimile and concluded his telephone call to Mr. Frank McBrearty Senior, Mr. Giblin then made efforts through a colleague, Mr. William Penrose TD to make contact with Mr. Brendan Howlin TD. Mr. Brendan Howlin TD was that evening attending a function when he was contacted by Mr. William Penrose TD and requested to telephone Mr. Giblin, who wished to speak with him "as a matter of urgency". Mr. Penrose informed Mr. Howlin, on that occasion, that Mr. Giblin was a well respected barrister and someone whom he could "well trust".¹⁸³
- 3.62. At approximately 23.50 hours on the evening of the 25th of June 2000 Mr. Howlin telephoned Mr. Giblin at his home. He did so at such a late hour because the matter had been described to him as urgent. Mr. Giblin informed Mr. Howlin that serious information had been brought to his attention that day. Mr. Howlin made handwritten notes of the conversation that followed. These notes were made or "consolidated" immediately after the phone call. Deputy Howlin described the telephone call as a "monologue", not a conversation, and he did not question Mr. Giblin about the material with which he was furnished. Mr. Giblin, for whatever reason, did not read to Mr. Howlin the contents of the facsimile that he had received from Mr. Frank McBrearty Senior earlier that evening. He explained that this happened because the facsimile machine was upstairs in his study and he had taken the call from Mr. Howlin downstairs. The Tribunal considers this to be a weak and implausible explanation. He did not even tell Mr. Howlin that he had received a facsimile from Frank McBrearty Senior. He did not send him a copy of it that night, the following day, or ever. Mr. Giblin believed that he burned the facsimile that he had received subsequent to this telephone call when he was disposing of a large amount of paper dealing with the District Court prosecutions brought against the McBreartys and others which had been withdrawn earlier in June 2000. Mr. Howlin was not told by Mr. Giblin whether any or all of this material was old or new. Mr. Giblin's real concern, according to Mr. Howlin, was that "the Carty investigation is compromised".¹⁸⁴

¹⁸² Transcript, Day 578, pages 26-27.

¹⁸³ Transcript, Day 574, pages 36-37.

¹⁸⁴ Transcript, Day 574, page 29.

He only discovered that information had been sent to Mr. Giblin by facsimile when he read Mr. Giblin's statement to the Tribunal in 2003.

- 3.63. Mr. Howlin made available two versions of the note of his conversation with Mr. Giblin on the evening of the 25th of June 2000. The first note, which is a contemporaneous or "consolidated" note, was made during and/or shortly after the telephone call.¹⁸⁵ The second is a redacted note which Mr. Howlin made prior to his attending a meeting with the Minister for Justice, Equality and Law Reform on Tuesday the 27th of June 2000. This was redacted by removing Mr. Giblin's name in order to give effect to what Mr. Howlin maintained was a right to confidentiality in respect of his source.¹⁸⁶ This note was handed over to Assistant Commissioner Fachtna Murphy in the course of his investigation into the anonymous allegations on the 4th of July 2000 and is referred to in his report, which also includes a typed version of the document.¹⁸⁷ The original of the note read as follows:

Phone: Martin Giblin 25/6/00
(Sunday evening 11.50pm).

- Serious info. being brought to him re: Sgt. White (whose objective was to give McBrearty as much grief as possible).
Criminals used to give perjured evidence against him.
- planted evidence! drugs on McBrearty associate. Already searched by another Garda – challenged White's find.
Prog. on TV3 (Wed.) next.
Ardagh – explosives planted
- Important witness (Garda) saw device (Frank Connolly Sunday B.P. +T.V.3) seeking to have witness speak to him. Giblin resisting – too important a witness.
- White planted stolen property on youth in Lifford (part of his M.O.)
- Critical issue is White is in position to blackmail 2 Ass.
Commissioners include. Kevin Carthy + Ass. Comm. Tony Hickey.

2

Evidence coming from Garda based in Donegal – has helped before + proved reliable.

He was approached by Sen. Detective (from Dublin) who told him that Sgt. White was being 'looked after'!

¹⁸⁵ Tribunal Documents – Anonymous Allegations, pages 843-844 – set out in Appendix A3.

¹⁸⁶ Tribunal Documents – Anonymous Allegations, pages 845-846 – set out in Appendix A4.

¹⁸⁷ Tribunal Documents – Anonymous Allegations, pages 276-277 – set out in Appendix A5.

-
- Sgt. White's expenses make interesting reading – also allowed to have access to stash of stolen property (to plant on people)!
 - Every case that Sgt. White was involved in needs rechecking.
-
- Giblin's real concern that Carthy investigation is compromised.
 - Case with 'Ballymun connection' would cause difficulty for Kevin Carthy. White did dirty work for him!¹⁸⁸

3.64. It is an unusual feature of Mr. Giblin's telephone call to Deputy Howlin that he did not discuss the receipt of the facsimile with him at all. He did not concentrate in detail on the shocking fresh allegations made in the facsimile, or their likely provenance. Mr. Giblin referred to some of the allegations set out in the facsimile but also concentrated on other additional matters. **The Tribunal is satisfied to accept Mr. Howlin's note as a reasonably accurate account of what he was told.** He was not told that the facsimile had been received or was addressed to Deputy Higgins, or given a copy of it. He was told only that Detective Sergeant White's expenses made "interesting reading", that he was allowed access to a stash of stolen property to plant on people, and that every case that Sergeant White was involved in needed rechecking. Mr. Giblin's real concern was that the "Carthy investigation is compromised" and he reported that Detective Sergeant White was in a position to blackmail Assistant Commissioners Carty and Hickey.

3.65. This was startling but very bald information. The central issues for both men must have been the extent of the information available and whether it was accurate. From Mr. Howlin's perspective, the information was authentic because it emanated from a senior counsel of standing at the Irish Bar. Crucially, it contained the information that "evidence coming from a Garda based in Donegal – has helped before + proved reliable". This gave the clear impression to Deputy Howlin that a Garda based in Donegal had furnished the information to Mr. Giblin: this Garda had helped Mr. Giblin before and had proved to be reliable in the past. The Tribunal sought to identify this Garda source because if Mr. McBrearty Senior and Mr. Togher were correct, the source of the facsimile was not a Garda or a retired Garda in Donegal at all but was unknown: the letter had been received through the post or post box and was completely anonymous. The person who had furnished the information was referred to in the body of the document as a serving Detective Inspector in the Dublin Metropolitan Area. Clearly, Mr. Giblin, in telling Mr. Howlin that the information emanated from a

¹⁸⁸ Tribunal Documents – Anonymous Allegations, pages 843-844.

Garda based in Donegal went considerably beyond what Mr. McBrearty Senior's position was and at the same time failed to reveal to Deputy Howlin the existence of the facsimile at all. An explanation for how this happened was offered to the Tribunal by Mr. Giblin: it was both complex and confounding.

What Deputy Howlin was told

3.66. Before considering that explanation a number of factors must be considered. Mr. Giblin, in outlining matters to Deputy Howlin, did not discriminate between historical material known to those involved in the McBrearty affair, and indeed, in some instances the subject of litigation in the District and High Courts and not contained in the facsimile received, and the contents of the facsimile. The additional historical material that was not included in the facsimile and about which Deputy Howlin was told as if it were fresh and new was:

1. The allegation that Detective Sergeant White had the objective of giving Mr. McBrearty Senior as much grief as possible: this refers to the inspections of Mr. McBrearty Senior's licensed premises and allegations of harassment. This had been the subject of High Court litigation between April and July 1997 and numerous other complaints.
2. Criminals were used to give perjured evidence against Mr. McBrearty Senior: this refers to the use of a number of persons alleged by Mr. McBrearty Senior to be petty criminals as witnesses against him in the District Court, for example Bernard Conlon. This had been canvassed directly with Mr. Conlon in cross-examination by Mr. Giblin S.C. in the District Court in December 1998 and Mr. Conlon's convictions were a continuing source of controversy in those proceedings in 1998.
3. Planting evidence on a McBrearty associate: this refers to an allegation that drugs had been planted by Detective Sergeant White on Paul Quinn, a brother of Mrs. Róisín McConnell, after he was detained for a drugs search on the 10th of February 1997. In 1999 Mr. Quinn instructed Mr. Ken Smyth, solicitor, in relation to this matter and he thereafter instituted proceedings.
4. The planting of an explosive device at a mast at Ardara: this was already the subject of suspicion and rumour: the suspicions about Ardara had been relayed to Mr. McBrearty Senior by a retired Detective Garda, James Madigan. Mr. Madigan was the "important witness" referred to in the conversation with Deputy Howlin. Mr. Giblin did not wish Mr. Madigan to speak to Mr. Frank Connolly, a journalist already investigating the matter, because Mr. Giblin wished to use him as a witness in the civil proceedings against the State and An Garda Síochána at a later stage. Assistant

Commissioner Carty was already aware of this issue and had commenced an investigation of it on the 4th of April 2000 at the request of the Garda Commissioner.

5. The allegation that stolen property had been planted on a youth in Lifford: this relates to a case extraneous to the facsimile and was offered to Deputy Howlin as proof of Detective Sergeant White's "M.O." (modus operandi). The Tribunal reviewed the papers and investigated this case and is satisfied that no such planting occurred in that case, though allegations were made by the youth that a false statement of admission was obtained from him by Detective Sergeant White.

Further, this material was not fresh and had not emanated from "a Garda based in Donegal". Much of it was already well known to Mr. Giblin for some time prior to June 2000. Therefore, it is difficult to understand why it became necessary to communicate urgently with Deputy Howlin about it late on a Sunday evening. All of these matters were also under inquiry by Assistant Commissioner Carty.

- 3.67. Other matters conveyed by Mr. Giblin to Deputy Howlin that did not emanate from the facsimile were that:

1. A Garda based in Donegal had been approached by a senior detective from Dublin, who told him that Sergeant White was being "looked after": and
2. There was a case with a "Ballymun connection" that would cause difficulty for Assistant Commissioner Carty.

The first of these, may refer to the transfer of Detective Sergeant White to Dublin following his suspension in March 2000 after his arrest in respect of the Bernard Conlon affair. Though not contained in the facsimile of the 25th of June 2000 this issue forms a major part of the facsimile of the 15th of July 2000. The second matter was also not included in the facsimile and, as will be seen, emanated from an entirely different source who was not "a Garda based in Donegal".

- 3.68. It can be seen, therefore, that the phone call by Mr. Giblin to Deputy Howlin, though made because of the urgency caused by the serious nature and freshness of the allegations contained in the facsimile, was made an occasion for the making of extensive allegations beyond the facsimile and not contained in it. The explanation for this may lie in what I have referred to as the juxtaposition between law and politics in relation to this matter. It is only fair to observe that by June 2000, as outlined later in this chapter, Mr. Giblin was operating in two capacities: firstly, he was retained as senior counsel to the McBrearty family in

relation to High Court proceedings and District Court prosecutions; secondly, he had extended his role into the political arena, as a citizen, because of his concern that the injustice done to his clients would not be addressed within the criminal legal process. He was frustrated on behalf of his clients and sought to enlist political support for them in furnishing this information to Deputy Howlin. He expressed the view that he was more interested in proceeding with the civil actions but there is no doubt that he was assisting in their campaign for the establishment of a sworn public inquiry at that time. Mr. Giblin had become embroiled in extraordinary events and was faced with what he regarded as insuperable difficulties in getting to the truth through the normal legal process. There is no doubt that Mr. Giblin, as a senior counsel, fought tenaciously and ultimately successfully on behalf of his clients and obtained what must be regarded as a very satisfactory result for them in civil proceedings. Nevertheless, his explanation as to how he dealt with Deputy Howlin in relation to this facsimile and that of the 15th of July 2000 was a cause of concern to the Tribunal.

Matters Requiring an Explanation

- 3.69. The Tribunal sought to understand why Mr. Giblin never sent the facsimile to Deputy Howlin; why he never informed him of the facsimile or its provenance; why he included allegations that were extraneous to the facsimile in his conversation with Deputy Howlin; why he told Deputy Howlin that this material came from a Garda based in Donegal; why he did not discriminate between the allegations contained in the facsimile and those which were not when speaking to Deputy Howlin; and why he did not return to Mr. Frank McBrearty Senior and make further enquiries with him in relation to the allegations. Mr. Giblin gave an explanation to the Tribunal in his various statements and evidence.

Mr. Giblin's informants

- 3.70. Mr. Giblin in his various statements and evidence to the Tribunal outlined a series of unusual contacts that he had with two persons about Garda behaviour in Donegal concerning Detective Sergeant John White. In a statement to the Tribunal made on the 23rd of November 2003, Mr. Giblin said that in late 1997 a person representing himself to be a Garda based in Donegal telephoned him. This person wanted to talk to him about the investigation into the death of the Late Richard Barron. He declined to identify himself. This man told Mr. Giblin that his clients were innocent of involvement in the death of the Late Richard Barron and that all Gardaí involved in the investigation disbelieved that the alleged confession made by Mr. Frank McBrearty Junior had been made by him; a lot of Gardaí were said to be worried about what was going on in Raphoe and thought that it would damage the force if it continued. The conversation was described by Mr. Giblin as awkward and disjointed.

- 3.71. Mr. Giblin described further contact with this man in early 1998. The source alleged that Detective Sergeant White had been given authority to close down Mr. McBrearty Senior's business, and to recruit Gardaí as he saw fit for the carrying out of inspections of the McBrearty licensed premises, to whom special allowances would be paid. He alleged that Sergeant White was not subject to the normal chain of command but was reporting to senior officers in Letterkenny. He also alleged that Mr. Andrew McBrearty was to be accused of involvement in drug dealing in Northern Ireland and that Mr. McBrearty Senior was to be accused of letting his premises be used for the sale of drugs. He said that all of this was happening to Mr. McBrearty Senior because he was thought by senior Gardaí to be talking too much about the Barron case and that the McBreartys "were to be shut up". Two further calls were received in 1998. In the first, received at the Law Library, Dublin, Mr. Giblin said that this Garda source expressed himself to be happy at the stand that Mr. McBrearty was taking in defending the District Court prosecutions and that Garda management was concerned about this. He said that Gardaí were concerned that their phones were tapped. The Garda source said that a senior officer in Dublin had told him that there was a lot of trouble in the "Park" over the use of Sergeant White against Mr. McBrearty Senior and the use of petty criminals as witnesses in the District Court prosecutions. The final telephone contact with this source was in the summer of 1998 when Mr. Giblin was informed by the Garda that evidence was being brought in from outside Donegal in the form of a witness who would "destroy the McBreartys in court". Mr. Giblin considered this informant to be an extremely important witness but he refused, when asked, to make a statement to Mr. McBrearty Senior's solicitor.
- 3.72. This informant also told Mr. Giblin that there were "dirty documents" and asked him if he would be interested in seeing them. He reiterated his concern about the tapping of Garda phones and that a lot of documents would be destroyed. Mr. Giblin said that the informant told him that he would send Mr. Giblin documents if he could. Mr. Giblin explained in detail how documents were sent to him by this source, some of which were "extremely beneficial". He said that he raised issues in the District Court as a result of some of the information supplied by this informant, in particular issues concerning Bernard Conlon. He knew the documents were from his source because of the use of a 'Nike' symbol on the envelope that he received. He did not retain any of the documentation received from this source but destroyed it all following the withdrawal of the District Court summonses against the McBrearty family in June 2000.¹⁸⁹ He also said:

During the course of my telephone contact with my anonymous source, I tried to encourage him to come forward and give evidence in the District

¹⁸⁹ Tribunal Documents – Anonymous Allegations, pages 799-808.

Court prosecutions against my clients. He was unwilling to make a statement to my solicitor on a confidential basis, or otherwise. It is difficult to convey in words how desperate the plight of my clients was during that time. ... Notwithstanding the concerns of my anonymous contact, he was unwilling to come forward at that time. He did, however, give a firm undertaking that he would give evidence in the High Court when I gave him an assurance that those proceedings would not come on for hearing for at least two years; we were too optimistic. He undertook to disclose himself, when the dust had settled, as he expressed confidence that Frank McBrearty Junior and Mark McConnell would not be charged with murder. He told me that he was confident that colleagues would give evidence in the High Court and tell the truth provided they were served with subpoenas. When I spoke to Mr. Howlin on the second occasion, I was by that stage extremely confident that my anonymous source at least would come forward and give evidence in the upcoming High Court actions.¹⁹⁰

- 3.73. In evidence Mr. Giblin explained to the Tribunal that he did not convey the information that he had received to his clients or to his instructing solicitor. Nevertheless, he had used this material in cross-examination in the District Court, a situation that he accepted was somewhat unusual.¹⁹¹ Mr. Giblin could not offer any reason as to why he had not sent on the facsimile to Deputy Howlin, or why he had not told him that he had received it from Mr. Frank McBrearty Senior, or, indeed, why he had not informed Deputy Howlin that this information had also been sent to Deputy Higgins. He said that it simply never occurred to him to do so. He denied the suggestion that in not doing so, he was attempting to indicate to Deputy Howlin that the information was coming from an independent Garda source and not his client; though that was clearly the effect of what he said on Deputy Howlin.
- 3.74. The fact that Deputy Howlin had coincidentally but separately received similar information from a “legal non-Garda source” to that received by Deputy Higgins also strengthened Deputy Higgins’ belief that the facsimile that he had received was authentic. It should also be noted that it was Mr. Giblin’s own decision to convey this information to Deputy Howlin: the facsimile was only addressed to Deputy Higgins, Mr. McBrearty Senior’s main political ally in this matter.
- 3.75. Mr. Giblin believed on reading the facsimile of the 25th of June 2000 that it was from the same anonymous informant who had contacted him in late 1997. However, he had never received anything other than Garda documents from that source so that his conclusion was not based on any comparison of the facsimile of the 25th of June 2000 with any document written or composed by his

¹⁹⁰ Tribunal Documents – Anonymous Allegations, pages 823 – Statement of Mr. Martin Giblin S.C. the 28th of April 2006.

¹⁹¹ Transcript, Day 579, pages 3-13.

informant. He accepted that, in hindsight, his conclusion in respect of the source of the facsimile of the 25th of June was “a bit of a leap” and that it could be said that his failure to outline these matters to Deputy Howlin gave the information greater weight than perhaps was justified in the circumstances. The Tribunal is satisfied that Mr. Giblin should have made the speculative nature of his conclusion clear to Deputy Howlin.

- 3.76. The matter does not end there. Mr. Giblin, in omitting to tell Deputy Howlin that he had received the facsimile from Mr. McBrearty Senior and in failing to outline the text of that document to him, thereby ensured that the only information as to its source was not given to Deputy Howlin. It will be recalled that the author of the document said that “confidential information” had come to hand from “a serving Detective Inspector of An Garda Síochána attached to a station in the D.M.A.” – the Dublin Metropolitan Area. Mr. Giblin gave the impression to Deputy Howlin that his information was from “a serving Garda in Donegal”. Moreover, Deputy Howlin was left with the further erroneous impression that the Garda serving in Donegal would give evidence in the High Court about these matters in the civil action to be brought by the McBreartys. This was not any part of the information furnished in the facsimile but was only what Mr. Giblin’s informant had allegedly said when he had last spoken to him some two years prior to the receipt of the facsimile. It was essential to Deputy Howlin’s understanding of this information that he be told of the speculative nature of what Mr. Giblin was saying. Instead, he received a most distorted view of the information that had come to hand and that had prompted these “urgent” communications. This contributed to a presentation to the Minister by Deputy Howlin that was, to say the least, inaccurate.

Documents

- 3.77. A number of documents were furnished by Mr. Giblin’s informant following the cessation of telephone contact with him in 1998.¹⁹² These, he said, were a copy of a statement made by Garda Tina Fowley in which she alleged that she had seen Detective Inspector McGinley practising the signature of Mr. Frank McBrearty Junior on the 4th of December 1996 in Letterkenny Garda Station. She had reported this to the Carty team, who referred her to her chief superintendent. She made a statement about the matter on the 17th of August 1999. The documents concerning the interviewing by the Carty team of the four detectives involved in the interviewing of Mr. Frank McBrearty Junior on the 4th of December 1996, which resulted in the making of an alleged false confession by Mr. Frank McBrearty Junior, were also supplied by the informant. These

¹⁹² Mr. Giblin told the Tribunal that the Tina Fowley document was given to him by a journalist. He said statements dealing with the taping of Frank McBrearty Junior’s alleged confession were furnished by his anonymous informant in Hilary Term (sometime between January and March) 2000: it is noted that the detectives’ statements were furnished to the Carty investigation in April 2000. See further Tribunal Documents – Anonymous Allegations, pages 960-968.

documents are said to have undermined Mr. Giblin's confidence in the objectivity, independence and open-mindedness of the Carty investigation. It should be noted that the detectives submitted statements to the Carty team in April 2000 concerning this matter and were not again interviewed by Assistant Commissioner Carty's team until July 2000, a month after the sending of the facsimile. The informant also supplied Mr. Giblin with a Garda note of a 'round table' conference between Professor Harbison and members of the Carty team in the course of which the State pathologist was inclined to the view that Mr. Barron probably died as a result of a road traffic accident. It is known that this meeting took place on the 26th of March 2000. This also undermined Mr. Giblin's confidence in the Carty investigation in that he concluded that that inquiry should then and there have vindicated his clients' reputations. All of these important documents were destroyed by Mr. Giblin at the conclusion of the District Court cases:¹⁹³ copies of some of them were furnished to Mr. Smyth, solicitor. The Tribunal notes that Mr. Giblin, though concerned about these matters, did not draw any of them to the attention of Deputy Howlin on the 25th of June 2000 as matters indicative of the authenticity and reliability of his informant, or as matters of great importance, even though they were essential to his clients' concerns.¹⁹⁴

The Ballymun Case

- 3.78. The case concerning the "Ballymun" issue had in fact emanated from a Detective Sergeant who was friendly with Detective Sergeant White and had nothing to do with the facsimile of the 25th of June 2000. As already noted the Tribunal is satisfied that there was no truth in the allegation ultimately made by Detective Sergeant White of wrongdoing on the part of Assistant Commissioner Carty in respect of the "Ballymun" case. Further, the events concerning that case occurred in 1995. Detective Sergeant White had a full opportunity when arrested on the 21st of March 2000 to make any allegations that he wished against Assistant Commissioner Carty at that time. Although he made some allegations against Assistant Commissioner Carty at that time this allegation, the most serious he ever levelled against him, was not included. In fact the allegation only emerged when conveyed by the other Detective Sergeant to Mr. Giblin and through him to Mr. Howlin. It is dealt with elsewhere in this report.

Conclusions on Mr. Giblin's call to Deputy Howlin

- 3.79. **The core of the message conveyed to Deputy Howlin by Mr. Giblin was the same as that of the facsimile, namely that Assistant Commissioner Carty was compromised. That message, at the time, was very significant in that**

¹⁹³ These matters were extensively explored and dealt with in the Second and Sixth Reports of the Tribunal.

¹⁹⁴ Tribunal Documents – Anonymous Allegations, pages 810-811 and Transcript, Day 579, pages 13-18.

the Minister for Justice, Equality and Law Reform was resisting a sworn public inquiry because he hoped to receive a full report from Assistant Commissioner Carty within the next short while that would deal with a lot of the issues raised by the McBrearty affair. In carrying the allegation to Deputy Howlin that the assistant commissioner was compromised, Mr. Giblin was clearly expecting Deputy Howlin to do something about it in the political arena. Insofar as he was aware of his client's campaign and Deputies Howlin and Higgins' support for a public inquiry, and that the facsimile had already been sent to Deputy Higgins, he must have understood that this material would be used to advance that cause politically: to demonstrate to the Minister that there were serious allegations levelled against Assistant Commissioner Carty, who was now compromised, and that the Carty investigation would never meet the case: he would have to convene a sworn public inquiry.

- 3.80. By not informing Deputy Howlin about the facsimile and that it came from Mr. Frank McBrearty Senior; by suggesting that it came from a Garda based in Donegal; and by embellishing his account with material external to the facsimile, Mr. Giblin was giving an air of independence and authenticity to this information that it clearly did not deserve. He was not briefing Deputy Howlin on the full reality of the situation. What could have been presented as a very simple story, that Mr. Frank McBrearty Senior had received a letter anonymously in the post which he sent on to Deputy Jim Higgins and to his lawyer, Mr. Martin Giblin S.C., was transformed into a complex mix of rumour, hearsay and innuendo that was not linked with the document at all, and in the telling of which the facsimile was not even mentioned. By failing to report what was supposedly the new and urgent information contained in the facsimile accurately and fairly to Deputy Howlin and to furnish him with a copy of the facsimile and inform him that it was sent from Mr. Frank McBrearty Senior, Mr. Giblin erred and failed to maintain the integrity of the process that he had initiated with Deputy Howlin. The deputy was dependent on Mr. Giblin's complete candour about these important matters. Instead he was primed with misleading and incomplete information that was given an entirely unwarranted aura of independence and authenticity because it came from a senior counsel.
- 3.81. The Tribunal was not offered any reasonable explanation as to why Mr. Giblin handled the facsimile in this way. No explanation was offered for the heightened urgency in seeking a meeting with Deputy Howlin and then failing to draw his attention to the central document that gave rise

to the urgency. If Mr. Giblin had a belief in the authenticity of the document, I would have expected him to produce it to Deputy Howlin without embellishment. If he had further and separate information to convey, he could have chosen to do so by setting out its separate nature and provenance clearly to Deputy Howlin. It is difficult to understand why this was not done. The Tribunal is not satisfied that this was done for a malicious reason but concludes that Mr. Giblin allowed himself to become caught up in the drama of these extraordinary events in which he was a participant. Unusually, he was in receipt of documents and information relevant to the cases on which he was engaged as a senior counsel, not from his solicitor, but from his client and his client's associates directly. The normal channel of communication is between solicitor and client. The solicitor then instructs counsel on all relevant matters. Mr. Giblin unwisely failed to adhere to this method of instruction. The purpose of doing business in this way is to ensure that counsel does not become directly involved in controversies related to the case and can at all times remain at an objective remove from contentious events. Mr. Giblin was subjected on a continuous basis to the highly fraught and emotional representations of his client, which understandably had a deep effect upon his ordinary emotional responses as a citizen and as a person and came to dominate his approach to these issues at the time.

Mr. Kenneth Smyth Receives a Facsimile

- 3.82. At 08.05 hours on the morning of Monday the 26th of June 2000, Mr. Frank McBrearty Senior sent a further facsimile to Mr. Kenneth Smyth, solicitor. This was the same facsimile that he had sent to Mr. Martin Giblin S.C. and to Mr. Jim Higgins, TD. Shortly after receiving this facsimile, Mr. Smyth received a telephone call from Mr. McBrearty Senior some time before 10.00 hours asking him whether he had received the facsimile, requesting him to make a transcribed copy of it and further requesting him to destroy the original of the facsimile when that was done. Mr. Smyth was not informed as to where this document had originally come from, nor did he ask. However, what stood out on this occasion for Mr. Smyth was that this was the first time that Mr. Frank McBrearty Senior had asked him to destroy a document. He did not feel comfortable about doing that. He directed his secretary to transcribe the facsimile, which she did, and to type in at the conclusion of the text of the document:

Text of this document came into my possession unsolicited on the 26th June 2000. The original has been destroyed at the request of the informant and this copy takes its place.

Notwithstanding the fact that he had the document transcribed and this addendum typed at the end of the transcribed text, Mr. Smyth did not destroy the original of the facsimile as requested by Mr. Frank McBrearty Senior, and retained it on his file. The only difference between the document sent to Mr. Smyth and those sent to Mr. Higgins and Mr. Giblin are words handwritten on the document by Mr. Frank McBrearty Senior: “Att. Kenneth Smyth from Frank McBrearty Senior”.¹⁹⁵

- 3.83. Mr. McBrearty Senior denied telling Mr. Smyth that he should destroy the facsimile. He implied in his testimony that Mr. Smyth was not telling the truth because Mr. McBrearty Senior had dispensed with his services in respect of his civil actions.¹⁹⁶ He described Mr. Smyth’s contention as rubbish because he knew that solicitors could not destroy vital documents. He pointed out that he needed all of his documents and “I kept them all myself”.
- 3.84. Mr. McBrearty Senior also told the Tribunal that though he was not one hundred per cent sure, he possibly did tell Mr. Smyth that this document had arrived anonymously and unsolicited to him in the post. For his part, Mr. Smyth, when asked by Assistant Commissioner Murphy who had sent him the facsimile and if the author of the document and the sender were one and the same, told him that he knew the person who had sent the document to him (namely Mr. Frank McBrearty Senior) but that “enough comments were made to satisfy me that he is not the author”, to which he added the observation that he could not rule out the retired Garda (Garda P.J. Togher) as the author, by reason of the style of the document.¹⁹⁷ The Tribunal notes that had Mr. McBrearty Senior informed Mr. Smyth on the 26th of June 2000 that the facsimile was received from an anonymous person by post and was unsolicited, Mr. Smyth would probably have informed Assistant Commissioner Murphy of this. **The Tribunal is satisfied that Mr. Smyth was not told that the facsimile was anonymous or unsolicited by Mr. Frank McBrearty Senior. In addition, the Tribunal is also satisfied that Mr. Frank McBrearty Senior told Mr. Smyth that he should transcribe or copy the facsimile which he had received and that Mr. Smyth declined to do so because he felt that it would be wrong to destroy an original document. Mr. Frank McBrearty Senior in this context has sought to discredit an honourable solicitor who had provided significant support and legal assistance to him and his family for a period of approximately three and a half years. In addition, Mr. McBrearty Senior chose not to tell the Tribunal the truth about the sending of this document to Mr. Smyth or the reason why he wished to have it destroyed. This was a deliberate**

¹⁹⁵ Tribunal Documents – Anonymous Allegations, pages 661-662 – set out in Appendix A6 and page 1041 - set out in Appendix A7.

¹⁹⁶ Transcript, Day 576, pages 38-45.

¹⁹⁷ Tribunal Documents – Anonymous Allegations, pages 653-656 (note of meeting at office of Assistant Commissioner M.F. Murphy, Garda Headquarters, 27th January 2003).

untruth relevant to an issue into which I had to inquire and it was done with the realisation by Mr. McBrearty Senior that he was involved in the creation and sending of the facsimile that he now wishes to disavow.

- 3.85. Mr. Smyth described these events in his evidence to the Tribunal. He told me that when he spoke to Mr. McBrearty Senior he did not ask and Mr. McBrearty Senior did not proffer the name of the person who had furnished the document or whence it came. He did not ask Mr. McBrearty Senior why he wanted to have the facsimile destroyed. He said:

*On this occasion I just felt, no, I just didn't feel comfortable with destroying this. I will make the transcript but I'll put the document on my file.*¹⁹⁸

Mr. Smyth could not recall whether he was told that the document had been sent to Mr. Higgins or Mr. Giblin. Nevertheless, he thought that he became aware, later in the week, that the document had been given to two politicians and had been discussed with the Minister. He did not make any further enquiries about the document. As already seen, the document had only been furnished to one of the politicians. He also believed that the document came from Mr. P.J. Togher, Mr. McBrearty Senior's retired Garda associate, whom he had first met on the 9th of December 1998. Mr. Smyth ascribed his belief to the fact that Mr. Togher at that meeting made a number of significant references to Detective Sergeant White's behaviour. He had described Mr. White on that occasion as "ruthless and dangerous". Mr. Togher said at that meeting that he would not travel in the same car as Sergeant White and that certain Gardai in Ballybofey did not want to work with him. He also spoke in the course of that meeting about the diversion of B.S.E. funds. However, Mr. Smyth acknowledged that nobody ever confirmed to him over the years that Mr. P.J. Togher had been the author or the source of the document.¹⁹⁹

- 3.86. Mr. Smyth's understanding of the relationship between Mr. P.J. Togher and Mr. Frank McBrearty Senior is exemplified by a letter that he wrote on behalf of Mr. McBrearty Senior to the Office of An Taoiseach on the 11th of February 2000, in which he requested an appointment for Mr. Frank McBrearty Senior and "a concerned retired Garda" in order to discuss Mr. McBrearty Senior's situation and general policing in Donegal. A meeting never took place. However, it was Mr. Smyth's evidence that he understood that the "concerned retired Garda" who was to accompany Mr. Frank McBrearty Senior was Mr. P.J. Togher.²⁰⁰ Mr. Frank McBrearty Senior said that it was his intention to ask Mr. James Madigan, the retired detective Garda, to accompany him to that meeting were it to take place.

¹⁹⁸ Transcript, Day 586, pages 5-8.

¹⁹⁹ Transcript, Day 586, pages 15-17.

²⁰⁰ Transcript, Day 586, pages 37-38 and see Tribunal Documents – Anonymous Allegations, page 563.

He had associations with Fianna Fáil that would have been useful. Mr. P.J. Togher had a reluctance to meet with the Taoiseach, a Fianna Fáil politician.²⁰¹ Mr. Smyth believed that he wrote the letter with Mr. P.J. Togher in mind and that although he had met Mr. Madigan on two occasions, as far as he was concerned Mr. Madigan was “more or less out of the picture and the tail wind was behind Mr. Togher in 2000”.²⁰² Mr. Madigan confirmed in evidence that he had never been approached and knew nothing about the proposed meeting with An Taoiseach.²⁰³ Mr. P.J. Togher said that the matter was never discussed with him and that he was not aware of the letter to An Taoiseach.²⁰⁴ **On this matter I am satisfied to accept the evidence of Mr. Smyth that the letter was written on Mr. Frank McBrearty Senior’s instructions with a view to organising a meeting with An Taoiseach in relation to his complaints and that Mr. P.J. Togher was the “concerned retired Garda” referred to in the letter. I interpret the evidence given by Mr. Frank McBrearty Senior and Mr. P.J. Togher on this matter as yet another attempt to mislead the Tribunal and convince it that Mr. Togher was not acting closely with Mr. Frank McBrearty Senior at the time as his confidant and adviser.**

- 3.87. It should be noted that both Mr. Smyth and Mr. Peter Nolan B.L. attended on McBrearty Senior’s behalf on the 21st of June 2000 at the District Court at Letterkenny when a large number of summonses were withdrawn by the Director of Public Prosecutions. Mr. Smyth said in evidence that he had been in extensive contact over this matter with Mr. McBrearty Senior and others. No mention was made to him when he went to Donegal that Mr. McBrearty Senior had received a letter for Mr. Higgins that was of a very urgent nature prior to his attending the brief District Court hearing, whilst he was in Donegal or between the date of the hearing and the receipt of the facsimile.²⁰⁵ Having regard to the urgency with which the facsimile was transmitted on Sunday night the 25th of June 2000, and the availability of Mr. Smyth and counsel earlier in the week and during the subsequent course of it, to Mr. Frank McBrearty Senior and the urgency with which everyone appeared to react to the document when it was received, it seems likely that the decision to utilise or send the document was made between the 21st of June and the 25th of June 2000. Considerable media attention had been paid to the withdrawal of these summonses. That, of course, contributed to public and political concern about events in Donegal. This concern could only have been heightened by the appearance of the facsimile on the 25th of June 2000. By this time the media were also very interested in events concerning Gardai in Donegal, and a documentary was in preparation for TV3 on the Ardara controversy.

²⁰¹ Transcript, Day 575, pages 127-135 (evidence of Mr. Frank McBrearty Senior).

²⁰² Transcript, Day 586, page 38 and pages 72-73.

²⁰³ Transcript, Day 577, pages 176-177.

²⁰⁴ Transcript, Day 569, pages 133-135.

²⁰⁵ Transcript, Day 586, pages 57-58.

The Journalists

Mr. Frank Connolly

- 3.88. Two journalists, Mr. Frank Connolly and Mr. John Mooney, gave evidence to the Tribunal relevant to the emergence of the facsimile. Mr. Frank Connolly was in 2000 a journalist with The Sunday Business Post and was also carrying out work in relation to the Donegal scandal in conjunction with TV3. He told the Tribunal that he first became aware of the McBrearty affair from a chance conversation with Mr. Kenneth Smyth, solicitor to the McBreartys, and thereafter visited Donegal and Mr. McBrearty Senior sometime in early to mid 1998. He conducted a number of interviews and was in regular contact at the time with Mr. Frank McBrearty Senior. He also received a facsimile, which he acknowledged was probably the same document received by Mr. Kenneth Smyth, solicitor, from Mr. Frank McBrearty Senior.
- 3.89. In that regard, amongst Frank McBrearty Senior's discovery documents a version of the facsimile was found addressed, in what is apparently Mr. Frank McBrearty Senior's handwriting, to Mr. Frank Connolly at The Sunday Business Post (Appendix A11). The version in Appendix A11 is similar in content but different in layout and format to the facsimile sent to Mr. Higgins (Appendix 1). The typeset is different: the version addressed to Mr. Connolly has five numbered paragraphs on the first page whereas that sent to Mr. Higgins has only four. The version in Appendix A11 does not have the words "confidential confidential confidential" repeated across the top of the first page and the word "end" does not appear at its conclusion. There are significant spacing differences between the sentences and paragraphs within the respective documents. A similar document to that set out in Appendix A11 emerges later in the story when Mr. William Flynn sent a copy of a document that he alleged he obtained from Mr. Frank McBrearty Senior to Assistant Commissioner Murphy on the 2nd of November 2000 (Appendix A14). **That Mr. McBrearty Senior should have a different version of a document that he claimed to have received in the post in his possession called for some reasonable explanation, which the Tribunal is satisfied, has not been forthcoming.**
- 3.90. Mr. Connolly received the facsimile at the offices of The Sunday Business Post. He told the Tribunal that he got notice of its arrival and imagined that he was told the general contents of the document over the phone. Mr. Frank McBrearty Senior told Mr. Connolly that he received the document in the post or through his letterbox. Mr. Connolly asked whether there was any defining postmark on the envelope in which the document was contained and Mr. McBrearty Senior told him that he had disposed of the envelope. He believed that the facsimile had

been sent to him shortly after Mr. McBrearty Senior had received it because he believed Mr. McBrearty Senior to be a man who moved on issues as soon as they happened and usually sent material very soon after he received it. He thought it more likely that he received it after the Tuesday of that week, that is after Tuesday the 27th of June 2000. On receipt of the document, Mr. Connolly acknowledged that he probably discussed the contents of it with Mr. Frank McBrearty Senior within a very short time, together with the implications of this type of document. He said:

*The contents of the document as a journalist were quite sensational, quite extraordinary, but because it was an anonymously sent document and because the allegations could not be stood up, it was quite a sensitive document and it was difficult to probably know what to do with it in the early stages having received it.*²⁰⁶

Mr. Connolly then discussed the matter with his editor. The facsimile was unpublishable in the form in which it had been received. The allegations were very serious “but how are we going to stand them up or find out whether they were true or not?”

- 3.91. In the memo of a meeting between Mr. Jim Higgins TD, Mr. Brendan Howlin TD and the Minister for Justice, Equality and Law Reform, Mr. John O’Donoghue TD, it is recorded that Mr. Higgins observed that he had received a query from Mr. Frank Connolly and TV3 in respect of the facsimile, which he had not answered prior to this meeting, which took place in the afternoon of the 27th of June. Following this meeting Mr. Higgins gave an interview to Mr. Frank Connolly concerning his meeting with the Minister for Justice, Equality and Law Reform, which was quoted in an article written by Mr. Connolly for The Sunday Business Post on the 2nd of July 2000. Mr. Connolly acknowledged that he telephoned Mr. Higgins to get his view of the document because Mr. McBrearty Senior had probably told him that he had sent it to Mr. Higgins and perhaps to his legal advisers also. This interview:

*Allowed us to publish the story that week ... that was the hook that allowed us to publish ...*²⁰⁷

The article was built around Mr. Frank Connolly’s interview with Mr. Jim Higgins TD concerning his meeting with the Minister.

- 3.92. In his article on the 2nd of July 2000 Mr. Connolly reported that Mr. Jim Higgins TD and Mr. Brendan Howlin TD met the Minister to express their concern over a claim that a Garda, who was the subject of very serious allegations, had in turn

²⁰⁶ Transcript, Day 590, pages 11-22.

²⁰⁷ Transcript, Day 590, pages 23-28.

made serious allegations of wrongdoing against two more senior colleagues, and that it was believed that Commissioner Byrne had approached Assistant Commissioner Fachtna Murphy to ask him to investigate these claims, which both TD's believed could have very serious implications. It was then noted that the Commissioner had ordered a major probe into allegations against some Gardaí in Donegal, which had been proceeding in a very thorough fashion under the direction of Assistant Commissioner Kevin Carty. The article said:

The latest allegations have been made by a member of the force who has been arrested and questioned about serious offences by the Carty inquiry team and has threatened to make his claims about senior officers publicly known if he is prosecuted.

According to Higgins, information supplied by an unnamed detective inspector serving in the Dublin Metropolitan Area suggests the garda under investigation behaved in an improper way with the full knowledge of senior officers over a period spanning more than 20 years.

The illegal operations involved planting evidence on suspects leading to their successful conviction for a variety of serious offences.

"If this is true then all of those cases which the garda was involved in over many years will have to be re-opened. It has also huge consequences for the current investigation into corruption in the force in Donegal and it underlines the urgency of my call for a public inquiry into the situation." Higgins, who was made his party's spokesman on public enterprise in last week's front bench re-shuffle, told The Sunday Business Post.

The Minister for Justice was also told that the garda officer had taken possession of stolen property which was not properly logged in official garda documents and some of which he used to plant on suspects.

The Minister was also informed that the garda has prepared an 18-page document detailing his contact with the two senior officers who, he claims, encouraged and rewarded his illegal activities ...²⁰⁸

The article then goes on to describe how the Minister held "urgent discussions" with the Garda Commissioner as a result of his meeting with Deputies Higgins and Howlin. It outlined some of the allegations that were under investigation by the Carty inquiry. This article was given front page prominence by the newspaper, reflecting the seriousness of the allegations contained in the facsimile and Mr. Higgins' claim that this development had "huge consequences" for the investigation being carried out by Assistant Commissioner Carty. It added to the urgency of his call for a full public inquiry into the Donegal affair.²⁰⁹

²⁰⁸ Tribunal Documents – Anonymous Allegations, page 557.

²⁰⁹ Tribunal Documents – Anonymous Allegations, statement of Frank Connolly 7th of July 2000 page 255 and Memo of Interview of Mr. Frank Connolly 5th July 2000 pages 256-257; see also interview between Mr. Connolly and Tribunal investigators 20th of March 2007 pages 1127-1137.

