



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

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)

Solicitor to the Tribunal: Bernadette Crombie, Hugh Dockry

Registrar to the Tribunal: Brendan O'Donnell

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Mr. Justice Frederick Morris

28th March, 2006

Re: Tribunal of Inquiry set up pursuant to the Tribunal of Inquiry (Evidence) Act 1921-2002 into certain Gardai in the Donegal Division.

Dear Minister,

I enclose herewith my Report in respect of Term of Reference (d) which is:-

(d) Circumstances surrounding the arrest and detention of Mark McConnell on the 1st October and Michael Peoples on the 6th May, 1999.

On the 17th January 2006, the Tribunal wrote to Inspector Declan P. Downey at the Garda Liaison Office with a view to ascertaining whether it was reasonably possible or reasonably probable that criminal proceedings might be brought arising out of the circumstances which are the subject matter of these Modules. Chief Superintendent Terry McGinn replied on the 24th March, 2006. I enclose a copy of this correspondence.

You will note that an allegation of perjury has been made against Bernard Conlon by Detective Sergeant John White and the file in relation to this matter is with the D.P.P. and is under consideration.


My Report contains criticisms of Bernard Conlon and in particular is critical of him as a witness.

In the circumstances, it may be that you will consider it appropriate to invoke Section Three of the Tribunal of Inquiry (Evidence) (Amendment) Act 2002.

My Report also contains criticisms of D/Sergeant John White. He, as you are aware, is awaiting trial before the Circuit Court on a charge in connection with the discovery of a firearm at a Travellers Encampment on the 23rd May, 1998. In this case also, it is possible that you may consider it appropriate to invoke the provisions of Section Three.

I am enclosing the correspondence which passed between the Tribunal and Chief Superintendent McGinn.

Yours faithfully,


Frederick Morris.

Michael McDowell, Esq.,
Minister for Justice Equality and Law Reform
Dept. of Justice Equality and Law Reform
94, St. Stephen's Green
Dublin, 2.

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PRIVATE & CONFIDENTIAL

24th March 2006

**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.
Silver Bullet Module - Term of Reference (d)
Ardara Module - Term of Reference (g)
Actual or Potential Criminal Proceedings.**

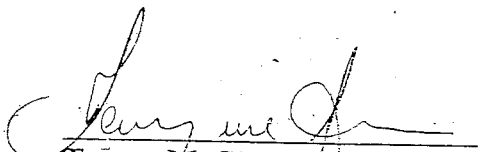
I refer to your correspondence dated the 17th January and 13th February 2006 in respect of the above caption.

The following matter pertaining to the relevant Modules have been investigated, and the current position with the investigation is as set out below:

No.	Investigation	Current Position:
1.	Allegation of Perjury against Bernard Conlon as contained in Statement of John White dated 21 st February 2005.	File with DPP - Under Consideration.

Should there be any developments in the above investigation, I will inform you without delay.

Is mise le meas,


Terry McGinn
Chief Superintendent

MORRIS TRIBUNAL

24 MAR 2006

- Is é Misean An Gharda Síochána

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

Mission Statement

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

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

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



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Sole Member
The Honourable Mr. Justice Frederick Morris

My Ref:

Your Ref:

If telephoning please ask for:-

MT/GDA/MCG010-01/HD/NT

Tuesday, 17th January 2006

PRIVATE AND CONFIDENTIAL
STRICTLY ADDRESSEE ONLY

Inspector Declan P. Downey
Liaison Officer
Garda Liaison Office
c/o Morris Tribunal
Belfield Office Park
Beaver Row
Clonskeagh
Dublin 4

Re: Module: Silver Bullet – Term of Reference (d) – Actual or Potential Criminal Proceedings

Dear Inspector Downey,

We refer to **paragraph (d)** of the **Tribunal's Terms of Reference** which reads as follows:

"[That the Tribunal shall inquire urgently into] The circumstances surrounding the arrest and detention of Mark McConnell on 1st October, 1998 and Michael Peoples on 6th May, 1999".

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

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

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

(a) the Attorney General,

(b) the Director of Public Prosecutions, and

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

(i) is described or mentioned in the report concerned, or

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

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

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

(a) for a specified period, or

(b) until the Court otherwise directs.

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


In the event that the Tribunal is in a position to furnish a report to the Minister within the next couple of weeks, it is important that we should be informed as to the reasonable likelihood of criminal proceedings being brought concerning the subject matters of **paragraph (d)** 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 this module.

In this regard, the Tribunal is already aware that two trials involving Bernard Conlon and Detective Sergeant John White have already concluded in relation to these matters. The Tribunal is anxious to know whether there are any other criminal proceedings contemplated.

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

We await hearing from you in due course.

Yours sincerely,



Hugh Dockry
Solicitor to the Tribunal

**PARAGRAPH (d) 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 (d) of the Terms of Reference requires the
Tribunal to urgently enquire into:

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

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 are exact reproductions.
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 they held at the time of events referred to. In this regard Detective Sergeant John White was appointed to act as a detective on the 7th of August 1997. Prior to this date he was a uniformed sergeant. This is reflected in the text.
6. Recommendations are set out in Chapter 5.

CHAPTER 1 INTRODUCTION

- 1.01. This is the third report of the Tribunal of Inquiry set up by Dáil and Seanad Éireann pursuant to the resolution 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) of the resolution, was published in July of 2004. That report also dealt with related issues of fact which required matters to be investigated within a period extending from 1998 to February of 1999. 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 the Garda investigation will be the subject of a later module of the Inquiry.
- 1.02. It was hoped to commence the arrest and detention module as soon as possible after the conclusion of the second report of the Inquiry but circumstances dictated that this was not possible. In the meantime, it was decided to proceed with other work related to Terms of Reference (d), (g), and (i). This report concerns the Tribunal's inquiry into Term of Reference (d).

Explanation of the Term of Reference

- 1.03. Term of Reference (d) concerns:

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

- 1.04. At a very early stage of the Tribunal's work I set out an explanation of how I intended to address this paragraph as follows:

The information which is available to the Tribunal suggests that there was an arrest and detention of the person named on the dates set out in the Terms of Reference. An arrest is a deprivation of a citizen's liberty. An arrest is justified where there is a suspicion on good faith, against the person proposed to be arrested, that he committed an offence which carries with it, in law, a power of arrest. Following the exercise of a power of arrest the

detention of the person arrested may be sought under the provisions of Section 4 of the Criminal Justice Act, 1984, for the proper investigation of the offence in respect of which the person has been arrested. These principles apply where an arrest is considered in the context of any of the Terms of Reference, with necessary modifications. The Tribunal understands that the complaint here is that the arrests and detentions should not have been made and occurred for reasons other than those permitted by law.

The Tribunal will:

- (i) Establish insofar as possible the facts surrounding these arrests and detentions and the treatment of the two men whilst in custody;
- (ii) Ascertain, insofar as possible the material available to the Garda Síochána when the arrests and detentions were made;
- (iii) Enquire into and establish the reasons for such arrests and detentions and whether such reasons were based on correct legal grounds;
- (iv) Enquire into and establish whether members of An Garda Síochána when making the arrests and detentions acted reasonably or in good faith or on any other sufficient, reasonable suspicion;
- (v) Enquire into whether the two individuals had become the focus of unfounded or unreasonable suspicion and, if so, how and why this occurred;
- (vi) Enquire into whether there was any or any legal justification for seeking to extend or extending the period of detention of either of the parties;
- (vii) Enquire into whether in making these two arrests members of An Garda Síochána proceeded with the arrests only when satisfied that in respect of each arrested person their suspicions were reasonable and/or that they exercised all appropriate care, caution and diligence in deciding to make an arrest with due regard to the presumption of innocence attaching to these two persons and their rights to fairness of procedures;
- (viii) Enquire into the motive for any conduct which may be disclosed;
- (ix) Consider the circumstances in which the Garda Síochána came into possession of the material available to them at the time when the arrests were effected and in this regard consider the use of

informants, if relevant, using the same approach as set out in relation to Term of Reference (b)(3);

- (x) Enquire into and consider the relationship, if any, between the material arising in this Term of Reference and any other Term of Reference.¹

- 1.05. The reference to the consideration of the use of informants which I described in (ix) above meant that the Tribunal intended to enquire into the management of informants in the same manner as was set out in the third part of the explanation of Term of Reference (b), which is fully set out in the second report of the Tribunal.² As it turned out the issue of the handling of informants in the sense indicated did not arise in the consideration of this Term of Reference and no evidence of any significance was adduced relevant to the handling of informants. The purpose of this chapter is to indicate the issues which confronted the Tribunal as its investigations and hearings progressed in respect of this Term of Reference and to indicate the conclusions which I have reached in respect of these issues.
- 1.06. The papers which were presented to the Tribunal included statements from a Mr. Bernard Conlon which contained a number of serious allegations against a serving member of the Donegal Division, namely Detective Sergeant John White.³ If these allegations were true then it meant that Detective Sergeant White, with the cooperation and assistance of a then serving member of the Sligo Division, namely Garda John Nicholson, induced Mr. Conlon, for the promise of reward, to attend at a licensed premises owned by Mr. Frank McBrearty Senior in Raphoe, Co. Donegal and allow himself be found drinking after hours on the premises. The object was to provide Detective Sergeant White with a reliable witness upon whom he could base a prosecution against Mr. McBrearty. The statement went on to describe the way in which Mr. Conlon was to be rewarded for this service, namely by having forged documentation supporting a claim for witness expenses and loss of earnings lodged on Mr. Conlon's behalf, on foot of which he would be paid money to which he was not entitled. He was also to be rewarded with cash payments.
- 1.07. Further allegations of a profoundly serious nature against Detective Sergeant White were contained in Mr. Conlon's statement. If these further allegations were true it meant that while the prosecution against Mr. McBrearty was at hearing before the District Court and before Mr. Conlon gave evidence, he, Mr. Conlon, was induced by Detective Sergeant White to make false allegations against two members of the extended McBrearty family to the effect that he was threatened

¹ Opening Statement of the Tribunal 15th July 2002.

² Second Report of the Morris Tribunal, paragraph 1.104, page 40.

³ Readers should note that Detective Sergeant John White served as a uniformed sergeant in Raphoe until appointed a detective sergeant to Letterkenny on the 7th of August 1997 and references to him, and to other Gardaí, are to their rank at the time of the reported events.

by them that if he gave evidence against Mr. McBrearty he would be shot. The two persons who he alleged issued these threats were Mr. Mark McConnell and Mr. Michael Peoples. These allegations were entirely false but Mr. Conlon alleged that he made them at the behest of Detective Sergeant White and in expectation of further reward. Moreover he alleged that, again at Detective Sergeant White's request, he went through a procedure of identifying these two gentlemen in identification parades to strengthen the case against them.

- 1.08. A major difficulty with which the Tribunal was confronted in considering Mr. Conlon's evidence was that not only did Detective Sergeant White vigorously deny all of these allegations, but the Tribunal recognised at an early stage that Bernard Conlon was a completely unreliable witness whose evidence should only be approached with the utmost caution. He was a man with a long criminal record. He was of limited intellect and accepted that he had committed perjury in the past. The manner in which the Tribunal dealt with Mr. Conlon's evidence is dealt with in the report.
- 1.09. A further difficulty which confronted the Tribunal was the manner in which Detective Sergeant White addressed these allegations. One of the features of his reply was to charge each witness whose evidence was unfavourable to Detective Sergeant White with a claim that he was party to a conspiracy against the Detective Sergeant to discredit him. Detective Sergeant White made numerous charges of corruption and conspiracy against a variety of witnesses. He claimed that the conspiracy had its origin in the senior officers of An Garda Síochána and he claimed that the more junior officers gave perjured evidence in support of their senior officers and of the conspiracy. He pointed to what he alleged were unsatisfactory investigations carried out by a number of officers as evidence of the fact that this conspiracy existed. The numerous allegations of conspiracy advanced by Detective Sergeant White occupied many hours of the Tribunal's time.

The Main Issues

- 1.10. The main issues that emerged in this module derived largely, therefore, from the relationship between Bernard Conlon of 61 Cartron Bay, Sligo, Garda John Nicholson of Sligo Station, and Detective Sergeant John White over a period from the 20th of July 1997 until shortly after Mr. Conlon's arrest on the 28th of February 2000. This association was interwoven with attempts by members of An Garda Síochána in Donegal to establish a case against Mr. Frank McBrearty Senior and members of his staff in respect of alleged breaches of the Liquor Licensing Acts at his licensed premises in Raphoe, Co. Donegal. Mr. Conlon became a witness in one of these cases arising out of his attendance at the premises on the

30th/31st of August 1997. He was then summonsed as a witness and, having attended the District Court on a number of occasions, he claimed that he had been threatened on the 20th of July 1998 by two men with a silver bullet in relation to his appearance as a witness. He gave evidence on the 11th of December 1998 at Letterkenny District Court in respect of this matter. Then, in April of 1999, he alleged that he had been offered a bribe to withdraw the evidence which he had given in the District Court by a Mr. William Flynn, private investigator, acting on behalf of Mr. Frank McBrearty Senior, and alleged that a letter written by Mr. Flynn to him at his address dated the 21st of April 1999 was part of this attempt to bribe him. Members of the Garda Síochána in Sligo investigated Mr. Conlon's allegations. Mr. Mark McConnell and Mr. Michael Peoples were arrested in the course of this investigation and detained because they were identified by Mr. Conlon as the two men who had threatened him on the 20th of July 1998. Mr. Conlon later withdrew the allegations against Mr. McConnell and Mr. Peoples. He said that statements in respect of the incident were false as also were his allegations of bribery against Mr. Flynn. He said he had been put up to making these allegations by Detective Sergeant John White. Four matters, broadly speaking, had to be addressed in the course of this module.

(i) Bernard Conlon's Attendance at Frankie's Nightclub on the 20th of July 1997 and the 30th/31st of August 1997

- 1.11. It has been established that the first time Bernard Conlon met Sergeant John White was on the 20th of July 1997 outside Frankie's nightclub, Raphoe. Mr. Conlon complained to Sergeant White about not receiving a meal to which he claimed to be entitled whilst attending Frankie's nightclub that night. It is alleged that subsequent to this meeting Mr. Conlon received a message from Sergeant White to meet him in Raphoe on Saturday night, the 30th of July 1997. This message was supposedly passed on to him by Garda John Nicholson, with whom both Mr. Conlon and Sergeant White were by that time acquainted. The purpose of this escapade was, allegedly, that Mr. Conlon would allow himself to be used as a police agent in the course of Garda attempts to establish breaches of the liquor licensing laws at Frankie's nightclub by Mr. Frank McBrearty Senior and his staff. He was to attend Frankie's nightclub as a customer and later in the evening he was to remain on the premises and purchase as many pints as he could so that when members of An Garda Síochána entered the premises he would be 'found on' the premises after hours. He would then be in a position to make a statement, and ultimately give evidence, of after hours service to and consumption by him of alcohol on the premises. It is known that he attended the premises on the 30th of August 1997. In the early hours of the 31st of August his name was taken when two Gardaí, Barrett and Keavney, entered and inspected the premises pursuant to the Liquor Licensing Acts.

- 1.12. Subsequently, on the 8th of September 1997 Bernard Conlon made a statement to Garda John Nicholson and a student Garda at Sligo Station, which was forwarded to Raphoe Station. This formed part of a prosecution brought against Frank McBrearty Senior and members of his staff in the District Court at Letterkenny and led to his being summonsed to appear at Letterkenny District Court as a witness in that prosecution in March of 1998. Mr. Conlon attended at a number of sittings at the District Court in 1998 and 1999 in respect of this and a related public order prosecution involving Mark McConnell. Arising out of his attendance as a witness Mr. Conlon was paid expenses in excess of that to which he was entitled. These sums were obtained by means of false claims submitted on his behalf for witness expenses. Forged invoices in respect of loss of earnings were submitted by Garda John Nicholson to Detective Sergeant John White on five occasions and to Sergeant Sarah Hargadon on one occasion. A further forged certificate of loss of earnings was submitted to Detective Sergeant Connolly which formed part of a claim for expenses for Bernard Conlon in respect of his attendance at Letterkenny District Court on an occasion when he falsely identified Mark McConnell.
- 1.13. The issue in this aspect of the module is whether Bernard Conlon was acting for or on behalf of Garda Nicholson and/or Detective Sergeant White in making himself available as a police agent and witness against the McBreartys and whether he was paid to do so by means of inflated expenses and/or by direct cash payments paid to him by Detective Sergeant White. He denies all allegations of wrongdoing against him.

(ii) The Silver Bullet Issue

- 1.14. The second most important issue that emerged in this module relates to the allegation made by Mr. Bernard Conlon that on the 20th of July 1998 two men, whom he later identified as Mark McConnell and Michael Peoples, attended at his residence at 61 Cartron Bay, Sligo at approximately 23.45 hours. One of the men (later identified as Mark McConnell) supposedly said to him, "Are you informer Conlon? I seen you in the court in Letterkenny on a few occasions, you were a State witness against Frank McBrearty Senior". Mr. Conlon said that he was frightened and recounted how the same man "took a silver coloured bullet from his jacket pocket and held it up to me and said there is one for you and one for White and that White had a trailer missing and he will be missing too." Mr. Conlon said that he had no doubt that this was all connected to the prosecution in which he was to appear as a witness, which had been initiated against Frank McBrearty Senior and a number of his employees, before Letterkenny District Court and which arose directly out of the events of the 30th and 31st of August

1997. Mr. Conlon later admitted that all of these allegations against Mark McConnell and Michael Peoples were false. He alleged that he had been put up to making these allegations by Detective Sergeant John White, who vehemently denied this. Mr. McConnell and Mr. Peoples were arrested on the basis of these lies, which were investigated by members of An Garda Síochána based in Sligo under the direction of Detective Sergeant Gerard Connolly. The Tribunal examined how that investigation was conducted and whether all due diligence and reasonableness was exercised by these Gardaí, particularly in effecting the arrests of Mr. McConnell and Mr. Peoples. In addition, the relationship between members of An Garda Síochána based in Sligo (and, in particular, Garda John Nicholson) and members of the Donegal division (in particular, Detective Sergeant John White and Superintendent Kevin Lennon) and their relationship with Bernard Conlon were examined. This necessarily involved emphasis on the allegation by Bernard Conlon that Detective Sergeant John White put him up to making these allegations. It also necessitated an examination of the extent (if any) to which the relationship between the McBreartys and their extended family and members of An Garda Síochána in the Donegal division in any way coloured or influenced the course of the Sligo investigation.

(iii) The Letter of the 21st of April 1999 and the Allegation of Attempted Bribery

- 1.15. The third main issue that emerged in this module relates to the receipt of a letter by Mr. Bernard Conlon dated the 21st of April 1999 from Mr. William Flynn, a private investigator. This letter on its face purports to offer an opportunity of financial award to Mr. Conlon by Mr. Flynn if he gave him assistance in relation to the investigation of a matter in County Meath which appears to be totally unrelated to any of the issues before the Tribunal. The supposed second page of this letter read:

As I would like if you would agree to that which was discussed down town about White and O'Dowd. If you agree, I will ring Frank McBertie and will arrange for you to get the money.

Thanking you,
Bernard.

- 1.16. Mr. Conlon alleged that the original of this letter contained only the first page. On receipt of the letter he alleged that he contacted Detective Sergeant White. Detective Sergeant White stated that when he was contacted by Bernard Conlon he advised him to contact Sligo Garda Station. Mr. Conlon alleged that Detective Sergeant White visited him, took the letter away for a period of hours, returned and gave him an envelope. He alleged that Detective Sergeant White told him to

make a complaint to Garda Nicholson, to the effect that days prior to the receipt by him of this letter, Mr. William Flynn had attended at his home, and offered him a bribe to withdraw the statement which he had given in the liquor licensing prosecution against Frank McBrearty Senior and his employees. This clearly involved resiling from the evidence that he had given to the District Court on the 11th of December 1998. He alleged that Detective Sergeant White wanted to frame Mr. Flynn in relation to this matter because of an unpleasant phone call made by Mr. Flynn to his wife at his family residence. His original allegation was also that Detective Sergeant White was responsible for the production of the second sheet of paper attached to the letter and quoted above. Bernard Conlon later withdrew the allegation of bribery against Mr. Flynn and alleged that he had been put up to the whole enterprise by Detective Sergeant White. The Tribunal was obliged to investigate the events surrounding this letter and also the limited extent of the investigation of this matter carried out by members of An Garda Síochána in Sligo. A statement was taken from Mr. Conlon but nothing else seems to have been done. The Tribunal had to enquire why this was so since these events occurred shortly before the arrest of Michael Peoples on the 6th of May 1999, and might have warranted more rigorous attention insofar as Mr. Conlon was again alleging an attempt to interfere with him as a witness in the District Court prosecution in Letterkenny emanating from Mr. Flynn, who was employed by Mr. Frank McBrearty Senior. The main issue here was to determine what if any involvement Detective Sergeant White had in the making of the allegation of bribery by Bernard Conlon against William Flynn.

(iv) The Arrest and Detention of Mark McConnell and Michael Peoples

- 1.17. The fourth main issue concerns the arrest and detention of Mark McConnell on the 1st of October 1998 and Michael Peoples on the 6th of May 1999. The reasons advanced for these arrests were scrutinised in the context of the events relevant to the other three issues and are closely related to each of them.
- 1.18. In considering these issues there were a great number of conflicts of evidence presented to the Tribunal in the course of its hearings, which I have addressed. Unhappily many lies were told to the Tribunal by the three main participants, namely Mr. Bernard Conlon, Mr. John Nicholson and Detective Sergeant John White, and by others. This has had the effect of extending the length of these hearings whilst I tried to unravel the various conflicting stories that were told concerning these events.

Background Circumstances

- 1.19. The circumstances surrounding the arrest and detention of Mark McConnell on the 1st of October 1998, and that of Michael Peoples on the 6th of May 1999,

are rooted in the numerous encounters between members of An Garda Síochána and members of the extended McBrearty and McConnell families which followed the death of the Late Mr. Richard Barron of Raphoe on the 14th of October 1996. From December 1996, and during 1997, the Garda Síochána attended at Frank McBrearty Senior's licensed premises in Raphoe, known as Frankie's nightclub. It is contended by the Gardaí involved that these visits were carried out in good faith for the purpose of ensuring that the provisions of the liquor licensing legislation concerning the opening hours of the premises were observed and for the purpose of preserving and maintaining public order in Raphoe. It was contended that Garda activity in and around the McBrearty premises arose out of serious public order difficulties that were perceived by the Garda Síochána to exist in Raphoe and to be directly related to large numbers attending Mr. McBrearty Senior's premises, particularly at the weekend.

- 1.20. Readers of the Tribunal's second report will be aware that Mr. Frank McBrearty Junior and Mr. Mark McConnell had become the main suspects in the murder inquiry carried out by the Garda Síochána into the death of the Late Mr. Barron. In the course of this investigation, Mr. Frank McBrearty Senior continued to run his licensed premises, as he was entitled to do. He came to view the visits by the Gardaí to his premises as excessive in number. He also considered that the presence of Gardaí manning checkpoints close to his premises and operating near his premises constituted an attempt to intimidate and/or harass him and his relations and employees, and to frustrate him in the operation of his business. He and other members of his family felt that they were being victimised and unjustly singled out for special treatment by An Garda Síochána over an extended period. Arising out of these visits and other alleged encounters with An Garda Síochána, a large number of summonses were issued against members of the McBrearty extended family and their employees alleging breaches of the liquor licensing laws and offences against public order. Mr. McBrearty Senior regarded this as the continuation of intimidation and harassment directed at him, his family, his employees and his business. This resulted in the initiation of High Court proceedings in or about April of 1997, which continued in their interlocutory phase until July of 1997. Mr. McBrearty Senior was and remains of the view that this intimidation and harassment was linked to the Garda view that Frank McBrearty Junior and Mark McConnell and others of the extended McBrearty and McConnell family were involved in, or had information in relation to, the alleged murder of the Late Mr. Barron and their frustration at their inability to advance their investigation in that direction.
- 1.21. The Tribunal is not concerned at this stage to determine the truth or otherwise of the various allegations and counter-allegations made in respect of the operation

of Mr. McBrearty Senior's premises or in respect of the behaviour of the Garda Síochána towards Mr. Frank McBrearty Senior, his family, his employees or his business (including the issuing of the various summonses). These matters will be considered when the Tribunal hears evidence in the course of a separate module concerning Term of Reference (c), which concerns:

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

- 1.22. However, it is necessary to refer to these events because what happened to Mr. McConnell and Mr. Peoples developed against the background of a growing mutual distrust and antagonism at various levels between the McBrearty extended family, friends and employees and An Garda Síochána. As the various summonses which were issued by An Garda Síochána against members of the extended McBrearty family and their employees came before the District Court, it became a battleground between both parties. Relationships were not helped by the extended period over which these cases were maintained before the District Court, from the 9th of March 1998 until December 2000. A hard fought battle was waged between the prosecution and the accused persons which encompassed these allegations of intimidation and harassment and further allegations of abuse of process made against the Garda Síochána by the accused.
- 1.23. It will be recalled that Mark McConnell and Michael Peoples had both been arrested on the 4th of December, 1996, on suspicion of the murder of the Late Mr. Barron. How this came to pass has already been chronicled in the second report of the Tribunal. Mr. Frank McBrearty Junior had been falsely implicated in the death of the Late Mr. Barron by Robert Noel McBride, a petty criminal, who was a person of limited intellectual ability capable of being pressurised quite easily. It was his false statement made specifically against Mr. Frank McBrearty Junior and Mr. Mark McConnell which led to both of their arrests. Mr. Michael Peoples was also the subject of disgraceful Garda conduct in the attempt which was made to extort money from him by a Garda informant through telephone calls, one of which was made from a Garda's home. The attempts to advance the investigation against Frank McBrearty Junior, Mark McConnell, Michael Peoples and others of the extended McBrearty and McConnell families continued until in or about August/September of 1997 when the McBride story began to unravel.
- 1.24. Astonishingly, into this maelstrom of events came Mr. Bernard Conlon. Like Robert Noel McBride, Mr. Conlon was a petty criminal of low intellectual ability.

Like Mr. McBride, Mr. Conlon made serious allegations against Mark McConnell and Michael Peoples, which he subsequently withdrew and admitted were false. Mr. Conlon also alleged that he was put up to making false allegations against Mark McConnell and Michael Peoples by a member of An Garda Síochána, Detective Sergeant John White, and that Detective Sergeant White also put him up to falsely identifying both. As a result of these false identifications, Mark McConnell and Michael Peoples were arrested by members of An Garda Síochána under Section 30 of the Offences Against the State Act, 1939. The unchallenged fact is that Mr. Conlon's false statement and false identifications led to these arrests. It is an extraordinary coincidence that Mr. McConnell, who had already been arrested twice, and Mr. Peoples, who had already been arrested once before in relation to the death of the Late Mr. Barron, should now, by a process which appears to be uncannily similar to that which led to the initial arrests, be arrested for a serious criminal offence on the word of Bernard Conlon. What is more disturbing is that an allegation should be made that a member of An Garda Síochána instigated his lying accusations against the two men using Mr. Conlon as his vehicle. It may be argued that these events are more than coincidental and that they are indicative of a persistent, calculated, and malicious campaign by members of An Garda Síochána to discredit, undermine, and/or frame Mr. McConnell and/or Mr. Peoples and/or other members of the McBrearty extended family, friends or employees, and that these events are but part of that process. Whilst members of the McBrearty family might be excused for thinking this is the case, the Tribunal could not proceed on that basis. On the contrary, bearing in mind the character of Mr. Bernard Conlon, it has examined the evidence presented to it with a view to ascertaining, as a matter of probability, what the likely course of events was in this matter. Nevertheless, it was necessary to consider the possibility that these events were indeed part of a campaign to discredit, undermine or frame the two men by members of An Garda Síochána.

Bernard Conlon

- 1.25. Bernard Conlon, who is now resident in Sligo, was born on the 14th of April 1956. He was educated at a special school and is regarded as being of low intelligence. Between 1981 and 1994 he incurred a number of convictions for offences of dishonesty including burglary, forgery, uttering forged documents, larceny, cattle maiming, indecency and malicious damage. These are set out in Appendix 1 to this report. Evidence was heard by the Tribunal from a number of victims of these crimes. From this, it became clear that Mr. Conlon had the capacity and disposition to deceive honest people for the purpose of committing crime. In at least one case, he impersonated a Garda. In another, he posed convincingly as a Department of Social Welfare official. In another, he gained

employment as a farm labourer and the confidence of his employer. He then quite maliciously maimed his cattle. When charged with these offences he pleaded guilty. In the case of the cattle maiming, he sought to explain his wrongdoing by alleging that the farmer had treated him in a mean manner by, amongst other things, not paying the wages to which he claimed to be entitled. This was a lie. On the other hand it can be observed that he demonstrated naive characteristics by using his real name or by leaving a trail which would very likely lead the Gardaí to him. He served numerous sentences of imprisonment including one of four years in respect of the robbery of an elderly person. In or about 1990 he moved to Sligo. He was convicted of larceny from the hostel in which he was working on the 3rd of October 1992.

- 1.26. Bernard Conlon is the central character in the events surrounding this module. The main allegations which he made were against Detective Sergeant White. He made false allegations against Mr. Mark McConnell and Mr. Michael Peoples to the effect that they had called to his home at 61 Cartron Bay, Sligo on the 20th of July 1998 and threatened him in relation to his appearance as a witness against Mr. Frank McBrearty in a liquor licensing prosecution then pending in the District Court. He alleged that in the course of this encounter they produced a silver bullet and also made threats to him and directed at Detective Sergeant White. He gave evidence in relation to these threats in the District Court at Letterkenny. In doing so he committed perjury. He was prosecuted and found guilty on indictment in the Circuit Criminal Court at Sligo on the 5th day of June 2002 in respect of three counts of making false statements to members of An Garda Síochána concerning the silver bullet threat. He was sentenced to a suspended term of three years imprisonment.⁴

The Approach to Bernard Conlon's Evidence

- 1.27. I am fully cognisant of the fact that Mr. Bernard Conlon has many previous convictions and might seek to cast the blame on others in order to minimise his own involvement in any wrongdoing. He has told lies on oath to this Tribunal, to the District Court and to the Circuit Court, in respect of matters relevant to this Inquiry. In some respects, his evidence must also be treated as that of an accomplice in that he alleges that in consort with Detective Sergeant White he conspired to make false allegations by means of false statements to An Garda Síochána against Mr. Mark McConnell and Mr. Michael Peoples. Similarly, he alleges that he conspired with Detective Sergeant White to make allegations by means of false statements to members of An Garda Síochána implicating William Flynn in the attempt to bribe Mr. Conlon; in this he must also be regarded as acting as an accomplice. I am fully aware of the dangers of relying upon the

⁴ Tribunal Documents, pages 1508-1511.

uncorroborated evidence of an accomplice and I am also mindful of Mr. Conlon's previous history of dishonesty and deceit. I am also aware of his learning difficulties, low level of intelligence, and his virtual inability to read and write. Indeed, he has shown a certain naivety when committing some offences, for example, by using his own name thereby facilitating detection. At a criminal trial it is normal to give a warning to the jury about acting on the uncorroborated evidence of an accomplice. Corroboration is evidence which shows or tends to show that the crime has been committed and that the accused committed it.

- 1.28. It is clear from a psychiatric and a psychological report obtained by the Tribunal on Bernard Conlon that he has a history of intellectual disability and special education. He is illiterate and innumerate. Nevertheless, his verbal and social skills were deemed sufficient for him to live independently and manage his budget. He has a history of offending on his own and whilst in the company of others. He is susceptible to influence by others. In particular, there are a number of areas of psychological vulnerability, which the Tribunal has to bear in mind in assessing the evidence of Mr. Conlon. Suggestibility, apparently, is a tendency to answer questions with information that has been suggested by the interviewer which is often related to poor memory and limited intelligence. However, suggestible people can be reliable when asked about events they have witnessed and are certain about. It is, however, a particular source of unreliability when a suggestible individual is confronted with uncertainty and expectations when interrogated. This can occur where the interviewer uses leading questions. The person comes to believe the scenario that is being put to them, especially if put by a person in authority. This has to be borne in mind when considering Mr. Conlon's interviews with members of the Carty team or when questioned as a witness. Secondly, a person may have a tendency to be compliant, that is, to go along with propositions, requests or instructions for some immediate gain. The person is eager to please and eager to protect his own self-esteem when in the company of others by avoiding conflict and confrontation with those in authority. This may be relevant to Mr. Conlon's account of his interaction with Detective Sergeant White. Additionally, Mr. Conlon was held to have a high test score for confabulation, which is a tendency to replace gaps in his memory with improvised or distorted stories. There is also a danger that Mr. Conlon's verbal abilities are likely to be misinterpreted by others as an indication that he is of a higher level of intellectual functioning than is actually the case. He actually fell within the "extremely low" range of intellectual functioning. These assessments of Mr. Conlon's psychiatric and psychological state are of assistance to the Tribunal but at the same time make more difficult the task of unravelling the truth in relation to his allegations. Neither report aspires to or pretends to determine whether in fact Mr. Conlon is telling the truth. That is a matter for the Tribunal.⁵

⁵ Tribunal Documents, pages 2867-2887 (Report of Dr. John S. Ferguson, Senior Clinical Forensic Psychologist) and pages 2891-2904 (Report of Dr. Harry Kennedy, Consultant Forensic Psychiatrist).

1.29. For the above reasons, I approach the evidence of Mr. Bernard Conlon with the utmost caution. It has been submitted to me that Mr. Conlon has made numerous allegations and statements which have been contradicted in evidence. Indeed, it is clear that many of his claims are demonstrably untrue. He made numerous statements which were sometimes mutually contradictory. There were numerous inconsistencies in respect of discrete points of fact which emerged when his evidence was compared with some of his statements. He failed to confirm a number of matters set out in his statements when giving evidence to the Tribunal. Experience tells me that persons who are for the most part truthful can on occasion tell lies. Similarly, persons who have in the past committed offences of dishonesty or have for the most part been untruthful are capable of telling the truth. This explains why there have been cases in which the prosecution has successfully relied upon the evidence of accomplices or witnesses who have in their past been untruthful. Such evidence has been accepted by triers of fact who, having analysed the facts, were nevertheless happy to rely upon the truthfulness of the testimony given. The Tribunal has heard evidence over fifty-four days of hearings. It has decided all facts only when satisfied of their occurrence on the balance of probabilities. In doing so it has exercised the utmost caution in relation to the testimony of Bernard Conlon and has been mindful of all the criticisms to which it is open. It has considered his testimony in the light of all other evidence adduced and all submissions made in relation to it.

How the Affair Unfolded

1.30. The central event which resulted in the arrests of Mark McConnell and Michael Peoples on the 1st of October 1998 and the 6th of May 1999 respectively, arose from a complaint made by Bernard Conlon, who then resided at 61 Cartron Bay, Sligo. He alleged that on the 20th of July 1998 two men had attended at his home and, when he opened the door, addressed him as “informer Conlon” and showed him a silver bullet. One of the men said words to the effect that “there is one for you and one for White” and “White has a trailer missing and he will be missing too”. This man had possession of the silver bullet. Mr. Conlon also alleged that before he left the same man warned him that if he turned up in court to give evidence in a prosecution under the Liquor Licensing Act against the McBreartys in Letterkenny District Court he would get the contents of this man’s pocket – meaning bullets. This man was accompanied by another and Mr. Conlon later gave vivid descriptions of these events and the men involved. When Mr. Tony Doyle, who then resided with Mr. Conlon, returned to the house later in the evening he was requested to telephone Sligo Garda Station on behalf of Mr. Conlon to make a complaint about this occurrence. He was told to ask for Garda John Nicholson. As a result of this call, Detective Sergeant Gerard Connolly and

Detective Garda Michael Reynolds came to Mr. Conlon's home and commenced an investigation. On the following day, the 21st of July 1998, Bernard Conlon made a detailed statement to them. Subsequently, he identified Mr. Mark McConnell on the 1st of October 1998 at Letterkenny District Court as the person who threatened him and produced the bullet. This led immediately to Mr. McConnell's arrest and detention. On the 8th of December 1998 at the District Court in Letterkenny, Mr. Conlon identified Mr. Michael Peoples as the man who accompanied Mr. McConnell on the 20th of July 1998 to a Garda Thomas Ward. On the basis of this identification Mr. Peoples was arrested on the 6th of May 1999. Eventually Mr. Conlon admitted in various statements that his complaints were false and, he claimed, had been made at the instigation of Detective Sergeant John White.

- 1.31. In order to fully understand the extensive deceit which was created and maintained in respect of Mr. McConnell and Mr. Peoples it is necessary to understand how Mr. Conlon came to be involved in events in Raphoe and how he first came into contact with members of An Garda Síochána working there.
- 1.32. Bernard Conlon was an habitu  of Frankie's nightclub. He enjoyed Country & Western music and attended the venue on apparently nine occasions prior to the 30th of August 1997 with a group of friends which included Catherine McGovern, Anthony Kearns and occasionally Tony Doyle. On one such occasion, Saturday, the 20th of July 1997, Mr. Conlon complained to a member of the staff of Frankie's nightclub about the failure to serve a meal to him whilst he was on the premises. He was directed to the chip shop across the road and told that he could return to the nightclub if he wished, later on. At the end of the night, he approached Sergeant John White outside the premises. He made a complaint to Sergeant White that no meals had been served in the nightclub. It is accepted by both men that this is the first occasion upon which they encountered each other. Mr. Conlon alleged that in the course of conversation with Sergeant White he informed him that he knew Garda John Nicholson of Sligo Station and that Sergeant White in turn informed him that he was a close friend of John Nicholson's and knew him pretty well. Mr. Conlon also alleged that Sergeant White enquired of him whether he had heard anything about "a murder" in the pubs and whether there had been any talk about it. This was a reference to the death of the Late Mr. Richard Barron.
- 1.33. Detective Sergeant White, for his part, stated that he entered Mr. Conlon's name and address in his notebook. Bernard Conlon informed him that he thought he was entitled to a meal having paid his entrance fee. He alleged that Mr. Conlon was insistent that he speak to the management of the nightclub about his

complaint and requested that he take a written statement from him concerning his complaint. Sergeant White suggested that he should make his complaint in Sligo Station if he wished. He told him that he did not believe the management of the nightclub had breached the law. Sergeant White entered the nightclub some minutes later and states that he discussed the complaint with Mr. Andy McBrearty. He did not expect to hear from Mr. Conlon again. He said, "I was not aware at the termination of this brief encounter with Mr. Conlon that he knew Garda Nicholson or vice versa." He said he did not meet Mr. Conlon again until the 9th of March 1998 at the District Court in Letterkenny.

Garda John Nicholson

1.34. John Nicholson was born in Boyle, County Roscommon and joined An Garda Síochána on the 29th of March 1967. On completion of his training as a member he was assigned to Stepside Garda Station in the Dublin Metropolitan Region. On the 27th of November 1970 he was transferred to Rooskey Garda Station where he remained until the 31st of August 1972. On that date he was transferred to Sligo Garda Station where he served until 2002. Mr. Nicholson, during the course of his career, was highly regarded in his community, which he served as a member of An Garda Síochána and as a private citizen. The Tribunal was made aware of numerous testimonials in support of his character and good works within the community when residing in Sligo. Arising out of bogus loss of earning certificates which were attached to claims for witness expenses and payments made on foot thereof to Bernard Conlon, Garda Nicholson was charged on the 26th of July 2002 and pleaded guilty to three counts of uttering forged documents contrary to Section 6 of the Forgery Act, 1913 at Riverstown District Court, Sligo. He was dealt with by Judge Anderson under Section 1(1)(i) of the Probation of Offenders Act, 1907. The Judge found the facts had been proved but did not record a conviction against Garda Nicholson. He was obliged to pay £600 compensation. Garda Nicholson applied for retirement, which took effect from the 4th of September 2002.

1.35. Two other important factors are relevant concerning Mr. Nicholson. The first is that he was the member of An Garda Síochána who arrested Mark McConnell for the second time on the 25th of June 1997 on foot of a District Court warrant, on suspicion of the murder of the Late Richard Barron. Importantly, he told the Tribunal that he met Sergeant John White for the first time when he attended at Raphoe Station with his colleagues from Sligo in order to carry out their duties in respect of that arrest. Sergeant White then told him something of the ongoing saga of the troubles which the Gardaí in Raphoe were having with the McBreartys, including an account of an apparently unpleasant phone call which

had been made to Sergeant White's wife by a private investigator, Mr. William Flynn. Mr. Flynn had been retained by the McBreartys to investigate the death of the Late Mr. Richard Barron. The second is that Garda Nicholson knew Bernard Conlon and had met him and was aware of his character and reputation from his police and social work in Sligo.

Detective Sergeant John White

1.36. Detective Sergeant John White was attested to the force in September 1974 and was appointed to Ballybofey Garda Station in January 1975. He was then transferred to Castlefinn Garda Station in April 1978 where he remained until April 1979. In April 1979, 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. Shortly after his marriage in 1983 he applied for a transfer, which was granted, to the Divisional Crime Unit at Harcourt Square, Dublin where he remained until April 1984. He 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, County Donegal as a uniformed Garda. Upon promotion to sergeant he was transferred to Carrick Garda Station, Donegal in March 1995. He operated as a uniformed sergeant in that area. On the 3rd of December 1996, he became involved in the Barron investigation. On the 10th of January 1997, he was transferred to Raphoe Garda Station as a uniformed sergeant where he was involved (inter alia) in the enforcement of the liquor licensing legislation in the town. On the 7th of August 1997, he was allocated to detective duties in Letterkenny. On the 21st of March 2000, Detective Sergeant White was arrested and detained by members of the Carty investigation team. He was suspended from duties from 19.15 hours on the 21st of March 2000 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. Detective Sergeant White was subsequently suspended from duty on the 19th of June 2001. Detective Sergeant White was prosecuted and acquitted of six counts, three of making false statements to members of An Garda Síochána and three of attempting to pervert the course of justice by inducing Bernard Conlon to make false statements, on the 18th day of January 2005. He denied all allegations of wrongdoing before the Tribunal.

Contact Between Garda Nicholson and Detective Sergeant White Concerning Bernard Conlon

1.37. Following the encounter between Bernard Conlon and Sergeant White on the 20th of July 1997, there was contact between Sergeant White and Garda John Nicholson. Though this is agreed by both men, the nature and timing of this contact and the reason for it are in dispute between them. In particular, they disagree as to the extent to which Bernard Conlon was referred to in the course of this contact. Bernard Conlon alleges that he was contacted by Garda John Nicholson on the 30th of August 1997 and given a message from Detective Sergeant John White that he should be in Frankie's nightclub in Raphoe that evening. He was to be on the premises after hours, and have as many pints in front of him as possible, so that when Gardaí entered the premises he would be clearly seen to have drink in front of him at a time when it plainly should not have been served to him. Garda Nicholson accepts that on the 29th of August 1997 he received a call from Detective Sergeant White who requested that he pass on a message to Mr. Conlon to meet him in Raphoe later that evening. He thought this matter was "crime related". Detective Sergeant White denies that he ever made such a call to Garda Nicholson or asked that any message be delivered to Bernard Conlon. However, he accepted in a statement made to the Tribunal and in evidence that he had a conversation with Garda John Nicholson some time between the 9th of August and the 30th of August 1997 in which a passing reference was made to Bernard Conlon. He states that Garda Nicholson told him that Bernard Conlon was a man who would tell the truth if he were 'found on' the premises after hours by members of An Garda Síochána in Frankie's nightclub. **I am satisfied that Bernard Conlon was requested by Garda John Nicholson at the behest of Detective Sergeant White to attend Raphoe on the evening of the 30th of August 1997 in order to be 'found on' in Frankie's nightclub with a number of drinks of alcohol in front of him after hours with a view to using his presence there to prosecute Frank McBrearty Senior and members of his staff for breaches of the liquor licensing laws. I reject the evidence of Detective Sergeant White in this regard. In addition, though I accept the evidence of Garda Nicholson that he received a phone call from Detective Sergeant White in which he was asked to pass on a message to Bernard Conlon, I do not accept the proposition that he did not understand the purpose of this meeting or the use to which Bernard Conlon was to be put in Frankie's nightclub. He was to be used effectively as an agent of the Garda Síochána in their continuing investigations and attempts to obtain evidence to prosecute Frank McBrearty Senior and his staff for breaches of the licensing laws. Bernard Conlon, by reason of his grievance as expressed on the 20th of**

July 1997 to Sergeant White, his relatively low intellectual functioning level, his known capacity for mischief and crime, his desire for money and his disposition towards the McBreartys, whom he thought were ripping him off by not furnishing him with a meal, was an amenable and willing candidate to carry out Sergeant White's wishes on the evening of the 30th/31st of August 1997.

- 1.38. Garda Nicholson was also an enthusiastic supporter of anything that would assist the Gardaí in Donegal to pursue the McBreartys or those who were believed to be implicated in any way in the death of the Late Mr. Barron. I have no doubt that it was his experience at the time of the arrest of Mark McConnell on the 25th of June 1997 and what he was told by Sergeant White about the McBreartys and the alleged trouble that the Gardaí in Raphoe had in dealing with them, together with the robust way in which the McBreartys fought back against the Garda operations by defending the District Court prosecutions and initiating civil proceedings, that convinced Garda Nicholson that he should assist Sergeant White and his colleagues in Donegal in whatever way he could.

The 30th/31st of August 1997

- 1.39. Bernard Conlon went to Raphoe on the evening of the 30th of August with a number of friends. They went to Frankie's nightclub, where they enjoyed the entertainment provided and remained until the early hours of the morning. Bernard Conlon, in accordance with the message which had been conveyed to him from Sergeant White through Garda Nicholson, intended to remain on the premises with drinks in his possession so that he would be 'found on' the premises after hours by Gardaí carrying out an inspection. Gardaí Shaun Barrett and Noel Keavney entered the premises at approximately 02.55 hours having been prompted to do so by Garda John O'Dowd. They found Bernard Conlon ostentatiously straddling the bar with a number of drinks in front of him. He was making every effort to attract their attention by his attitude and pose. Detective Sergeant White was not present in Raphoe at this stage. He was by then operating as a Detective Sergeant out of Letterkenny. However, he had a continuing and intense interest in securing convictions against Frank McBrearty Senior and members of his staff in relation to breaches of the Liquor Licensing Acts. In this instance, he was using Bernard Conlon as an agent with a promise that he would be looked after. Bernard Conlon understood this to mean that he would be looked after in the form of financial gain and so it proved to be.
- 1.40. **As part of this arrangement Bernard Conlon was directed by Detective Sergeant John White to make a statement to Garda John Nicholson at**

Sligo Station, which he did on the 8th of September 1997. The statement was to be used as part of a prosecution against Frank McBrearty Senior, Eamonn McConnell and Andy McBrearty in respect of charges arising out of his description of the events of the night of the 30th/31st of August 1997 and the inspection of Frankie's nightclub by the two Gardaí. He attended Sligo Garda Station by arrangement and the statement was then sent on to Raphoe Station where it became part of a prosecution file. Summonses were issued against three men: Frank McBrearty Senior, Eamon McConnell and Andy McBrearty. Bernard Conlon was summonsed as a witness to Letterkenny District Court to give evidence against them.

- 1.41. Bernard Conlon was greedy for money. He had little income and he was working casually for a Mr. Bernard Maguire. I am satisfied he was rewarded in kind by way of free rent by Mr. Maguire. He was in receipt of welfare payments and rent allowance. He helped to look after Mr. Maguire's cattle and properties at Cartron Bay, Sligo. Mr. Conlon was summonsed to give evidence at the District Court in Letterkenny and Donegal town from time to time in respect of the McBrearty cases. Applications were made for witness expenses on his behalf. He was required to attend on numerous dates. Though technically obliged to attend from day to day as a witness, it would have been possible, as happens in many cases, to minimise the inconvenience to him as a civilian witness by arranging with the court the date upon which his evidence would be taken. Instead of that, he attended on every date upon which the cases were before the court and was paid what were known to be inflated expenses, including compensation for loss of earnings to which he was not entitled. To this end, forged certificates of earnings were submitted as part of the expenses claims by Garda John Nicholson. Detective Sergeant White, who had never submitted witness claims before this case, made the applications on his behalf. Monies were sanctioned and paid. The sum overpaid to Mr. Conlon, a total in excess of £600, was perhaps relatively small but was, proportionate to his circumstances, of great significance to Mr. Conlon. Garda John Nicholson procured the forged certificates. He forged a number of signatures on these certificates and was furnished with the dates for attendances and the amounts to be included in the certificates by Detective Sergeant White. I am satisfied that both of them were fully aware that the amounts paid on foot of these bogus certificates were not due to Mr. Conlon.
- 1.42. The Tribunal is satisfied that Bernard Conlon was acting as an agent of Detective Sergeant John White and Garda John Nicholson when he attended Frankie's nightclub on the evening of the 30th/31st of August 1997. Both participated in

this plan and used Mr. Conlon as an agent and ultimately as a witness in the District Court against Frank McBrearty Senior and his staff. Both were involved in procuring witness expenses for Bernard Conlon for numerous attendances at the District Court to which he was not entitled, by way of “seeing him right” for his assistance. It is clear that when Bernard Conlon was ‘found on’ the nightclub premises and approached by the inspecting Gardaí, he was surprisingly cooperative with them during the interview. He had at least one ‘fresh’ drink in front of him and he willingly identified the barman who, he alleged, had recently served him with this drink after hours. He willingly provided them with his name and address. The Tribunal accepts the evidence of the inspecting Gardaí that his conduct and demeanour were not that of a patron in a licensed premises who had been found drinking on the premises after hours. Indeed he adopted a “brazen” pose and remained standing at the bar with the drinks so that he inevitably attracted their attention. **The Tribunal is satisfied that his total cooperation, the subsequent making of his statement and his attendance as a witness in the District Court, together with the inflated witness expenses paid to him, and the high degree of effort to ensure that he was transported to and from the courthouse by members of An Garda Síochána, all indicate the high level of cooperation between Bernard Conlon, Garda John Nicholson and Detective Sergeant White in this escapade. This cooperation indicated a relationship, that went far beyond that of the normal relationship, that exists between a member of An Garda Síochána and a witness.**

The 10th and 11th of December 1998 – Bernard Conlon as a Witness

- 1.43. It was always intended to use Bernard Conlon as a prosecution witness up to the time that senior counsel for Mr. Frank McBrearty indicated an intention to challenge his character and credibility. This, together with the broader challenge mounted against Mr. Conlon by counsel, prompted Superintendent Kevin Lennon, as the prosecutor of these cases, to drop Bernard Conlon as a prosecution witness. Up to that point, notwithstanding his previous convictions, he had been transported to the District Court on each occasion on which the matter was adjourned and treated as an important prosecution witness in this matter. Superintendent Lennon now made an attempt to ensure that Mr. Conlon could only be called as a defence witness and, therefore, examined in chief and not cross-examined by defence counsel. However, this failed when the District Judge directed that Mr. Conlon be tendered for cross-examination by the prosecution. This enabled defence counsel to cross examine him as to how he came to be on the premises and the false allegations that he made in respect of the silver bullet threat. **This cross-examination took place on the 11th of**

December 1998. The night before, when it had become clear that by order of the District Court, Mr. Conlon was to be produced for cross-examination, a desperate attempt was made by Detective Sergeant White in the company of Garda John Nicholson to rehearse Mr. Conlon in his evidence in respect of his previous convictions and being ‘found on’ in Frankie’s nightclub after hours on the 30th/31st of August 1997.

Bernard Conlon’s Arrest and Related Events

- 1.44. When this became known, Bernard Conlon was arrested and questioned by the Carty team on the 27th of January 2000. Superintendent Lennon summoned Garda Nicholson to a meeting at the Sligo Park Hotel on the 31st of January 2000. There he asked Garda Nicholson if he knew what Bernard Conlon had told the Carty team. Garda Nicholson did not. Superintendent Lennon then made a remark to Garda Nicholson to the effect that Bernard Conlon was “tight” and “would not crack”. The Tribunal is satisfied that this remark was made and accepts the evidence of Garda Nicholson in respect of this meeting. The remark implies that Bernard Conlon had guilty knowledge and had something to hide. In addition, the Tribunal concludes that this remark can only be interpreted as showing that Superintendent Lennon and Garda John Nicholson each understood that Bernard Conlon had something to hide from the Carty team, namely the fact that he had been planted in Mr. McBrearty’s premises for the purpose of being ‘found on’. It follows that Superintendent Lennon, in the view of the Tribunal, also had this knowledge. It notes that Superintendent Lennon did not seek this knowledge from the officers who would have had it at a meeting of senior officers at the Sligo Park Hotel on the same date. The Tribunal rejects Superintendent Lennon’s explanation that he approached Garda Nicholson only because he needed this information but could not obtain it from the Carty team because he felt isolated by them. The Tribunal cannot accept that there are any circumstances in which it would be appropriate for the prosecuting officer in a District Court matter to bypass the investigation team if he required this information for the purposes of his prosecution. The fact that he adopted this unorthodox approach satisfies the Tribunal that his guilty knowledge of this matter precluded him from approaching the Carty team directly.
- 1.45. The Tribunal draws a similar conclusion concerning the approach made by Detective Sergeant White to Garda John Nicholson at around this time, when he asked him to go and see Bernard Conlon and to ascertain from him what he had told the Carty team. This attempt to approach him was rebuffed by Bernard Conlon. At about this time also, Garda John Nicholson

commenced a series of meetings with Chief Superintendent McNally of the Carty team, which led ultimately to further revelations to them concerning Detective Sergeant White, Bernard Conlon and Superintendent Lennon. In this context, Garda Nicholson was disinclined to have anything further to do with Detective Sergeant White. Having declined to take his phone calls Garda Nicholson approached Superintendent Lennon with a request to tell Detective Sergeant White not to contact him ever again. No explanation was furnished by Superintendent Lennon as to why that approach was made to him. He was now based in Milford as a District Officer and was no longer Detective Sergeant White's local commander. These events confirmed to the Tribunal the close bond of knowledge that existed between the three in relation to the events of the 30th/31st of August 1997. **The Tribunal does not accept that these various contacts, which occurred at about the same time in the wake of Bernard Conlon's arrest, were purely coincidental.** A more detailed account of these events is set out in Chapter 2 of this report.

The Silver Bullet Threat

- 1.46. The Tribunal reached its conclusion in relation to the events of the 30th/31st of August 1997 notwithstanding the character of Bernard Conlon. The Tribunal would not have been happy to act upon his evidence without the further evidence which has already been summarised and which has been set out extensively in Chapter 2. It has to be acknowledged that Bernard Conlon can be lying, deceitful and cunning and is a person who is well capable of inventing a story of his own for his own purposes, notwithstanding the personal limitations under which he operates. The Tribunal, in the course of its deliberations, was fully mindful of his capacity to tell a story against Detective Sergeant White for the purposes of spreading the burden of guilt when giving an account of his own wrongdoing to the Carty team. Similarly, the Tribunal was wary that he may have been motivated by animosity or revenge. When relying upon the testimony of Bernard Conlon as a witness in respect of the events of the 30th/31st of August 1997, the Tribunal was able to draw its conclusions because there was ample evidence which confirmed Mr. Conlon's core account of these events. **However, when the Tribunal came to assess the facts relating to the silver bullet threat, it was unable to identify and isolate a single piece of evidence upon which it could satisfactorily rely to support or corroborate Bernard Conlon's core allegation that he was induced to make a false allegation against Mr. Mark McConnell and Mr. Michael Peoples by Detective Sergeant White.**
- 1.47. In this regard, there were two broad areas to consider. The first was whether the core story told by Bernard Conlon was true. Here there was a complete conflict

of evidence between Bernard Conlon and Detective Sergeant White. Detective Sergeant White denied the allegation that he put Bernard Conlon up to making the false allegation against the two men. **In fact, it has been clearly demonstrated, on his behalf, that Bernard Conlon lied in relation to various details surrounding these allegations. These lies range from untruths concerning how Detective Sergeant White put him up to making these false allegations to important inconsistencies in his various accounts of these events and false allegations attempting to implicate him in acts of intimidation against Bernard Conlon.** The second matter to be considered is the manner in which Detective Sergeant White chose to address these allegations by attacking the behaviour of the Carty team and Gardaí in Sligo. **Though Detective Sergeant White successfully demonstrated the flaws in Bernard Conlon's testimony on a number of important issues, he also launched a sustained and serious attack on other members of An Garda Síochána based in Donegal and Sligo and serving as members of the Carty team. These attacks were calculated to implicate his colleagues in various kinds of wrongdoing. These had not occurred. These allegations caused the Tribunal to question his truthfulness in dealing with the silver bullet issue. The Tribunal is satisfied that what he alleged against his colleagues was untrue. Nevertheless, whilst he told lies about these matters, they were not such as to entitle the Tribunal to regard them as corroborative of Bernard Conlon's story; particularly in the light of the serious flaws in that story that emerged in evidence.**

Examples of Lies Told by Mr. Conlon

- 1.48. Mr. Conlon maintained in statements and in evidence that he had a meeting with Detective Sergeant White at a sitting of the District Court in which the two men were pointed out to him by Detective Sergeant White on the 20th of July 1998. This could not be true because the evidence of the District Court clerk indicates that there was no sitting of the District Court on the 20th of July 1998. Indeed, documentation suggests that Mr. Conlon did not appear as a witness before the District Court between the 23rd of June 1998 and the 7th of December 1998.
- 1.49. Bernard Conlon gave conflicting accounts in relation to a gesture that was supposedly made to him by Detective Sergeant White in pointing out the two men as the persons to be identified as the culprits in respect of the threat. Mr. Conlon said that a gesture with two fingers pointed in a downwards direction by Detective Sergeant White was meant to indicate that he was to receive £200 for identifying the two men. However, in the course of Detective Sergeant White's trial in Letterkenny, Mr. Conlon gave conflicting evidence and said that this

gesture was meant to indicate “two people” and not £200. He repeated this under cross-examination at the Tribunal, notwithstanding that he had previously told the Tribunal that the gesture meant £200 when examined earlier.

- 1.50. Bernard Conlon also told the Carty team that he had been told prior to the 20th of July 1998 by Detective Sergeant White that he suspected Mark McConnell for the burning of his private car. However, though Detective Sergeant White’s car was burnt in an incident, this did not occur until the 19th of October 1998 (and of course Mr. McConnell had nothing to do with it).
- 1.51. In addition, Mr. Conlon told the Tribunal investigators that Detective Sergeant White told him in July 1998 that paint had been pegged on a wall at or near his home and that he was fully convinced that the McBreartys or Mark McConnell or Michael Peoples were behind this also. However, though there was such an incident at or near Detective Sergeant White’s home, it occurred on the 1st of November 1999. These facts clearly demonstrate that Mr. Conlon was not telling the truth in respect of these matters.
- 1.52. Mr. Conlon also gave evidence about various amounts that he was paid by Detective Sergeant White in respect of the silver bullet threat. His accounts in relation to the amounts paid to him by Detective Sergeant White and the occasions of the payments varied from statement to statement and in evidence from day to day.
- 1.53. A further example of the lies told by Mr. Conlon arises from the incident that is alleged to have occurred when Bernard Conlon received the William Flynn letter to his home on the 21st of April 1999. He says that he contacted Detective Sergeant White who immediately came down to Sligo and dealt with the letter. Initially, Mr. Conlon alleged that Detective Sergeant White visited his home, took away this letter and then returned with the letter but had added a second page to it, which supposedly referred to the offer of a bribe. In evidence to the Tribunal, Mr. Conlon said that he did not know how the second page came into existence and suggested that he had handed over a letter containing only one page to Garda John Nicholson. He maintained, nevertheless, that he was put up to making the allegation of attempted bribery against Mr. Flynn by Detective Sergeant White. Detective Sergeant White for his part has been able to demonstrate that it would have been next to impossible for him to travel to Sligo, as he was fully involved in the preparation of cases for the criminal sessions at Sligo Circuit Court the following day. The Tribunal is satisfied that Mr. Conlon invented that allegation against Detective Sergeant White. This matter is more fully set out in Chapter 4 of the report.

- 1.54. Subsequently, Mr. Conlon invented allegations calculated to suggest that Detective Sergeant White was attempting to intimidate him from telling the Carty team the true story of these events in the course of 2002 to 2003. These were investigated by the Carty team. The Tribunal is satisfied that they were untrue. The matter is more fully explained in Chapter 3.

Allegations by Detective Sergeant White Against his Colleagues

- 1.55. Detective Sergeant White has over the years, and before this Tribunal, made a number of allegations against Assistant Commissioner Kevin Carty and other members of the Carty team who investigated Bernard Conlon and other matters. He also made allegations of impropriety and corruption against members of An Garda Síochána serving in Sligo Station concerning their involvement with Bernard Conlon. The thrust of these allegations was to the effect that the Carty team wished to make him a scapegoat for any wrongdoing in Donegal, and Gardaí in Sligo wished to implicate him in matters in which they were involved. The Tribunal did not understand there to be an allegation that the Sligo Gardaí and the Carty team coordinated this attempt to scapegoat or blame Detective Sergeant White. **The Tribunal rejects the allegations made by Detective Sergeant White against his colleagues in the Carty team and in Sligo Station. No evidence has been advanced to support this theory, which the Tribunal views as extraordinary and sinister.** The advancing of these allegations as a reply to Bernard Conlon's assertions must raise doubts as to Detective Sergeant White's bona fides. It suggests a guilty knowledge of events. It also involved telling the Tribunal a whole series of lies in an attempt to substantiate the allegations. The evidence in relation to these matters is set out in Chapters 2 and 3 of the report.

(i) Allegations Against Detective Sergeant Connolly and Detective Garda McHale Concerning Previous Convictions of Bernard Conlon and the Meeting of the 22nd of September 1999

- 1.56. Detective Sergeant White alleges that Inspector Gerard Connolly and Detective Garda John McHale and other members of An Garda Síochána in Sligo conducted themselves wrongfully or corruptly in their dealings with Bernard Conlon and sought to scapegoat Detective Sergeant White in relation to the Bernard Conlon affair. An incident was seized upon by Detective Sergeant White to support this proposition.
- 1.57. In July 1998 a typed list of the previous convictions of Bernard Conlon was furnished to Superintendent Lennon as a matter of courtesy by Detective Inspector Connolly. This list had been prepared by Detective Garda John McHale in the course of a prosecution which he brought against Bernard Conlon in 1992.

A controversy arose in the District Court in Letterkenny when counsel for the McBreartys alleged that this typed list did not reflect accurately the full nature of the convictions incurred by Bernard Conlon over the years, when compared with the official computerised printout of his convictions. The Tribunal is satisfied that the discrepancy, such as it was, was attributable to human error. The District Judge directed that Inspector Connolly and Detective Garda McHale attend to give evidence in relation to this matter on the 23rd of September 1999. On the 22nd of September 1999, a meeting was held in a car park near Donegal town Garda Station attended by Detective Inspector Connolly, Detective Garda McHale and Detective Sergeant White. The Tribunal is satisfied that this meeting was requested by Inspector Connolly simply to ascertain the issue which they had to address the following morning. These two Gardaí had taken no part in relation to the prosecution in Letterkenny.

- 1.58. Detective Sergeant White alleged at the Tribunal, for the first time, that this meeting was a secret meeting convened by Inspector Connolly. Detective Sergeant White declared himself to be dubious about the explanation offered for the difference between the lists of convictions, though curiously, he accepted the explanation of error. He said that Detective Garda McHale had not given him the true explanation when first contacted on the 7th of September 1999. He said he was asked if Bernard Conlon had told him about his dealings with the Sligo Gardaí. He described how the two Gardaí had exchanged supposedly furtive glances with each other during the course of the meeting, and told him not to tell anyone it had occurred. He explained how he left the meeting confused. He said he reported this matter fully to Superintendent Lennon. Superintendent Lennon gave evidence that he was only told half of this story.
- 1.59. **The Tribunal is satisfied that there was no story to tell. It is also satisfied that this scenario was contrived against Detective Sergeant White's colleagues in Sligo. They acted in an honest and proper manner. Detective Sergeant White and Superintendent Lennon did not tell the truth about these events. It was an unseemly attempt to spread whatever blame might attach to him in respect of his dealings with Bernard Conlon onto the shoulders of as many of his colleagues as possible and in that way reduce his own involvement.** His behaviour is all the more unpalatable when one considers that Detective Sergeant White, on numerous occasions before the Tribunal, complained of the heavy burden cast upon his family and himself as a result of false allegations. This matter is more fully set out in Chapter 3.

(ii) The Statement of Bernard Conlon of the 26th of May 1998

- 1.60. A further example of this type of behaviour arose from the allegations which

Detective Sergeant White made concerning a statement made by Bernard Conlon on the 26th of May 1998. This arose from an incident which occurred in the District Court in Letterkenny as a result of which Mr. Conlon made a complaint that he had been verbally abused by Mark McConnell. He identified Mark McConnell in a statement to Garda Eamonn Doherty. Garda Eamonn Doherty told Detective Sergeant White and Superintendent Lennon this on the afternoon of the 26th of May. Therefore, when both were asked on the 21st of July 1998 about the description given by Bernard Conlon of the man with the goatie beard, and offered the name Mark McConnell as a possible suspect, they knew that Bernard Conlon should have been able to recognise Mark McConnell. They did not tell Detective Sergeant Connolly this. **Detective Sergeant White denies that he was present when Garda Doherty brought the news to Superintendent Lennon on the 26th of May, that Bernard Conlon had identified Mark McConnell as the man who had verbally abused him. The Tribunal rejects this evidence and accepts the evidence of Garda Doherty in this regard.**

- 1.61. Then Detective Sergeant White went one step further. He pretended that he was unaware of the statement made by Bernard Conlon identifying Mark McConnell. This statement had been sought by his solicitor when seeking disclosure of documents in his pending criminal trial. He and his solicitor Mr. Páid Dorrian, alleged that this statement of the 26th of May 1998 only came to their attention in January 2003 and that sight of it had been deliberately withheld from them until the 13th of September 2004. Both gave evidence about a meeting on that date in which it was suggested that two members of the Carty team present had to be pressed for this statement. **For the reasons set out in Chapter 3, the Tribunal is completely satisfied that no attempt was made to withhold this statement from Detective Sergeant White or Mr. Dorrian in order to frustrate their preparations for Detective Sergeant White's trial. The Tribunal rejects Mr. Dorrian's evidence completely.**

(iii) Detective Sergeant White and the Meeting of the 17th of March 2000

- 1.62. Detective Sergeant White was invited to a meeting on the 17th of March 2000 with members of the Carty team. An effort was made in the course of the Tribunal's hearings to suggest that Detective Sergeant White did not understand the allegations that were about to be made to him. Detective Superintendent McGarty said he informed the detective sergeant that he wanted to put a number of allegations to him regarding Bernard Conlon and that he was conducting a criminal investigation. It was intended to caution Detective Sergeant White before asking him a number of questions concerning the Bernard

Conlon affair. Detective Sergeant White obtained legal advice and returned indicating that he had been advised to say nothing. Before or while leaving the room, Detective Sergeant White addressed Detective Inspector Foley and told him that he had tapes and notes of conversations with senior officers, and suggested that he need not go searching his house because he had given everything to his solicitor. Detective Sergeant White gave a much more extensive account of an enormous row which, he said, erupted with Detective Inspector Foley in the course of which he pushed the Detective Inspector and shouted at him. **This version of the encounter is not accepted by Detective Superintendent McGarty or Detective Inspector Foley. I fully accept their evidence in relation to what happened at this meeting.** Not only was Detective Sergeant White determined to exercise his right not to incriminate himself at this meeting, he sought to introduce a matter which was entirely removed from the issue which he was asked to address.

(iv) Detective Sergeant White and the Meeting of the 20th of March 2000

- 1.63. A further meeting took place, by arrangement, on the 20th of March 2000. On this occasion, Mr. Páid Dorrian, solicitor, accompanied Detective Sergeant White and quite sensibly and properly advised him to rely upon his right not to incriminate himself. No criticism or objection can be made in relation to the exercise of this right or the advice given in this regard. However, this kind of encounter should be conducted in a businesslike fashion. Detective Sergeant White and Mr. Dorrian continued to insist before this Tribunal that there was a reluctance on the part of Detective Superintendent McGarty and Detective Inspector Coll to inform them of allegations made by Bernard Conlon. The Tribunal is satisfied that Detective Inspector Coll offered the facility to Detective Sergeant White to make a note of the allegations made in the course of the meeting but this was frustrated by the intervention of Mr. Dorrian. The behaviour of both was calculated to disrupt the meeting. Once again, the officers wished to pose questions under caution to Mr. Dorrian's client. The use of these tactics to disrupt this meeting inevitably led to the arrest of Detective Sergeant White on the 21st of March 2000. **An attempt was made to imply that the two officers behaved in an unfair manner to the extent that they would not even tell Detective Sergeant White what allegations had been made by Bernard Conlon and that he was then put in the unfair position of ignorance in this regard. This was not so. It was a contrived and mischievous allegation by Detective Sergeant White. The Tribunal rejects Mr. Dorrian's evidence.**

(v) Detective Sergeant White's Allegations of the 21st of March 2000

- 1.64. On the 21st of March 2000, Detective Sergeant White was arrested and requested that a note be placed in the custody record of a series of allegations. The detail in the note indicates a good degree of knowledge of some of the allegations made against him by Bernard Conlon. In this note he also set out a series of complaints. He alleged that his arrest was unlawful and illegal and was the result of a meeting which he had on the 7th of October 1998 with Assistant Commissioner Carty, in which he brought to the Assistant Commissioner's notice the fact that the statement taken from Frank McBrearty Junior on the 4th of December 1996 was a false statement, and that the arrest of Michael Peoples on the 6th of May 1999 was an unlawful arrest. He also said that he had given three "very valid reasons" to Chief Superintendent McNally and Detective Inspector John McGinley as to why Michael Peoples should not have been arrested for allegedly threatening Bernard Conlon on the 20th of July 1998. He said he was asked to carry out surveillance and confidential enquiries as to the whereabouts of Michael Peoples before his arrest. He said he was then told by Assistant Commissioner Carty that Chief Superintendent Fitzpatrick and Detective Superintendent John McGinley had informed him that they strongly suspected him of being involved in four serious crimes one of which was, "the present allegation re: Mr. Conlon".
- 1.65. **The Tribunal is satisfied that Detective Sergeant White included a series of lies in the custody record on the date of his arrest. When he met with Assistant Commissioner Carty on the 7th of October 1999, the Tribunal is satisfied that he did not bring the matters suggested to the attention of the Assistant Commissioner. In any event, the Tribunal is satisfied that his account in relation to his dealings with Chief Superintendent McNally and Detective Inspector John McGinley are false.** The Tribunal does not accept that he had a belief that his arrest on the 21st of March was simply to discredit him in relation to any future court cases as suggested in the note in the custody record. Once again, this Tribunal is satisfied that this was an attempt by Detective Sergeant White, in the guise of a pre-emptive strike, in a well thought out strategy on his part, to criticise the Carty team and once again distract from the core issue of his involvement with Bernard Conlon.
- 1.66. In the course of his detention, Detective Sergeant White quite properly and lawfully relied upon his right not to incriminate himself and for the most part refused to answer any questions related to the Bernard Conlon affair. He did, however, proclaim his innocence in respect of any wrongdoing. He said he would supply a full statement to the Gardaí. He never did. Of course, he is not criticised in this regard as he was entitled to rely once again upon his right not to

incriminate himself. As a Garda he can now be simply ordered to account for himself but such an account cannot be used in a criminal case.

(vi) Detective Sergeant White's Allegation of a Deal Between the Carty Team and the McBrearty Family

1.67. It was also alleged by Detective Sergeant White that some agreement had been entered into between members of the McBrearty family and members of An Garda Síochána, whereby in consideration of the McBrearty family withdrawing a challenge to the statement alleged to have been made by Mr. Frank McBrearty Junior, in the course of which he is alleged to have admitted to an assault on the Late Mr. Richard Barron, the Gardaí for their part agreed to remove Detective Sergeant White as a thorn in the side of the McBrearty family. Thus, the Carty team came to be inspired to focus upon issues such as the Bernard Conlon affair rather than upon the one about which Detective Sergeant White had been so vociferous, according to himself, and which, he says, he sought to bring to the attention of Assistant Commissioner Carty. Another aspect of this scenario is that he was made a scapegoat in this matter for pursuing the issue in relation to the infirmity of the statement of Frank McBrearty Junior. **This theory is fanciful and bizarre and is completely unsupported by any fact. It was clearly an attempt to muddy the waters and deflect the focus of the inquiry away from Detective Sergeant White.**

Lies as Corroboration

1.68. This series of lies had to be addressed by the Tribunal in its work. It is unquestionably the case that lies can be used as corroboration in the course of a criminal trial. To be capable of corroboration a lie must be (i) deliberate; (ii) related to a material issue and (iii) the motive for the lie must be the understanding or realisation by the accused of his guilt in respect of the charge. Furthermore, the lie must be shown to be such by evidence independent of the accomplice to be corroborated.⁶ Thus I am satisfied that these lies can be relied upon as evidence in support of the involvement of Detective Sergeant White in the events of the 30th/31st August 1997 and the subsequent prosecution of Frank McBrearty Senior, Eamonn McConnell and Andy McBrearty, by reason of other surrounding circumstances and evidence as already outlined.

1.69. **These lies are highly suspicious and also strongly suggest Detective Sergeant White's involvement in the silver bullet threat. The crucial fact to be borne in mind is that the bulk of these lies could have been told in order to distract attention away from Detective Sergeant White's conduct in the licensing prosecutions. They are not, as the legal test requires, referable only to his alleged guilt on the 'silver bullet' matter. Having**

⁶ R v Lucas [1981] Q.B. 720.

regard to the fact that numerous lies have been told by Bernard Conlon in respect of the silver bullet threat directly relating to Detective Sergeant White's involvement in the matter, and the absence of sufficient surrounding evidence to warrant relying upon these lies as corroboration, the Tribunal does not feel that it is appropriate to conclude that these lies indicate that Bernard Conlon was telling the truth in relation to his allegation that Detective Sergeant White was behind the making of the false allegations against Mr. Mark McConnell and Mr. Michael Peoples. Therefore, the Tribunal is unable to conclude that he was responsible for inducing Bernard Conlon to make these false allegations against the two men.

The Arrest and Detention of Mark McConnell and Michael Peoples

- 1.70. Though the thrust of the Tribunal's work on this module has been into Garda behaviour leading to the arrest and detention of Mark McConnell and Michael Peoples, it must be remembered that they were the focus of these false allegations. The serious consequence of these allegations for them could have been that they would be charged and convicted of charges in respect of which they could have received lengthy prison sentences. In the early stages, when Inspector Connolly and Detective Garda Reynolds attended with Bernard Conlon, they found a man who convinced them that he was frightened and that he had had a very bad experience. Bernard Conlon put on what was described as a very convincing act. It should be noted that this act completely fooled his flatmate of the time. However, as time went on, it was within the professional competence of An Garda Síochána to investigate his claims about the event. Mr. Conlon had a reputation as a criminal who was untrustworthy; albeit it was a number of years since his last conviction.
- 1.71. Superintendent Lennon and Detective Sergeant White were aware that Bernard Conlon had a reason to resent Mark McConnell in setting out his allegation of verbal abuse against him in respect of the 26th of May 1998. They also knew that he had specifically identified Mark McConnell on that date. Therefore, they both knew, when contacted by Detective Sergeant Connolly, that Mr. Conlon ought to have been able to name Mr. McConnell if he had seen him on the 20th of July 1998, when threatened. Detective Sergeant Connolly was not so informed. Then, Bernard Conlon identified Mark McConnell on the 1st of October 1998 without any fear and, indeed to the surprise of those present, approached him at the time of his arrest. On the 8th of December 1998, Bernard Conlon identified Michael Peoples in the District Court at Letterkenny, notwithstanding the fact that he had not identified

him on any previous occasion when Mr. Peoples was in court. Mr. Peoples was also, significantly, taller than the man described by Bernard Conlon by about four inches: he was very much taller than most of the McBrearty extended family.

- 1.72. **Detective Sergeant Connolly was not told of the alibi alleged to exist for Mark McConnell, which emerged in the course of the cross-examination of Bernard Conlon in the District Court in Letterkenny on the 11th of December 1998.** Nevertheless, he made a report to his superiors in which he suggested that by reason of the previous convictions of Bernard Conlon, the prosecution against Mark McConnell would fail. There was, of course, no mention of the alibi in this report. That was not his fault. Nevertheless, the investigation against Michael Peoples continued. **At this stage, if the full facts of which the Garda Síochána were, as a body, aware had been acted upon, it is likely that suspicions would have been aroused about Bernard Conlon and that he would have become the focus of the Garda inquiry. However, Superintendent Lennon and Detective Sergeant White were not candid or forthright with their colleagues in Sligo. It is likely that because their actions and decisions were under attack and scrutiny elsewhere, they were happy enough that trouble should be caused and/or exist for Mark McConnell and Michael Peoples in relation to the Bernard Conlon allegations. This is shocking.**
- 1.73. On the 27th of April 1999, Mr. Conlon made a statement to Inspector J. Barrett and Sergeant P.J. Gallagher in which he gave an account of a visit to his home by a man purporting to be the private investigator, Mr. William Flynn, from Enfield, Co. Meath. He alleged that he had been visited by Mr. William Flynn and was offered a bribe to change his statement of evidence in relation to the events of the 30th/31st of August 1997. This had been followed up by a letter of the 21st of April 1999, which Mr. Conlon said related to this visit and offer. No credence seems to have been attached to these allegations by Chief Superintendent Austin McNally and no enquiries by way of interview of Mr. Flynn or Frank McBrearty Senior occurred as a result. **The Tribunal is satisfied that these strange allegations made by Bernard Conlon should have attracted a full investigation of Bernard Conlon, and his truthfulness and motives, had they been properly enquired into. At the very least, they offered an opportunity to the investigators to pause and reflect before taking any steps that were reliant upon the allegations made by Bernard Conlon against Mr. Peoples.**
- 1.74. By this time, a letter had been received from the Director of Public Prosecutions in February 1999, which questioned the credibility of Bernard Conlon as a

witness. Notwithstanding this, Michael Peoples was arrested on the 6th of May 1999. The reason for this arrest might well have been to bring a sense of completion to an investigation based on the allegation of Bernard Conlon in which he had specifically identified Michael Peoples as a culprit. **However, the Tribunal is satisfied that there was a sufficient basis to review the investigation and vigorously examine Bernard Conlon's statements before the arrest of Michael Peoples particularly in the light of the events of the 27th of April. This did not happen. The Tribunal is not satisfied that the investigating Gardaí in Sligo evinced any malicious intent in the conduct of this inquiry. They were not part of any conspiracy to set up or frame Mark McConnell or Michael Peoples. They were deceived. They had to operate within a web of lies and deceit spun by Bernard Conlon. Important information that would have been crucial to their enquiries was held back from them by their colleagues in Donegal.** It may be that they had been led to believe that this type of intimidation was part of what could be expected from the McBrearty group within Donegal. It may be that had these elements not existed in the case and had the allegation against the two men stood on its own, the doubts about this story which seem to lurk beneath the surface of their inquiry could have been examined in a much more critical manner, and hence the second arrest of Mr. Peoples, at least, might have been avoided.

Time Taken

- 1.75. In this module, the Tribunal has been fed a continuum of lies by a number of witnesses including Bernard Conlon, Detective Sergeant John White, John Nicholson and others. Some lies were blatant and others, such as those of Detective Sergeant White, were carefully crafted and calculated to obscure the issues and cast blame on a number of his colleagues who were innocent of any wrongful or malicious behaviour in these events. Much time and effort was wasted by the Tribunal because of the unwillingness of these people to tell the unbridled truth. The reader will deduce from the length of the report that follows, the nature and extent of the shocking lies which were thrown with impunity in the path of the Tribunal in order to frustrate its efforts to discover the truth.

Assistance

- 1.76. The Tribunal was greatly assisted in its work by its investigators, Mr. Michael Finn and Retired Assistant Commissioner Pat Cummins, formerly of the Royal Canadian Mounted Police. In addition, Superintendent Terry McGinn, Inspector Declan Downey and Sergeant Brian Mahon, as liaison officers, continued to

provide a high level of professional cooperation to the Tribunal, as did the Commissioner of An Garda Síochána through his solicitor and counsel. It should be noted that Mr. Mark McConnell and Mr. Michael Peoples were repeatedly asked if they could give any relevant evidence to the Tribunal on this module or whether they had any submissions to make in relation to it in September and October 2005. No response was received to these letters.⁷

- 1.77.** The Tribunal will now proceed to discuss the evidence in detail concerning the events of the 30th/31st of August 1997, the false allegations made by Bernard Conlon against Mark McConnell and Michael Peoples, the letter of the 21st of April 1999 and surrounding events, and other events relevant to the investigation of the Bernard Conlon affair.

⁷ The four letters to Mark McConnell and Michael Peoples appear in Appendix 2 to this report.

CHAPTER 2

BERNARD CONLON AND THE DISTRICT COURT PROSECUTION

Bernard Conlon Goes to Frankie's Nightclub

2.01. By the summer of 1997 Bernard Conlon had attended about nine times at Frankie's nightclub for country and western evenings. These were held on a Saturday night. He went with various friends including, at times, Ms. Catherine McGovern and Mr. Anthony Kearns. The trips to Raphoe inevitably involved an overnight stay at McGranaghan's Bed & Breakfast, Raphoe, which was owned and operated by Mr. Jim McGranaghan and Mrs. Mary McGranaghan. This was arranged in advance. They took the bus from where they lived in Sligo to Ballybofey and a taxi from Ballybofey to Raphoe. The trips were usually planned two to three days in advance. Mr. Conlon's attendance was perhaps once every three weeks. The quality of the music has been reported to the Tribunal as excellent.

The 20th of July 1997

2.02. On Saturday the 20th of July 1997 Mr. Conlon attended Frankie's nightclub. Being somewhat hungry, he asked one of the security men whether there were any meals being served at the premises. He was told there was food served across the road in the chip shop and if he went over there he could return to the nightclub. He then enquired of the security man whether he was not, as a patron, entitled to a meal but was again directed to the chip shop across the road. He went out to the chip shop and returned to the nightclub. He had been told by various people that he was entitled to a meal once he had paid his cover charge. Up to that point, he had never seen any food served in the nightclub. Mr. Conlon was "a bit upset" about this. When he returned to the nightclub from the chip shop he saw Gardaí on the premises and when the night's entertainment was concluded he approached Sergeant John White. He had never met Sergeant White before this incident. Sergeant White was, apparently, on duty with Garda Shaun Barrett.⁸

2.03. Mr. Conlon told Sergeant White that he was concerned that no meals had been served in the nightclub. Sergeant White took some notes and then started to talk to him about where he was from and whether he knew any members of An Garda Síochána in Sligo. Mr. Conlon told Sergeant White that he knew Garda John Nicholson. Sergeant White indicated that he was a close friend of John Nicholson's and knew him pretty well. He asked Mr. Conlon whether he had heard anything about "a murder" in the pubs (a reference apparently to the

⁸ Transcript, Day 330, Q.458-489 and Q.700.

death of the Late Mr. Richard Barron) or whether there was anybody talking about it. He told Bernard Conlon that he would “look into” the failure to provide him with a meal.⁹

Detective Sergeant White’s Version of the Meeting

2.04. Detective Sergeant White made a statement on the 21st of May 2005, which in many respects tallies with the account given by Bernard Conlon of their first encounter with each other. He said:

I first met Mr. Conlon on Sunday morning 20th of July, 1997 at 2.28 a.m. at Meetinghouse St. Raphoe. I was attached to Raphoe Garda Station at that time. I was on duty in uniform and accompanied by Garda Shaun Barrett. I was directing traffic on the road outside Frankie’s Night Club. Mr. Conlon approached me on the roadway and he requested to speak to me. I informed him to move onto the footpath and I asked him what he wished to speak to me about. He told me that he wished to make a complaint that he had not received a meal in Frankie’s Night Club and he asked me if he was entitled to one after he had paid the entrance fee. I informed him that I believed that he was. I asked him for his name and address. He gave it to me and I noted it in my official notebook.

He was insistent that I speak to the management of the night club regarding his complaint and he asked me to take a written statement off him regarding this complaint. I informed him that I would not take a written statement from him as I was too busy with traffic control at that time and there was a large crowd of people exiting onto the street. I suggested that if he felt so strongly about the situation that he could make a statement of complaint at his local station in Sligo when he returned. Mr. Conlon had an amount of drink taken and from my experience I was aware that persons who feel that they have a problem of a relatively minor nature such as on this occasion, while under the influence of drink, rarely wish to proceed with the matter when they sober up. I informed him that I did not believe that the management of the night club had breached the law as such in relation to his complaint but that I would raise the matter with them later. Mr. Conlon gave me the impression that he wished to be present when I approached the management of the club but I told him that I would deal with it myself later.

This conversation would have lasted approx. two minutes or so. Mr. Conlon then left. Garda Barrett was standing close to me at this time but he did not to my recollection actually take part in any part of it, but he

⁹ Transcript, Day 330, Q.490-521 and other references.

would have I believe heard our conversation. I did enter the night club some minutes later at 3.34 a.m. and I discussed Mr. Conlon's complaint with Mr. Andy McBrearty who demanded to know the identity of the person making the complaint. I did not supply him with this information.

I was not aware of Mr. Conlon's existence prior to this meeting and I did not believe that I would ever hear from him again. I assumed that when he sobered up he would not wish to pursue his complaint of not receiving food in Frankie's Night Club. Garda John Nicholson's name did not enter my conversation with Mr. Conlon on 20th of July 1997 in any manner. I was not aware at the termination of this brief encounter with Mr. Conlon that he knew Garda Nicholson or vice versa. I did not meet Mr. Conlon again until his first appearance at Letterkenny District Court on the 9th of March, 1998. I believe that I made a written note of my encounter with Mr. Conlon in the occurrence book at Raphoe Garda Station prior to the termination of duty on that Sunday morning 20th of July, 1997.¹⁰

- 2.05. The main points of difference between the two men are:
- (a) Mr. Conlon denies that he asked Sergeant White to take a statement of complaint from him: he says that he was asked whether he wished to make an official complaint which Sergeant White said he would follow up and replied that he would think about it. There was no question of his asking Sergeant White to take a written statement or telling him that he wished to make a complaint.
 - (b) Mr. Conlon denies that he was requested on this occasion to make whatever complaint he wished to make to a member in Sligo Station.
 - (c) Mr. Conlon denies that Sergeant White said that he did not believe that the nightclub had broken the law or that he would raise the matter with its management.
 - (d) Mr. Conlon also denies that he said that he wished to be present when the matter was raised with management.
 - (e) Mr. Conlon was certain that they discussed their mutual friendship or acquaintance with Garda John Nicholson. Sergeant White denies this.
- 2.06. It is clear that no formal complaint or statement was made by Bernard Conlon at the time of this encounter. Bernard Conlon stated that this meeting marked the commencement of the relationship which he developed with Detective Sergeant White, and which involved Garda John Nicholson, over the period from the 20th of July 1997 to the date of his arrest on the 27th of January 2000. Detective

¹⁰ Tribunal Documents, page 2073.

Sergeant White denies any relationship and states that he next met Bernard Conlon on the 9th of March 1998. I am satisfied that the reason for this encounter was Mr. Conlon's irritation at not having received a meal to which he thought he was entitled whilst in the nightclub. Sergeant White took this matter up with the staff of Frankie's nightclub. I am satisfied that this coincided with enquiries which he had already made concerning the same issue within the premises earlier that evening. This common interest provided a springboard for their future association. It gave Sergeant White an opening which he later exploited to pursue his investigations concerning alleged breaches of the liquor licensing acts at Frankie's nightclub.

Alleged Meeting Between Bernard Conlon and Detective Sergeant White Between the 20th of July and the 30th of August 1997

2.07. In his evidence before the Tribunal, Bernard Conlon said that following his meeting with Sergeant White on the 20th of July 1997, he then met him the following Saturday night near the Diamond Bar in Raphoe. The sergeant was in civilian attire. Mr. Conlon seemed to imply in this evidence that this was the evening upon which he was 'found on' the McBrearty premises after hours on the 30th of August 1997.¹¹ Mr. Conlon, shortly after, sought to correct this impression when he told the Tribunal that he went back to Frankie's nightclub on an occasion before the 30th/31st of August 1997 when he again met and spoke with Detective Sergeant White who was on duty in uniform. According to Mr. Conlon, Detective Sergeant White asked him again whether he had heard any more news about the McBreartys and the "murder" of the Late Richie Barron. He had not. He was asked if he would be interested in doing a favour for Detective Sergeant White who had been speaking to Garda Nicholson about him. He was told that Detective Sergeant White had someone arrested for the death of the Late Mr. Barron but could not get anything out of them. Detective Sergeant White said that the only way that he would get anything out of the McBreartys was by "a found on late job". He was also told that Detective Sergeant White would look after him "money wise".¹² He was making the allegation, therefore, that Sergeant White, having spoken to Garda Nicholson about Bernard Conlon, met him approximately one week after his first encounter with him. Mr. Conlon alleged that Sergeant White offered him monetary advantage if he would attend at Frankie's nightclub and be 'found on' the premises after hours with a view to his being a witness in a later prosecution in respect of the event. Later in evidence, Mr. Conlon said that he could have met Detective Sergeant White at his home or in Raphoe.¹³

¹¹ Transcript, Day 330, Q.714-5.

¹² Transcript, Day 330, Q.797-800.

¹³ Transcript, Day 333, Q.258.

- 2.08. As already noted, Detective Sergeant White's case is that following the meeting of the 20th of July 1997 he did not meet Bernard Conlon again until Mr. Conlon attended the District Court as a witness on the 9th of March 1998 in respect of the prosecution arising out of the events of the 30th/31st of August 1997. Mr. Conlon was challenged on his version of events and it was pointed out that he had given a number of different accounts in relation to a supposed second meeting with Detective Sergeant White. Indeed, in a statement made on the 28th of January 2000 he said that he had attempted to telephone Sergeant White on the Thursday or Friday following the 20th of July but had not succeeded in making contact. Thereafter, he telephoned him at Letterkenny on the following Monday or Tuesday the 29th or 30th of July 1997 and reiterated his complaint to him about not receiving a meal at Frankie's nightclub, to which he claimed to have been entitled. On that occasion, he alleged that Detective Sergeant White invited him to make a statement but that Mr. Conlon said he would not bother.¹⁴
- 2.09. In a statement made on the 29th of January 2000 Mr. Conlon said that he went to Frankie's nightclub on a couple of nights after the 20th of July 1997 but that he was not speaking to any Gardai in Raphoe.¹⁵ On the 15th of February 2000 Mr. Conlon said that on one of a number of visits to Frankie's nightclub about three weeks after the 20th of July 1997 he met with Detective Sergeant White for the second time. It is clear from this statement that he believed this meeting took place on the 23rd of August 1997, one week before his visit to the premises on the 30th of August. In this statement he said that Detective Sergeant White told him that he was convinced Frank McBrearty was involved in the death of the Late Mr. Barron. Mr. Conlon had been in Frankie's nightclub and they spoke of what had happened inside at closing time. Detective Sergeant White asked him if he would agree to be 'found on' the premises drinking after hours and he agreed. He was further asked to become a witness for Detective Sergeant White on behalf of the State against Frank McBrearty Senior. Detective Sergeant White allegedly said that he would send two men into the ballroom and Mr. Conlon would be caught there drinking. He would tell the two members what Mr. Conlon would be wearing. He was told that there would be money in it for him and he was asked how he was fixed for the next Saturday, the 30th of August 1997. He said, "fair enough".¹⁶ Mr. Conlon repeated the 23rd of August 1997 as the approximate date for his second meeting with Detective Sergeant White on oath in the Circuit Court during Detective Sergeant White's trial on the 11th of January 2005 and the suggestion that he was in uniform on that day.¹⁷
- 2.10. **It is clear that there are a number of inconsistencies in the accounts given by Mr. Conlon in relation to this supposed second meeting.** In addition, the

¹⁴ Tribunal Documents, page 137.

¹⁵ Tribunal Documents, page 174.

¹⁶ Tribunal Documents, page 186.

¹⁷ Tribunal Documents, pages 1561-1562.

point is made that if the meeting took place on the 23rd of August 1997 it is unlikely that Detective Sergeant White would have been in uniform as he had been transferred from his uniformed duties in Raphoe to plainclothes detective duties in Letterkenny on the 7th of August 1997. **This is not conclusive of the matter but when taken with the inconsistencies outlined above, it creates serious questions about the accuracy and veracity of the evidence given by Bernard Conlon on this issue.**

Contact Between Bernard Conlon, Detective Sergeant White and Garda John Nicholson Prior to the 30th of August 1997

2.11. Whatever the inconsistencies in Mr. Conlon's evidence about an interim meeting with Detective Sergeant White, it is clear from the evidence that on the 30th of August 1997 Mr. Conlon did attend Frankie's nightclub and was 'found on' the premises after hours: his name was taken; he did make a statement about these events on the 8th of September 1997; this statement was forwarded and became part of the prosecution file against Frank McBrearty Senior and members of his staff, which gave rise to a prosecution against them for alleged breaches of the liquor licensing laws; and he was summonsed as a State witness in this prosecution to the District Court. How was Bernard Conlon inspired to do this? Was it on his own initiative? Was it on the initiative of Garda John Nicholson? Was it at the instigation of Detective Sergeant John White? Did Superintendent Lennon know about any of this, if it occurred? Both Garda Nicholson and Detective Sergeant White reject any suggestion that they were responsible for using Bernard Conlon as an agent by sending him in to Frankie's nightclub to be found drinking on the premises after hours for the purposes of engineering a prosecution against Frank McBrearty Senior and members of his staff. **Nevertheless, there is evidence, quite separate to that of Bernard Conlon, of contact and association between them which substantiates Mr. Conlon's claims in this regard. This includes:**

- (i) The testimony of John Nicholson that he received a message from Detective Sergeant John White for Bernard Conlon that he was to meet Detective Sergeant White at Raphoe on Saturday night, the 30th of August 1997;
- (ii) Evidence that Bernard Conlon, unusually for him, made an unplanned visit to Raphoe on Saturday the 30th of August 1997 with his friends and was 'found on' the premises at Frankie's nightclub drinking after hours by Gardaí who were carrying out an inspection and found him posing ostentatiously at the counter with multiple alcoholic drinks in front of him;
- (iii) Evidence that Bernard Conlon made a statement at Sligo Garda Station concerning the events of the 30th and 31st of August 1997 by pre-arrangement on the 8th of September 1997;

- (iv) Evidence that Bernard Conlon, a person who was a guilty party and had himself committed an offence under the liquor licensing laws, chose to come forward to the Garda Síochána in Sligo to make an inculpatory statement which was taken in the form of a witness statement without caution and which was clearly intended for use in a future prosecution;
- (v) Evidence that Bernard Conlon was summonsed as a witness on the basis of the statement made on the 8th of September 1997 to give evidence in the prosecutions initiated against Frank McBrearty Senior and members of his staff for alleged breaches of the liquor licensing acts arising out of the events of the 30th and 31st of August 1997;
- (vi) Evidence that following his attendances at the District Court, Mr. Conlon was paid expenses in excess of that to which he was entitled with the assistance of Garda Nicholson and Detective Sergeant White;
- (vii) Evidence of concern by Superintendent Lennon and Detective Sergeant White as to what Bernard Conlon may have told members of the Carty team following his arrest on the 28th of January 2000 in respect of the events leading up to the 30th and 31st of August 1997 and his attendance as a witness thereafter;
- (viii) Evidence that Garda John Nicholson and Detective Sergeant White met Bernard Conlon on the evening of the 10th of December 1998 in order to rehearse with him the testimony which he was to give the following day in the District Court and told him not to tell anybody about the meeting.

The Message

- 2.12. Bernard Conlon told the Tribunal that on Saturday morning, the 30th of August 1997 he met with a Mr. Ben Maguire, his friend, employer and landlord, who told him that the Gardaí were looking for him in Sligo. As Mr. Conlon was leaving Mr. Maguire's house in Cartron Bay, Garda John Nicholson pulled up in a silver patrol car and gave him a message. Mr. Conlon described it as follows:

Would I do a job for John White in Frankie's nightclub. And I thought about it for a minute and he says I have to know if you will or not. So I agreed on it. I said that I would go ... I went up to Catherine McGovern and Anthony (Kearns) and I just told them that we had to go ... would they mind coming to Raphoe that night. So they himmed and hawed and that type of thing and Anthony was short of a few pound or something and we were all, because I think we were all taken unawares, so I think I borrowed

*money off Ben Maguire and I gave Anthony a few pound that would tide him over. So we travelled from Sligo then to Raphoe ... John Nicholson had told me that he wanted me to have as much drink in front of me ... in Frankie's nightclub as late as possible and I ... went with it like ... and John Nicholson would have conveyed that message back to John White.*¹⁸

2.13. Mr. John Nicholson gave evidence to the Tribunal that he was asked to pass a message to Bernard Conlon by Detective Sergeant White in the course of a telephone call which he received at Sligo Garda Station between 18.00 and 22.00 hours on the evening of the 29th of August 1997 that Bernard Conlon was to meet Detective Sergeant White in Raphoe on the Saturday night. He was told that Mr. Conlon was helping Gardaí “with a little matter”, the nature of which was not discussed with him. He said this call had come out of the blue and that he had no other contact with Detective Sergeant White since June of 1997. Initially, Mr. Nicholson thought that Bernard Conlon might have been passing on information to members of An Garda Síochána in Donegal but he later acknowledged to the Tribunal that this was unlikely. If Mr. Conlon had been acting as an informant to Gardaí in Donegal it would be inappropriate for another member to reveal such a relationship to him as it might well have been dangerous to an informant. In passing on the message from Detective Sergeant White he “was obliging the man”. He thought that he might have told Detective Sergeant White to be careful of Mr. Conlon because of his previous record and reputation as untrustworthy and dishonest. He was not asked to give a time or a location for the proposed meeting to Mr. Conlon.¹⁹

2.14. Having received the message from Detective Sergeant White, Mr. Nicholson told the Tribunal that he went to Mr. Conlon's house at 61 Cartron Bay, Sligo to deliver it. He simply told Mr. Conlon that Detective Sergeant White had phoned him to give him the message and “he said that he was helping some of our fellas in Raphoe”. Mr. Conlon asked him no questions about the proposed time or location of the meeting. Mr. Nicholson did not know whether this message was intended to remind Mr. Conlon of an arrangement previously made or not. He said that having passed on the message he left Mr. Conlon. When he left he did not know whether Mr. Conlon would attend the proposed meeting or not. He was not asked by Mr. Conlon to convey any message back to Detective Sergeant White. However, he said that he may have telephoned him to tell him that he had delivered the message²⁰ and he told the Carty team that as far as he could recall he did contact Detective Sergeant White after the meeting with Mr. Conlon.²¹

¹⁸ Transcript, Day 330, Q.716-727.

¹⁹ Transcript, Day 339, Q.515-620, 629-630.

²⁰ Transcript, Day 339, Q.601-663.

²¹ Transcript, Day 339, Q.663-688.

- 2.15. It seems to me to be logical that if Garda Nicholson was asked by Detective Sergeant White to deliver a message and did so, that Garda Nicholson would make contact with him following delivery of such a message. I find it difficult to accept that it was not part of the task assigned to Garda Nicholson that having delivered the message, he should then obtain confirmation from Bernard Conlon that he would attend Raphoe on Saturday the 30th of August 1997 and that he would then contact Detective Sergeant White to confirm that this appointment would be kept for a particular time and place in Raphoe, or not as the case may be. To do otherwise would have deprived his assignment of a practical purpose.

Detective Sergeant White's Account

- 2.16. Detective Sergeant White said in evidence that when he first met Garda Nicholson in June of 1997 in a canteen at Letterkenny Station, Garda Nicholson discussed an investigation in which he was involved concerning another member of An Garda Síochána with him. Subsequently, they remained in contact because Sergeant White thought that he might have had contact with this member some time previously, knowledge of which might have been useful for Garda Nicholson in his investigation. He said that Garda Nicholson contacted him regularly about this matter. In the course of these phone calls, Detective Sergeant White said that they discussed the current situation in Frankie's nightclub at Raphoe. They also discussed Bernard Conlon. He said that it started out as a joke. He mentioned the name of Bernard Conlon to Garda Nicholson and the fact that Mr. Conlon had been looking for food at Frankie's nightclub and Garda Nicholson replied:

That would be my man alright ... he'd be hungry ... he said that Mr. Conlon was helpful to them in Sligo, very helpful. And I took it that he was helpful in that he would be a source of information but not an informant.²²

- 2.17. Later, on a date which Detective Sergeant White believed to be after the 7th of August 1997,²³ Garda Nicholson telephoned him and asked him how he was getting on with the McBreartys. Detective Sergeant White told Garda Nicholson that the inspections at Frankie's nightclub were still ongoing. Garda Nicholson said:

My man (namely Bernard Conlon) would be helpful you know, in that regard, he would tell the truth ... he said he was helpful to him or the boys in Sligo and that he would be truthful if he was questioned by a Guard as to what time the bar closed etc. ...

²² Transcript, Day 354, Q.416-443.

²³ The date of his transfer as a detective sergeant to Letterkenny from his position as uniformed sergeant in Raphoe.

It was a general conversation which he described as follows:

I had raised a point, not for the first time, with Garda Nicholson that it was very difficult, in fact impossible, to get a witness in McBrearty's nightclub to say when the bar closed. Most witnesses when you approach them there could have pints of beer there at three o'clock in the morning when you walk in or half two and you ask them what time they got it and oh we got it at eleven o'clock, when the bar closed ... (Bernard Conlon) because of the fact that he was helpful to the Gardaí in Sligo and he would be truthful, that he would not have any fear of ... I do not want to say fear of the McBreartys, but fear of getting involved in that type of thing ... It wasn't discussed that he would be involved as a witness, if I can put it like that ... the inference was that he would (make a statement about it).²⁴

- 2.18. Detective Sergeant White also acknowledged that, though it was not discussed, it followed that Mr. Conlon would be used as a witness because it would help the case. He welcomed the fact:

That this man would be a truthful man from outside the locality.²⁵

However, he viewed the remarks as just a suggestion and he did not do anything with the information. He did not tell Garda Nicholson to get Bernard Conlon to come down to the nightclub. The matter was not of any great importance to him at the time. The day after this conversation Mr. Conlon was caught on the premises. When he heard this, Detective Sergeant White believed that Garda Nicholson had had a word with him. Garda Nicholson never asked Detective Sergeant White whether he wanted him to do anything about Bernard Conlon or to contact Raphoe Station about arranging for him to go to Frankie's nightclub. Garda Nicholson did not say that he would get Mr. Conlon to go up to the nightclub. His impression was that if a Garda inspection took place when Mr. Conlon was there he would tell the truth about getting the drink after hours, if approached by the Gardaí.²⁶ After he heard of Mr. Conlon's attendance at Frankie's nightclub, Detective Sergeant White did not contact Garda Nicholson about it.

- 2.19. Detective Sergeant White described these events in a slightly different way in his statement of the 21st of May 2005. He said:

Garda Nicholson and myself also had discussions regarding Frankie's Night Club, including the difficulties the Gardaí on duty in Raphoe were faced with in relation to patrons who were found on the premises after hours,

²⁴ Transcript, Day 354, Q.416-462.

²⁵ Transcript, Day 354, Q.463-465.

²⁶ Transcript, Day 354, Q.466-492.

being truthful as to when they had been served alcohol. Mr. Conlon's name came up in conversation at some later stage when I informed Garda Nicholson that he had approached me on the street and made a complaint regarding the non production of a meal as I have outlined. Garda Nicholson told me that Mr. Conlon would probably tell the truth if the Gardaí encountered him on the premises after hours as he was not from the area and that he was helpful to the Gardaí. He outlined Mr. Conlon's position as a caretaker of houses in Sligo. I got the impression from speaking to Garda Nicholson that he was very well acquainted with Mr. Conlon. My understanding is that Garda Nicholson spoke to Mr. Conlon in relation to Frankie's Night Club and that an understanding was reached between them that Mr. Conlon would be truthful with the Gardaí as to the time that alcohol was being served if he was present during an inspection. I was of this belief from telephone conversations that I had with Garda Nicholson ...²⁷

Mr. Nicholson's Account

2.20. Though Mr. Nicholson accepted in evidence that he had contact with Detective Sergeant White in respect of a case which he was investigating concerning a member of An Garda Síochána, he rejected the contention that he had been involved in such an investigation prior to August of 1997. He maintained that any contacts they had concerning the matter occurred much later than August 1997. In this regard, the Tribunal has considered documents relating to this case which indicate that Garda Nicholson became involved in the interviewing of the suspect in the case on the 11th of August 1997. Subsequently, a file was prepared for the Director of Public Prosecutions who considered the matter and issued directions on the 9th of December 1997.²⁸ This is a timeframe consistent with the evidence given by Garda Nicholson in respect of his involvement in the case.

Analysis

2.21. I am satisfied that Detective Sergeant White contacted Garda John Nicholson by telephone prior to the evening of Saturday, the 30th of August 1997 and asked him to tell Bernard Conlon to go to Raphoe that Saturday night. I am also satisfied that, as a result of this message, Bernard Conlon went to Raphoe for the purpose of being 'found on' the premises after hours in the possession of alcohol by members of An Garda Síochána who would be present to carry out an inspection. It is likely that the mechanism of this escapade was discussed by Garda Nicholson with Bernard Conlon and that Detective Sergeant White was fully aware of what was intended. It coincided with his desire to successfully prosecute

²⁷ Tribunal Documents, pages 2074-2075.

²⁸ Tribunal Documents, pages 3374-3380.

Frank McBrearty Senior and his staff for breaches of the liquor licensing acts. He was willing to use Bernard Conlon to achieve that result.

- 2.22. I regard the testimony of Garda Nicholson on this issue as incomplete because he told me only part of the story. The testimony of Detective Sergeant White on this issue was both devious and contrived. Therefore, whilst I have expressed reservations about the veracity and accuracy of the testimony of Bernard Conlon in respect of alleged meetings with Detective Sergeant White between the 20th of July and the 30th of August 1997, nevertheless I am satisfied that the core element of his story that he was told to go to Raphoe to be 'found on' Frankie's nightclub after hours with a drink in front of him by members of An Garda Síochána inspecting the premises is true and supported to a large extent by the evidence of Garda Nicholson. I am also satisfied that there was contact between Detective Sergeant White, Garda Nicholson and Bernard Conlon prior to the 30th of August in which Bernard Conlon was directed as to what he should do in Raphoe.

Going to Frankie's Nightclub

- 2.23. Following his receipt of the message from Garda Nicholson, Bernard Conlon made arrangements to attend Frankie's nightclub with his friends. He believed that he went with Catherine McGovern and Anthony Kearns who, like him, were interested in country and western music. He told the Tribunal that unlike his other attendances at the nightclub, which were planned well in advance, this trip, because of the lateness of the notice, was not. It was the normal practice for him and his friends to make arrangements a couple of days in advance to go to the nightclub. In that way they could ensure that they had sufficient funds for the trip and their night out and could pre-book accommodation at McGranaghan's Bed & Breakfast in Raphoe with Mrs. Mary McGranaghan. Catherine McGovern gave evidence supportive of the fact that the trip was "a spur of the moment arrangement".²⁹ Mr. Kearns had previously made a statement to the same effect on the 3rd of February 2000 but did not say so in evidence.³⁰ The Tribunal notes that Mr. Kearns made every effort to help the Tribunal but laboured under a number of personal difficulties which limited his ability to help the Tribunal any more than he did.
- 2.24. Mr. Conlon and Ms. McGovern state that only three persons travelled to Raphoe on the 30th of August 1997. Mr. Anthony Kearns and a Mr. Tony Doyle state that Mr. Doyle was also in their company that night. Mr. Doyle also states that the trip was planned a number of days in advance.³¹

²⁹ Transcript, Day 328, Q.140-169, 196-202.

³⁰ Tribunal Documents, pages 396-398.

³¹ Transcript, Day 328, Q.782-784 (the evidence of Mr. Kearns) and Transcript, Day 373, Q.120-123 (the evidence of Mr. Doyle).

- 2.25. On balance, and bearing in mind the sometimes unreliable nature of Ms. McGovern's testimony to the Tribunal, **I am satisfied that the evidence tends to suggest that the arrangement to travel was not pre-planned as usual and the probability is that the idea to attend Frankie's nightclub that night emanated from Bernard Conlon late in the day prompted by the message received through Garda John Nicholson from Detective Sergeant White.**

Bernard Conlon and his Friends Arrive in Raphoe

- 2.26. The Conlon party travelled from Sligo at about 19.00 hours by bus to Ballybofey and then by taxi to Raphoe.³² Bernard Conlon said that he borrowed money from Mr. Ben Maguire prior to travelling.³³ In that regard, he had previously stated that Garda Nicholson had asked him whether he was alright for money when he delivered the message but he later denied this.³⁴ Mr. Conlon said that on arrival in Raphoe he and his party went to McGranaghan's Bed & Breakfast where they spent five to ten minutes speaking to Mrs. McGranaghan. He said that he told Anthony Kearns and Catherine McGovern that he had someone to meet and that he would see them later.³⁵
- 2.27. Ms. McGovern gave a somewhat confusing account of this part of the evening. She accepted that Bernard Conlon had gone out earlier than the rest of the party but said that he did not give a reason. They met in the nightclub later on.³⁶ He did not indicate that he was meeting anyone. However, in a previous statement Ms. McGovern said that Bernard Conlon told her and Anthony Kearns that he was going out to meet some person whom he did not identify and that they agreed to meet later in a pub.³⁷ When this was pointed out to her, she agreed that he had said that he was going to meet somebody and would meet them later. They later met up and went to Frankie's nightclub.³⁸
- 2.28. Later in her evidence it was pointed out to Ms. McGovern that she had also made a previous statement to the effect that having arrived in the Bed & Breakfast Mr. Conlon had left to meet his girlfriend. She also described how she had later met this girlfriend, who was apparently from Strabane, in Frankie's nightclub where Ms. McGovern had been introduced to her by Bernard Conlon. She also said that the group (including his girlfriend) had drinks together in the club³⁹ and that this lady remained sitting with Mr. Conlon in the nightclub until approximately 02.00 hours at the bar. She then somewhat strangely said that she did not know if this

³² Transcript, Day 330, Q.717.

³³ Transcript, Day 333, Q.329-333.

³⁴ Transcript, Day 333, Q.332-335.

³⁵ Transcript, Day 330, Q.735.

³⁶ Transcript, Day 328, Q.173-178.

³⁷ Tribunal Documents, page 400

³⁸ Transcript, Day 328, Q.186-196.

³⁹ Transcript, Day 328, Q.472-542.

girl existed at all.⁴⁰ She said that she was not at all sure of these matters. She was given the opportunity to reflect on these issues and returned to the witness box and told me that when Bernard Conlon had gone out earlier in the evening he did not tell her the name of the person he was meeting. She thought that he had met a girl that night. The possibility emerged in her evidence that she may have been confused as to the night of Bernard Conlon's appearance with his girlfriend. She connected this event with an appearance by the distinguished artist Joe Dolan at the club. On the night of the 30th, apparently, the artist appearing was Jimmy Buckley. However, Ms. McGovern also said that Mr. Conlon may have met a girl casually that night when dancing. She was not sure.

2.29. Mr. Kearns said that he did not see or meet any girlfriend of Mr. Conlon's that evening.⁴¹ Mr. Tony Doyle said that Mr. Conlon went off for a few hours after they arrived at the Bed & Breakfast in Raphoe. Mr. Conlon said he was going to get something to eat in the chip shop. He went out on his own. Mr. Doyle took it that he went to get something to eat and to have a walk around.⁴² Mr. Doyle was not told anything about Mr. Conlon meeting a girlfriend.

2.30. The evidence indicates to me that Mr. Conlon went to Raphoe on the 30th of August 1997 with Catherine McGovern, Anthony Kearns and Tony Doyle. They went to Mrs. McGranaghan's Bed & Breakfast and checked in. Though Mr. Conlon may have gone out to meet somebody, this person's identity was probably not made known to the others. He met them later that evening after a number of hours. I regard the evidence of Ms. McGovern concerning the existence of a girlfriend as confused and unreliable, though Mr. Conlon may have danced with a lady at some stage at the nightclub that evening. Indeed, the evidence of his companions concerning the evening festivities, through no fault of theirs, did nothing to clarify the evening's events for the Tribunal. **Though this evidence, such as it is, suggests Bernard Conlon's absence from the party for a period, it does not go so far as to prove that he met Detective Sergeant White.**

Did Bernard Conlon Meet Detective Sergeant White in Raphoe?

2.31. Mr. Conlon said in evidence that he met Detective Sergeant White in the car park of The Diamond in Raphoe. Detective Sergeant White was in plain clothes. He took Mr. Conlon to a school. Mr. Conlon said he did not know the school because he did not know Raphoe. He said that Detective Sergeant White took note of what he was wearing namely a white shirt, red tie, white cords and black shoes. At this point, it should be noted that regardless of clothing Mr. Conlon was and remains of a very heavy and distinctive build. He was told by Detective Sergeant

⁴⁰ Transcript, Day 328, Q.535.

⁴¹ Transcript, Day 328, Q.858-875.

⁴² Transcript, Day 373, Q.123-136.

White to be on the premises (Frankie's nightclub) as late as possible. He thought that they were at the school after 21.00 hours approximately. It was somewhat dark. They remained talking at the school for about ten to twenty minutes. Mr. Conlon said that he was told by Detective Sergeant White that he would look after him if he carried out this task for him and that there would be one hundred or two hundred pounds in it for him. Detective Sergeant White then dropped Mr. Conlon back to Raphoe and said that he would have to get out of the town at that stage because he was not supposed to be around Raphoe that night. He dropped Mr. Conlon in The Diamond in Raphoe and Mr. Conlon went to meet his friends in the Diamond bar.⁴³ Mr. Conlon claimed that Detective Sergeant White drove a blue car: in fact his car was green.

At Which School Did the Meeting Take Place?

2.32. It was demonstrated to Mr. Conlon that in his original statements, and in his evidence to the Circuit Court in Letterkenny, he had pointed out the Technical School in Raphoe as the school to which he had been driven by Detective Sergeant White. He confirmed this in evidence in the Circuit Court by reference to an aerial photograph of the area, which was also produced to the Tribunal. However, in evidence and in an interview with the Tribunal investigators Mr. Conlon identified a parking area outside Raphoe Central National School, Bride Street near the Close area of Raphoe as the place to which he had been driven that night. This school is positioned at the opposite end of the village to that at which the Technical School is located.⁴⁴ At the very least there was some confusion in Mr. Conlon's mind as to which school he was driven by Detective Sergeant White. He could not identify Raphoe Central National School on the photograph produced to the Tribunal.

Detective Sergeant White's Movements

2.33. Detective Sergeant White denies that this meeting ever took place. In his statement to the Tribunal he said:

I was scheduled to work as part of my normal duties on Saturday 30th of August, 1997 but I applied for a day's annual leave for that day as my wife, Rosaleen was travelling to Fermanagh on a tour and I had to mind our four children, who ranged in age from 2 years to 10 years of age at that time. My mother, Angela who lives in County Tipperary was staying with us at that time and she also went with my wife. My Form D.9, which is an annual leave application form shows that I was on annual leave on that date. My recollection is that my wife and my mother returned to our home late that night at approx. 10.30 p.m. to 11.00 p.m. and that I made tea

⁴³ Transcript, Day 330, Q.736-762.

⁴⁴ Transcript, Day 333, Q.468-508 and Tribunal Documents, pages 1628-1629 and pages 2315-2316.

for us in the sitting room upon their return. I applied for annual leave for 30th of August, 1997 for the specific purpose of staying at home to mind my four children and I did so. I do not remember if there was telephone contact between Garda Nicholson and myself on that date. I very much doubt it. There certainly was not telephone contact between Mr. Conlon and myself on that date. I most certainly did not meet Mr. Conlon in Raphoe that night.⁴⁵

- 2.34. Mr. Conlon in evidence said that he met Detective Sergeant White at 20.30 to 21.00 hours.⁴⁶ Detective Sergeant White expanded somewhat on his account in evidence to the Tribunal. He said:

In relation to the 30th itself or a couple of days prior to that my wife ... my mother's side was up on holidays in Donegal and my wife was going on a tour to Enniskillen and around that area on a bus with some group of ladies and she asked my mother would she go and she said she would and that meant that there was no one to mind the children. So I applied for a day's leave and I took the day's leave on that Saturday. I didn't know and I had no idea what time the bus would be coming back that night or what the itinerary was. I don't believe they had an actual time for coming back, it was just a question of going and having a meal on the way back and that type of thing. But to the best of my memory they returned around half past ten or eleven o'clock. That is approximate but it was late at night-time. When they arrived at my house my mother asked me to make tea and I did. I brought it into the sitting room: usually we have it in the kitchen. But we went in and I asked her about the trip. Sorry, my mother told me about the caves that she went to and that type of thing. My children were aged between two and ten at the time, they were young and lively and we just could not get a babysitter to mind them at the time and I was there in the house all day and I couldn't leave it. I could not tell Bernard Conlon even if a phone call had taken place, I couldn't say, I'll meet you at half past nine, because I didn't know what time they would be back at. And I did not meet him in Raphoe. That is an absolute certainty beyond doubt in my mind.⁴⁷

- 2.35. [This account of the trip undertaken by Detective Sergeant White's wife and mother was substantially verified in their evidence to the Tribunal. There is no reason to disbelieve their accounts. The Tribunal cannot be](#)

⁴⁵ Tribunal Documents, page 2075.

⁴⁶ Transcript, Day 333, Q.518.

⁴⁷ Transcript, Day 355, Q.237.

sufficiently satisfied that there was a meeting in Raphoe that night between Detective Sergeant White and Bernard Conlon. I am satisfied that Bernard Conlon was prompted to attend at Frankie's nightclub on the evening of the 30th of August by Detective Sergeant White and Garda John Nicholson and that there was contact between them and Bernard Conlon in the period between the 20th of July and the 30th of August 1997, which facilitated the development of their relationship. Though Mr. Conlon had difficulty in providing detail as to the times and dates of these meetings and may indeed have engaged in some confabulation concerning matters of detail, I am satisfied to accept the core of his account that Garda Nicholson and Detective Sergeant White used him as an agent in Frankie's nightclub that night.

Two Inspections of Frankie's Nightclub

2.36. At approximately 01.20 hours on the 31st of August 1997, Sergeant Sarah Hargadon and Garda Shaun Barrett carried out an inspection at Frankie's nightclub. This was routine and apparently unrelated to the arrangement made between Bernard Conlon, Detective Sergeant White and Garda Nicholson.

2.37. However, to fulfil the plan members of An Garda Síochána had to enter the premises and find Bernard Conlon with alcohol in the course of their inspection. This happened. On the evening of Saturday the 30th and in the early hours of Sunday the 31st of August 1997 a number of Gardaí were on duty in the centre of Raphoe. These were Sergeant Hargadon, Garda Keavney, Garda Barrett and Garda John O'Dowd. Two Gardaí, namely Gardaí Shaun Barrett and Noel Keavney, carried out this second inspection and said that they did so having been approached by Garda John O'Dowd.

2.38. Garda Keavney gave evidence that he and Sergeant Hargadon had inspected Frank McBrearty's nightclub together on the evening of the 30th/31st of August 1997. Later, in the early hours of the morning, he and Garda Barrett were standing at D.J.'s chip shop directly across the road from the nightclub when they were approached by Garda John O'Dowd who said:

*Would you mind having a look in Frankie's or in there or whatever:
he said words to that effect.*

2.39. Mr. John O'Dowd told the Tribunal that he had only a vague recollection of the 30th/31st of August 1997. He had no recollection of talking to Gardaí Barrett and Keavney about inspecting Frankie's nightclub at any time during that period of duty. From his notebook entries he was able to conclude that he was not present outside Frankie's nightclub between 02.30 and 03.00 hours on the morning of

the 31st of August. His notebook indicated that at 01.00 hours he had received a complaint from a lady on the street or at a house at Guesthouse End Street. He received some information at or about that time as a result of which he went to and made enquiries at a house at McBride Street nearby. He timed the end of his visit to the McBride Street house at 03.00 hours, which led him to believe that he had been on the premises for twenty to thirty minutes, from approximately 02.30 to 02.40 hours. He commenced duty at 20.00 hours on the 30th and concluded his duty at 04.00 hours on the morning of the 31st of August.⁴⁸

- 2.40. Gardaí Keavney and Barrett said that, having been approached by Garda O'Dowd, they then entered Frankie's nightclub at 02.55 hours on the morning of the 31st of August. Sergeant Sarah Hargadon told the Tribunal that she was standing outside Frankie's nightclub while Gardaí Barrett and Keavney were inside inspecting it and that Garda O'Dowd then joined her and told her that he had been away making enquiries about a crime in the town. He had been to a house in McBride Street and had searched it but did not recover money which had been allegedly stolen. He also informed her that he had seen on Teletext that Princess Diana had been involved in a serious accident. She felt that Gardaí Barrett and Keavney had just gone in to clear the premises at that stage and did not find this surprising. She had not become aware of the suggestion by Gardaí Barrett and Keavney that they had gone into the premises after being approached by Garda O'Dowd until after they made their statements to this effect on the 15th of June 2005. She was not aware in any way that Mr. Conlon had been inspired to be present on the premises with pints in front of him by any member of An Garda Síochána.⁴⁹
- 2.41. The timeframe indicated by Gardaí Barrett and Keavney for their encounter with Garda John O'Dowd would appear to suggest that at approximately 02.45 hours they were approached and asked to have a look in Frankie's nightclub by him.
- 2.42. In respect of Garda O'Dowd, I do not accept the proposition that he was necessarily away attending to the house at McBride Street for as long as is suggested. It seems to me that given the limited nature of the enquiry and search that he made, it is entirely possible that having made his comments to these two Gardaí he then went and visited McBride Street. It is an extraordinary coincidence, such as to make it in my mind more than a coincidence, that Garda O'Dowd should, in these circumstances, have prompted the two members to go into Frankie's nightclub. This is done at a time when the one inspection which is supposed to take place under a directive issued by Superintendent Lennon had already taken place at 01.20 hours.

⁴⁸ Transcript, Day 375, Q.225-376.

⁴⁹ Transcript, Day 328, Q.1040-1075.

- 2.43. Gardaí Barrett and Keavney⁵⁰ both deny that they were ever approached by or saw Detective Sergeant White in Raphoe that evening. Sergeant Hargadon and Garda O'Dowd also deny any such encounter or sighting. It seems to me likely that Garda O'Dowd prompted the second inspection of Frankie's nightclub. This has not been satisfactorily explained to the Tribunal by him, and the Tribunal is suspicious that he was part of and knew of the plan involving Bernard Conlon, Detective Sergeant White and Garda John Nicholson. Detective Sergeant White was not present at the time of the inspection but I am satisfied that he was behind it having considered the course of events established in evidence. For the plan to work somebody had to initiate the second inspection.

Encounter with Bernard Conlon

- 2.44. Garda Keavney described the scene when he entered the premises. There were people scattered around the hall area where there was seating. Mr. Bernard Conlon was standing facing the bar. The shutters were up on the bar and Mr. Conlon had his two hands on the counter. There were two pint glasses in front of him of Smithwicks, one of which was full and the other two-thirds full. Garda Keavney was satisfied that the pints were recently pulled. They both appeared to have fresh heads on them.⁵¹
- 2.45. Garda Shaun Barrett also gave evidence which substantially coincided with that of Garda Keavney. He did not find the approach by Garda O'Dowd in any way strange. He told the Tribunal that the two Gardaí approached the door, which was open, and they simply walked into the premises. They approached the dance floor and bar area. It was their intention to clear the premises. It would have been the normal thing to do in those circumstances. He thought there were about 50 or 60 people in the premises. The majority of these were sitting down to the right. The music had stopped. The majority of people at the table seemed to have what appeared to be alcohol in front of them. But they did not look like fresh drinks. Garda Barrett saw one man standing at the bar and another man behind it. The man in front of the bar was Mr. Bernard Conlon, who was standing with what appeared to Garda Barrett to be two pints which had just been pulled. The shutters were up in the bar and there were a lot of glasses on the bar which appeared to have been placed there in the course of clearing up. He did not believe that the bar was open at that stage: it was simply that the shutters were raised. There was another bar in which the shutters were down. On entering the premises a number of persons who were seated got up to leave. However, the man at the bar, Mr. Bernard Conlon, remained where he was:

⁵⁰ Garda Keavney had only been working in Raphoe since the 17th of July 1997 and had not been involved in the initiation of any prosecutions concerning Frankie's nightclub up to that time. He had entered Frankie's nightclub with Detective Sergeant John White on an inspection on the 20th of July 1997 in respect of which he thought summonses were issued.

⁵¹ Transcript, Day 326, Q.160-174.

I recall he was standing with his two hands on the bar and that he looked around as we were approaching. He didn't seem surprised or anything that I was approaching him. ... To his left, he was facing me, to my right there was another couple sitting down and I know that they were in his company ... He was drinking the pint and I spoke to him ... where other people were making efforts to leave, he seemed to be basically kind of brazen; that is the way I would describe him, he was kind of brazen. What drew my attention to him was his fresh drink, ... he seemed to be kind of brazen about his attitude. Sorry, 'his attitude' may be wrong because I hadn't spoken to him. He seemed to be brazen as he turned and faced ... it would be normal, particularly since I have some experience of inspecting licensed premises, particularly in the Raphoe area, even prior to that, and at any time you go in the people would generally leave, that was the normal thing and this man appeared to be brazen. So I asked him did he know it was an offence and he said he didn't and I asked him when did he get the drink and he says, I have a note that it is half two he says. Now whether it was half two that he said or whether he said 25 minutes, I can't recall, but my entry in my notebook it said it was 2.55 and I have a note in the thing that it was 2.20 that he said so. Whether he said it was 2.30 or whether he said it was half two or whether he said it was twenty-five minutes ago or half an hour or something to that effect I can't recall ... I asked him who had served him at that time. He pointed ... to my recollection to where was only one barman behind the bar at the time and I know it was Eamonn McConnell and he pointed that man there. So I basically put it to Eamonn McConnell that this man had alleged that he served him at half past two and he says I don't know what he is talking about, that fellow is drunk or something to that effect. Mr. McConnell appeared to me to get annoyed or agitated then because your man had said that.⁵²

- 2.46. Garda Barrett took Bernard Conlon's name and address but informed the Tribunal that this was not for the purpose of prosecuting Bernard Conlon. He said:

I recall asking him would he make a statement in relation to it and he said that he would so I recorded his name and the rest. I don't recall whether I had taken his name and address first and then asked him ... I would have to say that it wouldn't have been my intention to prosecute, in taking his name [it] wouldn't have been

⁵² Transcript, Day 326, Q.540-597.

my intention to prosecute him. ... Basically ... he alleged that he was served by this Mr. McConnell at a certain time and I had taken a note. At that stage I was totally unaware that he ever would make a statement. ... He appeared to be willing to make a statement. [The purpose in obtaining the statement from Mr. Conlon] was just to verify what he had alleged.⁵³

This was in the context of mounting a prosecution against the license holder. Garda Barrett also believed that though the drinks in front of the other patrons did not appear to be “fresh”, he did not believe that they had all been served prior to midnight.⁵⁴

2.47. Although Bernard Conlon’s posture was described as “brazen” by Garda Barrett, Mr. Conlon indicated to him that he would make a statement but he could not recall whether Mr. Conlon volunteered to do this or whether he asked him.⁵⁵

2.48. There were two other persons in the company of Mr. Conlon, namely Mr. Tony Kearns and Ms. Catherine McGovern, who were seated at the time. Garda Barrett took Ms. McGovern’s name and address because he thought she said she would make a statement but he was not one hundred per cent sure about that. He did not take Mr. Kearns’ name. Most other people made their way to the exit or were doing so by this time.⁵⁶

2.49. When the barman denied that he had served the pints to Mr. Conlon, Mr. Conlon appeared to get upset. Though Garda Barrett asked the man in their company, Mr. Kearns, to furnish his name and address this was not furnished but “he appeared a bit funny – he was smiling and I asked him twice and it was the same ... so I didn’t pursue it.”

Catherine McGovern, Anthony Kearns and Tony Doyle

2.50. Catherine McGovern told the Tribunal that she met Bernard Conlon later in the evening of the 30th of August at Frankie’s nightclub and remained in his company with Anthony Kearns for a number of hours. She and Bernard Conlon had a number of drinks. When the music stopped they made ready to leave at about 02.30 to 03.00 hours. Mr. Conlon indicated that he was going to stay for another while. On previous visits to the nightclub they had left directly after the music had finished. Mr. Conlon was “just sitting there finishing his drinks”. She thought he had one or two drinks left in front of him but she was not sure. She said that half an hour before she left he offered to buy her a drink but she had had enough and Bernard Conlon bought himself a pint which was still there as she and Mr. Kearns left about half an hour later. She and Anthony Kearns went

⁵³ Transcript, Day 326, Q.597-607.

⁵⁴ Transcript, Day 326, Q.606-612.

⁵⁵ Transcript, Day 326, Q.617-620.

⁵⁶ Transcript, Day 326, Q.632-642.

to the chip shop and as they were leaving the premises, she maintained that two Gardaí were entering the nightclub. Initially, she maintained that one of them was a male and the other a female Garda. She later maintained that she met three Gardaí coming out of the premises, including a female Garda, whom she acknowledged could have been waiting outside for the duration of the inspection. She also appeared to accept that there had been an earlier inspection of the premises by two Gardaí. She said she met two male Gardaí at the corner of Frankie's nightclub down from the entrance. A Garda patrol car was parked nearby on the same side of the street as Frankie's nightclub. She denied that her name was taken by a member of An Garda Síochána that night, though Garda Barrett in giving evidence said that he had taken her name and address, which were clearly entered in his notebook at the time of the inspection. He and Mr. Kearns then went to the café where they were obliged to wait for about half an hour. They then returned to the Bed & Breakfast where they met up again with Bernard Conlon within an hour of leaving the nightclub. This somewhat contradicted her earlier statement that Mr. Conlon had met them at the chip shop. At the Bed & Breakfast Mr. Conlon told them that he had encountered the Gardaí and that they had taken his name. He was a bit upset by this because he thought he would be summonsed to court. They told him he would have been better off to leave the nightclub when he was told that the Gardaí were coming in. She was aware that he had to go to Letterkenny District Court later and after this event their trips to Frankie's nightclub ended.⁵⁷

- 2.51. Aspects of this account do not gel with the account given by Gardaí Barrett and Keavney and I am satisfied that Ms. McGovern is mistaken about meeting the two Gardaí outside the premises as she and Mr. Kearns left. It seems more likely that Garda Barrett took her name and address at the time of his inspection with Garda Keavney and when they encountered Bernard Conlon on the premises. Mr. Conlon was standing at the bar and she was sitting nearby at that time. However, her evidence tends to confirm that Mr. Conlon delayed leaving the premises. He sought to buy her another drink well after hours and her evidence was that he purchased a drink one half hour before they left which was still sitting in front of him when the Gardaí inspected the premises. The other unusual feature of the evening was that they did not leave immediately after the conclusion of the musical performance as had happened on previous occasions.
- 2.52. Anthony Kearns gave evidence to the effect that having been in the company of Bernard Conlon, Catherine McGovern and Tony Doyle in Frankie's nightclub he decided to go because he did not wish to be summonsed for being on the premises after hours. He seemed to have been agitated and worried that the Gardaí would enter the premises and that he would get a summons. Having

⁵⁷ Transcript, Day 328, Q.204-438 and 610-727.

warned a number of people to come out, he left and, while leaving, saw two Gardaí enter the premises. His warning to the others was based more on his general fear that the Gardaí would inspect the premises, find him and his friends on the premises and summons them, rather than on any specific knowledge on his part that the Gardaí were going to carry out an inspection of the premises. When it was clear that his friends were not paying any attention to him, he left on his own. This would tend to suggest that Garda Barrett's evidence in respect of the taking of Ms. McGovern's name when he entered the premises is correct. However, Mr. Kearns also seemed to confirm that Ms. McGovern joined him and they went to the chip shop after Frankie's nightclub before returning to the Bed & Breakfast.⁵⁸

2.53. Mr. Tony Doyle told the Tribunal that he left the nightclub and Gardaí then entered the premises. Bernard Conlon came out of the nightclub and told him that he had "got pulled for having a pint in my hand ... I'm getting summonsed now for it". He went over and asked one of the Gardaí why he was getting summonsed near the entrance to the nightclub across from the chip shop.⁵⁹ His evidence tends to confirm that of Mr. Kearns and Ms. McGovern that Mr. Conlon was agitated and upset that his name had been taken and that he might be prosecuted. Mr. Conlon said that he complained about the taking of his name later on to Detective Sergeant White as this was not part of the agreed plan. However, one might also suppose that, regardless of any plan, a person might be worried about being summonsed in these circumstances. It should be noted that reference is made here to the evidence of Ms. McGovern, Mr. Kearns and Mr. Doyle for the purpose of completeness. As already noted their evidence, through no fault of their own, was in many respects infirm.

2.54. At this point, it is proper to point out that Mr. Frank McBrearty Senior and his staff reject any allegations of wrongdoing on their part or any allegation of non-compliance with the licensing laws that night. This conflict will be addressed in a later module concerning Term of Reference (c). What is clear to me, however, is that Bernard Conlon declined to leave the premises when the Gardaí entered, when it was the commonsense thing to do. On the contrary he ostentatiously remained at the bar with drinks in front of him in a manner which made it inevitable that he would become the focus of Garda attention. This was entirely in keeping with the agreed plan.

2.55. **I am satisfied that this plan was conceived and directed by Detective Sergeant White with Garda John Nicholson and Bernard Conlon. The plan was that Mr. Conlon would attend Frankie's nightclub as Detective Sergeant White's agent for the purpose of securing evidence against Frank McBrearty Senior and members of his staff. Mr. Conlon was a person**

⁵⁸ Transcript, Day 328, Q.792-857.

⁵⁹ Transcript, Day 373, Q.137-147 and Q.214-220.

with previous convictions, living on the margins of society and thought to be untrustworthy and dishonest. He was also somebody of low intellectual ability who was amenable to the promptings and encouragement of Detective Sergeant White and Garda Nicholson in respect of this escapade. He was open to the promise of money. Garda Nicholson was eager to help the Gardaí in Donegal in their difficulties with the McBreartys, on which he had been briefed by Detective Sergeant White and, perhaps, by other sources whilst in Donegal, during the second arrest of Mark McConnell in June of 1997. He willingly allowed himself to be used as a contact point for, and in the encouragement of, Bernard Conlon in this matter; the next phase of which was the making of a statement by Bernard Conlon about the events of the 30th/31st of August 1997 to members of An Garda Síochána.

Contact Between Bernard Conlon and Detective Sergeant White Between the 31st of August and the 8th of September 1997

2.56. Mr. Conlon said in evidence that the next contact that he had concerning the events of the 30th/31st of August 1997 was with Detective Sergeant White on the following Monday, the 1st of September 1997. Detective Sergeant White telephoned him and told him that he would be coming down to see him. He maintained that he had Detective Sergeant White's mobile telephone number from around the time he was 'found on' the premises. He told Detective Sergeant White that his name had been taken and he was told not to worry about it. Shortly afterwards, Detective Sergeant White telephoned him and arranged to visit him at his home at 61 Cartron Bay, Sligo. This, Detective Sergeant White's first visit to his home, occurred within one week approximately of the 31st of August 1997. When he arrived Mr. Conlon brought him into his sitting room. He told Mr. Conlon that he had done a good job and gave him money from a brown envelope containing £200 in twenty pound notes. He told Mr. Conlon that he was, "a man after his own heart, that type of thing ...". He told him that the next step was that Garda Nicholson would be coming to him, "to go to the station" to make a statement. The sergeant was dressed casually and remained in his house for about fifteen minutes.⁶⁰

2.57. Detective Sergeant White denied that any such contact took place. It was pointed out to Bernard Conlon that the records indicated that 61 Cartron Bay was not supplied with a telephone landline service until the 27th of November 1998 and that he did not have a mobile contract with Digifone until May 1999. Previously, Mr. Conlon had mentioned that he telephoned Detective Sergeant White either by landline or mobile phone. Initially, he had indicated that he had telephoned Detective Sergeant White on Detective Sergeant White's mobile phone or at Letterkenny Station. Detective Sergeant White made reference to records which

⁶⁰ Transcript, Day 330, Q.837-905.

indicate that he did not have a mobile phone at that time and that his contract did not commence until March 1998.⁶¹ Indeed, Mr. Conlon's claim to have written the mobile phone number given to him by Detective Sergeant White at that time in his rent book could not, therefore, have been correct. It was fairly clear that Mr. Conlon was fairly muddled in his recollection in respect of his use of phones in his contact with Detective Sergeant White. Notwithstanding this, **I am satisfied that there was contact made with Bernard Conlon by Detective Sergeant White prior to the making of his statement on the 8th of September 1997. The fact that this statement was made was not a mere coincidence.**

Bernard Conlon's Statement of the 8th of September 1997

2.58. If Bernard Conlon was worried about being summonsed and prosecuted in the District Court over his presence at Frankie's nightclub on the 31st of August 1997, as relayed to his friends and as clear from his complaint to Sergeant Hargadon about his name being taken, it is difficult to understand how he would attend at Sligo Station out of the blue on the 8th of September 1997 to make a full disclosure concerning his presence on that date. To accept that I would have to see his actions as unprompted by anything other than civic responsibility. I am satisfied that it is more than co-incidental that he made this statement to Garda John Nicholson. Nevertheless, an attempt was made to portray his attendance at Sligo Station and his encounter with personnel there on the 8th of September as little more than a coincidence. I do not accept that. In this respect, Garda Eamonn Gallagher, who was then a student Garda, gave evidence to the Tribunal that it appeared to him that Bernard Conlon had an appointment with Garda Nicholson, and that Garda Nicholson was expecting him to call that evening to make this statement about after hours drinking. He said:

Sometime after I started work (after 8 p.m.) I'm not sure what exact time it was, a phone call was made to the office (the crime office). Garda Nicholson answered it and he said that there is a fellow coming in to make the statement about after hours drinking. Garda Nicholson went down and took the man up. It was Bernard Conlon. He took Bernard Conlon in and he sat him down and took a witness statement from Bernard Conlon about after hours drinking and not getting food in Frankie's nightclub, in McBrearty's nightclub, in Raphoe. When the statement was over he read it back to Bernard and after Mr. Conlon signed it, Garda Nicholson signed it and I signed it. We left Bernard Conlon at home in one of the unmarked cars after he was finished making the statement ... I took it for granted the call came from downstairs as

⁶¹ Transcript, Day 333, Q.428, Q561-591.

Garda Nicholson said there is a man here to make a statement about after hours drinking. So I took it for granted that the call came from downstairs, from the public office, that whoever was working at the desk had phoned up to say that Mr. Conlon was there to make a statement ... so I knew before Mr. Conlon came into the room exactly what he was going to make a statement about, after hours drinking ... [This was] very unusual. So when the phone call came in ... Garda Nicholson just answered the phone and then he just said there is a man here to make a statement about after hours drinking. He never said anything else ... So I just took it for granted he knew Mr. Conlon was coming. He never made any fuss about the fact that he had to take a statement about something so minor in nature for someone in the crime office to be taking a statement about after hours drinking. So I just took it for granted that he knew he was coming ... you wouldn't call the crime unit to attend to such a minor thing as to get a statement about after hours. You'd expect them fully to get annoyed and say I am not going to take a statement about that. But he never, so that's why I just took it for granted that he knew he was coming. I would expect him to make a fuss if he didn't know ... I was surprised there wasn't and that's why I just took it for granted that he knew he was coming and that he never made a fuss about it.⁶²

Bernard Conlon's Account of the 8th of September 1997

2.59. Bernard Conlon stated that on the evening of the visit by Detective Sergeant White to his home, or within a few days thereof, he went to Sligo Garda Station to make a statement in respect of the events of the 30th/31st of August 1997. It is clear that he made such a statement on the 8th of September 1997 to Garda John Nicholson and then student Garda Eamonn Gallagher. When he attended at Sligo Station he initially asked for Garda Nicholson but was told by a member on duty that he was not there. Shortly afterwards, Garda Nicholson called to his home at 61 Cartron Bay and conveyed Mr. Conlon to the station. On entering the station and on going up the stairs to the room in which the statement was made, Bernard Conlon says that they met a man, whom he later identified to the Tribunal as retired Inspector Bernard Lyden. Some good-natured banter was exchanged between them. The inspector went into his office and Bernard Conlon was brought to another. He commenced making the statement and in the middle of the making of this statement another Garda (presumably Garda Gallagher) in plain clothes came into the room. These two members witnessed the statement.⁶³

⁶² Transcript, Day 345, Q.652-666.

⁶³ A typed version of this statement is set out in full in Tribunal Documents, pages 114-117.

Mr. Nicholson's Account of the Taking of the Statement

2.60. At the commencement of the statement, an averment appears that is normally appropriate to a witness statement rather than a statement of admission, which would be normally preceded by a caution to the effect that the interviewee is not obliged to say anything unless he wishes to do so. From the earliest point, therefore, it was contemplated that this would be a witness statement. The caption states:

I hereby declare that this statement is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I will be liable to prosecution if I state in it anything which I know to be false or do not believe to be true.

Garda Gallagher told the Tribunal of his surprise that Garda Nicholson was taking this statement in relation to Mr. Conlon being 'found on' the premises at Frankie's nightclub after hours. However, it is also clear that Mr. Conlon had nothing to complain about in respect of the evening of the 31st of August since he was in fact a transgressor of the law. Whilst I might understand his complaint about not receiving a meal when he thought he ought to have received one, I do not understand why it was thought he had any basis upon which to make a complaint in relation to the 31st of August 1997. Mr. Nicholson said the following to the Tribunal:

He told me that's why he was making the complaint that he was caught after hours in a licensed premises and that he wasn't served a meal and he was most anxious that he'd make the statement in Sligo.

He insisted that Bernard Conlon did not tell him that he had met Detective Sergeant White, but he did "put two and two together" because of the message which he was asked to deliver. Mr. Conlon was annoyed about the fact that his name had been taken. He wanted to make his complaint in Sligo and Garda Nicholson told him it should have been done in Donegal and that it had nothing to do with Sligo. He did not tell him that he had no basis for any complaint in relation to his name being taken. However, he said he was reluctant to take the statement. Mr. Nicholson admitted that, in the normal course, if a person came to him and told him that he had been drinking after hours in a pub and that he was caught by a Guard who took his name that he would not take a statement about it. He acknowledged that most people on finding themselves in such a situation would hope that the Garda Síochána would forget about the matter, and that they would not have to undergo the embarrassment of appearing in court on a charge or in a court report as a result of a court appearance. He said

that Mr. Conlon's position was different because:

I believe now that he was sent to make the complaint.

However, he did not accept that he understood that at the time. I am fully satisfied that the statement taken was a witness statement and, as a matter of common sense, that Garda Nicholson fully understood that the purpose of taking this statement from Bernard Conlon was to use it in a prosecution against the McBreartys, and that he well knew from his contacts with Detective Sergeant White that it was the result and part of a plan to use Bernard Conlon as an agent against Frank McBrearty Senior.⁶⁴

- 2.61. Mr. Nicholson denied that he had collected Bernard Conlon from his home and brought him to the Garda Station on the 8th of September 1997 or that Mr. Conlon was expected to call upon him at the station to make the statement.⁶⁵ Insofar as there is any conflict in the evidence on this issue between Mr. Nicholson and Garda Gallagher I accept the evidence of Garda Gallagher. I am satisfied that Bernard Conlon was expected to attend at the station to give a witness statement in relation to the events of the 31st of August 1997. It was used, insofar as it could be, to advance a prosecution against Frank McBrearty Senior and members of his staff.