- 3.93. The Tribunal is satisfied that the interview given by Deputy Higgins to Mr. Connolly made public the core of the allegations contained in the facsimile of the 25th of June 2000. This was calculated to put further pressure on the Minister to convene a sworn public inquiry. It pointedly omitted the names of the senior officers against whom the allegations were made. Before the interview the contents of the facsimile had already been disclosed by Mr. Frank McBrearty Senior to Mr. Connolly. Deputy Higgins told Mr. Connolly about his meeting with the Minister for Justice, Equality and Law Reform. There was very little attempt to maintain a confidential umbrella over the core allegations by Mr. McBrearty Senior or Deputy Higgins when dealing with Mr. Connolly. This does not sit well with their attempts to rely upon privilege in seeking to maintain the “confidentiality” of the identity of the source of the facsimile when faced with later requests for information from the Murphy inquiry and the Tribunal.

Mr. John Mooney

- 3.94. Mr. John Mooney, then a journalist for The Sunday Times, was interviewed by Gardai on the 28th of May and the 25th of July 2002 in respect of any information he may have had with regard to the facsimile dated the 25th of June 2000. In an article on the 25th of November 2001 Mr. Mooney had written that a Garda “memorandum” alleging corruption by two high ranking officers that had been passed to the Minister for Justice, Equality and Law Reform by Jim Higgins, TD and Mr. Brendan Howlin, TD was a forgery. He wrote:

The bogus document was prepared to collapse the anti-corruption investigation headed by Assistant Commissioner Kevin Carty by a Garda who was himself accused of serious corruption. The file purported to claim that the two high ranking officers had provided a subordinate officer with stolen goods to plant on suspects. The “file” contained warnings about “unthinkable consequences” for the force should full details of the ongoing corruption inquiry emerge.

The contents of the “file” were investigated after Labour TD Brendan Howlin and Fine Gael’s Jim Higgins contacted Minister O’Donoghue demanding an inquiry last year. The corrupt Garda concerned was suspended from the force and it emerged had never served alongside the two high ranking Gardaí.

The “file” now appears to have been a forgery and circulated in an attempt to collapse the Donegal corruption inquiry.

Both deputies said they had no alternative but to alert the Minister.²¹⁰

²¹⁰ Article “The Dirty Cops of Donegal – Attempt to Scupper Probe with a Forged Document” by John Mooney, The Sunday Times, 25th of November 2001.

Mr. Mooney told interviewing Gardaí that the “forged” document that he had seen had numbered paragraphs and was similar to the facsimile document furnished to Mr. Jim Higgins TD (Appendix A1). It did not contain the last paragraph of that facsimile. He said that he saw this “forged” document before it was shown to the Minister for Justice, Equality and Law Reform and understood that it was to be used by the McBrearty family against the State in civil proceedings. He also recalled that the words “crime and security” were typed in at the top of the document and that the document on its face bore a Garda stamp, which gave him the impression that it constituted a part of some sort of secret investigation within An Garda Síochána. It was not what he would have described as a station Garda stamp. From the manner in which the document was drawn up and the fact that it was not signed he drew the conclusion that it was a forgery.²¹¹

- 3.95. When interviewed by Tribunal investigators, it was pointed out to Mr. Mooney that it would be of significance if the document that he had seen was in existence prior to the 25th of June 2000. In the course of that interview on the 22nd of March 2007 he confirmed that he had seen the “forged” document prior to that date. He had spent a number of weeks investigating the allegations contained in it and had reached the conclusion that it was indeed a forgery calculated to undermine Assistant Commissioner Carty’s investigation.
- 3.96. Mr. Mooney was not able to verify any element of the allegations during the course of his limited inquiries and therefore did not publish them at the time. He described his decision in this way:

The fallout by producing, or by the Sunday Times particularly writing an article about two senior police officers and indeed John White, stating that they had engaged in these activities would have been calamitous if it was wrong. When I had seen this particular document I had chosen to research it and check it out properly to see if there was any truth to it and not just to take anyone’s sort of assertions at face value. And I remember distinctly ... news reports that Jim Higgins and Brendan Howlin had approached the Minister for Justice and my own concern was that I had had this story and hadn’t published it and that wouldn’t have been obviously correct on my behalf if it had turned out to be true and I remember thinking that is what I had seen, that they have taken this to John O’Donoghue. So it had to be before, that I had been aware of it. I suppose as a professional journalist, while we

²¹¹ Tribunal Documents – Anonymous Allegations, meeting between D/Superintendent Brehony and Inspector Corcoran and Mr. John Mooney 28th May 2002, pages 88-91 and interview between Mr. John Mooney and D/Superintendent Brehony and Sergeant Corcoran 18th August 2000 pages 258-259.

*strive, and we do our best and we are not always correct, but to get information right, it's also as far as editors are concerned, it's important that we deliver stories first so that struck me.*²¹²

In the course of his inquiries he discovered that John White had never worked with Assistant Commissioner Hickey and was satisfied that that allegation was not true. He concluded that there was a possibility the document had been created by a Garda who was under investigation and his conclusions to the effect that it was bogus were subsequently published in the article of the 25th of November 2001.²¹³

3.97. In evidence to the Tribunal Mr. Mooney recalled that the general thrust of the document that he had seen was to the effect that two Assistant Commissioners and Detective Sergeant White were involved in a conspiracy to plant stolen property, and that there was a reference to John White being untouchable because he had information that compromised the two Assistant Commissioners. The allegations concerning the planting of stolen property constituted, for him, the core of the allegations in the document. He could not recall specifically whether the document made a claim that Detective Sergeant White was in a position to blackmail anybody. The allegation that he recalled was that Detective Sergeant White could not be prosecuted for anything because he had information on Assistant Commissioner Carty. He also recalled reading a line in which it was stated that there were “huge consequences for the force”. That made a big impression on him. To the best of his recollection he recalled that there was some reference to the payment of extra expenses to Detective Sergeant White in the form of un-worked overtime or travelling and subsistence allowances for assisting the two senior officers in the alleged conspiracy. He also recalled a passage similar to paragraph 4 of the facsimile, to the effect that there was a fear among members of the investigation team, who believed that if Sergeant White was fully investigated he would use his knowledge of these matters as his defence. This would result in a number of convictions being challenged successfully as unsafe and this would have unthinkable consequences for those involved and the entire Garda force.

3.98. The document also contained allegations that stolen property had been planted on suspects and that Detective Sergeant White had a large amount of stolen property at his disposal that had not been officially documented in official property books. It also alleged that he had moved this property to the Donegal division and that this was known by the authorities. Mr. Mooney could not recall any passage in the terms of paragraph 6 of the facsimile to the effect that it was felt that the Carty investigation would be unsuccessful in establishing the facts

²¹² Transcript, Day 589, pages 30-31.

²¹³ Transcript, Day 589, pages 32-33.

“of the illegal activities of Detective Sergeant White and the only other alternative was a full and open public inquiry”. He also thought that there may have been a passage similar to the terms of the last paragraph, which suggested that Detective Sergeant White was in regular contact with Assistant Commissioner Hickey and had an eighteen page document concerning his and other activities whilst he was stationed in Dublin which was “his passport to escaping the rigours of the law and his way of frustrating the ongoing investigation”. He told the Tribunal that he regarded the allegation that the three officers were hand in glove with each other in a conspiracy to pervert the course of justice and plant stolen goods on people who were ultimately convicted as a new and most serious allegation. This was the thing he most remembered from the document. He told the Tribunal that the document he saw, to the best of his recollection, ended with “unforeseen consequences for the force”. In that regard he had previously indicated to investigating Gardaí that a final paragraph along the lines of the facsimile of the 25th of June 2000 did not appear in the document that he had seen, a statement he was happy to reaffirm at the Tribunal when it was pointed out to him.²¹⁴

3.99. The Tribunal is satisfied that Mr. Mooney saw a version of the facsimile of the 25th of June 2000 prior to that date. He carried out some inquiries in relation to it which led him to the belief that he could not rely upon it as being truthful, a conclusion about which he wrote on the 25th of November 2001. Mr. Mooney was entirely unclear as to the occasion upon which he saw the document or who showed it to him. He said, however, that Mr. P.J. Togher was not his source.²¹⁵

3.100. On the 10th of April 2002 Assistant Commissioner Kevin Carty wrote to Assistant Commissioner Murphy in respect of the anonymous allegations and suggested in that letter:

That I have information which indicates that Ken Smyth of Binchy Solicitors who represents the McBrearty family had a document in his office some weeks prior to Deputy Higgins disclosure which was broadly similar in content to the Higgins document. I believe that this is the document Mr. Higgins had re-typed. I intend to give this information in evidence at the Tribunal.²¹⁶

3.101. In evidence to the Tribunal Assistant Commissioner Carty said that it was Mr. Mooney who had given him this information. Mr. Mooney felt that he could not answer that question at the Tribunal. The Tribunal is satisfied that it was Mr. Mooney who gave this information to Assistant Commissioner Carty when following up the story in respect of the “forged” document that he had seen.²¹⁷

²¹⁴ Transcript, Day 589, pages 24-27.

²¹⁵ Transcript, Day 589, page 74.

²¹⁶ Tribunal Documents – Anonymous Allegations, page 83.

²¹⁷ Transcript, Day 580, pages 136-137.

- 3.102. For his part, Mr. Smyth, though he acknowledged meeting Mr. Mooney in the late summer of 2000 in his office after the facsimile had been sent, told the Tribunal that Mr. Mooney simply could not be correct that he had seen a copy or a version of the facsimile in his office prior to that date.²¹⁸ **The Tribunal is satisfied that Mr. Smyth did not have a copy or version of the facsimile of the 25th of June 2000 in his possession prior to that date.**

Mr. William Flynn's Copy

- 3.103. Mr. William Flynn, the private investigator who had been retained by Mr. Frank McBrearty Senior in 1997, also claimed to have received a version of the facsimile of the 25th of June 2000. On the 2nd of November 2000, he sent a copy of this document under cover of a note dated the 27th of October 2000 to Assistant Commissioner F. Murphy who was then investigating the facsimile that had been sent to Mr. Higgins. The document that Mr. Flynn claims was faxed to him by Mr. McBrearty Senior is set out at Appendix A14.²¹⁹ The content of this document is in its body the same as that set out in the facsimile of the 25th of June 2000 sent to Mr. Higgins (Appendix A1) save that it does not contain the words "confidential confidential confidential" at the top of page 1 and it does not conclude with the word "end". It differs from Appendix A1 in the same way as Appendix A11, the document found in Mr. Frank McBrearty Senior's discovery and addressed to Mr. Frank Connolly, which it resembles in virtually every respect except for the type font. Even the irregular justification in the various lines of the document Appendix A14 replicates the irregular justification of the same lines in Appendix A11. The words "trumped up" appear in both Appendices A11 and A14 whereas the phrase is misspelt as "tramped up" in the facsimile sent to Mr. Higgins (Appendix A1).²²⁰
- 3.104. Mr. Flynn told the Tribunal in evidence that he received this facsimile from Mr. Frank McBrearty Senior "about the end of June", on Monday or Tuesday the 26th/27th of June. He gave evidence that the document set out at Appendix A14 was a true copy of the document that he received by facsimile from Mr. Frank McBrearty Senior.²²¹ Mr. Flynn could not recall any conversation that he had with Mr. Frank McBrearty Senior at the time that he was furnished with the document. He could not remember the phone call.²²² Mr. Flynn could not assist the Tribunal when giving evidence as to the origin of the information contained in the facsimile. He had previously speculated that it had been composed by lawyers and a journalist on the basis of information supplied by Mr. P.J. Togher and had gone so far as to suggest that it had been composed in Mr. McBrearty Senior's conservatory.²²³ Mr. Flynn also alleged that the allegations contained in the

²¹⁸ Transcript, Day 586, page 57.

²¹⁹ Tribunal Documents – Anonymous Allegations, pages 350-352.

²²⁰ Appendix A14 is referred to as Appendix A20 in Assistant Commissioner Murphy's report.

²²¹ Transcript, Day 585, pages 33-36.

²²² Transcript, Day 585, pages 35-36.

²²³ Transcript, Day 585, pages 40-42.

facsimile were made by Mr. P.J. Togher at a meeting at his home on the 7th of March 2000. This matter will be considered later in this section.

Meeting the Minister

- 3.105. Mr. John O'Donoghue TD, Minister for Justice, Equality and Law Reform received a phone call from Mr. Jim Higgins TD and agreed to meet him with Mr. Brendan Howlin TD on the 27th of June 2000.²²⁴ He was told on the telephone that Mr. Higgins had some information in his possession which was of importance but he could not precisely recall what was said.
- 3.106. The two Teachtaí Dála held a meeting with the Minister at the Minister's office in Dáil Éireann at 15.30 hours on the afternoon of the 27th of June 2000. A note of the meeting was made by Ms. Oonagh McPhillips, the private secretary to the minister. Her note reads:

Note of meeting held Tuesday 27 June 2000
at 3.30 pm, Minister's office, Dáil Éireann

Present: John O'Donoghue T.D., Minister for Justice, Equality and Law Reform
Jim Higgins, T.D.
Brendan Howlin, T.D.
Oonagh McPhillips, Runai Aire

The Meeting was arranged at the request of Deputies Higgins and Howlin following their separate receipt of confidential information relating to the "McBrearty" case in Donegal.

On Sunday last Deputy Higgins received a confidential memo from a source he trusted absolutely – he said it was a Garda source. He handed copies of the memo to the Minister and Deputy Howlin who both studied it.

Deputy Howlin said he had also received confidential information on Sunday via a telephone call from what he described as a legal – not a Garda – source. He read his notes of the call to the meeting. He also expressed his absolute trust in his source.

Both Deputies acknowledged openly that neither of them had any proof of the allegations they outlined but both had no reason to suspect any malicious motive on the part of their sources.

Deputy Higgins said that he had received a query from Mr. Frank Connolly of The Sunday Business Post and TV3 which he had not answered. He said

²²⁴ Transcript, Day 577, pages 7-9.

his source was willing to co-operate with a Garda enquiry but not with the media.

The Minister acknowledged the seriousness of the allegation contained in the memo and said he would discuss it with the Garda Commissioner at the earliest possible opportunity.

Oonagh McPhillips

Runai Aire

27 June 2000.²²⁵

- 3.107. The Minister told the Tribunal that he was very sceptical about the information contained in the document of the 25th of June 2000 and that furnished by Deputy Howlin. He noted that Deputy Higgins' source was said to be a Garda who would co-operate with a Garda inquiry but not with the media. If that were so, he observed, there was no reason that he could not have gone directly to the Garda Commissioner with his information. Nevertheless, the Minister was satisfied that he had to respect the opinion of two experienced Teachtaí Dála who had come to him with this information rather than announce it publicly to the Dáil. They were raising a matter of public interest. He felt also that there was a political dimension to the decision to give the information to him rather than the Garda Commissioner. He said that Deputy Higgins:

*Was putting the information my way and he intended me to deal with it. I mean you could say of course, naturally it would have occurred to me that there was an element of Mr. Higgins wanting to transfer the problem, and Mr. Howlin the same. That would be natural enough. I mean they were deputies in the House and weren't holding an office, so naturally enough they wouldn't have been in a position to do anything else with it other than perhaps give it directly not [sic] Garda Síochána themselves, which they obviously decided not to do, they decided instead that they should give it to me. ... They're politicians, that's what politicians do. ... I don't think that there was an attempt at a stroke in it in that sense but I think they wanted to make sure that I was kept in the frame.*²²⁶

He added that the two Teachtaí Dála could have given the documentation directly to An Garda Síochána without any potential embarrassment for the Minister if they wished but they chose not to.²²⁷

²²⁵ Tribunal Documents – Anonymous Allegations, page 269.

²²⁶ Transcript, Day 577, pages 17-18.

²²⁷ Transcript, Day 577, pages 3-18.

- 3.108. Mr. O'Donoghue told the Tribunal that he regarded with suspicion the confluence of events whereby Deputy Higgins received his information from a Garda source and Deputy Howlin received his from a legal source at the same time. He believed that the two Teachtaí Dála in giving the information to him as Minister for Justice, Equality and Law Reform:

*Had a failsafe mechanism of giving me the information ... and whether it was true or false then was a matter for me to ascertain through the mechanisms which were available to me. They didn't, for example, go into the Dáil and make the statements, I know that they say that they didn't go into the Dáil and make these statements because they wanted to be responsible. I have no doubt that was an element in it. But I would also say that there was an element of them not wanting to go into the Dáil and make statements which would turn out to be completely false. ... What I honestly think is this: if they genuinely believed that there was some political advantage to be gained and that they were on solid ground, they would have gone into the Dáil and said that. I've no doubt about that.*²²⁸

The Minister acknowledged, however, that he did not know of any other politician who would have taken any different route than that followed by the two Teachtaí Dála. He was asked whether he was aware of any regulatory standards that apply in Dáil Éireann in relation to anonymous sources or anonymous information that comes to members of the Dáil by way of a code of behaviour or ethics. He replied that he was not but his practice was to regard any information passed to him by persons attending his clinic as confidential. However, he threw all anonymous correspondence in the bin.²²⁹

- 3.109. At the time he received the information the Minister was, of course, unaware that Deputy Howlin's legal source was Mr. Martin Giblin S.C., Mr. Frank McBrearty Senior's senior counsel, and that Deputy Higgins' conduit was Mr. Frank McBrearty Senior and that the information had come from Mr. P.J. Togher. He found a number of the allegations made to him unbelievable but felt that he was obliged to act notwithstanding his scepticism. He noted not only the coincidence of the information but also the coincidence of the call for a public inquiry. Looking back on it with knowledge of the identity of the conduits of the information he was of the view that the information was provided to the two Teachtaí Dála in an attempt to force a public inquiry. If he had known the identity of the sources at the time, it would have increased his suspicion in relation to the information. Having said that, he believed that he still would have referred the

²²⁸ Transcript, Day 577, pages 22-23.

²²⁹ Transcript, Day 577, page 24.

information to the Garda Commissioner for investigation.²³⁰ The Tribunal is satisfied that it should have been made clear to the Minister that the respective sources were not to be regarded as entirely independent of the campaign for a public inquiry. Both deputies knew that their respective sources, the main protagonist and his senior counsel, could not be presented to the Minister as independent and neutral parties.

- 3.110. Following this meeting the Minister for Justice, Equality and Law Reform, Mr. John O'Donoghue TD contacted the Commissioner of An Garda Síochána, Mr. Pat Byrne, who then requested that Assistant Commissioner Fachtna Murphy carry out an inquiry in relation to the allegations contained in the information supplied by the two Teachtaí Dála. By the time the Tribunal was established two reports had been compiled by Assistant Commissioner Murphy dated the 10th of December 2001 and the 22nd of February 2002, copies of which, together with their appendices, were furnished to the Tribunal in June 2002.
- 3.111. The Tribunal is satisfied that on receipt of this information the Minister for Justice, Equality and Law Reform acted properly and promptly by referring the matter to the Garda Commissioner. Clearly he was deprived of useful and important information as to the source of the allegations. However, he did not expect to be told the source by the two Teachtaí Dála, having regard to the obligation which he himself would have felt as a Teachta Dála in treating representations or information supplied to him by a constituent as a subject of confidentiality. However, in evidence he pointed to the clear political dimension of what was done. He pointed out that the evidence was brought to him rather than the Garda Commissioner, the information included a call for the establishment of a public inquiry, and the sources whose identities were protected were behind the campaign for a public inquiry. He also felt that the fact that the allegations were not made to the Dáil indicated in part a lack of confidence on the part of the two Teachtaí Dála in their substance.
- 3.112. The Tribunal is satisfied that the two Teachtaí Dála acted in a bona fide manner in bringing these allegations to the Minister. Of course, there was a serious political dimension to their actions. No doubt they could have brought this information to the Garda Commissioner, and they could certainly have made further inquiries in relation to the matter before bringing the allegations any further. However, they were, to an extent, manipulated by those furnishing the information. For that reason, the Minister's preference for binning anonymous allegations, though perhaps a blunt approach, is worth qualifying to this extent: if a Teachta Dála

²³⁰ Transcript, Day 577, pages 31-32.

wishes to bring allegations from an anonymous source further he/she should make further inquiries to ascertain how much information he/she can obtain and press those who are seeking action from them for that relevant information. Unless there is some sufficient minimum standard or threshold applied before anonymous information will be acted upon by Teachtaí Dála, and unless they are willing on its receipt to press the source for further information or evidence as a precondition to taking any further action, it may be that the best course to adopt in relation to such information is to 'bin it'.

The Murphy Investigation

Identifying the Source

3.113. It must be emphasised that once the matter was placed in the Minister's hands he felt obliged to act or he would be criticised for inaction by the two deputies. I am satisfied that in going to the Minister Deputies Higgins and Howlin expected him to take whatever steps were necessary to establish whether the allegations were true or not. They had no information to offer on the subject. On a general level they both believed that there should be a public inquiry into this and other matters relating to Donegal. Eventually, Term of Reference (h) was set for this inquiry by Dáil and Seanad Éireann for the express purpose of inquiring into the truthfulness of these allegations. One would think that Mr. Frank McBrearty Senior, Mr. P.J. Togher, Mr. Martin Giblin S.C., Mr. Kenneth Smyth, solicitor, Mr. Frank Connolly, the journalist, and the two Teachtaí Dála who desired the truth would assist Assistant Commissioner Murphy in his investigation and the Tribunal in going about its work. The allegations had now been raised to the level of a serious political issue by the two deputies: the McBrearty agenda to undermine the standing of Assistant Commissioner Carty's inquiry by attacking his integrity was given official impetus by their initiating this process of inquiry through the Minister.

3.114. The only sources of the allegations made known to Assistant Commissioner Murphy and the Tribunal in its early stages were the same sources as those of the two Teachtaí Dála. They knew the identities of the conduits of the allegations but did not, as it happens, know the identity of the actual Garda source of the information. From its commencement, Assistant Commissioner Murphy's inquiry was hamstrung by the raising of parliamentary privilege by the two Teachtaí Dála, by which they sought to protect the identity of the conduits of the information to them by refusing to reveal their sources to the assistant commissioner. In circumstances, which I will now outline, the assistant commissioner and the Tribunal, in its early stages, were prevented from tracing the sources of these very

serious allegations. There was no other independent verifying evidence available to the two Teachtaí Dála or anybody else about these allegations. This is what happened.

3.115. Assistant Commissioner Murphy's investigation commenced with Deputies Higgins and Howlin. He sought to identify their respective sources of information. Mr. Higgins told the Minister that his source was "a Garda source". Mr. Howlin told the Minister that he received the information "via a telephone call from what he described as a legal – not a Garda – source". The facsimile sent to Mr. Higgins TD said that the information had come to hand, "from a serving Detective Inspector of An Garda Síochána attached to a station in the D.M.A." – that is the Dublin Metropolitan Area. That is to say that the originator of the information was said to be a detective inspector serving in a station in the Dublin Metropolitan Area. That was the degree of knowledge conveyed to the Minister and was the necessary starting point for Assistant Commissioner Murphy and subsequently the Tribunal in the early stages of its inquiry. The assistant commissioner wished to identify the sources of the information in order to inquire from them what evidence they had to support these very serious allegations. Some three years later, the Tribunal was given to understand that Mr. Frank McBrearty Senior, who was campaigning for the establishment of a Tribunal of Inquiry at the time, was the person who forwarded the facsimile to Deputy Higgins, and that Mr. Martin Giblin S.C., the lawyer representing him and his family in numerous civil actions, and who had represented him in the District Court prosecutions in relation to his licensed premises in 1998, was Deputy Howlin's source of information. This information was not available to Assistant Commissioner Murphy, nor was it given to the Minister for Justice, Equality and Law Reform.

3.116. **The Tribunal is satisfied that the assertion of privilege by the two Teachtaí Dála to Assistant Commissioner Murphy in order to protect the identity of the conduits of this information does not stand in the same order of importance as information received from a concerned citizen in relation to a matter of public importance in circumstances in which that citizen has not entered into public agitation concerning the same or similar issues.** In this instance, Mr. McBrearty Senior and his lawyer were seeking a sworn public inquiry into Garda misconduct in Donegal. They had, by this stage, enlisted the support of the Fine Gael and Labour parties and Deputies Higgins and Howlin in relation to that. Having formed this loose alliance publicly and campaigned in the Dáil and outside the Dáil for the establishment of the public inquiry, the two Teachtaí Dála sought to further this cause by bringing these allegations to the Minister, under the guise of anonymous allegations, without revealing that Mr.

McBrearty Senior and Mr. Giblin S.C. had conveyed the information to them. This clearly implied to the Minister that these were fresh allegations coming from an entirely independent detective inspector in the Dublin Metropolitan Area, conveyed through an independent Garda source to Mr. Higgins and an independently minded non-Garda legal source in the case of Deputy Howlin, whereas both conduits were protagonists in the campaign for the public inquiry. I have no doubt that had this been made known to the Minister much time, effort and money could have been saved in going to Mr. McBrearty Senior, Mr. Giblin and Mr. P.J. Togher and getting to the root of these allegations at a much earlier stage. In addition, that information would have given the Minister the opportunity to enquire as to what further evidence was available from Mr. Frank McBrearty Senior and Mr. Togher and/or Mr. Martin Giblin S.C. in relation to these serious allegations. Instead, the clear understanding was given to the Minister and the assistant commissioner that this new information was coming from and through anonymous, uninvolved third parties and was a new and serious development in the Donegal affair.

- 3.117. Mr. McBrearty Senior and Mr. Martin Giblin S.C. (on his behalf) were by then embroiled in a very public struggle through the courts, the media and the political process in seeking justice for the McBrearty family, including the establishment of a public inquiry. Many very serious allegations had already been made publicly by the McBreartys and in both the District and the High Court on their behalf. Anonymity as sources or conduits of serious allegations against An Garda Síochána was the last thing that they sought up to June 2000. The Tribunal is satisfied that there was no obvious legitimate reason for them to run for the cover of anonymity in this case and to depart from their established strategy of identifying openly and publicly any allegation that they wished to present in respect of matters in Donegal. The difference between these and other allegations, in this context, may lie in the reality that the core of these allegations was false. The Tribunal sought to understand why the identities of the conduits of these allegations were not revealed until a very late stage of the inquiry. The possibility existed that anonymity was relied upon by the conduits because of the realisation, or at least the deep suspicion, that the core allegations forwarded to the two Teachtaí Dála were false: or in the case of Mr. McBrearty Senior a knowledge that they were completely false and constructed around numerous half-truths, lies and rumours. The Tribunal had to consider whether these allegations were made as part of the McBrearty campaign for a public inquiry, knowing that they were untrue, or that there was little or no evidence to support them, and that they were pursued because it was realised that they would have a disproportionate sensational impact when made. In particular, the allegations

struck at the integrity of Assistant Commissioner Carty and his inquiry. If his integrity could be undermined, and his inquiry compromised, a public inquiry might become more probable. The fact that the inquiry was not set up until March 2002 does not detract from the fact that the making of these allegations contributed to the process of its establishment. **The Tribunal is satisfied that Mr. McBrearty Senior and Mr. P.J. Togher constructed these false allegations out of numerous half-truths, lies and rumours to further the case for a public inquiry as already outlined.**

- 3.118. The assertion of privilege by the two Teachtaí Dála to the assistant commissioner was made in the course of meetings with Assistant Commissioner Murphy. It should be noted that in the meeting with the Minister for Justice, Equality and Law Reform on the 27th of June 2000, Mr. Higgins had said that “his source was willing to co-operate with a Garda inquiry but not with the media”. At a meeting on the 30th of June 2000 with Assistant Commissioner Murphy and Chief Superintendent Brehony, Mr. Higgins undertook to revert to his informant with a view to ascertaining whether he was willing to speak directly to the investigating Gardaí on the matters alleged. On the 30th of August 2000, Mr. Higgins again met with members of Assistant Commissioner Murphy’s investigation team and confirmed that the retired Garda who was his source was in the Donegal division. He also undertook that he would go back and talk to his source, whom he hoped would agree to meet Assistant Commissioner Murphy or other members of his investigation team. He undertook to try and obtain more specifics regarding the matters alleged in the facsimile concerning the production of evidence by unlawful means, the planting of evidence, the claiming of expenses not incurred, the planting of stolen property on suspects and the allegation that Detective Sergeant White had stolen property at his disposal. He was assured that any information obtained would be treated in confidence. Mr. Higgins felt that his source’s fear was that other Gardaí in Donegal would know or become aware that he was the source. It was extremely important for the Garda investigation at that time to obtain the evidence, if it existed, from the source. Mr. Higgins has indicated and the Tribunal is satisfied that the source of the information conveyed to him by facsimile was the retired Garda P.J. Togher.²³¹
- 3.119. Mr. Higgins in evidence said that while he told the Minister that his source was willing to co-operate with the Garda inquiry but not with the media, he had not in fact discussed that with Mr. Togher. He assumed, because he had absolute confidence in Mr. Togher, that he might have been willing to come forward to co-operate and corroborate the allegations made. He said that he never returned to Mr. Togher to ask him whether he would co-operate with the Gardaí at any stage, notwithstanding the matters recorded in the memo of the interview of the 30th

²³¹ Tribunal Documents – Anonymous Allegations, pages 270-271 and pages 108-109.

of August 2000 by the Gardaí. Instead he said that when the Gardaí came to him looking for this information:

Both Deputy Howlin and myself would have discussed the situation in relation to what we believed to be the constitutional protection that we had under Article 15.10 of the Constitution. And at that stage our attitude was, look, if we in fact divulge or if we are forced to divulge the source of our information then you would nearly have to put a public health warning on every clinic. ... I knew Mr. Togher from the past and I was confident in fact that he would co-operate, that there was no need to actually lift the phone and ask him. ... [The Gardaí] hadn't gone to anybody. What they were doing was the starting point was to interview Deputy Howlin and myself and to find out where or when the information arrived into our possession and so on. And of course they were quite explicit in trying to extract from us the source and the telephone records and so on. I think at one stage, I think, Deputy Howlin will confirm this to the Tribunal, that at some stage the two Guards in question actually threatened to sequester his telephone records. It was [decided not to do that] but it's not designed to engender a great deal of co-operation, something like that. A threat to politicians.²³²

Nevertheless, Deputy Higgins spoke to Mr. Frank McBrearty Senior at this stage as “the source” who actually sent the document. He told the Tribunal that both he and Mr. Frank McBrearty Senior decided in conjunction that they would not seek further details from the real source, who was Mr. P.J. Togher.²³³

- 3.120. While Mr. Higgins in evidence acknowledged the difficulties that existed for the Garda investigation he said that Deputy Howlin and he were adamant that they were not going to divulge their sources:

If they happened in the course of their investigation to come on the source we certainly wouldn't in any way stand in their way.

He acknowledged that he should possibly have asked Mr. Togher whether he would talk to the Gardaí but he did not. I am satisfied that this was an extraordinary position to adopt. The reason for this attitude may well lie in the following evidence from Mr. Higgins:

We go to the Minister for Justice with this information, right. The Minister for Justice brings in the Garda Commissioner, the Garda Commissioner appoints two senior ranking Gardaí and we found

²³² Transcript, Day 572, pages 152-156.

²³³ Transcript, Day 573, pages 166-176 and see Tribunal Documents – Anonymous Allegations, pages 270-271.

*the attitude of the two investigating officers where they constantly pressurised us, pressurised us, pressurised us. We found it, to be honest with you, distasteful. We felt that we had a right, we were conscious that we had a right to protect our source and we were determined to protect our source.*²³⁴

- 3.121. I am satisfied that an assertion of privilege in a situation where Deputy Higgins did not return to the source to ask whether he would co-operate with the Garda investigation either by furnishing information and evidence through Deputy Higgins or by direct contact with the Murphy investigators, was premature at the very least. If the source did not wish to be protected, there was no need to assert the privilege. This course of events seems to be more related to the Deputy's extreme annoyance at the manner in which the issue was approached by the Murphy investigators than by any established need to protect the retired Garda Togher. It was an unreasonable response.
- 3.122. This approach also appears to have been adopted by Deputy Brendan Howlin.
- 3.123. Assistant Commissioner Murphy and Detective Superintendent Brehony interviewed Deputy Brendan Howlin on the 1st of July 2000 at his home in Wexford. In the course of that meeting, Deputy Howlin asked if the Gardaí would accept documents from his source without the necessity of having him identified. He was informed that any documentation or information which would assist the investigation would be accepted. In a memorandum of this meeting prepared by Detective Superintendent Brehony it is recorded that Deputy Howlin expressed concern that the focus of the officers' inquiries was his source rather than the allegations. It was explained to Deputy Howlin that it was hoped that the source once identified would lead the investigation to information or evidence relevant to the allegations. Deputy Howlin was informed that every effort would be made to investigate the allegations, including a possible request to Mr. Howlin to provide telephone records. Deputy Howlin took issue with this and spoke in terms of raising that matter with the leader of the Labour party. He undertook to revert to his source and see whether he was willing to speak to An Garda Síochána. He was not prepared to identify his source. He asked if the officers would accept documents from his source without identifying him and he was informed that they would. Deputy Howlin expressed the view to the officers that he was being pressurised and was concerned that trying to identify his source would seriously compromise the access of whistleblowers to public representatives. They recorded that Deputy Howlin went so far as to say that if the officers were intent on identifying his source, particularly by accessing his telephone records, he would seek to have the Dáil recalled.²³⁵

²³⁴ Transcript, Day 572, pages 160-161.

²³⁵ Tribunal Documents – Anonymous Allegations, pages 272-274 and pages 109-110.

3.124. In evidence to the Tribunal Deputy Howlin acknowledged that he was:

*A little fractious because ... understandably the first question was to identify my source, I was a bit concerned that the focus of the inquiry was the plugging of a leak as opposed to the discernment of veracity or otherwise of the information. So I suppose a slight fractiousness in relation to that, although I suppose both senior police officers were extremely professional ...*²³⁶

Deputy Howlin told the Tribunal that when Assistant Commissioner Murphy told him that An Garda Síochána would use every means available to ascertain the identity of the source, he found that “a little bit threatening”. Deputy Howlin asked whether the Gardaí were suggesting that his telephone records might be sequestered: he was told it would be done by whatever means were necessary. He made it clear to the assistant commissioner that he regarded it as a:

pivotal part of our system that citizens could contact public representatives and that if we were going to have any investigation of wrongdoing that principle had to be maintained. I certainly made it clear that I would resist any exposition or exposure of my source.

In the course of the meeting he made clear to the assistant commissioner that his source was a legal non-Garda source who was effectively a conduit of the information.²³⁷ He said in evidence that it was suggested to him that it would hugely assist the investigation if the investigators could speak directly to the source. He thought that this request was reasonable. He said:

*While I was conflicted inasmuch as I wanted to preserve in principle the right of any citizen to contact an individual deputy, particularly a justice spokesperson, that I would check with him [the source] to see in these unique circumstances whether he would be willing to be identified by me to them. And I did that.*²³⁸

3.125. On the evening of the 1st of July 2000, Deputy Howlin telephoned Mr. Martin Giblin S.C., and explained to him what had happened and that he had undertaken to make contact with him to see if he would be willing to be identified. Mr. Giblin S.C. said that he was not willing to be identified as the conduit of the information.²³⁹ Deputy Howlin made a note of this conversation and was informed by Mr. Giblin S.C. at that time that the source of the information would give evidence in the High Court action against Ireland and the

²³⁶ Transcript, Day 574, page 42.

²³⁷ Transcript, Day 574, pages 42-43.

²³⁸ Transcript, Day 574, pages 43-44. Deputy Howlin also acknowledged that the memorandum of the meeting prepared by Chief Superintendent Brehony was correct, page 44.

²³⁹ Transcript, Day 574, pages 45-47.

Attorney General by Mr. McBrearty. He was told by Mr. Giblin that there was no point in talking to him as he was only a conduit. Mr. Giblin S.C. gave a number of reasons as to why there was no point in Gardaí speaking to him. Deputy Howlin confirmed to the Tribunal that it was his understanding on the Sunday night that Mr. Giblin wished those discussions to be treated as confidential by Deputy Howlin. This was confirmed to him by Mr. Giblin S.C. on the 1st of July 2000. Had Mr. Giblin S.C. released him from that bond of confidentiality on the 1st of July 2000 Deputy Howlin would have given his name to the Garda investigation at that time.²⁴⁰

- 3.126. Deputy Howlin made a note of this conversation of the 1st of July 2000, which reads:

Martin Giblin S.C.

Det in Dublin's

View that –

Gda. Auth's known about situation in Donegal for years.

Garda Commissioner by June '97 had evidence on how McBrearty was treated.

Including Gda. phone record which showed that he was involved in extortion – nothing was done

Another Sen. Garda [Det. Ch. Super. Austin McNally] spoke to Frank Connolly briefed him on investigation + he is in possession of a lot of information.

They should be in Donegal talking to

Sgt. John White

Gda. John O'Dowd

Supt. Kevin Lennon

Supt. McGinley

Ch. Super. Denis Fitzpatrick

Tony Hickey was Ass. Comm. for Donegal (based in Sligo) has close connection to Sgt. White.

Will give evidence in Court in High Court Action against Irl. + the A.G. (by McBrearty)

No point in talking to Martin – only has info which he passed on.

²⁴⁰ Transcript, Day 574, pages 45-52.

Sgt. White told investigation that he had evidence on Kevin Carty + Hickey that would bring them down (Is it possible that it is bluster).²⁴¹

It is surprising that even at that stage, when given a second opportunity, Mr. Giblin did not reveal to Deputy Howlin that he had possession of a very important facsimile that might assist the Garda investigation and that he had received this from Mr. Frank McBrearty Senior. Rather than have to chase two sources Assistant Commissioner Murphy would then have realised that he need concentrate only on one. This raised the suspicion that Mr. Giblin was embarrassed to reveal the fact that he had received the facsimile to Deputy Howlin, whom he had already told that his source was a Donegal based Garda, and not Mr. Frank McBrearty Senior. He would also have had to explain the history of the earlier facsimile and why he had not told Deputy Howlin about it.

- 3.127. On the 4th of July 2000 Deputy Howlin made a short statement to Assistant Commissioner Murphy and Detective Superintendent Brehony and handed over a redacted note of his discussion with Mr. Martin Giblin S.C. on the 25th of June 2000 concerning the Garda investigation of matters in Donegal. He confirmed that he had contacted his informant to ascertain whether he would be willing to be identified to An Garda Síochána. He handed over a redacted note of his discussions with the informant on the evening of the 1st of July 2000 to the two officers. In accordance with Mr. Giblin's wishes he declined to reveal the identity of his source.
- 3.128. For his part, Assistant Commissioner Murphy took legal advice as to whether he ought to pursue the issue of seeking the telephone records of the two Teachtaí Dála, but on balance decided against taking that course. Thus his investigation on that front came up against a brick wall.

Conclusion

- 3.129. The Tribunal is satisfied that like his colleague Deputy Higgins, Deputy Howlin was well aware that the source of the information that he had received was not an independent source in the sense that he was the senior counsel representing Mr. Frank McBrearty Senior, who was by that stage engaged in civil proceedings against An Garda Síochána and had numerous grievances against various Gardaí and was campaigning for a public inquiry into the Donegal affair. I am satisfied that Mr. Martin Giblin S.C., as a source, was not in the position of 'whistleblower' within an

²⁴¹ Tribunal Documents – Anonymous Allegations, pages 847-848 and see Appendices A6, A7 and A8. This note, Appendix A6, was reduced and redacted into a form which was furnished to Assistant Commissioner Fachtina Murphy, which can be seen at Appendix A8. In that redacted version Deputy Howlin makes it clear that Mr. Giblin said that there was a Garda in Donegal who would give evidence in court. He also wondered to himself whether the allegation supposedly made by Detective Sergeant White in the course of an investigation that he had evidence on Assistant Commissioner Carty and Assistant Commissioner Hickey that would bring them down was in fact bluster on his part.

organisation who might suffer dire consequences as a result of being revealed. Indeed, the note that Mr. Howlin furnished to the assistant commissioner indicates that the Garda Commissioner already knew the information and the nature of the allegations that were being made. If that were so, why was it necessary to envelop these allegations in secrecy? Mr. Frank McBrearty Senior, for his part, made extensive allegations, as had Mr. William Flynn and Mr. Giblin in the course of representing Mr. McBrearty Senior in the District Court in Donegal, against Gardaí of all ranks. While Mr. Giblin conveyed to Deputy Howlin his belief that many of these allegations were known to An Garda Síochána and that they had years to investigate them, the main emphasis of the facsimile of the 25th of June was its attack on the reputations of Assistant Commissioners Carty and Hickey. The attack on Assistant Commissioner Carty, who was conducting the investigations in Donegal, was a completely new allegation and it came at a time when he was believed to be finalising his report in respect of the Donegal affair. It was also made without any information being conveyed to the two Teachtaí Dála by Mr. Giblin or Mr. McBrearty Senior as to the considerable help the assistant commissioner had afforded the McBreartys in relation to their application for an adjournment in the Donegal prosecutions, and the fact that he had focussed on Detective Sergeant White in the course of his inquiries leading to his arrest in March of 2000 in respect of the Bernard Conlon affair: hardly the mark of a man who was compromised in respect of Detective Sergeant White.

Duties of a Teachta Dála

- 3.130. The Tribunal is satisfied that when the two Teachtaí Dála received the facsimile and information from Mr. Frank McBrearty Senior and Mr. Martin Giblin S.C. they owed it to themselves, to the Minister, and to those who were the subject of the allegations, to explore the information furnished to them somewhat further. The responsibility of the public representative cannot simply be to receive information and pass it on to the Minister for Justice, Equality and Law Reform and expect action. If the Minister were to take no action the Teachtaí Dála would undoubtedly subject him to criticism. If he took action as he did, it would inevitably set in train an inquiry of a most sensational kind calculated to undermine the authority, standing and reputation of those against whom these allegations were made. The two Teachtaí Dála were quick to crank up the political temperature in relation to these allegations by taking them immediately to the Minister. These serious allegations merited some

further exploration before that step was taken. The two Teachtaí Dála were in contact with one another about the McBrearty affair. They co-ordinated their approach in Dáil Éireann to an extent in relation to the campaign for a public inquiry. Though the Minister was given to understand that there were two separate and independent sources for this information that co-incidentally arrived to the two Teachtaí Dála at the same time, the reality was that the information came from the same source – the sender of the facsimile Mr. Frank McBrearty Senior.

3.131. In Mr. Higgins' view he knew that the man to question about this matter was Mr. P.J. Togher. The source for Mr. Martin Giblin S.C.'s information was also the facsimile sent to him on the 25th of June 2000. Both Teachtaí Dála knew that the same information was coming from the McBrearty camp. In the view of the Tribunal they should have returned to their sources and pressed them for further information or evidence backing up these allegations. That would have been a reasonable step to take. Further, the Tribunal is concerned that public representatives would receive and act upon such serious and sensational allegations without pressing their sources for information and evidence. The Teachtaí Dála should have returned to their sources and indicated in forceful terms that they would not take these matters any further in fairness to those who were the subject of the allegations unless more detailed information and evidence was produced. At the very least, Deputy Higgins should have insisted on a meeting with Mr. Togher and Deputy Howlin should have pressed Mr. Martin Giblin S.C. for further detail and evidence. Mr. Giblin, as a lawyer, would have understood this. Instead, these allegations were given a standing and authority well beyond that which was justified on the material available. It would have been entirely reasonable for the two Teachtaí Dála to say that they were not going to make allegations of such a wild kind about two assistant commissioners and a detective sergeant to the Minister for Justice, Equality and Law Reform and put them under a cloud, without something more than a facsimile and/or a late night phone call.

3.132. Politicians must be attuned to the possibilities that they are being used to advance a wholly false agenda by constituents who may be unscrupulous, deceitful, or have an agenda against the person or persons against whom they make allegations. This calls for the exercise of a sound discretion in relation to these matters. Whilst the Tribunal acknowledges the difficulties that Teachtaí Dála can be placed in, it would be naive to assume that all such representations are worthy of being brought to the

Minister's table. Confidentiality can of course be abused by those who seek to use their political representatives for their own purposes. In this instance, the two Teachtaí Dála should have been extremely mindful of that danger and carried out some further enquiries before going to the Minister, particularly, when it was contemplated that these communications had taken place in confidence and that neither the Minister nor any investigators of these matters would be allowed access to the source of the allegations because of the assertion of a parliamentary privilege. This was all the more important since the two conduits could be regarded as partisan in their approach to the allegations and were seeking the establishment of a Tribunal: this was also sought by the authors of the facsimile.

- 3.133. The Tribunal acknowledges that the two Teachtaí Dála exercised commendable discretion in not revealing the names of the two assistant commissioners and the allegations attaching to them, or indeed Detective Sergeant White, on the floor of the Dáil. However, it was inevitable that once these allegations were made to the Minister for Justice, Equality and Law Reform, he would ask the commissioner to carry out an inquiry because, in essence, that was why the two politicians went to the Minister: to get action. In the course of that process, it was inevitable that the names of the assistant commissioners and Detective Sergeant White would be associated with these allegations.
- 3.134. The Tribunal canvassed with the two politicians whether the process in which they engaged with their respective sources could be improved. The former Deputy Higgins justified bringing this information to the Minister for Justice, Equality and Law Reform without taking any steps to verify it on the basis that previous information that he had received from this source had "stood up". He therefore assumed that it was correct. He said:

*I mean you could say ... maybe that the correct course of action and maybe there is something to be learnt from this whole saga would be to go back and establish the authenticity from the original source ... of the information.*²⁴²

- 3.135. Deputy Howlin was also asked for his views on this matter. He said that he was terribly sensitive that anything by way of a recommendation might come from the Tribunal in respect of parliamentary privilege. He said he knew that many of his colleagues were not too envious of his being called to give evidence in relation to the matter. The simple thing to do if one had information about wrongdoing was to do nothing and then a politician will not be exposed for anything or have to face any hard questions. Public affairs would be badly served by such a

²⁴² Transcript, Day 573, pages 25-26.

development.²⁴³ He also rejected the analogy of a Garda or a police officer acting on the information of an informant. The Tribunal appreciates that one must be very careful with the information that an informant may give because an informant may be doing it to bolster their own standing with the Gardaí or to get some sort of advantage or have some other agenda than the exposition of the truth. Deputy Howlin did not feel that there was an obligation to check on the truthfulness of the information as the adequacy of steps taken would always be an issue. Questions would always arise as to what level of proof should be required, and how one was to go about making judgements of that nature. He thought the only proper course was to assess the person furnishing the information to be one of substance whom he believed would not peddle malicious information given the level of seriousness attaching to the information, and pass it on to the Minister. He thought he could not set himself up as a mini-Tribunal on the issues presented.

- 3.136. The Tribunal is satisfied that in this instance the allegations were of such a serious nature that both deputies should have enquired further insofar as they could as to the evidence and information that lay behind the allegations made. The Tribunal acknowledges that it can sometimes be difficult for members of the Dáil or Seanad to assess these allegations and fully accepts that they are not mini-Tribunals. However, there is a basic standard that ought to apply whether to members of An Garda Síochána, journalists, or members of the Dáil and Seanad when receiving information of this kind and acting upon it. The Garda Síochána have recently taken steps in relation to tightening up on procedures that apply to informants; journalists have codes of ethics and operate now under the Press Council and are subject to the laws of defamation. Politicians are left without any guidance. It is the Tribunal's view that a more serious and searching inquiry should have been made by the two members of the Dáil to whom these allegations were made. It is accepted that both Teachtaí Dála acted in good faith but having regard to the serious implications for the two assistant commissioners and Detective Sergeant White and any other person who might be subject to such allegations in the future, it is important that they only be acted upon by parliamentarians where they have carried out all reasonable inquiries or meetings possible in relation to the allegations made before taking it further.
- 3.137. The Tribunal recommends that the Committee on Practices and Procedure of Dáil and Seanad Éireann urgently review the manner in which members of both Houses deal with allegations brought to their attention by so called 'whistleblowers'. The damage that can be wrought to the

²⁴³ Transcript, Day 574, pages 114-116.

reputations of people falsely accused by persons peddling false stories to Teachtaí Dála or members of Seanad Éireann can be quite devastating to them. The Tribunal makes this recommendation, mindful of the sensitivity of both Houses of the Oireachtas to outside intrusion upon their procedures and privileges. Nevertheless, this is an area of such public importance that it should be addressed as a matter of urgency by both Houses of the Oireachtas with a view to ensuring an appropriate balance between the right of access of a 'whistleblower' to his/her public representative and the right of those subjected to such allegations to be fairly treated and not made the subject of unfounded allegations which have been endowed with undeserved legitimacy because they were peddled cynically directly or through a conduit to well meaning members of either House.

Mr. Martin Giblin S.C. and The Murphy Investigation

- 3.138. When Mr. Martin Giblin S.C. telephoned Deputy Howlin on the evening of the 25th of June 2000 he did not tell him that he had received a facsimile from Mr. Frank McBrearty Senior. He did not then or at any later stage furnish a copy of that facsimile to Mr. Howlin because he said he was not "so much interested in the document as the information on the document". He said that he did not ever think of sending the document to Deputy Howlin. He did not make Deputy Howlin aware that this information had come to him by facsimile from Mr. Frank McBrearty Senior. He thought that he may have said to Deputy Howlin that he thought that the information in it was going to Deputy Higgins and that he, Mr. Giblin, was taking this information seriously. He said that he was in contact with Deputy Howlin as a citizen and not as a lawyer. It is clear that some of the information given to Deputy Howlin went beyond that contained in the facsimile. The Tribunal considers it extraordinary that Mr. Giblin did not inform Deputy Howlin that he had received the facsimile from Mr. Frank McBrearty Senior. This document contained new and disturbing information that two assistant commissioners had interacted with a detective sergeant who was involved in the Donegal controversies in a criminally corrupt way for an extended period and that Assistant Commissioner Carty was thereby compromised in the preparation of any report on the Donegal affair because he could be blackmailed by Detective Sergeant White. Mr. Giblin did not even read the facsimile to Deputy Howlin over the telephone. He could not offer any sensible explanation for this omission to the Tribunal. He did not tell Mr. Howlin that Mr. Frank McBrearty Senior was the source of the facsimile or the new information. There is no evidence that Mr. Giblin ever questioned his client about the facsimile, which he maintained, on the basis of what Mr. Frank McBrearty Senior told him, had been sent anonymously to him by post or facsimile.

- 3.139. Mr. Giblin also confirmed to the Tribunal in evidence that he had decided not to allow his identity as the conduit of these allegations to be given to Assistant Commissioner Murphy's investigation on the 1st of July 2000 as described by Deputy Howlin. He refused because:

I felt that the setting up of a Garda investigation into this matter was now just going to create yet another sideshow. Admittedly I may have had a contribution to the setting up of this sideshow. But the principal issue for me was to get the client's ... the declaration [of innocence], clear up the Richie Barron issue. Everything else would fall into place then. Even if the cases were delayed for a long time, at least the principal objective was achieved. I felt at the time that this is just a distraction and it's going to lead to further confusion and further delay and so forth. ... I think I could undoubtedly have assisted [the Murphy investigation]. I was making a decision not to by not authorising Mr. Howlin to reveal my identity. There was no doubt about that. I made a conscious choice.²⁴⁴

When asked whether he thought he ought to have assisted Assistant Commissioner Murphy's investigation, he said that at the time he did not:

Bearing in mind the state of affairs as they existed at the time, I think I shouldn't have, no. That has to do with all of the complexity of the issue. My ultimate objective was a simple one, of getting a declaration of innocence and everything else will fall into place after that. But that's the decision I made and I haven't had an occasion to second guess myself on it since.²⁴⁵

- 3.140. In a statement to the Tribunal on the 27th of November 2003, prior to his giving evidence, Mr. Giblin outlined in great detail why he had become completely disillusioned with the Carty investigation. He informed the Tribunal that he had no confidence that Assistant Commissioner Carty would vindicate his client's reputation and innocence and that he had received further information from yet another informant that Detective Sergeant White was favoured by certain senior Garda officers. He believed that the Carty inquiry "was not evidence led but agenda driven." Indeed, he had been informed by a source that following his release from custody in March 2000 Detective Sergeant White met with a senior Garda officer in a licensed premises in Dublin, that his client's cases were discussed at this meeting and that a short time after this meeting Detective Sergeant White had been transferred to Dublin by Assistant Commissioner Murphy. He was disturbed by this:

²⁴⁴ Transcript, Day 578, pages 79-80.

²⁴⁵ Transcript, Day 578, pages 80-81.

The allegations in the anonymous document might well, in my experience of the case to date [June 2000] have been hitting the nail on the head, so to speak, on the reasons for the Garda failure to claim my client's innocence of involvement in the death of Richie Barron and to stop the District Court prosecutions and other forms of harassment which were, then, still continuing.

The reason I felt justified in bringing the Raphoe case into the political domain was because I was convinced that the Carty investigation was going nowhere, insofar as my clients were concerned. I felt that there was a real risk that Assistant Commissioner Carty was compromised and the anonymous circular provided a possible answer as to how, why and by whom. ...

I believed in June 2000, and I still believe, that the Garda authorities were dragging their heels on the Raphoe case for reasons to do with internal Garda politics and power struggles rather than enforcement of the law "without fear or favour".

Subsequent to speaking to Mr. Howlin I was disgusted to learn that the Minister for Justice had put the matter of the anonymous document into the hands of An Garda Síochána. If I had known this was going to happen I would not have bothered contacting Mr. Howlin. When he contacted me approximately one week later, I was by then convinced that yet another completely useless investigation had been commenced by yet another senior Garda officer. At that stage I disengaged from the matter of the anonymous circular even though I felt that issues were raised which were worthy of bona fide investigation. I believed however that Assistant Commissioner Murphy's investigation would be just as useful as ... the many other useless investigations into internal Garda matters, the reports on which are gathering dust in the offices of several State agencies.²⁴⁶

- 3.141. It is clear from that document that Mr. Giblin, in July 2000, was not seeking to preserve his confidentiality as a citizen who was a whistleblower in the ordinary sense. He had nothing to fear by the revelation of his identity by Deputy Howlin to Assistant Commissioner Murphy. He chose not to co-operate with Assistant Commissioner Murphy because he was "disgusted" that a Garda inquiry had been initiated in respect of the allegations that he had brought to Deputy Howlin. He simply did not want to co-operate with a Garda inquiry because he had no confidence in An Garda Síochána to conduct it. He feels to this day that he was justified in so doing. I respectfully disagree. A senior counsel of the Bar of Ireland,

²⁴⁶ Tribunal Documents – Anonymous Allegations, pages 802-815. Undoubtedly the manner in which Detective Sergeant White was transferred following his suspension was open to this misinterpretation of events, particularly by those on the receiving end of Garda wrongdoing.

having placed these very serious allegations in the political arena with the likely consequence that they would be put before the Minister for Justice, Equality and Law Reform, should have co-operated with a high level Garda inquiry into those allegations. One has to ask why in that event Mr. Giblin chose to furnish these allegations to Deputy Howlin if he did not intend to co-operate with any Garda inquiry and did not think that that would be the result of so doing; unless he was seeking the intervention of an outside agency to investigate the allegations, such as an external police force or a public inquiry. It should also be noted that even when a Tribunal of Inquiry was established, Mr. Giblin still declined to come forward, as will appear later in this chapter. The allegations made struck at the root of the criminal justice system in that they involved allegations of perjury and planted evidence and the wrongful conviction of innocent persons. It is astonishing that a senior counsel would not co-operate with the Murphy inquiry even to the extent of the limited but significant information which he had in his possession. This is all the more so in the light of the fact that Mr. Giblin thought that these allegations were to a large extent credible. The tone of his statement and the reason for his refusal to co-operate are further evidence of Mr. Giblin's emotional submersion in these extraordinary events.

Frank McBrearty Senior and the Murphy Investigation

- 3.142. During the course of the Murphy investigation Mr. Frank McBrearty Senior was approached by investigators who sought his assistance as to whether he had any knowledge of the facsimile of the 25th of June 2000. Mr. McBrearty Senior was of course known to Deputy Jim Higgins and Mr. Martin Giblin S.C. as the sender of the facsimile. Deputy Higgins was at the time protecting Mr. Frank McBrearty Senior's identity as the sender of the facsimile on the basis of a species of parliamentary privilege, and Mr. Martin Giblin S.C. had not divulged anything of Mr. Frank McBrearty Senior's involvement with the facsimile to Deputy Howlin. Mr. McBrearty Senior in dealing with the Murphy investigators behaved unreasonably and told lies about his knowledge of the facsimile. His behaviour towards them was disgraceful and belied his claim that he had never asserted any claim of privilege or confidentiality in respect of his dealings with Deputy Higgins. This is what happened.
- 3.143. On the 15th of January 2002, Detective Superintendent P. Brehony and Inspector Eugene Corcoran attended at Mr. Frank McBrearty Senior's licensed premises at Raphoe in Co. Donegal and sought a meeting with Mr. Frank McBrearty Senior. Mr. McBrearty Senior came down from his residence to meet them. He asked what they were enquiring about and said that he did not like Gardai in his pub. Mr. McBrearty Senior was informed that the two officers were investigating

information passed to the Minister for Justice, Equality and Law Reform by Mr. Jim Higgins TD and Mr. Brendan Howlin TD on the 27th of June 2000, and that the purpose of the visit was to establish if Mr. McBrearty Senior could assist them in their inquiries. He was also informed that Deputy Higgins had handed over a two page typed document to the Minister that he had received on the 25th of June 2000 and that the document contained serious allegations of wrongdoing against Detective Sergeant John White and two senior Garda officers. Mr. McBrearty Senior told the two officers that he was aware from the newspapers of the fact that Deputy Higgins had gone to the Minister and that another senior officer had been appointed to investigate the matter. He was told of the allegations made in the document and then indicated that he was not willing to speak to the two officers without his legal advisers being present, and that he had no evidence against Detective Sergeant John White. He said he had heard “that he had planted a gun on an itinerant”. Mr. McBrearty Senior then asked the two officers to contact his solicitor, Mr. Kenneth Smyth of Binchys solicitors, and told them that he was willing to travel to Dublin to speak to the two officers in the presence of his solicitor. He also outlined many grievances that he had about his treatment by An Garda Síochána in Donegal since 1996.²⁴⁷ In the light of Mr. Frank McBrearty Senior’s position, and the fact that Mr. Frank McBrearty Junior had arrived during the course of this meeting and had become somewhat agitated at the presence of the Gardaí, the two officers decided not to pursue the matter at that time but to seek a meeting at a later stage with Mr. Frank McBrearty Senior in the presence of his solicitor.²⁴⁸

- 3.144. Assistant Commissioner Murphy’s report of the 23rd of October 2002 sets out in detail the attempts made by his investigators to convene a meeting with Mr. Frank McBrearty Senior and others in the presence of their solicitor, Mr. Kenneth Smyth. Contact was made on the 16th of January 2002 with Mr. Kenneth Smyth, who was informed of the nature of the proposed interviews. Mr. Smyth informed Detective Superintendent Brehony that he was aware that Deputy Higgins had brought matters into the public domain but was unaware as to how his clients could assist in the investigation, and sought a written request from An Garda Síochána. On the 21st of January 2002 Assistant Commissioner Murphy wrote to Mr. Smyth seeking the meeting. A reply was received on the 4th of February 2002 from Mr. Smyth, which stated as follows:

For the avoidance of doubt, Mr. McBrearty Senior has asked me to write to say that he did not indicate his willingness to speak to the investigating members in the presence of his legal advisers, unless and until he had been given a list of questions well in advance. For the further avoidance of

²⁴⁷ Tribunal Documents – Anonymous Allegations, pages 58-59 – Inspector Corcoran’s memo of this meeting.

²⁴⁸ Tribunal Documents – Anonymous Allegations, pages 7-8.

doubt, the writer's suggestion to DS Brehony was that he would put in writing the nature of the questions sought to be answered so that they could be considered by our client's legal team.²⁴⁹

3.145. Assistant Commissioner Murphy wrote again on the 12th of February 2002 setting out a number of questions which his team wished to ask Mr. Frank McBrearty Senior. These were:

- (1) Did any or all of your clients have knowledge of the existence of the document in question either prior to or after it was passed to the Minister for Justice, Equality and Law Reform?
- (2) Did any or all of your clients have any input into the creation of the document?
- (3) Did any or all of your clients have any contact with Mr. Jim Higgins TD or Mr. Brendan Howlin TD concerning the document?
- (4) Do any or all of your clients have any information or evidence that D/Sergeant John White produced evidence by unlawful means as alleged at paragraph 2 in the enclosed document?
- (5) Do any or all of your clients have any information or evidence of convictions being achieved by "planting" evidence as alleged at paragraph 3 in the enclosed document or of the misappropriation of State funds as are alleged therein?
- (6) Do any or all of your clients have any information or evidence on the "unsafe" conviction of any person as alleged in paragraph 4 in the enclosed document?
- (7) Do any or all of your clients have any information or evidence on the allegations set out at paragraph 5 on the enclosed document which state that Detective Sergeant White had an amount of stolen property at his disposal?
- (8) Do any or all of your clients have any information or evidence regarding the allegations set out in the final paragraph of the enclosed document?
- (9) Did any or all of your clients have an involvement of any kind in the creation and/or dissemination of the enclosed document? In addition, the investigating members have been informed that Mr. Frank McBrearty Senior, Mr. Frank McBrearty Junior and Mr. Mark McConnell attended with others at the home of Mr. William G. Flynn

²⁴⁹ Tribunal Documents – Anonymous Allegations, pages 62-64.

[address given] on the 7th of March 2000.

The investigating members were led to believe that the matters set out in the anonymous document were discussed in some detail at the meeting in question. Accordingly, it is intended to ask questions of your clients as to any knowledge they might have of the alleged meeting in question or the matters discussed at same. The investigating officers wish to seek the assistance of your clients on the foregoing and on any other matters which arise in the course of the proposed interviews.

- 3.146. Mr. Frank McBrearty Senior replied personally to this letter on the 28th of February 2002. Copies of this letter were sent to the two Teachtaí Dála, his solicitor Mr. Smyth, and Mr. Martin Giblin S.C. In relation to his knowledge of the existence of the facsimile, he said as follows in response to question (2):

Whether I have any knowledge of any document that has existed, either with members of Dáil Éireann or anybody else is a matter of total confidentiality between me and my public representatives. This can be explained by once again bringing to your attention that in the course of the past five and a half years I have thousands of documents some of which were of great importance to me in trying to prove my innocence and that of my family. I would ask you, Mr. Murphy, did you or your investigators put as much work, dedication and perseverance into the investigation of the barrage of malicious documents that were distributed by members of An Garda Síochána and by criminal Garda informants defaming my character and that of my family? I will answer that one for you, no Sir you and your subordinates did not.

In further response to question (2) as to whether Mr. Frank McBrearty Senior had any input into the creation of the document he replied:

I do not recognise anything about the copy of the document attached to your letter, maybe, Detective Sergeant White, whom I presume you are aware is stationed at Harcourt Terrace, might cast some light on the contents of this document and if not, you, Mr. Murphy might be well advised to attend his so-called trial?²⁵⁰

- 3.147. Mr. Frank McBrearty Senior, in response to question 8, which concerned the allegation set out in the final paragraph of the enclosed document, and question 9 which asked whether he had any involvement in the creation and/or dissemination of the facsimile document of the 25th of June 2000 said, "I do not recognise the attached document".²⁵¹ It is clear from the now admitted course of events that these statements made to Assistant Commissioner Murphy by Mr.

²⁵⁰ Tribunal Documents – Anonymous Allegations, page 68.

²⁵¹ Tribunal Documents – Anonymous Allegations, page 69.

Frank McBrearty Senior denying that he recognised the copy of the facsimile of the 25th of June 2000 sent to Deputy Higgins were untrue. Not only that, but when answering Assistant Commissioner Murphy's questions he directed him to Detective Sergeant White in relation to the document. This letter was submitted to his solicitor Mr. Kenneth Smyth, his senior counsel Mr. Martin Giblin and Deputy Jim Higgins, who were now on notice that Mr. McBrearty Senior was lying to the Assistant Commissioner in saying that he did not recognise the document that he had sent them²⁵²

- 3.148. This letter continues in paragraph 11 with a denial that Mr. P.J. Togher, at a meeting at Mr. Flynn's home on the 7th of March 2000, discussed any matters with Mr. Flynn. He states:

The final paragraph of page 2 of your letter mentions Mr. William G. Flynn and a social visit I had to his home on the 7th of March 2000 accompanied by others, including Mr. Patrick J. Togher ... Mr. Patrick J. Togher, a Retired Garda who is a witness in my forthcoming court cases, has been informed by Detective Superintendent Brehony and Detective Corcoran that Mr. Flynn made a statement to them accusing Mr. Togher of discussing the matters under investigation with Mr. Flynn, while in my company on the 7th of March 2000. This conversation with investigators is on record. Mr. Togher, never at any time during that social visit, discussed any such matters with Mr. Flynn and has a total dislike of Mr. Flynn unlike many others I could mention, who are using and abusing him for their own ends as Mr. Togher has often said, to discuss **any matter** with Mr. Flynn would be *infra dignitatem*.

The letter then concludes with the threat of legal proceedings against the Gardai in the following terms:

I now wish to put the Commissioner of An Garda Síochána and his subordinates on notice from this date **28th of February 2002**, that I or my family, friends or employees, Mr. Murphy, (that are (a). Witnesses (b). Plaintiffs or (c). any other person being called to give evidence in our forthcoming cases are not to be approached again on matters appertaining to the "McBrearty Affair". My cooperation with the Garda Síochána has dramatically changed from the announcement of a Tribunal of Inquiry on the 12th of February 2002. Any divergence from those instructions will be prevented by the seeking of court injunctions, by consultation with my legal team, in order to ensure the protection of those witnesses.

²⁵² Tribunal Documents – Anonymous Allegations, page 70.

You may have gleaned from the above that we have had our fill of Virtual Policing, with its pseudo-investigations, against the background of a total failure to make a serious effort to investigate the Garda conspiracy against myself, my family, my friends and employees.²⁵³

- 3.149. Mr. Smyth confirmed to the Tribunal that he had forwarded Mr. Frank McBrearty Senior's response to Assistant Commissioner Murphy's questions but that he had no input into the drafting of that response. He said:

*Indeed I couldn't in all conscience have been involved in some of the paragraphs, which says that, you know, this document has never been seen before.*²⁵⁴

- 3.150. In response Assistant Commissioner Murphy wrote to Mr. Frank McBrearty Senior on the 13th of March 2002 pointing out that Mr. Frank McBrearty Senior had requested that his legal advisers be contacted and that he had indicated a willingness to speak to the investigating officers thereafter. He pointed out that this correspondence with Binchys solicitors was made in good faith and in furtherance of the investigation being conducted by him. He informed him that he had written to Messrs. Binchys solicitors seeking clarification in relation to Mr. McBrearty Senior's letter of the 28th of February 2002.²⁵⁵ Assistant Commissioner Murphy's letter to Binchys solicitors of the 13th of March 2002 points out to them that it was they who had requested in their letter of the 4th of February that a list of questions that the investigating Gardaí wished to put to Mr. Frank McBrearty Senior be furnished in advance of any meeting. This was done on the 12th of February 2002. It was noted by the Assistant Commissioner that Mr. Frank McBrearty Senior had confirmed that he did not recognise the facsimile document passed to the Minister for Justice, Equality and Law Reform on the 27th of June 2000 and that any knowledge that he had concerning the document was "a matter of total confidentiality" between him and his public representatives. He sought clarification as to whether the letter of the 28th of February 2002 from Mr. Frank McBrearty Senior was intended without further qualification to be his response to the questions posed by the assistant commissioner and also if it represented the solicitor's position.²⁵⁶ Messrs. Binchys solicitors passed this letter to Mr. Frank McBrearty Senior for his written instructions "to avoid further confusion in the matter".

- 3.151. Binchys solicitors received a letter dated the 18th of March 2002 from Mr. Frank McBrearty Senior, which they then furnished under cover of letter dated 22nd of

²⁵³ Tribunal Documents – Anonymous Allegations, page 70.

²⁵⁴ Transcript, Day 586, page 31.

²⁵⁵ Tribunal Documents – Anonymous Allegations, page 71.

²⁵⁶ Tribunal Documents – Anonymous Allegations, pages 72-73.

March 2002 to Assistant Commissioner Murphy at Mr. McBrearty Senior's request. This letter in strong terms put the Assistant Commissioner on notice that he and his subordinates were to cease immediately issuing further correspondence or having any conversation with his legal advisers, his witnesses, his family or himself concerning matters relating to the investigation concerning the alleged information passed by the two Teachtaí Dála to the Minister on the 27th of June 2000. He said that having attended the trial of Bernard Conlon in Sligo he had lost complete faith in the Carty inquiry. He said he had assisted Gardaí in that inquiry but now was of the view that "they were sent to Donegal to do a Sartor Resartus job, nothing more, nothing less".²⁵⁷ It was made clear that the letter of the 28th of February 2000 was intended to be a final letter in relation to the matter and the assistant commissioner was accused of harassing Mr. McBrearty Senior further in relation to issues raised previously with him. It concluded by informing the assistant commissioner that "my legal representatives are hereby instructed to issue proceedings should you prolong this matter any further."²⁵⁸ Further letters were sent seeking a response from Binchys solicitors on the 2nd of April and the 22nd of April 2002²⁵⁹ and on the 8th of May 2002 the assistant commissioner was informed that David Walley & Co. solicitors now acted for Mr. Frank McBrearty Senior.²⁶⁰

- 3.152. Assistant Commissioner Murphy wrote on the 14th of May 2002 to David Walley & Co. solicitors outlining the nature of his investigation, the correspondence to date and expressing his anxiety to bring the investigation to a conclusion. He requested that Messrs. Walley & Co. indicate whether it was their intention to make Mr. McBrearty Senior and others available for interview in respect of this matter. A short response was received by letter dated 21st of May 2002 expressing surprise that the Assistant Commissioner was persisting in pursuing the matter with Mr. McBrearty Senior.²⁶¹
- 3.153. The Tribunal is satisfied that Mr. McBrearty Senior's response to the reasonable and legitimate inquiries made by Assistant Commissioner Murphy and his team in respect of the information conveyed to the two Teachtaí Dála was unjustified, unreasonable and untruthful. It went beyond merely indicating non co-operation with Assistant Commissioner Murphy or reliance on legal privilege of one kind or another. Mr. McBrearty Senior lied to the assistant commissioner and sought to mislead his investigation in a very serious respect. He told him that he did not recognise the document that he had sent to Deputy Higgins, Mr. Martin

²⁵⁷ Sartor Resartus, Thomas Carlyle (1833-34) literally translated means the tailor re-tailored. Mr. Smyth in evidence indicated that he was unaware of the work and disavowed any input into the letter.

²⁵⁸ Tribunal Documents – Anonymous Allegations, page 76.

²⁵⁹ Tribunal Documents – Anonymous Allegations, pages 77-78.

²⁶⁰ Tribunal Documents – Anonymous Allegations, page 79.

²⁶¹ Tribunal Documents – Anonymous Allegations, pages 80-82.

Giblin S.C., Mr. Frank Connolly and his solicitor, Mr. Kenneth Smyth, whom he had directed to destroy the original. His behaviour towards Assistant Commissioner Murphy was disgraceful. The question arises as to why Mr. McBrearty Senior felt it necessary to lie to Assistant Commissioner Murphy about recognising this document if he had simply acted as a conduit when sending the document to Deputy Higgins and others following its receipt in the post or through the letterbox.

- 3.154. In the course of this correspondence, Mr. McBrearty Senior asserted legal professional privilege and claimed that any communications that he had with public representatives were confidential. This alludes to an assertion of a constitutional privilege which later featured large in the work of the Tribunal. However, in evidence to the Tribunal Mr. McBrearty Senior disavowed any reliance on confidentiality in respect of his communications with Deputy Jim Higgins. He said that though the document contained the words “confidential confidential confidential” at its head, he had never relied on confidentiality in relation to the matter and that Deputy Jim Higgins was wrong in his understanding that he wished his dealings and communications on the matter to remain confidential. The Tribunal is satisfied that Mr. Frank McBrearty Senior says what suits him at any particular time in relation to these assertions of privilege. In the context of this correspondence with Assistant Commissioner Murphy the core reality of the story is that Mr. McBrearty Senior lied to the assistant commissioner about recognising the facsimile and sought to mislead and discourage the investigation being carried out by the assistant commissioner as he did not wish the assistant commissioner to get to the truth of the matter: the truth was that Mr. McBrearty Senior was closely involved in the preparation and circulation of this untrue facsimile and information.

Mr. Patrick J. Togher and the Murphy Investigation

- 3.155. In an interim report on the 10th of December 2001 Assistant Commissioner Murphy noted how Mr. Patrick J. Togher refused to be interviewed despite numerous calls to his home by the investigating officers. Detective Superintendent Brehony made a memorandum of his attempt to speak with Mr. Togher on the 14th of September 2001 when he called to his home. He said that he spoke on the intercom to Mr. Togher, who indicated to him that he had already made a statement on the 5th of July 2000 to Superintendent James Gallagher and that this was his last and final statement. He said that he had thirty-two years of exemplary service in An Garda Síochána, and that his wife was a nurse and was trying to get some sleep. He was dealing with a family business

and did not wish to meet the Gardaí. When told that the officers wished to speak to him in relation to a matter of recent origin he refused to open the door, stating that he did not wish to speak to them.²⁶² Mr. Togher's reluctance to speak to any Gardaí investigating any matters in Donegal was expressed in a letter or statement written to Superintendent James Gallagher on the 5th of July 2000, the tone of which exudes exasperation, frustration and antagonism towards his former colleagues.²⁶³ His position was that he co-operated with the two officers, Detective Superintendent Brehony and Inspector Corcoran, when he opened the door to them and answered their questions on his doorstep on the 15th of January 2002. At that meeting a copy of the facsimile sent to Deputy Higgins was produced to Mr. Togher and he indicated that he had never seen this document before.²⁶⁴

3.156. Unknown to the two officers this conversation was picked up by the recording security equipment in situ at the entrance to Mr. Togher's property. It is clear from the exchange, a transcript of which was made available to the Tribunal, that Mr. Togher robustly denied any knowledge of the allegations made in the facsimile of the 25th of June 2000.²⁶⁵ He said that Mr. William Flynn was telling lies about a meeting on the 7th of March 2000. He summarised his attendance at Mr. Flynn's house on the 7th of March 2000 in similar terms as those outlined in evidence by him to the Tribunal. Chief Superintendent Brehony indicated that he thought he did not receive full co-operation from Mr. Togher on this occasion. **The fact that Mr. Togher, a retired Garda, dealt with the two officers on the doorstep, and the rather aggressive stance that he took with them in relation to the matters under inquiry, satisfied the Tribunal that it was reasonable of the chief superintendent to formulate that view.**²⁶⁶

3.157. It should also be noted that Mr. Togher did not take the opportunity on the 15th of January 2002 to say that sometime in early 2000 he had seen a letter addressed to Deputy Jim Higgins which Mr. McBrearty Senior had informed him had come in the post and had already been sent to his lawyers. The letter that he later identified as the facsimile of the 15th of July 2000 (Appendix A15) purportedly came from a serving member of An Garda Síochána in the Donegal division and again raised a number of serious questions concerning Assistant Commissioner Carty's investigations in Donegal. As already seen, it raised questions concerning the transfer of Detective Sergeant White from Donegal to Dublin following his arrest and detention in March 2000. It also complained about the alleged abuse of monies allocated to "B.S.E. duties" within An Garda

²⁶² Tribunal Documents - Anonymous Allegations, page 221 – note of Detective Superintendent Brehony.

²⁶³ Tribunal Documents - Anonymous Allegations, pages 222-224.

²⁶⁴ Tribunal Documents - Anonymous Allegations, pages 60-61 - note of meeting Tuesday 15th January 2002 by Inspector Corcoran.

²⁶⁵ Tribunal Documents - Anonymous Allegations, pages 999-1001.

²⁶⁶ Transcript, Day 585, pages 123-137.

Síochána and “being used to fund operations to harass and intimidate Mr. McBrearty and his family in Donegal”. It again alleges that Assistant Commissioner Carty’s investigation was totally flawed and refers to the need for a “full and comprehensive sworn public inquiry” as the only way forward. In an affidavit of the 10th of April 2003, Mr. Togher said:

42. I do have a recollection that Frank McBrearty Senior showed me a letter in February or March 2000 which was addressed to Jim Higgins TD. Frank McBrearty Senior told me that this had come in the post and that he had already sent it to his lawyers. I scanned through the document and I remember thinking that it was strange that Frank McBrearty Senior would fax this to Higgins when it was actually addressed to Jim Higgins himself. I do remember that Frank McBrearty Senior did ask me what I thought of the allegations contained in that letter. I don’t remember precisely what my reaction was on seeing this letter. I believe that it would have been similar to the reaction to a lot of the documentation which was being received by Frank McBrearty Senior at this stage. By that I mean that I may have been concerned in a general sense that there may have been some truth in the allegations that there were difficulties with the Garda force in Donegal but that I had no information regarding the veracity of any such allegations.

43. I have however a very specific recollection that at the time I was shown this document Frank McBrearty Senior told me that it had already been sent to Jim Higgins. This led to some confusion in my mind as to why Frank McBrearty Senior would have sent this document to Jim Higgins when it had come to Frank McBrearty Senior having apparently being addressed to Jim Higgins T.D.²⁶⁷

Mr. Togher went on to say that he had no hand, act or part in the authorship or dissemination of that letter and he did not know who the author was.²⁶⁸

- 3.158. The Tribunal notes that both Mr. Togher and Mr. Frank McBrearty Senior clearly knew in January 2002 of the existence of the letter of the 15th of July 2000, which made a further attack on the ability of the Carty investigation in respect of the McBrearty affair to get to the truth of the matter. Yet neither Mr. McBrearty Senior nor Mr. Togher told Detective Superintendent Brehony or Inspector Corcoran that they were aware of the existence of that letter and in Mr. McBrearty Senior’s case that he had possession of a copy of it which he could have given to the two officers at that time. **The Tribunal is satisfied that this**

²⁶⁷ Tribunal Documents – Anonymous Allegations, pages 575-576. The Tribunal has dealt in the earlier part of the chapter with the initial position adopted by Mr. Togher that the letter he viewed was the first facsimile.

²⁶⁸ Tribunal Documents – Anonymous Allegations, page 576.

is further evidence of the determination of Mr. Frank McBrearty Senior and Mr. Togher not to co-operate by revealing to the Murphy investigation the full truth concerning their dealings with both of these documents or knowledge of their provenance.²⁶⁹

Meeting of the 7th of March 2000

- 3.159. In exploring the events leading up to the circulation of the facsimile on the 25th of June 2000, Assistant Commissioner Murphy was told by Mr. William Flynn about a visit made by Mr. Frank McBrearty Senior, Mr. Frank McBrearty Junior, Mr. P.J. Togher, Mr. Mark McConnell and Mrs. Róisín McConnell to his home on the evening of the 7th of March 2000. It is agreed by those present that various matters pertaining to the McBrearty affair were discussed during that visit. In particular, the suggestion was later made by Mr. William Flynn that Mr. P.J. Togher made the same allegations in the course of that visit that later appeared in the facsimile of the 25th of June 2000. Mr. Flynn sought to cast Mr. Togher as the originator of these allegations during the course of that meeting. The others at the meeting totally rejected this allegation in evidence.
- 3.160. The visit to Mr. Flynn occurred at the end of a long day in the course of which the visiting party had attended Dáil Éireann to visit Mr. Jim Higgins TD in his capacity as Fine Gael spokesman on Justice, Equality and Law Reform. In his evidence, Mr. Togher said that he accompanied the party to the Dáil because he was at a loose end and took no part in the meeting between Mr. Higgins and the McConnells or Mr. McBrearty and remained for two to three hours sitting on his own at the entrance to the Dáil bar. He did not regard himself as a person who had any real function other than being out for the day. I do not accept that. This was a meeting of crucial importance to Mr. McBrearty Senior. He had received many rebuffs and suffered indifference from many politicians whom he had approached. At the end of the day, Mr. Higgins appeared on the steps of Dáil Éireann with Mr. Frank McBrearty Senior, Mr. Frank McBrearty Junior and Mr. Mark McConnell and announced to the media that Fine Gael were supporting Mr. Frank McBrearty Senior's call for the setting up of a public inquiry into matters concerning the McBrearty affair in Donegal. This was an enormous boost to Mr. McBrearty Senior's hopes. I am satisfied, from his own evidence, that by that time he had become dissatisfied with the Carty investigation into the matter because he did not regard it as an independent inquiry in the sense that it was being conducted by Gardaí into Gardaí and because he felt a number of the Gardaí involved in the investigation into the death of the Late Mr. Barron were also employed in the Carty investigation, albeit not in a central role. Of course, that was a legitimate view to hold and it was largely shared by Deputy Higgins.

²⁶⁹ Transcript, Day 570, pages 112-122 - Evidence of P.J. Togher.

- 3.161. In evidence, the visiting McBrearty/McConnell party told me that the decision to visit Mr. Flynn was spontaneous and done “for the craic” in order to show Mr. Togher what a character Mr. Flynn was. Mr. Togher told me that he was not enthusiastic about visiting Mr. Flynn. He had only agreed to work for Mr. McBrearty Senior on the understanding that Mr. McBrearty Senior assured him that Mr. Flynn was not still working for him. He had misgivings about what he regarded as the inappropriate methods and communications made by Mr. Flynn to other Gardaí and what he regarded as the unfounded if not scurrilous allegations that Mr. Flynn had made against a number of them. Indeed, when Mr. McBrearty Senior complained to Mr. Togher that, notwithstanding the termination of his retainer, Mr. Flynn was continuing to send him what he regarded as an excessive amount of documentation regarding continuing investigations and other matters concerning the Gardaí in Donegal, Mr. Togher said that he advised Mr. McBrearty Senior to instruct a solicitor to write to Mr. Flynn and request him to desist.²⁷⁰ Notwithstanding his stated reluctance, Mr. Togher agreed to accompany the party to Mr. Flynn’s house.
- 3.162. Although there was and remains considerable dispute between Mr. Flynn and Mr. McBrearty Senior as to whether Mr. Flynn continued to be retained by Mr. McBrearty Senior there was still a considerable level of correspondence between them. Mr. McBrearty Senior said that Mr. Flynn kept sending him documents notwithstanding the termination of his retainer. Mr. Flynn for his part accepted in cross-examination that his retainer terminated, not in October 1997 but sometime in 1998. Mr. Flynn stated that he maintained an interest in the McBrearty case in a general way because of his prior involvement and because he believed that Detective Sergeant White had been responsible for improperly securing a conviction against him in respect of telephone calls that he had made to Mr. White’s wife at home in 1998. He also intended to write a book about the McBrearty affair.²⁷¹ In that context, he said, he continued to furnish documents and communicate with Mr. Frank McBrearty Senior. He maintained that it was a two-way traffic of communication. In any event, relations were sufficiently cordial for Mr. McBrearty Senior to visit him “for the craic” following the successful conclusion of business at Dáil Éireann.
- 3.163. I am satisfied that Mr. McBrearty Senior regarded Mr. Flynn as a strong supporter in his campaign and for that reason went directly to his home to discuss the day’s events and exchange views as to how matters stood in relation to his case and campaign for a sworn public inquiry. There may well have been an element of ‘craic’ involved in celebrating the day’s events and indeed it is common case that generous refreshments were

²⁷⁰ Tribunal Documents – Anonymous Allegations, page 1012 – Letter Binchys (Mr. Smyth) to Mr. William Flynn requesting that he not contact Mr. McBrearty or his family “in writing or otherwise”.

²⁷¹ Transcript, Day 585, pages 60-65.

offered to the visiting party by Mr. Flynn and accepted. Nevertheless, the visit also had an added usefulness for Mr. McBrearty Senior in that he was able to discuss events with the private investigator who had helped him enormously up to that point, who was still carrying out inquiries and in whom he placed considerable trust. I am satisfied that Mr. McBrearty Senior took the opportunity to visit Mr. Flynn for that purpose and to discuss matters in the presence of two persons whose judgement he trusted and whose knowledge of events and the Gardaí in Donegal was extensive, namely Mr. Flynn and Mr. Togher.

What was discussed?

- 3.164. In a memo provided by Mr. William Flynn to Gardaí investigating the facsimile of the 25th of June 2000, Mr. Flynn gave the following account of what happened:

RE: Meeting in or about the 7th of March, 2000 with Mark McConnell, Frank McBrearty Jnr, Frank McBrearty Snr and Mr. Tougher at 6:45 p.m.

All attended my home returning from a meeting in Leinster House with Jim Higgins and Mr. McBrearty Snr introduced me to Mr. Tougher, a retired member of the garda force whom Mr. McBrearty informed me had done more for him than myself or his solicitors in exposing what is now known as the Donegal Garda corruption case. *This is the man who drove me to Jim Higgins and Jim Higgins has also done more for me than anyone else.*

I invited all into my living room and offered drinks. Mr. Tougher had whiskey and water and Mr. McConnell had a vodka and 7 up and Frank McBrearty Snr and Frank Jnr had tea.

The atmosphere was somewhat euphoric because of press exposure in the manner of speaking we were working on the one team and had been running up against a stone wall for a long considerable time until the previous day, it was a celebration meeting in a relaxed atmosphere.

The meeting lasted about 3 hours, during which time a number of matters were discussed. I can remember vividly the following been discussed.

- (a) That Det. Sergeant John White planted evidence and framed people, the latter was alleged by Mr. Tougher who went on to discuss John White's expenses and went into some detail in connection with same, i.e. he was alleging that Det. Sergeant John White literally got away with murder within the garda force in relation to expenses, because his connections with Assistant Commissioner Tony Hickey and Assistant Commissioner Kevin Carty.