The Statement of the 8th of September 1997

- 2.62. In this statement Mr. Conlon described how he attended at Frankie's nightclub on the evening of the 30th of August 1997. He outlined the arrangements which he had made for the trip with his friends Anthony Kearns and Catherine McGovern. He told how he arrived in the premises between 00.10 and 00.15 hours on the morning of the 31st of August 1997. He complained about not receiving a meal ticket on entering the premises after midnight. He said:

I knew when I was going into the place that I was entitled to a meal after 12 midnight but I got no meal and none of my two friends got one either. A few times previous to this I complained to the bouncers about getting no meal and they told me that I was all right, that there was plenty of drink there for me. They told me if I was hungry I could go out to a chipper across the road and return back into the nightclub. I did this on one previous occasion and returned to the nightclub after getting grub in the chipper.

He returned to this theme towards the end of the statement when he said:

I think Frankie's is a rip off, paying £6 without a meal and the drink was top price. I would say the place was over crowded and not a lot of comfort but the music was good.

⁶⁴ Transcript, Day 339, Q.690-779.

⁶⁵ Transcript, Day 339, Q.780-794.

This aspect of the statement is, in effect, a reiteration of the complaint which he had made on the 20th of July 1997 to Sergeant White. It was a theme which Bernard Conlon seemed to be very upset about and is another factor which would have made him an attractive candidate, with a grievance, to be employed against Frankie's nightclub.

- 2.63. The rest of the statement deals with how Mr. Conlon was 'found on' the premises after hours. He described how there were two to three hundred people in the nightclub but he only knew his two friends Catherine McGovern and Anthony Kearns. He said:

I was drinking pints of Smithwicks and I bought six pints for myself inside the club. I bought Catherine two pints of Harp and I bought Anthony two glasses of club orange as he does not drink. Catherine bought me one pint of Smithwicks and Anthony did not buy me any. So in total I had seven pints purchased between 12.15 a.m. and 2.25 a.m. At approximately 1.00 a.m. a female Garda Sergeant arrived into the nightclub accompanied by a male Garda and the barman pulled down the shutters in front of the bar in the ballroom where I was. As soon as the two Gardaí left the place the barmen opened the shutters again and began serving drink. There was a lot of drunken people in the place that night. At 2.25 a.m. I purchased two pints of Smithwicks for myself in case the bar would close down. The band finished at 2.00 a.m. and I did not know what time we should be out of the place at. After the two Gardaí left the nightclub after 1.00 a.m. there was a lot of drink served and a lot of people were buying up at the bar. There were about four or five bar staff serving drink and they were all very busy. At approx. 2.55 a.m. two male Gardaí came into the nightclub again. Up until the arrival of both these Gardaí drink was being served and the shutters were up. About three to four people that were at the bar after buying drink left their drinks on the counter and walked away from the bar when they saw the Gardaí. I was at the bar drinking a pint of Smithwicks and Catherine McGovern was standing beside me but she was not drinking at the time. I had another pint in front of me but as I stated I bought those two pints at about 2.25 a.m. One Garda took my name and address and I gave it to him. He asked me where I got the drink at this hour of the morning. I told him that the barman behind the bar had served it to me. The Garda asked me to identify this barman and I did that and the Garda asked him for his name. This barman denies that he served me the drink but I insisted to the Garda that he was the man that served me the drink. Catherine and Anthony also witnessed this barman serving me the two pints of Smithwicks at about 2.25 a.m. I became annoyed when the

Garda took my name and especially when this barman denied it because it was his fault. I then left the nightclub about 3.05 a.m. with Catherine and Anthony and I left a pint and a half after me on the counter. On my way out I think it was a bouncer told me to go back and tell the Garda that I did not know what barman had served me. I said I am finished here and that I was in bad humour and that I would not come back to the premises again ... I hope that I am not prosecuted as I usually go out one night weekly and that's all I can afford ... I know that I was on licensed premises during prohibited hours but so were a lot of other people.⁶⁶

- 2.64. Upon the completion of this statement, it was read over to Mr. Conlon and he signed it in the presence of Garda Nicholson and student Garda Gallagher. He then went with Garda Nicholson to the public area of the station and he was asked whether Catherine McGovern or Anthony Kearns would make a statement. He was then driven home in a car by Garda Nicholson and student Garda Gallagher. He said he made this statement because of money given to him by Sergeant White and the promise of more money in the future.⁶⁷

Inspector Bernard Lyden's Account

- 2.65. Bernard Lyden, a retired Inspector in An Garda Síochána, had been stationed at Sligo Station between 1992 and his retirement on the 10th of May 1999. In June of 1997, he became aware that four members of the force from Sligo Station, Garda John Nicholson, Detective Garda Paul Casey, Detective Garda Paddy Maguire and Detective Garda John McHale had been called to Letterkenny, Co. Donegal in order to participate in the inquiry into the death of the Late Richard Barron. Clearly this was in respect of the second arrest and detention of Mark McConnell but Mr. Lyden was not aware of that at the time. He was also unaware that Garda Nicholson met Sergeant White on that occasion for the first time. He could not recall hearing anything about the matter when they returned. He told the Tribunal that he had contact with Superintendent Kevin Lennon around this time and was aware from talking to him that there was a prosecution continuing in respect of breaches of the licensing laws in Donegal in which the superintendent was involved and that a senior counsel had been retained for the defence. He knew Superintendent Lennon from his days of service in Letterkenny and had regular discussions with him about recent case law which he supplied to Superintendent Lennon, and acknowledged that he got to know him pretty well. He was also involved in a fraud investigation with Superintendent Lennon in the course of which Garda John Nicholson was first introduced to Superintendent Lennon in or about March of 1992.⁶⁸

⁶⁶ Tribunal Documents, pages 114-117. Much of this is disputed by members of Frank McBrearty Senior's staff.

⁶⁷ Transcript, Day 330, Q.916-958.

⁶⁸ Transcript, Day 337, Q.538-569.

2.66. Mr. Lyden told the Tribunal that on the 8th of September 1997 between 18.00 and 18.45 hours he arrived at Sligo Station where there were a number of civilians outside the counter in the public office. As he passed he heard a man he recognised as Bernard Conlon complaining that he had been there on a previous occasion and that nobody was interested in taking a statement of complaint from him. He said he knew a lot about Bernard Conlon. He knew that he was constantly phoning in about problems in the vicinity of Cartron Bay where he was employed by Ben Maguire looking after his houses. When Inspector Lyden passed through the first security door he went inside and encountered Garda John Nicholson and a student Garda and requested that John Nicholson take a statement from Bernard Conlon. He did not speak to Bernard Conlon. Garda Nicholson was not keen to take a statement because “he said he didn’t trust him.” Inspector Lyden opened the security door at the bottom of the stairs and beckoned to Bernard Conlon and told him that Garda Nicholson would look after him. Garda Nicholson then went up the stairs followed by Bernard Conlon and Inspector Lyden. Garda Nicholson and Mr. Conlon went into the crime office and Inspector Lyden went into the detective inspector’s office. He had occasion to go into the crime office some time later where he found Garda Nicholson, a student Garda and Bernard Conlon. He left some files down on a table without comment and went back to his office. Whilst he was there, he overheard a comment about Raphoe. Later in the evening when he was finished his paperwork he requested sight of the statement made by Bernard Conlon. On previous occasions reports had been received from Bernard Conlon to the effect that something was amiss at the houses at Cartron Bay. Gardaí would attend and nothing would be amiss. He expected the statement to be something of that nature. He was also aware of Bernard Conlon’s previous history and knew “exactly the type of crimes that he had been involved in.”⁶⁹

2.67. These convictions included convictions for fraud, larceny and deception.⁷⁰

I knew that he had posed as a social welfare worker and a Garda. And I also knew that he was involved in a robbing of an elderly person and I also knew about the incident with the killing of the cattle and the maiming of the cattle. In my opinion he wasn’t a nice person. I also was aware of the stories that he used to report about Cartron Bay about different problems and that, it appears, he was doing it for his own purpose. The impression I got was that he was encouraging the Gardaí to come to the vicinity of where he lived so there would be no problems with tenants. But there were stories that he relayed about ... a particular house, it wasn’t true. So I knew him to be a liar. That was my opinion I had formed of

⁶⁹ Transcript, Day 337, Q.569-574.

⁷⁰ Transcript, Day 337, Q.609.

him. I had no particular axe to grind in respect of Mr. Conlon individually, I had particular interest in criminals and I made it my business to try and know as much as I could about them and their format or their form or their modus operandi ... I was intrigued that Bernard Conlon wanted to make a statement of complaint. It was out of form, out of character, from what I knew of him. And I actually thought he was going to shop somebody, some of his own mates and it might be worthwhile, it might be a breakthrough in some crime or something. That was the only reason that I was interested. But when I did realise what it was about, I was actually fed up really, I was disgusted with it because ... that type of breach of licensing law is usually dealt with in another way by talking to the licensee ... Special exemption costs a lot of money and a little bit of encouragement for a possible objection when the application is made often cures the ills, I discovered.⁷¹

- 2.68. Mr. Lyden also told me that Garda Nicholson did not tell him anything about his previous contact with Detective Sergeant White concerning Mr. Conlon's visit to Raphoe or that this attendance at the station had anything to do with work done on behalf of the Gardai in Raphoe in respect of the McBrearty family. **In fact, Mr. Lyden also said that there was a reluctance on the part of Garda Nicholson to take this statement. However, it is the absence of such a reluctance or negative reaction in the course of the statement that so surprised Garda Gallagher. I do not accept there was any reluctance on the part of Garda Nicholson to take this statement and I am satisfied to act on the evidence of Garda Gallagher in this regard.**

The Statement is Sent to Raphoe

- 2.69. Mr. Lyden directed that Mr. Conlon's two companions named in the statement, Ms. Catherine McGovern and Mr. Anthony Kearns, be interviewed because if corroboration was available it should be checked. This proved to be difficult and statements were not obtained from them at that time. Then he directed that the statement be forwarded to Gardai in Raphoe. However, he said:

... It wouldn't be normal, it wouldn't be my way of thinking that I would use a civilian with criminal convictions to further a State prosecution of any conviction. It never occurred to me that that is what would happen and I assumed, wrongly, that Sergeant Hargadon would have the final say. I didn't realise she wasn't the boss there, I know there is a different person now, but I didn't at the time ... and I had forgotten, I honestly had forgotten about

⁷¹ Transcript, Day 337, Q.610-612.

*the McBreartys, the murder thing, when I was looking at this and I was just getting rid of it.*⁷²

2.70. Mr. Lyden said that on Wednesday the 10th of September when he was acting District Officer at Sligo he was approached by Garda Nicholson in relation to the forwarding of documents. Garda Nicholson was a bit annoyed about holding on to the statement. Inspector Lyden was given the original statement plus a number of typed copies together with a short minute by Garda Nicholson. Mr. Lyden said that he knew Sergeant Sarah Hargadon, a sergeant in Raphoe at the time and he sent on the file, addressing it to the Sergeant in Charge, Raphoe. He did not attach any recommendation because it was not within his remit to do so in respect of an offence committed in another division. He assumed the matter would be dealt with informally with Mr. McBrearty Senior.

2.71. The normal procedure in relation to such a file was for Garda Nicholson to complete the file and address it to the sergeant in charge: Detective Sergeant Connolly. He would then forward it to the superintendent in Sligo who would forward it to the superintendent in Letterkenny who would then pass it on to the sergeant in charge at Raphoe. It was accepted by Mr. Lyden that this procedure was well known to Garda Nicholson. However, Garda Nicholson approached him and asked what he should do with the statement and was looking for guidance. Mr. Lyden said he:

*more or less took it off his hands just for peace of mind and just to say look I'll look after it I'll send it off. In hindsight you might think that there was something suspicious about it, but at the time I considered it insignificant and wasn't unduly concerned about it.*⁷³

It was forwarded without comment. No information was furnished outlining Bernard Conlon's previous character and convictions, for the benefit of the receiving Garda. Therefore, a somewhat different procedure than normal was followed in forwarding the file to Raphoe. Unusually, it was without the background necessary for the recipient to assess the individual who had made the statement. There was no telephone contact between Garda Nicholson or Inspector Lyden and any member of An Garda Síochána in Raphoe or Letterkenny about this matter. This included Superintendent Lennon with whom Inspector Lyden was well acquainted.

2.72. Mr. Lyden said that he became aware sometime afterwards, when talking to Superintendent Lennon, that there was a prosecution running and that it involved Frankie's nightclub:

... and more than likely, I can't recall now, but more than likely I

⁷² Transcript, Day 337, Q.615.

⁷³ Transcript, Day 338, Q.1-11.

*would have been made aware that Mr. Conlon was a witness and it probably resulted from the statement but I have no specific recollection of it.*⁷⁴

- 2.73. In the light of what Mr. Lyden knew about Bernard Conlon at that time it is surprising that this statement was passed without comment concerning his character to Raphoe. It seems to me unlikely that he would not have spoken to Superintendent Lennon at some stage and conveyed his strong negative opinion of Mr. Conlon to him. In this regard I note his frequent contacts and friendship with Superintendent Lennon.

The Prosecution

- 2.74. Though it is said that the file was sent on to Raphoe and that it was intended that Sergeant Sarah Hargadon should receive it, she gave evidence to the Tribunal that she never saw this file or the statement of Bernard Conlon. She was aware, however, that the prosecution ensued in relation to the events of the 31st of August 1997.⁷⁵
- 2.75. Garda Shaun Barrett, however, recalls receiving the statement at Raphoe Station in the post. He could not recall whether it was addressed to him or to the sergeant in charge. He was surprised at how good a statement it was. He prepared a file and forwarded it to the superintendent. He made a statement himself and also received one from Garda Keavney, which he forwarded, along with a copy of Mr. Conlon's statement together with a short report, to the superintendent's office in Letterkenny for directions. He was not requested to prepare a file by anybody else.⁷⁶ It was Garda Barrett's vague recollection that Mr. Conlon had volunteered to make this statement at Sligo Station. He had not contacted Sligo Station in relation to it before the statement arrived.⁷⁷ Subsequently, application was made on the 18th of December 1997 for the issuance of summonses against Mr. Frank McBrearty Senior, Mr. Andy McBrearty and Mr. Eamonn McConnell in respect of the events of the 31st of August 1997. Mr. McBrearty Senior was accused of selling intoxicating liquor, exposing it for sale, opening the premises for sale of intoxicating liquor, keeping the premises open for the sale of intoxicating liquor, permitting intoxicating liquor to be consumed, or permitting persons to be on his premises at a time when he was duly licensed to sell intoxicating liquor by retail but at a time when the sale of intoxicating liquor on the premises was prohibited and when the premises should have been closed by law, namely at 02.54 hours on the 31st of August 1997. Mr. Andy McBrearty was charged with aiding and abetting the commission of an offence by Mr. McBrearty Senior by allowing Frankie's nightclub to remain open

⁷⁴ Transcript, Day 338, Q.17-21.

⁷⁵ Transcript, Day 329, Q.33-34.

⁷⁶ Transcript, Day 327, Q.80-88.

⁷⁷ Transcript, Day 327, Q.66-70.

during a time that was prohibited by law, allowing the sale of intoxicating liquor, keeping the said premises open for the sale of intoxicating liquor, exposing intoxicating liquor for sale, permitting intoxicating liquor to be consumed, opening the said premises for the sale of intoxicating liquor and permitting persons to be on the said premises. Mr. Eamonn McConnell, the barman who is said to have been identified as having sold the intoxicating liquor to Mr. Conlon was charged with the same offences.⁷⁸

- 2.76. According to Superintendent Lennon, Inspector Delaney was responsible for making the decision that the three should be prosecuted.⁷⁹ The procedure that followed, according to Garda Barrett, was that he sent the file to Letterkenny where it was reviewed and a prosecution was directed. It was clear from the summonses that the applications were made by a Garda L. Dowd, apparently upon the directions of the deciding officer. Garda Barrett kept a copy file and was then informed of the return date for the summonses. The application for those summonses was made through Letterkenny.⁸⁰

Bernard Conlon as a Witness

- 2.77. Bernard Conlon was summonsed to appear as a witness in respect of these summonses against Frank McBrearty Senior, Andy McBrearty and Eamonn McConnell and subsequently in respect of a case brought against Mark McConnell, on a number of occasions. From the documentation, he was paid expenses in respect of his appearances, which included expenses for overnight stays, loss of earnings, travel and subsistence allowances. These were all claimed by members of An Garda Síochána on a form A.80, which was submitted on his behalf in respect of a designated case and appearance date. These forms were then certified by the local district officer for payment and a cheque issued payable to the witness as a result. The claims were invariably supported by a claim for loss of earnings purportedly signed by Bernard Maguire and, on one occasion, a Thomas Maguire. From the documentation available to the Tribunal, claims were made in respect of attendances by Mr. Conlon as a witness on the 9th of March; 27th and 28th of April; 25th and 26th of May; 22nd and 23rd of June; 9th and 10th of December; and the 11th of December 1998. Claims for expenses were also submitted for the 1st to the 4th of June inclusive; 24th of June; 6th and 7th of September; and the 18th and 23rd of November 1999. In addition, a claim was submitted and paid in respect of Mr. Conlon's attendance at Letterkenny District Court on the 1st and 2nd of October 1999, not as a witness in a court case but in respect of his attendance with Detective Sergeant Connolly to participate in an informal identification procedure in respect of the silver bullet complaint.⁸¹

⁷⁸ Tribunal Documents, pages 2840-2841.

⁷⁹ Transcript, Day 329, Q.906-908.

⁸⁰ Transcript, Day 327, Q.140-142.

⁸¹ Tribunal Documents, pages 697-780.

- 2.78. Initially, Mr. Conlon was to attend as a witness on behalf of the State in the prosecution brought against Frank McBrearty Senior, Andy McBrearty and Eamonn McConnell. Issues were raised during the course of the District Court proceedings in respect of Bernard Conlon. Counsel on behalf of the defence sought a list of his previous convictions. By the time these summonses were listed for hearing in December 1998 the silver bullet issue had arisen. Mr. Conlon had made a complaint that he had been threatened by two men and identified Mark McConnell as one of them on the 1st of October 1998. This led immediately to Mr. McConnell's arrest. Mr. McConnell alleged in custody that Superintendent Lennon and Sergeant White had put Mr. Conlon up to making this complaint. The bona fides of Mr. Conlon as a witness and the bona fides of the prosecution and its use of Mr. Conlon became an issue in the District Court.
- 2.79. It would appear from documents before the Tribunal that the previous convictions of Bernard Conlon were responsibly sought by defence counsel in an application before District Judge O'Donnell at Letterkenny District Court on the 23rd of June 1998. The judge directed that the defence should fax Superintendent Lennon the names of the lay witnesses whose convictions were required. On the 9th and 10th of December evidence was heard in relation to charges against Mr. McBrearty Senior, Mr. Andy McBrearty and Mr. Eamonn McConnell. On the 10th of December 1998, during the hearing of the summonses in respect of the events of the 31st of August 1997, Superintendent Lennon indicated to the court that he would not be calling Mr. Bernard Conlon. Counsel for the defence objected on the basis that he had been led to believe that he would be giving evidence. Superintendent Lennon argued that Mr. Conlon could be called as a defence witness and had informed counsel the previous day that he would make the witness available. Legal argument followed in relation to this matter in the course of which it was noted by counsel for the defence that Mr. Conlon had been present in court over some nine days and had travelled from Sligo. The District Judge invited Superintendent Lennon to present the witness for cross-examination. At the conclusion of proceedings on the 10th of December 1998 counsel for the accused indicated that the credibility and character of Mr. Conlon would be put in issue in cross-examination.⁸²
- 2.80. On the 8th of December 1998 counsel for the defence had made the further complaint that he had not received a list of convictions. He made a further application. At this stage a typed list of convictions was given over to him. On the 9th of December 1998 evidence was adduced by the prosecution in relation to these summonses and Mr. Conlon was not called. Superintendent Lennon said:
- My problem with him [Bernard Conlon] was his previous convictions, nothing else, nothing more, and he wasn't a relevant witness to prove a pub case.*⁸³

⁸² Tribunal Documents, page 2976 and Transcript, Day 348, Q.54-66.

⁸³ Transcript, Day 348, Q.73.

Inspector Connolly indicated in evidence and it was accepted by Superintendent Lennon that he first furnished the typed list of previous convictions to Letterkenny on the 21st of July 1998. It was Superintendent Lennon's understanding that the defence were contending that Mr. Conlon had been planted or put on the premises to detect the license breach by some member of the Garda Síochána.⁸⁴ For his part, Superintendent Lennon did not accept this argument as he believed that Bernard Conlon was bona fide caught on the premises and as a result of that he went to make a statement. He made no enquiry into this.⁸⁵

- 2.81. Superintendent Lennon also told the Tribunal that he did not feel obliged to call a witness whose testimony would "demolish" his case.⁸⁶ Superintendent Lennon said also that he proffered the witness for cross-examination and made a legal submission that he should not be obliged to call a witness in such a prosecution. The District Judge invited him to make the witness available for cross-examination. That debate took place in the wake of the further identification by Bernard Conlon of Michael Peoples at the District Court in Letterkenny as the second person who had attended his home on the 20th of July 1998 with Mark McConnell when he was threatened with the silver bullet. **I am satisfied that the reluctance on the part of Superintendent Lennon to call Bernard Conlon arose from the fact that he was aware by that stage that Bernard Conlon had previous convictions and that there was some substance to the allegation that Bernard Conlon had been used as an agent of the Garda Síochána in being 'found on' the premises.** It seems to me that he could not have anticipated the "demolition" of his case unless he understood how the matter had come about. The mere fact that the witness had previous convictions would not have prevented him being used as a witness for the prosecution.

The Use of Bernard Conlon as a Garda Agent

- 2.82. The Tribunal is satisfied that Garda Nicholson and Detective Sergeant White used Bernard Conlon as their agent to procure and provide evidence against Frank McBrearty Senior and members of his staff in respect of what the Gardaí believed, rightly or wrongly, to be the continuous flouting of the liquor licensing laws at his premises. This required me to consider whether his use as an agent was a lawful, fair or desirable feature of the investigation of crime.
- 2.83. There is no doubt that investigating authorities around the world engage in the use of police agents in gathering evidence. Undercover investigations are an essential part of police work. That is right and proper. Nevertheless there are certain boundaries which should not be crossed. Police forces exist to detect and prevent crime. It is anathema that they might create crime. A major problem arises when investigating authorities initiate the commission of a criminal

⁸⁴ Transcript, Day 348, Q.85-89.

⁸⁵ Transcript, Day 348, Q.94.

⁸⁶ Transcript, Day 348, Q.72.

offence. The case law in other jurisdictions contains extreme judicial disapproval of the use of ‘agent provocateurs’ to induce people to commit offences which they would not otherwise have committed. This does not mean that an accused person can successfully defend a criminal charge on the grounds that he would not have committed it but for the actions of an ‘agent provocateur’ – the so-called entrapment defence. It may entitle him however to challenge the admissibility of evidence obtained in this way in his trial because it was unfairly obtained. Such evidence may be excluded, depending on the balance of the circumstances, at the discretion of the trial Judge.⁸⁷ It has been held that various matters may be taken into account when considering the exclusion of such evidence. These include whether the accused was enticed to commit an offence he would not otherwise have committed, the nature of the entrapment, how active the police were in obtaining the evidence, whether there was an “unassailable” record of what occurred or whether it was strongly corroborated.⁸⁸ Fundamentally, a court must be presented with a true picture of what happened. This did not occur here.

- 2.84. In Bernard Conlon’s case, it was anticipated by Detective Sergeant White and Garda Nicholson that breaches of the statute had been and would likely be committed in the future at Frankie’s nightclub. They concluded that if Bernard Conlon sought to purchase alcohol outside the prescribed hours it would be sold to him there. The presumption was made that the licensee’s staff were disposed to commit the offence. In those circumstances it is not necessarily unlawful to carry out an undercover operation using an agent to enter the premises with a view to purchasing alcohol outside the prescribed hours.⁸⁹
- 2.85. If such an operation is carried out it must be done with the full knowledge of a Garda’s superiors, the prosecutor and the court before which the accused is brought to trial. There can be no excuse for carrying out this operation with Bernard Conlon without informing the Gardai in Raphoe on the night of the 30th of August. If a prosecution was contemplated, a full report on Bernard Conlon’s use as an agent should have been provided by Detective Sergeant White or Garda Nicholson and included in the prosecution file. This information should also have been provided to the defence and to the court. Otherwise, the case would be tried without any appreciation of the true status of Bernard Conlon as a Garda agent.
- 2.86. **The Tribunal is satisfied that Superintendent Kevin Lennon was fully aware of the frailties of Bernard Conlon as a witness. He was also aware that Bernard Conlon had been used as an agent by Detective Sergeant**

⁸⁷ R v Sang [1980] A.C.402.

⁸⁸ R v Smurthaite 98 Cr.App.R.437 and Archbold, Criminal Pleading Evidence and Practice (2002) paragraphs 15-21 to 15-430.

⁸⁹ DPP v Marshall [1988] 3 All E.R.683; London Borough of Ealing v Woolworths Plc [1995] Crim.L.R.58 and R v Morley and Hutton [1994] Crim.L.R.919.

White and Garda Nicholson in the procurement of evidence against the accused at Frankie's nightclub on the evening of the 30th of August. The use of Bernard Conlon as an agent by the Garda Síochána was clearly of relevance to the District Judge trying the case and the issue of abuse of process which had been raised by the defence: revealing it to the court would undoubtedly have weakened the prosecution case and tended to support the proposition that the Garda Síochána in Raphoe were adopting somewhat extraordinary measures to deal with simple licensing matters and had failed to reveal this to the court or the defence. It was the prosecution's duty in these circumstances to present all relevant evidence concerning Bernard Conlon to the court. Superintendent Lennon attempted to take the completely opposite course. His tactics were calculated to suppress the emergence of the true facts concerning the use of Bernard Conlon by the Garda Síochána. This was contrary to his obligation as a prosecutor to the court and improper.

- 2.87. I am sustained in this view by the events which followed the arrest of Bernard Conlon and the approaches made by Superintendent Lennon to Garda John Nicholson to ascertain whether Bernard Conlon had "cracked" when interviewed by members of the Carty team. This is dealt with later in the report.

The 10th of December 1998 Meeting

- 2.88. On the evening of the 10th of December 1998 Bernard Conlon met with Detective Sergeant John White and Garda John Nicholson in Sligo town. He described that evening in the following way to the Tribunal:

Well I was at home on that evening and I got a telephone call from Mick Reynolds from Sligo Garda Station. He said to me that I was on the box in the morning ... and I says to him sure I will be going up and I won't be heard like ... it won't go ahead. He says: it is going ahead in the morning. So the next thing was John Nicholson called to my home and he asked me that John White wanted to see us. John Nicholson asked me what does he want sure and sure John Nicholson was as much in the dark as to what I was. I didn't know what he wanted. But anyhow John Nicholson and me went down ... and John collected his young lad at school. We pulled into the petrol station and John White came from Letterkenny in a red unmarked patrol car. He spoke to John Nicholson for a few minutes and then I went over to him and we went down to the Garda Station in Sligo. We went behind the Garda Station where they have their cars. John came back then. After a while John came

back and John got into the car with John Nicholson. We were talking about the case. Sergeant John White had my previous convictions with him. He had them in a green folder and he did them out on a printout and that. He says the McBreartys' barrister ... will go through you in the morning. Rip through you. So he says you want to stick to your guns, Detective Conlon, he used to say to me. He read, to my knowledge, he read the statement to me about 'the found' on. John Nicholson left me back as far as Feeney's funeral parlour, that's what I recall. John White says to tell nobody that he was about that night, the night that he was getting back to Letterkenny. I went up the road, up past the petrol station, the last petrol station on the Bundoran Road and he says there was a private escort coming from Letterkenny to collect me. I went up anyhow and the next thing this official white patrol car came from Letterkenny and he wound down the window, and he says to me are you Bernard Conlon? I says, I am, yes. He says, we were sent down here to collect you. So I got in the back of the patrol car, they turned the patrol car and headed back towards Letterkenny.⁹⁰

Mr. Conlon then described how the escort stopped to allow him to purchase a takeaway meal on the way to Letterkenny and then brought him to a Bed & Breakfast near the Garda Station. He went in to bed and got up the next morning and went to Letterkenny courthouse to give evidence.

Detective Sergeant White's Account of the 10th of December 1998

- 2.89. Detective Sergeant White gave his account of this event in his statement of the 21st of May 2005, which was also put to Mr. Conlon in the course of his evidence. He accepted that he met both Garda Nicholson and Mr. Conlon in the forecourt of a filling station in Sligo. He wished to speak to Mr. Conlon in relation to his required attendance at Letterkenny District Court on the following morning. Mr. Conlon did not wish to be seen talking openly to Detective Sergeant White and Garda Nicholson as he felt, "it would give him a bad name." Detective Sergeant White then said:

I suggested that we drive to Sligo Garda Station and have our conversation in Garda Nicholson's office. There was general agreement about this but Garda Nicholson had something of a private nature to do first and I agreed to drive Mr. Conlon to the rear of Sligo Garda Station and wait there for Garda Nicholson. Mr. Conlon was nervous and repeated to me that he did not wish to go to court in the morning. I asked him why he had returned to Sligo without notifying myself or some other Garda. He said that he was

⁹⁰ Transcript, Day 331, Q.188-193.

fed up waiting around that he had gotten the bus back to Sligo that day. He said that he did not want to go into the witness box.⁹¹

When parked in the car park at the rear of Sligo Garda Station Mr. Conlon told Detective Sergeant White that his employer, Mr. Maguire, was not aware of the huge number of previous convictions that he had, and asked whether the court reporter could be stopped from publishing “his life history of crime”. He told him that he could not. Detective Sergeant White accepted that he had a copy of Mr. Conlon’s previous convictions with him typed on a single sheet of paper. It was not the original computer printout with green stripes that is normally produced in courts as the official Garda record.

2.90. Detective Sergeant White also said in this statement that he had made contact with Garda Nicholson earlier on the 10th of December 1998 and asked him whether he could establish if Mr. Conlon had returned to Sligo from Letterkenny District Court that day and if he could ensure that Mr. Conlon would telephone him. He explained to Garda Nicholson that Judge O’Donnell, the District Court Judge in Letterkenny, had issued explicit instructions on the 10th of December that Mr. Conlon would have to be produced by the prosecution as a witness at the commencement of Letterkenny District Court on the following morning. He had attempted to locate Mr. Conlon in the vicinity of the courthouse at Gallagher’s hotel or any nearby café but was unsuccessful. He believed there was a responsibility on him personally to meet Mr. Conlon and inform him of the instructions of Judge O’Donnell and of the requirement upon him to appear at Letterkenny District Court on Friday morning the 11th of December for the purpose of being cross-examined. Garda Nicholson assured Detective Sergeant White that he would make enquiries.

2.91. Detective Sergeant White then said that he had received a phone call from Mr. Conlon sometime after court concluded on the Thursday afternoon the 10th of December. Mr. Conlon said that he had returned to Sligo earlier that day as he had been “fed up”. He said that he had been speaking to Garda Nicholson. Detective Sergeant White told him he was required in court the first thing in the morning. He said:

I got the distinct impression that Mr. Conlon did not wish to give evidence on the following morning. I told him that I would have a Garda car sent down to his house to collect him. He said that he would meet them at the last filling station on the right at 8.00 pm. I was not finished talking to him but the connection went dead. I made an attempt to ring him back but there was not any answer. I asked someone in the traffic corps office if they would collect Mr. Conlon at the last filling station on the right going into Sligo at 8.00 pm.⁹²

⁹¹ Tribunal Documents, page 2088.

⁹² Tribunal Documents, page 2087.

- 2.92. He goes on to say that he then made contact again with Garda Nicholson. Garda Nicholson told him that he would try to make sure that Mr. Conlon met the patrol car that would come to Sligo for him. He said:

I was concerned that Mr. Conlon would not cooperate and that he would fail to appear at court the following morning. I told Garda Nicholson that I would call down myself. We agreed to meet at the same last filling station on the Bundoran Road as Garda Nicholson said that Mr. Conlon would not want to go to Sligo Garda Station. I met both Garda Nicholson and Mr. Conlon at a petrol filling station on the right hand side as one enters Sligo and just before the right turn for Cartron estate. I cannot remember exactly the time I arrived there but I would say that it was approx. 6.30 p.m. I travelled to Sligo that Thursday evening in order to ensure that Mr. Conlon would appear at Letterkenny District Court on Friday 11th of December, 1998 to give evidence. Judge John O'Donnell had instructed Superintendent Kevin Lennon on that date to produce Mr. Conlon in his court for the purpose of cross examination by the defence on the following morning.⁹³

- 2.93. Detective Sergeant White drove Mr. Conlon to the rear of Sligo Garda Station and waited for Garda Nicholson. He said:

Garda Nicholson then drove into the yard and then sat into the back of the car that I was driving. He asked Mr. Conlon if he was alright. Mr. Conlon went over again and again his fear that Mr. Maguire would find (out) about his previous convictions. He was nervous of the court. He did not want to give evidence. I explained to him that I had travelled specially to Sligo to ensure that he knew that he was required to give evidence first thing on the following morning at Letterkenny District Court and that if he did not appear that there would without doubt be an arrest warrant issued for him. I told him that if he did not appear that I would have to give evidence to Judge O'Donnell that I had made him personally aware of the requirement to be present in court in order to give evidence. He was very nervous. I told him that all he had to do was to explain to the Judge exactly what had happened on the night in question and to tell the truth. He said that he did not have a problem with that but that it was the previous convictions that were worrying him as he had started a new life in Sligo and now the whole country would know of his history of crime. I told him that there was not anything he could do about it. I wanted him to go back up to his house, get his clothing and I would drive him to Letterkenny as soon as possible as I wished to get back. Mr. Conlon would not go with

⁹³ Tribunal Documents, page 2087.

me but he said that he would get a lift up to Letterkenny later in the night or early in the morning. I told him to meet the patrol car at the arranged time which I believe was 8.00 p.m. Garda Nicholson assured me that Mr. Conlon would meet this car. If Mr. Conlon had agreed to travel to Letterkenny I would have cancelled the traffic corps car but as he would not do so I allowed the arrangements to remain in place.

Garda Nicholson did not discuss Mr. Conlon's statement with him, read out bits of it or tell him the bits and pieces to stick to.

I did not tell Mr. Conlon not to be afraid of the Judge as there would not be any possible reason to fear the Judge. I cannot remember saying that the barrister would as said tear into him about his convictions but I probably would have said that he could expect to be questioned at length regarding his convictions. I did not tell him to say that he had turned over a new leaf. (He said) that he had left his life of crime behind him when he came to Sligo except for one charge, and that he feared that everyone would now come to know his criminal past. This was a much bigger fear for him than actually giving evidence as to what happened in Frankie's nightclub. I may have told him to look up at the Judge and to tell the truth. I most certainly did not tell Mr. Conlon to deny that he knew anything about me and I did not tell him to say that he had not seen me that night. I expect that there were cameras in the rear of Sligo Station and if I wished the meeting to remain secret I would have ensured that it did not take place in an area where we would be seen by Gardaí and recorded on film.

From my point of view there was nothing improper in my calling to Sligo in order to see him personally for the purpose of ensuring that he would appear in court on the following morning or that if he failed to do so that I would be in a position to give evidence to that effect. Garda Nicholson did not tell Mr. Conlon to say that a Guard from Sligo had told him about an escort if he was asked. I then left when both men got out of my car.⁹⁴

- 2.94. Mr. Conlon disagreed with this version of events and reiterated in cross-examination that Detective Sergeant White had papers in his possession and already knew that the patrol car was coming from Letterkenny that night to collect him and for that reason he had to leave. In fact he said that Detective Sergeant White did not want Superintendent Lennon to know that he was in Sligo. He said:

He came to Sligo to interview me relating to my statement I made and my previous convictions. He told me that McBreartys' barrister would be ripping through me the next morning and be ready for

⁹⁴ Tribunal Documents, pages 2088-2089 and Transcript, Day 334, Q.573-581.

*him. He had briefed me in what to say. And I done that. I called, I went to the petrol station and I was picked up by an official Garda car and I was brought to Letterkenny ... the next morning I was down, I hadn't really time to say good morning, good night to anybody, I was on the box.*⁹⁵

- 2.95. Detective Sergeant White reiterated much of what was in this statement in evidence to the Tribunal.⁹⁶
- 2.96. Detective Sergeant White's position, therefore, is that he arranged for the traffic corps car to come to Sligo at 20.00 hours to collect Mr. Conlon. He had contacted Garda Nicholson to deliver a message that he would be collected by this car at that time. Because of his earlier apprehension that Bernard Conlon would not keep the rendezvous, and would not attend Letterkenny District Court the following morning, which arose from the conversation which he had on the phone with Bernard Conlon, and the fact that the phone went dead so suddenly, he decided to go to Sligo himself. He was worried that the failure of Bernard Conlon to appear the following morning at Letterkenny District Court would result in his "humiliation" in court because he felt the judge's direction to have Mr. Conlon present was somehow directed at him. He decided that the best way to deal with the matter was to travel himself. He met with Bernard Conlon as he described but did not discuss his statement with him. He did discuss his previous convictions. These were of some concern to Mr. Conlon at this meeting. He did not want them to be made public because his employer Mr. Bernard Maguire would find out about them. He wanted to bring Bernard Conlon to Letterkenny himself but Bernard Conlon declined this offer during the meeting. Detective Sergeant White left Bernard Conlon with Garda Nicholson one half hour to three-quarters of an hour before 20.00 hours. He left it to Garda Nicholson to ensure that the rendezvous with the Letterkenny traffic corps took place.

Mr. Nicholson's Account of the 10th of December 1998

- 2.97. Mr. Nicholson, in evidence to the Tribunal, differed in a number of ways with the evidence of both Bernard Conlon and Detective Sergeant White. His recollection was that there were two meetings between them. He told the Tribunal that on the first occasion he was asked to pass on a message to Bernard Conlon to meet Detective Sergeant White. He could not recall the date of this. There was a second occasion when he got a message from Detective Sergeant White at about 19.45 hours to ask Bernard Conlon to meet Detective Sergeant White at the Statoil station outside Sligo. He said he went down to give that message to Bernard Conlon but he met him on the way to the meeting. Mr. Conlon was crossing the road some 50 to 80 yards from the filling station. Garda Nicholson

⁹⁵ Transcript, Day 334, Q.584-585.

⁹⁶ Transcript, Day 357, Q.366-608 and Transcript, Day 358, Q.108-227.

was with his niece at the time and he gave Mr. Conlon a lift up to the filling station. They were going to the cinema. Mr. Conlon seemed to know all about the meeting. Garda Nicholson had been asked to divert to pick up Mr. Conlon and thought it odd that he had been asked to do so as Mr. Conlon seemed to know all about it. Having arrived at the Statoil filling station, they waited until Sergeant White arrived a few minutes later. Then Garda Nicholson drove away with his niece. He did not speak to Detective Sergeant White that night at all except when he received the telephone message on his mobile phone to collect Mr. Conlon.

- 2.98. The second meeting occurred, “a long time later” when Garda Nicholson received a call to go to the rear of Sligo Garda Station. It was some two or three months after the first episode. Mr. Conlon was sitting in the car with Detective Sergeant White when he arrived and he heard a mention about Mr. Conlon’s previous convictions. He got into the back of the car and was asked to arrange a lift for Mr. Conlon to Donegal. He said:

I heard mention about his previous convictions that he was going, that they were going to be handed over to his defence barrister, to the McBreartys, that was in relation to this after hours with McBreartys. That’s all I heard.

He recalled that he arranged a lift the following morning for Mr. Conlon to be brought down. Before the meeting was arranged he got a call from Detective Sergeant White to meet him at the back of Sligo Station. He received the call when Detective Sergeant White was in Sligo: he thought it was from his mobile phone. He was not told why he was to come down. He did not expect Bernard Conlon to be there. He was simply expecting to meet Detective Sergeant White. The reason for arranging a lift for Mr. Conlon was that he might not get a bus in time in the morning. He accepted this would not require Detective Sergeant White’s attendance in Sligo. He said there was no question of bringing Mr. Conlon up to Letterkenny that night from Sligo. There was no mention by Detective Sergeant White that he had come down personally to tell Bernard Conlon to be in court the following day and that he had a special responsibility to do that.⁹⁷ He only remained in the car for a few minutes. He later told me that he could not recollect whether in fact he had been told to attend at the rear of Sligo Garda Station to arrange a lift for Mr. Conlon to go down to Donegal.⁹⁸

- 2.99. Mr. Nicholson in evidence also said that he had no recollection of speaking to Detective Sergeant White by telephone earlier in the evening. Neither had he any recollection of a meeting with Bernard Conlon earlier in the evening. He denied that Detective Sergeant White made any contact with him by telephone but he

⁹⁷ Transcript, Day 340, Q.792-921.

⁹⁸ Transcript, Day 340, Q.920 and Transcript, Day 341, Q.1-25.

told him that he would try to make sure that Mr. Conlon met a patrol car coming from Letterkenny at the filling station. He rejected the contention that he was told by Detective Sergeant White that he would call down himself, and that they agreed to meet at the filling station because Garda Nicholson said that Mr. Conlon would not want to go to Sligo Garda Station. He did not arrange any aspect of the meeting and did not choose the location of it. There was no conversation in the filling station with Detective Sergeant White. He rejected completely the suggestion that, at that meeting, Mr. Conlon expressed a desire not to be seen talking to two Gardaí openly as it might give him a bad name and that therefore Garda Nicholson suggested that they drive to Sligo Garda Station and have the conversation in Garda Nicholson's office. Mr. Maguire's name was never mentioned while he was in the car with Detective Sergeant White and Mr. Conlon. He did not see any printout or typed document of convictions when he was in the car. He rejected Detective Sergeant White's description of what took place in the yard of the station concerning Mr. Conlon's fear about the consequences of the public revelation of his previous convictions, particularly in relation to Mr. Maguire. There was no talk about the consequences for Mr. Conlon of his non-appearance at the District Court in Letterkenny the following morning. He did not hear Detective Sergeant White invite Bernard Conlon to go back to his house to get his clothing so that he could drive him to Letterkenny. He did not read out any part of Mr. Conlon's statement of the 8th of September 1997 or hear any bit of it read out to him. Mr. Conlon was not told that he should deny in court that he knew either Garda Nicholson or Detective Sergeant White or that they had been together the previous night. He was not told how to deal with any enquiry as to how he came to be in Letterkenny or to say that it was a Garda from Sligo who had arranged his travel to court. He was not told to deny that this meeting had taken place if asked about it.⁹⁹

Analysis of John Nicholson's Evidence

2.100. **Mr. Nicholson's evidence was, in my view, deliberately incomplete in relation to his knowledge of this evening. He did not tell me the full story and remained evasive, telling me only half truths about a meeting which he understood to be very important to the Tribunal's inquiry.** As a matter of common sense, there had to be some sensible discussion between himself and Detective Sergeant White as to the purpose of this meeting. **Both Mr. Conlon and Detective Sergeant White are agreed that there was only one meeting and that was on the 10th of December 1998. I am satisfied that this is so. I am also satisfied that it was not necessary for Garda Nicholson to make any arrangements by way of a meeting between Detective Sergeant White, Bernard Conlon and himself for Bernard Conlon to travel**

⁹⁹ Transcript, Day 341, Q.26-232.

to Letterkenny. These arrangements had already been made. Evidence was available to the Tribunal that two traffic corps members from Letterkenny Station had been requested to travel to Sligo to collect Bernard Conlon at 20.00 hours on the evening of the 10th of December and did so, in accordance with Bernard Conlon's testimony.

- 2.101. Mr. Nicholson's evidence is a further example of the deceitful and underhand way in which he dealt with the Tribunal and the Garda inquiry into these events. Though some medical evidence was adduced which sought to explain his infirm recollection of events, I am completely satisfied that, far from being unable, Mr. Nicholson was completely unwilling to furnish a full and truthful account of these events on any occasion when requested to do so, whether to his solicitor, Mr. Kilrane, his colleagues, his superiors, the Keogh family, the Carty team or this Tribunal. Sometimes a partially truthful account would be given but never the full picture.

The Traffic Corps Car from Letterkenny

- 2.102. It will be recalled that Bernard Conlon gave evidence that Garda Nicholson left him at Feeney's funeral parlour after the meeting behind the Garda Station. Mr. Conlon said he went up the road to a petrol station on the Bundoran Road where he was to meet "a private escort" coming from Letterkenny to collect him. He said:

I went up anyhow and that next thing this official white patrol car came from Letterkenny and he wound down the window, and he says to me are you Bernard Conlon? I says, I am yes. He says, we were sent down here to collect you. So I got in the back of the patrol car, they turned the patrol car and headed back towards Letterkenny.¹⁰⁰

This account tallies with two statements furnished by Gardaí Liam Gaffney¹⁰¹ and Michael Forde.¹⁰² They were the members of the Letterkenny traffic corps who were directed to travel to Sligo, on Detective Sergeant White's instructions, to pick up a man who would be walking in the area of a filling station on the Donegal side of Sligo at 20.00 hours. Garda Gaffney said:

We were to pick up a man who would be walking in that area and on arrival we parked and waited for this man to arrive. We were there for about three-quarters of an hour and the man had not arrived, so we left and went to another filling station fairly close by where we stopped. We

¹⁰⁰ Transcript, Day 331, Q.193.

¹⁰¹ Tribunal Documents, page 2765.

¹⁰² Tribunal Documents, page 3168.

were approached by a man and he asked us were we waiting for him and were we to pick him up. We were satisfied that this was the man we were to pick up and he got into the car.

Garda Forde said:

To the best of my recollection it was around 7.30 p.m. or so when we arrived. After we were parked at the filling station for a while we thought we might have been at the wrong filling station so we drove further in towards Sligo, to another filling station. At this stage I noticed a man walking and we parked. This man approached the patrol car and said who he was. He told us he was going to court in Letterkenny and that he was a witness in court the following day. We knew he was a witness in the McBrearty case.

Both Gardaí agree that they stopped on the way to allow Mr. Conlon to get a takeaway and then brought him to a Bed & Breakfast in Letterkenny. Garda Gaffney learnt at some time much later that this man was Bernard Conlon.

- 2.103.** There are aspects of these accounts which are surprising in the light of the account given by Detective Sergeant White and his stated determination to see that Bernard Conlon was brought to Letterkenny that evening. The two members were never told who they were to collect. No arrangement was made for them to meet Garda Nicholson or any other Garda from Sligo who might introduce Mr. Conlon to them. Garda Nicholson did not bother to remain with Mr. Conlon to see him off, and satisfy himself that he had gone with the members to Letterkenny; even though that was the obligation which he undertook to Detective Sergeant White. Detective Sergeant White made no arrangement that Garda Nicholson would contact him to confirm that Bernard Conlon had left with the crew from Letterkenny; nor did he make any arrangement that the crew from Letterkenny would contact him when they arrived in Letterkenny to confirm that the rendezvous had occurred. He had not informed the crew that Bernard Conlon might not turn up to this rendezvous prior to his going to Sligo, nor did he advise them that they might liaise with Garda Nicholson if the rendezvous was not kept by Bernard Conlon. Bernard Conlon was left walking on his own and was not carefully shepherded to the rendezvous point and to the car from Letterkenny by Garda Nicholson. The two members were not made aware of Bernard Conlon's meeting with Garda Nicholson or Detective Sergeant White that evening. In fact, they might then have asked the very obvious question as to why they were brought down from Letterkenny when Detective Sergeant White was already down there and proposed to bring Bernard Conlon to Letterkenny himself. There was no realistic explanation as to why Bernard Conlon did not travel to

Letterkenny with Detective Sergeant White but would with the members of the traffic corps. I am satisfied the stories presented by Garda Nicholson and Detective Sergeant White to the Tribunal do not make sense.

2.104. However, the state of affairs outlined by the two members from Letterkenny is consistent with the testimony of Bernard Conlon to the effect that he was not to talk about this meeting and that it was to be kept secret. I am satisfied that Detective Sergeant White and Garda Nicholson held this meeting with Bernard Conlon and did not inform their colleagues about it because, as Bernard Conlon says, he was told not to tell anyone it had happened. The reason he was not to tell anyone it had happened was, I am convinced, because it was a rehearsal of his testimony for the following day. Both Garda Nicholson and Detective Sergeant White disavowed any intention on their part to refresh Bernard Conlon's memory by reading his statement to him. Because he had difficulty in reading, such a course would have been unexceptionable.

2.105. **However, I am satisfied that this meeting was held in order to rehearse with Bernard Conlon the questions he would have to face in relation to his previous convictions and the evidence which he would give in response to the questions asked of him by counsel for the defence the following day. It was also necessary to impress upon Bernard Conlon that he should stick with the story in his statements and to ensure that the true story of their relationship and contacts did not emerge in evidence. Garda Nicholson and Detective Sergeant White have lied to the Tribunal in the accounts they have given of this meeting and I accept the version of these events given by Bernard Conlon and the two traffic corps Garda.**

The 11th of December 1998

2.106. Bernard Conlon told the Tribunal that he attended the District Court in Letterkenny on the morning of the 11th of December 1998 and gave evidence of being 'found on' the premises on the 30th/31st of August 1998. He felt that he was put under "a bit of pressure" by counsel for the McBreartys. At lunchtime, when the court rose, he asked Superintendent Lennon whether he could have a Garda with him during the break, because he felt a bit afraid of what might happen "during dinner hour". The superintendent brought this to the judge's attention and Mr. Conlon said that the judge gave him Garda protection during the lunch break. He went up the town during the break accompanied by two members of An Garda Síochána and then returned to court and gave the rest of his evidence. He thought the court concluded between 15.30 and 16.00 hours. He said that when he was under cross-examination:

I was under instructions by Sergeant White to keep to my statements that I made.

He did not tell the court that he had been requested to be on the premises with a number of pints in front of him that night. He thought counsel for the McBreartys may have asked him whether a member of the Gardaí had requested him to be on the premises so that he could be caught by the Gardaí that night but he denied it:

Because I was sticking to my instructions by Sergeant John White.

He told the court he was a caretaker because:

I was told by Sergeant John White to say that I was working that I'd be able to claim my expenses ... he would have said that to me before the case even started.

In contrast to that account, he told the Tribunal that he was never a caretaker for Mr. Ben Maguire and never got any money from him.¹⁰³

- 2.107. When challenged that he went to the District Court with the deliberate intention of telling lies that morning and did in fact commit perjury, Mr. Conlon said:

I took the oath on the conditions that Sergeant White told me to say. I was brought that Thursday evening, I was briefed in, I was told, it was drilled into my head what to say and what not to say [by Sergeant White] ... he wanted to get at the McBreartys, he wanted a conviction against old Frank McBrearty. He wanted to get a conviction, he wanted every Guard to summons them and he wanted me to prosecute them as well.¹⁰⁴

- 2.108. Insofar as he claimed to be a caretaker when giving evidence, and in the making of statements to members of An Garda Síochána, he said:

When I was making statements and that, Sergeant John White always told me to say I was working and that's why I always put caretaker on the statements. It was put on the statement for me. Sergeant White put me up to doing all that [because] he could get me my expenses, that he'd get me money for going to these places, for going up and down and back and forward to courts.

He told him to say he was a caretaker "at the early start of our fooling." He admitted that he was, therefore, involved in committing a fraud when seeking expenses with regard to loss of earnings.¹⁰⁵ He also accepted that regarding his

¹⁰³ Transcript, Day 331, Q.194-217.

¹⁰⁴ Transcript, Day 334, Q.603-606.

¹⁰⁵ Transcript, Day 334, Q.609-619.

evidence to the District Court in respect of his occupation and in respect of his allegations concerning the silver bullet, no one put him up to making those allegations. Therefore Mr. Conlon accepted that he had been committing perjury in the District Court.¹⁰⁶

The Evidence Given by Bernard Conlon in the District Court

- 2.109. The Tribunal has been furnished with notes made by Mr. Ken Smyth, solicitor to the McBreartys and by Garda John O’Toole, who took notes for Superintendent Lennon during the course of the District Court prosecution. These notes essentially coincide with the account given of this evidence.¹⁰⁷ The salient points addressed and brought out by counsel for the McBreartys have already been referred to in the report. If lies were told by Mr. Conlon to the District Court, it would be facile to suggest that therefore, one must conclude that Mr. Conlon’s testimony on issues relevant to this module must be discounted. On the 11th of December 1998, Mr. Conlon was telling a story aspects of which he knew to be a lie because, he says, he was acting as an agent of the police on the 30th/31st of August 1997 and because Detective Sergeant White had put him up to this through the agency of Garda Nicholson. He said that he also told lies about the silver bullet allegation in the District Court. Again he alleged that Detective Sergeant White had put him up to this. The giving of evidence in such circumstances by Bernard Conlon against Frank McBrearty Senior, Mr. Andy McBrearty and Mr. Eamonn McConnell could well be regarded as the logical conclusion of the plan conceived when he was initially used as an agent by Detective Sergeant White.¹⁰⁸ **As the evidence emerged before the Tribunal it became clear that his evidence to the District Court was an amalgam of truth and falsehood.**
- 2.110. Bernard Conlon had been brought on a number of occasions to give evidence to the District Court. At the last minute Superintendent Lennon decided not to call him. **However, I am satisfied that on the evening of the 10th of December he was essentially coached in relation to what he was to say the following day when tendered for cross-examination by counsel for the McBreartys. It is not a definitive credibility point to say he told lies to the District Court. The question to be answered in respect of any evidence given or lies told by Bernard Conlon, or anybody else, is why was it done? In my view, Bernard Conlon’s evidence in respect of the events of the 30th and 31st of August 1997 was given in execution of his agreement to act as an agent**

¹⁰⁶ Transcript, Day 334, Q.617-634: he previously had given similar evidence to the Circuit Criminal Court in the trial of Detective Sergeant White, Tribunal Documents, pages 1665-1668 – his failure to acknowledge that he had committed perjury at the District Court when first cross-examined was criticised as yet a further lie by counsel at the trial and before the Tribunal.

¹⁰⁷ Tribunal Documents, pages 2977-2994 and pages 2557-2570.

¹⁰⁸ Though a determination in relation to whether he may have been sold intoxicating liquor in breach of the Liquor Licensing Acts can only be made when it is revisited under Term of Reference (c).

against the McBreartys for An Garda Síochána. There is a great deal of supportive evidence to suggest that that is so. In my view, when he gave evidence to the District Court he was, as he says, “sticking to his guns”; he had been rehearsed in his statements and he was not to mention the meeting with Detective Sergeant White and Garda Nicholson. This was in order to keep them out of the story. Both their behaviour and Bernard Conlon’s in the procurement and giving of this evidence was scandalous and calculated to undermine the integrity and fairness of the trial at which it was given. It was disgraceful conduct. I am shocked by it.

After Court on the 11th of December 1998

- 2.111. Bernard Conlon said that when he had finished his evidence he was invited to Letterkenny Garda Station and went there accompanied by Detective Sergeant White and Sergeant Sarah Hargadon. He thought Garda Keavney was present also. He was brought into the canteen and they had tea and sandwiches. He was congratulated as being “a star witness” for the State. After they had been talking there for a while he said:

John White says, come on up to my place, Bernard. So I went upstairs with John White. Superintendent Lennon went into his own office like, he had no part with Superintendent Lennon. He went off into his own office ... John White brought a bottle of whiskey out of his office and brought it down the stairs with me and he said I'll leave you home. So I went on, got into his car and we went, we went to ... drove on home. And on the way back ... no before we left we got ... I think John White, Sergeant John White rang John Nicholson in Sligo. John congratulated me on what I had done and he wished me the best of luck for Christmas and that type of thing. So then we came down then and we went home to Sligo in John White's private car. On the way down Gerry Connolly rang him to know where I was like ... He wanted to know what happened and that type of thing ... so John White says, he was so good he says I am leaving him home myself. We arrived in Sligo and he pulled in at my house and he gave me the bottle of Paddy and he also gave me ... he put his hand in his back pocket and he took out his wallet and he gave me 20 quid to have a drink for Christmas. So he said I'll see you, Detective Garda Conlon, we'll be in touch. So I went my way and he went his.¹⁰⁹

- 2.112. Detective Sergeant White denied offering any congratulations to Mr. Conlon on the manner in which he had given his evidence and denied that he brought him

¹⁰⁹ Transcript, Day 331, Q.218-225.

home or that he gave him money or a bottle of whiskey.¹¹⁰ It was also suggested to Bernard Conlon in cross-examination that he was taken to Letterkenny Station because he was afraid of the McBreartys. Whilst this was accepted by Mr. Conlon as the reason for the two Gardaí accompanying him to lunch earlier on in the day, he said he had no fear after giving evidence and he stated that Detective Sergeant White had invited him up to the station with other Gardaí.¹¹¹ Detective Sergeant White, in evidence, said that Mr. Conlon was “fairly high and excited” and went up to the station with him and other members of the force. He did not want to get his bus home. He did not want to go down the street in case he was attacked by the McBreartys. He said that they were giving him a lot of stares and that type of thing. He said:

Other than kick him away from us, more or less, we couldn't do much about it. He walked up and into the canteen and he had a cup of tea. He refused to get a bus. It just simply boiled down to that in the end. After some time passed, he said his bus time had gone past. I went up and downstairs a couple of times I tried to get somebody else to drive him to Sligo but I couldn't find anybody and in the end I got a car myself, I waited until a car became available, a branch car and I took him down to Sligo myself.¹¹²

- 2.113. Detective Sergeant White said he may have told Mr. Conlon that his evidence went well or that he gave good evidence but did not use the word “star”. Mr. Conlon was looking for reassurance and was in fear or claimed he was in fear. Bernard Conlon remained in the station for a number of hours between 16.30 and 18.30 hours approximately. Detective Sergeant White said that Mr. Conlon was “whinging”, perhaps in fear:

It was an awkward situation, I couldn't put him out on the street to fend for himself, just in the eventuality that somebody could attack him or hit him or anything else, it wouldn't look too good. It wouldn't be the proper thing to do I suppose.

He took Mr. Conlon home at approximately 19.00 hours. They had a cup of tea at about 16.45 and then Detective Sergeant White had a five to ten minute meeting with Superintendent Lennon about a proposition put in cross-examination to Mr. Conlon that Mr. McConnell had an alibi in respect of the time at which the silver bullet threat was supposed to have been made by him. He denied that he gave Bernard Conlon a bottle of whiskey. He most certainly would not have had it in his office, for personal reasons. He did not give it to him at the station or in the car in Sligo. He vaguely recalled a phone call to Garda Nicholson

¹¹⁰ Transcript, Day 334, Q.656-660.

¹¹¹ Transcript, Day 334, Q.655-658.

¹¹² Transcript, Day 358, Q.279-289.

“but it would just be a question of everything went ok in court and that type of thing”: he had no real recollection of the conversation. Bernard Conlon’s evidence concerning a call received from Detective Sergeant Connolly inspired a memory in Detective Sergeant White that he may then have told him about the alibi which had been put by counsel for the McBreartys in respect of Mark McConnell concerning the silver bullet issue; but he was not sure. However, he could not see himself telling Detective Sergeant Connolly that Bernard Conlon was so good a witness that he was leaving him home himself. He was also adamant that he had never carried a wallet in his life and would not have taken money from it in Sligo that evening.¹¹³ He also denied calling Mr. Conlon Detective Garda Conlon. He noted, as he did on a number of occasions in his evidence, that Bernard Conlon was always trying to ingratiate himself with members of An Garda Síochána and had, on at least one occasion, sought to impersonate a Garda.

- 2.114. Mr. Nicholson denied in evidence that he had received a telephone call from Detective Sergeant White after evidence was given by Bernard Conlon in Letterkenny. He had no reason to be worried if things did not go well.¹¹⁴
- 2.115. Inspector Connolly’s evidence, to an extent, supports Detective Sergeant White’s version of events in respect of this call. He was unsure whether there was a call on that date. He said that if the call took place it was probably in relation to the identification of Michael Peoples, which had occurred on the 8th of December 1998. He denied that he was told by Detective Sergeant White that he was so pleased with Mr. Conlon’s testimony that he had decided to drive him home himself. However, Inspector Connolly does not accept that there was any discussion with Detective Sergeant White on the 11th of December in that telephone conversation, or within days thereof, concerning the alibi which had been put forward on behalf of Mark McConnell in relation to the silver bullet issue.¹¹⁵
- 2.116. **I am satisfied that in relation to this car journey to Sligo there was a telephone conversation between Garda Nicholson and Detective Sergeant White which confirms the evidence given by Bernard Conlon and that Garda Nicholson was told that things had gone well or words to that effect.** Garda Nicholson had an interest, by reason of his involvement in this escapade, in hearing how Bernard Conlon had performed as a witness. **I do not believe a similar conversation took place with Detective Sergeant Connolly, though he may have had a conversation by telephone with**

¹¹³ Transcript, Day 358, Q.279-316 and Q.384-416.

¹¹⁴ Transcript, Day 241, Q.246-265 and Q.295-301: Garda Nicholson also denied that he delivered a hamper to Bernard Conlon after he gave evidence as Bernard Conlon had previously alleged though he had delivered a hamper to him a few years before that - Q.252-254.

¹¹⁵ Transcript, Day 347, Q.624.

Detective Sergeant White on the 11th of December 1998. If he did, I am satisfied to accept the likelihood that that conversation concerned the recent identification of Michael Peoples on the 8th of December 1998 and not how Mr. Conlon gave evidence or indeed the fact that an alibi had been proffered on Mr. McConnell's behalf in the course of the cross-examination of Bernard Conlon. I am also satisfied that Detective Sergeant Connolly was not told of this alibi by Detective Sergeant White. Inspector Connolly is a credible witness on this matter: Detective Sergeant White and Mr. Nicholson are not. However, the Tribunal considers that the unsupported evidence of Bernard Conlon is not enough for it to accept that Detective Sergeant White gave Bernard Conlon a bottle of whiskey or twenty pounds.

Witness Expenses Paid to Bernard Conlon

- 2.117. Bernard Conlon received a number of cheques from An Garda Síochána in respect of witness expenses. These were the subject of a number of formal claims to which reference has already been made. The procedure pursuant to which state witnesses may be reimbursed for expenses incurred in attending court in answer to a witness summons have been helpfully explained in statements and evidence furnished by Ms. Rita Harmon of Letterkenny Garda Station, and Superintendent D.F. Walsh of the Finance Section, Garda Headquarters. Ordinarily, witness expenses for persons attending court in criminal cases are paid by the local superintendent if they come within a prescribed schedule of fees. Headings under which fees are payable by way of witness expenses are set out in Garda Headquarters Circular 97/89 of the 18th of October 1989. A claim may be initiated by the completion of a form A.80 by a Garda member involved in the case. This form contains the name, address and occupation of the witness and under various headings provides details of the case in which the witness was involved, including the place and date of court attended, the amount of time (in respect of the witness's time) required in order to attend, and the amounts to which, it is claimed, the witness is entitled. This document is signed by a member of An Garda Síochána who declares that the information given by him on the form is correct. It is submitted to the local superintendent who then certifies that the witness attended court as stated, that he or she was necessarily absent from home or business for the period shown, that he or she was entitled to the amount deemed to be payable to him or her and that such amount is in accordance with the authorised scale and has not previously been paid or claimed.¹¹⁶
- 2.118. Ms. Rita Harmon worked on financial accounts at Letterkenny Garda Station and

¹¹⁶ Tribunal Documents, page 558.

part of her job involved the processing of witness claims. Normally, the form A.80 (the claim form), together with a certification of loss of earnings and other related documentation, if appropriate (for example, travel tickets, if the witness travelled from overseas), were submitted to the district office at Letterkenny Garda Station by either the member in charge of the particular case or a member having the rank of sergeant. As part of her duties Ms. Harmon checked each claim to ensure that the relevant documentation was attached and that the amounts of money claimed were in accordance with the current rates of the applicable schedule under the circular. If the claim was deemed to be correct it was forwarded to the superintendent, or the inspector who was the acting superintendent, for signature. No cheques were made out or issued until the claim was returned signed by the superintendent or the acting superintendent. They signed the claim in the space provided on form A.80. If the claim was in order, a cheque was made out for the witness and returned to the superintendent, or acting superintendent, for signature accompanied by two letters. One of these letters was addressed to the witness, the other to the sergeant in charge of the station from which the prosecution was brought. When the cheque was signed it was posted to the sergeant in charge and accompanied by the letter addressed to the witness. Both letters were signed by the superintendent or acting inspector. Details of the cheque payment were recorded in a cheque payment book and on the cheque stub.

- 2.119. At the end of every month the original of all claims paid from the Garda Síochána account for the particular month at Letterkenny Station were forwarded to the Finance Section, Department of Justice, Equality and Law Reform in Killarney, Co. Kerry as part of a monthly return. This was required so that the department could reimburse the local superintendent's account with the sum paid out in the previous month. Included in the return were the original claims in respect of payments made to State witnesses.¹¹⁷

The Claims

- 2.120. The first of the claims was made on the 29th of May 1998 in respect of three attendances at court by Mr. Conlon on the 9th of March 1998, the 27th of April 1998 and the 25th of May 1998. Attached to this claim was a certificate, purportedly signed by Bernard Maguire, that Mr. Conlon had been absent for five days from work at a rate of £40 per day due to his attendance as a witness at Letterkenny District Court. Mr. Maguire denies that Mr. Conlon was working for him, or that he issued the certificate, wrote it or signed it. A cheque was issued in the amount of £349 on the basis of this application. The claim was submitted by Detective Sergeant White and certified for payment by Superintendent Kevin

¹¹⁷ Tribunal Documents, pages 542-548 (see also the statements of Ms. Anne Marie Finan, Tribunal Documents, pages 549-557) and Transcript, Day 328, Q.1-48.

Lennon on the 29th of May 1998. This cheque was delivered personally by Sergeant White to Bernard Conlon when Sergeant White was on his way to a wedding shortly after the cheque was signed.¹¹⁸

2.121. The second claim was submitted by Sergeant Sarah Hargadon and also contained a certificate purportedly signed by a Thomas Maguire dated the 24th of June 1998 and certifying that Bernard Conlon had attended court in Letterkenny on the 22nd and 23rd of June as a witness and was at a loss of £40 per day from his employment as a housing caretaker and gardener. Thomas Maguire, in a statement submitted to the Tribunal, states that Bernard Conlon was never employed by him as a caretaker or gardener. When shown the certificate he stated that he had never seen it before and had not signed it. The Tribunal accepts that he had nothing to do with any of these certificates. Sergeant Hargadon told the Tribunal that she had some discussion over the phone with Mr. Conlon in relation to this claim and advised him to speak to Garda Nicholson. She also said that Garda Nicholson informed her that he would send on the certificate of loss of earnings by post. Some days later as she had not received it, she contacted Garda Nicholson again and was informed that he would post it to her as soon as possible. A number of days later Sergeant Hargadon received the certificate. She attached it to the claim and submitted it in the normal way. Garda Nicholson had no recollection about speaking to Sergeant Hargadon about this claim. He said he had nothing to do with the certificate. I do not accept his evidence in this regard.¹¹⁹

2.122. Sergeant Hargadon told the Tribunal that she completed this application for expenses on behalf of Bernard Conlon because she had received a phone call from Ms. Harmon of the district office at Letterkenny who processed the claims. Ms. Harmon informed her that Bernard Conlon had contacted her about the claim. Sergeant Hargadon told Ms. Harmon that if Mr. Conlon phoned again he should be told to contact her. She was then in contact by phone with Bernard Conlon. She told him that she needed a certificate of earnings before she could process a claim for loss of earnings. Mr. Conlon told her that she should ring Garda John Nicholson in Sligo and that Garda Nicholson would sort this out. She phoned Sligo station. She was given Garda Nicholson's mobile phone number and contacted him. She told him that she needed a certificate of earnings for Bernard Conlon and Garda Nicholson informed her that he would look after it and would send it on to her. She did not receive it and then contacted him for a second time. He confirmed that he would send it on. She then received the handwritten certificate. It came on a "half sheet" of Garda notepaper. She did not regard that as unusual as a Garda might fill out a certificate, or a half sheet, and get it signed by an employer. She first learnt that this certificate was a forgery

¹¹⁸ Tribunal Documents, pages 704-709.

¹¹⁹ Transcript, Day 339, Q.1-48.

in 2000. She believed that she had been contacted by Ms. Harmon because it was Ms. Harmon's perception that there had been a delay in dealing with what was deemed to be a Raphoe case. Normal practice was that the Garda who brought the case would submit a claim for all witness expenses. She acted as a result of Ms. Harmon's call because she wished to facilitate her, not because she was involved in the prosecution. She thought that Bernard Conlon was regarded as an important witness at the time from the way he was being treated by Superintendent Lennon and Sergeant White. She said this would explain to some degree her eagerness to have the matter dealt with quickly and efficiently.

- 2.123. The third claim submitted on the 14th of November 1998 by Detective Sergeant White for £312 was in respect of attendances by Mr. Conlon as a witness at Letterkenny District Court from the 7th to the 11th of December 1998.¹²⁰ A loss of earnings claim for £200 is based on a certificate which is undated and was purportedly signed by "Ben Maguire" attached to the claim. Mr. Maguire denies all knowledge of this certificate.
- 2.124. The fourth claim was in respect of Mr. Conlon's attendance at Donegal town District Court from the 1st to the 4th of June 1999 inclusive, in the case of "The Director of Public Prosecutions v Frank McBrearty Senior and others". This claim was accompanied by a letter from Detective Sergeant White, which stated that, "Mr. Conlon was present in court on behalf of the State on explicit instructions of Judge O'Donnell." The total claim in respect of his appearances was £220. A certificate of loss of earnings was furnished in support of the claim, again purportedly signed by "Ben Maguire" and claiming a loss of £40 per day for four days in respect of Mr. Conlon's earnings. This claim is dated the 22nd of June 1999.¹²¹
- 2.125. The fifth claim was submitted by Detective Sergeant White on the 31st of August 1999 in respect of a court appearance at Letterkenny District Court in proceedings brought against Mark McConnell in a prosecution under the Criminal Justice (Public Order) Act, 1994. The hearing date was the 24th of June 1999 and the amount claimed was £75. This prosecution appears to relate to an incident which is alleged to have occurred in the precincts of Letterkenny District Court on the 25th of June 1998, to which further reference will be made later in this report. The application was again signed by Detective Sergeant John White. A certificate of loss of earnings was supplied in support of the application. It was undated and purportedly signed "Ben Maguire" and claimed £40 for loss of earnings as a housing caretaker.

¹²⁰ Tribunal Documents, pages 717-722 – The reference to November 1998 on the face of this document is in error; the Tribunal is satisfied that this application relates from the 7th to the 11th of December 1998.

¹²¹ Tribunal Documents, pages 723-728.

- 2.126. The sixth claim was a composite claim submitted on the 13th of December 1999 by Detective Sergeant White in respect of expenses for Mr. Conlon's attendances at Donegal town District Court on the 6th and the 7th of September and the 23rd of November 1999 and in a second claim of the same date for his attendance at Letterkenny District Court on the 18th of November 1999. This claim was accompanied by a loss of earnings certificate which was undated and purportedly signed by "Ben Maguire". Mr. Conlon is again described as a housing caretaker. He was said to be at a loss of earnings of £160.
- 2.127. In respect of this certificate Detective Sergeant White said the following in his statement of the 21st of May 2005:

In late November 1999 I received a white envelope by registered post from Mr. Conlon. This was different from the usual brown Garda envelope which I received from Garda Nicholson that contained a loss of earnings certificate. I received this white envelope following requests from Mr. Conlon for payment of his expenses and after I had again informed him that I could not apply for expenses on his behalf until I received a loss of earnings certificate signed by Mr. Maguire. I had to repeatedly remind Mr. Conlon of this requirement. On this occasion I had not been asked for specific dates in respect of Mr. Conlon's attendances at court in Donegal by Garda Nicholson. I examined the loss of earnings certificate and I found that while the 6th of September 1999 had been specified that the 7th had not and I was aware that Mr. Conlon had been in Donegal Town District Court on the 7th of September, 1999. I did not immediately prepare a claim for these dates as I assumed that Mr. Conlon would later submit another claim for the 7th and this would not be acceptable to the staff of the superintendent's clerk's office. I did not notice the difference in the signature of Mr. Maguire at this stage. Rather than complete and submit a claim for Mr. Conlon, I telephoned him and I explained that the loss of earnings certificate that I had received did not include a claim for the 7th. He said that he would get another one signed by Mr. Maguire which included that date. Shortly afterwards I received another white envelope by registered post with the 7th of September included along with the other dates.