I don't know Assistant Commissioner Tony Hickey at all, but I fought Kevin Carty's reputation during this meeting but was contradicted by Mr. McBrearty Snr and Mr. Tougher. I nevertheless never changed my view in relation to Assistant Commissioner Carty.

- (b) Mr. Tougher alleged that Sergeant White stayed at Tony Hickey's house in Maynooth when Sergeant White was investigating me, up to that time I never knew or still do not know whether Tony Hickey lives in Maynooth.

2.

- (c) The discussion moved on to a garage or warehouse that Sergeant White owned near the border which Mr. Tougher alleged contained stolen goods and Mr. McBrearty alleged that Sergeant White had some vintage cars in this warehouse. The discussion continued in connection with Sergeant White and Mr. McBrearty Snr alleged that Sergeant White did not pay builders for construction work. I came in on the conversation and advised that I got a copy of Sergeant White's house deed and found it unusual that the original was lost. I queried of Mr. Tougher if he had Sergeant White's date of birth which he did not.

Mr. Tougher then alleged that a number of garda from Ballybofey had made representations to Chief Superintendent Denis Fitzpatrick that they did not wish to work along with Mr. White because he framed people.

I advised Mr. tougher that I too was investigating Sergeant White and all though I didn't establish for definite that it had been suggested to me that after he left Templemore, he was drafted to a town in Carlow, I think it was Graiguenamanagh and because he had successfully carried out surveillance on an alleged IRA family i.e. [name redacted] that he jumped straight into the murder squad, at which juncture Mr. Tougher alleged that is where he learnt his dirty tricks.

I cannot be certain if it was on the same evening or not, but I am almost certain that Mr. Tougher suggested that Det. Sergeant White worked along with Deputy Assistant Commissioner Noel Conroy and that Deputy Assistant Commissioner Conroy wanted to frame a man in Cabra and got White to plant the gun or that Deputy Commissioner Conroy planted the gun himself.

- (d) A general discussion took place re: Ban Garda Fowley. Mr. Tougher alleged that she was very badly treated and that her husband's phone had been interfered with and that her husband would be taking legal action against Fitzpatrick. He mentioned victimization of Ms. Fowley.
- (e) Mr. Tougher reverted back to the relationship of Sergeant White and senior members of the garda force in particular Tony Hickey and because of same, that he was able to fraudulently obtain astronomical expenses. I should mention that in the months proceeding [sic] this attendance and indeed within weeks of Mr. Carty's appointment, Mr. McBrearty had contacted me and alleged that he was informed by garda sources that Sergeant White had something on Assistant Commissioner Carty which would prevent Assistant Commissioner Carty from carrying out his duties. Further references and repeated references were made to Sergeant White was used to plant evidence and fit people up with the knowledge of Kevin Carty and Tony Hickey.

3.

- (f) I discussed an existing case I was on at the time where a garda in Mullingar was negligent in a road traffic accident and where my client was [name redacted] and Mr. Tougher informed me that he knew my client and we all agreed that he was a very decent man.

Mr. McBrearty again informed me that Jim Higgins was a great man and the most constructive action taken on his behalf was by Mr. Tougher bringing him to Mr. Higgins' office in Ballyhaunis. I remember the town Belmullet being mentioned but I cannot remember the context. I think I queried of Mr. Tougher where he was a native of and I think he informed that he was a native of Mayo.

At some juncture Frank McBrearty Jnr requested my daughter Jacqueline he would like to see a boxing match on television and Jackie tried to get the programme, but I don't the boxing match was on.

Mr. Tougher and I discussed Sergeant White and Mr. Tougher alleged that the Gardaí could be facing a disaster situation, there was another word used which suggested or implied that individuals who were framed by White would be queuing up to have their convictions set aside and that it would cost the state millions. Mr. Tougher informed me that my phones were most likely taped and would not give me his phone number or address or to contact him in any way because he

would be considered a traitor in the garda force if he was found helping Frank McBrearty Snr.

Mr. McBrearty mentioned a case of a nephew of Richard Barron who got three years sentence in connection with a crime, details of which I cannot remember, he was a young man called [name redacted] from Lifford and that Sergeant White had framed him and that this young man was innocent.

In or about the end of June, I observed in the press on television that Jim Higgins and Brendan Howlin had met with John O'Donoghue in connection with their deep concerns in relation to the Donegal Garda corruption case which was widely reported on television in relation to information they had received. Frank McBrearty phoned me in connection with same and faxed me the enclosed which Mr. McBrearty informed me was a copy of the document Mr. Higgins had given to the Minister.

A general discussion took place and agreement among everyone, including Mr. Tougher that there would have to be a public inquiry.

[To be supplemented further].²⁷²

- 3.165. This memo was dictated by Mr. Flynn in the presence of Chief Superintendent Patrick Brehony and Sergeant Eugene Corcoran on the 7th of June 2001. Following receipt of the facsimile, which Mr. Flynn said had been forwarded to him by Mr. McBrearty Senior at the end of June 2000, by the Garda Síochána in November 2000, Chief Superintendent Brehony and his colleague visited Mr. Flynn on the 11th of November 2000. Initially Mr. Flynn indicated that he would assist Chief Superintendent Brehony provided senior Gardaí would assist him in setting aside his conviction for making certain phone calls to Sergeant John White's wife of which he had been convicted in the District Court. Mr. Flynn was informed that this proposition could not be considered, following which Mr. Flynn indicated that regardless of whether or not such help was forthcoming he would make a statement to the Gardaí about the facsimile. There was a further meeting with Mr. Flynn on the 14th of May 2001, at which he indicated that a meeting had taken place on the 7th of March 2000 at his home, but did not elaborate any further in relation to the details of that meeting. On the 7th of June 2000 Mr. Flynn was again asked by the Gardaí to assist in tracing the source of the facsimile of the 25th of June 2000 (Appendix A1) in view of the fact that he had sent the Gardaí a similar document (Appendix A14). At that stage he dictated the memorandum set out above and also indicated that he had some further

²⁷² Tribunal Documents – Anonymous Allegations, pages 357-359 – this memo was also Appendix A22 to the Murphy Report.

information to give to An Garda Síochána which he would incorporate in a comprehensive statement at a later date. On the 19th of January 2002, he told Chief Superintendent Brehony that he would make a statement in February 2002 but on the 15th of February 2002, Mr. Flynn, when contacted by Inspector Corcoran, indicated that he would not be making any further statement on the matter. By that stage, Chief Superintendent Brehony was satisfied that the original condition set by Mr. Flynn had been abandoned by him. However, he declined to supplement the information that he had provided on the 7th of June 2001.²⁷³

- 3.166. Mr. Flynn sought to further the suggestion that Mr. P.J. Togher was the source of the information set out in the facsimile of the 25th of June 2000 in correspondence with the then Attorney General, Mr. Michael McDowell, and Mr. Shane Murphy, S.C. who had been appointed as a special counsel to review matters in relation to complaints concerning Gardaí in the Donegal division. In particular, in his letter to Mr. Murphy, S.C. he said the following:

8th February 2002

RE: Independent Review–An Garda Síochána–Donegal Division

Dear Mr. Murphy,

I refer to previous correspondence and I am sure you will agree that your findings will have disclosed heroes and villains and perhaps in seeking all the glory myself, I concealed the real hero of the exposure of the Donegal Garda Corruption case for he is indeed a modest hero who does not want to be identified and who has requested Mr. Jim Higgins TD the other hero of the exposure of this scandal to keep his identity a secret. Clearly this man is a hero and he should feel proud. ... I contacted Det. Sergeant Corcoran and Det. Sergeant [sic] Brehony to attend with me on Monday morning the 18th to make a statement. ... I went part of the way in a statement, a copy of which I enclose in relation to a meeting at my home on the 7th March 2000, (copy enclosed). ...

When I complete my statement on Monday the 18th, I will forward you a copy of same for referral to Mr. O'Donoghue. I should qualify that this statement will not allege that Mr. Tougher is the author of the Carty/Hickey/White document, rather than one of the architects assisted by professionals.

Clearly this man is a hero and as I anticipate Deputy Higgins who has a copy of all my files will no doubt be attacking the Minister for Justice next

²⁷³ Transcript, Day 586, pages 105-110.

week when this matter is raised in the Dáil and the Minister might consider requesting Deputy Higgins not to be modest about his hero source Mr. Tougher, having consideration that he is the prime source of the invaluable information concerning the corruption by Assistant Commissioner Carty and Assistant Commissioner Hickey. ...

Yours faithfully,

William G. Flynn²⁷⁴

Mr. Flynn also gave Assistant Commissioner Murphy's investigators to understand that he believed that the facsimile of the 25th of June 2000 had been created by Mr. Togher.²⁷⁵

- 3.167. Mr. Flynn resiled from this position when he gave evidence to the Tribunal. When asked directly whether he knew who the author or creator of the facsimile was he said:

*I have no idea and I don't think Mr. Togher, certainly Frank McBrearty is not, it's my view, he's not the author or creator and I don't think Mr. Togher is either, now that's only my view. ... It could be anyone.*²⁷⁶

He had no information to offer the Tribunal as to who the author might be. He accepted that he told the Murphy investigators that Mr. Togher and another person were probably responsible for the facsimile, in that Mr. Togher may have supplied the detail. He gave them his opinion that Mr. Togher had received help from a lawyer or a journalist and that the document was drawn up in Mr. McBrearty's conservatory with approximately four people present. Though admitting the conversation, he said that it was pure speculation on his part; he said it was just a fleeting comment. He appeared to indicate that he was angry and that he thought people were using Mr. McBrearty who was being influenced too much by others and diverted into other issues when he should have been advancing his case through the courts.²⁷⁷

- 3.168. Detective Sergeant White told Tribunal investigators that in or about November 2001 he had a number of meetings with Mr. William Flynn, in the course of which he was shown the memorandum concerning the meeting of the 7th of March 2000 and informed by Mr. Flynn that Mr. P.J. Togher was part of a conspiracy to have a letter sent by facsimile to Mr. Jim Higgins in June 2000. They discussed this memorandum, and in particular the suggestion made by Mr. Togher that Detective Sergeant White had a shed near the border that was full of

²⁷⁴ Tribunal Documents – Anonymous Allegations, pages 104-105.

²⁷⁵ Tribunal Documents – Anonymous Allegations, page 30.

²⁷⁶ Transcript, Day 585, page 37.

²⁷⁷ Transcript, Day 585, pages 40-41.

stolen property. Mr. Flynn assured Detective Sergeant White that Mr. Togher had said this. He also said in this interview that:

Mr. Flynn went out of his way to state that he wasn't blaming P.J. Togher for concocting the facts but that he was in some way involved in it and Mr. Flynn was adamant that a further party had been involved, a professional person he stated at first and it took an hour or two to get him to name this professional person and eventually he wouldn't name him ... but he did write on a sheet of blank paper on his desk or on the table in the dining room he wrote the name Frank Connolly and he wrote down journalist Sunday Business Post, after it. I expressed my doubt as to whether Mr. Connolly would be involved in the concoction of this fax and why he felt he was and Mr. Flynn stated that Frank Connolly had been in contact with him regularly at the time and that he also received a copy of the fax very early, he felt on the same day or before Mr. Higgins had got it. He immediately went to the fireplace and he burned the piece of paper with Mr. Connolly's name on it.

Detective Sergeant White recounted how this happened at a number of different meetings, and added that Mr. Flynn did not offer any real evidence that Mr. Connolly was involved in the creation of the facsimile. When he spoke to Mr. P.J. Togher about this matter, Mr. Togher denied Mr. Flynn's allegations.²⁷⁸ He also told Detective Sergeant White that the facsimile sent to Mr. Higgins had arrived in a brown envelope anonymously in the post at Mr. McBrearty Senior's door with Mr. McBrearty's name upon it.²⁷⁹ For his part, Mr. Flynn acknowledged that he suspected Mr. Connolly could have had an involvement in the creation of the facsimile but that he did not write his name down and burn the piece of paper upon which he had written it.²⁸⁰

- 3.169. Whilst Mr. Flynn maintained in evidence to the Tribunal his belief that Mr. Togher was not the author of the facsimile, nevertheless he continued to maintain that what Mr. Togher had said at the meeting of the 7th of March 2000 was accurately reflected in the memorandum which he had furnished to Detective Superintendent Brehony. In evidence Mr. Frank McBrearty Senior, Mr. Mark McConnell and Mrs. Róisín McConnell denied that this was so. This is what they said.

Frank McBrearty Senior

- 3.170. Mr. Frank McBrearty Senior said that Mr. Togher came to Dublin "for the run" to see Mr. Higgins with the McBrearty party. He said that when the party was talking

²⁷⁸ Tribunal Documents - Anonymous Allegations, pages 617-623.

²⁷⁹ Tribunal Documents - Anonymous Allegations, page 6.

²⁸⁰ Transcript, Day 585, pages 128-131 (evidence of Mr. Flynn) and see also Transcript, Day 581, pages 161-165 (Evidence of Mr. John White).

to Mr. Higgins, Mr. Togher walked away and went around the corner to sit somewhere else. The party was lobbying Mr. Higgins for the setting up of a Tribunal and other matters. Mr. McBrearty Senior said that the party had assembled in Buswells before they left as a group and stopped for a meal on the way home. He believed that they watched a match involving the Celtic football team during the course of the meal and arrived at Mr. Flynn's between 21.30 and 21.45 hours and left at approximately 23.00 hours. He believed that he had been phoned by Mr. Flynn who wanted him to call in on the way home. Mr. Flynn wanted to know what had happened at the Dáil. He believed that he had been phoned by Mr. Flynn sometime during the day when in the Dáil or at Buswells Hotel and that Mr. Flynn asked him to call over and tell him what happened.²⁸¹ In his statement of the 11th of June 2003 made to the Tribunal Mr. McBrearty Senior said that after his meeting with Mr. Higgins he suggested to the party that they travel out to see Mr. Flynn and said that he had received an invitation from Mr. Flynn to meet him that evening.²⁸²

- 3.171. Mr. McBrearty Senior said that on arriving at Mr. Flynn's he introduced Mr. Flynn to Mr. Togher as a person who was a friend of many years and who had helped him. Having praised Mr. Higgins and Mr. Togher to Mr. Flynn, he did not think that this went down well with Mr. Flynn. He confirmed that Mrs. McConnell and Mr. Togher had a drink and that Mr. McBrearty Senior, Mr. McBrearty Junior and Mr. McConnell accepted tea. The party spoke about what happened in the Dáil with Mr. Higgins. His High Court civil action was probably mentioned. He said that Mr. Flynn did most of the talking with Mr. McBrearty Junior, who explained to him what happened that day. In relation to Detective Sergeant White he said that there was a mention that Mr. White had gone up to investigate Mr. Flynn in Co. Meath: there was some chat about Inspector McGinley and Detective Sergeant Henry (serving Gardaí in Donegal who were involved in the Barron investigation).
- 3.172. Mr. McBrearty Senior could not recall whether there was any chat about Detective Sergeant White's expenses and he confirmed that Detective Sergeant White's shed was "possibly" mentioned. He could not recall any chat about Detective Sergeant White's possession of a garage where he was said to have stored stolen goods although Mr. McBrearty Senior said that he had supplied that information to Mr. Flynn the year before in 1999. He had also told him about vintage cars parked in Mr. White's house and at the shed which he had found out about having made enquiries at Ballybofey before March 2000. He said that Mr. Flynn was interested in the shed and cars because "the rumour was going about that he had stuff there that he was planting things on people", a rumour which he said was widespread in Donegal. Mr. McBrearty Senior said that he was told

²⁸¹ Transcript, Day 576, pages 101-123.

²⁸² Tribunal Documents – Anonymous Allegations, page 732.

that Detective Sergeant White had stuff in the shed that he had taken down from Dublin to plant on people. He believed that he got this information from journalists but he was not sure who told him. He confirmed that some case under investigation by Mr. Flynn was discussed with Mr. Togher but he had no memory of the specific details of the case. There was never any discussion by Mr. Flynn regarding the Gardaí facing a potentially disastrous situation or that they should be careful making phone calls because “phones could be tapped”. Mr. McBrearty Senior confirmed that Mr. Togher refused to give his telephone number to Mr. Flynn, but Mr. Togher did not say that he would be regarded as a traitor within the Garda force if he did so. For the most part what was discussed at that meeting were the events in Dáil Éireann with Mr. Higgins.²⁸³

3.173. Mr. McBrearty Senior denied that the contents of the “memo” supplied by Mr. Flynn on the 7th of June 2001 were an accurate portrayal of what happened at the meeting. He denied that Mr. Togher had alleged that Detective Sergeant White had planted evidence and framed people, or that expenses claimed by him had been discussed by Mr. Togher. Mr. Togher did not claim that Detective Sergeant White had got away with murder regarding expenses because of his connection to Assistant Commissioners Carty and Hickey. He said that the assistant commissioners’ names were not mentioned at all. Mr. Togher did not say that Detective Sergeant White had stayed at Assistant Commissioner Hickey’s home when investigating Mr. Flynn. He further denied that Mr. Togher had alleged that a number of Gardaí at Ballybofey did not want to work with Detective Sergeant White because he planted things or framed people, or that Mr. Togher alleged that he had learnt his dirty tricks while in the murder squad. He said that Mr. Togher always said to him that when he worked with Detective Sergeant White there was nothing wrong with him.²⁸⁴

3.174. Mr. Frank McBrearty Senior said that he never heard any discussion about Garda Tina Fowley or whether she had been badly treated in An Garda Síochána. He heard no allegation made against Deputy Commissioner Noel Conroy. He also denied that he had said to Mr. Flynn within weeks of Mr. Carty’s appointment to head the inquiry in Donegal that Garda sources had informed him that Detective Sergeant White had something on Assistant Commissioner Carty which would prevent the assistant commissioner from carrying out his duties.²⁸⁵ In relation to the case of the young man from Lifford mentioned in the memo, Mr. McBrearty Senior said that he probably had discussions with Mr. Flynn about that case on the phone but he did not think it was mentioned at the meeting.²⁸⁶

3.175. Mr. Frank McBrearty Senior also denied that there was a general agreement that

²⁸³ Transcript, Day 576, pages 167-173.

²⁸⁴ Transcript, Day 575, pages 151-166.

²⁸⁵ Transcript, Day 575, pages 170-176.

²⁸⁶ Transcript, Day 575, pages 181-182.

the only way to go forward following the meeting with Mr. Higgins on the 7th of March 2000 was to seek a public inquiry. He did not believe that that was mentioned. He said that he had lawyers and politicians working on that agenda. He said he was not a hundred per cent sure but when pressed conceded a possibility that it was discussed at Mr. Flynn's house.²⁸⁷

3.176. In his statement to the Tribunal in June 2003 Mr. McBrearty Senior said:

It has come to my attention from documentation received from the Tribunal, that Mr. Flynn alleged that Mr. P.J. Togher spoke of matters otherwise alleged in the document F/McB1 (Appendix A1 – the facsimile of the 25th of June 2000). I say categorically, that Mr. P.J. Togher did not speak at any time during the course of the evening about Sergeant John White or Kevin Carty. At no time was any reference made to the allegations contained in the document ... and I believe that Mr. Billy Flynn has now made these allegations, because he was put out about the fact that I had praised Mr. P.J. Togher and Mr. Jim Higgins for having assisted me and my family through the "McBrearty Affair".²⁸⁸

Mr. P.J. Togher

3.177. Mr. Togher in evidence to the Tribunal maintained that he was in a sense an uninvolved observer of events on the 7th of March 2000. He was retired at the time and at a loose end and attended Dáil Éireann with the McBrearty party "for no reason at all". He was not paid. He was in the Dáil for about two to three hours sitting inside the door of the bar on his own. He kept his distance from the meeting because he did not know the McConnells and did not wish to intrude upon their privacy in their talks with Mr. Higgins or any other politicians. He maintained that the outcome of the meeting was not discussed with him: he was not that interested in what went on at the meeting; he was not a confidant of Mr. McBrearty Senior and would not in any event have asked the McConnells about their business because he did not know them. He could not recall any discussion with Mr. McBrearty Senior as to how he got on at the meeting and did not ask him. He might have been told something general but nothing specific. Shortly before the conclusion of the meeting and before the encounter with the press he absented himself and went to Buswells hotel.

3.178. When the party regrouped at Buswells a meal was suggested. Mr. Togher travelled in the car with Messrs. McBrearty Senior and Junior. He believed that they went to the Lucan Spa Hotel and that on the way there was some argument between the two McBreartys, each giving out about what the other had said, should have said, or should not have said at the meeting. Mr. Frank McBrearty

²⁸⁷ Transcript, Day 575, pages 180-184.

²⁸⁸ Tribunal Documents – Anonymous Allegations, page 733.

Junior told Mr. Togher that Mr. Jim Higgins had told him that Mr. John Bruton, TD had called Mr. Jim Higgins in and told him to lay off the McBrearty case because a member of the Garda Complaints Board had approached him and told him that Mr. Higgins was causing problems. The McConnells joined up with his party for a meal. The question of Mr. Bruton's intervention, in Mr. Togher's view, caused dismay to Mr. McBrearty because it was putting Mr. Higgins under pressure to disengage from his cause. He was of the view that the McBrearty party felt in some way negative about the meeting. When they were leaving the hotel Mr. Togher maintained that Mr. McBrearty Senior suggested that "we should go down to Billy Flynn for a run, for a bit of craic". Mr. Togher expressed himself to be reluctant to do so but nevertheless was prevailed upon to go and they arrived at Mr. Flynn's house where Mr. Togher was introduced to him.²⁸⁹

3.179. I do not accept Mr. Togher's suggestion that the meeting with Mr. Jim Higgins was viewed as unsuccessful by Mr. Frank McBrearty Senior. Clearly Mr. Frank McBrearty Senior was pleased that Mr. Higgins had met him and that the Fine Gael party had on the steps of Dáil Éireann supported his campaign for the establishment of a Tribunal of Inquiry into the McBrearty affair. In addition, the stage had been set for favourable media coverage in that this meeting occurred in the full glare of publicity, ending with a declaration of Mr. Higgins' support for Mr. McBrearty Senior's campaign. I do not accept the constant attempt to portray Mr. Togher as an indifferent bystander to these events.

3.180. Mr. Togher also believed that the visit to Mr. Flynn's took place between 21.20 hours and 23.00 hours in that he recalled that he returned home to Donegal between 01.30 and 01.45 hours. He recalled that issues surrounding Mr. McBrearty Senior's case were discussed, including the matters concerning Darcy Connolly, William Doherty, Robert Noel McBride, the calls to Michael Peoples, Garda John O'Dowd and the Carty investigation. Mr. Flynn also made reference to a book that he had written. He denied that the "memo" furnished by Mr. Flynn to the Murphy investigation was true. He said that Mr. Flynn was walking up and down smoking a cigarette and discussed with Mr. Togher briefly the fact that he was from Co. Mayo and that he had a big case which he was investigating in that area. He sought his assistance in investigating that case and Mr. Togher declined. He asked for Mr. Togher's telephone number, which Mr. Togher declined to give. He recalled that during the course of the conversation Mr. Flynn said that Detective Sergeant White had some sort of shed built on his mother-in-law's land and that he needed her name in order to examine the land registry records to establish who owned the land upon which the shed was built. Mr. Togher said that he declined to give the lady's name to Mr. Flynn, though he

²⁸⁹ Transcript, Day 569, pages 146-154 and Transcript, Day 570, pages 1-11.

knew it because he was friendly with the White family. He said that Mr. Flynn:

Went on talking about John White he was this and that, he had stuff in the shed and this shed seemed to be a problem with him.

He said that Mr. Flynn was constantly answering the phone. Mr. Togher said that he made a gesture to Mr. Frank McBrearty Junior to stop talking about the matter raised by Mr. Higgins in respect of Mr. John Bruton TD, at which Mr. Frank McBrearty Junior desisted. He accepted that he received hospitality and was given a glass of whiskey and that Mrs. McConnell had a gin and tonic.²⁹⁰ He denied consuming a large amount of whiskey.

- 3.181. Mr. Togher denied that he said anything about Assistant Commissioner Tony Hickey or that Detective Sergeant White had stayed at Mr. Hickey's house in Maynooth while Detective Sergeant White was investigating William Flynn. In fact the Tribunal is aware that Mr. Hickey did not reside in Maynooth. Mr. Togher said that he did not know where Assistant Commissioner Hickey lived or of any connection between Detective Sergeant White and Mr. Hickey.²⁹¹
- 3.182. Mr. Togher also denied that he had ever said that Detective Sergeant White had a garage or that it contained stolen goods. It was Mr. Flynn, he maintained, who introduced the question of Detective Sergeant White having a garage, built close to his in-laws home. He then said that he could not recall Mr. Flynn mentioning stolen property "but he did mention that he had cars there". Mr. Togher said that he [Mr. Togher] did not mention vintage cars, nor did he mention stolen property in the garage. Nobody else in the course of the conversation, to his knowledge, mentioned stolen property.²⁹²
- 3.183. Mr. Togher denied that he informed Mr. Flynn that a number of Gardai from Ballybofey did not wish to work with Detective Sergeant White because he had framed people. He described that as a complete lie. He also denied telling Mr. Flynn that Detective Sergeant White had done work in Co. Carlow, as a result of which he had gone onto the murder squad, where he had allegedly learned his dirty tricks.
- 3.184. He particularly objected to the allegation made by Mr. Flynn that he had attempted to implicate Deputy Commissioner Noel Conroy in serious wrongdoing because he had a close personal connection with members of Mr. Conroy's family and:

*That he would even dare to say that I would mention friends that were so dear to me, that were next to family, hurt me very much.*²⁹³

²⁹⁰ Transcript, Day 570, pages 11-38.

²⁹¹ Transcript, Day 570, pages 38-41.

²⁹² Transcript, Day 570, pages 41-46.

²⁹³ Transcript, Day 570, pages 47-49.

- 3.185. He also denied saying anything about Garda Fowley in the course of the meeting to the effect that she had been badly treated by An Garda Síochána or that her husband's phone had been interfered with or that he intended taking legal action against Chief Superintendent Fitzpatrick. He said that he knew Garda Fowley very well and that she was not married. He had heard rumours about how she had been allegedly victimised in her work in An Garda Síochána but he did not mention her at any stage in the course of the conversation on the night of the 7th of March 2000.²⁹⁴
- 3.186. Mr. Togher denied that he said anything about a relationship between Detective Sergeant White and senior members of An Garda Síochána, in particular, Assistant Commissioner Hickey, or that Detective Sergeant White was able to fraudulently obtain astronomical expenses. He had no knowledge of any information said to have been given to Mr. Flynn by Mr. McBrearty Senior within weeks of Mr. Carty's appointment to head the investigation in Donegal that he was informed by Garda sources that Detective Sergeant White had something on Assistant Commissioner Carty which would prevent the assistant commissioner from carrying out his duties. He pointed out that though Mr. McBrearty Senior had some reservations about the Carty inquiry this did not prevent him from co-operating with Mr. Carty at all times. He said that there was no reference made during the course of the discussion to the effect that Detective Sergeant White was used to plant evidence and fit people up with the knowledge of the two assistant commissioners.²⁹⁵
- 3.187. Mr. Togher maintained that observations said to have been made by Mr. McBrearty Senior that he (Mr. Togher) had brought him to Mr. Higgins' office in Ballyhaunis were not made because it did not happen, though he had brought him to Mr. Higgins' house. He accepted that at some stage Mr. Frank McBrearty Junior requested to see a football match on the television. He denied having any discussion with Mr. Flynn about Detective Sergeant White and alleging that the Gardaí would be facing a disastrous situation in that persons who had been framed by Detective Sergeant White would be queuing up to have their convictions set aside and that it would cost the State millions.
- 3.188. Mr. Togher also denied informing Mr. Flynn that his telephones were most likely tapped. He accepted that he would not give his phone number to Mr. Flynn but he denied that he told him that he refused to do so because he would be considered a traitor in the Garda force if found to be helping Mr. Frank McBrearty Senior. It was well known around Raphoe and in other circles that he was helping Mr. Frank McBrearty Senior and he made no secret of working for him and would have been seen in his company. He simply did not wish to be contacted by Mr.

²⁹⁴ Transcript, Day 570, pages 49-51.

²⁹⁵ Transcript, Day 570, pages 51-55.

Flynn in the future. Further, he rejected the suggestion that in the course of a general discussion agreement was reached by everyone, including Mr. Togher, that there would have to be a public inquiry. He maintained that it was Mr. Flynn who mentioned a public inquiry but not him.²⁹⁶ The insistence by Mr. Togher that he did not voice any support for a public inquiry is very curious. He maintained in the course of his evidence that Mr. Frank McBrearty Senior was very happy with the Carty inquiry and that the one who voiced support for the public inquiry was Mr. Flynn. Yet he accepted that Mr. McBrearty Senior was in fact agitating for a public inquiry and indeed had made substantial progress towards that goal in securing Mr. Higgins' support for an inquiry that very day.

- 3.189. The Tribunal is satisfied that the issue of a public inquiry was discussed at this meeting and that all the parties present were enthusiastic about it. That had been the very reason they went to Dáil Éireann in the first instance and they had a success. It would have been extraordinary if the matter had not been discussed at Mr. Flynn's house. Indeed, Mr. McBrearty Senior told the Tribunal in evidence that he went to Mr. Flynn's house that night to tell him about the day's events at Dáil Éireann. Yet, Mr. Togher was determined to convince me that there was no mention at the meeting of any support for the establishment of a public inquiry other than from Mr. Flynn. It seems to me that his protestations in that regard are not credible and are an attempt to distance him from any suggestion that he might take any action to support a public inquiry or that he was in any way supportive of any inquiry that might have superseded the Carty inquiry. The Tribunal is satisfied that indeed he was supportive of the establishment of a public inquiry and that he did contribute to the general consensus at the meeting to that effect. As previously noted both facsimiles called for the establishment of a public inquiry.

The McConnells

- 3.190. Mrs. Róisín McConnell and Mr. Mark McConnell were also at this meeting, having driven there in their own car. Mrs. McConnell did not recall very much about the meeting and the contribution any particular person made to it. She thought that they called into Mr. Flynn's house because Mr. McBrearty Senior wished to collect material from Mr. Flynn. They arrived at about 21.00 hours and she was given a drink by Mr. Flynn. She agreed that Mr. Flynn spent some time on the phone and that he was walking up and down the room and "seemed to be talking in riddles". She thought he was unwell and might be on the verge of a mental breakdown because of her own experience. Various propositions were put to her about what might have been discussed, but she had no recollection of

²⁹⁶ Transcript, Day 570, pages 57-61.

what was actually discussed during the course of the meeting. Though Mr. Togher may have had a drink she had no recollection of him having more than one drink and said under cross-examination that if Mr. Togher had consumed a bottle of whiskey or if there had been extensive discussion or allegations made by Mr. Togher against Detective Sergeant White, of the nature contained in the memorandum made by Mr. Flynn, she would more than likely have remembered that. My overall impression was that Mrs. McConnell had very little memory of the meeting and had very little evidence to give in furthering my understanding of it.²⁹⁷

- 3.191. In interview with the Tribunal investigators on the 11th of June 2003, Mr. McConnell described how the meeting at Mr. Flynn's house was unplanned. It was not a meeting in any way to discuss tactics. The meeting in Dáil Éireann with Mr. Higgins had been the first opportunity to meet Mr. Higgins to outline their experiences to him. He could not recall if any commitment was given at the meeting by Mr. Higgins. The meeting at Mr. Flynn's took place on the way home and he described how there was a general discussion about the Donegal investigation but mostly about "general things that we went over a hundred times before". He recalled that Detective Sergeant White was mentioned and that there might have been mention of Assistant Commissioner Carty in the context of his investigation in Donegal. No notes were taken of the meeting and there was no specific decision made at it because it was not that kind of a meeting. It was the first time that Mr. Flynn had met Mr. Togher.²⁹⁸
- 3.192. In evidence, Mr. McConnell confirmed much of this to the Tribunal. He confirmed that the visit to Mr. Flynn's was Mr. Frank McBrearty Senior's suggestion, either to have a talk with Mr. Flynn or to pick something up. It was pitch black when they arrived and he sat beside his wife in the course of the meeting. During the evening Mr. Flynn spoke about his work in Donegal and the phone records that he had obtained, which were of importance in the case. The conversation was mostly between Mr. Frank McBrearty Senior and Mr. Flynn. He and his wife spoke the odd time and he was sure Mr. P.J. Togher said something but just in the general context of the investigation in Donegal. He confirmed that Mr. Flynn received a number of phone calls and was walking up and down the room. He recollected a reference by Mr. Flynn to some land registry search on Detective Sergeant White. Detective Sergeant White's behaviour in the inspections of Frank McBrearty's licensed premises over the years, and his involvement in the investigation of the death of the Late Mr. Barron, and his treatment of Mrs. McConnell in custody, were all discussed. There was some mention of Assistant Commissioner Carty's investigation in Donegal, which was ongoing. Mr. McConnell did not believe that Assistant Commissioner Carty was doing a good

²⁹⁷ Transcript, Day 587, pages 1-19.

²⁹⁸ Tribunal Documents – Anonymous Allegations, pages 636-643.

job and he made that known at the meeting because his name and Frank McBrearty Junior's name had still not been cleared in respect of the death of the Late Mr. Barron. When interviewed by the Carty investigation team, he found them "very volatile towards me and my wife". He said that there was no mention of Assistant Commissioner Hickey or Deputy Commissioner Conroy at the meeting. He had lost confidence in the Carty investigation. He was satisfied that Mr. Togher had a couple of whiskeys during the course of the meeting, but denied that Mr. Togher had consumed a bottle of whiskey.

- 3.193. Mr. McConnell denied emphatically there were any allegations made by Mr. Togher against Detective Sergeant White and in particular that Detective Sergeant White had been reimbursed with expenses in relation to planting evidence upon people or that Detective Sergeant White had stayed at Assistant Commissioner Hickey's house. He was adamant that these matters were not mentioned by anybody during the course of the meeting. Mr. McConnell said he knew nothing about the anonymous allegations set out in the facsimile until the matter broke in the press. He was sure that the members of the party who had met Deputy Higgins were happy with the meeting because "it was desperate times for us in Donegal". Mr. Higgins had indicated that he was going to try and help them in their fight to try and obtain justice. He felt that this could not happen with the Carty investigation because the inquiry was not being handled by somebody outside An Garda Síochána. He said that the general mood when they left Dublin and when they were having the meal prior to the visit to Mr. Flynn's house was that the best thing that could happen was the establishment of a public inquiry. Mr. Togher was not the instigator or leader of the conversation in relation to matters at Mr. Flynn's. He gave Mr. McConnell the impression that he did not particularly want to be there. In summary, he said the allegations were not mentioned. The meeting was not planned as a de-briefing in respect of what had happened with Mr. Higgins in Dáil Éireann. He maintained that Mr. Flynn "very much took the lead in that meeting".²⁹⁹

Conclusions on the Meeting of the 7th of March 2000

- 3.194. The meeting of the 7th of March 2000 may be taken as an important meeting that occurred spontaneously at the conclusion of a successful day enjoyed by the McBrearty extended party at Dáil Éireann. As an unplanned meeting between a number of people with clear views on the McBrearty saga, I am satisfied that a number of things happened as a matter of probability. Firstly, the day was dominated by the lobbying of Mr. Higgins, TD for support in setting up a public inquiry into the McBrearty affair. Mr. Higgins, TD obliged and committed the Fine Gael

²⁹⁹ Transcript, Day 587, pages 19-38.

party and himself personally to support that call on the steps of Dáil Éireann surrounded by Messrs. McBrearty Junior and Senior and Mr. Mark McConnell in the presence of the media. I have no doubt that this was fully reported upon to Mr. Flynn during the course of the visit.

- 3.195. The second important aspect of the evidence is the degree of agreement as to what was discussed and what happened at the meeting. Mr. Flynn states that he discussed a significant investigation with Mr. Togher centred in Mayo, Mr. Togher's home county. Mr. Togher agreed that this was so and he also agreed that when invited to join in this investigation he declined. Mr. Flynn and Mr. Togher are also agreed that Mr. Flynn asked Mr. Togher for his telephone number which Mr. Togher declined to give: they differ as to the reason why. On other minor matters there is limited agreement: Mr. Togher agreed that he accepted a glass of whiskey: Mr. Flynn said that he consumed up to a bottle of whiskey.
- 3.196. Mr. Flynn states that Mr. Togher made significant allegations against Detective Sergeant White, as set out in the memo discussed above. Mr. Togher denies this. However, there is a significant measure of agreement to the extent that a shed or garage used by Detective Sergeant White on his mother-in-law's land at Gortahurk was discussed. Mr. Mark McConnell was satisfied that Detective Sergeant White was discussed at the meeting, mostly in the context of his involvement in the Barron investigation and the mistreatment of Mrs. McConnell whilst in custody on the 4th of December 1996. There is a marked reluctance on the part of Mr. Togher and the McConnells to accept that anything further in the nature of an allegation against Detective Sergeant White was discussed. Yet Mr. McBrearty Senior gave evidence that he was aware in 1999, and well before March 2000, that similar allegations were made against Detective Sergeant White. In particular, he claimed that Mr. Flynn was interested in the garage in Gortahurk in 1999 because he had told Mr. Flynn some time before of rumours going about that Detective Sergeant White had "stuff" there and that he was planting things on people. It was also submitted on behalf of Mr. Togher that similar allegations were being made prior to the meeting of the 7th of March 2000. Mr. Togher and Mr. McConnell do not accept that these allegations were mentioned at all at the meeting.
- 3.197. Given that the wrongdoing of Detective Sergeant White was mentioned, in the context of the mistreatment of Mrs. McConnell, and that the shed was mentioned to the extent that the title to the land on which it was constructed was raised, it seems to me quite unlikely that whatever strong

rumours or other allegations that had led Mr. Flynn to raise queries in relation to the title to that land would not also have been discussed openly at the meeting. I am satisfied that allegations concerning Detective Sergeant White suggesting that he was storing stolen goods at the garage or shed and planting things on people were discussed at this meeting. Because of later events, I am satisfied that Mr. Togher, Mr. Frank McBrearty Senior and Mr. Mark McConnell now find it convenient to distance themselves from this discussion.

3.198. It is clear to me also that all present believed that a public inquiry was the best way forward because Mr. McBrearty Senior and Mr. McConnell had become disillusioned with the lack of progress made in vindicating the reputations of Mr. Frank McBrearty Junior and Mr. Mark McConnell in relation to the Barron death. In addition, they lacked confidence in an internal inquiry by the Gardaí into a Garda investigation. The protestations made to me in evidence by Mr. Togher and Mr. McBrearty Senior that they had not lost confidence in the Carty inquiry is belied by that day's mission to seek a public inquiry. This was freely acknowledged by Mr. Mark McConnell in evidence. Once again I am satisfied that the reluctance by Mr. Togher and Mr. McBrearty Senior to acknowledge this reality is a further instance of their wishing to distance themselves from the suggestion that this was a prominent topic for discussion at this meeting. The probability is that many aspects of the suspicions, rumours or reports concerning Detective Sergeant John White that had been circulated by different Gardaí and other sources prior to March 2000 were referred to, canvassed and discussed amongst those present.

3.199. I am satisfied that Mr. Flynn's allegations to the Murphy investigators were calculated not only to convey what was discussed but also to suggest that Mr. P. J. Togher was the originator of all of the allegations. At the time the memo was made in June 2001 the Murphy investigation was trying to ascertain the authorship of the facsimile of the 25th of June 2000 (Appendix A1). However, there are a number of features of Mr. Flynn's evidence that also cause concern. The first is his demeanour in the witness box: the manner in which he answers questions is far from direct. Secondly, the manner in which he chose to deal with the Murphy investigation's inquiries into the facsimile of the 25th of June 2000 was disquieting, insofar as he attempted to link his assistance in the matter to being helped by the Garda Síochána in having his District Court conviction set aside. In the circumstances, though I am not satisfied that Mr. Togher, Mr. McBrearty Senior and Mr. McConnell have told the full truth in

relation to what was discussed at the meeting of the 7th of March 2000, neither can I conclude on the basis of Mr. Flynn's evidence alone and the "memo" that he produced to the Murphy investigation that all of the allegations set out in that "memo" emanated from P.J. Togher. I am not satisfied on that basis alone to conclude that Mr. P.J. Togher was the originator of the allegations in the facsimile of the 25th of June 2000. That conclusion would require corroboration of the evidence of Mr. Flynn. The main conclusion that I draw from the evidence that I have heard on this issue is that the allegations were discussed at the meeting of the 7th of March 2000, save for the allegation made against Deputy Commissioner Conroy. The attempt by Mr. McBrearty Senior and Mr. Togher to deny that is an attempt to distance themselves from any involvement in a detailed discussion of allegations that subsequently appeared in the facsimile.

Conclusions on the Murphy Investigation

- 3.200. By the time Assistant Commissioner Murphy submitted his second report in relation to this matter on the 23rd of October 2002 he was still unaware that Mr. Frank McBrearty Senior was the conduit of the two facsimiles which were sent to Deputy Jim Higgins TD and Mr. Martin Giblin S.C. He was unaware that Mr. Martin Giblin S.C. had provided the information given to Deputy Brendan Howlin. He was unaware of the existence of the letter to Deputy Higgins of the 15th of July 2000, of which he was also not informed by Deputy Higgins. Mr. Frank McBrearty Senior told him a blatant lie that he did not recognise the facsimile of the 25th of June 2000 sent to Deputy Higgins. Deputy Howlin and Deputy Higgins had asserted confidentiality when faced with requests to furnish the identity of the source of the document and information received by them respectively. Mr. Martin Giblin S.C. had decided not to co-operate with Assistant Commissioner Murphy in his investigation because he had no faith in a Garda inquiry. Mr. P.J. Togher had informed his investigators that he had high regard for Detective Sergeant White, which was not the case. Mr. William Flynn had made allegations that the allegations contained in the facsimile document had been made explicitly by Mr. P.J. Togher at a meeting in his house on the 7th of March 2000. The other participants in the meeting rejected this. Nobody involved in this affair was willing to disclose the information that was necessary in order for this inquiry to be advanced. For a time following the establishment of this Tribunal, that position was maintained. However, the failure, for whatever reasons, of the various parties to assist Assistant Commissioner Murphy and his officers in their inquiry meant that he faced the same brick wall at the end of the inquiry as he had faced at the beginning.