I gave more thought to this claim as it was a change in procedure from the previous occasions. Garda Nicholson had not been in contact with me. It occurred to me that the writing on the loss of earnings certificate and Mr. Maguire's signature was small. I examined a previous claim and I found that the writing was much larger on the loss of earnings certificate

attached to that claim. I contacted Garda Nicholson by telephone and I informed him of the two loss of earnings certificates that I had received and what had happened. I told him that I believed that Mr. Conlon was attempting to short circuit the system for some reason. He agreed with me and he asked that I post both certificates on to him, stating that he would get proper ones signed by Mr. Maguire. I did so. He telephoned me some days later and told me that he was sending on the proper certificate with Detective Garda John McHale on the following day as he was going to Letterkenny District Court.¹²²

- 2.128. Detective Sergeant White does not appear to have kept a copy of the first certificate sent by Bernard Conlon of which he became suspicious. This was strange since Detective Sergeant White, in many other instances, was meticulous as to the keeping of records and documents. Bernard Conlon denies these allegations in respect of the certificate. Detective Garda John McHale confirmed to the Tribunal that there was an occasion on which he was asked by Garda Nicholson to deliver an envelope to Detective Sergeant White in Letterkenny. He had no idea what it contained.¹²³ Detective Sergeant White had an entry in his diary for the 4th of December 1999 wherein he noted that he had called Garda Nicholson and sent a letter to him in relation to this matter. Garda Nicholson accepted that an envelope was given to Detective Garda John McHale who brought it up to Detective Sergeant White. He did not accept that this occurred because of the return to him by Detective Sergeant White of suspect certificates submitted by Bernard Conlon.¹²⁴
- 2.129. In evidence to the Tribunal Detective Sergeant White said the first certificate he received from Bernard Conlon by registered post was missing the date of the 7th of September 1999. He put that in his drawer and phoned Bernard Conlon. He told him the certificate was missing the 7th of September. Mr. Conlon said to him that he would go back to Mr. Maguire and get a proper certificate made out. Detective Sergeant White said he then received another registered letter from Bernard Conlon with a new certificate including the date the 7th of September 1999. When he looked at that he saw the writing was small so he checked a previous copy he had of one of the certificates and at that stage he phoned Garda Nicholson. Garda Nicholson said to him that he thought Bernard Conlon was trying to short circuit the system. He then placed the two certificates into an envelope and wrote a handwritten letter to Garda Nicholson and sent it off in the post. The correct certificate was received by him a week later.¹²⁵

¹²² Tribunal Documents, page 2079.

¹²³ Tribunal Documents, pages 3010-3012, which tends to suggest that Sergeant White was incorrect in his account.

¹²⁴ Transcript, Day 343, Q.313-338.

¹²⁵ Transcript, Day 359, Q.643-669 and Transcript, Day 358, Q.688-756.

- 2.130. Detective Sergeant White also told the Tribunal that when he wrote the letter to Garda Nicholson it stated that he had received two letters and that the signature was too small to be Ben Maguire's signature. He requested Garda Nicholson to find out what Bernard Conlon was at and look into it. He said he made an entry in his diary "phone call and letter off to John Nicholson" which he said was not an effort to prove anything afterwards. He wanted Garda Nicholson firstly to meet Bernard Conlon and ask him who made out these certificates for him, and secondly to get a proper certificate from Mr. Maguire and send it up. He then said that he got a phone call from Garda Nicholson indicating that Detective Garda McHale and Detective Sergeant Connolly were coming to the Letterkenny Court the following morning, the 13th of December 1999, and that they would give Detective Sergeant White a proper certificate. He requested that Detective Sergeant White move the matter through the superintendent's office as quickly as possible and send the cheque back to Mr. Conlon. He wanted Detective Sergeant White to so arrange matters that the cheque could be given to Detective McHale on his return journey. The cheque in fact was posted on to Mr. Conlon afterwards. Garda Nicholson never came back to Detective Sergeant White about this and the questions he posed were never answered.¹²⁶
- 2.131. Detective Sergeant White states that this was a matter of no consequence to him and that Mr. Conlon could, in some way, be excused his behaviour in trying to short circuit the payment of expenses by reason of his being naive or simple or uneducated: this, in circumstances where Mr. Conlon already had a special arrangement whereby Garda Nicholson was looking after his loss of earnings certificates and sending them to Detective Sergeant White. It is also in marked contrast to the attempts by Detective Sergeant White to characterise Bernard Conlon as devious and manipulating. If he thought there was nothing to it, it is difficult to understand why he asked Garda Nicholson to follow it up. In any event, if it happened, I would have expected an appropriate explanation to be sought from Bernard Conlon and a full inquiry as to how he managed to obtain forged certificates. One might also wonder why Mr. Conlon would have found it necessary to forge the certificates. His problem with certificates had been solved by Garda Nicholson. He would be subverting a payment system which he had requested and from which he continued to benefit. He had no reason to forge these certificates. **It is in my view that this is another attempt by Detective Sergeant White to distance himself from the relationship which he had with Bernard Conlon and Garda John Nicholson and further, to present himself as proactive in ensuring that there was propriety in the submission of certificates. I reject his evidence in this regard.**
- 2.132. The seventh claim arose out of the attendance by Mr. Conlon outside Letterkenny

¹²⁶ Transcript, Day 358, Q.688-743.

District Court on the 1st of October 1998 for the purpose of participating under Garda supervision in an informal identification procedure in order to see whether he could identify any of the persons entering the court as one of the culprits who threatened him on the 20th of July 1998. This will be dealt with in the next chapter. This claim was submitted by Detective Sergeant Gerard Connolly on the 22nd of November 1998 and approved for payment by Inspector J.B. Murphy, who was an acting superintendent at Letterkenny, on the 23rd of November 1998. The certificate was dated the 26th of October 1998 and is addressed to the Gardaí at Letterkenny. It certifies that Mr. Conlon was absent for this purpose for two days, and that he was at a loss of £80 from his employment as a housing caretaker. The certificate is purportedly signed “Bernard Maguire”. Mr. Conlon was paid a total of £118.50 as a result of this claim.¹²⁷

Evidence of Detective Garda Paul Casey

2.133. The Tribunal has been unsuccessful in establishing definitively who were the respective authors of each of the seven certificates leaving aside the signatures on the certificates. However, in respect of the certificate dated the 26th of October 1998, Detective Garda Paul Casey gave evidence to the Tribunal that the writing on this certificate was his, except for the signature at the bottom. He did not know in whose handwriting the signature “Bernard Maguire” was, nor did he see anybody sign the certificate. He said that while serving at Sligo Garda Station with Garda John Nicholson, and attached to the crime office, he spoke with Garda Nicholson on the evening of the 26th of October 1998. Garda Nicholson told him that he needed to submit an expenses claim for a witness. He asked Detective Garda Casey to write the certificate of loss of earnings. He said:

I had absolutely no difficulty in writing out the document for Garda Nicholson. I was aware at that time, as were most people in the station at the time, that Garda Nicholson suffered from rheumatoid arthritis, which affected his right shoulder, his right arm and in particular his hand. This condition would come and go in severity and I knew when he came in to the office and made a comment asking me to write out the document, that he obviously was having difficulty with his hand. I didn't question him in relation to his condition because I didn't want to cause him any kind of embarrassment. I was in the middle of carrying out my own work and I wrote out the document for him. He dictated the document to me, to the extent that he pointed out to address it to Cartron at the top right hand corner and the date, 26/10/1998. I asked him who will I address it to. He said address it to the Gardaí

¹²⁷ Tribunal Documents, pages 768-774.

*at Letterkenny. He then dictated the letter to me and I wrote out what he said to me on the document. At the bottom of the document I wrote in the word "signed" with a semicolon and that's where my involvement with that document finished. I took it and I handed it to Garda Nicholson and he left the room. I had absolutely no difficulty at that time in writing out the document.*¹²⁸

- 2.134. Detective Garda Casey gave evidence that the writing of documents on behalf of Garda Nicholson was commonplace at Sligo Garda Station because of Garda Nicholson's physical difficulties. On occasions Garda Nicholson was able to cope but on others he was in severe pain and discomfort to such an extent that he had difficulty, for example, in putting the key into the door of the crime office to unlock it. He could, however, be perfectly fine the following day. In addition, he said that it was a standard procedure that one might fill out a form or a document for a person in order to claim witness expenses. One might speak to an employer or speak to the witness and ask them the identity of the employer, the position in which they worked, the nature of the work and earnings. Sometimes people did not understand what was required when they were asked to submit a claim for witness expenses: so, to simplify the process one might make out a certificate. A document like the one which he wrote would be brought to the employer who would be asked to read it and, if they were happy with it, to sign it. The document would then be brought back to the station and sent up as a claim for witness expenses to the appropriate authority.
- 2.135. Detective Garda Casey was asked to attend Riverstown District Court on the 25th of July 2002 when Garda Nicholson was prosecuted in respect of three charges of uttering forged documents related to these certificates. When he heard the evidence in the District Court he began to question whether he was involved in writing any of the certificates. He was aware that the Carty team had been investigating the matter. He then looked up the website of the Tribunal and read down through the Opening Statement of counsel, which included the details of the seven certificates. He had no definite recollection of being involved in any specific one but he decided to come forward and contact the Carty team. He contacted Detective Superintendent Tadhg Foley and explained to him that he had written some documents for Garda Nicholson. This included statements and memos of interview, but he was not sure whether he had written anything else, and he wanted to see the documents that the Carty team had.¹²⁹ Detective Garda Casey asked to see the certificates, which were shown to him, and was "absolutely stunned" to see his writing on the very last certificate shown to him. He had not enquired of Garda Nicholson at the time why he wished him to fill out the certificate. He did not wish to raise the issue of his arthritis as it might have caused him embarrassment.

¹²⁸ Transcript, Day 369, Q.816-823.

¹²⁹ Transcript, Day 369, Q.837.

- 2.136. Detective Garda Casey had visited 61 Cartron Bay with Garda Nicholson on an occasion in 1997 about some suggested difficulty with tenants in a house. They were only there for a short time, during which Mr. Conlon said that he had to be up early in the morning “shuffling with cattle for Ben Maguire”, a phrase that stuck in Detective Garda Casey’s mind. He took it that Bernard Conlon was employed by Ben Maguire because of this comment and because he called to the station about tenants who were causing trouble.¹³⁰
- 2.137. Detective Garda Casey met with members of the Carty team on a number of occasions. Initially, he contacted Detective Inspector Foley by telephone as already set out. Then on the 27th of January 2003 at his request he met with Detective Inspector Foley and Detective Inspector McHugh at the Sligo Park Hotel, where he was shown the certificates and identified one of them as being in his hand except for the signature. Coincidentally, when he emerged from that meeting at the Sligo Park Hotel, he encountered Mr. John Nicholson, who was driving along the road at the time. He pulled over and asked Detective Garda Casey whether he wanted a lift. He sat in and Mr. Nicholson drove him towards the Garda Station. He was in a state of shock having just recognised his writing on the certificate and chose to show a copy of the document to Mr. Nicholson. This is what he said happened:

I said to him I have just been interviewed by the Carty team in relation to certificates and he said to me what certificates had you anything to do with? And I said, I’ll show you what certificates. I reached into my pocket and I took out the photostat copy and I held it up. He drove on and he said just a minute, he pulled into the footpath and he took the document from me and studied it and said I never saw that in my life and he threw it back at me ... I said to him did I not write out that document ... did you not ask me to write out that document and he repeated I never saw that document before in my life ... I just looked at him. I didn’t know what to say. I just said, ok, goodbye, and I opened the door of the car and got out and walked away ... I was stunned by it.¹³¹

- 2.138. Mr. Nicholson denied that he had dictated the contents of the certificate dated the 26th of October 1998 to Detective Garda Casey. He said:

At no time did he ever do any writing for me or did I ask him to do any writing, no matter how bad my hand was. At no time did I ask anyone in my own unit, the crime unit, ever to do writing for me ... That receipt in question had nothing in any shape or form to do with me. It was in relation to a claim where Mr. Conlon was

¹³⁰ Transcript, Day 369, Q.858-892.

¹³¹ Transcript, Day 369, Q.955-962.

*brought down to Donegal to identify Mr. McConnell ... that had nothing to do with Sergeant White or anyone in Donegal, that was a Sligo claim. I did not know what days they were down there doing that, that is the truth ... I did not know when that claim was made out. I had no input into that good, bad or indifferent and I did not dictate that to Detective Garda Casey and I do not believe from my experience of his writing and I have plenty of them here, and if you look at them ... that Detective Garda Casey wrote that document. That is my opinion. And with respect to all the handwriting experts and all that, I want to say that clearly.*¹³²

- 2.139. In relation to the lift which he gave to Detective Garda Casey on the 27th of January 2003, he denied that Detective Garda Casey told him that he was in the Sligo Park Hotel speaking to Detective Inspector Foley and that he was shown any receipt or that there was mention of any receipt.¹³³
- 2.140. In support of this denial Mr. Nicholson pointed to a number of inconsistencies in Detective Garda Casey's evidence to members of the Carty team. Indeed, Detective Garda Casey acknowledged these inconsistencies himself.
- 2.141. Following his initial meeting on the 27th of January 2003 with members of the Carty team, when Detective Garda Casey sought sight of the originals of the certificates, he met with them again and was shown the certificates on the 21st of February 2003. On that date he stated that he had, "no hand, act or part in the drafting of the certificate and I did not sign the name Bernard Maguire at the bottom of the letter" in relation to the document dated the 26th of October 1998. He was then asked for a sample of his handwriting in the form of a copy of the contents of the document. He wished to take legal advice about this. On the 31st of March 2003 Detective Garda Casey produced a pre-written sheet of paper. He had received legal advice and was offering this as the sample requested. He also made a statement. He then made a further statement on the 26th of May 2003 verifying that having offered his notebooks since commencement of service he was requested to hand over the notebook for the period from the 16th of January 1998 to the 27th of October 1998, containing 185 pages of his normal handwriting. This material was furnished to Detective Inspector John Lynch of the document section at Garda Headquarters. He reported that it was his opinion that the writing in the document dated the 26th of October 1998, apart from the signature "Bernard Maguire", was probably that of Detective Garda Casey. Detective Garda Casey was made aware of this statement, to which he replied on the 3rd of December 2003:

¹³² Transcript, Day 372, Q.178-194.

¹³³ Transcript, Day 372, Q.195-199.

That there are similarities in the handwriting but states he did not write the body of the document. He also repeats that he did not sign the document in question.¹³⁴

- 2.142. The question was posed to Detective Garda Casey as to why he made the assertion that he did not write the body of the document on the 3rd of December 2003. He accepted the accuracy of that memo of interview. He also confirmed that he had read the statement of Inspector Lynch. He had come forward in January 2003 and said he was very stressed by December 2003 over the entire matter. He said:

I suppose I was embarrassed and ashamed of being propelled into a national Inquiry such as this and I just wanted to put the matter behind me as best I could until such time as I appeared here to give evidence. The interview was focussed on writing, the document I read was in relation to writing. It was all about writing. I just wanted to finish the interview and put it behind me until I was called here as a witness. I accept that I used the words "I did not write", I had intended to say the same as in my previous statement, "I did not draft" the body of the document but I used the word "write" and it was read over to me and I signed it. ... I put it in a drawer at my home and I forgot about it and I never looked at it and I never came across the memo until ten or twelve days ago when I was served with documents from the Tribunal here. I should have looked at it ... and I should have rang them up and clarified the issue straight away. ... It was careless.

He insisted that he had no intention of denying the fact that he had written this document. He merely wished to emphasise that he did not draft the body of it – it had been dictated to him.¹³⁵

- 2.143. The Tribunal is satisfied that the body of the certificate dated the 26th of October 1998 is in the handwriting of Detective Garda Casey. He came forward to the Carty team and acknowledged this. He submitted his handwriting for forensic examination and this confirmed the matter. Notwithstanding the apparent inconsistency in statements and memos of interview made to the Carty team, he affirms that it is his handwriting on oath to the Tribunal. I accept his evidence in this regard. Indeed, it is difficult to see what interest he would have in coming forward, whether to the Carty team or to the Tribunal, other than to confirm his involvement in the creation of the document. No other credible motive

¹³⁴ Tribunal Documents, pages 3450-3456.

¹³⁵ Transcript, Day 369, Q.929-954.

had been suggested to him. Garda Nicholson's complete denial of having involved Detective Garda Casey in the creation of this certificate and his further denial of the conversation which Detective Garda Casey said he had with him in his car on the 27th of January 2003 are completely false. His evidence to the Tribunal and further attempts to discredit Detective Garda Casey, who had simply helped him when he needed it as an act of kindness, were dishonourable and unworthy.

Garda Nicholson's Involvement in Bernard Conlon's Witness Expenses

2.144. In the course of meetings with the Carty team Garda Nicholson was asked whether he had claimed expenses for Bernard Conlon or obtained certificates of loss of earnings for him in respect of his attendance at the District Court. He was noted as saying, "Someone else signed them and he was used in that respect."¹³⁶ On this occasion Garda Nicholson was not willing to answer questions after caution. He said he would prepare a written statement. In a written statement of the 28th of March 2000 Garda Nicholson set out in detail his account of his involvement with Bernard Conlon's expenses as follows:

To the best of my knowledge in 1998 and 1999 Conlon was summonsed as a witness on behalf of the State on a number of different dates to give evidence at Letterkenny District Court. After his first appearance which I believe lasted a few days to the best of my recollection, I received a telephone call from Conlon at Sligo Garda Station. He stated that he urgently required his Court expenses for attending in Letterkenny as he was going away. He stated that he had no money and that he needed it as he would be away for a few days. He informed me that he had spoken to D/Sergt. White on the telephone and that the only way he could get his expenses was when he would get a receipt from his employer, Ben Maguire. Conlon stated that D/Sgt. White asked him to telephone me and ask me to arrange this and that in turn he would receive his expenses immediately. I then requested Conlon to go to Ben Maguire and get a receipt from him but he refused to do this. He informed me in a very surly manner that if we could not arrange this for him, that he would never go down to Court in Donegal again to give evidence. I immediately contacted D/Sgt. White by telephone and explained the position to him and what Conlon had said to me. D/Sergt. White was most anxious that I or someone else in Sligo Garda Station would get a receipt to cover Conlon's expenses. D/Sergt. White informed me that he was seeking £40 per day as loss of earnings for attending Court and stressed how important and vital a witness he was for the State. He stated that they could not afford to lose

¹³⁶ Memo of Interview between Garda John Nicholson and Detective Superintendent J. McGarty and Detective Inspector Tadhg Foley, the 15th of March 2000, Tribunal Documents, page 358.

him or do without him and that he was the only and most important civilian witness for the State against the Parting Glass Night Club for the night of the 30th/31st August 1997. I immediately set out looking for Ben Maguire in Sligo as I then realised the importance of the matter and that Conlon needed to get his expenses fast or the State would lose him as their witness. I spent over one hour looking for Ben Maguire to get a receipt from him to cover Conlon's expenses and I visited a few places including two different building sites where he usually worked. Eventually when I failed to locate him I discovered that he was in Northern Ireland where he owns land and lives part time. I again contacted Conlon and I informed him that I could not locate Ben Maguire. He stated to me that if we could not get him his money fast which he was entitled to, that he would wash his hands of us and never attend court in Donegal again. I explained to him that I was trying to help him and D/Sergt. White and that it should not be my problem but that I would do all I could to resolve it. He walked away in an unhappy mood and stated I will leave it yer hands. In turn that day I discussed the matter and the great urgency attached to it with a close friend which I do not wish to name. As a result this person stated to me I would have a receipt fast, just give the particulars and the dates of Conlon attending Court. Within half an hour this person handed me a receipt which I did not question and immediately faxed it from Sligo Garda Station to Letterkenny Garda Station for the attention of either D/Sergt. White or Supt. Lennon. At no time did I write any of those receipts or request anybody to do so. In turn, I would have forwarded a few similar receipts so that Conlon would receive his Court expenses and on each occasion it was the same procedure as the first receipt. In all cases there appeared the greatest of urgency and as soon as Conlon returned from Court on different occasions he looked for and wanted payment almost the next day. He would contact me by telephone and state that D/Sergt. White told him to contact me and that I would sort out his receipts. In turn I would telephone D/Sergt. White and inform him that I was not happy about the receipts and he assured me that whatever expenses Conlon looked for were always paid to him and that everything was totally honest and above board in relation to all those payments. Conlon was always either going to a wedding or going away for the weekend and always appeared to be short of money and needed it urgently. After I forwarded the first or second receipt to Letterkenny I made contact with Ben Maguire as I was concerned about those matters. I fully explained to Ben Maguire that I was trying to make contact with him a few times about getting receipts for Conlon attending Court in Donegal

but that I could not locate him. He stated that he had heard that I was looking for him and asked me what was the problem. I informed him that I had forwarded receipts on his behalf to Donegal for Conlon as he was claiming £40 each day he attended court. Ben Maguire stated that he knew Conlon was attending Court case(s) in Letterkenny. He stated that he had no problem with that and that Conlon or anybody else for that matter was entitled to those expenses provided he was present in Court ... As I stated I forwarded a few receipts and there could be about five or six altogether but I am not sure I did it as a matter of great urgency and the only reason I did this was to totally facilitate the Gardaí in Letterkenny and the State. The last receipt that I forwarded to Letterkenny was once again of great urgency. I put it in an envelope addressed to D/Sergt. White and I requested D/Gda John McHale, Sligo to bring it to Letterkenny as he was travelling there to Court on the date in question. To the best of my recollection this was around the middle of December 1999. On one occasion the payment of expenses to Conlon was so urgent that D/Sergt. White sent a patrol car from Letterkenny to Sligo with a closed envelope addressed to me. This envelope contained another closed envelope with Conlon's name on it, which I believed contained a cheque for expenses for his attendance in Court. D/Sergt. White telephoned me the previous evening and informed me that Conlon was on his way back again for his money and that he had made an arrangement with him that he was sending his cheque by car to Sligo and that I would meet him at the District Court the following morning which was a Thursday and give it to him. The envelope was delivered to the Public Office for me by patrol car and arrived in Sligo approx. 10.15 a.m. At 10.25 a.m. I walked over to the District Court and Conlon was waiting inside with a smile on his face when he saw me coming. I handed him the closed envelope which I presumed contained his expenses and he thanked me and said he was going to the Bank. At no other time did I ever give any other envelopes or cheques to Conlon. I would describe him as a greedy man for money and for years I considered him totally dishonest and untrustworthy.¹³⁷

- 2.145. In a further interview on the 4th of April 2000, Garda Nicholson acknowledged that he had obtained loss of earning certificates in the name of Ben Maguire but said he had no knowledge of the Thomas Maguire certificate. This was the one which Sergeant Hargadon said had been furnished to her after contact with Garda Nicholson.¹³⁸ Garda Nicholson's attention was drawn to the signature of Ben Maguire on a certificate of loss of earnings and also to the name Maguire in a copy of an original statement made by Garda Nicholson on the 27th of June

¹³⁷ Tribunal Documents, pages 362-365.

¹³⁸ Tribunal Documents, page 375.

1997 but he insisted that it was not his signature on the certificate. He was also asked the name of the friend whom he had alleged in his statement had provided the certificates to him but he was not prepared to name him. He said it was the same person who arranged each of six certificates for him.¹³⁹

- 2.146. On the 11th of May 2000, in a further interview, when asked about why he did not tell Detective Sergeant White that he could not get certificates of earnings in respect of Bernard Conlon, he said:

I did inform D/Sergeant John White by phone more than once. That's all I will say to that. ... The only role I played in this was totally to facilitate the Gardaí in Donegal and the State.¹⁴⁰

He went on to say that the certificates were given to him but that he was not told that they were forged. He never made out a claim for witness expenses. He never questioned his friend about the source of these certificates. He said:

I just did not, the friend would be a very genuine friend and I did not see any reason to ask any questions.¹⁴¹

He did not ask his 'close friend' to get a forged certificate of earnings for him in respect of Bernard Conlon. Garda Nicholson said that the dates and the amounts of money to be covered by the certificates were given to him by Detective Sergeant John White: he passed them on to his friend. Though he spoke to Ben Maguire about the first certificate he did not speak to him about the subsequent others. He insisted on numerous occasions that he did not ask anyone to forge any documents for him or for anybody else. His friend had volunteered:

But I was not aware it was in relation to forging.

He did not have to tell his friend that the certificate was to be signed by Bernard Maguire because his friend was aware that Bernard Conlon was working for Mr. Maguire. He never said the name Thomas Maguire to his friend and had no conversation with Thomas Maguire.¹⁴²

- 2.147. In respect of the certificate dated the 24th of June 1998 which had been sent to Sergeant Sarah Hargadon after contact with Garda Nicholson, Garda Nicholson maintained he could not recall that certificate at all. He said:

I received a call from Raphoe but it was something about Conlon looking for expenses. I thought it was a male voice. I know nothing about it. I don't recall having anything to do with that at all.¹⁴³

He could not explain why it was signed "T. Maguire".

¹³⁹ Tribunal Documents, page 377.

¹⁴⁰ Tribunal Documents, page 379.

¹⁴¹ Tribunal Documents, pages 380-381.

¹⁴² Tribunal Documents, pages 381-383.

¹⁴³ Tribunal Documents, page 384.

Bernard Maguire and Thomas Maguire

2.148. Bernard (Ben) and Thomas Maguire are brothers and were involved in the building trade in Sligo. They built a number of houses at Cartron Bay. Bernard Conlon was a tenant of Mr. Bernard Maguire at 61 Cartron Bay, Sligo. Mr. Maguire said that Mr. Conlon paid him £60 a week for a bottom floor flat in 61 Cartron Bay, that he did not work and that he was on disability. He had never known Mr. Conlon to work as he knew that he suffered from diabetes. He acknowledged that over the years Mr. Conlon would show new tenants a flat if Mr. Maguire were not available to do that. Mr. Conlon was not his official rent collector but, “over the years some people in other flats handed him rent and he then gave this to me.” He was not employed as a caretaker of the houses owned by Mr. Maguire in Cartron Bay. However, he was given some of the house keys in order to let people into the houses if Mr. Maguire were not available. Mr. Conlon was never paid anything for doing these favours for Mr. Maguire though he said, “I may have lent him money over the years and I would say that overall he owes me money.” He told members of the Carty team that since Mr. Conlon was not employed by him he could not have been at the loss of £40 per day in attending the District Court in Letterkenny. He was shown each of the documents which were said to have been certificates of loss of earnings submitted on behalf of Mr. Ben Maguire and supposedly bearing his signature. He said that he did not write any element contained in the certificates.¹⁴⁴

2.149. In a further statement made on the 25th of April 2000, Mr. Maguire said that though he knew Garda John Nicholson of Sligo, he had never been approached by him in relation to these certificates. He said:

He never informed me that he had sent receipts on my behalf in relation to Bernard Conlon attending Court. I can't recall Garda John Nicholson ever saying to me that he had been looking for me in relation to receipts for Bernard Conlon ... I would never get involved in submitting these type of certificates. The first I knew about these was when the other Guards showed them to me in the middle of January/start of February this year.¹⁴⁵

He also added that Mr. Conlon never worked for him on his lands at Belcoo, Co. Fermanagh.

2.150. Mr. Thomas Maguire who is supposedly the signatory on one of the certificates, dated the 24th of June 1998, made a statement on the 29th of February 2000 in respect of this certificate. Though he knew Bernard Conlon personally, he had never employed him as a caretaker or gardener and he never paid him for any work. He said he did not complete or sign this document.¹⁴⁶

¹⁴⁴ Tribunal Documents, pages 402-404.

¹⁴⁵ Tribunal Documents, pages 407-408.

¹⁴⁶ Tribunal Documents, pages 409-410.

2.151. Bernard Maguire lived in one of the houses from approximately 1990 to 2000, when he got married. He had livestock farms at Kiltyclogher and in Fermanagh as well. He became friendly with Mr. Conlon while he was living in Cartron Bay and they had gone to a number of nightclubs including Frankie's nightclub on a number of occasions to watch bands. On occasion Mr. Conlon would place advertisements in the local newspaper if there was a flat to let. The odd time he might help out cleaning out an apartment or decorating it when a tenant had left. Occasionally, if Mr. Maguire was going to the mart with some cattle, Mr. Conlon might help him out. Sometimes he went out to look at the cattle in Sligo to keep an eye on the livestock. When asked whether these visits were arranged with Mr. Maguire he replied:

Well he had a great interest in cattle and he would go out without me ever talking to him at all, you know, occasionally.

Mr. Conlon was, Mr. Maguire said, wrong to describe himself as a caretaker employed by Mr. Maguire. When asked whether any money had ever passed between them for these services Mr. Maguire replied:

He often got a lend of a few pounds off me, if he was very stuck over money or something like that. I would give it to him. I would never give him money for work or anything, that is the only money I would give him.

He said he was paid rent for the flat that Mr. Conlon rented at 61 Cartron Bay but in respect of the repayment of the loans he said:

Well sometimes I wouldn't ask him for it because, ok, if somebody comes down and helps you with cattle to put on a trailer or that, you need help so, you know, you just wouldn't go asking him for money. ... He did pay me some bits of rent and all that you know. ... He gave me back some money yeah, off and on, when he had a few pound, you know ...

He said he never got all the money back.¹⁴⁷

2.152. Mr. Nicholson told the Tribunal that he had spoken to Mr. Ben Maguire about "a receipt sent down for Bernard Conlon to claim expenses." He was sure he had told Mr. Maguire that his signature was signed at the bottom of these receipts. The way he put it was:

I told him that a receipt had gone down in his name for Bernard Conlon for to get his expenses for attending Court, and he told me that he knew I was looking for him and he knew that Mr. Conlon

¹⁴⁷ Transcript, Day 345, Q.1-78.

*was down in court. And that he was entitled to his expenses the same as anyone else. And that he had no problem with it.*¹⁴⁸

The contact which Garda Nicholson had with Mr. Maguire, he said, consisted of at least one phone call and one face to face meeting. Mr. Maguire denies that this ever happened.¹⁴⁹

Analysis

- 2.153. The Tribunal has difficulty with the testimony of Mr. Nicholson and Mr. Bernard Maguire in respect of these events. On balance it seems unlikely that Garda Nicholson went looking for Mr. Maguire in relation to a wholly fraudulent transaction in order in some way to get a civilian's approval for this internal Garda fraud. I am satisfied that the fact that Bernard Conlon was working in an informal way for Bernard Maguire made it unlikely that Mr. Maguire would issue certificates of the nature required. Mr. Conlon was claiming State benefit when he was also engaged by Mr. Maguire, albeit on a casual basis. The so-called loans made by Mr. Maguire to Mr. Conlon were fiction. Any money paid was for services rendered. Those services, insofar as Mr. Conlon maintained, cleaned or repaired Mr. Maguire's flats or collected rent on his behalf, could be described as those of a caretaker. He also assisted Mr. Maguire in his farm work. I am equally satisfied that members of An Garda Síochána in Sligo were aware of this. I have no doubt that Detective Sergeant White was made aware of it also. Therefore, it seems most unlikely to me that Garda Nicholson at that time would have approached Mr. Maguire in order to draw his attention to the fact that the certificate containing his forged signature had been sent up by him in order to claim expenses for Bernard Conlon to the Garda District Office in Letterkenny.
- 2.154. It will be recalled that Detective Sergeant White submitted five of these claims. He denies any knowledge of impropriety. On the contrary, he asserted that he took steps to deal with the one doubtful certificate that came to his attention in November 1999. Garda Nicholson maintained that it was Sergeant White who insisted on the urgency of dealing with these claims and supplied him with the details to be included on each certificate. This included the dates of attendance and the daily rate payable to Mr. Conlon. **Bernard Conlon stated that Sergeant White told him that he would look after him in respect of his expenses. However, Mr. Nicholson stops short of alleging that Detective Sergeant White knew that the certificates were forged. I am satisfied, however, that he knew, at least, about the dubious basis for these claims and that he pressurised Garda Nicholson into procuring them from whatever source he could.**

¹⁴⁸ Transcript, Day 343, Q.242-261.

¹⁴⁹ Transcript, Day 345, Q.20-106.

2.155. The Tribunal is satisfied that there was an understanding or agreement between Bernard Conlon, Garda Nicholson and Detective Sergeant White that Bernard Conlon would be looked after in respect of his attendance as a witness in Donegal. This went beyond the payment to him of normal witness expenses properly incurred. It extended to the payment of expenses which they knew could not be justified. In return Bernard Conlon would attend and give evidence as required by them. These payments were also made in return for his having acted as their agent in Frankie's nightclub and his making of the statement of the 8th of September 1997. Bernard Conlon was led to believe that he would be rewarded in this way. This was not only wrong but unlawful. Specific testimony procured by a Garda on foot of the promise, or the payment, of money is unlawfully obtained evidence which may be excluded in a criminal trial.¹⁵⁰ This was completely unacceptable and improper behaviour on the part of Garda Nicholson and Detective Sergeant White.

Garda John Nicholson and Chief Superintendent Austin McNally

2.156. In a statement made on the 28th of March 2000, Garda John Nicholson said the following:

Sometime in March or April 1999 I became aware that a Garda investigation was taking place in Letterkenny Garda Station, Co. Donegal concerning matters to do with the Parting Glass Night Club at Raphoe, Co. Donegal. I was aware at the time that Chief Supt. McNally of Sligo Garda Station was one of the men heading the investigation. Shortly after this investigation commenced, I approached Chief Supt. McNally outside Sligo Garda Station one evening and I had a conversation with him. I brought to his attention the fact that I had taken a written statement from a Bernard Conlon from Sligo as a result of him being found on during after hours in the Parting Glass Night Club in Raphoe, Co. Donegal on a date I could not recall, sometime in 1997. I then informed him that there was a matter of concern to me about receipts for Bernard Conlon that I would like to discuss with him. I informed him that Conlon had attended Court in Letterkenny as a witness for the State on a few occasions. I informed him that I had arranged receipts to be sent on his behalf, so that he would receive his expenses after he refused to supply the Gardaí in Letterkenny with those receipts himself. I explained that the only reason that I did this was to totally facilitate the Gardaí in Donegal and the State as it was a matter of great urgency at the time. A few weeks later I had another conversation with Chief Supt. McNally in Sligo Garda Station and he

¹⁵⁰ The People (DPP) v Gilligan (unreported Court of Criminal Appeal, August 8th 2003 at pages 9-10).

informed me that they had a look into the matter about the receipts that I had earlier mentioned to him and that everything appeared in order. On the 1st February, 2000 I went and met Chief Supt. McNally in his office in the Fraud Section at Harcourt Square, Dublin. This meeting was by way of an appointment with him after I had telephoned him. The first time that I mentioned to him when he might want to see me about was the receipts, that I had discussed with him nearly a year previous to that in Sligo. I informed him that this matter was still of concern to me and he informed me that they had fully looked into it all in Letterkenny. He informed me that everything appeared in order and that there were no irregularities and that he did not want me to mention the matter again. Again on the 10th February, 2000 I went and met Chief Supt. McNally with D/Insp. Foley in his office at Harcourt Square, Dublin and again I briefly mentioned about those receipts. I was again informed by Chief Supt. McNally that everything was in order. Some days later I became aware that Conlon was invited out to Manorhamilton Garda Station, Co. Leitrim and was interviewed by members of the Fraud Squad in connection with Court expenses he received and the receipts in question. On Wednesday the 15th March, 2000 by appointment I met with D/Supt. McGarty and D/Insp. Foley in Sligo Garda Station between 3 p.m. - 5.15 p.m. I was informed by D/Supt. McGarty that they wanted to speak to me about those receipts which were sent on behalf of Bernard Conlon and also about a letter that Conlon had received from a private investigator called Flynn. I was amazed that the matter of the receipts was brought up after what Chief Supt. McNally has discussed with me on a few previous occasions. I then went on to clearly and truthfully explain my role and the reasons that I had facilitated in those receipts being sent to Letterkenny Garda Station. I also fully and truthfully explained my role, what I did in relation to the letter Conlon had allegedly received from the private investigator. I offered to make a written statement then and there or make out a written statement myself and forward it on to them. ... When I discussed those receipts with Chief Supt. McNally I also mentioned that fact that I had approached Ben Maguire and brought to his attention that those receipts were sent to Donegal and to be careful with Conlon as I did not trust him.¹⁵¹

- 2.157. **The Tribunal regards this statement as wholly disingenuous in relation to Garda Nicholson's dealings with Chief Superintendent McNally. In making this statement on the 28th of March 2000 Garda Nicholson knew that the certificates were forgeries. On the face of the statement all that he told Chief Superintendent McNally was that he had obtained receipts or**

¹⁵¹ Tribunal Documents, pages 360-362 and page 364.

certificates in respect of loss of earnings which he had forwarded to Letterkenny in order to facilitate the State. Even if he raised the certificates with Chief Superintendent McNally, he did not tell him the full truth. Indeed, his statement was calculated to mislead the investigators and to insinuate that in some way Chief Superintendent McNally had fully investigated the issue of the receipts, found nothing wrong, and vindicated Garda Nicholson's position, thereby justifying his amazement that the matter was being looked into at all. He implies that he was in some way being victimised or treated unfairly by Chief Superintendent McNally who, he claims, had given him a clean bill of health on this issue. This was an utterly false and somewhat sanctimonious protest of injured innocence in the light of the facts as then known to Garda Nicholson. Unfortunately, this approach permeates much of Mr. Nicholson's testimony to the Tribunal.

- 2.158. In evidence to the Tribunal, Mr. Nicholson said that he had spoken to Chief Superintendent McNally about the expenses claims in a casual conversation outside the front door of Sligo Garda Station one afternoon at approximately 16.00 or 17.00 hours sometime shortly after the setting up of the Carty inquiry in or about March/April of 1999. He informed Chief Superintendent McNally that he had taken a statement from Mr. Conlon and sent it up to Donegal and that he had forwarded receipts that he was concerned about. He did not say what his concern was. He did not draw Chief Superintendent McNally's attention to the fact that there was anything wrong with the receipts. He said that "some receipts had gone up that might not be right." He did not go into any detail. He did not have any reason for mentioning the receipts. His concern was whether money claimed by Mr. Conlon was received by him.¹⁵² It is clear, however, that there was never any issue as to whether Mr. Conlon received expenses. In further interviews, Mr. Nicholson indicated that he had no reason to believe the certificates were forged at the time. He said that some four weeks later Chief Superintendent McNally had approached him and told Garda Nicholson that he had looked into the receipts and everything appeared to be in order. Mr. Nicholson claimed that these conversations occurred before Chief Superintendent McNally left Sligo. He had served there from the 14th of January 1999 to the 6th of December 1999. It would appear that the latest time at which his first conversation could have taken place with Chief Superintendent McNally was on a date in early November 1999. Extraordinarily, if that be so, Garda Nicholson supplied a further certificate to cover court appearances for Bernard Conlon in September and on the 18th and 23rd of November 1999 which were submitted on the 13th of December 1999. If his first meeting took place

¹⁵² Transcript, Day 343, Q.531-680 and Q.918-946.

sometime shortly after March/April 1999 one would be left with an even more extraordinary scenario where further forged certificates were submitted in June and September 1999 in respect of appearances by Mr. Conlon in the District Court on the 24th of June 1999 and the 26th of June 1999 and in respect of appearances from the 1st to the 4th of June 1999.¹⁵³

- 2.159. Chief Superintendent McNally gave evidence that he had a casual conversation in or about September 1999 with Garda John Nicholson outside Sligo Garda Station. Garda Nicholson mentioned to him that he had an involvement with Bernard Conlon and that he had taken a statement from him but Garda Nicholson said nothing to him whatsoever that raised any suspicion in his mind. He told Garda Nicholson that he felt sure he had nothing to worry about, or something to that effect. However, he was only told that Garda Nicholson had been involved in the taking of the statement of the 8th of September 1998. Garda Nicholson did not mention anything about any certificates, nor did he have a conversation with him some weeks after this in respect of any certificates. Chief Superintendent McNally said:

I certainly never looked at certificates and the certificates were not looked at. Claims wouldn't have been in Letterkenny anyhow ... the original claims would be in the Department or the Garda Claims Section in Killarney. That's where we got them from eventually. ... If John Nicholson was aggrieved why is he saying he told me this in March/April and he still continued; he sends up certs in September and June as far as I know. He continues to send up certs. He said nothing to me about claims for expenses at that time. ... I had absolutely no reason at any time to suspect John Nicholson of anything.¹⁵⁴

He added that his team did not look at these certificates until after Bernard Conlon was interviewed between the 15th and 18th of February 2000. By that time Garda Nicholson had also been interviewed on the 1st and 10th of February 2000 and though he had mentioned being involved in claims for witness expenses he said nothing to the Chief Superintendent McNally that aroused his suspicion that he was involved in any wrongdoing or was complicit in any criminality concerning those certificates.

- 2.160. **The Tribunal has no hesitation in preferring the evidence of Chief Superintendent McNally to that of Mr. Nicholson. The Tribunal is satisfied that sometime in 1999, probably around September, Garda Nicholson encountered Chief Superintendent McNally casually outside Sligo Garda Station and mentioned to him that he had taken the statement**

¹⁵³ Tribunal Documents, pages 723-724 and 729.

¹⁵⁴ Transcript, Day 351, Q.251-267.

concerning Bernard Conlon being ‘found on’ the licensed premises after hours on the 8th of September 1998. I am completely satisfied that he did not raise with Chief Superintendent McNally any issue concerning the certificates of loss of earnings at that time. His evidence in that regard is completely false and self serving. These lies are told to hide his involvement in obtaining expenses for Bernard Conlon to which he knew he was not entitled and to suggest that even a senior officer did not have any problem with the certificates.

The Handwriting Evidence

- 2.161. Two handwriting experts, Detective Inspector John Lynch of the Document Section, Garda Headquarters and Mr. James Nash, an independent examiner, scrutinised the seven certificates and compared these with samples of handwriting furnished by a number of Gardaí.¹⁵⁵ Both experts were of the view that five of the certificates had common handwriting features in the body of the writing such as to satisfy them that the same author wrote the body of each of the certificates. Though their opinions were qualified in respect of the certificate dated the 28th of May 1998 because it was a photocopy, nevertheless they thought this was pictorially “linked” to the other four and each of these five certificates was likely to have had a common author.¹⁵⁶
- 2.162. In respect of the certificate dated the 24th of June 1998 submitted on the 1st of July 1998 referable to Bernard Conlon’s appearances on the 22nd and 23rd of June 1998, Mr. Nash found no similarities in handwriting such as to connect this certificate with any of the handwriting in any of the other certificates or with any of the samples provided.¹⁵⁷ However, he did note that there were internal similarities such as to suggest that the author of the signature was also the author of the body of that certificate.¹⁵⁸
- 2.163. Mr. Lynch was of the opinion that the certificate of the 26th of October 1998 and the samples of handwriting provided by Detective Garda Paul Casey were similar and that he was the author of that certificate except for the signature “Bernard Maguire”.¹⁵⁹ Mr. Nash agreed that the handwriting in respect of the signature differed from the handwriting in the body of this certificate.¹⁶⁰ They did not attribute the handwriting in the signature of this certificate to any individual.
- 2.164. The experts were not able to attribute the handwriting in the body of the other five certificates, with the exception of the signatures, to any named party. Samples of handwriting of other serving Gardaí at Sligo Garda Station were also

¹⁵⁵ Tribunal Documents, pages 3465-3484 and 3527-3536.

¹⁵⁶ Transcript, Day 367, Q.179-182 and Transcript, Day 369, Q.444-448.

¹⁵⁷ Transcript, Day 367, Q.239-241.

¹⁵⁸ See also the conclusions of Mr. Lynch in this regard, Tribunal Documents, page 3466.

¹⁵⁹ Transcript, Day 369, Q.425-443.

¹⁶⁰ Transcript, Day 367, Q.243-245.

examined and compared with the certificates but no evidence was found to connect the handwriting of Detective Sergeant Gerard Connolly, Detective Garda Edward McHale, Detective Garda John McHale, Detective Garda Patrick Maguire, Detective Garda Michael Reynolds and retired Inspector Bernard Lyden with any of the documents.¹⁶¹ In addition, both experts were satisfied, as a matter of probability, that there was no connection between the handwriting of the Late Garda John Keogh (the man named by Mr. Nicholson as the Garda who procured the certificates) with any of these certificates. The Tribunal is satisfied on this evidence that the Late Garda Keogh had nothing whatsoever to do with the creation of these certificates. The experts were satisfied that the documents were not in the handwriting of Bernard Maguire or Thomas Maguire.

- 2.165. Both witnesses were satisfied that Garda John Nicholson was probably the author of the signature on the certificates submitted on the 14th of December 1998, the 22nd of June 1999, the 31st of August 1999 and the 13th of December 1999. They would only venture to suggest the possibility that the signature “Bernard Maguire” on the certificate dated the 28th of May 1998 was also in the handwriting of Garda Nicholson because their examination was confined to a photocopy.¹⁶² Therefore, I am satisfied on the evidence that these four signatures “Bernard Maguire” were probably forged by Garda John Nicholson. They were not able to attribute the signature of “Thomas Maguire” to anybody.
- 2.166. On the evidence it is probable that there were four, and perhaps five persons involved in the creation of these certificates. Garda Nicholson signed four of them, and perhaps a fifth. One person unknown was responsible for completing the body but not the signatures of five of the certificates. Detective Garda Casey was innocently responsible for completing the body of the seventh certificate but not the signature on it. The author of the signature on this certificate remains unidentified. A different unknown hand was most likely responsible for the creation of the entirety of the certificate of the 24th of June 1998 purportedly signed by Thomas Maguire. Three other persons were responsible for the unidentified handwriting. Mr. Nicholson undoubtedly knows who they are. He has chosen not to reveal their identities to the Tribunal and purports not to know who created the documents. Once again Mr. Nicholson has hindered and obstructed the Tribunal by failing to supply this important information.

The Late Garda John Keogh

- 2.167. The Late Garda John Keogh was a member of An Garda Síochána stationed at Sligo Station. He was named by Mr. Nicholson on the 16th of June 2005 to the

¹⁶¹ Transcript, Day 367, Q.255 and Transcript, Day 369, Q.452-455.

¹⁶² Transcript, Day 367, Q.215 and Transcript, Day 369, Q.474-476.

Tribunal’s investigators as the person who had supplied Garda Nicholson with a number of receipts for loss of earnings in respect of Bernard Conlon which had been sent to Donegal as part of a claim for witness expenses. He had mentioned to the Late Garda Keogh the urgency about getting receipts up to Donegal so that Bernard Conlon could get the expenses to which he was entitled and that he, Garda Nicholson, had failed to get Mr. Conlon to provide the requisite receipts or certificates from his employer Mr. Ben Maguire. Garda Nicholson had then made an attempt to contact Mr. Maguire but failed. He then mentioned this matter to the Late Garda Keogh, who supplied him with a receipt which was sent to Donegal. He maintained that he was not casting any aspersions on the Late Garda Keogh. He said the Late Garda Keogh did not prepare the receipts: he just supplied them. He believed that he did not write them out. He did not know who wrote them out. When asked how many of the receipts the Late Garda Keogh had made available to him he said he had “a clear memory of three and beyond that I can’t be sure.” He never discussed the matter with the Late Garda Keogh afterwards. Garda Keogh, so he says, probably sent one of the receipts up to Letterkenny for him.¹⁶³

- 2.168. A prior reference had been made by Garda Nicholson concerning this matter in his statement of the 28th of March 2000, which has already been quoted. In that statement Garda Nicholson had described how his:

close friend ... stated to me I would have a receipt fast, just give the particulars and the dates of Conlon attending Court. Within half an hour this person handed me a receipt which I did not question and immediately faxed it from Sligo Garda Station to Letterkenny Garda Station for the attention of either D/Sergt. White or Supt. Lennon. At no time did I write any of those receipts or request anybody to do so. In turn, I would have forwarded a few similar receipts so that Conlon would receive his Court expenses and on each occasion it was the same procedure as the first ... as I stated I forwarded a few receipts and these could be about five or six altogether.¹⁶⁴

When further questioned about this matter in April 2000 Garda Nicholson said he was not prepared to name the friend who provided the certificates but said that he got six certificates from him.¹⁶⁵ He was again questioned on the 11th and 15th of May 2000 and insisted that when his “close friend” gave him the certificates he was not told that they were forged. He gave the details to be included in the certificate to his friend. He did not ask his friend anything about the certificates because he “would be a very genuine friend and I did not see any reason to ask any questions.” He went on to maintain that he was not aware at

¹⁶³ Tribunal Documents, pages 2407-2409.

¹⁶⁴ Tribunal Documents, pages 363-364.

¹⁶⁵ Tribunal Documents, page 377.

the time that he received the certificates that they were forged but now believed that they were.¹⁶⁶ The Late Garda Keogh died on the 6th of May 2000.¹⁶⁷

2.169. In evidence to the Tribunal, Mr. Nicholson said that having told the Late Garda Keogh of the problem concerning the receipt, he then proposed that he would get the receipt for him. He suggested that he never intended to ask the Late Garda Keogh to do such a thing, nor did he ask him to get the receipt. The Late Garda Keogh volunteered to do this.¹⁶⁸ He did it to oblige Garda Nicholson. He said that he did not ask the Late Garda Keogh to obtain the certificate signed by Thomas Maguire. He thought he asked him to obtain two or three certificates.¹⁶⁹ Then Garda Nicholson took responsibility for all of the certificates excluding the certificate signed by Tom Maguire and the certificate of the 26th of October 1998. He reaffirmed that the Late Garda Keogh was involved in only two or three of the certificates but he could not explain how the others came into being. He said that the remaining certificates were just left for him but he did not know how they came to be left for him.¹⁷⁰ Despite repeated questioning, Mr. Nicholson offered no reason to the Tribunal why the Late Garda Keogh would involve himself in this matter by volunteering to procure certificates which, in my view, if this happened at all, must have been understood by both men to have been forged.¹⁷¹ To conclude otherwise would be an affront to plain common sense.

2.170. **The forensic evidence indicates that, as a matter of probability, the Late Garda Keogh had nothing whatsoever to do with the creation of these certificates: his handwriting does not appear on any of them.** There is other documentation which indicates that the Late Garda Keogh was very ill indeed during the period when these forgeries were committed and was, for most if not all of that time, out of work.¹⁷² From the evidence, it is clear that Garda Nicholson probably forged four of the signatures of Bernard Maguire on these certificates. Taking into account the fact that the handwriting in the body of five of the certificates was probably that of the same unknown person, and that the handwriting in the certificate purporting to bear the signature of Thomas Maguire is of another unknown person, it seems likely to me that Garda Nicholson procured the assistance of other individuals in the creation of the certificates. This did not require the intervention of a third party such as the Late Garda Keogh. Garda Nicholson was quite capable of doing it himself. Indeed in relation to the seventh certificate he went directly to Detective Garda Casey without using any intermediary. In addition, he lied when he said he did not sign

¹⁶⁶ Tribunal Documents, pages 380-383.

¹⁶⁷ Tribunal Documents, page 3622.

¹⁶⁸ Transcript, Day 338, Q.528-613.

¹⁶⁹ Transcript, Day 338, Q.619-649.

¹⁷⁰ Transcript, Day 338, Q.614-752.

¹⁷¹ Transcript, Day 372, Q.12-291.

¹⁷² Tribunal Documents, pages 3291-3371 and 3620-3622.

any of the certificates. I am satisfied that his evidence in relation to the Late Garda Keogh constitutes an unedifying attempt to minimise his guilty knowledge in respect of these certificates: it was a mean spirited and self-serving pretence with which he persisted in the face of clear evidence contradicting his testimony before the Tribunal.

- 2.171. The Tribunal has also heard evidence from Mrs. Kathleen Keogh, the widow of the Late Garda John Keogh¹⁷³ and Ms. Fiona Keogh.¹⁷⁴ Mrs. Keogh told the Tribunal that on the 8th of June 2005 Mr. Nicholson called to the office where she was working to speak to her concerning his involvement in this Tribunal. He told her that her husband had been involved in the forged documents in relation to Bernard Conlon. She said:

He said I have been told by my legal team that there are others involved and that John is one of them and if I don't name them I will go down ...

She did not ask who the others might be. A second meeting was then arranged at Mr. Nicholson's house. At this meeting Ms. Fiona Keogh said that Garda Nicholson suggested that her Late father had filled out a "silly receipt". When Mr. Nicholson was asked whether there would be any implications for her Late father she was told that there would be "no bloody implications". Mr. Nicholson was reminded that the previous Wednesday he had suggested to Mrs. Keogh that there were other people involved, including the Late Garda Keogh. Mrs. Keogh who was also present at the second meeting said that if the Late Garda Keogh's name were to come up, she would expect that everybody else would be named but Mr. Nicholson made no response to this. Mrs. Keogh told me that she said to Mr. Nicholson:

You did say that there were others involved in these documents and I presume that if my husband's name comes up, he is six feet under and he can't talk for himself, that the other people, if there were other people – that their names would come up as well.

But Mr. Nicholson did not reply: "he put his head down and didn't want to give any answer."¹⁷⁵ She left the meeting feeling more confused than ever. She thought Mr. Nicholson was very stressed, that maybe he was ill, but she also felt that he was avoiding the issue. Mr. Nicholson did not agree with the accounts given by Mrs. Keogh and her daughter of the conversation as set out in their statements and given to me in evidence.¹⁷⁶ He again denied that he was holding back the identification of others involved from the Tribunal.¹⁷⁷ I am quite satisfied

¹⁷³ Transcript, Day 367, Q.1-174.

¹⁷⁴ Transcript, Day 372, Q.1154-1178.

¹⁷⁵ Transcript, Day 367, Q.127-128.

¹⁷⁶ Transcript, Day 372, Q.389-421.

¹⁷⁷ Transcript, Day 372, Q.420-534.

that Mr. Nicholson knows how all of these documents were created and who created them. **Where there is a conflict between the evidence of Mrs. Keogh and her daughter and Garda Nicholson I have no hesitation in accepting the evidence of the two ladies. The fact that Mr. Nicholson has abused this man's name in death and tried to hide behind him is disgraceful.**

Subsequent Relevant Events

The Arrest and Detention of Bernard Conlon

2.172. On the 28th of January 2000, Bernard Conlon was arrested under Section 30 of the Offences Against the State Act, 1939 by members of the Carty team in relation to their investigation into the possible falsehood of his allegations concerning the silver bullet affair, against Mark McConnell and Michael Peoples. He was conveyed to Manorhamilton Garda Station, Co. Leitrim where he was detained. Garda Nicholson became aware of this. He knew it had to do with the investigation into the alleged threat. He had seen the telex sent out in relation to the arrest.

January/February 2000 – The Investigation of Bernard Conlon Commences

2.173. Chief Superintendent McNally has, to an extent, explained to the Tribunal how the inquiry into the allegations of Bernard Conlon developed. The Carty report describes growing suspicion about Bernard Conlon based on the extent of the telephonic traffic between Bernard Conlon and a number of Garda stations. In January 2000 members of the Carty team had received information that Mark McConnell had an alibi for the 20th of July 1998 and was unlikely to have been able to travel to Sligo in time to make the silver bullet threat.¹⁷⁸ On the 20th of January 2000 members of the Carty team interviewed Bernard Conlon, with his consent, at Manorhamilton Station in relation to the incident of the 20th of July 1998. In that interview, he claimed that the statements which he had made to date were correct. However, interviewing Gardaí, Detective Inspector Foley and Detective Sergeant Fox, formed the opinion that Bernard Conlon was not telling the whole truth in relation to these matters. Consequently, on the 27th of January 2000, Detective Sergeant Fox obtained a warrant pursuant to Section 29 of the Offences Against the State Act, 1939 from Superintendent John Fitzgerald at Sligo Station, having informed him that he was of the belief that Bernard Conlon was in possession of information in relation to the commission of a scheduled offence under the Offences Against The State Act, 1939, namely, an offence under the Firearms Act, 1925 as amended, concerning the production of a silver bullet to Bernard Conlon on the 20th of July 1998 at 61 Cartron Bay.

¹⁷⁸ Tribunal Documents, page 2246.

- 2.174. Later that evening Detective Sergeant Fox called at Mr. Conlon's residence, which was entered and searched. Documentation was seized and Mr. Conlon was then arrested and conveyed to Manorhamilton Garda Station. He was arrested under Section 30 of the Offences Against the State Act on suspicion of being in possession of information in relation to the commission of a scheduled offence under the Offences Against The State Act, 1939 to wit an offence under the Firearms Act, 1925 as amended. **The Tribunal does not accept that this was a lawful exercise of powers under Sections 29 and 30 of the Act.¹⁷⁹ The likely suspicion held by the investigating Gardaí was that Bernard Conlon had no information about the possession of ammunition at Sligo. The real suspicion was that Bernard Conlon made untrue statements to the Garda Síochána concerning the silver bullet threat. The exercise of these powers under Sections 29 and 30 afforded the Carty team the opportunity to search his residence and detain him long enough to question him to their satisfaction about this deception.** They were able to detain him for a longer period than would have applied had he been arrested and detained pursuant to the provisions of the Criminal Justice Act, 1984 for an offence of making false statements to the Gardaí contrary to Section 12 of the Criminal Law Act, 1976. **The result was that he admitted that the silver bullet allegations were false.**
- 2.175. Initially, during the course of his detention Bernard Conlon maintained the position that his previous statements in relation to events of the 30th /31st of August 1997 and the silver bullet threat were true. However, he reconsidered his position overnight and then made a series of admissions on the 28th and 29th of January 2000, which have already been chronicled in this report. He was then released from custody and the Carty team continued its investigations. Following the release of Bernard Conlon, various efforts were made by Superintendent Lennon and Detective Sergeant White to find out what Bernard Conlon had been asked whilst in custody. Garda Nicholson has given evidence that he met Superintendent Lennon in relation to this matter at the Sligo Park Hotel on the 31st of January 2000. In addition, he says that he was asked by Detective Sergeant White to approach Bernard Conlon to ascertain what had happened whilst he was in custody. He made an attempt to do so but was rebuffed by Mr. Conlon. Garda Nicholson subsequently telephoned Superintendent Lennon and asked him to contact Detective Sergeant White and request that he never contact him again.
- 2.176. Chief Superintendent McNally met with Garda John Nicholson on the 1st of February 2000 at Garda Nicholson's request at the Garda Bureau of Fraud Investigation, Harcourt Square, in Dublin. He said that he wanted to make a

¹⁷⁹ Tribunal Documents, pages 414-418. This was also the conclusion reached by the learned trial judge in the trial of Bernard Conlon (Tribunal Documents, page 1134).

statement concerning Bernard Conlon, who had been arrested a few days previously. He made a statement. Chief Superintendent McNally asked him at its conclusion whether he had ever asked Bernard Conlon to meet with Gardaí in Donegal or whether he ever brought Bernard Conlon to meet with John White. This was denied and the denial is at the end of the statement.¹⁸⁰ On the 10th of February 2000, Garda Nicholson again called to Chief Superintendent McNally's office in Harcourt Square at his own request, and furnished him with a handwritten statement which he had brought with him to the meeting. This was read back to Garda Nicholson. In this statement, Garda Nicholson gives an account of the contact he had with Superintendent Lennon following Bernard Conlon's arrest at the Sligo Park Hotel on the 31st of January 2000. Chief Superintendent McNally said in a statement that Garda John Nicholson on either the 1st or 10th of February mentioned that he had dealings with Bernard Conlon concerning his witness expenses. There was nothing in the content of those comments that aroused his suspicion that Garda Nicholson was involved in any kind of wrongdoing. This suspicion only emerged later following a subsequent statement by Bernard Conlon made between the 15th and 18th of February 2000 in which he outlined extensive dealings in relation to Detective Sergeant John White and Garda John Nicholson.¹⁸¹

- 2.177. Garda Nicholson's encounter with Chief Superintendent McNally in early February 2000 was described in evidence by Inspector Connolly. On the 1st of February 2000, Inspector Connolly, who was a close friend of Garda Nicholson's, had driven him to Dublin to meet with Chief Superintendent McNally. Prior to this, sometime in mid-1999, Garda Nicholson had told him that there was some problem about receipts which he had discussed with Chief Superintendent McNally. The receipts had been looked at by the Chief Superintendent who had told him there was nothing wrong with them. The certificates concerned loss of earnings in respect of Bernard Conlon. Inspector Connolly volunteered to drive him because he thought he might need some moral support and because he was aware of the high level of medication taken by Garda Nicholson in respect of his physical complaints. Inspector Connolly was disinclined to ask Garda Nicholson about the problem concerning the receipts and he was never told what the problem was. He felt that if Garda Nicholson wanted to tell him, he would. He did not sit in on the meeting on the 1st of February 2000, though he was invited to. Consequently, he was unaware that the receipts had never been discussed. After the meeting Garda Nicholson seemed to be pleased that he had met Chief Superintendent McNally. Inspector Connolly was told by Garda Nicholson that Chief Superintendent McNally had requested the meeting. He did not query with Garda Nicholson whether the problem concerning these certificates extended to

¹⁸⁰ Tribunal Documents, page 2247.

¹⁸¹ Tribunal Documents, page 2248 and Transcript, Days 351 to 352.

the one which he had submitted in respect of Bernard Conlon's claim of the 1st of October 1998. He did not discuss much on the way up or down from Dublin as Garda Nicholson slept a good deal of the way due to his medical condition.¹⁸² Though he could not be certain of the date, on one of the journeys from Dublin, a call was received by Garda Nicholson on his mobile phone from Detective Sergeant John White with whom he thought Garda Nicholson was very curt. He did not wish to speak to him.

Detective Sergeant White and Superintendent Lennon Attempt to Discover What Bernard Conlon Told the Carty Team

- 2.178. In the course of Mr. Conlon's detention, Garda Nicholson received a phone call on the 28th or 29th of January 2000 from Detective Sergeant White. He enquired of Garda Nicholson whether he knew anything about Mr. Conlon's arrest and Garda Nicholson replied that he did not. Detective Sergeant White seemed very concerned about it. He asked Garda Nicholson could he find out anything about it. Detective Sergeant White was not under investigation at that stage as far as Garda Nicholson was aware. He denied any common interest with Detective Sergeant White in any worries or concerns concerning the false certificates or any other matter. He understood that the arrest had to do with the investigation into whether or not the threat had actually happened. He was not in a position to tell Detective Sergeant White anything further about the arrest at that stage.¹⁸³
- 2.179. On the same day, Garda Nicholson received another phone call from Superintendent Kevin Lennon. He also asked Garda Nicholson whether he knew anything about the arrest of Bernard Conlon. Garda Nicholson responded that he did not know anything about it apart from what he knew from the telex. He had virtually the same conversation with Superintendent Lennon as he had had with Detective Sergeant White. Superintendent Lennon was at this time the district officer at Milford, Co. Donegal. It did occur to Garda Nicholson that it was strange that both of these men had telephoned him concerning this arrest. He thought they had telephoned him on account of the contact which he had had with Detective Sergeant White concerning the receipts/certificates and their dealings concerning the nightclub case.
- 2.180. On Saturday the 29th of January 2000, Garda Nicholson received a further phone call from Detective Sergeant White, who asked him to try and contact Bernard Conlon on a telephone number supplied by Detective Sergeant White. This was the number of a nearby house. Detective Sergeant White phoned Garda Nicholson back after about fifteen minutes and told Garda Nicholson that Bernard Conlon was not there. Mr. Conlon had been released from detention and Detective Sergeant White wanted "to see what happened ... I presume to see

¹⁸² Transcript, Day 346, Q.435-555.

¹⁸³ Transcript, Day 339, Q.905-990.

what he had said”. Notwithstanding the request by Detective Sergeant White that Garda Nicholson contact Mr. Conlon on the number provided, Detective Sergeant White himself tried to contact him but discovered that he was not available at the same number. Mr. Nicholson accepted that both of them were now trying to contact Bernard Conlon to ascertain what he had said during his detention. In relation to this Garda Nicholson said:

I was doing it to oblige him. I had no concerns or worries in relation to it myself at all ... I had no concerns in relation to this alleged threat on Mr. Conlon.

Bernard Conlon was now a suspect in a criminal investigation and Garda Nicholson accepted that it was wrong to approach this suspect to see what he had said to the investigators. He was being trusted to approach the main suspect and return and tell Detective Sergeant White what Bernard Conlon had told the Carty team. He said that he was not interested in the information that Detective Sergeant White wished to obtain: he denied that they had a common interest in obtaining that information. He denied that there was any fear in his mind that information concerning his involvement in the furnishing of the certificates might have come out in the course of the detention.¹⁸⁴

- 2.181. In the course of a second phone call on the 29th of January 2000, Detective Sergeant White asked Garda Nicholson to go down and see Mr. Conlon and ascertain what had been asked of him in custody. Detective Sergeant White was anxious that this be done. On the afternoon of the 30th of January 2000, Garda Nicholson went to see Bernard Conlon. He telephoned the number that he had been given previously by Detective Sergeant White. It was answered by an elderly gentleman who put the phone down. When he telephoned again he was informed that Mr. Conlon was not at home. He then drove to the Cartron estate where he saw Mr. Conlon. He said that he tried to pull up in his car beside Mr. Conlon to speak to him. They had no conversation. Mr. Nicholson regretted doing this but he said, “I thought everything was honest and above board.” He went down to see Bernard Conlon “to oblige Sergeant White, no one else.” When he encountered Bernard Conlon, he put up his hands and said he could not talk. Mr. Nicholson presumed that he had been told this by the Carty team.¹⁸⁵ Subsequently, Mr. Nicholson believed that he was contacted by Detective Sergeant White and that he informed him that he made an attempt to see Bernard Conlon but that Mr. Conlon would not talk to him.¹⁸⁶
- 2.182. On Monday the 31st of January 2000 Garda Nicholson had a meeting with Superintendent Kevin Lennon. He received a phone call from Superintendent

¹⁸⁴ Transcript, Day 339, Q.1020-1127.

¹⁸⁵ Transcript, Day 339, Q.1138-1162.

¹⁸⁶ Transcript, Day 339, Q.1161-1166.

Lennon between 14.00 and 15.00 hours and was told that the superintendent wished to meet him at the Sligo Park Hotel. At that meeting Superintendent Lennon told him that he was completely honest and clean in relation to the investigations in Letterkenny and that he fully intended to be back there as superintendent. He asked Garda Nicholson did he think that Mr. Conlon had talked during his detention and whether he knew the identity of his interviewers. Garda Nicholson responded that he knew nothing about it. He said that Superintendent Lennon “went on to say that Conlon is tight, that he would not crack.” The meeting lasted for approximately five minutes. Superintendent Lennon said he had spent nine months in pure hell and that the Carty investigation team was totally out of control. He appeared to Garda Nicholson to be a man under a lot of pressure.¹⁸⁷

- 2.183. Garda Nicholson was repeatedly asked what he took from this conversation with Superintendent Lennon – what was it that Bernard Conlon was being tight about and what could he reveal if he cracked? At that time he states that he fully believed the truthfulness of the allegation concerning the silver bullet threat that had been made by Bernard Conlon. He said:

*The only thing that I could take from that was in relation to the threat that was made to Mr. Conlon.*¹⁸⁸

He said that in respect of his contact with both Detective Sergeant White and Superintendent Lennon on these occasions:

*They were both most anxious about what Mr. Conlon had to say in relation to threats.*¹⁸⁹

He said that he wondered at the time why they were so concerned about what he had said.

- 2.184. Superintendent Lennon alleged that Mr. Nicholson had distorted the conversation which he had with him at the Sligo Park Hotel. He said that he heard about Bernard Conlon’s arrest on the 28th of January 2000 from a routine telex. During the course of the day he contacted Detective Sergeant Connolly in Sligo. He told Superintendent Lennon that he did not know why Bernard Conlon had been arrested other than in respect of an offence under Section 30 of the Offences Against the State Act, 1939. He emphasised that his contact with Detective Sergeant Connolly was routine in that he was giving him notice of the adjourned date of the District Court case concerning Bernard Conlon in which Detective Sergeant Connolly was a witness. In the course of the day, Superintendent Gallagher of Letterkenny telephoned Superintendent Lennon and told him that

¹⁸⁷ Transcript, Day 339, Q.1182-1213.

¹⁸⁸ Transcript, Day 339, Q.1189.

¹⁸⁹ Transcript, Day 340, Q.1-20.

Bernard Conlon had been arrested and detained at Manorhamilton Garda Station by the Carty team and that Inspector Coll had requested a copy of the statement made by Bernard Conlon on the 8th of September 1997. Superintendent Lennon asked Superintendent Gallagher the reason for Bernard Conlon's arrest and he replied that he did not know. Superintendent Lennon was then based at Milford. However, he told Superintendent Gallagher that he could obtain a copy of the statement requested from Detective Sergeant White in Letterkenny where the file was located. He then telephoned Letterkenny and spoke to Detective Sergeant White. He told him that the Gardaí at Manorhamilton were looking for the statement and also enquired of him whether he knew why Bernard Conlon had been arrested. He did not. Coincidentally Superintendent Gallagher approached Detective Sergeant White in Letterkenny during this phone call.¹⁹⁰

2.185. On the 31st of January 2000, Superintendent Lennon attended a conference at the Sligo Park Hotel attended by a number of senior officers from surrounding divisions. Superintendent Sheridan, the district officer in whose area Manorhamilton Station was situated, was also present. He had been made aware of the arrest of Bernard Conlon sometime on the 28th of January 2000 and said that he may also have been told about suspicions that the silver bullet allegation made by Bernard Conlon was untrue. On the 30th of January 2000 Superintendent Lennon was approached by Chief Superintendent McNally who requested him to contact Garda Nicholson and to pass him a message to the effect that he was to go and see Chief Superintendent McNally.¹⁹¹ Superintendent Lennon was aware that Superintendent Sheridan might have knowledge concerning these events at their meeting at the Sligo Park Hotel. Having been unsuccessful in obtaining the information he sought concerning Bernard Conlon, Superintendent Sheridan was the obvious man to ask. He did not pursue his enquiries with Superintendent Sheridan or any of the officers present at this meeting. He told the Tribunal that he did not pursue the matter with the Carty team because his relationship with them was not good at that stage.

2.186. After this meeting, Superintendent Lennon continued his enquiries by telephoning Garda Nicholson and requesting a meeting with him at the Sligo Park Hotel. At this stage, Bernard Conlon had already given his evidence in the District Court. Superintendent Lennon knew that he had been arrested under Section 30 of the Offences Against the State Act, 1939, and that the Carty team in the person of Inspector Coll had requested a copy of the statement taken from Bernard Conlon on the 8th of September 1997, as part of their enquiries. He could not understand how Bernard Conlon's arrest under Section 30 could be related to the statement of the 8th of September 1997. Once the statement was requested he knew there was either something wrong with it or there was a

¹⁹⁰ Transcript, Day 348, Q.634-766.

¹⁹¹ Transcript, Day 344, Q.168-188.

suspicion that there was something wrong with it. If so, he maintained, this was a matter which would have to be brought to the notice of the District Court. He maintained that this was the context in which he contacted Garda Nicholson and sought the meeting. His account of the meeting is as follows:

I rang the station ... and I got his mobile number and I rang him on his mobile and I asked him to come up to the hotel to meet me. He did come up. We sat down in a corner of the hotel and I asked him how was his health, because I knew he had this problem with arthritis. I said to him: why was Conlon arrested? He said he didn't know. So I asked him then, tell me about the circumstances of the taking of this statement in the pub case. He told me that Bernard Conlon came into the station, he met him on the stairs with Bernard Lyden, Bernard Lyden asked him to take a statement off him and he took him to his office and took a statement off him. It was sent on then to Donegal and he said, that statement is a hundred per cent. So I was happy enough with that and I couldn't have known that because I hadn't been talking to Bernard Lyden and the only person I could have got that from was John Nicholson ... that they had met on the stairs. So he went on then and he talked about Garda O'Dowd being arrested and he'd be next. I said, what would you be arrested for or words to that effect. Oh he says, nothing really, you know, you know yourself the way these fellas operate. I left it at that. Then I asked him did you see Conlon since, and he says, no, I saw him down the town but he waved me on. That was it like.¹⁹²

Garda Nicholson also said that he only knew that it was a Section 30 arrest.¹⁹³

- 2.187. Mr. Lennon denied in evidence that he had asked Garda Nicholson at that meeting whether he thought Mr. Conlon had talked, or had said of him that he was tight and would not crack. It is clear from the testimony of Mr. Nicholson that there had to be a mutual understanding between himself and Superintendent Lennon about what Bernard Conlon might talk about to the Carty team and what he might "crack" about. Superintendent Lennon was quite clear that the only conversation they had was about the statement of the 8th of September 1997.¹⁹⁴
- 2.188. When faced with these denials by Mr. Lennon, Garda Nicholson in turn denied that the statement of the 8th of September 1997 had ever been discussed with Mr. Lennon. He thought there could not be an innocent explanation for the

¹⁹² Transcript, Day 348, Q.770-772.

¹⁹³ Transcript, Day 348, Q.773.

¹⁹⁴ Transcript, Day 348, Q.937-959, see also Tribunal Documents, page 525.

questions posed by Superintendent Lennon to him at the Sligo Park Hotel concerning Bernard Conlon. He said:

*An innocent superintendent wouldn't ask me those questions in the Sligo Park Hotel without knowledge of what was going on ... He must have had some knowledge of those threats being made against Mr. Conlon or that it was false and that that was the reason that I was being asked those questions.*¹⁹⁵

He also acknowledged that the questions asked of him by the superintendent suggested that he had done something wrong, and that he was being trusted by the superintendent. He accepted that it could be inferred from this that he had played a part in whatever intrigue was going on and was working with the parties involved in it. However, he denied that he was involved in any such intrigue.¹⁹⁶

- 2.189. The Tribunal is satisfied that the meeting between Superintendent Lennon and Garda John Nicholson at the Sligo Park Hotel on the 31st of January 2000 indicates, on the part of Superintendent Lennon, an anxiety to ascertain what Bernard Conlon had said whilst in detention in Manorhamilton. I am not satisfied to conclude that this anxiety related to knowledge on the part of Superintendent Lennon that the story told by Bernard Conlon concerning the silver bullet threat, and the allegations he made against Mark McConnell and Michael Peoples, were untrue. However, I am satisfied that this contact indicated a shared bond of trust between Superintendent Lennon and Garda Nicholson and a common knowledge in relation to how Bernard Conlon came to be used as a witness in the District Court prosecution against the McBreartys arising out of the events of the 30th/31st of August 1997. It seems to me likely that Superintendent Lennon became aware of these events after they had occurred during the course of the prosecution. It was for this reason that Superintendent Lennon so vehemently opposed the calling of Bernard Conlon when the defence insisted upon it in the District Court, because his evidence in relation to the matter might fundamentally undermine his case. I conclude that he was fully aware of Garda Nicholson's involvement as a contact point for Bernard Conlon in Sligo. Therefore, he could confidently discuss the entire affair with him without fear of disclosure to other parties at that time. In this context, I also take account of the fact that Detective Sergeant White assisted Superintendent Lennon very closely in the preparation of the District Court cases against the McBreartys. Notwithstanding their respective denials, it seems to me likely

¹⁹⁵ Transcript, Day 340, Q.215-273.

¹⁹⁶ Transcript, Day 340, Q.74-322.

that Superintendent Lennon had acquired information in respect of these matters from Detective Sergeant White.

Garda Nicholson Refuses to Have Any Further Contact with Detective Sergeant White

2.190. Another feature of the evidence which tends to confirm this scenario arises from the strange evidence given by Mr. Nicholson, and confirmed by Superintendent Lennon and Detective Sergeant White, that Garda Nicholson telephoned Superintendent Lennon in Milford and asked him to pass on a message to Detective Sergeant White to the effect that Detective Sergeant White should never contact him again. On the 1st of February 2000, Garda Nicholson was being driven home from a meeting with Chief Superintendent McNally in the company of Detective Sergeant Connolly when he received two telephone calls from Detective Sergeant White. He declined to talk to Detective Sergeant White on each occasion. He said, "I simply didn't want to have anything to do with him after that."¹⁹⁷ Superintendent Lennon acknowledged receiving a call around this time from Garda Nicholson at approximately 08.20 hours, which Garda Nicholson said he made from Dublin airport. He wanted Superintendent Lennon to stop Detective Sergeant White entering into telephone communication with him. Superintendent Lennon was not given a reason and said he was not a messenger boy for Garda Nicholson. He told Garda Nicholson to telephone Detective Sergeant White himself. Superintendent Lennon did not know what the problem was between Garda Nicholson and Detective Sergeant White and he did not ask him. At the time he was no longer the district officer at Letterkenny but was based in Milford. He acknowledged that Garda Nicholson appeared to be relying on the professional contact which Superintendent Lennon had with Detective Sergeant White to convey this message. He did not care what was going on. He was happy with the statement made by Bernard Conlon in the pub case and that he had been told the statement was one hundred per cent correct. He never enquired of Detective Sergeant White as to what had led to this situation because it did not bother him. It was the first time in his career that he had ever received such a call. It was made very clear to him by Garda Nicholson that he did not want ever again to speak to Detective Sergeant White. He rejected the proposition that they had a shared knowledge in relation to what was under discussion, which did not need to be spelt out by the one to the other. He thought he might have passed on the message to Detective Sergeant White but had no recollection of doing so or of ever discussing the matter with him. He acknowledged that the chain of command in pursuing the matter had not been followed if Garda Nicholson wished to make some sort of a complaint against Detective Sergeant White. He had bypassed the superintendent in Letterkenny and gone to Superintendent Lennon, who was based in Milford.¹⁹⁸

¹⁹⁷ Transcript, Day 340, Q.323-347.

¹⁹⁸ Transcript, Day 348, Q.961-1048.

- 2.191. Detective Sergeant White recalled the telephone calls he made to Garda Nicholson, which he made on his mobile phone on the 1st or 2nd of February 2000, and that Garda Nicholson refused to talk to him. He said:

He was very evasive. And I found this most strange, that he was so evasive and I actually wrote in my diary, JN acting strangely.¹⁹⁹

He was contacted by Superintendent Lennon, who told him that he should not ring Garda John Nicholson anymore. He was shocked by this. He did not understand why Garda Nicholson did not want to speak to him on the night of the 1st or the 2nd of February. He felt snubbed and was given a clear indication the following morning that Garda Nicholson never wished Detective Sergeant White to speak to him again, so he never approached him about it. He said that nothing had happened to precipitate this development. He could not explain why the superintendent was used as a conduit for the message. He simply presumed that they knew each other over the years.²⁰⁰ He never had a falling out with Garda Nicholson and there was never any problem of any kind between them until he was told by Garda Nicholson that he did not wish to speak with him on the phone.

- 2.192. **It is a strange coincidence that, apparently unbeknownst to Superintendent Lennon, Detective Sergeant White had been in contact with Garda Nicholson asking him whether he knew anything about the arrest of Bernard Conlon. Detective Sergeant White explained that he telephoned Garda Nicholson because he became aware, through a telex in Letterkenny Station, that Mr. Conlon had been arrested.** His view of Mr. Conlon was, at that stage, that he was a harmless enough man and unlikely to be the subject of a Section 30 arrest. He telephoned Garda Nicholson because he was his contact in Sligo to find out what the story was in respect of Mr. Conlon's arrest. He did not ask him to find out any further information. He did not think he was the subject of an inquiry in respect of Mr. Conlon's arrest. He was simply curious about why it had occurred. When he telephoned Garda Nicholson he had no suspicion of any kind that Mr. Conlon was making an allegation against him. He assumed the arrest was in relation to an offence committed in Sligo. He denied that he ever sent Garda Nicholson to see Bernard Conlon in order to ascertain what had gone on during the course of his detention.²⁰¹ He did not tell Superintendent Lennon of his attempts to ascertain the reason for Mr. Conlon's arrest. **Both were seeking the same information at about the same time from the same Garda, each apparently without the knowledge of the other.** Other potential sources of this information are discussed in Chapter 3.

¹⁹⁹ Transcript, Day 354, Q.579-612.

²⁰⁰ Transcript, Day 354, Q.598-675.

²⁰¹ Transcript, Day 354, Q.558-610.

Analysis

- 2.193. I am satisfied that Garda Nicholson was contacted by Detective Sergeant White in relation to the Section 30 arrest and that he was asked to go and see Bernard Conlon to ascertain what he had been asked and what he had said in custody. It appears to me that by reason of the enquiries made by the Carty team in or about the 1st and 2nd of February 2000 arising out of this arrest, Garda Nicholson was apprehensive about the close contact which he had had with Detective Sergeant White, and felt that he had indeed been used by Detective Sergeant White in relation to the whole escapade in the manner which has been set out in this chapter. It was a parting of the ways. This was perhaps because Garda Nicholson wished now to distance himself from Detective Sergeant White. Undoubtedly, he tried to fend off the enquiries of the Carty team in relation to his involvement in the matter in the initial stages and then only told them half the story.
- 2.194. However, I am also satisfied from the evidence concerning the dealings between Superintendent Lennon, Detective Sergeant White and Garda Nicholson, that Detective Sergeant White not only used but planned, and was fully involved in and aware of, how Mr. Conlon was to be used and rewarded. Garda Nicholson felt himself to have been used by Detective Sergeant White in relation to retaining the services of Bernard Conlon as a witness and the furnishing of the certificates to ensure his payment. Indeed, I am satisfied that both Garda Nicholson and Bernard Conlon were used by Detective Sergeant White. However, they were full and knowing participants in this endeavour. The nature and extent of the contacts between the three around this time tends to prove their knowledge of what went on. Superintendent Lennon probably became aware of these matters after the plan had been instigated. Probably, the matter came to his attention as one of the prosecution cases before the District Court, and from his contact with Detective Sergeant White.

Garda Nicholson's Reaction: The Support and Advice Given by His Friends

- 2.195. Inspector Connolly described to the Tribunal a very distressing episode with Garda Nicholson which occurred some days after the meeting on the 1st of February. He received a telephone call from Garda Nicholson who told Inspector Connolly that he had received a phone call from Chief Superintendent McNally by which he felt very threatened. He said that he could not go through any more and talked about going to a river or a lake and that he would not put his family through anything.

He would not listen to any reasonable advice on the phone and when requested to tell Inspector Connolly where he was, he refused and hung up the phone. Inspector Connolly then went out looking for him and found him walking on the footpath along the road about three-quarters of a mile from his house. He was staggering and swaying. Inspector Connolly knew he was not a drinker. He had completely lost control of himself physically. His hands were swinging out and he had a phone in his hand and his right hand was extended. Inspector Connolly said that he was in terrible shape. Eventually Inspector Connolly coaxed him into the car. He declined to bring him home to his wife as he thought that might be distressing for her given his condition.²⁰²

Superintendent John Fitzgerald is Called

- 2.196. Inspector Connolly brought Garda Nicholson back to his own house where he contacted another friend of theirs: Superintendent John Fitzgerald, who lived nearby. They apparently spent a traumatic couple of hours together trying to calm Garda Nicholson down. However, he told them very little about what the problem was. This might be regarded as somewhat extraordinary. However, Inspector Connolly told the Tribunal that he did not wish to get involved in the enquiries of the Carty team or in any way compromise them.

*He said that he had a problem with the receipts: that's all he would say, that there was a problem with the receipts. He wouldn't elaborate on it. Superintendent Fitzgerald and myself didn't ask him anything about it. I felt myself if he wanted to say it, what the problem was, he would have said it. I wasn't going to enquire from him about it.*²⁰³

- 2.197. Garda Nicholson complained that he was used the whole way but they did not ask him how he was used or who had used him. It was a situation where you just had to sit down and let him talk it out himself and leave it at that. He said that Chief Superintendent McNally was putting awful pressure on him. Inspector Connolly advised him to go back to Chief Superintendent McNally if he had problems and to discuss them with him and offered to arrange a meeting with the chief superintendent if he wished. He calmed down after a number of hours and Inspector Connolly, a day or two afterwards, contacted Chief Superintendent McNally to arrange another meeting and brought Garda Nicholson back to Dublin for a meeting which occurred on the 10th of February 2000. It was at that meeting that Inspector Connolly learned for the first time from Chief Superintendent McNally that Bernard Conlon had alleged that the silver bullet threat was a complete set up.²⁰⁴

²⁰² Transcript, Day 346, Q.556-558.

²⁰³ Transcript, Day 346, Q.555-573.

²⁰⁴ Transcript, Day 346, Q.565-620.

- 2.198. Superintendent Fitzgerald had issued the warrant to search Mr. Conlon's home in January 2000 prior to his arrest. At that stage, he was made aware that the Carty team had information that Mark McConnell had an alibi in respect of the evening of the 20th of July 1998. The focus of the inquiry then shifted to the making of an allegation by Mr. Conlon. There was no suggestion made to him at that stage that any member of An Garda Síochána was involved in that matter. He was not told about what Mr. Conlon had said in custody so in January/February 2000 he was unaware of the allegation made. Superintendent Fitzgerald confirmed much of the evidence given by Inspector Connolly in relation to the evening when he was asked to go to Inspector Connolly's house and assist in helping Garda Nicholson who was "in a terrible state". He had an idea that it had to do with the Conlon affair in some way or another. He found Garda Nicholson to be terribly upset. Garda Nicholson told them that he had a problem with receipts which had to do with Conlon and the court cases in Donegal. He said the Carty team felt he was holding back. He then said that he had done nothing wrong in respect of Mr. Conlon and Donegal. He said that he was used. Superintendent Fitzgerald advised him to go to Chief Superintendent McNally and to tell him everything he knew. He advised him that if he was holding back to give him everything. Superintendent Fitzgerald was anxious not to interfere with a Garda investigation but he wished to encourage Garda Nicholson to go and tell the truth.²⁰⁵
- 2.199. Though a meeting of this kind might give rise to a suspicion that it was a covert meeting convened to discuss how to deal with the Carty inquiry, the Tribunal is satisfied that this is not the case. It was a meeting about which the Tribunal knew nothing until it was revealed to it by Inspector Connolly. The Tribunal is also satisfied that there was no question of Chief Superintendent McNally putting undue pressure on Garda Nicholson. He was simply carrying out his duty to ascertain the truth. It is unfortunate that notwithstanding the encouragement of his friends and colleagues and the facility offered by Chief Superintendent McNally and this Tribunal, Garda Nicholson has never told the full truth in relation to this matter. However, he did make himself available for further interviews under caution and provided a statement in relation to matters under investigation by the Carty team on the 15th of March 2000. He also provided a further statement on the 28th of March 2000 and was interviewed again in April and May 2000.²⁰⁶

Visit to Bernard Lyden

- 2.200. Garda Nicholson also received advice and support from Mr. Bernard Lyden, the retired inspector, who had been present on the evening of the 8th of September

²⁰⁵ Transcript, Day 352, Q.191-270.

²⁰⁶ Tribunal Documents, pages 351-388.

1997, when Bernard Conlon made his initial statement in respect of the events of the 30th/31st of August 1997 at Sligo station. Inspector Lyden had a number of contacts with Garda Nicholson in late spring and summer of 2000. He had been told by Garda Nicholson that some of the certificates of loss of earnings sent up to Donegal were not right. Some time in the summer of 2000, he believed that Garda Nicholson called to him in a very distressed state concerning an article which had appeared suggesting that a Garda was going to be prosecuted for fraud. Mr. Lyden took it upon himself to contact Mr. Kevin Kilrane, solicitor, and to seek an urgent appointment with him so that Mr. Nicholson could obtain legal advice. Mr. Nicholson, in the course of giving evidence, told the Tribunal about the meeting with Mr. Kilrane, having waived his legal professional privilege. Mr. Kilrane also gave evidence to the Tribunal concerning this meeting. Mr. Lyden, who gave evidence before Garda Nicholson, never told the Tribunal about this meeting. When he was recalled he said that he had no memory of it. In the light of the unique circumstances in which it occurred, and the fact that Garda Nicholson had met with Mr. Lyden on a number of occasions prior to the seeking of legal advice in 2000, this does not seem credible. In addition, the Tribunal recalls that in a very precise way Mr. Lyden corrected himself in evidence in respect of a suggestion that Superintendent Lennon might once have spoken to him about Bernard Conlon's expenses. The payment of witness expenses to Bernard Conlon only arose out of his attendance at the District Court in respect of the prosecution based upon the statement of the 8th of September 1997, about which Mr. Lyden had given evidence. The day after Mr. Nicholson revealed the consultation with Mr. Kilrane, Mr. Lyden telephoned Mr. Kilrane to ascertain what his memory of the meeting was and whether he could recollect whether Mr. Lyden had been present or not.

- 2.201. [I am not satisfied that Mr. Lyden has told the full story of his knowledge of or involvement in the taking of the statement of the 8th of September 1997. He most certainly was not candid with the Tribunal in relation to his subsequent dealings with Bernard Conlon and Mr. Kilrane.](#)²⁰⁷

Visit to Kevin Kilrane

- 2.202. Mr. Kilrane told the Tribunal that he was contacted by Mr. Lyden and asked if he could assist his former Garda colleague with legal advice. An urgent appointment was sought. He could not recall whether Mr. Lyden remained for the consultation or left but he was there to make the introduction. Mr. Nicholson's recollection was that he remained during the consultation. Mr. Kilrane said an urgent decision had to be made by Garda Nicholson. He was in trouble in relation to the production of a voucher that appeared to have been produced irregularly. The

²⁰⁷ Transcript, Day 366, Q.1-219 (Evidence of Mr. Lyden) and Transcript, Day 362, Q.1-107 (Evidence of Mr. Kilrane).

problem had arisen the day before when one of his superior officers had contacted him concerning a voucher that had been produced to claim expenses for a Mr. Conlon for attending court. The problem was that Bernard Conlon had attended court on some twelve occasions and had not been paid any expenses for his attendance. In a rather blunt way he had explained to the Gardaí in Letterkenny that he was not attending any further court cases unless and until his expenses were paid. No amount of persuasion to the contrary would persuade Mr. Conlon to attend. He was, he claimed, working in the black economy, collecting unemployment or disability payments, and collecting some form of pay in respect of which he was unable to produce a voucher for loss of earnings. Nevertheless, he was insisting on payment and claiming loss of earnings. Garda Nicholson was asked to resolve this and he did so by “causing to be produced a voucher from an employer of labour”, which purported to show loss of earnings to Mr. Conlon for the days he had attended court. This voucher was procured by John Nicholson and passed on to the relevant authorities to enable payment to be made to Mr. Conlon for the days that he had attended court, and to enable Mr. Conlon to continue cooperating with the prosecution. Mr. Kilrane asked Garda Nicholson from whom he had obtained the voucher but he would not tell him and he would not tell the investigation team. He did not wish to disclose the name of the person who actually procured the voucher. Mr. Kilrane got the impression that it was procured from another Garda. He got the impression that Garda Nicholson was protecting somebody. He was not the author of the voucher but had procured it or caused it to be procured. He was terribly agitated and Mr. Kilrane thought he was on the point of requiring medical help.

The Arrest and Prosecution of John Nicholson

2.203. On the 22nd of July 2000 a warrant was obtained from the District Court for the arrest of Garda John Nicholson on three counts of uttering forged documents and three counts of forging documents. Superintendent Fitzgerald endorsed this warrant over for execution on the 25th of July 2000. On the 26th of July 2000, Inspector Connolly was directed to go to Monaghan Garda Station to arrest and charge Garda John Nicholson, his friend and colleague of many years, on foot of this warrant. He was told that the evidence was based on Garda Nicholson's own statements of admission made after caution. He did not wish to carry out this duty but he was told that he was nominated to do this at the request of Assistant Commissioner Carty. It was thought that it would be an ease to Garda Nicholson if a friend did it, as his health was not good. Following this arrest, Mr. Nicholson was conveyed to Riverstown District Court in Sligo, where he was charged and pleaded guilty to three counts of uttering forged documents, namely three certificates of loss of earnings that had been submitted as part of Bernard

Conlon's claim for witness expenses. The case was prosecuted by Mr. Liam Mulholland, solicitor of the Chief State Solicitor's office. This had been directed by the Director of Public Prosecutions on the basis that the accused was a member of An Garda Síochána and it was more appropriate that the prosecutor not be a member of the force.²⁰⁸ It was also thought more appropriate that the case should be dealt with by a District judge who did not regularly sit in Sligo as Garda Nicholson had appeared on many occasions before the District Court during his career. Garda Nicholson was also anxious to have this matter dealt with by way of a plea of guilty at the first available opportunity and this was facilitated by the prosecution.

- 2.204. The charges to which Garda Nicholson pleaded guilty were contained in charge sheets 95123, 95132 and 95133. The District Judge was disposed to accept jurisdiction. He received the Director of Public Prosecutions' consent to summary disposal of the charges. Garda Nicholson pleaded guilty but the charges were dismissed under Section 1 (1) of the Probation of Offenders Act, 1907. It was directed that £600 compensation be paid.²⁰⁹ Though Judge Anderson dealt with the case, Judge McGuinness, who was the assigned judge for the area, had issued the warrant but had indicated that he would not sit and hear the matter. Accordingly, arrangements were made that Judge Anderson, who was sitting in a nearby district, would take the list in Riverstown District Court and Judge McGuinness would take the list that Judge Anderson was to take. Otherwise the business in Riverstown District Court that day constituted the normal list of that court. It was, of course, an entirely open hearing.²¹⁰
- 2.205. Reference is made to these matters for the sake of completeness but also because **it was suggested that there was something unusual about the prosecution of Garda Nicholson's case at Riverstown District Court. The Tribunal is absolutely satisfied that that is not the case. All appropriate and legal steps were taken in relation to this prosecution following a successful investigation by members of the Carty team. The prosecution cannot be criticised for facilitating the accused's wish to deal with the matter as quickly as possible, by entering his plea at the first available opportunity. This would be done for a person of any employment, Garda or not. Evidence was heard appropriate to a plea of guilty and the case was disposed of in accordance with law. It was entirely normal procedure that the local judge would not hear a case involving a serving local Garda with whom he was familiar professionally. If a substitute judge had been brought to Sligo town where there would have been a much longer list, greater administrative disruption might have been caused by reason of**

²⁰⁸ Transcript, Day 346, Q.637-654 and Transcript, Day 352, Q.320-337.

²⁰⁹ Tribunal Documents, page 3059-3064.

²¹⁰ Tribunal Documents, pages 3051-3058 (interview with Mr. William Cashell, Chief Court Clerk, Sligo District Court).

the fact that the sitting judge would have seisin of a number of cases which would have to be adjourned. This was less likely in Riverstown District Court, where there was a much smaller list.²¹¹ The Tribunal is satisfied that the innuendo of some sort of cover-up in this regard is completely without foundation.

2.206. Conclusions

1. Bernard Conlon was retained as an agent by Detective Sergeant John White, through Garda John Nicholson, to attend Frankie's nightclub in Raphoe on the evening of the 30th of August 1997 and the early morning of the next day. He was to be 'found on' the premises by Gardaí who would inspect the premises after licensing hours. He was directed by Detective Sergeant White to be in possession of as many alcoholic drinks as possible and to cooperate with the inspecting Gardaí. This was part of a plan whereby he would ultimately make a statement as to how he purchased and consumed drinks at Frankie's nightclub after hours, which would form the basis of a prosecution against Frank McBrearty Senior, the licensee of the premises, and members of his staff. Bernard Conlon was promised that he would be (and was) rewarded financially for doing this.
2. At 02.55 hours on the 31st of August 1997, Gardaí Shaun Barrett and Noel Keavney entered Frankie's nightclub, at the prompting of Garda John O'Dowd, for the purposes of an inspection. They found Mr. Conlon ostentatiously straddling the bar with a number of alcoholic drinks in front of him. They took his name and address. Garda Barrett and Garda Keavney were unaware that Bernard Conlon had been planted in the premises as a witness.
3. Later, on the 8th of September 1997, in pursuance of this plan, which was conceived by Detective Garda White, Bernard Conlon attended by arrangement with Garda John Nicholson at Sligo Garda Station and made a statement in respect of the events of the 30th/31st of August 1997. It was planned to use this statement as part of a prosecution against Mr. McBrearty and two members of his staff and that is what happened. Garda John Nicholson cooperated in taking that witness statement in the knowledge that Bernard Conlon had been planted as a witness.
4. Bernard Conlon was summonsed to give evidence at the District Court, sitting in Letterkenny and Donegal town on several occasions in the course of the resulting licensing prosecution. For this he was paid witness expenses and travel allowances to which he was not entitled. These claims

²¹¹ Transcript, Day 362, Q.71-80 (Evidence of Mr Kevin Kilrane, solicitor).

were submitted by Detective Sergeant White. The loss of earnings certificates in respect of Bernard Conlon, which were submitted as part of these claims, were bogus. Garda John Nicholson cooperated with Detective Sergeant White in procuring these forged certificates and lied to the Tribunal in representing that he obtained retrospective approval from Bernard Conlon's employer. Detective Sergeant White and Garda Nicholson arranged for these wrongful payments in fulfilment of Detective Sergeant White's promise to Bernard Conlon that he would be "looked after" for acting as their agent. Garda Nicholson forged parts of these documents. Both of them were fully aware that the claims and the supporting documents submitted were bogus.

5. Insofar as Detective Garda Paul Casey wrote out the body of one of these certificates, he was not culpable of any wrongdoing. He did so to help Garda Nicholson because of his severe arthritis. It was credibly represented to him that Garda Nicholson had a crippling pain in his hand on that day and needed help in a routine matter. Garda Nicholson attempted to use the hearings of the Tribunal to gain advantage from and debase Garda Casey's act of kindness.
6. Bernard Conlon was facilitated to an exceptional degree, far beyond that of any normal witness, in his multiple court attendances in being driven to and from court by the Garda Síochána. This highlighted for the Tribunal the importance that was placed upon him by Detective Sergeant White and Garda Nicholson as a witness in the prosecution of the licensing charges.
7. The importance with which Bernard Conlon was viewed is evidenced by the fact that Detective Sergeant White and Garda Nicholson were willing to ensure that he was paid expenses in respect of his attendances at the District Court to which they knew he was not entitled.
8. Superintendent Kevin Lennon became aware of the use of Bernard Conlon as an agent in the course of the District Court prosecution in Letterkenny. Following Bernard Conlon's arrest by the Carty investigation team on the 27th of January 2000 and his release thereafter, Superintendent Lennon sought information through Garda John Nicholson as to what Bernard Conlon may have said whilst detained in custody. The Tribunal is satisfied that Superintendent Lennon said words to the effect that Bernard Conlon was "tight" and "would not crack". Sergeant John White also approached Garda Nicholson to try to find out what had been said by Bernard Conlon in custody. Garda Nicholson made

an approach to Bernard Conlon to ascertain this information but he was rebuffed. The Tribunal is satisfied that, at that stage, all three knew that Bernard Conlon had been used as an agent in respect of the District Court licensing prosecutions by Detective Sergeant White. Detective Sergeant White and Garda Nicholson knew of their wrongdoing in this regard, and were fearful of it becoming known to their authorities. Superintendent Lennon, by this stage, certainly knew enough to suspect that there had been wrongdoing. He attempted not to use Bernard Conlon as a witness in the licensing case against the McBreartys because he feared that Bernard Conlon would disclose in cross-examination that he had been planted as a witness by Detective Sergeant White and Garda Nicholson. In this, he failed to comply with his obligations as the prosecuting officer to observe fair procedures and in his duty to the court. He was, however, obliged by the District Judge to tender Bernard Conlon for cross-examination on the 11th of December 1998,

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

CHAPTER 3 “THE SILVER BULLET” THREAT

An Allegation is Made by Bernard Conlon

- 3.01. Some time after midnight in the early hours of the 21st of July 1998, a report was made to the Garda station at Sligo. It was that men had called to the home of Mr. Bernard Conlon at 61 Cartron Bay, Sligo at approximately 23.45 on the 20th of July 1998 and threatened him. As a result of this complaint, Detective Sergeant Gerard Connolly and Detective Garda Michael Reynolds of Sligo Station called to Mr. Conlon’s home at approximately 00.50. The scene was described by Detective Sergeant Connolly:

We went to the front door of 61 Carton Bay and knocked on the door. The door was opened to us by Tony Doyle. He informed us that Bernard Conlon wished to speak to us. He took us to the sitting room in the house. Bernard Conlon was there and Tony Doyle then left the room. The light was off in this room and Bernard Conlon would not permit us to put it on. He was in a very distressed state. He then related an incident to us that had occurred about one hour previously. He stated that two men called to his door. One asked him if he was the informer Conlon, took a bullet from his pocket and threatened him with it if he attended at Letterkenny District Court to give evidence in a case versus the McBreartys. He was very scared and stated that he feared for his life. He stated that he had seen one of these people at Letterkenny District Court on a number of occasions.²¹²

- 3.02. Detective Garda Michael Reynolds, who had contemporaneously taken down what Mr. Conlon said, noted that “... at the time Mr. Conlon’s voice was trembling and he appeared breathless at times”.²¹³ They made arrangements for Mr. Conlon to make a more detailed statement the following morning at Sligo Garda Station. This first formal account was made to Detective Garda Reynolds and said:

I reside at 61 Cartron Bay Estate, Sligo, along with a Mr. Tony Doyle. I am afraid almost to give you this address because of a certain event which occurred last night outside the front door of the house. I will inform you of everything I remember of the occurrence. I am living at this address for the past fifteen years. Mr. Doyle is living there two years now. The house is owned by Ben Maguire. Yesterday, 20/7/1998, I was helping out on the farm with Ben Maguire and when we left the land at Oakfield at 8.00 p.m. we went to his house and chatted for a while. It must have been around 10.00 p.m. when I got home. I made some tea and sat down and watched

²¹² Tribunal Documents, pages 234-235.

²¹³ Tribunal Documents, page 248.

television. I was alone as Mr. Doyle had not returned home. At 11.45 p.m. I heard a knock on the front window of the sitting room. It was dark outside and the street lighting outside the house was not on. I went to the front door and on my way to open the door I put on the porch light. As soon as I opened the door I saw two males standing outside. One of the fellows said to me "Are you informer Conlon? I seen you in the Court in Letterkenny on a few occasions, you are a State witness against Frank McBrearty, Senior". I said to them "it was none of your business" and he said back to me "it is our business". I was very frightened at this state as I was on my own and I have no phone in the house. The spokesman took a silver coloured bullet from his jacket pocket and held it up to me and said "there's one for you and one for White and that White had a trailer missing and he will be missing too". I knew straight away that those boys were serious and knew what they were talking about. I knew White was a plain clothes Garda in Letterkenny. I started going into a trance when the fellow that was doing all the talking said, "I saw your statement". I could feel myself shaking and getting weak at the legs. I banged at the door and as I was doing this one of them shouted "if you turn up in court the next day you will get the contents of what I have in my pocket". I then went into the living room and turned down the television and sat on the couch. I was afraid to check to see if they had gone or to look for help. I was terrified. At 12.45 a.m. Mr. Doyle arrived home and asked me what I was doing up that late and if I was alright. I told him I was upset and frightened and to ring for the Gardaí. He asked me what was wrong. I said I'd explain later to him and "just go and get help". Two detectives arrived and I told them the story. I even now can see those two boys at my door and it's something that will stick in my memory forever. The fellow that did all the talking, I'd describe him as a stout lump of a lad with scraggy hair and a goatee whisker, about 5ft. 7 inches and aged between 22 and 25 years. His hair was black. He had a rough appearance and spoke with a rough northern accent. He was wearing a tee-shirt which I described as brown to darkish and he had a brown longish leather jacket. This is the man that produced the bullet. I am almost certain I saw this lad in the Court House in Letterkenny the last time I attended. He appears to be with a gang that was at the court. I'd say I'd know him again if I saw him. He also wore a pair of white and blue runners which I clearly remember observing. The other man was aged between 29 years and 30 years and somewhat taller, having black hair cut tight. He wore blue jeans and shoes and a shirt with no collar which I'd describe as a grandfather shirt. He also wore a leather jacket which was zipped up halfway. He kept his hands in his pockets of

the jacket and stared me straight into the eyes. He wore an ordinary pair of shoes. As far as I can remember, I think he had a stud or earring in one of his ears. He did no talking, just stood there. I never saw this guy before, but I feel that I would recognise him again if I saw him. I have no doubt that this is all connected to a case that [is] to come before the courts in Letterkenny [in] which I am to give evidence on behalf of the State. It's relating to after hours drinking in a ballroom in Raphoe, County Donegal. I attended this dance and during it the Gardaí raided the place and took names. My name and address was taken and that's the whole story behind the events which happened to me last night. Since the incident last night I haven't slept or eaten and I am still very upset and frightened. I don't know what to do. I feel that if I don't show up in court in Letterkenny in September there will be a warrant issued for me. So I feel one way or the other I am in a difficult situation. Everything that I have stated in this statement is correct and I have been asked to make any alterations or additions I deem necessary, but I don't wish to change anything that I have said.

Signed: B. Conlon

Witness: Michael Reynolds, D/Garda, 19297L²¹⁴

- 3.03.** As a result of the making of this complaint, Detective Sergeant Connolly commenced an investigation. Both he and Detective Garda Reynolds accepted at face value the genuine nature of what had been related. Also, at that stage, they believed that Mr. Conlon was telling the truth because of his demeanour when they first called around to him within an hour of the supposed making of the threat. A similar impression had been formed by Mr. Conlon's flatmate, Mr. Tony Doyle. This is clear from a statement made at the time by Mr. Doyle and in his evidence to the Tribunal.²¹⁵
- 3.04.** In the early hours of the morning of the 21st of July, having received the complaint from Bernard Conlon, Detective Sergeant Connolly contacted the Communications Centre at Letterkenny Garda Station because of the suggestion by Bernard Conlon that the threat was linked to the case in which he was involved in Donegal. He told the Garda on duty at Communications to contact Superintendent Kevin Lennon about the matter and to bring it to his personal attention, even though it was late at night. He also informed him about the apparent connection to the McBreartys in Raphoe and did this in case the car in which the culprits may have travelled might be intercepted on its return to Donegal.

²¹⁴ Tribunal Documents, pages 118-120.

²¹⁵ Tribunal Documents, page 232 and Transcript, Day 373, Q.165-174.

- 3.05. Later, he contacted Superintendent Lennon personally, some time on the 21st of July 1998, and outlined the nature of the complaint made by Bernard Conlon to him and in particular gave him two descriptions of the alleged culprits. Superintendent Lennon informed him that one of the descriptions “sounded like Mark McConnell”.²¹⁶
- 3.06. This was at a very early stage of the investigation. Detective Sergeant Connolly was satisfied that Superintendent Lennon was simply tendering the name of a suspect who could be the subject of elimination in the course of an ensuing inquiry.
- 3.07. Detective Sergeant Connolly asked Superintendent Lennon whether he could put him in contact with a Garda who knew Mr. McConnell in order to try and set up an informal identification procedure. Superintendent Lennon gave him the name of Detective Sergeant White as a person whom he might contact in this regard and use as a “liaison officer”.²¹⁷ The matter was immediately reported to the authorities by Superintendent Lennon on the 21st of July 1998 by a form C.9 report, which emanated from Letterkenny at 11.30 hours and was sent to the “Assistant Commissioner, ‘C’ Branch Security” in Superintendent Lennon’s name.²¹⁸
- 3.08. It is clear that this investigation was predicated completely on the behaviour and statement of Bernard Conlon. It led, ultimately, to the arrest and detention of Mark McConnell, following an informal identification procedure outside Letterkenny District Court on the 1st of October 1998. There was a further informal identification process on the 8th of December 1998 whereby Mr. Michael Peoples was identified as the second culprit in the matter. Peculiarly, this arrest was delayed until the 6th of May 1999. The arrests of Mr. McConnell and Mr. Peoples should never have happened because, as Mr. Bernard Conlon now admits, the allegations which he made against the two men were entirely false. In the course of revealing that falsehood to members of the Carty team, Mr. Conlon made very serious allegations that he had been put up to making these false charges against the two men by Detective Sergeant John White. Mr. Conlon was charged and convicted in respect of offences under the Criminal Law Act, 1976 for making these false allegations in his statements to members of An Garda Síochána and received a suspended sentence of three years imprisonment. Detective Sergeant White was also prosecuted on the basis of the allegations made by Bernard Conlon that he had been put up to making these false allegations by him. He was acquitted in respect of these charges by direction of the trial judge in Letterkenny Circuit Court on the 18th of January 2005. This

²¹⁶ Transcript, Day 344, Q.400-405 and Day 347, Questions 129, 145 and questions 170-174.

²¹⁷ Transcript, Day 347, Questions 146-152 and Questions 469-500.

²¹⁸ Tribunal Documents, page 1946-1953.

Tribunal is mandated to enquire into the arrest and detention of Mr. Mark McConnell and Mr. Michael Peoples arising out of Bernard Conlon's allegations. The nature of the evidence available to me is much wider than that available to a court of trial, which is necessarily limited by reason of the laws relating to the admissibility of evidence and because of the more extensive enquiries that can be, and were, carried out by the Tribunal. A different standard of proof also applies. A Tribunal may reach determinations of fact on the balance of probabilities whereas, if a criminal charge is to be proved, it must be established beyond a reasonable doubt.

The Allegations Made by Bernard Conlon Against Detective Sergeant John White

- 3.09. The falsehood of the allegations made against Mr. McConnell and Mr. Peoples emerged during the course of the Carty team's investigation of these events. Both Mr. McConnell and Mr. Peoples declared that it was their belief that Detective Sergeant White and Superintendent Kevin Lennon were responsible for the allegations made by Bernard Conlon against them in respect of the threat regarding the silver bullet. They made that case when questioned during detention. In addition, Mr. McConnell made a written complaint on the 25th of January 1999.²¹⁹ In his complaint, Mr. McConnell states his clear belief that the matter was orchestrated by three named Gardaí in Donegal, specifically, Detective Sergeant White, Superintendent Lennon and Garda John O'Dowd. He linked the events to the continuing harassment to which he, and other members of the extended McBrearty family, had been subjected since the death of the Late Mr. Barron. In addition, he made an allegation of negligence against Detective Sergeant Connolly and Detective Garda Reynolds. In particular, he emphasised his belief that these Gardaí too readily relied on the allegations made by Mr. Conlon, who had an extensive criminal record and was clearly dishonest and capable of deceit. This was well known to all members of An Garda Síochána in Donegal and Sligo during the course of the investigation, and at the time of his arrest and that of Mr. Peoples. Ironically, it is exactly this submission that is made on behalf of Detective Sergeant White as the basis for inviting this Tribunal to reject the allegations made by Bernard Conlon against him. He also makes a claim of gross negligence in his criticism of the Carty investigation which resulted in his arrest and prosecution.
- 3.10. In due course, serious doubts grew in respect of the truthfulness of Bernard Conlon's allegations against Mr. Connell and Mr. Peoples. This culminated in Mr. Conlon's arrest on the 27th of January 2000. He was interviewed over two days in Manorhamilton Garda Station. In the course of his detention Mr. Conlon made a statement on the 29th of January 2000 to Detective Sergeant James Fox,

²¹⁹ Tribunal Documents, pages 628-634.

Detective Inspector Foley and Detective Garda Maloney after caution. In the course of that statement he said:

I know that I was arrested on Thursday, 27th January 2000 by Detective Sergeant Fox in relation to an incident which I reported to the Guards in Sligo in which I stated that two men called to my home and threatened me and that one of them showed me a bullet. This never happened, but it was planned and arranged with Sergeant John White who was stationed in Raphoe and in Letterkenny. He told me that he had Martin O'Connell in on three or four occasions for different things and that he had him in for the murder of a Barrons man from Raphoe and that he could get nothing out of him. He said to me that he wanted to get Martin O'Connell and the other fellow Peoples off the streets of Raphoe. He came to my house and John White gave me £200 in cash in my sitting room before I reported this to the Guards. He had given me money on other times before this as well. It was because of John White that I went to the Guards and told them these lies. I made a statement to Detective Garda Reynolds about this which was completely false and was not right. I am totally sorry and very upset with the way things turned out. I was led up the garden path ... On one occasion before I gave evidence I was asked by John White at Letterkenny Court to have a look at two fellows in the hallway of the court. I did so. He asked me to do a turn for him but didn't tell me what it was at this stage. He told me that he would look after me and he put up two fingers to me. I knew then that it was £200 and I said O.K. John. He called to me and he described Martin O'Connell and the other fellow that was in the court and said he wanted Martin O'Connell off the streets of Raphoe. He said to me to let on that they called to my house at 61 Cartron Bay and that they threatened me not to attend in court and to say that Martin O'Connell put his hand in his pocket and produced a silver bullet and to say that there was one for me and one for White. O'Connell was to say that White was missing a trailer and that he would go missing himself. He told me to say that the other fellow kept his hands in his pockets and did not speak at all. He told me to get someone else to report the matter and to put on a gimmicks of a show when the Guards arrived from Sligo. He gave me £200 in £20 notes and he took out a cheque book but he gave me the money in an envelope instead. He told me that he had Martin O'Connell arrested for the murder investigation in Raphoe and that he could get no information out of him and that he wanted him behind bars. I went along with it when I got the money and that he would look after me when the case was over. I went to Letterkenny Court House on a

Monday after that and when I got home I done a few jobs and later that night I went home to my house and looked at television and I decided to go along with what John White had told me. When Tony Doyle came in I let on I was upset and asked Tony to contact the Guards as something had happened. Tony reported it and Detective Reynolds and Detective Connolly called to my house. Tony Doyle let them in. I told them the story and I let on to be a bit shaken and trembling. Mick Reynolds took his notebook out and asked me to describe the men which I did from John White's description. The next evening he took a statement off me. Reynolds and Connolly did not know that this was a stitch up ... I did not tell you the truth that night as I was under severe pressure. I did not want to grass up any guard. I am very sorry for what happened on that night but I have come clean on everything that happened in Raphoe. I knew that you were going to call me as John White told me that an Inspector would call to see me but that I was to stick to my guns ...²²⁰

- 3.11. Bernard Conlon made a further cautioned statement on the 15th of February 2000 to Detective Inspector Foley, Sergeant Dermot Flannery and Detective Sergeant James Fox. The statement continued over a three-day period, until the 18th of February 2000. In it, he reiterated much of what he had already told investigators. He described how early in July at the court sitting in Letterkenny, Detective Sergeant White had approached him and asked him to do him a favour. He pointed out two men sitting in court and intimated by signs alone that there was £200 in it for him by pointing two fingers towards the ground. Mr. Conlon got a good look at the two men who were Mark McConnell and Michael Peoples. He said:

On the following Saturday I rang him from 63 Cartron Bay and he told me he would be down the following Sunday morning. He arrived down the following morning in an unmarked car. He had a walkie-talkie in his pocket. I opened the door and he came in. He said "Detective Garda Conlon how's it going". He started talking about what he wanted me to do. He told me he had Mark McConnell in about the murder in Raphoe and that he was like a wall, he could get nothing out of him. He said I was the only man he could depend on. He wanted McConnell off the streets of Raphoe. He was convinced that Mark McConnell and young McBrearty had killed Richie Barrons. He said to me to say that Martin McConnell and Peoples called to my home and threatened me. He described to me Martin McConnell. He was a stout lump of a fellow, with a goatee beard and bushy hair. He said to me to say that Martin McConnell produced a silver

²²⁰ Tribunal Documents, pages 171-179. The Tribunal is satisfied that the reference in this statement to Martin McConnell is in fact a reference to Mark McConnell and that Mr. Conlon frequently refers to him as Martin McConnell.

bullet from his pocket and to say “I’ve seen your statement, I’ve seen you in the court, you’re a State informer”. I was to say back to him “it’s none of your business”. He would then produce the bullet and say to me there’s one for you and one for White, that White had trailers missing and he would go missing himself. To say that Pimples (Peoples) put his hand in his pocket and stared me in the face. He never opened his mouth. I was to say that Martin McConnell was wearing tracksuit bottoms and a leather jacket and runners and the other fellow was wearing a black leather jacket as well. To say I just slammed the door in their faces. He told me to get into a bit of a state and to get someone else to report it. He also told me he had a car burnt out and he suspected Martin McConnell and Peoples (Pimples). He reached to his insider pocket and took out his cheque book. He said that’s no good to you. He put it back in his pocket. He took an envelope from his back pocket and handed it to me. He said there’s a right few pound in that. He left saying he would see me the following morning in Letterkenny. I opened the brown envelope then. There were £200 in new £20 notes. I was delighted. He told me I was to do it the following night when I returned from the Court House.²²¹

- 3.12. He then went on to describe the events of Monday morning, the 20th of July, 1998:

On the Monday morning I met Sergeant John White inside the Court House door. He was in plain clothes as he had been promoted to Detective Sergeant. He says to me that’s on for tonight Bernard. I says O.K. He says you know what the story is. I saw McConnell and Peoples (Pimples) in the court that day. I noted what they were wearing and that’s the same description I gave to the Gardaí that arrived from Sligo. There was a lot of arguments about the State handing over papers. I did not give evidence on that date, but as far as I can recall Detective White did. When the Court was over, I think it was around half past three, I went to Letterkenny Garda Station with Detective White and other guards. White said he would arrange a lift for me. Shortly afterwards a plain clothes man arrived down and took me down to Sligo. I went home and did a few bits and pieces...²²²

It is important to note that Mr. Conlon fixes the conversation in which he was told that the matter was on for that night as one that took place in Letterkenny District Court on the morning of the 20th of July 1998.

- 3.13. Detective Sergeant White denies any wrongdoing and, in particular, denies that he initiated any of the allegations made against Mark McConnell or Michael

²²¹ Tribunal Documents, pages 194-196. The Tribunal is satisfied that Mr. Conlon frequently refers to Mr. Michael Peoples as Pimples.

²²² Tribunal Documents, pages 195-196.

Peoples by Bernard Conlon. As already described in this report, the Tribunal is satisfied that Bernard Conlon had an association with Detective Sergeant White and Garda Nicholson arising out of his use as their agent and witness against the McBrearty family. It might be easy to assume, therefore, that this association led them into an attempt to frame Mark McConnell and Michael Peoples in respect of the silver bullet threat based on their shared antipathy for the McBrearty extended family. A series of surprising coincidences might be regarded as supporting Bernard Conlon's story. Firstly, there was the coincidence that Bernard Conlon alleged that Detective Sergeant White was behind these false allegations, when Detective Sergeant White was also the instigator of Bernard Conlon's involvement in the District Court prosecution. Secondly, in his statement of the 21st of July 1998, Bernard Conlon involved Detective Sergeant White in his story by alleging that the threat was made against Detective Sergeant White also. Thirdly, there is the coincidence that there is mention in the course of that threat of a trailer having been stolen from Detective Sergeant White and that he might go missing too. This suggested knowledge on the part of Mr. McConnell and Mr. Peoples concerning the theft of Detective Sergeant White's trailer and that they had reason to threaten Detective Sergeant White. Fourthly, Detective Sergeant Connolly contacted Superintendent Lennon, who in turn directed him to Detective Sergeant White in order to assist in the identification of the two culprits and both of them nominated Mark McConnell as a suspect by reason of the description furnished. Fifthly, the fact that Bernard Conlon ultimately identified Mark McConnell and Michael Peoples, both of whom had been wrongfully arrested on the 4th of December 1996 in relation to the death of the Late Mr. Barron, was an appalling coincidence from their point of view. Sixthly, it was a fact that Superintendent Lennon and Detective Sergeant White were both immersed in the licensing prosecutions against the McBreartys and had dealings with the investigation into the death of the Late Richard Barron: they now became involved in these further allegations against Mark McConnell and Michael Peoples. The implication might too easily be drawn that this false allegation was an attempt by Detective Sergeant White to retaliate against the McBreartys in respect of all the complaints made against Gardaí in Donegal but especially against Detective Sergeant White arising out of his alleged mistreatment of Mrs. McConnell, while she was in custody over the 'Barron murder' and the many inspections and prosecutions that occurred concerning Frankie's Nightclub. These coincidences were certainly capable of adding fuel to the suspicion that Detective Sergeant White was behind the allegations made by Bernard Conlon against the two men. The Tribunal's job, however, is to analyse the evidence. It cannot leap to conclusions.

Alleged Meeting with Detective Sergeant White on the 20th of July 1998

- 3.14. As already noted, Bernard Conlon alleged that he met with Detective Sergeant White at Letterkenny District Court prior to a sitting of that court on the 20th of July 1998 in respect of matters concerning the McBreartys. Mr. Conlon also alleged that one week beforehand, Detective Sergeant White had come to his home and asked him to make the silver bullet threat complaint. Detective Sergeant White wanted these two men off the streets of Raphoe, he claimed. Mr. Conlon had seen Mr. McConnell and Mr. Peoples in court a few times before this. He said in evidence:

And it would have been relating to these two men, Mark McConnell and Michael Peoples. [Detective Sergeant White] stated to me that he had them in and that he had a suspect, ... they were suspects for the murder of Richie Barron ... He could get nothing out of them ... I was the only man that could do him a favour like ... so I agreed on that ... to say that they called to my ... home and produced a silver bullet to me and to say that they had seen me in Raphoe, at the courthouse in Letterkenny. And that they called me a State informer for the State, a State witness ... He said that there would be money in it for me. So we met then at the courthouse in Letterkenny and he pointed them out to me.²²³

It was put to him that, according to himself, he had been abused by members of the McBrearty family while he was attending court as a witness and that he made these false allegations because of that abuse. He replied that he had been abused by Mr. Mark McConnell. He had reported this abuse to Detective Sergeant White who told him to make an official complaint. He also pointed out that Michael Peoples had never abused him.²²⁴

- 3.15. Bernard Conlon also described to the Tribunal what happened at Letterkenny District Court on the 20th of July 1998. He said he was standing up against a wall on his own in the hallway of the courthouse when Detective Sergeant White approached him.

He says - do you see that fellow over there, he says, beyond with the goatie beard and he had a leather jacket on him and that. I says I do. He said do you see that other buck over there? He had a leather jacket I think as well on him and he had a sore arm or something that I recall. I said I do. So, I think I identified them then like, at a later stage ... he wanted me then to identify them like ... he said would you do me a favour. I said I would John. At that time,

²²³ Transcript, Day 331, Q.287-313.

²²⁴ Transcript, Day 331, Q.266-287.

*me and John was very pally like. He said would I be able to identify those two fellows for me and that ... to my recollection he said to me to identify these two men like, say that they were at my home ... when we planned it that type of thing ... so I agreed on it with him ... He put down his fingers to the ground and I knew what he meant that there would be £200 to identify them ... about that they were supposed to call to my home ... he would have been talking about it before like, you know. ... I gather that we had a previous chat about it like. ... [He said] is that on for tonight, Bernard. So I says ok John. So he also told me to look for Garda John Nicholson when the time would come to send for the Guards. So there was supposed to be these two men called to my home and they threatened me ... produced a bullet and the man stood at the door with his hands in his pockets and that. And he was supposed to say to me I seen you in court today, you're an informer ... Conlon. I said to him that was none of his business. I said that to Garda Mick Reynolds. I went on then and he told me to put a frightened thing on me, like ... to look frightened when the Guards came. Tony Doyle came back and I was sitting in the sitting room ...*²²⁵

- 3.16. Mr. Conlon claimed before the Tribunal that he did not like the idea of doing this at the beginning. He maintained that he was put under a lot of pressure by Detective Sergeant White:

*Because I seen that I was working for Sergeant John White, relating to doing things, for being 'found on' and all this type of thing and that he was giving me money ... I found that I was under an obligation to carry it out ... and White ... was kind of putting pressure on me ... he was anxious to get them Mark McConnell and Michael Peoples and he was anxious to get the McBreartys ... He didn't like them he was got on ... he was deaths on them people. He didn't like them ... I was in with Sergeant John White and I was getting a few pound for it ... I thought that they were good men to be in with ... I got on the right side of them and I thought Sergeant White was all right as a man.*²²⁶

He maintained that if he had not done this for Detective Sergeant White he would have been letting him down after he had already given him money.²²⁷ He was told not to tell anybody about what they were doing and to "stick to his guns" and not to let any other Garda in Sligo know what was going on between

²²⁵ Transcript, Day 331, Q.244-296.

²²⁶ Transcript, Day 331, Q.298-325.

²²⁷ Transcript, Day 331, Q.338-339.

him and Detective Sergeant White. He was told by Detective Sergeant White that he would see him “alright”. He also said:

*To my weighing up the situation, I thought that John White and John Nicholson were buddies like ... you know and that they were going along with one another and I didn't want to overpower John White.*²²⁸

He added that he only dealt with Garda Nicholson and Detective Sergeant White and that it was Detective Sergeant White who put him up to it. He said he had hoodwinked Detective Sergeant Connolly and Detective Garda Reynolds, who initially had investigated the matter.²²⁹ He excluded Garda John Nicholson from involvement in the matter and said:

*Garda John Nicholson knew very little about what was going on, he didn't put me under any pressure. It was Sergeant John White that was putting me under all the pressure like you know.*²³⁰

- 3.17. He maintained that he did not identify the two men at the courthouse on the 20th of July 1998 because Detective Sergeant White had told him to ring Sligo Garda Station and say that they called to his home and threatened him. Sergeant White told him what they were supposed to have said and what they were wearing. It was Detective Sergeant White's idea that he sit in the dark and act out looking worried and scared. He was also told that when he telephoned Sligo Garda Station he was to look for Garda Nicholson personally.²³¹ Oddly, notwithstanding the contents of his statements, Bernard Conlon maintained in evidence that Detective Sergeant White did not tell him to say “silver” bullet and, in relation to his statements, he maintained that he never described the bullet as a “silver” bullet.²³²

Problems with Bernard Conlon's Account

- 3.18. Detective Sergeant White denied that any meeting setting up this conspiracy to frame Mr. McConnell and Mr. Peoples ever took place at Letterkenny District Court on the 20th of July 1998. There is no record of Mr. Conlon's attendance at the District Court or the payment of witness expenses to him for such an attendance on that date. [There was no sitting of the District Court on the 20th of July 1998 according to official records supplied to the Tribunal by the District Court Clerk.](#)²³³ [There is no supporting evidence for Mr. Conlon's version of these events. On the contrary, such independent evidence as is available suggests that a meeting between Bernard Conlon and Detective](#)

²²⁸ Transcript, Day 331, Q.350.

²²⁹ Transcript, Day 331, Q.347, Q.357 and Q.384.

²³⁰ Transcript, Day 331, Q.429-430.

²³¹ Transcript, Day 331, Q.363-383.

²³² Transcript, Day 331, Q.358-359.

²³³ Tribunal Documents, pages 2425-2426.

Sergeant John White did not, and could not, have taken place prior to a sitting of Letterkenny District Court on the 20th of July 1998. However, Mr. Conlon insists that this meeting at which both individuals were pointed out to him took place on that date because the plan was hatched for that night. His testimony in this regard cannot be true. Indeed, the documentation suggests that Mr. Conlon did not appear as a witness before the District Court between the 23rd of June 1998 and the 7th of December 1998.

- 3.19. In addition, Mr. Conlon's evidence as to the sequence of events in respect of how Detective Sergeant White got him to make the allegation against the two men differs from what he originally told members of the Carty team on the 28th of January 2000. He told them that:

John White was in court in Letterkenny one day. I was also in court as a State witness in a case against Frank McBrearty. Mark McConnell and Michael Peoples were sitting in the courtroom with a group of people close to Frank McBrearty. Mark McConnell and Michael Peoples were sitting side by side. I think Mark McConnell had a crutch with him that day in court. John White was standing beside me and he turned his head to look back at where McConnell and Peoples were seated. Sergeant White said to me under his breath do you see that fellow with the goatee beard and the fellow sitting beside him with a black tight haircut take a good look at them. John White then said to me that he wanted to chat to me about those two men and that he would call to my house. John White then put two of his fingers together and said £200.

Mr. Conlon then went on to say that Detective Sergeant White called to his house on a Sunday morning. He could not put a date on this, but said he was to appear the following morning as a witness. Detective Sergeant White supposedly then told him that the two men who were going to be set up were Mark McConnell and Michael Peoples and he was told what to say to the Gardaí about the two men calling to his door and showing him a bullet and the threat that they had made. He was also to mention that two trailers had been stolen from the Garda Sergeant. He was then told that this was to happen the next day on the Monday. He was given £200 (10 x £20 notes) in an envelope. He said Detective Sergeant White had told him he had done a good job on McBrearty's pub for him and warned him not to mention to anyone that he had given him money.²³⁴

- 3.20. On the same date, Mr. Conlon had described to Gardaí how Detective Sergeant White had called to him at his home in an unmarked Garda car on Friday night, the 17th of July. He described the meeting on the Friday as follows:

²³⁴ Tribunal Documents, pages 155-157.

John White said to me you know them two boys that I pointed out to you in the courthouse, ... I am going to describe these fellows to you, so he says the fellow with the bushy hair and the fellow with the goat's beard. The other fellow had a black head of hair and a leather jacket. He said to me that he wanted to put Martin McConnell out of circulation and that he had a grudge against him as he had him in on several occasions and that Martin McConnell and McBrearty were the main suspects for the murder of Mr. Barron in Raphoe. He said he knew it was them that done it in his head but he couldn't prove it. He said to me to let on that them boys called to your house. I said I will. He handed me a brown envelope with £200 in £20 notes after I said I would do it.²³⁵

Mr. Conlon said that Detective Sergeant White had a cheque book in the back pocket of his trousers which he took out and asked first would he give Mr. Conlon a cheque and then decided against it because Mr. Conlon would then have to go to the bank. He gave him cash. He said he would look after Mr. Conlon when the case was over. He told Mr. Conlon to contact the Gardaí about the threat and to tell them that Mr. McConnell produced the bullet. He also said that he would have Mr. McConnell behind bars during his service in Raphoe and Letterkenny. Prior to his calling on the Friday, Mr. Conlon had been contacted by telephone by Detective Sergeant White. He also said that Detective Sergeant White asked him to tell the Gardaí the following:

He mentioned about his car being burnt and that he was suspicious of Martin O'Connell [sic] and he told me that he had two trailers stolen – one was a horse box and the other was an ordinary trailer. He told me that he suspected Martin O'Connell for stealing his trailers and that I was to tell the Guards that Martin O'Connell said to me that White's trailer was missing and that White would go missing himself.²³⁶

On this occasion, Mr. Conlon also stated that he had been approached by Detective Sergeant White prior to the visit to his home on the Friday. Though Detective Sergeant White pointed out the two men to Mr. Conlon, he did not at that time tell him what he wanted him to do but merely told him that he would visit him at his home. However, he did on that occasion tell Mr. Conlon that he would look after him and pointed his two fingers at him; which Mr. Conlon took to mean he would get £200. He specified that this conversation took place at a toilet near the stairs in the courthouse. Detective Sergeant White was on his own and had a file in his hand. They were present to attend the McBrearty cases. Detective Sergeant White called to see Mr. Conlon in Sligo the next evening. This would suggest that this conversation in the District Court took place on Thursday, the 13th of July 1998.²³⁷

²³⁵ Tribunal Documents, pages 148-154.

²³⁶ Tribunal Documents, page 150.

²³⁷ Tribunal Documents, pages 151-152.

3.21. In his statement of the 15th to the 18th of February 2000, Mr. Conlon indicated that he had been approached at one of his court appearances in Letterkenny in early July and asked by Detective Sergeant White to do him a favour. He outlined much the same story as previously noted. He then described Detective Sergeant White's attendance at his house on the Sunday morning and purported to describe how he was told what to say as already set out. He then described the third meeting on the morning of Monday, the 20th of July 1998 at Letterkenny courthouse with Detective Sergeant White.²³⁸ **Mr. Conlon appears to be quite muddled when it comes to dates and times concerning these events. He is not consistent in the various versions which he has given of the sequence of these events. Moreover, independent evidence clearly establishes that there were no District Court sittings relating to the McBreartys at which Mr. Conlon was obliged to attend as a witness during the month of July or indeed between the 23rd of June 1998 and the 7th of December 1998. There is no independent evidence to support his versions of events. On the contrary, the documentation appears to underline the improbability of these various accounts.**

The 'Two Fingers' Gesture

3.22. Mr. Conlon also said that Detective Sergeant White had gestured to him with two fingers or pointed two fingers in a downwards direction to indicate, as he interpreted, that he was to receive £200 for doing this favour. However, during the course of Detective Sergeant White's trial in Letterkenny in the Circuit Court Mr. Conlon gave evidence to the effect that this gesture was meant to indicate "two people", not £200.²³⁹ Indeed, when questioned about this at the Tribunal he said, "To my knowledge it was the two men that he meant."²⁴⁰ This is notwithstanding what he had previously told the Tribunal that this gesture meant "£200".²⁴¹

The Trailers, the Burnt Out Car and the House Painting Incident

3.23. Mr. Conlon alleged that part of the threat from Mr. McConnell and Mr. Peoples contained the phrase "that White had a trailer missing and he will be missing too." It is one of the coincidences in this affair that Detective Sergeant White had two trailers stolen from him prior to the 20th of July 1998. Mr. Conlon told members of the Carty team that he had been told by Detective Sergeant White in his home prior to the 20th of July that he suspected Mark McConnell of involvement in the theft of two of his trailers, a horse box and an ordinary trailer, and in the burning of his private car. This was the context in which, he alleged,

²³⁸ Tribunal Documents, pages 193-197.

²³⁹ Tribunal Documents, page 1643.

²⁴⁰ Transcript, Day 334, Q.215-222.

²⁴¹ Transcript, Day 331, Q.259.

he had been told by Detective Sergeant White to include the quoted phrase in his complaint to the Gardai in Sligo.²⁴²

- 3.24. In fact, two trailers had been stolen from Detective Sergeant White in May 1998. It appears strange that if Bernard Conlon was making up a story about a threat that he should include Detective Sergeant White as one of the objects of the threat and in doing so throw in a reference to one of Detective Sergeant White's missing trailers and that he would also go missing. It clearly implied a knowledge on the part of the maker of the threat that one of Detective Sergeant White's trailers had been stolen. Having regard to the fact that Detective Sergeant White, on his account, had very little contact with Bernard Conlon and acknowledges that he did not inform Bernard Conlon about his stolen trailers; and the fact that Bernard Conlon lived in Sligo, it seems curious that Mr. Conlon should have knowledge of these matters at all. Indeed, Detective Sergeant White's investigation into the stealing of his trailers was entirely unrelated to the McBreartys.
- 3.25. Detective Sergeant White, in evidence, denied ever speaking to Mr. Conlon about the larceny of his trailers. Instead, he had spoken to two individuals, on one occasion, outside the court who were involved in marts and moving around the county. They were men "who might be in the know" in relation to farmers. He wanted to circulate the descriptions of his trailers. He suggested the "strong possibility that Mr. Conlon would be standing nearby when we were talking." Other than that, he could not offer any other view in relation to this coincidence. He had not given Bernard Conlon any reason to believe that Mark McConnell or Michael Peoples had anything to do with the trailers or that either of these individuals had a grudge against him. Indeed, he said that it was not plausible to his mind that Mark McConnell would be involved in a scenario in which he would threaten anyone with a firearm or ammunition.²⁴³
- 3.26. There was no mention of a burnt out car in the threat supposedly made by the two men on the 20th of July 1998. However, in his interview on the 28th of January 2000, and in his statement of the 15th to the 18th of February 2000, Mr. Conlon said that Detective Sergeant White had told him that his car had been burnt out and that he felt that Mark McConnell was responsible for doing this. However, that incident did not occur until the 19th of October 1998. Obviously these matters could not have been mentioned to Bernard Conlon since they had not yet occurred at the time of the making of the threat on the 20th of July 1998. His statements, therefore, can only be regarded as untrue. When faced with the difficulty about the burnt car in giving evidence in Detective Sergeant White's trial in the Circuit Court at Letterkenny, Mr. Conlon continued to maintain that he had been told by Detective Sergeant White about the burnt car.²⁴⁴

²⁴² Tribunal Documents, page 150.

²⁴³ Transcript, Day 356, Q.318-366.

²⁴⁴ Tribunal Documents, pages 1649-1651.

3.27. Bernard Conlon told the Tribunal that Detective Sergeant White told him in July 1998 about the daubing of paint on a wall at or near Detective Sergeant White's home. He never said this in any of his statements to the Carty team. He said it for the first time to the Tribunal investigators, Mr. Finn and Mr. Cummins, on the 9th of June 2005. He told them that Detective Sergeant White had told him in July 1998 that paint had been "pegged" on a wall and that he was fully convinced that the McBreartys or Mark McConnell and Michael Peoples were behind this.²⁴⁵ He had not said this in evidence in the Circuit Court in Letterkenny. This incident had occurred on the 1st of November 1999.²⁴⁶ Consequently, Mr. Conlon could not have been told about it in July 1998. His evidence on this matter has also to be regarded as untrue.

Bernard Conlon Was to Look for Garda Nicholson

3.28. In evidence, Bernard Conlon said that he was told by Detective Sergeant White to look for Garda Nicholson when making his complaint about the silver bullet threat. Garda Nicholson acknowledges that he was not available on the evening of the 20th of July to attend to this complaint. Therefore, Detective Sergeant Connolly and Detective Garda Reynolds were the Gardaí who responded to the call. Bernard Conlon's account receives support from the evidence of Mr. Tony Doyle, who described how he returned to 61 Cartron Bay, where he lived with Bernard Conlon, in the early hours of the 21st of July. He said:

I turned the key in the door and I walked in and all the lights was off in the house and I went in the sitting room, Bernard was sitting in the chair. I said what's wrong? He said two fellas called down and threatened him with a bullet. I said did you call the guards? No. I said, do you want me to call the guards? Well I was worried about my own life at that stage, because you know they might take a hit in the window or shoot a bullet and I might be there, that's what I was worried about. So I went over to Duck Street in Sligo, beside Feeney's Funeral Parlour, and I rang the guards. Actually I asked Bernard do you want any particular guard and he said John Nicholson. So I went over and I rang the guards and I asked for John Nicholson. The guard on the desk, I didn't know his name or I didn't ask his name, I said, is John Nicholson around. No, he's off tonight. So then after that then I said, can you send some Garda out to 61 Cartron Bay, Bernard Conlon, he was threatened with a bullet. And I left it at that and came home ...²⁴⁷

²⁴⁵ Tribunal Documents, pages 2299-2300 and Transcript, Day 334, Q.290-305.

²⁴⁶ Tribunal Documents, page 3027 and Transcript, Day 334, Q.305.

²⁴⁷ Transcript, Day 373, Q.166.

- 3.29. Mr. Conlon's account is, therefore, supported to that extent by Mr. Doyle and the explanation for the non-involvement of Garda Nicholson, at that stage, was simply that he was unavailable.

Bernard Conlon and the Bullet in the Post

- 3.30. A further serious question arose in respect of Bernard Conlon's veracity from an incident described by Detective Garda Seamus Kearns. In evidence, he said that he recalled a morning on a date between June of 1997 and June of 1998 when Garda John Nicholson asked him to do him a favour by conveying Bernard Conlon to Letterkenny. He was given the keys of the crime car at Sligo Station and, accompanied by Detective Garda John McHale, collected Bernard Conlon from a point in Sligo town and drove him to Letterkenny for the purpose of attending his District Court case. He recalled some of the conversation in the car in the course of the journey. Bernard Conlon was sitting in the back seat. He began to talk about the McBreartys:

And then out of the blue he mentioned about getting a bullet in the post. And he continued to say then that the lads in Donegal were dealing with this. And I presume that he meant Gardaí in Donegal were dealing with this and I was happy to hear that because it then meant that I didn't have to take a report from him or take a statement or anything. Now, having said that, I didn't believe him when he said he got a bullet in the post.²⁴⁸

This story was brought to mind when Detective Garda Kearns was interviewed on the 13th of January 2003 as to whether he gave a lift to Mr. Conlon to one of his court appearances. His colleague at the time, Detective Garda McHale, had no recollection of any such conversation and believed that had it taken place he would have taken it further. It may have been a matter which they both considered inconsequential at the time. **No reason has been advanced as to why Detective Garda Kearns might volunteer an untruth in relation to this encounter. I accept his evidence to the Tribunal.**

- 3.31. In addition, Mr. Ben Maguire recounted an incident in his statement of the 10th of March 2000 in which he said the following:

In relation to people calling to Bernard Conlon being threatened by a bullet he told me in August/September, 1999 that a man had been arrested when he identified him having a drink in the Adelaide in Sligo. He said that this man had put a bullet in the door to him about a month earlier. I didn't really believe him and told him that it was all a cod.²⁴⁹

²⁴⁸ Transcript, Day 336, Q.388-409.

²⁴⁹ Tribunal Documents, page 405.

These two incidents indicate a capacity on the part of Mr. Conlon to invent a story about being threatened with a bullet. This tends to suggest that he had the capacity also to invent a story about a bullet in respect of the 20th of July 1998.

Incident on the 26th of May 1998

- 3.32. The Tribunal is satisfied that Bernard Conlon knew who Mark McConnell was on the 20th of July 1998. He had already seen him at the District Court in Letterkenny and also made a specific complaint to Gardaí on the 26th of May 1998 about abuse which he had allegedly received from Mark McConnell and an incident in which Mr. Frank McElwee was allegedly involved with members of the McBrearty family. If Mr. Conlon knew Mark McConnell at that time, and he had already named him in his statement of complaint on the 26th of May, he ought to have been able to name him to Detective Sergeant Connolly as the man who had called to his front door on the 20th of July 1998.
- 3.33. Garda Eamonn Doherty gave evidence that on the 26th of May 1998, he was approached by Mr. Bernard Conlon after a lunch break and informed that he had been intimidated and abused by members of the McBrearty family. Garda Doherty brought this to the attention of Superintendent Lennon and Detective Sergeant White in the courtroom just before the court sat. Detective Sergeant White was standing beside the superintendent at the time. Garda Doherty was informed by either Superintendent Lennon or Detective Sergeant White to take a statement from Bernard Conlon. He did so in the nearby jury room of the courthouse.²⁵⁰ In his statement, Bernard Conlon described the incident thus:

At 11.30am approx. I went to the toilet in the company of a young Doherty lad who was attending court with his mother as I was afraid of the McBrearty family. On my way back to the courtroom again we were approached by a stout black haired fellow with a goatie beard who was in the company of the McBreartys. Young Doherty and I were accompanied by the fellow that is married to Mr. Barron's (deceased) daughter at the time. The stout fellow with the beard used threatening words against Mr. Barron's son-in-law ... he said "I'll ... get you outside sometime". At that stage old Mr. McBrearty caught hold of my left arm and pushed in towards the courtroom, I told him to take his hands off me. He made the comment, "go ahead in you State ... ye." I walked on inside and I reported the incident to Garda Eamonn Doherty inside the courtroom.²⁵¹

²⁵⁰ Transcript, Day 350, Q.412-431.

²⁵¹ Tribunal Documents, page 2418.