3.201. Assistant Commissioner Murphy, Detective Superintendent Brehony, Inspector Corcoran and other officers attempted to investigate the allegations which were the subject of the facsimile (Appendix A1) and the information furnished to Deputy Howlin (Appendices A3, A4 and A5), despite the lack of co-operation that they encountered. Their efforts in this regard were thorough. In effect, because of the breadth of the allegations made, they were looking for the equivalent of a needle in a haystack in attempting to focus on the wrongdoing alleged. They had no specific case of wrongdoing to investigate. Therefore, they investigated as many cases as they could that Detective Sergeant White was involved in in the course of his career as a detective during the relevant periods, as well as the property books associated with stations where he served; and explored whether in fact he had been engaged with Assistant Commissioner Carty and/or Assistant Commissioner Hickey in the investigation of crime. In trying to ascertain the source of the allegations in the facsimile, all thirty members of An Garda Síochána who held the rank of detective inspector attached to stations and specialist units located in the Dublin Metropolitan Area at the relevant time were interviewed. For the initial report a total of forty-six retired Gardaí in the Donegal division were interviewed. Assistant Commissioner Murphy's report was available to the Tribunal.³⁰⁰ Assistant Commissioner Murphy's report ends by noting that the matter has now been made the subject of a Term of Reference at this Tribunal, which would provide a forum to examine under oath those parties who had not fully co-operated in his investigation.³⁰¹ His investigation found no evidence to sustain any of the allegations made in the facsimile of the 25th of June 2000, or the information conveyed to Deputy Brendan Howlin by Mr. Martin Giblin S.C. As would appear from Chapter 2 of this report, the Tribunal's investigators who reviewed Assistant Commissioner Murphy's investigation and carried out further investigations of their own, which were outlined to me in evidence, have reached a similar conclusion. I am satisfied from the evidence furnished to the Tribunal following these extensive investigations that the core allegations contained in the facsimile of the 25th of June 2000 are untrue for the reasons set out in Chapter 2.

Letters of the 12th of July 2000

3.202. Two letters were sent by facsimile on Friday the 14th of July 2000 to Mr. Ken Smyth and Deputy Jim Higgins. Both letters were dated the 12th of July 2000. The first letter purported to report information coming from "a serving Garda" and alleged that false statements were made by Gardaí to secure a number of

³⁰⁰ Tribunal Documents – Anonymous Allegations, pages 1-560.

³⁰¹ Tribunal Documents – Anonymous Allegations, page 31.

convictions in a particular prosecution. The information was said to be “most reliable” as it came from a person involved in the investigation. It stated that it was of paramount importance that this case be re-opened.³⁰² The second letter set out a series of allegations against a number of Gardaí of various ranks. The first set of allegations were against Gardaí involved in the investigation into the death of the Late Richard Barron and accused them of fabricating evidence by producing false statements allegedly made by Mr. Frank McBrearty Junior. These allegations were already the subject of complaint by Mr. Frank McBrearty Senior, Mr. Frank McBrearty Junior, Mr. Mark McConnell and other members of the extended Quinn family. The second allegation made against Detective Sergeant White was that he was:

Also involved in the making up of a bomb at the back of the Glenties Garda Station and planting it at the MMDS mast owned by Cable Management Ireland in Ardara. ... Some days later arrests were made and the extended Diver family from Ardara were interrogated about the events but they were never charged.³⁰³

This allegation was the subject of the fourth report of the Tribunal (Term of Reference (g)). It was an allegation already under investigation by the Carty team since the 4th of April 2000 following representations made by Mr. Tom Gildea to the Minister for Justice, Equality and Law Reform in March of that year.

- 3.203. The third allegation made in the letter was that Detective Sergeant White was allegedly involved in the framing of Mr. Mark McConnell and Mr. Michael Peoples in respect of the ‘silver bullet’ affair. This was the subject matter of the third report of the Tribunal (Term of Reference (d)), which determined that this allegation was unsustainable on the evidence. The letter went on to allege fourthly that:

During this time of harassment and intimidation Assistant Commissioner Tony Hickey was transferred to the North Western Garda Division in Sligo and he was then promoted and transferred elsewhere to be replaced by Assistant Commissioner Kevin Carty. We now know that both Hickey and Carty knew Detective Sgt. John White well and had worked with him previously in the Dublin District where they were involved in investigating serious crime, fabricating evidence and planting false evidence against innocent people.³⁰⁴

This replicates without any further evidence the allegation made in the facsimile of the 25th of June 2000.

³⁰² Tribunal Documents – Anonymous Allegations, page 1016.

³⁰³ Tribunal Documents – Anonymous Allegations, page 1017.

³⁰⁴ Tribunal Documents – Anonymous Allegations, page 1017.

- 3.204. The sixth allegation made was that Detective Sergeant John White planted drugs on Paul Quinn, a brother of Mrs. Róisín McConnell. This allegation was made known to Mr. Quinn’s solicitor, Mr. Ken Smyth, in 1999. It is the subject of the seventh report of the Tribunal (Term of Reference (c)), in which the Tribunal was satisfied that this allegation was true.³⁰⁵ The seventh allegation relevant to this inquiry is that Detective Sergeant White was alleged to have “planted convicting evidence” on a youth named in the letter and alleged to be serving a sentence of imprisonment as a result. The Tribunal is satisfied that this allegation was not correct, as already described in Chapter 2.
- 3.205. Of further relevance to the anonymous allegations is that Mr. McBrearty Senior describes a meeting with Mr. Frank Connolly, journalist, on Tuesday the 11th of July 2000. He said that at Mr. Connolly’s request he drove him to Ballybofey where Detective Sergeant John White’s house was located. He said:

We then proceeded to where his shed is situated on the Donegal/Tyrone border near Castlederg. We spoke to a neighbour there and she said that the land belonged to Detective Sgt. White and his wife. She also said that there was planning permission for the erection of three bungalows on the land beside the shed. This was the shed where ... [stolen] property that he had brought with him from Dublin. He also has vintage cars stored there. Myself and Mr. Connolly then drove towards Sgt. White’s “mansion” again

...³⁰⁶

Mr. McBrearty Senior also made a number of other allegations against Detective Sergeant White of planting items on persons who were subsequently convicted. There was no evidence adduced at the Tribunal to support any of these allegations. Of interest, however, is the fact that the theme of the allegations is the planting of items of evidence, a theme which was the hallmark of the facsimile of the 25th of June 2000 and the information conveyed to Deputy Howlin. The letter also describes how in the course of this journey the two visited the Gallagher family who had complaints about a search of their property, which was dealt with in the first report of the Tribunal (Term of Reference (e)). They also stopped to enable Mr. Connolly to speak to Mr. William Doherty, the petty criminal and informant who was involved in much of the mischief orchestrated against the McBrearty family chronicled in the second report of the Tribunal (Terms of Reference (a) and (b)).

- 3.206. The letter also makes a further allegation against Assistant Commissioner Carty, to the effect that he had been involved in the planting of a gun in Dublin, and other wild allegations that were entirely unwarranted and unsustainable.³⁰⁷ Much

³⁰⁵ Tribunal Documents – Anonymous Allegations, pages 1034-135 – letter from Mr. Ken Smyth to Assistant Commissioner Kevin Carty.

³⁰⁶ Tribunal Documents – Anonymous Allegations, page 1018.

³⁰⁷ Tribunal Documents – Anonymous Allegations, page 1018.

but not all of this material was brought to the attention of Assistant Commissioner Carty by Mr. Smyth in a letter of the 14th of July 2000.³⁰⁸ By this stage Mr. Smyth was acting for the McBreartys, Mr. Paul Quinn and Mr. Hugh Diver, as well as other parties in respect of the Ardara issue.

- 3.207. Mr. Frank Connolly told the Tribunal that the account given in the letter of the 12th of July 2000 of his visit to Donegal on the 11th of July was very accurate. He asked to be taken to the White property because:

*Somebody had informed me that this property may have been stored in a large shed, again this emerges from the rumour factory in Donegal. So I would have asked Frank McBrearty where is the shed that allegedly contains the stolen property and I remember him driving through Ballybofey ... and we went to a rural area ... and he showed me a fairly large shed ...*³⁰⁹

Mr. Frank McBrearty Senior told the Tribunal that all the information contained in this letter came from retired and serving Gardai.³¹⁰ He said it also came from journalists. In this instance he said he got the material typed by a young lady, that he did not know the truth of what was in it:

*But some of the stuff I knew it was a hundred per cent and there was some of the stuff I wasn't sure of. But I packed it all together ...*³¹¹

- 3.208. Mr. Smyth, who had received the facsimiles on the 14th of July 2000, confirmed that he knew of a number of the allegations contained in the letter prior to receiving it, including the Paul Quinn and Ardara mast allegations. He did not carry out any investigation to see whether any of these allegations could be substantiated at the time, though he did draw attention to the fact that he had instructions from Mr. Diver and others and Mr. Quinn in relation to those events. He was issued with instructions in relation to the manner in which the alleged statement of Mr. Frank McBrearty Junior had been taken and other issues concerning arrests and detentions in December 1996. He felt that the allegations had a history and that they did not suddenly emerge in that letter but rather developed over time.³¹²

- 3.209. Mr. Smyth also told the Tribunal that he first heard a passing reference in relation to the Ardara mast issue from Garda Jim Madigan, who joined a meeting on the 9th of December 1998.³¹³

³⁰⁸ Tribunal Documents – Anonymous Allegations, pages 1034-1036.

³⁰⁹ Transcript, Day 590, page 29.

³¹⁰ Transcript, Day 576, pages 94-96.

³¹¹ Transcript, Day 577, pages 85-87.

³¹² Transcript, Day 586, pages 27-29 and pages 64-70.

³¹³ Transcript, Day 586, pages 61-62.

Conclusion on the Letter of the 12th of July 2000

3.210. These letters indicate to me the extent to which Mr. McBrearty Senior was determined to advance all or any allegations against Detective Sergeant White. Some of these allegations were already well known to the authorities and were under proper investigation; others were wild and untrue. Mr. McBrearty Senior was particularly focussed on Detective Sergeant White, whom he believed to be his main tormentor in respect of the alleged harassment of his premises. He was also focussing on Assistant Commissioner Carty as a person against whom he was prepared to make the most outlandish allegations. Deputy Higgins did not forward this letter to the Minister for Justice, Equality and Law Reform or to Assistant Commissioner Murphy. Mr. Smyth, presumably on his clients' instructions, wrote a letter to Assistant Commissioner Carty setting out some of these allegations and exercising discretion by omitting the most outlandish allegations made against the assistant commissioner. He sought an assurance from the assistant commissioner that the other allegations would be investigated. Three of the allegations made, in particular, were the same as those made by Mr. Giblin to Deputy Howlin on the 25th of June 2000. The allegation that Detective Sergeant White had planted drugs on Paul Quinn, the Ardara case and the planting of evidence on a youth in Lifford were three issues raised by Mr. Giblin with Deputy Howlin. Clearly they were not new matters such as to provoke an urgent communication with a member of Dáil Éireann. Nevertheless they were matters which were obviously of huge concern to Mr. McBrearty Senior as he and Mr. Giblin sought to imbue them with the same degree of freshness and urgency as that given by Deputy Higgins to the startling allegations of the facsimile. The Tribunal is satisfied that in making his representations to Deputy Howlin, Mr. Giblin was to a large extent reflecting the then dominating concerns of Mr. McBrearty Senior, who at that time was focussed, in particular, on allegations of planting evidence made against Detective Sergeant White.

Letter of the 15th of July 2000

3.211. When then Senator Jim Higgins attended at the offices of the Tribunal for an interview with Tribunal investigator, Chief Superintendent Brian Garvie, he was asked towards the end of the interview whether he had any further information with which he would like to provide the Tribunal at that time. At this point Mr. Higgins said that he had received a letter by facsimile on the 15th of July 2000. This letter contained three pages and was a similar document with the same typeset to that of the facsimile that he had received on the 25th of June 2000

(Appendix A1). It was marked confidential. He produced the first and third pages of this letter to Chief Superintendent Garvie; at the time he was unable to locate the second page. He had not furnished the document to anybody else other than his legal representatives. He indicated that he was not in a position to stand over the contents of the document and had done nothing to determine the veracity of the allegations which it contained. He acknowledged that he had not revealed this document to Assistant Commissioner Murphy in the course of his investigation and said:

The reason that I kept it and didn't bring it to the attention of A/Comm. Fachtna Murphy was that I was of the opinion that the information contained in the document would, in any event, be discovered or come to light in the course of the investigation by Fachtna Murphy.

On the 10th of January 2003 Mr. Higgins' solicitor informed the Tribunal investigator that he had advised Mr. Higgins to speak to his source and obtain from him the second or middle page of the letter. Mr. Higgins had agreed to do this. In addition, it was confirmed to the Tribunal investigator that:

The original of this fax was not destroyed, but that it contains the original fax number and therefore a photocopy without that number was provided to me [Tribunal investigator].³¹⁴

The document furnished by Senator Higgins to Chief Superintendent Garvie is set out at Appendix A15. A copy of the second missing page was furnished to Chief Superintendent Garvie on the 21st of January 2003 under cover of letter of the same date which stated that Senator Higgins had received the second page from the source of the document with instructions that Senator Higgins was not to disclose the source.

- 3.212. The receipt of this document from Senator Higgins caused further investigations to be carried out by the Tribunal investigators and I also directed that a copy of this document be furnished to the Garda Commissioner in order to enable Assistant Commissioner Murphy, who had done such valuable work in investigating the previous document, to continue with his investigations.³¹⁵
- 3.213. As appears from Appendix A15, the copy of the letter furnished to the Tribunal was of very bad quality and difficult to read in full. In the course of its inquiries the Tribunal established that this facsimile had been sent to Deputy Higgins by Mr. Frank McBrearty Senior and that he had also furnished it to a number of other individuals, including Mr. Frank Connolly, journalist, Mr. Kenneth Smyth, solicitor, and Mr. Martin Giblin S.C. Its existence had not been revealed by any of these persons to Assistant Commissioner Murphy or his team up to that point. In

³¹⁴ Tribunal Documents – Anonymous Allegations, pages 740-742.

³¹⁵ Tribunal Documents – Anonymous Allegations, pages 743-747.

addition, it should be noted that at the meeting of the 9th of January 2003, Senator Higgins repeated his refusal to reveal the source of the facsimile of the 25th of June 2000 and he also confirmed that he had not spoken personally to the ex-Garda who had authored the facsimile but only to the conduit, who later turned out to be Mr. Frank McBrearty Senior. The first and third pages of the letter furnished by Senator Higgins to Chief Superintendent Garvie may be seen at Appendix A16 of this report.³¹⁶

3.214. As discussed in Chapter 2 the letter of the 15th of July 2000 raised three serious allegations against the Gardaí:

- (1) The lifting of the suspension and subsequent transfer of Detective Sergeant John White to the Special Detective Unit, Harcourt Square in March 2000 by Assistant Commissioner Murphy because of an alleged threat by Detective Sergeant White to expose wrongdoing by senior officers.
- (2) The allegation that three Gardaí, namely Sergeant Sarah Hargadon, Garda Noel Keaveney and Garda Shaun Barrett, were involved in the harassment and abuse of Mr. Frank McBrearty Senior and his family and gave evidence in open Court, under oath, as instructed by a Garda superintendent, in the course of which they committed perjury.
- (3) The allegation that monies allocated to Garda duties known as B.S.E. duties were used to fund the employment of Gardaí (including these Gardaí) to harass and intimidate Mr. McBrearty Senior and his family.

3.215. These allegations, which were also addressed to Mr. Jim Higgins TD at Dáil Éireann under the heading “confidential” and addressed to him in a personal style “Dear Jim” continued the theme that the Carty investigation was now being undermined, but this time by senior officers within An Garda Síochána who wished to undermine his authority and inquiry. The letter emphasised the inability of Mr. Carty’s inquiry to get to the truth, that it was flawed and that the Minister for Justice could not maintain that his inquiry was successful in establishing facts when further allegations arose after the delivery of the report. It sought “a full sworn public inquiry”.

3.216. Each of the allegations set out in this letter have been examined by Tribunal investigators and in evidence before the Tribunal. The Tribunal for reasons set out in the seventh report of the Tribunal and in Chapter 2 of this report is satisfied that the three named Gardaí did not commit perjury in the District Court in the course of the hearing of evidence in respect of the summonses brought against Mr. McBrearty Senior and his family, and is also satisfied that these three Gardaí were not involved in a

³¹⁶ See also Tribunal Documents – Anonymous Allegations, pages 561-562.

campaign of harassment against Mr. McBrearty Senior or his family. Further, the Tribunal is satisfied that there was no misappropriation or misuse of B.S.E. funds in respect of any such alleged harassment or intimidation of Mr. McBrearty Senior or his family. The first allegation in respect of Detective Sergeant White's transfer involves a number of proven facts upon which the author of the facsimile has superimposed a mixture of half-truths and sensationalised but unwarranted conclusions.

The Allegations of 15th of July 2000

- 3.217. The question was also posed in the second facsimile as to whether it was as a result of Detective Sergeant White's alleged threat to "expose wrongdoings by senior officer's within the force" that the commissioner saw fit to reinstate Detective Sergeant White following his suspension on the 21st of March 2000 and grant him a transfer. This allegation is also fully dealt with in Chapter 2. The allegation was untrue. There was a transfer, but not for the corrupt reason alleged. The Tribunal sought to trace the evolution of this allegation. The Tribunal is satisfied that the allegation contained in the facsimile was constructed around a series of half-truths and rumours.
- 3.218. A number of those involved with the facsimiles became aware that Detective Sergeant White following his arrest had been suspended and then transferred. Indeed Mr. William Flynn believed that he had received a facsimile from Mr. Frank McBrearty Senior shortly after the transfer was directed on the 24th of March 2000 containing what purported to be a copy of the transfer order together with related documents.³¹⁷ Mr. Frank McBrearty Senior denied that he had furnished these documents to Mr. Flynn. Mr. Martin Giblin S.C. said that by June 2000 he was aware of suggestions in the media that Detective Sergeant White, within a few days of his release from custody, had a meeting in a licensed premises in Dublin with a senior officer based at Garda Headquarters, at which his clients cases were discussed, and that a short time after this meeting Detective Sergeant White was transferred to Dublin by Assistant Commissioner Murphy in circumstances which were, in his opinion, "highly suspect". He concluded that there was something "deeply unwholesome" about Detective Sergeant White's relationship with senior Garda management.³¹⁸ Mr. Frank McBrearty Senior also conceded that, like Mr. Giblin, he was aware of the transfer of Detective Sergeant White within days of his arrest but could not say whether it was within a week or so after it.³¹⁹ Mr. Giblin told the Tribunal that he related the allegation that the Carty inquiry was compromised because of the alleged relationship between

³¹⁷ Tribunal Documents – Anonymous Allegations, pages 464-466 and pages 1112-1115. Mr. Flynn furnished copies of these documents to Assistant Commissioner Murphy on the 20th of June 2001 and to Ms. Bernadette Crombie, solicitor to the Tribunal, on the 18th of December 2002.

³¹⁸ Tribunal Documents - Anonymous Allegations, pages 812-814 – Statement of Mr. Martin Giblin on 27th of November 2003 and Transcript, Day 578, pages 24-25, 57-59, 94 and Day 579, pages 89-90.

³¹⁹ Transcript, Day 576, pages 77-79, page 153 and page 183.

Detective Sergeant White and Assistant Commissioner Carty to the suspension and what he regarded as the immediate reinstatement of Detective Sergeant White and his transfer following his release from detention.³²⁰ “It was just a very strange event.” The Tribunal accepts that the manner of the permanent transfer of Detective Sergeant White as described in Chapter 2 was reasonably open to the suspicion that it was mysterious and suspicious in the light of all that had been experienced by Mr. Frank McBrearty Senior and Mr. Giblin.

3.219. However, having made the connection in his mind between the alleged relationship between Assistant Commissioner Carty and Detective Sergeant White and the transfer before the 15th of July 2000, Mr. Giblin did not review his conclusion on reading the second facsimile. It clearly focused upon a connection between Detective Sergeant White and other senior officers said to be acting contrary to Assistant Commissioner Carty’s wishes and over his head who facilitated his transfer rather than maintain his suspension. This was said to have left Assistant Commissioner Carty “helpless” to prevent his reinstatement. It was alleged that this undermined the authority of Mr. Carty’s investigation. Clearly, the second facsimile suggests that Assistant Commissioner Carty is seeking to do the right thing. It is remarkable that Mr. Giblin did not feel prompted to furnish this important piece of information favourable to Assistant Commissioner Carty’s standing and reputation to Deputy Howlin in order to give him a fair and complete picture of the information he had received, from the same conduit, namely Mr. Frank McBrearty Senior, within a matter of weeks.

3.220. In this context, the Tribunal has also considered the various attempts made by Detective Sergeant White to allege wrongdoing by Assistant Commissioner Carty as providing a possible basis for the core allegation against the Assistant Commissioner contained in the facsimile of the 25th of June 2000. Following his arrest on the 21st of March 2000 on suspicion of procuring Bernard Conlon to make a false statement to the Gardaí at Sligo, Detective Sergeant John White was detained at Letterkenny Garda Station. He was suspended from duty by Chief Superintendent Denis Fitzpatrick at 19.15 hours on the 21st of March 2000. In the course of his detention he made a number of extensive allegations which he insisted be noted in the custody record. The Tribunal concluded in its third report that the allegations and complaints then made by Detective Sergeant White to the member in charge at the time of his arrest were false. Some of these complaints were made against Assistant Commissioner Carty. However, no complaint was made by Detective Sergeant White of any alleged corrupt activity by Assistant Commissioner Carty or any other senior officer as are set out in the

³²⁰ Transcript, Day 578, pages 24-25.

two facsimiles. The Tribunal was satisfied that the complaints made by Detective Sergeant White in March 2000 were made for the purpose of distracting the Carty team from the core issue then under investigation, namely the allegation that Detective Sergeant White had procured Bernard Conlon to frame Mr. Mark McConnell and Mr. Michael Peoples as culprits for the making of a threat against them on the 20th of July 1998 known as the ‘silver bullet’ affair.³²¹ The Tribunal is satisfied that such was the state of relations between Detective Sergeant White and the Carty team in March 2000 that if Detective Sergeant White had knowledge of corruption committed by Assistant Commissioner Carty or any other senior officer and was of a mind to use it to his advantage, he would then have done so. The time to use such information in order to stop the Carty inquiry or as a means of blackmail against senior officers to ensure that knowledge of any such alleged corruption did not emerge was then at its optimum. The fact that he did not do so tends to confirm to the Tribunal that the allegation that Detective Sergeant White was possessed of any such knowledge or made any effort by means of composing a statement or otherwise to blackmail Assistant Commissioner Carty or senior officers, was untrue. **The allegations of corruption in both facsimiles were a complete fiction.**

3.221. The Carty team also carried out and continued to carry out extensive inquiries into the behaviour of Detective Sergeant White as previously described in relation to the alleged placing of an explosive device on a mast at Ardara from the 4th of April 2000, and later, in 2001, the planting of a gun near a Traveller’s encampment in 1998. The Carty inquiry also carried out extensive work in relation to the arrest and detention of Frank McBrearty Junior on the 4th of December 1996. The reality was that the allegations made by Detective Sergeant White at the time of his arrest on the 21st of March 2000 were untrue. **However, insofar as these complaints were made and set out by Detective Sergeant White at that time, it is likely that they became part of the rumour-mill and half-truths discussed in Garda circles. However, they provided no basis whatsoever for the extravagant allegations made about this transfer in the letter of the 15th of July 2000.**

3.222. It is a curious feature of the allegations in the letter of the 15th of July 2000 that they raised issues with which Mr. Frank McBrearty Senior was personally consumed up to and after that time. The Tribunal is satisfied that this was not a mere coincidence. The perjury allegation against the three Gardaí concerned evidence that they gave in the course of District Court prosecutions based on summonses issued against Mr. McBrearty Senior following inspections of his nightclub premises. The Tribunal is satisfied that this allegation levelled against the three named Gardaí for the reasons set out in Chapter 2 was not established.

³²¹ Report on the Circumstances Surrounding the Arrest and Detention of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999 – Term of Reference (d) pages 227-232.

- 3.223. The alleged misappropriation of funds was also an issue that had been raised by Mr. Frank McBrearty Senior, in that it was contended on his behalf that Gardai who had been properly assigned to B.S.E. duties had been inappropriately diverted from those duties for the purpose of harassing and intimidating Mr. McBrearty Senior and his family. The Tribunal is satisfied that this allegation is totally unfounded, as set out in Chapter 2.

Further Copies

- 3.224. In discovery made by Mr. Frank McBrearty Senior to the Tribunal, two much clearer versions of this facsimile were made available. The first is a version of the document which is completely legible but in smaller typescript than that furnished by Senator Higgins to the Tribunal. This version is stated to be for the attention of Kenneth Smyth and is two pages in length. It is not addressed to Mr. Higgins at all. This is set out at Appendix A17. The second version of the facsimile appears to be a clearer copy of the document furnished by Senator Higgins to the Tribunal. It contains some minor handwritten amendments, which also appear on the version furnished by Senator Higgins, and contains in handwriting at the top of page 1 "Att. Ken Smyth from Frank McBrearty". This is contained in Appendix A18.³²² Both versions are signed by "a serving member of An Garda Síochána". If Mr. McBrearty Senior simply received this letter by post, he should not have a different version of the facsimile in different font and layout in his possession, or another clearer copy of the letter in the same font and layout. Mr. McBrearty Senior never sent Appendix A17 to Mr. Smyth. Mr. McBrearty Senior said that he did not know who typed it or when or where it was typed. He did not think that Mr. P.J. Togher typed it. It was suggested that Appendix A17 could be the re-typing of a letter received by Mr. Frank McBrearty Senior by somebody who made significant changes by including Mr. Frank McBrearty Senior's address on the top right hand corner and addressing it for the attention of Mr. Ken Smyth. If that is so, it was re-typed by somebody who had no difficulty in reading the original of the document sent on the 15th of July which is entirely legible. It is difficult to understand why this document was re-typed and then never sent to Mr. Smyth, if that is what happened.
- 3.225. In his statement to the Tribunal of the 11th of June 2003, Mr. Frank McBrearty Senior referred to both facsimiles that he had sent to Deputy Jim Higgins. He said that he received both facsimiles in the post and that he did not know who wrote them or why they were sent to him, given that they had already been addressed to Mr. Jim Higgins, TD. He had no knowledge as to whether the contents of the letters were true and had no evidence to support any of the allegations made. He said that he also sent a copy of the two facsimiles to his lawyers. He exhibited in

³²² See also Tribunal Documents – Anonymous Allegations, pages 1188-1192: both of these documents were furnished to the Tribunal in Mr. Frank McBrearty Senior's discovery.

that statement 'FMcB2' a photocopy of the facsimile sent to Deputy Higgins on the 15th of July 2000. This is similar to the unclear facsimile furnished by Senator Higgins to the Tribunal, which can be seen at Appendix A15. The document exhibited by Mr. McBrearty Senior 'FMcB2' is to be seen at Appendix A19. Mr. McBrearty Senior said:

I have a copy of the document I refer to as FMcB2, but I am not aware whether the document I have is the original document I received or a photocopy of same. I believe that part of the document FMcB2 which I have in my possession maybe an original and the other part being a photocopy.³²³

- 3.226. For his part, Mr. McBrearty Senior could not remember the date upon which he received the second letter, which he acknowledged that he then faxed to his lawyers. He said that he tried to make out what this document said by going over some of it with a pen in order to try and make it clearer. He acknowledged that "he probably roughly read it". It was pointed out to Mr. McBrearty Senior at the Tribunal that the facsimile of the 15th of July 2000 reflected his concerns in relation to the issue of perjury, which he believed had been committed by Gardaí in the District Court in respect of the divisional circular already referred to above, and the misuse of B.S.E. funds in the course of alleged intimidation and harassment of him and his extended family. He accepted that he had strong views about these matters at the time. However, he denied that he had any involvement in the creation of the letter. He had no explanation as to why the very issues with which he had concern were reflected in that letter other than that it was a co-incidence. He did not know who had written the letter.³²⁴
- 3.227. Mr. Frank McBrearty Senior also conceded that Mr. P.J. Togher may well have seen the letter that he sent to Deputy Higgins on the 15th of July 2000 eleven days previously, on the 4th of July 2000, as Mr. Togher said in his affidavit. He did not know how long it was in his office before he sent it or when he had received it. Indeed, Mr. Togher said in his affidavit that he may have seen it as far back as February/March of 2000.³²⁵
- 3.228. Under cross-examination Mr. McBrearty Senior reiterated that the letter of the 15th of July 2000 had come in the post and that he did not know who had sent it to him. He denied that Mr. Togher typed the letter. It was put to Mr. McBrearty Senior and denied by him that all of the information in that facsimile came from William Flynn, Martin Giblin S.C., from journalists, or from the retired Gardaí with whom he was in contact and that it had indeed been the subject of conversation between Mr. Giblin S.C. and Mr. Howlin. He denied that it was "particularly obvious" that the letter came from him or his supporters.³²⁶

³²³ Tribunal Documents – Anonymous Allegations, pages 745-747.

³²⁴ Transcript, Day 576, pages 75-90.

³²⁵ Transcript, Day 576, pages 90-91.

³²⁶ Transcript, Day 576, pages 167-170.

Deputy Jim Higgins and the Letter of the 15th of July 2000

- 3.229. Mr. Higgins told the Tribunal that he received the letter of the 15th of July 2000 by facsimile and did nothing with it. He set it aside. He told the Tribunal that he did so for a number of reasons. Firstly, it was illegible: secondly, he thought the allegations that could be read from the document would emerge and be investigated in the course of Assistant Commissioner Murphy's inquiries: thirdly, unlike the previous facsimile, similar information had not emerged from Deputy Howlin's source (though he never took it upon himself to inform Deputy Howlin that he had received a further facsimile): fourthly, he was still somewhat annoyed by the aggressive stance that he thought the investigating Gardaí had adopted towards ascertaining the identity of his source. Undoubtedly, the document received by Deputy Higgins was blurred and in part difficult if not impossible to read. However, the Tribunal is satisfied that the gist of the allegations in the document and the import of the document was entirely clear to the reader.
- 3.230. Deputy Jim Higgins believed that the letter of the 15th of July 2000, though it was said to be from a "serving member" of An Garda Síochána, had the same typeface as the previous document. On the basis that he believed it to be from the same source he presumed that the Gardaí investigating the first facsimile would unearth whatever other wrongdoing had occurred or was referred to in the second letter. It did not register with him when he received the document that the emphasis in the letter of the 15th of July 2000 concerning Assistant Commissioner Carty was entirely different to that of the 25th of June 2000. The latter alleged that Assistant Commissioner Carty's inquiry was compromised because serious questions were raised as to whether Detective Sergeant White, with whom he had allegedly committed criminal offences in the past and attempted to pervert the course of justice, would blackmail him with the information in his possession, and that a similar position applied in respect of Assistant Commissioner Hickey. The former tried to portray a different scenario in which Assistant Commissioner Carty is represented as trying to get to the truth in Donegal but was being thwarted by senior officers of An Garda Síochána who were trying to support and/or assist Detective Sergeant White. This difference only occurred to him when he re-discovered the document when preparing for the Tribunal. Further, Deputy Higgins, in advancing the proposition that he put the document aside because there was no corroboration such as that which emanated from Deputy Howlin who had received information to the same effect as the facsimile of the 25th of June 2000 on the same date, also acknowledged that he made no attempt to inform Deputy Howlin that he had received a second facsimile document, or of its contents or origin.³²⁷ He did not bring the second document to the Minister. He never returned to Mr. McBrearty Senior in respect

³²⁷ Transcript, Day 572, pages 170-175.

of any aspect of the letter of the 15th July 2000, if only to get a clear copy of it. Indeed, on the 30th of August 2000 when asked if he had anything further to offer the Garda investigation that might assist it, he said that he had not spoken to his source for a considerable time and that he was no longer the spokesman on Justice for Fine Gael; yet Deputy Higgins had received the second facsimile on the 15th of July 2000, which was clearly relevant to that inquiry in that he believed the information to be from the same source.³²⁸

- 3.231. Deputy Higgins also believed that the letter of the 15th of July 2000 was from the same source because it was also addressed to him in rather familiar terms as “Dear Jim”, and was suggestive of previous correspondence with such phrases as “as you are aware”.³²⁹
- 3.232. The Tribunal is satisfied that the contradiction in the second facsimile of the assessment of the character of Assistant Commissioner Carty contained in the first was so clear that it must have caused Deputy Higgins to question the reliability of the source of the documents whom he believed to be Mr. Togher. It was important that this information be given to the Minister. However, this would also have undermined the reliability of Deputy Higgins’ source in the eyes of the Minister and any investigator who was told of it. The Tribunal is satisfied that Mr. Higgins’ stated reasons for not passing on the document are to that extent somewhat disingenuous.

P. J. Togher and the Letter of the 15th of July 2000

- 3.233. In an affidavit of the 10th of April 2003 submitted to the Tribunal Mr. Togher deposed to having a recollection that Frank McBrearty Senior showed him a letter in February or March 2000 that was addressed to Deputy Higgins. He informed him that it had come in the post and that he had already sent it to his lawyers. Mr. Togher scanned through the document and recalled thinking that it was strange that Mr. McBrearty Senior would facsimile this to Deputy Higgins when it was actually addressed to Mr. Higgins himself. He recalled that Frank McBrearty Senior asked him what he thought of the allegations contained in the letter but he could not recall precisely what his reply was at the time. He believed that it would have been similar to the reaction he had to a lot of documentation that had been received by Mr. Frank McBrearty Senior at that stage. He would have been concerned in a general sense that there might have been some truth in the allegations that there were difficulties within the Garda force in Donegal, but he had no information regarding the veracity of such allegations.³³⁰
- 3.234. Mr. Togher told the Tribunal that he may have been mistaken in stating in this

³²⁸ Transcript, Day 573, page 164 and Tribunal Documents – Anonymous Allegations, page 270.

³²⁹ Transcript, Day 573, page 3.

³³⁰ Tribunal Documents – Anonymous Allegations, page 579.

affidavit that he had seen the letter of the 15th of July 2000 in February/March of that year. In evidence, he recollected that on the 4th of July 2000 when he went to work with Mr. McBrearty Senior he was shown the letter of the 15th of July 2000. He confirmed that Mr. McBrearty Senior told him that the letter had come in the post. He could not say if it was in the partly illegible form as provided to the Tribunal by Deputy Higgins. He believed that he told Mr. McBrearty Senior that he did not believe the letter to be one hundred per cent. Both he and Mr. Martin Giblin S.C. had discouraged Mr. McBrearty Senior from sending anonymous allegations to Mr. Giblin S.C.. Mr. McBrearty Senior had been receiving numerous unsolicited letters from around the country referring to allegations against Gardaí at that time. He thought that the letter did not seem to follow from page one to page two and was a two-page document as far as he could recollect. This is a strange recollection as clearly Mr. McBrearty Senior was in possession of the three pages of the facsimile at the time. Mr. McBrearty Senior told him that he had either sent it or was going to send it on to Deputy Jim Higgins. Mr. Togher's view as expressed to Mr. McBrearty Senior was "it's an anonymous letter and it's a mischievous letter as far as I'd be concerned".³³¹ The Tribunal completely agrees with this assessment of the contents of the letter of the 15th of July 2000.

- 3.235. It should be noted that on the 4th of July 2000 attempts were made to interview Mr. Togher on behalf of the Carty team and that on the following day, the 5th of July 2000, he sent the letter to Superintendent James Gallagher to which reference has already been made. In that letter he indicated that he could not assist the Garda Síochána further, notwithstanding the fact that he claims that he had that very day seen the letter that would be sent to Deputy Higgins on the 15th of July 2000.³³² Mr. Togher maintained in evidence that he was always under the impression that the letter of the 15th of July had come in some time in February, March or April 2000 because he thought he had seen it before lying on the counter and that he had seen it earlier on in the year. It was pointed out to Mr. Togher that the letter of the 15th of July historically refers to the arrest of Detective Sergeant White, his suspension and subsequent re-instatement, which occurred on the 21st of March and the 24th of March 2000 respectively.³³³ The Tribunal is satisfied, therefore, that if this was Mr. Togher's first viewing of the letter, it had to take place some time between the 24th of March 2000 and the 15th of July 2000. However, the Tribunal does not accept this sequence of events as outlined by Mr. Togher.

Mr. Kenneth Smyth and the Letter of the 15th of July 2000

- 3.236. Mr. Smyth, Mr. Frank McBrearty Senior's solicitor, told the Tribunal investigator

³³¹ Transcript, Day 570, pages 66-83.

³³² Transcript, Day 570, pages 83-124.

³³³ Transcript, Day 571, pages 159-174 and Transcript, Day 572, pages 41-57.

that he received the second facsimile on the 16th of July 2000. The original of the facsimile was produced to the investigator. He acknowledged that this facsimile also came from Mr. Frank McBrearty Senior. He did not know if the contents of the facsimile were true and had no evidence to offer in support of its contents. He had no direct or indirect knowledge about who may have prepared this facsimile. Nobody had ever admitted to being the author of this facsimile and he did not forward it to anybody else. He did not discuss this facsimile with any reporter.³³⁴

- 3.237. In evidence to the Tribunal, Mr. Smyth confirmed that he received the second facsimile, which is dated the 15th of July 2000, from Mr. Frank McBrearty Senior. He thought this second document was “less of an event”. Mr. Frank McBrearty Senior did not identify to Mr. Smyth the person from whom he had received the document or the source of the information contained in it. He did not identify Mr. P.J. Togher as the source. He described the document as “highly illegible”, particularly the second page. He did not know whether Mr. McBrearty Senior told him to destroy this document as he had done in relation to the first facsimile. He felt that he could not have made a transcript of the document in any event, such was its condition. He did not seek a better copy from Mr. Frank McBrearty Senior. Mr. Smyth believed that this was due to the pressure of work occasioned by the extraordinary set of circumstances with which they were dealing. He also had at the back of his mind that perhaps a better copy had gone to the politicians and he did not need to concern himself about it. He described the atmosphere in which he was working at the time in the following way. The summonses against Mr. McBrearty and his family and employees were withdrawn on the 21st of June 2000. He said:

*The slate was being wiped clean. Obviously on one hand there was euphoria, but quite soon afterwards there's a feeling well why? Why are they being wiped at this stage? What have we said in the last few days that has tipped the balance? I suppose at that stage, without digressing, there was a feeling that well perhaps it was an attempt, not having broken Frank McBrearty and not being likely to break him at this stage, to at least avoid the airing of the wider issue.*³³⁵

In this context the wider issue referred to the extensive allegations made by the McBrearty family that they had been harassed and intimidated by the Garda Síochána in the course of their business, as well as all of the other matters into which the Tribunal has already inquired. Mr. Smyth believed that this facsimile had the same genesis as the first document of the 25th of June 2000. He felt that

³³⁴ Tribunal Documents – Anonymous Allegations, page 660 – Memorandum of Interview between Mr. Kenneth Smyth solicitor and Chief Superintendent Brian Garvie dated 22nd September 2003.

³³⁵ Transcript, Day 586, pages 20-26.

if Mr. Togher were the author of the first facsimile he was also the author of the second one.³³⁶

- 3.238. As previously noted, Mr. Smyth was also interviewed by Assistant Commissioner Murphy and Inspector Corcoran in January and March 2003. He mentioned the second facsimile of July 2000 at the second meeting but not at the first. He told the Tribunal that he presumed that the second facsimile was “out there anyway”. He made a statement in relation to the second facsimile on the 6th of March 2003. In it he detailed how he had received it and he gave a redacted copy to the investigators to preserve the identity of the sender. He told them that he knew the sender but was not in a position to reveal his identity.³³⁷
- 3.239. Mr. Smyth also told the Tribunal that nobody ever told him that Mr. P.J. Togher was the author of the second facsimile, or indeed either of them. He never made an inquiry to identify the author and nobody ever volunteered that information to him.³³⁸

Mr. Martin Giblin and the Letter of the 15th of July 2000

- 3.240. In his evidence to the Tribunal, Mr. Martin Giblin S.C. said that he was certain that he received a copy of the facsimile of the 15th of July 2000 sent to Deputy Jim Higgins. He could not recall how it came to him but he did see it. When he saw it he decided to have nothing to do with the whole issue because he was getting progressively more unhappy with the business of circulating documents. He could not recall what he actually did with his copy of the facsimile but believed he destroyed it when disposing of other Donegal papers, as he did with the facsimile of the 25th of June 2000. He did not speak to Deputy Howlin about the document and did not send him a copy. He did not discuss the matter with Mr. Frank McBrearty Senior that summer. He did not recall speaking to him at any stage about the matter but presumes he must have. He could not recollect whether the document that he saw was partially illegible or not. He thought that there were a number of versions of documents going around later on but he simply did not know which version he saw. He did not pay much attention to the contents of the second facsimile. He believed that there was something going on within the Garda force and that certain documents were circulating. He decided that he did not want to have anything to do with the circulation of anonymous documents. He did not know from whom the second document came or whether it came from his anonymous informant. Mr. Giblin, it will be recalled, believed that the first facsimile had come from his own anonymous informant who was separate to personalities in Donegal and not Garda P.J. Togher. It should be noted that Mr. Giblin in statements submitted to the Tribunal on the 27th of November

³³⁶ Transcript, Day 586, pages 27-28.

³³⁷ Transcript, Day 586, pages 27-37 and Tribunal Documents – Anonymous Allegations, pages 647-650.

³³⁸ Transcript, Day 586, page 17.

2003 and the 28th of April 2006 did not mention the second facsimile at all, though the likelihood is that he saw it on or about the 15th of July 2000.³³⁹

- 3.241. It will also be recalled that Mr. Giblin was caused to lose faith in the Carty investigation because he associated the allegations made against Assistant Commissioner Carty in the first facsimile that he acted unlawfully with Detective Sergeant White with what seemed to him to be the inexplicable reinstatement of Detective Sergeant White following his suspension from duty on the 21st of March 2000 and his transfer to Dublin. It is difficult to accept that the facsimile of the 15th of July 2000 would not have registered with him as a significant document. It clearly undermined the suggestion that Assistant Commissioner Carty was compromised. If that were true it tended to undermine the reliability of the first facsimile. The association made between the transfer and the first facsimile by Mr. Giblin was also thereby undermined.
- 3.242. There were obvious features of the second facsimile that could have been expected to attract Mr. Giblin's interest. The second facsimile had also been sent by Mr. Frank McBrearty Senior. It was also addressed to Mr. Jim Higgins. It also called for a public inquiry. It was typed in a similar style. It was entirely logical therefore to associate the second facsimile with the first. Indeed, it would have been remarkable if two documents of such similarity addressed to Mr. Higgins but sent to Mr. McBrearty Senior had coincidentally arrived by post to Mr. McBrearty Senior from two separate sources. This would have made the contradiction referred to above all the more glaring to a reader of the second facsimile. **The Tribunal is satisfied that Mr. Giblin did not tell Mr. Howlin of the second facsimile because he realised that it was potentially an embarrassment to the case for a public inquiry.**

Conclusion on Letter of the 15th of July 2000

- 3.243. **Even though Deputy Howlin was told by Mr. Giblin that the information in the first facsimile was "coming from a Garda based in Donegal", he was not told how speculative this opinion was or that the last telephone contact with the source was in 1998. He did not tell Deputy Howlin that this Garda had remained anonymous when telling him of the information in the first instance. Then Mr. Giblin chose not to furnish the second facsimile to Deputy Howlin and to leave him with the erroneous impression that the information that he did furnish was from an identifiable source prepared to come forward and give evidence in the High Court. The result was that Deputy Howlin was left with a completely distorted impression of the reality of whence this information came, its authenticity and its independence; and of the basis upon which Mr. Giblin**

³³⁹ Transcript, Day 578, pages 95-102

formed an opinion about this evidence. Deputy Howlin was not furnished with information from the second facsimile that completely undermined the first information given to him by Mr. Giblin. Thus Deputy Howlin could have been furnished with two facsimiles but received neither.