- 3.34. When this statement had been completed at approximately 15.00 hours, Garda Doherty and Bernard Conlon returned to the courtroom together and Garda Doherty asked him if he could point out the man who had abused and intimidated him. He pointed out Mark McConnell, whom Garda Doherty knew. He also pointed out Eamonn McConnell. After this identification Garda Doherty said:

I would have approached the superintendent on the completion of the court for that day and the superintendent and Sergeant John White and to the best of my recollection Garda O'Dowd, John O'Dowd, was present, and I stated that I had a statement taken from Bernard Conlon and that Mark McConnell had been identified. ... I indicated that he had pointed out the man with the goatie beard and the lilac shirt and the black tracksuit bottom as the gentleman that had assaulted him, allegedly intimidated him. Someone of them, I'm not sure as to which of them, stated that the identification was poor and that the identification that should have been done was Mr. Conlon put his hand on the shoulder of the person that allegedly abused him. I was not happy with that situation because I was afraid that it could have ended up in a rowdy situation in the courtroom.²⁵²

- 3.35. Garda Doherty also interviewed Mr. Frank McElwee (Mr. Barron's son-in-law) about this incident and took a statement from him at the Garda station. He also made a note of the identification made by Bernard Conlon of Mark McConnell which he furnished to Tribunal investigators. He was not challenged in cross-examination by Superintendent Lennon, who was representing himself before the Tribunal, in relation to this description of events.²⁵³
- 3.36. Detective Sergeant White took issue with Garda Doherty's evidence that he was present in court on the occasion when Garda Doherty returned with the news that Mark McConnell had been identified by Bernard Conlon. He said that when the court rose on the 26th of May he left the courtroom immediately because he had to go to Dublin on other urgent business. Garda Doherty replied that he was "fairly satisfied" that Detective Sergeant White and Superintendent Lennon were both present when he brought the identification to their attention.²⁵⁴
- 3.37. Detective Sergeant White had seen Mark McConnell regularly in the District Court during the course of the prosecutions in 1998. Michael Peoples was not present as much as Mr. McConnell. He did not think it odd that Mr. Conlon had not named Mr. McConnell or Mr. Peoples when he first heard of the complaint

²⁵² Transcript, Day 350, Q.431-446.

²⁵³ Transcript, Day 350, Q.447 and Tribunal Documents, page 2791.

²⁵⁴ Transcript, Day 350, Q.513-527 – see also the evidence of Frank McElwee, Transcript, Day 358, Q.84-90.

because he did not think that Mr. Conlon would have known them by name, though he accepted that he undoubtedly knew Mr. Frank McBrearty Senior and Mr. Frank McBrearty Junior. He denied that he was present when, as Garda Doherty says, he reported the identification of Mark McConnell by Bernard Conlon on the afternoon of the 26th of May 1998.²⁵⁵

3.38. Garda Eamonn Doherty prepared a file in relation to the incident on the 26th of May 1998. Further statements were taken from Mr. Frank McElwee and Mrs. Geraldine McElwee and were sought from Mr. Frank McBrearty Junior, Mr. Mark McConnell and Mr. Eamonn McConnell. This report was furnished to the sergeant in charge at Raphoe, Sergeant Hargadon, on the 22nd of October 1998. It also contained the statement of Bernard Conlon and noted that Bernard Conlon had identified Mark McConnell in the courtroom before the court had risen. There was a recommendation that Mr. Eamonn McConnell be prosecuted for a public order offence. This file was then transferred by Sergeant Hargadon to Superintendent Lennon at Letterkenny with a similar recommendation. Superintendent Lennon directed that Eamonn McConnell be prosecuted but also directed that Mark McConnell be prosecuted for an offence contrary to Section 6 of the Criminal Justice (Public Order) Act, 1994.²⁵⁶

3.39. In addition, on the 21st of July 1998, Superintendent Lennon had included a reference to the previous intimidation of Bernard Conlon as a State witness in his preliminary report on the making of the silver bullet threat to Crime & Security at Garda Headquarters in Dublin. In that report he said:

It is not surprising that this action has been taken in view of the attitude of Mr. McBrearty and his staff towards the Gardaí in general (matters which are well documented at your office) and people in this area who assist the Gardaí in investigations. I have encountered intimidation of witnesses including this witness at the District Court sittings already referred to above and have brought the matter to the notice of the District Judge in open Court. As a result he has threatened contempt proceedings if there were any other reoccurrences in court.²⁵⁷

3.40. In his evidence to the Tribunal, Superintendent Lennon said that he knew about the events that had happened, that an incident had taken place in the court and that a file had been sent to the Director of Public Prosecutions. However, he did not inform Detective Sergeant Connolly on the 21st of July 1998 of the previous identification by Bernard Conlon of Mark McConnell “because I obviously didn’t think about it. I’d forgotten about it or whatever ... there was no Garda file on it at that stage ... some of the people weren’t approached until September.”²⁵⁸

²⁵⁵ Transcript, Day 356, Q.456-478.

²⁵⁶ Tribunal Documents, pages 2850-2865 and 2924-2930.

²⁵⁷ Tribunal Documents, pages 1951 to 1953.

²⁵⁸ Transcript, Day 349, Q.524-628.

- 3.41. I am satisfied that on the 21st of July 1998, Detective Sergeant White and Superintendent Lennon were both aware that Bernard Conlon had previously identified Mark McConnell arising out of the incident on the 26th of May 1998. I accept the evidence of Garda Eamonn Doherty in that regard. Superintendent Lennon did not dispute that evidence because he said he had no recollection of the occasion. Detective Sergeant White denied that he was present on the occasion. I reject his evidence in this regard. Both witnesses were in a position to inform Detective Sergeant Connolly of Mr. Conlon's complete familiarity with the appearance of Mark McConnell on the 21st of July 1998. They failed to do so. Instead Superintendent Lennon referred Detective Sergeant Connolly on to Detective Sergeant White as a person who would know Mark McConnell and who would be in a position to set up an informal identification procedure which Mr. Conlon could then attend in order to identify the culprit.
- 3.42. It would appear that the summonses in relation to the 26th of May were first mentioned in the District Court at Letterkenny on the 7th and 12th of December 1998. The District Judge presiding indicated that he would not hear these summonses as the evidence in relation to them might touch upon matters which he had overheard while sitting in court. He, therefore, disqualified himself from hearing these summonses and arranged for a special sitting by another District Judge to hear the matter. These summonses appear only to have been mentioned on these dates and not to have been in the list for hearing. The summons against Mr. McConnell in its body suggests that it is returnable to the 26th of November 1998 but in the court planner it is noted as having been issued for Letterkenny District Court on the 21st of January 1999. It would appear that one of the claims for witness expenses signed by Detective Sergeant White was said to be in respect of the attendance of Bernard Conlon for a case against Mark McConnell brought under the Criminal Justice (Public Order) Act, 1994. It seems likely that Superintendent Lennon and Detective Sergeant White were both aware of these cases from their direct involvement in the District Court proceedings.²⁵⁹

The Allegedly Missing Document Issue

- 3.43. Detective Sergeant White not only disavowed any knowledge of the prior identification by Bernard Conlon of Mark McConnell on the 26th of May, but maintained that Bernard Conlon's statement in relation to that event had been withheld from him and his solicitors in the course of the preparation for his criminal trial on charges related to these events. This is a shocking allegation to make. The Tribunal now needs to dispose of it.

²⁵⁹ Tribunal Documents, pages 2865, 2930, and 729.

The Tribunal has been furnished with correspondence between Mr. Dorrian, solicitor to Detective Sergeant White, and the Chief State Solicitor on behalf of the Director of Public Prosecutions and the Carty team who investigated the matter relating to the question of disclosure and, in particular, the disclosure of Bernard Conlon's statement of the 26th of May 1998.²⁶⁰ From that correspondence it is clear to me that a request was made to the Chief State Solicitor for a:

Statement made to Garda Eamonn Doherty regarding abuse and threats from members of the McBrearty family at Letterkenny Courthouse in 1998, which resulted in criminal charges being brought.²⁶¹

This became known as "item 5" in the course of correspondence and at the Tribunal. A letter was sent to the superintendent at Letterkenny on the 11th of August 2003 by Superintendent Coll attaching the letter of request from Mr. Dorrian and requesting that attention be given to item no. 5.²⁶² In a letter of the 30th of December 2003 from Superintendent Coll, the Chief State Solicitor was informed that all the statements and memos of Bernard Conlon taken during Assistant Commissioner Carty's investigation were to be found as part of a folder of disclosure material itemised in the letter.²⁶³ In the same letter, Superintendent Coll indicated that item 5 had been requested from the superintendent in Letterkenny. In March 2004, Mr. Dorrian was informed by the Chief State Solicitor that all statements and memoranda of interview with Bernard Conlon taken during the Carty investigation were available for inspection at Monaghan Garda Station and that item no. 5 had been requested from the superintendent in Letterkenny. On the 3rd of August 2004 Mr. Dorrian was informed by the Office of the Director of Public Prosecutions that item 5 was available for inspection at Monaghan Garda Station. It is clear from the evidence that the statement of Bernard Conlon was enclosed in a folder of disclosure material to the Chief State Solicitor and was ultimately shown to Mr. Dorrian and Detective Sergeant White when they attended at Monaghan Garda Station on the 13th of September 2004.²⁶⁴ Evidence was received by the Tribunal in relation to the contention that an effort was made to hide the statement of Bernard Conlon by the Carty team members, Superintendent Coll, Detective Garda Eddie Whelan and Sergeant Denise Flynn from Mr. Páid Dorrian, solicitor, and Detective Sergeant White.

- 3.44.** Detective Sergeant White and Mr. Dorrian point correctly to the fact that the statement of the 26th of May was omitted from the list of documents which constituted Appendix No. 65 of the Carty report containing the statements and memos of interview with Bernard Conlon furnished as part of the Carty report to

²⁶⁰ Tribunal Documents, pages 3236-3290.

²⁶¹ Tribunal Documents, page 3240.

²⁶² Tribunal Documents, page 3246.

²⁶³ Tribunal Documents, page 3250.

²⁶⁴ The Minutes of this meeting are at Tribunal Documents, pages 3260 to 3261.

the Commissioner. It was also submitted to the Director of Public Prosecutions in or around July 2000. It would appear that this statement was omitted in error from the list. It was also submitted to the Tribunal and put to Detective Garda Whelan, that the only reason that Detective Sergeant White became aware of the existence of this statement was because of a reference in a memo of interview taken from Bernard Conlon by Detective Sergeant Fox, who had found a copy of the statement of the 26th of May in a search of Bernard Conlon's house. In a memo of interview of the 29th of January the statement was produced to Bernard Conlon by Detective Sergeant Fox and Detective Garda Maloney and Mr. Conlon acknowledged the truth of the facts set out in the statement.²⁶⁵

- 3.45. I note that there is no reference in the notes of that interview to the fact that the statement was made to Garda Doherty or that it resulted in criminal charges being brought as set out in Mr. Dorrian's letter of the 30th of April 2003. However, it was contended that the importance of this document only became apparent after the first disclosure from the Director of Public Prosecutions containing this memo in January 2003.²⁶⁶ This contention cannot be true having regard to the main statement made by Bernard Conlon from the 15th to the 18th of February 2000, which had been served as part of a book of evidence in 2002 and in which Mr. Conlon said:

When the McBreartys realised who I was they became very abusive to me. Outside the courthouse and inside the courthouse door they would verbally abuse and threaten me. This would happen both in Donegal town and Letterkenny. I always reported it to Sergeant White. He'd advise me to report it and make a statement about it. I made two statements about it to Garda Eamonn Doherty and one in Donegal town. I was abused on other occasions as well but I made no complaint about it. John White told me I should see a solicitor and take a civil action against the McBreartys for the abuse they were giving me.²⁶⁷

- 3.46. Consequently, I find it inconceivable that Detective Sergeant White and Mr. Dorrian, his solicitor, could not have been aware of the existence of the statement made by Bernard Conlon to Garda Doherty concerning abuse by the McBreartys, following the service of the Book of Evidence. Further information was made available upon disclosure in January 2003 when the Fox memorandum was disclosed. Therefore, they were on full notice of the existence of the statement. It was not hidden from them. It was inevitable that they would have sight of it upon full disclosure, which occurred in Monaghan, as described to me by Detective Garda Whelan and Sergeant Flynn. I regard the elaborate effort made by Detective

²⁶⁵ Tribunal Documents, page 168.

²⁶⁶ Transcript, Day 370, Q.194-200.

²⁶⁷ Tribunal Documents, pages 206-207.

Sergeant White and Mr. Dorrian to suggest that there was any attempt on the part of Superintendent Coll, Detective Garda Whelan or Sergeant Flynn or any other Garda involved in the investigation of this matter, to conceal the existence of this statement from Detective Sergeant White at any stage, to be utterly contrived and mischievous. To my mind, it was an attempt to distract from the fact, of which I am satisfied, that Detective Sergeant White was fully aware of the previous identification of Mark McConnell by Bernard Conlon when he was first invited to assist Detective Sergeant Connolly in the investigation of the silver bullet threat on the 21st of July 1998. I am further satisfied that at that time, Detective Sergeant White was happy to encourage Detective Sergeant Connolly in his investigation against Mark McConnell. It would involve further trouble to the extended McBrearty family, of which Mr. McConnell was a part, at a time when that family was raising issues concerning members of An Garda Síochána, including Detective Sergeant White, who had been involved in the investigation into the death of the Late Mr. Barron, and in numerous prosecutions against the McBrearty family arising out of the policing of Raphoe. This had resulted in a multitude of complaints against members of An Garda Síochána (including Detective Sergeant White). A very serious complaint had also been made by Mrs. Roisín McConnell concerning how she was treated by Detective Sergeant White whilst detained on the 4th of December 1996. There was also, at that time, increasing interest and concern expressed by politicians concerning policing in Raphoe and in responsible and professionally forthright correspondence by Mr. Ken Smyth, solicitor on behalf of the McBrearty family.

The Identification and Arrest of Mark McConnell

- 3.47. The investigation carried out by Detective Sergeant Connolly focussed on the identification of the two men who had supposedly attended at Mr. Conlon's house and threatened him and Detective Sergeant White. Superintendent Lennon suggested that he contact Detective Sergeant White who had been a sergeant in Raphoe and knew the McBreartys, their relations and friends by reason of his service there, and could arrange an informal identification procedure. He contacted Detective Sergeant White and relayed the descriptions of both culprits to him. He told him that Superintendent Lennon had suggested that one of those described "sounded like" Mark McConnell. Detective Sergeant White agreed that "it could be him." Strangely, Detective Sergeant Connolly did not take any steps to alert Detective Sergeant White to the fact that he had been threatened by the two men. That aspect of the threat was not discussed by them.

At this time, Detective Sergeant Connolly was fully aware that Mark McConnell was a nephew of Frank McBrearty Senior, who had been wrongly arrested along with Frank McBrearty Junior in December 1996 on suspicion of the murder of the Late Richard Barron, and subsequently re-arrested in respect of the same matter in June 1997. He asked Detective Sergeant White to assist him in arranging an occasion in some public area where there could be a number of people present to afford Mr. Conlon an opportunity of making an identification of Mr. McConnell, if that were possible. He thought that this would probably be easy to achieve given that Mr. McConnell played in a band. He anticipated that it might take place at a hall or in a large lounge where the opportunity for such an exercise would be good.

- 3.48.** Detective Sergeant Connolly waited for Detective Sergeant White to get back to him with a suitable venue and time for the carrying out of such a procedure. Detective Sergeant White told him to leave the matter with him. At one stage, Detective Sergeant White told him that he had a problem locating a venue for the band as they played north and south of the border. The informal identification process did not take place until the 1st of October 1998 outside Letterkenny courthouse. About a week prior to the 1st of October, Detective Sergeant White contacted Detective Sergeant Connolly and told him that Mark McConnell was due to attend Letterkenny District Court as a State witness in an assault case on the 1st of October. He thought that this would be an ideal opportunity to hold an informal identification procedure.
- 3.49.** Detective Sergeant Connolly then went to speak with Mr. Conlon to enquire about his availability on the 1st of October. He informed Mr. Conlon that he intended holding an informal identification parade on that date. He also told him that if there were an informal identification parade that there might also be a formal parade that day or even the following day. He would have to be available for a number of days from the 1st to the 2nd of October. Mr. Conlon agreed to make himself available.
- 3.50.** Detective Sergeant Connolly then contacted Detective Sergeant White and confirmed that they would attend on the morning of the 1st of October at the courthouse. He had several discussions with Detective Sergeant White about the matter and informed him that in the event of Mr. McConnell being identified, he intended to arrest Mr. McConnell and convey him to Letterkenny Garda Station. He asked whether he would have assistance in relation to the interviewing of Mr. McConnell during the course of his detention. Detective Sergeant White told him that there would be plenty of assistance at Letterkenny Station. Detective Sergeant Connolly asked Detective Sergeant White about the location of the

courthouse in Letterkenny. He told him that they would be up in Letterkenny for breakfast and that they intended to be there early. Detective Sergeant White said that he was going to court that morning also and that he would show them where the courthouse was as he would be coming to work, and he suggested a restaurant at which he would meet them. Detective Sergeant White would then bring them to the courthouse. A meeting was arranged for 09.30 hours approximately.²⁶⁸

3.51. Prior to going to Letterkenny on the 1st of October 1998, Bernard Conlon said that he had been contacted by Detective Sergeant White who said that he had made a good statement “that it was a good sticking statement”. He said he would get on to the Sligo men about it and get a file sent up to Letterkenny. Detective Sergeant White used to phone Mr. Conlon at that time. In one of these phone calls Detective Sergeant White told him there was going to be an identification parade the following day and that Mark McConnell was going to be arrested. He realised that Mark McConnell was going to be arrested if he identified him. He knew when he went to Letterkenny that Mark McConnell would be there and that he was the man he had to identify that morning.²⁶⁹ In this regard, Mr. Conlon’s evidence seemed to vary in relation to how he was contacted by Detective Sergeant White and is clearly not to be relied upon. At one point, he suggested that he was visited in his home by Detective Sergeant White, and on another occasion that he was telephoned on more than one occasion between the 20th of July 1998 and the 1st of October 1998 by Detective Sergeant White, and on yet another occasion that he may have spoken to him on one of numerous visits to the District Court during this period. However, it is clear that there were no occasions requiring Mr. Conlon’s attendance at the District Court during this period.²⁷⁰

3.52. Bernard Conlon, in evidence to the Tribunal, said that after he had made the statement to Detective Garda Reynolds he was in contact with Detective Sergeant White by telephone, or he might have come down to his house. He then said that at approximately 14.30 hours or 15.00 hours on the 30th of September 1998, Detective Sergeant Connolly invited him to accompany him to Letterkenny the following morning as he might be able to identify the person who had been at his home. He travelled to Letterkenny with Detective Sergeant Connolly and Detective Garda Reynolds and they stopped at a restaurant on the way. Detective Sergeant White was in the restaurant and he had a paper. He saw them arrive. They sat down and then Detective Sergeant Connolly got up and went over to talk to Detective Sergeant White, leaving Detective Garda Reynolds with Bernard Conlon having their refreshments at a nearby table. Detective Sergeant Connolly

²⁶⁸ Transcript, Day 344, Q.403-435.

²⁶⁹ Transcript, Day 331, Q.567-584.

²⁷⁰ Transcript, Day 331, Q.509, Q.523, Q.528 and Q.580.

showed a file in his possession to Detective Sergeant White, who read it. They then left the restaurant. Detective Sergeant White travelled to the Garda Station in his car and they followed in an unmarked car. They picked up Detective Sergeant White outside the station and went to the back of the courthouse in Letterkenny. Detective Sergeant White, after a few minutes, left the scene. The three then got out of the car and headed towards the courthouse. Mr. Conlon was then asked whether he knew anybody coming up the street towards the courthouse. He identified Mark McConnell. Detective Sergeant Connolly then went over and arrested Mark McConnell. Bernard Conlon then went with Detective Garda Reynolds to Letterkenny Garda Station.²⁷¹

- 3.53.** Detective Sergeant White denies that he had regular contact with Mr. Conlon. He also denies that he visited Mr. Conlon's house in September 1998. He agrees that he met with Inspector Connolly, Detective Garda Reynolds and Bernard Conlon on the morning of the 1st of October 1998. This meeting had been arranged by Inspector Connolly because he did not know the location of the courthouse in Letterkenny and required advice as to the best vantage point from which to carry out an identification procedure of persons approaching the courthouse. He said that they drove to the car park opposite the courthouse where he waited for a minute or two and then returned to Letterkenny Garda Station. All are agreed that Detective Sergeant White was not present at the time of the identification and the arrest of Mark McConnell.²⁷²
- 3.54.** Detective Sergeant White, in evidence to the Tribunal, confirmed that he had not been told of the threat made against him on the 20th of July 1998 until some considerable time after, but he could not recall when. It was not a matter of any importance to him. He did not take it seriously. However, he agreed that he was contacted shortly after the event by Detective Sergeant Connolly for the purpose of arranging a suitable place for an informal identification parade. He did not know much about the band that Mr. McConnell played in or where he might otherwise be found working as a painter. He told Detective Sergeant Connolly that he would do his best but there was nobody he could approach to enquire as to where Mr. McConnell was playing next. He told Detective Sergeant Connolly that he would have difficulty in doing it quickly; he put it on the long finger to a certain degree because of the possibility of further potential entanglement with the McBreartys resulting in a further complaint.²⁷³
- 3.55.** However, Detective Sergeant White told the Tribunal that he had a habit of taking on more than he could do: therefore he became involved.²⁷⁴ It may be that this delay was not of any great significance. However, it had the consequence that

²⁷¹ Transcript, Day 331, Q.508-518.

²⁷² Tribunal Documents, page 2085.

²⁷³ Transcript, Day 356, Q.373-393.

²⁷⁴ Transcript, Day 356, Q.392.

Mr. McConnell was not afforded an opportunity at the earliest possible stage of trying to recollect where he was on the evening of the 20th of July 1998, which would have been of enormous benefit to him and, indeed, to the investigation. This delay takes on a more sinister aspect when one considers that Bernard Conlon, Detective Sergeant White and Superintendent Lennon all knew at that stage that Bernard Conlon had previously identified Mark McConnell by name on the 26th of May 1996 to Garda Eamonn Doherty. Though they knew this they chose not to say so to Detective Sergeant Connolly. This conduct by them towards a fellow Garda is appalling. They were happy enough to see Mark McConnell placed under suspicion, which would have serious consequences for him and would be extremely troubling and worrying to his and to the extended McBrearty family.

- 3.56. Bernard Conlon described to the Tribunal how he identified Mark McConnell outside Letterkenny courthouse and was then taken away by Detective Garda Reynolds to Letterkenny Garda Station. They went to the public area and then to the canteen where they had a cup of coffee and then Mr. Conlon went down the town for a walk. He then hung around the Garda Station yard and spoke with the odd Garda coming and going from the station. At this stage, he claimed that he met Detective Sergeant White. He told the Tribunal that he felt low in himself about the arrest of Mark McConnell. He was asked why he did not at that stage call a halt to the escapade. He said:

Well at that stage I couldn't, do you know, because as I met Sergeant White out in the yard that day ... he was talking to me and he says to me, stick to your guns, that was a great thing of his, stick to your guns, Detective Garda Conlon. McBrearty, Frank McBrearty and I think the young lad was down at the end of the road at the Garda station and he says, look at auld Frankie looking up at me, you know. He says take no ... he hates to see me talking to you like, you know. So he went away. He said then he couldn't be seen talking to me too much.²⁷⁵

Detective Sergeant White denied that he had any such conversation in the station yard with Bernard Conlon.²⁷⁶

- 3.57. Mr. Conlon then had dinner in the canteen with Detective Garda Reynolds. He asked Detective Garda Reynolds whether he could go over to visit Mrs. Mary McGranaghan in Raphoe to have a chat with her. Detective Garda Reynolds, who had little else to do, drove him over to Raphoe in an unmarked Garda car. He waited outside while Mr. Conlon visited Mrs. McGranaghan, who gave him tea. He thought that he told Mrs. McGranaghan that Mark McConnell had been

²⁷⁵ Transcript, Day 331, Q.544-549.

²⁷⁶ Transcript, Day 356, Q.530-552.

arrested.²⁷⁷ They then returned to the station and he walked around the Garda station yard again and had yet another meal. While he was at the station a Garda, who brought him from Ballybofey to Letterkenny on one occasion, came to him and asked him whether his identification was correct. He replied to him that it was and the Garda said, “We’ve nothing to worry about then.”²⁷⁸ He was later left home at Cartron Bay in the Garda car by Detective Sergeant Connolly and Detective Garda Reynolds at about 21.30 to 22.00 hours.

Analysis

- 3.58. I regard it as a curious feature concerning these events that following Mr. Conlon’s complaint in July 1998 very few steps were taken to ensure his safety or to move with alacrity to deal with the alleged intimidation of State witnesses involving the threat to him and a Garda Sergeant. There was a considerable delay in taking any practical steps in the investigation until the 1st of October 1998. It was also clear from the evidence that more senior officers in Donegal and in Dublin, though clearly aware of the events, showed minimal interest in the matter or how it was investigated. Bernard Conlon made no enquiry as to what was happening. No Garda went to tell him how the matter was being addressed. Detective Sergeant White said that he did not take the matter seriously.
- 3.59. Mr. Conlon displayed no reluctance to attend court on subsequent occasions. He had no difficulty in making a statement or going to Letterkenny Garda Station to identify a suspect. When he did identify Mr. McConnell he was told by Detective Sergeant Connolly to stay back during the arrest. He contravened that sensible direction. Detective Sergeant Connolly described this scene to the Tribunal. He told Mr. Conlon to remain on the far side of the road for his own safety, as he was concerned that something might happen to him during the course of the arrest. At one stage he looked around and Mr. Conlon was standing right behind him. He was in a very excitable state. He told him again to go back across the road because he was concerned about him. He could not believe that he had come up behind him whilst he was arresting Mr. McConnell. He thought it was odd that somebody who had informally identified another, whom he alleged had threatened him with a bullet, and put him in fear, would approach him in this way. He would have expected Mr. Conlon to be more concerned for his own safety and to be concerned about having to confront or point out a suspect. Most people would be concerned to leave the scene once they had carried out the identification.²⁷⁹ Mr. Conlon then waited around the Garda station for the purpose of participating in a more formal identification parade should that be held. In the event, it was not but he

²⁷⁷ Transcript, Day 331, Q.518-520 and Q.551-556.

²⁷⁸ Transcript, Day 331, Q.519.

²⁷⁹ Transcript, Day 344, Q.499-508.

had no fear in doing so. It might perhaps indicate exceptional valour: but that was not in keeping with the character of Mr. Conlon.

- 3.60. A further curious aspect of these events is the fact that a claim for expenses was made on behalf of Mr. Conlon for his attendance at this informal identification process by Detective Sergeant Connolly. Unbeknownst to Detective Sergeant Connolly, this claim included one of the forged certificates in terms of loss of earnings which has been dealt with in Chapter 2 and also a small but unsustainable claim for a bus ticket paid on his behalf by Detective Sergeant Connolly. Of course Mr. Conlon was not entitled to such a claim since he was driven to and from Letterkenny by the Gardaí. However, it is not so much the amount but the reason for the making of this inflated claim that is of interest. Detective Sergeant Connolly said he made this claim wrongfully on behalf of Mr. Conlon because, “it was probably ... to keep him right for us in relation to both the identification parade and maybe a subsequent court case, if any.”²⁸⁰ One might have thought it would be unnecessary for the Gardaí to have to keep Mr. Conlon “right” in this way. The bogus certificate of earnings for this trip also seems to have been submitted for this purpose (though not by Detective Sergeant Connolly who was innocent of any involvement with that certificate). **It seems to me that if Mr. Conlon had been a victim of intimidation and the Gardaí were taking steps to ensure that the culprits were brought to justice and the threat removed, he would be only too delighted to assist in that process without carping on about expenses to which he was not entitled. On this occasion at least, whatever about the other certificates, the query might have reasonably been raised as to why he needed to be kept “right” in this regard, if he were truly a victim.**
- 3.61. **Detective Sergeant White told the Tribunal that in October 1998 some Gardaí in Letterkenny, including himself, had difficulty in believing that the silver bullet threat had actually occurred.** There was a feeling abroad in the station that the event was a bit unusual and he thought it was unlikely to have happened. However, he said that Detective Sergeant Connolly seemed to be quite certain from his dealings with Bernard Conlon that it had happened. However, if some person is going to arrest another “you just leave them to their own devices” and keep your doubts to yourself. He did not take the threat as purportedly made against him seriously.²⁸¹ **If that was his view, he certainly never conveyed it to Detective Sergeant Connolly at that stage. The Tribunal does not accept that this was his view at the time. It is a convenient pose for Detective Sergeant White to adopt at this juncture.**
- 3.62. At the time of Mark McConnell’s arrest there were some grounds for doubting

²⁸⁰ Transcript, Day 344, Q.452.

²⁸¹ Transcript, Day 356, Q.440-450.

the veracity of the complaint made. However, I do not believe that Detective Sergeant Connolly in arresting Mark McConnell acted in any way maliciously. He did so in the belief that Bernard Conlon was telling the truth, and also in circumstances where his attitude towards Mark McConnell and other members of the McBrearty family was perhaps coloured by what he had selectively been told of the history of events in Donegal, and the perception that undoubtedly existed in Sligo in the light of that history that this was the type of thing that Mr. McConnell might be involved in. Indeed, Detective Sergeant Connolly was effectively pointed in the direction of Mark McConnell by Detective Sergeant White and Superintendent Lennon. If Detective Sergeant White thought the occurrence unlikely, he kept this firmly to himself, together with the fact that Bernard Conlon had been used as his agent in respect of the District Court case in which he was a witness, and the fact that Mr. McConnell was well known to Bernard Conlon as a result of the incident of the 26th of May 1998.

- 3.63. It is clear that at the time of the arrest of Mr. McConnell, Detective Sergeant Connolly knew of the extensive criminal convictions of Bernard Conlon and indeed had forwarded a copy of these convictions to Superintendent Lennon some days after the 21st of July 1998. The Tribunal has also received evidence from a number of Gardaí in Sligo to the effect that they knew well that Mr. Conlon's word was not to be trusted and that he was a criminal. These included Garda John Nicholson and then Inspector Bernard Lyden. Mr. McConnell had merely guessed that this was so but the Gardaí in Donegal and in Sligo knew it to be so. However, a criminal can be, and often is, the victim of a crime. Ultimately in December 1998 Superintendent Lennon said that he decided not to use Bernard Conlon as a witness in the District Court prosecution because of his previous convictions.

The Detention of Mark McConnell

- 3.64. Meanwhile, the unfortunate Mr. McConnell had been arrested under Section 30 of the Offences Against the State Act, 1939 and was brought to Letterkenny Garda Station where he was detained and interviewed. There was some difficulty for Detective Sergeant Connolly in getting the cooperation of Gardaí at Letterkenny Station to interview Mark McConnell. This fact was confirmed by Detective Sergeant White who said that they did not wish to get involved with Mark McConnell for fear of some complaint being made by him against them. Some Gardaí at Letterkenny had a bit of a laugh about this amongst themselves, apparently related to the Garda Complaints Board.²⁸² Detective Sergeant White

²⁸² Transcript, Day 356, Q.451-455.

said that he was involved in the detention in that he made out lists of members to interview Mr. McConnell. He agreed with Detective Sergeant Connolly that there was not a great deal of assistance or enthusiasm in Letterkenny station on the part of Gardaí to conduct the interviews.²⁸³

3.65. Mark McConnell was detained following his arrest at 11.07 hours on the 1st of October 1998 until his release at 11.00 hours on the 3rd of October 1998. He was interrogated during that period by teams of Gardaí in relation to the allegations made against him by Bernard Conlon. As already mentioned, in the course of these interviews he made allegations against Detective Sergeant White, Superintendent Lennon and Garda O'Dowd to the effect that they were behind the Bernard Conlon allegations. The Tribunal accepts that as a statement of his belief but, of course, since it is a matter only of his opinion, it cannot be relied upon as evidence in support of that allegation. However, Mark McConnell made a number of pertinent points to his interrogators. He suggested to them that Bernard Conlon was lying and that they should enquire into his criminal convictions and background. At one point, he said he had seen him at the District Court in May 1998 (which is likely a reference to the 26th of May 1998). He gave an account of his movements over the previous seven days during which he had been on tour with the band of which he was a member down the country. On the Sunday night they played in Cookstown, Co. Tyrone. His return home had been delayed by a terrorist incident at Cookstown and he believed that he arrived home at approximately 07.00 hours on the morning of the 20th of July 1998. He had no clear memory of his movements on the evening of the 20th of July. He thought it unlikely that he had been out and believed that he had been with his wife that evening but he does not appear to have been entirely clear about this. He was justifiably angry at the fact that he had been arrested and interrogated in relation to this matter.²⁸⁴

3.66. Mr. McConnell, on the official records of his detention, made a complaint that he had been assaulted by Detective Garda Joseph Foley at 14.05 hours on the 1st of October 1998. He alleged that he had been struck on the shoulder. He was asked by the member in charge if he required a doctor and said that he did not. However, a Dr. McColgan was brought to the station but, in the presence of Detective Garda Reynolds, Mr. McConnell declined to be examined. The interview notes at this point record what happened as follows:

At 4.25pm Dr. B. McColgan accompanied by Garda John Rouse enters the interview room and is introduced by a member in charge to Mr. McConnell. Garda Rouse informs the prisoner that he has made a complaint and that he was assaulted and now the doctor is here to

²⁸³ Transcript, Day 356, Q.446-449.

²⁸⁴ Tribunal Documents, pages 594-634 and pages 655-673.

examine him. Detective Sergeant Connolly leaves the room. Mr. McConnell says he made no complaint and that it was all a joke. I have no injuries only an old scar on my leg. He lifts up his trousers and shows the scar to the doctor. Mark McConnell stated that I told my solicitor that it was a joke. He then told Garda Rouse that Detective Garda Foley had tapped him on the shoulder yesterday. Dr. McColgan made notes and leaves the interview room at 4.33 pm. Mark then says I hope there is not a complaint lodged, it's all a joke. He goes to day room for telephone call.²⁸⁵

Though it is said in the notes that the notes were read over and acknowledged as correct by Mr. McConnell, he declined to sign them. The Tribunal notes that Mr. McConnell received a number of visits from members of his family and his solicitor during the course of his detention. This allegation was not pursued by Mr. McConnell and the Tribunal concludes that any suggestion of a complaint was withdrawn within twenty-four hours of its making.

- 3.67. A second complaint of this kind was made by Mr. McConnell against Detective Garda Michael Reynolds in a written complaint made by him and furnished to the Garda Complaints Board on the 25th of January 1999. He said:

Garda Reynolds went as far as to throw my leg off a chair which I had it on because earlier that year I had broken the leg and had to keep it up in the event of it swelling. This caused me great pain and it was obvious that he had done this because I would not sign a statement of guilt which he had prepared. He then got very angry and said that I was wasting his good golfing time which was precious to him. He said that he didn't care if I was innocent or guilty but just to sign the statement so that he could get away to play golf.²⁸⁶

In the course of his evidence to the Tribunal Detective Garda Reynolds denied this allegation and gave this account of the matter:

*Mr. McConnell had his foot up, he was sitting across the table from us and he had his foot left right up in front of us, ... up on the bench and I requested him to take down his foot and that's all. Nothing happened beyond that.*²⁸⁷

The Tribunal notes that no complaints of which it is aware concerning this matter were made to Mr. McConnell's solicitor by him at the time of his detention, and it is recorded that he made no complaint at the time of his release. Of course, this is not always definitive of there being no grounds for such a complaint. No

²⁸⁵ Tribunal Document, pages 607-608.

²⁸⁶ Tribunal Documents, pages 630-631 and 633.

²⁸⁷ Transcript, Day 337, Q.522.

evidence has been given to date by Mr. McConnell in respect of any of his detentions, but it is hoped that this will change in the future. The Tribunal is not in a position to take his complaint any further and no criticism can be made of Detective Garda Reynolds relating to it. In this regard, I wish to refer again to the fact that Mr. McConnell was requested by letter to furnish any relevant evidence which he could give to the Tribunal on this module. Had he responded positively to it, any such evidence would have been called.²⁸⁸

Identification of Michael Peoples

- 3.68. Bernard Conlon purported to identify Michael Peoples as one of the two men who had called to his house at 61 Cartron Bay on the evening of the 20th of July 1998. This purported identification was of the second male who threatened him on that occasion. In his original statement he described this man as follows:

Between 29 years and 30 years and somewhat taller about 5 foot 9 inches having black hair cut tight. He wore blue jeans and shoes and a shirt with no collar which I describe as a grandfather shirt. He also wore a leather jacket which was zipped up half way. He kept his hands in his pockets of the jacket and stared me straight into the eyes. He wore an ordinary pair of shoes ... he had a stud earring in one of his ears ... I never saw this guy before but I feel that I would recognise him again if I saw him.²⁸⁹

- 3.69. Bernard Conlon told the Tribunal that on the morning of the 8th of December 1998 he attended the District Court at Letterkenny where he met Detective Sergeant White in the foyer outside the District Court. Detective Sergeant White told him to identify Michael Peoples to Sergeant Sarah Hargadon. Detective Sergeant White told him that Michael Peoples was in court. He also told Bernard Conlon also to say that every time he looked over at Michael Peoples, Mr. Peoples attempted to disguise himself. How he is supposed to have done this, one can only imagine. Mr. Conlon went into the courtroom and sat down. Detective Sergeant White whispered to him and pointed out Michael Peoples. However, he did not point Mr. Peoples out to Sergeant Hargadon. There was another Garda sitting beside him and he identified Mr. Peoples to that member. Detective Sergeant White was in and out of the courtroom and was speaking to Sergeant Hargadon. The Garda to whom he had identified Mr. Peoples was Garda Tom Ward, who approached him and asked him to make himself available at the lunch break to go to Letterkenny Garda Station where he made a statement concerning his identification of Michael Peoples as one of the two men who had threatened him.
- 3.70. Bernard Conlon had previously described this episode in a statement of the 15th to the 18th of February 2000 in which he said:

²⁸⁸ Tribunal letters of the 28th September 2005 and 11th of October 2005 to Mark McConnell and see Transcript, Day 377, page 62.

²⁸⁹ Tribunal Documents, page 120.

In early December I was attending Letterkenny District Court, I was sitting in the court and John White came over and sat down beside me. He said that's Peoples (Pimples). I said I know. He had his arm in a plaster as far as I can recall. White told me to identify him to the Ban Gharda. He called her Sarah. She took over in Raphoe when he was transferred. She was sitting up beside the Judge. John White moved away. After a few minutes I got up, there was a Guard sitting near me and I approached him. I told the Guard there was a fellow over there with his arm in a plaster that was at my home and the Guard looked over at him. I told him the Sligo Guards would be looking to interview him. The Guard got up and went up to speak to Sergeant White. He came back down and sat beside me. I saw Sergeant White talking to Sarah. I then saw her looking at Pimples (Peoples). I had seen (Pimples) Peoples in court previously but I hadn't intended to identify him until I was prompted by Sergeant White. I was unhappy about the whole thing, it was playing on my mind. The only reason I did it was because I was paid to do it. I didn't want to fall out with John White.²⁹⁰

Sergeant Hargadon and Detective Sergeant White

- 3.71. Sergeant Hargadon recalled sitting in the jury box in the District Court on the 8th of December and had a "vague recollection" of being told by Detective Sergeant White of the identification of Michael Peoples by Bernard Conlon sometime before lunchtime. At the time she was seated in the jury box and Detective Sergeant White approached and sat down beside her to tell her of this identification.²⁹¹ Initially, Detective Sergeant White challenged Sergeant Hargadon's evidence by suggesting this encounter did not take place in the jury box or in the courthouse before lunchtime. However, it was accepted that he may have had a conversation about this identification after the sitting of the court.²⁹² It had been suggested to Bernard Conlon that his evidence about Detective Sergeant White approaching Sergeant Hargadon was completely untrue, as was his evidence that Detective Sergeant White ever requested him to identify Michael Peoples or had anything to do with the identification of Michael Peoples.²⁹³
- 3.72. In evidence, Detective Sergeant White accepted the likelihood of a conversation with Sergeant Hargadon concerning this identification of Michael Peoples. He maintained that it did not take place when the court was in session. However, he now said that he may have left the front bench in which he had been sitting and walked around to where Sergeant Hargadon was sitting in the jury box and told

²⁹⁰ Tribunal Document, pages 200-201.

²⁹¹ Transcript, Day 329, Q.137-178.

²⁹² Transcript, Day 329, Q.475-550.

²⁹³ Transcript, Day 334, Q.538-567 and Tribunal Documents, page 2086.

her that Bernard Conlon had picked out Mr. Peoples. Sergeant Hargadon had been cross-examined at length to the effect that this conversation had never taken place in the jury box or in the courthouse but that the matter may have arisen in general conversation afterwards. Her cross-examination extended to the proposition that she was “creating a situation”.²⁹⁴ Though it was maintained in cross-examination that the general matter may have come up in conversation after court, the point made was that Detective Sergeant White had never approached her purposely to inform her about the identification of Michael Peoples.²⁹⁵ Sergeant Hargadon’s evidence in this regard tended to support Bernard Conlon’s description of movements within the courtroom after his identification. In this context, I find it strange that considerable effort was made in cross-examination to advance the proposition with her that the conversation had never taken place as she described it and that there was something of a rowing back on this position when evidence was given to the Tribunal. It leads me to the suspicion that Detective Sergeant White sought to discredit Sergeant Hargadon simply because her evidence tended to support an aspect of Mr. Conlon’s story. Detective Sergeant White’s evidence has moved considerably from his previous statement in which he said:

I did not move over in the courtroom and speak to Sarah Hargadon which apparently caused her to look in the direction of Michael Peoples.

At the very least, this did not help the Tribunal to clarify what happened in the courtroom on the 8th of December 1996.²⁹⁶ I am satisfied that Detective Sergeant White approached Sergeant Hargadon and informed her that Michael Peoples had just been identified by Bernard Conlon before lunch on the 8th of December 1998 in the jury box. Detective Sergeant White’s version of these events as put in cross-examination or in evidence is not accepted. On one view, the untruthful versions presented in relation to this incident might indicate a desire on his part to distance himself from an involvement in the silver bullet issue and the identification of Michael Peoples. However, I am not satisfied that the untruths told in respect of this event of themselves constitute sufficient corroboration to justify my acting on Bernard Conlon’s evidence on the broader issue. I find it strange that Detective Sergeant White should instruct his counsel to deny the event as described by Sergeant Hargadon and later hedge his evidence in this matter. This change of emphasis did nothing to enhance his credibility.

3.73. This cross-examination could also be looked at in the light of the statement made by Detective Sergeant White concerning the issue in a letter to the Commissioner

²⁹⁴ Transcript, Day, 329, Q.547.

²⁹⁵ Transcript, Day 329, Q.509-511 and Q.544.

²⁹⁶ Transcript, Day 356, Q.568-592.

of An Garda Síochána dated the 26th of July 2005. He complains of the failure of the Carty team members to interview persons who might have seen him speak to Bernard Conlon, if this had happened, on the 8th of December 1998. However, he also said in relation to Garda Ward and Sergeant Hargadon:

Garda Ward did not speak to me as he, Mr. Conlon, alleges. I did not speak to Sergeant Sarah Hargadon as he alleges and she did not look over at Mr. Peoples following this, as he alleges. Neither Sergeant Hargadon nor Garda Ward agrees with Mr. Conlon in relation to these assertions ...

In the light of the cross-examination conducted on behalf of Detective Sergeant White and Sergeant Hargadon's evidence, the Tribunal does not accept this assertion.²⁹⁷

- 3.74. Detective Sergeant White told the Tribunal that following the identification of Michael Peoples a uniformed Garda approached him and brought it to his notice. He then brought it to Superintendent Lennon's attention, who said that there should be a statement taken and the Gardaí in Sligo should be contacted. Detective Sergeant White told the Garda to do this. However, he was not involved in the taking of this statement though he did learn about it later in the day. He never had any discussion about this identification of Michael Peoples with Bernard Conlon.²⁹⁸
- 3.75. Superintendent Kevin Lennon told the Tribunal that it was generally known in the courtroom by the prosecution team and amongst Gardaí that Mr. Peoples had been identified. He was not sure whether he gave a direction to take a statement or not. He was simply happy that a statement should be taken and sent to Sligo. He knew Michael Peoples was not arrested as a result of the identification. It would not be proper procedure to arrest Michael Peoples in respect of a case committed in another division without the background facts and information concerning the progress of that investigation. Though he knew that Michael Peoples had attended court on prior occasions it did not surprise him at the time that Mr. Conlon had not picked Michael Peoples out prior to this. Neither did it surprise Detective Sergeant White according to Superintendent Lennon.²⁹⁹

Evidence of Garda Thomas Ward

- 3.76. Garda Thomas Ward attended Donegal District Court on the 8th of December 1998. He was there as part of a series of licensing prosecutions which had been brought against Frank McBrearty Senior and others. In evidence to the Tribunal, Garda Ward recalled that there had been a break in the proceedings for about fifteen minutes on the morning of the 8th of December. The District Judge rose and Garda Ward left the courtroom for the duration of this break and returned

²⁹⁷ Tribunal Documents, pages 2119-2120.

²⁹⁸ Transcript, Day 356, Q.592-600.

²⁹⁹ Transcript, Day 348, Q.372-432.

on the resumption of the proceedings until approximately noon. He sat at the rear of the courtroom to the left of the door. Bernard Conlon was seated in a row behind him. Shortly after the proceedings resumed, Bernard Conlon tapped him on the shoulder and pointed out to him a man who was seated across the courtroom on the right hand side. Mr. Conlon informed Garda Ward that this man was one of the two men who had threatened him down in Sligo. At this stage, Garda Ward was aware of the allegations which had been made by Mr. Conlon that a threat had been made to him as a State witness some six months prior to the court hearing in that two men had allegedly called to his house and that a bullet had been produced:

*It would have been mentioned through our job.*³⁰⁰

He said:

*He pointed out this man across the courtroom, who had his left hand bandaged and he was wearing a green shirt and light green jumper, and he indicated to me that this was one of the people who had been down at his house in Sligo and threatened him not to attend court.*³⁰¹

- 3.77. A few moments after receiving this information from Mr. Conlon Garda Ward approached Garda Noel Keavney who was the Garda physically nearest to him.³⁰² He was stationed in Raphoe and Garda Ward thought that he might know the identity of the man who had been pointed out to him by Mr. Conlon. Garda Keavney identified this man to him as Michael Peoples and was able to furnish him with his address. He recorded the time at 12.05 hours. The hearing was continuing at this stage.³⁰³ This was confirmed by Garda Keavney.³⁰⁴
- 3.78. Garda Ward thought that he may have returned to his seat before leaving the actual courtroom, which he did within minutes. He then spoke to Detective Sergeant Sylvester Henry in the foyer outside the courtroom. He said:

I spoke to him about the identification by Mr. Conlon to me of Mr. Peoples. And I was making enquiries did he know who was investigating the matter, basically did he have any knowledge of it. And he informed me that it was members in Sligo Garda Station that were investigating it. And to my recollection he advised me to ask Mr. Conlon to make a statement about it and to forward notice of the identification to Sligo Gardaí ... and to have it forwarded on to Sligo for investigation. ... The court was still sitting ... I asked

³⁰⁰ Transcript, Day 325, Q.1-28.

³⁰¹ Transcript, Day 325, Q.31.

³⁰² Transcript, Day 325, Q.31-64.

³⁰³ Transcript, Day 325, Q.68-73.

³⁰⁴ Transcript, Day 326, Q.96.

*Mr. Conlon would he make a statement, a written statement about his identification of Mr. Peoples to me and he agreed to do so ... I made an arrangement for Mr. Conlon to attend at Letterkenny Garda Station during the court recess for lunch ... to make a statement, which he did. ... I believe the time 1.45, I would have suggested that time.*³⁰⁵

- 3.79. Garda Ward said he was not aware of Mr. Peoples' connection with the McBrearty family. When asked if he was aware of Mr. Peoples' arrest for murder in December of 1996 he replied that:

I believe I had no recollection of it at that time. I don't recollect that ever entering into the equation at the time.

There was some discussion with Garda Ward's colleagues during the lunch break on the 8th of December in that he was trying to find out who was investigating the actual incident so that he could contact them or get the information passed on to them.³⁰⁶

- 3.80. Garda Ward thought Mr. Conlon appeared "fine and relaxed" when he pointed Mr. Peoples out to him in the District Court:

*I didn't notice any terror in him or anything of that nature.*³⁰⁷

He attended at Letterkenny Garda Station as requested at 13.45 hours where he made a statement as follows:

I hereby declare that this statement is true to the best of my knowledge and belief and that I make it knowing that if it is tendered in evidence I will be liable to prosecution if I state in it anything which I knew to be false or do not believe to be true.

On this date, the 8/12/98 I was summonsed to attend court at Letterkenny Courthouse. While I was sitting in the courtroom at 12.05 pm I saw one of the boys that called to my house at 61 Chathrin [sic] Bay about four months ago, he was along with another man who threatened me not to attend Court at Letterkenny. I pointed out this man to a Guard who I now know to be Garda Ward. He is a tall black haired wearing a grey jumper and green shirt and he has a bandage on his left hand. He was sitting over with the McBrearty family in the courthouse. Each time I looked over at him he attempted to disguise himself. I am certain he is one of those men who were down in Sligo at my house. This statement has been read over

³⁰⁵ Transcript, Day 325, Q.73-85.

³⁰⁶ Transcript, Day 325, Q.90-97.

³⁰⁷ Transcript, Day 325, Q.106.

to me and it is correct.

Signed: B. Conlon

Witnessed: Thomas Ward

Date: 8/12/98³⁰⁸

- 3.81. In evidence, Garda Ward was asked about Mr. Peoples' demeanour in the District Court and said:

*He didn't look to have any problems as far as I was concerned. I could not say that he had any concern for anything of that nature anyway, or any other nature.*³⁰⁹

In fact when asked how Mr. Conlon had indicated that Mr. Peoples had apparently attempted to disguise himself when Mr. Conlon had looked over at him, Garda Ward said:

*... He said ... that he would turn away or try and change the appearance of his face ... maybe the movement of his jaw or face, I can't recollect that he ever mentioned covering it with his hand ...*³¹⁰

In any event, Mr. Peoples made no such gesture. This was another lie supposedly suggested by Detective Sergeant White to Mr. Conlon.

- 3.82. Garda Ward told the Tribunal that he made an attempt to contact some member of the investigating team prior to Mr. Conlon's arrival at Letterkenny Station but failed. He believed that he obtained a mobile phone number for one of the investigating members who was off duty with a view to discovering the factual background of the case. He had no indication that there was anything wrong with the statement when it was made to him. He had no doubt at any time that Mr. Conlon was telling him anything other than the truth and he seemed to be genuine in his complaint and in the statement that he made.³¹¹ He did not ask him to outline the facts of what happened in Sligo, only those that had occurred in Letterkenny Courthouse.³¹²
- 3.83. When the statement had been completed by Mr. Conlon Garda Ward read the complete statement back to him and Mr. Conlon agreed that it was correct and signed it.
- 3.84. Following the making of this statement both Garda Ward and Mr. Conlon returned to the District Court. Garda Ward believed that Mr. Peoples was there

³⁰⁸ Tribunal Documents, page 123.

³⁰⁹ Transcript, Day 325, Q.63.

³¹⁰ Transcript, Day 325, Q.123-125.

³¹¹ Transcript, Day 325, Q.112-115, Q.117, Q.123-134.

³¹² Transcript, Day 325, Q.118.

also. He believed that he may have told Mr. Conlon how he intended to deal with the matter, by sending the statement to Sligo for further investigation. However, Mr. Conlon did not allege that he was in any fear or that he would like something more done about the statement which he had made.³¹³

3.85. The District Court hearing concluded at 17.50 hours approximately on the afternoon of the 8th of December 1998. Garda Ward returned to Ballybofey Garda Station after court. He typed up Mr. Conlon's statement and his own statement of evidence and forwarded it through the sergeant in charge of Ballybofey Station to Letterkenny Garda Station. From there, he presumed that it was forwarded to Sligo for further investigation in the normal way. He presumed it arrived by post at Letterkenny, probably on the 10th of December 1998. He never spoke to any investigating officer in Sligo afterwards concerning this statement.³¹⁴

3.86. Garda Ward was satisfied that he was spoken to by somebody who emphasised the importance of dealing with the statement promptly to him during the course of the 8th of December 1998. He could only specifically identify Garda Keavney and Detective Sergeant Henry as persons with whom he had spoken. He said:

*I would try and deal with everything as promptly as I can. But to have everything dealt with on the same particular day I would not say that is the general way I would deal with it. But somebody obviously emphasised to me to have it dealt with promptly, but I haven't a recollection of who that particular individual was and ... I have thought about that since, but I haven't come up with the answer.*³¹⁵

3.87. In cross-examination on behalf of Inspector Connolly it was suggested that Garda Ward had contacted Inspector Connolly on the 8th of December 1998 by telephone and informed him that Bernard Conlon had identified Michael Peoples and he may have requested him to take a statement from Bernard Conlon. Garda Ward accepted that possibility but had no recollection of having made contact with any member of the Gardaí in Sligo.³¹⁶

3.88. **The Tribunal is completely satisfied that Gardaí Ward and Keavney and Detective Sergeant Henry acted in an entirely proper and honest way in the handling of this matter.**

The Alibi

3.89. The next important development in the investigation of this matter took place during the cross-examination of Bernard Conlon during the hearing of the

³¹³ Transcript, Day 325, Q.42-150.

³¹⁴ Transcript, Day 325, Q.155-170.

³¹⁵ Transcript, Day 325, Q.102.

³¹⁶ Transcript, Day 325, Q.255-258.

licensing summonses against Mr. McBrearty and others at Letterkenny District Court on the 11th of December 1998. The meeting between Bernard Conlon, Garda John Nicholson and Detective Sergeant White in Sligo on the night before this has already been dealt with in Chapter 2. I am satisfied that this meeting concerned a rehearsal of Bernard Conlon's proposed testimony relating to the events of the 30th/31st of August 1997 and his previous convictions: Detective Sergeant White and Garda Nicholson wished to ensure that nothing of Bernard Conlon's use as a Garda agent on that occasion, or his association with them, would emerge in evidence at the District Court the following morning.

3.90. However, when cross-examined by counsel for the McBrearty family it was suggested to Bernard Conlon that he was lying about the silver bullet threat and that Mr. McConnell had an alibi for the evening of the 20th of July 1998. No transcript is available in relation to District Court proceedings but notes were taken on behalf of the Garda Síochána and by Mr. Ken Smyth, solicitor for the accused men. For the most part, these notes are in agreement as to what was said. Mr. Smyth's notes record the following exchange:

Counsel	Why then are you telling blatant lies about Mark McConnell, last July, the 20th?
Conlon	It is under investigation.
Lennon	It is a dangerous precedent as there is an investigation in Sligo.
Counsel	I'll show that the witness is lying.
Judge	He can reply only in relation to the date and not the facts.
Counsel	What time in the evening, last July?
Conlon	11.45.
Counsel	[McConnell] ³¹⁷ was seen in Letterkenny that night and was seen by two leading members of the legal profession who saw him and spoke to him.
Judge	Will you be producing these witnesses?
Counsel	Yes, if necessary.
Judge	The time is important.
Counsel	They saw him between 9.40 p.m. and 10.20 p.m. and spoke to him and other people spoke to him.
Judge	It's alright to talk about the date and the time.
Counsel	Who put you up to making these allegations?
Conlon	Nobody. ³¹⁸

³¹⁷ By mistake, counsel is recorded as saying "Mr. Conlon"..

³¹⁸ Tribunal Documents, pages 2978-2979.

3.91. The Garda note in relation to this matter reads as follows:

S.C.	You made an allegation against Mr. McConnell.
W.	Yes he called to my house and threatened me.
S.C.	When was that.
W.	The 20/7/98 it was a Monday night I was watching TV, there was a knock to the window I opened the door and two men were there.
Supt.	Objection Judge this matter is under Garda investigation.
Judge	You can't ask about any events beyond fixing the date.
S.C.	What time did this happen.
W.	11.45 pm.
Supt.	Interjection.
Judge	Only the discussion of the date.
S.C.	Mr. McConnell was in Letterkenny that evening, he was seen by leading members of the legal profession.
W.	I'm only saying what happened that evening at the door, I made a statement.
S.C.	Two leading members of the legal profession saw Mr. McConnell between 9.30pm and 10.20pm and spoke to him plus others.
Supt.	It is a criminal trial matters for them???
S.C.	Who put you up to make these allegations about Mr. McConnell.
W.	No one. ³¹⁹

3.92. It is clear that counsel on behalf of Mark McConnell was advancing two propositions. The first was that Mark McConnell had an alibi for the evening of the 20th of July in that he was in Letterkenny where he was seen by two members of the legal profession between 21.30 hours and 22.20 hours and spoke to them and others. The second proposition advanced was that somebody had put Mr. Conlon up to making these allegations. Essentially, the message was being conveyed that Mr. McConnell had nothing to fear in relation to this allegation of Mr. Conlon's: two members of the legal profession had seen him on the night of the 20th of July 1998, at a time which rendered it unlikely that he

³¹⁹ Tribunal Documents, page 2560.

was down in Sligo, some seventy miles away, threatening Mr. Conlon with another man at 23.45 hours. Detective Sergeant White and Superintendent Lennon should have taken the same immediate interest that they took in ensuring that Bernard Conlon's statement in respect of the Michael Peoples' identification was taken, in seeking further details from the McBrearty legal team as to the nature of this alibi at that stage. It is precisely the information which Mr. McConnell's interviewers sought on the 1st of October 1998. Now that matters could be clarified by Mr. McConnell it is strange that Superintendent Lennon, as prosecuting officer, and Detective Sergeant White did not take any steps to ensure that this be done that day, or very shortly afterwards. In addition, no steps were taken to seek clarification of a very serious allegation that Mr. Conlon was put up to making this allegation against Mr. McConnell. If that allegation were true, it equally applied to the proximate identification of Michael Peoples of which the defence were at that stage unaware. It was a repetition of the allegation made by Mark McConnell himself when detained on the 1st of October 1998.

- 3.93. Detective Sergeant White or Superintendent Lennon should have immediately directed that Detective Sergeant Connolly be informed about both of these allegations, which were closely connected and of crucial importance to his inquiry. However, Detective Sergeant Connolly is adamant that he was never told about the alibi advanced on behalf of Mark McConnell in the District Court. Superintendent Lennon maintains that he told Detective Sergeant White to inform Detective Sergeant Connolly about the alibi so that it could form part of his investigation. Detective Sergeant White said he did so. In addition, it is maintained that newspaper reports were carried in relation to this allegation in the Donegal Democrat, that it was made in open court, and was widely known amongst members of An Garda Síochána in Donegal and amongst the public as a result. It is, therefore, submitted to the Tribunal that it was unlikely that Detective Sergeant Connolly would not have become aware of the alibi put forward by Mark McConnell on the 11th of December 1996 even if he had not been told about it by Detective Sergeant White. **It is my view that it is a totally inadequate response to say Detective Sergeant Connolly probably became aware of this by word of mouth or some other version of a bush telegraph from Donegal to Sligo and that he should, therefore, have carried out enquiries in relation to the alibi. The central question is whether in fact Detective Sergeant White told Detective Sergeant Connolly about the alibi.**
- 3.94. The objective fact is that the alibi was not investigated by Detective Sergeant Connolly. This is clear both from his evidence and from the fact that he does not include any reference in relation to this alibi in the report which he submitted in

relation to Mark McConnell to his superiors on the 19th of January 1999. His recommendation in that report was as follows:

As already stated the only evidence in the case is the identification made by Conlon, which Mr. McConnell denies. However, due to the fact that McConnell has no previous convictions and Bernard Conlon has a long list of convictions as per (A.12) in this file, I recommend that there be no further action in this case. While there may be grounds to prosecute Mr. McConnell I believe that no court would convict him of the alleged crime.³²⁰

His stated view could only have been enhanced by the existence of an alibi, properly investigated and corroborated. On the other hand, it might have changed his view had this alibi fallen apart upon investigation. It seems unlikely that Detective Sergeant Connolly would have taken such a definitive view if such an important matter remained to be investigated.

3.95. Mr. Lennon, in evidence, said that he saw the alibi as a “straw in the wind, another allegation”. However, he directed that it be passed on to Sligo by Detective Sergeant White. Though it was related to the credibility of his witness in the District Court prosecution, he never followed it up. He never discussed the matter with Detective Sergeant White. Mr. Conlon was never asked about this alibi even though he was brought back to Letterkenny Station after he had given his evidence. Further details of this alibi were not sought from the McBrearty legal team.³²¹

3.96. In a statement on the 12th of July 2005, Detective Sergeant White said that he had telephone contact with Inspector Connolly following the revelation made in the District Court on the 11th of December 1998 by counsel for the McBreartys. He said:

This appeared to give Mr. McConnell an alibi in relation to this alleged visit to Mr. Conlon’s home. We discussed the time factor and the length of time that it would take to travel to Sligo from Letterkenny. It was decided that this threw suspicion on Mr. Conlon’s claims. Inspector Connolly some short time later informed me that he was not going to recommend a prosecution against Mr. McConnell. To my mind that was the end of the matter.³²²

3.97. Detective Sergeant White told the Tribunal that he contacted Detective Sergeant Connolly about the alibi which had been put forward and discussed it with him. He could not recall how and when he did this but it was shortly afterwards at the

³²⁰ Tribunal Documents, page 11.

³²¹ Transcript, Day 348, Q.125-201 and Q.1066-1120.

³²² Tribunal Documents, page 2814.

direction of Superintendent Lennon. He did not tell him of the allegation put to Bernard Conlon that he had been put up to it because that was the type of ordinary allegation that might arise in the course of any cross-examination. After that, it was a matter for Detective Sergeant Connolly to continue his investigation. In his conversation with Detective Sergeant Connolly he told him he did not think it was a watertight alibi. However, at the time he was dubious about Mr. Conlon's story. Nobody approached the McBrearty legal team for further information. He had no reason not to tell Detective Sergeant Connolly about this alibi.³²³

- 3.98. Detective Sergeant Connolly denied that he ever received information about this alibi. Had he done so he would have investigated it. It was not included in his report for that reason. He rejected the allegation that he was trying to deflect responsibility for events onto Detective Sergeant White. He acknowledged that he may have had a conversation from Sligo with Detective Sergeant White in Donegal on the phone on the 11th of December but believes that, if he did, it was in relation to the identification of Michael Peoples. No doubts were expressed to him by Detective Sergeant White about Bernard Conlon's veracity. He did not hear about this alibi until some time in 2000.

Analysis

- 3.99. I am satisfied that it was essential that Detective Sergeant Connolly be informed of the existence of Mark McConnell's alibi against the silver bullet threat allegation as soon as possible. This never happened. I reject the evidence of Detective Sergeant White in this regard. I doubt that he was told to pass on this information to Sligo by Superintendent Lennon. No effort was made in Donegal to pursue the issue of the alibi with the McBrearty legal team. To do so might have revealed an association between Garda John Nicholson, Detective Sergeant White and Bernard Conlon and totally exposed the use of Bernard Conlon as an agent of Detective Sergeant White. Sligo was deprived of this information also, perhaps, because a proper level of objectivity had been lost on the part of Superintendent Lennon and Detective Sergeant White in relation to the prosecution of the District Court matter. This occurred because of the growing pressure caused by complaints on the part of the McBrearty family, and interest from Garda headquarters and others as to what was going on in Raphoe. It appears to me that neither Superintendent Lennon nor Detective Sergeant White had any interest in helping to relieve counter pressure against the McBreartys, which was undoubtedly caused by the investigation into the false Bernard Conlon claim.

³²³ Transcript, Day 357, Q.1-130.

The File on Mark McConnell

- 3.100. A seven-page report was prepared and sent to the superintendent in Sligo by Detective Sergeant Connolly on the 19th of January 1999. Detective Sergeant Connolly outlined the results of his investigations in relation to the silver bullet threat as they concerned Mark McConnell, including how he came to be identified and arrested on the 1st of October 1998 and what occurred whilst he was detained. It was noted that the only evidence against Mark McConnell was the informal identification at Judge Walsh Road, Letterkenny on the 1st of October 1998. When detained Mr. McConnell made no incriminating statement. The recommendation was that no further action should be taken in the case because, whilst there might be grounds to prosecute Mr. McConnell, Detective Sergeant Connolly did not believe that any court would convict him of the alleged offence. He had no previous convictions: Bernard Conlon had a long list of convictions. It was also pointed out that the second man, who had allegedly called to Mr. Conlon's door on the same date, had also been informally identified by Mr. Conlon and that "this is also being investigated".³²⁴
- 3.101. This file was received by Superintendent J. Sheridan who in turn transmitted it on the 27th of January 1999 to Mr. D. Sheridan, State Solicitor in Sligo. Superintendent Sheridan in his report outlined much of what was in Detective Sergeant Connolly's report. He added:

If you feel that the informal identification is sufficient, then obviously I will be recommending that Mark McConnell should be prosecuted for coercion as aforementioned. ... You will be aware from this file that Mark McConnell would have every reason to intimidate Conlon and to attempt to prevent him from giving evidence against the owner of the night-club, Frankie McBrearty, Raphoe. You will note that Mark McConnell is a nephew of McBreartys.

Investigations are continuing relative to the identification of the second man who called and intimidated Conlon on the 20th of July 1998.³²⁵

These reports were then transmitted to Chief Superintendent Austin McNally and the Assistant Commissioner of Crime & Security in Dublin on the 27th of January 1999 and the 2nd of February 1999 respectively.³²⁶

- 3.102. The State Solicitor sought directions from the Director of Public Prosecutions in respect of Mark McConnell, which he received in a letter of the 24th of February 1999. In this letter, Mr. Michael Mooney, professional officer, wrote:

³²⁴ Tribunal Documents, pages 5-14.

³²⁵ Tribunal Documents, pages 3-4 and see Transcript, Day 344, Q.44-100 and Q.148-158.

³²⁶ Tribunal Documents, pages 1-2.

It seems extraordinary that anybody would go to such lengths to threaten a prosecution witness over a minor prosecution for breach of the licensing acts. It is all the more extraordinary when one considers that Conlon himself was an accomplice to any alleged breach of the licensing acts since he too was apparently found on after hours. Since the Gardaí inspected the premises it is not clear why or in what capacity Conlon's evidence is required on behalf of the prosecution. Since the Gardaí who inspected the premises could presumably prove their case without resort to Conlon it is not clear why the licence holder or anybody on his behalf would bother threatening Conlon.

The injured party's statement reads somewhat theatrically and has not the ring of reality about it. Mark McConnell's replies in the course of interview on the other hand are compelling and further call into question Conlon's credibility. McConnell unlike Conlon has no previous convictions.

In view of the above a prosecution seems unlikely in this case. I understand that there are a number of further statements to be furnished in this case which are unlikely to be of any great significance. A matter which might be of significance is the suggestion by McConnell that Conlon's complaint is made mischievously in order in some way to assist a person called [Superintendent] Lennon in a court matter presumably involving Lennon which was not going well. Does this relate to the prosecution under the Licensing Acts? What reason had McConnell to be in the District Court during the hearing of the prosecution under the Licensing Acts? Was he a witness? Was he prosecuted for being found on? Was Conlon prosecuted for being found on? If so, what happened with those prosecutions?

Final directions will issue upon receipt of the above information.³²⁷

3.103. **It seems to me that Mr. Mooney accurately summed up the nature of the allegation made against Mark McConnell when he described it as "extraordinary" in its context.** He points to a number of factors which never appear to have been accepted by the investigating Gardaí. These are:

- (i) The District Court case was a minor prosecution that might result upon conviction of the licensee in the imposition of a fine;
- (ii) The case could still be proved against the licensee if the two Gardaí who inspected the premises gave evidence, therefore intimidating Mr. Conlon was not a guarantee of success;

³²⁷ Tribunal Documents, pages 687-688.

- (iii) Mr. Conlon himself was an accomplice to any alleged breach of the licensing acts since he too was apparently ‘found on’ after hours;
- (iv) The story told appeared to Mr. Mooney to be “somewhat theatrical”. It did not have the “ring of reality about it”;
- (v) Mr. McConnell’s responses to questioning were “compelling”.

These were the reactions of the professional officer of the Director of Public Prosecutions who objectively reviewed these papers when requested. In addition, he raised specific questions which went to the heart of the matter but which do not appear to have been addressed in the course of the investigation. None of these points are made by the investigating Gardaí. Detective Sergeant Connolly makes the point in favour of Mr. McConnell that he has no previous convictions and that Mr. Conlon has, and cites this as the decisive point as to whether there should be further action or not. I find it difficult to understand why the inherent unlikelihood of these events did not more forcefully strike the investigators. Rather, the investigation continued, with the focus now shifting to the intended arrest of Michael Peoples.

The Focus on Michael Peoples

- 3.104. Chief Superintendent Austin McNally had been appointed to the Sligo/Leitrim Division on the 19th of January 1999. On the 4th of March 1999 he was also appointed to coordinate the investigations in Donegal primarily looking at the issues arising out of the previous investigation into the death of the Late Mr. Barron and the extortion phone calls in respect of Michael Peoples. He also became involved in the wider investigation of the Carty team arising out of the allegations made by Mrs. Sheenagh McMahon in March/April 1999.
- 3.105. Shortly after his appointment in March to enquire into the Donegal matters, he was approached by Detective Sergeant Connolly in relation to this matter. Detective Sergeant Connolly was anxious about the delay in effecting an arrest of Michael Peoples following his identification in December 1999. He was proposing to effect an arrest as soon as possible. Notwithstanding the fact that Michael Peoples had been arrested on suspicion of the murder of the Late Mr. Barron on the 4th of December 1996, and that he was the alleged victim in respect of the extortion phone calls, no linkage was made by Chief Superintendent McNally, or indeed anybody else, at that stage between the cases in Sligo and Donegal. Chief Superintendent McNally informed the Tribunal that this connection only emerged later in the course of his investigations in Donegal.

3.106. Chief Superintendent McNally explained to the Tribunal that he asked Detective Sergeant Connolly to delay effecting the arrest of Michael Peoples because he wanted to read the file. He was very busy dealing with issues which had been raised by Mrs. Sheenagh McMahon, in relation to bogus explosives finds thorough Donegal, in March/April 1999 and he was also anxious to assemble the resources to deal with that and to deal with the interviewing of Michael Peoples. His overriding concern was to solve the crime. At that stage, he did not pay much heed to the allegation made by Mark McConnell that he was being set up by members of An Garda Síochána. He viewed that in the context of the ongoing disputes between the McBrearty family and the Gardaí in Donegal. At that time, both he and Superintendent Sheridan believed that the silver bullet events had occurred. There was nothing to indicate that Bernard Conlon was telling lies about it. However, he had a completely different view of the case some seven to eight months later, as a result of the ongoing Carty investigation than he had in April/May 1999. He was not aware of the confrontation in which Bernard Conlon had been allegedly involved on the 26th of May 1998 or the statement that had been made on that date. Indeed, he did not think his investigation team saw the significance of that statement, which was found in Bernard Conlon's house, until well into the investigation some time in 2000. However, when he discussed the matter with Detective Sergeant Connolly he agreed with the proposal that Michael Peoples should be arrested because Bernard Conlon was making a serious allegation of witness intimidation which had to be investigated as a crime. Had it not been investigated fully and it later transpired that the allegation was correct, they could legitimately have been criticised. The investigation had to take its course until the evidence proved otherwise.³²⁸

The Arrest of Michael Peoples

3.107. As outlined by Detective Sergeant Connolly, preparations were made for the arrest of Michael Peoples on the 6th of May 1999. Two Gardaí who were operating on behalf of the Carty team, namely Detective Gardaí Noel Jones and Seán Herraghty, assisted Detective Sergeant Connolly in monitoring the movements of Michael Peoples on the evening of the 5th and the early hours of the morning of the 6th of May so as to ensure that he was available to be arrested in the area of Raphoe. Detective Gardaí Eddie McHale and Michael Reynolds travelled with Detective Sergeant Connolly to the Letterkenny and Raphoe area. They received a call from Detective Gardaí Jones and Herraghty indicating that Mr. Peoples had been stopped at a checkpoint. They travelled to that location and Detective Sergeant Connolly arrested Michael Peoples there.

³²⁸ Transcript, Day 351, Q.105-154.

Were Three Reasons not to Arrest Michael Peoples Advanced by Detective Sergeant White to Chief Superintendent McNally and Detective Inspector McGinley?

3.108. Detective Sergeant White in a statement made on the 12th of July 2005 gave the following account of his involvement in the preparations for the arrest of Michael Peoples:

I did not have any knowledge that Mr. Peoples was to be arrested until approx. 6.30 p.m. or 7.00 p.m. on the evening of the 5th of May, 1999. I was on a rest day on that date. I see from my diary that I performed 16 hours overtime on that date. This duty was carried out in relation to Letterkenny Circuit Court on that date.

I had intended to finish work at 6.30 to 7.00pm when I received a telephone call on my mobile telephone from Chief Superintendent McNally as I was leaving my office to go home. He informed me that they intended arresting Mr. Peoples in the morning in relation to the alleged threat to Mr. Conlon on the 20.7.98 but they were unsure as to whether he was living in Raphoe or not. I was aware that Chief Superintendent McNally was the senior investigating officer on The Carty Team and I assumed that this arrest was being carried out by that team. This assumption was further strengthened by the fact that Detective Superintendent John McGinley and Detective Garda Seán Herraghty were involved in the operation as both were working as part of The Carty Team. I was most surprised to hear that an arrest of Mr. Peoples was planned and I told Chief Superintendent McNally so. I informed him of three, what I thought, were valid reason why Mr. Peoples had not been involved in this alleged crime and they are follows:

- A. That I was aware that Inspector Connolly had recommended to The D.P.P. in January of 1999 that there should not be any prosecution taken against Mr. McConnell due to Mr. Conlon's previous criminal convictions and his apparent lack of credibility.
- B. That Mr. Giblin had stated in cross examination of Mr. Conlon on 11.12.98 at Letterkenny District Court that two leading members of the legal profession had been in Mr. McConnell's company in Letterkenny on the night of 20.7.98 and that it was highly unlikely that Mr. McConnell could have been in Sligo at 11.45 p.m. on that night.
- C. That I felt it most unlikely that Mr. Peoples would be involved in a threat to Mr. Conlon without wearing any type of disguise keeping in mind that he would have been in the same court house as him prior to the

event and more importantly that Mr. Peoples had returned to Letterkenny Court House during the week of 8th - 11th December, 98 when Mr. Conlon was again present.

Chief Superintendent McNally stated that the decision had been made and that all he required from me was verification that Mr. Peoples was still residing in Raphoe. I told him that I had not heard anything to suggest otherwise. He said that Detective Superintendent McGinley had informed him that it was his belief that Mr. Peoples was having marital difficulties and that he had moved back to The Mountain Top area of Letterkenny. Chief Superintendent McNally informed me that he had a surveillance unit in the Raphoe area observing Mr. Peoples' house and he wanted me to make discreet enquiries with some local person who would be able to state if Mr. Peoples was still residing in Raphoe. I agreed that I would do so.³²⁹

- 3.109. Detective Sergeant White maintained that shortly after this telephone call from Chief Superintendent McNally he received a similar telephone call from Detective Superintendent John McGinley. He also sought clarification as to whether Mr. Peoples had moved from Raphoe and told Detective Sergeant White that Detective Gardaí Seán Herraghty and Michael Carroll were on surveillance duty in Raphoe. Detective Sergeant White said that he also told Chief Superintendent McNally the same three reasons as to why Michael Peoples should not be arrested at that time. He then travelled to Raphoe where he spoke to two individuals, neither of whom were in a position to state definitively if Mr. Peoples was living in St. Eunan's Terrace but both of whom believed that he was. He then confirmed this fact with another resident of St. Eunan's Terrace. None of these people had learned that Mr. Peoples supposedly had marital difficulties and he never heard any allegation to that effect. He denied that he ever told Detective Sergeant Connolly that Michael Peoples was having marital difficulties and that for that reason there was difficulty in locating him. He alleged that Detective Sergeant Connolly was using him as an excuse for his failure to carry out his duties in a timely and proper manner.³³⁰

Evidence of Chief Superintendent McNally

- 3.110. Chief Superintendent McNally denied that Detective Sergeant White ever put arguments to him as to why Michael Peoples should not be arrested.³³¹ He said, "It's utter rubbish. It's utter lies." He had no recollection of any conversation of any kind with Detective Sergeant White in relation to this arrest. He acknowledged that he probably had contact with Detective Inspector McGinley

³²⁹ Tribunal Documents, page 2813.

³³⁰ Tribunal Documents, pages 2816-2817.

³³¹ Transcript, Day 351, Q.160-173.

and recalled speaking to Detective Garda Noel Jones, one of the surveillance team in Raphoe.³³² He acknowledged that some member of the team may have asked Detective Sergeant White to carry out some work on the matter on the night of the 5th.³³³ He believed that Detective Sergeant White was now telling these lies because he was trying to distance himself from Bernard Conlon, and therefore alleged untruthfully that he had given reasons as to why Bernard Conlon's allegation should not be acted upon, to him and to Detective Inspector McGinley. "He is attempting to distance himself from his interaction with Bernard Conlon."³³⁴ In his diary entry for the 5th of May 1999 Detective Sergeant White had written, "Enquiry for D/Chief McNally", which it was suggested verified contact between them.³³⁵ Chief Superintendent McNally said:

It does not say what the enquiry is about. It could have been about another matter. I am not saying that I didn't talk to John White or ask him, but I have certainly no recollection of that and it is quite possible that some member of the investigation team asked him to check the whereabouts of Michael Peoples.³³⁶

- 3.111. Detective Sergeant White made reference to this conversation when arrested on the 21st of March 2000 when he requested that Sergeant Foy, the member in charge, enter in the custody record that he had in fact informed Chief Superintendent McNally and Detective Inspector McGinley:

of three very valid reasons why Michael Peoples should not be arrested for allegedly threatening Bernard Conlon on the 20th of August 1998 at Sligo.³³⁷

Chief Superintendent McNally was accused of failing to investigate the three valid reasons. His response has been that this was unnecessary as he knew the contention inserted in the custody record was a lie.³³⁸

Evidence of Mr. John McGinley

- 3.112. Mr. McGinley, who was a Garda inspector in Donegal then, also denied the allegation that he had been given these three reasons by Detective Sergeant White. He told the Tribunal that on the 5th of May 1999 he was asked by Chief Superintendent McNally whether he knew where Michael Peoples was living as there was an investigation going on in Sligo and it was proposed to arrest him the following day. Chief Superintendent McNally told him that he would get his own people to carry out whatever enquiries had to be made locally in relation to

³³² Transcript, Day 351, Q.160-167.

³³³ Transcript, Day 351, Q.155-160.

³³⁴ Transcript, Day 351, Q.179.

³³⁵ Tribunal Documents, page 2818.

³³⁶ Transcript, Day 353, Q.351-354.

³³⁷ Tribunal Documents, page 1938.

³³⁸ Transcript, Day 353, Q.364-383.

the matter. He did not direct any detectives from Letterkenny to attend in Raphoe to carry out any enquiries on behalf of the chief superintendent. He had no telephone contact with Detective Sergeant White in relation to this matter on the 5th or 6th of May 1999. He did not request Detective Sergeant White to make any enquiries in Raphoe in relation to the whereabouts of Michael Peoples.

- 3.113. Detective Sergeant White claimed that he attempted to telephone Chief Superintendent McNally on his mobile phone to inform him of the information that he had ascertained in Raphoe and then telephoned Detective Inspector McGinley's mobile phone and the communication centre in Letterkenny, where he left messages outlining the information that he had received. He made a further entry in his diary:

P call – J. McGinley plus M.L. Carroll – 1.20 am re: M.P. - 1.30 am finish.³³⁹

Telephone records indicate a mobile telephone call at 01.24 hours from Detective Sergeant White's mobile phone lasting some 38 seconds to Detective Inspector McGinley's mobile telephone number.³⁴⁰ Mr. McGinley had no recollection of receiving any message on that date or picking up a message of that kind. He also noted that there was little point in leaving a message with him at 01.24 hours in the morning in respect of an arrest that was to take place the following morning, when personnel from Sligo were leaving early at approximately 04.00 or 05.00 hours to carry out this arrest. He would not have received a message until the morning at about 09.00 hours, by which time the arrest would have been effected long since. However, he could not think of any other reason as to why Detective Sergeant White would contact him that night. He did not answer such a call. He did not recall any message on his answering service the following morning in relation to the matter. In denying any knowledge of the so-called three valid reasons he said:

It would be pointless discussing for and against the arrest of somebody with me who knew absolutely nothing about the background to it, or anything to do with it. It seems to me that if John White had a difficulty with this arrest and he seems to have been central to it from the beginning himself and all the way through the district courts that himself and Superintendent Lennon would probably be the most people that were au fait with it. If he felt that he shouldn't have been arrested then I imagine he should have discussed it with Superintendent Lennon who is familiar with all the facts and that then they should consult the superintendent in Sligo who was sending the people up to do the arrest and make him aware of the decision. My point is that there

³³⁹ Tribunal Documents, page 2818.

³⁴⁰ Tribunal Documents, page 3421.

*was no point in discussing it with me because I didn't know the first thing about it. And if he had discussed it with me and I had reservations about it I would have asked him to consult Superintendent Lennon about it.*³⁴¹

Analysis

- 3.114. The Tribunal is satisfied that Detective Sergeant White never contacted or informed Chief Superintendent McNally or Detective Inspector McGinley about the “three valid reasons” as to why Michael Peoples should not be arrested. The request which he made to Sergeant Foy to insert these allegations in the custody record at the time of his arrest on the 21st of May 2000, was part of a contrivance calculated to distract from his central involvement with Bernard Conlon. His ploy was to weave a web of suspicion over the arrest of Michael Peoples around other members of An Garda Síochána, a tactic that denied any involvement on his part in relation to the arrest. Instead, he has deceitfully put himself in the shining role of somebody who was absolutely against the arrest of Michael Peoples and sought to prevent it, only to be thwarted by senior officers who were determined to ensure that it took place. In this context, one notes that no effort was made by Detective Sergeant White to approach his own superiors in Letterkenny in relation to these doubts at any stage prior to, or after, the arrest of Michael Peoples. He did not bring to the attention of Sligo Gardaí the fact of his own association with, and use of, Bernard Conlon as a witness in the District Court prosecution. He did not tell them of the prior identification of Mark McConnell on the 26th of May 1998. He was determined to weave a web of deceit concerning this matter which can be seen as far back as the 21st of March 2000.
- 3.115. In my view the same applies to the allegations made by Detective Sergeant White in respect of Detective Inspector McGinley. Undoubtedly, there was some telephone contact between Detective Sergeant White’s mobile and Detective Inspector McGinley’s mobile at 01.24 hours on the 6th of May 1999. This does not prove the contents of that message. The Tribunal is not satisfied that it related to the arrest of Michael Peoples but accepts the evidence of Mr. McGinley on this matter. He had very little reason to be concerned in respect of an investigation that was being conducted from Sligo and in which his personnel had not been deployed by him. The making of these untruthful and serious allegations against two senior officers offers support to the suspicion that Detective Sergeant White was seeking to manipulate this story to a very deep extent from an

³⁴¹ Transcript, Day 366, Q.324-333.

early stage of the investigation by the Carty team. It might also lead one to suspect that this deceit was calculated to hide a deeper involvement on the part of Detective Sergeant White in the attempt to frame Mark McConnell and Michael Peoples in respect of the silver bullet threat. I am not satisfied that these lies can of themselves constitute sufficient corroboration to enable me to conclude that the evidence of Bernard Conlon in that regard is true. However, I am satisfied to view it as a further attempt on the part of Detective Sergeant White to disassociate himself from Bernard Conlon and his use of him as a paid agent in the District Court prosecution.

Evidence of Detective Gardaí Jones and Herraghty

3.116. Detective Garda Noel Jones was part of the Carty team based in Letterkenny and was requested by Chief Superintendent McNally to monitor the movements of Michael Peoples and his home on the 5th of May 1999. He was told that it was intended to arrest Michael Peoples on the 6th of May 1999 and that a team of investigators was travelling from Sligo led by Detective Sergeant Connolly. Detective Garda Jones was given a contact number for Detective Sergeant Connolly. He was told that the arrest was in relation to Bernard Conlon's allegation concerning the production of a bullet by way of a threat to him. At that time, the issue of the silver bullet threat was not part of work being undertaken by the Carty team at Letterkenny. However, Detective Garda Jones was aware that such an incident was alleged to have occurred. Chief Superintendent McNally thought that he knew Mr. Peoples and where he lived but he did not. Therefore Detective Garda Jones contacted Detective Garda Seán Herraghty, who did. He was also given the address of St. Eunan's Terrace, Raphoe as the residence of Michael Peoples. Nobody suggested to him that there was any question of Mr. Peoples not residing at this residence. Detective Garda Herraghty was also part of the Carty team. He set about monitoring the house of Mr. Peoples in order, in Garda jargon, to "put him to bed at this address": that is, check out that he was at the address provided.³⁴² Detective Garda Herraghty was monitoring the house between 19.00 and 20.00 hours and noted that Mr. Peoples' van was outside his residence. He met Detective Garda Michael Carroll, of Letterkenny Station, who was on other duties in Raphoe, who agreed to monitor the house for him. If there was a change, and the van left the premises, Detective Garda Carroll was to contact Detective Garda Herraghty at home. There was no change. On the following morning, Detective Garda Herraghty and Detective Garda Jones left Letterkenny at 06.00 hours and travelled to Raphoe. At approximately 07.30 hours Mr. Peoples left his home, drove to his workplace and, after a short period, drove on towards Lifford. Detective Garda Jones kept

³⁴² Transcript, Day 371, Q.4-89.

Detective Sergeant Connolly informed by phone of these movements and when Mr. Peoples drove towards Lifford he decided to intercept him on the pretext of carrying out a search of the vehicle, in order to ensure that he did not cross the border prior to the arrival of the team from Sligo, if that was his intention. Mr. Peoples' van was stopped, and Sergeant Connolly was contacted and given the location. He arrived during the course of the search and arrested Michael Peoples. Both Gardaí denied that they had been requested to carry out a surveillance of Mr. Peoples by Detective Inspector McGinley.³⁴³

3.117. Sergeant Carroll in evidence to the Tribunal said that he did not receive any call or communication from Detective Sergeant White on that night. He had no communication with Detective Sergeant White concerning Michael Peoples, notwithstanding the entry in Detective Sergeant White's notebook, which was apparently referable to him.

3.118. [The Tribunal is satisfied to accept the evidence of these three Gardaí in relation to their involvement in the events of the 5th and 6th of May 1999.](#)

Why Arrest Michael Peoples?

3.119. It might be wondered, in the light of the DPP's professional officer, Mr. Mooney's comments and the unfolding investigation in Donegal why An Garda Síochána persisted in arresting Michael Peoples on the 6th of May 1999. This is a question, the answer to which lies squarely with the investigators in Sligo. It is difficult to understand why the fundamental questions raised by Mr. Mooney do not appear to have been addressed prior to the arrest of Mr. Peoples and why his commonsense analysis of the Bernard Conlon allegations did not dent, let alone shatter, the Gardaí's enthusiasm for pursuing the matter any further. Evidence is presented to the Tribunal that the arrest of Mr. Peoples was, to a large extent, a necessary procedural step in order to complete the investigation into allegations made by Bernard Conlon. This had to occur because Bernard Conlon had identified Michael Peoples in the informal District Court procedure which I have already described. However, before the arrest took place another dramatic development had occurred when, [on the 27th of April 1999, Mr. Conlon made a statement to Inspector J. Barrett and Sergeant P.J. Gallagher in which he alleged that a Mr. William Flynn, private investigator employed by Mr. Frank McBrearty Senior, had attended at his home and offered him a bribe to withdraw the statement upon which the evidence which he had given on the 11th of December 1998 was based. He also alleged that on Monday the 26th of April 1999 he received a letter at his residence at 61 Cartron Bay, Sligo from Mr. Flynn which contained a somewhat oddly drafted second page and which was supposedly linked to the offer to](#)

³⁴³ Transcript, Day 371, Q.92-121 and see also the testimony of Sergeant Carroll on Day 371.

bribe Mr. Conlon. These events are more particularly described in Chapter 4. It is clear from the evidence that Chief Superintendent McNally was aware of the allegations now made by Bernard Conlon and, indeed, directed that a statement be taken in respect of them by Inspector Barrett and Sergeant Gallagher. There was no follow-up in respect of these allegations. One might have expected William Flynn or Frank McBrearty Senior to be interviewed by An Garda Síochána. **I am satisfied that these allegations were not accepted as true by An Garda Síochána. It was, therefore, decided that they did not warrant further investigation. That was a decision which An Garda Síochána was entitled to make. However, having regard to the fact that the allegations concerning Mr. Flynn and Mr. Frank McBrearty Senior, and the associated letter, were directly related to the District Court prosecution in respect of the events of the 30th/31st of August 1997, one might have expected that this turn of events would have influenced An Garda Síochána against the arrest of Michael Peoples. However, notwithstanding these intervening events, Michael Peoples was arrested on the 6th of May 1999.**

3.120. Detective Sergeant Connolly told the Tribunal that he delayed the arrest of Michael Peoples following his identification on the 8th of December 1999 because of the approach of Christmas. He had other more immediate duties to attend to. In the course of January, he was preparing for a fraud trial and he also had to go to the United States for three weeks. Subsequently, he was involved in a number of difficult investigations. In addition, at the time of the identification he believes that he had been in telephone contact with Detective Sergeant White. He learnt from Detective Sergeant White that Michael Peoples might not be residing at St. Eunan's Terrace for personal reasons, therefore there was some uncertainty as to his location. He told Detective Sergeant White to leave it and that he would get back to him at a later stage. Detective Sergeant White denies he told Detective Sergeant Connolly this. On the contrary, he says that when he spoke to him concerning Michael Peoples he told him he was the type of person who was unlikely to be involved in the making of such a threat. This, in turn, was denied by Detective Sergeant Connolly.

3.121. In early March 1999, Detective Sergeant Connolly had a meeting with Chief Superintendent McNally and Superintendent Sheridan about his investigation. He told them of his proposal to arrest Michael Peoples and that his wish would be to detain him in the Sligo division rather than take him to Letterkenny. This was primarily because of what he perceived to be the lack of assistance he had received in Letterkenny on the arrest of Mark McConnell. He then had a second meeting with Chief Superintendent McNally alone to discuss this arrest because time was moving on, at which he was asked to defer the arrest. No reason was

given to him for the deferment. Subsequently, he returned to Chief Superintendent McNally with the issue about three to four weeks later. He expressed further concern about the delay in arresting Michael Peoples and said that he wished to move on it. He was given approval to effect the arrest and to detain the suspect at Manorhamilton Garda Station. The necessary personnel would be provided. The arrest took place within a fortnight of this approval.

- 3.122. Detective Sergeant Connolly said that he did not believe that he was made aware of the alleged William Flynn attempt at bribery and associated letter incident at the time of that conversation; nor was he made aware of the contents of Mr. Conlon's statement made on the 27th of April 1999 concerning the alleged attempt to bribe him.³⁴⁴

The Detention of Michael Peoples

- 3.123. Following his arrest at 07.50 hours on the 6th of May 1999, Mr. Michael Peoples was conveyed by Detective Sergeant Connolly to Manorhamilton Garda Station where he was detained until his release at 11.05 hours on the 7th of May 1999. During this detention he was interrogated by a number of Gardaí including Detective Garda Reynolds, Detective Garda McHale, Detective Gardaí Caplice and Hunt and Detective Gardaí Murray and Donnelly. His period of detention was extended by Chief Superintendent McNally at 11.50 hours on the 6th of May 1999, which extension was to take effect from 07.50 hours on the 7th of May 1999.³⁴⁵ During this period Mr. Peoples was in telephone contact with members of his family and his solicitor. He also took part in an identification parade at which Bernard Conlon attended and picked him out as the second man who attended at his home on the 20th of July 1998.
- 3.124. The identification was a strong feature of this investigation because of the descriptions given by Bernard Conlon of the culprits who had threatened him. His description of the second culprit, whom he identified as Michael Peoples, in his statement of complaint is repeated:

The other male was aged between 29 years and 30 years and somewhat taller about 5'9" having black hair cut tight. He wore blue jeans and shoes and a shirt with no collar which I'd describe as a grandfather shirt. He also wore a leather jacket which was zipped up halfway. He kept his hands in his pockets of the jacket and stared me straight into the eyes. He wore an ordinary pair of shoes. As far as I can remember I think he had a stud or earring in one of his ears. He did no talking just stood there. I never saw this guy before but I feel that I would recognise him again if I saw him.³⁴⁶

³⁴⁴ Transcript, Day 346, Q.124-247.

³⁴⁵ Tribunal Documents, pages 675-686.

³⁴⁶ Statement made 21st of July 1998, Tribunal Documents, pages 119-120.

- 3.125. Michael Peoples was recorded in the custody record of Manorhamilton as being 6'1" in height, a feature which distinguished him from most, if not all, of the McBrearty party attending the District Court. He is also clearly considerably taller than the person described as the second culprit by Mr. Conlon. The investigating Gardaí should have attributed importance to this discrepancy. It is not mentioned in the report of Detective Garda Reynolds which was ultimately sent to the Director of Public Prosecutions. He was never described, for example, by Bernard Conlon as the very tall man who used to accompany the McBreartys at their District Court appearances.

Bernard Conlon's Attendance at Manorhamilton Station

- 3.126. Bernard Conlon alleged that he had been put up to identifying Michael Peoples at Manorhamilton Station by Detective Sergeant White. In his statement of the 15th to the 18th of February 2000 he said:

I remember in early May, 1999 John White called to my home at 64 Cartron Bay. He arrived down in the afternoon. He told me that (Pimples) Peoples would be arrested and taken to Manorhamilton and I would be finished with Letterkenny for identification parades. A couple of days later Gerry Connolly arrived and he said to me that he was going to have someone in Manorhamilton Garda Station and would I mind going down to identify someone in the Garda Station. He asked me for my phone number. He said he would ring me. The next day when I checked my answering machine there was a message from Gerry Connolly from Manorhamilton Station to ring him urgently. I did so. He told me to meet Mick Reynolds at Feehily's phone box at 1.30 p.m. I travelled to Manorhamilton with Mick Reynolds. I was met by Gerry Connolly and I was kept back for a few minutes. I was brought into a room where men were lined up in a long row. The person in charge of the line I now know to be Sgt. Flannery. I pointed out Peoples to him. I was removed then from the room. I know when I pointed out Peoples it was a stick up. I left and went to Gurns for a cup of coffee. Mick Reynolds then took me home. I was very upset on the way home. I knew there was nothing I could do about it. I could see it ending up in the High Court in Dublin. The next day I rang White either on his mobile or Letterkenny and I told him how I got on. He said fair play to you, stick to your guns.³⁴⁷

- 3.127. In evidence to the Tribunal, Mr. Conlon said that he was not aware of the arrest of Michael Peoples until contacted by Inspector Gerard Connolly at his home and told that he might be wanted in Manorhamilton sometime during the next day for an identification parade. He described the journey to Manorhamilton and the

³⁴⁷ Tribunal Documents, pages 203-204.

identification of Michael Peoples.³⁴⁸ Following this identification, he made a further statement describing it to Detective Garda Reynolds.³⁴⁹

- 3.128. In the course of the interviews, Mr. Peoples was able to tell the Gardaí, after consultation with his wife Mrs. Charlotte Peoples, that he had been to an FCA camp for some days leading up to the 20th of July 1998. It was likely that he was babysitting with the children on the Monday evening, the 20th, the evening of the alleged silver bullet threat, while his wife was working in a local bar. He denied the allegations made by Bernard Conlon and suggested that he was being put up to making them. He did not know by whom. He pointed out that he had attended the District Court in Letterkenny on a number of occasions and could easily have been picked out by Bernard Conlon on any of those occasions. He also said that because of his work as doorman in a premises called “The Rock” at Church Hill which Mr. Conlon had attended, Mr. Conlon would have been familiar with his appearance. Detective Sergeant Connolly said that notwithstanding the denials of Michael Peoples he still had an open mind on the whole incident.
- 3.129. Detective Sergeant Connolly felt that Mr. Peoples had no previous convictions and if it came down to Mr. Conlon’s word against that of Mr. Peoples that Mr. Peoples would get the benefit of the doubt. He agreed with the recommendations in the report furnished by Detective Garda Reynolds at that time. In addition, some of the interviewers of Michael Peoples did not think he was lying or trying to avoid their questions. Detective Garda Caplice, at the end of his interviews, was not at all convinced that he had been involved in any incident at 61 Cartron Bay.³⁵⁰ Detective Garda Hunt also expressed similar concerns to Detective Garda Caplice and both he and Detective Garda Caplice told Detective Inspector Foley their concerns that Mr. Peoples was innocent and was in fact telling the truth.³⁵¹

The File on Michael Peoples

- 3.130. On the 30th of November 1999, Detective Garda Michael Reynolds forwarded a file to the Detective Sergeant, Crime at Sligo Station in respect of the case of Michael Peoples. He outlined a history of the investigation, which included the informal identification of Mr. Peoples on the 8th of December 1998 and his subsequent arrest on the 6th of May 1999. He also included the formal identification by Mr. Conlon of Mr. Peoples in the course of the identification parade held on the 7th of May 1999. His recommendation appears in the concluding paragraph of the report:

³⁴⁸ Transcript, Day 331, Q.684-702.

³⁴⁹ Tribunal Documents, page 127 – Statement dated 7th of May 1999. A somewhat similar description of this identification at Manorhamilton Station is to be found at Tribunal Documents, page 178 – interview of Bernard Conlon on 29th of January 2000.

³⁵⁰ Transcript, Day 325, Q.148.

³⁵¹ Transcript, Day 326, Q.67-84.

Michael Peoples while in custody made no incriminating statement. The only evidence against him is the identification made by Conlon at Letterkenny District Court on the 8/12/98 and the formal identification parade at Manorhamilton on 7/5/99.

While it is suspected that he accompanied McConnell to Conlon's house at Cartron on 20/7/98 there is no evidence to suggest that he made any threat to Conlon. No prosecution is recommended.³⁵²

This file was forwarded to the Office of the Director of Public Prosecutions on the 8th of December 1999 and on the 14th of December 1999 Mr. Michael Mooney, Professional Officer, wrote to Mr. Sheridan, State Solicitor of Sligo as follows:

The various memoranda of interviews of Mark McConnell and Michael Peoples have a ring of truth about them which I cannot dispatch. Their accounts are to the effect that Conlon is ill disposed towards them and that his complaint is false and maliciously inspired. Having considered their interviews in detail I have been unable to satisfy myself that the suspects are being other than truthful. Accordingly I would agree with you that there is not a prima facie case against either suspect and therefore there is to be no prosecution.³⁵³

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

³⁵² Tribunal Documents, pages 15-19.

³⁵³ Tribunal Documents, page 689.

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

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

The 'Secret' Meeting

- 3.133. In the course of his evidence to the Tribunal Detective Sergeant White described,

at length, a controversy which erupted in the District Court at Letterkenny concerning the previous convictions of Bernard Conlon. On the 21st of July or thereabouts, Superintendent Lennon was furnished with a typed list of the previous convictions of Bernard Conlon which he was obliged, as the prosecutor, to disclose to the defence in respect of the liquor licensing case concerning the events of the 30th/31st August 1997. It should be noted that Superintendent Lennon did not have to rely on this list, as furnished by Detective Sergeant Connolly, as he could quite easily have procured a full list of the then known convictions of Bernard Conlon on the Garda computer system. Detective Sergeant Connolly, in furnishing this list was being of assistance in that the long form computer printout of these convictions can be very cumbersome to deal with and interpret and can run to many folds of paper. In 1992 Detective Garda John McHale had prosecuted Bernard Conlon for larceny at a hostel in Sligo. In preparation for that hearing, a typed list of convictions had been compiled based on the computerised record. Counsel on behalf of the McBrearty family in the District Court prosecutions applied to the District Court on several occasions for a copy of Mr. Conlon's previous convictions. A typed list was handed over to them by way of disclosure in this regard. However, when they insisted on seeing the computerised version of the convictions they discovered a number of discrepancies. Objection was taken at the District Court to this failure to make full disclosure of Mr. Conlon's previous convictions. The District judge required an explanation as to why these discrepancies existed and, for that purpose, requested the attendance of the relevant Gardaí from Sligo who were concerned in the furnishing and preparation of the typed list. **The Tribunal is entirely satisfied that when Detective Sergeant Connolly furnished the typed list to Superintendent Lennon he was unaware of the discrepancies, and was not seeking in any way to mislead Superintendent Lennon or the defence in the District Court prosecutions. Further, I am satisfied, on the evidence presented, that Detective Garda John McHale prepared this list back in 1992. There were some handwritten amendments to bring it up to date made by Detective Sergeant Connolly before its transmission. The two Sligo Gardaí acted honestly and in good faith in providing this list to Superintendent Lennon. I am also satisfied that the superintendent presumed that this list was a complete list of convictions and that it was not compared with the computer printout that was available from the original Garda records.**

- 3.134.** On the 20th of September 1999, Superintendent Jim Gallagher of Letterkenny Station requested that Detective Garda John McHale and Detective Sergeant Connolly travel to the District Court at Letterkenny to explain why the list of

convictions furnished was incomplete. A meeting was arranged for the 22nd of September 1999 in Donegal town with Detective Sergeant White, in order to ascertain clearly what concerns existed in relation to the preparation of the typed list. As far as Detective Garda McHale and Detective Sergeant Connolly were concerned, they met with Detective Sergeant White in the car park opposite Donegal town Garda Station. Detective Garda McHale had the file with him and they spoke about the list. Detective Sergeant White explained that the list did not tally with the list of convictions disclosed to the McBrearty legal team and Detective Garda McHale explained that the omissions were due to human error: his or the typist's. Detective Garda McHale stated that at this meeting Detective Sergeant White accepted his explanation of the omissions. The meeting lasted ten to fifteen minutes and nothing else was discussed at it.³⁵⁴

3.135. A controversy arose over this meeting in the following way. Counsel on behalf of Detective Sergeant White cross-examined Garda John Nicholson on Day 343 of the Tribunal's hearings. A number of allegations were raised against Garda Nicholson including the proposition that there was corruption in Sligo in respect of the forging of loss of earnings certificates and the ease with which they could be got from any Garda in Sligo Station; the use of Bernard Conlon as an agent of An Garda Síochána in setting up the McBreartys by his attendance at Frankie's nightclub in Raphoe on the evening of the 30th/31st August 1997; a need to deflect attention from Sligo's misdeeds by setting Detective Sergeant John White up as a "fall guy" and attempting to draw Superintendent Lennon into the framework of guilt; and attempts to tell untruths to the Carty team against Detective Sergeant White, in order to use him as a scapegoat for the "incompetence" or the "corruption" that was going on in Sligo. As a result of these allegations³⁵⁵, I directed that Detective Sergeant White provide the Tribunal with a further statement outlining exactly the allegations which he was making against the relevant Gardai in Sligo. A statement was produced on the 12th of July 2005.³⁵⁶ In the body of that statement Detective Sergeant White gave a lengthy description of the meeting in Donegal town on the 22nd of September 1999 which sought to cast a veil of mystery and suspicion over dealings of Detective Garda McHale and Detective Sergeant Connolly with Bernard Conlon. He said:

I have concerns with regard to what was effectively a secret meeting that was arranged by Inspector Gerry Connolly with me on the 22.9.99 at Donegal Town which is relative to his dealings with or knowledge of Mr. Conlon.

This came about as a result of an allegation being made by Mr. McBrearty's

³⁵⁴ Transcript, Day 350, Q.549-580 and Transcript, Day 346, Q.288-402.

³⁵⁵ They are summarised in Transcript, Day 343, pages 70-71.

³⁵⁶ Tribunal Documents, pages 2804-2817.

defence team at Donegal Town District Court on the 7.9.99, at which time they alleged that some of Mr. Conlon's previous convictions had been intentionally removed from his conviction record. A typewritten sheet of paper containing Mr. Conlon's list of previous convictions which originated from Sligo Detective Branch office had been submitted to the court in the mistaken belief that it contained all of his convictions. I made telephone contact with Sligo Detective office at [number redacted] on that date and I spoke to Detective Garda John McHale at which time I attempted to establish who had typed this document. He informed me that he was not aware of the document or of who had prepared it. I was aware that he had charged Mr. Conlon with the last crime for which he had been charged in 1992. I also telephoned Detective Sergeant Connolly on his mobile telephone [number redacted]. Likewise he could not enlighten me as to who had typed the previous convictions. I also telephoned Garda Nicholson on his mobile telephone [number redacted] and he was unable to assist me as to who had prepared this list of Mr. Conlon's previous convictions.

Judge John O'Donnell ordered that the members who had prepared this document be present at Letterkenny District Court on 23.9.99 in order to give evidence to him as to the preparation of this document and to offer an explanation as to why two of Mr. Conlon's previous convictions were missing from same. It was established that Inspector Connolly's handwriting appeared at the bottom of this document and Detective Garda McHale had been in charge of Mr. Conlon's last prosecution in 1992 at the District Court and in 1994 at Sligo Circuit Court. Both members were due to give evidence on 23.9.99.

On 22.9.99 I received a telephone call on my mobile telephone from Inspector Connolly who requested that I telephone him from a coin box. I could not understand why we could not have this conversation on my mobile or even my land line. He insisted that I telephone him at a number that he supplied to me, from a coin box.

I reluctantly agreed. I drove approx one mile to what is now a Centra foodstore at Navenny, Ballybofey. I did ring this number but a female voice informed me that Inspector Connolly was not there. I was unhappy with this situation and I had begun driving home when I received another call on my mobile phone from Inspector Connolly who requested that I return to the public telephone and ring him again. I believe that at this stage I made the calls on my mobile telephone. He requested that I drive to Sligo

and meet him for a discussion regarding his appearance at Letterkenny District Court on the following morning. I refused to do so and I asked him what he wanted to know and what was the reason for all of this subterfuge. He asked me to bear with him and that he could not discuss the matter on a telephone. I told him that I would meet him before the commencement of the court on the following morning. He insisted that he meet with me that evening. I refused to go to Sligo, but after repeated requests from him I agreed to meet him in the public car park at The Quay, Donegal Town. I told him that this did not suit me and that I would have to claim both overtime and a claim for mileage in respect of this trip if he insisted that I make it. He insisted that I meet him.

This meeting was scheduled for 9.30 p.m. I arrived at this car park which is situated across from Donegal Town Garda Station but partly out of sight of same. I waited ten minutes. I telephoned him on my mobile phone and he told me that he was situated further down the car park. I then observed the lights of a car flash on and off near the quay.

I walked over and I got into what was a private car. I believe that it was a maroon coloured Mazda 626. Inspector Connolly and Detective Garda John McHale were seated in the front. I got into the back. I expected some revelation to be made to me. Inspector Connolly wished to know exactly what was said in the Donegal town District Court on 7.9.99. I told him. I asked him who had typed out the list of previous convictions. Detective Garda John McHale replied that he had done so and that the two missing convictions had been omitted in error. I asked him why he had misled me in relation to this when I had telephoned him on the 7.9.99. He said he had just forgotten. I accepted his explanation but I was dubious of it. I got the impression that both members were concerned in relation to Mr. Conlon's past. The discussion then centred upon the arrest of Mr. Michael Peoples and I discovered that Inspector Connolly had arrested him. I was very surprised as I did not know that he had any involvement in this arrest and I was of the impression that it had been an operation carried out by The Carty Team. I told him that I believed that it was a most unwise decision. He did not wish to talk about it. The conversation lasted approx. 20 minutes and then both men were ready to leave. I asked why this conversation could not have taken place on the telephone.

Inspector Connolly informed me that telephones could not be trusted. He requested that I keep the meeting between ourselves. I could not understand why I had been asked to travel to Donegal Town for this

meeting or why they had driven from Sligo. I asked but I was not enlightened. I informed Inspector Connolly that I would be claiming overtime and mileage in respect of the meeting. He requested that I should not do so that they were not going to do so and he insisted that the meeting remain secret.

I left their car in what I can only describe as a most confused state of mind. I did submit a claim for overtime and mileage in respect of what I saw was a duty that I carried out on that night. I also noted the meeting in my diary as "meeting with G. Connolly and J. McHale – claim 36 miles". It is clear from my diary that this was a rest day and I have written at the top of the page "3 O.T." which denotes three hours overtime.

As events developed and I was charged in relation to alleged crimes that I did not commit I became more suspicious of the interaction between The Sligo Detective Unit and Mr. Conlon. I was suspicious of this meeting, the reason for it and of both members' apparent knowledge of and what I perceived was concern in relation to Mr. Conlon's past. As part of a request for disclosure of documentation in my criminal case, relative to Mr. Conlon's allegations, I requested that my solicitor seek copies of both Inspector Connolly's and Detective Garda McHale's Form A.85's (daily work records) and Form A.13's which are sub allowance claims in respect of this night 22.9.99 as I was suspicious of both members' actions on that night. I was eventually shown a copy of Detective Garda McHale's A.13 which I believe shows that he was on duty on that date in Sligo – Ballina from 9.00 a.m. until 5.00 a.m. To be best of my knowledge I was not given sight of the other three requested documents.³⁵⁷

- 3.136. In evidence to the Tribunal, Detective Sergeant White added an important element to the story of his encounter with Detective Garda McHale and Inspector Connolly at Donegal town. He said that Inspector Connolly did not tell him what he wanted until he sat into the car. Inspector Connolly said he just wanted to discuss the convictions with him. He was shown the typed list of convictions by Detective Garda McHale who explained how a mistake had been made. He asked him why he had not told him this when he phoned him the first day and was then informed that Detective Garda McHale had forgotten and that he had not intended to deceive Detective Sergeant White. Detective Sergeant White was dubious about this reply. He added:

That conversation wouldn't have lasted very long. When we were finished I said: what is the problem, why am I here? Gerry Connolly would look over at John McHale the two of them, kind of out of

³⁵⁷ Tribunal Documents, pages 2806-2808.

the side of their eye at one another and there was silence and Gerry Connolly said to me: what does Bernard Conlon be telling you, how well do you know him? I said sure I meet him every day in court and he chats away about Ben Maguire, and that type of stuff. About working and his life generally, mostly about what he does and his country and western habits. And he says: well does he be chatting about us? I said no he doesn't, why would he be chatting about you or anybody else, Gerry. He said we are just wondering like, that type of way. But they were glancing ... I was sitting in the back and I couldn't get eye contact but they were glancing over at one another out of the side of their eye at one another. I got the feeling that there was something between them in the front that I wasn't party to, but I didn't pursue it any further than that. But I asked him three or four times, I said Gerry why the hell am I here? Why did I have to come to Donegal town at night to have this discussion, we could have had it before the court outside Letterkenny in the car park or even in the café? I did say that to him, ... on the phone the first time. ... but he said no he wanted to see me that night ...³⁵⁸

This element of his account was not included in Detective Sergeant White's statement of the 12th of July 2005. He was asked what this allegation, quoted above, was all about. He replied that he did not know and said:

I didn't delve into the matter any further or why that he seemed to have some concern about what Bernard Conlon would be telling me about John McHale and himself.³⁵⁹

Detective Sergeant White also claimed that:

There was something going on between the two men in the front seat which I was excluded from, that's the way I felt at the time. There was pressure put on me to go to Donegal town that night and I expected when I went there that I would be told something of an unusual nature and I asked Gerry Connolly twice or three times, Gerry why am I here, what is the problem and he didn't answer that. He said grand, that's it like more or less. The whole situation was deflated in my mind, I didn't know why I went there and that's why I told him I was claiming overtime and sub allowance for it because to me it was unnecessary and I left that car park wondering why in the name of God am I down here tonight, I didn't know.³⁶⁰

³⁵⁸ Transcript, Day 359, Q.112-117.

³⁵⁹ Transcript, Day 359, Q.118-119.

³⁶⁰ Transcript, Day 359, Q.120-151.

- 3.137. The Tribunal notes that, in cross-examination of Inspector Connolly, counsel for Detective Sergeant White limited the proposition put in this way. He suggested that Detective Sergeant White's impression was that they "wanted to find out privately from him, quietly and so to speak, off the record just what the Gardaí in Donegal knew about Bernard Conlon and his association with Sligo Gardaí." In particular, they wanted to know what Detective Sergeant White knew about Bernard Conlon's background and what Bernard Conlon had been telling Detective Sergeant White. When asked whether he was suggesting that the two Gardaí asked him whether the Gardaí knew about some improper association between Bernard Conlon and Sligo Gardaí, counsel replied that he just meant to pose the question in a general sense: the two Gardaí were just asking him whether he had been told about whatever contact or connection there may have been between Bernard Conlon and the Sligo Gardaí.³⁶¹
- 3.138. **Inspector Connolly rejected these allegations, as did Detective Garda John McHale. So does the Tribunal. I fully accept their accounts of the meeting in Donegal town. I regard the evidence of Detective Sergeant White in this matter as contrived and mischievous, and calculated to raise a cloud of suspicion over Inspector Connolly and Detective Garda McHale which was entirely unwarranted. He has told these lies to distract from his own association with Bernard Conlon. It was a clear attempt to insinuate that Inspector Connolly and Detective Garda McHale had acted in a sinister and cloak and dagger fashion because they had something to hide in respect of their dealings with Bernard Conlon. I am completely satisfied that the so-called 'secret' meeting was about the attendance of both men at the District Court in Letterkenny the following morning. They wished to clarify what the issues were in relation to the previous convictions of Bernard Conlon in the hearing in which they had taken no part. Various attempts were made to suggest and establish that Inspector Connolly and Detective Garda McHale were telling lies in relation to this meeting, by reference to claims for overtime submitted by Detective Sergeant White and documents submitted by the two Gardaí to their employers. I consider these issues to be red herrings and indicative of the obsessive extent to which Detective Sergeant White will go in constructing a lie. Once again, this contrivance raises in my mind a suspicion that Detective Sergeant White lied because he was desperate to suggest that Sligo Gardaí may have been up to no good with Bernard Conlon in relation to the District Court prosecution, the forged certificates and the silver bullet threat because it was he who was responsible for these matters. I am reluctant to hold that these lies are corroborative of Bernard Conlon's allegations**

³⁶¹ Transcript, Day 347, Q.739-744.

against Detective Sergeant White in respect of the silver bullet threat in the absence of further evidence. However, given the existence of independent evidence in respect of Detective Sergeant White's involvement in the District Court liquor licensing prosecution allegations, I am satisfied that this series of untruths supports Bernard Conlon's version of events in which he involves Detective Sergeant White in those matters. It affords a reason for the late development of this tale by Detective Sergeant White in attempting to colour their action in respect of Bernard Conlon's convictions.³⁶²

- 3.139. In making these allegations, Detective Sergeant White sought to distort otherwise straightforward events into the realm of the sinister in an effort to imply corrupt behaviour on the part of Detective Garda McHale and Inspector Connolly. An example of this was the flashing of headlights at the car park in Donegal to attract his attention when he arrived for the meeting on the 22nd of September 1999. This was turned into something akin to a scene from a spy novel where he suggested that the car was much further back down the car park away from the view of the Garda Station so as to attract less attention to the meeting. Other propositions were put to Detective Garda McHale and Inspector Connolly about their dealings with Detective Sergeant White concerning the list of convictions which were calculated to further this scenario.
- 3.140. A most serious allegation was made against Detective Garda McHale, that when first contacted on the 7th of September 1999 by Detective Sergeant White at Sligo Station, he told Detective Sergeant White that he did not know who had typed up the list of previous convictions and referred him on to Detective Sergeant Connolly. The implication was that this contact was made at Sligo Station where the Conlon file and relevant information would have been readily available but that Detective Garda McHale simply disavowed knowledge of how the list came to be compiled. It was later alleged that at the meeting on the 22nd of September 1999 Detective Garda McHale said he had simply forgotten his involvement in the typing of the list and that he must have made an error. He supposedly apologised to Detective Sergeant White for misleading him. This was denied by Detective Garda McHale in evidence. However, Detective Sergeant White was most insistent that Detective Garda McHale was lying even about the first contact on the 7th of September 1999. In this regard, Detective Garda McHale gave evidence that he was not in Sligo Station on that date but was in Manorhamilton Station interviewing a suspect. He was accused of telling a lie about this because Detective Sergeant White's mobile phone records did not indicate a call to Manorhamilton Station.

³⁶² Transcript, Day 350, Q.537-704 and Tribunal Documents, pages 2905, 2962-2963, 3381, 2906, 2961 and 2964.

Moreover, from his records he insisted that he had telephoned Detective Garda McHale at precisely 11.24 hours on the morning of the 7th. The relevant custody record at Manorhamilton Garda Station clearly indicates Detective Garda McHale was present at Manorhamilton at that time. Therefore, he did not have access to the file and it is most likely that he referred the enquiry from Detective Sergeant White on to Detective Sergeant Connolly. **This episode, however, demonstrated to me the lengths to which Detective Sergeant White would go to distort what was a relatively straightforward event in order to implicate his colleague falsely in misbehaviour. I totally accept Detective Garda McHale's evidence on these matters.**

- 3.141. **Detective Sergeant White also said that at the meeting of the 22nd of September he became aware for the first time that Michael Peoples had been arrested by Inspector Connolly. He said that he offered the opinion that he thought that this arrest had been unwise. Detective Garda McHale and Inspector Connolly claim that no such conversation took place. I accept their evidence in this regard and I view this lie as another self serving attempt on the part of Detective Sergeant White to create an illusion that he was repeatedly critical of the arrest of Michael Peoples before and after its occurrence.**³⁶³
- 3.142. If Detective Sergeant White had attended a meeting such as the one described by him on the 22nd of September 1999, one would have expected that, as part of his duty, he would have reported it in full to his superior, Superintendent Lennon, who had asked him to find out the background to the typed list of convictions for the purpose of the hearing on the 23rd of September 1999, at which Superintendent Lennon was the prosecuting officer. Detective Sergeant White was, he claimed, dubious about information he was receiving, and suspicious about the furtive glances which were passed between the two Gardaí, and their curiosity as to what he may have been told by Bernard Conlon about his association with the two Sligo Gardaí. This had most serious implications at a general level but, more specifically, for the evidence which it was intended that they would give to the District Court.
- 3.143. Superintendent Lennon, for the first time in his evidence, revealed to the Tribunal that he had been told certain elements of the story set out in the statement of Detective Sergeant White on the 12th of July 2005. He was told by Detective Sergeant White that he had received a phone call from Inspector Connolly on the 22nd of September 1999, who requested that he telephone him from a coin box. He said he asked Detective Sergeant White what this was all about and was told that the two Gardaí wished to know what was happening in court. They both

³⁶³ Transcript, Day 359, Q.1-111 and Transcript, Day 358, Q.744-756.

thought the call unusual. He said, “what’s going on here, what are they up to?” Detective Sergeant White said he did not know other than the two Gardai wanted to know what was happening in court and he asked Detective Sergeant White why he had to ring from a phone box. He replied that “they seemed to be worried about the previous convictions.” He said this made sense because previous convictions had been left out of the list. However, he acknowledged that there was no mystery about this and that the explanation given that there had been a typographical error or human error was accepted by him and put forward to the court.

3.144. Superintendent Lennon claimed that he was told about the meeting in the car park in Donegal town, that Detective Sergeant White had been asked to make a telephone call from a phone box, and that no claim was to be made in respect of the meeting and that the meeting was to remain secret. He said he had asked Detective Sergeant White what this secrecy was all about but he could not explain it to him. He did not raise the issue with Detective Sergeant Connolly or Detective Garda McHale the next morning when they attended court. He did not see it as sinister. He did not think it was a matter that should have been brought to the attention of the District Judge. He said he had no reason to disbelieve the history of the list of convictions put forward by Detective Garda McHale. He was not told about the observation of the car flashing lights on and off to attract Detective Sergeant White’s attention. He was not told that Detective Sergeant White expected some revelation to be made. He was not told by Detective Sergeant White that he had been misled by Detective Garda McHale on the 7th of September 1999. He was not told that Detective Garda McHale disavowed any knowledge of who had prepared the typed list of convictions. He thought he should have been. He was not told by Detective Sergeant White that he was in any way dubious about the explanation offered by Detective Garda McHale. He did not tell Superintendent Lennon that they had discussed the arrest of Michael Peoples, or that there was a reticence on the part of Inspector Connolly to talk about the arrest. Superintendent Lennon claimed that he was not told of the suggestion made by Inspector Connolly that he did not wish to discuss the matter on the telephone because the telephones could not be trusted. It was made clear to him that he was not to be told about the meeting as it was to be kept secret. He accepted that it was very serious that a detective garda and detective sergeant would hold a meeting with another detective sergeant and try to deprive him of the information concerning that meeting. He carried out no inquiry into the matter. He never made any report about this to any authority. He said the Tribunal could take it that the matter was not presented to him as a sinister matter at all.³⁶⁴

3.145. It was suggested to Superintendent Lennon in cross-examination on behalf of Detective Sergeant White, that he was told in advance of the court sitting on the

³⁶⁴ Transcript, Day 348, Q.1225-1450.

23rd of September that the meeting the night before had been a secret meeting, and that Detective Sergeant White had been told to phone from a coin box and though he did not give him full details at that stage, he told him sufficient details for him to realise that there was something underhand going on between Detective Garda McHale and Detective Sergeant Connolly. It was also suggested that, subsequently, he was filled in comprehensively on what had happened. Superintendent Lennon denied this. It was suggested that Superintendent Lennon expressed interest in what he had been told but wanted to hear what the two Gardaí from Sligo were going to say in their evidence. It was suggested on behalf of Detective Sergeant White that he also told Superintendent Lennon before the court sat that Detective Garda McHale was now admitting that he had typed the document himself where previously he had said he had not typed it. Superintendent Lennon said that he did not get the impression that anything underhand was happening prior to the sitting of the court. Detective Sergeant White denied that he ever held back anything from Superintendent Lennon concerning the meeting.³⁶⁵

- 3.146. Detective Sergeant White claimed that before the judge sat on the 23rd of September 1999, he told Superintendent Lennon nearly everything that happened. He expressed his concerns about the meeting, the need for it, the phone box, the telephone call, and that he was dubious of Garda McHale's previous interaction with him on the phone on the 7th of September. He told him about the secret meeting. It was a short conversation and lasted no more than three or four minutes. In evidence to the Tribunal, Detective Sergeant White said that he believed Bernard Conlon made up the silver bullet threat himself and that Detective Inspector Connolly and Detective Garda McHale were not involved in it. However, he also continued to maintain that:

They wanted to have a meeting with me that wouldn't leave any traces afterwards ... it just can't be as simple as the previous convictions being left out of the list of convictions, it was an easily explainable thing and it could have been taken at face value ... I don't know what they were up to. I tried to elicit from Gerry Connolly in the car what the reason was for going there. ...

He denied that he was trying to spread the blame in another direction onto the two Gardaí from Sligo. He denied that he was simply trying to draw them into a scenario with Bernard Conlon without being specific about it, or trying to suggest a dubious association on their part with Bernard Conlon.

- 3.147. **The Tribunal is satisfied that Detective Sergeant White is not telling the truth about his encounters with Inspector Connolly and Detective Garda**

³⁶⁵ Transcript, Day 350, Q.76-224.

McHale in September 1999. His evidence and that of Superintendent Lennon in respect of the supposed conversation said to have been had between them about this meeting is not credible. Notwithstanding the somewhat sensational way in which it was presented to the Tribunal, Detective Sergeant White and Superintendent Lennon seemed to have treated the event, at the time, as if nothing had happened, and went directly on to the business in hand and called the two Gardaí as witnesses in the District Court to deal with this issue concerning Mr. Conlon's previous convictions which was the subject of a serious judicial inquiry. Astonishingly, the Tribunal is now told there was a huge aura of suspicion about the meeting. In addition, Superintendent Lennon and Detective Sergeant White were involved in the preparation of a report in respect of the furnishing of the previous convictions of Bernard Conlon to the District Court and did not set out the details of the 7th, 22nd and 23rd of September 1999 in that report. This is because there was nothing to tell.³⁶⁶

Detective Sergeant White, Detective Garda Peter McGuinness and Detective Sergeant Pat Walsh

- 3.148. In the aftermath of the arrest of Bernard Conlon on the 27th of January 2000, the evidence indicates that Superintendent Lennon and Detective Sergeant White sought to ascertain what Bernard Conlon had been asked, and what he had said, whilst detained in custody to members of the Carty team. I am satisfied that they did so in order to ascertain what the Carty team had been told about the Frankie's Nightclub events of the 30th/31st of August 1997. This matter has been dealt with in Chapter 2.
- 3.149. A question arose as to whether Detective Sergeant White sought to obtain information about what, if anything, had been said by Bernard Conlon to the Carty team during his detention concerning the silver bullet. If this were so, it would have suggested a worry on his part, perhaps, about what Bernard Conlon had said to implicate him in the affair. After Bernard Conlon's release Detective Sergeant White heard from his friend Detective Garda Peter McGuinness. He worked in the Garda National Drugs Unit with Detective Sergeant Pat Walsh under the command of Assistant Commissioner Carty. He was aware that Assistant Commissioner Carty had undertaken the investigation in relation to matters in Donegal and that his friend Detective Sergeant White had been the subject of complaints in relation to the execution of his duties in Donegal. He believed that complaints were made in relation to his work at Frankie's nightclub. He offered him his support as a friend. Through Detective Sergeant Walsh, he heard about the arrest of Bernard Conlon, as a result of which he contacted Detective Sergeant White in early 2000. Detective Sergeant Walsh had told him

³⁶⁶ Tribunal Documents, pages 2828 and 3218.

that Bernard Conlon had made a statement in which he made an allegation against Detective Sergeant White to the effect that he had been involved with Bernard Conlon in setting up a person over a bullet, namely Mark McConnell. He became aware of this quite soon after Mr. Conlon had made his statement on the matter. He presumed that Detective Sergeant White was aware that this allegation had been made and he telephoned him to tell him that he had heard about the allegation. He telephoned Detective Sergeant White on or about the 29th of February 2000. He was hoping he would mention the matter. He did not; so he brought up the subject. He was not asked by Detective Sergeant White to find out what Bernard Conlon had said in custody and the information came to him as a complete surprise. Detective Sergeant White told him that he had no knowledge of the allegation and that this was the first he had heard of it. He was strong in his denial of the matter. He said the investigators were out to get him and they were somehow in league with the McBreartys. He felt he was under a lot of pressure and had some animosity towards the people who were carrying out the investigation. Detective Sergeant McGuinness formed the impression that Detective Sergeant White's view was that he had disagreed with the way in which the investigation of the Late Richard Barron's death had been carried out and had voiced his opinion about this: this was why he was being targeted, as he saw it, by the investigators.

- 3.150. Detective Sergeant White thought members of the investigation team were working in conjunction with Frank McBrearty Senior because of some problem with Frank McBrearty Junior's statement of alleged admission of the 4th of December 1996. It did not make a lot of sense to him.
- 3.151. Detective Sergeant White said that he had a note of this telephone conversation in his diary as follows:

11.30 p.m. call from Peter McGuinness. He stated that he heard a week ago that I was in serious bother over Bernard Conlon in Sligo and that he had said to the investigators that I, John White, had been involved with him in setting up Mark McConnell re: the bullet incident in Sligo. I was stunned and I told Peter that he was the only policeman that had contacted me regarding this. I also told him that I was totally innocent of this allegation and that I believed that members of the investigation team were working in conjunction with Frank McBrearty because of the problem with Frank Junior's false statement. I told him that Frank McBrearty, Billy Flynn, Mr. Giblin and Mr. Nolan all had and were still targeting Kevin Lennon and myself and John O'Dowd and that I believed

*that the investigation team were working with them in a deal to preserve Frank McBrearty Junior's statement, which was investigated by AC Carty but not properly investigated intentionally, as it could not withstand a proper investigation. Also that the Milford incident on 20th September 1997, was not properly, if at all, investigated and that the investigation team refused to take possession of a false file submitted to Kevin Lennon for the DPP. I told him that I was upset over these selective investigations which were not looking for the truth but a cover up. I also told him of a conversation I had with Detective Sergeant Pat Walsh who told me lies. He was very surprised over this.*³⁶⁷

- 3.152. Detective Sergeant White agreed that it was very difficult to make sense of this note other than that it suggested that he was somewhat “paranoid” at the time. He believed that members of the Carty team were meeting with the McBreartys and that they were going to do some sort of a deal with the McBreartys about the alleged confessions of Frank McBrearty senior. He withdrew any allegation against Mr. Giblin, Mr. Nolan and Mr. Flynn. He was concerned that the Carty team were making a deal with the McBreartys in relation to matters on the ground in Raphoe unrelated to the silver bullet threat. He said:

*I felt that the Carty team's agenda was to find a scapegoat or two in relation to things in Donegal, but to ignore and not to properly investigate the alleged statement of Frank McBrearty Junior. And I now felt threatened that I was going to be that scapegoat.*³⁶⁸

- 3.153. Detective Garda McGuinness, though he had not said it to the Tribunal investigators, accepted, for the most part, the note of the telephone conversation made by Detective Sergeant White. He denied that he was aware that Detective Sergeant White would be interested in this information and that he was keen to act on his behalf and to supply it to him. He emphasised that he presumed that Detective Sergeant White already knew it.³⁶⁹

- 3.154. His colleague, Detective Sergeant Pat Walsh, said that he heard that Bernard Conlon had made a statement whilst in custody concerning the falsehood of the silver bullet threat and that Detective Sergeant White was behind it. He said he had worked many years with Detective Garda McGuinness who would have discussed it with him. There was no question of contacting Detective Sergeant White about this because he believed that would have been to interfere in the investigation. He made a specific decision not to contact Detective Sergeant White even though he and Detective Sergeant White were friendly and colleagues of longstanding. Detective Garda McGuinness never told him that he

³⁶⁷ Transcript, Day 356, Q.5.

³⁶⁸ Transcript, Day 356, Q.122.

³⁶⁹ Transcript, Day 369, Q.607-815.

was going to contact Detective Sergeant White. Detective Sergeant Walsh also told the Tribunal that Detective McGuinness had informed him that he had a conversation with Detective Sergeant White about the allegation. Detective Sergeant White had emphatically denied it and said that he felt that the Carty investigation team were out to get him. Detective Sergeant Walsh thought that Detective Sergeant White was “losing it”. He was also told by Detective Garda McGuinness that Detective Sergeant White was taken aback by the allegation.³⁷⁰

- 3.155. It seems an odd coincidence that the very information which Superintendent Lennon sought from Garda Nicholson, and which Detective Sergeant White asked him to obtain from Bernard Conlon after his release from custody, should be furnished by a Detective Garda who formerly served under Assistant Commissioner Carty and worked with personnel who were still closely connected to the Carty team. It might be inferred that Detective Sergeant White was using every avenue open to him to obtain this information. Detective Garda McGuinness rejects this proposition entirely and presents his phone call as simply a coincidence. However, Detective Sergeant Walsh knew not to contact Detective Sergeant White about this information because it might interfere with the investigation. One has to wonder why the same thought did not strike Detective Garda McGuinness. It is noteworthy that the statements made by Bernard Conlon were on the 28th and 29th of January 2000 and then from the 15th to the 18th of February 2000. **I am satisfied that Detective Garda McGuinness genuinely thought that Detective Sergeant White knew about the allegation already. In human terms, it is very understandable that a colleague would phone and offer some sympathy in relation to his friend’s predicament.**

Mrs. Mary McGranaghan

- 3.156. A further coincidence is that Mrs. Mary McGranaghan, at whose bed and breakfast Bernard Conlon stayed when visiting Frankie’s nightclub in Raphoe, visited Mr. Conlon for the first time at his home at 61 Cartron Bay, Sligo on the 10th of March 2000. Mrs. McGranaghan and her husband Mr. Jim McGranaghan were very friendly with Detective Sergeant White. He was a frequent caller, particularly to Mr. Jim McGranaghan, according to Bernard Conlon. She spoke to him about the ongoing inquiry. She suggested that the “flashy tie and shirt men” were getting him to say things. She said she would take him up to Raphoe and get a solicitor for him. Bernard Conlon thought she had been sent there on an errand and to find out what was going on. She was concerned about what he had been saying to the Carty team. She said Detective Sergeant White was a very decent man and that they were trying to pin things on him. She left him £20 on the mantelpiece.³⁷¹ He said he reported this matter to Detective Sergeant Fox.

³⁷⁰ Transcript, Day 370, Q.463-525.

³⁷¹ Transcript, Day 322, Q.439-452.

Mrs. McGranaghan accepts that she visited Bernard Conlon. She knew his address from the bed and breakfast. She was driving home from Sligo, having just visited a friend in hospital and her late aunt, when she was obliged to pull into a garage in Sligo. She asked the garage man what the nearby area was and he said it was Cartron Hill. She decided to visit Mr. Conlon. Initially, he welcomed her into his home and he discussed with her how he had been arrested and involved in court cases. She left £20 for him to have a drink for himself and his sister and brother-in-law. When she returned to Raphoe she spoke to her husband about her visit.³⁷² Detective Sergeant White denied that he had anything to do with or knew anything of the visit of Mrs. McGranaghan to Bernard Conlon.³⁷³ If Bernard Conlon is correct, then this visit could be seen as another attempt to gather information in respect of what he may have said during the course of his detention, and is not the coincidence portrayed by Mrs. McGranaghan. They both appear to be agreed on the contents of their conversation. The only difference appears to be the connotation put on it by Bernard Conlon that she seemed to be fishing for information. It might well have been a question of perception. In those circumstances **I am not satisfied that Mrs. McGranaghan went on a mission for Detective Sergeant White to Bernard Conlon. However, I have no doubt that whatever transpired between them, which she says she relayed to her husband, was probably discussed with Detective Sergeant White. For this, nobody can be criticised.**

Detective Sergeant White and the Carty Investigators

3.157. Prior to the telephone call from Detective Garda McGuinness, Detective Sergeant White told the Tribunal that he had heard about the allegation that he had set up Mark McConnell and Michael Peoples with the silver bullet allegation on four occasions. The first was in an interview with Assistant Commissioner Carty on the 7th of October 1999. It was one of four allegations put forward by the Assistant Commissioner which the Assistant Commissioner said he did not believe. The Assistant Commissioner denied this in evidence to the Tribunal and this matter has been already dealt with.³⁷⁴ He was also aware of the allegation from the notes of interview of Mark McConnell and Michael Peoples who had given their belief that he and Superintendent Lennon were behind the Bernard Conlon allegation. In addition, the matter had been raised with him by Chief Superintendent Carey in respect of a complaint made by Mark McConnell on the 25th of January 1999, and in respect of which he had furnished a statement indicating that he first became aware of the alleged visit to Mr. Conlon's home on the 20th of July 1998 two days after the event, and denied having anything to do with it.³⁷⁵ Detective

³⁷² Transcript, Day 49, Q.18-22.

³⁷³ Transcript, Day 356, Q.61-62.

³⁷⁴ The Second Report of the Tribunal of Inquiry in respect of Terms of Reference (a) and (b) paragraphs 5.185 and 6.95.

³⁷⁵ Tribunal Documents, pages 3223-3224 and Transcript, Day 356, Q.151-165.

Sergeant White said that he had already dealt with this matter by way of this written statement to his authorities and, therefore, did not have to worry about it.³⁷⁶

- 3.158. He thought that if there was a complaint it would come through the system and he would deal with it within the disciplinary procedure of An Garda Síochána. It was so preposterous that he took no heed of the complaint. He was not overly anxious about it; therefore, he did not make any enquiries about it.
- 3.159. The next he heard of the matter was when telephoned by Superintendent James Gallagher on the 16th of March 2000 and informed that the Carty team wished to interview him the following day, St. Patrick's Day. He was on a week's leave and told the superintendent that this did not suit him. The superintendent insisted that he attend. He asked the superintendent what the Carty team wished to interview him about but the superintendent did not know. He then asked whether he would get overtime. The superintendent phoned him back and informed him that the matter could not be postponed until the following Monday and that he would be paid his overtime. Later in Superintendent Gallagher's office, Detective Sergeant White told him that if this matter was in relation to Bernard Conlon, he was totally innocent of it.³⁷⁷ He said he thought that since the Bernard Conlon matter was one of the things mentioned to him by Assistant Commissioner Carty on the 7th of October 1999, it could be one of the things that he would be interviewed about on the 17th of March.
- 3.160. There is no doubt, having regard to the extraordinary note in Detective Sergeant White's diary made on the 24th of February 2000, that he was extremely upset and concerned about the allegation made by Bernard Conlon about the silver bullet affair during the course of his detention as relayed to him by Detective Garda McGuinness. It was an allegation which he had already been obliged to address arising out of the belief of Mark McConnell. Now for the first time, there was evidence in the form of Bernard Conlon's direct allegation against him in statement form that he was behind the silver bullet threat. Within days of Mr. Conlon's detention, he was trying to get information as to what Bernard Conlon had said to the Carty team through Garda Nicholson. It was clearly in the forefront of his mind when he mentioned his innocence of the allegation to Superintendent Gallagher on the 16th of March 2000. **The Tribunal is, therefore, completely satisfied that when Detective Sergeant White went to the meeting on the 17th of March 2000, he clearly anticipated that he might be interviewed in respect of the Bernard Conlon allegation and he was extremely concerned about it. His testimony suggesting that this matter was not to the forefront of his mind on the 17th of March 2000**

³⁷⁶ Transcript, Day 356, Q.172.

³⁷⁷ Transcript, Day 356, Q.81-84.

and that he was not overly anxious about it, is contrary to the evidence available and to commonsense.

The Meeting of the 17th of March 2000

- 3.161. Detective Superintendent Joseph McGarty had been assigned to the Carty investigation on the 8th of March 2000. Amongst the matters which he was asked to investigate were the allegations made by Bernard Conlon. As part of that inquiry, he interviewed Garda John Nicholson on the 15th of March 2000 and then sought to interview Detective Sergeant White on the 17th of March at 10.00 hours. He requested Superintendent James Gallagher to arrange this meeting. He did not tell Superintendent Gallagher what the meeting was about because it was part of the Carty investigation and he intended to inform Detective Sergeant White about the matter when he arrived for the meeting. At that meeting, he planned to inform Detective Sergeant White that he had a number of allegations to put to him in respect of Bernard Conlon and that he would be cautioned. He wanted to set the scene for him. He thought that Detective Sergeant White might wish to get legal advice before answering questions but he also hoped that he would listen to the questions after caution and then go away, perhaps get legal advice, and return to him on another occasion. Detective Inspector Tadhg Foley was also present at this meeting.
- 3.162. At the meeting, Detective Superintendent McGarty said that he informed Detective Sergeant White that he wanted to put a number of allegations to him regarding Bernard Conlon and that he was conducting a criminal investigation. Detective Sergeant White requested that he be allowed to tape the interview. This was refused. Detective Sergeant White then requested Detective Superintendent McGarty to put the allegations to him and at that stage, Detective Superintendent McGarty informed him that he would do so after caution. Detective Sergeant White then requested that he be afforded an opportunity to consult his solicitor, Mr. Páid Dorrian. At 10.05 hours Detective Sergeant White left the interview room and returned a short time later to say that his solicitor had advised him to say nothing. The interview terminated at 10.25 hours prior to which Detective Sergeant White told them that he would talk to his solicitor about answering the allegations on a question and answer basis. He was informed that the interview could only be with Detective Sergeant White alone. Before leaving the room, Detective Sergeant White said:

I have tapes and notes of conversations with senior officers and he then looked at Detective Inspector Foley and said there is no need to go searching my house, you won't find them, everything is with my solicitor.

Detective Sergeant White then left the room and Detective Inspector Foley made a note of the interview. Detective Sergeant White informed Detective Superintendent McGarty that he would be working from 18.00 hours on the 20th of March and would then let him know what he intended to do. The reference to having tapes and notes of conversations with senior officers came out of the blue and he addressed the remark as he was going out the door to Detective Inspector Tadhg Foley. Neither of them could understand what the reference to tapes of conversations was about. It was, however, viewed as a threat but was never pursued with him.³⁷⁸

- 3.163. **The Tribunal finds it utterly shocking that a detective sergeant could, on such a serious occasion where he is the focus of a criminal inquiry, determine that he could act with such gross insubordination to superior officers as to threaten them in this fashion, and that further he could do so without any consequence. While Detective Superintendent McGarty agreed that Detective Sergeant White had acted in an insubordinate manner and that this was not a practice that would normally be accepted, he did nothing about it. This kind of behaviour on behalf of serving members of An Garda Síochána cannot be allowed to pass without sanction if discipline is to be maintained in the force.**
- 3.164. Detective Sergeant White gives a completely different account of this meeting which, if true, is even more shocking. Detective Sergeant White said that he asked Detective Superintendent McGarty to outline the full situation to him. Detective Superintendent McGarty cautioned him. He was asked by Detective Sergeant White whether this was about Bernard Conlon. Detective Superintendent McGarty asked him how he knew that and he replied by telling him that a detective had telephoned him during the week and told him that there was an allegation against him. Detective Superintendent McGarty replied that this was highly irregular. He cautioned him again and told him that it was a criminal investigation. Detective Sergeant White confirmed that he had requested permission to tape the interview, which was refused. He wished to tape it “for clarity”. He consulted with his solicitor after the third caution was put to him. He also said that Detective Inspector Foley sneeringly told him, “You’ll not get a solicitor on St. Patrick’s morning”.
- 3.165. Detective Sergeant White said that between 10.07 hours and 10.25 hours approximately he turned off his tape recorder and ejected the tape. He was writing on plain sheets of paper taking notes of what was being said when he was told by Detective Inspector Foley in a stern voice not to take any notes; he dropped the biro and stopped. Then it was agreed that they would meet on

³⁷⁸ Transcript, Day 367, Q.716-747.

Monday evening the 20th of March at 18.00 hours. Detective Sergeant White asked if the interview was now over. Detective Superintendent McGarty said it was and that he reluctantly agreed to his request to meet at 18.00 hours on the Monday evening. Detective Sergeant White gave the Tribunal the following account of what happened:

I said, what I am going to say now is off the record, Gentlemen. And I said to Superintendent McGarty, I am not including you in anything that I am going to say now and he said nothing, I said what words I say now will be directed at Tadhg Foley and I didn't use his rank. And what followed then was all I can say is, I was upset. I went over to him and I did bang the table in front of him, hard. I told him that he was setting me up and that I knew he was setting me up and he denied it and I said: if that is the case why did you send two of your men into the Travellers Rest restaurant in Strabane a couple of weeks ago, three weeks ago whatever it was, and put a statement in front of Doherty and try to get him to sign it? He denied it, and I said, well I can tell you one thing I have proof, because I went over to the Travellers Rest and I got the CCTV tapes from the restaurant. Then he struck the table with his fist and said, you have no [expletive delete] right to get them. And I struck the table with my fist and said I have every right in the world, as much right as your men to go into a different jurisdiction without the knowledge of the RUC and try and fabricate evidence against me. Other things were said then in relation to different matters, but I was upset certainly, I was annoyed, I was angry. I was very angry with what was happening because I knew what was happening then. It wasn't Superintendent McGarty who was involved in this. I just said to Superintendent McGarty, were you in Manorhamilton and he said no John I wasn't and I said well I am not saying one word against you of any kind, I am not including you in any way in the allegations. I didn't use the word allegations, I said in what I am now putting it to this man here. I did not include him it was not my intention to include anything against Joe McGarty.³⁷⁹

- 3.166. Detective Sergeant White later said in cross-examination in relation to his altercation with Detective Inspector Foley that:

I then went over and I accused D/I Foley of certain things and I suppose you can only call it a barrage of abuse, and it was the first time in my life I ever, ever abused a senior officer. And that is a fact

³⁷⁹ Transcript, Day 355, Q.598-628.