- 3.244. Mr. Giblin states that this was not deliberately done for a particular purpose. He implied that Deputy Howlin's notes might give a somewhat subjective version of what had been said in the course of conversation with him concerning the first facsimile; however, he was not in a position to challenge the accuracy of the notes. He said that in the days following the receipt of the first facsimile and the withdrawal of the prosecutions in Donegal, he became more focussed on his client's High Court actions and that internal Garda difficulties or infighting were not of any concern to him; rather, he was more concerned with the vindication of his client's reputation. He became not "too much interested in the political process anymore" and what that could do for his clients. However, it was clear from their actions that Mr. Giblin and Mr. Frank McBrearty Senior hoped the political process would secure the establishment of a sworn public inquiry.
- 3.245. It is quite legitimate, of course, to engage in the political process, and clearly that needs to be done in order to secure the establishment of a Tribunal of Inquiry. That was known to all involved in this strange series of events. The Tribunal is satisfied that completely untrue allegations were given an authority to which they were never entitled by the manner in which they were presented to the politicians and ultimately to Mr. John O'Donoghue, the Minister for Justice, Equality and Law Reform in order to secure that end. Clearly, if the second facsimile undermined the thrust of the allegations against Assistant Commissioner Carty and Detective Sergeant White, it was essential that Deputy Howlin should have it: that Mr. O'Donoghue should have it; and that Assistant Commissioner Murphy should also have it in investigating the allegations set out in the first facsimile. Not only was Assistant Commissioner Murphy not given the second facsimile but he was lied to by Mr. Frank McBrearty Senior about his close involvement in circulating the first facsimile. Since Mr. Giblin had decided in his client's interests to engage in this political process and become the conduit of serious allegations, the Tribunal is satisfied that he should have maintained the integrity of this process by ensuring that the very important second facsimile was made available to Deputy Howlin, the Minister and the Assistant Commissioner. He and Mr. McBrearty Senior had raised very serious issues at a high political level for the purpose of

securing action. Both facsimiles support the campaign for the establishment of an inquiry. The Minister for Justice, Equality and Law Reform was called upon to act and did; but the goal of the Tribunal was still a distance away and the Tribunal is satisfied that the second facsimile would not have helped the campaign to achieve that goal.

- 3.246. The Tribunal was deeply suspicious that this was the reason that the recipients of the second facsimile from Mr. McBrearty Senior never passed it on or mentioned it until years afterwards following the establishment of the Tribunal. The second facsimile was clearly an embarrassment to that campaign: it dwells on complaints that were very personal to Mr. McBrearty Senior and had already been canvassed on his behalf by Mr. Giblin in the District Court. It undermined totally the case against Assistant Commissioner Carty made in the first facsimile in which, it will be recalled, Assistant Commissioner Carty's ability to conduct an independent inquiry into the Donegal affair was said to be undermined by the potential for blackmail by Detective Sergeant White arising out of their joint wrongdoing in the past. These deficiencies are accepted in evidence by Mr. Giblin, Mr. Togher, Mr. Smyth, Deputy Howlin and Deputy Higgins. The Tribunal is satisfied that these deficiencies had the potential to undermine the case for a Tribunal if presented to the Minister for Justice, Equality and Law Reform. Indeed, the Minister acknowledged that this information would have been of some significance to him at the time. It is further satisfied that the inaction in respect of the second facsimile is explained by the fact that Mr. Higgins, an astute politician, and Mr. Giblin, an accomplished lawyer, also saw the potential for damage to the case being made for a Tribunal at that time. The Tribunal does not accept as a matter of common sense that the plain meaning of that document, notwithstanding its partial illegibility, was not crystal clear to both men and to a large extent guided their inaction in relation to it. The reluctance of Mr. Higgins and Mr. Giblin to accept this in evidence was somewhat disingenuous.

The Tribunal Seeks the Source

- 3.247. It was clearly indicated by counsel to the Tribunal in the Preliminary Opening Statement made in November 2002 that every effort would be made by the Tribunal to identify the source of the information contained in the facsimile of the 25th of June 2000 to Deputy Jim Higgins and the information to Deputy Howlin furnished on the same date. The logic behind this was the same as that pursued by Assistant Commissioner Murphy. No person had come forward to offer any

evidence to support the very serious allegations made against Detective Sergeant White, Assistant Commissioner Carty and Assistant Commissioner Hickey on the 25th of June 2000. It was the duty of the Tribunal to ascertain whether there was substance to these allegations or not. The allegations were framed in very broad terms. In order to define the allegations more specifically and gather the evidence in support of them, if it existed, the Tribunal needed to interview those who were said to have this “reliable information” and evidence.

- 3.248. In parallel, the Tribunal tried through its investigators to examine the careers of Assistant Commissioner Carty, Assistant Commissioner Hickey and Detective Sergeant White in order to ascertain if and when they had worked together to see if they ever had the opportunity to form and maintain the lengthy corrupt relationship alleged in the facsimile of the 25th of June 2000. Detective Sergeant White’s career was examined in relation to where he served as a detective, with particular emphasis on any property for which he may have been responsible in the course of his work and cases that he had investigated. Nobody emerged to allege that they had been the subject of any miscarriage of justice on the basis of evidence planted upon them by Detective Sergeant White with the connivance of either of the assistant commissioners. All officers of the rank of inspector serving in the Dublin Metropolitan Area during the period of Detective Sergeant White’s service were interviewed or statements were obtained from them as to whether they were the “serving detective inspector ... attached to a station in the D.M.A. concerning the Garda investigation in the Donegal division”. All of the Tribunal’s investigations pointed to the falsehood of the allegations.
- 3.249. The Tribunal was aware that there had been telephone communication between the two Deputies and their respective sources. With this knowledge the Tribunal, by letters dated the 17th of December 2002, gave notice to the two Deputies that it intended to make Orders for Discovery in respect of the telephone records that would hopefully, reveal the number from which the facsimile had been received by Deputy Higgins and from which information had been received by Deputy Howlin. A claim of privilege was raised by the two Deputies in respect of this information under Article 15 of the Constitution. They claimed that their telephone records were absolutely privileged and also privileged under common law. The Tribunal convened a hearing on this matter on the 18th of February 2003, at which the Committee on Procedure and Privileges of Dáil Éireann was represented. Subsequently, the Tribunal rejected the claim of privilege on the 28th of February 2003 and made an Order for the discovery of the relevant records. A judicial review was commenced on the 24th of March 2003 resulting in a High Court judgement quashing the Tribunal’s Order for Discovery on the 13th of October 2003. This Order was appealed to the Supreme Court by the Tribunal, which restored the Order for Discovery in a reserved judgement.³⁴⁰

³⁴⁰ Howlin v Morris [2006] 21.R. 321 to 388.

- 3.250. On the 11th of June 2003 following an interview between Chief Superintendent Brian Garvie and Mr. Frank McBrearty Senior, the Tribunal received a statement from Mr. McBrearty Senior indicating that he had received a letter in the post in June 2000 that he had faxed to Deputy Higgins on the 25th of June 2000. He also said that he had received a second letter, a copy of which he had also faxed to Deputy Higgins (the facsimile of the 15th of July 2000). He sent copies of these documents to his lawyers. He was aware that Deputy Higgins would bring the first document to the attention of the Minister for Justice, Equality and Law Reform. He maintained that he was not aware of the identity of the authors of either document.³⁴¹
- 3.251. On the 22nd of September 2003 Mr. Kenneth Smyth, solicitor, when interviewed by Chief Superintendent Garvie stated that he had received the same two facsimiles from Mr. Frank McBrearty Senior on the 26th of June 2000 and the 16th of July 2000 respectively.³⁴² By this time Deputy Higgins had on the 24th of June 2000 withdrawn from the High Court proceedings that had been initiated against the Tribunal. Counsel for the Tribunal brought it to the attention of the High Court on the 24th of June 2003 that Mr. McBrearty Senior had on the 11th of June 2003 claimed to the Tribunal that he was the source of the facsimiles that had been sent to Deputy Higgins. The Tribunal at that time had no way of evaluating whether that was true or not. It was submitted that it was however, a clear waiver of any confidential privilege that might otherwise attach to the facsimile. On the 25th of June 2003 counsel for Deputy Higgins informed the High Court that the Deputy had been released from any duty of confidentiality which he had to the person who sent the facsimile. His client was however still claiming privilege in respect of “the ultimate source” of the information. It was revealed that Deputy Higgins was willing to reveal the identity of the conduit of the facsimile of the 25th of June to the Tribunal and to hand over the original of the second facsimile of the 15th of July 2000 to the Tribunal, which would also reveal the identity of the sender.³⁴³ It will be noted that Mr. Frank McBrearty Senior made his statement on the 11th of June 2003 on legal advice from his solicitor Mr. David Walley.
- 3.252. Deputy Howlin, who had also initiated proceedings against the Tribunal and asserted a similar privilege, continued with his action. The conduit whom he was protecting was Mr. Martin Giblin S.C. It will be recalled that on the 1st of July 2000 Mr. Howlin, at the request of Assistant Commissioner Murphy, had returned to his source and asked whether he would consent to the revelation of his name to Assistant Commissioner Murphy. Mr. Giblin refused. The High Court Judge asked Deputy Howlin’s counsel if an inquiry could be made as to whether

³⁴¹ Tribunal Documents – Anonymous Allegations, pages 729-734.

³⁴² Tribunal Documents – Anonymous Allegations, page 660.

³⁴³ Tribunal Documents – Anonymous Allegations, pages 748-777.

Deputy Howlin's source might release him from his perceived duty of confidentiality. The court was informed that it was not in the Deputy's gift to be released from it and that it depended upon the informant's decision. On the morning of Thursday the 26th of June 2003 the High Court was informed that there had been no developments and that the application would proceed.³⁴⁴ The case then continued and took its course to the Supreme Court.

- 3.253. Deputy Howlin told the Tribunal that once he had been informed on the 1st of July 2000 that Mr. Giblin did not wish to have his identity revealed, he did not go back to Mr. Giblin on that point at any subsequent stage.³⁴⁵ He was not going to pressurise the informant into revealing himself if he did not wish to.
- 3.254. For his part, Mr. Giblin set out in a statement of the 27th of November 2003 what his position was in relation to this matter. He said:

I ... was surprised to read in the newspapers that Mr. Howlin and Mr. Higgins had been called before the Tribunal at such an early stage in the sequence of modules. I was completely confident that the Tribunal would not make Orders for Discovery against the TDs and that I could, then, have approached the Tribunal.

Once Orders for Discovery were made against Mr. Howlin, I felt that I was put in an impossible situation as, an approach my [sic] me to the Tribunal could have the effect of undermining any effort by Mr. Howlin to assert an important constitutional privilege. I felt it would be wrong for me to take any action which could have such an effect. Issues of privilege also arose. If a TD has a privilege in receiving information from a citizen, that citizen might also enjoy a corresponding privilege. Besides, Mr. McBrearty's fax to me was, arguably, covered by strict legal professional privilege. Mr. McBrearty has released me from this privilege, to enable me to furnish this statement.³⁴⁶

- 3.255. Deputy Howlin told the Tribunal that he was not aware during the currency of his challenge to the Tribunal's Order for Discovery in the High and Supreme Courts that Mr. Giblin took the view outlined above. Deputy Howlin's view was that the Order was something that was important to resist and that if he were released from his duty of confidentiality by Mr. Giblin at any time, he would have accepted that, but he was not going to coerce him or pressurise him to do so. He felt that making contact with him would amount to that. He was not aware of Mr. Giblin's view that he would be undermining Deputy Howlin's assertion of a constitutional privilege if he came forward during the currency of the court proceedings.³⁴⁷

³⁴⁴ Tribunal Documents – Anonymous Allegations, pages 792-794.

³⁴⁵ Transcript, Day 574, page 103.

³⁴⁶ Tribunal Documents – Anonymous Allegations, pages 814-815.

³⁴⁷ Transcript, Day 574, pages 104-105.

- 3.256. By June 2003, Mr. Frank McBrearty Senior, had revealed himself as the conduit of the two facsimiles to Deputy Higgins. This was done with the knowledge and assistance of Mr. David Walley, his solicitor, who also acted for him in civil proceedings against the State and the Garda Commissioner and for a time before the Tribunal. Mr. Giblin appeared on behalf of Mr. Frank McBrearty Senior and members of his family at hearings of the Tribunal in July 2003 instructed by Mr. Walley. Mr. Giblin was, nevertheless, insistent that his identity not be revealed, not because he wished to protect the identity of Mr. McBrearty Senior as the sender of the facsimile to him, or any other source, but because he wanted to facilitate a hearing concerning the point of constitutional law at issue regarding the right asserted by Deputy Howlin. It is most unlikely that this attitude was adopted in June 2003 in order to protect the identity of Mr. McBrearty Senior, who had already, on the advice of his solicitor Mr. Walley, acknowledged himself to be the sender of the two facsimiles to Deputy Higgins.³⁴⁸
- 3.257. Subsequently on the 24th of October 2003, Mr. Giblin informed the Tribunal that it was he who telephoned Brendan Howlin having received a facsimile from Mr. Frank McBrearty Senior on the 25th of June 2000. He furnished a statement in relation to that matter on the 27th of November 2003, in which he confirmed that he had telephoned Deputy Howlin and supplied him with information that had been supplied to him by Mr. Frank McBrearty Senior. He also supplied him with information from an anonymous Garda based in Donegal with whom he had first communicated in March 1997 and from whom he had received information and documents thereafter. Though Mr. McBrearty Senior had told him that the facsimile of the 25th of June 2000 had been received anonymously, Mr. Giblin felt that he recognised the author of the document as his informant. As already noted, this is difficult to understand since Mr. Giblin had never seen a document drafted by his informant. Curiously, also, the document had not been sent directly to Mr. Giblin by the informant.
- 3.258. The information belatedly furnished by Mr. Frank McBrearty Senior and Mr. Martin Giblin S.C. as to their involvement with the facsimile of the 25th of June 2000, though ultimately helpful, only advanced the inquiry to a stage where the identity of the sender of the facsimile was now established. Mr. McBrearty Senior simply asserted that the document had been received by post and anonymously. Mr. Giblin ultimately stated that the facsimile had been received from Mr. McBrearty Senior whom, he understood, had received it anonymously by post.
- 3.259. Mr. McBrearty Senior also acknowledged that he had sent the facsimile of the 15th of July 2000 to Deputy Howlin in his statement of June 2003. The document that became known as the facsimile of the 15th of July 2000 had already been

³⁴⁸ The Tribunal sat in Donegal town in July 2003 in order to hear evidence from various local witnesses and pathologists in relation to the death of the Late Richard Barron.

disclosed in discovery to the Tribunal by Mr. Frank McBrearty Senior but its significance only emerged during the course of the Tribunal's investigations and hearings. Prior to the public hearings of the Tribunal, it was not possible to advance the Tribunal's state of knowledge any further in respect of the source of the allegations contained in both facsimiles.

- 3.260. There is no doubt that had Mr. McBrearty Senior and Mr. Martin Giblin S.C. come forward with even this very limited amount of information at a much earlier stage, a great deal of time, energy and expense would have been saved on the part of the Tribunal. It is extremely difficult to understand why an elaborate attempt was made to envelop the involvement of Mr. McBrearty Senior and Mr. Martin Giblin S.C. in these facsimiles, and their acting as conduits to Deputy Higgins and Deputy Howlin, respectively, in a cloak of secrecy.
- 3.261. The Tribunal has already described how the initial assertion of privilege was made by the two Teachtaí Dála. The dominating circumstance surrounding their dealings with Assistant Commissioner Murphy and their assertion of privilege in respect of their phone records as to the identification of their sources was the umbrage that they took at what they regarded as the pressurising tactics adopted by the assistant commissioner in his approach to them. Whilst the Teachtaí Dála may well have felt justified in asserting constitutional privilege in the face of a Tribunal's inquiry in relation to their telephone records as private papers and the protection of their sources under Article 15 of the Constitution, it is difficult to see why Mr. Frank McBrearty Senior and Mr. Martin Giblin had any interest in asserting such a privilege, much less persisting in that assertion to the extent and for as long as they did. Mr. Giblin had a simple story to tell: he received a facsimile from Mr. Frank McBrearty Senior on the 25th of June 2000. Mr. Frank McBrearty Senior had another simple story: he maintained that he received the facsimile by post on the evening of the 25th of June 2000. If that were true, there was no reason for Mr. McBrearty Senior to engage in lies and evasions in his dealings with Assistant Commissioner Murphy. Every step was taken until June 2003 to ensure that even the most elementary facts about this story as to who sent the facsimile to Deputy Higgins and who gave the information to Deputy Howlin did not emerge. The second facsimile was completely removed from the history of events until 2003.
- 3.262. As already described, it emerged during the Tribunal's inquiry and in evidence that Mr. P.J. Togher was regarded by Deputy Higgins as the person from whom

Mr. Frank McBrearty Senior had received the facsimile of the 25th of June 2000 and the subsequent facsimile of the 15th of July 2000 because Deputy Higgins believed that the two documents came from the same person. The Tribunal sought further assistance on this aspect of the inquiry from an expert in forensic document examination.

Expert Evidence

- 3.263. The Tribunal sought the assistance of Mr. Robert Radley, a specialist in the forensic analysis of documents, in attempting to identify the typist of the two facsimile documents of the 25th of June 2000 and the 15th of July 2000. In particular, he was furnished with a number of documents which were acknowledged to have been typed by Mr. P.J. Togher and asked to compare the typing in that control sample with the typing in the two facsimile documents.³⁴⁹ Mr. Radley outlined his methodology, the nature of his examination and his conclusions in evidence to the Tribunal. He explained what he was looking for in this way. Every typist in constructing a document obviously hits keyboard buttons on the word processor or typewriter. Every typist in doing their work consciously or unconsciously makes a choice which is reflected in the printed product. If a typist has been taught in a particular manner then the skill which they exhibit in creating the document will reflect the typical typing convention of the course of instruction, for example, the Pitman course. People who are not trained, either professionally or by somebody who has been trained professionally, will develop their own style. This will be reflected in the words as they appear on the typed document and in the order and relative positioning and spacing of words. All of these features and combinations can lead to a very strong association between the document and the typist or from one document to another by saying that they originate from a common source. He emphasised that he was looking only at the mechanics of how the document was produced not at forensic linguistics or how language was used or misused. He simply looked at the way keys are pressed by the typist and the significance, if any, of what emerges from that in the printed document.
- 3.264. His examination involved the comparison of documents of known origin and an examination of how the individual laid out the typing. He examined how the spacebar was used in spacing between words, lines and paragraphs, the spacing between the address at the top right-hand corner and the salutation 'dear sir', the alignment from the salutation to the text, the change of spacing between paragraphs and the final valediction of a letter. On examination of the documents of known origin there can emerge features which are idiosyncrasies of the typist. Any of them could be commonplace, but some would be of a much more

³⁴⁹ Mr. Radley's credentials and experience have previously been set out to the Tribunal: see Transcript, Day 543. His report is set out at Tribunal Documents – Anonymous Allegations, pages 1207-1292.

unusual nature and the more unusual these features and the more they deviate from what might be called the conventional style, the more significant they become. The level of idiosyncrasies tends to be higher in the amateur typist. The accumulation of idiosyncrasies detected can be assessed on a scale of possibility. Whilst a typist may have one particular idiosyncrasy there may be many other people who have the same idiosyncrasy. When a number of idiosyncrasies emerge from one typist's work the chance factor of somebody else having also the same idiosyncrasies diminishes. He set out his brief as follows:

I was presented with two sets of documents. Basically I was asked to determine whether I could say whether these had been typed, the questioned material had been typed by the same typist as produced the comparison documents as I call them. I was also asked whether I could determine from the typeface, the type design [whether] there [were] any significant associations between the comparison material and the questioned material. But as a result of the very poor quality copies on which I had to work, that particular aspect can't really be taken very far at all. Whilst acknowledging and allowing for the fact that untrained typists can develop a consistency and indeed some professionals sometimes are not so consistent, nevertheless, the accumulation of idiosyncrasies, particularly on the part of an untrained typist can be regarded on a scale of possibility.³⁵⁰

- 3.265. Mr. Radley identified a number of idiosyncrasies in the control sample of documents acknowledged to have been typed by Mr. Togher. These included the presence of inappropriate full stops after a number, which was described as very unusual; the presence of double spacing between a person's title and his name, for example, between "Mr." and "Smith"; the use of a row of exclamation marks; the use of a full stop after a question-mark as in "?."; the use of words to designate page numbers in some of the documents; and the use of a full stop after a bracketed paragraph number as in "(1)." Other idiosyncrasies were identified by Mr. Radley within the typing of the control sample. Those which he specified in evidence became relevant when he examined the two facsimiles where he found that they were repeated.³⁵¹ In relation to both facsimiles Mr. Radley gave his expert opinion that there was "positive limited evidence" to support the proposition that Mr. Togher typed both facsimiles.
- 3.266. This conclusion had to be understood in respect of the terminology employed by him as a document examiner. He applied a sliding scale of opinions dependent upon the level of confidence that he had in his conclusion. The highest level of

³⁵⁰ Transcript, Day 611, pages 3-11.

³⁵¹ Transcript, Day 611, pages 11-36.

opinion was that a person typed a document without a doubt. Below that and indicative of there being some slight doubt that the document was typed by that person was a finding that there was “very strong evidence” to support the proposition that a particular person typed a document. Slightly below that again was the conclusion that the expert was of opinion that there was “strong evidence” to support the proposition that the document was typed by a particular individual. These were all expressed to be opinions of high confidence that a particular individual had typed a particular document. However, the opinion that there was “positive limited evidence” to support the proposition that Mr. Togher typed the two facsimiles is not an opinion of high confidence. It was a very broad band of opinion extending from an opinion of “strong evidence” down to opinion that the evidence was “inconclusive”. It meant that the finding was far from conclusive and could be regarded as “moderate” evidence. It was positive evidence of associating the documents with Mr. Togher but it was nowhere near conclusive or very strong. According to Mr. Radley it meant that “on this evidence it is more likely Mr. Togher typed [the facsimiles] than somebody else who co-incidentally had this combination of typing features.”³⁵²

- 3.267. Mr. Radley’s evidence was challenged by counsel on behalf of Mr. P.J. Togher primarily on the basis that the control sample of documents that he used was too small upon which to base any conclusion and that there were very few features in the facsimile documents that could be compared with similar features of the known documents. Mr. Radley acknowledged that though he had discerned in excess of some fifty idiosyncrasies in the control sample, the basis for his comparison with the questioned sample was a much lesser number of idiosyncrasies.³⁵³
- 3.268. The Tribunal is satisfied that Mr. Radley as an expert witness gave very measured and careful evidence outlining the grounds upon which he reached his conclusion. Having carefully considered all of the evidence given by Mr. Radley and, in particular, the cross-examination carried out of Mr. Radley by counsel on behalf of Mr. Togher, the Tribunal is satisfied to accept Mr. Radley’s opinion that there is “limited” or “moderate” evidence that the two facsimile documents were typed by Mr. Togher. It has taken into account all of the qualifications carefully made by Mr. Radley and his explanation that this evidence is regarded by him as positive evidence associating these documents with Mr. Togher which is “nowhere near conclusive”. The Tribunal is satisfied, having regard to Mr. Radley’s qualifications and experience, his investigations and careful work in examining the documents submitted to him by the Tribunal, to accept his uncontradicted evidence and opinion. This evidence is by no means conclusive of

³⁵² Transcript, Day 611, pages 11-40.

³⁵³ Transcript, Day 611, pages 56-102 (and see Q. 259).

the proposition that Mr. Togher typed the facsimiles of the 25th of June 2000 and the 15th of July 2000. **Nevertheless, the Tribunal is satisfied that this is independent and logically probative evidence that supports the proposition that Mr. Togher was indeed the typist.**

- 3.269. There were other common features between the two facsimiles and the control sample of documents that did not directly relate to the mechanical process of typing. These were simply features that were observable by any person reading the document. These included features such as consistent spelling errors or grammatical errors, which Mr. Radley regarded as legitimate matters to be taken into consideration as matters of evidence but not matters upon which he was giving a professional opinion. He said:

I mean the examination of things like spelling errors, capitalisation, insertion of apostrophes and what have you, would be recognisable by most educated laypeople. I am probably no better qualified than anybody else in this courtroom to say where an apostrophe should be and where it shouldn't be. It is readily apparent throughout these documents, for instance the apostrophes just pepper the text ... I don't go into those points because, as I say, I think a lot of that is common sense and everybody in this courtroom can see it. At the same time I wouldn't wish to be accused of doing a part job and not considering whether all the other grammatical features of the document were correct or not.³⁵⁴

- 3.270. Mr. Togher accepted in evidence that the two facsimiles appeared to have the same typing and layout. He also accepted that the facsimiles when compared with material that he accepted that he typed contained certain similarities. For example, in the control sample of typing material Mr. Togher when typing inserted an apostrophe before the "s" in plurals such as "member's" and "officer's". This feature or error was also to be found in the facsimiles. For example, the word members is typed "member's" in the facsimiles repeatedly. Indeed, in his letter of the 4th of July 2000 to Superintendent Gallagher, a document typed within days of the two facsimiles, the same error is obvious.³⁵⁵

I am satisfied that these several observable features also tend to support the proposition that Mr. Togher typed the two facsimiles.

- 3.271. In addition, the straightforward reading of the two facsimiles indicates that the terminology used and the information which they purport to supply suggests a Garda involvement. This is accepted by Mr. Togher. That does not necessarily mean that that Garda was Mr. Togher. Terms such as "DMA.", initials for the

³⁵⁴ Transcript, Day 611, page 109.

³⁵⁵ Transcript, Day 571, pages 124-160.

Dublin Metropolitan Area, and the specific rankings of Gardaí and the manner in which they are expressed in the documents suggest that the document was prepared by a member of An Garda Síochána. In addition, reference to internal procedures or expenses in respect of “overtime/travelling subsistence” suggest a familiarity with the terminology employed by Gardaí in the course of their duties. Elsewhere, I have indicated in my conclusions that the material in both facsimiles probably emanated from a member of An Garda Síochána because some of the false allegations appear to be based on material or half-truths picked up in Letterkenny Garda Station and transformed into these false allegations. These further aspects, however, establish to my satisfaction that a Garda or Gardaí were involved in the furnishing of the material that forms the basis of the facsimiles and in their composition. Of themselves they do not establish that Mr. Togher was that Garda or former Garda: nevertheless, given that Mr. Togher is a retired Garda, these findings are consistent with the finding that he was involved; they are not contra-indicators.

Conclusions

- 3.272. Assistant Commissioner Kevin Carty was appointed to investigate extortion phone calls allegedly made to the home of Michael and Charlotte Peoples and matters relating to the investigation into the death of the Late Richard Barron in February 1999. Initially, Mr. Frank McBrearty Senior and his family were pleased with this development and hoped that this inquiry would lead to a speedy exoneration of Mr. Frank McBrearty Junior and Mr. Mark McConnell in respect of untrue allegations that they were involved in the death of the Late Richard Barron. Other matters came to the attention of the Carty inquiry. Wide ranging investigations were launched into bogus finds of explosives by the Gardaí, the planting of a device at a mast at Ardara in October/November 1996, alleged harassment of the McBrearty family in the operation of their business by Gardaí, the use of Bernard Conlon in the course of that harassment as a witness against the McBreartys, the arrest and detention of Mark McConnell and Michael Peoples on the basis of false allegations made by Bernard Conlon that they had threatened him with a ‘silver bullet’, and other matters. By June 2000 Assistant Commissioner Carty had substantially completed a report on these matters for the Garda Commissioner.
- 3.273. Between 1998 and 1999 Mr. Frank McBrearty Senior, members of his staff and relations had been defending sixty-nine summonses brought against them in respect of offences contrary to the liquor licensing and public

order legislation. On the 21st of June 2000, following the submission of an interim report and papers to the Director of Public Prosecutions in respect of these summonses by Assistant Commissioner Carty, they were withdrawn. By that time the District Court had heard a great deal of evidence in relation to the events that were the subject matter of the summonses. The defence mounted by Mr. McBrearty Senior and the other accused during the course of these hearings was that the prosecutions were an abuse of process that constituted a substantial element of the harassment being conducted by the Gardaí against Mr. McBrearty Senior, his family, his employees and his business. Mr. McBrearty Senior complained of this harassment to the Carty investigation team. He believed that it was part and parcel of a campaign conducted by senior officers in Letterkenny and implemented on the ground by Detective Sergeant White and Garda John O'Dowd, which he hoped to expose in the District Court hearings. This included allegations of Garda misbehaviour in the conduct of the investigation into the death of the Late Richard Barron and their dealings with the extended Quinn and McBrearty families.

- 3.274. Mr. Martin Giblin S.C., who appeared for Mr. McBrearty Senior and others in the course of those hearings, raised these matters, which he referred to as the “wider issue”, which included many of the elements that were under investigation by Assistant Commissioner Carty at that time. At the time of the withdrawal of the summonses the only evidence that remained to be heard was in relation to the “wider issue”.
- 3.275. Shortly after the withdrawal of the summonses on the 21st of June 2000, Mr. Frank McBrearty Senior sent a facsimile to Deputy Jim Higgins and Mr. Martin Giblin S.C. on the evening of the 25th of June 2000. He sent the same facsimile to Mr. Kenneth Smyth, his solicitor, on the 26th of June 2000 and to Mr. Frank Connolly, journalist, in or about the same date. The Tribunal is satisfied that the withdrawal of the summonses increased the frustration of Mr. Frank McBrearty Senior and his advisers with the legal system and the Carty investigation and their capacity to discover the truth. It convinced them that a public inquiry was the only way to obtain the truth. This precipitated the sending of the facsimile of the 25th of June 2000.
- 3.276. In late 1998/1999 Mr Frank McBrearty Senior retained the services of Mr. Patrick J. Togher, a retired Garda, who worked for him periodically as a typist and bookkeeper. The Tribunal is satisfied that Mr. Togher became a confidant and

adviser to Mr. McBrearty Senior in relation to his dealings with An Garda Síochána and the documentation which he received in relation to issues concerning his own case and from others. He became a valued and trusted supporter of Mr. Frank McBrearty Senior. He attended important meetings with him. He met with Mr. Frank McBrearty Senior's solicitor on the 9th of December 1998. The Tribunal is satisfied that at that meeting Mr. Togher made derogatory remarks about Detective Sergeant White, describing him as "ruthless and dangerous" and said that Gardaí in Ballybofey did not want to work with him. In addition, the attendance note records other information supplied by Mr. Togher to Mr. Smyth, solicitor, which was useful to their case concerning the "wider issue". The Tribunal is satisfied that Mr. Togher's denial of the accuracy of the note taken by Mr. Smyth of that meeting is untrue and calculated to distance himself from his involvement in the making of allegations against Detective Sergeant White. He tried to maintain that he had the highest regard for Detective Sergeant White, which the Tribunal is satisfied was untrue.

3.277. Mr. Frank McBrearty Senior also befriended a retired Detective Garda James Madigan, whom he had known during the period of his service in An Garda Síochána and had assisted on a number of occasions in respect of Garda inquiries. Mr. Madigan also became a supporter of Mr. McBrearty Senior. The Tribunal is satisfied that through Mr. Madigan and other Gardaí and retired Gardaí who visited Mr. Madigan's house, which Mr. Frank McBrearty Senior also visited from time to time, Mr. McBrearty Senior became aware of further allegations against Detective Sergeant White, such as the alleged planting of a device at Ardara in October/November 1996. The Tribunal is satisfied that rumours and half-truths emerged from these sources which ultimately formed the basis of the false allegations set out in the facsimile of the 25th of June 2000. For example, Mr. Frank McBrearty Senior became aware through a number of sources that Detective Sergeant White had access to a shed at Gortahurk. He had an interest in vintage cars. The allegation was made that he had planted a device at Ardara and rumours emerged that he had planted items of evidence on others. An allegation was made that he had planted drugs on Mr. Paul Quinn on the 10th of February 1997. The Tribunal is satisfied that a small number of incidents in which allegations or rumours emerged that Detective Sergeant White had planted something on somebody grew into a generalised allegation that he had habitually done so, that he had stolen goods for the purpose, that he used a shed at Gortahurk to store these articles and that he had obtained convictions by planting stolen property on other people.

3.278. The Tribunal is also satisfied that a number of telephone calls made to Letterkenny Garda Station by a Detective Sergeant Walsh in the course of

which, by way of a prank, the detective sergeant said that Assistant Commissioner Hickey was looking for Detective Sergeant White, in order to ensure that his phone call would be returned, gave rise to the rumour within Letterkenny Garda Station that Detective Sergeant White was well connected to Assistant Commissioner Hickey. This rumour was then grafted on to the rumour of widespread planting of items of evidence by Detective Sergeant White and the obtaining by him of false convictions in the facsimile of the 25th of June 2000. In addition, the knowledge within An Garda Síochána that Detective Sergeant White had in the 1990s travelled to Dublin to meet with Assistant Commissioner Carty on entirely legitimate Garda business of a confidential nature was also grafted on to these rumours to create the grotesque and sensational but false spectacle of two assistant commissioners involved with Detective Sergeant White in corruption which extended to the handling of stolen property, and the planting of it on innocent persons for the purpose of obtaining false convictions. The legitimate expenses obtained by Detective Sergeant White in the course of his travels to and from Dublin to meet with senior officers in respect of confidential duties were also seized upon to enhance the plausibility of the story in the facsimile. They were wrongly presented as a form of payoff to Detective Sergeant White for his wrongdoing.

3.279. It was alleged that an eighteen page statement was in existence, made by Detective Sergeant White, which outlined his involvement with Assistant Commissioner Hickey in these alleged illegal activities. On the 24th of March 2000 Detective Sergeant White had indeed made a lengthy statement, sixteen pages long, in relation to an entirely different matter. Days before, following his arrest on the 21st of March 2000, Detective Sergeant White had made a number of complaints which were recorded in the custody record against Assistant Commissioner Carty. These complaints were also false. These events were probably known in Garda circles in Letterkenny. They provided a factual backdrop onto which was grafted the false allegation that the eighteen page statement would ensure that Detective Sergeant White could avoid being made accountable for his wrongdoing by threatening to reveal the involvement of the assistant commissioners in it.

3.280. The Tribunal is satisfied that the contents of the facsimile of the 25th of June 2000 owed much of its origin to material emanating from Letterkenny Garda Station. Mr. Frank McBrearty Senior and Mr. Martin Giblin S.C. assert that they received information and documents from sources within An Garda Síochána in Donegal. The raw material upon

which these false allegations were constructed consisted of half-truths and rumours of the type already described. Mr. P.J. Togher, a retired Garda, also had access to this type of material. Once received and gathered by Mr. Frank McBrearty Senior it was exaggerated, added to and transformed into the false allegations set out in the facsimile by Mr. McBrearty Senior and Mr. P.J. Togher.

3.281. In the course of 1999 and into the year 2000 Mr. Frank McBrearty Senior attempted to garner the support of Teachtaí Dála in his home county and throughout the country for a campaign for a sworn public inquiry into Garda wrongdoing in Donegal. He travelled on a number of occasions to meet with Deputy Jim Higgins TD and Deputy Brendan Howlin TD, their respective parties' spokesmen on Justice, Equality and Law Reform, who gave him support inside and outside the Dáil. On the 7th of March 2000 Deputy Jim Higgins, in the presence of the media on the steps of Dáil Éireann, gave his and his party's support to this call. The Tribunal is satisfied that by this time Mr. Frank McBrearty Senior and his advisers had become disillusioned with the Carty investigation. They believed that it was taking too long and had not exonerated Mr. Frank McBrearty Junior or Mr. Mark McConnell of involvement in the death of the Late Mr. Barron. The investigation was pursuing inquiries which were not Mr. Frank McBrearty Senior's main concern. He had no faith in an investigation being carried out by senior Gardaí into alleged wrongdoing by Gardaí. The Minister for Justice, Equality and Law Reform was relying upon the fact that he was awaiting the report of Assistant Commissioner Carty, which he expected to address all issues in relation to alleged Garda wrongdoing in Donegal and which he hoped might render a Tribunal unnecessary.

3.282. The withdrawal of the summonses on the 21st of June 2000 was viewed by Mr. McBrearty Senior and his lawyers as a successful conclusion to the criminal proceedings but also as a setback for the exploration of the "wider issue" already described. As already indicated the Tribunal is satisfied that the withdrawal of these summonses was the immediate catalyst for the sending of the facsimile of the 25th of June 2000 by Mr. Frank McBrearty Senior to Deputy Jim Higgins and Mr. Martin Giblin S.C. He, Mr. Togher and perhaps others calculated that if the Carty investigation could be undermined, the Minister for Justice, Equality and Law Reform could no longer rely upon it as the answer to the call for a public inquiry. The most effective way to undermine Assistant Commissioner Carty's investigation was to attack his reputation as a

professional policeman for honesty, integrity and independence. The Tribunal is satisfied that they set about this task by drawing together a series of rumours, half-truths, and untruths onto which the core allegations of corruption against the two Assistant Commissioners were then grafted. They then composed and typed this letter, which Mr. McBrearty Senior forwarded to Deputy Jim Higgins, and Mr. Martin Giblin S.C. to be used as part of the campaign for a public inquiry.

- 3.283. The Tribunal is also satisfied that someone had to advise Mr. McBrearty Senior in relation to this course of action. That person had to have some knowledge and experience to understand what was required politically to advance the case for a public inquiry. It is most unlikely that Mr. McBrearty Senior came to this knowledge on his own. The Tribunal has been unable on the basis of the limited evidence available to it to identify the person or persons who gave him this advice.
- 3.284. The Tribunal is further satisfied that the call for a public inquiry contained in the facsimile of the 25th of June 2000 was deliberately inserted in that document by Mr. McBrearty Senior and Mr. Togher to ensure its use as part of the campaign for a public inquiry. The Tribunal does not accept that this document was received by post and as a matter of pure coincidence contained a call for a sworn public inquiry that just happened to coincide with Mr. Frank McBrearty Senior's state of mind. The Tribunal is satisfied that Mr. Frank McBrearty Senior and Mr. P.J. Togher were entirely responsible for the creation of this letter and its contents.
- 3.285. The Tribunal is satisfied from the technical terms employed by the writer, the knowledge exhibited of certain events within the force, the accurate reference to ranks, the knowledge of Garda procedure, the knowledgeable reference to expenses in the form of un-worked overtime, travelling and subsistence allowances and the somewhat stilted language of the facsimile that it was drafted or contributed to by a person familiar with what I regard as Garda terminology and mode of expression.
- 3.286. Deputy Jim Higgins told the Tribunal that he was informed by Mr. Frank McBrearty Senior that he had been given the letter, the subject of the facsimile, by "my friend". He understood this friend to be Mr. P.J. Togher because in his conversations with Mr. McBrearty Senior on the telephone both of them were very cautious in respect of what they would say because both were worried at that time that their telephones were being tapped. Mr. McBrearty Senior used to refer to Mr. Togher as "my friend" as a kind of code. Deputy Higgins said that he explicitly understood "my

friend” to be Mr. P.J. Togher and believed that Mr. Togher was in fact the source of the document. Mr. Frank McBrearty Senior denies that this was so and maintains that he received the document in the post. Mr. P.J. Togher also denies authorship or being the typist of the document and indeed denied any knowledge of the document or the fact that it had been sent to Deputy Higgins. The Tribunal accepts the evidence of Deputy Jim Higgins that he was informed by Mr. Frank McBrearty Senior that the document came from “my friend”, whom they both explicitly understood to mean Mr. P.J. Togher. Deputy Higgins told the Tribunal that he received many documents from Mr. Frank McBrearty Senior and customarily enquired of him as to whether they had been vetted for relevance by his friend, on the telephone. By this he meant Mr. P.J. Togher. Mr. Higgins also told the Tribunal that he later spoke to Mr. McBrearty Senior about approaching Mr. Togher to ask him if he would allow his identity to be revealed as the source but they both agreed not to. The Tribunal is satisfied that it was clearly understood between Mr. Frank McBrearty Senior and Deputy Higgins that this facsimile was received from Mr. P.J. Togher. I am satisfied to accept the evidence of Deputy Higgins on this matter. I reject the evidence of Mr. Frank McBrearty Senior and Mr. P.J. Togher, whom I consider to have been evasive, unconvincing and untruthful in their testimony.

- 3.287. In this regard Mr. Frank McBrearty Senior gave evidence that he did not refer to Mr. Togher as “my friend” by way of a code in telephone conversations with Deputy Higgins and was quite open in using his name. However, Mr. Giblin S.C. also confirmed that Mr. McBrearty Senior was careful not to use names on the telephone. Indeed, he said Mr. McBrearty Senior would refer to Mr. Togher to him as “the man from Drumkeen”. I am satisfied that Mr. McBrearty Senior referred to Mr. Togher in coded form when dealing on the telephone with Mr. Giblin and Deputy Higgins.
- 3.288. On the morning of the 26th of June 2000, Mr. Frank McBrearty Senior sent the same facsimile to Mr. Kenneth Smyth, his solicitor, and instructed him to have the original of the facsimile transcribed and thereafter to destroy it. Mr. Smyth followed his client’s instructions to an extent. He directed his secretary to transcribe the facsimile and to delete any information that might identify Mr. Frank McBrearty Senior as the source of the document, and also to type a note by way of addendum to the effect that the text of the document came into his possession unsolicited on the 26th of June 2000, that the original had been destroyed at the request of the informant and that this copy took its place. Mr. Smyth thought the better

of destroying the original of the facsimile and in fact retained it. Mr. Frank McBrearty Senior gave evidence that he gave no such instruction to Mr. Smyth and implied in his testimony that Mr. Smyth was not telling the truth because Mr. McBrearty Senior had dispensed with his services in respect of his civil actions. He also suggested that he possibly told Mr. Smyth that the document had arrived anonymously and unsolicited to him in the post. The Tribunal is satisfied to accept the evidence of Mr. Smyth that he was not told that the facsimile came in the post and was anonymous or unsolicited by Mr. Frank McBrearty Senior. The Tribunal is also satisfied that Mr. Frank McBrearty Senior told Mr. Smyth that he should transcribe or copy the facsimile which he had received and destroy the original, and that Mr. Smyth declined to do so because he believed it to be wrong to destroy an original document. The Tribunal is satisfied that Mr. Frank McBrearty Senior in his evidence sought to discredit an honourable solicitor who had provided significant support and legal assistance to him and his family for a period of approximately three and a half years. This was a deliberate untruth relevant to an issue into which I had to inquire, and was done with the realisation by Mr. McBrearty Senior that he was involved in the creation and sending of the facsimile, which he now wishes to disavow.