... I gave him a lot of verbal abuse, I told him what I thought he was doing and why he was doing it. I suppose he got angry with me. At one stage, he tried to stand up behind the chair and I pushed him down with my left hand, which I realise is the wrong thing to do and I shouldn't do it. I did it Chairman through utter, utter anger. I told him that they were up in Donegal and they had no intention of looking into Frank McBrearty Junior's statement. He claimed that they had and that they had done the job fairly. I shouted at him, had he went to the members in charge yet. He said no. I said that it is the first ... thing you should do, to go to the members in charge and find out what their view was, when he was leaving the room and leaving the station. Then I spoke to him, I told him that he had no right in the world to send two detectives into Northern Ireland, a different jurisdiction, with a prepared three-page statement and put it in front of a criminal, Mr. William Doherty, in an attempt to get him to sign it about me, without reading the statement over to him, a statement prepared by a detective. He roared at me that that didn't happen. I told him that I went over to the Travellers Rest and I had acquired two tapes from the CCTV cameras and that I was in the process of checking them out at that time. He roared back at me, he pounded his fist on the table and said that I had no right in the world myself to go over there as an Irish guard to do that. And I said well report it to the RUC, we'll see what happens. At that stage ... I hit the table with my fist very hard I agree with that, I was very angry and the words I said to him was that you [expletive deleted] up the whole investigation and that is what I said to him ... I said to him I went to you Tadhg ... in fairness I went to you in October '99, the previous year, we had a meeting in our office and I put my cards on the table and you told me that you were not investigating me. This man keeps coming back to me William Doherty and his father, I'm hearing over and over again that they are still targeting me and I am not in a position to defend myself. Voices were raised on both sides. I was standing throughout all this. At least on two occasions I looked over at Superintendent McGarty and said, Joe you can leave the room if you wish, I don't want to make any comment against you, and I am not including you in what I am saying here to Tadhg Foley this morning. Superintendent McGarty was white in the face and he said, look John calm down and leave it go. It went on I'd say for 15/20 minutes. I left the station in a

totally ... worn out traumatised fashion and ... if they had done me for assault or discipline, I presume that they could have went ahead and I wouldn't have much of a defence to it in relation to that. And I was thoroughly surprised when I saw both their statements in the criminal file, that there was nothing in relation to that interlude that went on between Tadhg Foley and myself, mostly on my part, and I believe that I was wrong to raise my voice, to roar, to shout, to use my fist on the table and to push him down by the shoulder. But I was so aggravated by what was happening and what I perceived to be happening that I took that action and it was the first time in my life.³⁸⁰

- 3.167. Detective Inspector Foley during the course of this meeting made the following note as an aide memoir:³⁸¹

17th March 2000
10.00 am D/Sgt. John White
Informed criminal investigation.
Want to put allegations re: B Conlon.
Asked can he tape.
No.
Put allegations to me.
Will put them after caution.
Do you mind if I consult with my solicitor.
No.
10.05 leave the room.
My solicitor advice to me say nothing.
10.25 am interview terminated
Stated that he would talk to his solicitor about answering the allegations in question answer basis. Interview will be with himself only.³⁸²

- 3.168. A further memorandum was made by Detective Inspector Foley, which was signed by both officers within minutes of the conclusion of the interview, which was termed notes of interview. Included in that note is evidence of the threat

³⁸⁰ Transcript, Day 361, Q.600-605.

³⁸¹ Transcript, Day 368, Q.670-675.

³⁸² Tribunal Documents, pages 3389-3390.

allegedly made by Detective Sergeant White in the interview, which has already been referred to.³⁸³

The Interview of the 20th of March 2000

3.169. The next attempt to interview Detective Sergeant White took place on the 20th of March 2000 at Letterkenny Garda Station at 18.00 hours. Detective Superintendent McGarty, Inspector Hugh Coll, Detective Sergeant White and his solicitor Mr. Páid Dorrian attended. The two officers had a prepared list of questions to put to Detective Sergeant White. Their account is that Detective Sergeant White was informed that he would not be interviewed in the presence of his solicitor. Mr. Dorrian said he was going to the High Court and that his client was entitled to fair procedures and to know “why, where and who made the allegations”. He then stated that they could arrest his client. Detective Superintendent McGarty said that he would not arrest him. It was later suggested that Detective Sergeant White was told something to the effect that there was no question ever of his being arrested, which was denied by both officers. The comment was simply referable to that day’s events. Detective Sergeant White, according to Inspector Coll, asked if he could take a note of the allegations and Inspector Coll agreed that he could. Mr. Dorrian said he was not taking notes and that the meeting was terminated. If the interview had taken place it would have been under caution. He would have been told the general nature of the allegations. This would have been given without any caution. They would not have expected a reply at that stage. They would then have applied the caution and asked the questions.³⁸⁴ They did not get the chance to proceed in this orderly fashion. The interview lasted from 18.00 hours to 18.07 hours. Detective Superintendent McGarty’s note of the meeting is as follows:

6.00pm – 6.07 pm 20.3.2000.

Mr. Dorrian, Solr. accompanied by D/Sgt. J. White to interview room at Letterkenny Garda Station.

Mr. Dorrian introduced himself and said his client was not answering any questions.

There is such a thing as fair procedures and he is entitled to know when, who and how the allegations were made. I informed, Mr. Dorrian, Solr. that I was not going to interview D/Sgt. White in the presence of the solicitor and he said he was taking me to the High Court.

He said you can arrest him if you like.

Informed him that I would not arrest him.

³⁸³ Transcript, Day 368, Q.675-741.

³⁸⁴ Transcript, Day 367, Q.257-303.

Mr. Dorrian said this interview is terminated.

D/Sgt. White said could he take a written note of the allegations and he was informed by Insp. Coll that he could.

Mr. Dorrian intervened and said no and that his client was entitled to how, who when and where the allegations were made. Mr. Dorrian, Solr. said he was going to the High Court.³⁸⁵

Shortly after this meeting, it was decided by the officers that Detective Sergeant White should be arrested. It was necessary to advance the investigation by interviewing him concerning the allegations of Bernard Conlon.

- 3.170. At 18.25 hours on the same date, Detective Sergeant White reported to Sergeant Michael Foy that his locker had been interfered with and a number of items had been removed from it including a briefcase with all notes and notebooks concerning proceedings involving the Director of Public Prosecutions and the McBrearty family and notes concerning these court cases together with notes made by Detective Sergeant White concerning his contact with colleagues in respect of the convictions of Bernard Conlon. He alleged that this interference happened between 11.30 hours on the 17th of March 2000 and 18.10 hours on the 20th of March 2000. **He accused Detective Inspector Foley of being behind this. There is no evidence to support this allegation and the Tribunal is not satisfied as to the bona fides of this complaint. It provides a convenient excuse as to why important documents in Detective White's possession relating to the entire McBrearty case went missing and were not available.**

The Arrest of Detective Sergeant White on the 21st of March 2000

- 3.171. On the 21st of March 2000 Inspector Tadhg Foley arrested Sergeant John White on:

Suspicion of procuring the commission of an offence under Section 12 of the Criminal Law Act, 1976 in that between the 1st of July and 21st of July 1998 at Cartron Bay, Sligo he procured Bernard Conlon to make a false statement to the Gardaí at Sligo that a criminal offence had been committed.

He was detained at Letterkenny Garda Station from 19.05 hours on the 21st of March 2000 until 00.15 hours on the 22nd of March 2000. He was suspended from duty by Chief Superintendent Denis Fitzpatrick at 19.15 hours on the 21st of March 2000.

³⁸⁵ Tribunal Documents, pages 3391-3393.

3.172. The Member in Charge at Letterkenny Garda Station to which Sergeant White was conveyed was Sergeant Michael P. Foy, who gave an account of what happened. Sergeant Foy detained Detective Sergeant White following a discussion with Detective Inspector Foley. He asked Detective Inspector Foley whether he had a statement in writing to substantiate the allegation that had been made. This was confirmed and indeed Sergeant Foy had information prior to Detective Sergeant White's arrest that such a statement had been made. He decided to detain Detective Sergeant White under the terms of Section 4 of the Criminal Justice Act, 1984 for the proper investigation of the offence for which he was arrested. He followed a number of normal procedures and at 19.13 hours he received a complaint from Detective Sergeant White that Sergeant Fox had taken possession of the keys of his car to secure it at 19.03 hours. This was brought to the attention of Sergeant Traynor who left the office and returned a minute later to inform Detective Sergeant White that Sergeant Fox was in an office within the station with the keys. Detective Sergeant White objected to his car being searched without a warrant and also made a separate complaint:

He complained that his arrest was illegal and unlawful and was as a result of a recent meeting he had with Assistant Commissioner Carty at Hillgrove Hotel, Monaghan, in which he brought to his notice certain aspects of the current investigation in Donegal which were as follows:

- (i) That the statement taken from Frank McBrearty (Junior) on the 4/12/96 was a false statement,
- (ii) That the arrest of Michael Peoples on he believed 6/5/99 was an unlawful arrest.

He stated that he had informed C/Superintendent McNally and D/Inspector John McGinley of three very valid reasons why Michael Peoples should not be arrested for allegedly threatening Bernard Conlon on 20/7/98 at Sligo. He stated that at this time that both officers were not asking him to take part in the arrest of Michael Peoples, but to carry out confidential enquiries into his whereabouts and surveillance on his house. He stated that he did this and reported his findings by mobile phone to D/Inspector McGinley on mobile phone [number redacted] and left a message on his answering machine and also at Communications Centre, Letterkenny at 1.30 am on that morning. Detective Sergeant White said that he also brought to Commissioner Carty's attention that he had several reasons for believing that the Garda notebook found at Doherty's house at Doorable, Manorcunningham on 20/9/97 was planted by the Gardaí in order to discredit Superintendent Lennon and Garda John O'Dowd. He stated that

he handed Commissioner Carty a micro cassette containing a taped conversation between William Doherty, D/Garda Kilcoyne and himself on 5/12/96, which pertained to the notebook. He stated that on that date Commissioner Carty advised him that C/Superintendent Fitzpatrick and D/Superintendent John McGinley had informed him they strongly suspected him of being involved in four serious crimes which were as follows:

- (i) The present allegation re: Mr. Conlon,
- (ii) That he arranged to have a gun man travel from Dublin and threaten a woman in Letterkenny with the aid of a hand gun when he was masked,
- (iii) That he placed explosives on a mast in West Donegal,
- (iv) That he planted a gun near a traveller's encampment in 1998.

He stated that he assured Commissioner Carty that he was not involved in any criminal activities relating to the four accusations. In relation to number four he stated that he gave the names of his two informants and got them personally to consult with D/Commissioner Noel Conroy who was personally known to one of these informants and to get D/Commissioner Conroy to establish if he was telling the truth. He stated that Commissioner Carty assured him that he would do so. He stated that Commissioner Carty did not believe that he had anything to do with any of the crimes. He stated that he believed that this arrest was simply to discredit him in relation to any future court cases.³⁸⁶

- 3.173.** Sergeant Foy recorded the complaints made by Detective Sergeant White in the Garda Síochána custody record in respect of his arrest and detention.³⁸⁷
- 3.174.** Detective Sergeant White was interviewed whilst detained on the 21st of March 2000 by Detective Superintendent J. McGarty and Detective Inspector Foley and Inspector Hugh Coll and Detective Sergeant J. Giblin. In the course of his detention he was afforded access to his solicitor with whom he had a telephone conversation at 19.40 hours and an extensive interview between 20.00 hours and 20.50 hours. He again telephoned his solicitor at 22.06 hours and 23.29 hours. On release from custody at 00.13 hours he had no complaints to make concerning his treatment whilst in detention.³⁸⁸
- 3.175.** It is clear that Detective Sergeant White, as he was entitled to do in law, indicated that he did not wish to reply to any of the questions posed by the interviewing

³⁸⁶ Tribunal Documents, Statement of Sergeant Michael P. Foy made 27th of April 2000, pages 588-590.

³⁸⁷ Tribunal Documents, pages 1937-1945.

³⁸⁸ Tribunal Documents, pages 1942-1945.

members until he had seen his solicitor and also indicated, having received the advice of his solicitor, that he would not reply to any questions acting on his solicitor's advice. With a very few exceptions, when all of the allegations made by Bernard Conlon were put to him he declined to reply on the advice of his solicitor.

3.176. The exceptions arose in the course of the interview with Chief Superintendent McGarty and Inspector Foley as follows:

Q. Did you talk to Bernard Conlon about how you had Mark McConnell in about the murder in Raphoe and he was like a wall, you could get nothing out of him?

A. No reply, I never interviewed Mark McConnell in a Garda Station ...

Q. Did you take a cheque book out of your pocket and say to Bernard Conlon, that's no good and put it back in your pocket?

A. No reply – I don't have a cheque book and I have not had one for the last 10 years or perhaps 15 years ...

Q. Did you drive Bernard Conlon to a B&B on one of his court appearances in Letterkenny?

A. No reply – Yes I did on two occasions ...

Q. Did you tell Garda John Nicholson that he was to get certificates for £40 in respect of loss of earnings for Bernard Conlon attending Letterkenny District Court in respect of your cases?

A. No, Garda Nicholson produced those certificates to me, after each court case by post and D/Garda John McHale handed one to me in a sealed envelope at Letterkenny Courthouse in December 1999. Inspector Gerry Connolly was present at the time.

Q. Did you send a cheque to Sligo District Court to Garda John Nicholson for him to hand it over to Bernard Conlon?

A. I don't want to reply to any questions on the advice of my Solicitor. I just want to say that I have never in my life indented the typing on any typed correspondence and the fact that McBertie is spelled this way I am referring to the second page of the letter which is signed Bernard. I have nothing more to say but I will forward a statement through my solicitor in the very near future. I wish to categorically deny any wrong doing in relation to my dealing with Mr. Conlon, that's all.³⁸⁹

³⁸⁹ Tribunal Documents, pages 426-451.

- 3.177. A similar approach was adopted to the interview conducted by Inspector Hugh Coll and Detective Sergeant Giblin. This largely concerned the issue of various claims for witness expenses. Again, Sergeant White declined to reply to most of the questions asked on the advice of his solicitor. Again there were a number of exceptions as follows:

- Q. B.C.3 Did you deliver this cheque personally to Bernard Conlon?
- A. I did I shouldn't reply. I am not sure. One day I gave him a cheque passing through Sligo. I am not sure which day ...
- Q. B.C.5 Did you make out the certificate of loss of earnings?
- A. No certainly not.
- Q. H.C. Did you organise for anyone else to make it out and sign it?
- A. No
- Q. B.C.6 Did you arrange for Bernard Conlon to cash this cheque at McGranaghan's B&B, Raphoe?
- A. No, no ...
- Q. B.C.9 Did you deliver this cheque personally to Bernard Conlon?
- A. I delivered one cheque. I can't remember when. I was on my way to Tipperary.
- Q. Did you have somebody else deliver this cheque to Bernard Conlon?
- A. No reply on the advice of my solicitor. I will answer all this in a full statement which I will forward to you in the near future ...
- Q. Did you make out these loss of earnings certificates?
- A. Myself. No absolutely no way in the wide earthly world.
- Q. Did you instruct any other person to make out these loss of earnings certificates?
- A. No...
- Q. Did you receive correspondence from Bernard Conlon by registered post relating to his witness expenses in November and December 1999 (produce "customer receipts")(copies) produced by Inspector Coll?
- A. No reply at the moment on the advice of my solicitor. I will answer all this in the form of a statement in the near future ...

Q. Is there anything else you want to say?

A. I wish to categorically state that I am not guilty of any wrong doing in relation to the claims that you have shown me and that I will forward a statement in the near future.³⁹⁰

3.178. Notwithstanding the statement by Detective Sergeant White that he would forward his statement in relation to these matters to the investigating members, he never did so. Though he set out an elaborate series of allegations concerning topics ranging from the alleged confession of Frank McBrearty Junior on the 4th of December 1996 to the arrest of Michael Peoples in May of 1999 and other matters in respect of the Barron investigation and the Carty investigation, and though he alleged the particular arrest and detention of the 21st of March 2000 was simply to discredit him “in relation to any future court cases”, he never elaborated on this to the investigating members and never addressed the issues raised by them. The Tribunal acknowledges that the right not to incriminate oneself in the course of a criminal investigation was lawfully available to Detective Sergeant White on this occasion; nevertheless, he must have known that the investigators needed to establish the truth in relation to his dealings with Bernard Conlon and needed his assistance as a detective sergeant in that regard. Unfortunately, this assistance was unavailable to the Carty team as the inevitable consequence of his quite lawful and proper exercise of this right and no criticism can be made of Detective Sergeant White in this regard.

3.179. However, the strategy adopted and the method of its execution was somewhat strange. Detective Sergeant White was willing to throw an allegation into the pot on the 17th of March 2000 by way of the threat that he made on that occasion. Then, on the date of his arrest, he was prepared to launch a number of other allegations. He quite deliberately chose not to remain silent when he was arrested, and to set out this raft of allegations, which clearly demonstrated that he knew what was under investigation. The Tribunal is satisfied that the purpose of these allegations was to distract the Carty team from the core issue which required investigation namely, the allegation that Detective Sergeant White had put Bernard Conlon up to the framing of Mark McConnell and Michael Peoples as culprits for the making of the threat against him on the 20th of July 1998 which necessarily involved inquiring into his relationship with Bernard Conlon. The Tribunal is satisfied that the factual basis of what he dictated to Sergeant Foy for inclusion in the custody record is substantially false. This includes his version of the supposed meeting with Assistant Commissioner Carty, the allegation that he gave

³⁹⁰ Tribunal Documents, pages 452-462.

three reasons as to why Mr. Peoples' arrest was unlawful to Chief Superintendent McNally and Detective Inspector McGinley, and the allegation that a notebook was planted at William Doherty's house. They were all calculated to give the impression that something other than a lawful investigation was being carried out in relation to the allegations by Bernard Conlon. At the end of this note, he directed Sergeant Foy to insert that he believed that his arrest was simply to discredit him in relation to any future court cases. In my view, as sole member of this Tribunal, his whole approach to the Carty investigation, in particular from March 17th up to and including his arrest and detention, was to create a smokescreen in order to distract, as far as possible, from his association with Bernard Conlon and Garda John Nicholson. The Tribunal finds the allegation that the arrest was simply made to discredit him to be totally without substance. A great deal of effort was employed in the course of the Tribunal hearings by Detective Sergeant White to weave a web of intrigue around what were very straightforward and direct efforts made by Detective Superintendent McGarty, Inspector Foley and Inspector Coll to pose the questions that were ultimately posed after Detective Sergeant White's arrest. The stance adopted during his detention could equally have been adopted during a cautioned interview on the 17th or 20th of March. There was no difficulty in respecting Detective Sergeant White's right not to incriminate himself on those occasions, as it was respected during the course of his detention. In fact, the likelihood is that had the interview proceeded in precisely these terms prior to his arrest, he probably would not have been arrested at that stage. The Tribunal is entirely satisfied to accept the evidence of Detective Superintendent McGarty, Detective Inspector Foley and Inspector Coll in relation to their accounts and their dealings with Detective Sergeant White and Mr. Dorrian in the course of these meetings. The Tribunal does not accept the evidence of Detective Sergeant White and Mr. Dorrian in this matter. The criticisms advanced of the behaviour of those officers by Detective Sergeant White are deliberately contrived and mischievous and are rejected. Though this approach once again heightened the Tribunal's suspicion that Detective Sergeant White was involved in the invention of the silver bullet threat it is not sufficient to corroborate Bernard Conlon's evidence in that respect.

Further Allegations by Bernard Conlon

- 3.180. In the course of 2002 and 2003 Bernard Conlon made a series of allegations which were investigated by the Carty team concerning telephone calls and other

occurrences which he considered to be of an intimidatory nature and linked to his assistance to the Carty team.³⁹¹ In particular, he alleged that on the 20th of January 2002 he was sitting at a table having his dinner when he heard a loud knock on his front door. When he opened the front door he saw a tall man walking away out of the driveway towards the road. He alleged this same person got into a green Mercedes car which was parked directly outside Bernard Conlon's driveway. He said that he was shocked but was not sure whether this was Detective Sergeant White or not. Enquiries revealed that Detective Sergeant White had been the owner of a green Mercedes but enquiries also revealed that he had disposed of this vehicle in December 2001. The investigators were satisfied that Bernard Conlon was aware that Detective Sergeant White was the owner of a green Mercedes but would not have known that he had disposed of it when he made his complaint.

- 3.181.** A complaint was also made by Mr. Conlon that at 12.20 hours on the 21st of January 2002 he received a telephone call on his mobile phone from a male caller, who said in a hushed tone, "Bernard, Bernard, Bernard." He associated this call and other calls with his court appearances in Donegal. An application to trace incoming calls to Bernard Conlon's mobile phone indicated that the call had been made by a Mr. Richie Power, a nephew of Bernard Conlon, who stated that his reason for ringing Mr. Conlon was to get his clothing returned from Mr. Conlon's house, which he had left there when he stayed for a period of six days. They exchanged a few cross words and Mr. Power stated that Mr. Conlon threatened that he would "get the fellows with the peaked caps after me."
- 3.182.** A further allegation was made that on the 5th of February 2002 at 23.15 hours, Mr. Conlon answered a front door knock at his home and was confronted by two men who claimed to be members of An Garda Síochána and informed him they were to take him to Manorhamilton Garda Station "for the lies you have told Tadhg Foley about John White". He was told that he could come voluntarily or they would get a warrant. He asked for identification and when the two men left the area he went to phone the Gardaí. Extensive enquiries carried out at that time yielded no results. The lady residing in the upper portion of 61 Cartron Bay at the time was interviewed but had no recollection of hearing any knocking that night or any conversations taking place downstairs.
- 3.183.** Mr. Conlon made a further complaint that he had received a number of telephone calls on the 17th and 18th of June 2002 which he considered to be of a threatening nature. The caller on each occasion referred to Mr. Conlon as being a police informer and having stitched up John White in the courthouse in Sligo. Mr. Conlon was of the opinion that the caller on each occasion was his nephew,

³⁹¹ Tribunal Documents, pages 1989-2044.

Richie Power. The calls were traced to a mobile phone, the property of Mr. Peter Hart. He was married to Kathleen Power, a sister of Richie Power. Mr. Hart admitted that he had given a loan of his phone to Mr. Richie Power. Mr. Power accepted that he made the calls but only for the purpose of recovering clothing; but that he might have said to Bernard Conlon on the phone, “is that the informer Conlon.”

3.184. In another complaint made in respect of a call received on the 13th of April 2003, Mr. Conlon said a caller had said “hello” and “shush” repeatedly. In fact this turned out to be a mistake in dialling by a lady from China who was interviewed later. She accidentally contacted Mr. Conlon on a number of occasions because she had mis-stored a phone number.

3.185. The Tribunal is highly suspicious of these allegations and, in particular, is very concerned that attempts were made, without justification, to imply that Detective Sergeant White was attempting to intimidate Mr. Conlon in relation to the information which he had furnished to the Carty team. In these instances, the Tribunal is satisfied that it was Mr. Conlon who was attempting to contrive a scenario against Detective Sergeant White. It may be that the motivation for this behaviour was to put further pressure on Detective Sergeant White or to make it seem as if his allegations against, Detective Sergeant White were true, and for that reason Detective Sergeant White was trying to intimidate him, and/or he may have been trying to ingratiate himself further with the Carty team. Whatever the reason, it further undermined Mr. Conlon’s credibility with the Tribunal in respect of the story of the silver bullet threat.

3.186. Conclusions

1. The allegation made by Bernard Conlon that two men, whom he later identified as Mr. Mark McConnell and Mr. Michael Peoples, threatened him with a silver bullet at his home on the 20th of July 1998 was completely false.
2. The accusation made by Bernard Conlon that he was put up to making this allegation by Detective Sergeant John White is based entirely on his own testimony, which is deeply flawed. He was shown to be seriously inaccurate, and to have lied, in the course of his evidence to the Tribunal. He has had an unfortunate history of criminal, dishonest and deceitful behaviour and is not a person whose testimony could be relied upon without corroboration in some material respect. There is no satisfactory independent evidence of Mr. Conlon’s allegations against Detective

Sergeant White, such as to warrant the conclusion that Detective Sergeant White conspired, induced or paid him to make this silver bullet threat allegation against Mr. McConnell and Mr. Peoples.

3. These allegations were investigated by Gardaí from Sligo and, in particular, Inspector Gerard Connolly and Detective Garda Michael Reynolds. They carried out their investigation honestly and in good faith. They were not involved in any conspiracy to frame Mark McConnell or Michael Peoples in respect of the allegation of Bernard Conlon.
4. When Detective Sergeant White and Superintendent Lennon became aware of significant information relevant to the silver bullet threat investigation they failed to pass it on to the investigators in Sligo. This information concerned the fact that Bernard Conlon was already fully familiar with the appearances of Mark McConnell and Michael Peoples and should have been able to recognise them immediately had they called to his door to threaten him on the 20th of July 1998. Instead, Bernard Conlon affected in his witness statement of the 21st of July 1998 not to know them. In addition, an assertion was made during the hearing of the McBrearty licensing cases, in open court, that Mark McConnell had an alibi for the night when the threats had supposedly been made against Mr. Conlon. The specifics of that alibi were not given to Inspector Connolly at the crucial stage of his investigation. These important elements were not passed on to him in Sligo, probably because Superintendent Lennon and Detective Sergeant White were then engaged heavily in their licensing prosecutions against the McBreartys and their staff, and because of other issues arising out of the Garda investigation into the death of the Late Richard Barron that were arising in Donegal at that time. As a result, they were not particularly upset that Mark McConnell and Michael Peoples became the subject of this investigation. Instead, they were content to allow the genuine investigation by Inspector Gerard Connolly and Detective Sergeant Michael Reynolds proceed on an entirely false basis. This is shocking.
5. A most serious allegation of concealment of documents was made by Detective Sergeant White and Mr. Páid Dorian, solicitor. The Tribunal spent several days reviewing the facts. The Tribunal does not accept their testimony.
6. During the Tribunal hearings, Detective Sergeant White successfully demonstrated the unreliability of much of the testimony given by Bernard Conlon in relation to his alleged participation in the making of the

allegation that Detective Sergeant White was involved in creating the silver bullet threat allegation using Mr. Conlon as a false witness.

7. Detective Sergeant White, in the course of his testimony before the Tribunal, has also made a litany of the most serious allegations concerning his Garda colleagues in the Carty team and in Sligo. The Tribunal has determined that these allegations are false. The allegations were made with a view to distracting from his association with Bernard Conlon and Garda John Nicholson in relation to events arising out of the planting of Bernard Conlon as an agent in Frankie's Nightclub on the 30th/31st of August 1997. Though the making of these false allegations heightened the Tribunal's suspicion that he was, indeed, behind the silver bullet threat, nevertheless, the undoubted lies which Detective Sergeant White told did not provide sufficient or satisfactory corroboration such as to enable the Tribunal to accept the testimony of Bernard Conlon, which had already been undermined by reason of his lies and inconsistencies on this issue.
8. The Tribunal is satisfied that the submission advanced by Detective Sergeant White that Bernard Conlon's evidence is part of a conspiracy against him is without foundation.

CHAPTER 4 THE LETTER

The Letter of the 21st of April 1999

- 4.01. On the 27th of April 1999 Bernard Conlon made a statement to Inspector J. Barrett and Sergeant P.J. Gallagher in which he gave an account of a visit to his home by a man purporting to be a private investigator who gave his name as a Mr. Flynn from Enfield, Co. Meath. He supposedly was asked by this Mr. Flynn about his involvement in the court case involving Mr. Frank McBrearty at Letterkenny Court. He recounted that Mr. Flynn asked him:

Would you be interested in changing your statement that you made to the Guards about McBrearty's nightclub. I said to him that, that court case was over. It's not over that's why I'm here to have a chat with you. Flynn said to me if I co-operated with him that he would make one phone call to Frank McBrearty and that I would have £10,000 in my pocket. If I went to a solicitor with him and made a statement about Sergeant White and a Garda O'Dowd in Letterkenny. Flynn wanted me to change my statement I made to the Gardaí about McBrearty's nightclub. He said that McBrearty would have the money ready inside a couple of hours. He said McBrearty was a millionaire and that he could take on the State. McBrearty wanted to get Sergeant White moved. He asked me did I know Sergeant White. I said I met Sergeant White at the live bands in Frankie's nightclub in Raphoe. He used to be on duty there. I told Flynn I just knew White to see. I told Flynn I wasn't going to tell lies and I wanted no money. Flynn said, "I will write to you" and come back to you if you want. Don't mention anything to the Guards. He shook hands and left the house.

- 4.02. Mr. Conlon said that he was upset by this visit and then added:

Yesterday Monday 26th April, 1999 I got a letter addressed to me at 61 Cartron Bay. It was typed and came from William G. Flynn, Private Investigator. I now have handed the letter over to the Gardaí. I was very upset about Mr. Flynn calling to my house and I contacted Garda Nicholson in Sligo Station for his help. I also want to tell you that Flynn told me that Sergeant White had him up in court for making abusive phone calls. He seemed to have a grudge against Sergeant White and Garda O'Dowd. He said the Minister for Justice was dealing with White and he was going to be shifted.³⁹²

- 4.03. Mr. Conlon also described a second gentleman who was seated in a car outside his house at the time of Mr. Flynn's visit who, he said, was clearly with him.

³⁹² Tribunal Documents, pages 124-125.

- 4.04. Contact was made by Mr. Conlon with An Garda Síochána as described by Garda John Nicholson in a statement made on the 4th of April 2000 to Detective Superintendent McGarty and Detective Inspector McHugh as follows:

On the 26th of April 1999 Conlon contacted me by telephone about some letter he had received from a Private Investigator called Flynn. He informed me that he had contacted Detective Sergeant White who suggested to him to contact me. I immediately went to his house at No. 61 Cartron Bay, Sligo and spoke to Conlon at the front door. He showed me a typed letter which offered him a large sum of money which I cannot recall the amount to withdraw the evidence he had already given in Letterkenny District Court. I did not read this letter as I just vaguely glanced over it. To the best of my knowledge there was only one page, and I asked Conlon could I bring it with me as I considered the matter as very serious. Conlon stated that it was a great offer and if he accepted it he would be sound for life. He handed me the letter after I informed him that I was going to bring it to the attention of my superior officer. I cannot recall did he give me the envelope it arrived in but it's possible he did. I immediately went to Sligo Garda Station and brought this matter to the immediate attention of Chief Superintendent McNally and I handed over this letter to him.³⁹³

- 4.05. Chief Superintendent Austin McNally then requested Inspector Michael Barrett and Sergeant P.J. Gallagher to interview Bernard Conlon at his home. At about 11.15 hours on the 27th of April 1999 Garda Nicholson drove both members to Cartron Bay where they met Bernard Conlon walking in the estate. Garda Nicholson introduced Mr. Conlon to Inspector Barrett and Sergeant Gallagher and advised him to talk to them. Sergeant Gallagher recalled that on their arrival at Cartron Bay, Bernard Conlon was on the street and:

Garda Nicholson went over to Bernard Conlon and spoke to him and then introduced Bernard Conlon to us.

They then went into his house and took a statement in the terms already set out. Inspector Barrett states that he received the letter purportedly sent to Mr. Conlon on the 27th or 28th of April 1999 from Garda Nicholson. He handed that letter over to Detective Inspector Foley.³⁹⁴ The letter was claimed by Inspector Barrett to be written over two pages in a statement made to Detective Inspector Foley on the 15th of February 2000. This is the first page:

³⁹³ Tribunal Documents, page 366.

³⁹⁴ Tribunal Documents, Statement of Inspector Barrett, pages 423-424; Statement of Sergeant Gallagher, page 425 (both undated). Inspector Barrett was unclear as to whether it was a copy or the original letter but the Tribunal is satisfied it was the original of the document later examined by Inspector Fitzgerald.

First Page

Zimmerman & Co International Ltd

Thistlewaite House

Enfield

Co Meath

Date 21st April 1999

Mr. Bernard Conlon 61 Cartron Bay, Sligo, Co. Sligo

Re: Incident on the 18th January 1996 at Navan

Dear Mr. Conlon,

Let me introduce myself, Billy Flynn is my name, I have been a Private Detective for nearly 20 years and I am retiring in the coming weeks due to a protracted illness and I have been winding down the business in recent months and clearing all outstanding cases, I do not admit failure very easily but I was retained in relation to an incident that took place at Johnstown, Navan on the 18th January 1996 and it would appear I have failed to succeed in this investigation which upsets me considerably as my client is also my friend and I am making one last effort to attempt to resolve this case satisfactorily for my client who suffered injury and loss.

I hope you are not offended in me writing to you for assistance I have been informed by a colleague that you once lived in Navan and in a manner of speaking you knew everyone, this case was particularly dangerous and I did not conduct an investigation in Navan because of the danger involved. My colleague informs me that you are a very honourable and trustworthy person whom I could trust and that I could write to you in the strictest confidence as I am now doing.

Basically, what is required here is somebody not resident in Navan but with Navan connections and local knowledge. My client has authorised me to pay £5,000 for information that will lead to a conviction, I am in possession of this cash and write to enquire if you would be interested in assisting me in this matter.

In conclusion I hope you are not offended by this correspondence and if so, just tear it up, if not, please phone me and we can arrange to meet.

Yours faithfully,

William G. Flynn

- 4.06. The letter comes in two pages: the first page concludes with the signature of William G. Flynn.³⁹⁵ The second page is more mysterious. Here it is:³⁹⁶

Second Page

As I would like if you would agree to that which was discussed down town about White and O'Dowd.

If you agree, I will ring Frank McBertie and will arrange for you to get the money. Thanking you, Bernard.

- 4.07. In his statement of the 15th of February 2000, Mr. Conlon said:

I recall getting a letter from Flynn, a private detective from Enfield. The letter stated he was interested in talking to me about an incident that happened in Navan and that there was money in it for me. It was a single sheet of paper. He said he was interested in meeting with me and would I ring him or call to see him. I thought this letter a bit strange as I had never heard of Flynn or had any idea of what he was talking about. I rang John White and asked him did he know Flynn and he said I do know the whore. I told him I got a letter from him. He asked me had I the letter. I told him I had. He said he would be down. White called down in the afternoon and I showed him the letter. He told me he had him up in the court for making obscene phone calls to his wife. He had him in Letterkenny Court and was fined and bound over to keep the peace. He said he was a private detective for the McBreartys investigating the Richie Barron's murder. He said he wanted me to stitch him up. He told me there was a few pound in it if I did it for him. I agreed to do it. He took away the letter and came back a few hours later. There was a second sheet attached to the letter. John White told me he had added a bit to it. He told me not to take it out of the envelope. I didn't obey his order. I had a look at it. There was a second sheet, but there was no heading on the second sheet. I cannot remember what was on it. He gave me a description of Flynn that was supposed to have called to my home, a few days before I got the letter. He picked the day. He said he would be wearing a suit with a flashy shirt and tie, stout blocky build, 40ish with a beard. I was to say that he offered to take me to a solicitor. At this stage statement made to Inspector Michael Barrett on 27.4.1999 read over to Bernard Conlon and he agreed it was all lies. Before John White left that evening he told me to report the incident as he had described to John Nicholson. Before he left he took five twenty pound notes out of his black wallet and gave them to me. He told me he wanted to get Flynn put out of circulation. He'd he wanted him to

³⁹⁵ Tribunal Documents, page 690.

³⁹⁶ Tribunal Documents, page 691.

have dry shoes. It was all over Flynn making phone calls to his wife. I was happy enough to do it. I didn't have much option ... he was upset that the Judge didn't issue a warrant for Flynn to appear in Court, so the Judge could make an example of him. He headed off then. I rang Sligo Garda Station from my own phone as far as I recall and I left a message for John Nicholson to call which he did. When he arrived he says I know your looking for me, you got an old letter. I says that right John. Tony Doyle was in the sitting room watching television and John Nicholson walked into the kitchen. He sat down at the table and I handed him the envelope. He put on his glasses. He took out the letter and read it. He turned it over and looked at the other page and he was smiling. He asked me when I got the letter. I told him I got it on this Monday. I told him what White had told me to say. He said, "I'm already briefed". He stayed about ten minutes. He took the letter away with him. He said there would be someone calling and to make a statement.³⁹⁷

4.08. The following morning Garda Nicholson brought the other two members to take Mr. Conlon's statement.

4.09. He added in his statement that at the conclusion of the making of the statement he was asked:

Is that the letter and I said it was. There were two sheets there.

He acknowledged that he signed the document and also said:

I contacted John White and told him I had made a statement. I never met or do I know Billy Flynn.³⁹⁸

4.10. When interviewed by Detective Superintendent Joseph McGarty and Detective Inspector McHugh on the 4th of April 2000 about this matter, Garda John Nicholson admitted that he called down to Bernard Conlon when he received a message in Sligo Garda Station in April 1999. However, he did not accept that he said to Bernard Conlon, "I know you are looking for me you got an old letter." He accepted that he called down and collected the letter. He spoke to Bernard Conlon at the door. In respect of the letter he said:

More than likely I did get an envelope but I can not honestly say, but whatever I got I later gave it to Chief Superintendent McNally on the same day ... I vaguely glanced through the letter but I did not read it. ... I cannot recall any second page, but it is quite possible it was there. There was something about offering money to him if he withdrew the evidence in Court ... I presumed he got it that day ...³⁹⁹

³⁹⁷ Tribunal Documents, pages 204-206.

³⁹⁸ Tribunal Documents, page 206.

³⁹⁹ Tribunal Documents, page 374.

Garda Nicholson also denied that Bernard Conlon told him what Sergeant White had told him to say, and said that he did not inform Bernard Conlon that he was already briefed. That was “absolutely untrue”. He insisted that the only page he saw was the first page. He did not tell Bernard Conlon that someone would be calling and that he should make a statement. He denied that he informed Bernard Conlon that he was to tell Inspector Barrett and Sergeant Gallagher:

what Sergeant White and Conlon had discussed. He simply advised Mr. Conlon to talk to the members about the letter. He then left the area.⁴⁰⁰

- 4.11. When asked about this letter by members of the Carty team, Detective Sergeant White for the most part made no reply. This changed when the letter was produced to him by Detective Superintendent McGarty as follows:

Q. I now produce to you the letter from B. Flynn and the second page added to it by you. What have you to say about this?

A. Can I read it. I saw the letter dated the 21/4/1999 which I have now read, but I have never seen the second page before, which is signed Bernard.

Q. Did you type the second page of the letter and attach it to the letter you got from B. Flynn?

A. Certainly not.

Detective Sergeant White then reverted to giving no reply to questions asked by the interviewers.⁴⁰¹

The Evidence of Bernard Conlon

- 4.12. Mr. Conlon told the Tribunal that he could not understand the letter that he received from Mr. Flynn. He had never met or spoken to Mr. Flynn. Tony Doyle may have read the letter to him. He did not like the contents of the letter. He never contacted Mr. Flynn about the letter. He phoned Detective Sergeant White about it and asked him if he knew Mr. Flynn. Detective Sergeant White called Mr. Flynn a rude name and said:

He was involved with making phone calls or abusive calls to his home ... and he was interviewed or arrested, he was prosecuted for it ... He was a bit upset that time that there wasn't a bench warrant issued for to bring him before the courts ... Billy Flynn, I think he got bound to (the) peace or he was ... he got away, he didn't get a prison sentence anyhow ... Sergeant White said he was making abusive phone calls to his wife ... He said they were

⁴⁰⁰ Tribunal Documents, page 375.

⁴⁰¹ Tribunal Documents, pages 447-450.

*abusive phone calls or something ... He was up in court for it. He said he was an investigator, he used to work for the McBerteys (sic) in Raphoe ... He was investigating things that was happening around with the McBerteys (sic) ... He was annoying his wife, that type of thing.*⁴⁰²

- 4.13. He was told by Detective Sergeant White to contact the Garda station in Sligo about this letter. He made contact and looked for Garda John Nicholson. Garda Nicholson later came to his house that night and:

... Tony Doyle, I think, was in the sitting room or something and he brought the letter into the sitting room and he looked at it and he said that he was bringing it away ... John Nicholson ... it seems was instructed by Sergeant White to take away the letter.

The letter was never returned to his physical possession but he saw it again the next morning. The following morning, Mr. Conlon was introduced to Inspector Barrett and his colleague by Garda Nicholson. It was at this stage that he first saw the second sheet of the letter which was shown to him by the two members. When he handed the letter over to John Nicholson there was “only one letter on it”: now “there was two letters tagged together”.⁴⁰³

- 4.14. He had no idea where the second sheet came from. At this stage, he made what he acknowledged to be the false statement to Inspector Barrett and his colleague dated the 24th of April 1999.⁴⁰⁴ This details the entirely false allegations made by Bernard Conlon concerning an apparent attempt by Mr. Flynn to bribe him in order to discredit Garda John O’Dowd and Detective Sergeant White and to withdraw his evidence. He alleged that Detective Sergeant White had put him up to making this false statement against Mr. Flynn and also supplied him with the details which he was to include in it.⁴⁰⁵ He told Detective Sergeant White that he had made this statement to Inspector Barrett.

- 4.15. At this stage of his evidence Mr. Conlon acknowledged that he might have discussed the second page of the letter with Detective Sergeant White:

At the time I mentioned that to John White, he’d laugh and he’d have the craic about it, like you know, but he never came up with a reason why that was put on it.

He denied that he had added the page to the letter himself or had got anybody else to type it up. He was adamant that he gave the letter which he had received from Mr. Flynn to Garda Nicholson and that the first he saw of the second page

⁴⁰² Transcript, Day 332, Q.233-265.

⁴⁰³ Transcript, Day 332, Q.282-283.

⁴⁰⁴ Tribunal Documents, page 124.

⁴⁰⁵ Transcript, Day 332, Q.310-329.

was the following morning when it was produced to him.⁴⁰⁶ However, he told the Tribunal that he brought the attention of Inspector Barrett and his colleague to the fact that there was now an extra “letter” attached. They did not comment on this when he told them about it.⁴⁰⁷

- 4.16. Mr. Conlon said that the allegation about Mr. Flynn which he supplied to the two Gardaí in the statement was given to him by Detective Sergeant White over the phone when he had contacted him following the receipt of the letter. He later met Detective Sergeant White at his home at 61 Cartron Bay, Sligo. He was told at that meeting about what he was to say in the statement. Mr. Conlon seemed unsure as to when exactly he had been supplied with the false details of the statement: whether it was on the phone or when Detective Sergeant White visited him. It is noteworthy that in his evidence to the Tribunal, Mr. Conlon did not allege, as he had in earlier statements, that Detective Sergeant White, when he had visited Mr. Conlon, had taken the one page letter, examined it, taken it away, and then returned it to Mr. Conlon as two pages on the same afternoon prior to the attendance of Garda Nicholson at 61 Cartron Bay. He said that he never produced the second page to the Gardaí and did not know where it came from. The second page was shown to him by Inspector Barrett. He denied that he had got someone to type the second page.⁴⁰⁸ In his statement of the 15th to the 18th of February 2000, Mr. Conlon said this meeting with Detective Sergeant White had occurred in the afternoon and that before Detective Sergeant White left that evening, Mr. Conlon was told to report the incident with Mr. Flynn to Garda Nicholson. He had said that during the course of the afternoon:

He took away the letter and came back a few hours later. There was a second sheet attached to the letter. John White told me he'd added a bit to it. He told me not to take it out of the envelope. I didn't obey his order. I had a look at it. There was a second sheet, but there was no heading on the second sheet. I cannot remember what was on it.⁴⁰⁹

Sergeant White denied that any of this happened. The Tribunal is satisfied that Mr. Conlon handed over a two-page letter to Garda Nicholson. His evidence on this matter is false.

Detective Sergeant White's Denial

- 4.17. Detective Sergeant White gave a comprehensive rebuttal of these allegations in his statement of the 28th of May 2005. In that statement he accepted that he had received a telephone call from Mr. Conlon at 11.00 hours on the morning of the 26th of April 1999 which lasted (according to telephone records) for 1 minute

⁴⁰⁶ Transcript, Day 332, Q.335-344.

⁴⁰⁷ Transcript, Day 332, Q.348-350.

⁴⁰⁸ Transcript, Day 332, Q.283-383.

⁴⁰⁹ Tribunal Documents, page 205.

and 24 seconds. Mr. Conlon told him that he was being offered big money by Mr. Flynn in relation to something that happened in Navan, Co. Meath about which he knew nothing. This call was received at Letterkenny Garda Station and Detective Sergeant White advised Mr. Conlon to report the matter to the Gardaí in Sligo and to his solicitor. He did not believe that he would be contacted about the matter again. He was not requested to go to Sligo, nor did he suggest that he would do so. He was able to document in the most detailed fashion the work which he was carrying out at that time in preparation for the criminal sittings at Letterkenny Circuit Court on the following morning. He also accepted that he received another phone call from Mr. Conlon at Raphoe Garda Station, again on the 26th of April 1999, at 12.37 hours, which lasted for 2 minutes and 37 seconds. On this occasion, he was informed that Mr. Conlon had reported the matter to his solicitor but had not yet reported it to the Gardaí. Detective Sergeant White advised him that he should do so. Mr. Conlon said that he would and he did not contact him again on that date. He denied that he travelled to Sligo or that he told Mr. Conlon that he wanted to set up Mr. Flynn. Detective Sergeant White denied typing out the second sheet of paper. Detective Sergeant White worked thirteen hours duty on the 26th of April 1999, all of which was on overtime.

- 4.18.** He had three reference points by which he could establish part of his duties on that date, which included his diary, a list of witnesses in the case of the People (at the suit of the Director of Public Prosecutions) and Frank McBrearty Junior and others (the Edward Moss case), together with copies of a number of fax transmissions.
- 4.19.** In his diary for the 26th of April, Detective Sergeant White noted a call received from Bernard Conlon at 11.00 hours. After lunch on the same date, he said that he wrote a letter to a medical man from Castlederg, County Tyrone upon which he impressed that date's Garda stamp. He then filled out a facsimile cover sheet by hand which was dated the 26th of April 1999 and was timed at 15.35 hours. He then sent this facsimile to the doctor's surgery at Castlederg; the result sheet of which shows the transmission at 15.39 hours. In addition, he typed a letter to another medical doctor and filled out the facsimile cover sheet by hand, which was again dated the 26th of April 1999 and the time again noted at 15.35 hours. This was also faxed, together with associated documents, to the doctor's office at 15.43 hours, the time and date of which are noted on the result sheet. He received a call back from one of the doctors, which he entered in his diary at 16.00 hours. He then telephoned Superintendent John Fitzgerald's office at Manorhamilton Garda Station at 16.30 hours and notified his clerk of the situation regarding the court case. The time of this call was noted in his diary also.

He then typed out a letter to Superintendent Fitzgerald and stamped it with the Garda stamp for the 26th of April 1999 and faxed these documents to the superintendent's office at Manorhamilton at 16.56 hours. He also notified a number of witnesses of their obligation to attend court.⁴¹⁰

Evidence of Detective Garda Edward McHale

- 4.20. In this context, the Tribunal heard evidence from Detective Garda Edward McHale to the effect that on a date which appears to be the morning of the 26th of April 1999, at approximately 09.30 to 10.00 hours, he encountered Bernard Conlon near Sligo Garda Station. Mr. Conlon asked for Garda John Nicholson and he had a letter with him which he showed to Detective Garda McHale. The letter contained not one, but two pages, which Detective Garda McHale identified to the Tribunal as being the same two pages as those already set out in the report. Mr. Conlon did not say when he had received this letter but he did proffer the letter to Detective Garda McHale, who looked at it. However, he was not asked to give the letter to Garda John Nicholson. His reaction to the letter was:

I didn't make much sense out of any of the letter; even the main body of the letter I didn't. I thought it was a peculiar way for, that was my own thinking now, for a private investigator to meet Bernard Conlon. I just thought it was a peculiar way that maybe he wouldn't, if he did not want to meet him that he would probably write, he would not drive down to Sligo to meet him. That was my initial thinking.

Detective Garda McHale told Mr. Conlon that he would meet Garda John Nicholson and tell him that he was looking for him and he did later mention the matter to Garda Nicholson. He returned the letter to Mr. Conlon.⁴¹¹

- 4.21. Detective Garda McHale's evidence, which I accept, provides strong support for Detective Sergeant White's denial of involvement in the production of any part of this letter: in particular, the second page. If he had been involved as described by Bernard Conlon in coming to his house, taking away the letter, manufacturing the second page and bringing it back to Bernard Conlon on the afternoon of the 26th, Detective Garda McHale could not have been shown the second page of the letter earlier on the morning of the 26th of April. Mr. Conlon's description of the attendance of Detective Sergeant White at his home on the afternoon of the 26th of April 1999 is completely false.

⁴¹⁰ Tribunal Documents, pages 2091-2095 and page 2427 and pages 2520-2530 and Transcript, Day 360, Q.230-254.

⁴¹¹ Transcript, Day 353, Q.640-698.

Evidence of Detective Sergeant White

4.22. Detective Sergeant White, in evidence, said that following the second phone call with Bernard Conlon on the 26th of April 1999, he had nothing personally to do with the matter. However, he did become aware that the matter had been reported within a matter of days after the 26th. He said he never saw a copy of the second page of the letter until he was in custody, when he denied having anything to do with it. He said there was a level of disbelief amongst Gardaí when they heard about the allegation that Mr. Flynn had attempted to bribe Bernard Conlon. Notwithstanding this sense of disbelief, the event had no impact on the District Court licensing prosecution because Mr. Conlon had already given evidence. He said:

I didn't know about the second letter, that's a certainty, until afterwards. There was no in-depth discussion about it. It was a bit of laugh, a bit of a joke amongst members ... I don't think that we ever actually got down as far as ... saying ... that it was a lie, that he was telling lies. From the brief discussion I had with members in Letterkenny, anything to do with Mr. Flynn wasn't taken seriously and Mr. Conlon was a very small time witness in a small case.⁴¹²

4.23. It is a peculiarity of this case, that though Mr. Conlon started out as a small witness in a small case, which would only have the most minor consequences for those accused, it was then accepted by Gardaí that a threat was made by two persons connected with the accused to intimidate Mr. Conlon as a witness. Then, after he had given his evidence in that small case, Bernard Conlon claimed that a further attempt was made by a private investigator, acting on behalf of one of the accused, to bribe him into withdrawing the statement which formed the basis of the licensing prosecution. It is difficult to see how these events could be viewed with some hilarity by elements in Letterkenny Garda Station and yet viewed seriously enough to warrant criminal investigation and the arrest of innocent people in Sligo. Notwithstanding his previous encounters with Mr. Flynn, because of Mr. Flynn's contact with his wife by telephone at his home and Mr. Flynn's subsequent prosecution in respect of that call, Detective Sergeant White said he had no interest in how the matter was dealt with in Sligo. He said that he had no motivation to make up anything against Mr. Flynn and held no grudge against him in respect of this matter. He felt that it was up to the Gardaí in Sligo under Chief Superintendent McNally to investigate this letter properly by interviewing the parties in respect of whom the allegation had been made; namely Mr. Frank McBrearty Senior and Mr. William Flynn. This was not done.

⁴¹² Transcript, Day 58, Q.52-520.

Evidence of Mr. John Nicholson

4.24. Mr. Nicholson gave evidence to the Tribunal that he received a call from Bernard Conlon who told him that he got a letter. He was asked by Bernard Conlon to call out and see him. He had a vague recollection of speaking to Chief Superintendent McNally before he went. He went to Chief Superintendent McNally because he was told that the letter was from a Mr. Flynn who had dealings with matters in Donegal which, he knew, were being investigated by Chief Superintendent McNally. Bernard Conlon also told him that he had contacted Detective Sergeant White who suggested that he contact Garda Nicholson. He associated the letter with the McBreartys, but did not understand it to have emanated from Mr. Flynn at their behest. When he called to Mr. Conlon he briefly glanced at the letter and only recalled there being one page of it. Whatever he got he handed over to Chief Superintendent McNally. The Tribunal is not satisfied that this could be so. Having gone out specifically to obtain the letter, it is difficult to understand why Garda Nicholson would not have read the letter in its entirety and, if there were two pages, read them both. There was some conversation about Mr. Conlon being happy if he accepted a sum of money offered in the letter. He made reference in statements to the fact that the letter referred to offering Mr. Conlon a sum of money to withdraw his evidence in the District Court. This is what he recalled of the letter. In fact the letter does not say any such thing. He said the second page could have been included in the letter but he did not see it. If the offer of money to withdraw the statement as evidence, which had been made by Mr. Flynn to Mr. Conlon, was not in the letter one could only assume that he had been told this by Mr. Conlon. He did not take a statement from Mr. Conlon at that stage. He said that he did not see a reason for doing it. He had no explanation to offer for not taking what, in the Tribunal's view, is the obvious course for a Garda in such a situation: to take a statement from Mr. Conlon who was clearly complaining about an attempt to bribe him. He did not see that he had any duty to take a statement from Mr. Conlon. The Tribunal is satisfied that exactly that was his primary duty at that stage having regard to the seriousness of the allegation. Once again, Mr. Nicholson, in his testimony to the Tribunal, was evasive and unforthcoming in factual detail. This again raised the suspicion that he had more to tell than he was willing to disclose to the Tribunal.

The Limited Investigation of The Letter

4.25. **It is difficult to understand why this letter was not treated as one might expect: an important exhibit in a criminal investigation. Garda Nicholson should be able to recount in detail, and should have noted, what he received from Bernard Conlon and what Bernard Conlon told him about**

the receipt of the letter and his conversation with William Flynn. If the letter was part of this story it should have been crystal clear from the very beginning whether there were one or two pages to the letter, whether they were in the envelope, whether they were handled by Garda Nicholson, to whom they were brought, when they were handed over, and by whom they were retained. These basic details are what are needed in order to establish the necessary chain of evidence that might need to be established if any criminal charges arose out of this case. No explanation has been furnished by any member of An Garda Síochána, including Garda Nicholson, as to why this was not done in relation to this letter.⁴¹³

Evidence of Chief Superintendent McNally

- 4.26. Chief Superintendent McNally recalled, in evidence, how on the 26th of April 1999, he received a telephone call from Garda Nicholson when he was on duty in Donegal, to tell him that Bernard Conlon had contacted him in relation to the fact that two men had called to his house in relation to the evidence that he had given in Donegal Court and that they wanted him to change his statement. He thought that Mr. Flynn's name may have been mentioned. He telephoned Superintendent Sheridan to find out what Garda inspector was working, or who was available, and was informed that it was Inspector Barrett. He contacted Inspector Barrett and instructed him to go and interview Mr. Conlon in relation to the information that Garda Nicholson had furnished to him. Chief Superintendent McNally said that Garda Nicholson called to see him the following day. He showed him the letter, which included the second page, and Chief Superintendent McNally told him to give the letter to Inspector Barrett.
- 4.27. Chief Superintendent McNally said that he was concerned by the allegation and that is why he caused Inspector Barrett to interview Mr. Conlon about it. He was concerned that this might be an attempt by Mr. Flynn to influence witnesses. He understood Garda Nicholson had contacted him because the letter concerned Donegal. He was involved in the Donegal investigation at that stage. The matter was relevant because it referred to Mr. Conlon's appearance in the court case against Mr. Frank McBrearty Senior.
- 4.28. When Chief Superintendent McNally read the letter on the 27th of April 1999, he could not understand it. The second page in particular made no sense. As to the first page, the Navan enquiry from Mr. Flynn, he said:

*I consider(ed) the letter quite harmless. It was typical ... it was a Billy Flynn letter. That was my reaction at the time.*⁴¹⁴

⁴¹³ Transcript, Day 341, Q.302-564.

⁴¹⁴ Transcript, Day 351, Q.300-317.

- 4.29. Chief Superintendent McNally was clear in his recollection that he did not receive the letter on the 26th of April. On that date, he was in Donegal. At lunchtime he received a phone call from Assistant Commissioner Carty to meet him in Donegal town because Superintendent Lennon wished to meet him. They met Superintendent Lennon at the Abbey Hotel. Then he went to a funeral at Ballyshannon. He remained in Letterkenny that evening and overnight. It was an important phase in the overall investigation as Mrs. Sheenagh McMahon was about to commence making her statement.
- 4.30. Chief Superintendent McNally, in trying to understand the second page of the letter, said:

*I know I couldn't make head or tail of it at the time. I suppose, you know, was it a letter typed out by Bernard Conlon or a proposed reply, or whatever. I certainly had no reason to think otherwise. ... Insofar as it is a mystery ... I couldn't make head or tail of it.*⁴¹⁵

His mindset was that Mr. Flynn was a bit of a nuisance who had approached a number of witnesses in the investigation and they were beginning to interview a number of those witnesses at that stage of the investigation.⁴¹⁶ Nothing was done to investigate the matter any further until Bernard Conlon made his statements in January 2000.⁴¹⁷

Evidence of Superintendent Barrett and Sergeant Gallagher

- 4.31. Superintendent Barrett, who was then an inspector, gave evidence to the Tribunal that he was contacted by Chief Superintendent McNally. He was an acting District Officer at the time based in Carrick-on-Shannon, Co. Leitrim. He was requested to interview Bernard Conlon with Sergeant P.J. Gallagher. At the time he took the statement, he said, there was no reason to believe or disbelieve Mr. Conlon. He seemed a little bit concerned at the time. He was entitled to make a complaint in a statement which was taken from him as directed by Chief Superintendent McNally. Mr. Conlon told him that he had received a letter and that he had given it over to Garda John Nicholson. Inspector Barrett took the statement at face value as something that merited investigation. He returned with the statement to Sligo Garda Station where he got the statement typed. He handed over the typed copy on that day or the following day to Chief Superintendent McNally and also handed over the letter from Mr. Flynn to the Carty investigation team some time later. He received no other direction to carry out further enquiries in respect of the statement, by interviewing Frank McBrearty Senior or Mr. William Flynn or anybody else. He also said that he received the letter from Garda John Nicholson.

⁴¹⁵ Transcript, Day 351, Q.317-335.

⁴¹⁶ Transcript, Day 351, Q.340.

⁴¹⁷ Transcript, Day 351, Q.317-354.

There were two pages to it when he handed it over to the Carty team. Whatever he got he gave to the Carty team. He had made reference to the fact that this was a “copy” letter as that is what it seemed to be at the time. He said he knew nothing about the silver bullet issue or the Donegal situation at all at that stage.⁴¹⁸

- 4.32. Sergeant Gallagher confirmed much of the evidence given by Superintendent Barrett. His involvement in the matter ended when he returned to the station with Inspector Barrett after the taking of the statement. He did not think there was anything suspicious about the taking of the statement.⁴¹⁹

Other Letters Drafted by Bernard Conlon

- 4.33. It is easy to see why Chief Superintendent McNally could not make any sense of the second page of this letter. Detective Sergeant White thought it was an attempt by Mr. Conlon to ingratiate himself further with Gardaí and to show himself as a person who, when offered a serious bribe, would not allow himself to be corrupted but instead would be willing to tell the truth.⁴²⁰ The McBrearty name is not spelt correctly: it is spelt “McBertie”. It is notable that in the course of his evidence Mr. Conlon has repeatedly referred to the McBrearty family as “McBertie”. In this regard, the Tribunal was very concerned to discover letters apparently dictated by Mr. Conlon which were sent to the Minister for Justice, Mr. Michael McDowell SC, TD, on the 30th of June 2003 and to the then Commissioner of An Garda Síochána. In the body of the letter to the Commissioner by Mr. Conlon there is a reference to “Frank McBertie”. The structure, the weak construction and the lack of flow in these letters is very similar to that exhibited in the second page of the letter in question. The letter to the Minister reads:

Dear Minister McDowell

I would like an appointment to meet you at your office regardin Garda harasment as your araware that I was involved with Garda coruption in Donegal.

As I am now a victimise by sume Garda in Sligo trusting you will get this your early attion.

Yours sincerely

Bernard Conlon⁴²¹

⁴¹⁸ Transcript, Day 352, Q.11-125. (The Tribunal is satisfied that this was in fact the original letter.)

⁴¹⁹ Transcript, Day 352, Q.468-492.

⁴²⁰ Tribunal Documents, page 2092.

⁴²¹ Tribunal Documents, page 3522.

The letter to the Commissioner reads:

Dear Mr. Pat Burns Comisiner

As I would like to write to you in relating to Garda coruption as I was left a skete goat by Sligo Garda John Nickleson of Sligo Garda Station and also Det. Sergent White as my whole is destroyed now. As I feel now I'm in dangor now what they mede me do. It's relating to Frank McBertie night club in Raphoe, Co. Donegal. I would to met you and have a chat with you as soon as possible.

Yours sincerely

Bernard Conlon, 61 Carton Bay, Sligo.⁴²²

- 4.34. The Tribunal is aware that Detective Sergeant White is a highly articulate and literate man and cannot conceive of circumstances in which he would have penned this second page of the Flynn letter or typed it in order to achieve some objective that was to his benefit. If an attempt was being made to convert a letter received from William Flynn into a letter, or even the reply to a letter, of an offer of bribery so that it could be used against Mr. Flynn and Mr. Frank McBrearty Senior at a later stage, this would have constituted a very poor effort on his part. In addition, it seems most unlikely that persons engaged in attempts to bribe witnesses would engage in a correspondence about it. The second page could not be regarded as part of a letter emanating from somebody attempting to bribe another. It could only be regarded as a letter drafted in response to such an offer and a very poor one at that. It was never presented by Mr. Conlon as a response to the offer; rather it was presented as part of a letter received from Mr. Flynn.

Absence of Forensic Evidence

- 4.35. It is also notable that no forensic link by way of fingerprint or otherwise has been made between the two page letter and its envelope and Detective Sergeant White.⁴²³

⁴²² Tribunal Documents, page 3512.

⁴²³ Tribunal Documents, pages 3013-3014.

4.36. Conclusions

1. According to a story told by Bernard Conlon, a private detective working for the McBrearty family called William Flynn called to his house and menacingly threatened to bribe him over to the McBrearty side of the Donegal affair. This never happened. Mr. Conlon made up the allegation. There is no evidence to support his further allegation that he had planned to tell this lie as a result of entering into a conspiracy with Detective Sergeant John White and that he used Bernard Conlon as his corrupt agent in this regard. The Tribunal rejects Mr. Conlon's evidence,
2. The lie about the visit from Mr. Flynn to Bernard Conlon was told by Mr. Conlon in the context of a genuine one page letter that was received by him from Mr. Flynn. This letter was one enquiring about an event in Navan that was, and is, unrelated to any of the events with which the Tribunal is concerned. On the face of this letter, and on all of the evidence painstakingly sifted by the Tribunal, there is no evidence of any kind of any improper conduct by Mr. Flynn.
3. Bernard Conlon has told multiple lies about this William Flynn letter. When he came to complain about the fictional visit that, he alleged wrongly, had been made by Mr. Flynn to his house, he handed over the genuine one page William Flynn letter to the Gardaí as a two page letter. This second page to the letter was entirely false and was deceitfully added to the letter by Bernard Conlon.
4. Bernard Conlon has attempted to mislead the Tribunal by claiming that this second page to the William Flynn letter was the creation of certain Gardaí. Mr. Conlon's allegation that a member of the Gardaí created this second page to the letter is a lie. In all probability, this second page to the letter was created by Bernard Conlon, or was written by a person unknown under his direction.
5. When presented to the Gardaí for investigation, the William Flynn letter was alleged by Bernard Conlon to be in two pages. This also was a lie.
6. It is surprising that this letter was not fully investigated by Gardaí in Sligo or by the Carty team. Bernard Conlon made very serious allegations that needed to be followed up immediately. If, as the Tribunal is now told, it was not treated very seriously at the time, the question should have been asked by the Gardaí as to whether these allegations by Bernard Conlon were a lie. If he was lying, then this had serious implications for the allegations made by Bernard Conlon against Mark McConnell and Michael

Peoples in respect of the alleged silver bullet threat. This was a line of inquiry which was worthy of exploration at that time. It could well have led to a reassessment of Mr. Conlon as a witness of credibility and, as a consequence, the arrest of Michael Peoples on the 6th of May 1999 could have been avoided.

CHAPTER 5 RECOMMENDATIONS

- 5.01. The issues raised in this module were essentially matters of fact. No change of structure or policy on the part of the Garda authorities can compel members of An Garda Síochána or other witnesses appearing before the Tribunal to tell the truth. The Tribunal notes with concern, however, that the saga of Bernard Conlon has continued for several years before the criminal courts. That saga was also an internal Garda discipline matter and it remains unresolved within An Garda Síochána. This is dismaying. Unless there is a mechanism in which issues such as these can be addressed promptly and efficiently within the code of discipline available to An Garda Síochána, public confidence, and indeed internal confidence, in the effective leadership of the organisation, and the integrity of An Garda Síochána will be seriously undermined: as it has been here.
- 5.02. This long delay in the disposal of internal Garda discipline matters is not fair to the public, to other serving members of An Garda Síochána or, indeed, to serving members who become the subject and focus of allegations such as those chronicled in this report. The Tribunal has heard of the human cost to Bernard Conlon, Mr. John Nicholson, Detective Sergeant John White, other witnesses and their families, and especially, Mr. Mark McConnell and Mr. Michael Peoples, of leaving these matters unresolved. It is very wrong that a period of over five years has passed within which the Garda Síochána disciplinary code has not dealt with issues concerning Detective Sergeant White. In this regard, the Tribunal is compelled to record that it repeats its recommendation that consideration should be given to revising the discipline regulations to make them more streamlined and less cumbersome so that issues such as these are dealt with swiftly. Allowing issues such as the Bernard Conlon affair to fester within the Sligo and Donegal divisions, and within An Garda Síochána generally can only be a source of disharmony and disruption to the work of An Garda Síochána in those divisions. Long drawn out and unresolved Garda internal enquiries are always a source of intense frustration and worry to those who have done nothing wrong and who simply wish to get on with doing their job of serving the public. It is also grossly unfair to those who were the subject of Bernard Conlon's false allegations, Mr. Mark McConnell and Mr. Michael Peoples, whose lives were overshadowed and continue to be affected by this disgraceful affair.

- 5.03. The Tribunal was shocked to have to find as a fact that two Gardaí retained Bernard Conlon as a Garda agent for the purpose of attending at Frankie’s nightclub on the 30th of August 1997 to procure evidence. It is even more disturbing that Bernard Conlon received witness expenses to which he was not entitled in return for doing so, and for attending the District Court as a witness for the prosecution. It is absolutely vital to the administration of criminal justice that those using a person as a Garda agent should chronicle such use accurately and comprehensively. Further, the use of an agent to gather evidence and as a witness should only be engaged in with the full knowledge and approval of a senior officer. The use of an undercover civilian agent, acting under Garda direction, must be adequately recorded and should also be fully disclosed to the prosecuting authority, the defence and the court.
- 5.04. The Tribunal recommends that the use of any person as an agent and witness should be subject to strict controls and restricted to cases of strict necessity. It is recommended that urgent consideration be given to the formulation of proper written guidelines by the Minister for Justice, Equality and Law Reform, in conjunction with the Commissioner of An Garda Síochána, governing the use of agents as witnesses. These regulations should provide a regime within which operations in which agents are approved and retained are accurately and adequately recorded and then reported to the prosecuting authority. It is wrong, as happened in the Bernard Conlon case, for members of An Garda Síochána to casually engage an agent without making a single note about the matter and without Garda management authority. This allows for lies to be later told with alacrity: precisely what happened in respect of the Bernard Conlon affair before this Tribunal. Agents and their handlers need ethical direction. The entire use of, noting of, authorisation of, and disclosure in respect of, agents should be the subject of written Garda regulations. Contravention of these regulations should be a serious disciplinary offence.
- 5.05. The Tribunal suggests that those who read this report, and the other four reports of this Inquiry, should urgently consider what changes in structure, ethics, training and composition of an Garda Síochána might best militate against a recurrence of the extraordinary events chronicled in the reports, while at the same time enhancing the effectiveness of our national police force and its otherwise proud record.

APPENDIX I

PREVIOUS CONVICTIONS OF BERNARD CONLON

Date	Court	Offence(s)	Court Outcome
02/06/1981	Naas District Court	Burglary (7) Forgery (6) Uttering & Larceny (6)	Mountjoy Prison 1 Year
02/06/1981	Trim Circuit Court	Mal. Maiming Cattle	Sentence 1 year 5 months
16/12/1982	Kilmainham District Court	Section 21(3) Misuse of Drugs Act	Probation
29/08/1983	Dublin District Court	Indecency	Fined £5
02/05/1984	Thurles District Court	False Pretences	Sentence Limerick Prison 10 Months
05/07/1985	Nenagh District Court	False Pretences (2) Credit by Fraud (3) Larceny	Sentence Limerick Prison 10 Months & 6 Months
08/07/1987	Navan District Court	Larceny	100 hours Community Service Order
22/07/1987	Navan District Court	Forgery & Larceny	110 hours Community Service Order
22/06/1988	Navan District Court	Section 2 Larceny Act, 1916	£20.00 Fine
23/01/1989	Trim Circuit Court	Larceny of Assorted Jewellery	Mountjoy Prison 5 Years
25/01/1989	Trim Circuit Court	Burglary (8) Larceny (7) Malicious Damage Robbery	Mountjoy Prison 5 Months
08/02/1989	Castlepollard District Court	False Pretences (12)	Sentence 1 Month
20/10/1989	Dublin District Court	Section 10 Criminal Justice Act False Pretences	Sentence Mountjoy Prison 10 Months
03/10/1992	Sligo District Court	Section 2 Larceny Act 1916	Sentence 3 Months
22/11/1994	Sligo Circuit Court	Appealed	Sentence suspended if of good behaviour for 1 year and entered bail of £100

APPENDIX 2

THE FOUR LETTERS TO
MR. McCONNELL AND MR. PEOPLES
DATED THE 28TH OF SEPTEMBER 2005 AND THE 11TH OF OCTOBER 2005

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

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



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Dublin 4,
Ireland.
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Fax: 01 - 260 1122

Sole Member
The Honourable Mr. Justice Frederick Morris **DX: 208 Dublin**

My Ref:

Your Ref:

If telephoning please ask for:-

SIL/PEO001-06/BC/JH

PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE

Wednesday, 28th September 2005

**PRIVATE AND CONFIDENTIAL
STRICTLY ADDRESSEE ONLY**

Mr. Michael Peoples
264 St. Eunan's Terrace
Raphoe
Co. Donegal

**RE: Module: The "Silver Bullet" issue – Term of Reference (d)
Investigation into the circumstances surrounding the arrest and detention of
Mark Mc. Connell on the 1st October, 1998 and Michael Peoples on the 6th
May, 1999.**

Dear Mr. Peoples,

As you will be aware the Tribunal has been holding hearings into this module over recent months. The taking of evidence has almost been completed. The purpose of this letter is to enquire from you as to whether you feel there is any relevant evidence, which you could give to the Tribunal on this aspect of its work.

If you feel that you could give relevant evidence on this module, please could you contact the Tribunal's offices so that an appointment can be arranged for you to give an interview to one of the Tribunal's Investigators. This will be recorded and circulated in advance of you giving evidence before the Tribunal.

If you have any queries, please do not hesitate to contact me either by e-mail or at the telephone number given above.

Yours sincerely,

Bernadette Crombie
Bernadette Crombie.

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

Established by The Minister
for Justice Equality and Law Reform
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Tel: 01 - 260 1111
Fax: 01 - 260 1122

Sole Member
The Honourable Mr. Justice Frederick Morris **DX: 208 Dublin**

My Ref:

Your Ref:

If telephoning please ask for:-

SIL/MCC005-05/BC/JH

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Tuesday, 11 October 2005

PRIVATE AND CONFIDENTIAL
STRICTLY ADDRESSEE ONLY

Mr. Mark McConnell

Tullyvinney

Raphoe

Co. Donegal

By Registered Post

RE: Module: The "Silver Bullet" issue – Term of Reference (d)
Investigation into the circumstances surrounding the arrest and detention of Mark
Mc. Connell on the 1st October, 1998 and Michael Peoples on the 6th May, 1999.
Further material –extra to volume 9
Final submissions

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Yours sincerely,

P.A. Shane Dwyer

Bernadette Crombie,
Solicitor to the Tribunal

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

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PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE

Tuesday, 11 October 2005

PRIVATE AND CONFIDENTIAL
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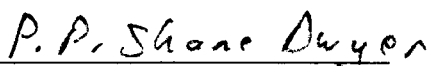
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264 St. Eunan's Terrace
Raphoe
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