- 3.289. The Tribunal is satisfied that Mr. Frank McBrearty Senior in correspondence with Assistant Commissioner Murphy lied to him about his knowledge of the facsimile of the 25th of June 2000. He informed Assistant Commissioner Murphy that he did not recognise the document that he had in fact sent to Deputy Higgins, Mr. Martin Giblin S.C., Mr. Frank Connolly and his solicitor Mr. Kenneth Smyth, whom he had directed to destroy the original. He also asserted a claim of legal professional privilege and a claim of confidentiality in respect of communication with his solicitor and public representative in this correspondence. Later in evidence he told the Tribunal that he never asserted any claim of confidentiality in respect of his communications with Deputy Jim Higgins. Deputy Higgins, on the other hand, indicated that he in conjunction with Mr. Frank McBrearty Senior decided not to contact Mr. P.J. Togher to ascertain whether he would allow his identity to be revealed to Assistant Commissioner Murphy as the source of the information. The Tribunal is satisfied that Mr. Frank McBrearty Senior says what suits him at any particular time in relation to assertions of privilege. The Tribunal is also satisfied that Mr. McBrearty Senior lied to the assistant commissioner about recognising the facsimile, and sought to mislead and discourage the

investigation being carried out by the assistant commissioner as he did not wish the investigation to ascertain the truth of this matter, which was that Mr. McBrearty Senior was involved in the preparation and circulation of this untrue facsimile. The Tribunal is satisfied that Mr. McBrearty Senior's response to the reasonable and legitimate inquiries made by the assistant commissioner and his team was unjustified, unreasonable and untruthful.

3.290. The Tribunal is also satisfied to accept the evidence of Chief Superintendent Pat Brehony that he did not receive the full co-operation of Mr. P.J. Togher when he called to him in January 2003 when investigating the facsimile of the 25th of June 2000. On that date, Mr. Togher dealt with the two Garda officers on his doorstep. He adopted a somewhat aggressive stance and tape-recorded the conversation on his security intercom equipment. He robustly denied any knowledge of the allegations made in the facsimile of the 25th of June 2000. Though he now says that he was then aware of the letter of the 15th of July 2000, as was Mr. Frank McBrearty Senior during the course of the Murphy investigation, he did not reveal its existence to the two Garda officers: this was the same approach adopted by Mr. Frank McBrearty Senior in respect of that facsimile.

3.291. Mr. Frank McBrearty Senior, Mr. P.J. Togher, Mr. Frank McBrearty Junior, Mr. Mark McConnell, Mrs. Róisín McConnell and Mr. William Flynn met at Mr. Flynn's house on the evening of the 7th of March 2000. Mr. Flynn alleged in evidence that Mr. P.J. Togher made a number of allegations during the course of that meeting against Detective Sergeant John White. He alleged that Mr. Togher accused Detective Sergeant White of planting evidence and framing people and also alleged that the detective sergeant had received expenses because of his connections with Assistant Commissioners Hickey and Carty. He alleged that Detective Sergeant White had stayed at Assistant Commissioner Hickey's house. He said that Mr. Togher alleged that Detective Sergeant White owned a garage or shed near the border which contained stolen goods and that he had some vintage cars in this warehouse. Mr. Flynn said that he (Mr. Flynn) made certain enquiries concerning his own investigation of the title deeds to the shed. He said that Mr. Togher also alleged that a number of Gardaí from Ballybofey had made representations to Chief Superintendent Fitzpatrick that they did not wish to work alongside Mr. White because he framed people. He said that repeated references were made to Detective Sergeant White being used to plant evidence and fit people up with the knowledge of Assistant Commissioners Carty and Hickey by Mr. Togher

and Mr. Frank McBrearty Senior. Those present at the meeting, including Mr. Togher, denied that these allegations were made by Mr. Togher.

3.292. The Tribunal is satisfied that the meeting of the 7th of March 2000 was an important meeting that occurred spontaneously at the conclusion of a successful day at Dáil Éireann. I am satisfied that a number of things happened as a matter of probability. The day was dominated by the lobbying of Deputy Higgins for support in setting up a public inquiry into the McBrearty affair. I have no doubt that the day's events were fully reported to Mr. Flynn during the course of the visit. There is a measure of agreement that a shed or garage used by Detective Sergeant White on his mother-in-law's land at Gortahurk was discussed. Though there was a marked reluctance on the part of Mr. Togher and the McConnells to accept that anything further in the nature of allegations against Detective Sergeant White was discussed, apart from the mistreatment of Mrs. Róisín McConnell whilst in custody on the 4th of December 1996, Mr. Frank McBrearty Senior gave evidence that he was aware in 1999 that similar allegations of planting evidence had been made against Detective Sergeant White. He knew that Mr. Flynn, the private investigator, was interested in the garage in Gortahurk in 1999 because of rumours going about that Detective Sergeant White had "stuff" there and that he was planting things on people.

3.293. The Tribunal is satisfied that the discussion of the title to land at the shed at Gortahurk had to have a context. The context was provided by the fact that allegations of mistreatment of Mrs. Róisín McConnell were discussed at the meeting and the fact that rumours of which Mr. Frank McBrearty Senior was aware in relation to the planting of evidence by Detective Sergeant White were circulating in 1999. The shed at Gortahurk was being investigated because it was thought that Detective Sergeant White stored items there. The Tribunal is satisfied that the allegations concerning Detective Sergeant White suggesting that he was storing stolen goods at the garage or shed and planting things on people were discussed at this meeting. The Tribunal is also satisfied that Mr. Togher, Mr. Frank McBrearty Senior and Mr. Mark McConnell now find it convenient to distance themselves from this discussion because of subsequent controversy in relation to the facsimile. The Tribunal is also satisfied that all present at this meeting were agreed that a sworn public inquiry was the best way forward. The probability is that many aspects of the suspicions, rumours or reports concerning Detective Sergeant White that had been circulated by a number of serving or retired Gardaí and other

sources prior to March 2000 were referred to, canvassed and discussed amongst those present at this meeting. However, I am not satisfied to conclude on that basis alone that Mr. P.J. Togher was the sole originator of the allegations contained in the facsimile of the 25th of June 2000. The Tribunal concludes from the evidence heard in relation to this meeting that allegations against Detective Sergeant White, similar to those contained in the facsimile of the 25th of June 2000, were discussed at the meeting, and that Mr. Frank McBrearty Senior and Mr. P.J. Togher were familiar with allegations circulating in respect of Detective Sergeant White at the time when the facsimile was composed and circulated by them. I am satisfied that allegations against Detective Sergeant White discussed at this meeting reappeared in the facsimile of the 25th of June 2000.

- 3.294. On receipt of the facsimile from Mr. Frank McBrearty Senior on the 25th of June 2000, Mr. Martin Giblin S.C. decided to contact Deputy Howlin about it as a matter of urgency. The Tribunal is satisfied that he did so conscious of the fact that the facsimile was in fact addressed to Deputy Jim Higgins and in order to inform the Labour party spokesman on Justice, Equality and Law Reform of allegations tending to undermine Assistant Commissioner Carty's inquiry and to advance the case politically for the establishment of a Tribunal. Having done so, Mr. Giblin failed to furnish a copy of the facsimile to Deputy Howlin or to go through its contents with him. No reasonable explanation has been furnished for this by Mr. Giblin. He told Deputy Howlin about other historical material related to the Donegal case including the harassment of Mr. McBrearty Senior's licensed premises, the use of criminals to give evidence against Mr. McBrearty Senior, the planting of evidence on Mr. Paul Quinn, the planting of an explosive device at a mast at Ardara and the alleged planting of stolen property on a youth in Lifford. He also told him that a Garda based in Donegal had been approached by a senior detective from Dublin who told him that Sergeant White was being looked after and about a case with a "Ballymun connection". He also alleged that Sergeant White's expenses made interesting reading, that he was allowed to have access to a stash of stolen property to plant on people and that every case he was involved in needed re-checking. He emphasised to Deputy Howlin that his real concern was that Assistant Commissioner Carty's investigation was compromised. It was seriously misleading of Mr. Giblin to represent all of this information to Deputy Howlin as new and urgent.
- 3.295. In addition, Mr. Giblin failed to inform Deputy Howlin that much of what

he was telling him emanated from his own two informants and that a great deal of it had already been aired in Court and was the subject of Assistant Commissioner Carty's inquiry. He failed to tell him that he had received the information about the stash of stolen property and the alleged compromising of the Carty inquiry in a facsimile furnished by Mr. Frank McBrearty Senior, his client, and that it was attributable to yet another source, a detective inspector of the Dublin Metropolitan Area. He did so in the knowledge, later confirmed on the 1st of July 2000, that his communication with Deputy Howlin was regarded as confidential by Deputy Howlin and was unlikely to be subjected to close scrutiny. He also hoped and expected that Deputy Howlin would act upon the information. In doing all of this Mr. Giblin stated that he was acting as a citizen and not as a lawyer. Nevertheless, it is clear that his status as a senior counsel was something that was very important to Deputy Howlin in assessing the reliability of the information, and Mr. Giblin must have been cognisant of that. The fact that this information was furnished by a senior counsel enhanced its reliability and status in the eyes of Deputy Howlin; though, of course, it added nothing to its actual reliability as the core information was still an unsubstantiated series of allegations. In initiating this process, the Tribunal is satisfied that Mr. Giblin had, both as a citizen and as a lawyer, the duty to maintain the integrity of that process: this he failed to do.

- 3.296. The Tribunal notes that Mr. Giblin dealt with Mr. McBrearty Senior directly and received information and documents on a regular basis from Mr. McBrearty Senior and not through his solicitor, which would be the normal channel of communication between a barrister and client. He was also dealing with extraordinary events. Mr. Giblin has acknowledged that matters became very fraught and emotionally charged when dealing with Mr. McBrearty Senior and his family. He acknowledged, and it is clear from the tone of a number of the statements made by him to the Tribunal and from his evidence, that Mr. Giblin himself became deeply involved and affected by their plight, subjected as he was to continuous emotional representations by Mr. Frank McBrearty Senior over the years of his involvement in the case. The Tribunal is satisfied that his lack of candour with Deputy Howlin is to be viewed against this background; this led to a serious error of judgement on the part of Mr. Giblin in the manner in which he dealt with this information and conveyed it to Deputy Howlin.
- 3.297. The Tribunal is satisfied that the second facsimile of the 15th of July 2000 was sent by Mr. Frank McBrearty Senior to Deputy Higgins, Mr. Martin Giblin S.C., Mr. Frank Connolly and Mr. Kenneth Smyth, solicitor. This letter

was not revealed to the Tribunal by any of these recipients until Deputy Higgins told Tribunal investigators in January 2003 that he had received it. The facsimile of the 25th of June 2000 stated that its information came from a senior detective inspector in the Dublin Metropolitan Area. The second facsimile purports to come from a serving member of An Garda Síochána. Both were addressed to Deputy Higgins and called for the establishment of a Tribunal of Inquiry. It is unlikely that these facsimiles emanated from two different sources and as a matter of pure coincidence were sent to Mr. McBrearty Senior, addressed to Deputy Higgins, both calling for the establishment of a public inquiry based on the supposed inadequacy of the Carty investigation.

- 3.298. The Tribunal was not given any reasonable explanation by Deputy Higgins or Mr. Giblin as to why they did not furnish the text of the information contained in the second facsimile to the Minister for Justice, Equality and Law Reform or Deputy Brendan Howlin respectively. The main features to note about the second facsimile are that it alleged that Detective Sergeant White was mysteriously re-instated following his arrest and suspension in March 2000 at the behest of senior officers of An Garda Síochána. It claims that this decision was made over the head of Assistant Commissioner Carty who was helpless to act and that the authority of his investigation was thereby undermined; therefore, because it would not discover the truth a public inquiry was required. This was, of course, contrary to the thrust of the first facsimile of the 25th of June 2000 which denigrated Assistant Commissioner Carty and Assistant Commissioner Hickey as corrupt, as already outlined, and subject to potential blackmail by Detective Sergeant White. Deputy Higgins believed both documents to be from the same source, namely Mr. Togher. Mr. Giblin had received both facsimiles from Mr. Frank McBrearty Senior. The Tribunal is satisfied that Deputy Higgins, an astute politician and Mr. Giblin, an accomplished lawyer, must have realised the contradiction at the heart of this document and the potential damage this could do to the call for a public inquiry if the source of the information in the first facsimile was thought to be unreliable and contradictory. This contradiction was crystal clear from a reading of the second document. Mr. Giblin must also have been aware that if he disclosed the receipt of the second facsimile to Deputy Howlin, he would be obliged to inform him about the first facsimile and would also have to explain why he did not reveal it to him up to that point. No reasonable explanation has been given by either Deputy Higgins or Mr. Giblin as to why the document was not relied upon by them. The simple

explanation offered that they did not do so because they did not pay much attention to the document is weak and implausible. The maintenance of the integrity of the process in which they were both engaged with the Minister for Justice, Equality and Law Reform and Deputy Howlin respectively, required them to keep the relevant parties fully informed.

- 3.299. The Tribunal is further satisfied that the second facsimile contains allegations upon which Mr. Frank McBrearty Senior was fixated, namely the allegations that three Gardaí had allegedly committed perjury in the course of the District Court prosecutions in 1998 by failing to acknowledge the fact that they had seen a divisional circular concerning the McBrearty family and Mr. William Flynn, and that funds allocated to “B.S.E. duties” had been misused by An Garda Síochána to fund Garda harassment and intimidation of Mr. McBrearty Senior, his family and business. Mr. Smyth, solicitor, recorded in his note of the 9th of December 1998 that Mr. Togher had produced documents at that meeting in respect of the divisional circular. Gardaí were cross-examined in the following days about the circular. Mr. Smyth also recorded that Mr. Togher complained about expenses being paid to Detective Sergeant White. The Tribunal is satisfied that the second facsimile was composed by Mr. McBrearty Senior and Mr. Togher in a further effort to advance the case for a Tribunal of Inquiry. They intended that the document would be used in the same way as the first facsimile of the 25th of June 2000. They failed to understand that the second facsimile created difficulties by reason of the entirely different approach that it adopted towards the integrity of Assistant Commissioner Carty. The document was deemed to be coming from the same source by Deputy Higgins. Mr. Giblin received both documents from the same conduit Mr. Frank McBrearty Senior. The reliability of the information was clearly weakened by this contradiction. The fact that the two other allegations contained in the document were clearly matters that had already been well aired and were not new and urgent further undermined the authenticity of the document. The allegations clearly concerned matters close to Mr. McBrearty Senior’s own focus of interest at the time and were therefore likely to be of lesser impact than the more sensational allegations contained in the first facsimile. The Tribunal is satisfied that it was largely the realisation by the recipients of the deficiencies of this second facsimile that ensured that the document was not used in the same way as the facsimile of the 25th of June 2000 in the campaign calling for a public inquiry.

- 3.300. The Tribunal is satisfied that both facsimiles of the 25th of June 2000 and the 15th of July 2000 were composed and typed by Mr. Frank McBrearty Senior and Mr. P.J. Togher. The Tribunal has accepted the evidence of Deputy Higgins that Mr. Frank McBrearty Senior told him that he got the first facsimile from Mr. Togher “his friend”. Mr. Togher had been a strong supporter and adviser to Mr. McBrearty Senior. He was a former Garda. The language and content of both facsimiles is replete with Garda terminology and precise reference to matters such as rank. The Tribunal is satisfied that the allegations contained in the first facsimile were created from information acquired by Mr. Frank McBrearty Senior and Mr. P.J. Togher from various Gardaí and retired Gardaí, including retired Detective Garda Madigan, and by his private investigator, Mr. William Flynn, and perhaps other correspondents. The Tribunal is satisfied that Garda documents were from time to time leaked to the McBrearty group. The Tribunal is also satisfied that all of these matters were discussed between Mr. Togher and Mr. McBrearty Senior. Further, the Tribunal is satisfied that Mr. McBrearty Senior was given to understand by some of his contacts or advisers that in order to achieve the establishment of a Tribunal of Inquiry it would help if the Carty investigation or report could be undermined. Mr. Higgins was his political ally in this matter and consequently Mr. McBrearty Senior ensured that both facsimiles were addressed to him and that both contained the call for a public inquiry. He and Mr. Togher set about constructing the false allegations set out in the two documents based on the embellishment of the stories that had come to him from his various sources. Mr. Togher as the typist, in effect, put these allegations into a readable format as Mr. McBrearty Senior’s literacy and composition skills were weak. The facsimiles were then sent to Deputy Higgins and Mr. Martin Giblin S.C. in the hope and expectation that they would be used as part of the campaign for a public inquiry in whatever way they thought appropriate.
- 3.301. The Tribunal is satisfied to accept the evidence of the forensic document examiner that there was “limited” or “moderate” evidence that the two facsimiles of the 25th of June 2000 and the 15th of July 2000 were typed by Mr. Togher, in the sense that there was positive evidence associating these documents with Mr. Togher but that this evidence was “nowhere near conclusive”. Though this evidence is not conclusive of the proposition that Mr. Togher typed the facsimiles, nevertheless the Tribunal is satisfied that it is independent and logically probative evidence that supports or tends to support the proposition that Mr. Togher was the typist.

- 3.302. The Tribunal is also satisfied that there were other common features between the two facsimiles and the control sample of documents available that did not directly relate to the mechanical process of typing on which evidence was given by the expert. These were simply features that were observable by any person reading the document. This included features such as consistent spelling errors or grammatical errors and matters such as capitalisation and the inappropriate insertion of apostrophes, which the expert was of the opinion could be taken into consideration as matters of evidence. These are recognisable by most educated lay people and were to a large extent a matter of common sense. The Tribunal is satisfied that the existence of these additional common features in the control sample and the two facsimiles also supports or tends to support the proposition that Mr. Togher was the typist of the documents. The Tribunal does not accept his evidence that he was not.
- 3.303. The Tribunal, in reaching this conclusion, has also taken into account a number of lies told by Mr. Frank McBrearty Senior and Mr. Togher designed to distance themselves from their involvement in the composition and distribution of these facsimiles which have already been set out in the body of this report. These lies were deliberate, related to material issues before the Tribunal and were motivated by the realisation on both their parts that they were involved in the preparation of these facsimiles.
- 3.304. Deputies Higgins and Howlin went to the Minister for Justice, Equality and Law Reform on the 27th of June 2000 with the information that they had received. The Minister was not informed that the facsimile of the 25th of June had been received by Deputy Higgins from Mr. McBrearty Senior. He was only told that it was from a reliable Garda source. He was not told that the reliable Garda source was Mr. P.J. Togher, Mr. McBrearty Senior's close adviser and confidant. Deputy Howlin did not inform the Minister that he had received the information from a party close to Mr. McBrearty Senior, namely Mr. Martin Giblin S.C. The Minister was told that the information was from a reliable legal non-Garda source. Though both Deputies sought to preserve the identity of their sources on the basis of a claim of confidentiality, there was no reason not to tell the Minister that the sources were allied to the McBrearty group and were also part of the campaign for a public inquiry. Indeed, the Tribunal does not see any worthy reason why Mr. McBrearty Senior and Mr. Martin Giblin S.C. needed a cloak of secrecy in their dealings with the two politicians as they

had already been publicly engaged with An Garda Síochána in respect of a multiple of contentious issues. Indeed Mr. McBrearty Senior had given a copy of the facsimile to Mr. Frank Connolly, a journalist, and within a short time of the meeting with the Minister, Deputy Higgins gave a detailed interview to Mr. Connolly about this meeting and its subject matter. This was published in The Sunday Business Post on the 1st of July 2000. It is difficult to see any legitimate purpose for concealing the identity of Mr. McBrearty Senior and Mr. Giblin other than to avoid being subjected to searching questions in relation to the evidence supporting the facsimile of the 25th of June or other information supplied in the course of any inevitable inquiry. It was only when the issue of their identities was pursued by the Tribunal in the course of subsequent High Court proceedings between the two Deputies and the Tribunal that they chose to reveal themselves.

- 3.305. The Tribunal is also satisfied that both Deputies should have returned to their sources of information and pressed them for further information or evidence backing up the very serious allegations made against the two assistant commissioners and Detective Sergeant White. The Tribunal is concerned that public representatives should receive and act upon serious and sensational allegations against senior Garda officers without pressing their sources for information or evidence. If the sources wished the Deputies to take action on their behalf it was entirely reasonable that the Deputies should have informed their sources in forceful terms that they would not take these allegations any further in fairness to those who were the subject of them unless more detailed information and evidence was produced. At the very least, Deputy Higgins should have insisted on a meeting with Mr. Togher and Deputy Howlin should have pressed Mr. Martin Giblin for further detail and evidence. Mr. Giblin as a lawyer would undoubtedly have understood this.
- 3.306. It would have been entirely reasonable for the two Deputies to indicate that they were not going to make allegations of such a wild kind about two assistant commissioners and a detective sergeant to the Minister for Justice, Equality and Law Reform and put them and their careers under a cloud of suspicion without something more than a facsimile or a late night phone call. Politicians must be attuned to the possibility that they may be used to advance a wholly false agenda by constituents who may be unscrupulous, deceitful or have an agenda against the person or persons against whom they make the allegations. This calls for the exercise of a sound discretion in relation to these matters. It would be naïve to assume

that all such representations are worthy of being acted upon. Confidentiality can be abused by those who seek to use their political representatives for their own purposes. In this case the fact that coincidentally the facsimile and the information arrived at the same time and conveyed the same message that a public inquiry is required – a call supported by Mr. McBrearty Senior and Mr. Giblin at the time – should have alerted them to that danger. Therefore, the two Deputies should have been extremely mindful of that danger, more especially when it was intended that these communications would be treated as confidential and that the sources of the information could never be probed as far as the Deputies were concerned at that time.

- 3.307. The Tribunal notes that politicians are left without guidance in respect of this issue. It is accepted by the Tribunal that both Deputies acted in good faith but having regard to the serious implications for the two assistant commissioners and the detective sergeant and any other person who might be subject to such allegations in the future, it is important that they only be acted upon by parliamentarians when they have carried out all reasonable inquiries or meetings possible in relation to the allegations made before taking them further. This is very important because undoubtedly a Minister, once he receives allegations made by responsible Deputies, will be expected to treat them seriously. This gives further impetus to the allegations. In this case the Minister brought them to the Garda commissioner for investigation. Throughout this process the legitimacy and status of the allegations was enhanced without furnishing a scintilla of evidence. In this way false and unscrutinised allegations acquired an unwarranted momentum and destructive force of their own.
- 3.308. Though mindful of the sensitivity of both Houses of the Oireachtas to outside intrusion upon their procedures and privileges, the Tribunal recommends that the Committee on Practices and Procedures of Dáil and Seanad Éireann urgently review the manner in which members of both Houses should deal with allegations brought to their attention by so-called ‘whistleblowers’. This is a matter of general public importance extending beyond the facts of this case, and should be addressed as a matter of urgency by both Houses of the Oireachtas with a view to ensuring an appropriate balance between the right of access of a ‘whistleblower’ to his/her public representative and the right of those subjected to such allegations to be fairly treated and not made the subject of unfounded allegations which may be endowed with underserved legitimacy because they are peddled cynically and successfully to well meaning members of either House.

Final Conclusions

- 3.309. Mr. Frank McBrearty Senior was undoubtedly the victim of a terrible injustice at the hands of An Garda Síochána. His son and nephew had been wrongly suspected of involvement in a crime that they did not commit. Extortion telephone calls had been made to persons connected to his family, being Michael and Charlotte Peoples. One of these telephone calls was made from the home of a serving Garda. Frank McBrearty Senior received numerous abusive telephone calls and hoax bomb calls. He and members of his immediate and extended family were unlawfully arrested by the Gardaí. A number of these persons were mistreated by the Gardaí at Letterkenny Garda Station. During his detention, his son Frank McBrearty Junior made a false confession admitting to an assault on the Late Richard Barron that never occurred. Mr. Frank McBrearty Senior's nightclub business became the focus of excessive Garda attention in the first eight months of 1997. This led to the issuance of an extraordinary number of summonses against Mr. Frank McBrearty Senior and others. Certain Gardaí had recruited and used a man with a criminal record from Sligo to be deliberately found on the premises after hours, so as to secure a conviction against Mr. McBrearty Senior.
- 3.310. Mr. Frank McBrearty Senior and his legal team hoped to expose much of this wrongdoing when the so-called "wider issue" came to be heard in the District Court in Letterkenny. However, this was not to be. In June 2000, the Director of Public Prosecutions withdrew all the summonses then pending against Mr. Frank McBrearty Senior, members of his family and his staff.
- 3.311. Mr. Frank McBrearty Senior was entitled to claim redress for the wrongs committed by agents of the State against him and members of his extended family. He achieved this when he and others successfully concluded High Court proceedings for damages in 2007. He also sought to have this wrongdoing exposed in the forum of a public inquiry. It was reasonable of him in the circumstances to make representations to have such an inquiry established. However, it was wrong and inexcusable of him to have set about achieving that goal by publishing serious untrue allegations against a serving detective sergeant and two serving assistant commissioners in An Garda Síochána.
- 3.312. The assistant commissioners, in particular, had exemplary records within An Garda Síochána. These allegations caused them much personal and professional embarrassment. I have no doubt but that their standing was

damaged by the publication of such allegations to persons at the highest level in government. It took some time for Assistant Commissioner Murphy's investigation to conclude its work. It took a great deal of time for this Tribunal to develop a full understanding of what happened in Donegal so as to enable it to disentangle the events of the other nine Terms of Reference from the lies, rumours and half-truths contained in these two facsimiles and to make a finding in a public forum that the core allegations in the two facsimile documents were completely without substance.

CHAPTER 4

RECOMMENDATIONS

- 4.01. The following are the recommendations made by the Tribunal arising out of this Term of Reference.

Garda Disciplinary Regulations

- 4.02. The Tribunal considered in Chapter 2 the police practice that applied in relation to transfer in lieu of suspension of a Garda within the disciplinary process. The Tribunal notes the provisions of Regulation 35 of the Garda Síochána (Discipline) Regulations, 1989, which provides that the power of suspension for an initial period of seventy-two hours is vested in a Chief Superintendent. In this case Assistant Commissioner Murphy was vested with the power of suspension for longer periods under Regulation (4) of the Disciplinary Regulations. He was required to consider the further suspension of Detective Sergeant White before the expiration of the initial seventy-two hour period of suspension imposed by Chief Superintendent Fitzpatrick. In doing so he relied upon the practice and procedure which had evolved over the years and which was set out in a number of documents, including a 'policy document' issued in April 1994. He viewed the case of Detective Sergeant White as falling within that part of the policy document that recommended that a Garda be suspended where there is evidence that he has committed acts of such seriousness as would result in his dismissal from the force if they are proved true, but not until such time as preliminary inquiries rule out the possibility of the member being the subject of a false or a malicious accusation. In line with this policy each case was to be considered on a case by case basis.
- 4.03. In addition the Assistant Commissioner was permitted as a matter of practice to consider transfer in lieu of suspension. This practice was given formal recognition in an agreed report, No. 523 of the Garda Conciliation Council, dated the 7th of October 1997. Assistant Commissioner Murphy informed the Tribunal that there was no single definitive document that set out clearly the practice and procedure to be adopted in relation to suspension and transfer in lieu of suspension. The practice in force in 2000 required the Assistant Commissioner to come to a conclusion as to whether he ought to suspend a Garda. If he decided that the Garda should be suspended he had to then further consider whether he ought to offer that Garda a transfer in lieu of the suspension proposed. This transfer was regarded only as a temporary transfer. It would continue only for as long as a suspension would have continued. It was a completely different species to the permanent transfer described in Chapter 7 of the Garda Code, which was completely separate from disciplinary proceedings.

- 4.04. In the case of Detective Sergeant White, a permanent transfer application was made to Assistant Commissioner Murphy in the circumstances outlined in Chapter 2. This should not have happened. The appropriate procedure was to consider whether Detective Sergeant White should have been suspended. If a decision was made by the Assistant Commissioner to suspend him, it was only in those circumstances that a temporary transfer should have been considered in lieu of the suspension. The Tribunal is satisfied that this occurred as the result of an error arising out of the pressure of time and confusion that operated in the minds of the officers dealing with the transfer issue at the time.
- 4.05. It is recommended that an amendment be made to the Garda Síochána (Discipline) Regulations, 1989 to regulate the practice and procedure described to the Tribunal by Assistant Commissioner Murphy in a formal and clear manner, and to ensure that in the future the issue of suspension is considered before the offer of a transfer in lieu of suspension is considered and granted. It should be made explicitly clear that a permanent transfer under Chapter 7 of the Garda Code cannot be considered once an issue of suspension of a Garda has arisen for consideration, under the Garda regulations or otherwise. The criteria for suspension should be formulated and included in the Garda regulations. It is imperative that an issue of suspension should be resolved in the interests of An Garda Síochána and of the public's confidence in An Garda Síochána before any question of transfer, whether permanent or temporary, is considered. If a Garda has submitted or intends to submit an application for permanent transfer at the time when he is suspended or when the issue of his suspension is under active consideration, the question of his permanent transfer should not be considered until the issue of suspension has been determined. This should be reflected in the regulations.

Public Representatives and Anonymous Allegations

- 4.06. In this case what appeared to Deputy Jim Higgins and Deputy Brendan Howlin to be anonymous allegations were conveyed to them by Mr. Frank McBrearty Senior and Mr. Martin Giblin S.C. respectively. A clear issue arises as to how public representatives in the Dáil and Seanad should deal with such anonymous allegations, which on their face appear to raise matters of considerable public interest and importance. The Tribunal is mindful of the sensitivity of both Houses of the Oireachtas to outside intrusion upon their procedures and privileges. It is most reluctant to venture into this area. However, the Tribunal notes that An Garda Síochána has recently taken steps in relation to tightening up on its procedures as they apply to informants and that journalists maintain codes of ethics and operate now under the Press Council and are subject to the laws of defamation in respect of such matters.

- 4.07. The Tribunal acknowledges that it can sometimes be difficult for members of the Dáil or Seanad to assess the veracity or authenticity of allegations made anonymously. In this instance, it is the Tribunal's view that a more serious and searching inquiry should have been made by the two Teachtaí Dála to whom these allegations were made. It is accepted that both of them acted in good faith. However, having regard to the serious implications of the allegations for the two Assistant Commissioners and Detective Sergeant White, and any other person who might be subject to such allegations in the future, it is important that they only be acted upon by parliamentarians when they have carried out all reasonable inquiries, interviews, correspondence or meetings in relation to the allegations made before taking them further.
- 4.08. The Tribunal recommends that the Committee on Practice and Procedure of Dáil and Seanad Éireann urgently review the manner in which members of both Houses deal with allegations brought to their attention anonymously by so-called 'whistleblowers'. In this case the parties who conveyed the allegations, the conduits, were known to both Teachtaí Dála. In the case of Deputy Higgins he was satisfied that the document emanated from Mr. P.J. Togher via Mr. Frank McBrearty Senior. Deputy Howlin was told by Mr. Martin Giblin S.C. that the information emanated from a Garda in Donegal. The damage that can be wrought to the reputations of people falsely accused by persons peddling false stories to Teachtaí Dála or members of Seanad Éireann, directly or through others, can be quite devastating to them. This is an area of such public importance that it should be addressed as a matter of urgency by both Houses of the Oireachtas with a view to ensuring an appropriate balance between the right of access of a 'whistleblower' to his/her public representative, and the right of those subject to such allegations to be fairly treated and not made the subject of unfounded allegations that have been endowed with undeserved legitimacy because they were conveyed cynically and successfully to well meaning members of either House.
- 4.09. The standard of responsibility of a public representative cannot simply be to receive information and pass it on to the relevant minister in the expectation that the minister will act upon the information. Serious allegations of the kind made in this case require some further exploration and inquiry before further steps are taken. Very little was done to explore the reality behind these anonymous allegations by the two Teachtaí Dála who received them. At the very least, Deputy Higgins should have insisted on a meeting with Mr. Togher and Mr. Frank McBrearty Senior, and Deputy Howlin should have pressed Mr. Martin Giblin S.C. for further detail and evidence. Instead, these allegations were given a standing and authority

well beyond that which was justified on the material available. It would have been entirely reasonable for the two Teachtaí Dála to say that they were not going to make allegations of such a wild kind about two Assistant Commissioners and a Detective Sergeant to the Minister for Justice, Equality and Law Reform, thereby putting them under a cloud of suspicion, without something more than a facsimile and/or a late night phone call. Politicians must be attuned to the possibility that they are being used to advance a wholly false agenda by persons who may be unscrupulous, deceitful or have an agenda against the person or persons against whom they make allegations. This calls for the exercise of a sound and informed discretion in relation to these matters. The Tribunal is satisfied that a standard of behaviour to be observed by Teachtaí Dála or senators should be set by the Committee on Practice and Procedure of the respective Houses of the Oireachtas. It is all the more important when the allegations made come from an anonymous source in circumstances in which the assertion of parliamentary privilege by the two Teachtaí Dála had the effect of denying access by those investigating the allegations to the identity of the conduits or sources of the allegations. The Tribunal respectfully recommends that the Committee on Practice and Procedure of both Houses of the Oireachtas should urgently consider this issue and provide the necessary guidance to the members of each House should this arise in the future.

General Conclusions

- 4.10. The Tribunal has now concluded its work. Over a period of six years it has produced eight reports containing numerous recommendations. A number of these recommendations have been implemented by the appropriate authorities. Others have not. The Tribunal repeats and commends its previous recommendations to the Minister for Justice, Equality and Law Reform, the Garda Commissioner and the Houses of the Oireachtas. The Tribunal also wishes to acknowledge that there have been a number of significant and important reforms within An Garda Síochána. The Garda Ombudsman Commission and Garda Inspectorate have now been established by statute and are in their first years of operation. Their independence and oversight work is crucial to the maintenance of high standards of operation and discipline within An Garda Síochána and the development and implementation of best international police practice now and in the future. These reforms, together with strong adherence to principles of accountability at all levels within An Garda Síochána, and positive leadership at officer level, will hopefully go a long way towards avoiding the type of shocking scandals into which the Tribunal has inquired over the last number of years.

APPENDICES

- A1. Photocopy of original facsimile received by Deputy Jim Higgins from Mr. Frank McBrearty Senior on the 25th of June 2000 – the facsimile details were removed by Deputy Higgins prior to photocopying the original to preserve the anonymity of the sender.
- A2. A typed transcription of the copy of the facsimile of the 25th of June 2000 prepared at the direction of Deputy Jim Higgins by his secretary at his constituency office on the morning of Monday, 26th of June 2000 – the identifying facsimile numbers of Mr. Frank McBrearty Senior had already been removed from the original and the words “For the information of Jim Higgins” were also deliberately omitted.
- A3. A copy of the original handwritten note made by Deputy Brendan Howlin regarding his telephone conversation with Mr. Martin Giblin SC on the evening of the 25th of June 2000.
- A4. A copy of the original of a handwritten note made by Deputy Brendan Howlin TD regarding his telephone conversation with Mr. Martin Giblin SC on the night of the 25th of June 2000 and furnished by him to Assistant Commissioner Murphy. This note was a redacted version of Appendix A3, in which any reference to Mr. Giblin had been removed.
- A5. A copy of the redacted handwritten note made by Deputy Brendan Howlin regarding his telephone conversation with Mr. Martin Giblin SC on the evening of the 25th of June 2000 and used by him when presenting this information to the Minister for Justice, Equality and Law Reform at a meeting on Tuesday the 27th of June 2000 together with a typed copy of same.
- A6. A contemporaneous note made by Deputy Brendan Howlin of a telephone conversation that he had with Mr. Martin Giblin SC to ascertain whether Mr. Giblin would meet members of Assistant Commissioner Murphy’s team on the 1st of July 2000.
- A7. A copy of the handwritten redacted note made by Deputy Brendan Howlin of the telephone conversation that he had with Mr. Martin Giblin on the 1st of July 2000 and used by Deputy Howlin when speaking to investigating Gardaí about whether his “informant” was willing to co-operate with them.
- A8. A copy of the Appendix A7 which Deputy Howlin gave to the Murphy investigation team on the 4th of July 2000 and which was later included in Assistant Commissioner’s Murphy’s report as BH2.
- A9. A copy of the facsimile of the 25th of June 2000 sent to Mr. Kenneth Smyth, solicitor, on the morning of the 26th of June 2000.

- A10.** A typed transcription of Appendix A9 made by Mr. Kenneth Smyth's secretary at his direction on the morning of the 26th of June 2000 on the instructions of Mr. Frank McBrearty Senior with a further instruction that Mr. Smyth should destroy the original facsimile of Appendix A10 on the making of this typed copy.
- A11.** A version of the facsimile of the 25th of June 2000 addressed "For the information of Mr. Jim Higgins TD and Frank Connolly Sunday Business Post" found in Mr. McBrearty Senior discovery documents.
- A12.** A version of the facsimile of the 25th of June 2000 addressed "For the information of Mr. Jim Higgins TD" and similar in all respects to Appendix A11 save that it was addressed only to Mr. Higgins, found in Mr. Frank McBrearty Senior's discovery documents.
- A13.** A version of the facsimile of the 25th of June 2000 addressed "For the information of Mr. Jim Higgins TD" containing the same wording as the versions of the facsimile contained in A11 and A12 but laid out differently and in a different typed font but containing a number of similarities.
- A14.** A version of the facsimile of the 25th of June 2000 received by post by Assistant Commissioner Fachtna Murphy on the 2nd of November 2000 from Mr. William Flynn. Apart from the typed font this copy is similar in all respects to Appendix A11, apart from the handwriting on the first page of that copy, and A12.
- A15.** A complete copy of the three-page letter sent by facsimile to Deputy Jim Higgins on the 15th of July 2000.
- A16.** A copy of pages 1 and 3 of the original of the facsimile sent to Deputy Jim Higgins on the 15th of July 2000 as furnished to the Tribunal by Deputy Higgins on the 9th of January 2003. The second page was furnished a short time later, a copy having been obtained by Deputy Jim Higgins from his then unknown source whose identity was later revealed as Mr. Frank McBrearty Senior.
- A17.** A version of the letter of the 15th of July 2000 contained in the discovery made by Mr. Frank McBrearty Senior to the Tribunal. This version contains Mr. Frank McBrearty Senior's address in the top right-hand corner and for the "Attn: Ken Smyth".
- A18.** A copy of the facsimile sent to Deputy Jim Higgins by Mr. Frank McBrearty Senior on the 15th of July 2000 found in the documents discovered by Mr. McBrearty Senior to the Tribunal. This document is the clearest version of the facsimile in the form received by Deputy Higgins.
- A19.** A copy of the facsimile sent to Deputy Jim Higgins on the 15th of July 2000 and exhibited at "FMcB2" in the statement of Mr. Frank McBrearty Senior of the 11th June 2003. This copy is not as clear as Appendix A18.

A1

Photocopy of original facsimile received by Deputy Jim Higgins from Mr. Frank McBrearty Senior on the 25th of June 2000 – the facsimile details were removed by Deputy Higgins prior to photocopying the original to preserve the anonymity of the sender.¹

¹ Tribunal Documents – Anonymous Allegations pages 266-267.

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APPENDIX 1

CONFIDENTIAL CONFIDENTIAL CONFIDENTIAL

For the information of Mr. Jim Higgins T. D.

Confidential information has come to hand from a serving Detective Inspector of An Garda Síochána attached to a station in the D. M. A. concerning the Garda investigation in the Criminal Division.

(1). There appears to be a problem concerning the ongoing investigation in to the conduct of one Detective Sergeant John White which would give the impression that the matter is not being dealt with in accordance with the Commissioner's instructions to the investigating Officer, Kevin Carty. If this is the case, it is very worrying, to say the least.

(2). The reason for this is the fact that D/Sgt. White worked with both Mr. Carty and Assistant Commissioner Tony Hickey during his service in Dublin and when ever evidence had to be got to prove a case beyond doubt, Mr. White was the man who was given the job of producing the said evidence by unlawful means.

(3). A large number of convictions were achieved by "planting" evidence and both Carty and Hickey were aware that White was the source of the "tamped up" evidence. Paysack was extra expenses for White in the form of unworked overtime/travelling and subsistence allowances and this misappropriation of Department of Justice funds continued up to

1999 as White was given blanket permission to claim the afore-mentioned expenses.

(4). There is now a fear among members of the investigation team that if White is fully investigated he will use his knowledge of those matters as his defence and in doing so a number of person's convicted which involved lengthy prison sentences will prove to have been unsafe and the consequence P266. Those involved are indeed the

entire force, would be unthinkable.

15). Another matter which White was involved in was the planting of stolen property on suspects and as a result of this he had a huge amount of stolen property at his disposal. This property was not officially documented in official property books and this malpractice enabled him to have a huge amount of stolen property at his disposal. When he moved to Donegal Division he moved a large amount of said stolen property with him and this was known by the Authorities and indeed was a "running joke" among ordinary Gardai.

16). Taking all this reliable information in to account it is felt that this investigation will be unsuccessful in establishing the true facts of the illegal activities of Detective Sergeant White and the only other alternative is a full and open public enquiry.

It is known that White is in regular contact with Assistant Commissioner Hickey and has an eighteen page document concerning his and others activities whilst he was stationed in Dublin and this document, it appears, is his passport to escaping the rigours of the law and his way of frustrating the ongoing investigation.

END.

A2

A typed transcription of the copy of the facsimile of the 25th of June 2000 prepared at the direction of Deputy Jim Higgins by his secretary at his constituency office on the morning of Monday, 26th of June 2000 – the identifying facsimile numbers of Mr. Frank McBrearty Senior had already been removed from the original and the words “For the information of Jim Higgins” were also deliberately omitted.²

² Tribunal Documents – Anonymous Allegations, page 268.

CONFIDENTIAL CONFIDENTIAL.....CONFIDENTIAL

Confidential information has come to hand from a serving Detective Inspector of An Garda Síochána attached to a Station in the D.M.A. concerning the Garda Investigation in the Donegal Division.

1. There appears to be a problem concerning the ongoing investigation into the conduct of one Detective Sergeant John White which would give the impression that the matter is not being dealt with in accordance with the Commissioner's instructions to the investigating Officer, Kevin Carty. If this is the case, it is very worrying, to say the least.

2. The reason for this is the fact that Detective Sergeant White worked with both Mr Carty and Assistant Commissioner Tony Hickey during his service in Dublin and whenever evidence had to be got to prove a case beyond doubt, Sergeant White was the man who was given the job of producing the said evidence by unlawful means.

3. A large number of convictions were achieved by "planting" evidence and both Carty and Hickey were aware that White was the source of the "trumped up" evidence. Payback was extra expenses for White in the form of unworked overtime/travelling and subsistence allowances and this misappropriation of Department of Justice funds continued up to 1998 as White was given blanket permission to claim the aforementioned expenses.

4. There is now a fear among members of the investigation team that if White is fully investigated he will use his knowledge of those matters as his defence and in doing so a number of person's convicted which involved lengthy prison sentences will prove to have been unsafe and the consequences for those involved and indeed the entire force, would be unthinkable.

5. Another matter which White was involved in was the planting of stolen property on suspects and as a result of this he had a huge amount of stolen property at his disposal. This property was not officially documented in official property books and this malpractice enabled him to have a huge amount of stolen property at his disposal. When he moved to the Donegal Division he moved a large amount of said stolen property with him and this was known by the Authorities and indeed was a "running joke" among ordinary Gardai.

6. Taking all this reliable information into account it is felt that this investigation will be unsuccessful in establishing the true facts of the illegal activities of Detective Sergeant White and the only other alternative is a full and open public enquiry.

It is known that White is in regular contact with Assistant Commissioner Hickey and has an eighteen page document concerning his and other's activities whilst he was stationed in Dublin and this document, it appears, is his passport to escaping the rigours of the law and his way of frustrating the ongoing investigation.

END

A3

A copy of the original handwritten note made by Deputy Brendan Howlin regarding his telephone conversation with Mr. Martin Giblin SC on the evening of the 25th of June 2000.

Home Ph. 018373552
Phone: Martin Giblin 25/6/00
(Sunday evening 11.50pm)

- Serious info. being brought to him re.
Sgt. White (whose objective was to give McCarthy as much grief as possible)
Criminals used to give perjured evidence against him.
- Planted evidence! drugs on McCarthy's associate. Already searched by another Garda & challenged White's find.
Prog. on TUV (Wed.) next. Adairagh — evidence planted.
- Important witness (Garda) saw ~~McCarthy~~ device (Frank Connolly Sunday SP. + T.J.3)
seeking to have witness speak to him. Giblin resisting → too important a witness.
- White planted stolen property of youth in Lifford (part of his R.O.)
- Critical issue is White is in position to blackmail 2 Ass Commissioners in law. Kevin Costello + Ass Comm. Tony Hickey

P843

2.

Evidence coming from Garda based in Doragal — has helped before + proved reliable

He was approached by Sen. Detectives (from Dublin) who told him that Sgt. White was being 'looked after'!

- Sgt. White's expenses make interesting reading — also allowed to have access to stock of stolen property (to plant on people)!

- Every case that Sgt. White was involved in needs rechecking

- Criblin's real concern that Canning investigation is compromised

- Case with 'Ballymun collection' would cause difficulty for Kevin Canning. White did dirty work for him!

A4

A copy of the original of a handwritten note made by Deputy Brendan Howlin TD regarding his telephone conversation with Mr. Martin Giblin SC on the night of the 25th of June 2000 and furnished by him to Assistant Commissioner Murphy. This note was a redacted version of Appendix A3, in which any reference to Mr. Giblin had been removed.

4/4/00

Copy of document for
Ass. Comm. F. Humphrey

Sunday evening 5/6/00

I received a call from a
colleague to phone a person
who had in the past kept me
informed about the situation
in Donegal concerning the Garda
and the McBrearty's

— He informed me that serious
information had been brought to
his attention regarding Det. S.
White. He suggested that chemicals
were used by Sgt. White to
give perjured evidence against
Mr. McBrearty. He suggested that
he planted evidence on a
McBrearty associate. He suggested
that Sgt. White planted stolen
property on youth in Lifford
(an action that was common
for him).

— Critical issue is that Sgt. White
is in a position to blackmail
two Ass. Commissioners —
Ass. Comm. Kevin Carty + Ass. Co
Tony Hickey.

— Evidence coming from Garda base
in Donegal who has provided
my informant with most reliable
information in the past.

P845

2

- He (Doregal Barra Garda) was approached by Sen. Detective from Dublin who told him that Sgt. White "was being looked after".
- Sgt. White's expenses make interesting reading — also allowed to have access to stacks of stolen property — to plant on people
- Every case Sgt. White was involved in needs rechecking
- Informants real concern however is that the Carty Investigation is compromised.
- Explained that case "with Ballymun Connection" would cause difficulty for Kevin Carty — White he suggested did "dirty work" for him.

A5

A copy of the redacted handwritten note made by Deputy Brendan Howlin regarding his telephone conversation with Mr. Martin Giblin SC on the evening of the 25th of June 2000 and used by him when presenting this information to the Minister for Justice, Equality and Law Reform at a meeting on Tuesday the 27th of June 2000 together with a typed copy of same.³

³ Tribunal Documents – Anonymous Allegations, pages 275-277.

On Sunday evening 25/6/00
I received a call from a
colleague to phone a person
who had in the past kept me
informed about the situation
in Donegal concerning the Garda
and the McBrearty's.

— He informed me that serious
information had been brought to
his attention regarding Det. Sgt
White. He suggested that chemicals
were used by Sgt. White to
give perjured evidence against
Mr. McBrearty. He suggested that
he ^(White) planted evidence on a
McBrearty associate. He suggested
that Sgt. White planted stolen
property on youth in Lifford
(an action that was common
for him).

— Critical issue is that Sgt. White
is in a position to blackmail
two Ass. Commissioners —
Ass. Comm. Kevin Carty + Ass. Comm.
Tony Hickey.

— Evidence coming from Garda based
in Donegal who has provided
my informant with most reliable
information in the past.

2

- He (Deregal ~~San~~ Garda) was approached by Sen. Detective from Dublin who told him that Sgt. White "was being looked after".
- Sgt. White's expenses make interesting reading — also allowed to have access to lists of stolen property — to plant on people!
- Every case Sgt. White was involved in needs rechecking.
- Informants real concern however is that the Carty Investigation is compromised.
- Explained that case "with Ballymun Connection" would cause difficulty for Kevin Carty — White he suggested did "dirty work" for him.

APPENDIX 6

B.H.1

On Sunday evening 25th June, 2000 I received a call from a colleague to phone a person who had in the past kept me informed about the situation in Donegal concerning the Gardai and the Mc Brearty's.

- He informed me that serious information had been brought to his attention regarding Det Sgt White. He suggested that criminals were used by Sgt White to give perjured evidence against Mr. Mc Brearty. He suggested that he (White) planted evidence on a Mc Brearty associate. He suggested that Sgt White planted stolen property on youth in Lifford (an action that was common for him).
- Critical issue is that Sgt White is in a position to blackmail two Ass. Commissioners – Ass. Comm. Kevin Carty and Ass. Comm Tony Hickey.
- Evidence coming from Garda based in Donegal who has provided my informant with most reliable information in the past.
- He (Donegal based Garda) was approached by Senior Detective from Dublin who told him that Sgt White 'was being looked after'.
- Sgt White's expenses make interesting reading – also allowed to have access to stash of stolen property – to plant on people!
- Every case Sgt White was involved in needs rechecking.
- Informants real concern however is that the Carty investigation is compromised.
- Explained that case "with Ballymun connection" would cause difficulty for Kevin Carty – White he suggested did "dirty work" for him.

A6

A contemporaneous note made by Deputy Brendan Howlin of a telephone conversation that he had with Mr. Martin Giblin SC to ascertain whether Mr. Giblin would meet members of Assistant Commissioner Murphy's team on the 1st of July 2000.⁴

⁴ Tribunal Documents – Anonymous Allegations, pages 847-848.

Phone 1/4/80

Martin Giblin S.C.

01/8373552.

Def. in Dublin is

View that —

Gard. Auth. know about situation
in Donegal for years.

Gard. Commissioner

by June '97 had
evidence of how O'Brien
was treated.

Including Gard. phone records
which showed that he was
involved in extortion —
nothing was done.

Another In. Garda. (Det. Ch. Super.

Det. Ch. Super. ~~Thomas~~

Spoke to Frank Connolly
briefed him on investigation
+ he is in possession of
a lot of information.

They
should
be

in
Donegal
talked
to

Sgt. John White

Gard. John O'Dowd

Supt. Kevin Lannon

Supt. McCusker

Ch. Super. Denis Fitzpatrick

Tony Hickey was

Ass. Comm. for Donegal

(based in Sligo)

connection

1984/5

Sgt. White.

2

Page 1/7/00

8 | Will give evidence in Court
in High Court Action
against Tel + the A.G.
(by McBreeny)

8 | No point in talking to
Martin — they has info
which he passed on

• → Sgt. White told investigator
that he had evidence on
Kevin Carty + Hickey that
would bring them down
(Is it possible that it is
bluster)

A7

A copy of the handwritten redacted note made by Deputy Brendan Howlin of the telephone conversation that he had with Mr. Martin Giblin on the 1st of July 2000 and used by Deputy Howlin when speaking to investigating Gardaí about whether his “informant” was willing to co-operate with them.⁵

⁵ Tribunal Documents – Anonymous Allegations, page 849.

Report

discussion

1/7/00

- Not willing to have his name given to Gardaí.
- Suggests that investigation should interview
 - Sgt. John White
 - Gaa. John O'Donnell
 - Sgt. Kevin Lennor
 - Sgt. McGuirey
 - Chief Sup. Denis Fitzpatrick
- Says that Garda in Donegal will give evidence in court.
- Says that Sgt. White told investigation that he had evidence on Kevin Carty + Hickey that would bring them down.
- I asked if this could be bluster from White — informant says maybe so.

A8

A copy of the Appendix A7 which Deputy Howlin gave to the Murphy investigation team on the 4th of July 2000 and which was later included in Assistant Commissioner's Murphy's report as BH2.

Response to call to informant ^{BH2}
discussion — 1/7/00

— Not willing to have his name
given to Gardaí.

— Suggests that investigation should
interview { Sgt. John White
Gaa. John O'Donnell
Supt. Kevin Lennan
Supt. McGuirey
Chief Supt. Denis Fitzpatrick.

— Says that Garda in Dergal
will give evidence in Court.

— Says that Sgt. White told
investigation that he had
evidence on Kevin Carty +
Hickey that would bring them
down.

— I asked if this could be bluster
from White — informant
says maybe so.

A9

A copy of the facsimile of the 25th of June 2000 sent to Mr. Kenneth Smyth, solicitor, on the morning of the 26th of June 2000.⁶

⁶ Tribunal Documents – Anonymous Allegations, pages 661-662.

ATT Kea Sgtt Pkari RullerBunz

CONFIDENTIAL CONFIDENTIAL CONFIDENTIAL

01/09/22
Pgh
11:50 PM

For the information of Mr. Jim Higgins T. D.

Confidential information has come to hand from a serving Detective Inspector of A. Garda Siochana attached to a station in the D. M. A. concerning the Garda investigation in the Donegal Division.

1) There appears to be a problem concerning the ongoing investigation in to the conduct of one Detective Sergeant John White which would give the impression that the matter is not being dealt with in accordance with the Commissioner's instructions to the investigating Officer, Kevin Carty. If this is the case, it is very worrying, to say the least.

2) The reason for this is the fact that D/Sgt. White worked with both Mr. Carty and Assistant Commissioner Tony Hickey during his service in Dublin and when ever evidence had to be got to prove a case beyond doubt, Mr. White was the man who was given the job of securing the said evidence by unlawful means.

3) A large number of convictions were achieved by "planting" evidence and both Carty and Hickey were aware that White was the source of the "trumped up" evidence. Payback was extra expences for White in the form of unworked overtime/travelling and subsistence allowances and this misappropriation of Department of Justice funds amounted up to £45,000. White was given blanket permission to claim the above-mentioned expences.

4) There is now a fear among member's of the investigation team that if White is fully investigated he will use his knowledge of those matters as his defence and in doing so a number of person's convictions which involved lengthy prison sentences will prove to have been unsafe and the consequences for those involved an indeed the

P661

entire force, would be unthinkable.

151. Another matter which White was involved in was the planting of stolen property on suspects and as a result of this he had a huge amount of stolen property at his disposal. This property was not officially documented in official property books and this malpractice enabled him to have a huge amount of stolen property at his disposal. When he moved to Donegal Division he moved a large amount of said stolen property with him and this was known by the Authorities and indeed was a "running joke" among ordinary Gardai.

161. Taking all this reliable information in to account it is felt that this investigation will be unsuccessful in establishing the true facts of the illegal activities of Detective Sergeant White and the only other alternative is a full and open public enquiry.

It is known that White is in regular contact with Assistant Commissioner Hickey and has an eighteen page document concerning his and others activities whilst he was stationed in Dublin and this document, it appears, is his passport to escaping the rigours of the law and his way of frustrating the ongoing investigation.

END.

A10

A typed transcription of Appendix A9 made by Mr. Kenneth Smyth's secretary at his direction on the morning of the 26th of June 2000 on the instructions of Mr. Frank McBrearty Senior with a further instruction that Mr. Smyth should destroy the original facsimile of Appendix A10 on the making of this typed copy.⁷

⁷ Tribunal Documents –Anonymous Allegations, page 1041.

Confidential information has come to hand from a serving detective inspector of An Garda Siochana attached to a Station in the D.N.A. concerning the Garda Investigation in the Donegal Division.

There appears to be a problem concerning the on-going investigation concerning the conduct of one Detective Sergeant John White which would give the impression that the matter is not being dealt with in accordance with the Commissioner's instructions to the Investigating Officer, Kevin Carthy. If this is the case, it is very worrying to say the least.

The reason for this is the fact that Detective Sergeant White worked with both Mr. Carty and Assistant Commissioner Tony Hickey during his service in Dublin and when ever evidence had to be got to prove a case beyond doubt, Mr. White was the man who was given the job of obtaining the said evidence by unlawful means.

A large number of convictions were achieved by 'planting' evidence and both Carty and Hickey were aware that White was the source of the 'trumped up' evidence. Pay-back was extra expenses to White in the form of unworked overtime/travelling and subsistence allowances and this misappropriation of the Department of Justice funds continued to . Sergeant White was given blanket permission to claim the above mentioned expenses.

There is now a fear among members of the Investigation Team that if White is fully investigated, he will release his knowledge of those officers as his defence and in doing so a number of persons convicted which involved lengthy prison sentences will prove to be unsafe and the consequences for those involved as indeed to the entire Force would be unthinkable.

Another matter which White was involved in was the planting of stolen property on suspects and as a result of this he had a huge amount of stolen property at his disposal This property was not officially documented in official property books and this malpractice enabled him to have a huge amount of huge amount of stolen property at this disposal.

When he moved to Donegal Division, he moved a large amount of the said stolen property with him and this was done by the Authorities and indeed was a 'running joke' among ordinary Gardai.

Taking all this reliable information into account, it is felt that this investigation would be unsuccessful in establishing the true facts of the illegal activities of Detective Sergeant White and the only other alternative is a full and open public enquiry.

It is known that White is in regular contact with Assistant Commissioner Hickey and has an eighteen page document concerning his and others activities whilst he was stationed in Dublin and this document, it appears, is his passport to escaping the rigors of the law and his way of frustrating the ongoing investigation.

ENDS

Text of this document came into my possession unsolicited on the 26th of June 2000. The original has been destroyed at the request of the Informant and this copy takes its place. /

A11

A version of the facsimile of the 25th of June 2000 addressed “For the information of Mr. Jim Higgins TD and Frank Connolly Sunday Business Post” found in Mr. McBrearty Senior discovery documents.⁸

⁸ Tribunal Documents –Anonymous Allegations, pages 1193-1194.

ATT

Sunday 04/88
Post.
1

For the information of Mr. Jim Higgins T. D. and Frank Connolly.

Confidential information has come to hand from a serving Detective Inspector of An Garda Siochana attached to a station in the D. M. A. concerning the Garda investigation in the Donegal Division.

- (1). There appears to be a problem concerning the ongoing investigation into the conduct of one Detective Sergeant John White which would give the impression that the matter is not being dealt with in accordance with the Commissioner's instructions to the investigating Officer, Kevin Carty. If this is the case, it is very worrying, to say the least.
- (2). The reason for this is the fact that D/Sgt. White worked with both Mr. Carty and Assistant Commissioner Tony Hickey during his service in Dublin and whenever evidence has to be got to prove a case beyond doubt, Mr. White was the man who was given the job of producing the said evidence by unlawful means.
- (3). A large number of convictions were achieved by "planting" evidence and both Carty and Hickey were aware that White was the source of the "trumped up" evidence. Payback was extra expenses for White in the form of unworked overtime/travelling and subsistence allowances and this misappropriation of Department of Justice funds continued up to 1988 as White was given blanket permission to claim the afore-mentioned expenses.
- (4). There is now a fear among members of the investigation team that if White is fully investigated he will use his knowledge of those matters as his defence and in doing so a number of person's convicted which involved lengthy prison sentences will prove to have been unsafe and the consequences for those involved and indeed the entire force, would be unthinkable.
- (5). Another matter in which White was involved in was the planting of stolen property on suspects and as a result of this he had a huge amount of stolen property at his disposal. This property was not officially documented in official property books and this malpractice enabled him to have a huge amount

P1193

For the information of Mr. Jim Higgins T. D.

of stolen property at his disposal. When he moved to the Donegal Division he moved a large amount of said stolen property with him and this was known by the Authorities and indeed was a "running joke" among ordinary Gardai.

(6). Taking all this reliable information into account it is felt that this investigation will be unsuccessful in establishing the true facts of the illegal activities of Detective Sergeant White and the only other alternative is a full and open public enquiry.

It known that White is in regular contact with Assistant Commissioner Hickey and has an eighteen page document concerning his and others activities whilst he was stationed in Dublin and this document, it appears, is his passport to escaping the rigours of the law and his way of frustrating the ongoing investigation.

A12

A version of the facsimile of the 25th of June 2000 addressed “For the information of Mr. Jim Higgins TD” and similar in all respects to Appendix A11 save that it was addressed only to Mr. Higgins, found in Mr. Frank McBrearty Senior’s discovery documents.⁹

⁹ Tribunal Documents –Anonymous Allegations, pages 1195-1196.

For the information of Mr. Jim Higgins T. D.

Confidential information has come to hand from a serving Detective Inspector of An Garda Siochana attached to a station in the D. M. A . concerning the Garda investigation in the Donegal Division.

(1). There appears to be a problem concerning the ongoing investigation into the conduct of one Detective Sergeant John White which would give the impression that the matter is not being dealt with in accordance with the Commissioner's instructions to the investigating Officer, Kevin Carty. If this is the case, it is very worrying, to say the least.

(2). The reason for this is the fact that D/Sgt. White worked with both Mr. Carty and Assistant Commissioner Tony Hickey during his service in Dublin and whenever evidence has to be got to prove a case beyond doubt, Mr. White was the man who was given the job of producing the said evidence by unlawful means.

(3). A large number of convictions were achieved by "planting" evidence and both Carty and Hickey were aware that White was the source of the "trumped up" evidence. Payback was extra expenses for White in the form of unworked overtime/travelling and subsistence allowances and this misappropriation of Department of Justice funds continued up to 1988 as White was given blanket permission to claim the afore-mentioned expenses.

(4). There is now a fear among members of the investigation team that if White is fully investigated he will use his knowledge of those matters as his defence and in doing so a number of person's convicted which involved lengthy prison sentences will prove to have been unsafe and the consequences for those involved and indeed the entire force, would be unthinkable.

(5). Another matter in which White was involved in was the planting of stolen property on suspects and as a result of this he had a huge amount of stolen property at his disposal. This property was not officially documented in official property books and this malpractice enabled him to have a huge amount

P1195

For the information of Mr. Jim Higgins T. D.

of stolen property at his disposal. When he moved to the Donegal Division he moved a large amount of said stolen property with him and this was known by the Authorities and indeed was a "running joke" among ordinary Gardai.

(6). Taking all this reliable information into account it is felt that this investigation will be unsuccessful in establishing the true facts of the illegal activities of Detective Sergeant White and the only other alternative is a full and open public enquiry.

It known that White is in regular contact with Assistant Commissioner Hickey and has an eighteen page document concerning his and others activities whilst he was stationed in Dublin and this document, it appears, is his passport to escaping the rigours of the law and his way of frustrating the ongoing investigation.

A13

A version of the facsimile of the 25th of June 2000 addressed "For the information of Mr. Jim Higgins TD" containing the same wording as the versions of the facsimile contained in A11 and A12 but laid out differently and in a different typed font but containing a number of similarities.

For the information of Mr. Jim Higgins T. D.

Confidential information has come to hand from a serving Detective Inspector of An Garda Siochana attached to a station in the D. M. A . concerning the Garda investigation in the Donegal Division.

- (1). There appears to be a problem concerning the ongoing investigation into the conduct of one Detective Sergeant John White which would give the impression that the matter is not being dealt with in accordance with the Commissioner's instructions to the investigating Officer, Kevin Carty. If this is the case, it is very worrying, to say the least.
 - (2). The reason for this is the fact that D/Sgt. White worked with both Mr. Carty and Assistant Commissioner Tony Hickey during his service in Dublin and whenever evidence has to be got to prove a case beyond doubt, Mr. White was the man who was given the job of producing the said evidence by unlawful means.
 - (3). A large number of convictions were achieved by "planting" evidence and both Carty and Hickey were aware that White was the source of the "trumped up" evidence. Payback was extra expenses for White in the form of unworked overtime/travelling and subsistence allowances and this misappropriation of Department of Justice funds continued up to 1988 as White was given blanket permission to claim the afore-mentioned expenses.
 - (4). There is now a fear among members of the investigation team that if White is fully investigated he will use his knowledge of those matters as his defence and in doing so a number of person's convicted which involved lengthy prison sentences will prove to have been unsafe and the consequences for those involved and indeed the entire force, would be unthinkable.
 - (5). Another matter in which White was involved in was the planting of stolen property on suspects and as a result of this he had a huge amount of stolen property at his disposal. This property was not officially documented in official property books and this malpractice enabled him to have a huge amount of stolen property at his disposal. When he moved to the Donegal Division he moved a large amount of said stolen property with him and this was known by the Authorities and indeed was a "running joke" among ordinary Gardai.
 - (6). Taking all this reliable information into account it is felt that this investigation will be unsuccessful in establishing the true facts of the illegal activities of Detective Sergeant White and the only other alternative is a full and open public enquiry.
- It known that White is in regular contact with Assistant Commissioner Hickey and has an eighteen page document concerning his and others activities whilst he was stationed in Dublin and this document, it appears, is his passport to escaping the rigours of the law and his way of frustrating the ongoing investigation.

P1197

A14

A version of the facsimile of the 25th of June 2000 received by post by Assistant Commissioner Fachtna Murphy on the 2nd of November 2000 from Mr. William Flynn. Apart from the typed font this copy is similar in all respects to Appendix A11, apart from the handwriting on the first page of that copy, and A12.¹⁰

¹⁰ Tribunal Documents –Anonymous Allegations, pages 351-352.

APPENDIX 20

For the information of Mr. Jim Higgins T. D.

Confidential information has come to hand from a serving Detective Inspector of An Garda Siochana attached to a station in the D. M. A. concerning the Garda investigation in the Donegal Division.

(1). There appears to be a problem concerning the ongoing investigation into the conduct of one Detective Sergeant John White which would give the impression that the matter is not being dealt with in accordance with the Commissioner's instructions to the investigating Officer, Kevin Carty. If this is the case, it is very worrying, to say the least.

(2). The reason for this is the fact that D/Sgt. White worked with both Mr. Carty and Assistant Commissioner Tony Hickey during his service in Dublin and whenever evidence has to be got to prove a case beyond doubt, Mr. White was the man who was given the job of producing the said evidence by unlawful means.

(3). A large number of convictions were achieved by "planting" evidence and both Carty and Hickey were aware that White was the source of the "trumped up" evidence. Payback was extra expenses for White in the form of unworked overtime/travelling and subsistence allowances and this misappropriation of Department of Justice funds continued up to 1988 as White was given blanket permission to claim the afore-mentioned expenses.

(4). There is now a fear among members of the investigation team that if White is fully investigated he will use his knowledge of those matters as his defence and in doing so a number of person's convicted which involved lengthy prison sentences will prove to have been unsafe and the consequences for those involved and indeed the entire force, would be unthinkable.

(5). Another matter in which White was involved in was the planting of stolen property on suspects and as a result of this he had a huge amount of stolen property at his disposal. This property was not officially documented in official property books and this malpractice enabled him to have a huge amount

For the information of Mr. Jim Higgins T. D.

of stolen property at his disposal. When he moved to the Donegal Division he moved a large amount of said stolen property with him and this was known by the Authorities and indeed was a "running joke" among ordinary Gardai.

(6). Taking all this reliable information into account it is felt that this investigation will be unsuccessful in establishing the true facts of the illegal activities of Detective Sergeant White and the only other alternative is a full and open public enquiry.

It known that White is in regular contact with Assistant Commissioner Hickey and has an eighteen page document concerning his and others activities whilst he was stationed in Dublin and this document, it appears, is his passport to escaping the rigours of the law and his way of frustrating the ongoing investigation.

A15

A complete copy of the three-page letter sent by facsimile to Deputy Jim Higgins on the 15th of July 2000.¹¹

¹¹ Tribunal Documents –Anonymous Allegations, pages 745-747.

CONFIDENTIAL.

MR. JIM HIGGINS, I.D.
DAIL EIREANN.

Dear Jim,

I am a serving member of An Garda Síochána in the Donegal Division.

A number of serious questions has arisen concerning the Garda investigation in Donegal under the appointed Assistant Commissioner in charge of the Northwest region - Mr. Kevin Carty.

Some of the matters that this investigation has failed to cover, concerning the abuse of power by certain named Gardai is causing grave concern to both senior and junior members of the Force.

As you are aware a Detective Sergeant (White) was arrested under the provisions of Section 4 of the Criminal Justice Act, 1984 and subsequently questioned. During his interrogation he threatened to expose alleged wrongdoing by very senior members of the Garda Force.

He was suspended from duty but, within 48 hours he was mysteriously reinstated and given his choice of a station in the Dublin Metropolitan Area.

It has now come to notice that this was done over the head of, and against the express wishes of the Officer in charge of the investigation, Mr. Kevin Carty. Mr. Carty was in a helpless situation to prevent his reinstatement as the Commissioner, Mr. Byrne would have signed both forms, (1). revoking suspension and (2). ordering his requested transfer, at public expense.

P745

THE D/Sgt. having been suspected made telephone contact with a senior officer in Garda Headquarters and for some unknown reason it was decided at the highest level, to have him reinstated and given a station of his choice.

(1) Why was this done, against the authority and express wishes of Assistant Commissioner Carty?

(2) Telecommunication records from the phones in the D/Sgt's possession, the phones in Letterkenny and Raphoe Garda stations showing that contact was made and to whom?

(3) On who's advice did the Garda Commissioner, Mr. Byrne, take the decision to appoint a Special Detective Unit to investigate the Assistant Commissioner, that he appointed to investigate Garda corruption in the General Division?

(4) Was it as a result of the D/Sgt's threats to expose wrongdoings in senior Officer's within the Force that Commissioner saw fit to instigate and grant him his transfer?

(5) If this is the case, or indeed if the Assistant Commissioner Carty was overruled and his Authority undermined his position as investigating officer is untenable.

The majority of serving Gardai now believe that this investigation is totally frustrated by similar incidents, that it is totally flawed by the total lack of cooperation by the member's under investigation and are totally convinced that the full facts will not come out. They feel that a full and comprehensive sworn public enquiry is the only way to establish a level of confidence in the Garda Force both in Ireland and internationally.

Another matter causing grave concern is the fact that certain Gardai, who were involved in the instructed harassment and abuse of Mr. McBrearty and his extended family are and coming within the

scope of this investigation, namely, Gardai Shaun Barrett, Noel Keaveney, and Sergeant Sarah Hardigan. Those members were at the forefront of this alleged and instructed conspiracy, i.e. using public monies allocated to B.S.E. duties to harass and intimidate Mr. McBrearty and his family, giving evidence in open Court, under Oath, as instructed by a Garda Superintendent, thereby, committing (allegedly) barefaced perjury??.

If those persons are not part of the overall investigation then it completely fails in what it set out to achieve???

Finally, The Minister of Justice can not say the investigation was successful in establishing the facts when after the final report is delivered further serious matters come to light, and I can assure you, Mr. Higgins that this is way the matter will drag on and on and without the granting of a full sworn public enquiry, the Minister will get "egg on his face".

This whole affair can be summed up by the very old saying, "Old sins cast long shadows"

It was never more true than in this case.

Yours faithfully,

A serving member of An Garda Síochána.

A16

A copy of pages 1 and 3 of the original of the facsimile sent to Deputy Jim Higgins on the 15th of July 2000 as furnished to the Tribunal by Deputy Higgins on the 9th of January 2003. The second page was furnished a short time later, a copy having been obtained by Deputy Jim Higgins from his then unknown source whose identity was later revealed as Mr. Frank McBrearty Senior.¹²

¹² Tribunal Documents –Anonymous Allegations, pages 561-562.

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CONFIDENTIAL.

MR. JIM HIGGINS, T.D.
DAIL EIREANN.

Dear Jim,

I am a serving member of An Garda Síochána in the Donegal Division.

A number of serious questions has arisen concerning the Garda investigation in Donegal under the appointed Assistant Commissioner in charge of the Northwest region - Mr. Kevin Carty.

Some of the matters that this investigation has failed to cover, concerning the abuse of power by certain named Gardai is causing grave concern to both senior and junior members of the Force.

As you are aware a Detective Sergeant (White) was arrested under the provisions of Section 4 of the Criminal Justice Act, 1984 and subsequently questioned. During his interrogation he threatened to expose alleged wrongdoing by very senior members of the Garda Force. He was suspended from duty but, within 48 hours he was mysteriously reinstated and given his choice of a station in the Dublin Metropolitan Area.

It has now come to notice that this was done over the head of, and against the express wishes of the Officer in charge of the investigation, Mr. Kevin Carty. Mr. Carty was in a helpless situation to prevent his reinstatement as the Commissioner, Mr. Byrne would have signed both forms, (1). revoking suspension and (2). ordering his requested transfer, at public expense.

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scope of this investigation, namely, Gardai Shaun Barrett, Noel Keaveney, and Sergeant Sarah Hardigan. Those members were at the forefront of this alleged and instructed conspiracy, i.e. using public monies allocated to B.S.E. duties to harass and intimidate Mr. McBrearty and his family, giving evidence in open Court, under Oath, as instructed by a Garda Superintendent, thereby, committing [allegedly] barefaced perjury??.

If those persons are not part of the overall investigation then it completely fails in what it set out to achieve???

Finally, The Minister of Justice can not say the investigation was successful in establishing the facts when after the final report is delivered further serious matters come to light, and I can assure you, Mr. Higgins that this is way the matter will drag on and on and without the granting of a full sworn public enquiry, the Minister will get "egg on his face".

This whole affair can be summed up by the very old saying, "Old sins cast long shadows"

It was never more true than in this case.

Yours faithfully,

A serving member of An Garda Síochána.

A17

A version of the letter of the 15th of July 2000 contained in the discovery made by Mr. Frank McBrearty Senior to the Tribunal. This version contains Mr. Frank McBrearty Senior's address in the top right-hand corner and for the "Attn: Ken Smyth".¹³

¹³ Tribunal Documents –Anonymous Allegations, pages 1188-1189.

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Frank McBrearty
Raphoe
Co. Donegal.

Attn: Ken Smyth

I am a serving member of An Garda Siochana in the Donegal Division.

A number of serious questions have arisen concerning the Garda investigation in Donegal under the appointed Assistant Commissioner in charge of the Northwest region - Mr. Kevin Carty.

Some of the matters that this investigation has failed to cover, concerning the abuse of power by certain named Gardai is causing grave concern to both senior and junior members of the force.

As you are aware a Detective Sergeant (White) was arrested under the provisions of Section 4 of the Criminal Justice Act, 1984 and subsequently questioned. During his interrogation he threatened to expose alleged wrongdoing by very senior members of the Garda Force. He was suspended from duty, but within 48 hours he was mysteriously reinstated and given his choice of stations in the Dublin Metropolitan Area.

It has now come to notice that this was done over the head of and against the wishes of the Officer in charge of the investigation, Mr. Kevin Carty. Mr. Carty was in a helpless situation to prevent his reinstatement as the Commissioner, Mr. Byrne would have signed both forms, 1) revoking suspension and 2) ordering his requested transfer, at public expense.

The Detective Sergeant having been suspended made telephone contact with a senior officer in Garda Headquarters and for some unknown reason it was decided at the highest level, to have him reinstated and given a Dublin station of his choice.

1. Why was this done, against the authority and express wishes of Assistant Commissioner Carty ?.
2. Telecommunication records from the phones in the D/Sgt's possession, the phones in Letterkenny and Raphoe Garda stations should show what contact was made and to whom ?.
3. On who's advice did the Garda Commissioner, Mr. Byrne, take the unprecedented steps that he took in overruling the Assistant Commissioner, that he appointed to investigate Garda corruption in the Donegal Division ?.
4. Was it as a result of the D/Sgt's threats to expose wrongdoings by Senior Officers within the Force that Commissioner saw fit to reinstate and grant him his transfer.
5. If this is the case, or indeed if the Assistant Commissioner Carty was

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overruled and his Authority undermined his position as investigating officer is untenable.

The majority of serving Gardai now believe that this investigation is continually frustrated by similar incidents, that it is totally flawed by the total lack of cooperation by the member's under investigation and are totally convinced that the full facts will not come out. They feel that a full and comprehensive sworn public enquiry is the only way for which to restore public confidence in the Garda Force both in Donegal and Nationwide.

Another matter causing grave concern is the fact that certain Gardai who were involved in the instructed harassment and abuse of Mr. McBrearty and his extended family are not coming within the scope of this investigation, namely, Gardai Shaun Barrett, Noel Keaveney, and Sergeant Sarah Hardigan. These member's were at the forefront of this alleged and instructed conspiracy, i.e. using public monies allocated to B.S.E. duties to harass and intimidate Mr. McBrearty and his family, giving evidence in open court, under Oath, as instructed by a Garda Superintendent, thereby, committing (allegedly) barefaced perjury ??.

If those person's are not part of the overall investigation then it completely fails in what it set out to achieve ???.

Finally, The Minister of Justice can not say the investigation was successful in establishing the facts when after the final report is delivered further serious matters come to light, and I can assure you, Mr. Higgins that this is way the matter will drag on and on and without the granting of a full sworn public enquiry, the Minister will get "egg in the face ".

This whole affair can be summed up by the very old saying, "Old sins cast long shadows"

It was never more true than in this case.

Yours faithfully,

A serving member of An Garda Siochana.

A18

A copy of the facsimile sent to Deputy Jim Higgins by Mr. Frank McBrearty Senior on the 15th of July 2000 found in the documents discovered by Mr. McBrearty Senior to the Tribunal. This document is the clearest version of the facsimile in the form received by Deputy Higgins.

Att Kewy Sgt H
from
King's Co. f
CONFIDENTIAL.

MR. JIM HIGGINS, T.D.
DAIL EIREANN.

Dear Jim,

I am a serving member of An Garda Síochána in the Donegal Division.

A number of serious questions has arisen concerning the Garda investigation in Donegal under the appointed Assistant Commissioner in charge of the Northwest region - Mr. Kevin Carty.

Some of the matters that this investigation has failed to cover, concerning the abuse of power by certain named Gardai is causing grave concern to both senior and junior members of the Force.

As you are aware a Detective Sergeant (White) was arrested under the provisions of Section 4 of the Criminal Justice Act, 1984 and subsequently questioned. During his interrogation he threatened to expose alleged wrongdoing by very senior members of the Garda Force. He was suspended from duty but, within 48 hours he was mysteriously reinstated and given his choice of a station in the Dublin Metropolitan Area.

It has now come to notice that this was done over the head of, and against the express wishes of the Officer in charge of the investigation, Mr. Kevin Carty. Mr. Carty was in a helpless situation to prevent his reinstatement as the Commissioner, Mr. Byrne would have signed both forms, (1). revoking suspension and (2). ordering his requested transfer, at public expense.

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THE D/Sgt. having been suspended, made telephone contact with a SENIOR officer in Garda Headquarters and for some unknown reason, it was decided at the highest level, to have him reinstated and given a Dublin station of his choice.

(17). Why was this done, against the authority and express wishes of Assistant Commissioner Carty?

(20). Telecommunication records from the phones in the D/Sgt's possession, the phones in Letterlenny and Rathoe Garda stations could show what contact was made and to whom?

(30). On who's advice did the Garda Commissioner, Mr. Byrne, take the unprecedented steps that he took in overruling the Assistant Commissioner, that he appointed to investigate Garda corruption in the Donegal Division?

(4). Was it as a result of the D/Sgt's threats to expose wrongdoings by Senior Officer's within the Force that Commissioner saw fit to reinstate and grant him his transfer.

(5). If this is the case, or indeed if the Assistant Commissioner Carty was overruled and his Authority undermined his position as investigating officer is untenable.

The majority of serving Gardai now believe that this investigation is continually frustrated by similar incidents, that it is totally flawed by the total lack of cooperation by the member's under investigation and are totally convinced that the full facts will not come out. They feel that a full and comprehensive sworn public enquiry is the only way for which to restore public confidence in the Garda Force both in Donegal and Nationwide.

Another matter causing grave concern is the fact that certain Gardai, who were involved in the instructed harassment and abuse of Mr. McBrearty and his extended family are not coming within the

scope of this investigation, namely, Gardai Shaun Barrett, Noel Keaveney, and Sergeant Sarah Hardigan. Those member's were at the forefront of this alleged and instructed conspiracy., i.e. using public monies allocated to B.S.E. duties to harrass and intimidate Mr. McBrearty and his family, giving evidence in open Court, under Oath, as instructed by a Garda Superintendent, thereby, committing (allegedly) barefaced perjury??.

If those person' are not part of the overall investigation then it completely fails in what it set out to achieve???

Finally, The Minister of Justice can not say the investigation was successful in establishing the facts when after the final report is delivered further serious matters come to light, and I can assure you, Mr. Higgins that this is way the matter will drag on and on and without the granting of a full sworn public enquiry, the Minister will get "egg on his face".

This whole affair can be summed up by the very old saying,. "Old sins cast long shadows"

It was never more true than in this case.

Yours faithfully,

A serving member of An Garda Siochana.

P1192

A19

A copy of the facsimile sent to Deputy Jim Higgins on the 15th of July 2000 and exhibited at "FMcB2" in the statement of Mr. Frank McBrearty Senior of the 11th June 2003. This copy is not as clear as Appendix A18.

07445515

IMB2.

CONFIDENTIAL.

*from
Fred McBreary*

MR. JIM HIGGINS, T.D.
OF DUBLIN.

... former member of An Garda Síochána in the Donegal Division.

... number of serious questions has arisen concerning the Garda
... in Donegal under the appointed Assistant Commissioner in
... the Northwest region - Mr. Kevin Carty.

... one of the matters that this investigation has failed to cover,
... the abuse of power by certain named Gardai is causing
... to both senior and junior members of the Force.

... you are aware a Detective Sergeant (White) was arrested under the
... of Section 4 of the Criminal Justice Act, 1984 and
... subsequently questioned. During his interrogation he threatened to
... alleged wrongdoing by very senior members of the Garda Force.
... suspended from duty but, within 48 hours he was mysteriously,
... reinstated and gave his choice of a station in the Dublin Metropolitan
... Force.

... it has now come to notice that this was done over the head of, and
... against the express wishes of the Officer in charge of the
... investigation, Mr. Kevin Carty. Mr. Carty was in a helpless
... position to prevent his reinstatement as the Commissioner, Mr. Byrne
... would have signed both forms, (1). revoking suspension and (2).
... ordering his requested transfer, at public expense.

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THE D/Sgt having been suspended made telephone contact with
SENIOR officers in Headquarters and for some unknown reason it
was decided at least to have him reinstated and given a
warning by the senior

(1) The D/Sgt does, against the authority and express wishes of
Assistant Commissioner Carty?

(2) How records from the phones in the D/Sgt's
residence in Lifford and Raphoe Garda stations
were made and to whom?

(3) Why did the Garda Commissioner, Mr. Byrne, take
the D/Sgt to task in connection with the President
and be appointed to investigate Garda corruption in the

(4) Was it as a result of the D/Sgt's threats to expose wrongdoings
within the Force that Commissioner and D/Sgt
were transferred?

(5) If it is the case, or indeed if the Assistant Commissioner
has the Authority to conduct the public
enquiry, is it probable.

The D/Sgt Gardai now believe that this investigation is
totally flawed by similar incidents; that it is totally flawed
by lack of cooperation by the member's under investigation
and that the full facts will not come out. They
believe that a comprehensive sworn public enquiry is the only way
to get the full facts out of the Garda Force both in

Another factor of some grave concern is the fact that certain
members who were involved in the instructed harassment and abuse of
certain individuals are not coming within the

scope of this investigation, namely, Gardai Shaun Barrett, Noel Keaveney, and Sergeant Sarah Hardigan. Those members were at the forefront of this alleged and instructed conspiracy.. i.e. using public money allocated to B.S.E. duties to harrass and intimidate Mr. McEneaney and his family, giving evidence in open Court, under Oath, as instructed by a Garda Superintendent, thereby, committing alleged and bare faced perjury??.

If those persons are not part of the overall investigation then it is a failure to achieve what it set out to achieve???

Finally, The Minister of Justice can not say the investigation was successful in establishing the facts when after the final report is delivered further serious matters come to light, and I can assure Mr. Higgins that this is way the matter will drag on and on and without the granting of a full sworn public enquiry, the Minister will get "egg on his face".

This whole affair can be summed up by the very old saying.. "Old sins cast long shadows"

It was never more true than in this case.

Yours faithfully,

A serving member of An Garda Síochána.

TRIBUNAL STAFF

Counsel to the Tribunal:

Peter Charleton SC
(2002 to December 2006 when he resigned on his appointment as a Judge of the High Court).

Paul McDermott SC

Anthony Barr SC

Kathleen Leader BL

Solicitor to the Tribunal:

Hugh Dockry
(2005 to 2008)

Bernadette Crombie
(2002 to November 2005)

Legal Researcher:

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Brendan O'Donnell

Tribunal Investigators:

Michael Finn

Brian Garvie
(2002 to 2003)

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